

Too Big to Jail - The Big Five Banks Taking 5-Finger Discounts

Causes and Cures – Freedom from Fraudulent Foreclosures

Ann Marie Charnes

University of Memphis

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#### Abstract

This report discloses findings in connection with research to determine the root cause of why there are so many citizens losing their homes to foreclosures by national banks and reveals possible cures for the problems discovered. The “root cause” means the main issue that must be addressed to cure the problem; however, as many gardeners are aware, to get to the “root,” one must dig. The United States of America’s legislative branch was once a beautiful garden; however, it has been invaded with weeds (politicians), which have been allowed to grow and choke out most of the beautiful flowers (statesmen). The research will show the result caused by the politicians in the mortgage market in the United States and will prove that not only have the weeds destroyed this part of the garden, but have allowed a violent creature (the Fox) to have total control over it.

The research digs deep into the business of “securitization” and what it really means, or more importantly what it does not mean: it does not mean that *anybody* is watching over the Fox and what is actually being sold in this “market.” The research also looks into the laws of the United States, which provide the very foundation of our country and set up the beautiful gardens known as the legislative branch, the judicial branch, and the executive branch. The United States was built on a set of laws (the Constitution) and the research will prove what rights the citizens have to stop the Fox from taking their homes. The research reviews the past history in this country when citizens have been denied their rights granted by the Constitution, and how important equality under the law is to this country.

The research proves that federal and state legislature and judiciary continue to choose the Fox over the citizen to this day; however, it can only change by the will of the people. Will the people allow this to continue or will they remove the weeds (politicians) from the garden (United States Legislative Branch) and demand equal rights?

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### Causes and Cures – Freedom from Fraudulent Foreclosures.

This report discloses findings in connection with research to determine the root cause of why there are so many citizens losing their homes to foreclosures by national banks and reveals possible cures for the problems discovered. The root cause of why so many citizens have lost their homes to foreclosures by national banks is because the legislative and judicial branches have failed to protect them, and continue to choose national banks over the citizen to this day.

When a citizen, such as yourself, takes something that belongs to someone else (in street terms, this is a “5-finger discount”), the legislative and judicial branches make certain the citizen without proper ownership does not get away with this behavior. However, the national banks have been taking “5-finger discounts” regularly in many states, including Mississippi, since the financial meltdown began (perhaps even before), taking the homes of many citizens, and with full knowledge that the homes do not belong to the national banks, the legislative and judicial branches continue to allow it. Why would this be allowed? How can they get away with this? Although it is happening in every state; for this paper, when state law controls the issue, I have focused specifically on Mississippi state law.

### **I. The Golden Hen House (The USA Mortgage Market)**

**A. The Fox Watching Over the Hen House.** Have you heard the old story about the fox watching over the hen house? My theory is similar to the fox watching over the hen house, but this hen house is much more than a poultry farm, and there is much more at stake than losing a few hens. This is about the mortgage market and how the legislative branch of our government allowed the national banks to have complete control over it without any supervision, and how the

national banks committed fraud to make billions or perhaps more, caused the financial crisis, and continue fraudulent activity to this day.

**1. The Golden Hen House.** The “Golden Hen House” in this story represents the United States of America’s Home Mortgage Market, as a whole. The Golden Hen House is not one physical place or business, it is comprised of each and every homeowner that finances the purchase (and refinance) of a home, and each and every entity and activity that flows from such transaction. The Golden Hen House has many hens including lenders like national banks, community banks, and other banking entities, governmental entities that regulate within the hen house, and attorneys and title companies, as well as many other hens pecking away in this busy hen house.

**2. The Fox.** The “Fox” represents one or more of the national banks, including, but not limited to Bank of America, Wells Fargo, JPMorgan Chase, Citibank, and Goldman Sachs.

**3. Nest Eggs.** The “Nest Eggs” are legal documents each homeowner signed and continues to sign at closing titled “Promissory Note.” This document is unique to each homeowner in that it “defines the exact terms and conditions of the loan” (Ling & Archer, 2010, p. 220). Each homeowner can identify his or her Nest Egg from any other Nest Egg because it is unique to him/her in that it contains his/her unique signature. The Nest Egg serves as an IOU.

**4. Egg Cartons.** The “Egg Cartons” are trusts that contain the Nest Eggs. These trusts are set up as special purpose entities to hold the Nest Eggs. These special purpose entities are discussed in more detail in Section II below.

**5. Prospectus.** The “Prospectus” is a document that tells what is in the Egg Cartons, and is explained in more detail in Section II.B.2 below, but for now just know that it is a piece of paper with writing that says to Investors (people with money, described below in Section II.B.2

and B.3 below) that if the Investors will send money to invest in the Egg Cartons, the Fox will send the Investors a certificate and pay interest back on their investment.

**B. The Story.** Now that you know what the Golden Hen House really is, let's get back to the story. The Fox was watching over the Nest Eggs and things went well until one day the Fox was able to manipulate his way into complete control over the entire process of gathering the Nest Eggs, placing them in the Egg Cartons, preparing the Prospectus, gathering the funds from Investors, gathering the funds from homeowners and controlling everything from start to finish in the Golden Hen House without any supervision.<sup>1</sup> The Fox soon realized he could make more money by saying there were Nest Eggs in Egg Cartons that were really in other Egg Cartons. He even started cracking a Nest Egg or two (or more), which ruins the egg, but nobody except the Fox ever looks at those Egg Cartons anyway, so the Fox was just putting pieces of a Nest Egg in different Egg Cartons. This made the Fox very rich, and all was working out for him until one day, many years' later, someone started asking questions and wanted to make the Fox open the Egg Cartons to find a Nest Egg and to make sure all the Nest Eggs were really there. Oh No! The Fox did not know what to do, he was not planning on harming anybody; he just wanted to make some extra money and only planned to do this to a few of the Egg Cartons in the beginning, but it was just so easy and nobody could get hurt, could they?

**1. What went wrong?** As in every tangled web we weave when we try to deceive, we end up all tangled up in lies; and that is exactly what has happened here. The Fox does not want anybody to see what is in the Egg Cartons and has done everything in his power to prevent us [the public] from the truth. This is explained in more detail below.

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<sup>1</sup> There are many factors that allowed the manipulation to succeed, including the lobbyists in the legislative branch arena, together with collective bargaining (unions and civil service) inside government. All of which cause conflicts of interests which result in the creation of weeds rather than flowers in our legislative branch.

2. **Can it be fixed?** The legislative branch passes laws and the judicial branch enforces the laws to protect us. The legislative branch in Mississippi had laws on the books it could have used and even passed new laws [the Mississippi SAFE Mortgage Act]; however, it specifically excludes National Banks, and the courts have been unable or unwilling to protect the average citizen to date in most cases. This is explained in more detail below.

## II. Stock Market, Securitization, and Secrets?

A. **Is this the Stock Market?** Most citizens believe what they hear about the United States Home Mortgage Market and Securitization means the “Stock Market” and think, “Securities and Exchange Commission” or “SEC” as it is known far and wide in this country must be watching over these activities. One would think to hear “Securitization” and “Securities and Exchange Commission” would go hand in hand; however, that has not been the case in the three securitization channels in U.S. Home Mortgage Lending. In fact, the standard language on the majority of Prospectus that are sent out to Investors that this researcher has reviewed specifically state “Neither the SEC nor any state securities commission has approved the certificates or determined that this prospectus is accurate or complete. Any representation to the contrary is a criminal offense” (Wells Fargo, 2003, p. 1). No, this Prospectus is not selling anything to do with the Public Stock Market, or not legally anyway. This market is called the private secondary capital market (Brigham & Houston, 2002, p. 179), and if done correctly it is a perfectly legal market; however, without oversight, there can be massive fraud, which can lead to lawsuits and financial issues, which can cause a ripple effect throughout several markets depending on the parties involved.

B. **Overview of the Securitization Process.** Now that we know about this “private secondary capital market,” let’s drill down further to determine what the Fox is actually selling.

Keep in mind all of this takes place after the homeowner has left the closing. The homeowner will be paying the Fox on that Nest Egg he/she signed at closing (the original of which went to the Fox) until paid in full, at which time the Fox will release the Trust Deed (or Mortgage as it is called in some states) that secures the Nest Egg (that document was filed with the local land records). This “securitization process” all happens when the Fox gets the Nest Egg but before he places it in the Egg Carton. This is important to each homeowner because one should know who actually holds his Nest Egg (which is the debt or “I Owe You” a/k/a “IOU”) that he is paying each month and what the Fox is really collecting on when he sends you a statement in the mail asking you for money. It is the one who has the Nest Egg that can legally act to foreclose on the Trust Deed or Mortgage to take one’s house.

1. There are three (3) securitization channels in U.S. Home Mortgage Lending (Ling & Archer, 2010, pp. 295,296) that one’s Nest Egg may take:

a. GMNA. The Government National Mortgage Association “is a Government corporation in the Department of Housing and Urban Development” that

purchases, services and sell[s] mortgages insured or guaranteed by the Federal Housing Administration (FHA) and the Department of Veterans Affairs (VA), furnishes fiduciary services to itself and other departments and agencies of the Government, and guarantees privately issued securities backed by trusts or pools of mortgages or loans which are insured or guaranteed by FHA and VA and certain loans insured by the Farmers Home Administration” [emphasis added] (In re Registration of Government National Mortgage Association, 2002).

b. GSE. “GSE” stands for government-sponsored enterprise and refers to either Fannie Mae (FNMA) or Freddie Mac (FHLMC) as the enterprise that guarantees the privately issued securities (just paper the Fox creates called “Certificates”) backed by the Egg Cartons. Congress created FNMA and FHLMC after “recognizing the need for a secondary

market” for buyers of “FHA and VA loans” as well as “conventional loans.” (Ling & Archer, 2010, p. 289). There is still great confusion over what “type” of entities FNMA and FHLMC really are – public or private – and even the entities themselves put forth conflicting information. (The Federal Home Loan Mortgage Corporation v. Bank of America Corporation; Bank of America, N.A.; Barclays Bank PLC; British Bankers' Association; BBA Enterprises, Ltd; BBA Libor, Ltd; Citigroup, Inc.; Citibank, N.A.; Cooperative Centrale Raiffeisen-Boer, 2013) (Robinson, Veronica v. BAC Home Loan Servicing, LP, et al., 2011)

*c.* Private Securities Process. The private entity that created the Egg Carton is the Senior/Subordinate (Ling & Archer, 2010, pp. 296, 297) (which means it plans on getting paid on this and really should be paid first since it created this great deal, but will let others get paid first) guarantees the Certificates which are backed (secured) by the Egg Cartons.

**2. The Prospectus.** The Prospectus is a writing that the Fox makes up and sends out that states the Fox has set up the Egg Carton and the Egg Carton has Nest Eggs in it that GMNA, the GSE, or the Private Entity “GUARANTEES” and which they believe will pay at a certain percentage rate (Ling & Archer, 2010). The Prospectus states that if the Investor buys a “certificate” (a piece of paper the Fox will send the Investor that says the Investor owns part of the Egg Carton), the Fox will pay the Investor a percentage of the profits from the entire Egg Carton. In the Prospectus it states that to invest one must be a “Sophisticated Investor,” which means someone that has experience in investing and finance and understands the risks associated with investing in products that are not registered with the SEC. Remember, on the face of the Prospectus in bold letters it states: “Neither the SEC nor any state securities commission has approved the certificates or determined that this prospectus is accurate or complete. Any representation to the contrary is a criminal offense” (Wells Fargo, 2003, p. 1).

3. **Bags of Money.** After reading the Prospectus, Investors send in bags of money (Ling & Archer, 2010, pp. 296, Ex. 11-10) to the Fox. The Fox uses this money to purchase more Nest Eggs. Remember, the Fox provides the money at closing and the homeowner gives the Nest Egg to the Fox at closing. So, if you are following the story, you can see that the Fox has not really contributed any money himself. The money comes from the Investors and the homeowners. The Fox just moves the money around either from the homeowners or the Investors but when he moves it he will say it is “his.”

### **III. The Steal**

The Fox was doing well. He was making money without having to provide any money himself; however, he wanted more. He decided to “steal” not just the recognition for the source of the money, but to steal the actual money. The Fox did this for many years, and when the money started running out, he began stealing our houses.

**A. Greed.** As time went on the Fox began to get greedy and he created so many Egg Cartons there were more Egg Cartons than Nest Eggs, although nobody but the Fox knew this. All the money the Fox took in from Investors did not go to buy more Nest Eggs; some of it went in the Fox’s pocket or to those who found out about the Fox’s scheme as it grew larger. Of course, the scheme grew so large that eventually there was not enough money to go around to everyone, so one by one; the Fox could not pay Investors of all the Egg Cartons (Government Accountability Office, July 2011, p. 135). The Investors became angry and wanted money, after all this investment was “guaranteed” wasn’t it? The bursting of the “housing market bubble” was born and the finger pointing began (Deutsche Bank Trust Company Americas, as Trustee v. Elliott International, L.P.; Liverpool Limited Partnership, SEI Institutional Investments Trust

High Yield Bond Fund, an investment fund within SEI Institutional Investments Trust; SEI Institutional Mana, 2009).

**B. Badges of Fraud.** We have in this country what is known as “badges of fraud,” which means particular items or circumstances that have to do with the transaction (such as concealment of transfer, complexity of transaction, failure to pay fair consideration, etc.) that seem to stand out and need investigation or explanation. In our story, all was going well and the homeowners knew who held their Nest Eggs because the Deed of Trusts were filed in local land records (some counties have register’s offices and others keep land records in county clerk or chancery court offices) and if their Nest Eggs traded hands at any time, such transfers were always recorded by filing an assignment of the Deed of Trust, which secures the Nest Egg, in the local land records (Ling & Archer, 2010, pp. 220, 228-230). The transactions were simple and there was no concealment of any kind; however, the Fox decided to make it more complex by creating a “middleman” named MERS. This allowed the Fox to save money by not having to pay to file assignments; however, the most important aspect of this scheme is that there could be no more tracking of the Nest Eggs. Once the Fox had Middleman MERS (of which he is one of the controlling owners) in place, he was not only able to place present Nest Eggs in multiple Egg Cartons, but he was able to assign past Deeds of Trusts from old transactions to Middleman MERS and create even more Egg Cartons (Battle, Christopher G. and Rebecca L. Battle v. GMAC Mortgage, LLC; Morris & Associates; and John and Jane Does 1-10, 2011), (Seal, Tangela D. v. Shapiro & Massey, LLP, Et. Al., 2012), (United States of America v. Wells Fargo Bank, N.A., 2012), (James, Douglas A. and Eileen M. James v. Recontrust Company, BAC Home Loan Servicing Limited Partnership, Mortgage Electronic Registration System, Inc., Northwest Mortgage Group, Inc., 2012).

#### IV. Laws, The Stuff This Country Was Built On!

The United States of America was built on laws which “declared in the solemn instrument” are called the “Constitution.” (Rawle, 1993, p. 40). In Rawle’s book, “A View of the Constitution,” which was first published in 1825 and taught at West Point, he states:

Cicero in his Treatise *de Legibus*, remarks that law, (and he explains that he speaks of general, not positive law,) is the perfection of reason, seated in nature, commanding what is right, and prohibiting what is wrong. Its beginning is to be traced to times before any law was written, or any express form of government adopted. (Rawle, 1993, p. 203)

Rawle goes on to state that “Every member of society has a direct interest in the prevention or punishment of every act contrary to the well-being of the society.” (Rawle, 1993, p. 203). The Constitution created the legislative branch, the judicial branch, and the executive branch, which are supposed to protect the citizens of the United States of America; however, the research reveals the legislative branch is enacting laws that do nothing to stop the Fox from his stealing!

**A. The Right of the People.** Our legislative branch passes laws to protect us, the executive branch (President) has the power to veto those laws, and the judicial branch enforces those laws, which also protects us, so how did the Fox get to be so large and in charge? After all, the Constitution of the United States of America, Amendment IV specifically gives us the right “to be secure in [our] houses [...] against unreasonable searches and seizures, [which] shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” One would think that covers this whole situation and the people of the United States have a right to be secure in their houses and no warrants shall issue but upon probable cause supported by oath or affirmation [solid proof] shall our things [house] be seized [taken]; however, no court has agreed with that argument to date because in order for that argument to prevail (win) the government

would have to be the one trying to “take” your house, nobody has proved in court the connection between the Fox and the government (Robinson, Veronica v. BAC Home Loan Servicing, LP, et al., 2011) (Battle, Christopher G. and Rebecca L. Battle v. GMAC Mortgage, LLC; Morris & Associates; and John and Jane Does 1-10, 2011). Apparently, the courts are not taking into consideration the “certain ties between [the government entity] Reserve Banks and [the Fox] financial institutions, such as those with a director on a Reserve Bank’s board of directors, raised questions about whether the Federal Reserve System took appropriate steps to prevent favoritism and mitigate conflicts of interests.” (Government Accountability Office, July 2011). The Federal Reserve Bank documents are confidential and always hidden from the public, but the Dodd Frank Act allowed a “one-time audit of emergency loans and other assistance provided by the Federal Reserve System from December 1, 2007, through July 21, 2010, the enactment of the act,” which provided shocking information in regard to the Fox, like how it used government money to “finance the assets held by off-balance-sheet (hidden or special purpose entities as they like to call them) entities when those entities were unable to refinance their expiring debt due to market concerns over the quality of the assets (Empty Egg Cartons)” (Government Accountability Office, July 2011, pp. 2, 131-132, 135). Perhaps the courts should also look at what happens after the Fox obtains title post-foreclosure, which also leads back to a government agency. Once the foreclosure has taken place, the title is put in the Fox’s name; it is then transfers the title into a government entity’s name, who then sells the home to the general public [that is someone like yourself]. Thus the “taking” of property from one citizen and selling it to another citizen.

**B. The Fox (The Too Big to Fail National Banks) and the laws that control.**

**1. The National Bank Act.** This is the law that created national banks in the first place. It all happened in 1863 and 1864 and this act defines how a national bank is set up, what actions it can take, actions it may not take, and other regulations (United States Code, 12 USC § 38). There was much debate over having national banks, and the authority that should be granted to such entities by our past statesmen. Statesmen are what we used to have running our legislative branch. Merriam-Webster defines a “statesman” as “one actively engaged in conducting the business of a government or in shaping its policies.” As times changed, we had less and less statesmen (what I refer to as “flowers” herein) and more politicians (which I refer to as “weeds”). Merriam-Webster so nicely describes a politician as “a person engaged in party politics as a profession or a person primarily interested in political office for selfish or other narrow usually short-sighted reasons” (Merriam-Webster Online, 2013). It makes one wonder if one of those statesmen was really a “weed in disguise” back in the 1860’s when this act was passed; however, that is the subject of another paper for another day.

**2. The Comptroller of the Currency.** This statute (another name for law) is where the “Office of the Comptroller of the Currency” is established, “There is established in the Department of the Treasury a bureau to be known as the ‘Office of the Comptroller of the Currency’ which is charged with assuring the safety and soundness of, and compliance with laws and regulations, fair access to financial services, and fair treatment of customers by, the institutions and other persons subject to its jurisdiction.” (United States Code, 12 USC § 1). This entity is often referred to as the “OCC” and has issued several “Consent Orders” before, during and after the financial crisis with national banks and the entity known as “MERS.” This is the entity in charge of the Fox, but the research reveals it did not watch over the Fox at all. In

fact, the OCC announced a “seeping settlement in April 2011” with the “major servicers” over the foreclosure fraud; however, it came to light last month (March 2013) that “it is largely overseen by the perpetrators of the problem – the banks” (Sucher, OCC's Magical Mystery Foreclosure Review, 2013).

**3. Legislative Branch In Action.** The following are laws that the legislative branch has passed over the years in connection with the mortgage market and the lenders (the term “lenders” includes national banks (the Fox), but also can refer to other small banks or lending companies):

*a.* In 1968, the federal legislature passed the “Truth in Lending Act,” often referred to as “TILA” and it was passed to encourage up front “truth” or “good faith” negotiations between lenders and borrowers, so that the lenders could not tell the borrower one thing (low interest rate forever) and then trap them into something else (low interest rate only lasted six months, then high interest rate) (United States of America, 12 USC §1026). One would think the truth and good faith should be mandatory for a national bank; however, the federal legislative branch had to put this in writing for some reason; remember this was thirty-nine years before the financial crisis.

*b.* In 1974 when it came to light that Lenders (like the Fox) were actually committing further “abusive practices” in the real estate market throughout the nation, it passed more laws under the Real Estate Settlement Procedures Act, which is often referred to as “RESPA.” RESPA states that “The Congress finds that significant reforms in the real estate settlement process are needed to insure that consumers throughout the Nation are provided with greater and more timely information on the nature and costs of the settlement process and are protected from unnecessarily high settlement charges caused by certain abusive practices that

have developed in some areas of the country” (United States Code, 12 USC § 27). So, six years after TILA “abusive practices” in the real estate market are occurring and “consumers throughout the Nation” need protection, thirty-three (33) years BEFORE the financial crisis?

*c.* In 2001, a hearing took place among the top officials in the United States of America to discuss the generally accepted accounting principles (“GAAP”), at which time it was stated by the presiding chairman, Honorable Cliff Stearnes that maintaining the highest standards are fundamental to the health of our economy. This was a time of worry in the financial markets in America because the Securities and Exchange Commission began cracking down on accounting fraud, and by July of 2001 had a list of 260 accounting investigations under way. This committee of top officials and the speakers it had summoned from across the country were determined to review the past, take a hard look at the present and revise the GAAP for the future so that the information provided by companies in the United States could be trusted. Remember, these are the top officials in the country and the best people had been summoned to solve the problems because the health of our economy was at risk ( United States Congress Financial Accounting Standards Board, 2001).

*d.* In 2008, the S.A.F.E. Mortgage Licensing Act – Federal Registration of Residential Mortgage Loan Originators was passed and codified at 12 USC Section 1007. The federal legislative branch passed this act AFTER the financial crisis and it requires mortgage institutions to register with a governmental agency (United States Code, 12 USC § 1007).

*e.* Legislative Branch “inaction” is probably more in line with what you are thinking by now! The legislative branch of the United States of America, the greatest nation in the world, had a meeting in 2001 with the top officials in the country, and they all knew that there was a problem in the real estate industry, with mortgage backed securities, and GAAP, but

they did nothing? In an age of computers, iPhones, and amazing technology, not one “top official” in that meeting thought to *at least* get a “list of mortgage institutions” or if that was discussed, it took seven (7) years to implement.

**4. State Legislative Branch.** We have dug a bit into the federal side of the garden, but there is also another side that can help the citizen – the state legislature. When the State of Mississippi was hit by the Great Depression in the 1930’s, the state legislative branch enacted legislation to protect its citizens from foreclosures, citing a state of emergency<sup>2</sup>. When hit by Hurricane Katrina in 2005, not only did the Mississippi legislative branch enact laws to protect the citizens from national banks taking their homes, but the federal legislative branch of the United States also enacted laws to protect the citizens. The legislative branches at the federal level and the state level knew the citizens of Mississippi were in great need in this time of crisis and in response the legislative branches rushed to the rescue. However, in 2007, when the State of Mississippi was hit by a “once-in-a-century credit tsunami,” according to Alan Greenspan<sup>3</sup>, (Liddell, 2010) who at that time was the Federal Reserve Board Chairman, neither the federal nor the state legislative branches offered a single life jacket to the victims, why? The state legislature could have done exactly like the legislature did in the 1930’s to protect the citizens from foreclosures, but instead it simply watched and waited to see what other states would do, or what the federal legislature might enact. It did enact some laws and there were already laws on the books citizens might be able to use to protect themselves:

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<sup>2</sup> (Wilson Banking v. Colvard), 172 Miss. 804, 161 So. 123, 1935 Miss. LEXIS 173 (1935) This case is the Mississippi case that states the statutes that Mississippi enacted to suspend foreclosures during the economic emergency in the 1930’s were valid. There are other states as well and all were ruled by the Supreme Court to be valid. Connecticut General Life Ins. Co. v Roth (1934) 218 Iowa 251, 254 NW 918; Metropolitan Life Ins. Co. v Morris (1935) 181 La 277, 159 So 388; Russell v Battle Creek Lumber Co. (1933) 265 Mich 649, 252 NW 561; State ex rel. Lichtscheidl v Moeller (1933) 189 Minn 412, 249 NW 330;Klinke v Samuels (1934) 264 NY 144, 190 NE 324; Granger v Luther (1920) 42 SD 636, 176 NW 1019.

a. Mississippi Safe Mortgage Act, Miss. Code Ann. § 81-18 This is a great piece of state legislation and *would* provide much needed relief for the citizens; however, it excludes the very entities (companies) that the citizens need protection from: national banks, who service the majority of mortgages in Mississippi, four of the Big 5 national banks (Bank of America, Wells Fargo, JPMorgan Chase and Citibank), together with Ally Bank/GMAC, service 68% of ALL home mortgages in the nation (Federal Reserve System, Office of the Comptroller of the Currency and Office of Thrift Supervision, 2011).

b. Constitution of the State of Mississippi - Section 1 – “The powers of the government of the state of Mississippi shall be divided into three distinct departments, and each of them confided to a separate magistracy, to-wit: those which are legislative to one, those which are judicial to another, and those which are executive to another.” Basically, this is saying there will be three branches in the Mississippi State government (Mississippi Legislature). It is important to separate powers, so that one branch (or entity) does not control everything.

c. Constitution of the State of Mississippi - Section 2 - “No person or collection of persons, being one or belonging to one of these departments, shall exercise any power properly belonging to either of the others. The acceptance of an office in either of said departments shall, of itself, and at once, vacate any and all offices held by the person so accepting in either of the other departments.” If you are serving in one branch of the government, you are not allowed to serve in another branch at the same time (Mississippi Legislature). This section makes clear that the power should be divided so that an improper use of too much power is not possible. If this is done at the federal level, and at the state level, why would anyone think it wise to allow the Fox control?

*d.* Constitution of the State of Mississippi - Section 14 states “No person shall be deprived of life, liberty, or property except by due process of law.” This means exactly what it says, that no person in the State of Mississippi shall be deprived of property except by due process of law, so how can a mortgage servicer take my house in Mississippi by filing a few documents in the land records of Chancery Court? (Mississippi Legislature).

*e.* Constitution of the State of Mississippi - Section 23 states “The people shall be secure in their persons, houses, and possessions, from unreasonable seizure or search; and no warrant shall be issued without probable cause, supported by oath or affirmation, specially designating the place to be searched and the person or thing to be seized.” This means the people of the State of Mississippi have a right to be secure in their houses and no warrants shall issue but upon probable cause supported by oath or affirmation [solid proof] shall our things [house] be seized [taken]. The oaths and affirmations filed in the land records are filed by the mortgage servicer signed by its employees, and the mortgage servicer was not party to the first transaction, and has no proof to file any documents in the land records on behalf of the lender.

*f.* Constitution of the State of Mississippi - Section 24 tells us that “All courts shall be open; and every person for an injury done him in his lands, goods, person, or reputation, shall have remedy by due course of law, and right and justice shall be administered without sale, denial, or delay.” If this is the case, then why is it that most cases that are filed for relief from foreclosure are immediately removed to district court (by a motion filed by the national bank), which is more costly for homeowners? A county court has jurisdiction to hear matters of land disputes; however, if the legislative branch did its job at the beginning of the

crisis (and can still do so now), the citizens would not be going one by one to the judicial branch for relief.

**5. OCC Orders, Lawsuits, and Continued Bad Behavior.** The Fox has total control, and is completely out of control. To this very day, our legislature and judiciary have done nothing to stop it. A mere slap on the wrist here and a few million dollars there, but nothing substantial to fix the problem and the fraud continues.

*a.* Why did the legislative branch in the State of Mississippi not immediately declare a state of emergency and put in place a stay [a temporary stop] of foreclosures or at the very least a stay of non-judicial foreclosures [foreclosures that are done outside of a courtroom]? This would have allowed the Fox only to foreclose on homes that it has the Nest Egg on and the court will be able to determine from the Nest Egg the legal rights to the property.

*b.* The laws passed after the financial crisis were craftily named such as the Mississippi S.A.F.E. Mortgage Act, however, it is like a dog with a ferocious bark and no bite; it has all the words to protect homeowners and it even provides for the mortgage servicer to disclose to the borrower the identity of the note holder (the one that holds the Nest Egg) and copies of all assignments; however, it excludes national banks (the Fox). That means the Mississippi S.A.F.E. Mortgage Act does not apply to national banks (the Fox), and since national banks (the Fox) are the majority mortgage servicers in Mississippi, why would the state legislators waste the paper and time to write such a worthless act? (Federal Reserve System, Office of the Comptroller of the Currency and Office of Thrift Supervision, 2011).

*c.* Even if the Mississippi act applied to national banks, they may not follow it. The national banks are not following any rules, federal, state, or agency. The OCC is supposed to be the regulatory agency over national banks (United States Code, 12 USC § 1);

however, it has issued orders to the “Big Five” national banks but the research reveals they are not being followed, at least not in Mississippi. One such OCC Order states:

*i.* all factual assertions made in declarations, affidavits, or other sworn statements filed by or on behalf of the Bank are accurate, complete, and reliable; and that affidavits and declarations are based on personal knowledge or a review of the Bank’s books and records when the affidavit or declaration so states (Wells Fargo Bank, N.A., 2011);

*ii.* affidavits filed in foreclosure proceedings are executed and notarized in accordance with state legal requirements and applicable guidelines, including jurat requirements (Wells Fargo Bank, N.A., 2011);

*iii.* standardized affidavits and declarations for each jurisdiction in which the Bank files foreclosure actions to ensure compliance with applicable laws, rules and court procedures (Wells Fargo Bank, N.A., 2011);

*iv.* properly documented ownership of the promissory note and mortgage (deed of trust) under applicable state law, or is otherwise a proper party to the action (as a result of agency or other similar status) at all stages of foreclosure and bankruptcy litigation, including appropriate transfer and delivery of endorsed notes and assigned mortgages or deeds of trust at the formation of a residential mortgage-backed security, and lawful and verifiable endorsement and successive assignment of the note and mortgage or deed of trust to reflect all changes of ownership (Wells Fargo Bank, N.A., 2011);

*v.* Bank has the ability to locate and secure all documents, including the original promissory notes (Wells Fargo Bank, N.A., 2011);

*vi.* All mortgage assignments and endorsements with respect to mortgage loans serviced or owned by the Bank out of MERS’ name are executed only by a certifying officer authorized by MERS and approved by the Bank (Wells Fargo Bank, N.A., 2011);

*vii.* ensure that all other actions that may be taken by MERS certifying officers (with respect to mortgage loans serviced or owned by the Bank) are executed by a certifying officer authorized by MERS and approved by the Bank (Wells Fargo Bank, N.A., 2011);

*viii.* ensure that the Bank maintains up-to-date corporate resolutions from MERS for all Bank employees and third-parties who are certifying officers authorized by MERS, and up-to-date lists of MERS certifying officers (Wells Fargo Bank, N.A., 2011); and

*ix.* ensure compliance with all MERS Requirements and with the requirements of the MERS Corporate Resolution Management System (Wells Fargo Bank, N.A., 2011).

*d.* In the Consent Order entered April 13, 2011 in OCC Case No. AA-EC-11-20 in the matter of: MERSCORP, Inc., and the Mortgage Electronic Registration Systems, Inc., Reston, Virginia, it states under Article II, paragraph 4 (MERSCORP, Inc., and the Mortgage Electronic Registration Systems, Inc., Reston, Virginia, 2011):

In connection with services provided to Examined Members related to tracking, and registering residential mortgage loans and initiating foreclosures (residential mortgage and foreclosure-related services”), MERS and MERSCORP:

*i.* have failed to exercise appropriate oversight, management supervision and corporate governance, and have failed to devote adequate financial, staffing, training, and legal resources to ensure proper administration and delivery of services to Examined Members; and

*ii.* have failed to establish and maintain adequate internal controls, policies, and procedures, compliance risk management, and internal audit and reporting requirements with respect to the administration and delivery of services to Examined Members. (MERSCORP, Inc., and the Mortgage Electronic Registration Systems, Inc., Reston, Virginia, 2011).

However, the research reveals hundreds of assignments of deeds of trusts and substitutions of trustee documents filed in the DeSoto County Chancery Court Clerk’s Office since the entry of these Consent Orders, which fail to comply with the above requirements.

## V. ERAmerica

**A. Same Fight, Different Day.** It is the same fight “we the people” have always had in this country, for “Equality” of “Rights” in “America” under the law, which shall not be denied or abridged by the United States or by any State on account of \_\_\_\_\_ [blank]. In the past we have filled in the blank with sex, race, and many things; however, for this fight it is “NOT being a Big

Bank or being a Big Bank.” Simply put, rights are being denied to those who are NOT a Big Bank and the law is being abridged for those that are a Big Bank.

**B. Denied.** The homeowners are being denied rights simply because they are not a big bank. The courts refuse the homeowner access to find out who holds his/her Nest Egg, the very document that evidences the debt and the right to payment. The courts are denying the homeowners’ their basic right – not to pay unless the creditor can prove the debt, especially in light of the badges of fraud surrounding the home mortgage market, which has affected the homeowners by the Fox’s actions and the ripple effects of those actions (the financial crisis has caused many companies to go out of business, costing many homeowners their jobs).

**C. Abridged.** The Fox is allowed to ignore laws or bend them to his advantage. He takes documents the homeowners signed in good faith and uses those against the homeowner in court, at the same time creating back-dated assignments of documents to foreclose on the debt by using assignments of a document that secures the debt document that the Fox refuses to produce (the Nest Egg). The court basically says, the Fox is large and in charge, he knows what he is doing and it must be right. The court does not make the Fox produce the actual document that proves he is owed the debt, and rules that we can just take the Fox at his word, he would not lie.

**D. Equality.** Most courts are simply watching Congress (the federal legislative branch) for clues on what to do, they know this is uncharted territory and after all, won’t the homeowners get relief *eventually* from this billion dollar settlement? Well, just as this research was coming to an end, “the Obama administration’s promise to do justice for over four million foreclosed homeowners has evaporated into the could-have –been ether,” and now that the OCC has put the Fox in charge of the settlement with homeowners, not even “*eventually*” is certain. Now, even ex-Litton Loan Servicing executive Chris Wyatt seems to draw an analogy between the banks

(his former employer) and foxes, because he said “the banks have become the foxes guarding this foreclosure hen house.” (Sucher, OCC's Magical Mystery Foreclosure Review, 2013). There is definitely nothing equal about this situation.

## V. Conclusion

Until our legislative branches at the federal and state levels are thoroughly “weeded,” and the flowers (true statesmen) get serious about implementing rules and regulations to safeguard against fraudulent activity in this country in all areas including activities of national banks, such entities should not be allowed any activity within a state **without state regulation and supervision**. If rules and regulations are not enough to safeguard this country against national banks, perhaps it is time the national banking industry itself is broken into pieces as our legislature and judiciary has done with large institutions in the past when one has become a monopoly and nuisance to society.

In conclusion, it is important that legislation is passed quickly to require national banks to perform judicial foreclosures and provide (i) proof of ownership of the debt, (ii) that the debt is in fact delinquent, and (iii) that all steps have been properly taken by the bank before any action is allowed to proceed against the homeowner. This is still the United States of America, where we have the right to be secure in our houses. Remember, this fight is NOT about “a free house,” it is about “*our* free country.”

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