

No. ⁱ**18-8413**

ORIGINAL

Supreme Court, U.S.
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**In the
Supreme Court of the United States**

Francisco Avoki — PETITIONER
(Your Name)

VS.

Carolinas Telco Federal Credit Union — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Fourth Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Francisco Avoki

(Your Name)

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(Address)

Charlotte

(City, State, Zip Code)

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QUESTION(S) PRESENTED

Does a borrower exercise his right to rescind a transaction in satisfaction of the requirement of Section 1635 by “ [N]otifying the creditor” in writing within three (3) years of the consummation of the transaction, as the Third, Eleventh Circuit and the US Supreme Court have held, or must a borrower file a lawsuit within three years of the consummation of the transaction , as the First, Fourth, Sixth, Eighth, Ninth and Tenth Circuits have held?

For sake of clarity and comprehensibility, the US Supreme Court has already granted certiorari in couple cases that present this question of TILA'such as:

- a) Jesinosky v. Countrywide Home Loans (US Supreme Court file N° 13-394 Certiorari granted April 28, 2014, final decision on January 15, 2015;
- b) Gary R. Peterson, et UX v. Bank of America, N.A US Supreme Court File N° 13-1526 , Certiorari granted January 20, 2015 with final decision on February 23, 2015
- c) Others cases such as Rocky Takushi v. BAC Home Loans servicing; Alain Keiran v. Home capital Inc...) and others cases.

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from federal courts :

The opinion of the United States court of appeals appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from state courts :

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts** :

The date on which the United States Court of Appeals decided my case was December 20, 2018.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

The judgment of the court of appeals was entered on December 20, 2018. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1) et seq., and Fed. R. App. P 36.

☐ For cases from **state courts** :

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves provisions of the Federal Truth in Lending Act, 15 U.S.C. § 1601, *et seq.* ("TILA") and the right interpretation of Federal Reserve Board's Regulation Z enacted by the US Congress.

STATEMENT OF THE CASE

Petitioner, Francisco Avoki ("Mr. Francisco"), respectfully requests that the Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the 4th Circuit. Filed on December 20, 2018; affirming the order of the United States District Court for Western District of Charlotte, filed on July 24, 2018.

A. INTRODUCTION

The Fourth (4th) Circuit Court of Appeals affirmed the District Court's decision dismissing Mr. Francisco's case, holding that the time limit of 3 years bars his claim that he properly rescinded his mortgage-loan per this Court's Jesinoski decision holding that rescission is effected upon notice.

Moreover, Congressional intent in enacting the federal Truth in Lending Act ("TILA") was to protect such consumers with clear rescission procedures, which Mr. Francisco Avoki followed. Jesinoski made clear when rescission is effected (Notification), but the banks, consumers and lower courts now are inconsistently applying the law Jesinoski sought already to clarify. The case in bar, like many others in the wake of Jesinoski, are in direct conflict with this Court's important unanimous Jesinoski holding.

B. STATEMENT

The Congress enacted the Truth in Lending Act "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing...practices." 15 U.S.C. § 1601(a).

The TILA Act therefore provides to disclose to borrowers various terms of a credit transaction, including "finance charges, annual percentage rates of interest, and the borrower's rights." *Beach v. Ocwen Fed. Bank*, 523 U.S. 410, 412 (1998) (citing 15 U.S.C. §§ 1631, 1632, 1635, 1638.) Section 1635(a) and 1631 provide that a borrower who secures the loan with a principal dwelling "shall have the right to rescind the transaction until midnight of the third business day following the consummation the transaction or the delivery of the information intention to do so." 15 U.S.C. § 1635(a). Section 1635(a) thereby creates an unconditional right to rescind the house Loan for three days-

./ Statement of the Case

...after the consummation of the transaction and, as a remedy for a creditor's violation of the Act's disclosure requirements, extends that right to rescind until three days following the ultimate delivery of the right to rescind under Section 1635(a) states in motion a series of automatic steps to unwind the transaction, imposing obligations on both the creditor and the borrower.

When a borrower "exercises his right to rescind under [Section 1635(a)]; he is not liable for any finance or other charge, and any security interest given by the [borrower] ...becomes void upon such a rescission." *Id.* § 1635(b). Section 1635(b) next provides that "[w]ithin 20 days after receipt of a notice of Rescission, the creditor shall return to the [Borrower] any Money or property given as down payment ..And shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction." *Id.*

Subsequently, [U]pon the performance of the creditor's obligations under this section, the [borrower] shall tender the property to the creditor," but "[I]f the creditor does not take possession of the property within 20 days after tender by [Borrower], ownership of the property vests in the [Borrower] without obligation on his part to pay for it." *Id.* These procedures prescribed by section 1635(b) "shall apply except when otherwise ordered by a Court." *Id.*

Although the Act originally extended the three-day rescission right until the creditor delivered proper disclosures and notices, whenever that might be, Congress later limited to three years the time within which a borrower may exercise the right to rescind even if a creditor never delivers the disclosures required by the Act. See Act of October 28, 1974, Pub. L. 93-495, § 405, 88 Stat. 1500, 1517 (codified at 15 U.S.C. § 1635(f)). Section 1635 (f) thus provides that a borrower's "right of rescission shall expire three years after the date of the consummation of the transaction ... notwithstanding the fact that the information...required under this section or any other disclosures required under [the Act] have not been delivered to the [Borrower]." 15 U.S.C. § 1635 (f).

./ Statement of the Case

And rescission forms required under this section...whichever is later, by notifying the creditor ...of his The creditor shall also provide, in accordance with regulations of the Bureau, appropriate forms for the obligor to exercise his right to rescind any transaction subject to this section.

(b) Return of money or property following rescission When an obligor exercises his right to rescind under subsection (a) of this section, he is not liable for any finance or other charge, and any security interest given by the obligor, including any such interest arising by operation of law, becomes void upon such a rescission. Within 20 days after receipt of a notice of rescission, the creditor shall return to the obligor any money or property given as earnest money, down payment, or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered any property to the obligor, the obligor may retain possession of it.

Upon the performance of the creditor's obligations under this section, the obligor shall tender the property to the creditor, except that if return of the property in kind would be impracticable or inequitable, the obligor shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the obligor, at the option of the obligor. If the creditor does not take possession of the property within 20 days after tender by the obligor, ownership of the property vests in the obligor without obligation on his part to pay for it.

The procedures prescribed by this subsection shall apply except when otherwise ordered by a court.

Although the Act originally extended the three-day rescission right until the creditor delivered proper disclosures and notices, whenever that might be, Congress later limited to three years the time within which a borrower may exercise the right to rescind even if a creditor never delivers the disclosures required by the Act...

./ Statement of the Case

... See Act of October 28, 1974, Pub. L. No. 93-495, § 405, 88 Stat. 1500, 1517 (codified at 15 U.S.C. § 1635 (f)). Section 1635(f) thus provides that a borrower's "right of rescission shall expire three years after the date of consummation of the transaction ...notwithstanding the fact that the information...required under this section or any other disclosure required under [The Act] have not been delivered to the "[borrower]." 15 U.S.C. § 1635 (f). Regulation Z, which implements the Act¹, confirms that, "[i]f the required notice or material disclosures are not delivered, the right to rescind shall expire 3 years after consummation. " 12 C.F.R. § 226.23(A)(3). That Regulation further explains that "[t]o exercise the right to rescind, the consumer shall notify the creditor of the rescission by mail, telegram, or other means of written communication." Id. § 226.23(a)(2).

C. STATEMENT OF THE CASE

Francisco Avoki financed a secured loan on his home on November 14, 2012 May 6, 2005, that was secured by a sum of \$35,000 and or a deed of trust, defined as a consumer credit transaction under the federal Truth in Lending Act ("TILA"), 15 U.S.C. § 1602.

1. The Act originally vested the federal Reserve Board with authority to promulgate regulations implementing the Act see Pub. L. No. 90-321, title. I. § 103(b), 105 82 Stat. 146, 147 148 (1968). Under the authority the Board promulgated Regulation Z, after notice and comment. See 12 C.F.R. pt. 226 . The Consumer Financial Protection Act of 2010 transferred implementing authority from the federal Reserve Board to the Consumer Financial Protection Bureau . See Pub. L No. 111-203, tit. X, § 1061(b)(1), (d), 124 Stat. 1376, 1955, 2036, 2039 (codified) at U.S.C 5581(b) (1), (d)).

./ Statement of the Case

Mr. Francisco Avoki alleges numerous TILA violations by the lender, including the failure to provide the required consumer notices and disclosures, without to disclose on his payment what is the interest, what is the premium to the insurance policy and what is the principal on his monthly payment of \$ 795.

After several quarrel about these disclosures with Ms. Kimberly -Kim (Telco Central avenue Charlotte' Manager), on February 12, 2013 , Mr. Francisco Avoki timely exercised his right to rescind the Loan transaction by its letter dated 2/12/2013.

Although Carolinas Telco via Ms. Kimberley received Mr. Francisco Avoki 's rescission, Telco took none of the steps TILA requires of lenders following rescission. Carolina Telco initiated closure of Mr. Francisco Avoki' shared account instead of paying the default of \$ 795 on the loan, Telco converted all Francisco Avoki assets and paid off the loan.

Telco converted all Francisco Avoki assets and paid off the loan. Despite Mr. Francisco Avoki 's rescission of the loan and the lender's (Carolinas Telco) concomitant lack of legal right to convert All Francisco Avoki shared account was closed and funds paid from Telco to Telco house - loan on July 31, 2013.

The federal District Court of Charlotte dismissed Mr. Francisco Avoki 's suit in July 24 2018 by memorandum opinion and order granting a motion to dismiss on the basis of alleged ***TIME BAR LIMITATION OF ONE YEAR ON TILA!***, and the Fourth Circuit affirmed the dismissal on December 20, 2018 (per Curriam and unpublished.)

./ Statement of the Case

The District Western Court of Charlotte and the Fourth Circuit held that The TILA Act required the plaintiffs- Appellant Francisco Avoki to file a lawsuit to rescind under 3 years their failure has timely barred their TILA, TILA Claims and the case is dismissed WITH PREJUDICES. Dis regardless that On **January 13, 2015**, the United States Supreme Court issued its unanimous opinion in Jesinoski v. Countrywide Home Loans, Inc., holding that TILA's unequivocal language "leaves no doubt that rescission is effected when the borrower notifies the creditor of his intention to rescind."

Accordingly, the US Supreme Court made clear that Mr. Francisco Avoki's house secured Loan and note were immediately made void upon his timely rescission notification in February 12, 2013. Based on this US Supreme Court's ruling in Jesinoski; on December 28, 2017, Francisco Avoki filed a complaint against Carolinas Telco credit union, in the District of Western Charlotte alleging TILA violations nevertheless the District Court dismissed the complaint on TILA by Order of July 24, 2018 (appendix B) page 8 the Court said: ... "Plaintiff did not bring this proceeding until December 28, 2017.

Because Plaintiff did not bring this proceeding until December 28, 2017, his (Negligent-TILA is barred by the three-year statute of limitation.)" On December 20, 2018 the Fourth Circuit affirmed (**per curiam**) the District Court Decision.

Merely put the US District Court of Charlotte and the Fourth Court refused to recognize that plaintiff Francisco Avoki had validly rescinded their mortgage and loan, Instead they have held [e]rroneously that the TILA Act required the plaintiff-Appellant Francisco Avoki to file a lawsuit to rescind under 3 years their failure has timely barred their TILA , and TILA Act Claims and the case is dismissed with PREJUDICES; while Mr. Francisco lost his account – assets life insurance despite his timely loan rescission on February 12, 2013. Following the rescission, the lender had no standing to convert secured fund nor foreclose the loan – home.

./. Statement of the Case

The Court of appeals are sparkly divided on the issue. Three other circuits and the US Supreme Court hold that, in accord with the plain text of Section 1635 of TILA Act The notice of rescission within the 3 years limit still sufficient. Notifying the creditor in writing here February 12, 2013 or 88 days after Carolinas Telco' scam, is all that is required to exercise that rescission right.

On January 13, 2015, the United States Supreme Court issued its unanimous opinion in *Jesinoski v. Countrywide Home Loans, Inc.*, holding that TILA's unequivocal language "leaves no doubt that rescission is effected when the borrower notifies the creditor of his intention to rescind."

The landmark *Jesinoski* case explained when rescission was effected pursuant to TILA. The Fourth Circuit opinion in *Avoki v. Telco* 18-1849 of December 20, 2018 [W]antonly manufactures legal obstacle for borrowers seeking to vindicate their rights under a law that was enacted to protect borrowers, and risks flooding the US District Courts with tons of needless lawsuits to accomplish **rescission** that Congress intended to be completed privately and without litigation;

The US Supreme Court must rectify this situation by providing needed guidance in this critical area of consumer protection law, whereby Borrowers and homeowners are being evicted and foreclosed upon despite having legally rescinded in timely manner their Loan.

Because of the US Supreme Court unique and exclusive Jurisdiction, over rescission and TILA Act cases, only this Court's immediate involvement can prevent the Federal Circuit's mistake from quickly spreading again throughout the nation on rescission right characterization; years of the misapplication of TILA's mandates prior to *Jesinoski* should not be combined by years of additional misapplication. Petitioner respectfully ask to the Supreme Court to grant them a writ of certiorari.

REASONS FOR GRANTING THE PETITION

Consumer protection law codified by TILA Act requires that certiorari be granted here for 4 important reasons so that the law will be followed consistently by ALL Courts notably:

- A. Decisional uniformity on TILA Act ' decision
- B. Disregard of Jesinosky and Gary (Supreme Court),
- C. District Court and Fourth Circuit Erred by its misconception of the TILA rescission requirements.
- D. National importance on Borrowers' protections

A. UNIFORMITY ON TILA ACT.

The lowers courts (District of Charlotte and or 4th Circuit) in this case (*Avoki v. Telco 3:17-cv-746-GCM / 18-1849*) [b]latantly disregarded applicable Supreme Court precedent in denying Petitioner recourse despite this Court's unanimous Jesinoski decision on January 13, 2015, The US Supreme Court, in its Jesinoski ruling [*No. 13-13684*], and Gary Peterson [*No. 13-1526*] settled a Circuit split regarding the act of invoking a TILA rescission, These two decision, our Supreme Court properly rejected the requirement of lawsuit within 3 years for a rescission right holding that the plain text of the statute and its implementing regulation dictates that *the written* notice to the creditor is sufficient, and that neither the statute nor the regulation makes any mention of a further requirement to sue with three-year limit.

The opposite Holding of the Fourth Circuit in *Avoki v. Telco 18-1849* here, also shared by the First, Sixth, Ninth, and Tenth Circuits , looks the text of the statute and regulation, "[e]xtrapolating" from this Court Decision in *Beach v. Ocwen Federal Bank* , 523 U.S. 410, 412 (1988), to impose a requirement that under Section 1635(f) ' The [borrower] must file a rescission action in Court' within three years. *Kevin v. Home Capital. Inc*, 720 F. F. 3d 721, 728 (8th Cir. 2013.).

./ Reason for granting the petition

Prior January 13, 2015 (Jesinoski) the Circuits were deeply split on the issue of whether a borrower may exercise the right of rescission by giving a notice with three years of the transaction or must also file a lawsuit within three years of the transaction. Compare *Keiran v. Home Capital, Inc.*, 720 F.3d. 721, 728 (8th Circuit 2013) *McOmie-Gray v. Bank of America Home Loan*, 667 F.3d 49 (1st Circuit 2012); *Rosenfield v. HSBC Bank, USA* 681 F.3d 1172 (10th Cir. 2012.)

Routinely District Court were dismissing the federal claims and remain the case to State Court under the time Barred doctrine. Since January 15, 2015 this US Supreme Court has already granted Certiorari to resolve the circuit split for the right of rescission in *Jesinoski v. Countrywide Home Loan*, (File 13-684) and *Gary R. Peterson v. Bank of America* (File No. 13-1526.) This Court should firmness of purpose the conflict and provide clear guidance to lower courts on this important matter of federal consumer protection law impacting consumers across the country.

The protections afforded by TILA must be allowed where, as here, the consumer effectively rescinded the loan yet lost his assets and Loan by invalid conversion, in which the lender's right to foreclose or convert loan was extinguished as a matter of law by the borrower's rescission. The Supreme Court naturally should grant the Francisco' Petition, and consolidate the *Avoki v. Telco* case with *Jesinoski* and *Gary* for Uniformity of ruling in the lower Courts.

**B. FOURTH CIRCUIT'S DECISION ON AVOKI
V. CAROLINAS TELCO DISREGARDED AND
CHALLENGEUS SUPREME COURT PREVIOUS
JUDGMENT.**

The Fourth Circuit's decision of December 20, 2018 per curiam in this case deepens a significant conflict among the fourth circuit and the US supreme Court.

./ Reason for granting the petition

The Fourth Circuit affirmed the dismissal of Avoki's TILA, TILA Claims and right to rescind by holding that a borrower must file a lawsuit within three years. However on Jesinoski No. 13-684) and Gary Peterson No. 13-1526)' decisions, our US Supreme Court properly rejected such a requirement. Since January 15, 2013 a unanimous Supreme Court agreed that the statute means what it says. The brevity is remarkable. The right to rescind mortgage transactions in the Truth in Lending Act (commonly known as TILA).

The statute allows a borrower to rescind any residential mortgage and loan transaction until three days after the lender provides the disclosures that TILA requires. Thus, if the lender provides the disclosures at the closing (as it should), the right to rescind is gone three days later. But if the lender doesn't provide the disclosures – or if the borrower *claims* that the lender doesn't provide the disclosures – then the rescission period well might continue for three years after consummation of the transaction. That is why our Supreme Court has already remanded couple case for consideration in the light of Jesinosky v. Countrywide, notably:

✓ In the US Supreme Court case No. 13-705 KEIRAN, ALAN, ET AL. V. HOME CAPITAL, INC. ET AL The petition for a writ of certiorari was granted. The Judgment was vacated, and the case remanded to the United States Court of Appeals for the Eighth circuit for further consideration in light of Jesinoski v. Countrywide, 574 U.S.__(2015.)

✓In 13-1526 Peterson, Gary R. et Ux v. Bank of America N.A. The petition for a writ of certiorari was granted. The Judgment was vacated, and the case remanded to the United States Court of Appeals for the Eighth circuit for further consideration in light of Jesinoski v. Countrywide, 574 U.S.__(2015.)

✓In the US Supreme Court case No. 13-884 TAKUSHI F v. BAC HOME LOANS SERVICING The petition for a writ of certiorari was granted. The Judgment was vacated, and the case remanded to the United States Court of Appeals for the Ninth circuit for further consideration in light of Jesinoski v. Countrywide, 574 U.S.__(2015.)

./ Reason for granting the petition

The Petitioner Francisco Avoki has already exercised his right to rescind within 3 years limitations period accordingly with the requirements of Section 1635(a) thus indisputably the Telco Loan is VOID, VOIDABLE and NIL.

The Fourth Circuit decision on December 20, 2018 on Avoki v. Telco 18-1849 sounds as a real defiance and simple abusive resistance to the Supreme Court decisions on TILA, this US Supreme Court should enforce its Rulings and regulations thus remand for consideration in light of Jesinoski, Gary Peterson, Kerein Alan, Takushi Rocky.

C. THE FOURTH CIRCUIT' HOLDING THAT AVOKI MUST FILE LAWSUIT TO EXERCISE HIS RIGHT TO RESCIND UNDER § 1635 IS IN ERROR.

This Court review is further warranted because the Fourth circuit 's holding of December 20, 2018 is incorrect on the merits. The plain statute, the structure and purpose of the Act , and the clear direction of the implementing regulation establish that “ notifying the “ “creditor” is sufficient to exercise the right to rescind under the section 1635 and that there is no further requirement to file suit within the three-year time limit as the Supreme Court ' decision on Jesinoski No. 13-684 and Gary R. Peterson No. 13-1526.

The lower court failed to acknowledge the unanimous holding in Jesinoski. The rescission was valid and never vacated. Jesinoski explained that the courts of appeal had misinterpreted the will of the enacting Congress. Yet the courts continue to do so.

Consumer protection law codified by TILA requires that certiorari be granted here so that the law will be followed consistently by the **Fourth Circuit**.

./ Reason for granting the petition

A. SECTION 1635' S PLAIN TEXT ESTABLISHES THAT THE NOTICE TO A CREDITOR IS SUFFICIENT TO EXERCISE THE RIGHT TO RESCIND AS CONFIRMED BY THIS COURT IN JESINOSKI.

In Jesinoski No. 13-684 of January 13, 2015 the Us supreme Court confirmed the text of section 1635(a) both creates a right of rescission and specifies the method of its exercise. NOW the statute indisputably provides that the borrower" Shall have the right to rescind the transaction ." 15 U.S.C § 1635(a). The statute further details the manner in which that right ma be exercised by specifying that the borrower shall have the right to rescind " Until midnight of the third business day" after the closing or the delivery of proper disclosures "by notifying the creditor, in accordance with regulations of the bureau, of his intention to do so. " *Id.*

The Clear meaning of this statutory text is that a borrower exercises his right to rescind a transaction by "notifying the creditor" Right to rescind exercised by Francisco Avoki within 3 years on February 13, 2013 after a loan contracted on November 14, 2012.this letter is sufficient to rescind the Telco's loan (Scam) without ant extra need of a lawsuit. Section 1635(f)'s text confirms that interpretation. That section creates a "time limit for the exercise of the right , " id § 1635(f), but does not restrict the manner in which that right may be exercised within that time limit. As this Court recognized in Beach, Section 1635(f) "says nothing in terms of bringing an action but instead provides that the "right of rescission [under the Act] shall expire' at the end of the time period. " says nothing in terms of bringing an action but instead provides that the "right of rescission {under the Act] shall expire' at the end of the time period." 523 U.S. at 417. By addressing the "right's duration" id., Section 1635(f) is simply silent regarding what a borrower must do within the time limit it establishes in order to exercise that right.

./ Reason for granting the petition

Beyond Section 1635(a)'s affirmative statement that a borrower exercises his right to rescind by "Notifying the creditor" and section 1635(f)'s notable silence on the issue, neither section gives any indication of a further requirement that the borrower must sue within the three-year time limit. Indeed, neither section even mentions a court or legal proceedings. See Sherzer, 707 F. 3d at 260 ("[T]he absence of any reference to causes of action or the commencement of suits in [Section] 1635 also suggests that rescission may be accomplished without a formal Court filing."); Gilbert, 678 F. 3d at 277 (Simply stated, neither [Section] 1635(f) nor regulation Z says anything about the filing of a lawsuit. And petitioner refuses to graft such a requirement upon them ."); see also Keiran, 720 F.3d at 728. (Regulation Z says nothing about filing suit.)

This conspicuous absence in notable in a statute that elsewhere explicitly establishes legal causes of action. See 15 U.S.C. § 1640 (creating damages cause of action for violation of the Act and a statute of limitations thereto.) Accordingly, Section 1635 does not impose a requirement that a borrower sue to exercise the right to rescind as Confirmed by our Supreme Court in Jesinoski v. Country wide Home loan on January 15, 2015.

B. THE STRUCTURE AND PURPOSE OF THE TILA ACT & REGULATION "Z" CONFIRM THAT NOTICE ALONE IS SUFFICIENT TO EXERCISE THE RIGHT TO RESCIND AS CONFIRMED IN GARY AND JESINOSKI CASES BY THE SUPREME COURT.

Under TILA, "[a]n obligor's right of rescission shall expire three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs first, notwithstanding the fact that the information and forms required under this section or any other disclosures required under this part have not been delivered to the obligor." 15 U.S.C. 1635(f).

./ Reason for granting the petition

That provision “says nothing in terms of bringing an action” or “a suit’s commencement”; rather, it speaks to the “duration” of the rescission right. *Beach v. Ocwen Fed. Bank*, 523 U.S. 410, 417 (1998). An obligor who exercises his “right of rescission” before it expires has satisfied the time limit set forth in Section 1635(f). Section 1635(a), in turn, unambiguously describes how an obligor may exercise the rescission right. That subsection states that “the obligor shall have the right to rescind the transaction ” by notifying the creditor, in accordance with regulations” of the relevant agency, “of his intention to do so.” 15 U.S.C. 1635(a).

Section 1635(a) also mandates that the creditor “provide appropriate forms for the obligor to exercise his right to rescind any transaction subject to this section.” *Ibid.* Section 1635(a) thus makes clear that, if a creditor fails to make the disclosures that TILA requires (Respondent TELCO’ Case), an obligor who sends a notice of rescission within Section 1635(f)’s three-year period has exercised the “right of rescission” before its expiry, regardless of whether he asserts a claim in court within the same period. The obligor’s responsibility in exercising the right is to “notify[]” the creditor—that is, “[t]o give notice to; to inform by words or writing, in person or by message, or by any signs which are understood; to make known.” *Black’s Law Dictionary* 1211 (rev. 4th ed. 1968); see also, e.g., *Webster’s New Twentieth Century Dictionary* 1225 (2d ed. 1969).

An obligor can make his exercise of the rescission right “known” to the creditor using any writing, without invoking the authority of a court to do so. Indeed, Section 1635(a) expressly contemplates that the obligor can deliver the requisite notification by filling out a pre-printed form—hardly an indication that the filing of a full fledged complaint is required. See 15 U.S.C. 1635(a). Section 1635(a) also states that an obligor who wishes to “notify[] the creditor” must do so “in accordance with regulations.” 15 U.S.C. 1635(a). Because TILA gives “an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation,”

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the relevant portion of Regulation Z is a "legislative regulation[]" that must be "given controlling weight unless" it is "arbitrary, capricious, or manifestly contrary to the statute." *Chevron U.S.A. Inc. v. NRDC*, 467 U.S. 837, 843-844 (1984). Regulation Z confirms that, "[t]o exercise the right to rescind, the consumer shall notify the creditor of the rescission by mail, telegram or other means of written communication." 12 C.F.R. 226.23(a)(2); see 12 C.F.R. Pt. 226, like Section 1635, the regulation does not require the commencement of a lawsuit or refer to any means of exercising the right other than sending a written notice. Other TILA provisions bolster the conclusion that sending a notice is sufficient to exercise the "right of rescission" within the time specified by Section 1635(f). Section 1635(b) states that, "[w]hen an obligor exercises his right to rescind under subsection (a)," he "is not liable for any finance or other charge, and any security interest becomes void upon such a rescission." 15 U.S.C. 1635(b). Accordingly, "[w]ithin 20 days after receipt of a notice of rescission, the creditor shall return to the obligor" certain money or property, "and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction." *Ibid.*; see *ibid.* (stating that these "procedures shall apply except when otherwise ordered by a court"); see also 12 C.F.R. 226.23(d)(1)-(2). Section 1635(b) confirms that sending the written notice described in Section 1635(a) is not simply a preliminary step on the way to exercising the "right of rescission."

Rather, provision of the notice constitutes the exercise of the right, with the operative legal consequences that timely rescission entails. TILA adverts to the possibility that a court may become involved, at the behest of either the obligor or the creditor, after the obligor sends the rescission notice. See 15 U.S.C. 1635(b), (c) and (g); 15 U.S.C. 1640(a)(3), (c) and (g). Inter alia, the Act creates a cause of action for damages in 15 U.S.C. 1640, which imposes monetary liability on "any creditor who fails to comply with any requirement under section 1635" and specifies where and when such an action may be brought.

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15 U.S.C. 1640(a) and (e); see *Beach*, 523 U.S. at 417-418. The relevant provisions do not suggest, however, that an obligor must file suit within three years after the relevant transaction in order to prevent expiration of the rescission right under Section 1635(f). Simply put Section 1635 is written with the goal of making the rescission process a private one, worked out between the creditors and debtors without intervention of the Court. See *Belini v. Washington Mut. Bank, FA*, 412 F. 3d 17, 25 (1st Cir. 2005.) TILA's history and purposes confirm that an obligor who sends a written rescission notice has exercised the "right of rescission" under Section 1635(f) and need not file a lawsuit within the specified three year period. See, e.g., *Anderson Bros. Ford v. Valencia*, 452 U.S. 205, 219-223 (1981) (examining "the underlying purpose of the TILA").

The statute is intended "to assure a meaningful disclosure of credit terms," and to ensure that borrowers who might otherwise be confused or misled have a fair understanding of the transaction and of their rights. 15 U.S.C. 1601. Congress enacted TILA's rescission provisions in response to fraudulent home-improvement schemes in which "homeowners, particularly the poor," were "trick[ed] into signing contracts at exorbitant rates, which turn[ed] out to be liens on the family residences." 114 Cong. Rec. 14,388 (1968) (statement of Rep. Sullivan); see *id.* at 14,384 (statement of Rep. Patman); see also *Mourning v. Family Publ'ns Serv., Inc.*, 411 U.S. 356, 363 (1973) (citing H.R. Rep. No. 1040, 90th Cong., 1st Sess. 13 (1967)).

The right of rescission, which is broad and generally unwaivable where it applies, is a "vitally important" part of Congress's effort to combat such practices. 114 Cong. Rec. at 14,388 (statement of Rep. Sullivan); see *Barrett v. JP Morgan Chase Bank*, 445 F.3d 874, 881-882 (6th Cir. 2006). Here the Fourth Circuit would instead channel all rescission into the legal system, flooding the Courts with *piles* of unnecessary lawsuits. Thus warrants the grant of the Writ of Certiorari to enact a clear and **definitive** guidance

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to Fourth Circuit that Section 1635(b) and Regulation Z bolsters the conclusion that a borrower need only give a notice to the creditor in order to exercise the right of rescission as yet confirmed by our Supreme Court in Jesinoski and Gary cases.

C. THE US SUPREME COURT SHOULD RESOLVE A NATIONAL IMPORTANCE MISINTERPRETATION OF TILA IN FOURTH CIRCUIT UNSETTLED ISSUE POST JESINOSKI.

Just as this Court resolved in Jesinoski the inconsistent application of the effectiveness date of a TILA rescission, here, too, the Court should resolve the inconsistency the courts have had in applying TILA post-Jesinoski. The US Supreme Court should not ignore the unequal enforcement of federal consumer law protection that is occurring post-Jesinoski. "Jesinoski revealed the majority of federal courts had 'misinterpreted the will of the enacting Congress.'" Paatalo v. JP Morgan Chase Bank, Case No. AA 6:15-cv-01420 (D. OR. Nov. 12, 2015). Certain Circuits are continuing to do so, post-Jesinoski, because the effect of the Court's holding is unclear.

Here the Fourth circuit (Avoki v. Telco 18-1849) and Other courts, however, have failed to give Jesinoski its due effect. See, e.g., In re Kelley, 2016 WL 281647, at *8 n.5 (Bankr. N.D. Cal. Jan. 21, 2016) (Jesinoski "did not hold, as Debtor appears to contend, that a loan is rescinded on notice and borrowers have no further obligation to perform if the lender does not respond."); In re Brown, 538 B.R. 714, 718-19 (Bankr. D. Va. 2015) (memorandum opinion in which the court disregarded Jesinoski and the effect of a rescission notice pursuant thereto); In re JensenEdwards, 535 B.R. 336, 347 (Bankr. D. Id. 2015) ("Jesinoski simply distinguishes the required timely notice of rescission from a deadline to file suit"). This Court's unanimous Jesinoski opinion held that rescission under TILA is effective upon notice. Courts are resisting the implications of that holding and are, as here, making rulings that conflict with TILA and Jesinoski.

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The Court should grant certiorari to rectify these conflicts in the application of federal consumer protection law. The lender Carolinas Telco Credit Union here ignored the rescission duly exercised by the borrower Mr. Francisco Avoki in this case, which nullified the bank's right to foreclose nor conversion of shared accounts.

The Fourth Circuit is using the doctrine of time bar limitation to avoid dealing with the homeowner's rescission that occurred as a matter of law per this Court's unanimous Jesinoski decision and the Truth in Lending Act.

The application of Time limitation of 3 years under these circumstances would be inconsistent with TILA's statutory scheme and therefore would frustrate Congress' policy decision regarding borrowers and lenders. Furtherance of this important public policy depends on the courts' uniform interpretation of this clear Congressional mandate. When a Loan is properly rescinded, the law says that the note / security becomes void immediately. The loan and its instruments are void by operation of law when the borrower validly rescinds the Loan. Jesinoski, 135 S. Ct. at 792; Paatalo; Johnson-El. Nothing can "unvoid" it. "To effectuate TILA's purpose, a court must construe 'the Act's provisions liberally in favor of the consumer' and require **absolute** compliance by creditors." Id. (quoting In re Ferrell, 539 F.3d 1186, 1189 (9th Cir. 2008) (emphasis added). TILA provides special rescission rights for borrowers 15 U.S.C. § 1635(a).

The Fourth Circuit failed to acknowledge the unanimous holding in Jesinoski. The rescission was valid and never vacated. Jesinoski explained that the courts of appeal had misinterpreted the will of the enacting Congress. Yet the courts continue to do so. Consumer protection law codified by TILA requires that certiorari be granted here so that the law will be followed consistently by all lower Courts.

CONCLUSION.

For all of the foregoing reasons, the petition for a writ of certiorari should be granted. The Fourth Circuit's decision in in a total defiance with the US Supreme Court 's unanimous decision in Jesinoski, the holding of which is wholly overlooked or neglect in the Fourth Circuit's decision of **December 20, 2018 18-1849.**) The court's action below is a misinterpretation of the Truth in Lending Act's mandate. If the Jesinoski decision No. 13-864 and the federal Truth in Lending Act are to provide their important intended consumer protections, This petition for a writ of certiorari should be granted.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Francisco Avoki

Date: Thursday, February 7, 2019

Francisco Avoki