No. 19-125

IN THE

Supreme Court of the United States

GALE ZAMORE,

Petitioner,

v.

DEUTSCHE BANK NATIONAL TRUST CO., INDIVIDUALLY, AND AS TRUSTEE FOR JP MORGAN MORTGAGE ACQUISITION TRUST 2007-CH5 ASSET BACKED PASS-THROUGH CERTIFICATES SERIES 2007-CH5,

Respondent.

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

PETITION FOR REHEARING

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TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

Page

CASES

STATUTES AND OTHER AUTHORITIES

PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44.2, Petitioner, Gail Zamore, respectfully Petitions this Honorable Court to Grant a Rehearing on the Court's Order denying Certiorari in this action for the following reasons.

GROUNDS FOR REHEARING

This case is about the authority of this court, the primacy of its rulings and the *ultra vires* acts of lower courts in defying the holdings of this court. The denial of certiorari fuels a rampant rebellion of the courts that is creating a shadow doctrine in which individual trial judges and even appellate judges and panels are disregarding or excluding remedies provided by statute and rejecting the rulings of this court. Anything less than acceptance of this case for review will result in perpetuation of Courts across the nation undermining the rule of law.

Rule 42.2 states in pertinent part that any petition for the rehearing of an order denying a petition for a writ of certiorari or extraordinary writ shall be filed within 25 days after the date of the order of denial . . . but its grounds shall be limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. . . .

In this action, a state court trial judge, a Federal District Court Judge and the 11th Circuit Court of Appeals have ignored or refused to apply a Federal Statute and a final decision, a presumably controlling holding, of this Court. The statute in question is 15.U.S.C. §1635 and this Court's holding is *Jesinoski v Countrywide*. The facts are

not in dispute. The borrower's/petitioner's rescission was timely sent and received. The loan contract was canceled and yet three courts have ignored or openly rejected the effect of the statute as held by this Court and allowed foreclosure on a mortgage and note that were canceled **as a matter of law**.

Congress recognized in the 1960's that lenders must be subject to rigorous regulation or they would continue predatory practices against unsophisticated consumers. Faced with the choice of creating a new agency that would review every loan or enacting a self-regulating system, Congress chose the latter and it was signed into law as the Federal Truth in Lending Act (TILA).

The effect of the current rebellion of lower courts against the regulatory mechanism contained in the TILA rescission statute and this Court's clearly established holding in *Jesinoski* is to remove all regulation --- or at least all consequences --- from violations of the requirements contained in the lending statutes. This contradicts Congressional intent and what this court has already ruled. The refusal to enforce the TILA regulations puts consumer borrowers back in the unprotected positions they occupied before the Truth In Lending Act was enacted more than fifty years ago.

The question before this court is whether this open rebellion on three levels of combined state and federal judiciaries can be tolerated. At stake is whether our nation and its institutions are governed by the rule of law or chaos.

In fact, presently, it appears that no decision in any court has applied the TILA rescission statute as written despite the clear and unambiguous wording of the statute and the clear, unambiguous and express ruling of this Court in *Jesinoski*.

Even in older cases where some relief was granted based upon the TILA Rescission statute, the rulings included judicial approval of whether the notice of rescission was justified; each such case rejecting the event of rescission and creating precedent that rescission is a claim regardless of whether it is under common law or the TILA rescission statute.

This current practice of the lower Courts has the effect of converting the statutory rescission from the self-executing event set forth in the statute to a claim necessitating judicial intervention. This, in turn, unnecessarily burdens borrowers with procedural obstacles that do not exist under the clear and unambiguous language of the statute. It requires acts by the borrower to make the rescission effective besides mailing --- the exact opposite of the provisions of the statute and the exact opposite of what this court unanimously ruled in *Jesinoski*.

Hence the purpose of the TILA rescission statute has been turned on its head by lower courts (without any right, justification or excuse) uniformly rejecting the holding of this court and the express wording of the statute. The denial of certiorari by this court thus further emboldens the courts which are continuing to deny unambiguous statutory relief to borrowers and further to assert authority to "overrule", reject or ignore statutes and the express holding of this court.

In the case at bar, all of the previous described courts had before them a timely sent notice of rescission that was legally effective upon mailing. The mailing, timing, and receipt are not in dispute.

With no dispute over the sufficiency of the notice, the federally mandated timely rescission of Petitioner homeowner had occurred by operation of law. Title to the property has changed from being encumbered by a mortgage to being unencumbered, with the duty to record the release of the mortgage placed on a party purporting to represent the creditor. Nonetheless, the foreclosure of petitioner's homestead has proceeded as though the rescission did not exist.

In short the three previous courts have ignored the ruling in *Jesinoski,* and the courts following the state court have ratified and *per curiam* affirmed the trial court while the federal trial and appellate courts have refused to correct the blatant rejection and avoidance of *Jesinoski* and U.S.C. § 1635.

The homeowner herein, Plaintiff Zamore, has done everything correctly to timely rescind the underlying loan pursuant to U.S.C. 1635 as well as *Jesinoski,* yet the courts, both state and federal, have refused to follow the law.

This presents a clear challenge to the rule of law and a further challenge to the authority of the Supreme Court of the United States. These challenges continue daily in part because this court has denied certiorari in this case. It opens the door for courts to make future challenges when they disapprove of the policy set by lawful statutes.

In plain words, a paradigm shift has occurred wherein the opinion of any judge is superior to the written law and the holdings of this court.

The position of the various attorneys for the Appellee has simply been that regardless of statutes or a holding by the highest court in the land, the courts need not concern themselves with rescission under the Truth in Lending Act as passed into law by the U.S. Congress over 50 years ago. Across all jurisdictions, the statute is dying despite the absence of repeal or a contrary decision changing the decision in Jesinoski.

The denial of certiorari itself has emboldened courts to believe they can ignore statutes and ignore the rule of law as finally decided in decisions of this court, especially as it relates to rescission under the Federal truth In Lending Act. The spread of such specious doctrine undermines the rule of law, respect for our institutions and the confidence in the marketplace where, despite the existence of laws and rules and precedent, lawyers can offer the possibility that they might convince the judge to ignore the law.

A. *JESINOSKI* IS THE SUBJECT OF REBELLION BY THE LOWER COURTS

In *Jesinoski v. Countrywide Home Loans, Inc.*, 135 S. Ct. 790 (2015), the late Justice Scalia wrote a unanimous decision in which the opinion noted that the Truth in Lending Act gives borrowers the right to rescind loans for up to three years after the transaction is consummated. This Honorable Court held that the borrower was't required to file an action for rescission or to take any further action and further that under U.S.C.

1635(a), rescission is effected when the borrower notifies the creditor of his intention to rescind. It is an event not a claim. No additional steps are required to effect the rescission. But the courts across the country reject that self-evident proposition.

In the action *sub judice*, the borrower gave timely notice pursuant to U.S.C. 1635(a) of her intent to rescind within the statutory period. The underlying loan was rescinded. Under the regulations pursuant to said statute the Note and mortgage were void upon said rescission. As unanimously stated by this court five (5) years ago, TILA Rescission is a self-executing statutory remedy that operates as a matter of law. It is not a claim that requires any further action by the borrower. 15 U.S.C.S. §1635. *McIntosh v. Irwin Union Bank & Trust, Co.*, 215 F.R.D. 26 (USDC Mass. 2003), *Hubbard v. Ameriquest Mortg. Co.*, 624 F.Supp.2d 913 (USDC Ill. 2008) and *Lippner v. Deutsche Bank Nat'l Trust Co.*, 544 F.Supp.2d 695 (USDC Ill. 2008).

The Federal trial court in the case at bar was presented with a complaint that mirrored the complaint in *Jesinoski,* as the facts were substantially the same with regard to the rescission. A party claiming to be the lender had filed a foreclosure action. The Petitioner here responded by asserting that foreclosure was impossible since it was based upon a loan that had been rescinded. The state court utterly ignored the defense of rescission, despite the clear and obvious absence of subject matter jurisdiction. The Federal District Court dismissed the new complaint by Petitioner with prejudice, holding *Jesinoski* will not be followed and the rescission statute would not be applied.

If any of those courts had followed the *Jesinoski* decision, they would have held that the borrower was not required to seek rescission in court, but that the notice of her intent to rescind was sufficient to rescind the loan --- as specifically and expressly stated by Justice Scalia in *Jesinoski*. Thus the Federal District Court and the Federal Appeal Court both failed to follow the *Jesinoski* decision, thus presenting a question of direct conflict between the lower Federal Courts and the highest court in the land. As Justice Scalia made crystal clear, there is no room for interpretation or wiggle room, to wit: the statute is unambiguous, constitutional and must be applied as written.

That should have settled the matter. If it had, Appellant Zamore would not be before this court and judges on state and Federal courts would not be acting *ultra vires* and abusing their powers by ruling on documents that have no legal effect simply because they don't agree with that statute or this court in its unanimous *Jesinoski* holding.

Had the Federal District and Appellate Courts followed *Jesinoski,* the decision would have been rendered that the Petitioner's Complaint stated a cause of action, that the Note and Mortgage were, in fact, rescinded, and that Respondent herein is liable for damages caused by its actions following the effective rescission of the Note and Mortgage.

Jesinoski held that the timely rescission was enough to rescind the Note and Mortgage. Hence any action deriving its foundation from the note or mortgage MUST BE VOID. The only enforcement action available was the statutory scheme set forth by the TILA Rescission statute which has

been ignored by the lender and successors whose behavior the statute was intended to regulate.

In this matter --- as in thousands of cases across the country --- the lender ignored the rescission, pursued foreclosure in state court, and the state court entered judgment on a rescinded (void) Note and Mortgage. Petitioner's subsequent action seeking remedies in federal court based upon the effectiveness of the rescission was held insufficient to state a cause of action. None of that changes the fact that title changed as a result of the rescission as a matter of law. Yet the lower courts are uniformly rejecting that reality.

The District Court reviewed the pleadings submitted by the Defendant from state Court actions in which the Petitioner had clearly attempted to allege that the Note and Mortgage had been rescinded and created the theory that that the failure of the State Court to address, much less follow, the law as set for in U.S.C. 1635 and in *Jesinoski* rendered the federal lawsuit subject to dismissal under the *Rooker-Feldman* doctrine. See *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983). In short, the circuitous logic employed allows that jurisdiction somehow arose at the moment that the state court had committed the *ultra vires* act of ignoring the statute and the holding of this court of last resort.

The circuitous argument has resulted in an injustice and *ultra vires* rejection and circumvention of the *Jesinoski* decision and is emblematic of all such decisions in all jurisdictions. Despite thousands of timely rescissions under 15 U.S.C. §1635 it appears that no foreclosure has

been denied on the basis that the note and mortgage were void along with the rest of the loan agreement and that a new statutory framework was created to collect the debt. United States Supreme Court decision of *Jesinoski* is routinely ignored by state and Federal trial and appellate courts and lawyers are now claiming that, at least in jurisdictions covered by the 11th Circuit, courts are barred from applying *Jesinoski* or 15 U.S.C. § 1635.

This produces the illegal and anomalous results. Despite rescinding the loan transaction, borrowers obtain no relief or remedy. The protections legislated by the U.S. Congress are refused. This is now true for all borrowers who send a timely notice of rescission. And because, in the subject jurisdiction (which mirrors all others), the decision of this Court may be ignored along with the statute, parties claiming to be creditors need do nothing since consumers are denied their rights under the Truth in Lending Act. This denial of TILA protections has already been unanimously rejected directly or by clear implication in *Jesinoski*.

The purpose of the *Rooker-Feldman* Doctrine was not intended to permit State Courts to disregard United States Supreme Court decisions. And it certainly was not meant to be a vehicle by which courts could arrogate unto themselves the authority to hear matters that were not legally before them. But that is exactly the current reality, and this court's denial of certiorari has added considerable fuel to that fire.

Since the Note and Mortgage at issue were, in fact, timely rescinded, all actions involving a foreclosure constituted a rejection and avoidance of *Jesinoski*. The

merits of this action MUST BE HEARD to avoid a continual litany of cases that seek to enforce the erroneous decisions of state courts that violate the law of the land. The Petition for Writ of Certiorari must be granted to stop the lower courts from inventing authority to overturn statutes and the decisions of this court.

It is imperative that this Honorable Court admonish state and federal courts that its decisions are not subject to being disregarded, overturned or abandoned by the artifice of merely failing to abide by the thorough and well-reasoned opinion that was assumed to be the law of the land. Borrowers should rely on the *Jesinoski* decision as a holding that mandates both state and federal trial and appellate courts to honor the legislation as enacted and the U.S. Supreme Court decisions.

The behavior of the lower courts creates an *ultra vires* shadow doctrine that negatively affects all borrowers who did everything correctly when rescinding their loans and renders the *Jesinoski* decision effectively abandoned and overturned by lower courts. But further, it sets the precedent that *ultra vires* acts can be undertaken by the courts contradicting express holdings of the highest court in the land. If the rule of law is to be maintained this behavior cannot be left unchecked. This defiance cannot stand.

There has been no change to the federal laws as interpreted by the *Jesinoski* decision. There has been no U.S. Supreme Court decision to change the decision in the *Jesinoski* case. The self-executing nature of a TILA rescission, as held in *Jesinoski,* is being ignored, overturned and circumvented by the state and federal trial and appellate courts, and, in this very case.

The only path available to uphold the rule of law is for this Honorable Court to accept jurisdiction and render an opinion as to whether or not it overrules *Jesinoski,* since that is what the lower courts are doing. That previously resolved issue is very much in doubt by reason of the denial of certiorari here.

It is critical to the law and notions of the binding authority of the United States Supreme Court that both state and federal trial and appellate courts know that there will be no permissible avoidance of the clear dictates of constitutional statutes or holdings of the highest court of the land.

For the foregoing reasons, Petitioner hereby requests that a Re-Hearing on the Court's ruling that denied the Petition for Writ of Certiorari.

CONCLUSION

It is said that 99.4% of the cases on Certiorari sent to this Honorable Court are turned down. Here, before this Honorable Court is the choice to enforce the law of the land or to effectively create new doctrine that relegates itself subservient to "lower" courts --- for if certiorari is denied, it serves to affirm the erroneous decisions of the state and federal judges ignoring a federally mandated remedy and this Court's holdings.

Respectfully submitted,

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CERTIFICATION OF PARTY

Gail Zamore, by and through undersigned counsel, hereby certifies that this petition for rehearing is restricted to the grounds specified in Sup.Ct.R. 44.2 and has been presented in good faith and not for delay.

Respectfully submitted,

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