

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

MICHAEL ROP, *et al.*,

Plaintiffs,

v.

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

Defendants.

Case No. 1:17-cv-00497

Oral Argument Requested

FHFA DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY

Defendants Federal Housing Finance Agency and Mark A. Calabria (“FHFA Defendants”) submit this notice to inform the Court of two recent developments relevant to the FHFA Defendants’ pending motion to dismiss (ECF No. 24, PageID.383) and Plaintiffs’ pending motion for summary judgment (ECF No. 30, PageID.431).

1. On July 9, 2020, the Supreme Court granted certiorari to review the Fifth Circuit’s *en banc* decision in *Collins v. Mnuchin*, 938 F.3d 553 (2019). *See Collins v. Mnuchin*, No. 19-422, 2020 WL 3865248. *Collins* involves a separation-of-powers challenge to FHFA’s for-cause removal provision identical to Counts I and II here, and the parties addressed the Fifth Circuit decision in a prior Notice of Supplemental Authority dated September 10, 2019 (ECF No. 60, PageID.1618) and Responses thereto dated September 27, 2019 (ECF Nos. 63, 64, PageID.1750, 1753). The *Collins* plaintiffs’ petition granted by the Court requested consideration of two issues:

- a. Whether FHFA’s structure violates the separation of powers;
- and

b. Whether the courts must set aside a final agency action that FHFA took when it was unconstitutionally structured and strike down the statutory provisions that make FHFA independent.

2. On June 29, 2020, the Supreme Court issued a decision in *Seila Law v. CFPB*, No. 19-7, --- S. Ct. ----, 2020 WL 3492641. That case involved the constitutionality of a for-cause removal provision applicable to the Director of the Consumer Financial Protection Bureau—the same issue as in several prior CFPB cases cited in the parties’ briefs. The Court held that the for-cause removal provision for the CFPB Director violated the separation of powers, but that the unconstitutional provision was severable from the remainder of the statute.

Dated: July 14, 2020

Respectfully submitted,

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