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

THOMAS SAXTON, IDA SAXTON, BRADLEY PAYNTER, Plaintiffs, v. THE FEDERAL HOUSING FINANCE AGENCY, in its capacity as Conservator of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, MELVIN L. WATT, in his official capacity as Director of the Federal Housing Finance Agency, and THE DEPARTMENT OF THE TREASURY, Defendants.	Civil Action No. 1:15-cv-00047

PLAINTIFFS' RESPONSE TO FHFA'S NOTICE
OF NEW AUTHORITY OF SEPTEMBER 13, 2016

The opinion in *Robinson v. FHFA*, No. 15-109 (E.D. Ky. Sept. 9, 2016) ("Op."), extensively quotes but adds almost nothing new to the district court's decision in *Perry Capital v. Lew*, 70 F. Supp. 3d 208 (D.D.C. 2014), an appeal of which was argued in April and remains pending in the D.C. Circuit.[1] Plaintiffs have already demonstrated through extensive briefing that the *Perry Capital* decision was fatally flawed, and that decision is no more persuasive when quoted by another court.

[1] Unlike the *Perry Capital* court, the court in *Robinson* ruled that the Companies' shareholders do not fit within the zone of interests protected by 12 U.S.C. § 4617(a)(7); *see* Op. 9–11. But as Plaintiffs have explained elsewhere, the purpose of this provision is to safeguard FHFA's independence and thereby protect the Companies and their shareholders. *See* Plaintiffs' Response to Defendants' Motions to Dismiss at 26–27 (June 30, 2016), Doc. 86. That is easily enough to satisfy the zone of interests requirement, which is less demanding when a plaintiff sues to compel a federal agency to comply with the law. *See Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 132 S. Ct. 2199, 2210 (2012); *FAIC Sec., Inc. v. United States*, 768 F.2d 352, 357 (D.C. Cir. 1985).

Although its reasoning provides no additional 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 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 *Perry Capital*, 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 property 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.

Dated: September 15, 2016

Respectfully submitted,

/s/ Alexander M. Johnson

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September 2016, I caused a true and correct copy of the foregoing to be filed electronically using the Court's CM/ECF system, causing a true and correct copy to be served on all counsel of record.

/s/ Alexander M. Johnson
Alexander M. Johnson