

No. 22-314

In the
Supreme Court of the United States

Kimberly Cox

Petitioner,

v.

LAW OFFICES OF LES ZIEVE, A PROFESSIONAL CORPORATION, *et al.*,

Respondents.

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

PETITION FOR REHEARING

Kimberly Cox
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Wellington, NV 89444
Petitioner, in propria persona

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I. INTRODUCTION

The nation's founders feared government tyranny and created our Constitution to limit oppression of the governed. Nowhere is this intention clearer in our organic law than the limitations placed on the exercise of judicial Power. Our founders' focused on judicial power as a way of preventing oppression as experienced in part from King George III's use of the courts to force his own interests on the colonists.

This Court has historically acknowledged the purpose of our nation's Article III courts, is for independent and neutral judges to perform *judicial inquiries*.

"A *judicial inquiry* investigates, declares, and enforces liabilities as they stand on present or past facts and under laws supposed already to exist" (emphasis added). See e.g. *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *Roudebush v. Hartke*, 405 U.S. 15 (1972). Cf. *Prentis v. Atl. Coast Line Co.*, 211 U.S. 210 (1908).

Neither the District Court nor Ninth Circuit Court of Appeals in this case performed a proper *judicial inquiry* under Article III because each failed to consider the legal issues posed nor facts stated by petitioner Kimberly Cox ("Ms. Cox"). Neither court conducted *any* fact finding and as a result, they failed to apply the law to the facts which would have been discovered had the requisite inquiries been conducted.¹

This Court has provided ample precedents which demonstrate that federal courts resolve *judicial inquiries* by finding facts to which the law is applied, e.g. *In re Summers*, 325 U.S. 561 (1945). In Summers, although the justices disagreed over what law should be applied to a fact, all justices relied on the factual findings to apply the law.

¹ Also see IV.A. below.

Unfortunately, it appears that federal judges are in too much of a hurry or have other reasons for failing to perform the required judicial inquiries and factfinding particularly in foreclosure actions as evidenced in this case.²

II. PETITION FOR REHEARING

Pursuant to Sup. Ct. Rule 44.2, Ms. Cox hereby respectfully petitions this Court to rehear the conference and reconsider its December 5, 2022, order denying certiorari in this case for the following reasons and upon the following additional grounds.³

III. QUESTIONS PREVIOUSLY PRESENTED

The questions previously presented in Ms. Cox's Petition for Writ of Certiorari ("Petition") requested this Court exercise its vested supervisory powers and control over the District and Ninth Circuit Courts' assumption of jurisdiction that neither had. Ms. Cox showed that the Courts failed to: (a) comply with mandatory provisions of the Fed. R. of Evid.; (b) state or provide any facts upon which their decisions were made; (c) show or explain how the few authorities cited by either court in their decisions had anything to do with the facts of this action; and (d) ignored other, contrary decisions issued in both courts themselves, by other appellate courts, and in a pivotal decision by this Court.

IV. ADDITIONAL RULE 44 GROUNDS FOR REHEARING; ARGUMENT

Below are the additional Rule 44 – substantial and additional grounds that were not previously presented in Ms. Cox's Petition because of the focus on the

² Note: the facts in this case are unique and incontrovertible, which the lower courts should have accepted as true in the light most favorable to Ms. Cox which they failed to do.

³ All statements asserted in this rehearing petition are already on the record appropriately stated as facts, with supporting evidence and applicable relevant authorities.

District and Appellate Courts' lack of jurisdiction in this action which is of such importance to the public and judicial system itself, that it is incumbent on this Court of last resort, to exercise its supervisory powers to rein in these inferior courts' *ultra vires* acts, not uncommon in the Ninth Circuit. Notwithstanding the forgoing, the additional grounds for rehearing and reconsideration include:

A. Article III Courts have Limited Jurisdiction; re State Court Sovereignty; and Tenth Amendment Violations

Every cause of action in Ms. Cox's Complaint arose exclusively under California State Law not federal law. Contrary to the misrepresentations of removing counsel and assumed by the District and Appellate Courts without the proper judicial inquiry into the facts nor law of this case (see I. Introduction above), the California Superior Court in which the Complaint was filed had exclusive jurisdiction to hear this case.⁴

The Tenth Amendment to the United States Constitution specifically states:

“ The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

⁴ See: Cal. Civ. Code §§ 1708 *et seq.*; 1709 *et seq.*; 1710 *et seq.*; 1788 *et seq.*; 2295; 2238; 2920; 2923 *et seq.*; 2924 *et seq.*; 2924.19; 2932 *et seq.*; 2932.5 *et seq.*; 2934 *et seq.*; 3281-3283; 3304 *et seq.*; 3353; 3355-3356; and 3334.12; and Cal. Bus & Prof. Code § 17200 *et seq.*; and the multitude of supporting authorities also provided. Each and every violation of Cal. Pen. Codes and Federal Violations were only stated as predicate acts to defendants' undenied violations of Cal. Bus. & Prof. Code § 17200 *et seq.*. Again, see e.g.:

“An action may be brought under this chapter to establish title against adverse claims to real or personal property or any interest therein” (Cal. Code of Civ. Proc. § 760.020(a); “The superior court has jurisdiction of actions under this chapter” Cal. Code of Civ. Proc. § 760.040(a); and “Subject to the power of the court to transfer actions, the proper county for the trial of an action under this chapter is: (a) where the subject of the action is real property or real and personal property, the county in which the real property, or some part thereof, is located” Cal. Code of Civ. Proc. § 760.050(a) (emphasis added). Also see, *Patrickson v. Dole Food Co.*, 251 F.3d 795, 799 (9th Cir. 2001) (citing *Verlinden*, 461 U.S. at 495) (“Although any federal ingredient may be sufficient to satisfy Article III, the statutory grant of jurisdiction under 28 U.S.C. § 1331 requires more.”).

There are no delegated powers for the District or Appellate Court under the Commerce Clause or any other authority to hear or decide the State Court Actions such as in this case when the Courts fail to have original, subject matter, federal question or diversity jurisdiction (see, Section 2 of Art. III)⁵ and in which every cause of action arose exclusively under California Law and within the Superior Court's jurisdiction. 28 U.S.C. § 1367 supplemental jurisdiction over State Law claims was not available either and was never sought, established nor invoked.⁶

Neither the District nor Appellate Court showed they addressed, interpreted or appropriately applied the law in this dispute let alone as related to the facts which neither made judicial inquiry into. Both Courts failed to accept all properly alleged facts stated in Ms. Cox's Complaint as true, construing them, and the evidence she provided, in the light most favorable to her as they should have. It should be considered judicial misconduct for these courts to act as if the law does not matter,

⁵ The constitutional limitations on federal jurisdiction make federal courts "courts of limited jurisdiction," *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978) (jurisdiction lacking), as opposed to state courts, which are generally presumed to have subject matter jurisdiction over a case. See 13 Charles Alan Wright, Arthur R. Miller, Edward H. Cooper & Richard D. Freer, *Federal Practice and Procedure* § 3522, p. 100 (3d ed. 2008) [hereinafter 13 Wright & Miller].

⁶ The Dist. Court failed to have original jurisdiction and again, the causes of action stated and undenied in the Complaint were novel and complex issues of State law exclusively under its jurisdiction (Note, exercising supplemental jurisdiction is discretionary, see 28 U.S.C. 1367(c) and was not established nor exercised in this case). Also see, *Lowdermilk v. United States Bank Nat'l Assoc.*, 479 F.3d 994, 998 (9th Cir. 2007) ("[A]s federal courts, we are courts of limited jurisdiction and we will strictly construe our jurisdiction."); and 13 Wright & Miller § 3522, p. 100. Federal courts are "empowered to hear only those cases that (1) are within the judicial power of the United States, as defined in the Constitution, and (2) that have been entrusted to them by a jurisdictional grant by Congress." 13 Wright & Miller § 3522, p. 100; see generally 13 Wright & Miller § 3521. *Foxhall Realty Law Offices, Inc. v. Telecomm. Premium Servs., Ltd.*, 156 F.3d 432, 435 (2d Cir. 1998) (citation omitted) ("[S]tate courts are courts of general jurisdiction and are accordingly presumed to have jurisdiction over federally-created causes of action unless Congress indicates otherwise, whereas federal courts are courts of limited jurisdiction which thus require a specific grant of jurisdiction."), abrogated on other grounds by *Grable & Sons Metal Products, Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308 (2005); and *Hart v. FedEx Ground Package Sys. Inc.*, 457 F.3d 675, 679 (7th Cir. 2006) (citing *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) "Federal courts are courts of limited jurisdiction")

are not accountable to anyone and can do whatever rule however they want. These judges took an oath to *impartially* administer justice and *perform all the duties incumbent on them* which they failed to do and showed no concern whatsoever for Ms. Cox's rights or the inherent supervisory power of this Court.

B. Wire Fraud and Mail Fraud

Like the other defendants' undenied unlawful acts stated in the Complaint for which there is no private right of action; Ms. Cox contends that defendants committed wire and mail fraud in furtherance of their intentional fraudulent scheme and artifice to unlawfully confiscate Ms. Cox's home attempting to extort an exorbitant amount of money she does not owe; by wrongfully sending statements through the U.S. Mail, making telephone calls and electronic communications (e.g., internet and emails) attempting to collect a non-existent purported "debt;" and by electronically causing the recording of false instruments;⁷ which are felonies in California. The Eighth and Ninth Causes of Action in the Complaint showed, these undenied allegations were stated only as predicate acts to violations of Calif. Bus. & Prof. Code § 17200 *et seq.*

C. Lack of a Federal Question or Standing; Violations of the Truth in Lending Act; Failure to Make Judicial Inquiries; Lack of Candor with the Courts; and Violations of the Discharge Injunction

The "federal question" issue may have been previously raised in Ms. Cox's Petition for Writ of Certiorari; however, it was only presented as it related to the District and Appellate Courts' lack of jurisdiction and improvident removal of this case from State Court. Whereas, the following aspects of the purported "federal question" and additional ground(s) relate to the purported "federal question" *itself*,

⁷ E.g. see, Cal. Pen. Code § 502 *et seq.*, 18 U.S.C. §§ 1341 and 1343; and also Cal. Bus. & Prof. Code § 17208; *Aryeh v. Canon Business Solutions, Inc.*, (2013) 55 Cal.4th 1184, 1192; and "Jolly v. Eli Lilly & Co. (1988) 44 Cal.3d 1103, 1110; and 15 U.S.C. § 1692 *et seq.* Evidence of which was provided in Ms. Cox's Complaint and undenied by defendants.

which was erroneously presumed to exist by the District and Appellate Courts because of removing counsels' untruthful and misleading representations. This is not how our justice system is supposed to operate (see, the foregoing).

1. Brief Recap of the District and Appellate Courts' Decisions

The Appellate Court affirmed the District Court's decision (Petition, Appendix E pgs. A8 and 9) by providing legal conclusions without discussing the facts nor the cited authorities upon which the Memorandum was based. The Memorandum showed *the Court failed to make the requisite judicial inquiries into the facts of this case.* Accordingly, the authorities cited in the memorandum had nothing to do with the facts of this case and failed to state how they did.⁸

The District Court's Order (Petition, Appendix I pg. A13) which was less than one page, provided neither facts nor any supporting authority. In granting the motion to dismiss the Court erroneously concluded that Ms. Cox's "claims and issues" were "already adjudicated to finality in previous litigation." However, this was impossible because the "claims" that gave rise to the causes of action stated in Ms. Cox's Complaint, did not even occur until subsequent to the purported "previous litigation" the Court cited. The defendants in the previous litigation were not the same which the title of the previous case clearly shows. The Court did not explain who the defendants purportedly were; nor how they alternatively could have been "...parties in privity with the current defendants" which they were not.

The Court's Order failed to provide even one authority in support of its conclusion; and admitted it failed to review Ms. Cox's Opposition to defendants' motion to dismiss by simply labeling it as "indecipherable."

⁸ The Court also denied without discussion or explanation, Ms. Cox's motion to strike and judicial notice request which was mandatory under Fed. R. Evid. 201(c)(2).

2. The District and Appellate Courts Ignored Precedential Authority

In *Jesinoski v. Countrywide Home Loans, Inc.*, 574 U.S. 259 (2015) this court determined that rescission of a qualified transaction which conformed to the applicable provisions of the Truth in Lending Act (15 U.S.C. 1601 *et seq.* implemented by Regulation Z, 12 C.F.R. 1026 *et seq.* “TILA”), by serving a timely, documented notice of rescission on the “creditor” (see, 15 U.S.C. § 1602(g)(2) and 12 C.F.R. § 1026.2(a)(17)(i)) as done by Ms. Cox, renders the transaction and any related security interest, invalid and void. Defendants’ entire defense and attempts to justify removal of this action was premised on their lack of candor with the Courts, failing to mention the precedential *Jesinoski* opinion they knew was contrary to all their assertions.

Again, that Ms. Cox rescinded the subject Transaction as a matter of law is NOT a “federal question” but an undenied and proven FACT.⁹

3. Bankruptcy Discharge Injunction Violations

Ms. Cox’s also showed her Rescission was acquiesced to, which rendered any purported security interest or lien that could have passed through her 2010 bankruptcy, invalid, void and of no force or effect after her 2012 discharge.

Defendants misled the District and Appellate Courts into assuming that Ms. Cox failed to have “standing” (or claims were barred as *res judicata*) to assert the causes of action she stated in her Complaint because she failed to schedule them as assets in her 2010 bankruptcy. Not only were such “causes of action” unavailable in 2010 as further addressed elsewhere herein, but she did in fact schedule the purported debt as unsecured, which was also overlooked by both Courts along with

⁹ Ms. Cox stated no claim nor sought relief for the “Creditor’s” violation of the TILA in her Complaint because the rescission was her relief which she already received in 2007. Therefore, removal based on defendants claim that the rescission was a federal question was a complete sham which the District and Appellate Courts assumed without conducting ANY judicial inquiry whatsoever.

defendants' undenied numerous violations of the discharge injunction;¹⁰ and the causes of action stated in the Complaint did not occur until commencing on 1/31/2020.

V. CONCLUSION

Notwithstanding having shown in Ms. Cox's Petition for Writ of Certiorari that the District and Appellate Courts lacked the jurisdiction each erroneously assumed, the additional grounds provided herein also show the Courts' refused to comply with Article III and overreached their authority. The Courts' decisions were based on assumptions and presumptions of misrepresentations presented by removing counsel that were repudiated by Ms. Cox in her papers.

The District Court failed to provide even one authority in support of its decision; and both courts failed to inquire into the facts stated in the Complaint or those in Ms. Cox's papers opposing removal. The very few authorities that the Appellate Court did cite in its memorandum had absolutely nothing to do with the facts of this case nor stated how they did; and failed to evaluate, recognize or discuss even one of the numerous *applicable* authorities provided by Ms. Cox in her requests for judicial notice which was summarily denied.. Moreover, neither Court stated whatsoever, nor could they have, upon what facts their decisions were made.

¹⁰ See e.g., *U.S. Bank Nat'l Ass'n v. Naifeh*, 1 Cal.App.5th 767, 780 (Cal. Ct. App. 2016) ("A timely notice of rescission automatically renders the security interest void under section 1635(b), where the creditor acquiesces in the rescission or ignores it.")

Even if assuming, *arguendo*, that Ms. Cox failed to schedule her causes of action stated in the Complaint as assets in her 2010 Ch. 7 bankruptcy, as erroneously presumed by the Dist. and App. courts (which should be noted, was based on arguments untruthfully presented by defendants). The Dist. and App. Courts overlooked and refused to consider Ms. Cox's showing that **SHE HAD NO AVAILABLE CAUSES OF ACTION TO SCHEDULE UNTIL 3-YEARS AFTER HER DISCHARGE UNTIL THE 2015 JESINOSKI DECISION WAS ISSUED** because she never filed a lawsuit to seek relief under the TILA as required in the 9th Cir. at the time (see e.g., *U.S. Bank Nat'l Ass'n v. Naifeh*, *Id.* at 782 n.9 ["before *Jesinoski*, the Ninth Circuit law was that no rescission was effected unless the borrower had actually filed a lawsuit."]).

Accordingly, for the reasons and upon the additional grounds stated herein, Ms. Cox respectfully requests this Honorable Court rehear the conference and reconsider the denial of her Writ for Petition of Certiorari so this case can be briefed on the questions presented, additional grounds addressed herein and merits thereof.

Date: December 26, 2022

/s/Kimberly Cox

Kimberly Cox

In Propria Persona

VI. CERTIFICATION OF PARTY UNREPRESENTED BY COUNSEL

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

December 26, 2022

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

VII. CERTIFICATE OF COMPLIANCE WITH WORD COUNT

Ms. Cox hereby certifies that this petition for rehearing contains 2,922 words, excluding the parts that are exempted by the Rules.

December 26, 2022

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

CERTIFICATE OF SERVICE

Declaration (28 U.S.C. § 1746)

Pursuant to and in compliance with S.Ct. R., 29, I, Charles Cox, am not a party to this action and over 18 years old. I hereby certify that on December 28, 2019, I personally caused copies of PETITION FOR REHEARING to be served, by placing copies in envelopes addressed to each person listed below by prepaid, first-class U.S. Mail. All parties required to be served, have been served.

LAW OFFICES OF LES ZIEVE, A PROFESSIONAL CORPORATION; and Richard L. Mroczek C/O LES ZIEVE
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NEWREZ LLC; Qwendena Robinson; and Alfonso Ramirez
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Fort Washington, PA 19034

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on (date): 12/28/2022

/s/Charles Cox
Charles Cox

