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**IN THE
SUPREME COURT OF THE UNITED STATES**

PAUL DAVID SCHULTZ, Applicant,

v.

BOKF, N.A., Respondent.

**ON APPLICATION ARISING FROM THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT**

**EMERGENCY APPLICATION FOR AN IMMEDIATE
TEMPORARY ADMINISTRATIVE STAY AND A LIMITED STAY
PENDING FINAL RESOLUTION OF THE PROSPECTIVE §
455(a) PARTICIPATION CONTROVERSY**

Paul David Schultz
Applicant *Pro Se*
18436 Kapalua Terrace
Leesburg, Virginia 20176
(703) 582-4355
pdschultz1@gmail.com

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**TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE OF
THE UNITED STATES AND CIRCUIT JUSTICE FOR THE FOURTH
CIRCUIT:**

Applicant Paul David Schultz respectfully applies under Supreme Court Rules 22 and 23 and 28 U.S.C. § 1651(a) for immediate temporary administrative relief and a narrowly limited stay preserving the status quo while the Chief Justice, the Court, and the United States Court of Appeals for the Fourth Circuit address the pending prospective-recusal emergency. The requested order would prevent only Judge Leonie M. Brinkema from entering a merits disposition in *Schultz v. BOKF, N.A.*, No. 1:26-cv-01125-LMB-IDD (E.D. Va.), while allowing briefing, record preparation, party filings, and ordinary nondispositive administration to continue. It would not decide the merits of the bankruptcy appeal, decide the ultimate § 455(a) question, or direct the Fourth Circuit how to rule.

The emergency is constitutional, not merely procedural. The act sought to be stayed is merits adjudication itself by the tribunal whose continued participation remains the subject of a properly presented and unresolved impartiality challenge. A fair and impartial tribunal is a basic requirement of Fifth Amendment due process. If the challenged judge renders the merits judgment before that participation question can receive meaningful review, the asserted constitutional injury is complete and the controversy over prospective participation is extinguished. Later review may address the resulting judgment, but it cannot recreate first-instance merits adjudication occurring only after the impartiality

question was meaningfully reviewed. The requested stay therefore preserves both the constitutional condition under review and this Court's jurisdiction to afford meaningful prospective relief while that relief still exists.

The need for temporary preservation arises because Applicant has already sought the same protection below through two formally designated Emergency Motions. Fourth Circuit No. 26-2405 is an original mandamus proceeding challenging Judge Brinkema's continued participation. Dkt. 3, filed October 5, 2026, is an Emergency Motion for Limited Stay of Merits Disposition Pending Resolution of Petition for Writ of Mandamus and for Temporary Administrative Stay. Dkt. 9, filed October 7, 2026, is a separate Emergency Motion for Expedited Consideration of Pending Emergency Motion and for Immediate Action on the Pending Temporary Administrative-Stay Request. The Fourth Circuit granted Applicant leave to proceed *in forma pauperis* on October 6 at Dkt. 8. As of October 15, 2026, at 9:00 a.m. EDT, the mandamus petition (Dkt. 2), Dkt. 3, and Dkt. 9 remain pending; no merits disposition has entered in EDVA No. 1:26-cv-01125-LMB-IDD. Dkt. 3 has remained pending for approximately 10 days since its October 5, 2026 filing.

Applicant contemporaneously submits a petition under Supreme Court Rule 20 asking this Court for a still narrower institutional remedy: require the Fourth Circuit to exercise its own discretion by adjudicating the properly docketed emergency preservation request while meaningful prospective relief remains available. This Application serves the complementary function. It asks the Circuit Justice to preserve the condition that makes the Rule 20 controversy capable of meaningful adjudication.

RELIEF REQUESTED

Applicant requests two nested forms of relief. First, he requests an immediate temporary administrative stay, pending consideration of this Application or further order, preventing Judge Brinkema from entering an order or judgment affirming, reversing, dismissing, remanding, or otherwise disposing of the merits of EDVA No. 1:26-cv-01125-LMB-IDD. Second, after such immediate preservation, Applicant requests a limited stay on the same terms pending final resolution of the prospective § 455(a) participation controversy. If the Fourth Circuit grants recusal or the matter is reassigned to a successor judge whose participation is not challenged, the stay would no longer prevent merits adjudication by that successor judge. If the Fourth Circuit denies relief, Applicant requests that the stay remain in place for the period necessary to seek timely further review in this Court and, if such review is timely sought, until disposition thereof or further order of the Circuit Justice or the Court.

The requested order should expressly permit merits briefing, record assembly, party filings, docket administration, and other nondispositive proceedings to continue. It also need not prevent reassignment of the appeal. If the matter is reassigned to a successor judge whose participation is not the subject of the pending § 455(a) challenge, Applicant does not seek to prevent that successor judge from proceeding unless separately ordered. The requested relief therefore protects only the disputed act: merits disposition by the challenged judge before the prospective participation controversy receives meaningful appellate review.

JURISDICTION AND AUTHORITY

The Chief Justice is the Circuit Justice allotted to the Fourth Circuit. Supreme Court Rule 22.3 requires an application to be addressed to the Justice allotted to the circuit from which the matter arises, and Rule 22.1 directs the Clerk to transmit such an application promptly when an individual Justice has authority to grant the requested relief. Rule 23.1 provides that a stay may be granted by a Justice as permitted by law.

This Application does not seek a stay of enforcement of an already-entered district-court merits judgment under 28 U.S.C. § 2101(f); no such merits judgment has entered. Applicant instead invokes the All Writs Act, 28 U.S.C. § 1651(a), and Rule 23.1 to preserve this Court's jurisdiction and the prospective subject of the contemporaneous Rule 20 petition. This Court has long recognized authority to preserve the practical effectiveness of appellate jurisdiction where intervening events otherwise could defeat meaningful review. FTC v. Dean Foods Co., 384 U.S. 597, 603–05 (1966); Scripps-Howard Radio, Inc. v. FCC, 316 U.S. 4, 9–10 (1942).

Appellate jurisdiction exists because this Court may review the Fourth Circuit's ultimate disposition of the pending mandamus proceeding under 28 U.S.C. § 1254(1). The related Rule 20 petition asks the Court to require adjudication of that pending mandamus proceeding and a pending emergency motion, not to dictate the Fourth Circuit's substantive result. Temporary preservation is necessary because the intervening merits disposition would itself consummate the asserted constitutional injury: adjudication of the merits by the tribunal whose continued participation is the subject of a properly presented and unresolved impartiality

challenge. The constitutional interest is not merely in obtaining corrective review after judgment; it is in receiving merits adjudication in the first instance from a fair and impartial tribunal. A stay therefore preserves both that Fifth Amendment protection and the practical effectiveness of this Court's appellate jurisdiction while the question remains capable of meaningful resolution.

The governing stay standard is directly informed by Hollingsworth v. Perry, 558 U.S. 183, 190 (2010) (per curiam). There the Court explained that, to obtain a stay pending the filing and disposition of a petition for mandamus, an applicant must demonstrate a fair prospect that a majority of the Court will vote to grant mandamus and a likelihood of irreparable harm absent a stay; in close cases, the Circuit Justice or the Court balances the equities and relative harms. *Hollingsworth* also restated the familiar mandamus considerations identified in Cheney v. U.S. Dist. Court for D.C., 542 U.S. 367, 380–81 (2004): no other adequate means to attain the requested relief, a clear and indisputable entitlement to the writ, and appropriateness under the circumstances. This Application satisfies those preservation-focused requirements for the reasons below.

The Constitution and the All Writs Act supply the governing boundary within which Rule 23.3 must operate. Rule 23.3's lower-court-first requirement has been satisfied because Applicant first sought the same stay relief from the Fourth Circuit through Dkt. 3, a formally designated Emergency Motion requesting an immediate temporary administrative stay and a limited stay of merits disposition pending resolution of the mandamus petition. Dkt. 9 thereafter sought immediate and expedited judicial action on that still-pending stay request. App. 16a–34a. The order

underlying the mandamus controversy is EDVA Dkt. 8, the September 29, 2026 order denying recusal, which is reproduced in the Appendix. App. 35a–37a. No Fourth Circuit order has yet granted or denied Dkt. 3. Rule 23.3 requires that the requested relief first be sought below and directs an applicant to append the lower-court denial “if any.” Applicant has therefore invoked the prescribed lower-court mechanism and expressly sought the same preservation now requested here. Rule 23.3’s lower-court-first requirement must be applied consistently with the Constitution and the All Writs Act. It cannot be construed to require Applicant to remain below while lower-court nondecision itself permits the asserted Fifth Amendment injury to occur and extinguishes the jurisdictional object the All Writs Act is invoked to preserve through the requested stay: a live controversy in which prospective constitutional relief remains possible. A procedural rule cannot be construed to extinguish the fundamental Fifth Amendment right to adjudication by a fair and impartial tribunal or to deprive this Court of the opportunity to exercise the appellate jurisdiction Congress has conferred while that constitutional controversy remains capable of meaningful prospective relief. Congress has conferred the jurisdictional authority; what nondecision threatens to destroy is the opportunity for its effective exercise before the constitutional injury occurs.

Even assuming ordinary practice favors awaiting an actual lower-court disposition before Circuit Justice intervention, the present posture falls within the “most extraordinary circumstances” Rule 23.3 expressly contemplates. See Volkswagenwerk A.G. v. Falzon, 461 U.S. 1303, 1303–05 (1983) (O’Connor, J., in chambers). There, emergency stay relief remained pending and undecided in the

Michigan Supreme Court, yet the Circuit Justice entertained and granted a stay. Here, Dkt. 3 likewise remains undecided while the very Fifth Amendment injury—and associated irreparable harm—it seeks temporarily to prevent may occur first. Applicant submits that, for purposes of time-sensitive Fifth Amendment preservation, Dkt. 3's continued nondecision operates as a constructive denial because silence through the challenged merits disposition defeats the requested protection as completely as a formal denial while simultaneously foreclosing meaningful prospective review of the challenged judge's continued participation. Applicant's contemporaneous Rule 20 petition asks this Court to require adjudication of the unresolved mandamus petition, Dkt. 3, and Dkt. 9 while prospective relief remains possible. The present Rule 22 application therefore seeks to preserve the subject of that Rule 20 proceeding and this Court's ability to exercise its appellate jurisdiction while the Fourth Circuit's nondecision persists and prospective constitutional relief remains possible. Rule 23.3 should not transform Applicant's compliance with the lower-court-first requirement into a command to wait until the constitutional protection sought has become impossible in kind.

PROCEDURAL BACKGROUND

A. The underlying bankruptcy appeal and the pending recusal controversy.

The underlying controversy arose in *In re Paul David Schultz*, Bankr. No. 24-11959-BFK, and the related motion for relief from automatic stay brought by

BOKF, N.A., in the United States Bankruptcy Court for the Eastern District of Virginia. The resulting bankruptcy appeal is pending in the United States District Court for the Eastern District of Virginia under 28 U.S.C. § 158(a), No. 1:26-cv-01125-LMB-IDD.

On September 10, 2026, Applicant filed EDVA Dkt. 5 seeking recusal under 28 U.S.C. § 455(a), reassignment, and deferral of merits disposition. Dkt. 5 expressly invoked United States v. DeTemple, 162 F.3d 279, 286–87 (4th Cir. 1998), and asked whether a reasonable, well-informed observer considering all facts and circumstances would question impartiality, while also explicitly disclaiming a tally-of-losses theory. The motion presented an objective cumulative record that included recurring adjudicative-scope and status enlargement, recurring party-presentation transformation, eleven first-level bankruptcy dispositions before record transmission and ordinary record-based merits presentation, the Dkt. 21/Dkt. 5 appellate-history contradiction sequence, and later use of accumulated litigation history as repetition, credibility, and filing-access predicates. App. 38a–61a.

No Appellee filed an opposition to the recusal motion before Judge Brinkema entered the September 29 order. The substituted materially different judicial-rulings and bias framework centered on adverse rulings, extrajudicial source, and the “deep-seated favoritism or antagonism” language associated with Liteky v. United States, 510 U.S. 540, 555 (1994).

Judge Brinkema, in Dkt. 8, recited *DeTemple’s* objective formulation, but then stated that the asserted circumstances did not establish “bias or the exceptional favoritism or antagonism required for recusal” and that Applicant

identified “no extrajudicial source of bias.” EDVA Dkt. 8 at 2; App. 36a. The substitution appears on the face of Dkt. 8 itself. No Appellee opposition intervened between Applicant’s presentation of the cumulative *DeTemple* controversy actually presented and the substituted materially different decisional framework reflected in Dkt. 8. The party-presentation principle is reflected in *United States v. Sineneng-Smith*, 590 U.S. 371, 375–80 (2020), *Clark v. Sweeney*, 607 U.S. 7, 9–10 (2025) (per curiam), and *Margolin v. National Ass’n of Immigration Judges*, 608 U.S. 339, 342–43 (2026) (per curiam). The present application does not ask the Circuit Justice to resolve that controversy. It asks only that Judge Brinkema not enter the merits judgment that would complete the asserted constitutional injury before meaningful appellate review of her continued participation can occur.

Applicant filed his opening merits brief in the district-court bankruptcy appeal on September 28. Ordinary merits briefing remains open. The requested stay would not interrupt that briefing. It would preserve the constitutionally protected identity-of-adjudicator issue and aid this Court’s jurisdiction until the pending emergency requests can be judicially addressed.

B. Dkt. 5 documented recurring party-presentation and adjudicative-transformation events before Dkt. 8 existed.

Dkt. 5 preceded Dkt. 8 by nineteen days. The party-presentation concern therefore was not constructed in reaction to the recusal denial. Before Dkt. 8 existed, Applicant had already placed recurring transformation of the presented

controversy within the cumulative § 455(a) record and had supported that contention with concrete procedural sequences. App. 38a–61a.

One sequence arose from the September 5, 2025 TRO hearing in EDVA No. 1:25-cv-01336-LMB-IDD. Clear Sky Financial, LLC (“Clear Sky”) was not the named appellee, yet Clear Sky filed a substantive opposition and Edward Grass (“Grass”) appeared and participated on Clear Sky’s behalf concerning foreclosure, claim, deficiency, and related litigation issues before Applicant was given the opportunity to raise his procedural objections. When Applicant attempted to present two procedural motions in open court, Judge Brinkema stated that was “not appropriate” despite the Notice of Appearance and substantive Response in Opposition having been filed at 5:06 p.m. and 6:01 p.m., respectively, the night before the hearing and then directed him to file them with the Clerk. He did so, and through Dkt. 22 Judge Brinkema later denied both motions as moot because they had been filed “after this Court’s hearing.” Sept. 5, 2025 Tr. 4:23–11:20; EDVA No. 1:25-cv-01336-LMB-IDD, Dkt. 22; App. 62a–82a.

A second sequence concerned the appellate history assigned to AP No. 24-01058 Dkt. 30. In EDVA No. 1:25-cv-01334, Judge Brinkema, in Dkt. 21, stated that Applicant had not appealed AP Dkt. 30, that the time to appeal had passed (even though AP Dkt. 30 was interlocutory), and that the merits of the underlying order were outside the Rule 60(b) appeal then before the District Court. After final judgment later entered in the adversary proceeding, Applicant filed No. 1:26-cv-00984 as the first direct appeal. Before Applicant responded to Clear Sky’s “duplicate-appeal” motion, before a Rule 8014 merits brief, and before the appellate

record was before the District Court, Judge Brinkema accepted Clear Sky's position in Dkt. 5 and dismissed the direct appeal as raising "no new issues" and seeking another "bite of the apple" as though AP Dkt. 30 had been appealed prior. Dkt. 5 at 13–16; Dkt. 5-1, Rows 6 & 8; App. 44a–47a, 55a–56a. The contradiction is clear: in 25-cv-01334 AP Dkt. 30 had not been appealed yet in 26-cv-00984 AP Dkt. 30 had indeed already been appealed. The beneficiary of the contradiction was constant: Clear Sky Financial, LLC.

Those examples were part of the cumulative appearance record presented in Dkt. 5 itself. The point was not that any one event conclusively established partiality, but that recurring alteration of who could participate, what controversy was treated as presented, and what prior adjudication was said to have occurred formed part of the objective circumstances a reasonable observer would consider under § 455(a). Dkt. 5 had already placed the broader party-presentation and adjudicative-transformation mechanism at issue. Dkt. 8 then introduced a different *Liteky*-centered decisional theory that Dkt. 5 had not presented and adjudicated the recusal motion through that substituted framework, thereby supplying a contemporaneous additional instance of the very mechanism Dkt. 5 had placed at issue.

C. Eleven first-level bankruptcy appeals reached final disposition before ordinary record-based merits presentation.

Dkt. 5 and its filed docket-history exhibit identified eleven first-level bankruptcy appeals in which disposition preceded ordinary record transmission and record-based merits presentation. On August 27, 2026, the Bankruptcy Court entered Main Case Dkt. 821 and stated: “In all ten Referenced Appeals the United States District Court entered judgment without the record on appeal.” Bankr. Dkt. 821 at 1 & n.1; App. 85a. Dkt. 821 ordered transmission of the record in those ten appeals after judgment had already entered. A separate audited matter, No. 1:25-cv-01499, ended nine days before its Bankruptcy Transmittal Cover Sheet and fifteen designated-record items arrived. Across all eleven matters, final disposition preceded record transmission, ordinary merits briefing, and the District Court docket reflected no briefing order establishing an opening-brief opportunity before judgment. The filed record states:

1. No. 1:25-cv-01499: Judge Brinkema dismissed the conversion-reconsideration appeal as moot at Dkt. 2 on September 24, 2025 because she had affirmed the original conversion order earlier that day. No briefing order or merits brief preceded dismissal. The Bankruptcy Transmittal Cover Sheet and fifteen designated-record items arrived October 3, nine days after judgment.
2. No. 1:26-cv-00984: Clear Sky filed its “duplicate-appeal” motion at Dkt. 4 on May 7, 2026, and Judge Brinkema, in Dkt. 5, dismissed the appeal the next day

on May 8. No briefing order, response to Dkt. 4, opening merits brief, or appellate-record transmission preceded judgment.

3. No. 1:26-cv-01239: Once again Judge Brinkema, in Dkt. 2, dismissed the appeal on May 11, 2026. Judgment preceded even the timely filed Main Case Rule 8009 designation filed May 15 by four days. No briefing order, bankruptcy record or merits brief preceded judgment.
4. No. 1:26-cv-01575: Once again Judge Brinkema, in Dkt. 2, dismissed the appeal on July 7, 2026. A Rule 8009 designation had been filed May 19, but before judgment the District Court docket reflected no designated record, Rule 8010 event, briefing order, or opening brief.
5. No. 1:26-cv-01576: Once again Judge Brinkema, in Dkt. 2, dismissed the appeal on June 8, 2026. A Rule 8009 designation had been filed May 7; no transmitted designated record, Rule 8010 event, briefing order, or opening brief preceded judgment.
6. No. 1:26-cv-01579: Once again Judge Brinkema, in Dkt. 2, dismissed the appeal on June 8, 2026. A Rule 8009 designation had been filed May 7; no transmitted designated record, Rule 8010 event, briefing order, or opening brief preceded judgment.
7. No. 1:26-cv-01577: Once again Judge Brinkema, in Dkt. 2, affirmed the filing injunction on July 30, 2026. A Rule 8009 designation had been filed May 19, and the bankruptcy docket transmitted only the notice of appeal; no designated record, Rule 8010 event, briefing order or opening merits brief preceded judgment.

8. No. 1:26-cv-01578: Once again Judge Brinkema, in Dkt. 2, affirmed the filing injunction on June 8, 2026. A Rule 8009 designation had been filed May 19; before judgment the docket reflected no transmitted Rule 8009 record, Rule 8010 notice, briefing order, opening brief, appellee brief, or reply.
9. No. 1:26-cv-01869: Once again Judge Brinkema, in Dkt. 2, affirmed the bankruptcy recusal order on July 20, 2026. The notice/designation sequence began June 18; the District Court docket moved from Dkt. 1 to final Dkt. 2 without an intervening record-transmission event, briefing order, or opening merits brief.
10. No. 1:26-cv-01763: Once again Judge Brinkema, in Dkt. 2, affirmed the bankruptcy order on July 31, 2026. A Rule 8009 designation had been filed June 12; before judgment the docket reflected no Bankruptcy Transmittal Cover Sheet, designated packets, Rule 8010 availability notice, briefing order, or opening merits brief.
11. No. 1:26-cv-01870: Once again Judge Brinkema, in Dkt. 2, affirmed the venue order on July 20, 2026. A Rule 8009 designation had been filed June 18; the District Court docket moved from Dkt. 1 to final Dkt. 2 without an intervening transmitted designated record, Rule 8010 event, briefing order, or opening merits brief.

Across the eleven audited first-level bankruptcy appeals, the record is categorical: eleven final dispositions; eleven cases with no pre-judgment briefing order establishing an opening-brief opportunity; eleven cases in which the designated record on appeal had not been transmitted before disposition; and eleven

cases in which ordinary record-based merits presentation never occurred before final judgment or dismissal. App. 51a–61a, 85a. The Bankruptcy Court independently corroborated the record-transmission failure, finding in Main Dkt. 821 that “[i]n all ten Referenced Appeals the United States District Court entered judgment without the record on appeal,” while the eleventh audited matter, No. 1:25-cv-01499, ended nine days before its Bankruptcy Transmittal Cover Sheet and fifteen designated-record items arrived. App. 53a, 85a. Applicant relies on that eleven-of-eleven recurrence as objective evidence of repeated deprivation of the pre-judgment process through which the First Amendment Petition Clause right of meaningful resort to the courts and the Fifth Amendment guarantee of notice and a meaningful opportunity to be heard become operative. The sequence repeatedly bypassed the bankruptcy-appellate framework prescribed by Rules 8009 and 8010 for designation and transmission of the appellate record and Rules 8014 and 8018 for the merits-brief process and filing sequence. Section 455(a) is preventive and protects public confidence in judicial impartiality. Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 859–60 (1988). The eleven completed events therefore provide objective constitutional and procedural evidence supporting prospective review before the challenged judge exercises dispositive merits authority again. Applicant presents those events for their constitutional, procedural, and § 455(a) significance; the underlying merits of the eleven appeals are not presented for review here.

The present appeal has advanced farther procedurally because Applicant has now filed an opening merits brief. The eleven completed matters remain relevant

because they establish the depth and recurrence of the prior deprivation: final disposition occurred in every audited matter before any briefing order established the opening-brief opportunity, before the designated appellate record was transmitted, and before ordinary record-based merits presentation could occur. That completed history supplies the concrete prospective concern here. Applicant seeks preservation before the challenged judge again exercises dispositive merits authority, this time while the separate threshold controversy concerning her continued participation remains pending for appellate review.

D. Two formally designated Fourth Circuit Emergency Motions remain the immediate preservation mechanism below.

Applicant commenced Fourth Circuit No. 26-2405 seeking prospective mandamus review of Judge Brinkema's continued participation. Dkt. 3, entered October 5, 2026 at 5:02:00 p.m., is an Emergency Motion for Limited Stay of Merits Disposition Pending Resolution of Petition for Writ of Mandamus and for Temporary Administrative Stay. It requests an immediate temporary administrative stay while the Fourth Circuit considers the emergency motion and a limited stay of merits disposition pending resolution of the mandamus petition. The requested protection allows briefing, record preparation, party filings, and ordinary nondispositive district-court administration to continue.

On October 7, Applicant filed Dkt. 9, a second formally designated Emergency Motion: Emergency Motion for Expedited Consideration of Pending

Emergency Motion and for Immediate Action on the Pending Temporary Administrative-Stay Request. Dkt. 9 requests immediate action on the temporary-preservation component of Dkt. 3, conditional single-judge consideration under Fourth Circuit Local Rule 27(e) if panel action cannot feasibly occur and the request has not already been assigned to a panel, temporary protection while any response is obtained, and expedited disposition of Dkt. 3. App. 24a–34a.

Applicant’s concern that an emergency request can remain undecided throughout its operative window is supported by a prior Fourth Circuit chronology. In No. 26-1086, Applicant filed an emergency stay motion on March 20, 2026 identifying April 3 deadlines and an April 17 evidentiary hearing. The Fourth Circuit did not decide that emergency stay until July 10—112 days after filing, 98 days after April 3, and 84 days after April 17. The point is not that No. 26-1086 dictates the result here. It demonstrates why the existence of an emergency filing, standing alone, does not preserve time-sensitive relief. App. 86a–93a.

As of October 15, 2026, at 9:00 a.m. EDT, the mandamus petition (Dkt. 2), Dkt. 3, and Dkt. 9 remain pending, and no order granting or denying the requested temporary preservation has entered. No merits disposition has entered in EDVA No. 1:26-cv-01125-LMB-IDD. Dkt. 3 has therefore remained pending for approximately 10 days since October 5, 2026.

REASONS FOR GRANTING THE APPLICATION

I. Immediate administrative relief is necessary to preserve the status quo while this Application is considered.

The first requested step is deliberately temporary. Applicant asks for an immediate administrative stay so that the very event the Application seeks to prevent does not occur while the Application is being transmitted, a response is considered, or the Circuit Justice decides whether longer interim relief is warranted. Supreme Court Rule 22.1 requires prompt transmission to the Circuit Justice; Rule 23.1 authorizes a Justice to grant a stay as permitted by law; and the All Writs Act permits preservation necessary or appropriate in aid of this Court's jurisdiction. 28 U.S.C. § 1651(a).

The status quo is readily identifiable. The EDVA bankruptcy appeal remains pending; Applicant's opening brief has been filed; the § 455(a) participation controversy remains the subject of Fourth Circuit No. 26-2405; and the Fourth Circuit's temporary-preservation request has been invoked. An administrative stay would leave all of those processes in place. It would simply prevent the asserted Fifth Amendment injury from occurring while the courts determine whether the challenged judge may perform the dispositive adjudication.

Hollingsworth confirms that interim preservation is available in connection with mandamus. 558 U.S. at 190. The present request is narrower than the stay at issue there because Applicant does not ask the Circuit Justice to suspend the entire district-court proceeding. He asks only to withhold the single adjudicative act that would complete the asserted constitutional injury and eliminate the possibility of

prospective relief in kind. The immediate administrative stay serves only to preserve the status quo long enough for orderly consideration of this Application; the accompanying limited-stay request supplies the longer interim protection if the Circuit Justice concludes that the traditional preservation showing is satisfied. If the Circuit Justice prefers to obtain a response before deciding the limited stay, the immediate administrative stay can maintain the status quo for that short interval.

II. There is a fair prospect that the related Rule 20 petition warrants extraordinary relief.

A. The Rule 20 petition presents a substantial question whether nondecision may itself produce the practical effect of denial and obstruct timely further review.

The related Rule 20 petition presents a narrow institutional question. The Fourth Circuit retains complete discretion to grant or deny Dkt. 3 and to grant or deny mandamus. Applicant does not ask this Court to dictate either substantive result. The question is whether that discretion may remain unexercised while nondecision itself produces the practical effect of denial by permitting the challenged district-court merits act to occur while simultaneously obstructing Applicant's timely access to further emergency review and extinguishing the live prospective controversy over which this Court's appellate jurisdiction could otherwise be meaningfully exercised.

Federal Rule of Appellate Procedure 21 confirms the distinction between discretion over outcome and adjudicative treatment. Rule 21(a)(3) requires the clerk to docket a properly filed mandamus petition and submit it to the court. Rule 21(b)(1) permits the court to deny the petition without requiring an answer from the respondent; otherwise, it must order an answer. And Rule 21(b)(6) provides that the mandamus proceeding “must be given preference over ordinary civil cases.” Those provisions preserve summary decisional authority; they do not identify nondecision as a disposition.

This Court has long distinguished the power to control a lower court’s substantive judgment from the power to require exercise of adjudicative authority. Will v. Calvert Fire Insurance Co., 437 U.S. 655, 661–62 (1978), recognizes that mandamus may be available where a lower court persistently and without reason refuses to adjudicate a matter properly before it. The present emergency does not depend on proving that an ordinary motion has been pending for some historically extraordinary number of days. The temporal value of the requested protection can disappear quickly, and the completed No. 26-1086 chronology demonstrates why waiting for delay to become conventionally “long” can make the remedy meaningless.

The Rule 20 petition therefore seeks the least intrusive form of extraordinary relief: require a ruling while a ruling can still matter. That request is in aid of this Court’s appellate jurisdiction under 28 U.S.C. § 1254(1) by preserving the controversy necessary for that jurisdiction to remain meaningfully exercisable, and it is supported by the All Writs Act’s preservation function. Dean Foods, 384 U.S. at

603–05. A prompt Fourth Circuit denial would leave the Fourth Circuit’s substantive judgment intact and permit Applicant to pursue whatever further relief remains available. Continued silence can determine the temporal outcome without any judicial decision at all.

The right whose prospective protection is at stake is fundamental. “A fair trial in a fair tribunal is a basic requirement of due process.” In re Murchison, 349 U.S. 133, 136 (1955). The Due Process Clause likewise entitles a litigant to an “impartial and disinterested tribunal” and protects both the appearance and the reality of fairness. Marshall v. Jerrico, Inc., 446 U.S. 238, 242–43 (1980). More recently, this Court reaffirmed the objective character and constitutional importance of judicial impartiality, holding that due process requires recusal where the objective risk of bias becomes constitutionally intolerable and explaining that both the appearance and reality of impartial justice are essential to the legitimacy of judicial adjudication. Williams v. Pennsylvania, 579 U.S. 1, 8–9, 14–16 (2016). Applicant does not contend that those authorities themselves establish that Judge Brinkema must ultimately be recused on the present record. They establish the constitutional importance of the interest for which prospective review is being sought: merits adjudication by a tribunal whose impartiality is not subject to an unresolved, properly presented challenge.

That constitutional protection must operate before the challenged merits adjudication occurs if it is to operate as a protection at all. Otherwise, the protection is reduced from an *ex ante* constitutional guarantee to an *ex post* remedial claim, with the asserted constitutional injury already complete. The Due Process Clause

does not merely promise a mechanism for attempting to undo a judgment after a constitutionally disqualified tribunal has exercised dispositive authority; it protects the right to a fair and impartial tribunal when adjudication occurs. If the availability of later review were sufficient to deny preservation, the impartial-tribunal guarantee could be defeated in practice by timing alone: the challenged tribunal could exercise the very merits authority under review before any reviewing court determines whether it may lawfully do so. Thus and on the facts presented here, treating later review as an adequate substitute would reduce the impartial-tribunal guarantees recognized in *Murchison*, *Marshall*, and *Williams* to after-the-fact error correction precisely when Applicant seeks to invoke them prospectively. A lower court cannot be permitted, through action below combined with nonaction above, to make the constitutional protection impossible before any reviewing tribunal determines whether it was required. Interim preservation exists to prevent that constitutional protection from becoming non-existent or merely retrospective.

That distinction also supplies the necessary *Cheney* bridge. Applicant does not claim a clear and indisputable entitlement to a predetermined Fourth Circuit ruling on recusal or on Dkt. 3. The narrower entitlement asserted in the related Rule 20 proceeding is to meaningful judicial treatment of a properly docketed emergency request directed to preservation of that fundamental impartial-tribunal interest while prospective relief remains possible. Federal Rule of Appellate Procedure 21 requires a mandamus petition to be docketed and submitted to the court, permits summary denial without requiring an answer from the respondent, and commands that the proceeding receive preference over ordinary civil cases. Fed.

R. App. P. 21(a)(3), (b)(1), (b)(6). *Will* further recognizes supervisory mandamus where an inferior court persistently and without reason refuses to adjudicate a matter properly before it. *Will v. Calvert Fire Insurance Co.*, 437 U.S. 655, 661–62 (1978). Applicant therefore seeks no substantive outcome by writ; he seeks exercise of judicial authority while judicial action can still protect the subject of review.

B. The underlying § 455(a) controversy is substantial and objectively framed.

The underlying participation controversy likewise presents a substantial issue. Dkt. 5 affirmatively invoked *DeTemple*'s objective § 455(a) standard and presented a cumulative record rather than a claim of subjective bias. The question was whether a reasonable, well-informed observer considering all circumstances would question impartiality. 162 F.3d at 286–87. The circumstances presented included recurring adjudicative-scope and status enlargement, recurring party-presentation transformation, the eleven pre-presentation dispositions, the TRO participation-before-objection sequence, the Dkt. 21/Dkt. 5 appellate-history contradiction, and later use of accumulated litigation history as repetition, credibility, and filing-access predicates. Dkt. 5 thus placed the recurring mechanism at issue nineteen days before Dkt. 8 existed.

Judge Brinkema, in Dkt. 8, stated the *DeTemple* formulation, but then resolved the request through *Liteky*-centered concepts: “exceptional favoritism or antagonism” and absence of an “extrajudicial source of bias.” The legal framework

substitution is visible on the face of the order itself. The present application does not require the Circuit Justice to decide whether recusal ultimately is required. It requires only recognition that the pending controversy is serious enough that a short preservation order is appropriate before the challenged judge enters the very merits disposition the prospective recusal request seeks to precede.

The preventive character of § 455(a) reinforces that conclusion. *Liljeberg* explains that § 455(a) serves the public's confidence in the judicial process, not merely proof of actual bias. 486 U.S. at 859–60. A temporary stay that preserves the identity-of-adjudicator issue until it is reviewed is aligned with that preventive function and does not prejudice the ultimate recusal result.

The same objective concern is reinforced by the Code of Conduct for United States Judges. Canons 1, 2, and 3 emphasize preservation of judicial integrity and independence, avoidance of impropriety and its appearance, and fair, impartial, and diligent performance of judicial duties. Applicant invokes those standards not as a disciplinary claim and not as proof of subjective misconduct, but because they reinforce § 455(a)'s objective inquiry into whether the full circumstances would cause a reasonable, informed observer to question continued impartial adjudication.

C. Dkt. 8 itself reproduces the party-presentation mechanism that Dkt. 5 had already placed at issue.

The transformation is visible on the face of Dkt. 8; it does not depend on Applicant's characterization. Dkt. 5 presented an objective cumulative-record

controversy under *DeTemple*. Judge Brinkema, in Dkt. 8, first recited the *DeTemple* formulation, but then stated that the asserted pattern “consists of judicial acts,” that disagreement with judicial rulings did not establish “bias or the exceptional favoritism or antagonism required for recusal,” and that Applicant identified “no extrajudicial source of bias.” EDVA Dkt. 8 at 2; App. 36a. Those are the order’s own words. Judge Brinkema therefore stated the controversy Applicant presented and then resolved the motion through substituted materially different *Liteky*-centered concepts visible in its own text. That adjudication occurred without an intervening Appellee opposition supplying the substituted decisional framework.

The recurrence is independently significant. Dkt. 5 had identified party-presentation transformation as part of the cumulative § 455(a) controversy before Dkt. 8 existed. Judge Brinkema, through Dkt. 8, then supplied a contemporaneous additional instance of the mechanism already placed at issue. No Appellee opposition intervened. *Sineneng-Smith*, 590 U.S. at 375–80; *Clark*, 607 U.S. at 9–10; and *Margolin*, 608 U.S. at 342–43, enforce the party-presentation principle and do not require the Circuit Justice to decide ultimate recusal here. They confirm that the challenge to the decisional framework is substantial enough to warrant preservation. A reasonable observer need not infer subjective motive to regard the recurrence as materially strengthening the need for prospective review before the same challenged judge enters the merits judgment.

The historical record supplies a categorical constitutional predicate: in eleven of eleven audited first-level bankruptcy appeals, final disposition preceded any briefing order establishing an opening-brief opportunity, transmission of the

designated appellate record, and ordinary record-based merits presentation. Main Dkt. 821 independently confirms that ten of those judgments were entered “without the record on appeal”; the eleventh audited matter ended nine days before its record was transmitted. App. 53a, 85a. The eleven-of-eleven sequence repeatedly bypassed the bankruptcy-appellate framework prescribed by Rules 8009 and 8010 for designation and transmission of the appellate record and Rules 8014 and 8018 for the merits-brief process and filing sequence. Applicant relies on that completed history as objective evidence of repeated deprivation of the pre-judgment process through which the First Amendment right of meaningful resort to the courts and the Fifth Amendment guarantee of notice and a meaningful opportunity to be heard are made effective. The present appeal has advanced farther because Applicant has filed an opening merits brief. The constitutional concern now is prospective and distinct: whether Judge Brinkema should exercise dispositive merits authority while the threshold controversy concerning her continued participation remains unresolved. Dkt. 5 placed the eleven-event history and the related party-presentation mechanism within the cumulative § 455(a) record before Dkt. 8 existed; Dkt. 8 then itself reproduced the challenged decisional mechanism while adjudicating that recusal request. Those objective circumstances materially strengthen the need for preservation before the same challenged judge enters the merits judgment.

III. Denial of temporary preservation threatens irreparable constitutional and adjudicative harm.

The threatened injury is first-instance merits adjudication by the very tribunal whose continued participation remains under unresolved appellate review. The eleven completed pre-presentation dispositions supply concrete evidence that first-instance procedural protections can be extinguished before later review catches up: eleven final dispositions, no pre-judgment briefing order in any of them, no transmitted designated appellate record in any of them, and no ordinary record-based merits presentation before disposition. The Fifth Amendment protection presently at stake includes adjudication by a fair and impartial tribunal when judgment is rendered. Once the challenged judge exercises the dispositive merits authority whose exercise Applicant seeks to precede through review, that first-instance protection cannot be restored in kind. Later vacatur may correct a judgment; it cannot recreate merits adjudication that occurred only after meaningful review of the impartiality objection.

The risk is concrete in the present record. Dkt. 5 placed the eleven completed pre-presentation dispositions, recurring party-presentation transformation, and related decisional mechanisms within the objective § 455(a) controversy before Dkt. 8 existed. Judge Brinkema then reproduced the asserted party-presentation mechanism while adjudicating whether that cumulative record itself warranted recusal. The present danger is that the same judge may now exercise dispositive

merits authority before prospective review determines whether her continued participation is consistent with § 455(a).

Applicant's present irreparable injury is adjudication of the merits by the challenged judge before the separate threshold controversy concerning her continued participation receives prospective appellate review. Applicant has filed an opening merits brief in the present appeal, which distinguishes the current procedural posture from the eleven completed pre-presentation dispositions. That distinction strengthens rather than diminishes the preservation request: the historical record establishes what occurred when first-instance process was allowed to become complete before review, while the present application asks the Court to preserve the distinct § 455(a) protection before the challenged dispositive act occurs. The availability of merits briefing now cannot cure the asserted party-presentation injury already alleged in the recusal proceeding, where Judge Brinkema decided the recusal motion through the challenged transformed decisional framework rather than the framework Applicant presented.

The preservation choice is asymmetric. A temporary administrative stay can be dissolved immediately if review shows it unnecessary, and it does not prevent briefing, record preparation, filings, nondispositive administration, or reassignment. But denial or continued nondecision cannot restore the lost constitutional condition after the challenged merits disposition has entered: first-instance adjudication only after the impartiality objection has received meaningful review. Later vacatur may provide retrospective correction, but it cannot make the

original merits adjudication occur before a tribunal whose authority to adjudicate had first been resolved.

That distinction matters under *Hollingsworth*. The irreparable-harm inquiry asks whether denial of interim protection will allow the event sought to be preserved against to occur before mandamus review can function. 558 U.S. at 190. Here the answer is yes. Applicant has already experienced an emergency stay request that remained undecided for 112 days despite identified events fourteen and twenty-eight days away. The current district-court history separately contains eleven first-level dispositions before ordinary record transmission, briefing order and merits presentation and a recusal order entered through a transformed decisional framework, rather than the decisional framework Applicant presented. Those completed events supply an objective basis for present imminence.

Continued nondecision also affects access to the next reviewing tribunal. Supreme Court Rule 23.3 ordinarily requires relief first to be sought below. Applicant has done so. If the lower court can remain silent until the protected event occurs, however, the litigant may lose both the prospective relief below and the practical opportunity to seek equivalent emergency protection above while it still matters. The present Application asks the Circuit Justice to prevent that circular result, not to bypass the Fourth Circuit.

The harm is also institutional. Section 455(a) exists to protect the appearance and reality of impartial adjudication before public confidence is undermined. Liljeberg, 486 U.S. at 859–60. Where the challenged act is a merits disposition by the judge whose continued participation is under review, a temporary pause

directed only to that act is the least disruptive means of ensuring that appellate review remains meaningful.

**IV. The equities and public interest strongly favor a narrow
preservation order.**

The requested stay imposes minimal countervailing harm. Respondent BOKF, N.A. may continue to brief the merits. The record may continue to be assembled and corrected. The Clerk may continue ordinary administration. The District Court may address nondispositive matters. The application asks only that Judge Brinkema not enter the final merits disposition while the prospective-recusal emergency is under judicial review.

The fact that Applicant has already filed his opening merits brief further demonstrates the narrowness of the requested relief. Applicant does not seek to prevent merits presentation or ordinary appellate development; he seeks only to preserve the identity-of-adjudicator question before the presented merits are decided.

Respondent therefore loses no substantive defense, no briefing opportunity, and no right to eventual adjudication. The only restraint is on merits disposition by the challenged judge while the prospective § 455(a) participation controversy remains unresolved. By contrast, denial of temporary preservation risks making the requested prospective relief impossible in kind. The balance is especially favorable because the restraint may be lifted at any time by further order and ceases to

restrict merits adjudication if Judge Brinkema recuses or the matter is reassigned to a successor judge whose participation is not challenged.

The public interest also favors orderly adjudication. A short preservation order avoids needless disputes over whether a merits judgment entered during the pendency of the recusal challenge must later be vacated, reassigned, or relitigated. It protects judicial resources while respecting the preventive purpose of § 455(a). The stay is therefore not an interruption of adjudication; it is a means of preserving who may perform the dispositive adjudication until that threshold question receives meaningful review.

V. Applicant first sought the same stay relief below; continued nondecision now threatens to extinguish that prospective protection before the challenged merits disposition, leaving no adequate means for preservation.

Applicant first sought the same preservation from the Fourth Circuit through Dkt. 3. That formally designated Emergency Motion requests an immediate temporary administrative stay and a limited stay of district-court merits disposition pending resolution of the mandamus petition—the same preservation requested here. Dkt. 9 then sought immediate and expedited judicial action on that still-pending request, temporary protection while any response was obtained, and conditional single-judge consideration under Local Rule 27(e). Dkt. 9 did not substitute a different form of relief for Dkt. 3; it sought judicial action on Dkt. 3 while that preservation could still be effective. App. 16a–34a. The record therefore

establishes direct resort to the appropriate court below for the same stay relief now requested from the Circuit Justice.

The Fourth Circuit remains the lower tribunal capable of granting or denying Dkt. 3, but Dkt. 3 has value only before the challenged merits disposition occurs. Judge Brinkema has already denied the underlying recusal request through EDVA Dkt. 8, so another request to the challenged judge cannot supply the independent preservation sought through the pending mandamus proceeding. App. 35a–37a. A stay entered after Judge Brinkema has exercised the dispositive merits authority at issue cannot preserve who exercises that authority in the first instance. Continued nondecision therefore leaves Applicant without an adequate means, on the present timetable, to preserve the Fifth Amendment protection whose prospective loss Dkt. 3 was filed to prevent.

Fourth Circuit No. 26-1086 supplies completed evidence of that temporal problem. Applicant filed an emergency stay motion on March 20, 2026 identifying threatened events fourteen and twenty-eight days away. When no ruling issued, Applicant filed an Emergency Motion to Expedite Decision on April 20 and thereafter a status letter concerning the unresolved emergency requests. The Fourth Circuit did not resolve the stay and expedite motions until July 10—112 days after the stay motion was filed and after the entire identified emergency window had expired. App. 86a–93a. Its evidentiary significance is direct: formal pendency of an emergency stay request did not preserve the time-sensitive relief the motion sought. Judicial action after the protected event had occurred could decide

the motion, but it could no longer provide the prospective protection for which the motion had been filed.

That completed history gives concrete effect to the constructive-denial posture presented here. Dkt. 3 likewise seeks protection whose value expires upon the challenged merits disposition. If that disposition occurs first, continued silence defeats the requested preservation as completely as a formal denial for purposes of the prospective Fifth Amendment protection at stake, while foreclosing meaningful prospective review of the challenged judge's continued participation. Dkt. 3's formal pendency therefore cannot itself constitute an adequate alternative when the act it seeks temporarily to prevent would eliminate the protection before judicial action occurs.

An immediate administrative stay can preserve the status quo while the Circuit Justice obtains any response considered appropriate or refers the Application to the full Court under Rule 22.5. The requested administrative stay permits briefing, record preparation, filings, docket administration, and ordinary nondispositive proceedings to continue while temporarily withholding only the challenged dispositive act. The separately requested limited stay would preserve that same status quo through resolution of the prospective § 455(a) participation controversy or further order. Either course permits orderly consideration without allowing the period of consideration itself to consume the constitutional protection the Application seeks to preserve.

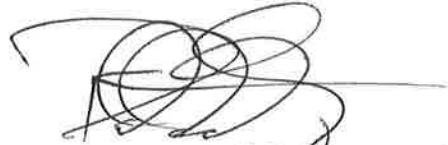
CONCLUSION AND RELIEF REQUESTED

Applicant respectfully requests an immediate temporary administrative stay, pending further order, providing that Judge Brinkema shall not enter any order or judgment affirming, reversing, dismissing, remanding, or otherwise disposing of the merits of EDVA No. 1:26-cv-01125-LMB-IDD while this Application is considered. Briefing, record preparation, party filings, docket administration, and ordinary nondispositive proceedings may continue.

Applicant further requests a limited stay on the same terms pending final resolution of the prospective § 455(a) participation controversy or further order of the Circuit Justice or the Court. If the Fourth Circuit grants recusal or the matter is reassigned to a successor judge whose participation is not challenged, the stay need not bar merits adjudication by that successor judge. If the Fourth Circuit denies relief, Applicant requests that the stay remain in place for the period necessary to seek timely further review in this Court and, if such review is timely sought, until disposition thereof or further order of the Circuit Justice or the Court.

Alternatively, if immediate limited relief is not granted outright, Applicant requests an immediate administrative stay sufficient to obtain any response the Circuit Justice considers appropriate and to permit orderly consideration of the Application without allowing the prospective controversy to be overtaken in the interim.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Paul David Schultz', with a horizontal line extending to the right.

Paul David Schultz
Applicant *Pro Se*
18436 Kapalua Terrace
Leesburg, Virginia 20176
(703) 582-4355
pdschultz1@gmail.com
Dated: October 15, 2026

PROPOSED ADMINISTRATIVE ORDER

Upon consideration of the application of Paul David Schultz, it is ordered that, pending further order of the undersigned or of the Court, entry by Judge Leonie M. Brinkema of any order or judgment affirming, reversing, dismissing, remanding, or otherwise disposing of the merits of *Schultz v. BOKF, N.A.*, No. 1:26-cv-01125-LMB-IDD (E.D. Va.), is administratively stayed. This order does not stay merits briefing, record preparation, party filings, docket administration, nondispositive proceedings, or reassignment of the appeal. If the matter is reassigned to a successor judge whose participation is not the subject of the pending recusal challenge, this order does not by itself prohibit that successor judge from proceeding.

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Emergency Motion for Stay, Fourth Circuit No. 26-1086, Dkt. 12,
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of 7, denying the Emergency Motion for Stay and Motion to Expedite
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**Additional material
from this filing is
available in the
Clerk's Office.**