

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

THOMAS SAXTON, *et al.*,

Plaintiffs,

v.

THE FEDERAL HOUSING FINANCE
AGENCY, *et al.*,

Defendants.

Civil Action No. 1:15-cv-00047-LRR

**INVESTORS UNITE’S REPLY IN
FURTHER SUPPORT OF ITS
OPPOSED MOTION FOR LEAVE TO
FILE *AMICUS CURIAE* BRIEF IN
SUPPORT OF PLAINTIFFS’
OPPOSITION TO DEFENDANTS’
MOTIONS TO DISMISS**

Investors Unite respectfully submits this reply in further support of its Opposed Motion for Leave to File *Amicus Curiae* Brief in Support of Plaintiffs’ Opposition to Defendants’ Motions to Dismiss, dated November 2, 2015, ECF No. 40 (the “Motion”).

As explained in the Motion, proposed *amicus curiae* Investors Unite is a coalition of large and small investors in the Companies¹ who wish to provide the Court, in the form of the *amicus curiae* brief attached to the Motion, with important background concerning HERA’s conservatorship provisions that are relevant to Defendants’ pending motions to dismiss this action.

Defendants’ arguments in opposition to the Motion, *see* Defs.’ Resistance to Mot. by Investors Unite for Leave to File Amicus Brief (Nov. 19, 2015), ECF No. 44 (the “Resistance”), are meritless.

First, Defendants admit that they consented to the filing of a similar *amicus curiae* brief by Investors Unite in the Court of Appeals for the District of Columbia Circuit in *Perry Capital LLC v. Lew*, No. 14-5243. *See* Resistance at 4 n.1. Because the issues before this

¹ Capitalized terms not defined herein have the meaning ascribed to them in the Motion.

Court are similar to those being considered by the Court of Appeals in *Perry Capital*, Investors Unite filed the Motion so that this Court would have the benefit of the same briefing as the Court of Appeals. Defendants do not, because they cannot, explain why this Court should be deprived of such briefing.

Second, the issues raised in Investors Unite’s proposed amicus brief – explaining FHFA’s conservatorship authority under HERA and how FHFA’s actions exceed that authority – are directly relevant to Defendants’ argument that the Court lacks subject matter jurisdiction over certain claims in this case because FHFA was acting within its statutory conservatorship powers. *See, e.g.*, Reply in Supp. of Mot. to Dismiss by Defs. Fed. Housing Fin. Agency As Conservator for Fannie Mae and Freddie Mac, and FHFA Dir. Melvin L. Watt, at 1 (Nov. 23, 2015), ECF No. 45 (“The Conservator acted squarely within its broad statutory powers and functions when it executed the Third Amendment.”); Dep’t of Treasury’s Reply Mem. in Supp. of Mot. to Dismiss Compl., at 1 (Nov. 23, 2015), ECF No. 46 (“It is well-established under both HERA and a materially identical provision in the Financial Institutions Reform, Recovery and Enforcement Act (‘FIRREA’) that the anti-injunction provision applies regardless of whether the plaintiffs agree with the manner in which FHFA has exercised its conservatorship powers. Plaintiffs’ reliance in their resistance brief on supposed ‘statutory duties’ of the conservator misinterprets HERA, and does not establish jurisdiction over the claims.”).

Third, Investors Unite does not merely duplicate the arguments of the parties. Investors Unite’s proposed amicus brief provides additional and different considerations based on the sources for the conservatorship powers contained in HERA and the actual, comparative standards long used by the FDIC in applying virtually identical statutory provisions.

Fourth, granting the Motion would not delay resolution of this case or prejudice Defendants. *See* Resistance at 1. Investors Unite does not seek to intervene in this matter beyond simply filing the proposed amicus brief to assist the Court in resolving the Defendants' pending motions to dismiss.

For these reasons and those in the Motion, Investors Unite respectfully requests permission to file its amicus brief, attached as Exhibit A to the Motion.

Dated: November 24, 2015

Respectfully Submitted,

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