No. 21-98

In The

Supreme Court of the United States

FRANK C. WARNER, PRO SE,

Petitioner,

v.

U. S. DEPARTMENT OF EDUCATION,
MIGUEL CARDONA, SECRETARY,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Circuit Confusion exists in the matter of Promissory Notes.

This Court must resolve this issue and set one standard for all 50 states.

Failure to do so may lead to the economic confusion in the 1600's that led England to create the Statute of Frauds.

This issue is:

> "Is a fully legible Promissory Note (Contract) required to collect on a debt?"
>
> "If a Promissory Note is not required to collect on a debt what document substitutes for the terms and conditions to enforce collection of the loan?"

PARTIES TO THE PROCEEDING

Petitioner Frank C. Warner, Pro Se, was the plaintiff in the district court proceedings and appellant in the court of appeals proceedings. Respondent U. S. Department of Education was the defendant in the district court proceedings and appellee in the court of appeals proceedings.

RELATED CASES

Petitioner Warner has submitted only two cases that are related to the issue before the Court. His reasoning is that a case that has been decided absent a promissory note and a case that has been decided requiring a promissory note present the issue that must be decided by this Court.

As a graduate school trained economist with 33 hours in economics, Petitioner predicts eventual economic chaos should this Court not set one standard for debt collection.

Failure to require a Promissory Note to collect on a debt will create the conditions that led England to create The Statute of Frauds in 1677.

The two cases are:

- *Frank C. Warner, Pro Se v. U. S. Department of Education* (No Promissory Note needed)

RELATED CASES – Continued

- See *In Re: SMS Financial LLC. v. Abco Homes, Inc.*, No. 98-50117 February 18, 1999 (5th Circuit Court of Appeals) (Promissory Note required.)

Petitioner Warner, knowing how lawyers think, is submitting several more court decisions requiring the promissory note to collect a debt:

- *McCay v. Capital Resources Company, Ltd.*, 96-200 S.W.2nd 1997

Where the complaining party cannot prove the existence of the note, then there is no note.

- See *Pacific Concrete F.C.U. v. Kauanoe*, 62 Haw. 334, 614 P.2d 936 (1980), *GE Capital Hawaii, Inc. v. Yonenaka*, 25 P.3d 807, 96 Hawaii 32 (Hawaii App. 2001).
- Siwooganock Bank in Lancaster NH, in alleged foreclosure suit, failed or refused to produce the actual note which Siwooganock alleges Eva J. Lovejoy owed.
- To recover on a promissory note, the plaintiff must prove: (1) the existence of the note in question; (2) that the party sued signed the note; (3) that the plaintiff is the owner or holder of the note; and (4) that a certain balance is due and owing on the note. See *In Re: SMS Financial LLC. v. Abco Homes, Inc.*, No. 98-50117 February 18, 1999 (5th Circuit Court of Appeals).

RELATED CASES – Continued

- *Beaumont v. The Bank of New York Mellon* (6:11-cv-01865) District Court, M.D. Florida
- Equal protection clause of the U.S. Constitution. 14th Amendment, Section 1.

Unequivocally the Court's rule is that in order to prove the "instrument", possession is mandatory.

- See *Matter of Staff Mortg. & Inv. Corp.*, 550 F.2d 1228 (9th Cir. 1977). "Under the Uniform Commercial Code, the only notice sufficient to inform all interested parties that a security interest in instruments has been perfected is actual possession by the secured party, his agent or bailee."

There are many cases contributing to circuit confusion on the issue as to requiring the promissory note to collect on a loan.

There should be none.

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PETITION FOR A WRIT OF CERTIORARI

Frank C. Warner, Pro Se, petitions for a writ of certiorari to review the judgments of the United States District Court for Eastern Arkansas and the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The Eighth Circuit's opinion is reported at Docket #56 and is reproduced at App. 1. A motion was not filed for reconsideration and rehearing en banc. The opinions of the District Court for the Eastern District of Arkansas are reproduced at App. 4.

JURISDICTION

The Eighth Circuit Court of Appeals entered judgment on February 9, 2021. No petition for rehearing en banc was filed.

The opinion of the District Court for the Eastern District of Arkansas is reproduced at App. 4.

This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Text in italics are narratives by Warner. Plain text is from the actual law or provisions.

The Constitutional provisions involved are the ***Fourteenth Amendment,*** *Article IV, §1, Clause 1*

Amendment XIV

NOTE: This is included as the current circuit confusion as to promissory notes applies two different standards on the citizenry:

1. *Some circuits require the lender to produce the Promissory Note in order to collect on a loan.*
2. *Other circuits have no requirement to produce the Promissory Note and allow lenders to collect on loans by using only documents they created without the borrower's knowledge or consent.*
3. *The result is a lack of equal protection of the law.*

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; 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**. (Emphasis added)

Article IV, § 2, Clause 1:

NOTE: Included to show that circuit confusion as to Promissory Notes denies some citizens the protection and privileges of Promissory Notes pertaining to collection of loans while granting protection to the citizens in other Districts or Circuits.

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

The Statutes involved are:

Arkansas Statute of Frauds;

This statute was barely mentioned by the subordinate Courts or was not considered at all. The requirement that a contract or promises be in writing applies to this case. Without the Promissory Note there does not exist any other document containing any of the Terms, Conditions, and Signature of Warner.

This alone was grounds for Summary Judgment in favor of Warner. Instead, DOE produced documents all of which were derived from the files of DOE. Warner was never advised that the Treasury Offsets used by DOE to extract payments from Warner's federal benefits were done absent the Promissory Note.

No other document produced had a single one of the Terms and Conditions applicable to the loan let alone his signature indicating acceptance. Absent the

legal authority granted by the contents of the Promissory Note to confiscate funds due Warner, Warner sees this as civil fraud.

Ark. Code § 4-59-101

2019 Arkansas Code

Title 4 – Business and Commercial Law

Subtitle 5 – Contracts, Notes, and Other Commercial Instruments

Chapter 59 – Fraud

Subchapter 1 – Statute of Frauds

§ 4-59-101. Contracts, Agreements, or Promises Required to Be in Writing – Definitions (Emphasis added)

The Judiciary Act of 1789 – An Act to establish the Judicial Courts of the United States.

Defendant DOE received multiple requests over several years to produce the only document relevant to the case – the Promissory Note containing all terms, conditions, and signature of petitioner accepting the terms and conditions pertaining to the three consolidated loans.

When the request for this document was presented during Discovery, DOE admitted in their responses that they could not produce that document.

Section 15. Requires all parties to produce all documents relevant to the issue.

> ". . . . and if a defendant shall fail to comply with such order, to produce books or writings, it shall be lawful for the courts respectively on motion as aforesaid, to give judgment against him or her by default."

Sec. 34. This section is relevant based upon the failure of the District and Circuit Courts to apply Arkansas law, specifically the Arkansas Statute of Frauds.

> "And be it further enacted, That the laws of the several states, except where the constitution, treaties or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision in trials at common law in the courts of the United States in cases where they apply."

The *Erie* Doctrine:

Both subordinate Courts ignored the stricture of the Erie Doctrine by ignoring Arkansas law – specifically the Arkansas Statute of Frauds. Both subordinate Courts allowed evidence to be introduced into the Record none of which contained the Terms, Conditions, and Signature of Warner. The admission of Extra Record evidence ignored the stricture against such an act and was used by the District Court to help him make a decision.

Instead, these two courts accepted documents, some of which had Warner's signature such as several Forbearance Requests, none of which contained the relevant information. For example, copies of Excel

spreadsheets, the Administrative Record which did not contain an Affidavit of Lost Note.

Not one of the documents produced by Defendant and relied upon by the District and Appeals Courts contained any of the Terms and Conditions of Warner's loan.

All of which clearly shows an intent to ignore the Erie Doctrine; Arkansas Statute of Frauds, and the 14th Amendment.

***Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938).**

In Erie Railroad, the issue was whether a federal court had to follow state tort law or could instead invent its own tort law. The Supreme Court held it was unconstitutional for federal courts to create federal general common law in cases where state common law would otherwise be used.

The Regulations are:

34 CFR § 674.31 – Promissory note.

NOTE: CFR § 674.31 is referenced and included to show the information that Warner is unable to verify that his Master Promissory Note contained the information below.

For example, § (b)(1)(i) states the interest rate to be 5% while the interest rate assessed against Warner was 9%.

34 CFR § 674.31 – Promissory Note.

§ 674.31 Promissory note.

(a) Promissory note.

(1) An institution may use only the promissory note that the Secretary provides. The

institution may make only non-substantive changes, such as changes to the type style or font, or the addition of items such as the borrower's driver's license number, to this note.

(2)

(i) The institution shall print the note on one page, front and back; or

(ii) The institution may print the note on more than one page if –

(A) The note requires the signature of the borrower on each page (Emphasis added); or

(B) Each page of the note contains both the total number of pages in the complete note as well as the number of each page, e.g., page 1 of 4, page 2 of 4, etc.

(iii) The promissory note must state the exact amount of the minimum monthly repayment amount if the institution chooses the option under § 674.33(b).

(b) Provisions of the promissory note –

(1) Interest. The promissory note must state that –

(i) The rate of interest on the loan is 5 percent per annum on the unpaid balance [as Warner was assessed an interest rate of 9%. With no Promissory Note there was no way to prove Warner agreed

to the higher interest rate]; and [Emphasis added]

(ii) No interest shall accrue before the repayment period begins, during certain deferment periods as provided by this subpart, or during the grace period following those deferments.

7 CFR § 4279.226 – Replacement of document. (Partial narrative)

NOTE: This is included as it essentially describes an Affidavit of Lost Note. No Affidavit of Lost Note was in DOE's Administrative Record (AR) even though there are several references in the AR to the promissory note being unavailable or unreadable.

The Administrative Record shows that no Affidavit of Lost Note was filed.

(a) The Agency may issue a replacement Loan Note Guarantee or Assignment Guarantee Agreement which was lost, stolen, destroyed, mutilated, or defaced to the Lender or Holder upon receipt of an acceptable certificate of loss and an indemnity bond.

(b) When a Loan Note Guarantee or Assignment Guarantee Agreement is lost, stolen, destroyed, mutilated, or defaced while in the custody of the Lender or Holder, the Lender must coordinate the activities of the party who seeks the replacement documents and must submit the required documents to the Agency for processing. The requirements for replacement are as follows:

(1) A certificate of loss, notarized and containing a jurat, which includes:

(i) Name and address of owner;

(ii) Name and address of the Lender of record;

(iii) Capacity of Person certifying;

(iv) Full identification of the Loan Note Guarantee or Assignment Guarantee Agreement including the name of the Borrower, the Agency's case number, date of the Loan Note Guarantee or Assignment Guarantee Agreement, face amount of the evidence of debt purchased, date of evidence of debt, present balance of the loan, percentage of guarantee, and, if an Assignment Guarantee Agreement, the original named Holder and the percentage of the guaranteed portion of the loan assigned to that Holder. Any existing parts of the document to be replaced must be attached to the certificate;

(v) A full statement of circumstances of the loss, theft, destruction, defacement, or mutilation of the Loan Note Guarantee or Assignment Guarantee Agreement; and

(vi) For the Holder, evidence demonstrating current ownership of the Loan Note Guarantee and Promissory Note or the Assignment Guarantee Agreement. If the present Holder is

> not the same as the original Holder, a copy of the endorsement of each successive Holder in the chain of transfer from the initial Holder to present Holder must be included. If copies of the endorsement cannot be obtained, best available records of transfer must be submitted to the Agency (e.g., order confirmation, canceled checks, etc.).

In closing:

Courts have no power (just as the Commissioner has no power in his capacity as an administrative official) "to rewrite legislative enactments to give effect to" their "ideas of policy and fitness or the desirability of symmetry in statutes." 479 F.2d 1147 – Busse v. Commissioner of Internal Revenue, § 26.

WHY A PROMISSORY NOTE IS REQUIRED TO COLLECT WARNER'S DEBT AND ALL DEBTS

Lending businesses in England around the year 1600 had become so chaotic that Parliament created a Statute of Frauds. This document, requiring the terms, conditions, and signatures of the parties be in writing. This ended the feuding that occurred with every lending act.

The document that was created so as to impose terms, conditions, and agreements of the parties by signature was known as The Statute of Frauds. While it

was created in England in 1667 the founders of America immediately saw its value.

As the Constitution of the United States was intended to curb the power of the federal government the Founders did not insert a Statute of Frauds into the Constitution of the entire nation. They left it to the several states to include a Statute of Frauds should they so desire.

This gave them freedom to word their Statute of Frauds a bit differently than other states.

Erie Railroad Co. v. Tompkins, 304 U.S. 64 (1938)

Syllabus

1. The liability of a railroad company for injury caused by negligent operation of its train to a pedestrian on a much-used, beaten path on its right-of-way along and near the rails depends, in the absence of a federal or state statute, upon the unwritten law of the State where the accident occurred. Pp. 304 U. S. 71 et seq.

2. A federal court exercising jurisdiction over such a case on the ground of diversity of citizenship, is not free to treat this question as one of so-called "general law," but must apply the state law as declared by the highest state court. *Swift v. Tyson*, 16 Pet. 1, overruled. Id.

3. There is no federal general common law. Congress has no power to declare substantive rules of common law applicable in a State whether they be local in their

> nature or "general," whether they be commercial law or a part of the law of torts. And no clause in the Constitution purports to confer such a power upon the federal courts. Except in matters governed by the Federal Constitution or by Acts of Congress, **the law to be applied in any case is the law of the State. And whether the law of the State shall be declared by its legislature in a statute or by its highest court in a decision is not a matter of federal concern** [Emphasis added]. P. 304 U.S. 78. [*Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938)] [Emphasis added].

Arkansas has a Statute of Frauds wherein it states:

> 2010 Arkansas Code
> Title 4 – Business and Commercial Law
> Subtitle 5 – Contracts, Notes, And Other Commercial Instruments
> Chapter 59 – Fraud
> Subchapter 1 – Statute of Frauds
> **§ 4-59-101 – Contracts, agreements, or promises required to be in writing.**
> [Emphasis added]

The relevant section to this lawsuit is § 4-59-101. This section is relevant as there is no Promissory Note containing the Terms, Conditions, and signed by Warner by which to refer when questioning the Terms, Conditions, and Signature.

Warner's position is that since the DOE did not properly maintain these important records resulting in an illegible document of what DOE purports to be the Promissory Note, there is no loan.

Respondent, over many years, has taken the position they do not need the Note to collect. The "evidence" they gathered on their own is more than sufficient to validate the loan. The result of this is not having a document showing the Terms, Conditions, and acceptance Signature. Lender made up the Terms and Conditions from their internal records absent any agreement by the borrower. This includes changing interest rate, penalties, fees, and so forth. All of which is done without the knowledge, concurrence, or acceptance by the borrower.

It's back to the early 1600's in England prior to the Statute of Frauds that was written specifically to prevent the very actions Respondent has used in the instant case.

Warner pointed out in his earlier filings that not a single document produced by Respondent contained neither a Term, a Condition, nor Warner's signature. Respondent's position as to having sufficient evidence to validate the loan is fallacious absent the Promissory Note.

As noted above, the only issue presented in this Writ and to the lower courts was and still is:

> *"If the lender, upon request by the borrower, cannot produce a completely legible as to Terms, Condition, and Signature promissory note, may legally collect on that loan?"*

"Furthermore, the lender does not have a single document with any of the terms, conditions, and signature of the borrower, can the lender legally collect?

The written agreement between lender and borrower must have certain wording in order for the contract to be considered valid and binding upon the parties. These are:

1. "Even when an agreement is put in writing, there are certain elements that must be contained in the writing in order for the contract to be considered valid and binding. Such agreements must:
2. Be in written form, thought it does not need to be written in any type of formal language.
3. Identify the subject of the contract in an easily understood manner.
4. Spell out the essential terms of the agreement, including the exact nature of the goods or services, and the price or other consideration agreed upon.
5. Include the signatures of both parties, or at a minimum, the signature of the party that is being charged for the goods or services."

Statute of Frauds, February 20, 2016, by: Content Team. https://legaldictionary.net/statute-of-frauds/

Not a single one of the requirements for a promissory note were presented to Warner after multiple requests both before and after discovery.

The actions of lenders collecting on loans absent the promissory note also violates the Equal Protection clause of the U.S. Constitution. 14th Amendment to the U. S. Constitution, Section 1.

Having different collection standards among the several states creates confusion as to what protection should lenders take regarding promissory notes. Lenders in one state do not have to worry about protecting promissory notes while lenders in another state do have to worry about protecting promissory notes. Confusion can exist within a single state by requiring some loans to have a promissory note while allowing other loans to be collectable absent a promissory note.

The confusion created by multiple standards as to collecting on loans denies every citizen the knowledge that in some states debt collection standards are strict while in other states debt collection standards are lax.

Standard procedures applying to all states and their citizens equally removes all questions as to what document(s) are critical and must be preserved. When other states and circuits have differing standards as to the value of promissory notes the result is there is no equal protection across the states and some citizens are punished when lenders collect on missing promissory notes while others do not.

Those borrowers who face collection absent the promissory note potentially face having to pay the loan twice should the original promissory note appear at a later time.

Certain rules and procedures have to be changed so conformity and standardization is imposed.

INTRODUCTION AND STATEMENT OF THE CASE

The only issue presented concerns contract law both federal and state. Specifically, contracts dealing with lending and collecting money. Contracts pertaining only to the lending and borrowing of money are called Promissory Notes.

This case began back in the early 1980's when Petitioner Warner, (Warner) returned to university study to earn a Master of Arts Degree in Economics.

Warner's attention was divided between attempting to make a computer training business survive and being an active plaintiff in an anti-trust lawsuit. [Balmoral Cinema v. Allied Artists, etc., U.S. Court of Appeals for the Sixth Circuit - 885 F.2d 313 (6th Cir. 1989)]

During his period of study at the University of Memphis (then Memphis State University) for the Masters in Economics his financial problems increased to the point that it became necessary to take three student loans so as to complete his studies and earn the Master of Arts in Economics degree.

Warner's VA Educational Benefits had been used to earn his Master of Science in Management degree.

Warner's anti-trust lawsuit required a disinterested third-party who was an economist to testify as to the economic damages suffered as a result of the illegal activities that denied Warner's theatre top-quality motion pictures.

The intricacies of licensing theatrical motion pictures is a little known subject. Warner enrolled in the Master of Arts in Economics so as to be able to explain to the expert witness how the actions of the defendants prevented him from licensing for exhibition high-grossing theatrical motion pictures. That is, the economic damage in lost revenue and the projection of damages had the defendants allowed Warner a fair opportunity to license top revenue motion pictures.

Warner subsequently took out three (3) student loans which were consolidated in 1987 into one loan under a Master Promissory Note.

Warner does not deny that three loans were obtained and later consolidated into one loan under a Master Promissory Note. ***It is the Master Promissory Note that is the issue of this lawsuit, not the loan itself.*** *Absent the Master Promissory Note Warner has no way of verifying the interest charged, as well as fees and expenses all of which were applied to the principal.*

The three promissory notes that were replaced by the Master Promissory Note were never presented during discovery. Even if they had been presented the

Consolidated Master Promissory Note rendered them moot. It is the Consolidated Master Promissory Note that was presented on one page that was barely legible for the top 10% of the page. The balance of the page was blacked out with no terms, conditions, or signature identifiable. App 11, Plaintiff's Collective Exhibit 4-D. Please see back of this Exhibit where a Notary Public attests that **". . . IS A TRUE AND CORRECT COPY OF THE ORIGINAL PROMISSORY NOTE."**

Based upon this notarized statement and the condition of the note, did the Notary, Christine Taylor commit civil fraud?

Allowing creditors to collect on loans without the constraints of the promissory note essentially removes all constraints especially those in the Arkansas Statute of Frauds. The result would be, in Warner's professional opinion, economic chaos similar in nature to that which led to England creating the Statute of Frauds.

In the year 2003 Warner began collecting Social Security Benefits. Several months before these payments began Warner was notified that 15% of his monthly social security payments as well as other federal funds due him such as tax refunds would be withheld as payments on his consolidate student loan.

Warner was still having financial difficulties at this time and was working full-time for a computer servicing company. In 2003 he was laid off due to a staff reduction at the location where he was working. That company is presently defunct.

Warner's situation as to earnings continued where he found he was unable to continue making meaningful contributions to the house income. His family subsisted on the earnings of his wife who was a public-school teacher.

All this time Warner noted the fees and costs continued to accumulate while the garnishment (Treasury Offsets) continued. Warner took several forbearances during this period. Bankruptcy was not an option as Congress had closed this option for student loans.

Warner remembered a lesson from his college classes – no promissory note, no loan.

Warner contacted several attorneys in Eastern Arkansas he knew about taking this case. All responded the same way – no one was interested.

Thus, Warner had no choice but to file this Writ of Certiorari Pro Se and all preceding document as well.

REASONS FOR GRANTING THE PETITION

THIS CASE PRESENTS AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN, BUT MUST BE SETTLED BY THIS COURT.

The issue presented in this case involves a genuine continuing conflict between the Federal Courts of Appeals and state courts that is significant and extremely important because it will determine the standard of review courts use when reviewing requirements necessary to collect debts.

The Eighth Circuit's as well as the District Court's decision reflect that the U. S. Supreme Court's decision found in Erie Railroad Co. v. Tompkins, 304 U.S. 64 (1938) was ignored by both the district and circuit courts.

Absent federal law to refer to, both courts ignored the requirements of Erie, to apply existing state law where federal law does not exist. Here, both the district and the circuit court ignored applying the strictures of Erie and applied their own thinking rather than the Arkansas Statute of Frauds.

Is a Promissory Note that is legible as to all terms and Conditions and the Signature of the borrower(s) of a loan necessary in order to enforce collection of a loan?

Or, as is present with the instant case, can lenders substitute documents they created with no input or approval by the borrower to obviate the need for the promissory note and collect the loan using data they manufactured with no input from the borrower?

This case raises the importance and necessity of lenders to keep and maintain accurate records that must be presented upon demand. The purpose of which is to prove that the Terms and Conditions of a loan (Contract) are legitimate and enforceable by lenders as verified by the signature of the borrower.

The lawsuit that brought about this Writ was filed September 10, 2018 in the Federal Court for the Eastern District of Arkansas. Docket Number: 3:18-cv-00169, assigned to Judge D. P. Marshall. Parties are

Frank C. Warner (Warner), Pro Se, and the U.S. Department of Education (DOE).

In their reply to the Complaint DOE admitted they could not produce a legible, signed copy of the Promissory Note with all the terms, conditions, and signature of Warner. [Docket #8, Section III, Paragraphs 3 & 4]

In spite of this admitted fact DOE continued collection action on Warner by way of Treasury Offsets that began around mid-2003. [Docket #8, Section III, Paragraphs 3 & 4] These Treasury Offsets ceased when this case was filed.

After filing this lawsuit DOE responded with their answer to the Complaint. Warner then initiated Discovery by submitting Requests for Documents; Requests for Admissions; and Interrogatories.

In each response by DOE, they admitted that a legible copy of the Promissory Note was not available.

Based upon these admissions as to failure to produce the only document providing legal authority to collect on Warner's debt, Warner filed for Summary Judgment. The Trial Judge denied Warner's Motion for Summary Judgment.

DOE's response was to move Warner's case to the Administrative Procedures Act (APA).

Examining the Administrative Record (AR) Warner's account reveals that sometime in 1987 Warner consolidated three (3) individual student loans into one loan by way of a Master Promissory Note.

One document in the AR is the Promissory Note that is in DOE's Administrative records. Except for a small amount at the top middle of the page the entire document is illegible. No Terms, Conditions, and Signature are present. See App. 11.

This is document is identical to previous requests for the Note submitted to DOE's collection agencies and DOE itself.

A careful review of the AR by Warner revealed several notations as to the Note. Several entries noted the absence of the promissory note.

Also absent from the AR is a reference to an Affidavit of Lost Note.

Beginning sometime in the year 2011 Warner looked at the account statement pertaining to his Student Loan. While reviewing relevant documents Warner noted that while costs such as interest and fees were increasing there was no reduction in the claimed principle of the loan. While the amount of the principal remained the same the amount showing the accumulation of fees, interest, etc. continued to grow.

Over the years Warner's financial conditions prevented repayment of this loan.

Not only did the District Court and the Circuit Court ignore state law regarding lending contracts they also ignored the following:

34 CFR § 674.31 – Promissory note

15 U.S. Code § 1692g. Validation of debts

Erie Railroad Co. v. Tompkins, 304 U.S. 64 (1938)

The decisions rendered by the District Court and the Eighth Circuit Court are erroneous and indicative of a lack research as to the procedure(s) to follow when a promissory note is lost.

Trial Court used a sample promissory note that "mirrors" Warner's. [Docket #34, Page 31]. Warner objected to allowing this into evidence. This "sample" promissory note consists of more than one page. The "promissory note" produced numerous times to Warner is only one page. [Docket #42. See Page 2 beginning at line 1] More detail is provided in Plaintiff's Memorandum in Support of the Motion to Strike Defendant's Exhibits 1 & 2. [Docket #43] See [Docket #43, Page 7].

This Writ is filed for the purpose of respectfully asking this honorable court to end the confusion amount the state courts, the federal district courts, and the federal circuit courts as to the necessity of producing the original of the promissory note.

As stated elsewhere, unless the Court standardizes for all courts that careful document protection is critical in attempting to collect on a loan eventually the differing courts, state and federal, will cause economic chaos the same that led to the creation of the Statute of Frauds.

RELIEF SOUGHT

Petitioner Warner requests this Court establish that all contracts (promissory notes), be produced upon request.

Failure to produce the Original Promissory Note upon request shall render said loan dismissed with prejudice and the loan declared null and void.

Upon failure to produce the original promissory note upon request that all monies collected as payments be returned to the borrower and that interest of 6% be calculated as compound interest, not simple interest.

That all monies spent in prosecuting this case be returned to Warner so as to make him whole as to expenses.

That all monies paid as principle, interest, and fees paid by Warner, be returned to him with an interest rate of 9%, the same interest rate imposed upon Warner for the entire duration of the loan beginning with the first payment.

Warner has been notified by a contractor for the Department of Education that in August his student loan will be discharged in full.

This is the result of the Veterans Administration classifying Warner as 100% service connected permanently and totally disabled.

Petitioner Warner respectfully asks that the Court grant Certiorari on the subject of the Promissory Note and not the loan.

Both the District and Circuit Courts ignored the laws that required them to apply state law when federal law did not exist.

As Warner's loan will be discharged in August, should monetary compensation be awarded Warner requests that all payments made from Treasury Offset up to November 16, 2016 be returned as the Court may decide.

The VA has established my 100% disability began on the November date above.

Therefore Certiorari should be granted and this Honorable Court set a nationwide standard regarding debt collection and promissory notes.

Any additional relief awarded by the Court would be appreciated.

Respectfully submitted,

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