

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

JOINT STATUS REPORT

Pursuant to this Court’s February 24, 2025 and March 3, 2025 Orders (ECF Nos. 96, 97), the parties respectfully submit this Joint Status Report in anticipation of the Rule 16 Scheduling Conference set for April 2, 2025 before the Honorable Ray Kent.

Appearing for the parties as counsel at that conference will be:

For Plaintiffs: Brian W. Barnes of Cooper & Kirk, PLLC, and Ashley G. Chrysler of Warner Norcross and Judd LLP.

For Federal Housing Finance Agency (“FHFA”) and Director William Pulte (together, “FHFA Defendants”): Robert Katerberg of Arnold & Porter Kaye Scholer LLP and Andrew Portinga of Miller, Johnson, Snell & Cummiskey, P.L.C.

For U.S. Department of the Treasury: Jacqueline Coleman Snead of the United States Department of Justice.

1. **Jurisdiction:** Plaintiffs assert jurisdiction under 28 U.S.C. §§ 1331 and 2201. Defendants assert that 12 U.S.C. § 4617(f), which provides that “[n]o court may take any action to restrain or affect the exercise of [the] powers or functions of [FHFA] as a conservator,” removes jurisdiction to grant relief sought by Plaintiffs.

2. **Jury or Non-Jury:** This case is to be tried by the Court as a trier of law and fact. Defendants do not believe trial is necessary because this action should be resolved by dispositive motions.

3. **Judicial Availability:** The parties do not agree to have a United States Magistrate Judge conduct any and all further proceedings in the case, including trial, or to order the entry of final judgment.

4. **Statement of the Case:**

Plaintiffs: Following the Sixth Circuit’s remand, the remaining issue in this case is whether “the Recovery Act’s unconstitutional removal restriction inflicted compensable harm entitling [Plaintiffs] to relief.” *Rop v. FHFA*, 50 F4th 562, 574 (6th Cir. 2022). A letter signed by President Trump after the end of his first term in office confirms that, but for the unconstitutional restriction on removing FHFA Director Mel Watt, President Trump “would have ordered FHFA to release these companies from conservatorship,” *id.* a 575—a step that would have necessarily redounded to the benefit of Plaintiffs and other Fannie Mae and Freddie Mac shareholders. Under the Supreme Court’s decision in *Collins v. Yellen*, 594 U.S. 220, 260 (2021), Plaintiffs sustained compensable harm and are entitled to retrospective

relief that puts them in the position they would be in if President Trump had the ability to implement his preferred policies with respect to Fannie Mae and Freddie Mac from the start of his first term in office.

Defendants: This case is on limited remand from the Sixth Circuit. *Rop v. FHFA*, 50 F.4th 562, 564 (6th Cir. 2022). Plaintiffs are shareholders of Fannie Mae and Freddie Mac who claim that they have been harmed by a transaction, known as the Third Amendment to the Senior Preferred Stock Purchase Agreement, between FHFA, as Conservator of Fannie Mae and Freddie Mac, and the U.S. Department of the Treasury. When Plaintiffs brought this case in 2017, they alleged a variety of constitutional claims relating to FHFA's structure, including a challenge to a statutory provision purporting to make FHFA's Director removable only for cause. This Court and the Sixth Circuit already dismissed most of the claims in Plaintiffs' first amended complaint, the operative complaint. ECF No. 66; *Rop*, 50 F.4th 562. Following the Supreme Court's guidance in *Collins v. Yellen*, 594 U.S. 220 (2021), however, the Sixth Circuit remanded for one narrowly limited purpose: "consideration of whether the [removal provision] actually affected any actions implementing the third amendment that allegedly harmed shareholders." *Rop*, 50 F.4th at 576; *see Collins*, 594 U.S. at 260 (finding FHFA Director's for-cause removal restriction unconstitutional but remanding for lower courts to decide whether that restriction caused any cognizable harm).

All of the other courts that have adjudicated similar issues have granted Defendants' Rule 12(b)(6) motions to dismiss and dismissed the cases with

prejudice. *Bhatti v. FHFA*, 97 F.4th 556 (8th Cir. 2024), *aff'g* 646 F. Supp. 3d 1003 (D. Minn. 2022); *Collins v. Dep't of the Treasury*, 83 F.4th 970 (5th Cir. 2023), *aff'g* 642 F. Supp. 3d 577 (S.D. Tex. 2022); *Fairholme Funds, Inc. v. United States*, 26 F.4th 1274, 1304-05 (Fed. Cir. 2022) (explaining that the Supreme Court placed “extreme limits on the possible relief available to similarly situated shareholders” and “there is no viable remedy”). In their pending motions for judgment on the pleadings, Defendants seek dismissal of this case for the same reasons.

5. Prospects of Settlement: No settlement discussions have occurred to date. Plaintiffs are open to discussing potential settlement. Defendants do not see a prospect of settlement at this time.

6. Pendent State Claims: This case does not include pendent state claims.

7. Joinder of Parties and Amendment of Pleadings: Plaintiffs intend to file a motion for leave to amend the complaint in advance of the Rule 16 conference. Plaintiffs state that they will propose amendments to the complaint that Defendants previously consented to in writing but that FHFA now opposes. Defendants state that they will oppose the motion for leave to amend for the reasons set forth in their pending dispositive motions and note that the prior informal discussions about potential amendments occurred almost two years ago and circumstances have materially changed. The parties note that pursuant to Federal Rule of Civil Procedure 25(d), which provides that “when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office

while the action is pending,” that “officer’s successor is automatically substituted as a party[.]” current FHFA Director William Pulte, in his official capacity as Director, should be substituted for former Director Mark Calabria in the caption of this case.

8. Disclosures and Exchanges:

a. *Initial Disclosures:* Plaintiffs propose that the parties exchange initial disclosures on April 16, 2025. Defendants propose that initial disclosures be deferred until after the Court resolves Defendants’ pending dispositive motions (ECF Nos. 99-102). There were no initial disclosures in either of the prior substantially similar cases, which were disposed of on Rule 12(b)(6) motions to dismiss. *Bhatti v. FHFA*, 97 F.4th 556 (8th Cir. 2024), *aff’g* 646 F. Supp. 3d 1003 (D. Minn. 2022); *Collins v. Dep’t of the Treasury*, 83 F.4th 970 (5th Cir. 2023), *aff’g* 642 F. Supp. 3d 577 (S.D. Tex. 2022).

b. *Expert Witnesses:* Plaintiffs expect to be able to furnish the names of their expert witnesses by October 8, 2025. Defendants do not anticipate that any expert witnesses will be necessary to the resolution of this case. There were no expert witnesses in either of the prior substantially similar cases, which were disposed of on Rule 12(b)(6) motions to dismiss. *Bhatti v. FHFA*, 97 F.4th 556 (8th Cir. 2024), *aff’g* 646 F. Supp. 3d 1003 (D. Minn. 2022); *Collins v. Dep’t of the Treasury*, 83 F.4th 970 (5th Cir. 2023), *aff’g* 642 F. Supp. 3d 577 (S.D. Tex. 2022).

c. *Exchange of Expert Reports:* In Plaintiffs view, it would be advisable in this case to exchange written expert witness reports as

contemplated by Fed. R. Civ. P. 26(a)(2). Plaintiffs propose that reports be exchanged according to the following schedule:

October 8, 2025: Plaintiffs' initial expert reports.

November 7, 2025: Defendants' initial expert reports.

December 2, 2025: Plaintiffs' rebuttal expert reports.

January 6, 2026: Defendants' rebuttal expert reports.

d. *Document Production*: The parties are unable to agree on voluntary production at this time.

9. Discovery:

Plaintiffs: Consistent with the Sixth Circuit's remand, Plaintiffs anticipate that fact discovery in this case will focus on "whether President Trump . . . would have actually removed FHFA Director Watt in January 2017 and whether his replacement would have, at the time, asked Treasury to either reduce its liquidation preference or convert its preferred stock to common stock." *Rop*, 50 F.4th at 576. Plaintiffs anticipate that discovery can be completed within six months and do not propose that discovery be conducted in phases. Plaintiffs propose a fact discovery deadline of October 2, 2025.

Defendants: As set forth in Defendants' pending dispositive motions (ECF Nos. 99-102), this case involves dispositive legal issues that require no factual development. Defendants therefore maintain that no discovery is necessary or appropriate. There was no discovery in either of the prior substantially similar cases, which were disposed of on Rule 12(b)(6) motions to dismiss. *Bhatti v. FHFA*,

97 F.4th 556 (8th Cir. 2024), *aff'g* 646 F. Supp. 3d 1003 (D. Minn. 2022); *Collins v. Dep't of the Treasury*, 83 F.4th 970 (5th Cir. 2023), *aff'g* 642 F. Supp. 3d 577 (S.D. Tex. 2022).

10. Electronically Stored Information:

Plaintiffs: Plaintiffs anticipate that discovery in this case will require production of electronically stored information and expect that the parties will be able to work collaboratively on an appropriate protocol for the production of such information.

Defendants: As set forth in Defendants' pending dispositive motions (ECF Nos. 99-102), this case involves dispositive legal issues that require no factual development. Defendants respectfully submit that no discovery is necessary or appropriate. There was no discovery in either of the prior substantially similar cases, which were disposed of on Rule 12(b)(6) motions to dismiss. *Bhatti v. FHFA*, 97 F.4th 556 (8th Cir. 2024), *aff'g* 646 F. Supp. 3d 1003 (D. Minn. 2022); *Collins v. Dep't of the Treasury*, 83 F.4th 970 (5th Cir. 2023), *aff'g* 642 F. Supp. 3d 577 (S.D. Tex. 2022).

11. Assertion of Claims of Privilege or Work-Product Immunity

After Production: In light of Defendants' position that discovery should not go forward at this time, the parties have not yet agreed to a procedure for addressing privilege or addressing immunity for matters inadvertently produced during discovery.

12. Motions: The parties acknowledge that W.D. Mich. LCivR 7.1(d) requires the moving party to ascertain whether the motion will be opposed, and in the case of all nondispositive motions, counsel or *pro se* parties involved in the dispute shall confer in a good-faith effort to resolve the dispute. In addition, all nondispositive motions shall be accompanied by a separately filed certificate. The following dispositive motions are contemplated by each party:

Plaintiffs: Depending on the outcome of fact and expert discovery, Plaintiffs anticipate moving for summary judgment.

Defendants: FHFA Defendants and Treasury have each filed motions for judgment on the pleadings. If the case survives those motions, FHFA Defendants and Treasury Defendants anticipate filing motions for summary judgment.

13. Alternative Dispute Resolution: The parties do not believe an alternative dispute resolution process is likely to be productive in this case.

14. Length of Trial:

Plaintiffs: If this case survives the parties' anticipated cross motions for summary judgment, Plaintiffs anticipate roughly one week being needed for trial.

Defendants: This case turns exclusively on legal issues suitable for resolution through dispositive motions practice, without need for trial. As noted, the prior substantially similar cases were disposed of on Rule 12(b)(6) motions to dismiss. *Bhatti v. FHFA*, 97 F.4th 556 (8th Cir. 2024), *aff'g* 646 F. Supp. 3d 1003 (D. Minn. 2022); *Collins v. Dep't of the Treasury*, 83 F.4th 970 (5th Cir. 2023), *aff'g* 642 F. Supp. 3d 577 (S.D. Tex. 2022).

15. Electronic Document Filing System: The Parties acknowledge and understand that all documents must be filed and served electronically, by means of the Court's CM/ECF system.

16. Other: None.

Dated: March 28, 2025

Respectfully submitted,

/s/ Matthew T. Nelson

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