25-7115

ORIGINAL

No. _____

In the
Supreme Court of the United States

JACQUELYN V. FITZHUGH,

Petitioner,

v.

WELLS FARGO BANK, N.A., AS INDENTURE TRUSTEE FOR THE IMPAC CMB SERIES 2005-3,

Respondent

On Petition for a Writ of Certiorari from
United States Court of Appeals for the First Circuit

Case No. 23-1107

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Introductory Statement

Forum shopping and the "new federalism" is alive and well in Massachusetts. The favored forum of choice for the big bank, foreclosing mortgagees in the commonwealth is the U. S. district court and the U. S. Court of Appeals. This case provides a good explanation as to why that is. Although this case is but a pixel in the big picture of the corrupting influence of mega bank money and power in the Massachusetts courts, a close look at what's going on in this case might answer questions we are afraid to ask.

Questions:

1. When a federal court misinterprets and fails to apply a state statute consistent with state law, leading

to a conflict with how the state's highest court would rule, does it violate the principles of federalism as it is commonly understood, or establish a new form of it, by misapplying state law, which the U.S. Supreme Court has a mandate to correct, especially where the Federal Court of Appeals refused Appellant's request to certify the question to the state's highest court?

2. Is forum shopping on the basis of diversity as practiced today in our courts ("neo-forum shopping") discriminatory and unconstitutional, particularly where it is weaponized to curtail equal access to justice for the poor pursuant to the 5th and 14th amendments?

PARTIES TO THE PROCEEDINGS AND RULE 29.6 DISCLOSURE STATEMENT

All parties appear in the caption of the case on the cover page.

Petitioner here -- Plaintiff-Appellant below – is Jacquelyn R. Fitzhugh, a natural person (not a corporation).

Respondent here—Defendant-Appellee below—is Wells Fargo Bank, N. A., as Indenture Trustee for the Impac CMB Series 2005-3.

RELATED PROCEEDINGS

Wells Fargo Bank, N.A., as Indenture Trustee for the Impac CMB Series 2005-3 v. Jacquelyn Fitzhugh and Earl Fitzhugh, No. 24-SP-1177, Massachusetts Northeast Housing Court. Judgement pending.

Wells Fargo Bank, N.A., as Indenture Trustee for the Impac CMB Series 2005-3 v. Jacquelyn R. Fitzhugh,

No. 22-10217-PBS, United States District Court for the District of Massachusetts. Judgement entered December 8, 2022.

Wells Fargo Bank, N.A., as Indenture Trustee for the Impac CMB Series 2005-3 v. Tyree Phillips Richardson, No. 25H77SP005481, Massachusetts Northeast Housing Court. Judgement pending.

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IN THE

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United States District Court and report and recommendations of the magistrate judge appear at Appendix B to the petition and are unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was August 11, 2025. A timely petition for rehearing was denied by the United States Court of

Appeals on 11/03/2025, and a copy of the order denying rehearing appears at Appendix C.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. U. S. Const. Amend. XIV, § 1.

   "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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."

2. Massachusetts General Laws chapter 244, section 35C (b), reprinted below verbatim:

   "A creditor shall not cause publication of notice of foreclosure, as required under section 14, when

the creditor knows or should know that the mortgagee is neither the holder of the mortgage note nor the authorized agent of the note holder. 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 subsection in an affidavit based upon a review of the creditor's business records. The creditor, or an officer or duly authorized agent of the creditor, shall record this affidavit with the registry of deeds for the county or district where the land lies. ***The affidavit certifying compliance with this subsection shall be conclusive evidence in favor of an arm's-length third party purchaser for value, at or subsequent to the resulting foreclosure sale, that the creditor has fully complied with this section and the mortgagee is entitled to proceed with foreclosure of the subject mortgage under the power of sale contained in the mortgage and any or more of the foreclosure procedures authorized in this chapter; provided that, the arm's-length third party purchaser for value relying on such affidavit shall not be liable for any failure of the foreclosing party to comply and title to the real property thereby acquired shall not be set aside on account of such failure. The filing of such***

affidavit shall not relieve the affiant, or other person on whose behalf the affidavit is executed, from liability for failure to comply with this section, including by reason of any statement in the affidavit. For purposes of this subsection, the term "arm's-length, third party purchaser for value" shall include such purchaser's heirs, successors and assigns."

STATEMENT OF THE CASE

The underlying case commenced in Massachusetts Superior court. The respondent/defendant below removed the case to the United States District court for Massachusetts on the basis of diversity. Before any discovery took place, the defendant/respondent moved for judgement on the pleadings which was granted. Petitioner filed a timely notice of appeal, and the United States court of Appeals for the 1st Circuit affirmed the decision of the district court. Thereafter, petitioner filed a timely petition for rehearing, which the Appeals court denied. Included with the petition

for rehearing was also petitioner's motion to certify the question of state law which lies at the heart of this action to the Massachusetts Supreme Judicial Court, which the Appeals Court also denied. (Pet. App. 1d)

REASONS FOR GRANTING THE PETITION

The new forum shopping is discriminatory and unconstitutional like the old forum shopping.

In 1842, Supreme Court decided the case of *Swift v. Tyson,* 41 U.S. (16 Pet.) 1 (1842), and held that United States federal courts which heard cases brought under their diversity jurisdiction under the Judiciary Act of 1789 must apply statutory state laws when the state legislatures in question had spoken on the issue, but did not have to apply the state's common law if the state legislatures had not spoken on the issue.

Later, in 1938, the U.S. Supreme Court delivered its landmark decision in *Erie Railroad Co. v. Tompkins,* 304 U.S. 64 (1938), in which the Court held that the United States does not have a general federal common law and that U.S. federal courts must apply state law, not federal law, to lawsuits between parties from different states that do not involve federal questions. In reaching this holding, the Court overturned almost a century of federal civil procedure case law, and established the foundation of the modern law of diversity jurisdiction. The Erie decision "goes to the heart" of the American system of federalism and the relationship between the U.S. federal government and the states. The Erie Court reasoned that because the Swift doctrine dictated that a lawsuit between two in-state parties would be decided under state law but an identical lawsuit

between an in-state party and an out-of-state party would be decided under federal common law, the Swift doctrine was allowing plaintiffs to manipulate which law would be applied to their lawsuits by strategically filing them in specific state or federal courts—a practice now known as "forum shopping". The Supreme Court decried this practice, saying that it allowed plaintiffs to introduce "grave discrimination" against parties from other states. The Court also held that the Swift doctrine had not only been a "social and political" failure, but had also been unconstitutional. Having determined that the Swift doctrine was unconstitutional, the opinion further declared that there is no general U.S. federal common law, and that U.S. federal courts hearing cases under diversity-of-citizenship jurisdiction must apply state laws as construed by state supreme courts.

"Except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State. And whether the law of the State shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern. There is no federal general common law. Congress has no power to declare substantive rules of common law applicable in a State, whether they be local in their nature or "general," be they commercial law or a part of the law of torts. And no clause in the Constitution purports to confer such a power upon the federal courts."

—Erie, 304 U.S. at 78.

The petitioner here avers that forum shopping works both ways. It can not only be practiced by plaintiffs, but defendants as well, and leads to a discriminatory end. In the underlying case the respondent/defendant has engaged in a common tactic of big bank mortgagees to forum shop federal courts to decide foreclosure cases in Massachusetts, which are matters which should be decided by state law and state judges. It is still discriminatory in that a lawsuit between two in-state parties would be decided under state law but an

identical lawsuit between an in-state party and an out-of-state party would be decided under some hybrid of state-federal law, depending on the discretion of the federal judge. As the Swift doctrine was allowing plaintiffs to manipulate which law would be applied to their lawsuits by strategically filing them in specific state or federal courts—"forum shopping," so the practice has evolved with a new twist into "neo forum shopping." The Supreme Court once decried this practice, saying that it allowed plaintiffs to introduce "grave discrimination" against parties from other states. However, the new twist allows out of state defendants to introduce "grave discrimination against parties in their own states." This "neo forum shopping" consists not in applying federal law to state issues, but applying federal judges to state law; specifically, to misinterpret and mis-apply state law, which is what

happened in this case in the lower court. One peculiar and corrupt outcome of neo forum shopping is discrimination against the poor —"povertyism"—which is a real, pervasive, and harmful form of discrimination. Povertyism is now recognized by UN experts as comparable to racism and sexism, as it too involves negative stereotypes, systemic exclusion, and unfair treatment, such as being judged, ignored, or denied services based on low income. The federal forum is also the forum of choice because it leads to a financial dead-end for most litigants fighting foreclosure, few of which can afford to pay an attorney to appeal to U. S. Appeals Court, let alone the U. S. Supreme Court. And even if they could, it is a well-known and dismal statistic that the U. S. Supreme Court hears fewer than 1% of cases appealed to it. Therefore, the United States Court of Appeals is for

most folks fighting foreclosure their last bite at the apple, and the U. S. Supreme court a dead end. And for some reason, statistically the big banks rarely lose in United States Courts of Appeals, no matter how weak their cases are. Why? Because their pockets are deep. The petitioner here avers that this "neo-forum shopping" should be declared unconstitutional like the old forum shopping under the Swift doctrine. Because it leads to a discriminatory outcome, the U. S. Supreme Court today should decry it also as "gravely discriminatory" *against* the poor, but *for* the rich and powerful.

In the introduction to the questions presented in this petition, petitioner stated that this case amounts to no more than a pixel in the big picture of corruption in America today—in all three branches of government. It also points to an explanation of why those in charge

of the executive branch are so contemptuous of the law and the courts. Why they feel that they are above the law as long as they have plenty of money, as long as they can amass wealth. Why? Because, they have learned this lesson from the big banks (like the big bank respondent in this case) that money can determine the outcome of legal proceedings. Whether this has always been true or not, the perception on the streets today is that it is true: Big money and big banks now own all three branches of the American government. The messaging is loud and clear to the rank-and-file poor and working-class people: Get money, seek riches at all costs, because justice has to bought in America. It has never been so glaringly obvious as it is today. Maybe we still have a good system of courts and laws, but we just don't have enough good people working in them anymore. And

more good people are now leaving in droves. The magistrate judge in this case simply ignored the plain language, meaning and legislative intent of M.G. L. chapter 244, section 35C(b). This federal magistrate judge simply elevated her own personal interpretation of law above the law of the intent of the Massachusetts legislature, and the district court judge simply accepted her findings and recommendations with scienter, but washed her hands of it like Pontius Pilate.

On page 38 of the Appellant's opening brief, the following statement of the Magistrate Judge makes the foregoing apparent:

"Further, at no point did either the Magistrate Judge or the USDC trial Court Judge ever undertake statutory construction as to the meaning of the legislative intent of G.L. c. 244, §35C(b). This was so, despite the Plaintiff specifically articulating in detail, the clear language of the statute, and its obvious application to only "arm's length third party purchasers" at a statutory auction sale. Instead, the

Magistrate Judge and USDC trial Court Judge eschewed any such review, and merely relied upon parallel non-precedential federal trial court rulings and Massachusetts Appeals Court R. 1:28 non precedential holdings involving decisions examining other borrowers pleadings under a 12(b)(6) analysis that were nowhere alleged by Plaintiff. Further, in none of the cited cases by the Magistrate Judge was the issue of the statute only applying to arm's length third party purchasers ever raised."

But despite the issues petitioner raised in the foregoing, the appeals court panel found no "apparent error" with the Magistrate Judge's interpretation of Massachusetts state law, which raises the question of what is the standard for "apparent error."

CONCLUSION

This petition for writ of certiorari should be granted because the District Court Magistrate Judge failed to perform proper statutory construction of state law M.G.L. chapter 244, section 35C(b). In so doing the Judge mis-applied Massachusetts state law, in order to

arrive at a predetermined and corrupt ruling. Petitioner is looking for at least four Justices in the highest court in the land to address this unconstitutional practice and get back to the basics of upholding their oath to do equal right to both the rich and the poor.

Don't Supreme Court Justices take two oaths of office? First, they take the same constitutional oath as members of Congress. They also take a judicial oath, as stated in 28 U.S.C. § 453:

"I, ____, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____ under the Constitution and laws of the United States. So help me God."

However, since "the poor" rarely have access to the U. S. Supreme Court, due largely to the fact that they are poor, how often do Supreme Court Justices even get

an opportunity to keep this part of their oath meaningful.

This is an inconvenient truth of national importance, because most of the nation is poor. Compared to the billionaire class of super-empowered individuals and corporate "persons," arguably more than 99% of the nation's population—the rest of us--are poor. And to be real about this, just how often are appellants with the financial means to get cases heard before the Supreme Court concerned with interpretations of the law which will benefit the poor majority of Americans?

Aside from disrupting an archaic operating system with some yet to be thought of, brilliant new way of handling increasing caseloads (with due respect for the Court's shadow docket, of course), perhaps one way to address this inconvenient truth is for the highest court in the land to send an unmistakable

message to the lower courts to not warp the law in the first place in order to reach predetermined and corrupt outcomes. And not show deference to deep-pocket corporations which clearly game both the state and federal court systems through corrupt and discriminatory neo forum shopping.

Respectfully submitted,

/s/ Jacquelyn V. Fitzhugh

Jacquelyn R. Fitzhugh

Date: February 2, 2026