No. 17-7144

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

Supreme Court, U.S.
FILED
DEC 05 2017
OFFICE OF THE CLERK

RACHEL ALISHA WINDHAM,

Petitioner

V.

HARMON LAW OFFICES, PC, JP MORGAN CHASE BANK, NA

Respondents

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

PETITION FOR A WRIT OF CERTIORARI

Rachel A. Windham, pro se

Nom de Guerre

207 North Street

Randolph, MA 02368

(857) 998-7446 rwindham29@hotmail.com

QUESTIONS PRESENTED

1. Whether the First Circuit Court of Appeals violated the Petitioner's Fourteenth Amendment right under the Due Process Clause By refusing to recuse themselves despite having a significant pecuniary interest in the case?

2. Whether the Supreme Court of the District of Massachusetts erred in instructing J.P. Morgan Chase and Harmon Law Offices to continue with foreclosure proceedings against the Plaintiff and ultimately permitting them to ignore the most basic State and Federal procedural foreclosure practices, especially having been provided proof that JP Morgan Chase has already been compensated the full par value of the home by way of filing a false claim for total loss with HUD?

3. Did the Supreme Court of the United States for the district of Massachusetts err in its decision that the foreclosure mill, Harmon Law Offices, P.C. is not a debt collector, and should not be held liable for egregious violations to the FDCPA, in contradiction to the national precedent?

PARTIES TO THE PROCEEDINGS

The Petitioner is Rachel Alisha Windham, *pro se,* a resident of Massachusetts. The Respondents, JP Morgan Chase Bank, NA, is a corporation under the laws of the state of Delaware, incorporated under CT CORPORATION SYSTEMS, 1209 North Orange Street, Wilmington, DE, with its principal place of business located at 277 Park Avenue, New York, NY 10017. J.P. Morgan Chase is represented by Jeffrey D. Adams, Esq. of Parker Ibrahim & Berg, LLC, One Financial Center, 15th Floor Boston, MA 02111. Harmon Law Offices, PC is a corporation under the laws of Massachusetts, incorporated in Massachusetts, its principal place of business being 150 California Street, Newton, MA 02458, and is represented by Robert M. Mendillo, Esq. of Harmon Law Offices.

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Petitioner, Rachel A. Windham, pro se, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this case.

OPINIONS BELOW

The Judgement and denial without opinion of The First Circuit Court of Appeals (16-1547), is unreported, and appears at Appendix of this writ. The order of denial without opinion of Plaintiff's Petition for Rehearing EnBanc is unpublished and appears at Appendix. The opinion of the Supreme Court for the District of Massachusetts is unpublished (1:2015-cv-12809) and appears at Appendix of this Petition .

JURISDICTION

The judgment of the court of appeals was entered on July 13, 2017, and a timely petition for panel rehearing and rehearing en banc was denied on September 8, 2017. This Petition for Writ of Certiorari is timely filed under Rule 33.2. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent Constitutional, Provisional, Regulatory and Statutory Provisions are reproduced in the appendix to this petition.

STATEMENT OF THE CASE

This case concerns an important Fourteenth Amendment question, as well as seeks to clarify precedence as there is a true controversy at law relative to internal court conflicts as well as national importance of the findings of this case not only to the Petitioner, but to all others similarly situated nationwide, and is of the upmost Public Interest. The Plaintiff has been seeking due process and judicial relief regarding this matter since 2013, when the Plaintiff's mortgage was dual tracked, and she was mislead to believe in good faith that her application for a remodification was pending, JP Morgan Chase and Harmon Law Office conspired to foreclose on the Plaintiff's property. When the Plaintiff became aware of the fact that she had been deceived, she promptly requested a Real Estate Settlement Act report from JP Morgan Chase Bank NA pursuant to 12 USC 2601, et seq. While awaiting the RESPA, the Plaintiff filed FOIA requests from The Department of Housing and Urban Development, USDA and FHA online seeking information as to how JP Morgan Chase was allowed to foreclose without attempting in good faith to resolve the issue, and what checks and measures the government had in place, if any, to avoid having homeowners misled into thinking their modifications were pending, whilst moving simultaneously to auction off their property. After waiting three weeks, the Plaintiff made follow up phone calls to both FHA AND HUD, checking the status of her loan, and what options she had available to her since her request for a partial claim option had been denied by the bank as well as checking the status of her FOIA requests. The Plaintiff was informed by both agencies, separately but on the same day that her loan was no longer in the system as the total loss claim had already been paid to the lender, JP Morgan Chase Bank, NA. Later the same day, the Plaintiff did receive the RESPA which she requested from JP Morgan Chase which contained a detailed itemized ledger of her account which further confirmed and evidenced the date and dollar amount previously given to her via telephone by HUD and FHA. The Plaintiff then promptly contacted Eugene McGirt from HUD again seeking either a photocopy of the check cashed by JP Morgan Chase or record of an electronic transfer of funds evidencing the total loss claim payout associated with her mortgage, and was told that the lender would not release the information. The Plaintiff pleaded with Mr. McGirt, who had stated that his official title was Attorney McGirt and he was a legal representative for HUD, and he responded by stating that he would lose his job if he was to supply the Plaintiff with the information. The Plaintiff then promptly filed Civil Action 1:13-cv-11371 on 06/07/13, along with complaints with Attorney General Martha Coakley, Massachusetts State Attorney Carmen Ortiz, Norfolk County District Attorney Michael Morrissey's office, Secretary of State William Galvin, The Federal Bureau of Investigation, The

Office of The Inspector General, Consumer Financial Protection Bureau, President Obama's Financial Fraud Enforcement Task Force, FDIC and the Department of the Treasury. The civil complaint was ultimately dismissed 12/18/14 for lack of evidence, namely proof of total loss claim payment by The Department of Housing and Urban Development to JP Morgan Chase Bank NA. The Plaintiff then filed Civil Action 14-14069 JGD against The Department of Housing and Urban Development for FOIA

11/04/14, and seeking specifically, to compel HUD by way of Writ of Mandamus to release telephone records, which do exist by HUD's own admission documenting the conversations held between the Plaintiff and Mr. McGirt. The honorable Judge Judith Dein ultimately dismissed the case 10/19/15, deciding that HUD had met its minimum requirements of a reasonable search for

pertinent information evidencing the total loss claim payout.In March 2015, the Plaintiff, by way of direct email to Mr. Jamie Dimon, President and CEO of JP Morgan Chase Bank, NA entered into a cease and desist agreement wherein JP Morgan Chase was instructed to cease and desist all foreclosure actions, as well as any and all communication with Ms. Windham. In June 2015, the Plaintiff discovered that a foreclosure auction was scheduled to take place on her property two weeks later through a public notice printed in the Randolph Herald. On 06/24/15, Plaintiff filed complaint for emergency injunctive relief against Harmon Law Offices (1:15-cv-12809). Plaintiff was informed by the Honorable Judge F. Dennis Saylor IV that Harmon Law Office was the incorrect party to seek injunctive relief against. On July 8, 2015, Plaintiff submitted Amended Complaint seeking injunctive relief against JP Morgan Chase Bank, NA, and on January 7, 2016, Judge Saylor allowed Harmon Law Offices' motion to dismiss, stating that they are not liable for claims under FRCP, as he did not consider Harmon a collections agency, despite the fact that every correspondence previously received by the Plaintiff included the phrase "THIS IS AN ATTEMPT TO COLLECT A DEBT". Also dismissed without discussion was the fact that it is a regular practice of Harmon Law Office to use letters drafted on their premises using the Department of Housing and Urban Development logo without the explicit permission of HUD. The plaintiff motioned the court to amend her complaint after the status conference as the Honorable Judge Saylor said that he would be making a decision based on the papers, and the Plaintiff's original complaint was in the form of a request for injunctive relief. The Honorable Judge Saylor ultimately denied the Plaintiff's motion for leave to amend on 04/25/2016, and allowed JP Morgan Chase's motion to dismiss, and inviting JP Morgan Chase and Harmon to "pick up where they left off" in the foreclosure process, citing res judicata against all issues brought up in the case with The Honorable William G. Young, although the Plaintiff stated in her writings that any references made to that case were for background purposes only. On 05/06/2016, the Plaintiff filed a Notice of Appeal with the First Circuit Court of Appeals. 05/18/2016, the case was docketed (16-1547) and the Appellant's brief was timely filed 07/11/2016. On 08/31/2016, the case was submitted to Panel and Justices William Kayatta, O'Rogeriee Thompson, and Chief Justice Jeffrey Howard were assigned to the case. Immediately upon the discovery of assignment of Appellate Panel, the Plaintiff conducted research pertaining to the Judicial Financial Disclosures with information that was immediately available, it was discovered that all three Justices on the panel had a financial interest in the case in various forms including, but not limited to, stock holding, credit cards, and residential mortgage notes under JP Morgan Chase. Because the Appellant only had 14 days in which to motion to recuse upon discovery of the Appellate Panel, and, had she followed the status quo and officially requested Judicial Financial Disclosure forms for each of the Justices, it would have taken (at minimum) 3-6 months to receive official reports, in which time the panel could have easily disposed of the Plaintiff's case, and leaving the Plaintiff with no form of redress due to time constraints that seem to be set up for failure. In a brief review of similarly situated cases, the Appellant found that, although the Justices held a significant pecuniary interest in the cases heard, they were quickly denied. On 09/06/16, Appellant filed a motion for recusal for the Appellate Panel with exhibits, which were conditionally sealed for over 6 months. 05/30/2017, the Motion for Recusal was denied, with no opinion (see Exhibit). 06/06/2017, the Plaintiff filed a Petition for Writ of Mandamus to Compel judicial officers to perform a clear ministerial duty, exercise discretion, and correct an abuse of discretion by judicial officers. Also on 06/06/2017, Plaintiff filed a Complaint for Judicial Misconduct with The Committee for Judicial Misconduct and Disability, which was accepted and docketed with three separate case numbers given (see Exhibit), and is, as of today, still pending and under review. 07/13/2017, Judgement affirming the District Court's decision was entered 07/13/2017, and the Appellant's Petition for Writ of Mandamus was "construed" as a motion for reconsideration and was denied by same order. 07/27/2017, Appellant filed Motion for Rehearing En Banc. 09/08/2017, a panel of 5 judges for the First Circuit Court of Appeals, three of whom were the original Justices assigned to this case, namely, Chief Judge Jeffrey Howard, Judge William Kayatta, and Judge O'Rogeriee Thompson. Of the other three justices who were a party to the decision to hear the Appellant's case En Banc, two of the remaining three recused themselves from the decision, namely Judge Sandra Lynch and Judge David Barron. Unremarkably, the denial of the Appellant's motion for Rehearing EnBanc was denied as a majority of the judges voted against hearing the case EnBanc.

REASONS FOR GRANTING CERTIORARI

THE COURT'S DECISION IS IN CONFLICT WITH LOCAL AND CONSTITUTIONAL LAW

This case raises the important constitutional question of whether foreclosures that do not strictly adhere to local and federal law should be allowed to continue, and if JP Morgan Chase has violated the terms of the power of sale clause of the mortgage, on what grounds do they purport to initiate foreclosure actions of any kind against the Plaintiff? If foreclosure mills such as Harmon are allowed to forge signatures and operate under the guise of HUD, and if their actions, are prima facie fraudulent meeting the definition of a debt-collector, they should not be excused from following federal and state consumer protection laws. And more appropriately, who, if not this Honorable court will protect the public when the Defendants are given complete freedom in the Registry of Deeds to alter, change or amend the records without supervision?

This case involves illegal foreclosure actions brought upon Petitioner, Rachel A Windham by Harmon Law Office, acting in a nominee capacity as defined by CJS(The Corpus Juris Secundum) defines a nominee as "One designated to act for another as his representative in a rather limited sense. It has no connotation, however other than that of acting for another in representation of another or as the grantee of another, and it's commonly excepted meaning the term connotes the delegation of authority to the nominee in a representative or nominal capacity only and does not connote the transfer or assignment to the nominee of any property in or ownership of the rights of the person nominating him." In this instance J.P. Morgan Chase clearly delegated the responsibilities of a nominee to be bestowed upon Harmon Law Office office for the purpose of conducting a foreclosure sale and auction on the plaintiffs property where they would be acting as not only the attorney to foreclose upon the Plaintiff, but also as the auctioneer. And in this attempted conversion, or reconveyance, defined in the Corpus Juris Secundum 18 CJS "It has been said that a Voluntary Act of the transferor is required to constitute a conveyance. The term has been used as including generally all instruments affecting real estate, and specifically, the execution of a real estate foreclosure sale"- Conveyance is interchangeable with the term Conversion as the "equitable doctrine relating to the change in the character from real to personal or visa versa and as the tortuous act of exercising dominion over another's personal property in denial of, or inconsistent with his rights). Harmon Law Office, acting on the direct order of J.P. Morgan Chase, in complete contravention to a stipulated cease and desist agreement entered into by both parties on or about April 2015. A complaint for emergency injunctive relief seeking to enjoin the foreclosure sale that was set for July 2015, as the Plaintiff had not been served any notice to cure, or notice of the impending Auction of her property prior to discovering the public notice in her local paper, and having been deceived by J.P. Morgan Chase into a false sense of security in the aforementioned cease and desist agreement, all the while ordering a public auction of the Plaintiff's property without notice. Plaintiff believed this Honorable Court to have original subject matter jurisdiction for federal question 28 USC 1331, and 18 USC 1964 (a), which provides, in part, that "The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce". Massachusetts consumer protection law proscribes "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." Mass. Gen. Laws ch. 93A, § 2. The unfair and deceptive practices the Respondents have engaged in reach far beyond the scope of billing or clerical errors, and directly violate 15 USC 1692, (e)(1)(14), False representation that a debt is being collected on behalf of the United States Government, as on Attorney Anita Johnson's direct admission, The Department of Housing and Urban Development did not give Harmon Law Offices permission to use their logo, their name or their letterhead. 18 USC 1692 (b) provides "It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce." The Fifth Circuit held in

Taylor v. Perrin Landry 103F.3d 1232: "The frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, and the extent to which such noncompliance was intentional are factors the court must consider, among other relevant factors in determining the amount of liability in any individual action under the Act. § 1692."

Nonjudicial action to effect dispossession or disablement of property, where there is no present right to the property claimed as enforceable security instrument is a prohibited act, as JP Morgan Chase holds no right to Plaintiffs property in light of the fact they they have already been compensated the par value of the mortgage note. JP Morgan Chase, having caused to be filed upon the Norfolk County Registry of Deeds Affidavits in non-consecutive order purporting to attest to personal knowledge of the Plaintiffs property status as an attempt to back track and attempt to defraud and conceal the fact that the foreclosure was invalid. M.G.L. ch. 244, §35B(f) provides in pertinent part as follows:"Prior to publishing a notice of a foreclosure sale, as required by section 14, the creditor, or if the creditor is not a natural person, an officer or duly authorized agent of the creditor, shall certify compliance with this section in an affidavit based upon a review of the creditor's business records." 05/31/2012, Assignment was filed, 7/23/12 a "Notice to Foreclose Mortgage" was filed, but not until the Plaintiff served a RESPA request and Power of Attorney statement to JP Morgan Chase, did they then on 05/02/13 file an Affidavit, and again on 05/07/15 file an additional Affidavit in the Norfolk County Registry of Deeds. Harmon Law Office has published the Foreclosure and Auction Sale Notice in the Petitioner's hometown newspaper without serving the Petitioner personally prior to doing so in violation of 12 USC 3708, in actual malice with reckless disregard of whether it was false or not.No Civil Servicemember's Notice was published prior to the publishing of the Notice of Auction and Sale, in violation of 50 USC App 501 et. seq. The Petitioner was not sent a Right To Cure Notice 90 Days prior to the scheduling of the foreclosure sale in violation of MGL ch. 244, 35A.

Harmon Law Office is attempting to act on a foreclosure order that has expired, making any foreclosure auction/and or sale void, null and illegal per the attestation of Assistant Chief Registrar of Norfolk County Registry of Deeds, Richard F. Kennedy, upon whom the Petitioner would have sought a sworn affidavit attesting to the same should this case have proceeded to discovery, however the Petitioner was not afforded any opportunity to provide any evidence in the immediate case, in contravention to the Fourteenth Amendment equal protection clause, which provides, in part, "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", as well as the Fifth Amendment due process clause which provides the federal government that no one shall be "deprived of life, liberty or property without due process of law. "

The denial of a claim under 42 USC 1983 was inappropriate, as JP Morgan Chase Bank, NA is a federally chartered financial institution and has multiple governmental contracts in all areas of intrastate trade, and are attempting to foreclose on an FHA insured, HUD secured loan, creating an obligation *In Solido.* Supreme Court has identified specific factors which indicate Congressional intent to create a statutory right of contribution, in line with 18 Corpus Juris Secundum sec. 11, which states in pertinent part: "Right of contribution rests on principles of equity and natural justice".(Supra.2) . Spoken of the Laws codified in the first Magna Carta that " they were intended to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private right and distributive justice.'

The Petitioner asserts that claims arising out of 42 USC 1983 should not have been dismissed for the following reasons: JP Morgan Chase Bank, NA is a governmentally chartered corporation federally and nationally, and operates under contract with FHA, HUD, GNMA, among others, and owes a responsibility to be held accountable to numerous Governmental Control agencies, such as the Office of the Comptroller of the Currency, The Securities Exchange Commission, Office of the Inspector General, and FDIC, among others. JP Morgan Chase Bank, one of the first banks to become a charter member of the New York Clearing House, was allowed to sell government backed bank notes in an agreement with the United States Government, and worked directly with the government to create the Federal Reserve System. JP Morgan Chase additionally regularly files documents pertaining to various stages in the mortgage process within Registry of Deeds offices all over the country, with the assistance of

Civil Servants acting in their state capacity in the aforementioned Registry Departments. JP Morgan Chase also employs collection agencies or law offices similar to Harmon Law Office to use state statutes and the assistance of state officials, in causing documents to be filed upon the Norfolk County Registry of Deeds *In Pari Delicto*, in addition to initiating land court proceedings for the purpose of foreclosure actions including the publication of erroneous public notices in actual malice, and reckless disregard for whether the information being entered was false or not, making them a joint participant in state action, and furthermore, creating a common liability amongst parties as a concurrent negligence of each party involved, acting in concert was a proximate cause of unrepairable injury to the Petitioner." It is established that, under the FDCPA, a debt collector may be found vicariously liable for the conduct of its attorney" (*Newman v. Checkrite California, Inc.* 912 F.Supp. 1354)

By direct extension, the State created, through its negligence, a right or privilege that caused, or could reasonably be caused in the future if not remedied, an unconstitutional violation of the Takings Clause of the 5th Amendment which protects real property, and requires the government and its agencies to pay just compensation when dispossessing a citizen of their property. This very basic equitable doctrine has been respected and adhered to dating as far back as the Magna Carta of 1215, section 52, which outlined a process by which those who had been unlawfully dispossessed of their property rights of restitution against the violator. This is a sound principle, however, the Petitioner believes it is flawed in the sense that no citizen should have to wait until they are completely dispossessed of their property to then attempt to seek retribution and redress, and the citizen stands firm in her right, and is entitled to resist unlawful action as a matter of her right, hence this prayer for relief. Also pertaining to actionable causes covered under 42 USC 1983 is violations of the Dormant Commerce Clause, in addition to Fourteenth Amendment Procedural Due Process Claims, and the Takings Clause of the Fifth Amendment (Horne v. Department of Agriculture) as JP Morgan Chase, being an entity that regularly conducts intrastate, interstate and foreign trade, having not complied with even the most basic procedural state and federal statutes, the Plaintiff requests relief for the claims under the procedural component of the due process clause that prohibits the deprivation of life, liberty, or property without fair procedure. Sir Edward Coke, equated "due process of law" with the "per legem terre" language of Chapter 29 of the Magna Carta. Edward Coke, The Second Part of the Institutes of the Laws of England 50 (1797 ed.).

In the Honorable Judge Saylor's opinion, it was stated that "Chase may, once again, resume its foreclosure proceedings by resetting a foreclosure sale date and following the procedures outlined in Mass. Gen. Laws ch. 244, § 14 (outlining the steps required to provide notice of a foreclosure sale, including publication of public notice." The Petitioner believes that the State and National legislature placed rules governing the form and process of foreclosure as a method to protect homeowners from the very same careless disregard perpetuated by JP Morgan Chase and Harmon Law Office. If lenders and attorney/debt collectors are given freedom to proceed with foreclosure proceedings without strictly adhering to local and federal statutes, it would be extremely detrimental to the public in general, as the victims would be left with virtually no hope of redress. In the immediate case, allowing JP Morgan Chase to "pick up where they left off" would be a violation of the rules governing The Registry of Deeds wherein by the admission of the Assistant Chief Registrar of Norfolk County Registry of Deeds, Richard F. Kennedy, if more than a year has lapsed between the filing of a Notice to Foreclose, which in this case the notice was entered into the registry on 07-23-2012, the lender would have to "start the process all over again". MGL ch244 provides a stringent outline for foreclosing upon a homeowner which includes, in pertinent part, a 90 Day Right To Cure Notice, Civil Servicemembers Filing, Affidavit, and Public Notice for three consecutive weeks.

The Respondents completely disregarded the first three requirements and proceeded to the final step in utter and total violation of MGL statutes, even barring the fact that JP Morgan Chase agreed to cease and desist foreclosure proceedings violating CH93A, and continue to violate the terms of the mortgage contract by tacking on tens of thousands of dollars in litigation fees relating to this case on the Petitioner's mortgage, without judicial instruction to do so.

FORECLOSURE MILLS IN MASSACHUSETTS LIKE HARMON LAW OFFICES SHOULD BE LIABLE FOR VIOLATIONS OF THE FDCPA IN KEEPING WITH NATIONWIDE PRECEDENT

Harmon Law Office and JP Morgan Chase Bank should be held liable for Chapter93A violations, and should not be held above the law. Harmon Law Office regularly engages in the Collection of Debt on behalf of a wide variety of mortgage lenders as evidenced in their correspondence which states in bold, clear language that "THIS IS

AN ATTEMPT TO COLLECT A DEBT". The FDCPA prohibits the use of unfair and unconscionable practices (15 USC 1692f), giving a false impression of the character, amount or legal status of the debt, (15 USC 1692e-2), and using false and deceptive collection methods (15USC 1692(E-10). In attempting to pass off notices originated in their office as being official HUD notices, and in using letterhead purporting to have been sent from HUD and FHA, Harmon Law Office violated 15 USC 1692, (e)(1)(14), False representation that a debt is being collected on behalf of the United States Government. JP Morgan Chase has violated MGL 244 section 15 by breaching the terms of the mortgage contract with the Plaintiff, namely Section 18 page 8 of the FHA Mortgage Contract. The language of the section states "If Lender invokes the statutory power of sale, lender shall mail a copy of the notice of sale to borrower and to any other persons as prescribed by applicable law, in the manner provided by applicable law. Lender shall publish the notice of sale and the property shall be sold in the matter prescribed by applicable law." Congress enacted the FDCPA to " 'eliminate the recurring problem of debt collectors dunning the wrong person or attempting to collect debts which has already paid.' " *Swanson v. Southern Oregon Credit Serv., Inc.,* 869 F.2d 1222, 1225 (9th Cir.1988) (quoting S.Rep. No. 95-382, at 4 (1977), reprinted in 1977 U.S.C.C.A.N. 1695, 1699). "[T]o ensure that debt collectors give consumers adequate information concerning their legal rights," id. (citation omitted), section 1692g(a) requires that the initial communication with a consumer in connection with a debt contain: (1) the amount of the debt; (2) the name of the creditor; (3) a statement that if the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector; (4) a statement that if the consumer disputes the debt, the debt collector will mail the consumer verification of the debt or a copy of a judgment; and (5) a statement that, upon the consumer's written request, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor. "The FTC Act authorizes a civil penalty of up to $10,000 for each violation of the FDCPA. A separate violation occurs every time a prohibited threat or misrepresentation is made, or each time the required validation notice is not provided." (*US v. National Financial Services* 98F3D 131(4th Circuit).

As Harmon Law Office is acting on direct instruction of JP Morgan Chase, Plaintiff contends that both parties should be held equally liable for violations of the FDCPA as opposed to the apparent status quo, which is for each party to point the finger to the other, claiming plausible deniability and liability ultimately falling on no one, leaving the Plaintiff with no due process and no course of redress. This honorable court has the power to prescribe rules and procedure in the interest of justice. From the Plaintiff's own experience, she has been met with hurdles in virtually every form of recourse sought. In speaking with The Attorney General's office, she was told that there was a minimum of 15 identically situated complaints that would have to be received by their office before they would be able to seek litigation against JP Morgan Chase. In contacting the District Attorney's office, the Plaintiff was told that without the direct referral and approval of the Attorney General or the US Attorney's Office, no criminal charges could be explored. In contacting the US Attorney's Office, the Plaintiff was told that first an investigation by the FBI would have to be conducted, and we all know the FBI has much more pressing issues than to investigate the legality of foreclosure actions being taken against a single homeowner.

Per 18 USC 1964, Courts shall have jurisdiction to prevent and restrain violations of section 1962, as well as the power to provide restraints to illegal and unconscionable collection practices covered under the FDCPA. Violation of any provision of Fair Debt Collection Practices Act (FDCPA) entitles consumer to award of actual damages, which may include compensation for emotional distress, without regard to state law requirements that must be established for party to recover for negligent or intentional infliction of emotional distress. Consumer Credit Protection Act, § 813(a), as amended, 15 U.S.C.A. § 1692k(a) (Please see *Maxwell v. Fairbanks Capital Corp.* D.Mass2002 (281 B.R. 101))This Honorable Court also has the power to prevent any further undue harm unto the Plaintiff and her family, as they have already been harassed and threatened, and the Plaintiffs livelihood and only source of financial security has been effectually destroyed by JP Morgan Chase and their investors by sending debt collection henchmen to the Plaintiff's residence on a regular basis, making anonymous threatening phone calls as well as creeping around the back yard of the Plaintiff and taking photos. It has been widely held that generally, Appellant has standing to claim the non-judicial foreclosure attempt wrongful because Harmon Law Office took a beneficial and direct pecuniary interest in the deed of trust of the Petitioner's property as acting as the foreclosing attorney as well as the auctioneer under the same owner/operator as evidenced in the Secretary of State filings, which makes the instrument not merely voidable but void, and whereby they have no legitimate authority to order sale.

This blatant invasion of the Petitioner's legally protected interests would result in identifiable irreversible harm which can easily be traced directly to the foreclosing entity's abusive exercise of the authority purportedly delegated by said fraudulently filed assignment, for the Plaintiff has possession of the only equitable title. Harmon Law Office conducted themselves negligently with lack of due care and intentionally performed illegal acts to aid in their goal of depriving the Petitioner of life, liberty and property in their position of a shadow nominee an undisclosed agent for JP Morgan Chase Bank. Harmon was given the authority to file, amend, change, alter documents within the registry of deeds and dispose of the Plaintiff's property. Harmon Law Office has a prima facie pecuniary interest in the transaction gives efficient cause to fraud. If a transaction bears any badge of fraud, either covertly or openly, it must be stricken down.

The blind assertion that Harmon should not be held liable for any action taken while under contract for JP Morgan Chase as foreclosing counsel because they are just following "orders" is utterly absurd. " Adjudicating against a person, thing, or upon the status of some subject matter, which, wherever and whenever binding upon any person, is binding upon all persons" *Bartero v Real Estate Savings* 10 MO App 78. "Qui facit per alium, facit per se" (he who acts as another, acts as himself) Honorable Justice Oliver Wendell Holmes.

The Sixth Circuit found in *Glazer v. Chase Home Finance* 704F 3d453 2013 that lawyers who initiated a foreclosure are debt collectors subject to FDCPA 15 USC 1692 if they regularly perform this function and should be liable for making false, deceptive or misleading representations in connection to foreclosure. In *Henson v. Santander Consumer USA,* 582 US 2017 (16-349), The Honorable Justice Gorsuch noted : "because the statutory definition of the term "creditor" excludes those who seek to collect a debt obtained "in default," §1692a(4), they contend it again follows as a matter of necessary inference that these persons must qualify as debt collectors." In the present case, there was no ambiguous language in the communication from Harmon Law Office. It stated, contrary to their defense that Harmon was merely enforcing a client's interest, in big bold letters "PLEASE BE ADVISED THAT THIS IS AN ATTEMPT TO COLLECT A DEBT", and even invited the reader to call or visit their website directly to order reinstatement or payoff information. This is more than supporting plausible inference which would qualify Harmon Law Office by virtue of their servicing third party debt, as a debt collector that they are subject to the FDCPA Act under the substantive provisions with respect to all of their collection activities. 15 USC 1692, and locally MGL ch 93A. In *Gammon v. GC Services L.P.*, 27 F.3d 1254, 1257 (7th Cir. 1994) at 27 it is annotated that "The Senate Report accompanying the FDCPA explained that the purpose of the act was "to protect consumers from a host of unfair, harassing, and deceptive debt collection practices without imposing unnecessary restrictions on ethical debt collectors." S.REP. No. 95-382, at 1-2, reprinted in 1977 U.S.Code Cong. & Admin. News 1695, 1696. One of the deceptive practices Congress was concerned about was "impersonating public officials," id., " Citing *Clomon v. Jackson,* 988 F.2d 1314, 1318 (2d Cir. 1993) (the "`least sophisticated debtor standard has . . . been adopted by all federal appellate courts that have considered the issue.'") The Ninth Circuit also agrees to recover damages, a consumer-plaintiff is not required to show intentional conduct on the part of a debt collector. *Russell,* 74 F.3d at 33. Nor must a debtor prove a deceptive act or actual damages. *Baker v. G.C. Services Corp.*, 677 F.2d 775, 779-780 (9th Cir. 1982). The Eighth Circuit held " A violation of any of the FDCPA's prohibitions is actionable regardless of the size of the debt at issue. *Duffy v. Landberg,* 215 F.3d 871, 875 (8th Cir. 2000)." One of the many methods utilized by Harmon Law Office was to send a letter on HUD Letterhead, which upon HUD's own admission was not an authorized use of their logo nor of their letterhead, The Fifth Circuit in *Gammon v. GC Services L.P.,* 27 F.3d found in a similar case that the use of a government agency seal, letterhead and/or envelope in an attempt to frighten or otherwise coerce payment is a violation of U.S.C. § 1692k(b)(1). Concurring is *Lugar v. Edmonston Oil,* 457 US 922, and West v. Atkins 487 US 42,48 holding that a private party can be characterized as a state actor through the use of governmental functions. In contradiction to *Sheriff et. al. v. Gillie et. al.*, 578 US 2016, wherein the party was given leave to freely use the letterhead of the Attorney General, but in this case the Honorable Justice Ruth Bader Ginsburg delivered the opinion for the unanimous Court, which held that, regardless of whether the special counsel are "state officers" under the FDCPA, their use of the Attorney General's letterhead was not materially misleading because it accurately conveyed that the special counsel was tasked with collecting debts on the Attorney General's behalf. Here, Harmon has freely used letterhead of the United States Department of Housing, without permission (an actionable offense under 15 USC 1692, (e)(1)(14), False representation that a debt is being collected on behalf of the United States Government), but are somehow relieved of the responsibility to comply with the statute, and claim not to be debt collectors, and simultaneously relieved of the responsibility to comply with 15 USC 1692, (e)(1)(14), and claim to not perform function under the color of state law. Harmon Law Office does, however regularly file Affidavits within the Massachusetts Registry of Deeds, and regularly file complaints in the Massachusetts Land Courts, all governmental entities utilized by Harmon to effectuate their fraud because they consider themselves to be inviolable since the status quo has thus far been to give them free range within the courts to file erroneous documents, affidavits and pleadings see .MGL ch 183, 5(b), Affidavits relating to title, recording. The state statute is procedurally defective under the Due Process Clause, effectuating a valid cause of action under § 1983. The statutory scheme obviously is the product of state action, and a private party's joint participation with state officials in the seizure of disputed property is sufficient to characterize that party as a "state actor" for purposes of the Fourteenth Amendment. The Respondents were, therefore, acting under color of state law in participating in the attempted deprivation of petitioner's property.

For Harmon now to argue that it was not engaged in debt collection is, to put it charitably, unsupportable. *Pettway v. Harmon Law Offices, P.C.,* No. 03-cv-10932-RGS, 2005 WL 2365331, *5 & n.10 (D. Mass. Sept. 27, 2005) ("[A] defendant law firm whose foreclosure activities are beyond reproach might nonetheless be liable under the FDCPA for related but less salubrious efforts to squeeze a debtor into coughing up the underlying debt.") Harmon's defense has thus far been that they were acting only upon the direction of JP Morgan Chase, and JP Morgan Chase has stated it should not be liable for violations of the FDCPA committed by Harmon Law Office. In *Kirkland Construction v. James,* 39 MassApp 559, it was held a violation of Chapter 93A where "representations were false, careless and harmful". There is without doubt nothing more harmful than having your home taken away illegally. *Harmon v. Attorney General* 83 Mass App 830 found that indeed "a law firm may be liable under Chapter 93A if it engaged in conduct beyond the functions of traditional representation." The documents provided this Court demonstrating outright and blatant violations of the FDCPA as well as Chapter 93A violations are plausible on its face (*Ashcroft v. Iqbal* 556 US at 678), and display much more than a per we violation of Chapter 93A (*Pettway v. Harmon* 2005WL 2365331). Of the Core basic statutes and rules of initiating foreclosure proceedings against a homeowner in the state of Massachusetts is codified in MGL ch. 244, 2,9, 14, 15, 18, and 35 requiring foreclosing entities such as JP Morgan Chase as well as Harmon Law Office to perform basic obligatory functions, including, but not limited to serving a 150 Day

Right to Cure Notice upon the homeowner, publishing a Civil Servicemembers Notice, publishing in a local newspaper for three consecutive weeks a Notice of Intent to Foreclose and Auction, but most importantly the obligation to substantiate the legality of proceeding with said foreclosure and authenticating the actual debt, where here there is none as the par value payment was received by way of false total loss claim by FHA (18 USC 1962 Collection of an unlawful debt). Petitioner never received a 150 Day Right to Cure Notice, there never has been three consecutive weeks notice posted in the local paper regarding Foreclosure or Auction, as the notice was pulled on week two when the Plaintiff became aware that JP Morgan Chase and Harmon violated their promise to cease any and all foreclosure action due to the pendency of a civil suit in Massachusetts Supreme Court, and chalked it up to a clerical oversight. So it is the Petitioner's standing that The Honorable F Dennis Saylor erred in his invitation to JP Morgan Chase and Harmon Law to feel free to pick up where they left off. Additionally, clarification of the operating procedures within The Massachusetts Registry of Deeds is desperately needed, as upon the attestation of First Assistant Register Richard F. Kennedy, Jr. for the Norfolk County Registry of Deeds once a notice to foreclose mortgage is filed, and no foreclosure occurs within a twelve month period, a new notice to foreclose mortgage must be filed and "The process starts at zero". The Honorable F Dennis Saylor, upon dismissing the Plaintiff's case noted "Chase was under no obligation to provide a second right to-cure notice (although the Petitioner was never served in the first instance) or to refile a complaint in the Land Court." Is it legal for promissory notes, mortgages, assignment and affidavits all signed by one person purporting to be Vice President of multiple companies simultaneously, filed within The Registry of Deeds? JP Morgan Chase is not sacrosanct and exempt from Massachusetts State Law, and should not be allowed to completely disregard local Acts such as Chapter 258 of the Acts of 2010- An Act Relative To Mortgage Foreclosures, or Chapter 159- An Act Preventing Unlawful and Unnecessary Foreclosure. This Petition and prayer is jurisdictionally appropriate for suits in diversity (*Swift v. Tyson* 47 US 1) wherein 28 U.S. Code § 1652 and 28 U.S. Code § 2072 are applicable, offering that "State laws as rules of decision; The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States and this honorable court is given the power to prescribe"; "(b) Such rules shall not abridge, enlarge or modify any substantive right"? The Petitioner humbly and respectfully requests judicial clarification on these matters.

JUDICIAL RECUSAL, FULL FAITH AND CREDIT AND CONSTITUTIONAL FLAWS FOR EN BANC PROCEEDINGS IN THE FIRST CIRCUIT APPELLATE COURT FOR THE DISTRICT OF MASSACHUSETTS

Judicial recusal is formally governed by two key statutes: 28 USC section 144 and 455. In addition, Federal Judges abide by the Ethics in Government Act, gift regulations, federal statutes, as well as further constraints imposed upon them by the Judicial Conference through the Judicial Code of Conduct. In the Federal Judicial system, there is no *De Minimis* exception for recusal based on financial interest "ownership of a legal or equitable interest, however small".., Judicial Canons,1,2&3 specifically outline in detail.

Judges, like other Federal Officials are required to file annual financial disclosure statements listing their stock holdings, among other things. However, these reports are not readily available or accessible to the public, or by anyone outside the Judiciary. In *Lewis v. Curtis*, 671 F.2d 779, the Circuit Court of Appeals stated that the "impartiality and the appearance of impartiality in a judicial officer are the sine qua non of the American Legal System". The purpose of an impartial tribunal is obvious enough; "It is axiomatic that a fair trial in a fair tribunal is a basic requirement of due process"(*Caperton v. Massey* 556 US868,876.

The Petitioner contends that matters of judicial recusal for conflict of interest is of the upmost importance, as the subject envelops our most basic and fundamental right to due process codified in the Constitution of United States of America 1789 (rev. 1992), Amendment XIV. The American people must have faith in the integrity and impartiality of this Honorable Court. In denying the Appellant's motion for recusal in the face of overwhelming evidence proving a clear duty under Supreme Judicial Court Rule 3:09: Code of Judicial Conduct, 1.2(1)(2), 2.11(A)(3), and 3.11(C)(1)(4), with no explanation. Subsequently, upon Plaintiff's Petition for Writ of Mandamus to compel adherence to the very laws prescribed and authored by this Judicial body, the court erred in interpreting it incorrectly as a motion for reconsideration, and once again denying as well as dismissing the case in its entirety, just adds insult to injury.

The Due Process Clause incorporated the Common Law Rule that a judge must recuse him or herself when he or she has a direct, personal, substantial or pecuniary interest, no matter how small. In *Aetna Life Insurance Company v. Lavoie* 475 US 813, it was held that the Judge's participation in the case violated Appellant's rights under the 14th Amendment of Due Process, and in denying recusal motions it clearly demonstrated that the court reached it's merits of Appellant's Constitutional challenge, and where Appellants acted in good faith in raising issues as soon as facts were discovered relating to conflict of interest. In harmony with this point of view "in *Tumey v. Ohio* (273 U.S., at 524),the Court held that a decision should be set aside where there is `the (*Aetna Insurance Company v. Lavoie* 475 U.S. 813, 826) slightest pecuniary interest' on the part of the judge . . . ." Id., at 148. In *Caperton v. Massey Coal Company* 556US 868, The Honorable Justice Kennedy held "Under our precedents there are objective standards that require recusal when "the probability of actual bias on the part of the judge or decision-maker is too high to be constitutionally tolerable." *Withrow v. Larkin*, 421 U. S. 35, 47 (1975) . Applying those precedents, we find that, in all the circumstances of this case, due process requires recusal." The prima facie evidence of deliberate indifference acting under color of state law amounts to a deprivation of rights (*Baker v. McCollan* 443 US 137,146) as well as a violation of a right secured by The Constitution of The United States of America (*Patterson vs Allain* 12-1365). "Judicial decisions rendered under circumstances suggesting bias or favoritism tend to breed skepticism, undermine the integrity of the courts, and generally thwart the principles upon which our jurisprudential system is based" (*Flam Supra* note 3@110)

The Petitioner submitted for consideration along with the motion for recusal, three separate Financial Disclosure Forms filed by the aforementioned justices which clearly showed an abundance of Prima Facie evidence that is considered shocking to the conscience of even the most ill informed observer that there is a definite, irrefutable preponderance of evidence in favor of recusal for conflict of interest, and would undoubtedly call into question the moral turpitude of the appellate panel. It stands to reason that there is an overwhelming presumption of denial of FULL FAITH AND CREDIT in the instant case. Public Confidence demands that cases be tried by unprejudiced judges, and denial of request for substitute judges on the ground of prejudice, and worse even, without any explanation can only be presumed a denial of justice.

Any reasonable person would see the grave consequences of the denial of the Plaintiff's request for recusal as there is no adequate remedy by appeal of the order or otherwise, the petitioner will be damaged in a way not correctable on direct appeal, and furthermore, by denying the Petitioner's motion for recusal, there has been an undeniable usurpation of judicial power, and clear abuse of judicial discretion.

Additionally, the abrupt denial of the Appellant's case in its entirety, coupled with the lack of explanation, as well as the misconstrued Petition for Writ of Mandamus immediately following the Plaintiff's formal complaint to the Judiciary Ethics Committee, even to the least informed person would seem an intentional miscarriage of justice, resulting of the loss of faith in this legal system. The Appellate Court erred in issuing any decision at all as the official investigation by the Judicial Conference of the United States Committee on Judicial Conduct and Disability is still to this day pending, although accepted and formally docketed.

The En Banc review process of the First Circuit Court of Appeals is flawed. On motion for Rehearing, a denial was issued stating that of the available justices having voted by majority against hearing the Appellants case En Banc, it became even more obvious to this Petitioner that the chips were stacked against her. Of the six Justices voting, three of which being the original Appellate Panel, two judges having recused themselves from the decision, and assumably, one judge who voted in favor of an EnBanc Rehearing, the majority vote had pre-determinately been decided.

More compelling yet is the fact that, upon commencement of a formal complaint with the Judicial Ethics Commission (still pending and under investigation), each complaint is heard and decided by the Chief Justice for the First Circuit, however there are no explicit guidelines given regarding what happens if the complaint is against the Chief Judge himself. *"If we desire respect for the law, we must first make the law respectable."*, Louis Brandeis.

This system is flawed. Any observer, be it public, least informed, or well informed would be shocked, disheartened, and disenchanted. This Honorable Court has jurisdiction over the question if the Petitioner's 14th Amendment rights under the Due Process Clause have been violated. The obdurate treatment and ultimate denial of evidence-backed claims against JP Morgan Chase and Harmon Law clearly demonstrates that the Court reached the merits of the Appellant's Constitutional Challenge, and where the Appellant raised the issue as soon as facts relating to the Justices' financial holdings were discovered, the Appellants claims are meritorious, timely and most importantly, the truth.

CONCLUSION

The Corpus Juris Secundum states a denial of a right must always render a decision invalid, whether or not it may appear to a reviewing court that different circumstances would have rendered a different result. It must be regarded as a qualified right independently, which finds it's essential justification in the sense of procedural justice, which any person affected by a decision is entitled to have. This decision is of the upmost Public and National Importance as there are infinite amounts of honest citizens similarly situated nationwide, and this case is a superior vehicle for addressing the question presented.

The Petitioner prays this Court will finally allow due process and justice to be served. There is significant risk of irreversible harm unto the Petitioner if the Respondents are simply invited to resume a foreclosure that is wholly illegal prima facie. Petitioner Rachel Windham respectfully requests that the decision from the lower court be reversed, and that the Honorable Court order a review this case De Novo in the interest of justice. Petitioner stands firm in her constitutional guarantee of due process, and further states that this case involves implicit violations of the

Appellant's 14th Amendment Rights, and disallowing the Plaintiff's Brief for technical purposes would be directly injurious and result in a manifest injustice. The Petitioner respectfully requests that if the procedure is irregular, or this request for Writ of Certiorari is extraordinary that this honorable court proceed in the interest of justice whereas the The Due Process Clause guarantees the rule of law: the federal government may impinge on private rights only in accordance with fixed general principles knowable in advance. The judicial prerogative is inconsistent with such a guarantee, for it contemplates that federal judges have a discretionary power to take life, liberty and property in accordance with new rules of decision announced and applied for the first time to the case at hand. This Petition for Writ of Certiorari has been made in good faith, and this Petitioner prays this honorable Court correct the manifest injustice and clarify the preceding conflicts of decisions as they involve the public interest and furthermore seek to save the Petitioner from a irreparable irreversible injury. Article I **Section 8** gives the government the right "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof", and to make uniform laws; Chief Justice Marshall wrote, "Let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional." As in the parallel Clause of Article III, stating that "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish,", with the Tenth Amendment conferring" All remaining powers are reserved for the states or the people."

Allow this Writ to be perfected as to send it down back to the lower level to restore judicial sovereignty and public hope, for although the king can do no wrong, he may also still only serve one master, departmentalized. For the aforementioned reasons, the Petitioner respectfully requests a writ of certiorari to review the decisions of the First Circuit Court of Appeals and respectfully requests that oral argument be allowed. "Judicandum est legibis, non exempli" (judgement is to be given according to the laws, not according to precedent), Hon. Sir William Blackstone, from Blackstone's Commentaries, 1899.

The petition for a writ of certiorari, as well as the Petitioner's request for oral argument should be granted.

Respectfully submitted,

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Date: November 17th, 2017