

July 13, 2020

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 (argued before Judges Benton, Gruender, and
Smith on October 15, 2019)

Dear Mr. Gans:

Pursuant to Federal Rule of Appellate Procedure 28(j), the Federal Housing Finance Agency (FHFA) Defendants-Appellees write to advise the panel of two recent developments.

First, 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 Fifth Circuit decision was addressed by the parties in prior Rule 28(j) letters dated September 9, 2019 and September 23, 2019, and at oral argument. The plaintiffs' petition granted by the Court requested consideration of two issues:

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1. Whether FHFA's structure violates the separation of powers; and
2. 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.

Second, 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.

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 13, 2020, 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
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