No. 17A1348

IN THE SUPREME COURT OF THE UNITED STATES

COLETTE MARQUIS (aka COLETTE MARQUIS-KILIANY)
Petitioner

v.

CHASE BANK, SELECT PORTFOLIO SERVICING,
DEUTSCHE BANK as Trustee for LONG BEACH MORTGAGE
LOAN TRUST WL3-2006
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT COURT

Colette Marquis-Kiliany
Pro se
3624 Stokes Drive
Sarasota, FL 34232
941-822-2947
cakiliany4@gmail.com

QUESTIONS PRESENTED FOR REVIEW

The question presented in this appeal is NOT what lower courts have assumed, whether a TILA rescission such as Marquis' rescission of her mortgage loan was "valid" when mailed. TILA states that rescission is "effective upon notice" by "operation of law", which indicates rescission becomes effective when notice is given, subject only to a challenge in a lawsuit filed by a party with standing to invalidate it. Does a court have jurisdiction to rule, as happened in Marquis' case, that a rescission is <u>not</u> "effective upon notice", absent a lender lawsuit timely filed claiming it is not?

LIST OF PARTIES

Petitioner, Colette Marquis (aka Colette Marquis-Kiliany), was the Plaintiff in the district court and the Appellant in the 11th Circuit Court of Appeals. Respondents, Chase Bank, Select Portfolio Servicing, Deutsche Bank as Trustee for Long Beach Mortgage Loan Trust WL3-2006, were the Defendants in the district court and the Appellees in the court of appeals (although none of the parties responded).

TABLE OF CONTENTS

APPENDICES

TABLE OF AUTHORITIES

CASES

STATUTES INVOLED

The 14th Amendment, Sec. 1:

> *"...nor shall any state deprive any person of life, Liberty, or property, without the due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."*

U.S. Const. Amend. XIV, Sec. 1

The Truth in Lending Act (TILA) §1635 (See Appendix I)

OTHER AUTHORITIES

Davenport, T.. "An American Nightmare: Predatory Lending in the Subprime Home Mortgage Industry," 36 Suffolk U.L. Rev 531 (2002)

Sickler, Alexandra. "The Truth Shall Set You Free: Explaining Judicial Hostility To the Truth in Lending Act's Right to Rescind a Mortgage Loan" (August 15, 2014).

12 Rutgers Journal of Law and Public Policy 4 (Summer 2015)

No. 17A1348

IN THE SUPREME COURT OF THE UNITED STATES

COLETTE MARQUIS
Petitioner

v.

CHASE BANK, SELECT PORTFOLIO SERVICING,
DEUTSCHE BANK as Trustee for LONG BEACH MORTGAGE
LOAN TRUST WL3-2006
Respondents

PETITION FOR WRIT OF CERTIORARI

Petitioner, Colette Ann Marquis respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

On July 6, 2016, Judge Scriven of the Middle District of Florida issued her unpublished, sua sponte opinion on Marquis' complaint, a petition for an injunction based on her rescission (8:16-cv-01022-MSS-MAP; Exhibit E). Her opinion is reprinted in this Petition for Writ of Certiorari at Appendix B. The opinion of the 11th Circuit, also sua sponte and marked "Do Not Publish", was issued on February 2, 2018 (Case No. 16-15265; Appendix A) by Justices Marcus, Rosenbaum and Carnes, the Motion for Rehearing denied March 13th (Exhibit D) and the Motion to Recall the Mandate denied by Judge Carnes on June 30th. The time to file this

petition for Writ of Certiorari was extended by Judge Clarence Thomas to August 13th, 2018.

JURISDICTION

The denial of this court is invoked under 28 USC, sec. 1254. The denial of appellant's Motion for Rehearing [Appendix D] in this case was entered by the United States Court of Appeals for the 11th Circuit on March 15, 2018.

STATEMENT OF THE CASE

FACTS GIVING RISE TO THIS CASE

Colette Marquis-Kiliany (Marquis) is the sole owner of property located at 3624 Stokes Drive, Sarasota, Florida. Marquis and her then-husband applied for a loan with Long Beach Mortgage Loan Company, whom they reasonably believed to be a lender, to buy their growing family's first home in Florida in 2005. Long Beach turned out to be a feeder of loans to Washington Mutual that acted as an aggregator of loans, the product of which was used for claims of "securitization" of the loan documents. Whether or not Washington Mutual ever ascended to ownership of the debt or the note and mortgage is an open question. Whether the debt ever ascended to the named Trust, the plaintiff in the foreclosure action Marquis is currently defending against in Florida State Court is also an open question, as is the actual existence of the named Trust or whether the Trust came to own any interest in the subject loan.

The loan was quite burdensome, having been converted to an adjustable rate, 9.6% loan within a few days of the "closing". Petitioner and her husband were divorced a short while later, after 5 years of marriage and the birth of two children (whom petitioner under duress decided to leave in the custody of her sister while attempting to find a solution to her mortgage/housing problem). Upon application of the Petitioner, Washington Mutual granted a refinancing of the property in 2008 shortly before the demise of Washington Mutual. The "refinancing" was claimed to be a modification, but a new lender and completely new terms were inserted where the old loan had been.(See the actual loan documents attached to the Motion to Recall the Mandate.)[1] There is no legal dispute that the new loan agreement exists nor that it purports to govern the terms and conditions of the loan. Long Beach, along with many other "originators" arising in the mortgage meltdown era, no longer exists and has not existed since 2008. It is undisputed that Long Beach has no further claim to the loan documents or the debt.

In September 2008 Chase Bank entered into an agreement with the estate of Washington Mutual as represented by an FDIC receiver and a U.S. Trustee in bankruptcy. Chase claims to have acquired servicing rights for the subject loan in that transaction, although it is not clear from the record what basis Chase has for

---

[1] *The presence of a new "lender" necessarily implies that the old "lender" was satisfied, unless the old "lender" was not the party who advanced its funds (and assumed the risk of loss). In the first instance satisfaction is presumed thus making it a new loan. In the second existence failure of consideration means that the loan contract was never consummated between the maker and payee on the note (mortgagor/trustor and mortgagee/beneficiary on the mortgage/deed of trust); hence in the second instance there would be no express loan agreement to cancel.*

their claim, nor whether their claim is for the entire history of the loan or simply prospectively, starting with the date of the agreement. According to the Agreement as posted on the FDIC website, the consideration for the takeover by Chase was literally zero (no monetary compensation).

In June 2009, Petitioner sent her first notice of rescission to Chase Bank (see lower court docket exhibit to Motion to Recall the Mandate). Petitioner, under duress, due to Chase refusing to acknowledge same properly rendered rescission notice, continued paying her mortgage through May 2010 (although inexplicably her amended complaint as docketed—as well as the 11th circuit opinion--stated she had paid through 2012); yet Petitioner at this time, and at several times previously, has been subject to an attempted illegal sale of her home, the subject property, the current sale date scheduled just weeks away, for August 28, 2018, by Deutsche.[2]

In August 2012, Chase claims to have executed a purported assignment of mortgage without having received an assignment of mortgage from either the FDIC receiver or the U.S. Trustee in bankruptcy. The named assignee was a named trust bearing the name "Long Beach Loan Trust WL3-2006" and named an entity as Trustee of the alleged trust, that is: "Deutsch Bank National Trust Company as

---

[2] *Respondents have attempted to abandon any claim about the WAMU document entitled "modification" in Marquis state foreclosure case by foreclosing on the basis of the original note and mortgage. It is an open question as to whether this is a covert attempt to avoid the rights of rescission under 15 U.S.C. §1635, since Petitioner asserts that the 2008 transaction was a refinancing and not a modification.*

Trustee for Long Beach Mortgage Loan Trust WL3-2006"("Deutsche", see exhibit to Marquis' original and amended complaints in the lower court docket). No transaction has been claimed nor proffered in which the debt was acquired for value.

Also, in 2012, the National Mortgage Settlement Act settled accusations of Chase using robo-signed documents to illegally foreclose on loans it did not own. In Petitioner's case, Nationwide Title Clearing, known to create such fraudulent backdated paperwork for foreclosure entities, created the assignment to Deutsche, of which no financial institution even notified Marquis. In April 2013, Deutsche served Marquis with foreclosure papers, foreclosing on the original Long Beach note and mortgage rather than on the refinanced WAMU loan.[3]

Shortly after Marquis answered the foreclosure complaint, Chase maintains it assigned Select Portfolio Servicing to collect payments on the loan. Marquis challenged Chase, Deutsche, and Select Portfolio Servicing (collectively the " bank entities") as to whether they were owners of the debt and they said that the owners were the "certificate-holders". In Bankruptcy Court (where Marquis has been twice since the foreclosure judgement), they changed their name on the claim form to "Deutsche Bank as Trustee for the Registered Certificate- Holders of Long Beach Mortgage Loan Trust WL3-2006".

In a December 2015 ex parte hearing in state foreclosure court on Deutsche's

Motion to Dismiss, of which hearing Marquis was not informed, her counter-claims were dismissed and she was disallowed by same court order any more amendments to her answer, including any defenses predicated upon rescission under 15 U.S.C.§1635.

In January of 2016, Petitioner sent a new notice of rescission because she believed she had lost her copy of the 2009 notice of rescission. After the conclusion of the case appealed from, she recovered her copy of the 2009 rescission notice that she has now recorded in County records, (same of which is attached as an exhibit[3] it to her Motion to Recall the Mandate, found in Appendix H).

Once again, neither the Chase bank entities nor any other parties responded to the rescission notice within 20 days. Three months after the rescission notice was sent, Select Portfolio Servicing responded,,stating that the rescission issue was "part of on-going litigation". The court granted a Motion for Summary Judgment six months later and Marquis' homestead was foreclosed in October of 2016.

FEDERAL COMPLAINT FILED

Marquis filed a Federal District complaint in the Middle District of Florida under the Truth in Lending Act (TILA) U.S.C. 28, sec. 1635, in May of 2016 for temporary and permanent injunctions to be issued by the Federal court to issue declaratory relief that her recorded 2016 rescission prohibited Chase, Deutsche or

---

[3] *Apparently, the Respondents knew about the "modification"- which was actually a refinancing- - and chose to ignore it.*

any other bank involved from foreclosing on Marquis' note and mortgage.

Later that month, Judge Scriven of the Middle District of Florida ruled in a sua sponte decision that Marquis' rescission was not effective upon mailing due to the fact that the original 2005 loan was subject to conditions. In other words, the court ruled: that the loan was not a purchase money loan, and that the rescission was not sent within 3 years of the date of the alleged "consummation."

Without any hearing or evidence, the trial court decided that the loan was a purchase money loan and that there had been a consummation of the loan agreement between Long Beach and Marquis and that said consummation occurred longer than three years before the 2016 rescission was sent. However, the ruling did not vacate the TILA rescission and rather ignored it. The effect of an order contrary to *the rescission being effective upon notice by operation of law* is precisely what is at issue.

The TILA Rescission statute instantly substitutes statutory procedure and rights for the purported loan contract. Those rights and obligations arise upon delivery of the notice. The borrower is entitled to receive a canceled original note, and payment of all monies paid for the loan from the latest successor lender. In addition, the borrower receives the valuable right to demand that the latest "lender" record a release and satisfaction of the encumbrance. The ruling in the injunction case below deprives the borrower of these rights without due process.

FEDERAL 11TH CIRCUIT PROCEEDINGS

Marquis appealed to the United States Court of Appeals for the 11th Circuit (11th Cir.), arguing that if any party with standing had wanted to contest her rescission notice on the grounds of its timeliness or of the type of loan it was (or anything else), they should have timely filed in court to contest it, and that her rescission was an event, not a claim.

Marquis also argued in the alternative that her 2008 refinance with WAMU was NOT a modification of the original loan as the Court, sua sponte ("Respondents") assumed, but in fact a new loan, a refinancing which would have qualified it for TILA rescission. The 11th Cir. court affirmed the Middle District of Florida's opinion, writing "Because residential mortgage transactions are exempt from a right of rescission under Truth in Lending Act, Plaintiff has no claim for relief to enforce that right." Justices Marcus, Rosenbaum and Carnes affirmed the lower court opinion on February 2nd, 2018.

Justice Carnes denied Marquis' Motion for Rehearing on March 14th, 2018. Marquis appeals the February 2nd, 11th Cir. opinion and their subsequent denials of rehearing and recall to this court, in hopes of justice. Her argument is primarily that giving notice of rescission *made the rescission already effective* upon mailing, requiring no court order to make it effective. To that end, in her Federal Complaint,

she had petitioned *only* for the requisite injunctions to be issued. No court is authorized, and is acting without jurisdiction, she argues, when it imposes conditions on the point in time when a rescission becomes effective[4].

ARGUMENT FOR GRANTING CERTIORARI

I. INTRODUCTION: THE MEANING OF TILA RESCISSION AND THE RULING OF THE SUPREME COURT IN JESINOSKI v. COUNTRYWIDE

The jurisdiction of the Supreme Court is established when lower court decisions clash with each other or flagrantly disregard this Court's expressly stated rulings and decisions, thus creating uncertainty as to the application of clearly expressed Federal Law.

This condition exists in Marquis' case, the case at bar and in virtually all state trial courts, all Federal Trial Courts, and state and Federal appeals courts on the subject of rescission. All of the lower courts are ruling consistently in opposition to the 2015 *Jesinoski* decision, as the 11th Circuit ruled in the Marquis case, the case at bar.

The jurisdiction of the Supreme Court is also present here because the issue in question is one of urgent public importance. If the lower courts' misplaced rulings regarding rescission are allowed to stand, potentially tens of thousands if not hundreds of thousands of people—now and in the future--will lose their statutory

---

[4] *The operative error committed by the Trial court and the 11th Circuit opinion was that it treated the statuatory rescission as a claim instead of an event that was already effective upon mailing by operation of law. This conflicts with the ruling in Jesinoski and the Federal Statute 15 U.S.C.§More on this in the argument section below.*

rights without due process. Further, tens of thousands today will unjustly lose their homes and their rights under the TILA Rescission statute. Further, title to property and collection of debts will be forever clouded, resulting in pitched legal battles, societal discord, and liabilities arising from disputed and/or abandoned property.

The Supreme Court of the United States should grant the instant Petition for Writ of Certiorari because—put simply—lower courts are refusing to follow the decision of this Court in *Jesinoski v. Countrywide Home Loans*, 135 S. Ct. 790 (2015) (hereinafter *Jesinoski*). In *Jesinoski,* this court unanimously ruled on the conditions whereby a notice of rescission is effective under U.S.C. Title 15 (Commerce and Trade) the federal Truth in Lending Act (TILA) §1635. The only condition to the effectiveness of rescission under 15 U.S.C. §1635 is exactly what the statute (and this Court) expressly directs: i.e., notice is the only condition, with no allowance for disputed rescissions.

None of the lower courts[5] are following the TILA Rescission statute nor the clear holding of this Court in Jesinoski. The Truth in Lending Act (TILA) §1635, which was passed to allow consumers "to avoid the uninformed use of credit" in transactions which put their homes at risk, states that homeowner-borrowers may exercise their right to rescind home loan "by noticing the creditor", as stated in TILA§1635(a). Congress, in enacting TILA, wished minimal court involvement in

[5] *Including objections and adversarial actions in Bankruptcy Court and review by Circuit Courts of Appeal, the BAP panel, or the federal district judge.*

rescission, and wanted to avoid a huge agency within the government that would monitor residential lending for the people of this country. TILA thus intended the right of rescission to be exercised without court interference or monitoring, regardless of the circumstances of the rescission, and whether contested or un-contested, as this Court explicitly, unanimously and clearly confirmed in *Jesinoski*. The lower courts are subject to following the strictly binding precedent enunciated by this Court, yet inexplicably fail to do so, as in the case at Bar.

This Court in turn must follow the laws as approved by the Congress of the United States. That Congress certainly intended the consumer to be able to avoid having the courts intervene in the rescission process is clear not only by its language, but also in the legislative history following the inception of TILA. For example, in 1977 Congress considered and rejected an amendment to TILA that would have created a cause of action "to determine the consumer's right to rescind". Through TILA, Congress did not intend courts to examine a homeowner's rescission unless a creditor with standing had timely petitioned the court with a lawsuit alleging that the rescission was not valid. (See *An American Nightmare: Predatory Lending in the Subprime Home Mortgage Industry*," 36 Suffolk U.L. Rev. 531. 2002)

The finality of decisions by the Supreme Court of the United States is settled in the U.S. Constitution, Article III, Section 1, "The judicial power of the United States shall be vested in one Supreme Court and in such inferior Courts as the Congress may from time to time ordain and establish." The hierarchy of power and authority

is thus established.

II. THE SUPREME COURT'S RULING IN *JESINOSKI* THAT TILA RESCISSION IS EFFECTIVE UPON MAILING—IS BEING INEXPLICABLY AND ROUTINELY IGNORED

Virtually all state trial courts, all Federal Trial Courts, and state and Federal appeals courts apparently disagree with this Court on the subject of rescission. All of the lower courts are ruling consistently in opposition to the 2015 Jesinoski decision, including the 11th Cir. in the Marquis case, the case at bar.

In Marquis' case, the 11th Cir. opinion, which entirely skirted the question at issue, did not even mention the Supreme Court *Jesinoski* decision, although Petitioner Marquis consistently argued 15 U.S.C. §1635 and *Jesinoski* as her primary case reference for her claim that she was entitled to injunctive relief based upon her rescission and its effectiveness upon notice. Thus the 11th Circuit, like virtually all the other lower courts, flagrantly disregarded this court's binding authority.

The unintended consequence of the current opposition of the lower courts, such as the 11th Cir. ruling in the Marquis case is not only the tacit aggregation of power by the lower courts to assert positions that violate statutory law. These reactionary court opinions also violate the explicit legal case holdings of this Court, thus creating what legal experts would call a constitutional crisis.

The finality of this Court's decisions and the obligation of all other courts to

accept and follow same decisions has long been established. "It is this Court's responsibility to say what a federal statute means, and once the Court has spoken, it is the duty of other courts to respect that understanding of the governing rule of law". James *v. City of Boise, Idaho*, 136 S. Ct. 685, 686 (2016). (The Idaho Supreme Court, like any other state or federal court, is bound by the United States Supreme Court's interpretation of federal law.); "Our decisions remain binding precedent until we see fit to reconsider them, regardless of whether subsequent cases have raised doubts about their continuing vitality." *Bosse v. Oklahoma*, 137 S. Ct. 1, 2 (2016); The Oklahoma Supreme Court must abide by the FAA, which is "the supreme Law of the Land. It is this Court's responsibility to say what a statute means, and once the Court has spoken, **it is the duty of other courts to respect that understanding of the governing rule of law.**" *Nitro-Lift Techs., L.L.C. v. Howard*, 568 U.S. 17, 21 (2012) (e.s.)

At the time of writing the instant brief, there are thousands of pending decisions across the land that openly or tacitly "disagree" with this Court on the issue of TILA rescission. Virtually all lower courts are eviscerating TILA, section 1635, inserting conditions for rescission where none exist and, more importantly, where none *can* exist, as stated in *Jesinoski*.

The question presented in this appeal is NOT whether the rescission was "valid." The question is whether it was effective as of the time of delivery. If it was effective as stated by the statute and this Court, then before any party can raise any

timely objection to its validity they would need to establish legal standing without the void note and void mortgage in addition to a short plain statement upon which relief could be granted, allowing for due process to take its course.

The real issue may be that banking entities such as those in the Marquis case do not have the standing required to challenge rescission. Hence—in an effort to avoid TILA's painful consequences for themselves— banking entities like those in this case have put immense pressure on the lower courts to deny that rescissions brought before the court by homeowners such as Marquis, are valid. When a borrower like Marquis is seeking injunctive relief, and not a determination of her rescission's validity it is extremely unfair for a court to instead rule— arguably without jurisdiction— that her rescission was actually never effective. In the case at bar, the Marquis case, the 11th Circuit ruled sua sponte on whether or not her rescission was valid, without being asked to do so by Marquis or any party with standing, inserting the condition that her home loan was not what the court deemed to be the kind of home loan upon which Marquis could exercise her right of rescission, and secondarily that the statute of limitations may have run out. However, the true interpretation of TILA as applied here is that the Chase banking entities **themselves** should have challenged the rescission under those or any other grounds, **within 20 days of receiving the notice of rescission**, rather than simply ignoring the TILA rescission. The courts are bowing under pressure from the banks and not enforcing TILA. The lower courts, in all their contrary decisions, commit an

egregious error in viewing them- selves, contra *Jesinoski*, to be the ultimate arbiters of the meaning of 15 U.S.C. §1635. Their error is compounded by one simple, undeniable fact: the statute describes the effect of a rescission notice as an *event,* and *not* a claim.

Hence the decision appealed from in the case at bar that a "statute of limitations" had run on an event that had already happened and that Marquis' loan was not the kind of loan that could be rescinded. Here we see an example of the currently popular application of a court of a projection into the future of conditions upon which a creditor with standing might hypothetically win equitable relief vacating the statutory rescission.

This Court may have inadvertently obscured the issue for those such as Marquis fighting rescission cases when they issued a negative opinion in *Beach v Ocwen Federal Bank* 523 U.S. 410 (1998). The lower courts have taken the *Beach* case as meaning that they could summarily or informally rule on questions of fact relating to whether the notice of rescission could be vacated in cases where the notice was delivered more than 3 years from the date of consummation. This Court was careful in Jesinoski not to disturb the Beach v. Ocwen ruling, which simply states that the rescission is improper and essentially is the exercise of a nonexistent right if it is sent more than three years from the alleged date of consummation of the loan contract. The operative question of fact, unless admitted by the homeowner/ borrower is what was the effective date of consummation, if any,

of the loan contract between the borrower and the named lender.

This is followed by the operative question of law, upon which this appeal is based: i.e., given that the rescission is effective upon notice and the note and mortgage are hence void, there are no longer any legal presumptions arising from possession or "ownership" of any paper instrument; hence in order to oppose statutory rescission, only a party with legal standing may raise any objection to statutory rescission, and must do so timely and by alleging legal standing based upon the existence of a relevant financial transaction in which they were a principal party, and bear the risk of loss. Since an allegation of standing would depend upon facts relevant to the actual monetary transaction at issue, it is only through a lawsuit filed within twenty (20) days from the date of statutory rescission that a party subject to a rescission can allege such facts, giving an opportunity to the borrower to respond, and have a court resolve the issues in dispute by issuing findings of fact and conclusions of law.

Grounds upon which a creditor with standing might sue are myriad, but the key point is that the creditor must bring a lawsuit to raise those issues, or those issues are dead. Determination of the date of consummation, whether the loan is the correct kind of loan to rescind, and other questions of fact must be based upon due process, to wit: filing a lawsuit, alleging facts supporting standing, with supporting causes of action, with a demand that the rescission be vacated. The issue of the date of consummation is not necessarily the date on the documents (if the

party named as lender on the loan documents was even a creditor); but as in the case at bar the consummation clock is restarted by a refinancing agreement if the agreement is changing essential terms, including the lender and successor, and including new consideration between the new lender and a new set of borrowers; that the new document at issue is entitled "modification" does not change the fact that same document is in fact a new loan by way of a refinancing of the loan at issue.

There are dozens of potential fact patterns that could be raised by a party with standing to vacate the TILA rescission and restore the note, the mortgage and loan agreement. However, the possibility of such claims cannot be the basis of a ruling unless they are litigated under Jesinoski.

Any other construction would directly conflict with the TILA rescission statute and this Court's unanimous decision in *Jesinoski*.. This is true in Marquis' case, as well, in the lower courts' allowance of the banking entities to benefit from the post-rescission void loan agreement, the void note and the void mortgage. In so doing, they failed to follow the applicable statute, as directed by the unanimous opinion of this court.

For example, take notice of the following opinion in another rescission case: "TILA grants borrowers rights to rescind certain consumer credit transactions involving a security interest in the borrower's primary residence. 15 U.S.C. § 1635(a). TILA creates *two* rescission periods, one unconditional and *one condition-*

al." [emphasis added] *Pohl v. U.S. Bank, as Trustee et al*, U.S. Court of Appeals, 10th Circuit June 16, 2017. Again, this decision is a faithful representation of virtually all TILA rescission decisions across the country, to wit: they are imposing conditions and complicated additions to the process of rescission, disregarding that this court and the statute directed that there were none.

Entire regions of the United States are blanketed by rulings such as those examples above, which rulings are completely opposite to the express wording of the statute and the opinion of this court. Hence the courts in the case at bar, and in thousands of other cases across the country, have introduced a condition that leaves all parties in legal limbo. The statute says the rescission is effective by operation of law, but the decisions of the lower courts clearly impose a condition that clearly thwarts the statute by removing the phrase "effective by operation of law." This forces the borrower to file suit, which is the very thing that this Court in *Jesinoski* stated clearly and emphatically must NOT be imposed as a condition to the effectiveness of the rescission, and which TILA rescission was meant to circumvent.

Under the Statute, a change takes place at the time of mailing or delivery: through the rescission at law, the loan agreement is replaced by a statutory scheme in place of the loan agreement. The applicable statute, 15 USC §1635(b), provides for cancellation of the loan contract, and in place of the loan contract, sets forth a

statutory scheme to resolve the rights and obligations of the parties. To prevent this from happening, the Notice of TILA rescission must be vacated by a court order based upon any number of meritorious claims raised by the creditor. The time limit for filing such a lawsuit is the period in which the lender or creditor is not in violation, i.e., up to 20 days from delivery of the notice of rescission. Any party seeking to deny the legal effect of the event of a rescission must sue within 20 days of same rescission event; or else the rescission is not just presumptively but conclusively valid

Specifically, the issue again centers on when TILA rescission is effective. If it is effective by operation of law, as stated in the statute and by this Court in *Jesinoski*, then the loan contract is cancelled, and the note and mortgage are void by operation of law at the time of the rescission event. Besides mailing the notice, the placing of extra conditions to rescission being effective, when Congress and this Court explicitly disclaim the placing of any such conditions, illegally changes TILA rescission from a statutory event to a statutory claim.

As we have seen before the *Jesinoski* decision, most Federal and State courts ignored the plain wording of the statute 15 USC §1635; specifically, they "interpreted" the statute to mean that the effectiveness of a notice of TILA Rescission is somehow contingent upon tender, or the filing by the rescinder-borrower of a lawsuit to make the rescission effective, or other conditions that do

not appear in the statute.

This court answered the question in *Jesinoski* where it said (1) no interpretation is allowed because the statute is clear and unambiguous on its face, (2) no conditions apply to the effectiveness of a notice of rescission save one: mailing and delivery:

However, the Federal and State courts across the country have again disregarded the Supreme Court of the United States and have attached conditions based upon "interpretations" of the law. Despite the clear and

unambiguous language of the statute stating that the rescission is effective by operation of law, virtually all the courts are issuing rulings and opinions that flatly reject the clear statutory language, and this Court's ruling in *Jesinoski*, thus in effect striking the words "effective by operation of law" from the statute.

III. LOWER COURT JUDGES ARE INSERTING THEIR OWN MISPLACED ECONOMIC FEARS AND BIASES INTO OPINIONS ABOUT THE TILA STATUTE; THUS, THE SUPREME COURT MUST END THIS PRACTICE *BY ISSUING A DECLARATION AND AN ORDER CONSISTENT WITH JESINOSKI*

According to multiple lawyers Marquis has consulted with, the reasons that many judges do not accept the outcome of rescission in cases like hers are that they either (a) fear economic loss to banks and those invested in them; or (b) simply do not understand that TILA rescission does not erase the debt. The clear meaning of TILA is "disclose or lose money." Some judges have apparently confused rescission with forgiveness of the debt. However, the statute requires compliance with the three statutory duties imposed by the TILA Rescission statute before any demand for payment of the principal can be pursued. Further, TILA was meant to protect borrowers from unscrupulous lenders, and punish lenders who violate borrowers' rights who continue to commit, deceptive and predatory lending crimes. The lending and rescission statute was *designed* to deter lenders from doing exactly what lenders did 2004-2009, to "table-fund" a risky loan with investor money, hoping homeowners will not notice their crimes before any time statute would run. As part of this deterrence, TILA forces such

lenders to prove standing to counter a rescission. (See Davenport,*An American Nightmare:Predatory Lending in the Subprime Home Mortgage Industry*, 36 Suffolk U.L. Rev. 531 (2002)

Thus, the Supreme Court must take up this Writ to ensure that lower courts are meting out the punitive economic consequences TILA intended for such lenders. The fundament of this appeal by the homeowner is whether the personal disagreement with TILA rescission as outlined by this court by a lower court judge or panel of judges is sufficient to render the statute impotent. However, perhaps the more important fundament is whether this Court, as the highest court in the land, can and will enforce its own rulings and decisions when lower courts refuse to do so. This appeal is not about speculating on who would win a lawsuit by a lender/ creditor requesting that a court vacate the rescission. This appeal is solely about whether courts have any right, justification or excuse to ignore a legal event that has already occurred: i.e., the cancelation of the loan contract resulting in the note and mortgage being void and the resulting substitution of the statutory scheme in place of the loan contract.

In the case at bar a notice of rescission was sent in 2016, and the alleged loan closing was 11 years earlier. However, the case was tried on the premise of the original loan documents and ignored the subsequent loan refinancing mistakenly described as a modification in 2008; while not recorded, there is no dispute about whether the modification

took place, nor any dispute about the pleadings challenging the enforcement of the original loan documents as illegitimate documents. As it happens, the homeowner in the case at bar recovered a notice of TILA rescission that was sent in 2009 canceling the modified loan that was a refinancing masquerading as a modification.

Yet, this court need only look to the 2016 notice of TILA rescission to decide the case and thereby issue a decision that leaves no room for doubt as to the meaning of "effective by operation of law" in the TILA Rescission statute, as affirmed by this Court in Jesinoski. The nub of the issue is the reference to a potential condition to validity of the no- tice of TILA rescission, i.e.: that it be mailed within three years of consummation and be about a certain kind of loan. Petitioner concedes the hypothetical right to oppose the rescission on grounds of validity of the notice of rescission. Petitioner concedes that the three- year limitation and loan type are hypo.

Plaintiff does not concede that the test of the validity of the rescission notice occurs upon mailing, but rather states that such a test must occur in accordance with due process, and is subject to scrutiny or limitation if and only if the party subject to the rescission brings--within 20 days of the mailing of a given rescission notice--a lawsuit to challenge the validity of the rescission. Absent a filed lawsuit by the party subject to the rescission, within the 20-day timeframe referenced above, the rescission notice at issue is not just presumptively valid, but valid in a

manner not subject to legal challenge. Regardless of the reason that the notice of rescission might have been sent and whether the sending was based upon correct legal interpretation by the homeowner, Congress never intended homeowners to be required to go to a lawyer or to court in sending the notice. That is the whole point of the statute, without which, the disclosure requirements would be optional. In place of a new huge Federal agency, Congress made the statute self-actuating. The courts are constrained to follow policy as expressly stated in valid statutes.

There should be no confusion in the courts about what the TILA statute says or means. If the lender/creditor complies with the statute, it will either file a timely lawsuit seeking an order to vacate the rescission, or it will comply with the three statutory duties. The duties include (a) return of canceled note (b) filing release of encumbrance even though by operation of law the encumbrance is void and (c) return of certain monies paid by the borrower. This scenario also allows the homeowner to seek financing to pay off the debt, which survives rescission. Any shortfall in financing can be made up by applying the disgorgement money to paying off the old debt; regardless, the homeowner's own finances can be used to make up the difference, and if that still doesn't suffice to cover the money at issue, then the homeowner can tender a secured note for the remaining balance. TILA Rescission does not wipe out the debt.

It does penalize the lender/creditor for violation of disclosure requirements in

the form of lost interest and certain fees. In the case at bar there are many factual issues that are only tangentially related to rescission. Whether or not the "originator" was in fact the lender or an agent for a party that could legally be described as a lender was an issue. This touches on TILA Rescission in that it impacts the date of consummation or perhaps whether there was any consummation at all, in which case, the objectives of TILA Rescission may have already been met. These issues are raised not as a point for this court to decide on appeal, but only as context for the barred rescission dispute. Following opinions from many jurisdictions, the federal trial court in the Marquis case imposed conditions on the effectiveness of rescission, essentially entertaining a lawsuit that no alleged creditor had filed.

The court followed the same example as another case decided July 17, 2018, in U.S. District Court, San Diego, California. The decision was to deny the Motion to Dismiss filed by the party identified as seeking foreclosure, resulting in the case going to trial on certain issues. Had 15 U.S.C. §1635 been properly applied, the injunction would have been issued, the notice of sale vacated along with all other events and activities from the ostensible lender and associated parties, post rescission date.

Echoing the gravamen of nearly all decisions across the country, Judge Sabraw in that case distinguished between (1) the unconditional right to rescind

for any reason within 3 days of alleged "consummation" of the loan contract and (2) a newly invented doctrine of a conditional right to rescind: rescission was only effective in the event that the proper disclosure documents had not been given to the borrower. This again reduces TILA rescission to a claim rather than an event that was effective by operation of law. As Judge Sabraw put it: "'However, if no disclosure violation occurs, the right to rescind is not extended for three years and instead ends at the close of the three-day window following consummation of the loan transaction." *HINRICHSEN v. Bank of America, NA*, Dist. Court, SD California 2018, Id. (quoting *Keiran v. Home Capital, Inc.*, 720 F.3d 721, 730 n.8 (8th Cir. 2013)). "Given the date of the consummation of the loan, December 17, 2009, and the date of Plaintiff 's notice of rescission, January 17, 2012, Plaintiff does not fall within TILA's 'buyer's remorse' provision", the judge ruled. Thus, Plaintiff 's invocation of his right of rescission is timely "only if [MLD] failed to satisfy TILA's disclosure requirements." *Jesinoski*, 135 S. Ct. at 792." Once again, we are faced with a court denying the existence or

effectiveness of the rescission and requiring proof from the homeowner that the conditions for disclosure were not met, before a court must follow 15 U.S.C. §1635.

In summary, the Judge in the case at bar and the *Hinrichsen* case both committed the same error (although the lower courts ruled sua sponte in the Marquis case): allowing a respondent to stop the effectiveness of TILA rescission by announcement of its dispute with the notice of rescission, without suing within 20

days of the rescission event, in direct conflict with this Court's unanimous ruling in *Jesinoski* that there is "no distinction between disputed and undisputed rescissions". The notice effects the rescission, with no lawsuit required. The TILA rescission remains effective and starts the clock on the new deal created by 15 U.S.C. §1635 in place of the canceled loan agreement, void note and void mortgage or deed of trust.

Further the Judge in the case at bar and the *Hinrichsen* case both committed error in creating presumptions without foundation, and where there could be no presumptions. Any party relying strictly on the canceled loan, agreement, the void note and the void mortgage, loses any semblance of legal standing and thus the court cannot pretend that it has standing to object to the TILA rescission. The use of presumptions arising from canceled or void instruments is obviously error by logic and law. And yet that is what the courts below did in this case, and it was what the *Hinrichsen* court did, and it was what virtually every court in the land is doing except this Court.

Also, to Marquis the fact that the court used such presumptions in order to rule against her interests— including not only in the Mandate, but in flat-out denials of her Motion for Rehearing and Motion to Recall the Mandate--without the lenders even *answering* her complaint or responding *ever*-- was dehumanizing, humiliating and shocking. Losing her home under such circumstances would be extremely unjust and contrary to her constitutional right

to due process under the 14th Amendment when a banking entity is attempting to deprive her of her homestead:

> *"...nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."* U.S. Const. amend. XIV, Sec. 1.

URGENT, DIRE CONSEQUENCES FOR THE NATION DUE TO ONGOING DENIAL OF HOMEOWNERS' TILA RESCISSION RIGHTS BY LOWER COURTS

In addition to the urgent matter of Marquis' and other homeowners' constitutional rights being violated as this petition is being written, the issue of liability associated with clouded titles on property, as TILA intended to avoid through a clearly delineated, time-sensitive procedure in 1635(b), should be a cause for alarm in our country and is only one other urgent reason the Supreme Court should hear the Marquis case. Marquis also fears liability--what would happen if damages were caused to someone on her property due to her dispute with the banking entities, or what if one of her minor children should get hurt on the abandoned property in foreclosure next door to her, where the issue of standing has kept the home empty for over four years?

The following case, while indicating that there are courts that are tentatively moving toward the correct application of statutory rescission under 15 U.S.C.

§1635., also speaks to the title and liability complications the current court atmosphere is causing. A California appeals court recently found in a TILA rescission case that *Jesinoski* required the court to vacate judgment after the sale of a home, and remand to "reevaluate respondent's standing and the merits concerning respondent's claims for cancellation of instruments" because "if the rescissionary remedy is completed, the security interest in the Property is void, the foreclosure sale is void." *US Bank National Assoc. v. Naifeh*, No. A142994., Cal. Ct. App., 1st App. Dist. (5th Div. 2016). (But note the continued misconstruction of the TILA statute: the court still comes down on the side of making statutory rescission a claim in which the borrower bears a burden of proof before the rescission can be effective.) Tens of thousands of similar rescission cases are causing title and liability issues across the country.

Consequently, just like many other homeowners fighting foreclosures of loans which were unconscionable, Marquis dreads that even if her current state appeal of her state of Florida foreclosure case (based upon other grounds) results in reversal of the Florida State 12th judicial circuit's foreclosure judgement, other alleged creditors (or those with new alleged grounds for foreclosure of her mortgage loan) could again attempt to foreclose on her property on the same mortgage loan, leaving herself and two minor children homeless, and in the meantime unsure of their ownership of their home.

Also, Deutsche Bank as Trustee for Long Beach Mortgage Loan Trust WL3-

2006 has filed for a sale date to sell her homestead (most likely to another Chase Bank entity). That pending sale date is on August 28, 2018.

Hence, the direct and indirect effect of the lower courts' inexplicable defiance of this court's authority and TILA has threatened and undermined the fundamental power of the judiciary as the third branch of government as well as the fabric of the marketplace and our society. To summarize and list a few more tragic consequences of the lower courts' defiance of the authority of this court:

- By failing to follow this Court's decision in *Jesinoski*, the virtually unanimous rebellion of the lower courts threatens the basic building blocks of the Supreme Court as an institution, to wit: finality and superiority. Left alone this pattern of behavior of the lower courts is creating a new doctrine that this Court's opinions are not final and not superior in authority to the lower courts.

- The virtual unanimity of the courts in their rebellion has resulted in a chilling effect, to wit: on borrowers on their own and even on advice of counsel not send a rescission notice or raising the issue because of the virtual certainty that the trial court and any state or Federal appellate court will conclude that the rescission was not effective upon mailing, despite this Court's clearly worded ruling in *Jesinoski* stating that all rescissions are effective upon mailing.

- Lawyers advocating for borrowers are under threat of sanctions and even bar grievances (currently pending in Southern California) for advocating the effect of TILA rescission in court. Lawyers who attempt to advocate for their clients on the basis of 15U.S.C. §1635 are directly threatened with sanctions and bar grievances by judges sitting on the bench in trial courts. Many judges express outrage that any lawyer would advocate for using rescission or would attempt to tip the scales away from the banks.

- Foreclosures are routinely processed despite delivery of statutory rescission notice. Foreclosure sales proceed in which parties relying upon void paper instruments are nevertheless allowed to submit a credit bid or the property can be sold to a third party.

- Fewer lawyers are available to represent homeowners because they are under threat of sanctions or bar discipline — all for advocating that the courts follow the law as it was written and this court's unqualified unanimous 9-0 decision in *Jesinoski.* Petitioner Marquis specifically has encountered exactly those conditions. She has been unable to find lawyers to help her in the legal defense of her home. And no lawyers are willing to represent Petitioner on the issue of rescission under 15 U.S.C.§1635 requiring Petitioner to expend large amounts of time educating herself on the law and large sums of money (for her) on developing an alternate defense narrative to foreclosure at- tempts by parties who, by operation of law, lack standing to do so (when their claim relies upon a void note and void mortgage or deed of trust).

The conflict between the action of the lower courts versus the Supreme Court has resulted in title issues across the country. On the one hand the law says that the loan agreement is canceled, the note and mortgage are void while on the other hand foreclosures have proceeded and continue to proceed based upon reliance on void documentation premised on a canceled loan agreement. Further, liability issues will inevitably follow. In the Marquis state case an appeal of the foreclosure is in process and her home is being scheduled for a foreclosure sale. So, just as in many other such cases, the immediate, urgent consequence if the Supreme Court fails to uphold homeowner- borrowers' rescission rights and issue an injunction, will be a tragic loss of a family's homestead property, a loss based upon claims arising from void instruments and/or the sale of a home that must then be reversed if she wins her state appeal. The personal damages to Marquis so far include not only legal expenses, lost credit and lost work hours associated with legally defending her home; Marquis has also endured a related divorce, and severe straining of her family and personal relationships—including with her minor children— resulting from the financial burden of the original predatory loan, and the on-going uncertainty and stress about her and her children's housing. Further, damages arise from the loss of health and mental health associated with the stressors of not only the original predatory loan, but the unending, relentless stream of litigation she has endured to keep her property.

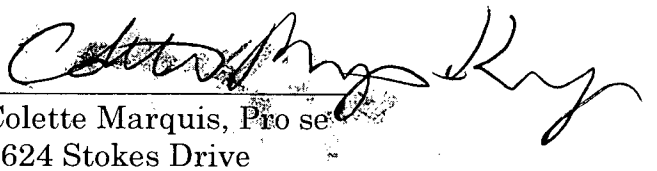
CONCLUSION

This travesty of justice will continue unless stopped by the Supreme Court.

This court must stand for the Constitutional principle that depriving people of their property without due process of law is unacceptable, and moreover for the principle that lower courts compliance with the orders and opinions issued by this court is mandatory. Lower courts must follow the controlling precedent of the *Jesinoski* decision. The Writ of Certiorari should be granted.

Further, the Supreme Court of the United States must act <u>now</u> to end the on-going chaos in the judicial and property systems of this country. In conclusion, this Court must lead the lower courts to understand that *Jesinoski* makes clear rescission is an event, not a claim, for all the reasons stated above. This Court should grant the Writ of Certiorari.

Respectfully submitted,



Colette Marquis, Pro se
3624 Stokes Drive
Sarasota, FL 34232
941-822-2947; cakiliany4@gmail.com