

July 23, 2019

**VIA ECF**

Michael E. Gans  
Clerk of Court  
United States Court of Appeals for the Eighth Circuit  
Thomas F. Eagleton Courthouse  
111 South 10th Street  
Room 24.329  
St. Louis, MO 63102

Re: *Bhatti, et al. v. Federal Housing Finance Agency, et al.*, No.  
18-2506

Dear Mr. Gans:

The Federal Housing Finance Agency (FHFA) Defendants-Appellees write to advise the Court (a) of a leadership change at FHFA that necessitates substitution of parties under Fed. R. App. P. 43(c)(2), and (b) that under its new leadership FHFA has reconsidered the constitutional issue in this case, presently takes the position that HERA's for-cause removal provision is constitutional, and urges the Court to uphold the constitutionality of the structure Congress chose for FHFA.

1. Mark A. Calabria was sworn in to serve a five-year term as FHFA Director in April 2019, following presidential nomination and Senate confirmation. Pursuant to Rule 43(c)(2), Director Calabria should be substituted for Acting Director Joseph Otting as a defendant-appellee.

2. In this case, Plaintiffs-Appellants challenge the validity of a transaction known as the Third Amendment in part on the ground that it is

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allegedly unconstitutional for FHFA to be led by a single Director removable by the President only for cause. Before the district court and in its appellee brief to this Court, FHFA defended the constitutionality of this provision. Earlier this year, and after briefing was completed but before oral argument, the term of FHFA's prior Senate-confirmed Director expired. Under interim leadership FHFA advised this Court by letter filed January 17, 2019, that it would not further defend the constitutionality of this provision. At all relevant times, FHFA argued and continues to argue that this issue does not affect the Third Amendment's validity.

Under its new Director, FHFA has reconsidered the constitutionality of the removal provision. FHFA now advises the Court that FHFA takes the position going forward that HERA's for-cause removal provision is constitutional, as FHFA argued in its brief to this Court. FHFA respectfully requests that the Court consider FHFA's appellee brief to this Court as continuing to represent FHFA's operative position. FHFA withdraws the statements relating to this issue in its letter filed January 17, 2019. FHFA respectfully requests that, to the extent the Court finds it necessary to reach the constitutional issue, the Court uphold FHFA's structure and otherwise affirm the judgment below as to the Third Amendment.

Respectfully submitted,

/s/ Robert J. Katerberg  
Robert J. Katerberg

*Counsel for Defendants-Appellees  
Federal Housing Finance Agency and  
Director Mark A. Calabria*

CERTIFICATE OF SERVICE

I hereby certify that on July 23, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the appellate CM/ECF system.

The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

/s/ Robert J. Katerberg  
Robert J. Katerberg

*Counsel for Defendants-Appellees  
Federal Housing Finance Agency and  
Director Mark A. Calabria*