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February 12, 2024

VIA CM/ECF

Michael E. Gans
Clerk of Court
U.S. Court of Appeals for the Eighth Circuit
111 South 10th Street, Room 24.329
St. Louis, MO 63102

Re: *Bhatti et al. v. Federal Housing Finance Agency et al.*, No. 23-1051
Rule 28(j) Notice of Supplemental Authority (Oral Argument Set for February 14,
2024, in St. Paul before Judges Smith, Benton, and Stras)

Dear Mr. Gans:

Plaintiffs-Appellants respectfully respond to Defendants-Appellees' notice of supplemental authority regarding *Collins v. Dep't of Treasury*, 83 F.4th 970 (5th Cir. 2023).

The Fifth Circuit's ultimate disposition in *Collins* was at odds with its reasoning, which in fact supports Plaintiffs' entitlement to relief. The Fifth Circuit held that "the complaint plausibly alleges," *id.* at 984, that "after two years with Calabria as the head of the FHFA—the Trump Administration would have held a public offering of shares, and that offering would likely have resulted in the elimination of the Treasury's liquidation preferences," *id.*; *see also id.* at 983 ("[T]he amended complaint alleges that the Trump Administration would have eliminated the liquidation preferences in preparation for a public offering of shares that was scheduled to take place in 2021, roughly two years after Director Calabria took office."). This reasoning cannot be squared with the Fifth Circuit's ultimate disposition. What the Fifth Circuit found shareholders to have plausibly alleged is precisely what Plaintiffs must show to survive a motion to dismiss.

Respectfully submitted,

/s/ Brian W. Barnes

Brian W. Barnes

Counsel for Plaintiffs-Appellants

Cc: All Counsel of Record