

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

ATIF F. BHATTI, *et al.*,

Plaintiffs,

v.

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

Defendants.

Case No. 0:17-cv-02185 (PJS/HB)

**FHFA DEFENDANTS' MOTION TO DISMISS**

Defendants the Federal Housing Finance Agency (“FHFA”) and FHFA Director Melvin L. Watt (together, the “FHFA Defendants”) move for an order dismissing Plaintiffs’ First Amended Complaint for Declaratory and Injunctive Relief pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction and Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim, based upon the following grounds:

1. The FHFA Defendants move to dismiss for lack of subject matter jurisdiction Counts I and II, which allege that the Third Amendment to preferred stock purchase agreements between FHFA, as Conservator for Fannie Mae and Freddie Mac, and the U.S. Treasury Department (“Third Amendment”) is invalid because FHFA’s status as an independent agency headed by a single Director and other structural features violate Article II of the Constitution and the separation of powers. Plaintiffs lack Article

III standing to bring those claims because their alleged injuries are not traceable to the alleged constitutional violations and would not be redressed by an order finding FHFA's structure unconstitutional. The FHFA Defendants further move to dismiss Counts I and II on the ground that they fail to state a claim upon which relief may be granted because they are contradicted by well-established precedent upholding the constitutionality of independent agencies.

2. The FHFA Defendants move to dismiss Count III, which alleges that the Third Amendment is invalid because it was approved by an FHFA Acting Director in violation of the Appointments Clause of the Constitution, for failure to state a claim upon which relief may be granted because (a) settled precedent permits subordinate agency officials to act as the head of an agency without Senate confirmation, (b) Plaintiffs' challenge to the reasonableness of the President's nomination efforts and duration of the Acting Director's service presents non-justiciable political questions, (c) the *de facto* officer doctrine bars Plaintiffs' claim, and (d) the duration of the Acting Director's service was reasonable.

3. The FHFA Defendants move to dismiss Counts IV and V, which allege that the Third Amendment is invalid because FHFA as Conservator exercised powers in violation of the nondelegation and private nondelegation doctrines, for failure to state a claim upon which relief may be granted because the Conservator did not exercise any improperly delegated governmental power when it entered into the Third Amendment and the Housing and Economic Recovery Act of 2008 provides intelligible principles.

4. The points and authorities supporting FHFA's motion to dismiss are more fully set forth in the memorandum of law being filed contemporaneously with this motion.

5. The FHFA Defendants further adopt and incorporate by reference the arguments set forth in the Treasury Department's brief in support of its motion to dismiss that Plaintiffs' claims are barred by claim preclusion and because FHFA has succeeded to claims by shareholders of Fannie Mae and Freddie Mac.

WHEREFORE, the FHFA Defendants respectfully request that the Court grant their motion and dismiss Plaintiffs' First Amended Complaint for Declaratory and Injunctive Relief with prejudice.

Dated: September 15, 2017

Respectfully submitted,

/s/ Mark Jacobson

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