No. 23-1195

ORIGINAL



IN THE

# Supreme Court of the United States

BRAD JOHNSON,

*Petitioner,*

*v.*

PENNYMAC LOAN SERVICES, LLC, ASSURANT, INC., AND STANDARD GUARANTY INSURANCE COMPANY,

*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE NORTH CAROLINA COURT OF APPEALS

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

1. Within the context of its de novo review, in interpreting the regulatory language and meaning of 12 C.F.R. § 1024.37(b) (Basis for charging borrower for force-placed insurance), pursuant to the Supreme Court's Mandate under its *Chevron* Doctrine, did the North Carolina Court of Appeals commit reversible error by (a) erroneously giving complete deference, under *Chevron*, to 12 C.F.R. § 1024.37(b), while, at the same time, (b) completely ignoring (1) 12 C.F.R. § 1024.37(a)(1) (Definition of force-placed insurance) and (2) the legislative history, intent and meaning of 12 U.S.C. § 2605(k) (Servicer prohibitions), both of which directly address the specific issue at bar?

2. Within the context of its de novo review, pursuant to the Supreme Court's Mandate under its *Chevron* Doctrine, in applying 12 C.F.R. § 1024.37(b) (Basis for charging borrower for force-placed insurance) to the facts of the instant case, did the North Carolina Court of Appeals commit reversible error by (a) giving complete deference, under *Chevron*, to 12 C.F.R. § 1024.37(b), while, at the same time, (b) completely ignoring (1) 12 C.F.R. § 1024.37(a)(1) (Definition of force-placed insurance) and (2) the legislative history, intent and meaning of 12 U.S.C. § 2605(k) (Servicer prohibitions), thereby effectuating a Taking of Johnson's property pursuant to U.S. Const. amend, V & XIV?

## RELATED CASES

*PennyMac Loan Servs., LLC v. Johnson*, No. 1:20CV175, U.S. District Court for the Middle District of North Carolina. Judgment entered March 8, 2021.

*PennyMac Loan Servs., LLC v. Johnson*, No. 20CVS436, Superior Court of the County of Forsyth, North Carolina. Judgment entered May 27, 2021.

*PennyMac Loan Servs., LLC v. Johnson*, No. 22-629, Court of Appeals of North Carolina. Judgment entered April 18, 2023.

*PennyMac Loan Servs., LLC v. Johnson*, No. 22-629, Court of Appeals of North Carolina. Judgment entered May 24, 2023.

*PennyMac Loan Servs., LLC v. Johnson*, No. 145P23, Supreme Court of North Carolina. Judgment entered December 18, 2023.

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## OPINIONS BELOW

## NORTH CAROLINA COURT OF APPEALS

Related to the questions presented, the North Carolina Court of Appeals held as follows.

> "Johnson seemingly argues Penny Mac breached the Mortgage Loan contract by imposing charges related to force-placed insurance when the **terms of the Mortgage Loan required insurance only on improvements on the Property, of which there are none** on Lots 13, 15, and 17. **PennyMac argued, and the trial court agreed, that the force-placed insurance was reasonable under C.F.R. § 1024.37(b) because PennyMac had a reasonable basis for believing insurance was required under the terms of the Mortgage Loan . . .**
>
> Under federal regulations, '[a] servicer may not assess on a borrower a premium charge or fee related to force-placed insurance **unless the servicer *has a reasonable basis* to believe that the borrower has failed to comply with the mortgage loan contract's requirement to maintain hazard insurance.**' 12 C.F.R. § 1024.37(b) (2021) (emphasis added). The regulation specifies when a servicer may assess force-placed insurance. Contrary to Johnson's argument, it is not a question of whether PennyMac had [a beneficial/security] interest; rather, it is a question of **whether it had a reasonable basis to believe Johnson was not**

> **complying with the terms of the Mortgage Loan contract.** *See id.*" Bold added. App. 15-16. Also, *see* App. 35-36.

The entire OPINION of the panel of the North Carolina Court of Appeals, unanimously affirming the trial court's ORDER, is published at *PennyMac Loan Services, LLC v. Johnson*, 288 N.C. App. 363, 887 S.E.2d 99, 102 (2023), and is reprinted at App. 5-24.

> **IN THE GENERAL COURT OF JUSTICE. SUPERIOR COURT DIVISION, FORSYTH COUNTY, NORTH CAROLINA**

On **27 May 2021**, in Conclusion of Law 12, Superior Court Judge David L. Hall held as follows.

> "To the extent that they are characterized as a breach of contract claim, Johnson's allegations still fail to state a claim. **Pursuant to 12 C.F.R. [§] 1024.37(b), PennyMac was allowed to assess Johnson a fee related to force-placed insurance because it had a reasonable basis to believe that Johnson failed to comply with his mortgage loan contract's requirement to maintain hazard insurance.** In making this ruling, this [c]ourt does not prejudge the outcome of the underlying deed reformation action." Bold added. App. 32-33. Also, *see* App. 35-36.

The entire ORDER of Superior Court Judge David L. Hall, filed 27 May 2021, is reproduced at App. 25-34.

## JURISDICTION

The jurisdiction of this Court to review the final judgment or decree rendered by the highest court of the State of North Carolina in which a decision could be had, in a case arising under the Constitution and federal law currently at bar, where a title, right, privilege, or immunity is specially set up or claimed under the Constitution and federal statutes, is invoked under 28 U.S.C. § 1257(a).

## STATUTORY PROVISIONS INVOLVED

### U.S. CONSTITUTION

**SUPREMACY CLAUSE**
**U.S. Const. art. VI, cl. 2**

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

**FIFTH AMENDMENT**
**U.S. Const. amend. V**

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service

in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; **nor shall private property be taken for public use, without just compensation.**" Bold added.

**FOURTEENTH AMENDMENT**
**U.S. Const. amend. XIV**

"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." Bold added.

**U.S. CODE**

**12 U.S.C. § 2605(k) (Servicer Prohibitions)**

Subsection (k) [**Servicer Prohibitions**] of 12 U.S. Code § 2605 (**Servicing of mortgage loans**) provides:

". . .

(1) In general. **A servicer** [e.g., PennyMac] of a federally related mortgage **shall not—**

**(A) obtain *forced-placed hazard insurance* unless there is a reasonable basis**

> **to believe** the borrower has failed to comply with the **loan contract's requirements** to maintain property insurance . . .
>
> (2) ***Forced-placed insurance*** **defined** . . . the term 'forced-placed insurance' means **hazard insurance coverage obtained by a servicer** of a federally related mortgage when the borrower has failed to maintain or renew hazard insurance **on such property as required of the borrower under the terms of the mortgage.**" Bold and italics added.

**12 U.S.C. § 2605(l)**
**(Requirements for forced-placed insurance)**

Subsection (l) [Requirements for forced-placed insurance] of 12 U.S. Code § 2605 (**Servicing of mortgage loans**) provides:

> "A servicer [e.g., PennyMac] of a federally related mortgage shall not be construed as having a reasonable basis for obtaining **forced-placed insurance** unless the requirements of this subsection have been met.
>
> (1) A servicer may not impose any charge on any borrower for **forced-placed insurance with respect to any property securing a federally related mortgage** unless—

(A) the servicer has sent, by first-class mail, a written notice to the borrower containing—

(i) a reminder of the borrower's obligation to maintain hazard insurance **on the property securing the federally related mortgage;**" Bold added.

**Legislative History and Intent of 12 U.S.C. § 2605(k) (Servicer Prohibitions) and 12 U.S.C. § 2605(l) (Requirements for forced-placed insurance)**

During the Great Recession, there was a proliferation of real estate foreclosures.[1] As a result, mortgage borrowers lost their jobs, stopped paying their contractually required, mortgage indebtedness payments, including interest, principal, taxes, and property insurance.[2] In these cases, to protect their security interest in real estate, mortgage lenders, including mortgage indebtedness service providers, would (1) obtain lender force-placed insurance on the real estate secured by the Mortgage/Deed of Trust and (2) charge the borrower for the "cost" of such hazard insurance coverage.[3] **However,**

1. Stacy Johnson, **Next Bank Scandal? Force-Placed Homeowners Insurance**, MONEY TALKS NEWS (Nov. 15, 2010), http://www.moneytalksnews.com/next-bank-rip-off-forced-place-homeownersinsurance/.

2. *Id.*

3. Daniel J. Neppl, **Force-Placed Insurance: 3 Things to Watch in 2012**, LAW 360 (Apr. 11, 2012), http://www.law360.

**banking practices that arose during this period became abusive (e.g., exorbitant force-placed insurance profits, commissions, and kickbacks) and, accordingly, were subject to increased scrutiny.**[4]

In response, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank").[5] The purpose of Dodd-Frank was to "promote financial stability of the United States by improving accountability and transparency in the financial system . . . [and] **to protect consumers from abusive financial services practices.**"[6] Bold added. In particular, Section 1463 of the Dodd-Frank Act amended Section 6(k) of the Real Estate Procedures Act ("RESPA") to add 12 U.S.C. § 2605 (Servicing of mortgage loans), which "evince[d] **Congress's intent to establish reasonable protections for borrowers to avoid unwarranted force-placed insurance coverage.**" Bold added. 78 Fed. Reg. 10696,10700,10714.

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com/articles/328781/force-placed-insurance-3-things-to-watch-in-2012; see also *Caplen v. SN Servicing Corp.*, 343 F. App'x. 833, 834 (3d Cir. 2009) ("Under the terms of the note and mortgage, the [homeowners] agreed to carry hazard insurance on the property and to provide evidence of insurance to the bank; if they failed to do so, the bank was authorized to 'force place' insurance on the property – that is, to independently obtain insurance and add the cost of the premiums to the principal due under the note – in order to protect its security interest in the property.").

4. Edward Wyatt, **A Mortgage Practice Gets a Closer Look by Regulators**, N.Y. TIMES (Mar. 26, 2013), http://www.nytimes.com/2013/03/27/business/economy/regulators-review-costs-of-forceplaced-insurance.html.

5. Pub. L. No. 111-203, 124 Stat. 1376 (2010).

6. H.R. 4173, 111th Cong. (2010).

In particular, Title X of Dodd-Frank created the Consumer Financial Protection Bureau ("CFPB") to investigate violations of consumer protection laws and enact rules regarding consumer protection statutes.[7] Moreover, Section 1022(b)(1) of Dodd-Frank, 12 U.S.C. 5512(b)(1), authorizes the CFPB to prescribe rules (e.g., Regulation X) "as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof."

Specifically, in 78 Fed. Reg. 10696, dated February 14, 2013, the CFPB issued its final rules and official interpretations regarding its Mortgage Servicing Rules (Regulation X – 12 C.F.R. Part 1024) under the Real Estate Settlement Procedures Act ("RESPA"). In particular, the CFPB recognized:

> "**There is evidence that borrowers were subjected to improper fees that servicers had no reasonable basis to impose, improper force-placed insurance practices, and improper foreclosure and bankruptcy practices.** *See* Kurt Eggert, *Limiting Abuse and Opportunism by Mortgage Servicers*, 15 Housing Pol'y Debate 753 (2004), available at http://ssrn.com/abstract=992095 (collecting cases) . . .
>
> [T]he amendments to section 6(k) of RESPA in section 1463 of the Dodd-Frank Act evince

7. Thomas P. Vartanian et al., **Title X Overview: Bureau of Consumer Financial Protection**, AM. BANKERS ASS'N, http://www.aba.com/Issues/RegReform/Pages/RR10_overview.aspx.

> **Congress's intent to establish reasonable protections for borrowers to avoid unwarranted force-placed insurance coverage.**" Bold added. 78 Fed. Reg. 10696,10700,10714.

As a consequence, in its published final rules, the CFPB made "major changes to the mortgage loan servicing requirements of Regulation X, which includes the provisions relating to FPI [lender force-placed insurance],"[8] e.g., 12 C.F.R. § 1024.37(a)(1) & (b).

## U.S. CODE OF FEDERAL REGULATIONS

**12 C.F.R. § 1024.37(a)(1) (Definition of force-placed insurance)**

**12 C.F.R. § 1024.37(b) (Basis for charging borrower for force-placed insurance)**

12 C.F.R. § 1024.37(a)(1)&(b) is reprinted at App. 35-36.

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8. Karen C. Yotis, **Force-Placed Insurance: Another Multi-Billion Dollar Industry Caught in the Regulatory Cross Hair**, LEXISNEXIS LEGAL NEWSROOM (May 6, 2013, 4:19 PM), http://www.lexisnexis.com/legalnewsroom/insurance/b/insuranceregulation/archive/2013/05/06/forceplaced-insurance-anothermulti-billion-dollar-industry-caught-in-the-regulatory-cross-hairs.aspx (citing Mortgage Servicing Rules under the Real Estate Settlement Procedures Act (Regulation X); Final Rule, 78 Fed. Reg. 10,696 (Feb. 14, 2013) (to be codified at 12 C.F.R. pt. 1024)).

## STATEMENT OF THE CASE

## FACTS MATERIAL TO CONSIDERATION OF THE QUESTIONS PRESENTED

### PARTIES

1. **Pro Se Plaintiff, Brad R. Johnson, Ph.D., J.D., CPA (Inactive, OR, #4278) ("Johnson").** Johnson is married and has been married to Elci Wijayaningsih since January 2000. Professionally, Johnson is employed by the State of South Carolina as a tenured Professor of Accounting (and Accounting Program Coordinator) at Francis Marion University. Specifically, Johnson (a) has been teaching Federal Taxation at the University Graduate and Undergraduate levels for over 40 years and (b) has been a licensed (active or inactive) Oregon C.P.A. for over 40 years.

2. **Defendant, PennyMac Loan Services, LLC ("PennyMac").** PennyMac is a Delaware limited liability company, with its principal office located at 3043 Townsgate Road in Westlake Village, CA 91361. PennyMac is in the business of loan services. PennyMac is a mortgage service provider and mortgage lender. Lender force-place insurance is a lucrative business for mortgage lenders and servicers (generally referred to as "lenders"). As a mortgage service provider, PennyMac contractually outsources to Assurant, Inc. ("Assurant") (1) the tracking of hazard and flood insurance, in general, and (2) in particular, the tracking and processing of lender force-placed insurance. Within that relationship, Assurant has the exclusive contractual right to place

lender force-placed insurance with the insurance company of its choosing, in every instance in which one of the borrowers of PennyMac violates a Deed of Trust in failing to properly insure the improvements on the specific *Property* that is secured by said Deed of Trust, for which PennyMac has a beneficial/security interest. In the case of PennyMac, for real property improvements in North Carolina, Assurant causes Standard Guaranty Insurance Company ("InsuranceCo"), a subsidiary/affiliate of Assurant, to issue lender force-placed insurance to PennyMac in the form of a Certificate of Insurance Coverage, in instances where one of the borrowers of PennyMac violates a Deed of Trust in failing to properly insure the improvements on specific *Property* that is secured by said Deed of Trust for which PennyMac has a beneficial/security interest. The "cost" associated with the issuance of such lender force-placed insurance is exclusively established by Assurant, based upon Assurant's contract with PennyMac. When InsuranceCo issues lender force-placed insurance to PennyMac in the form of a Certificate of Insurance Coverage, PennyMac receives a kickback, commission, qualified expense reimbursement, or other compensation (e.g., subsidized insurance tracking services). Finally, shortly after PennyMac receives a Certificate of Insurance Coverage from InsuranceCo on *Property* for which PennyMac has a beneficial/security interest, PennyMac attempts to collect the debt owed by the borrower to InsuranceCo by charging the borrower with such "cost."

3. **Defendant, Assurant, Inc. ("Assurant")** Assurant is a publicly held Delaware Corporation with the

address of its principal executive office located at 28 Liberty Street, 41st Floor, New York, NY 10005. Accordingly, Assurant is a resident of New York and Delaware. The business surrounding lender force-placed insurance is a lucrative business for Assurant. In 2010, Assurant collected approximately $2.7 billion in premiums through its specialty insurance division, which is primarily devoted to lender force-placed insurance.

4. **Defendant, Standard Guaranty Insurance Company ("InsuranceCo").** InsuranceCo was formed in Georgia, with the address of its principal executive office located at 260 Interstate North Circle SE in Atlanta, GA 30339. Accordingly, InsuranceCo is a resident of Georgia. The great grandparent of InsuranceCo is Assurant. is in the business of providing lender force-placed insurance.

5. **Johnson's cash purchase of Lots 16&18.** As a consequence of Johnson's cash purchase of Lots 16&18, on November 7, 2008, AmTrust Bank f/k/a Ohio Savings Bank, as Grantor, conveyed the property more particularly described below to Brad Johnson, as Grantee, by executing and delivering a Limited Warranty Deed, recorded on November 10, 2008, in Book 2856, Page 708 of the Brunswick County Public *Registry, North Carolina:*

**Being all of Lots 16 and 18, Block 186, Section N-6, Long Beach (now Oak Island), NC as shown on map recorded in Map Book 11, Page 89, Brunswick County Registry.**

6. On or before November 7, 2008, having total control over Lots 16&18, for the purpose of insuring the home on Lots 16&18, Johnson, individually, made the personal, deliberate and unilateral decision to purchase dwelling and flood insurance from the Farm Bureau, which was maintained until 2018.

7. In 2009, Johnson obtained a residential loan from Prime Lending for the purpose of refinancing several outstanding debts, wherein the Deed of Trust identified Lots 16&18 as security for the loan. There was no escrow account for insurance and property taxes.

8. **Johnson's cash purchase of Lots 13,15&17.** *As a result of* Johnson's cash purchase of Lots 13,15&17, on or about August 25, 2012, Homer E. Wright, Jr., as Grantor, conveyed the property more particularly described below to Brad Johnson, as Grantee, by executing and delivering a General Warranty Deed, recorded on August 31, 2012, in Book 3307, Page 799 of the Brunswick County Public Registry, North Carolina:

   **BEING ALL OF LOTS 13, 15 AND 17, BLOCK 186, SECTION N-6, LONG BEACH (now Oak Island) as per map for National Development Corp. prepared by Howard M. Loughlin, Registered Land Surveyor, recorded in Map Book 11, page 89, office of the Register of Deeds for Brunswick County, North Carolina.**

9. Having total control over Lots 13,15&17, for the purpose of avoiding the recurring, annual Sewer

District Fee, levied upon owners of undeveloped parcels by the Town of Oak Island, North Carolina, in two Instruments of Combination (for property tax and assessment purposes only), dated October 29, 2012 and June 12, 2013, Johnson, individually, made the personal and unilateral decision to combine Lots 13,15&17 with contiguous Lots 16&18 to create one developed residential parcel (Parcel # 235IM021).

10. On June 9, 2013, Johnson submitted a preprinted Uniform Residential Loan Application to Weststar Mortgage, Inc. (hereinafter "Weststar") for the purpose of "refinancing" (debt consolidation). Such preprinted application was prepared by Weststar, based upon the information contained in Johnson's credit report, which was obtained by Weststar.

11. In the course of evaluating Johnson's loan application, Weststar's underwriters demanded (and Johnson properly and satisfactorily submitted) more information and documents as a prerequisite to the closing of the loan.

12. On or after July 1, 2013, in a telephone call between Weststar's Loan Originator, Pamela Franz, and Johnson, Johnson asked Weststar's Loan Originator, Pamela Franz, who he should contact if he had questions regarding the closing documents. Weststar's Loan Originator, Pamela Franz, stated that she would answer his questions and that he could question any document, except for the legal description of the *Property* in the Deed of Trust, for which Weststar would have a beneficial/security interest. Weststar's Loan Originator, Pamela Franz, stated emphatically

that the legal description of the *Property* described in the Deed of Trust could not be changed under any circumstances.

13. As a result of the careful, thorough and detailed evaluation and quality reviews of Johnson's loan application, conducted by Weststar's underwriters and senior loan officers between July 15-17, 2013, permission to close was granted by said persons.

14. On or about July 18, 2013, Johnson and his wife, Elci Wijayaningsih, received the closing documents, which included **a Deed of Trust for Johnson and his wife to sign and a Note for Johnson to sign.**

15. Prior to receiving the Deed of Trust, there had been no discussion or agreement among or between the parties (Johnson, Wijayaningsih or Weststar) as to the identity of the *Property* that was to be granted by Johnson and his wife to secure the loan and for which Weststar would have a beneficial/security interest.

16. On pages 2-3 of the Deed of Trust, said Deed of Trust referenced above in Paragraph 14 states:

> "TRANSFER OF RIGHTS IN THE PROPERTY
>
> The beneficiary in this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successor and assigns of MERS. **This Security Instrument secures to Lender:** (i) the repayment of the loan, and all renewals,

extensions and modifications of the Note; and (ii) **the performance of Borrower's covenants and agreements under this Security Instrument and the Note.** For this purpose, **Borrower irrevocably grants and conveys to Trustee and Trustee's successors and assigns, with power of sale, the following described property located . . .**

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT 'A'.

**Which currently has the address of 111 SouthEast 14th Street, Oak Island, North Carolina 28465**

TO HAVE AND TO HOLD this property unto Trustee and Trustee's successors and assigns, forever, together with all of the improvements now or hereafter erected on the property and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." **Borrower understands and agrees that MERS holds only legal title to the interests granted by the Borrower in this Security Instrument,** but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any and all of those interests, including, but not

limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and cancelling this Security Instrument." Bold added.

17. In particular, Exhibit "A" of the Deed of Trust referenced above in Paragraph 14 expressly and unambiguously describes the *Property* as:

**"The land referred to herein below is situated in the County of Brunswick State of North Carolina described as follows:**

**Being all of Lots 13, 15 and 17, Block 186, Section N-6, Long Beach (now Oak Island) as per map for National Development Corp prepared by Howard M. Loughlin Registered Land Surveyor, recorded in Map Book 11, Page 89, office of the Register of Deeds for Brunswick County, North Carolina.**

**Parcel ID: 235-IM-036, 2351M037**

**This being the same property conveyed to Brad Johnson from Homer E. Wright, Jr., unmarried in a Deed dated August 2, 2012, recorded August 31, 2012, in Book 3329 Page 0354.**

**Property Commonly Known As: 111 SouthEast 14th Street Oak Island, NC 28465"**

18. Furthermore, on page 2 of the Note, said Note

referenced above in Paragraph 14 states:

"UNIFORM SECURED NOTE

> This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as the Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note."

19. When Johnson received the closing documents on July 18, 2013, Johnson and Wijayaningsih closely examined those documents and each recognized that the Deed of Trust, referenced above in Paragraph 14, was a Security Instrument that had as its purpose to secure to Weststar (a) the repayment of the Note, referenced above in Paragraph 14, and (b) the performance of Johnson's and Wijayaningsih's covenants and agreements under said Security Instrument. Furthermore, neither Johnson nor Wijayaningsih questioned the legal description of the *Property* in Schedule A of the Deed of Trust, because, Weststar, in clear and unambiguous language, expressly intended that Johnson and Wijayaningsih irrevocably grant and convey to the named Trustee, with power of sale, the *Property* described above in Paragraph 17 (and no other).

20. Accordingly, at closing on July 19, 2013, to serve the

purposes of the Security Instrument, as referenced above in Paragraph 19, Johnson and Wijayaningsih each expressly intended to (and did, in fact) irrevocably grant and convey to the named Trustee, with power of sale, the *Property* (and no other) clearly and unambiguously described in Schedule A of the Deed of Trust, which is referenced above in Paragraph 17.

21. In addition, Johnson, individually, made the personal, deliberate, and unilateral decision to elect (a) to continue purchasing, from the Farm Bureau, hazard and flood insurance on his home located on Lots 16&18 and (b) to have Weststar set up an escrow account so that Johnson would pay property taxes and insurance on a monthly basis for the entire developed residential parcel (Parcel #235IM021, incorporating Lots 13,15,16,17&18), for the purpose of having a more even cash outflow, which is specifically allowed under the Deed of Trust referenced above in Paragraph 14.

22. After Johnson and his wife signed the closing documents referenced above in Paragraph 14, those closing documents were sent to Linear Title & Closing, where Linear Title & Closing reviewed those closing documents, found no irregularities, proceeded with consummating the transaction, and recorded the Note and Deed of Trust referenced above in Paragraph 14.

23. Through two letters dated August 8, 2013, and September 2, 2013, with the Deed of Trust and Note attached, PennyMac notified Johnson that the Note referenced above in Paragraph 14 had been transferred to Creditor PennyMac on August 6, 2013, wherein "[t]he transfer of your mortgage loan to the

Creditor does not affect any terms or conditions of the Mortgage/Deed of Trust or Note" and whereupon Johnson not only relied on the veracity and substantive contents of such letters, but also based his future conduct on such notification.

24. On September 2, 2013, PennyMac had knowledge (a) of the description of the *Property* described in Schedule A of the Deed of Trust, which is referenced above in Paragraph 17 and for which PennyMac had a beneficial/security interest, and (b) that hazard insurance on Lots 16&18 would not insure PennyMac's beneficial/security interest in said *Property* (i.e., Lots 13,15&17).

25. Because Johnson's daughter was planning to enter college in Fall 2019 and Johnson wanted to decrease his expenses in preparation, shortly after September 20, 2017, and for the next four plus (4+) years, Johnson contacted PennyMac for the purpose of having PennyMac discontinue its effort to obtain hazard or flood insurance on the real property improvements on Lots 16&18 (developed residential land) to insure PennyMac's beneficial/security interest in Lots 13,15&17 (undeveloped residential land).

26. Instead, for the next four plus (4+) years, the conduct of PennyMac (a mortgage service provider) presumed that the Deed of Trust referenced above in Paragraph 14, allowed PennyMac to obtain (and charge Johnson with the "cost" of ) lender force-place insurance on the real property improvements on Lots 16&18 (developed residential land) to insure PennyMac's beneficial/security interest in Lots 13,15&17 (undeveloped

residential land), notwithstanding the fact that PennyMac had no beneficial/security interest in Lots 16&18 (developed residential land).

27. Based upon its presumption referenced above in Paragraph 26 (i.e., as a mortgage service provider, PennyMac is allowed, under the Deed of Trust, to obtain lender force-place insurance on Lots 16&18, even though PennyMac had no beneficial/security interest in Lots 16&18 (developed residential land)):

    a. In April 2018, PennyMac used Johnson's escrow funds to electronically pay $3,104 ($535) to renew the hazard (flood) insurance policy covering Lots 16&18 from the Farm Bureau, over Johnson's objections.

    b. By Letters dated August 31, 2018, September 17, 2018, May 10, 2019, and June 14, 2019, to Johnson, PennyMac threatened Johnson with economic harm (charging Johnson with the "cost" of lender force-place insurance covering Lots 16&18) if Johnson did not pay for hazard insurance covering the improvements on Lots 16&18, which Johnson was under no obligation to do (because PennyMac had no beneficial/security interest in Lots 16&18). For example, PennyMac states:

> "Because Homeowners (Hazard) Insurance is required on your property, we plan to buy insurance for your property. You must pay us for any period during which the insurance we buy is in effect, but you do not have insurance."

c. In July, 2019, PennyMac obtained lender force-place insurance from InsuranceCo, through Assurant, covering the improvements on Lots 16&18, where PennyMac (1) charged Johnson $2880 for such lender force-place insurance (a Certificate of Coverage Placement), a "cost" determined by Assurant, and then (2) as shown by letters dated July 16, 2019, August 12&19, 2019 and September 17, 2019, increased Johnson's monthly payment from $1506.82 to $2106.81, as follows:

> "As you know, **your loan agreement requires that you provide us with proof of acceptable and continuous homeowner's insurance on an annual basis** . . . we have purchased a Lender-Placed Insurance to protect our interest in the dwelling structure, by advancing funds from your escrow account . . . The Lender-Placed Insurance premium has been advanced from your escrow account. If you did not have an escrow account, PENNYMAC LOAN SERVICES, LLC has established one for you and will provide you with an escrow analysis statement, which will explain the increase in your monthly payment to recover the amount advanced as well as future insurance payments. You will be responsible for any applicable taxes or fees, which result from the purchase of this insurance." Bold added.

d. By letter dated March 2, 2020, to Johnson, Assurant, on behalf of PennyMac, threatened

Johnson with economic harm (charging Johnson with the "cost" of lender force-place insurance covering Lots 16&18) if Johnson did not pay for hazard insurance for the improvements on Lots 16&18, which Johnson was under no obligation to do (because PennyMac had no beneficial/security interest in Lots 16&18). For example, Assurant states:

> "Your insurance certificate is due to renew on 05/09/2020. **If the Named Insured Mortgagee** renews the lender placed insurance certificate on your property, it may be renewed with a change in premium. It may also have a change in deductible(s). **This insurance certificate was purchased on your behalf because you did not maintain insurance coverage on your property as required by the terms of your loan.**" Bold added.

e. By letter dated March 2, 2020, to Johnson, PennyMac again threatened Johnson with economic harm (charging Johnson with the "cost" of lender force-place insurance covering Lots 16&18) if Johnson did not pay for hazard insurance covering the improvements on Lots 16&18, which Johnson was under no obligation to do (because PennyMac had no beneficial/security interest in Lots 16&18). For example, PennyMac states:

> "Because we did not have evidence that you had Homeowners (Hazard) Insurance

> on the property listed above, we bought insurance on your property and added the cost to your mortgage loan account . . . **Because Homeowners (Hazard) Insurance is required on your property, we intend to maintain insurance on your property by renewing or replacing the insurance we bought . . .** " Bold added.

## PROCEDURAL HISTORY WITH REGARD TO FEDERAL QUESTIONS RAISED

After more than a two-year dispute [*see* Material Facts #25-27, above] regarding lender force-placed insurance, as defined in both (1) 12 C.F.R. § 1024.37(a)(1) [*see* App. 35-36] and (2) 12 U.S.C. § 2605(k)(2), which could not be resolved, on **20 January 2020**, PennyMac filed suit [*PennyMac Loan Servs., LLC v. Johnson et al.*, 20-CVS-436 (County of Forsyth, NC 2020)] against Brad Johnson and his wife, Elci Wijayaningsih, in Forsyth County, North Carolina District Court to reform a 2013 Deed of Trust recorded in Brunswick County, North Carolina, to add Lots 16&18 to the *Property* (Lots 13,15&17) securing Johnson's loan.

On **21 February 2020**, Johnson filed counterclaims (third-party claims) against PennyMac (Assurant and InsuranceCo) for violations of (a) Racketeer Influenced and Corrupt Organizations Act of 1970 (RICO), 18 U.S.C. Sections 1961-1968 (1994), (b) The Fair Debt Collection Practices Act of 1978, Pub. L. No. 95-109, 803(6)(F), 91 Stat. 874, 875 (1977) (codified as amended at 15 U.S.C. 1692-1692o (1994 & Supp. III 1998)), and (c) *Breach of Contract Accompanied by Fraudulent Acts* pursuant to South Carolina law.

Also, on **21 February 2020**, Johnson removed the entire case to the United States District Court for the Middle District of North Carolina [*PennyMac Loan Servs., LLC v. Johnson*, No. 1: 20CV175, (M.D.N.C.)].

PennyMac then moved to remand the case to Forsyth County District Court, and on 8 **March 2021**, the Middle District of North Carolina granted PennyMac's Motion to Remand [*PennyMac Loan Servs., LLC v. Johnson*, 2021 WL 861530, at *7 (M.D.N.C. Mar. 8, 2021)].

The case was subsequently transferred to the Forsyth County Superior Court, where PennyMac, Assurant and InsuranceCo each filed Rule 12(b)(6) motions to dismiss Johnson's counterclaims (third-party claims) against PennyMac (Assurant and InsuranceCo). After a hearing on the motions, **the clerk E-mailed the parties** stating that (1) Superior Court Judge David L. Hall had granted the motions to dismiss by PennyMac, Assurant and InsuranceCo and (2) **the attorneys for PennyMac, Assurant and InsuranceCo should draft the ORDER.** Subsequently, the attorneys for PennyMac, Assurant and InsuranceCo drafted a PROPOSED ORDER, which Superior Court Judge David L. Hall **(1) signed, without change,** and (2) filed on **27 May 2021** (*see* App. 25-34), in part, holding as Conclusion of Law 12:

> "To the extent that they are characterized as a breach of contract claim, Johnson's allegations still fail to state a claim. **Pursuant to 12 C.F.R. [§] 1024.37(b), PennyMac was allowed to assess Johnson a fee related to force-placed insurance because it had a reasonable basis to believe that Johnson failed to comply with**

> **his mortgage loan contract's requirement to maintain hazard insurance.** In making this ruling, this [c]ourt does not prejudge the outcome of the underlying deed reformation action." Bold added. App. 32-33. Also, *see* App. 35-36.

Johnson filed a timely appeal of the Forsyth County Superior Court ORDER, and a panel of the North Carolina Court of Appeals unanimously affirmed the trial court in its OPINION at *PennyMac Loan Services, LLC v. Johnson*, 288 N.C. App. 363, 887 S.E.2d 99, 102 (2023). *See* App 5-24. In particular, the North Carolina Court of Appeals held:

> "Johnson seemingly argues **Penny Mac breached the Mortgage Loan contract by imposing charges related to force-placed insurance when the terms of the Mortgage Loan required insurance only on improvements on the Property, of which there are none on Lots 13, 15, and 17. PennyMac argued, and the trial court agreed, that the force-placed insurance was reasonable under C.F.R. § 1024.37(b) because PennyMac had a reasonable basis for believing insurance was required under the terms of the Mortgage Loan . . .**
>
> Under federal regulations, '[a] **servicer may not assess on a borrower a premium charge or fee related to force-placed insurance unless** the servicer *has a reasonable basis* to believe that the borrower has failed to

> comply with the mortgage loan contract's requirement to maintain hazard insurance. 12 C.F.R. § 1024.37(b) (2021) (emphasis added). **The regulation specifies when a servicer may assess force-placed insurance.**'" Bold added. App. 15. Also, *see* App. 35-36.

Johnson then moved the North Carolina Court of Appeals for *en banc* rehearing, which was denied on **24 May 2023.** *See* App. 3-4.

Because the panel of the North Carolina Court of Appeals affirmed the trial court's ORDER unanimously, Johnson did not have an automatic right of appeal to the North Carolina Supreme Court. Instead, Johnson filed a petition for discretionary review, which the North Carolina Supreme Court denied on **18 December 2023.** *See* App. 1-2.

Finally, Chief Justice Roberts granted an extension for the filing of the instant petition until **2 May 2024.**

## REASONS FOR GRANTING THE PETITION

### STANDARD OF REVIEW

Questions of federal regulatory and statutory interpretation are ultimately questions of law for the United States Supreme Court and are reviewed de novo. *United States v. Pink*, 315 U.S. 203, 62 S. Ct. 552, 86 L. Ed. 796, 1942 U.S. LEXIS 1060 (1942) (Supreme Court, upon appeal from state court, will review or independently determine all questions on which Federal right is necessarily dependent).

**QUESTION #1:**

A RENDERED DECISION OF THE NORTH CAROLINA COURT OF APPEALS HAS COMMITTED REVERSIBLE ERROR BY VIOLATING THE SUPREME COURT'S MANDATE UNDER ITS *CHEVRON* DOCTRINE, IN THAT SUCH DECISION (1) IMROPERLY GAVE COMPLETE DEFERENCE TO 12 C.F.R. § 1024.37(b) AND THEN (2) MISINTERPRETED SUCH REGULATION'S LANGUAGE, HISTORY, INTENT AND MEANING TO OBTAIN A PERVERSE RESULT (AFFIRMING THE LOWER COURT'S INCORRECT AND UNCONSTITUTIONAL OPINION AS TO THE EFFECT OF 12 C.F.R. § 1024.37(b)), PROMPTING THE EXERCISE OF THE SUPREME COURT'S POWER OF SUPERVISION TO ENSURE THE INTEGRITY AND UNIFORMITY OF FEDERAL LAW

A court will read the Real Estate Settlement Procedures Act ("RESPA") [12 U.S.C.S. § 2601 et seq.] and Regulation X as an integrated set of laws and regulations to determine the duties and obligations of a servicer [e.g., PennyMac]. *Coppola v. Wells Fargo Bank, N.A.* (In re Coppola), 596 B.R. 140, 2018 Bankr. LEXIS 3383 (Bankr. D.N.J. 2018). However, it is a violation of the Supreme Court's mandate under the *Chevron* Doctrine for the interpretation and application of 12 U.S.C. § 2605(k) to be entirely displaced by 12 C.F.R. § 1024.37(a)(1) & (b), since 12 U.S.C. § 2605(k)&(l) directly address the issue at bar, i.e., under **what exceptional circumstances** is a servicer [e.g., PennyMac] allowed **(1) to obtain lender force-placed insurance, as defined in 12 U.S.C. § 2605(k)(2), and (2) charge a borrower [e.g., Johnson] with the "cost" thereof.**

## THE SUPREME COURT'S MANDATE UNDER ITS *CHEVRON* DOCTRINE

In certain circumstances, the Supreme Court has mandated that both federal and state courts grant deference to a federal agency's interpretation of a federal statute. *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). Specifically, under the Supreme Court's *Chevron* Doctrine, with respect to the question of whether a federal or state court must give deference to a federal agency's interpretation and application of a federal statute, such court must first determine whether such **federal statute directly addresses the issue at bar**. Here, only if (1) the federal statute does NOT directly address the issue at bar and (2) the federal agency's interpretation and application of said federal statute is reasonable, does the Supreme Court mandate that the federal or state court uphold such agency's interpretation and application of such federal statute. In this case, **Johnson argues that this threshold determination of the Supreme Court's *Chevron* Doctrine (i.e., that the state court must first determine that the federal statute does not directly address the issue at bar) is so ambiguous that it opens the door for the state court to either accept or reject the federal agency's interpretation and application of said federal statute. On this basis, Johnson argues that THE SUPREME COURT SHOULD CONSIDER ABOLISHING THE *CHEVRON* DOCTRINE, ALTOGETHER. Instead, Johnson argues that THE SUPREME COURT SHOULD CONSIDER A MANDATE THAT LOWER COURTS MUST READ FEDERAL AGENCY REGULATORY LAW AND THE ASSOCIATED FEDERAL STATUTORY LAW TOGETHER.**

THE RENDERED DECISION OF THE NORTH CAROLINA COURT OF APPEALS

(1) VIOLATED THE SUPREME COURT'S MANDATE UNDER ITS *CHEVRON* DOCTRINE AND

(2) IMPROPERLY CONDUCTED A DE NOVO REVIEW OF 12 C.F.R. § 1024.37(b) TO DETERMINE SUCH REGULATION'S MEANING AND INTERPRETATION BY MISAPPLYING, OR TOTALLY IGNORING, WELL-ESTABLISHED CANONS OF STATUTORY CONSTRUCTION TO DEVISE A UNIQUE JUDICIAL CONSTRUCTION, THE EFFECT OF WHICH VIOLATES THE UNITED STATES CONSTITUTION

In the instant case, (1) the rendered decision of the North Carolina Court of Appeals not only violated the Supreme Court's mandate under its *Chevron* Doctrine, but also, (2) in determining under **what exceptional circumstances a servicer** [e.g., PennyMac] **is allowed (a) to obtain lender force-placed insurance [as defined in 12 U.S.C. § 2605(k)(2)] pursuant to 12 U.S.C. § 2605(k)(1)(A), and (b) charge a borrower [e.g., Johnson] with the "cost" thereof,** such decision erroneously gave complete deference, purportedly under *Chevron*, to 12 C.F.R. § 1024.37(b), while, at the same time, completely ignoring (i) 12 C.F.R. § 1024.37(a)(1) (Definition of force-placed insurance) and (ii) the legislative history, intent and meaning of 12 U.S.C. § 2605(k) (Servicer prohibitions), both of which directly address the specific issue at bar

[i.e., under **what exceptional circumstances** is a servicer [e.g., PennyMac] allowed **(a) to obtain lender force-placed insurance (as defined in 12 U.S.C. § 2605(k)(2)) and (b) charge a borrower [e.g., Johnson] with the "cost" thereof** ]. Finally, in determining the regulatory meaning and interpretation of 12 C.F.R. § 1024.37(b) (Basis for charging borrower for force-placed insurance), the decision misapplied, or totally ignored, well-established canons of statutory construction to devise a unique judicial construction, the effect of which violates the United States Constitution.

**The rendered decision of the North Carolina Court of Appeals violated the Supreme Court's mandate under its *Chevron* Doctrine**

The rendered decision of the North Carolina Court of Appeals violated the Supreme Court's mandate under its *Chevron* Doctrine, because such decision gave complete deference to 12 C.F.R. § 1024.37(b), even though the legislative history, intent and meaning of 12 U.S.C. § 2605(k) (Servicer prohibitions) directly addresses the specific issue at bar, i.e., under **what exceptional circumstances** is a servicer [e.g., PennyMac] allowed **(a) to obtain lender force-placed insurance (as defined in 12 U.S.C. § 2605(k)(2)) and (2) charge a borrower [e.g., Johnson] with the "cost" thereof.**

**In giving complete deference to 12 C.F.R. § 1024.37(b), under *Chevron*, the decision improperly conducted a de novo review of 12 C.F.R. § 1024.37(b)**

But more importantly, in giving complete deference, purportedly under *Chevron*, to 12 C.F.R. § 1024.37(b), the

rendered decision of the North Carolina Court of Appeals improperly conducted a de novo review of 12 C.F.R. § 1024.37(b) to determine such regulation's meaning and interpretation by completely ignoring (a) 12 C.F.R. § 1024.37(a)(1) (Definition of force-placed insurance) and (b) the legislative history, intent and meaning of 12 U.S.C. § 2605(k) (Servicer prohibitions).

**The decision misapplied, or totally ignored, well-established canons of statutory construction to devise a unique judicial construction of 12 C.F.R. § 1024.37(b), the effect of which violates the United States Constitution**

Specifically, in its de novo review, the rendered decision ("decision") of the North Carolina Court of Appeals misapplied, or totally ignored, the following well-established canons of statutory construction to devise a unique judicial construction of 12 C.F.R. § 1024.37(b), the effect of which violates the United States Constitution. The following canons of statutory construction are taken from Antonin Scalia & Bryan A. Gardner, *Reading Law: The Interpretation of Legal Texts* (2012). For each canon of statutory construction found below, the violation of such canon of statutory construction by the decision is identified and discussed.

(a) *Contextual Canons.*

(i) Whole-Text Canon. Under the Whole-Text Canon, the text must be construed as a whole. As shown above, in determining the regulatory meaning and interpretation of 12

C.F.R. § 1024.37(b) (Basis for charging borrower for force-placed insurance), the decision completely ignored 12 C.F.R. § 1024.37(a)(1) (Definition of force-placed insurance) as well as 12 U.S.C. § 2605(k) (servicer prohibitions) and 12 U.S.C. § 2605(l) (Requirements for force-placed insurance).

(ii) Surplusage Canon. Under the Surplusage Canon, if possible, every word and every provision are to be given effect (*verba cum effectu sunt accipienda*), i.e., NO word or provision should be ignored. As shown above, in determining the regulatory meaning and interpretation of 12 C.F.R. § 1024.37(b) (Basis for charging borrower for force-placed insurance), the decision completely ignored 12 C.F.R. § 1024.37(a)(1) (Definition of force-placed insurance), the qualifying word ("unless") and the grammatical structure of 12 C.F.R. § 1024.37(b).

(iii) Prefatory-Materials Canon. Under the Prefatory-Materials Canon, a preamble, purpose clause, or recital is a permissible indicator of meaning. As shown above, in determining the regulatory meaning and interpretation of 12 C.F.R. § 1024.37(b) (Basis for charging borrower for force-placed insurance), the decision completely

ignored the purpose (the remedying of evils) and legislative intent (policy objective) of 12 C.F.R. § 1024.37(b) (Basis for charging borrower for force-placed insurance), as enumerated in 12 U.S.C. § 2601 (Congressional findings and purpose) and in 78 Fed. Reg. 10696, dated February 14, 2013, where the CFPB issued its final rules and official interpretations regarding its Mortgage Servicing Rules under RESPA (i.e., Regulation X – 12 C.F.R. Part 1024).

(iv) Title-and-Headings Canon. Under the Title-and-Headings Canon, the title and headings are permissible indicators of meaning. As shown above, in determining the regulatory meaning and interpretation of 12 C.F.R. § 1024.37(b) (Basis for charging borrower for force-placed insurance), the decision completely ignored the purpose of 12 C.F.R. § 1024.37(b) (Basis for charging borrower for force-placed insurance), as enumerated in the titles to 12 C.F.R. § 1024.37(a)(1) (**Definition of force-placed insurance**) as well as 12 U.S.C. § 2605(k) (**Servicer prohibitions**) and 12 U.S.C. § 2605(l) (**Requirements for force-placed insurance**).

(v) Interpretive-Direction Canon. Under the Interpretive-Direction Canon, **definition sections and interpretation**

**clauses are to be carefully followed.** As shown above, in determining the regulatory meaning and interpretation of 12 C.F.R. § 1024.37(b) (Basis for charging borrower for force-placed insurance), the decision completely ignored 12 C.F.R. § 1024.37(a)(1) (**Definition of force-placed insurance**) as well as 12 U.S.C. § 2605(k) (**Servicer prohibitions**) and 12 U.S.C. § 2605(l) (**Requirements for force-placed insurance**), in violation of the Interpretive-Direction Canon.

(b) *Semantic Canons.*

(i) Ordinary-Meaning Canon. Under the Ordinary-Meaning Canon, words are to be understood in their ordinary, everyday meanings – unless the context indicates that they bear a technical sense. As shown above, in determining the regulatory meaning and interpretation of 12 C.F.R. § 1024.37(b) (Basis for charging borrower for force-placed insurance), the decision ignored the plain meaning of the words of the regulation and statute, in favor of its own judicial construction, even though the texts of the regulation and statute, as a whole, including, in particular, 12 C.F.R. § 1024.37(a)(1)&(b) and 12 U.S.C. § 2605(k)&(l), are clear and unambiguous.

(ii) Omitted-Case Canon. Under the Omitted-Case Canon, nothing is to be added to what the text states or reasonably implies (*casus omissus pro omisso habendus est*). That is, a matter that is not covered, is to be treated as not covered. As shown above, in determining the regulatory meaning and interpretation of 12 C.F.R. § 1024.37(b) (Basis for charging borrower for force-placed insurance), the decision ignored the plain meaning of the words of the regulation, adding and subtracting words in favor of its own judicial construction.

(iii) Negative-Implication Canon. Under the Negative-Implication Canon, the expression of one thing implies the exclusion of others (*expressio unius est exclusio alterius*). As shown above, in determining the regulatory meaning and interpretation of 12 C.F.R. § 1024.37(b) (Basis for charging borrower for force-placed insurance), the decision completely ignored the grammatical structure of 12 C.F.R. § 1024.37(b) (Basis for charging borrower for force-placed insurance), which carved out an exception (using the term "unless") to the mandatory prohibition [Congress used "shall not" in 12 U.S.C. § 2605(k) (Servicer prohibitions)] for a servicer to assess a

premium charge or fee related to force-placed insurance on a borrower.

(iv) Mandatory/Permissive Canon. Under the Mandatory/Permissive Canon, mandatory words impose a duty; permissive words grant discretion. As shown above, in determining the regulatory meaning and interpretation of 12 C.F.R. § 1024.37(b) (Basis for charging borrower for force-placed insurance), the decision completely ignored the Congressional mandate that a servicer (1) "**shall not obtain force-placed hazard insurance** unless . . . " [12 U.S.C. § 2605(k)] and "**shall not be construed as having a reasonable basis for obtaining force-placed insurance** unless . . . " [12 U.S.C. § 2605(l)].

(c) *Syntactic Canons.*

(i) Proviso Canon. Under the Proviso Canon, a proviso conditions the principal matter that it qualifies – almost always the matter immediately preceding. As shown above, in determining the regulatory meaning and interpretation of 12 C.F.R. § 1024.37(b) (Basis for charging borrower for force-placed insurance), the decision interpreted 12 C.F.R. § 1024.37(b) (Basis for charging borrower for force-placed insurance)

by ignoring the provisos (beginning with "unless") in C.F.R. § 1024.37(b) [a servicer "**may not ('shall not' under 12 U.S.C. § 2605(k) (servicer prohibitions)) assess on a borrower a** premium charge or **fee related to force-placed insurance (as defined in C.F.R. § 1024.37(a)(1))** unless . . . "]; 12 U.S.C. § 2605(k) [a servicer "**shall not obtain force-placed hazard insurance** unless . . . " 12 U.S.C. § 2605(k)]; and 12 U.S.C. § 2605(l) [a servicer "**shall not be construed as having a reasonable basis for obtaining force-placed insurance** unless . . . " 12 U.S.C. § 2605(l)], thereby violating the Proviso Canon.

(d) *Expected-meaning Canons.*

(i) Constitutional-Doubt Canon. Under the Constitutional-Doubt Canon, a statute should be interpreted in a way that avoids placing its constitutionality in doubt. As shown below, in determining the regulatory meaning and interpretation of 12 C.F.R. § 1024.37(b) (Basis for charging borrower for force-placed insurance), the decision interpreted 12 C.F.R. § 1024.37(b) (Basis for charging borrower for force-placed insurance) in a way that (1) decreased protections for borrowers (e.g., Johnson) to avoid unwarranted

force-placed insurance coverage and (2) increased a servicer's (e.g., PennyMac's) legal authority [i.e., under 12 C.F.R. § 1024.37(b), **"force-placed insurance [is] reasonable" only if the servicer had a reasonable basis for believing insurance was required under the terms of the Mortgage Loan**] to take said borrower's property without just compensation, an unconstitutional Fifth Amendment (through the Fourteenth Amendment) Taking, thereby defeating and impairing the purpose of the statute.

(ii) *In pari materia* – Related-Statutes Canon. Under the Related-Statutes Canon, statutes *in pari materia* are to be interpreted together, as though they were one law. *Coppola v. Wells Fargo Bank, N.A.* (In re Coppola), 596 B.R. 140, 2018 Bankr. LEXIS 3383 (Bankr. D.N.J. 2018). As shown above, in determining the regulatory meaning and interpretation of 12 C.F.R. § 1024.37(b) (Basis for charging borrower for force-placed insurance), the decision completely ignored 12 C.F.R. § 1024.37(a)(1) (Definition of force-placed insurance) as well as 12 U.S.C. § 2605(k) (Servicer prohibitions) and 12 U.S.C. § 2605(l) (Requirements for force-placed insurance), all of which should have been interpreted and harmonized together, *in pari materia.*

**The decision's unique judicial construction of 12 C.F.R. § 1024.37(b) has the effect of Taking the borrower's property without just compensation, which is an unconstitutional Fifth Amendment (through the Fourteenth Amendment) Taking**

A borrower has "in rem rights" only in the real estate (i.e., *Property*) that is described as security in the Deed of Trust. *Henriquez v. Green Tree Servicing, LLC (In re Henriquez)*, 536 B.R. 341, 348 (Bankr. N.D. Ga. 2015); *Thomas v. Seterus Inc. (In re Thomas)*, 554 B.R. 512 (2016). Under 12 C.F.R. § 1024.37(a)(1) (Definition of force-placed insurance), force-placed insurance is defined as "**hazard** insurance **obtained by a servicer** on behalf of the owner or assignee of a mortgage loan **that insures the property securing such loan.**" Bold added.

With regard to the rendered decision of the North Carolina Court of Appeals, such decision's perverse judicial construction of 12 C.F.R. § 1024.37(b), as discussed above, **has the effect of increasing a servicer's (e.g., PennyMac's) legal authority to unilaterally expand the Property securing the loan, if the servicer** [e.g., PennyMac] **merely has a reasonable basis for believing insurance was required under the terms of the Mortgage Loan,** thereby TAKING said borrower's [e.g., Johnson's] property without just compensation, which is an unconstitutional Fifth Amendment (through the Fourteenth Amendment) TAKING.

**The decision's perverse judicial construction of 12 C.F.R. § 1024.37(b) exists because state courts may disregard all precedents from federal courts, except the U.S. Supreme Court**

With regard to the unique judicial construction of 12 C.F.R. § 1024.37(b) by the rendered decision of the North Carolina Court of Appeals, as discussed above, such a perverse construction of a federal statute exists because, as a general rule, decisions by federal District Courts and Circuit Courts of Appeal are not considered binding precedents by state courts. **Supreme Court justices have opined that states may disregard all precedent from the federal courts, except the Supreme Court. For example, in a concurring opinion in *Lockhart v. Fretwell*, 506 U.S. 364 (1999), Justice Clarence Thomas stated:**

> "The Supremacy Clause demands that state law yield to federal law, but **neither federal supremacy nor any other principle of federal law requires that a state court's interpretation of federal law give way to a (lower) federal court's interpretation.** In our federal system, a state trial court's interpretation of federal law is no less authoritative than that of the federal court of appeals in whose circuit the trial court is located. See *Steffel* v. *Thompson*, 415 U.S. 452, 482, n. 3, 39 L. Ed. 2d 505, 94 S. Ct. 1209 (1974) (REHNQUIST, J., concurring); *United States ex rel. Lawrence* v. *Woods*, 432 F.2d 1072, 1075-1076 (CA7 1970), cert. denied, 402 U.S. 983, 29 L. Ed. 2d 148, 91 S. Ct. 1658 (1971); Shapiro, State Courts and Federal Declaratory Judgments, 74 Nw. U. L. Rev. 759, 771, 774 (1979)." Bold added. *Lockhart v. Fretwell*, 506 U.S. 364, 376, 113 S. Ct. 838, 846, 122 L. Ed. 2d 180, 193, 1993 U.S. LEXIS 1016, *21, 61 U.S.L.W. 4155, 93 Cal. Daily Op. Service 524, 93 Daily Journal DAR 1017, 6 Fla. L. Weekly Fed. S 912 (U.S. January 25, 1993).

Accordingly, the only remedy to the perverse unconstitutional judicial construction of 12 C.F.R. § 1024.37(b) by the rendered decision of the North Carolina Court of Appeals is resort to the U.S. Supreme Court. As this Supreme Court has held in *James v. City of Boise.* 577 U.S. 306 (1916):

> "'It is this Court's responsibility to say what a [federal] statute means, and once the Court has spoken, it is the duty of other courts to respect that understanding of the governing rule of law.' *Nitro-Lift Technologies, L.L.C.* v. *Howard*, 568 U. S. 17, 21, 133 S. Ct. 500, 184 L. Ed. 2d 328, 333 (2012) (*per curiam*) (quoting *Rivers* v. *Roadway Express, Inc.*, 511 U. S. 298, 312, 114 S. Ct. 1510, 128 L. Ed. 2d 274 (1994) internal quotation marks omitted). And for good reason. As Justice Story explained 200 years ago, **if state courts were permitted to disregard this Court's rulings on federal law, 'the laws, the treaties, and the constitution of the United States would be different in different states, and might, perhaps, never have precisely the same construction, obligation, or efficacy, in any two states. The public mischiefs that would attend such a state of things would be truly deplorable.'** *Martin* v. *Hunter's Lessee*, 14 U.S. 304, 1 Wheat. 304, 348, 4 L. Ed. 97 (1816)." Bold added. *James v. City of Boise*, 577 U.S. 306, 307, 136 S. Ct. 685, 686, 193 L. Ed. 2d 694, 694-695, 2016 U.S. LEXIS 947, *2, 84 U.S.L.W. 4099, 25 Fla. L. Weekly Fed. S 610 (U.S. January 25, 2016).

**QUESTION #2:**

A RENDERED DECISION OF THE NORTH CAROLINA COURT OF APPEALS HAS COMMITTED REVERSIBLE ERROR BY VIOLATING THE SUPREME COURT'S MANDATE UNDER ITS *CHEVRON* DOCTRINE, IN THAT SUCH DECISION HAS INTENTIONALLY APPLIED 12 C.F.R. § 1024.37(b) TO THE FACTS OF THE INSTANT CASE, WITHOUT CONSIDERING THE EFFECTS OF EITHER (1) 12 C.F.R. § 1024.37(a)(1) OR (2) THE LEGISLATIVE HISTORY, INTENT AND MEANING OF 12 U.S.C. § 2605(k), THEREBY EFFECTUATING A TAKING OF JOHNSON'S PROPERTY PURSUANT TO U.S. CONST. AMEND, V & XIV, ALL OF WHICH PROMPTS THE EXERCISE OF THE SUPREME COURT'S POWER OF SUPERVISION TO ENSURE THE INTEGRITY AND UNIFORMITY OF FEDERAL LAW

In the instant case, the rendered decision of the North Carolina Court of Appeals violated the Supreme Court's mandate under its *Chevron* Doctrine. In particular, in determining under what exceptional circumstances PennyMac is allowed (a) to obtain lender force-placed insurance [as defined in 12 U.S.C. § 2605(k)(2)], pursuant to 12 U.S.C. § 2605(k)(1)(A), and (b) charge Johnson with the "cost" thereof, such decision erroneously gave complete deference, purportedly under *Chevron*, to 12 C.F.R. § 1024.37(b), while, at the same time, completely ignoring (i) 12 C.F.R. § 1024.37(a)(1) (Definition of force-placed insurance) and (ii) the legislative history, intent and meaning of 12 U.S.C. § 2605(k) (Servicer prohibitions), both of which directly address that specific issue at bar.

But moreover, in applying the decision's regulatory meaning and interpretation of 12 C.F.R. § 1024.37(b) (Basis for charging borrower for force-placed insurance) to the facts of the instant case, the decision's perverse judicial construction of 12 C.F.R. § 1024.37(b) **had the effect of increasing PennyMac's legal authority to unilaterally expand the Property securing the loan described in the Deed of Trust to include not only Lots 13,15&17, but also Lots 16,&18, since the trial court concluded that PennyMac had a reasonable basis for believing insurance was required under the terms of the Mortgage Loan,** thereby TAKING Johnson's property (i.e., Lots, 16&18) without just compensation, which is an unconstitutional Fifth Amendment (through the Fourteenth Amendment) TAKING.

## CONCLUSION

Both the U.S. Constitution's framers and the U.S. Supreme Court have stressed that the articulation of nationally uniform interpretations of federal law is an important objective of the federal adjudicatory process. The U.S. Supreme Court always has been assumed to be the primary guardian of this uniformity. But also, "[u]pon the State courts . . . rests the obligation to guard, enforce, and protect every right granted or secured by the Constitution of the United States and the laws made in pursuance thereof, whenever those rights are involved in any suit or proceeding before them." *Robb v. Connolly*, 111 U.S. 624, 637 (1884).

However, in federal statutory interpretation cases heard in state courts, state courts aggressively assert their independent role in interpreting federal statutes. Without a federal "law" of statutory/regulatory interpretation handed down by the U.S. Supreme Court (which would bind state courts under the Supremacy Clause), most state courts feel free to select from a wide array of interpretive principles. As a result, state and federal courts can reach different interpretations of the same federal statute based on different chosen rules of interpretation. Furthermore, because the state courts are coordinate (not inferior) to federal courts on matters of federal law, state courts have no obligation to harmonize their interpretive choices with decisions of federal courts, **resulting in intentional disuniformity.**

In the instant case, for example, purposeful and intentional disregard for the definition of "force-placed insurance" by the rendered decision of the North Carolina Court of Appeals resulted in a conclusion of law that was diametrically opposed to the legislative history, intent and meaning of 12 U.S.C. § 2605(k) (Servicer prohibitions) and 12 U.S.C. § 2605(l) (Requirements for force-placed insurance). **On this basis, Johnson argues that the Supreme Court should grant the instant Petition. But further, Johnson argues that THE SUPREME COURT SHOULD CONSIDER ABOLISHING THE *CHEVRON* DOCTRINE, ALTOGETHER. Instead, Johnson argues that THE SUPREME COURT SHOULD CONSIDER MANDATING THAT LOWER COURTS MUST READ FEDERAL AGENCY REGULATORY LAW AND THE ASSOCIATED FEDERAL STATUTORY LAW TOGETHER IN ALL CASES.**

Respectfully submitted,

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