

FILED
SUPREME COURT
STATE OF WASHINGTON
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No. 1037350

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

GABRIEL MARQUEZ VARGAS,

Appellant

v.

RPA CP OPPORTUNITY TRUST 1, REAL TIME
RESOLUTIONS, INC., and NORTH START TRUSTEE, LLC

Respondents

**MOTION FOR LEAVE TO FILE AMICUS BRIEF OF
NORTHWEST CONSUMER LAW CENTER**

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I. INTRODUCTION

Pursuant to Rule of Appellate Procedure 10.6, Northwest Consumer Law Center respectfully requests leave to file its accompanying Brief of *Amicus Curiae*.

II. IDENTITY AND INTEREST OF *AMICI*

Northwest Consumer Law Center (“NWCLC”) is a nonprofit organization serving low and moderate income consumers in the State of Washington. NWCLC is the only legal services organization in Washington that focuses solely on consumer legal issues. While based in Seattle, NWCLC has represented and counseled consumers throughout all counties of Washington State. Since opening its doors in 2013, NWCLC has represented thousands of Washington homeowners facing the prospect of losing their homes as a result of defaulted mortgages and the foreclosure process, including those facing foreclosure on a long-ago defaulted mortgage. NWCLC represents clients in pursuing loan modifications, mediations, and bankruptcy protection in order to save their homes. When saving a home is

not possible, NWCLC works to guide homeowners through a process that is fair and transparent and works with them to achieve the best possible outcome. NWCLC and its clients have an interest in the fair development of Washington's mortgage and foreclosure laws.

III. FAMILIARITY WITH ISSUES PRESENTED

NWCLC's amicus briefing will aid the Court's disposition of these certified questions from the Western District of Washington because NWCLC, its board members, and its counsel have extensive experience representing consumers in Washington Consumer Protection Act (CPA) cases and can offer arguments different and additional context to the problem than those made by the parties on the determinative question in the appeal: Whether foreclosure of defaulted Home Equity Lines of Credit loans ("HELOC"s) should be limited exclusively to judicial foreclosure?

NWCLC has counseled and represented low and moderate income homeowners in all types of foreclosure matters,

including damages claims for injuries to homeowners caused by violations of the Washington Deed of Trust Act (DTA), Washington Foreclosure Fairness Act (FFA) mediations, and many other foreclosure-related matters. NWCLC Executive Director and attorney Amanda Martin is the author of *Litigating Consumer Protection Acts in the HAMP¹ Context*, SEATTLE U. L. REV. 739 (2015). Staff Attorney at NWCLC and counsel for *Amicus Curiae*, Arthur Ortiz, was himself a foreclosure mediator from 2011 to 2015 and convened over three hundred foreclosure mediation sessions. NWCLC's extensive experience and statewide perspective from the homeowner's viewpoint should materially assist the Court in deciding the certified questions.

IV. ISSUES FOR *AMICUS* BRIEF

The issue that NWCLC wishes to address for Washington homeowners is: whether lenders and their assigns

¹ Home Affordable Mortgage Program (HAMP), a Treasury-sponsored initiative that aimed at preventing foreclosure by encouraging mortgage loan servicers to modify the mortgages of qualified homeowners.

(“beneficiaries”) should be permitted to foreclose HELOCs nonjudicially? Additionally, NWCLC provides necessary context for the Court on how these issues affect homeowners, particularly low income Washingtonians, and the policies underlying Washington’s Deed of Trust Act.

V. HOW *AMICUS* BRIEF WILL ASSIST THE COURT

The issues presented by the parties here regard a loophole in the law that permits non-negotiable security instruments to be treated as negotiable instruments effectively stripping away homeowner’s rights and eliminating any and all effective legal scrutiny in a highly technical and broadly dynamic factual environment. NWCLC’s Amicus Brief will describe the differences between nonjudicial and judicial foreclosure beyond their definitional differences in order to explain how, in the context of a HELOC, nonjudicial foreclosure is legally impractical, to the extent of being prejudicial, compared to judicial foreclosure. For example, the brief explains how it

matters whether a security instrument is negotiable or not because the authoritative actors of each foreclosure system are aiming at fundamentally different targets. The nonjudicial foreclosure trustee is simply aiming to provide all interested parties with sufficient notice for the parties to act to preserve their interest, whereas a judicial foreclosure requires jurisdiction because a judge will make findings of fact and rulings that will bind the parties with regard to their interest in the security, in this case, the borrower's home. *Bain v. Metro. Mortg. Grp., Inc.*, 175 Wn.2d 83, 94, 285 P.3d 34, 39 *citing* Joseph L. Hoffmann, Comment, *Court Actions Contesting the Nonjudicial Foreclosure of Deeds of Trust in Washington*, 59 Wash. L.Rev. 323, 330 (1984). Therefore, the brief explains, the effect of submitting a defaulted HELOC to nonjudicial foreclosure is the loss of appropriate forum which then results in the loss of legal rights impacting thousands of Washington homeowners. In practice, this means that in nonjudicial foreclosure no party can identify or remedy the consequences of deceptive and predatory

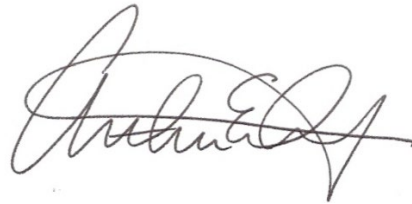
conduct.

VI. CONCLUSION

For these reasons, Northwest Consumer Law Center respectfully request that the Court grant this motion.

Respectfully submitted this 12th day of May, 2025.

I certify that this document
contains 848 words in
compliance with RAP 18.17(c).

A handwritten signature in black ink, appearing to read 'Arthur Ortiz', with a horizontal line drawn across the middle of the signature.

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Transmittal Information

Filed with Court: Supreme Court
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