No. 613

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**In the**

**Supreme Court of the United States**

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**MARQUISE MILLER,**

*Petitioner*

*v.*

**LEGACY BANK,**

*Respondent*

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

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# PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

1. Whether the Equal Credit Opportunity Act 15 U.S.C. § 1691 et seq., authorizes a cause of action for individuals who are prospective applicants or inquirers, and who have been subject to discriminatory discouragement by lenders prior to the submission of a formal credit application, thereby resolving a circuit split between the Tenth and Seventh Circuits.

2. The 10th Circuit's decision raises the following issues not yet decided by this Court:

I. Did Congress intend for the Equal Credit Opportunity Act to allow discrimination to occur to borrowers before they have a completed loan application?

II. Should prospective applicants be able to bring suit under the Equal Credit Opportunity Act?

## CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6 of the Rules of the Supreme Court, Petitioner states that Legacy Bank is not a publicly held company and no publicly held corporation owns 10% or more of its stock.

## RELATED PROCEEDINGS

*Miller v. Legacy Bank*, U.S. Court of Appeals for the Tenth Circuit, No. 24-6105 — Judgment entered March 13, 2025

*Miller v. Legacy Bank*, U.S. District Court for the Western District of Oklahoma, No. 5:20-cv-00946-D— Judgment entered May 7, 2024

*Miller v. Timothy Degiusti*, U.S. District Court for the Western District of Oklahoma, No. 5:25-cv-00301 — Pending

*Miller v. Suzanne Mitchell*, U.S. District Court for the Western District of Oklahoma, No. 5:25-cv-00535 — Pending

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## PETITION FOR WRIT OF CERTIORARI

Although the Tenth Circuit's decision in *Miller v. Legacy Bank* is unpublished, it directly conflicts with the published opinion of the Seventh Circuit in *Consumer Financial Protection Bureau v. Townstone Financial, Inc.*, 80 F.4th 614 (7th Cir. 2023), on the identical question of whether the Equal Credit Opportunity Act (ECOA) protects individuals who are "discouraged" from applying for credit. The Tenth Circuit concluded that ECOA does not protect individuals unless they have completed a formal loan application. By contrast, the Seventh Circuit correctly recognized that the statute also protects prospective applicants who are unlawfully deterred from applying due to discriminatory practices.

Although *Miller* is unpublished, the Tenth Circuit has acknowledged that "[t]he most important reasons for permitting citation of published precedents are just as cogent to me in the case of unpublished rulings." *In re Rules of the United States Court of Appeals for the Tenth Circuit*, 955 F.2d 36, 38 (10th Cir. 1992) (statement of the Honorable Judge McKay). That court further explained that "all rulings of this court are precedents, like it or not, and we cannot consign any of them to oblivion by merely banning their citation," citing with approval the Fourth Circuit's conclusion that "any decision is by definition a precedent." *Id.* (quoting *Jones v. Superintendent, Virginia State Farm*, 465 F.2d 1091, 1094 (4th Cir. 1972)). This principle aligns with the constitutional imperative of fairness and equal treatment under the law.

While Supreme Court Rule 10 favors certiorari where a split exists among circuit courts on an important federal question, it does not require that both decisions be published. See also *Rogers v. Missouri Pac. R. Co.*, 352 U.S. 500, 508 (1957) (reviewing unpublished ruling where legal question was properly presented). Given the real-world legal consequences of the diverging approaches in *Miller* and *Townstone*, and the national importance of uniform ECOA enforcement, this Court's intervention is necessary to resolve this split and protect the civil rights of prospective credit applicants.

## OPINIONS BELOW

The opinion of the United States Court of Appeals for the Tenth Circuit is unpublished but available at **[Doc. No. 43]**. The opinion of the United States District Court for the Western District of Oklahoma is available at **[Doc. No. 348]**.

## STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). On January 24, 2025, the Tenth Circuit, ordered the appellee to respond to Petitioner's petition for rehearing by Feb. 14, 2025. The court denied the petition for rehearing on March 13, 2025 electronically only. This Petition is timely filed within 90 days of the denial of Petition for Rehearing and issuance of the mandate. Furthermore, according to the Tenth Circuit docket, the pro se Petitioner never received a copy of the court's final ruling on the Petition for Rehearing and Suggestion for Rehearing En Banc by mail as required by Federal Rule of Appellate Procedure 45(c). As a result, the 90-day

period prescribed under Supreme Court Rule 13.1 did not commence, because proper notice was never effectuated upon pro se Petitioner by mail.

## PERTINENT CONSTITUIONAL AND STATUTORY PROVISIONS INVOLVED

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. § 1691(a), provides in relevant part: "It shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction—(1) on the basis of race, color, religion, national origin, sex or marital status, or age."

Section 1691a(b) defines "applicant" as: "...any person who applies to a creditor directly for an extension, renewal, or continuation of credit, or applies to a creditor indirectly through a credit arranger."

Relevant procedural statute:

28 U.S.C. § 1254(1): "Cases in the courts of appeals may be reviewed by the Supreme Court by... writ of certiorari granted upon the petition of any party to any civil or criminal case."

These provisions are central to the resolution of whether the term "applicant" encompasses prospective applicants who were discouraged from applying due to alleged discrimination.

U.S. Constitution, Article I, Section 8, Clause 3 (Commerce Clause): *"The Congress shall have Power... To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes..."*

U.S. Constitution, Amendment V (Due Process Clause): *"No person shall... be deprived of life, liberty, or property, without due process of law..."*

The Equal Credit Opportunity Act is consistent with the Fifth Amendment's principles prohibiting discriminatory conduct by the federal government. U.S. Constitution, Amendment XIV, Section 1 (Equal Protection Clause): *"No State shall... deny to any person within its jurisdiction the equal protection of the laws."*

While ECOA governs private conduct, its purpose parallels the Fourteenth Amendment's equal protection guarantee by prohibiting credit discrimination on suspect classifications such as race or sex.

## STATEMENT OF THE CASE

This case arises from a discriminatory lending practice conducted by Legacy Bank against Petitioner, a Black male who according to the lower courts only made a loan inquiry to Legacy Bank. According to the lower courts--Petitioner was discouraged from applying for a loan and denied the opportunity based on non-creditworthy factors, including the geographic location of the property.

The U.S. District Court for the Western District of Oklahoma characterized Petitioner as a "prospective applicant" and referenced his "loan inquiry." Nevertheless, the Tenth Circuit held that Petitioner could not bring an ECOA claim because he did not qualify as an "applicant" under the statute, since he did not formally submit a loan application.

This interpretation creates a circuit split with the Seventh Circuit, which in ***Consumer Fin. Prot. Bureau v. Townstone Fin.***, 107 F.4th 768 (7th Cir. 2024), held that the ECOA covers the "discouragement of prospective applicants" even if a formal application is never submitted.

On January 24, 2025, the Tenth Circuit directed the appellee to respond to Petitioner's petition for rehearing. The response was filed on February 14, 2025. On March 13, 2025, the Tenth Circuit denied the petition for rehearing and issued its mandate on March 21, 2025, thus rendering its judgment final for purposes of seeking Supreme Court review.

## REASONS FOR GRANTING THE WRIT

### I. The Tenth Circuit's Decision Conflicts with the Seventh Circuit and Undermines the Purpose of the ECOA

The Tenth Circuit's interpretation permits creditors to discriminate openly at the inquiry stage, effectively stating that inquirers such as minorities, women, or the elderly can be discouraged or refused outright with no ECOA recourse unless a formal application is filed. This interpretation undermines the ECOA's deterrent function. As the Seventh Circuit stated: "When the text of the ECOA is read as a whole, it is clear that Congress authorized the imposition of liability for the discouragement of prospective applicants." See *Townstone,* 107 F.4th at 776.

In this case, assuming the lower courts conclusions were correct---Legacy Bank issued an

adverse action notice before Petitioner submitted a loan application, discouraging him explicitly based on non-creditworthiness factors such as property location. (See Doc. 66-6) After viewing the adverse action notice submitted to Petitioner- Marquise Miller- the Oklahoma State Banking Department stated that: "Taken alone, Mr. Farris' statement of denial would appear to fall within the impermissible credit practice of 'REDLINING.'" (See Page 3, Doc. 77-1).

This is important because the Oklahoma State Banking Department reviewed Legacy's adverse action notice (Doc. 66-6) submitted to Marquise Miller and determined that even if Mr. Miller did not complete a loan application, Legacy's loan denial taken alone was discriminatory and fell within the impermissible credit practice of redlining.

The point is—even if Miller did not allegedly have a formal or completed loan application, the record is clear that Legacy Bank discriminated against Mr. Miller before he could allegedly submit a completed loan application. This would give Miller an actionable cause of action under the ECOA according to the 7th Circuit Court of Appeals. Also, it is important to note that any... "notification given to an applicant against whom adverse action has been taken shall be in writing." . . . (*Thompson v. Galles Chevrolet* Co.807 F.2d 163, 165 (10th Cir. 1986). Therefore, not only was Miller discriminated against, but he also was considered an applicant under the ECOA because it is without dispute that Legacy Bank gave Mr. Miller an adverse action notice in writing.

## II. The 7th Circuit plainly concludes that prospective applicants are considered applicants under the ECOA, whereas the 10th Circuit concludes that prospective applicants are not considered applicants under the ECOA.

The 10th Circuit states: "Because we uphold the judgment due to Mr. Miller's failure to show his status as an applicant for purposes of an ECOA claim, we need not address arguments regarding whether he qualified for a loan." (Page 7, Doc. 43-1)

Also, the trial court refers to Miller's loan request to Legacy Bank as: **"...Plaintiff's October 14, 2015 loan INQUIRY."** (Page 13, Doc. 348).

However, even if Miller only inquired for the loan, Legacy's actions before Miller allegedly applied for the loan would be considered discriminatory and discouraging. This is because Legacy states in its' **October 14, 2015** adverse action notice that Miller made a loan request and states to Miller that:

> I've spoken with Lending Committee about the Lottie request on Friday and this morning. Between the location, scope of the rehabilitation of the property, crime rate in the area, vacancy/abandonment of properties in the surrounding area, and real estate market in the area, the committee has declined to approve loaning funds for the rehabilitation. (See Doc. 66-6)

Again, and for emphasis, the 10th Circuit overlooks that according to the Oklahoma State

Banking Department, Legacy's loan denial taken alone would be discriminatory.

The Oklahoma State Banking Department states: "Mr. Farris' email denying the **Loan request** stated that the Loan was refused in part, **based on the location** of the Lottie Property. Taken alone, Mr. Farris' statement of denial would appear to fall within the impermissible credit practice of "**redlining.**" (Page 3, Doc. 77-1)

This is important because: "Redlining is a distinction based on the "geographic location of the risk..." (*N.A.A.C.P. v. American Family Mut. Ins. Co.* 978 F.2d 287 (7th Cir. 1992)

Therefore, even if Miller did not apply for the loan, the 10th Circuit overlooks that Miller was certainly discouraged and discriminated against before he allegedly applied for the loan. This is because--- Legacy discouraged Miller from obtaining the loan (Doc. 66-6) by denying Miller's loan request, due to the location of his property (redlining) and other factors that have absolutely nothing to do with his creditworthiness. (*Miller v. American Exp. Co.* 688 F.2d 1235, 1239 (9th Cir. 1982) Therefore, the 10th Circuit's ruling is in direct conflict with authority from the 7th Circuit that states when: "Congress well understood that "any aspect of a credit transaction" had to include actions taken by a creditor before an applicant ultimately submits his or her credit application." (*Consumer Fin. Prot. Bureau v. Townstone Fin.* 107 F.4th 768 (7th Cir. 2024).

## III. The Tenth Circuit's Ruling Contradicts Legislative Intent and Established Precedent

The ECOA was enacted to eliminate discriminatory barriers to credit access. Congress explicitly included discouragement as a violation under 15 U.S.C. § 1691(a)(1). The Tenth Circuit's narrow reading renders this provision meaningless for all but formal applicants.

In *Miller v. American Express Co.*, 688 F.2d 1235, 1239 (9th Cir. 1982), the court recognized that discouraging someone from applying due to protected status constitutes actionable discrimination.

## IV. The Circuit Split Warrants Supreme Court Review

The conflict between the Tenth and Seventh Circuits has significant implications for uniform federal credit discrimination law. The Court should resolve whether ECOA protections extend to prospective applicants, ensuring fair and consistent application nationwide.

Currently, the 10th Circuit's conclusions are in contradiction with other circuits that have ruled that the ECOA extends beyond formal completed loan applications. The 10th Circuit's ruling indicates that inquirers and prospective applicants can be discriminated against without having a right to bring a cause of action under the ECOA, whereas the 7th Circuit ruling regarding this same issue reveals a circuit split.

The 10th Circuit's ruling literally gives lending institutions the ability to say to prospective applicants and inquirers "we don't loan money to

blacks, elderly people, or single women" and those affected would not have any viable cause of action under the Equal Credit Opportunity Act, because they did not "apply" for a loan. This in effect would greatly damage society, and defeat the entire purpose of the ECOA, which is why the 7th Circuit reversed the district court's decision in *Townstone.* Therefore, the 10th Circuit decision is in direct conflict with *Consumer Fin. Prot. Bureau v. Townstone Fin.*107 F.4th 768 (7th Cir. 2024) and should be reversed.

## V. Civil Enforcment and Private Cause of Action Under the Equal Credit Opportunity Act Must be Applied Equally

Respondent has argued that *Consumer Financial Protection Bureau v. Townstone Financial, Inc.*, 80 F.4th 614 (7th Cir. 2023), is inapposite because it involved a civil enforcement action brought by the government, rather than a private right of action. That argument fails for two key reasons.

First, the central legal issue in *Townstone*—the scope of the term "applicant" under the Equal Credit Opportunity Act (ECOA), 15 U.S.C. § 1691 *et seq.*—is identical in both contexts. The ECOA does not define "applicant" differently for purposes of public versus private enforcement. In fact, the statutory definition in 15 U.S.C. § 1691a(b) applies equally across the entire Act: "The term 'applicant' means any person who applies to a creditor directly for an extension, renewal, or continuation of credit, or applies through an existing account for an amount."

The question before the Seventh Circuit in *Townstone* was whether individuals who are discouraged from applying due to discriminatory

conduct can be considered "applicants" under the ECOA. That is precisely the same question at issue in this case. Whether enforcement is brought by the CFPB or by a private plaintiff, the legal inquiry centers on the meaning of "applicant," and *Townstone* interpreted that term broadly—consistent with longstanding Regulation B, 12 C.F.R. § 1002.2(e), which includes discouraged individuals as "applicants."

Second, courts routinely rely on agency enforcement interpretations when construing the reach of private rights of action under remedial civil rights statutes. As the Supreme Court held in *Alexander v. Sandoval*, 532 U.S. 275, 284 (2001), the existence of a private right must be discerned from the statute itself, but the scope of liability under that right often mirrors the same statutory elements used in agency enforcement. Thus, an authoritative circuit construction of "applicant" in a public enforcement context carries significant weight for private litigants asserting the same statutory violation.

Moreover, denying private plaintiffs the benefit of *Townstone*'s interpretation would create an illogical and unjust outcome: that the ECOA prohibits discouragement when the government sues, but allows it when private citizens—often the direct victims of discrimination—attempt to assert their rights.

## CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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November ___, 2025