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## [FORECLOSURE LITIGANTS ARE BECOMING A "SUSPECT CLASS" EXPOSED TO DISPARATE TREATMENT IN VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE CONSTITUTION](#)

September 19, 2013

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The following is essentially an "op-ed" piece, the matters being a product of what I have seen occurring around this country in the past 5+ years since I became a full-time foreclosure defense litigator. To my knowledge, no one has sought to advance this position in court yet, but it may be that no one else has seen it as I do.

Foreclosures are "civil" actions, meaning, in court parlance, that they are not in the criminal, family, or probate divisions of the court. In the old days (pre-MERS, pre-securitization, pre-robo-signers, etc.), all foreclosure cases came into the civil court (including what are called, in some states, "Chancery" divisions) and were governed by the same Rules of Civil Procedure and pretrial procedures as other civil cases. This applied whether the case was filed as a judicial action by the foreclosing party in a judicial state, or whether filed by a homeowner challenging a foreclosure in a non-judicial state. Parties involved in foreclosure cases were treated the same and given the same rights as any other "civil" litigant involved in non-foreclosure litigation and provided with the same litigation tools, including discovery and full hearings.

What has happened in several jurisdictions is that homeowners involved in foreclosure cases have become relegated to "special" foreclosure divisions, "special" rules of procedure, and "special" pretrial procedures which (a) rob the homeowner of the protections afforded to other civil litigants; (b) railroad a foreclosure case through the system at an accelerated rate of speed; (c) force early trials which hamstringing discovery rights and permit the "banks" and servicers to avoid their discovery obligations; and (d) subject homeowner litigants in foreclosure cases to procedures which have been designed for no other purpose than to "clear the court dockets". What is without dispute is that the dockets are crowded solely as a result of the disaster created by the investment banks and servicers from the getgo.

The United States Constitution guarantees something called "equal protection", and precludes something called "disparate treatment" being applied to a "suspect class". This body of law arose primarily out of the civil rights movement, and there is a wealth of case law on these issues from the Federal courts. However, all of these infirmities are present in certain jurisdictions which have chosen drastic (and, I assert, unconstitutional) measures to cram and jam foreclosure actions through the system.

Homeowners involved in foreclosure litigation are within the general class of civil litigants. All civil litigants are guaranteed certain rights, including the right to have their case governed by the Rules of Civil Procedure and pretrial and trial procedures applicable to all other civil litigants. However, a "suspect class" has been created within the general class of civil litigants (those being homeowners in foreclosure cases), whose members are being subject to "disparate treatment", meaning that they are being treated differently than other members of the general class of civil litigants with the results being unconstitutional as applied, notwithstanding that the "special" foreclosure procedures may not be unconstitutional on their face. The difference is well-established in the case law: a rule of law may pass muster as being "facially" constitutional,

but is unconstitutional when it is applied. That is what is happening in several states with the "special" foreclosure procedures.

In order to stop this wrongful torrent, someone has to be willing to file an action challenging the constitutionality of the "special" foreclosure procedures as applied, using the equal protection principles recognized in the law. The "bank lobby" has had its effect on certain state governments, which have caused the enactment of the "special" procedures for the sole purpose of making it easier for the "banks" and servicers to line their pockets with money and real property by causing the courts to deny homeowners the same rights as other civil litigants, which is illegal as is "robo-signing", backdating Assignments, forging notary information, and creating fabricated promissory notes through "photoshop", etc.

A government will get away with something illegal until someone calls them to the carpet on it. A perfect example of this occurred several years ago in Florida, where a new school was under construction and where the DOT had already, before the school was completed, placed the "School Zone" signs outside of the incomplete school which reduced the speed limit to 15 mph during certain hours of the day. Although the school was incomplete and unoccupied, the police wrote hundreds of tickets for "speeding through a school zone" until about 100 people showed up in court on the same day from tickets written by the same police officers and advised the Court of the facts. The Judge threw out all of the tickets at the same time and admonished the officers. Needless to say, the ticket writing stopped that day.

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