

No. \_\_\_\_\_

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In The  
**Supreme Court of the United States**

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KENNETH TAGGART,

*Petitioner,*

v.

WELLS FARGO BANK N.A., et al.,

*Respondents.*

—◆—  
**On Petition For A Writ Of Certiorari  
To The United States Court Of Appeals  
For The Third Circuit**

—◆—  
**PETITION FOR A WRIT OF CERTIORARI**

—◆—  
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## QUESTIONS PRESENTED

1. Has the authority of the Federal Home Loan Mortgage Corporation (Freddie Mac) to remove state court actions to federal court, pursuant to 12 U.S.C. § 1452(f), been extinguished because Freddie Mac is no longer owned by the federal government?
2. Does an owner of real estate possess a federal due process right to ascertain the validity of a security interest in that real estate, and the identity of the entities that claim said security interest?
3. Does the holding of *Carpenter v. Longan*, 83 U.S. 271 (1872) render a transaction purporting to separate a mortgage and a note invalid?

**PARTIES TO THE PROCEEDING BELOW**

The following individuals and entities are parties in the court below:

Kenneth J. Taggart

Plaintiff in the trial court, Appellant in the Court of Appeals, Petitioner herein.

Wells Fargo Bank N.A.

Mortgage Electronic Registration Systems, Inc.

Federal Home Loan Mortgage, Corp.

Defendants in the trial court, Appellees in the Court of Appeals, Respondents herein.

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**PETITION FOR A WRIT OF CERTIORARI**

Petitioner Kenneth J. Taggart respectfully, by and through counsel, Jeremy B. Cooper, petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in *Taggart v. Wells Fargo Bank N.A., et al.*, Case Nos. 17-1836 and 17-2416.

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**OPINIONS**

The Third Circuit court's opinion dated May 15, 2018. (Appendix 1)

The judgment of The United States Court of Appeals for the Third Circuit is dated May 15, 2018. (Appendix 6)

The memorandum from The United States District Court of Eastern Pennsylvania dated July 28, 2017 denying reconsideration. (Appendix 8)

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The final memorandum from The United States District Court of Eastern Pennsylvania dated May 30, 2017. (Appendix 13)

The final order from The United States District Court of Eastern Pennsylvania dated May 30, 2017. (Appendix 26)



The memorandum dismissing original complaint from the United States District Court of Eastern Pennsylvania dated September 30, 2016. (Appendix 28)

The order dismissing original complaint from the United States District Court of Eastern Pennsylvania dated September 30, 2016. (Appendix 46)

The order of the United States Court of Appeals for the Third Circuit is dated June 21, 2018 denying rehearing. (Appendix 48)



## **JURISDICTION**

The judgment of the court of appeals for the Third Circuit was entered on May 15, 2018. The order denying rehearing and rehearing en banc was entered on June 21, 2018. At the request of Petitioner, an extension was granted by the United States Supreme Court extending the deadline to file a Writ of Certiorari up until November 18, 2018. November 18, 2018 being a Sunday provides that the last day to file a petition as being November 19, 2018. This timely Petition is being submitted to the court for its consideration. The Petition for Writ of Certiorari was sent via U.S. Postal Service on or before November 19, 2018. Supreme Court application No. 18A207. This court's jurisdiction is invoked under 28 U.S.C. § 1254(1).



## CONSTITUTIONAL PROVISIONS INVOLVED

### U.S. Const. amend. V

No person shall be deprived of life, liberty, or property, without due process of law.

### 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. . . .



## STATUTORY PROVISIONS INVOLVED

### 12 U.S.C. § 1452(f)

- (f) Actions by and against the Corporation; jurisdiction; removal of actions; attachment or execution issued against the Corporation

Notwithstanding section 1349 of title 28 or any other provision of law, (1) the Corporation shall be deemed to be an agency included in sections 1345 and 1442 of such title 28; (2) all civil actions to which the Corporation is a party shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of all such actions, without regard to amount or value; and (3) any civil or other action, case or controversy in a court of a State,

or in any court other than a district court of the United States, to which the Corporation is a party may at any time before the trial thereof be removed by the Corporation, without the giving of any bond or security, to the district court of the United States for the district and division embracing the place where the same is pending, or, if there is no such district court, to the district court of the United States for the district in which the principal office of the Corporation is located, by following any procedure for removal of causes in effect at the time of such removal.

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### CASE LAW IN QUESTION

*Carpenter v. Longan*, 83 U.S. 271, 274 (1872)

“The note and mortgage are inseparable; the former as essential, the latter as an incident. An assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity.”

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### STATEMENT OF THE CASE

Petitioner filed a Quiet Title Action in state court against Respondents seeking to Quiet Title and resolve claims, or the validity of claims, made by Respondents,

Wells Fargo Bank N.A., Mortgage Electronic Registration Systems, Inc., and the Federal Home Loan Mortgage Corp., commonly referred to as Freddie Mac. (App. at 29)

Freddie Mac removed the case to the District Court for the Eastern District of Pennsylvania citing federal statute 12 U.S.C. § 1452(f). Petitioner contested the authority of Freddie Mac to remove the case pursuant to 12 U.S.C. § 1452(f) asserting that 12 U.S.C. § 1452(f) was extinguished as a matter of law as Freddie Mac was no longer a government entity as defined in 12 U.S.C. § 1452(f) by its reliance on 28 U.S.C. § 1345, and 28 U.S.C. § 1442. The District Court denied Petitioner's Request to remand the case back to state court based on its reliance of 12 U.S.C. § 1452(f). (App. at 41-42) Petitioner contended 12 U.S.C. § 1452(f) was no longer applicable to Freddie Mac because it was no longer a government entity as defined by 28 U.S.C. § 1345, and 28 U.S.C. § 1442.

Petitioner's action, *inter alia*, contested the validity of the mortgage and assignment of mortgage due to several irregularities in their contents, and whether they were valid. (App. at 29-30) The mortgage bore the name "American Partners Bank F.S.B.," as mortgagee, and was dated December 16, 2008 (although the Petitioner asserts that American Partners Bank F.S.B. ceased to exist on January 20, 2008). The mortgage identified Mortgage Electronic Registration Systems, Inc. as nominee for American Partners Bank F.S.B. There was also an assignment of mortgage made on April 5, 2010, and recorded May 18, 2010 in which

Mortgage Electronic Registration Systems, Inc. assigned the mortgage to Wells Fargo Bank N.A. Finally, when American Partners Bank F.S.B. purportedly created the mortgage and note on December 16, 2008, it assigned the mortgage to “Mortgage Electronic Registration Systems, Inc., as nominee for American Partners Bank F.S.B.,” but did not assign the Note to “Mortgage Electronic Registration Systems, Inc., as nominee for American Partners Bank F.S.B.” (App. 28-45)

The District Court for the Eastern District of Pennsylvania granted a motion to dismiss claims against two individual defendants (purported notaries on some of the relevant documentation) with prejudice, and dismissed the remaining claims with leave to amend. (App. 28-45) Following the filing of an Amended Complaint by the Petitioner, an additional motion to dismiss was filed by the Respondents, and was granted with prejudice. (App. 13-25) The Petitioner’s motion for reconsideration was denied. (App. 8-11) The Petitioner appealed the matter to the Court of Appeals for the Third Circuit, which affirmed the judgment below, and which subsequently denied rehearing en banc. (App. 1-5, 48-49)



## REASONS FOR GRANTING PETITION

**I. The Third Circuit's ruling permitted Freddie Mac to rely on a statutory regime which contemplated Freddie Mac's continued ownership by the government, and which unfairly privileges it over other litigants.**

Freddie Mac's use of 12 U.S.C. § 1452(f) is of national importance, because Freddie Mac uses this statute to forum shop and gain advantage in quiet title and foreclosure cases by removing them from the state courts to federal court. These claims are best adjudicated by state courts which are better equipped to adjudicate these types of cases that mostly rely on state law.

The Petitioner contends that Freddie Mac's ability to use of 12 U.S.C. § 1452(f) to remove cases to federal court was extinguished when it became a publicly held corporation, and should as a matter of law function under the same strictures as its sister entity, Fannie Mae. The Petitioner asserts the Third Circuit's opinion in the instant case conflicts with a decision of the United States Supreme Court, *Lightfoot v. Cendant Mortgage Corp.*, 580 U.S. \_\_\_, 137 S. Ct. 553, 196 L. Ed. 2d 493 (2017). Additionally, the Petitioner asserts that the Third Circuit's decision is in conflict with the Ninth Circuit Court of Appeals which has held that Freddie Mac and Fannie Mae are not Agents of the government: In *United States ex rel. Adams v. Aurora Loan Servs.*, 813 F.3d 1259 (9th Cir. 2016).

The District Court's denial of Petitioner's remand request was based on 12 U.S.C. § 1452(f) which Petitioner contends it is now rendered inoperable as matter of law due to Freddie Mac becoming a privately held company. In addition to the Ninth Circuit, Freddie Mac's indiscriminate use of section 1452(f) has found disfavor in district court decisions, such as *Fed. Home Loan Mortg. Corp. v. Shaffer, et al.*, 2:14-cv-1690-WMA (N.D. Ala. December 16, 2014). This opinion, which approvingly cites *Fed. Home Loan Mortg. Corp. v. Amersey*, 2014 WL 1400086 (E.D. Mich., April 9, 2014), used the principles of statutory construction to come to the conclusion that Freddie Mac's use of 12 U.S.C. § 1452(f), which must be strictly construed, was improper.

Several other courts have found that Freddie Mac has used this statute to forum shop in an attempt to gain an unfair advantage. *See Fed. Home Loan Mortg. Corp. v. Litano*, 2015 U.S. Dist. LEXIS 71066, at \*7 (D. Mass. March 30, 2015) (remanding on the basis of statutory construction, deeming abstention appropriate, and finding Freddie Mac's conduct in the case to constitute inappropriate forum shopping and a third basis for remand); *Fed. Home Loan Mortg. Corp. v. Amersey*, No. 13-13753, 2014 U.S. Dist. LEXIS 49415, 2014 WL 1400086 (E.D. Mich. April 9, 2014) (remanding based on statutory construction). Freddie Mac has admitted using this statute to forum shop. *See Ocwen Loan Servicing, LLC*, 2015 U.S. Dist. LEXIS 23061, 2015 WL 685264.

Respondent Freddie Mac removed the case to District Court pursuant to 12 U.S.C. § 1452(f) which

states the District Court has jurisdiction over all matters of Freddie Mac. Petitioner contested the removal to District Court, however Petitioner's Motion to Remand was Denied. (App. at 41-42) Petitioner filed a renewed motion to remand to state court *citing* the opinion of the United States Supreme Court, *Lightfoot v. Cendant Mortgage Corp.*, 580 U.S. \_\_\_, 137 S. Ct. 553, 196 L. Ed. 2d 493 (2017). The renewed Motion to Remand was again Denied.

Petitioner contends that 12 U.S.C. § 1452(f) has been extinguished by operation of law since it was enacted when the government owned Freddie Mac at its infancy. Petitioner contends the government no longer owns Freddie Mac and is therefore inoperable, or otherwise unenforceable. Neither this court, nor any other appellate court has reviewed the issue as to whether the statute has been rendered inoperable when Freddie Mac became a publicly owned company. However, the basis for the statute and analysis by the Supreme Court in *Lightfoot*, concluded that it was the intention of congress to have identical laws governing both Freddie Mac and Fannie Mae, excepting 12 U.S.C. § 1452(f) only because the distinguishable difference at the time the statute was enacted was that Freddie Mac was government owned, and Fannie Mae was not. Both entities are now privately owned.

The Ninth Circuit Court of Appeals held that Freddie Mac and Fannie Mae are not agents of the government: *In United States ex rel. Adams v. Aurora Loan Servs.*, 813 F.3d 1259 (9th Cir. 2016). This case cites the same legal theory that Freddie Mac is no



longer government owned, and the original jurisdiction and intent of Freddie Mac has changed. This supports Petitioner's claims that the statute, 12 U.S.C. § 1452(f) has been extinguished as a matter of law when Freddie Mac transitioned into a privately held company. The Ninth Circuit affirmed the district court's dismissal of the complaint, observing that, although Fannie Mae and Freddie Mac were initially chartered by the federal government, they are now private companies.

When a case is removed, “[t]he federal courts are under an independent obligation to examine their own jurisdiction.” *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231 (1990). The District Court issued an opinion on September 30, 2016, denying Plaintiff's opposition to removal to the Eastern District of Pennsylvania. The Third Circuit cited in its opinion that it relied on 12 U.S.C. § 1452(f), (App. at 3). Petitioner relied on a recent decision by this Court, which analyzed the removal process of Fannie Mae based on the language in its Charter, *Lightfoot v. Cendant Mortgage Corp.*, 580 U.S. \_\_\_, 137 S. Ct. 553, 196 L. Ed. 2d 493 (2017). The recent opinion in *Lightfoot* is directly applicable to the interpretation of the statute and law relied on in this case.

This Court's *Lightfoot* opinion concluded that the language in the Charter of Fannie Mae, and Freddie Mac were virtually the same, and rendered an opinion stating that the “sue-and-be-sued clause” does not automatically grant federal district courts jurisdiction over cases involving Fannie Mae. The court only distinguished Freddie Mac by way of 12 U.S.C. § 1452(f)

providing that Freddie Mac is a federal agency under 28 U.S.C. § 1345 and 28 U.S.C. § 1442, that civil actions to which Freddie Mac is a party arise under federal law, and Freddie Mac may remove cases to federal district court before trial. However, because Freddie Mac is no longer a federal agency, the purpose underlying the grant of removal power in its charter is defeated.

The opinion, in *Lightfoot*, clearly states that it was the intent of Congress to have the same, or identical, requirements for both Fannie Mae and Freddie Mac, however the operative difference was that when Freddie Mac's Charter was enacted, Freddie Mac was a government agency, but Fannie Mae had transitioned into a private entity in 1989. Since the enactment of Freddie Mac's Charter in 1970, when Freddie Mac was a government owned entity, Freddie Mac was also transformed into a private entity. In 1989 Freddie Mac transformed into a private entity and is no longer considered a government entity, or government agency rendering statutes such as 28 U.S.C. § 1345 and 28 U.S.C. § 1442, inoperable.

As such, Freddie Mac's charter and authority to remove any case to federal court should now be construed as identical to Fannie Mae. This would be true in articulating in the reasoning, and opinion issued by this Court in *Lightfoot*. The removal statutes are construed restrictively, and any doubts about removability are resolved in favor of remanding the case to state court. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

**II. The Third Circuit’s dismissal of the Petitioner’s claims deprived him of his due process rights to legally determine what entities claim an interest in his property, and the validity of those interests.**

By dismissing the Petitioner’s claims relating to the identity of the holders of security interests and the validity of said security interests, the courts below deprived him of his only vehicle for protecting his interests to his real property in the courts. Effectively, he has been denied his rights to due process in relation to his fundamental property rights in his real property.

Pennsylvania does not allow a plaintiff to challenge assignments of mortgage in a foreclosure action. *Souders v. Bank of America*, 2012 WL 7009007 (M.D. Pa. December 6, 2012). This leaves only a separate quiet title action, or action seeking declaratory judgment to resolve any valid claims related to assignments of the mortgage on a plaintiff’s property, or other assertions of a security interest pertaining to a property, although Pennsylvania’s state courts are silent about whether a quiet title action is an appropriate vehicle for this purpose. Absent any ability to challenge assignments of a mortgage, effectively anyone can file such an assignment, and foreclose on a property without the ability to challenge its validity and standing. Even if the party filing the “assignment of mortgage” is a true successor in interest to a mortgage, it still must comply with recording laws to perfect its lien pursuant to Pennsylvania Law. The only ability of a property owner to challenge the validity of

the lien, including assignments of mortgage is via a quiet title or declaratory action. *See Bank of America v. Casale*, No. 1164 WDA 2012 (Pa. Super. 2013).

A defendant cannot challenge assignments of the mortgage as a counterclaim or new matter in a foreclosure action. *Souders*, 2012 WL 7009007 at 11. A property owner is entitled to be put on notice as to who has claims against his property. This is a principal that runs through Pennsylvania Recording Law since its origin, and since this cannot happen in the foreclosure action, the remedy must be made available through other means.

States other than Pennsylvania, and other Circuit Courts allow property owners to challenge assignments of mortgage, and claims against their property without any burden of demonstrating harm to them. In California, mortgage debtors may challenge a foreclosure by alleging there was a break in the chain of assignments involved in securitization of the loan, California's top court has ruled. *Yvanova v. New Century Mortgage Corp.*, No. S218973, 2016 WL 639526 (Cal. February 18, 2016). In *Culhane v. Aurora Loan Services of Nebraska*, 708 F.3d 282 (1st Cir. 2013), the First Circuit rejected the broad rule that a borrower lacks standing to challenge an assignment that is void *ab initio*, finding that the borrower suffers the requisite harm by reason of the enforcement of the note by a non-owner.

The Petitioner contends that a person's right to challenge claims to one's property is a constitutional

right afforded pursuant to the United States Constitution pertaining to Property Rights and Due Process Rights.

By requiring a showing of malice or harm, the Third Circuit is in conflict with First Circuit. In *Culhane v. Aurora Loan Services of Nebraska*, 708 F.3d 282 (1st Cir. 2013), the First Circuit rejected the broad rule that a borrower lacks standing to challenge an assignment that is void *ab initio*, finding that the borrower suffers the requisite harm by reason of the enforcement of the note by a non-owner.

Failure to put a property owner on notice of any claims pertaining to an assignment of mortgage leaves a cloud on the title which can't be challenged unless someone else claims ownership to said interest. The principle of recording interests is to put the world on notice to any claims. If there is evidence of a defective assignment of mortgage, the Third Circuit rule as manifested in the opinion below leaves the property owner with no legal avenue to challenge assignments of mortgage. Essentially, anyone can file an assignment of mortgage on a property and the property owner has no recourse. If a property owner wants to sell his property which has a defective assignment of mortgage, he must pay the party who has a defective assignment, and, as a matter of law then be subjected to another lawsuit from another party and have to defend that lawsuit.

This is notwithstanding Petitioner's contention that the inability, or denial of a litigant's right to challenge

assignments of mortgage in a foreclosure action violates his constitutional Due Process and Property Rights under the United States Constitution, and Pennsylvania Constitution. This prevents a party, or restricts a party from challenging “Standing” in a foreclosure action. Standing to maintain an action is a prerequisite to a party’s ability to seek judicial resolution of a controversy. *Step Plan Servs., Inc. v. Koresko*, 12 A.3d 401, 417 (Pa. Super. 2010). This Court should grant certiorari on this issue to resolve the split in authority and rule that there is a due process right of a property owner to ascertain the identity of validity of the entities purporting to possess a security interest in that property.

**III. In dismissing the Petitioner’s claim, the Third Circuit ignored the straightforward language of *Carpenter v. Longan*, 83 U.S. 271 (1872), which renders the practice of separating the mortgage and note improper.**

The Petitioner asserts that the mortgage and note were split, or bifurcated by the purported originating lender, American Partners Bank. American Partners Bank held the note, while the mortgage clearly nominates Mortgage Electronic Registration Systems, Inc. as the nominee for American Partners Bank.

The use of nominees, or third parties to hold, or record a mortgage, when the mortgagee retains

possession of the note, splits the mortgage and note and conflicts with this court's decision in *Longan*.

This issue is of national importance as it is common practice in the lending community and it bifurcates the note and mortgage which has been deemed impermissible by way of longstanding and well-settled law of this court.

The note and mortgage are inseparable; the former as essential, the latter as an incident. An assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity.

*Carpenter v. Longan*, 83 U.S. 271, 274 (1872).

For reasons set forth in the preceding sections of this Petition, the Petitioner was denied, via the District Court's order granting the Respondents' motion to dismiss, the ability to litigate this issue when determining the merits of his substantive claims relating to the ownership and validity of the security interest in his real property. The courts below deprived the Petitioner of any meaningful review of this issue by dismissing his claims on the basis of insufficiently pled facts. As a result, this Court has the opportunity to consider the scope and applicability of the point of law quoted above, the circumvention of which has had a widespread effect throughout the country on the operation of the mortgage finance industry.



**CONCLUSION**

Based upon the foregoing, the Petitioner respectfully asserts that this case is an appropriate vehicle for this Court's consideration and resolution of several issues of significant public importance relating to the home finance industry, which impacts an immense portion of the United States population. The Petitioner asks that this Court grant its Petition for Writ of Certiorari and consider this case on the merits.

Respectfully submitted,

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