No. 16-36045

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JACOB MCGREEVEY,

Plaintiff-Appellant

v.

PHH MORTGAGE CORPORATION, *et al.*,

Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

BRIEF FOR THE UNITED STATES AS *AMICUS CURIAE* SUPPORTING NEITHER PARTY

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STATEMENT OF THE ISSUE

This case concerns the proper statute of limitations for private suits alleging violations of the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. 3901 *et seq.* Plaintiff brought suit asserting a violation of 50 U.S.C. 3953(c), which prohibits the "sale, foreclosure, or seizure of property" made during or within a year after the period of the servicemember's military service for a breach of a mortgage obligation originating prior to that service. Defendants moved to dismiss on the ground that plaintiff's claim was untimely. Applying *Reed* v. *United*

Transportation Union, 488 U.S. 319, 323 (1989), the district court adopted the four-year limitations period of Washington's Consumer Protection Act (CPA), Wash. Rev. Code §§ 19.86 *et seq.* (2016), which the court determined to be the closest state-law analogue to plaintiff's SCRA claim. We address the following question:

Whether private SCRA suits are governed by the limitations period of the closest state-law analogue of the State in which they arise, as the district court held, or instead by the uniform, four-year federal catch-all statute of limitations set forth in 28 U.S.C. 1658(a).[1]

INTEREST OF THE UNITED STATES

Congress enacted the SCRA to (1) "provide for, strengthen, and expedite the national defense" by enabling servicemembers "to devote their entire energy to the defense needs of the Nation," and (2) "provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service." 50 U.S.C. 3902; see also *Brewster* v. *Sun Trust Mortg., Inc.*, 742 F.3d 876, 879 (9th Cir. 2014) (the SCRA effectuates "the Congressional purpose of granting active-duty members of the armed forces repose from some of the trials and tribulations of civilian life").

[1] The United States takes no position on the merits of plaintiff's SCRA claim or whether it was timely filed.

Without vigorous enforcement of the SCRA, our Nation's ability to meet its critical defense needs may suffer.

The United States enforces the SCRA through litigation by the Attorney General. See 50 U.S.C. 4041. Given the limited federal resources available to enforce the statute, however, private actions serve an important role in the SCRA's enforcement. Accordingly, the United States files this brief pursuant to Federal Rule of Appellate Procedure 29(a).

STATEMENT OF THE CASE

1. Background On The SCRA

Congress first enacted the Soldiers' and Sailors' Civil Relief Act (SSCRA)—the SCRA's predecessor—in 1918, soon after the United States entered World War I. See SSCRA, Pub. L. No. 65-103, 40 Stat. 440; *Gordon* v. *Pete's Auto Serv. of Denbigh, Inc.*, 637 F.3d 454, 457 (4th Cir. 2011). The Act expired after the war but was reenacted with only minor changes in 1940. *Gordon*, 637 F.3d at 458; see also SSCRA of 1940, Pub. L. No. 76-861, 54 Stat. 1178. In 1942, Congress modified many of the existing provisions of the Act and added new protections. See SSCRA Amendments of 1942, Pub. L. No. 77-732, 56 Stat. 769; see also H.R. Rep. No. 81, 108th Cong., 1st Sess. 33-34 (2003). Congress amended the SSCRA numerous times between 1942 and 2003. See H.R. Rep. No. 81, 108th Cong., 1st Sess. 34; *Gordon*, 637 F.3d at 458.

In 2003, Congress enacted the SCRA to "restate, clarify, and revise" the SSCRA, Pub. L. No. 108-189, 117 Stat. 2835, as well as to "strengthen many of its protections," H.R. Rep. No. 81, 108th Cong., 1st Sess. 35. The SCRA provision at issue in this lawsuit prohibits the "sale, foreclosure, or seizure of property" for a breach of a mortgage obligation that originated prior to the servicemember's military service if the sale, foreclosure, or seizure is "made during, or within one year after, the period of the servicemember's military service," unless the defendant obtains a court order or waiver by the servicemember of his SCRA rights. 50 U.S.C. 3953(c). This provision constitutes "a serious prohibition aimed at keeping members of the armed forces free of foreclosures which would be distractions and unfair while they serve their country." *Brewster* v. *Sun Trust Mortg., Inc.*, 742 F.3d 876, 878 (9th Cir. 2014).

The protection against foreclosure on property during or shortly after one's active military service was part of the SSCRA's original enactment in 1918 and its reenactment in 1940.[2] The SSCRA provided this protection to sales, foreclosures, or seizures of property "made during the period of military service or within three months thereafter." Pub. L. No. 65-103, 40 Stat. 440, 444 (1918); Pub. L. No. 76-861, 54 Stat. 1178, 1183 (1940). When Congress enacted the SCRA in 2003, it

[2] See SSCRA, Pub. L. No. 65-103, 40 Stat. 440, 444 (1918); SSCRA of 1940, Pub. L. No. 76-861, 54 Stat. 1178, 1183.

retained the three-month scope of the foreclosure protection as it existed in the SSCRA.[3] Congress in 2008 expanded the scope of this protection to extend nine months after the period of military service, and then expanded it again in 2012 to extend one year after the period of military service.[4]

As originally enacted, the SCRA, like the SSCRA, contained no express private right of action. As a result, SCRA cases brought by private plaintiffs frequently gave rise to the question whether the SCRA contained an implied private right of action. While district courts around the country reached different results on that question,[5] neither the Supreme Court nor any federal appellate court had occasion to address it. See R. Chuck Mason, Cong. Research Serv., R40456, *The Servicemembers Civil Relief Act (SCRA): Does It Provide for a Private Cause*

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[3] See SSCRA, Pub. L. No. 108-189, 117 Stat. 2835, 2847.

[4] See Housing and Economic Recovery Act, Pub. L. No. 110-289, 122 Stat. 2654, 2849 (2008 amendment); Honoring America's Veterans and Caring for Camp Lejeune Families Act, Pub. L. No. 112-154, 126 Stat. 1165, 1208 (2012 amendment).

[5] Compare, *e.g.*, *Frazier* v. *HSBC Mortg. Servs., Inc.*, No. 8:08-cv-02396-T-24 TGW, 2009 WL 4015574, at *4 (M.D. Fla. Nov. 19, 2009) (concluding that the SCRA contained an implied private cause of action), and *Linscott* v. *Vector Aerospace*, No. CV-05-682-HU, 2006 WL 240529, at *7 (D. Or. Jan. 31, 2006) (same), with *Williams* v. *U.S. Bank Nat'l Ass'n*, No. ED CV12-00748-JLQ, 2013 WL 571844, at *4 (C.D. Cal. Feb. 13, 2013) (concluding that the SCRA did not create an implied private right of action), and *McMurtry* v. *City of Largo*, 837 F. Supp. 1155, 1157-1158 (M.D. Fla. 1993) (same, with respect to the SSCRA).

of Action? 9 (2009). In light of this uncertainty, Congress in 2010 added an express cause of action to the statute, 50 U.S.C. 4042, "to clarify that a person has a private right of action to file a civil action for violations under the SCRA." 156 Cong. Rec. 16,739; see also H.R. Rep. No. 324, 111th Cong., 1st Sess. 7 (2009).

Congress did not, however, specify a statute of limitations for SCRA claims brought by private plaintiffs. The two courts to address the question of the SCRA's statute of limitations have borrowed the limitations period from the closest state-law analogue of the State in which the SCRA claim was brought, leading to different limitations periods for comparable SCRA claims in those two States. Compare ER 14[6] (applying a four-year statute of limitations under Washington law to wrongful-foreclosure SCRA claims brought in Washington), with *Johnson* v. *Mortgage Elec. Registration Sys., Inc.*, No. 14-cv-10921, 2014 WL 6678951, at *5 (E.D. Mich. Nov. 25, 2014) (applying a three-year statute of limitations under Michigan law to wrongful-foreclosure SCRA claims brought in Michigan).

[6] Citations to "ER __" refer to page numbers in plaintiff-appellant's Excerpts of Record. Citations to "Doc. __, at __" refer to the district court docket and page number of documents not included in the Excerpts of Record.

2. Statement Of Facts And Procedural History

a. Plaintiff Jacob McGreevey is a member of the United States Marine Corps and a Washington resident.[7] In 2006, McGreevey refinanced a home mortgage loan with defendant PHH Mortgage Corporation while he was not in active military service. ER 21-23. On May 18, 2010, while McGreevey was on active military duty in Iraq, defendant Northwest Trustee Services, Inc. (Northwest), acting as trustee for PHH Mortgage, initiated foreclosure proceedings on McGreevey's home. ER 23.

McGreevey was released from active military duty on July 21, 2010. ER 24. Upon returning home, he notified one or both defendants of his active service and requested an opportunity to refinance his mortgage loan. ER 24. Defendants ignored that request, and Northwest foreclosed on McGreevey's home, without a court order, on August 20, 2010. ER 24.

b. On May 6, 2016, McGreevey sued PHH Mortgage, alleging that its foreclosure and sale of his home within nine months of his active military service violated the SCRA, 50 U.S.C. 3953(c). Doc. 1. McGreevey subsequently amended his complaint, adding Northwest as a defendant. ER 20-21.

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[7] Because plaintiff's lawsuit was dismissed under Federal Rule of Civil Procedure 12(b)(6), we summarize the facts as alleged in his First Amended Complaint, which this Court must assume to be true at this stage. See *Brooks* v. *Clark Cnty.*, 828 F.3d 910, 914 n.1 (9th Cir. 2016).

Defendants moved to dismiss McGreevey's amended complaint, arguing, among other things, that it is time-barred.[8] Doc. 16, at 7-10. Acknowledging that the SCRA does not itself contain a statute of limitations, defendants argued that the court must look to the closest state-law analogue to determine the appropriate limitations period. Doc. 16, at 7. Defendants contended that, under any of the various Washington laws that might serve as a potential analogue, the limitations period would at most be four years. Doc. 16, at 7-8 (citing Washington's CPA, Deed of Trust Act, Fair Debt Collection Practices Act, and conversion statute). Thus, defendants argued, under whichever state-law analogue the court elected, McGreevey's complaint—filed nearly six years after the August 20, 2010, foreclosure date—is time-barred. Doc. 16, at 8.

McGreevey, in response, argued that the appropriate analogue to effectuate Congress's intent is not a state law but rather the federal Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. 4301 *et seq.* Doc. 17, at 7-8. In 2008, Congress provided expressly, through the Veterans' Benefits Improvement Act (VBIA), that "there shall be no limit on the period for

[8] PHH Mortgage had previously moved to dismiss McGreevey's original complaint on the ground that the SCRA's express private cause of action, 50 U.S.C. 4042, did not yet exist when the foreclosure on McGreevey's home allegedly took place. Doc. 7, at 4-10. The district court denied that motion, holding that Section 4042 applied retroactively to SCRA claims arising before its enactment. *McGreevey* v. *PHH Mortg. Corp.*, No. 3:16-cv-05339, 2016 WL 4945301, at *3-4 (W.D. Wash. Sept. 16, 2016).

filing" a USERRA claim. Doc. 17, at 7 (quoting 38 U.S.C. 4327(b)). McGreevey argued that, because both USERRA and the SCRA serve similar purposes, the court should infer that Congress also intended that the SCRA should have no statute of limitations. Doc. 17, at 7-8. Alternatively, McGreevey argued that, should the court choose to look to state law, the closest analogue is not any of the statutes defendants cited but rather a breach-of-contract claim, which in Washington has a six-year statute of limitations. Doc. 17, at 8-9.

Defendants filed a reply rebutting both of McGreevey's arguments. Doc. 18. Defendants argued that McGreevey's SCRA claim is not analogous to a state-law breach-of-contract claim because it was McGreevey's own non-payment that breached the mortgage agreement, not defendants' foreclosure on and sale of his house. Doc. 18, at 5-6. Defendants also contested McGreevey's reliance on USERRA, arguing that the SCRA's purpose differs from USERRA's and that, unlike USERRA, the SCRA does not contain language expressly providing for no limitations period. Doc. 18, at 4-5. Defendants also argued that, should the court look to federal law instead of a state-law analogue, the appropriate federal statute would be not USERRA but 28 U.S.C. 1658(a), which provides a four-year limitations period for claims arising from any federal statute enacted after December 1, 1990, that "fail[s] to delineate a statute of limitations." Doc. 18, at 5.

c. On December 6, 2016, the district court denied defendants' motion to dismiss. ER 16. The court rejected both of McGreevey's arguments—*i.e.*, that the SCRA is subject to no statute of limitations like USERRA or, alternatively, to the six-year statute of limitations governing state-law breach-of-contract claims—ruling that the best state-law analogue is Washington's CPA, which has a four-year limitations period. ER 14-15. The court concluded, however, that assuming an April 21, 2011, sale date as represented in McGreevey's complaint and accounting for tolling during McGreevey's military service in 2011-2012, see 50 U.S.C. 3936(a) (requiring tolling of statutes of limitations during the "period of a servicemember's military service"), McGreevey's complaint was timely under a four-year statute of limitations. ER 13, 15. The court did not address defendants' alternative argument that SCRA claims are subject to the four-year federal catch-all limitations period in 28 U.S.C. 1658(a).

d. Defendants filed a motion for reconsideration of the district court's ruling, arguing that the correct sale date triggering the limitations period was actually August 20, 2010, not April 21, 2011, as McGreevey had alleged in his complaint. Doc. 25, at 1-3. Thus, defendants argued, even accounting for tolling during McGreevey's active service, the four-year limitations period expired September 28, 2015, not May 19, 2016, as the court had calculated. Doc. 25, at 2.

e. On December 15, 2016, the district court granted defendants' motion for reconsideration and dismissed McGreevey's complaint as time-barred. ER 19. In doing so, the court adhered to its original ruling that Washington's CPA was the appropriate state-law analogue for SCRA claims but concluded that documents defendants submitted "undisputedly establish August 20, 2010 as the trustee sale date." ER 18. Using that date as the limitations-period trigger, the court ruled that, even with tolling, McGreevey's May 6, 2016, complaint was untimely. ER 18.

SUMMARY OF ARGUMENT

Contrary to the district court's assumption, private SCRA claims are subject not to state-law limitations periods but rather to the federal four-year catch-all limitations period provided in 28 U.S.C. 1658(a). Section 1658(a) applies to civil actions arising under an Act of Congress enacted after December 1, 1990. In *Jones* v. *R.R. Donnelley & Sons Co.*, 541 U.S. 369, 381-382 (2004), the Supreme Court held that a cause of action arises under a post-1990 enactment if the action "was made possible by [the] post-1990 enactment." Plaintiff's SCRA claim was made possible by the 2010 enactment in which Congress added an express private right of action to the SCRA, 50 U.S.C. 4042, as that Act created "a new right to maintain an action" to enforce one's SCRA rights. *Id.* at 382. Thus, because plaintiff's private SCRA action "aris[es] under" a post-1990 enactment, Section 1658(a)'s four-year limitations period applies. 28 U.S.C. 1658(a).

Clarifying that the federal four-year statute of limitations applies to private SCRA claims furthers important policy interests. Applying Section 1658(a) to private SCRA claims would provide needed certainty and uniformity to litigants in SCRA cases; it would also promote judicial economy by eliminating unnecessary and wasteful litigation over which federal- or state-law analogue applies in any given case.

ARGUMENT

PRIVATE SCRA CLAIMS ARE GOVERNED BY THE UNIFORM, FOUR-YEAR FEDERAL STATUTE OF LIMITATIONS SET FORTH IN 28 U.S.C. 1658(a)

A. Background On 28 U.S.C. 1658(a)

In 1990, Congress established a four-year catch-all statute of limitations for any "civil action arising under an Act of Congress enacted after [December 1, 1990]," unless another limitations period is "provided by law." 28 U.S.C. 1658(a). Before 1990, when a federal law lacked a statute of limitations, courts' "settled practice" was generally to borrow the limitations period of the "closest state analogue." *Jones* v. *R.R. Donnelley & Sons Co.*, 541 U.S. 369, 377-378 (2004) (citation omitted).[9] This practice led to numerous problems that "spawned a vast

[9] Although the general practice is to borrow state-law limitations periods for pre-December 1, 1990, causes of action, courts have recognized that, in some circumstances, analogous federal law provides a more appropriate limitations period than would the closest state-law analogue. *DelCostello* v. *International*

(continued…)

amount of litigation." *Id.* at 377. Accordingly, Congress enacted 28 U.S.C. 1658(a) to fill the "void" created by the lack of a "uniform statute of limitations applicable to federal causes of action." *Ibid.* (citation omitted).[10]

In *Jones*, the Supreme Court addressed what it means for a cause of action to "aris[e] under" an Act of Congress within the meaning of Section 1658(a). 541 U.S. at 371. The petitioners in *Jones* had sued under 42 U.S.C. 1981, alleging that various actions by their employer violated their statutory right "to make and enforce contracts." *Id.* at 372-373 (citation omitted). As originally enacted in 1866, Section 1981 did not protect against conduct that occurred after the formation of the contract, *i.e.*, the type of conduct that petitioners alleged. *Id.* at 373. In 1991, however, Congress amended Section 1981 to define the right "to make and enforce contracts" more broadly to include post-formation conduct. *Ibid.* (citation omitted). The question in *Jones* was whether petitioners' cause of action "arose under" the original Act or under the 1991 amendments. *Id.* at 369. If the former, then their claims would be governed by the two-year statute of

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(…continued)
Bhd. of Teamsters, 462 U.S. 151, 158-162 (1983); see also, *e.g.*, *Price* v. *Bernanke*, 470 F.3d 384, 389 (D.C. Cir. 2006) (borrowing Title VII limitations period for civil actions brought by federal employees under the Age Discrimination in Employment Act).

[10] The four-year limitations period in Section 1658(a) is subject to tolling where another federal statute, including 50 U.S.C. 3936(a), requires tolling of a statute of limitations in specified circumstances.

limitations set forth in the closest state-law analogue, an Illinois personal-injury statute; if the latter, then they would be governed by Section 1658(a)'s four-year federal catch-all provision. *Id.* at 371-373.

The Court held that petitioners' cause of action arose under the 1991 amendments and therefore was subject to Section 1658(a)'s four-year limitations period. Recognizing that the plain language of Section 1658(a) could support either petitioners' or respondent's view, the Court concluded that "[t]he history that led to the enactment of § 1658 strongly supports an interpretation that fills more rather than less of the void that has created so much unnecessary work for federal judges." *Jones*, 541 U.S. at 380. Because it would "subvert[] that goal" to restrict Section 1658 only to entirely "new sections of the United States Code" that made no reference to pre-1990 law, the Court adopted a broader view of the term "arising under": a cause of action "aris[es] under" a post-1990 law, the Court held, if the plaintiff's claim "was made possible by [the] post-1990 enactment." *Id.* at 381-382 (first brackets in original); see also *id.* at 382 (Section 1658 applies "whenever a post-1990 enactment creates a new right to maintain an action"). Accordingly, the Court concluded, because petitioners' Section 1981 claims were not cognizable until Congress enacted the 1991 amendments, those claims "ar[ose] under" the 1991 amendments and were therefore subject to Section 1658(a)'s catch-all limitations period. *Id.* at 383.

B. Private Lawsuits To Enforce The SCRA Are "Made Possible By" A Post-1990 Act Of Congress And Are Therefore Governed By Section 1658(a)

Under *Jones*, private SCRA claims "aris[e] under" a post-1990 Act of Congress: specifically, the 2010 enactment in which Congress added an express private right of action to the SCRA, 50 U.S.C. 4042. Although federal law has provided servicemembers protection against property foreclosure during or shortly after their military service since the SCRA's predecessor was enacted in 1940,[11] Congress did not provide servicemembers an express private right of action to enforce that right until it enacted 50 U.S.C. 4042 via the Veterans' Benefits Act of 2010, Pub. L. No. 111-275, §§ 301-303, 124 Stat. 2864, 2875-2877. McGreevey's private claim was thus "made possible by" the 2010 Act insofar as that Act provided him "a new right to maintain an action" to enforce his SCRA rights. *Jones*, 541 U.S. at 382; see also *Millay* v. *Maine Dep't of Labor*, 762 F.3d 152, 155-156 (1st Cir. 2014) (concluding that, although the Rehabilitation Act was enacted in 1973, plaintiff's Rehabilitation Act claim arose under a post-1990 enactment because Congress did not provide for judicial review of decisions rendered through the administrative appeals process until a 1998 amendment). Accordingly, McGreevey's claim "aris[es] under" the 2010 Act within the meaning of Section 1658(a), as interpreted by the Supreme Court in *Jones*.

[11] See SSCRA of 1940, Pub. L. No. 76-861, 54 Stat. 1178, 1183.

That some district courts had concluded that the SCRA, and its predecessor the SSCRA, contained an implied private right of action even before Congress added Section 4042 in 2010 does not alter the conclusion that plaintiff's private SCRA claim "was made possible by" the 2010 Act. *Jones*, 541 U.S. at 382. No federal appeals court, including this Court, has ever held that the pre-2010 SCRA or its predecessor contained an implied private right of action. See *Brewster* v. *Sun Trust Mortg., Inc.*, 742 F.3d 876, 878 n.3 (9th Cir. 2014) (declining to reach the question); *Gordon* v. *Pete's Auto Serv. of Denbigh, Inc.*, 637 F.3d 454, 459 n.1 (4th Cir. 2011) (same); *Frazier* v. *HSBC Mortg. Servs., Inc.*, 401 F. App'x 436, 441 n.9 (11th Cir. 2010) (same). And district courts within this Circuit have reached different conclusions on that question.[12] Indeed, it was precisely this uncertainty in the law that led Congress to add an express private right of action to the SCRA in 2010. See p. 6, *supra*.

Thus, it is far from clear that a servicemember could have brought a private claim to vindicate his or her SCRA rights before Congress enacted Section 4042 in

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[12] Compare *Linscott* v. *Vector Aerospace*, No. CV-05-682-HU, 2006 WL 240529, at *5-7 (D. Or. Jan. 31, 2006) (concluding that the SCRA contained a private right of action to enforce the mortgage foreclosure provision), with *Giri* v. *HSBC Bank USA*, 98 F. Supp. 3d 1147, 1151-1152 (D. Nev. 2015) (concluding that the pre-2010 SCRA did not contain a private right of action to enforce the mortgage foreclosure provision, as it "provided only for criminal liability, not for any civil liability"), and *Williams* v. *U.S. Bank Nat'l Ass'n*, No. ED CV12-00748-JLQ, 2013 WL 571844, at *4 (C.D. Cal. Feb. 13, 2013) (concluding that plaintiff "had no right to civil relief" under the SCRA prior to the 2010 Act).

2010, much less before it enacted 28 U.S.C. 1658(a) in 1990. *Jones*, 541 U.S. at 382. Indeed, in this case, the district court ruled in an earlier order that the plaintiff's private SCRA claim—which arose from a foreclosure that occurred several months before Section 4042 was enacted—was permissible not because the SCRA contained an implied private right of action prior to Section 4042's enactment but because the express private right of action Congress provided in Section 4042 applies retroactively. See *McGreevey*, 2016 WL 4945301, at *3-4; see also *Gordon*, 637 F.3d 454. Under these circumstances, Section 4042 provided "a new right to maintain an action" to enforce the SCRA right against wrongful foreclosure that was not available prior to 2010. *Jones*, 541 U.S. at 382.[13] Applying Section 1658(a), rather than state law, to SCRA claims is consistent with the Supreme Court's broad interpretation of Section 1658(a), as intended to "fill[]

[13] In SCRA cases where the servicemember asserts a statutory substantive right that *did not* exist in the SSCRA—such as the right to terminate motor vehicle leases, 50 U.S.C. 3955(a) and (b)(2)—the claim would also "arise under" the 2003 enactment of the SCRA, and therefore after 1990, within the meaning of *Jones*. Likewise, in SCRA cases asserting a right that was added to the SCRA later—such as the right to terminate a cell phone contract, 50 U.S.C. 3956, which was added in 2008, see VBIA, Pub. L. No. 110-389, § 805(a), 122 Stat. 4145, 4188-4189—the claim would also "arise under" that post-1990 enactment per *Jones*. Indeed, if the foreclosure and sale here occurred more than 90 days after McGreevey's period of active service, then his claim would also be "made possible by" another post-1990 enactment, as Congress did not extend the wrongful foreclosure provision's scope of protection beyond 90 days until 2008. See p. 5, *supra*. In any of these cases, however, Section 1658(a) would also apply for the independent reason that the 2010 Act adding an express private right of action to the SCRA made the plaintiff's SCRA claim possible.

more rather than less of the void that has created so much unnecessary work for federal judges." *Jones*, 541 U.S. at 380.

Finally, adopting Section 1658(a)'s four-year statute of limitations for private SCRA claims would provide needed certainty and uniformity for litigants. See *Socop-Gonzalez* v. *INS*, 272 F.3d 1176, 1196 (9th Cir. 2001) (observing that statutes of limitations serve the policies of certainty and uniformity). Determining what is the appropriate state- or federal-law analogue is often a complicated endeavor, even for federal judges with experience performing such analyses. See generally *Jones*, 541 U.S. at 377-380. A circuit-wide four-year limitations period would provide certainty for both plaintiffs and defendants, eliminating the burden on the litigants to determine whether a particular claim falls within the correct state- or federal-law limitations period. This also would promote judicial economy by reducing unnecessary litigation over which state- or federal- law analogue applies in any given case. Reducing such "unnecessary work" was the "central purpose" behind Section 1658(a)'s enactment. *Jones*, 541 U.S. at 380.

CONCLUSION

This Court should hold that private SCRA claims are governed by the four-year federal catch-all statute of limitations set forth in 28 U.S.C. 1658(a).

Respectfully submitted,

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Signature of Attorney or Unrepresented Litigant: s/ Christine A. Monta

Date: Mar 29, 2017

("s/" plus typed name is acceptable for electronically-filed documents)

CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2017, I electronically filed the foregoing BRIEF FOR THE UNITED STATES AS *AMICUS CURIAE* SUPPORTING NEITHER PARTY with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I also certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Christine A. Monta
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Attorney