

ORIGINAL

IN THE SUPREME COURT OF OHIO

Case No. 2011-0890

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ON REVIEW OF CERTIFIED QUESTIONS OF STATE LAW  
FROM THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO, WESTERN DIVISION.  
U.S. DIST. CASE NO. 3:10-CV-02537; 1: 10-CV-02709

**STATE OF OHIO EX REL.**  
**MICHAEL DEWINE, ATTORNEY GENERAL, et al.,**

Plaintiff-Respondent

v.

**GMAC MORTGAGE, LLC, et al.**

Defendant-Petitioner.

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**MERIT BRIEF OF *AMICUS CURIAE* SONDRA ANDERSON  
IN SUPPORT OF PETITIONER STATE OF OHIO EX REL.  
MICHAEL DEWINE, ATTORNEY GENERAL**

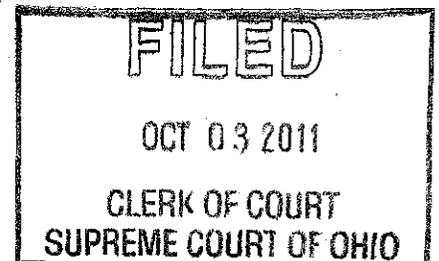
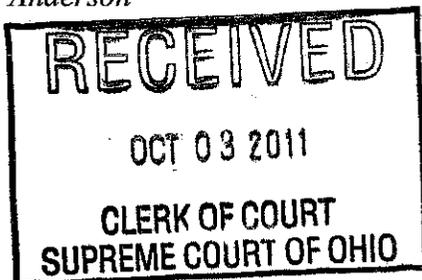
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## **I. STATEMENT OF INTEREST OF AMICUS CURIAE**

*Amicus Curiae* Sondra Anderson is the named plaintiff in a putative class action pending in the United States District Court for the Northern District of Ohio against another “mortgage servicer” allegedly responsible for a pattern of inefficiency and incompetence when handling of her mortgage loan. Anderson is also a party to a parallel case accepted for review by this Court, but held in abeyance pending the outcome here. *Anderson v. Barclays Capital Real Estate, Inc.*, S.Ct. Docket Number 2001-908. Both cases ask whether a “mortgage servicer,” an entity of increasing importance to Ohio’s homeowners, can be accountable to the borrower, or indeed subject to regulatory enforcement by the Attorney General, under the state’s Consumer Sales Practices Act (CSPA). Anderson has a direct stake in the outcome here, as do thousands of Ohio borrowers who have been victims of deceptive, unfair and unconscionable conduct with respect to their monthly mortgage payments.

Anderson respectfully requests that the Court answer all three certified questions in the affirmative. Mortgage servicing is generally a “consumer transaction” as defined by the CSPA.

## **II. BACKGROUND OF THE ANDERSON CASE**

Generally, Anderson’s mortgage servicer (“HomEq”) failed to apply her payments in the manner prescribed by her note and mortgage, failed to account for some of her payments at all (raising the inference that the servicer simply kept the money) and failed to accurately respond to Anderson’s repeated inquiries about her mortgage loan. Based upon the allegations in Anderson’s complaint, the District Court concluded that HomEq committed unfair, deceptive and unconscionable trade practices as defined by the CSPA. However, the District Court also concluded that Ohio lacked binding authority governing whether the CSPA applies to “mortgage

servicers” such as HomEq. The District Court certified questions to this Court intended to resolve the issue.

**A. Anderson’s parallel case: the District Court concludes that HomEq allegedly violated the CSPA, but is uncertain whether the Act applies.**

Anderson’s four-count complaint included allegations of unjust enrichment, conversion, violations of the federal Real Estate Settlement Procedures Act (RESPA) and violation of Ohio’s CSPA. In June 2010, the District Court declined to dismiss the two common law counts and held its decision in abeyance with respect to the RESPA<sup>1</sup> and CSPA claims. *Anderson v. Barclays Capital Real Estate, Inc.*, 2010 U.S. Dist. LEXIS 68327. Crediting the truth of the allegations in Anderson’s complaint, the District Court found that the servicer engaged in unfair, deceptive and unconscionable trade practices as defined by the CSPA. *Id.* at \*\*20-22. The District Court held its decision on the CSPA count in abeyance pending certification of questions of state law to this Court pursuant to S.Ct.Prac.R. 18.

From the outset, Anderson expressed significant concerns about the timing and factual basis for such a certification. Appearing before the District Court as an *Amicus Curiae*, the Ohio Attorney General’s Office initially shared many of the same reservations. Most importantly, certification at an early stage of the litigation would lack the advantage of a factual record about what a “mortgage servicer” is and the role generally played by such an entity during the life of a consumer’s mortgage. Frankly, Anderson was concerned that a certification order to this Court at the pleading stage may prompt a series of unfounded and un rebuttable assertions tending to minimize the interaction between a mortgage servicer and its consumer/borrower to merely ministerial functions. In fact, in the modern world of pooled and securitized mortgages, the

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<sup>1</sup> The RESPA claim was held in abeyance pending the filing of a Second Amended Complaint detailing Anderson’s damages caused by the RESPA violation.

servicer often plays the lead role in customer service and can make the lion's share of decisions regarding a typical consumer's loan.

Anderson, HomEq and the Attorney General's Office spent the better part of a year discussing, and sometimes disputing, whether and when certification to this Court would be appropriate. Ultimately, HomEq stipulated that the allegations contained in Anderson's Second Amended Complaint regarding the nature and role of mortgage servicers must form the basis of any certification order. By agreement among the parties, these allegations are incorporated into the District Court's certification order in the *Anderson* case.

As alleged in Anderson's Second Amended Complaint (and are stated in the certified order) HomEq specifically, and mortgage servicers generally, may perform some or all of the following functions:

- accepts, applies and distributes mortgage loan payments and other fees, penalties and assessments, and in connection with so doing exercises discretion regarding the fees charged or applied to a particular mortgage loan account (Second Amended Complaint ("SAC"), District Court ECF Doc. No. 35, ¶ 71(a));
- maintains customer service departments and call centers to which Ohio residents with loans being serviced by HomEq are directed to call with questions, concerns about their mortgage loans (SAC ¶ 71(b));
- directs customers who are in default or danger of default to contact it for options concerning loss mitigation or loan modification and further holds itself out as having authority to make substantive decisions regarding which customers, if any, will receive loan modification agreements or loss mitigation assistance (SAC ¶ 71(c));
- handles consumer disputes regarding their mortgage loans (SAC ¶ 71(d));

- negotiates and executes loan modification, forbearance and other agreements directly with customers (SAC ¶ 71(e));
- purchases homeowner's insurance on behalf of, and at the expense of, consumers who HomEq believes not to have purchased insurance required by the note and mortgage (SAC ¶ 71(f));
- makes customer service related promises on its website to which consumers are directed by the servicer (SAC ¶ 72 n.7); and
- receives payment for its loan administration and other services from the payment stream generated by the consumers' residential mortgages (SAC ¶ 71(g)).

In large part, these allegations are based upon information published on HomEq's web page describing its own role as a mortgage servicer.

Within days of each other, two federal district judges certified questions of state law concerning the applicability of the CSPA to mortgage servicers: the instant case (certified on May 24, 2011) and *Anderson* (certified on May 26, 2011). This Court accepted both cases for review on August 24, 2011, but held *Anderson* in abeyance pending its resolution of this case.

Although the questions of law certified in *Anderson* and the instant case are similar, there is a critical factual difference. Here, the factual allegations against the mortgage servicer (GMAC) appear to be limited to, or at least focused on, affidavits and other documentation in support of a lender's position in foreclosure litigation. That is, *Anderson* understands this case to challenge the apparently common practice of "robo-signing," or executing documents falsely attesting to having reviewed information that the signer had not.

While the authority vested in mortgage servicers during the foreclosure process is significant, litigation against borrowers represents only a small fraction of the possible universe

of interaction between a mortgage servicer and a borrower. The *Anderson* case, in contrast, deals more broadly with the day-to-day business of mortgage servicers: collecting and applying monthly payments and responding to borrowers' inquiries about their loans.

**B. Anderson's factual allegations: HomEq cannot or will not explain what it did with her mortgage payments.**

The specific facts surrounding Anderson's mortgage loan are not dispositive here. However, some background is useful to illustrate the range of activity that can give rise to a CSPA claim. The *Anderson* case has nothing to do with affidavits filed in the course of foreclosure litigation.

Sondra Anderson is an Ohio homeowner who purchased a home financed through a note and mortgage. The note and mortgage clearly set forth an order of priority for application of the borrower's payments. (SAC.<sup>2</sup> at ¶¶ 14-15). In Anderson's case, mortgage payments must be applied in the following order: first toward interest due under the note; second to principal due under the note; and third to specifically defined escrow items. (*Id.*) Payments may be applied to other purposes only after interest, principal and escrow. (SAC at ¶ 17). HomEq began acting as the "servicer" of Anderson's loan shortly after origination. (SAC at ¶ 13). As servicer, HomEq collected Anderson's monthly payments and decided how to disburse and apply them, including forwarding the appropriate portion to the holder of her note and mortgage. (SAC at ¶¶ 16-17).

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<sup>2</sup> Refers to Anderson's Second Amended Complaint, Order, Dist. Ct. ECF doc. # 35. This is the current, effective pleading in that case and referenced in the District Court's order certifying a question of law to this Court. Although some discovery is underway, the federal case remains largely in the pleadings stage.

HomEq was required to forward the great majority of these payments to the owner/holder of Anderson's note and mortgage after application according to the terms of those documents.<sup>3</sup>

For a number of reasons not directly related to this review, Anderson began questioning HomEq's use of her mortgage payments. On her own, and with the assistance of counsel, Anderson repeatedly requested and reviewed information from HomEq regarding the application of her mortgage payments. (SAC at ¶ 19). Among other items, Anderson inquired about payments applied to court costs and attorney fees apparently related to a foreclosure case filed by HomEq against her. (*Id.*) Despite these inquiries, HomEq could not or would not account for all of Anderson's payments. (SAC at ¶ 20). Simply put, Anderson never got the same answer from HomEq two times in a row when she asked what happened to her mortgage payments.

Finally, using a procedure available to borrowers under the Real Estate Settlement Procedures Act ("RESPA"), Anderson formally inquired about how HomEq applied her mortgage payments. (SAC at ¶ 21) Although HomEq provided Anderson with a payment history, the servicer did not provide a substantive response to the majority of her inquiries. (SAC at ¶¶ 22, 62). Further, a professional audit of HomEq's payment history shows a portion of Anderson's payments were applied to vague categories such as "addl payment" and "other." (SAC at ¶ 23). These applications were improper because her note and mortgage required these funds to be applied first to interest and principal. In addition, HomEq did not account for approximately \$2,500 of Anderson's payments at all. (SAC at ¶ 24). In other words, the payment history provided by HomEq shows that the servicer received \$2,500 more in payments

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<sup>3</sup> HomEq has variously identified as "Deutsche Bank" and "Morgan Stanley Home Equity Loan Trust 2005-2 Pass Through Certificates, Series 2005-2" as the current holder of Anderson's note and mortgage.

than it applied to any discernable purpose, even after accounting for monies attributed to unauthorized categories such as “addl payment” and “other.”

Anderson advances two distinct theories for relief under the CSPA. First, HomeEq’s failure to properly apply and account for her payments, including the fact that \$2,500 is completely unaccounted for, constitutes unfair and deceptive acts and practices pursuant to R.C. § 1345.02 and unconscionable acts and practices in connection with a residential mortgage loan pursuant to R.C. §§ 1345.031. HomeEq’s misapplication amounts to collection of unlawful fees, effectively stealing portions of Anderson’s mortgage payments. Second, HomeEq’s response to Anderson’s RESPA request fell short of the requirements of that statute, which is actionable pursuant to R.C. § 1345.02(F)(prohibiting “knowingly fail[ing] to make disclosures required by federal law”).

The District Court concluded that Anderson was entitled to proceed under both sections of the CSPA if this Court concludes that the act encompasses the activities of mortgage servicers. The outcome of the CSPA claims in the *Anderson* case, therefore, directly hinges on how this Court resolves the questions certified here.

### **III. LAW AND ARGUMENT**

Here, the District Court certified three questions of state law. Question One broadly asks whether residential mortgage servicers generally qualify as “suppliers” to a “consumer transaction” as defined by the CSPA. The second and third questions specifically address conduct during the course of foreclosure litigation.

As set forth below, this Court has consistently held that the CSPA is a remedial statute that must be broadly construed to deliver the intended consumer protections. As such, Anderson urges this Court to answer all three questions in the affirmative. Because only the first question

is directly dispositive of her own case, Anderson will not take a specific position on Questions Two and Three.

**Response to First Certified Question of State Law: Does the servicing of a borrower's mortgage loan constitute a "consumer transaction" as defined by the Ohio Consumer Sales Practices Act, R.C. § 1345.01(A).**

Yes. Ohio's CSPA is generally a broad remedial statute prohibiting commercial actors from exploiting or cheating their consumer customers. Structurally, the Act contains broad definitions of covered conduct subject to specific exclusions. The first question of state law certified by the District Court here, and both questions certified in *Anderson*, ask whether, mortgage servicing can ever fall under the purview of the Act.

Based upon a plain reading of the CSPA, the only possible answer is "yes." By their nature, these entities perform "services" on behalf of their borrower/customers and are therefore engaged in "consumer transactions" as defined by R.C. § 1345.01(A). Moreover, none of the exceptions to the CSPA is sufficiently broad to exclude mortgage servicers under all circumstances.

**A. Trial courts to consider the issue have universally concluded that mortgage servers are "suppliers" to a "consumer transaction" as defined by the CSPA.**

As an initial matter, the clear majority of Ohio trial courts to address the issue have concluded that the CSPA can reach mortgage servicers. Nearly five years ago, the U.S. District Court for the Southern District of Ohio held that the mortgage servicers are not generally exempt from the Act. *Dowling v. Litton Loan Servicing, L.P.*, 2006 U.S. Dist. LEXIS 87098 at \*\*42-44 (S.D. Ohio, Marbley, J.) ("If the legislature intended to exempt all loan servicing agents from coverage under the CSPA, it would have done so. This Court will not extend the CSPA's exemption beyond its clear and unambiguous meaning. For that reason, the Court finds that the CSPA applies to Defendant in this case").

In the intervening years, Ohio trial courts have universally held that mortgage servicing generally falls within the scope of the CSPA. *Kline v. Mortgage Electronic Systems, Inc.*, 2011 U.S. Dist. LEXIS 60733 at \*12 (S.D. Ohio, Rice, J.); *State v. Barclays Capital Real Estate, Inc.*, Montgomery County Common Pleas Docket No. 2009CV10136 (Sept. 16, 2010, O’Connell, J.), relying on *Dowling; Jent v. BAC Home Loans Servicing, LLC*, 2011 U.S. Dist. LEXIS 79652 at \*9 (S.D. Ohio, Spiegel, J.); *Munger v. Deutsche Bank*, 2011 U.S. Dist. LEXIS 77790 at \*24 (N.D. Ohio, Gwin, J.).

Although this Court has accepted certification on the basis that Ohio law is either unclear or underdeveloped on the subject, there is a growing consensus in the state’s trial courts that the Act does apply to mortgage servicers. To date, no mortgage servicer has identified a court to reach a contrary conclusion.

**B. The definitions of “supplier” and “consumer transaction” included in the CSPA are sufficiently broad to encompass activities by mortgage servicers generally.**

Prior to certification in the District Court, HomEq claimed that it is not a “supplier” and does not engage in “consumer transactions,” and is therefore not covered by the CSPA. That argument has no merit. Both terms are defined broadly by the statute and contain only limited exceptions, none of which apply to a stand-alone mortgage servicer.<sup>4</sup> Such entities unquestionably participate in the world of consumer transactions.

The CSPA defines a supplier as a “person engaged in the business of effecting or soliciting consumer transactions, whether or not that person deals directly with the consumer.” R.C. § 1345.01(C). Within the plain language of the CSPA a “person” unquestionably includes corporations, and therefore includes HomEq. R.C. § 1345.01(B). The definition of “supplier” is

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<sup>4</sup> At least with respect to itself, HomEq acknowledges that none of the exceptions addressing banks and other financial institutions defined by R.C. § 5725.01 apply here.

broadly descriptive and does not list every commercial entity that could fall within its scope. Accordingly, an argument that the term “supplier” does not include entities acting purely as mortgage servicers is baseless. Simply because a particular industry is not named in the definition of “supplier” does not mean that it is not covered by the CSPA. To the contrary, an entity is included unless specifically excluded. A mortgage servicer engaged in only some of the activities enumerated in the *Anderson* certification order easily meets the broad definition of a “supplier” as defined by the CSPA. A servicer such as HomeEq collect the borrower’s payments and makes substantive decisions about their application. Many servicers are charged with the responsibility to directly interact with the consumer by responding to her concerns and inquiries about her mortgage loan. In *Anderson*’s case, HomeEq took receipt of all her payments on her residential mortgage loan and was responsible for accounting for those payments in accordance with the terms of her note and mortgage. Controlling the payments, including the accounting and the application of the payments definitely “effects” a consumer transaction. The servicer is also the only entity charged by law with responding to a borrower’s RESPA requests. Even considered separately, these activities clearly constitute “effecting...consumer transactions,” under the CSPA’s definition of a “supplier.” When considered collectively, there can be no serious dispute about whether mortgage servicers “effect” consumer transactions.

The definition of “consumer transaction” is similarly broad. A “consumer transaction” is defined as “a sale, lease, assignment, award by chance, or other transfer of an item of goods, a service, a franchise, or an intangible, to an individual for purposes that are primarily personal, family, or household, or solicitation to supply any of those things.” R.C. § 1345.01(A). A servicer such as HomeEq can accept, apply and distribute a borrower’s payments, such a company

is clearly performing labor for the benefit of the consumer, which constitutes providing “services” as referenced in R.C. § 1345.01(A).

As with the definition of “supplier,” the definition of “consumer transaction” does not enumerate those industries, entities, or professions included within its scope, but does contain several specific exemptions. None of these exceptions applies to a stand alone mortgage servicer—and notably, in the *Anderson* case, HomEq does not claim that they do. Among the transactions exempted from the CSPA are those between individuals and their accountants, attorneys, physicians, dentists, veterinarians, public utilities, financial institutions, dealers in intangibles, and insurance companies. See R.C. § 1345.01(A). The only exemptions that could conceivably apply to a stand-alone mortgage servicer are those for financial institutions and dealers in intangibles. In *Anderson*, HomEq concedes that it is neither a financial institution nor a dealer in intangibles. The District Court explicitly included this concept in its certification order. For the purposes of this Court’s review, in the *Anderson* case at least, it is undisputed that HomEq is not a financial institution nor a dealer in intangibles.

In addition, the General Assembly has specifically exempted certain participants in the residential mortgage industry from the definition of “supplier”—but mortgage servicers were not generally exempted. The definition of “supplier” provides that: “If the consumer transaction is in connection with a residential mortgage, ‘supplier’ does not include an assignee or purchaser of the loan for value.” R.C. § 1345.01(C). The canon of statutory construction “*expressio unius est exclusio alterius*” controls here—the expression of one thing implies the exclusion of the other – and it prevents the Court from creating “an additional statutory exclusion not expressly incorporated into this statute by the legislature.” *Weaver v. Edwin Shaw Hosp.*, 104 Ohio St.3d. 390, 2004-Ohio-6549 at ¶20. That is, where the General Assembly excluded certain residential

mortgage participants, such as purchasers for value, from the definition of supplier, but did not exclude mortgage servicers, this Court should not judicially create an exemption for the benefit of mortgage servicers.

While HomEq maintained in the District Court that the CSPA should not be construed as broadly as its plain language indicates, that interpretive question has long been resolved in Ohio. This Court has repeatedly endorsed a broad construction of the CSPA: “The Consumer Sales Practices Act prohibits unfair or deceptive acts and unconscionable acts and practices by suppliers in consumer transactions....[I]t is a remedial law which is designed to compensate for traditional consumer remedies and so must be liberally construed pursuant to R.C. § 1.11.” *Einhorn v. Ford Motor Co.* (1990), 48 Ohio St.3d 27, 29; *Whitaker v. M.T. Auto, Inc.*, 111 Ohio St.3d 177, 2006-Ohio-5481 at ¶ 30 (the CSPA is a remedial law that must be construed in favor of the consumer).

Finally, HomEq also argued in the District Court that a mortgage servicer cannot be a “supplier” if it lacks a direct legal relationship with the borrower. Not so. Under the CSPA, it is well established that privity is not required between the supplier and the consumer. The supplier need not have a contractual relationship with the consumer. See, e.g., *Garner v. Borcharding Buick, Inc.* (1992), 84 Ohio App.3d 61, 64 (“However, we do not interpret the statutes as requiring privity of contract between the consumer and defendant”); *Hinckley Roofing, Inc. v. Motz*, 9th Dist. No. 04CA0055M, 2005-Ohio-2404 at ¶8 (“As the CSPA does not require privity of contract as a prerequisite of damages...”). The CSPA does not require that there be a sale or solicitation between the supplier and consumer. See, e.g., *Estep v. Johnson* (1998), 123 Ohio App.3d 307, 319-20 (finding that a towing company which towed a consumer’s car after being hired by the local police department committed a consumer transaction). Moreover, as set forth

above, the CSPA should be interpreted liberally in favor of consumers. See *Einhorn*, 48 Ohio St.3d at 29. In *Anderson*, the Second Amended Complaint and the District Court’s certification order detail a broad range of activities involving direct contact with, and authority to make decisions about, the borrower’s mortgage loan.

In short, the CSPA is an intentionally broad remedial statute with limited, specific exemptions—none of which apply to a stand-alone mortgage servicer. Accordingly, such an entity is bound by the CSPA.

**C. Mortgage servicing is not exempted from the CSPA by the legislative history of the act.**

Because of the nature of the CSPA, a broad statute with specific exceptions, it is difficult to anticipate all of the arguments that may be raised by any particular mortgage servicer as a basis for concluding that the Act does not apply. In the *Anderson* case, HomEq attempted to use “legislative history” in its effort to persuade the District Court that mortgage servicers are not subject to the CSPA. But legislative history is irrelevant where the statutory language is clear, as it is here. *State v. Maxwell*, 95 Ohio St. 3d 254, 2002-Ohio-2121 at ¶10 (“We first consider the words of the statute to determine legislative intent...In determining legislative intent, our duty is to give effect to the words used, not to delete words used or insert words not used.”) (Internal citations omitted). HomEq’s “legislative history” arguments to date do not withstand scrutiny.

In the District Court, HomEq pointed to House Bill 3, a proposed amendment to the CSPA considered, but not enacted, by the last General Assembly. H.B. 3 was a broad, seventy page bill that addresses a number of areas related to the foreclosure crisis. Part of the bill would create a regulatory scheme for mortgage servicers, which would be overseen primarily by the Department of Commerce. H.B. 3 § 1323 *et seq.* Another section of the bill states that servicers shall not commit any act that is unfair, deceptive, or unconscionable under the CSPA, and states

that several regulatory violations should be considered unfair and deceptive under the CSPA. H.B. 3 § 1323.361. Nothing in this proposed and unenacted section implies that servicers were previously exempt from the general definitions under the CSPA, but simply proposed a number of specific additional provisions applicable only to mortgage servicers.

HomeEq's "legislative history" argument rests upon its unsupported assertion that provisions in a proposed, but not enacted, bill are meritorious points in favor of its position. HomeEq argued that the provisions contained in proposed H.B. 3, at one time introduced to the General Assembly, demonstrates the CSPA does not currently cover mortgage servicing. H.B. 3 is not a statement of the law or of precedent, but a factual statement of legislation formerly pending before the legislature. As such, it has absolutely no bearing on whether the current version of the CSPA applies to mortgage servicers. Moreover, the legislature's consideration of H.B. 3 cannot be used to determine the intent of the legislature as it is merely one among numerous proposed bills introduced but never enacted. This Court should not try to divine the legislature's intent when it has not yet acted. See, e.g. *Porter v. Saez*, 10 Dist. No 03AP1026, 2004-Ohio-2498 at ¶66 ("[S]ilence is rarely, if ever, an effective barometer of legislative intent"). Taken to its logical end, if this Court rules that bills introduced in the legislature, but not passed, can be utilized and considered in statutory interpretation, any number of legislators may start introducing bills with the sole goal of impacting future court decisions without actually enacting the law.<sup>5</sup> The Ohio legislature is a deliberative body that speaks through the laws it

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<sup>5</sup> If the Court does view H.B. 3's passage by the House as evidence that the House believes that the CSPA does not cover mortgage servicing, the Senate's failure to pass the bill could just as easily be seen as evidence that the Senate believes servicing is already covered. Moreover, the legislature's continued decision not to actually enact H.B. 3 or some equivalent could easily be viewed as

enacts. HomEq's construction of a bill once introduced, but not enacted, is simply not persuasive in light of the plain language of the CSPA.

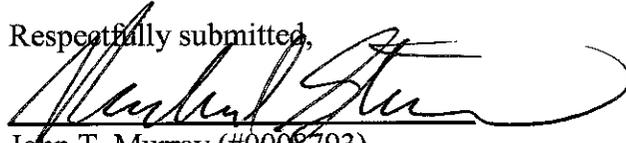
The mere proposal of former H.B. 3 cannot be reasonably interpreted as changing the plain meaning of the CSPA, which does not exempt mortgage servicers.

#### IV. CONCLUSION

For all of the reasons stated above, *Amicus Curiae* Sondra Anderson urges the Court to consider the full panoply of activities undertaken by mortgage servicers alleged in both the instant case and the *Anderson* case when determining whether "mortgage servicing" can qualify as a "consumer transaction" under the CSPA. Even if only some of these functions are considered, mortgage servicing easily falls within the scope of the Act. When all of these functions are considered collectively, there can be no doubt.

For all of the reasons above, this Court should answer all three certified questions of state law in the affirmative.

Respectfully submitted,



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