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September 11, 2016

VIA ELECTRONIC FILING

Mr. Mark Langer
Clerk of the Court
United States Court of Appeals for the District of Columbia Circuit
E. Barrett Prettyman United States Courthouse
333 Constitution Avenue, N.W.
Washington, D.C. 20001

Re: *Perry Capital LLC v. Lew*, Nos. 14-5243 (L), 14-5254 (con.), 14-5262 (con.)

Dear Mr. Langer:

The opinion in *Robinson v. FHFA*, No. 15-109 (E.D. Ky. Sept. 9, 2016), extensively quotes the district court's decision below but adds nothing new that is relevant to this appeal.[1] Plaintiffs have already demonstrated that the decision below was fatally flawed, and that decision is no more persuasive when quoted by another district court.

Although its reasoning provides no insight into any of the legal issues before this Court, *Robinson* is useful in that it brings into sharp relief the implications of Defendants' arguments. *Robinson* dismissed an APA challenge to the Net Worth Sweep despite assuming that "there was never any threat that the Companies

[1] Defendants forfeited any argument that the Companies' shareholders are outside the zone of interests protected by 12 U.S.C. § 4617(a)(7). *See* Op. 9–11; *Crossroads Grassroots Policy Strategies v. FEC*, 788 F.3d 312, 320 (D.C. Cir. 2015) (zone of interests requirement is not jurisdictional). Regardless, the purpose of safeguarding FHFA's independence was to protect the Companies and their shareholders, and the zone of interests requirement is not demanding in this context. *See FAIC Sec., Inc. v. United States*, 768 F.2d 352, 357 (D.C. Cir. 1985).

would become insolvent by virtue of paying cash dividends," Op. 3, that the Companies' dividend obligations to Treasury "were artificially and permanently inflated" by a series of accounting improprieties perpetrated by FHFA, *id.*, and that the Net Worth Sweep was "the culmination of a long-term plan to seize and nationalize the Companies," *id.* at 4. The *Robinson* court ruled that these allegations were immaterial because, like the district court in this case, it believed that HERA permits FHFA to "treat[ ] the GSEs as an ATM machines [sic]." Op. 11.

To accept this reasoning is to allow not only FHFA but all federal conservators to plunder the assets of financial institutions whose assets they are required to preserve and conserve. No federal conservator has ever been permitted to enrich itself or a sister federal agency at the expense of the company for which it is responsible, and Congress did not authorize FHFA to become the first when it enacted HERA.

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