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Via ECF

Lyle W. Cayce
Clerk of Court
United States Court of Appeals for the Fifth Circuit
600 S. Maestri Place
New Orleans, LA 70130-3408

Re: *Collins v. Federal Housing Finance Agency*, No. 17-20364
(Oral Argument scheduled for March 7, 2018)

Dear Mr. Cayce:

Of the ten judges who served on the en banc panel in *PHH Corp. v. CFPB*, 2018 WL 627055 (D.C. Cir. Jan. 31, 2018), only six endorsed FHFA's position that the separation of powers permits an agency that is headed by a single individual who cannot be removed from office by the President over a policy disagreement. Rather than the *PHH* majority, this Court should follow the dissenting opinions of Judges Henderson and Kavanaugh:

- “[C]onsent of the governed is a sham if an administrative agency, by design, does not meaningfully answer for its policies to either of the elected branches.” *Id.* at *48 (Henderson, J., dissenting); *see also id.* at *55-56, *65-67.
- Whereas the FTC approved in *Humphrey’s Executor* is “a deliberative expert nonpartisan agency that reports to the Congress,” “[t]he CFPB is a unitary inexpert partisan agency that reports to no one.” *Id.* at *60; *see also id.* at *96-99 (Kavanaugh, J., dissenting).

- “The single-Director structure of the CFPB represents a gross departure from settled historical practice,” and is “[p]erhaps the most telling indication of the severe constitutional problem with” the agency’s leadership structure. *Id.* at *73 (Kavanaugh, J., dissenting); *see also id.* at *74-77, *80-85.
- “The CFPB’s concentration of enormous power in a single unaccountable, unchecked Director poses a far greater risk of arbitrary decisionmaking and abuse of power, and a far greater threat to individual liberty, than a multimember independent agency does.” *Id.* at *73; *see also id.* at *87-90.
- “The single-Director CFPB diminishes the President’s Article II authority to control the Executive Branch more than traditional multi-member independent agencies do.” *Id.* at *73; *see also id.* at *91-96.

To the extent the Court accepts FHFA’s arguments about the scope of 12 U.S.C. § 4617(f) and dismisses Plaintiffs’ APA claims, FHFA will be *even more* constitutionally problematic than the CFPB—insulated from meaningful oversight by not only the President and Congress but also the judiciary. The Court should reject statutory and constitutional arguments that would thus make FHFA the least accountable agency in our Nation’s history. *See* Plaintiffs’ Opening Br. 19-20.

Respectfully submitted,

/s/ David H. Thompson
David H. Thompson

Counsel for Appellants

cc: Counsel of Record (by ECF)