

No. 18-1536

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

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KIMBERLY COX

*Petitioner,*

v.

OLD REPUBLIC NATIONAL TITLE INSURANCE  
COMPANY, *et al.*,

*Respondents.*

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

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**PETITION FOR REHEARING**

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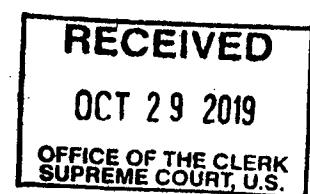
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## I. PETITION FOR REHEARING

Pursuant to Sup. Ct. Rule 44.2, Kimberly Cox (“Ms. Cox”) respectfully petitions for rehearing of the Court’s October 7, 2019 order denying certiorari in this case for the following reasons.

## II. GROUNDS FOR REHEARING

The grounds for granting rehearing include new or additional supporting authorities and decisions of a substantial effect and to other substantial grounds not previously presented including the following:

**A. The courts lacked subject-matter jurisdiction to rule as they did, while erroneously refusing to invoke the jurisdiction they possessed.**

The N. Dist. of Calif. (“Dist. Court”) Court’s memorandum decision<sup>1</sup> was affirmed by the Ninth Cir. App. Court (“App. Court”),<sup>2</sup> erroneously ruling that Ms. Cox lack[ed] standing, depriving jurisdiction “over this case”<sup>3</sup> because she purportedly failed to schedule her 2007 Truth in Lending Act and Regulation Z (15 U.S.C. §§ 1601-1667f and 12 C.F.R.

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<sup>1</sup> See, Ms. Cox’s certiorari petition (“cert. petition”) Appendix G.

<sup>2</sup> See cert. petition Appendix D and E.

<sup>3</sup> The App. Court affirmed the Dist. Court’s decision that Ms. Cox “lack[ed] standing,” which deprived it of jurisdiction “over this case.” This is notwithstanding that just like the Dist. Court; the App. Court invoked “jurisdiction” over other aspects of the case including, among other things: (a) failing to enter the defaults of non-appearing and late-appearing parties; and (b) denying mandatory Fed. R. Civ. P., R. 11 sanctions against attorneys who did not deny failing to have legal services agreements with the parties and non-parties they claimed to represent while also claiming to represent parties that do not exist and were not sued by Ms. Cox.

Part 1026, collectively “TILA”) rescission (“Rescission”) and any “Rescission-Related” “claim(s)” as “cause(s) of action” in her 2010 Ch. 7 bankruptcy.<sup>4</sup> However, additional authority has recently been discovered, that confirms, the Courts in this case were deprived of subject-matter jurisdiction over any aspect of Ms. Cox’s Rescission because, *inter alia*, the applicable statute of repose undeniably terminated in December 2007, nearly three years before she filed her bankruptcy.

“The Ninth Circuit concluded that ‘1635(f) is a statute of repose, depriving the courts of subject matter jurisdiction when a § 1635 claim is brought outside the three-year limitation period.’” *Sepehry-Fard v. Countrywide Home Loans, Inc.*, Case No. 13-cv-05769-BLF (N.D. Cal. Mar. 21, 2016), \*5 (discussing *Miguel v. Country Funding Corp.*, 309 F.3d 1161, 1164 (9th Cir. 2002)).<sup>5</sup> Also see e.g., *Satre v. Wells Fargo Bank*, No. 15-16025, at \*3 (9th Cir. May. 29, 2019); *Tyshkevich v. Wells Fargo Bank*, No. 16-16592, at \*2 (9th

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<sup>4</sup> See § B. below. It is undenied that the subject purported “debt” was scheduled in Ms. Cox’s bankruptcy as contingent, unliquidated and disputed for multiple self-proclaimed purported “creditors,” and was further described in Schedule F as follows:

“Claim allegedly incurred 12/10/2004. Consideration for [c]laim was to refinance real property at 131 Sutphen St., Santa Cruz, CA 95060. Debtor contends that if this debt is proven to exist at all, it is unsecured and subject to discharge. Subject to Setoff.”

<sup>5</sup> Contrary to how the Dist. Court ruled in Ms. Cox’s case, in *Sepehry-Fard* the same judge in the same Court confirmed, that **rescission is a remedy not a claim or cause of action**, relying on and citing the same authorities Ms. Cox previously provided in her operative complaint and cited throughout her case (see, II.B. herein) supporting that contention.

Cir. Dec. 21, 2017); *Brophy v. JPMorgan Chase Bank, N.A.*, No. 17-35141, at \*2 (9th Cir. Nov. 1, 2017); and *In re Krage*, Case No.: 2:12-bk-17916-WB, at \*6 (Bankr. C.D. Cal. Aug. 16, 2016); and *Hoang v. Bank of Am.*, 910 F.3d 1096, 1100 (9th Cir. 2018) quoting *King v. California*, 784 F.2d 910, 913 (9th Cir. 1986) [“I**Slection 1635(f)** represents an ‘absolute limitation on rescission actions’ which bars any CLAIMS filed more than three years after the consummation of the transaction”] (emphasis added).

**B. The ruling(s) in this case that Ms. Cox’s rescission was a “claim” or “cause of action,” has been shown to be untrue as contradicted by not only decisions in other cases and courts but by the very same Dist. Court that ruled in this case. Ms. Cox’s rescission was a non-judicial event, an effected remedy because of the creditor’s failure to provide the mandatory disclosures.**

On 8/8/2016 the Dist. Court ruled<sup>6</sup> Ms. Cox lacked “standing to bring this case” for her purported failure to schedule her Rescission or Rescission “related claims” (assumed to mean “cause(s) of action”) in her 2010 Ch. 7 Bankruptcy. On 11/19/2018 the Dist. Court’s decision was affirmed by the App. Court.<sup>7</sup>

Contrary to the interloping defendants, non-defendants, and attorneys claiming to appear for them<sup>8</sup> and with whom the Dist. and App. Courts

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<sup>6</sup> See, N. Dist. of Calif. case # 5:15-cv-02253-BLF pgs. 7-8.

<sup>7</sup> See, 9<sup>th</sup> Cir. App. Ct. case # 16-16566, DktEntry: 98-1.

<sup>8</sup> Opposing attorneys in this case tacitly acknowledged by failing to deny it, appearing for defendants and non-defendants that do not exist, and they had no legal services agreement with.

agreed with in their rulings, Ms. Cox never stated a “claim” (again, assumed to mean “claim upon which relief can be granted”) or a “cause of action” seeking relief or damages for her TILA Rescission in her operative complaint or elsewhere. The only claims upon which she sought relief, were for defendants’ and non-defendants’ unlawful acts that commenced in 2014, long after her bankruptcy case closed, and discharge was granted.

Accordingly, Ms. Cox undeniably, timely and lawfully effected her non-judicial remedy<sup>9</sup> of Rescission pursuant to TILA, rendering the transaction and any purported security related

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<sup>9</sup> See e.g., pg. 4 of 102:20-26 of the operative Second Amended Complaint Document 93 Filed 03/04/2016; 9<sup>th</sup> Cir. Case: 16-16566 DktEntry: 66 pg. 12 of 142 ¶ B. and fn. 43.

“See, e.g. AER pgs. 007:20; 0431:15-0432:26; Ms. Cox’s Opening Brief (DktEntry: 17 ‘AOB’) pg. 10, fn. 17, pgs. 41, 49, 58 and 66; e.g. *Nakash v. Superior Court* (1987) 196 Cal.App.3d 59, 69-70; 141 Cong. Rec. S14,566,S14,567 (Sept. 28, 1995) (statement of Sen. D’Amato) [rescission is a ‘draconian remedy’; 15 U.S.C. § 1640(g) [describing section 125 (15 U.S.C. § 1636 rescission) as a ‘remedy; *Weingartner v. Chase Home Fin.* (2010, DC Nev) 702 F.Supp.2d 1276 [describing a TILA rescission as a ‘remedy’]; *Valentine v. Influential Sav. & Loan Assoc.* (1983), ED Pa) 572 F.Supp. 36 [“Rescission is[an] equitable remedy”]; *Andrews v. Chevy Chase Bank* (2008, CA7 Wis.) 545 F3d 570 [7<sup>th</sup> Cir. Court of Appeals held rescission is an equitable, individualized, restorative remedy under 15 U.S.C. § 1635]; *Eby v. Reb Realty* (1974, CA9 Ariz.) 495 F2d 646 [rescission under 15 U.S.C. § 1635(a) is a remedy, 15 U.S.C. § 1640 is for recovery; each is an ‘election of remedies’ for failure to make required disclosures]; the creditor’s (AWL’s) violation of 15 U.S.C. § 1635(b) is the cause of action, rescission is the remedy (and therefore not a “cause of action”). (Emphasis added in the above). (Also see, citations, *supra*).”

thereto, void in July 2007.<sup>10</sup> The facts stated and authorities cited by Ms. Cox in support, were ignored by the Courts. Instead, the Courts chose to manufacture their own facts, primarily based on inaccurate, disputed presumptions and obfuscation of applicable terms and terminology (e.g., defining Ms. Cox's Rescission as a "claim" when it was never stated as any such thing).

The defendants, non-defendants, their purported appearing attorneys and the Courts cited inapposite authorities unrelated to the *actual* facts of this case. Whereas, for the purpose of the Fed. R. Civ. P., R. 12(b)(6) before the motions to dismiss were granted by the Dist. Court, the facts stated by Ms. Cox in her complaint were required to be assumed to be true but were not.<sup>11</sup>

While the Dist. Court ruled, and its decision was affirmed by the App. Court, that Ms. Cox's Rescission was a "claim," the very same Court contradicted itself deciding just the opposite in other case(s) not previously presented, for example:

**"The Court agrees with Judge Cousins' conclusion that Claim 1 of the SAC, 'Rescission of Contract pursuant to California Civil Code § 1688 and 1689,' is not properly**

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<sup>10</sup> Also see, *Jesinoski v. Countrywide Home Loans, Inc.* (Jan. 2015) 135 S.Ct. 790.

<sup>11</sup> See e.g., *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554 (2007) at 570. Moreover, the Court(s) was/were required to accept the truth of all allegations and draw all reasonable inferences in favor of the Plaintiff and a court should assume their veracity which they failed to do (see e.g., *Ashcroft v. Iqbal*, 556 U.S. (2009) 662, 678-679; and *In re Tracht Gut, LLC*, 836 F.3d 1146, 1150 (9<sup>th</sup> Cir. 2016) citing *Maya v. Centex Corp.*, 658 F.3d 1060, 1067-1067).

stated as a freestanding claim. Under California law, 'Rescission is not a cause of action; it is a remedy.' *Nakash v. Superior Court*, 196 Cal. App. 3d 59, 70 (1987); *see also Moreno v. Citibank, N.A.*, No. C 09-5339 CW, 2010 WL 1038222, at \*4 (N.D. Cal. Mar. 19, 2010) ('[R]escission is not a freestanding cause of action, but rather relief that may be granted as a result of unlawful conduct')." (emphasis added) *Shetty v. America's Wholesale Lender*, Case No. 16-cv-05846-BLF, at \*6-7 (N.D. Cal. Mar. 25, 2019).

Other courts in this Circuit have also ruled that rescission is not a "cause of action" or a "claim," contrary to the Dist. and App. Courts in this case, *e.g.*:

"The Court has already dealt with rescission based on TILA ... '[r]escission is not a cause of action; it is a remedy.' *Nakash v. Super. Ct.*, 196 Cal. App. 3d 59, 70 (1987) (citations omitted); accord *Gayduchik v. Countrywide Home Loans, Inc.*, No. 2:09-cv-03524 JAM-GGH, 2010 WL 1737109, at \*4 (E.D. Cal. Apr. 22, 2010); *Tiqui v. First Nat'l Bank of Az.*, No. 09cv1750 BTM (BLM), 2010 WL 1345381, at \*7 (S.D. Cal. Apr. 5, 2010)." *Watkinson v. Mortgageit, Inc.*, CASE NO. 10-CV-327 - IEG (BLM), at \*6 (S.D. Cal. Jun. 1, 2010), *Gayduchik v. Countrywide Home Loans, Id.* at \*11; *Lee v. Wells Fargo Bank, N.A.*, CASE NO. 5:12-cv-02820 EJD, at \*7 (N.D. Cal. Mar. 18, 2013); and *Sepehry-Fard v. Countrywide Home Loans, Inc.*, *Id.*

C. Defendants, non-defendants and their purported attorneys, misled the Dist. and App. Courts causing Ms. Cox to be deprived of her constitutional rights, and the remedy codified by congress for rescission under TILA. By agreeing with these defendants and non-defendants, the courts have allowed California's non-judicial foreclosure scheme to be weaponized authorizing interlopers to unlawfully dispossess Ms. Cox of her property.

“ Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State...subjects, or causes to be subjected, any citizen of the United States...to the deprivation of any rights... secured by the Constitution and laws, shall be liable to the party injured in an action at law, suite in equity, or other proper proceeding for redress...”<sup>12</sup> (emphasis added)

Through their erroneous decisions, the 9<sup>th</sup> Cir. Courts usurped Ms. Cox's right to rely on her lawfully effected non-judicial remedy of rescission and the power granted by Congress under TILA along with other decisions, including those by *this* very Court (e.g. *Jesinoski, Id.*).

### 1. First Amendment

“ Congress shall make no law ... prohibiting ... the right of the people ... to petition the government for a redress of grievances.”

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<sup>12</sup> See, 42 U.S.C. § 1983

**2. Fourth Amendment**

“ The right of the people to be secure in their ... houses ... against unreasonable ... seizures, shall not be violated ...”

**3. Fifth Amendment**

“ No person shall be ... deprived of ... property, without due process of law ...”

**4. Fourteenth Amendment Section 1**

“ No state shall make or enforce any law which shall abridge the privileges ... of citizens of the United States; nor shall any state deprive any person of ... property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

**5. Article 1 Sec. 7(a) of the California Constitution**

“ A person may not be deprived of ... property without due process of law or denied equal protection of the laws ...”

**6. Article 1 Sec. 13. of the California Constitution**

“ The right of the people to be secure in their ... houses ... against unreasonable seizures ... may not be violated ...”

## 7. Article 17.(2) of the United Nations Universal Declaration of Human Rights

“ No one shall be arbitrarily deprived of his property.”<sup>13</sup>

### III. CONCLUSION

Although the Certiorari Act of 1925 and Sup. Ct. R. 10 provides this Court the discretion whether or not to hear this case, as the highest Court in the land, this is Ms. Cox’s last resort to seek review of, and supervision over, the erroneous decision(s) of the inferior Ninth Cir. Courts. There are many compelling reasons to grant rehearing and certiorari which include those stated herein above and as follows:

1. The App. Court’s conflicting decisions departed from the accepted and usual course of other judicial proceedings;
2. The App. Court sanctioned the Dist. Court’s departure described above calling for this Court’s supervisory power; and
3. The Ninth Cir. Courts decided important question(s) of federal law that must be settled by this Court, which have been shown to conflict with

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<sup>13</sup> The issues upon which Ms. Cox seeks certiorari are not only of compelling national, but also of international importance. The United States is one of the “Permanent Five” members of the U.N. Security Council and signatory to its Charter.

The Dist., App., Bankr. and now this Supreme Court by denying certiorari, have granted these interloping defendants/respondents, non-defendants/non-respondents and their purported attorneys, the ability to arbitrarily and unlawfully deprive Ms. Cox of her Property in violation of the U.S. and Calif. Constitution and the U.N. Dec. of Human Rights.

other relevant decision(s) of this Court which are of national and international importance.

The Supreme Court's website states: “"EQUAL JUSTICE UNDER LAW" - ... written above the main entrance to the Supreme Court Building, express[es] the ultimate responsibility of the Supreme Court of the United States ... as the final arbiter of the law, the Court is charged with ensuring the American people the promise of equal justice under law and, thereby, also functions as guardian and interpreter of the Constitution.” Unless “Equal Justice” means the same as lack of justice, this Court has failed to adhere to its profoundly stated and ultimate responsibility in this case - to assure not only Ms. Cox's but others' individual rights and to stand by the Court's “sworn duty to uphold the Constitution.”

It is incumbent on this Court to exercise supervision over the 9<sup>th</sup> Cir. to protect citizens and society at large from these abuses perpetrated on “we the people” by institutions, corporations, lawyers, governments and inferior courts. The Dist. and App. Courts:

1. Manufactured facts;
2. Misrepresented authorities they cited;
3. Ignored: (a) applicable authorities cited by Ms. Cox in her papers: (b) multiple undenied felonies committed by defendants and their attorneys;<sup>14</sup> (c) frauds on the court by the same attorneys; (d) the rule of law and the actual facts of this case while manufacturing their own; and (e) the actual claims

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<sup>14</sup> Essentially, suborning those felonies (see, 18 U.S.C. § 4).

upon which relief can be granted, stated in the operative complaint;

4. Exhibited bias, ruling just the opposite in other cases on the same or very similar issues they did in this case;

5. Failed: (a) to enter defaults by non-appearing or late-appearing parties, non-parties and/or their purported attorneys; and (b) to comply with Court Rules and Fed. R. of Civ. Procedure; and

6. Failed to define the term "claim" obfuscating its meaning when used throughout their decisions and cited authorities resulting in the Courts' erroneous decisions.<sup>15</sup>

Citizens are Constitutionally authorized access to the courts to seek redress for their grievances. Ms. Cox was denied such access under the guise of her purported "lack of standing." The Courts' accordingly refused to invoke jurisdiction "over this case".

The 9<sup>th</sup> Circuit Courts' ruling(s) in this case failed to follow controlling laws as they are written, misapplied authorities they cited while ignoring applicable authorities documented by Ms. Cox. As a result, the Courts dishonored and undermined the United States and California Constitutions, State and Federal laws and applicable decisions of this Honorable Court.

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<sup>15</sup> The term "claim" has very different meanings in the context of bankruptcy, in its common use, or when used as a substitute for "claim upon which relief can be granted" or "cause of action" as erroneously obfuscated throughout the Courts' decisions. See e.g., Ms. Cox's certiorari petition pgs. i, ii, 8, 9, 10, 12, 15, 17, 18, 19, 20; and fn. 3, 7; Appendix E, G, H and I therein.

This Court's denying Ms. Cox's certiorari petition and silence on the questions presented has destroyed not only *her* confidence in the "judicial system" but will do so for virtually every other citizen seeking justice for the acts complained of in this case and will encourage the 9<sup>th</sup> and other Circuit Courts to continue making decisions in an unjust, and unequal manner unless this Honorable Court grants certiorari and exercises its supervision to stop it.

Accordingly, for the reasons and upon the grounds set forth herein above and on the record in this case, Ms. Cox respectfully requests the Court: (1) grant her petition for rehearing; (2) vacate the order denying her petition for a writ of certiorari; and (3) grant her petition for a writ of certiorari.

October 16, 2019

  
/s/Kimberly Cox

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Kimberly Cox *in pro per*

**IV. CERTIFICATION OF PARTY**  
(Unrepresented by Counsel)

Ms. Cox hereby certifies that this petition for rehearing is restricted to the grounds specified in Sup. Ct. R. 44.2 and has been presented in good faith and not for delay.

October 16, 2019

  
/s/Kimberly Cox  
Kimberly Cox *in pro per*