No. _____

IN THE

Supreme Court of the United States

NICOLE BARONE,

Petitioner,

v.

WELLS FARGO BANK N.A.,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

Nicole Barone
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QUESTIONS PRESENTED

This Court often emphasizes the importance of preserving the public's trust in the legal system. But over the past decade, courts have left the public and homeowners with questionable decisions and actions that have marred the system. Unfortunately, millions harmed are average American's, their families and friends. Every American has been affected, as these outcomes have had a lasting negative effect on the economy and wealth, including record poverty, homelessness, health care costs, low wage jobs and government assistance, while infringing on Constitutional Rights. Herein, there are numerous questionable issues by the courts and others in favor of Wells Fargo and the government's interest in Fannie Mae (FNMA), the alleged note owner. This case raises important issues over the government's direct financial interest in trillions of dollars' in taxpayer backed mortgages, FNMA as *de facto* State actor, national banks, mortgage securitization (RMBS), default insurance (CDSs and CDOs), Constitutional property rights, foreclosure and modification fraud, standing and void judgements in need of addressing. This case raises questions of Constitutionality of FL law that infringes on Due Process under Amendments V and XIV. Thus, the questions presented are:

1.Whether U.S. Government's indefinite Total Control and exclusive financial benefit of FNMA renders it a *de facto* State-actor subject to federal jurisdiction and the property "takings" clause of the U.S. Constitution?

2. Whether this Court's holding in *Valley Forge* the *Real-Party-In-Interest-Doctrine*, Fed. R. of Civ. P. 17 & 19, and FL Supreme Court's holding in *Kleiser* prohibit Wells Fargo and servicers from filing foreclosures when they are not the true owner of the note debt?

3. Whether Wells Fargo and foreclosing parties violate Due Process by not supplying complete Chain of Title outlining all RMBS or REMIC trust securitization and rehypothecation of the notes, and detailed payment trail to the alleged note owners to satisfy the contracts?

4. Whether Wells Fargo and other non-legal owners can collect benefits above legal amount owed, inc. non-disclosed tax incentives, taxpayer funded default insurance, title and re-insurance, securitizations, rehypothecations, secondary default policies, CDSs and CDOs?

5. Whether Florida law allowing a non-opinioned Appeals Court order to remove review authority of the state High Court violates the guarantee of a fair legal process? Should all courts be held to the opinion standards of Federal Courts to satisfy Due Process? Did FL High Court err in its use of this unconstitutional law, with notice of this Court's holding in *Valley Forge* and its own long-held decision in *Kleiser*? Does the National Bank Act's federal regulation, preemption and restrictions on states demand federal jurisdiction?

PARTIES TO THE PROCEEDING

Petitioner, Nicole Barone and spouse John were defendants in Circuit Court, she was appellant in the Appeals Court and petitioner in the FL Supreme Court.

Respondent, Wells Fargo Bank N.A. was a party throughout litigation. Wells Fargo is alleged servicer for the U.S. Government's exclusive interest in FNMA.

RULE 29.6 STATEMENT

None of the petitioners is a nongovernmental corporation, has a parent corporation or shares held by a publicly traded company.

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Nicole Barone respectfully petitions for a Writ of Certiorari to review the order of Florida Supreme Court.

DECISIONS BELOW

The order of Florida Supreme Court (App. 1), non-opinioned decision of Florida Fourth District Court of Appeals (App. 3), and the order of 17th Judicial Circuit Court for Broward County (App. 4) are attached hereto.

JURISDICTION

The Florida Supreme Court dismissal order was entered on November 29th, 2017. The non-opinioned order of Florida Fourth District Court of Appeals was entered on October 26th, 2017. Justice Thomas granted an extension until April 28th, 2018 to file, so this petition is therefore timely filed. This Court's jurisdiction rests on 28 U.S.C. § 1257(a), "the highest court of [the] State in which a decision could be had." *See, e.g., KPMG LLP v. Cocchi*, 565 U.S. 18, 19 (2011) (per curiam).

CONSTITUTIONAL, STATUATORY & RULING PROVISIONS INVOLVED

U.S. Const. amend. V, cl. 3 & 4, state: "...nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." Accordingly, U.S. Const. amend. XIV, §1, cl. 2, provides in part: "nor shall any State deprive any person of life, liberty, or property, without due process of law."

U.S. Const. Article III, § 2, cl. 1: "The judicial Power shall extend to all Cases, in Law and Equity, arising

under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority...to Controversies to which the United States shall be a Party...". Concurring, 28 U.S.C. § 1345 states: "the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress." (June 25, 1948, ch. 646, 62 Stat. 933.).

U.S. Const. art. VI, cl. 2: "the Laws of the United States . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Fed. R. Civ. P. 17: "An action must be prosecuted in the name of the real party in interest." Substantiating the *Real-Party-In-Interest-Doctrine*, while conflicting with Fl. R. Civ. P 1.210: "Every action may be prosecuted in the name of the real party in interest."

Fed. R Civ. P. 19(a)(1): *Required Party.* A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if: (A) in that person's absence, the court cannot accord complete relief among existing parties; or (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may: (i) as a practical matter impair or impede the person's ability to protect the interest; or (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

INTRODUCTION

The most essential cog of justice is jurisdiction, the essence of a Courts power to adjudicate, and in lack thereof no Court action can be valid. *See Mansfield, C. & L. M. R. Co. v. Swan*, 111 U.S. 379, 382 (1884) "The requirement that jurisdiction be established as a threshold matter is 'inflexible and without exception,' "; for "jurisdiction is power to declare the law," and " 'without jurisdiction the court cannot proceed at all in any cause,' " *Steel Co. v. Citizens for Better Environment*, 523 U.S. 83, at 94 (1998); *Ruhrgas AG v. Marathon Oil Co. et al.*, 526 U.S. 574 (1999).

The US Constitution has long governed and asserted the importance of Due Process and fair legal proceedings as essential to our system of justice. Moreover, the same revered document outlines the necessary rights granted unto the people to protect against those who attempt to pervert it, including entrusted corporations and the government.[1] A nagging issue compounding post Financial Crisis, is the vast number of Americans that have been and continue to be affected by the foreclosure crisis. The crisis transferred billions of wealth from the people into the coffers of entrusted banks like Wells Fargo and to the US Government through its seizure of FNMA. Many of the foreclosures that created the record poverty and homelessness, were wrongful and violated Constitutional rights, Federal law, long-held state High Court rulings and the direction of this Court. Systemic failures at standing, by improperly bringing many of these foreclosures in the

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[1] "...The people — the people — are the rightful masters of both Congresses, and courts — not to overthrow the Constitution, but to overthrow the men who pervert it —". Abraham Lincoln, [Sept. 16-17, 1859] (Notes for Speech in Kansas and Ohio), Page 2.

wrong venue, corrupted Chain of Title through securitization, wrongful rehypothecation, and unlawful third-party proceedings, are vital issues to proper adjudication of millions of cases, past, current and future.

Many foreclosures involved blatant failures of government mandated modification publicly scorned by some Courts and ex-government officials. Tactics utilized are eerily similar across countless victims' stories and complaints defining the schemes. Ethics are lost for taking advantage of Americans when financially vulnerable, creating a situation impossible to overcome and eventually fall susceptible to misrepresentations procuring countless profitable securitizations, rehypothecations and defaults.

Wells Fargo and national banks have been regularly utilizing federal preemption privileges to avoid victims claims but continue to wrongfully bring mass foreclosures in those same state venues. Some state officials and courts turned a blind eye to the facts and wrongdoings, and allowed Wells Fargo, banks and FNMA to wrongfully obtain millions of properties through fraud. In Florida, the infamous Rocket Docket fostered countless wrongful proceedings and Due Process failures with judges closing hundreds of cases per day while violating homeowners Constitutional Rights, including this case. A Broward foreclosure judge was noted for closing around 786 cases in one day. Due Process? Courts have allowed Wells Fargo to go unpunished for too long. Wells Fargo's multiple record Billion-dollar regulatory settlements demand greater attention by Courts to the numerous victims' claims and to remove the hiccups and legal speedbumps utilized to deter justice, including within this case.

This Court is the ultimate adjudicator for the people and the Constitution, and this case presents the ideal opportunity to address these issues that have continued to plague Americans and the justice system for over a decade. The law must not rule on the impact or fallout from millions of improper and void judgements, it must focus on the facts and the millions of victims whose Constitutional rights have been violated.

STATEMENT OF THE CASE

This foreclosure was wrongfully initiated in state Court by Wells Fargo, alleging for FNMA, which through its seizure is for the U.S. Government's exclusive benefit and interest. Upon filing, Wells Fargo violated the Notice of Fair Debt Collections Practices Act, 15 U.S.C § 1692, *et seq.* by wrongfully asserting it was the owner of the debt, that right allegedly belongs to the U.S. Government and FNMA. Additionally, Wells Fargo failed to satisfy due process, as it purported service with questionable Affidavits of Lost Original Summonses. These affidavits were filed almost two months after the alleged service, and a few days after Wells Fargo erred in filing a default motion. The alleged server was ProVest LLC, publicly known and reprimanded for its fraudulent practices by consent order with the FL Atty. Gen. and dubbed the "sewer service" firm. Wells Fargo's own ROS has different handwriting than on the original summons, from the same alleged server. Prior to this, Mrs. Barone filed a request for mediation, which was never acknowledged by Wells Fargo. A questionable notice of borrower non-participation was filed a few days after its default filing. Mrs. Barone does not recall refusing mediation, especially because she filed the request. Moreover,

Wells Fargo claimed mandatory mediation was not applicable, violating Administrative Order 2011-13-Civ.

Around the same time, Wells Fargo violated the Barone's through an unauthorized bank account withdrawal, and for days thereafter failed to file their fraud complaint in violation of FDIC Section 10.1 governing Suspicious Activity and Criminal Violations. Wells Fargo notified them days later, that it committed the unauthorized transaction, and attempted to conceal the unlawful act as a collection action. The Barone's were represented by an attorney, who throughout the proceedings lead them to believe their defense was being handled properly. Needless to say, it was not. The Barone's counsel commented that Wells Fargo could not commit the unauthorized withdrawal and he was going to get the house from them, but later stated that the foreclosure Court wouldn't hear it at trial, and they would lose. This was part of Wells Fargo's wrongful 48-hour ultimatum, misrepresenting and inducing judgement for a 4-6 month extension to file for modification. This is still occurring, as it tried to coerce Mrs. Barone and her father into accepting it for his home a few months ago. The Barone's never signed any final judgement. Wells Fargo allowed the foreclosure Court to operate without mandatory voice recorders or court reporters for homeowners' due process rights protection. This all occurred during the infamous Rocket-Docket.

Wells Fargo initiated foreclosure while processing their modification, this is Dual-tracking that was highly criticized by congress and restricted by the National Mortgage Settlement. Wells Fargo wrongfully advised that their payments needed to be in the rears in order to file for HAMP, and then dragged the process out for months by not supplying any updates. This is confirm-

ed by former S.I.G. TARP, Neil Barofsky's book BAILOUT, Chapter 8, Foaming the Runway.[2] *See* also *Kuehlman v. Bank of America*, 177 So3d 1282 (Fla.5th DCA 2015); *Nowlin v. Nationstar Mortg.*, LLC, 193 So.3d 1043 (2016). Wells Fargo then wrongfully alleged that Mrs. Barone declined modification, sometime in July of 2012. In an early 2012 article, the US Treasury's Making Home Affordable Report suggested Wells Fargo was denying HAMP modifications in order to seek "lucrative fees on delinquent loans", and it only provided 9,761 HAMP trial modifications out of the 110,807 that it was required to. Wells Fargo was complying with its legal obligations under HAMP less than 10% of the time. Wells Fargo utilized this scheme to force its customers into default, so it could collect on its lucrative and unjust default derivatives and policies. Later in the process, Wells Fargo attempted to Bait & Switch them from a HAMP modification that was substantially more beneficial to them, into a secondary mod that clearly benefitted Wells Fargo and its "Investor", who was initially concealed and later admitted to being FNMA. It initially concealed that the much higher "Investor" mod payment was due to forced Lender Placed Insurance (LPI). Wells Fargo advised that they MUST pay for the LPI to qualify for the trial payments, and if they wanted to get their own policies they

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[2] - *"One particularly pernicious type of abuse was that servicers would direct borrowers who were current on their mortgages to start skipping payments, telling them that they would allow them to qualify for a HAMP modification. The servicers thereby racked up more late fees, and meanwhile many of the borrowers might have been entitled to participate in HAMP even if they had never missed a payment. Those led to some of the most heartbreaking cases. Homeowners who might have been able to ride out the crisis instead ended up in long trial modifications, after which the servicers would deny them a permanent modification and then send them an enormous "deficiency" bill."* (emphasis added). -

needed to decline the offer and start over by resubmitting another package. It advised this was FNMA's policy within its guidelines, and it was adhering. The Barone's submitted their own flood policy to be paid and charged to escrow, in accordance with Wells Fargo's written guidance, but it failed to accept the policy in favor of its own LPI policy with more than a 300% higher premium. Soon after they complained over the LPI policies, their property located east of Federal Highway near the intracoastal and canals, was questionably removed as a mandatory flood zone.

Shortly thereafter Wells Fargo settled claims that it was receiving unethical and secret incentives and/or "kickbacks" from LPI policies, at the detriment of its entrusting customers. Wells Fargo utilized back door deals with LPI insurers that led to manipulated premiums and extensive control over LPI policies that it charged to the Barone's for years. *See Simpkins v Wells Fargo Bank, N.A.*, 2013 WL 4510166, at *7 (S.D. Ill. Aug 26, 2013); *Leghorn v. Wells Fargo Bank, N.A.*, 950 F. Supp. 2d 1093, 1115 (N.D. Cal. 2013); *Fladell v. Wells Fargo Bank, N.A.*, No. 0:13-cv-60721, 2014 WL 10017434, *1 (S.D. Fla. Mar. 17, 2014).

Their complaint letter to Wells Fargo's Escalation Department was responded with excuses for its wrongdoings, provided incorrect HAMP calculations, and blatantly avoided the unauthorized withdrawal and an unauthorized credit application that occurred a few weeks prior. Wells Fargo claimed it couldn't find any information. To conceal its wrongful acts, its response demanded the Barone's subpoena documents. Since then, it has avoided multiple RFPs within foreclosure, provided only calculated foreclosure documents in Mr. Barone's state RICO action and wrongfully influenced

dismissals in his Federal RICO action to avoid discovery.[3] The first wrongful dismissal was overturned by the Eleventh Circuit, and second is recently noticed for appeal. The second dismissal is with the same judge, who is a Wells Fargo mortgage customer, and refuses to recuse himself. Wells Fargo hired elite counsel against a *Pro Se* litigant, and used them for this foreclosure appeal, instead of the firm that handled this case for years. Wells Fargo unethically attempted to discredit Mr. Barone by trying to self-label him a conspiracy theorist, within its motion to dismiss his original state RICO complaint, for unlawful acts it has since been forced to publicly acknowledge and/or admit.

Wells Fargo allowed former peer, general magistrate Eiss, to be involved and handle its questionable strike of the RFP. Wells Fargo allowed Judge Rosenthal to handle the RFP while on demotion during a criminal investigation. Her actions in handling the RFP are highly-questionable. She was later investigated for ethics violations and retired after the FL High Court revoked her sweetheart deal over public outrage.

During foreclosure, Wells Fargo filed documents containing false statements, including motions to cancel sales that included "Plaintiff has requested a cancelation of the sale to allow its loss mitigation department to continue to negotiate a loan workout with the mortgagors." The Barone's were not working with its loss mitigation department. Also, its Certification Pursuant to Local Rule 10A which states "I hereby certify that I have made a good faith attempt to resolve

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[3] Cases were brought for Wells Fargo's numerous wrongful acts against them. Federal RICO action: *Barone v. Wells Fargo Bank N.A.*, 16-16079-CC, 16-cv-60960-WPD; State RICO action: *Barone v. Wells Fargo Bank N.A.*, CACE15021684, 4th DCA 4D17-2531.

this matter before setting it for hearing and the issues before the court may be heard and resolved by the court within five (5) minutes." Wells Fargo did not make any good faith attempts to resolve any issues with them. After they moved to proceed *Pro Se* in this case, Wells Fargo failed to serve them a notice of sale filing only a few days later, by removing them from electronic service. It wrongfully influenced the Court to excuse its service failure by utilizing Hurricane Matthew, which did not affect their property. Judge Stone refused to hear their arguments at hearing. Moreover, Wells Fargo regularly set hearings without contacting them. It's counsel Mr. Hall, made perjurious statements to the Court, they advised of this in a 2015 email, and soon after he was no longer with the firm, only to return last year. More concerning, Wells Fargo ignored a conciliation order for months, while multiple judges asked if there was a lawsuit coming for the issues brought to the Court, but no corrective actions were taken.

For years, Wells Fargo allowed inspectors to trespass on their property without prior consent, prompting no trespassing notices. Its inspectors are still a nuisance, by doing drive-by picture taking. Wells Fargo's inspectors harassed Mrs. Barone's mother for some time before her sudden death a few years ago. They would bang on her door as early as 7:30 am and late at night advising that Wells Fargo sent them to check occupancy. Wells Fargo also wrongfully attempted to coerce Mrs. Barone's mother and father into submitting a statement blaming the Barone's for their financial situation to assist approval of their modification.

A few months before Mr. Barone filed his state RICO action, they sent an email to Wells Fargo's Executive Offices, Legal Department and Board of

Directors notifying of his intent to file. Wells Fargo continued its wrongful forwarding of their communication to the mortgage department. Greg Nichols responded and led Mrs. Barone to believe he was an attorney in the legal department, while he sarcastically downplayed the issues and tried to forestall any pending suit. He alleged the Barone's counsel participated in mediation in this case and that he had over 500 documents ready to bring to Court. Wells Fargo has not substantiated his claims, including his legal status.

Around this time, Mrs. Barone had a questionable encounter with her counsel and Judge Lazarus in the courthouse, where Lazarus advised her not to file ethics charges against Judge Rosenthal, but rather revisit the RFP. She revisited the RFP and Lazarus said he needed time to review everything and get back to the parties, but he failed to address the RFP. Lazarus then allowed Wells Fargo's counsel Mr. McDonough to play games in avoiding its non-answer to the RFP for over a month, while lashing out at him for not making himself available for hearings and setting and canceling others. His tone changed when McDonough finally appeared, coincidently the day before the sale date. While awaiting hearing, McDonough unethically defamed the Barone's by yelling across the courtroom to a colleague and by sarcastically showing and discussing their file with a lawyer unconnected to the case, while Mrs. Barone sat a few feet away. At the hearing, Lazarus was unprepared, he had to ask for a copy of the motions from Mrs. Barone and then immediately scrolled to the back of the filing and curiously ruled a technicality against them, while brashly ignoring Wells Fargo's notice of sale deficiency. McDonough didn't have to say a word. This forced her to file bankruptcy to protect their property from Wells Fargo's wrongful seizure with Court help.

Wells Fargo's issues continued when she filed to re-open her bankruptcy. Upon notice, the foreclosure Court clerk immediately placed a stay on the case. A few hours later, Wells Fargo filed a moot motion to cancel the sale for the next week without mentioning the bankruptcy filing, and the next day filed a NOH for the moot motion. Mrs. Barone showed for the hearing from being unable to trust Wells Fargo's previous wrongful actions. Before the hearing she advised Wells Fargo's new representative, that the motion was moot because of her bankruptcy filing. The representative called her office and advised that Wells Fargo's motion needed to be heard. Mrs. Barone was wrongfully forced in front of Judge Stone, who again refused to hear her arguments that the motion was moot. Wells Fargo never acknowledged the bankruptcy and perjured the Court by asserting there must have been a mod package submitted, when it knew this was false. Judge Stone refuse to check the docket on the computer in front of him and assisted Wells Fargo's fraud, by granting the moot motion and resetting the sale date. A few days later, FL Atty. Gen. Pam Bondi was notified through email and ex-U.S. Atty. Preet Bharara by FedEx of these unlawful acts of the Court and Wells Fargo. After numerous unreturned calls to each attorneys' offices, the Barone's are unaware of any research or investigations conducted by either, just silence. Mrs. Barone went to file a motion to cancel the wrongful sale and was advised that the clerk was unaware of what Wells Fargo was attempting, it was completely against procedure, so he re-cancelled the sale. He noted it all in the computer and said that Wells Fargo was not going to be happy with him, but he had to do the right thing.

Soon after, they filed a motion to vacate final judgement and sanctions against Wells Fargo for this blatant act of fraud on the Court. They also filed a motion for clarification of Wells Fargo's counsel and of the Court's jurisdiction over Wells Fargo prior to and post judgement. Wells Fargo played games with setting the hearing by only noticing the vacate and sanctions motion and forced the Barone's to file their own NOH for their clarification motion. It alleged the clarification was not really a motion. At hearing, Lazarus stonewalled them when they attempted to bring up Wells Fargo's admitted FHA fraud and its unauthorized account scandal. Lazarus ignored the arguments of *Parker v. Parker*, 950 So.2d 388 (Fla.2007); *Cox v. Burke*, 706 So. 2d 43, 47 (Fla. 5th DCA 1998); *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 64 S.Ct. 997 (1944) and *In re Intermagnetics America, Inc.*, 926 F.2d 912, 916 (9th Cir.1991), denied their motion to vacate and sanctions while completely ignoring their jurisdiction clarification motion. On April 25th, Mrs. Barone attended the 2017 annual shareholder meeting in Florida as a guest of Sr. Nora Nash of Sisters of St. Francis, who advised they are shareholders, corporate governance activists and conduct business with Wells Fargo. Sr. Nora was aware of the issues and at the meeting had to stand up and assertively get Mr. Sanger and Mr. Sloan to take Mrs. Barone's questions, after they passed over her numerous times.

A few weeks later on May 8th, Mrs. Barone filed to remove this action to Federal Court on the federal jurisdiction questions and the foreclosure Court's failure and unwillingness to address. After she filed notice, under 28 U.S.C. § 1446, the foreclosure Court no longer had jurisdiction and should automatically stay the proceedings. The clerk wrongfully advised that only bank-

ruptcy automatically stays proceedings, which is not what the FL 3rd DCA advises.[4] The clerk forced her to pay for and file a motion to cancel the sale and advised to bring it to the Court, hand it to the case manager the Judge will sign it and hand it back. Instead, the case manager handed it to Wells Fargo's counsel who wrongfully claimed he could not argue this today it would have to be tomorrow. Mrs. Barone advised that 28 U.S.C. § 1446 completely removes the Courts power to proceed. The clerk wrongfully set a hearing for the next morning and forced Mrs. Barone to return. At the May 9th Hearing, Wells Fargo sent another new face, who immediately argued against the clear language of statute § 1446 and proceeded to commit further fraud against the Court with Lazarus' assistance.[5] Lazarus arrogantly defied § 1446 by denying their motion and ordered the property sold. When Mrs. Barone questioned his blatantly violating federal law, he heatedly asserted that he would do whatever the Federal Court says, but in contrast he knowingly defied federal law. This forced them to remove their belongings from the property and incur unnecessary costs in doing so, that must be reimbursed by Wells Fargo and the foreclosure Court.[6] While this was occurring, Sr. Nora advised she was communicating with Wells Fargo executives, in-

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[4] *Reyes v. Aqua Life Corp.*, 41 Fla. L. Weekly D2768 (Fla. 3rd DCA December 14, 2016) "Because removal results in an *automatic stay* of the proceedings in state court, no further activity or action is permissible or may be conducted in the circuit court, and the notice informs the circuit court that it may not proceed unless and until the case is remanded." (emphasis added).

[5] *See Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985) (fraud upon the court exists "where the judge has not performed his judicial duties"); *Trans Aero Inc. v. LaFuerga Area Boliviana*, 24 F.3d 457 (2nd Cir. 1994)

[6] Some costs are accruing monthly and all costs were added to relief requested in Mr. Barone's Federal Amended Complaint.

cluding board members, regarding the issues, so Wells Fargo's leadership was informed of its unlawful actions. Afterwards, she advised that she wasn't getting anywhere with them and her efforts may be useless.

More concerning was the highly-questionable swift remand order that was entered by the Federal Court after the auction sale. The filing had close to a thousand pages to be reviewed and the costs incurred for copies and the filing fee should have warranted a thorough review. If the Court was so adamant in its decision, it should have refunded the filing fee. A service was paid for, but for some curiously odd reason the District Court felt it necessary to push aside its overwhelmed docket to immediately address the removal in favor of Wells Fargo. Ironically, Wells Fargo was at the time blatantly committing another fraud against the Court by violating 28 U.S.C. § 1446. Wells Fargo was well aware of its blatant violation of § 1446, *See Musa v. Wells Fargo Delaware Trust Company* (Case No. 1D15-0937, 1st DCA, FL. Dec. 2015).[7] The Barone's filed an objection to the sale on May 18th, and on May 19th, appealed the vacate judgement and sale cancelation orders.

On May 23rd, the 4th DCA ordered to show cause for appealability of the sale cancelation order, asserting lack of jurisdiction to review.[8] Her response was filed on June 1st, included the objection to the sale and clearly outlined the blatant 28 U.S.C. § 1446 violation. Wells Fargo filed an unethical response purporting the

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[7] *"As a court of the United States, we must, under the Supremacy Clause, give force to the express language of 28 U.S.C.A. § 1446 (West 2015)."* (emphasis added).

[8] The May 23rd order only allotted ten days to file response to the order on appealability and an additional five days from then to file her initial brief for the vacate judgement and sanctions order.

Court's lack of jurisdiction to conceal its and the foreclosure Court's violation. On June 29th, the Court undermined justice by dismissing the appeal of an obviously Void order that clearly violated § 1446. This prompted a July 13th motion for clarification, which Wells Fargo failed to respond to, and the 4th DCA failed to address. The order left Mrs. Barone unsure if it was an act of the Court or solely an act of the appeals clerk.

Mrs. Barone advised the Court, about a month after the unlawful sale, they had to summon the Broward Sherriff's office to the property on June 14th, for acts of trespassing, vandalism and theft. Over the past few months or so, on multiple occasions a gate on the property has been broken by forced entry. The Barone's social media accounts have had posts regarding Wells Fargo and this case deleted without notice and reasoning. Their tax refund had been held in limbo for over a year, with an alleged and unsubstantiated identity theft issue. For months it had been allegedly mailed with no date available. They did not have these issues prior to their litigations with Wells Fargo.

Oddly, the 4th DCA advised the vacate final judgement and sanctions order was not a final order, which required Mrs. Barone to file her initial brief within fifteen days of its May 23rd order, instead of seventy, and she obliged. Wells Fargo requested an extension of time to file its response brief, she filed an objection, but the Court granted the extension. Wells Fargo filed its response brief, she filed her reply, which requested the assistance of this Court for the federal jurisdictional questions. Her initial brief also requested the assistance of the FL Supreme Court, but these requests went unaddressed. On October 26th, the 4th DCA felt justice was served by filing a non-opinioned order, with-

out addressing the vital jurisdiction questions and Wells Fargo's numerous wrongful acts, including multiple federal law violations. During this time, she contacted Fox News and was advised of other complaints they already received for the Broward foreclosure Court and Judge Lazarus. A local producer joined her in the courtroom one day to research the story, and quickly pointed out all the players involved. Because of the impact of a story of this magnitude, the producer brought it to Fox Business too. Mrs. Barone introduced Sr. Nora to do an email interview, the contents of which the Sisters won't share, and now almost a year later, Sr. Nora has been out of contact, the Fox producer has been quiet, and the story delayed. Later last year, Mrs. Barone contacted the ACLU, who last advised it was still researching, and introduced an ex-Wells Fargo employee from her credit union, who is now believed to be no longer with the credit union and not returning email. For years, many parties have curiously gone quiet over this and fallen out of the picture. A prominent Fort Lauderdale attorney tried to settle this, but his practice and life are in turmoil since an attempted settlement meeting in Palm Beach one Friday in August of 2014. About a year later, while Mrs. Barone's mother was on hospice dying, Wells Fargo defamed them and quashed a business deal with a family friend, a respected and influential local businessman who had two commercial projects with Wells Fargo at that time.

On November 22nd, she appealed to FL Supreme Court, outlining the jurisdictional issues within the notice. On November 29th it was questionably dismissed for no review of a non-opinioned order.

REASONS FOR GRANTING THE WRIT

This petition raises vital Constitutional questions of due process and proper jurisdiction of the U.S. Government, its undeniable Total Control of State-actor FNMA and the multiple frauds orchestrated by Wells Fargo. These issues are of great public importance, as they have far reaching implications into the lives of every American, as homeowner and taxpayer. Although there has been petitions with questions of the U.S. Government's treatment of FNMA stakeholders, Mrs. Barone is unaware of any petitions or holdings of this Court directly addressing the vital questions herein. These issues have hindered proper adjudication across the nation for close to a decade. Congress is pondering reorganization or recapitalization of FNMA, any decision would certainly affect Americans and the housing and mortgage markets. Any decision by Congress regarding FNMA stakeholders before addressing these jurisdiction questions could make the stakeholders culpable for numerous unlawful and unconstitutional foreclosures. Millions of state foreclosure judgements, wrongfully procured by third-parties for the ultimate financial benefit of the U.S. Government are Constitutionally Void. Many of these foreclosures were filed with corrupted land titles, as most loans were secretly securitized, rehypothecated and hedged multiple times for profiteering, and clear Chain of Titles were not proffered because the true owners are unknown or multiple un-suspecting parties. The government's Net Worth Sweep was enacted years after the crisis when Wells Fargo and banks were profiting handsomely from wrongful foreclosures, securitizations, rehypothecations and secret default policies. The FNMA wrongful foreclosures of mass Americans were utilized to help fund the liquidity that today still funds the NWS, that was outed as being used to fund government activities,

including Obamacare. It is likely that FNMA doesn't rightfully own the notes to many of the wrongfully foreclosed properties, because Wells Fargo and banks packaged, sold and rehypothecated these loans multiple times to investment groups as if they were stocks or mutual funds. Robo-signing and fraudulent documents were utilized in attempts to fill documentary voids. The unlawful benefits syphoned from each property by these non-legal owners calculates to staggering amounts above what was legally owed. These issues have been often avoided by Courts, including herein and within Mr. Barone's RICO actions. Why would Wells Fargo and its partners spend so much in legal expenses for a foreclosure and appeals, state RICO action and appeal, federal RICO action and now 2 appeals, and now this Court for a $350,000.00 or so property if it wasn't concealing? The risk management alone proves it is a bad investment, and by the third largest entrusted bank by American's to manage their livelihoods, so there is no reasonable excuse other than Wells Fargo is concealing its wrongful acts at insurmountable costs to its customers and shareholders. The questions are ripe for review and addressing by the Court to set rightful Constitutional precedent as to the jurisdiction and reach of the U.S. Government and its Totally Controlled State-actors like FNMA and Freddie Mac, along with its servicing agents like Wells Fargo.

The Court should therefore grant this petition to address these serious issues, along with Wells Fargo's multiple frauds, and to correct wrongful precedent set by national Courts, including the FL High Court and 4th DCA's non-opinioned order, for past, present and future generations.

I. This Court Should Grant Certiorari To Resolve The Conflict Between The Government, Courts And The American Public Over Fannie Mae's Practical Reality As *de facto* State-actor For Exclusive Benefit Of The U.S. Government And Under Its Total Control Warranting Exclusive Federal Jurisdiction Under Article III And Federal Statute 28 U.S.C. § 1345

There should be no dispute over the "practical reality" of the government's obvious control and moonlighting as the decade-long exclusive benefactor of FNMA. There is a serious conflict between the government, Courts, legal professionals and American public over the "practical reality" of FNMA as State-actor under this Court's direction in *Department of Transportation v. Association of American Railroads,* 135 S. Ct. 1225 (2015). This Court held that it believes in scrutinizing the "practical reality" of an entity's status, instead of utilizing Congressional labels. Additionally, this Court addressed agency principle and severity of the control aspect that favors FNMA as State-actor in *Hollingsworth v. Perry,* 133 S. Ct. 2652 (2013). The misinterpretation of this Court's direction by other Courts has left serious questions of law that affect every American, that need to be resolved.

Under Article III of the Constitution, the Federal Court holds exclusive jurisdiction over any action in which the U.S. Government is a party. See *United States v. Texas,* 143 U.S. 621 (1892), the federal judicial power exclusive to the Supreme Court included *"cases in which the United States was a party,"* (emphasis added). Petitioner is unaware of any elaborations of this Constitutional law that segregates between named party and silent party. Additionally, 28 U.S.C. § 1345

grants the Federal Court jurisdiction over actions by the U.S. Government, its agencies and officers. It is undeniable the government has been orchestrating Total Control over FNMA's operations, as immediately after its self-serving indefinite seizure, it claimed over an 80% stake and swiftly removed executives and directors. Accordingly, the government has been silent party and ultimate financial beneficiary, including the mass foreclosures, as it is the only party to consistently extract monies from the operations since the seizure.

The U.S. Treasury has accepted billions in extractions from FNMA, while it was orchestrating record numbers of wrongful foreclosure liquidations, many in state Courts infringing on due-process and the 5th Amendment's "Takings" clause. Treasury Secretary Mnuchin advised in an interview with Fox Business on May 1st, 2017, that the previous administration used FNMA profits sent to the Treasury for *"other parts of the government, while they kept taxpayers at risk."*, including Obamacare. (emphasis added). This is unconstitutional, as it shows public use of funds derived from private property through due-process failures and without just compensation. The Federal Court has jurisdiction and shall decide arguments over how to interpret the Constitution and federal law. (*See Marbury v. Madison*, 5 U.S. 137 (1803)).

In no way can justice be served by masquerading a decade long indefinite conservatorship as temporary. Moreover, the seizure cannot be labeled as temporary, when Fannie's own 8-k filed after the seizure stated *"[t]he delegation of authority [would] remain in effect until modified or rescinded by FHFA"*, and *"[the] conservatorship has no specified termination date."*

(emphasis added).[9] Recently, an FHFA attorney described the situation as temporary but indefinite,[10] which fosters manifest injustice, and even more severity in addressing these issues. The difference in inferior Court decisions regarding FNMA as a State-actor, has hinged on the battle over temporary and indefinite control. This argument is settled by comments from the FHFA Inspector General stating it has become "more obvious that the conservatorships would not be temporary."[11] The agency factor is present, as the government is in Total Control of FNMA's operations through FHFA.[12] In *Fed. Home Loan Mortg. Corp. v. Kelley*, No. 12000885AV, 2013 WL 3812051, at *5 (Mich. Cir. Ct. Feb. 21, 2013) "the procedures and provisions in place made the conservatorship, in all practicality, permanent.", the Court concurred with this Court and took a practical approach finding FNMA a State-actor.

The State-actor arguments need to be addressed by this Court, especially since millions of wrongful Void foreclosures hang in the balance, along with trillions of dollars in American's property and wealth, along with violations of their constitutional rights.[13] The Florida

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[9] *See* Fannie Mae, Form 8–K filed with the SEC (Dec. 24, 2008), https://perma.cc/89H9-AK3W (showing no specified termination date).

[10] **TEMPORARY:** That which is to last for a *limited time only*, as *distinguished from* that which is perpetual, or *indefinite*, in its duration. Black's Law Dict. 2nd Ed. (emphasis added).

[11] Fed. Hous. Fin. Agency, Office of the Inspector Gen., *Enterprise Reform*, 2, 5 https://perma.cc/3EDX-CYXX

[12] *See* RESTATEMENT (THIRD) OF AGENCY § 1.01 cmt. f (1)(2006) *("An essential element of agency is the principal's right to control the agent's actions.")*.

[13] *See* Brian Taylor Goldman, The Indefinite Conservatorship of Fannie Mae and Freddie Mac is State-Action, 17 J. Bus. & Sec. L. 11, Available at: http://digitalcommons.law.msu.edu/jbsl/vol17/iss1/1

Courts avoidance of these vital issues shows unwillingness to fully address and protect Federal rights.

II. This Court Should Grant Certiorari To Address The Vital Issues Of Third-Party Non-Debt Owner Standing In Foreclosures Under Its Holding In *Valley Forge*, The Florida Supreme Court In *Kleiser*, The *Real-Party-In-Interest-Doctrine* And Fed. R. Civ. P. 17 & 19 Which Prohibit Wells Fargo And Non-Owners Of The Debt From Bringing Foreclosure

This Court has long held the standard of law, that prohibits third-parties like Wells Fargo from asserting the rights of another. This was clearly brought to the attention of Florida Supreme Court and 4th DCA citing this Court's holding in *Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 474 (1982) (*"real party in interest must assert its own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties."*)(emphasis added). The Courts were also advised of long-held Florida Supreme Court holding in *Smith v. Kleiser*, 91 Fla. 84 (Fla. 1926) (*"In a suit to foreclose a mortgage...it should be in the name of the real owner of the debt secured."*) (emphasis added). The *Real-Party-In-Interest-Doctrine* concurs, along with Fed. R. Civ. P 17 (*"An action must be prosecuted in the name of the real party in interest."*) (emphasis added) and Rule 19 which requires parties to a suit when the Court cannot accord complete relief among existing parties. In this case Wells Fargo is not the debt owner and cannot legally surrender any of the alleged note owner's rights. FNMA has employees in full time seats in the Broward foreclosure Court, so

even if this Court unexpectedly finds the state venue to be proper, FNMA should be abiding by the law and filing its own suits, if it really is the true owner.

Wells Fargo has not substantiated, through clear chain of title, its alleged claims that FNMA is the note owner, and not one or more RMBS trusts from securitizations and rehypothecations by former Wachovia or itself. The law must ask why the loan was never clearly endorsed over to Wells Fargo if it acquired all of Wachovia's assets and personnel? Moreover, why was the note not endorsed to FNMA if it is the true owner? Who really owns the note and has the right to enforce it? FNMA advises that it is always the owner of a note and it never relinquishes its interest, in its Servicing Guide, Part I, Chapter 2, Section 202.06, Note Holder Status for Legal Proceedings Conducted in the Servicer's Name, "Fannie Mae is at all times the owner of the mortgage note, whether the note is in Fannie Mae's portfolio or whether owned as trustee...".The foreclosure courts have for too long wrongfully used the presumption of alleged facts, documents and righteousness in favor of plaintiff banks and Wells Fargo, in serious detriment to homeowners, and only recently have we rightfully begun to see a change in that status quo. Litigations between shareholders and MBS holders against FNMA and banks have unlocked documents showing inconsistent arguments by alleging one thing with investors and another with borrowers. Recent rulings have proven that presumption can no longer play a major role in foreclosures, as it does not in any Court proceeding. See *In re Lehman Brothers Holdings Inc.*, 08-13555, U.S. Bankruptcy Court, S.D.N.Y (Manhattan); *Saccameno v. Ocwen Loan Servicing, LLC, et al*, No. 1:2015cv01164 (N.D. Ill. 2018). Wells Fargo has defrauded millions of customers through multiple elaborate schemes, some

public and others not yet outed, but courts have favored it with presumptions and benefit of the doubt. Wells Fargo's latest whistleblower settlement demands presumptions end and Wells Fargo be held to the most stringent of ethical standards.[14] Any law purporting third-party standing in contrast with these long-standing principles of justice are unconstitutional, as no law should be made to assist fraud by banks like Wells Fargo against Americans. Foreclosures are extremely important as they involve Americans homes, and no law can discriminate a foreclosure case to any other action when it comes to standing, as this would be unconstitutional. This is not a fair legal process for Wells Fargo's millions of victims, and the scar left on the legal system from it must be righted.

The law demands that we not look at the potential fallout from righting millions of wrongful foreclosures that permanently damaged so many Americans lives. Ethics and the Constitution demand that we focus on doing the right thing, and in the case of over a decade of fraudulent foreclosures and modifications, it's time for all victims to be made whole by their perpetrators.

III. This Court Should Grant Certiorari As It Is Unlawful For Non-Legal Owners Including Wells Fargo, Servicers, Lenders And FNMA (For The U.S. Government's Benefit) To Accept Benefits in Excess of Note Balances

Wells Fargo and servicers for the exclusive benefit of the U.S. Government's interests in mortgages, are

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[14] *See* Emily Flitter, The Former Khmer Rouge Slave Who Blew the Whistle on Wells Fargo, The New York Times Available at: https://www.nytimes.com/2018/03/24/business/wells-fargo-whistleblower-duke-tran.html

essentially playing the role of a government agency. Wells Fargo exploits this relationship by spreading the mortgage risk across multiple default derivative products, securitization and rehypothecation, this includes taxpayer backed loans and default insurances. Wells Fargo then wrongfully manipulates the government modification process by advising homeowners they need to "be in the rears" with payments, to apply. (See again pg. 7, fn. 2, and *Kuehlman*). This fosters an incentive for Wells Fargo to push default to collect on its multiple policies. Wells Fargo utilizes defaults of securitized and rehypothecated mortgage notes to collect on secret CDOs, CDSs, and secondary default policies. These policies unjustly enrich Wells Fargo with benefits in excess of the legal note balance owed, in many cases double the legal amount or more. Wells Fargo securitized and rehypothecated notes, many multiple times, and collected substantial sums from these note sales. Wells Fargo and FNMA cannot legally retain ownership of a securitized (sold) note, and as such have no standing to foreclose on any default. Wells Fargo is in controlled possession and evades discovery of the documents that will substantiate the benefit amounts. Wells Fargo and FNMA are not the legal owners of the properties and these actions are in breach of any contracts they are trying to enforce. This conduct is wrongful, unethical and immoral, and it must end.

IV. This Court Should Grant Certiorari To Address Florida Law That Infringes On Constitutional Due Process And Detracts From Ruling Standards Of This Court And Federal Courts By Allowing Appeals Courts Non-Opinioned Decisions To Remove The Review Authority Of The Highest State Court

The American system of justice is built around one Supreme Court, and all inferior Courts are to follow its direction. This direction is not only just for interpretation of the law, it is meant for procedure in conforming to Constitutional standards. No Court should be allowed to rule without citation of the laws in which its decision is based, especially a state Court reviewing Constitutional issues that have far reaching implications into the public domain and Federal Court jurisdiction. Humans are flawed, and by consequence there will be flawed rulings within the judiciary, hence the necessity of the appeals and review structure of the U.S. Court system. A non-opinioned order can in no way satisfy the Constitutional guarantee of a fair legal process, nor can it satisfy the common law doctrine of fair procedure. Is this Supreme Court impeded from reviewing a non-opinioned order of an inferior Court? The answer is no, and neither should any state High Court be withheld from review by any state law that appears obvious on its face to be unconstitutional. This premise is the basis of the Article VI Supremacy Clause, and states should be held to higher standards in protecting Constitutional Rights, most especially ensuring a fair legal process. Herein, the trial court and 4th DCA never cited case law to back up their decisions, and 4th DCA avoided and failed to address the Void judgement and federal jurisdictional questions of great public importance. Non-opinioned orders in FL have irritated attorneys to the point that one put together the data.[15] This along with the National Bank Act, 12

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[15] *See* Samantha Joseph, Can He Say That? Frustrated Attorney Asks, "What's Wrong With the Third DCA?", Daily Business Review, Available at: https://www.law.com/dailybusinessreview/sites/dailybusinessreview/2018/02/09/can-he-say-that-frustrated-attorney-asks-whats-wrong-with-the-third-dca/?slreturn=20180321235644

U.S.C. 1 *et seq.*, federal regulation, preemption and restrictions on states outlined by this Court in *Watters v. Wachovia Bank, N. A.*, No. 05-1342, 550 U.S. 1 (2007) (quoting *Farmers' & Mechanics Nat'l Bank v. Dearing*, 91 U.S. 29, 34 (1875)), vie for exclusive federal jurisdiction of Wells Fargo and national banks.

In *Levine v. United States*, 362 U.S. 610, 80 S.Ct. 1038 (1960), citing *Offutt v. United States*, 348 U.S. 11, 14, 75 S.Ct. 11, 13 (1954), this Court held "justice must satisfy the appearance of justice." A reasonable expectation under this direction is the right to a fair legal process utilizing legal resources in written decisions. How else is a party to utilize or question legal grounds for a Courts decision? In *Pfizer Inc. v. Lord*, 456 F.2d 532 (8th Cir. 1972), the 8th Circuit concurs, "It is important that the litigant not only actually receive justice, but that he believes that he has received justice."

Since servicers handle most mortgages, and Wells Fargo is the largest for the government's interests in FNMA, these issues have far-reaching implications for every American and should be addressed by the Court.

CONCLUSION

For all these reasons, the Court should grant this petition.

Dated: April 25th, 2018

By: _____

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