

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

MICHAEL ROP, STEWART KNOEPP,  
and ALVIN WILSON,

Plaintiffs,

v.

THE FEDERAL HOUSING FINANCE  
AGENCY, 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. 1:17-cv-00497  
Hon. Paul L. Maloney

**THE DEPARTMENT OF THE TREASURY’S RESPONSE TO PLAINTIFF’S NOTICE  
OF SUPPLEMENTAL AUTHORITY CONCERNING *COLLINS v. MNUCHIN***

On September 25, 2018, plaintiffs filed a notice of supplemental authority concerning the Fifth Circuit’s recent decision in *Collins v. Mnuchin*, 896 F.3d 640 (5th Cir. 2018). See ECF No. 47. In their notice, plaintiffs referenced the Department of the Treasury’s brief in response to the *Collins* plaintiffs’ rehearing petition, which stated that the Fifth Circuit panel “correctly held that the FHFA Director’s for-cause removal protection is inconsistent with separation-of-powers principles.” Treasury’s Opp. to Pet. for Reh’g En Banc at 2, *Collins v. Mnuchin*, No. 17-20364 (*Collins* Rehearing Brief) (5th Cir. Sept. 13, 2018) (attached as Ex. B to Plaintiffs’ Notice of Supplemental Authority, ECF No. 47, PageID.1474). On this basis, plaintiffs assert that the “United States” has “endorsed Plaintiffs’ position that FHFA’s structure is unconstitutional,” and invite the Court to enter summary judgment for the plaintiffs on Counts I and II of their amended complaint. ECF No. 47 at 1, PageID.1420.

Defendant, the United States Department of the Treasury (“Treasury”), submits this response in order to clarify its position and dispel any notion that it supports judgment for the plaintiffs on any of their claims in this matter. As the United States made clear in response to similar claims in the *Collins* case, although the FHFA Director’s for-cause removal protection is inconsistent with separation-of-powers principles in light of the Director’s regulatory powers, this furnishes no basis for invalidating the Third Amendment, “an action that does not implicate the President’s control over executive power in these circumstances because it was undertaken by FHFA as a conservator of private enterprises.” *Collins* Rehearing Brief at 3-4, PageID.1475-1476. Plaintiffs’ reliance on the *Collins* brief in support of their claims in this case is thus misplaced. For the reasons stated in Treasury’s briefs in this case, Treasury respectfully requests that the Court deny plaintiffs’ motion for summary judgment, grant Treasury’s motion to dismiss, and enter judgment for the defendants on all claims asserted in the amended complaint.

Dated: September 28, 2018

Respectfully submitted,

JOSEPH H. HUNT  
Assistant Attorney General

ANDREW BYERLY BIRGE  
United States Attorney

DIANE KELLEHER  
Assistant Branch Director

/s/ R. Charlie Merritt  
R. CHARLIE MERRITT  
Trial Attorney (VA Bar No. 89400)  
U.S. Department of Justice  
Civil Division, Federal Programs Branch  
919 East Main Street, Suite 1900  
Richmond, VA 23219  
(202) 616-8098  
robert.c.merritt@usdoj.gov

*Counsel for the United States*

*Department of the Treasury*