No. 17-1601

IN THE

Supreme Court of the United States

NICOLE BARONE,

Petitioner,

v.

WELLS FARGO BANK N.A.,

Respondent.

On Petition for a Writ of Certiorari to the Florida Supreme Court

PETITION FOR REHEARING

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PETITION FOR REHEARING

Pursuant to Rule 44 of this Court, Nicole Barone respectfully petitions for rehearing of this case to a full nine-member Court, to call the Court's attention to material developments that occurred after filing of the petition for writ of certiorari. This new evidence has a conspicuous effect on the totality of this case and should affect this Court's consideration. Therefore, Mrs. Barone respectfully moves this Court for an order (1) vacating its October 1st, 2018, order denying her petition for a writ of certiorari, and (2) granting certiorari review.

REASONS FOR GRANTING REHEARING

This case represents the governments unconstitutional involvement and exclusive benefit of the continual wrongful foreclosures committed by Wells Fargo and many of its peers for Fannie Mae and Freddie Mac against millions of Americans and countless Floridians for over a decade. Additionally, it involves numerous unlawful acts by Wells Fargo against Mrs. Barone and her family throughout their pursuit of justice spanning many years and multiple proceedings. She brought her petition to this Court in hope that these overhanging issues of great public importance would be properly addressed and Justice would finally be served. She advised this Court of all of the misdoings by Wells Fargo and its representatives involved herein and therein her spouse's state and federal RICO actions involving this foreclosure. This Court was advised that this case has yet to receive a written legal opinion utilizing controlling law with precedential cases to back up the foreclosure Court's or the 4th DCA's decisions.[1] Unfortunately, this Court ordered a denial adding to this continual lack of substantiation. The fact that the Court made this decision with an unfilled chair (only eight members participated) and lacking new substantial, material and/or controlling evidence presented herein, is actionable in upholding this Court's Constitutional directives to promote justice and prevent manifest injustices. (See *Ambler v. Whipple*, 90 U.S. 278, 282 (1875)) *("[If] the omissions in the transcript on which the case was heard are material to the decision of the case, it presents a strong appeal for reargument.")*. (emphasis added).

I. Wells Fargo's Recent Admittance of Committing Wrongful Foreclosures By Way of an Alleged "Glitch" and Withholding Knowledge of Such From the Courts as Far Back as 2015, Wells Fargo's Unscrupulous Service of Federal Appeals Court Documents, and a Recent Multi-Billion Dollar MBS Settlement

Late on Friday August 3rd, 2018, Wells Fargo admitted to committing hundreds of wrongful foreclosures by way of an alleged "glitch" in its software that caused miscalculations and wrongful denials of modifications, substantiating the Barone's previous claims of such throughout all litigations.[2] Although, the alleged excuse

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[1] The Florida Supreme Court on November 29th, 2017 supplied case law to support its questionably unconstitutional reasoning for non-review of a non-opinioned 4th DCA order on October 26th. The trial Court's un-opinioned denial of vacatur was entered on April 19th.

[2] See *James Rufus Koren, "Wells Fargo foreclosed on 400 people who may have had a chance to keep their homes"*, Los Angeles Times,

of a "glitch" is far from the facts outlined within the denied petition and further substantiated by countless homeowner complaints and the government official who was in charge of overseeing Wells Fargo's and its peers unsatisfactory modification efforts in relation to TARP.[3] Petitioner believes Wells Fargo's admitted number of hundreds to be irresponsibly inadequate of the actual total number of American family's affected, and the details of the admission are eerily similar to the claims herein, which warrants the attention of this Court for proper adjudication. Many questions remain unanswered over this admission, including what software failed? Who created the software? Who holds the patents and rights to such software? What was the purpose of the software? Why did it fail? Who was in charge of monitoring its results and maintenance? How come the failures were not caught and corrected if properly monitored? Was the software disclosed to and inspected by government regulators, including the SEC since it consisted of millions of undisclosed MBS transactions that were actually securities transactions and not conventional mortgages? Why did Wells Fargo wait 3 years to divulge this information? and why has Wells Fargo failed to properly advise the Courts, including herein, by knowingly withholding material evidence of the possibility and/or acknowledgement of involvement of homeowners' properties?

Additionally, Wells Fargo sent a letter to Mrs. Barone dated August 6th, the Monday following its late Fri-

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August 3, 2018, *Available at http://www.latimes.com/business/la-fi-wells-fargo-foreclosures-20180803-story.html*

[3] See *Neil Barofsky*, ex- S.I.G. for TARP, book, *BAILOUT*, Ch. 8, *"Foaming the Runway"*

day admission, advising that it has sent corrected payment information to the credit bureaus on her behalf, ***"After the foreclosure on your mortgage was cancelled".*** (emphasis added) (*See* Appx. A1.). No further elaboration of such was proffered, only a rude advisement by Wells Fargo's representative to stop calling because of current litigation. The alleged "glitch" and the cancelled foreclosure advisement occurred while this case was under this Court's jurisdiction, and Wells Fargo failed to advise the Court by knowingly withholding this material information that surely would have had impact on its decision to deny the petition and/or to order the wrongful judgement vacated upon foreclosure cancellation. The judgement must be vacated due to the cancellation of the foreclosure, which is proper.

As noted herein and within the petition, due to the numerous unlawful acts Wells Fargo inflicted unto the Barone's, questionable actions by the Courts and the unwillingness to hold Wells Fargo accountable, Mr.

Barone took action within state and federal RICO proceedings. After docketing of her petition for a writ of certiorari herein, and her spouse making known that he was preparing to file a petition for a writ of certiorari with this Court for his state RICO action, Wells Fargo and its elite legal counsel attempted to scare the Barone's with an inexcusable method of document service within his federal RICO action. The document served in a suspicious package and in a completely unprofessional manner was an appendix. It was served in a makeshift and damaged reused retail box with the original advertiser scribbled out, it was much larger than the contents, and most heinously contained no sender information. This is not the way documents have been served upon the Barone's numerous times over the years from these parties, nor are documents served by these parties in this manner in the regular course of conducting business, especially upon legal professionals, and most especially within federal Courts. This is a clear continuation of abuse of the Barone's as *Pro Se* litigants and it cannot be just excused by the Courts, including this Court. Mrs. Barone can supply substantiating proof of this suspicious package, including pictures that speak volumes, upon request by the Court.[4] This Court can also view this information and a few of the pictures within her spouse's federal RICO action currently on appeal within the Eleventh Circuit *Barone v. Wells Fargo Bank, N.A.*, 18-11272-CC.

Furthermore, on August 1st, 2018, Wells Fargo in a continuation of the past few years of settlements for wrongdoings, settled with the DOJ for MBS securities for over 2 Billion dollars.[5] The DOJ alleged that Wells Fargo lied about the quality of mortgages which mislead investors. Wells Fargo's numerous wrongdoings, including its undisclosed MBS transactions, mismanagement of homeowners' accounts and property it utilized to mislead investors, its secret rehypothecations, default insurances and derivatives (CDS & CDOs), leave this Court with the crucial task of upholding the Constitution for millions of American homeowners unlawfully removed from their homes with many living on the streets in deep poverty. Especially because the proceeds

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[4] Mrs. Barone is unaware if she is allowed to attach such pictures to this filing, but will make them available upon Court request.

[5] See *Ben Lane, "Wells Fargo to pay $2 Billion for allegedly lying about subprime mortgages"*, HousingWire on HousingWire.com, August 1, 2018, *Available at* https://www.housingwire.com/articles/46335-wells-fargo-to-pay-2-billion-for-allegedly-lying-about-subprime-mortgages

from many of these unlawful foreclosures have been taken from the GSEs by the government through the Net Worth Sweep.

If this Court were to allow Wells Fargo to continue its wrongful foreclosures to enrich itself and hold onto these unjust benefits received by fraud tied to countless Americans Constitutionally protected property, and that paid off the mortgage note balances many times over, it would have dire impact on our Constitutional society. These issues are not as simple as to be continually pushed aside, these vital issues call into question the existence of the Constitution and this Court's and its inferior siblings' purpose in protecting it and Americans from all who encroach, including the government and influential corporations like Wells Fargo.

III. Recent Federal Court Ruling That Properly and Directly Addresses the Issues Presented Within the Petition For Writ of Certiorari

After the petition for writ of certiorari was docketed, on August 2nd, 2018, a federal district Court in *Sisti v. Federal Housing Finance Agency*, 2018 WL 3655578 (D.R.I. Aug. 2, 2018) properly utilized this Court's direction agreeing with the arguments presented herein of Fannie Mae's *de facto* State-actor "practical reality" status within *Dept. of Transportation v. Assoc. of American Railroads,* 135 S. Ct. 1225 (2015) and within its predecessor *Lebron v. National Railroad Passenger Corp.*, 513 U.S. 374, 115 S. Ct. 961, 130 L. Ed. 2d 902 (1995).[6] This finding of State-actor status correctly follows the

[6] https://ecf.rid.uscourts.gov/cgi-bin/show_public_doc?2017cv0005-39

direction of this Court and directly addresses and impacts this case and millions of Americans wrongful foreclosures for over a decade. The district Court's decision is clearly in line with this Court's direction within the arguments presented herein this case, and further substantiates the need for this Court to address the remaining wrongful interpretations still muddying up the system of justice.

If this Court were to allow these clear misapplications of law to stand, it would further gross manifest injustices violating millions of Americans Constitutional rights, homeowners and shareholders alike. This issue clearly needs to be addressed by this Court, as it not only affects the lives of millions of homeowners and shareholders, it impacts every American citizen. Unless this Court resolves these issues in a precedential manner, issues of great public importance will be further ignored and unconstitutional non-opinioned/non-cited orders of a state's Courts would set wrongful precedent for matters involving the government and violations of the Constitutional rights of all Americans. If this Court allows these issues to continue to spoil the sanctity of the justice system, the very fabric of our Constitutional laws will be further eroded leading us down the path of continued lawlessness through elitist protectionism at the grave cost of our inherent and God given rights as Americans.

CONCLUSION

For the forgoing reasons, the petition for rehearing should be granted.

Respectfully submitted,

By: ______________________

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October 20th, 2018

CERTIFICATE OF PRO SE PARTY

I hereby certify that this petition for rehearing is presented in good faith and not for delay.

On October 20th, 2018

By: Nicole Barone

Nicole Barone
Pro Se Petitioner

Additional material from this filing is available in the Clerk's Office.