



































































1 JUSTICE GINSBURG: Well, the court said  
2 "general jurisdiction," right?

3 MR. BROOKS: They -- they certainly did.

4 JUSTICE GINSBURG: "General jurisdiction,"  
5 instead of saying "of competent jurisdiction" when  
6 "competent" generally means -- is this -- the -- the  
7 sue-and-be-sued clause gives the corporation capacity to  
8 sue and be sued, but competent jurisdiction is addressed  
9 to the Court.

10 Does this Court have authority to proceed in  
11 this category of cases?

12 MR. BROOKS: Yes, Your Honor. So the way we  
13 think all these things work together is, first of all,  
14 as I say, the entire phrase, "court of competent  
15 jurisdiction," State or Federal, had been unanimously  
16 held to confer subject-matter jurisdiction. Right?  
17 Those are the cases we talked about, and there were no  
18 cases to the contrary at the time.

19 And the understanding of what "competent  
20 jurisdiction" was adding was twofold. First of all,  
21 from Congress's perspective at the time, I think it's  
22 fair to say they weren't thinking about much, because  
23 the 1954 Act was a 150-page comprehensive reform of  
24 Federal housing policy having very little to do with  
25 jurisdiction.

1                   And we think what happened is they simply  
2 borrowed a phrase that had been unanimously held to  
3 confer jurisdiction, and they put it in for Fannie Mae.  
4 There was no other reason to think they meant anything  
5 different from that.

6                   But we also know that less than two years  
7 before the 1954 charter for Fannie Mae was adopted, this  
8 Court looked at the phrase "competent jurisdiction" on a  
9 standalone basis and said that all it referred to at  
10 that time in that context was personal jurisdiction.

11                   That doesn't mean that's what "competent  
12 jurisdiction" means always. But what we think it means  
13 is when coupled with the words "State" or "Federal," it  
14 means personal jurisdiction courts of general  
15 jurisdiction.

16                   Now, Justice Sotomayor earlier asked the  
17 question about how many statutes had sue-and-be-sued  
18 clauses like ours. We have the same count, Your Honor,  
19 that your clerk has. We have nine total, including  
20 Fannie Mae.

21                   JUSTICE SOTOMAYOR: We now have three  
22 versions, but that's okay.

23                   (Laughter.)

24                   MR. BROOKS: I'm going to go with nine.

25                   (Laughter.)



1 MR. BROOKS: But here's what else we know.  
2 The number of statutes that have the phrase "competent  
3 jurisdiction" alone, based on some Lexis research very  
4 early this morning, is 781. So if the phrase "competent  
5 jurisdiction" together with "State" or "Federal" exists  
6 only nine times, but "competent jurisdiction" as a  
7 generic matter occurs 781 times, that's the rule that we  
8 urge on this Court today.

9 The rule is, when combined with the grant of  
10 jurisdiction embodied in the word "Federal" under Red  
11 Cross, you have the personal jurisdiction and general  
12 jurisdiction holdings of other cases. You have the  
13 grant of subject-matter jurisdiction per Red Cross and  
14 its progenitors, and that becomes the jurisdictional  
15 rule that is very clean.

16 Now --

17 CHIEF JUSTICE ROBERTS: If -- I'm sorry.

18 MR. BROOKS: So Your Honor, I was going  
19 to -- go ahead.

20 CHIEF JUSTICE ROBERTS: Your friend on the  
21 other side scares me when he says there are 60,000 cases  
22 that are going to be added to the Federal docket.

23 Do you have an answer to that?

24 MR. BROOKS: I have many answers to that,  
25 Your Honor, but the easiest answer is this.

1 The easiest answer is no --

2 JUSTICE KENNEDY: Don't tell us we're not  
3 working hard enough.

4 (Laughter.)

5 MR. BROOKS: I do recall, Justice Kennedy,  
6 that once upon a time, the Court took 150 cases a year.  
7 Maybe foreclosures could be among them.

8 JUSTICE KENNEDY: They were easier cases.

9 MR. BROOKS: Perhaps I should sit down.

10 (Laughter.)

11 MR. BROOKS: Your Honor, the easiest answer  
12 to that is that it's undisputed in this case that  
13 Freddie Mac -- whatever one thinks of the Fannie Mae  
14 charter, Freddie Mac has clear, undisputed  
15 belt-and-suspenders jurisdiction. Freddie Mac has  
16 almost as many foreclosures as Fannie Mae has. There  
17 has been no race to the Federal courthouse.

18 JUSTICE GINSBURG: But there is a specific  
19 statute that makes that crystal clear. And if we -- if  
20 Congress wanted Fannie Mae, which it was going private,  
21 to be treated the same way as Freddie Mac, then why  
22 didn't it say the same thing for Fannie Mae as it  
23 said --

24 MR. BROOKS: Well, so, Your Honor, we know a  
25 couple of things that Congress thought about Freddie

1 Mac. But just let me make sure I've closed off on the  
2 Chief Justice's question, which is the fact that there's  
3 no race to the Federal courthouse on foreclosures for  
4 Freddie Mac tells you what you need to know about Fannie  
5 Mae, its sister organization.

6 Now, Justice Ginsburg, the issue about  
7 Freddie Mac is severalfold. So the first thing we know  
8 is when Freddy was created in 1970, the legislative  
9 history in both the House Report and the Senate Report  
10 make crystal clear that Congress's intention was to  
11 create an entity that had identical powers that would  
12 develop in parallel and that would have no advantage  
13 over Fannie Mae. We know that was their intention in  
14 drafting it.

15 Now, the words were unquestionably  
16 different, just as the words in the Red Cross charter  
17 were different from the words in the Second Bank of the  
18 United States charter, and yet the outcome was the same.

19 The reason the words were different at the  
20 time is because Congress had the luxury, in 1970, of  
21 writing in a blank slate. So Congress sat down, without  
22 60 years of history, without the need to extricate a  
23 legacy agency from Ginnie Mae with a privatization  
24 scheme over six different amendments, and to simply sit  
25 down and say, this is what we think the GSE should look

1 like.

2 JUSTICE BREYER: I just want you to -- to  
3 talk at some point -- I mean, there is a page of  
4 legislative history, which could not be more clear. It  
5 says exactly what the government says. It says -- they  
6 are -- they are asked, does it -- if we did this, aren't  
7 we giving these corporations -- I mean, Fannie -- the  
8 right to go into a Federal court, although the matter  
9 may be purely a State matter? That's not what we  
10 intended. All we intended -- then they say, well, you  
11 know, they have to look to see whether it's really a  
12 State case or whether it's really a Federal case.

13 I mean -- and the words "competent  
14 jurisdiction" do -- she says do that. That is their  
15 natural meaning. I hadn't quite taken that in, but --  
16 but it is -- it is their natural meaning that, what's  
17 the point of having these here if the statute without  
18 them would grant jurisdiction to go into Federal court  
19 if you want?

20 MR. BROOKS: Well, Justice Breyer, on the --

21 JUSTICE BREYER: Let me give you that --  
22 what do I do? Maybe you could just say you shouldn't  
23 look at legislative history. I'm not prepared to say  
24 that. What -- what should I do?

25 MR. BROOKS: Justice Breyer, two -- two

1 points.

2                   So first of all, on the -- on the natural  
3 reading, I would just urge that the natural reading of  
4 "competent jurisdiction" standing alone is different  
5 from the natural reading of "competent jurisdiction"  
6 State or Federal. And there is no case, I emphasize,  
7 that holds those words together, don't confer  
8 jurisdiction.

9                   But now, on the question about what was --  
10 you know, how to understand the colloquy in 1934, there  
11 is one respect in which that colloquy could be clearer.  
12 And that respect is if the colloquy related to the  
13 statute that created Fannie Mae. That would make it  
14 clearer.

15                   But as it turns out, the 1934 statute that  
16 counsel cites in the briefing was not the statute that  
17 created Fannie Mae, and so it's not that much more  
18 probative than if it had been the legislative history of  
19 an utterly unrelated statute. Okay?

20                   In 1934, in the Housing Act, Congress  
21 authorized the creation of entirely different private  
22 mortgage associations which never came into being. The  
23 sort of hope in the middle of the Depression in 1934 was  
24 that private capital would come into the market pursuant  
25 to that statute in places, if you read the rest of the

1 legislative history, in places like Houston, Texas, and  
2 Chicago, and New York, and would start creating  
3 liquidity to solve the problem.

4 So in 1938, a new statute was passed. That  
5 was the same year, I might add, that Senator Bulkley,  
6 the Senator whose legislative history is quoted, lost  
7 his re-election campaign.

8 JUSTICE BREYER: For this reason.

9 (Laughter.)

10 MR. BROOKS: We -- we -- we can only assume,  
11 or perhaps hope.

12 But in any case, 1938 was a different  
13 statute. The congressional charter for Fannie Mae, that  
14 wasn't even created in 1938. The congressional charter  
15 for Fannie Mae that's being reviewed today was created  
16 in 1948, one year after the Red Cross charter was  
17 adopted, and six years after D'Oench, Duhme. And the  
18 language adopted in 1948 was the D'Oench, Duhme  
19 language.

20 So somebody has to prevail, either the  
21 Supreme Court unanimously in D'Oench, Duhme, or the  
22 failed Senator Bulkley. We -- we think the answer is  
23 most likely this Court in D'Oench, Duhme followed in Red  
24 Cross.

25 CHIEF JUSTICE ROBERTS: The -- the Federal

1 courts -- may be stepping back a bit. There are courts  
2 of limited jurisdiction. And to get into them you have  
3 to carry, I think, a significant burden to establish  
4 their right to be there.

5 Now, I think you have to do more than win  
6 51/49, given a presumption against Federal jurisdiction.  
7 Do you think -- I suspect you think you do win by more  
8 than 51/49, but that seems to me that is a consideration  
9 that we need to take into account.

10 MR. BROOKS: So, Chief -- Mr. Chief Justice,  
11 there's no question that the courts are limited  
12 jurisdiction courts, and we should look at  
13 subject-matter jurisdiction with a careful eye.

14 Having said that, this fundamentally is a  
15 case about statutory construction. It's about what did  
16 Congress mean to do in 1954. That's really all it's  
17 about. I don't think there's a serious question but  
18 that under Article III --

19 JUSTICE GINSBURG: But there's so many ways  
20 that you could -- if you want to make sure that this  
21 entity gets into Federal court all the time, what  
22 Congress did with Freddie Mac is said, Freddie Mac will  
23 be deemed to be a Federal agency for jurisdictional and  
24 removal purposes.

25 Now, that is very clear. It means it can

1 come into Federal court to sue. It means it can remove  
2 if it's sued in State court.

3 This, compared to "court of competent  
4 jurisdiction" -- which, as I go back to competent  
5 jurisdiction, competence refers to the ability of the  
6 Court, which consists of two things: subject matter and  
7 personal.

8 MR. BROOKS: So, Your Honor, let me begin  
9 where you ended, if I might, and just say that this  
10 Court has repeatedly held that the word -- the phrase  
11 "competent jurisdiction" again, standing alone, okay,  
12 has multiple different meanings depending on context.

13 In the United States v. Morton in 1984, this  
14 Court held that it sometimes refers to subject-matter  
15 jurisdiction and sometimes refers to personal  
16 jurisdiction citing cases.

17 In the earlier case law of Blackmar v.  
18 Guerre, which was the case decided just two years before  
19 our statute was decided, it said that in that context,  
20 the phrase only referred to personal jurisdiction.

21 So I think the only way to harmonize all of  
22 these cases is to say that where competent jurisdiction  
23 is included in a phrase that has the Red Cross  
24 language/Osborn/D'Oench, Duhme, it means all of the  
25 other things that "competent jurisdiction" normally



1 means: personal jurisdiction, courts of general  
2 jurisdiction, et cetera. And that's what the case law  
3 holds.

4 But the most --

5 JUSTICE GINSBURG: That's because this  
6 Court's competence is general competence, which is  
7 subject matter, and it's specific competence, which is  
8 personal.

9 MR. BROOKS: Correct. That's exactly right.  
10 And, again, because this is a case about Congress'  
11 intention in adopting a statute, what is critical to  
12 understand is when Congress borrowed this language that  
13 had pre-existed for the Federal Housing Administration  
14 for 20 years and grafted it onto Fannie Mae in its  
15 verbatim entirety, every case that had interpreted that  
16 language had held it was sufficient to confer  
17 subject-matter jurisdiction so strongly that in the  
18 Seven Oaks case in 1948 in the Fourth Circuit just six  
19 years before our statute, the Fourth Circuit said that  
20 those words were no more restrictive than the phrase "in  
21 any United States District Court." That's the tapestry  
22 on which Congress was weaving at the time.

23 Now, let me address, if I might just  
24 briefly, the policy issue. We talked about the text and  
25 the history. But counsel spent a few moments talking

1 about this privatization concept and how it would be  
2 that what must have happened in the '50s was Congress  
3 was going to treat Fannie Mae like any other private  
4 company and deprive it of special access to the Federal  
5 courts.

6           The presumption behind that argument is  
7 that, naturally, Congress would never want a privately  
8 owned company to have special access, except we know  
9 from the Second Bank of the United States in Osborn that  
10 there are times when a privately owned company is  
11 sufficiently important, it can have special access. The  
12 Second Bank was 80 percent owned by private  
13 shareholders.

14           Fast-forward two centuries to 1970, we know  
15 that Freddie Mac was created entirely privately owned at  
16 its inception with clear and undisputed access to the  
17 Federal courts, admittedly with different language, of  
18 course, because it was writing in a different era and  
19 writing on a different slate without all the baggage  
20 that Fannie Mae had gone through. But there's no  
21 question that privately owned instrumentalities when  
22 pursuing a federally important purpose like housing can  
23 qualify under these circumstances.

24           But the other problem with their theory if  
25 it fails as a theoretical matter is that it also fails

1 in its mechanism. The truth is this: Congress did not  
2 privatize Fannie Mae in 1954. On the contrary, even  
3 when Fannie Mae became privately owned, under the 1954  
4 Act, it remained a Federal government agency and it  
5 still had special access to the Federal courts under  
6 1345.

7 So if there had been a conscious legislative  
8 judgment to take Fannie out of the Federal courts at  
9 that time, they surely would have had to do the work of  
10 taking away its agency status.

11 JUSTICE GINSBURG: It shouldn't matter to  
12 the Federal court. They can be there if there is  
13 diversity or if the claim arises under Federal law.

14 MR. BROOKS: That's true, Your Honor. That  
15 exact issue, however, I might point out, was raised  
16 specifically in Red Cross. It was a point of discussion  
17 in the Red Cross oral argument before this Court that  
18 Red Cross had repeatedly moved on diversity grounds.  
19 And that issue was pointed out in the opinion as not  
20 being particularly relevant. Lots of companies remove  
21 on lots of grounds all the time.

22 And by the way --

23 JUSTICE GINSBURG: But Red Cross didn't have  
24 the competence language. It was just any court, State  
25 or Federal.

1                   MR. BROOKS: That's true. But the point I  
2 was making is that the fact of diversity jurisdiction  
3 didn't have some negative implication for other sources,  
4 and, indeed, the Freddie Mac charter is very powerful  
5 evidence that that shouldn't matter.

6                   Freddie Mac -- talk about belt and  
7 suspenders -- has a charter which says, sue and be sued  
8 in State or Federal court. It also says, Freddie --  
9 Freddie doesn't say competent jurisdiction.

10                   But what else Freddie says is Freddie says  
11 that Freddie shall be deemed an agency for 1345  
12 purposes. It separately says Freddie shall have  
13 statutory authorization to remove, notwithstanding the  
14 limitations of 1442. So Freddie has four distinct  
15 grounds for getting to Federal court.

16                   JUSTICE SOTOMAYOR: So why didn't they do  
17 that for Fannie Mae?

18                   MR. BROOKS: Because we -- I mean, it's hard  
19 to know the subjective intentions, Justice Sotomayor, of  
20 the Framers of our charter. But the original charter  
21 language was written in the '30s and '40s. It was  
22 written at a time when we were connected with multiple  
23 other agencies. We were part of the Department of  
24 Housing and Urban Development. We comprised what became  
25 Ginnie Mae. And our language was an attempt to do

1 essentially removal surgery, to separate us from this  
2 big accretion of language over decades.

3 Freddie Mac didn't have that problem. So  
4 Freddie Mac is what one would do if you were starting  
5 from scratch.

6 I will say, I am reminded of Justice Kagan's  
7 colloquy in the last argument, though, about what would  
8 happen to a Hill staffer looking at the 1954 statute.  
9 And I'm trying to imagine what would happen to the poor  
10 Hill staffer if he came and he said, well, listen.  
11 We -- we'd like to change Fannie Mae's language. We  
12 want to add this competent jurisdiction language.

13 Now, that's only been looked at three times  
14 before, and all of those cases said that confers  
15 jurisdiction. But we think that was just dicta or  
16 perhaps wrong, and so we would go ahead and use it as a  
17 way of removing jurisdiction.

18 That doesn't sound plausible any more in  
19 this case than it did in the prior case to me, given  
20 what the case law backdrop was of the time.

21 Now, if I might, I'd like to say one point  
22 about the Freddie Mac issue, because, obviously, you  
23 know, we are sister companies. Obviously, Freddie Mac  
24 has different language. The question is, is this a good  
25 thing for our side? Is it a bad thing for our side?

1           Our view basically is Congress said what it  
2 meant in the 1970 reports, House and Senate. It said  
3 that companies were supposed to be parallel. They were  
4 supposed to have no advantages over each other and have  
5 all the same powers.

6           The question for this Court is: Why would  
7 Congress -- although it used a different language across  
8 multiple powers -- why would it have wanted Freddie Mac  
9 to have the same mortgage acquisition powers, the same  
10 securitization powers, the same tax exemptions and SEC  
11 exceptions, the same access to treasury lines of credit,  
12 but have different Federal court litigating powers?  
13 There's no answer to that.

14           And all we know is that in terms of the  
15 Federal interest in access to the Federal courts, what  
16 we know is that Fannie is the same as Freddie Mac, only  
17 much, much bigger. So it doesn't make a lot of sense to  
18 imagine that a \$3 trillion dollar company, the largest  
19 company in the United States by assets, creating housing  
20 across the country just like Freddie Mac would have been  
21 intended not to be protected by Federal court  
22 jurisdiction.

23           JUSTICE BREYER: Did you look it up? I  
24 mean, is there -- did you try to find out where this  
25 language really came from? I mean, somebody wrote it.

1 It didn't just have computers write it. I mean, there  
2 is a human being who wrote it.

3 MR. BROOKS: Yeah.

4 JUSTICE BREYER: But who? Where did he come  
5 from? Who did he work for? Does anybody know?

6 CHIEF JUSTICE ROBERTS: He was fired.

7 JUSTICE BREYER: He was fired.

8 MR. BROOKS: It's possible it was a former  
9 staffer for Senator Buckley, although I certainly hope  
10 not.

11 Your Honor, the -- here is what we know. We  
12 know the language pre-existed. We know it wasn't  
13 created in nineteen --

14 JUSTICE BREYER: Are those words,  
15 "competent" -- you know, in any "court of competent  
16 jurisdiction" --

17 MR. BROOKS: "State or Federal."

18 JUSTICE BREYER: Yeah, "State or Federal."  
19 You know, I've got that point. I just want to know who  
20 did this.

21 MR. BROOKS: If I find them, I will let you  
22 know.

23 Your Honor, here's what we do know: We know  
24 the language was not de novo in 1954. We know it was  
25 written in the '30s for the Federal Housing

1 Administration. That's what we know. That's where the  
2 phrase first came from. And we know that that language  
3 had been repeatedly held to mean one thing, and Congress  
4 had no indication it could have meant anything else. We  
5 know from Ferguson, from George H. Evans, and from the  
6 Seven Oaks case at a minimum, okay, that that phrase,  
7 "competent jurisdiction," State or Federal, conferred  
8 jurisdiction.

9           Here's what else we know: We know that in  
10 briefing before this Court in the '80s, looking at this  
11 exact language at Section 1702 of the National Housing  
12 Act, the Solicitor General filed a brief in opposition  
13 to certiorari in this Court in the Portsmouth  
14 Redevelopment case. And in that brief citing Ferguson,  
15 the Solicitor General's office said that phrase creates  
16 jurisdiction in the district courts. Okay? That's what  
17 we know. That has always been the understanding.

18           And if we didn't have that history and we  
19 didn't have that case law, we might write it differently  
20 on a blank slate. But writing 200 years after Osborn  
21 and in the wake of all of that New Deal era case law, we  
22 know what it means.

23           The disruption that would be created in the  
24 markets, would this Court suddenly reverse the lower  
25 courts -- and there are multiple of them all coming to



1 the same result, at least three in the courts of  
2 appeals -- and hold that Freddie Mac has different  
3 powers than Fannie Mae has would be significant?

4 CHIEF JUSTICE ROBERTS: Well, there is a  
5 reason -- your -- your friend on the other side suggests  
6 there was a reason for treating them differently, which  
7 is that the board -- the Freddie board is -- consists of  
8 Federal officers, while the idea, of course, is that  
9 Fannie's board, two-thirds of it does not.

10 MR. BROOKS: Right. But the Fannie board,  
11 unlike the Freddie board, was one-third appointed by the  
12 President of the United States until conservatorship in  
13 2008, and at the same time had the same special Treasury  
14 access, the same tax exemptions, the same SEC  
15 registration exemptions. I mean, Your Honor, there is  
16 no material policy different between these two agencies,  
17 and again, we have the legislative history that shows an  
18 intent to treat these the same.

19 I will say that since 1974, every GSE  
20 statute, and there have been many, have simultaneously  
21 imposed identical amendments to both the Fannie Mae and  
22 the Freddie Mac charter. So since Freddie was created,  
23 Congress has never treated one differently, not in the  
24 '70s and not today. So there's no plausible reason why  
25 they would have wanted these treated differently.

1 CHIEF JUSTICE ROBERTS: Do you know why they  
2 have that different structure on the board of directors?

3 MR. BROOKS: Well, again, Your Honor, and  
4 it's interesting, I've actually personally spoken to  
5 some of the original Fannie Mae directors from the late  
6 '60s, okay? They were all former government officials,  
7 because Fannie was, in '68, being extricated from its  
8 Federal agency role.

9 Freddie Mac was a clean sheet of paper.  
10 Freddie Mac was created the way that the Congress of  
11 1970 would have wanted it. Fannie Mae wasn't. Fannie  
12 Mae was inherited from generations earlier and had to be  
13 torn apart from Ginnie Mae. That's why the original  
14 board of the private Fannie Mae in 1968 consisted of  
15 Paul Volcker, who at the time was a former HUD  
16 Undersecretary. It consisted of a former general  
17 counsel of HUD. They were all Federal officials at that  
18 time, and it took multiple years before they could be  
19 extricated. There is just a history here, which makes  
20 it different.

21 But I would re-emphasize, Fannie Mae is the  
22 largest participant in the largest market in the U.S.  
23 economy. Holding that Fannie Mae has different powers  
24 and lesser powers than Freddie Mac has, simply because  
25 the language of the '50s and a complicated history

1 differed a little bit from the language of the '70s,  
2 would be a significant policy shift that we would argue  
3 isn't justified by either history or policy or text.

4 If there are no further questions, thank  
5 you.

6 CHIEF JUSTICE ROBERTS: Thank you, counsel.

7 Mr. Rosenkranz, three minutes.

8 REBUTTAL ARGUMENT OF E. JOSHUA ROSENKRANZ

9 ON BEHALF OF THE PETITIONERS

10 MR. ROSENKRANZ: Thank you, Your Honor.

11 Just a couple of points.

12 First, Justice Breyer wanted to know: What  
13 do you do when the language points one way and the cases  
14 seem to point another? I would -- I'd dispute the "the  
15 cases seem to point another," but my direct answer is:  
16 This Court has never gone wrong by going with the  
17 language, and in those previous cases, what the Court  
18 was trying to do in each case was go with the language,  
19 right down to Red Cross where the operative principle  
20 was: What did this very language mean last time this  
21 Court addressed it?

22 Justice Breyer, you also asked: Which is  
23 simpler for lawyers? Now -- now, Fannie doesn't dispute  
24 that our reading is a natural reading of the language.  
25 Fannie doesn't even dispute that it's the most natural

1 reading. Instead, its entire argument revolves around  
2 this proposition that it might actually mean other  
3 things, but I still don't know what Fannie thinks it  
4 means.

5 Fannie says it could mean personal  
6 jurisdiction. It could mean -- it could mean venue. It  
7 could mean general jurisdiction. Plug each of those  
8 words into the statute, and it just doesn't parse. But  
9 the bottom line is you need to commit to what that  
10 meaning is, and this Court can't go wrong by  
11 interpreting those words to mean what this Court has  
12 said of competent jurisdiction.

13 JUSTICE KAGAN: Well, suppose it means  
14 personal jurisdiction. Why doesn't it parse?

15 MR. ROSENKRANZ: Okay. So now the statute  
16 says, Fannie can sue or be sued in any court that has  
17 personal jurisdiction over the parties, State or  
18 Federal.

19 Well, the Federal Court of Claims has  
20 personal jurisdiction over Fannie, but this was not a  
21 grant of jurisdiction, because the -- the whole idea is  
22 that this now turns into a grant of Federal  
23 subject-matter jurisdiction. It's not a grant of  
24 jurisdiction to Fannie.

25 So what about the court of appeals cases

1 that Mr. Brooks has addressed? Those cases did not  
2 interpret the phrase of "competent jurisdiction," and  
3 they were not about Federal jurisdiction. Everyone  
4 understood in those cases, Ferguson and so on, that  
5 there was Federal jurisdiction. The question was  
6 whether something about the Tucker Act trumped district  
7 court jurisdiction to move the cases to the Federal  
8 court -- excuse me, to the Court of Federal Claims.

9 JUSTICE SOTOMAYOR: Isn't that USG's  
10 position in Portsmouth?

11 MR. ROSENKRANZ: Well, Your Honor, I can't  
12 explain the position that the government has taken, but  
13 the government has said that those were also kind of  
14 drive-by jurisdictional references in cases that simply  
15 did not involve the question of what is the source of  
16 Federal jurisdiction.

17 If I may, one last point on Fannie and  
18 Freddie. Why -- why did Congress treat them  
19 differently? The answer is different era, 32 years  
20 apart, and better lobbyists. Freddie was being  
21 supported and pressed by the Federal Home Loan Board,  
22 what used to be called the Home Loan Bank Board. They  
23 were ardent that Fannie was going to stop protecting  
24 Federal interests. They wanted an advantage.

25 So Congress said, we are not giving them any

1 advantage. But case after case has held that, of  
2 course, Freddie has jurisdiction. And if I may, just  
3 one more sentence, but the vast majority of cases have  
4 held, before this case came along -- the vast majority  
5 of cases have held that there was no automatic  
6 jurisdiction for Fannie.

7 Thank you, Your Honors.

8 CHIEF JUSTICE ROBERTS: Thank you, counsel.

9 The case is submitted.

10 (Whereupon, at 12:02 p.m., the case in the  
11 above-entitled matter was submitted.)

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