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Case No. 20-2026

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

CYNTHIA BOSS,
Plaintiff-Appellee,

v.

FEDERAL NATIONAL MORTGAGE ASSOCIATION; AND FEDERAL HOUSING FINANCE AGENCY,
Defendants-Appellants,

SANTANDER BANK, N.A.
Defendant.

On Appeal from the United States District Court for the District of Rhode Island,
Case No. 1:17-ev-00042
The Honorable John J. McConnell, Jr.

BRIEF FOR AMICUS CURIAE IN SUPPORT OF NEITHER PARTY

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U.S. CONSTITUTION

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Housing and Economic Recovery Act of 2008 12 U.S.C. §4617 (a)(b)

OTHER SOURCES

Friendly, "Some Kind of Hearing", 123 U.Pa.L.Rev. 1267, 1279-95

Goldman, The Indefinite Conservatorship of Fannie Mae and Freddie Mac Is State Action. 17 J.Bus&Sec.L. 11, 26(2016)

Summers, Fannie Mae and Freddie Mac's Subversion of State Consumer Protection Law Under the Guise of HERA: Post-Forelosure Litigation in Massachusetts, 20 U.P.A.J.L.& Social Change 273 (2017)

Fannie Mae v. Freddie Mac, by Kimberly Amadeo

The Federalist No. 51

The Federalist No. 70

STATEMENT OF AMICUS

Amicus has a petition in the Massachusetts Supreme Judicial Court and a Motion to Vacate in the U.S. District Court that raises the issue before the First Circuit Court of Appeals in these cases – namely that due process is required before the U.S. Government takes private property.

This amicus is being submitted to bring to this Court's attention two significant decisions that have not been included in either parties' briefs in this matter.

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One decision from the Federal Court in Massachusetts decided against the Attorney General for the Commonwealth: Commonwealth v. FHFA 54 Fed Supp. 3rd 94 (2014) and another decision presently in front of the U.S. Supreme Court Collins v. Yellen 938 F.3rd 553 (2019), U.S. Supreme Court docket number 19-422 oral arguments held in December 2020. This Court has allowed amicus for providing such assistance to the Court on occasion.

Since taking conservatorship in 2008 for GSE's, rather than instituting pre-deprivation due process that is required and incorporated into foreclosure proceedings by every other federal agency that offers mortgages[1] – the FHFA orchestrated a nationwide litigation effort where it successfully argued that (1) FNMA is not the government and is not required to provide due process before a taking of private property; (2) the enabling statute Housing and Economic Recovery Act ("HERA") pre-empts all state consumer protection laws related to foreclosures;[2] and (3) HERA pre-empts all post-foreclosure defense actions. FHFA argues as it does here that their agency and FNMA are untethered by the U.S. Constitution, state laws or courts that interfere with their taking. The decision against the Attorney General of the Commonwealth of Massachusetts

[1] For example: Veterans Administration, U.S. Department of Agriculture and U.S. Department of Housing and Urban Development all provide pre-deprivation due process.

[2] In 2014, a Massachusetts U.S. District Court Judge ruled that FHFA is not required to comply with a Massachusetts statute that prohibits unnecessary foreclosures. Commonwealth v. FHFA

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was in line with this pattern of litigation strategy employed by FHFA. The large number of cases supporting FHFA's position that it is not the government represents the fruit of the litigation strategy.

In Collins v. Yellen, 983 F.3rd 553 (2019) U.S. Supreme Court docket 19-422, the Appeals Court address the issues of constitutional infirmities of HERA and specifically the anti-injunction clause. Patrick Collins is a shareholder of the GSE's and brought this action due to the FHFA's taking of shareholder interests from the GSEs. So as the Amicus filed in this matter represents, the interests of GSE investors and homeowners losing their homes align arguing that FHFA must operate in accord with the U.S. Constitution.

The FHFA brief in this matter indicated that FHFA and FNMA have oversight of servicers/contractors. However this is not supported by more recent congressional testimony and record audits.

In fact, FHFA and FNMA provide no oversight of their servicers/contractors' actions.[3] The servicers do not allow any pre-deprivation due process and there

[3] On July 27, 2020 the FHFA-OIG issued a report "Oversight by FNMA of Compliance with Forbearance Requirements Under the CARES act and Implementing Guidance by Mortgage Servicers. The report stated the following: "**We learned from the Enterprises that neither views its responsibilities to include testing whether its servicers comply with legal and regulatory requirements. According to the Enterprises, their long-standing business relationships with mortgage servicers, the servicers' familiarity with the Enterprises' servicing requirements, and their continual contact with servicers give them confidence**

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is no way for anyone with a mortgage to have any direct exchange with FNMA or FHFA. FHFA and FNMA argue nationwide that they are "not the government" and not required to provide pre-deprivation due process. [4]

FHFA administers an agency that they understand to be above government oversight, **including all state legislation to halt unnecessary foreclosures**. States have interests in preventing community blight and preventing widespread homelessness of families and FHFA's actions violate FNMA's own charter to be only a "secondary-market participant" and not own property directly. In Massachusetts, the Federal Court ruled that state laws do not apply to FHFA and FNMA, and those state laws include strict compliance with the non-judicial foreclosure statutes. This translates into the fact that FNMA can take whatever

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that servicers are well-informed of their legal and contractual obligations under the CARES Act and implementing guidance. The Enterprises rely on representations and warranties made by each servicer that it complies with applicable law and regulations. A breach of these representations and warranties can lead an Enterprise to invoke contractual remedies. In addition, each Enterprise reported to us that it obtains an annual certification from each servicer that it complies with applicable law and regulations. FHFA advised us that it considered this oversight acceptable. See also: FHFA-OIG Report March 30, 2020: FHFA Faces a Formidable Challenge: Remediating the Chronic and Pervasive Deficiencies in its Supervision Program Prior to Ending the Conservatorships of Fannie Mae and Freddie Mac

[4] The U.S. Supreme Court cited FHFA in Seila Law LLC v. CFPB 591 U.S. __(2020): The only remaining example is the Federal Housing Finance Agency (FHFA), created in 2008 to assume responsibility for Fannie Mae and Freddie Mac. That agency is essentially a companion of the CFPB, established in response to the same financial crisis. See HERA. It regulates primarily Government-sponsored enterprises, not purely private actors. And its single-Director structure is a source of ongoing controversy. **Indeed, it was recently held unconstitutional by the Fifth Circuit, sitting en banc. See Collins v. Mnuchin,** 938 F. 3d 553, 587–588 (2019).

property they want, without compensation and without compliance with Massachusetts general laws or the U.S. Constitution.

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ISSUE PRESENTED

Whether the Federal Housing Finance Agency ("FHFA") an agency of the U.S. Government and Federal National Mortgage Association ("FNMA")can take private property without due process of law when every other federal agency allows for pre-deprivation due process

ARGUMENT

A. DUE PROCESS REQUIRED FOR EXTINGUISHING PROPERTY RIGHTS

1. Nature Of Due Process

U.S. Const. Amend. V: **No person shall be... deprived of life, liberty, or property, without due process of law;** nor shall private property be taken for public use, without just compensation and U.S. Const. Amend. XIV, sec. 1: No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any State deprive any person of life, liberty, or property, without due process of law;** nor deny to any person within its jurisdiction the equal protection of the laws.

The U.S. Supreme Court determined that the loss of an individual's home constitutes a final, lasting deprivation of property entitling him/her to the protection of the due process clause. Los Angeles v. David, 538 U.S.

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715, 717(2003) (deprivation of even money is the deprivation of property for purpose of evaluating due process protection). Cleveland Board of Education v. Loudermill, 470 U.S. 532, 538;541 (1985) ("The point is straightforward: the Due Process Clause provides that certain substantive rights—life, liberty, and property—cannot be deprived except pursuant to constitutionally adequate procedures")(emphasis supplied). The Due Process Clause mandates that a sanction such losing one's home "should not be assessed lightly or without fair notice and an opportunity for a hearing on the record." Roadway Express, Inc. v. Piper, 447 U.S. 752, 766-767(1980).

Individuals are entitled to procedural due process if the property/liberty interest at stake is deemed to be of such magnitude or importance that its loss can fairly be characterized as important; and it depends upon the extent to which the individual will be "condemned to suffer grievous loss." Morrissey v. Brewer, 408 U.S. 471, 481(1972) quoting Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123,168(1951)(Frankfurter, J., concurring). Goldberg v. Kelly, 397 U.S. 254, 262-263(1970). "There is a human difference between losing what one has and not getting what one wants." Id.

Once a court identifies that the Due Process Clause applies to the proceedings below, "the question remains what process is due." Loudermill,

470 U.S. at 541 quoting Morrissey v. Brewer, 408 U.S. at 481. In Mathews v. Eldridge, 424 U.S. 319, 334-335(1976) the U.S. Supreme Court outlined the process due in any given instance is determined by weighing "the private interest that will be affected by the official action" against the government's asserted interest, "including the function involved" and the burdens the government would face in providing greater safeguards. Id. at 335. The Mathews calculus contemplates a judicious balancing of these concerns, through an analysis of "the risk of an erroneous deprivation" of the private interest if the process were reduced and the "probable value, if any, of additional or substitute procedural safeguards." Id. See Hamdi v. Rumsfeld, 542 U.S. 507, 528-529(2004).

Factors roughly in order of priority that have been considered to be elements of a fair hearing: (1) an unbiased tribunal; (2) notice of the proposed action and the grounds asserted for it; (3) an opportunity to present reasons why the proposed action should not have been taken; (4), (5) and (6) the right to call witnesses, to know the evidence against one, and to have decision based only on the evidence presented; (7) counsel; (8) and (9) the making of a record and a statement of reasons; (10) public attendance; and (11) judicial review. Friendly, "Some Kind of Hearing", 123 U.Pa.L.Rev. 1267, 1279-95 (1975). The U.S. Supreme Court has

consistently held that *some kind of hearing* is required at some time before a person is finally deprived of his property interests. Wolf v. McDonnell 418 U.S 539, 557-8 (1974). Wigmore's statement that cross-examination "is beyond a doubt the greatest legal engine ever invented for the discovery of truth highlights the importance that cross examination plays in the United States' legal system. Id.

2. FNMA Is the Government – The First Circuit Conflict

Congress enacted the HERA to renew public faith in the government-sponsored enterprises (GSEs) that provided home loans—namely Fannie Mae and Freddie Mac. It created the FHFA. As a new agency, the FHFA used its newfound authority to put Fannie Mae and Freddie Mac under conservatorship in 2008.[1]

> FNMA was chartered by Congress to further governmental objectives related to the secondary mortgage market and national housing policies. The federal government maintains a substantial ownership interest in FNMA and FNMA is substantially funded by the federal government. The Board of Directors of FNMA are appointed by FHFA and FNMA has been under the control of FHFA and/or the United States Treasury for thirteen years. The Rhode Island District Court Judge held "based on these facts, FNMA is an agency or instrumentality of the United States for the purpose of individual rights guaranteed against the federal government by the United States Constitution. *ia v. Fed. Hous. Fin. Agency*, 324 F. Supp. 3d 273, 277 (D.R.I. 2018) .R.I. 2018). See DOT v. Ass'n of Am. R.R., 135 S. Ct.

[1] https://www.investopedia.com/terms/h/housing-and-economic-recovery-act-hera.asp

1225, 1232-1233 (U.S. 2015); Lebron v. National Railroad Passenger Corp., 513 U.S. 374 (1995).

FHFA as conservator was charged with *reorganizing, rehabilitating or winding up [FNMA] affairs* 12 U.S.C §4617(a)(2). In fact, FHFA expanded FNMA affairs and embarked on a nationwide litigation campaign to insulate FNMA actions from judicial scrutiny, engaging courts to determine that (1) FHFA is not a government actor; (2) HERA gave FHFA and FNMA immunity from all state consumer protection laws: and (3) "Congress intended FHFA to "exercise [its]rights, powers, and privileges" as conservator without being "subject to the direction or supervision of any other agency of the United States or any state. 12 U.S.C. §4617(a)(7) these "rights, powers and privileges expressly include the "transfer or sale of any GSE asset without approval, assignment or consent.

Under the FHFA conservatorship FNMA has exponentially increased their interests in the U.S. mortgage market.[2] The unique status of the FHFA

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[2] By 2009, Fannie Mae, Freddie Mac, and FHLB provided 90% of the financing for new mortgages. This was more than double their share of the mortgage market prior to the 2008 crisis. Private mortgage financing had simply dried up. https://www.thebalance.com/fannie-mae-vs-freddie-mac-3305695 by Kimberly Amadeo sourced to Fannie Mae and FHFA reports.

and FNMA has led to lawlessness, particularly in states that are "non-judicial." [3]

Chief Judge John J. McConnell was the first to decide absolutely that FHFA and FNMA are government actors and must provide pre-deprivation due process in non-judicial foreclosure states. Judge McConnell held in *Sisti v. Fed. Hous. Fin. Agency*, 324 F. Supp. 3d 273, 277 (D.R.I. 2018) .R.I. 2018) on appeal in this matter:

> The Court holds that the Plaintiffs can prove that the GSEs and FHFA·as conservator are government actors, and thus, can prove that the Defendants denied Plaintiffs due process by conducting non-judicial foreclosures. This Court is aware that this holding is contrary to every other court to reach the issue. Numerous district courts, as well as the Sixth and D.C. Circuits, have concluded that the Defendants are not government actors for purposes of constitutional claims-a fact the Defendants emphasized throughout their briefing and at oral argument (as well they should have). See, e.g.:, Defs.' Reply at 29-33 (listing decisions of other courts). **Nevertheless, none of those**

[3] "The Framers recognized that, in the long term, structural protections against abuse of power were critical to preserving liberty." Bowsher, 478 U. S., at 730. Their solution to governmental power and its perils was simple: divide it. To prevent the "gradual concentration" of power in the same hands, they enabled "[a]mbition . . . to counteract ambition" at every turn. The Federalist No. 51, p. 349 (J. Cooke ed. 1961) (J. Madison). At the highest level, they "split the atom of sovereignty" itself into one Federal Government and the States. Gamble v. United States, 587 U. S. ___, ___ (2019) (slip op., at 9) (internal quotation marks omitted). They then divided the "powers of the new Federal Government into three defined categories, Legislative, Executive, and Judicial." Chadha, 462 U. S., at 951. They did not stop there. Most prominently, the Framers bifurcated the federal legislative power into two Chambers: the House of Representatives and the Senate, each composed of multiple Members and Senators. Art. I, §§2, 3. The Framers viewed the legislative power as a special threat to individual liberty, so they divided that power to ensure that "differences of opinion" and the "jarrings of parties" would "promote deliberation and circumspection" and "check excesses in the majority." See The Federalist No. 70, at 475 (A. Hamilton); see also id., No. 51, at 350. Id. 591 US_(2020)

> **cases is binding on this Court; they are only available to the Court for any persuasive value they may have.** This Court, however, is duty-bound to conduct an independent inquiry of the matter before it, bound by the law that controls it. See D'Arezzo v. Providence Ctr., Inc., 142 F. Supp. 3d 224, 228- 29 (D.R.I. 2015). In so doing, the Court is not persuaded by the reasoning of prior cases discussed more below and instead concludes that the Defendants can be found to be government actors. *Sisti v. Fed. Hous. Fin. Agency*, 324 F. Supp. 3d 273, 277 (D.R.I. 2018) .R.I. 2018).

In June 2014, the former Massachusetts Attorney General filed a complaint in Massachusetts Superior Court charging that FNMA and FHFA engaged in unfair or deceptive practices in Massachusetts by failing to comply with existing statutes, [including An Act Preventing Unlawful and Unnecessary Foreclosures Ch. 244 §35B-35C)] rules, regulations or laws meant to protect the public health, safety and welfare as set forth in 940 C.M.R. §3.16. FNMA and FHA removed the action to the federal court and the federal court granted FNMA's motion to dismiss. Commonwealth v. FHFA 54 F. Supp. 3rd 94 (2014)

> "HERA prohibits courts from taking any action to restrain the function of the FHFA as conservator. The District Court Judge interpreted 12 U.S.C. §4617(b)(2)(D)(ii) HERA's anti-injunction clause as expressly removing conservatorship decisions from court's oversight. Granting FHFA's Motion to Dismiss, he wrote "**Congress intended FHFA to "exercise [its]rights, powers, and privileges" as conservator without being "subject to the direction or supervision of any other agency of the United States or any state.** 12 U.S.C. §4617(a)(7) **these "rights, powers and privileges expressly include the "transfer or sale of any GSE asset without approval, assignment or consent.** [emphasis added] Id at

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> See also FHFA v. City of Chicago 962 F.Supp 2nd 1044, 1060-1061. Commonwealth v. FHFA 54 F. Supp. 3rd 94 (2014). See also Fannie Mae and Freddie Mac's Subversion of State Consumer Protection Law under the Guise of HERA: Post-Foreclosure Litigation in Massachusetts 20 U.Pa.J.L.& Social Change 273 (2017).

This decision had a chilling effect on all cases in Massachusetts involving FNMA. Few Massachusetts Judges have allowed for due process – pre-deprivation or post-deprivation when FNMA is a party.

3. Federal Government Taking Of Property Requires Pre-Deprivation Due Process

The framers of our constitution sought to ensure that "no man or group of men will be able to impose its unchecked will." United States v. Brown, 381 U.S. 437, 443 (1965). [4]

A decision that HERA's anti-injunction clause expressly removes conservatorship decisions from any court's oversight also violates the separation of powers of the U.S. Constitution. **"The Constitution constrains governmental action by whatever instruments or in whatever modes that action may be taken. And under whatever congressional**

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[4] The right to cross-examine and confront adverse witnesses and their evidence implies the right to marshal and adduce one's own evidence in support of a position on a contested fact issue such as (1) whether the foreclosure was void because there was no pre-deprivation hearing Sniadach v. Family Fin. Corp., 395 U.S. 337, 89 S.Ct.1820 (1969); and (2) the precise amount of the debt due respondents under the note, if plaintiff's liability was established. 441 U.S. 418, 423(1979). See Hamdi v. Rumsfeld, 542 U.S. at 534.

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label." quoting *Ex parte Virginia* , 100 U.S. 339, 346–47, 25 L.Ed. 676 (1880)

HERA's anti-injunction clause cannot invalidate the U.S. Constitution and the Fifth Amendment protections for an individual's right to property. As Chief Justice John McConnell wrote:

> "To allow Congress to determine whether the Constitution applied to a government-created entity would allow the government "to evade the most solemn obligations imposed in the Constitution by simply resorting to the corporate form." *Id.* at 397, 115 S.Ct. 961. The Court explained, "[o]n that thesis, *Plessy v. Ferguson* , 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896), can be resurrected by the simple device of having the State of Louisiana operate segregated trains through a state-owned Amtrak." *Lebron* , 513 U.S. at 397, 115 S.Ct. 961 ; *see also.* at 392–93, 115 S.Ct. 961

The right to cross-examine and confront adverse witnesses and their evidence implies the right to marshal and adduce one's own evidence in support of a position on a contested fact issue such as (1) whether the foreclosure was void because there was no pre-deprivation hearing Sniadach v. Family Fin. Corp., 395 U.S. 337, 89 S.Ct.1820 (1969); and (2) the precise amount of the debt due respondents under the note, if plaintiff's liability was established. 441 U.S. 418, 423(1979). See Hamdi v. Rumsfeld, 542 U.S. at 534.

Pre-deprivation due process is not difficult to administer and should determine whether FNMA has standing to bring a non-judicial foreclosure and offer a mortgagor the opportunity to present evidence, confront and cross-examine persons who supplied information upon which the foreclosure action is grounded that inter alia: (1) whether FNMA is the current holder of the mortgage and authorized to exercise the power of sale; (2) whether [FNMA] provided all required pre-foreclosure notices under state and federal law and the mortgage documents; (3) whether [FNMA] sent a notice of default that strictly complies with Paragraph 22 of the mortgage; (4) whether [FNMA]acted in good faith in their review and offers of loan modifications; and (5)whether the borrower was in default. [5] they were not in default. They should have a neutral informal hearing officer make a determination based on applicable law prior to the termination of a party's property interest. Every other federal agency has incorporated some kind of pre-deprivation due process into their foreclosure processes without undue hardship.

B. CONSTITUTIONALITY OF HERA DETERMINATION BY THE U.S. SUPREME COURT EXPECTED IMMINENTLY

[5] Questions 1-4 were presented in the Cynthia Boss complaint.

The U.S. Supreme Court heard oral arguments in December 2020 of cross petitions on the constitutionality of HERA provisions in Collins v. Yellen 938 F.3d 553 (2019) U.S. Supreme Court docket no. 19-422 formerly known as Collins v. Mnuchin and a decision is expected any time.[6]

That case presents the U.S. Supreme Court with the opportunity to weigh in on the very issue presented to the First Circuit in this case and ruled on by the Massachusetts Federal Court against the Commonwealth: the constitutionality of HERA's anti-injunction clause. Amicus brings this case to the attention of this Court for purposes of allowing this Court to be fully informed that the issue being addressed here has already been argued before the U.S. Supreme Court.

CONCLUSION

As to the District Court's finding that FNMA and FHFA are the government and as such are required to provide due process before taking private property without compensation, this Court should consider the conflict with the Massachusetts Federal Court decision against the Massachusetts' Attorney General.

[6] There are 12 Amicus Briefs submitted in that case.

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/s/ Debra Brown

Amicus Curiae

Dated: June 6, 2021

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I certify that on June 6, 2021, I electronically filed the foregoing document with the United States Court of Appeals for the First Circuit by using the CM/ECF system. I certify that the following parties or their counsel of record are registered as ECF filers and that they will be served by the CM/ECF system:

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