

IN THE
Supreme Court of the United States

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE
FOR THE RMAC TRUST, SERIES 2016-CTT,

Petitioner,

v.

CASSANDRA FOX,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS FOR THE STATE OF NEW YORK,
APPELLATE DIVISION, FIRST JUDICIAL DEPARTMENT

**BRIEF OF *AMICI CURIAE* THE AMERICAN
LEGAL AND FINANCIAL NETWORK AND
THE LEGAL LEAGUE IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI**

DAVID W. RODSTEIN
Counsel of Record
TROMBERG, MILLER, MORRIS
& PARTNERS, PLLC
210 N. University Drive,
Suite 900
Coral Springs, FL 33071

BLAKE A. STRAUTINS
KLUEVER LAW GROUP
200 N. LaSalle Street,
Suite 1800
Chicago, IL 60601

NATALIE A. GRIGG
TROMBERG, MILLER, MORRIS
& PARTNERS, PLLC
39 Broadway, Suite 1250
New York, NY 10006

STEPHEN M. HLADIK
HLADIK, ONORATO &
FEDERMAN, LLP
298 Wissahickon Avenue
North Wales, PA 19454

*Counsel for Amicus Curiae
American Legal and
Financial Network*

[Additional Counsel Listed On Inside Cover]

STEVEN K. EISENBERG
JESSICA N. MANIS
STERN & EISENBERG
1581 Main Street, Suite 200
Warrington, PA 18976

*Counsel for Amicus Curiae
for The Legal League*

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U.C.C. § 3-104(2)(d)	11
U.C.C. § 3-301	11
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Other Authorities

ATTOM, <i>U.S. Foreclosure Activity Increases Quarterly in Q1 2025</i> (2025), https://www.attomdata.com/news/market-trends/foreclosures/q1-and-march-2025-foreclosure-market-report/ (last visited July 2, 2025)	6
Fannie Mae and Freddie Mac. Congressional Budget Office, <i>Fannie Mae, Freddie Mac, and the Federal Role in the Secondary Mortgage Market</i> at IX, (December 2010), https://www.cbo.gov/sites/default/files/111th-congress-2009-2010/reports/12-23-fanniefreddie.pdf (last visited July 3, 2025)	15

Cited Authorities

	<i>Page</i>
Federal Housing Finance Agency, <i>National Mortgage Database Outstanding Residential Mortgage Statistics</i> , https://www.fhfa.gov/data/dashboard/nmdb-outstanding-residential-mortgage-statistics (Quarter 1 of 2025, filtered by Geography: New York) (last accessed July 4, 2025)	3
Irwin S. Izen, <i>A Solution to the Foreclosure Crisis</i> , New York Law Journal (April 13, 2018)	7
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Royal, James F., Ph.D., <i>Secondary mortgage market: What it is and how it works</i> , (Apr. 3, 2025), https://www.bankrate.com/mortgages/secondary-mortgage-market/#how-it-benefits-homebuyers (last visited July 3, 2025).	15, 16, 17
State of N.Y. Unified Court System, <i>2015 Report of the Chief Adm'r of the Courts</i> (2015), https://ww2.nycourts.gov/sites/default/files/document/files/2018-06/2015ForeclosureReport.pdf (last accessed July 3, 2025).	13

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State of N.Y. Unified Court System, <i>2016 Report of the Chief Adm'r of the Courts</i> (2016), https://ww2.nycourts.gov/sites/default/files/document/files/2018-07/ForeclosureAnnualReport2016.pdf (last accessed July 3, 2025)	13
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State of N.Y. Unified Court System, <i>2018 Report of the Chief Adm'r of the Courts</i> (2018), https://ww2.nycourts.gov/sites/default/files/document/files/2018-12/18_Foreclosure-Annual_Report.pdf (last accessed July 3, 2025).	13
State of N.Y. Unified Court System, <i>2019 Report of the Chief Adm'r of the Courts</i> (2019), https://ww2.nycourts.gov/sites/default/files/document/files/2019-12/ForeclosureAnnualReport2019.pdf (last accessed July 3, 2025)	13
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State of N.Y. Unified Court System, <i>2021 Report of the Chief Adm'r of the Courts</i> (2021), https://www.nycourts.gov/legacyPDFS/publications/pdfs/ForeclosureAnnualReport2021.pdf (last accessed July 3, 2025).....	14
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INTEREST OF *AMICI CURIAE*¹

The American Legal and Financial Network and the Legal League are national trade associations comprised of a network of law firms and other supporting businesses that serve clients in the mortgage servicing industry. The *Amici Curiae*'s members provide legal representation, support, training, and educational resources for businesses and government entities in the mortgage servicing industry, including the residential mortgage banking community.

The *Amici Curiae*'s members include law firms, foreclosure trustees, title companies, technology companies, and various other entities engaged in legal representation, consulting, risk evaluation, asset protection, and other ancillary services related to the mortgage servicing industry.

The *Amici Curiae* are interested in this case and are well-positioned to provide *amicus curiae* assistance because their members possess extensive knowledge and an intimate understanding of the mortgage industry and mortgage foreclosure law. If not reviewed and overturned,

1. Rule 37.2 Disclosure. David W. Rodstein, counsel for the American Legal & Financial Network ("ALFN") timely gave notice of the ALFN's intent to file this *amicus curiae* brief to Jaynee LaVecchia, counsel for Petitioner, and to Erin E. Wietecha, counsel for Respondent, via email on June 5, 2025.

Rule 37.6 Disclosure. No counsel for any party has authored this *amicus curiae* brief in whole or in part. No party has made any monetary contribution intended to fund the preparation or submission of this *amicus curiae* brief, and no person other than the *amici curiae* has made any such monetary contribution.

the decision below will have a direct negative impact on the business of the *Amici Curiae*'s members and the clients they serve.

SUMMARY OF THE ARGUMENT

New York's statute of limitations savings statute was narrowed by the Foreclosure Abuse Prevention Act ("FAPA") in a way that, when applied retroactively, unconstitutionally extinguished Petitioner's \$417,000.00 loan asset.

Retroactive application of the narrowed savings statute harms not only Petitioner but also harms all holders of New York mortgages in foreclosure, harms the New York mortgage market itself, and harms the consumers who benefit from that market. The magnitude of these harms is in the billions of dollars.

To prevent these harms, the Court should grant the Petition and receive briefs on the merits.

ARGUMENT

I. FAPA unconstitutionally deprived Petitioner of its property rights in the Fox mortgage.

New York's Foreclosure Abuse Prevention Act ("FAPA") created a new, narrowed statute of limitations savings statute that, when applied retroactively, extinguished Petitioner's \$417,000.00 mortgage loan in violation of the United States Constitution. These *Amici Curiae* agree with Petitioner's arguments for writ of certiorari and write separately to explain how FAPA's

retroactive application creates billions of dollars in harm to others.

II. The constitutional violations at issue harm all holders of New York mortgages in foreclosure, harm the New York mortgage market itself, and harm the consumers who benefit from that market.

The New York mortgage market comprises over two million mortgages with a total unpaid principal balance of approximately 645 billion dollars. Federal Housing Finance Agency, *National Mortgage Database Outstanding Residential Mortgage Statistics*, <https://www.fhfa.gov/data/dashboard/nmdb-outstanding-residential-mortgage-statistics> (Quarter 1 of 2025, filtered by Geography: New York) (last accessed July 4, 2025).

FAPA's new savings statute, when applied retroactively, creates a multi-billion dollar harm affecting all holders of mortgages in foreclosure. It also harms the New York mortgage market and the consumers that benefit from that market.

A. Harm to all holders of New York mortgages in foreclosure.

New York had 20,637 pending foreclosure cases as of October 2023, the most recent official count by the New York Chief Administrator of the Courts. State of N.Y. Unified Court System, *2023 Report of the Chief Adm'r of the Courts* 5 (2023), available at <https://www.nycourts.gov/legacyPDFS/publications/pdfs/ForeclosureAnnualReport2023.pdf> (last accessed July 3, 2025). In addition to that number, 1,746 foreclosures had

been dismissed in the year immediately preceding the official count. *Id.* at 8.

The holders of all the mortgages² in active foreclosure actions and at least a portion of the dismissed foreclosure actions are harmed by the retroactive application of FAPA's new savings statute.

1. Retroactive application harms all those in the position of Petitioner—purchasers from the original foreclosure plaintiff.

Petitioner was not the original plaintiff in the foreclosure action and was therefore barred under the new savings statute from re-filing a foreclosure action, despite having acquired the mortgage before FAPA became law. As described in section II.B. below, the purchase and sale of mortgages on the secondary mortgage market occur frequently. All purchasers in the same situation as Petitioner are similarly barred from enforcing their mortgages, resulting in a forfeiture of their mortgages and a stunning windfall to each of their borrowers—a free house.

2. Retroactive application harms all original foreclosure plaintiffs.

The original plaintiffs in a foreclosure action are harmed by retroactive application of the new savings

2. The word “mortgage” is used throughout this brief to refer collectively to all the loan documents associated with a mortgage loan, including the promissory note, unless otherwise specified or required by the context.

statute because their mortgages would become worthless if sold to anyone else, such as happened to Petitioner.

FAPA’s statute of limitations savings statute, New York Civil Practice Law and Rules Law (“CPLR”) § 205-a(a) (“the Foreclosure Savings Statute”), allows *only* the “original plaintiff” in a dismissed mortgage foreclosure action to institute a new foreclosure action, if that action would otherwise have been barred New York’s six-year statute of limitations. CPLR § 213(4). If the original plaintiff sells the mortgage to a purchaser, as happened in this case, the mortgage and the negotiable promissory note it secures become worthless because they cannot be enforced.

By rendering the mortgage worthless in the hands of a would-be purchaser, FAPA deprives the mortgage holder of the ability to sell that mortgage, which is a valuable right. The free transferability of mortgages securing negotiable promissory notes is a characteristic that is integral to their value, as more fully described in section II.A.5, below.

The scope of retroactive application goes far beyond this case. It includes all cases in which the new Foreclosure Savings Statute is applied to an investor that purchased the mortgage before the passage of FAPA. A pre-FAPA mortgage purchase included the negotiability that is a hallmark of mortgage loans. Thus, even if the pre-FAPA purchaser’s mortgage foreclosure action was dismissed after expiration of the statute of limitations, that purchaser was still able to sell the mortgage because the then-applicable savings statute, CPLR § 205(a),³ did

3. The contrasting statutes are CPLR § 205(a), which applied to the Fox mortgage foreclosure when Petitioner purchased it, and

not render the loan worthless to a purchaser. If the new Foreclosure Savings Clause is applied to any investor that purchased a mortgage before passage of FAPA, such application upsets the investment based expectations of the purchaser at the time of purchase.

The purpose of CPLR § 205(a)—which is still applicable to all dismissed cases, *except* for mortgage foreclosures—is to “ameliorate the potentially harsh effect of the Statute of Limitations. . . .” *George v. Mt. Sinai Hospital*, 47 N.Y.2d 170, 177 (1979). The savings statute provides “a second opportunity to the claimant who has failed the first time around because of some error pertaining neither to the claimant’s willingness to prosecute in a timely fashion nor to the merits of the underlying claim.” *Id.*, 47 N.Y.2d at 178–79.

The harsh effect of the new Foreclosure Savings Statute is prevalent because of the lengthy foreclosure process in New York.

3. The average New York foreclosure case lasts nearly as long as the statute of limitations.

The New York foreclosure process is the fifth longest of any state in the nation, taking an average of 1,910 days. *See* ATTOM, *U.S. Foreclosure Activity Increases Quarterly in Q1 2025* (2025), <https://www.attomdata.com/news/market-trends/foreclosures/q1-and-march-2025-foreclosure-market-report/> (last visited July 2, 2025). This

CPLR § 205-a(a) (“the Foreclosure Savings Statute”), which was passed after Petitioner purchased the Fox mortgage and which the lower court applied retroactively.

extensive timeline is the result of state regulations and pervasive court delays, which have been well publicized. *See* Irwin S. Izen, *A Solution to the Foreclosure Crisis*, New York Law Journal (April 13, 2018); *and see generally* 3 NYCRR § 419.10; 3 NYCRR § 419.10.

Moreover, the 1,910-day average timeline does not begin when the statute of limitations begins. Rather, the vast majority of residential mortgage loans are subject to Regulation X of the Real Estate Settlement Procedures Act, which prohibits filing a foreclosure action or sending statutorily required foreclosure notices until after 120 days following the borrower's initial default. *See* 12 C.F.R. § 1024.41(f)(1)(i). Thus, an *average* mortgage foreclosure in New York terminates 2,030 days (1,910 plus 120) after the borrower's initial default—after more than 5.5 years of the six-year statute of limitations period has elapsed as to that default.

Given that almost the entire statute of limitations period elapses in the *average* mortgage foreclosure case, a substantial volume of cases terminate after the six-year statute of limitations has run—which happened in this case. The mortgage holder in every such case loses the ability to sell its mortgage asset under the retroactive application of the Foreclosure Savings Statute.

Furthermore, the holders of mortgages currently in foreclosure progressively lose resale value of those mortgages due to the Foreclosure Savings Clause, whether or not the statute of limitations has expired at the time of resale. The Foreclosure Savings Statute denies the right to refile a case dismissed after expiration of the statute of limitations, except for the “original plaintiff” in the

action. Therefore, the longer such cases are pending, the riskier and less valuable the subject mortgages become to would-be purchasers on the secondary mortgage market.

4. Over \$1.2 billion of mortgage loans in New York are already subject to the unconstitutional application of the Foreclosure Savings Statute.

Retroactive application of the Foreclosure Savings Statute is interfering with the benefits of the secondary mortgage market to consumers and investors alike. The ALFN surveyed mortgage servicers to gather information for the benefit of the Court.⁴ The ALFN asked these servicers for three categories of information:

- The number and dollar amount of loans they currently service in New York;
- The number and dollar amount of loans they currently service in New York that are currently in default status (meaning a borrower has missed at least one regular monthly payment or the loan is in foreclosure); and
- The number and dollar amount of loans they currently service in New York that include a foreclosure action that was dismissed, voluntarily or otherwise.

4. Though the ALFN is not a professional survey provider, the author of this section of the brief, Blake A. Strautins, has faithfully reproduced the survey questions and has faithfully complied and reported the seven responses received.

The ALFN received responses from seven servicers in the mortgage loan servicing industry that service loans in New York. These servicers collectively service more than 235,000 loans in New York, totaling an unpaid principal balance of more than \$66,000,000,000. Of those loans, at present, more than 5,100 are in default, totaling more than \$1,340,000,000 in principal balance. Moreover, of the loans that they are servicing in New York, more than 7,100 loans totaling a balance of over \$1,218,000,000 have a previous foreclosure action that was dismissed—meaning each of these loans is subject to the potential retroactive application of FAPA, and the potential loss of over a billion dollars in otherwise secured assets.

The survey also requested additional information, such as whether the servicers have excluded New York loans from loan sales on the secondary market, whether the servicers have made price adjustments for loans being sold on the New York secondary market, whether the servicers have made any changes to the representations and warranties being made when offering New York loans for sale on the secondary market to specifically address the impact of FAPA, and any other impacts of FAPA on their business operations.

At least two of the servicers reported that they have been adjusting the sales pricing of their New York loans on the secondary market in a downward fashion to take into account the increasing risks posed by FAPA, demonstrating that FAPA's retroactive application caused loss of market value in these loans to be placed for sale. At least one of these servicers has been making changes to its representations and warranties it makes when selling New York loans. Another servicer reported that

it has entirely stopped bidding on New York loans in the secondary market.

These responses by market participants reflect the harm suffered by mortgage investors left “holding the bag” when a mortgage falls under the Foreclosure Savings Statute, rendering it worthless to a purchaser on the secondary market. The holder of such a mortgage cannot recoup any of its investment by selling the mortgage. It can only do so by the lengthy, arduous process of refiling another 5.5-year foreclosure action, during which it must pay attorney’s fees, court costs, property taxes, and property insurance.

These responses from just seven servicers, among scores in the marketplace, suggest that the full impact on the New York mortgage market as a result of FAPA is several billion dollars in scope.

5. Deprivation of the ability to sell destroys the negotiability of commercial paper—an integral characteristic of its value.

The secondary mortgage market is dependent on negotiability of mortgage loans, whereby the rights of the original lender are freely assignable to a successor-in-interest. It is well-established law that “the assignee steps into the assignor’s shoes and acquires whatever rights the latter had (*see Furlong v. Shalala*, 156 F.3d 384, 392 (2d Cir 1998).” *In re Stralem*, 303 A.D.2d. 120, 122 (N.Y. App. Div. 2d Dep’t 2003). FAPA retroactively confiscates the assignee rights acquired by investors before passage of FAPA in violation of the Due Process and the Takings Clauses of the United States Constitution. While the

original plaintiff has the right to commence a new action within the savings period, a successor-in-interest or assignee, such as Petitioner, is stripped of that right.

A mortgage note is a negotiable instrument under the Uniform Commercial Code. *See Mortgage Elec. Registration Sys., Inc. v. Coakley*, 41 AD3d 674, 674 (N.Y. App. Div. 2d Dep’t 2007); see also, U.C.C. §§ 3-104(2)(d); 3-301. The “holder” of the note is the party entitled to enforce the mortgage note, including the rights under the mortgage. *See* U.C.C. §§ 1-201(b)(21); 3-104(2)(d); 3-301. Those enforcement rights transfer from the assignor to the assignee by and assignment of the note (and mortgage) and the assignee possesses the same rights, benefits, and remedies that the assignor originally possesses. *Salem Tr. Co. v. Manufacturers’ Fin. Co.*, 264 U.S. 182, 197 (1924).

However, the Foreclosure Savings Statute enacted by FAPA prevents the original plaintiff from transferring any of its rights under long standing law, effectively removing negotiability from mortgage notes that have been the subject of a previous foreclosure action. Retroactive application of the Foreclosure Savings Statute thus impermissibly interferes with the property rights of mortgage holders and the contractual rights of parties to a contract for the sale and purchase of such mortgages. *See Sveen v. Melin*, 584 U.S. 811 (2018).

The rights of holders of any *other* debt obligation besides mortgages are unaffected by the New York Legislature’s focused targeting and removal of rights belonging to holders of obligations secured by mortgages. The New York legislature has not included any provision setting forth a plan to compensate Petitioner or other

holders of mortgages in foreclosure for the billions of dollars in mortgage rights taken from them through the retroactive application of FAPA.

CPLR 205(a) was intended to promote decisions on the merits of a matter rather than outcomes based upon the statute of limitations due to technical legal requirements. *See Creary v. PHH Mortgage Corp.*, 2021 N.Y. Misc. LEXIS 26244 (NY Queens, Supreme Ct. 2021). Contrary to that purpose, retroactive application of the Foreclosure Savings Statute converts once-negotiable instruments, in which all rights may be freely assigned, into anchors that the holders are tethered to and cannot transfer. To do so retroactively is contrary to the fundamental and long standing tenets of the Uniform Commercial Code and strips the rights inherent in negotiable instruments from their holders in violation of the Due Process and Takings Clauses of the United States Constitution.

6. Foreclosure dismissals for any disqualifying reason, due to no fault of the mortgage holder, immediately render the mortgage worthless.

In addition to making mortgages worthless to a purchaser, the Foreclosure Savings Statute also makes mortgages worthless in the hands of the *original plaintiff* when its foreclosure is dismissed for any of several disqualifying reasons. Those reasons include “any form of neglect,” including “violation of *any* court rules . . . failure to comply with *any* court scheduling orders, or default due to an attorney’s nonappearance for a conference or at a calendar call, or failure to timely submit *any* order or judgment. . . .” CPLR § 205-a(a) (emphasis supplied). Under the Foreclosure Savings Statute, there is no

leniency for excusable neglect, such as an attorney’s failure to appear due to transit delays, severe weather, medical emergencies, or any other factor outside an attorney’s control. Thus, even applied prospectively, FAPA violates the Due Process and Takings Clauses by rendering otherwise valuable mortgages worthless based on arbitrary events that bear no relationship to a legitimate state interest.

The foreclosure dismissals that give rise to these unconstitutional deprivations of property skyrocketed immediately after the passage of FAPA, according to data published by the New York Office of Court Administration (“OCA”) from 2015 through 2023.⁵ FAPA became law on

5. State of N.Y. Unified Court System, *2015 Report of the Chief Adm’r of the Courts* 9 (2015), available at <https://ww2.nycourts.gov/sites/default/files/document/files/2018-06/2015ForeclosureReport.pdf> (last accessed July 3, 2025).

State of N.Y. Unified Court System, *2016 Report of the Chief Adm’r of the Courts* 8 (2016), available at <https://ww2.nycourts.gov/sites/default/files/document/files/2018-07/ForeclosureAnnualReport2016.pdf> (last accessed July 3, 2025).

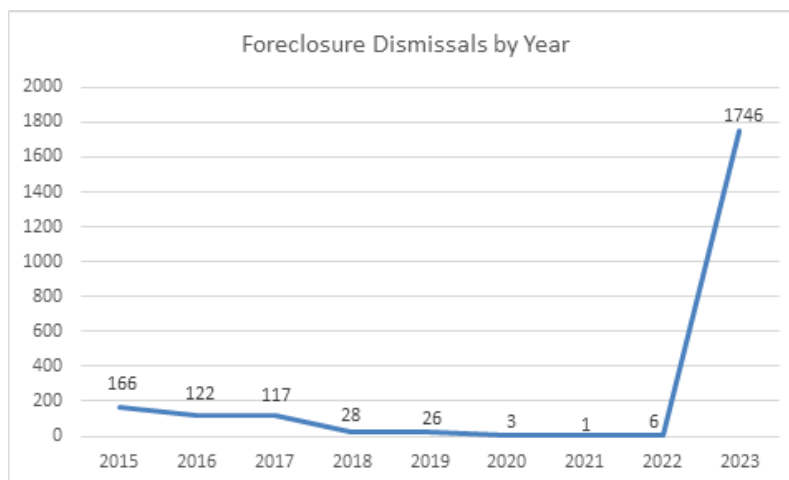
State of N.Y. Unified Court System, *2017 Report of the Chief Adm’r of the Courts* 11 (2017), available at <https://ww2.nycourts.gov/sites/default/files/document/files/2018-07/ForeclosureAnnualReport2017.pdf> (last accessed July 3, 2025).

State of N.Y. Unified Court System, *2018 Report of the Chief Adm’r of the Courts* 8 (2018), available at https://ww2.nycourts.gov/sites/default/files/document/files/2018-12/18_Foreclosure-Annual_Report.pdf (last accessed July 3, 2025).

State of N.Y. Unified Court System, *2019 Report of the Chief Adm’r of the Courts* 8 (2019), available at <https://ww2.nycourts.gov/sites/default/files/document/files/2019-12/ForeclosureAnnualReport2019.pdf> (last accessed July 3, 2025).

State of N.Y. Unified Court System, *2020 Report of the Chief Adm’r of the Courts* 8 (2020), available at https://ww2.nycourts.gov/sites/default/files/document/files/2020-12/20_Foreclosure-Annual_Report.pdf (last accessed July 3, 2025).

December 30, 2022. The 2022 OCA report reflected six foreclosure dismissals for the one-year reporting period.⁶ The 2023 OCA report (the most recent data published by the OCA) reflected an increase from six foreclosure dismissals in 2022 to 1,746 in 2023.



gov/sites/default/files/document/files/2022-07/Image_001.pdf (last accessed July 3, 2025).

State of N.Y. Unified Court System, *2021 Report of the Chief Adm'r of the Courts* 8 (2021), available at <https://www.nycourts.gov/legacyPDFS/publications/pdfs/ForeclosureAnnualReport2021.pdf> (last accessed July 3, 2025).

State of N.Y. Unified Court System, *2022 Report of the Chief Adm'r of the Courts* 8 (2022), available at <https://www.nycourts.gov/legacyPDFS/publications/pdfs/ForeclosureAnnualReport2022.pdf> (last accessed July 3, 2025).

State of N.Y. Unified Court System, *2023 Report of the Chief Adm'r of the Courts* 8 (2023), available at <https://www.nycourts.gov/legacyPDFS/publications/pdfs/ForeclosureAnnualReport2023.pdf> (last accessed July 3, 2025).

6. The reporting period for each OCA report runs from mid-October of the year preceding the report year to mid-October of the report year.

FAPA not only results in draconian unconstitutional outcomes when cases are dismissed, but it has apparently generated an increase in those dismissals by several orders of magnitude.⁷

B. Harm to the secondary mortgage market.

1. The secondary mortgage market is crucial to the health of the U.S. housing market.

The primary mortgage market is where consumers borrow directly from banks, credit unions, and mortgage lenders (“originators”). The secondary mortgage market is where originators sell mortgage loans to investors, including investment banks and the government-sponsored enterprises Fannie Mae and Freddie Mac. Congressional Budget Office, *Fannie Mae, Freddie Mac, and the Federal Role in the Secondary Mortgage Market* at IX, (December 2010), <https://www.cbo.gov/sites/default/files/111th-congress-2009-2010/reports/12-23-fanniefreddie.pdf> (last visited July 3, 2025); *see also* Royal, James F., Ph.D., *Secondary mortgage market: What it is and how it works*, (Apr. 3, 2025), <https://www.bankrate.com/mortgages/secondary-mortgage-market/#how-it-benefits-homebuyers> (last visited July 3, 2025); *see also* Kagan, Julia, *Secondary Mortgage Market: Definition, Purpose, and Example*, (June 2, 2025), <https://www>.

7. These *amici curiae* submitted a request pursuant to New York’s Freedom of Information Law on June 13, 2025, to the OCA to identify each dismissed case reported in the 2015 through 2023 reports in order to examine the case files and identify how many of the dismissed cases would be subject to the same ruling imposed on Petitioner in this case. No substantive response has been received as of the date of filing this brief.

investopedia.com/terms/s/secondary_mortgage_market.asp (last visited July 3, 2025).

Selling loans in the secondary market allows originators to replenish the capital they paid out when originating mortgage loans. Replenishing that capital provides liquidity, enabling mortgage lenders to issue *more* mortgages to *more* borrowers. *See* Congressional Budget Office at 1 (“The secondary mortgage market channels funds to borrowers by facilitating the resale of mortgages and MBSs.”); Royal; Kagan, *supra*.

2. Unconstitutional retroactive narrowing of the Savings Statute impedes transactions in the secondary mortgage market.

When investors have the constitutionally protected right to buy and sell mortgage loans at their discretion, those loans are frequently sold and resold. Defaulted loans are commonly sold during the foreclosure process itself, with investors buying at a discount due to the inherent risk of owning a loan that does not bring in monthly payments and imposes carrying costs on the investor. The seller of a defaulted mortgage takes a measured loss (the discount) and by doing so liquidates its position in the defaulted mortgage.

Liquidation of defaulted mortgages provides the sellers of those mortgages with new capital to make new purchases from mortgage originators. More buyers vying to purchase from mortgage originators pushes liquidity up the system and contributes to the availability and affordability of mortgage loans, as described below.

FAPA's Foreclosure Savings Statute, in addition to violating the constitutional rights of investors, makes mortgages in foreclosure too risky to purchase. The buyer of a loan in foreclosure runs the risk of losing its entire investment if the foreclosure is dismissed for a disqualifying reason under the Foreclosure Savings Statute. This increased risk results in less demand for delinquent mortgages in New York, as reflected in the markedly lower prices paid in the secondary market for such loans in New York versus the rest of the United States. *See* Brief of Amici Curiae New York Bankers Association, American Institute of Servicing and Legal Executives, New York Bankers Association, Mortgage Bankers Association and American Bankers Association, at 20-21.

C. Harm to consumers that benefit from the secondary market.

The secondary mortgage market makes mortgage credit more accessible and affordable for consumers. *See* Congressional Budget Office; Royal; and Kagan, *supra*. This benefit is due largely to the securitization process that creates mortgage-backed securities ("MBS"). MBS increase investor demand for mortgage loans, which incentivizes originators to attract more borrowers on the primary market.

The increased primary market activity resulting from securitization on the secondary market provides a steady and continuous flow of mortgage credit across the country, including in New York. It makes homeownership more accessible to prospective consumers and puts downward pressure on interest rates.

Retroactive application of FAPA to deprive investors of the full value of their investments, as happened here, has the opposite effect. If the ruling below is not reviewed and overturned, it will confirm to the market that New York courts can deprive investors of their property in similar cases. Mortgage loans in New York will have less secondary market value due to the risk of being rendered worthless, reducing liquidity in the New York mortgage market as a whole. Reduced liquidity means less access to credit for consumers and higher mortgage rates.

CONCLUSION

The retroactive application of the Foreclosure Savings Clause deprived Petitioner of its constitutional property rights and causes harm throughout the New York mortgage market. To vindicate these harms, the Court should grant the petition for writ of certiorari and accept briefs on the merits.

Respectfully submitted,

DAVID W. RODSTEIN
Counsel of Record
 TROMBERG, MILLER, MORRIS
 & PARTNERS, PLLC
 210 N. University Drive,
 Suite 900
 Coral Springs, FL 33071

BLAKE A. STRAUTINS
 KLUEVER LAW GROUP
 200 N. LaSalle Street,
 Suite 1800
 Chicago, IL 60601

STEVEN K. EISENBERG
 JESSICA N. MANIS
 STERN & EISENBERG
 1581 Main Street, Suite 200
 Warrington, PA 18976

*Counsel for Amicus Curiae
 for The Legal League*

NATALIE A. GRIGG
 TROMBERG, MILLER, MORRIS
 & PARTNERS, PLLC
 39 Broadway, Suite 1250
 New York, NY 10006

STEPHEN M. HLADIK
 HLADIK, ONORATO &
 FEDERMAN, LLP
 298 Wissahickon Avenue
 North Wales, PA 19454

*Counsel for Amicus Curiae
 American Legal and
 Financial Network*