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

FHFA'S OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO AMEND

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The Federal Housing Finance Agency Defendants ("FHFA") oppose Plaintiffs' latest attempt to amend their complaint in this eight-year-old case. *See* ECF No. 106. As the attached redline (Exhibit A) reflects, the proposed second amended complaint ("SAC") is essentially a whole new case. It bears almost no resemblance to the current operative complaint, as to which Defendants have already answered and moved for judgment on the pleadings.

Moreover, the claims in the proposed SAC are recycled versions of claims that have been uniformly and decisively rejected by numerous courts across the country. *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). The injunction sought by the proposed SAC—an order compelling Defendants to wipe out Treasury's more than $345 billion liquidation preferences in the Enterprises—is barred as a matter of law because it would "restrain or affect the exercise of [the] powers or functions of the Agency as a conservator." 12 U.S.C. § 4617(f); *Collins v. Yellen*, 594 U.S. 220 (2021).[1]

[1] To the extent Plaintiffs seek injunctive relief implicating Fed. R. Civ. P. 65(c) and the President's Memorandum Ensuring the Enforcement of Federal Rule of Civil Procedure 65(c), Plaintiffs would be required to post a bond to cover all damages caused by such an injunction. *See* https://www.whitehouse.gov/presidential-actions/2025/03/ensuring-the-enforcement-of-federal-rule-of-civil-procedure-65c/. The Court need not address such issues, however, since Section 4617(f) bars injunctive relief and the Court should deny leave to make the proposed amendments seeking such relief.

Indeed, just yesterday, another district court denied a similar motion for leave to amend in a copycat lawsuit against FHFA and Treasury in the wake of *Collins*. Mem. Op., *Wazee Street Opportunities Fund IV LP v. FHFA* ("*Wazee* Mem. Op."), No. 18-CV-03478 (E.D. Pa. Apr. 14, 2025), ECF No. 64 (Exhibit B). In *Wazee*, the court not only denied leave to amend as futile; it also issued an order to show cause why the case should not be dismissed. *See Wazee*, No. 18-CV-03478, ECF No. 65.

With Plaintiffs already having taken up the time of no fewer than twelve federal judges with their meritless theories, this Court should not indulge Plaintiffs' burdensome litigation any longer. Plaintiffs' claim that Defendants should be deemed to consent to the present amendment based on discussions almost two years ago about their *previous* motion to amend ignores all intervening events, including two unanimous appellate decisions confirming the futility of Plaintiffs' misguided theories, and Defendants' answering and moving for judgment on the current complaint. The Court should deny Plaintiffs' motion to amend, grant FHFA's pending motion for judgment on the pleadings, and bring closure to this protracted litigation that has now run out of gas.

PROCEDURAL HISTORY

A. The Enterprises, the Conservatorships, and the Conservator's Preferred Stock Purchase Agreements with Treasury

Plaintiffs allege they own shares of the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") (together, the "Enterprises"). In September 2008, FHFA, as Conservator of the Enterprises, entered into preferred stock purchase agreements with the Department of the Treasury. Through these agreements, Treasury provided billions of dollars of funding to avoid the Enterprises going into insolvency. In return, Treasury received preferred stock carrying several "key entitlements," chief among them a "senior liquidation preference" subject to "dollar-for-dollar increase every time the [Enterprises] drew on [Treasury's] capital commitment," as well as quarterly dividends. *Collins*, 594 U.S. at 232.

In August 2012, FHFA as Conservator and Treasury entered into an amendment to the senior preferred stock purchase agreements, known as the "Third Amendment," that changed how the quarterly dividends were calculated. They have also entered into further amendments, including January 2021 amendments providing for dividends on Treasury's preferred stock to be paid in the form of "increases in the liquidation preference" rather than cash. *See id.* at 235. Treasury's liquidation preferences in the two Enterprises currently stand at more than $345 billion combined.[2]

[2] *See* Fannie Mae Form 10-K for 2024, at 10 ($216.1 billion liquidation preference as of March 31, 2025), *available at* https://tinyurl.com/3dv7rncv; Freddie Mac Form 10-

B. This Lawsuit: 2017-2020

Plaintiffs filed this action in June 2017, following a similar lawsuit in the Southern District of Texas called *Collins*, and concurrently with an identical lawsuit on behalf of other Enterprise shareholders in the District of Minnesota called *Bhatti*. The same counsel representing Plaintiffs here represented the shareholders in *Collins* and *Bhatti*. All three lawsuits alleged that the Third Amendment was invalid on account of various alleged constitutional defects in FHFA's structure.

The first amended complaint in this case had five counts. *See generally* ECF No. 66 PageID.1765-66. In 2020, this Court dismissed all of them. *Id.* at PageID.1818. Plaintiffs appealed only the dismissal of Counts I (violation of the President's constitutional removal authority) and III (Appointments Clause).

C. The Supreme Court's Decision in *Collins*

While this case was on appeal, the Supreme Court decided *Collins v. Yellen*, holding that the "for-cause restriction on the President's removal authority [over FHFA's Director] violates the separation of powers." 594 U.S. at 250. However, the shareholders' removal-based argument in *Collins* for setting aside the Third Amendment failed because that transaction was entered into by an *Acting* Director who was removable at will, and was not covered by the removal restriction. The

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K for 2024, at 90 ($129 billion liquidation preference as of December 31, 2024), *available at* https://tinyurl.com/yx2h8tuc. The Court may take judicial notice of undisputed data in SEC filings. *See In re Automotive Parts Antitrust Litig.*, 2017 WL 7689654, at *1 (E.D. Mich. May 5, 2017).

inapplicability of the removal protection to the Acting Director "defeat[ed] the shareholders' argument for setting aside the third amendment[.]" *Id.* at 257.

Because the Court nevertheless understood the shareholders' claims to extend beyond the initial *adoption* of the Third Amendment to its *implementation*, the Court separately "consider[ed] the shareholders' contention about remedy with respect to only the actions that confirmed Directors have taken to *implement* the third amendment during their tenures." *Id.* Although the Court mostly rejected the shareholders' implementation arguments as well, finding them "neither logical nor supported by precedent," *id.*, it ultimately allowed a narrowly circumscribed remand, stating that it "cannot be ruled out" that the unconstitutional removal restriction might have affected implementation of the Third Amendment. *Id.* at 259.

Five Justices expressed substantial doubts about Plaintiffs' prospects on remand. *See Collins*, 594 U.S. at 270-71 (Thomas, J., concurring) ("I seriously doubt that the shareholders can demonstrate that any relevant action by an FHFA Director violated the Constitution. And, absent an unlawful act, the shareholders are not entitled to a remedy."); *id.* at 282 (Gorsuch, J., concurring in part) (describing remand as "speculative enterprise" expected to "go nowhere"); *id.* at 275-76 (Kagan, J., concurring in part and concurring in the judgment, joined in part by Breyer and Sotomayor, JJ.) ("the lower court proceedings may be brief indeed" because the President's undisputed plenary control over Treasury "seems sufficient to answer the question the Court kicks back").

D. The Sixth Circuit's Decision Remanding This Case

After the Supreme Court decided *Collins*, the Sixth Circuit upheld dismissal of the Appointments Clause claim (Count III) in this case. *Rop*, 50 F.4th at 569-74. As to the removal-restriction claim (Count I), the Sixth Circuit held that the removal restriction provided no basis for invalidating the Third Amendment because that amendment was adopted by an Acting Director unprotected by the removal restriction. *Id.* at 575.

Nevertheless, because "the majority in *Collins* … remand[ed] for further consideration of whether the restriction actually affected any actions implementing the third amendment that allegedly harmed shareholders," the Sixth Circuit likewise remanded the case for the narrow purpose of pursuing such claims, although it characterized them as "speculative" and "no easy feat." *Id.* at 576-77. Consistent with its focus on the operative complaint, *id.* at 576-77 & n.7, the Sixth Circuit's remand instructions did not intimate that further amendments would be necessary or appropriate.

E. Proceedings So Far on Remand

On remand, Plaintiffs moved for leave to file an amended complaint in August 2023. ECF No. 79. Defendants opposed Plaintiffs' motion to the extent it sought to add a new theory under the Appropriations Clause, but they did not at that time oppose certain other amendments. *See* ECF Nos. 83, 84; *see also* ECF No. 85 at PageID.1975 n.1.

On December 11, 2024, this Court denied Plaintiffs' motion for leave to amend. ECF No. 87. For approximately two months thereafter, Plaintiffs did not seek

reconsideration of the Court's denial; nor did Plaintiffs file any further amended complaint or indicate that they still intended to do so. This Court accordingly ordered Defendants to answer the first amended complaint by February 21, 2025. ECF No. 88. Only then did Plaintiffs advise that they would seek to amend again. The Court ordered Defendants to answer the first amended complaint regardless of Plaintiffs' potential desire to amend, observing that "Plaintiffs have not yet filed any motion for leave to amend" and deferring the answers "assumes the Court would grant the motion." ECF No. 90.

Defendants timely filed their answers to the first amended complaint. ECF No. 92 (FHFA); ECF No. 93 (Treasury). Defendants then each moved for judgment on the pleadings. ECF No. 99 (FHFA); ECF No. 101 (Treasury).

On April 1, 2025, the evening before a scheduled status conference with Magistrate Judge Kent, Plaintiffs moved for leave to file the proposed SAC, which would replace the five counts in the current complaint with four new counts, one directly under the Constitution and three under the Administrative Procedure Act. *See* Ex. A. The gravamen of the proposed SAC is that the removal provision somehow thwarted an alleged plan in 2017 and 2018 to "eliminate[] the liquidation preference on Treasury's senior preferred stock." ECF No. 106-1 PageID.2316. The proposed SAC seeks, among other relief, an injunction to "(a) direct Defendants to eliminate the liquidation preference on Treasury's senior preferred stock (either by writing down the liquidation preference on Treasury's senior preferred stock to zero or by converting Treasury's senior preferred stock to common stock); and (b) prohibit

Defendants from further increasing the liquidation preference on Treasury's senior preferred stock." ECF No. 106-1 PageID.2323.

F. Other Courts Universally Reject the Claims and Theories Plaintiffs Seek to Introduce Here

Meanwhile, since the Sixth Circuit's remand, other courts have rejected the new claims and liquidation-preference elimination theory proposed here. On remand, the shareholders in *Collins* injected the same claims and theory, only to be swiftly dismissed with prejudice on the pleadings. *Collins v. Lew*, 642 F. Supp. 3d 577 (S.D. Tex. 2022). The Fifth Circuit unanimously affirmed. 83 F.4th 970 (5th Cir. 2023). A copycat case filed concurrently with this one met the same fate. *Bhatti v. FHFA*, 646 F. Supp. 3d 1003 (D. Minn. 2022), *aff'd*, 97 F.4th 556 (8th Cir. 2024). In a related Third Amendment case raising removal restriction claims alongside other theories, the Federal Circuit held that shareholders could not establish any viable claims of the type hypothesized in the *Collins* remand instructions. *Fairholme Funds, Inc. v. United States*, 26 F.4th 1274, 1304-05 (Fed. Cir. 2022).

Most recently, in *Wazee*, the court denied leave to amend despite plaintiff's conclusory efforts to "demonstrate how it was harmed by the unconstitutional restriction on the President's ability to remove the FHFA Director." *Wazee* Mem. Op. at 9. The *Wazee* court concluded, "[l]ike in *Bhatti* and *Collins*," that "Plaintiff's argument that the removal restriction caused the harm it alleges is too speculative to survive a motion to dismiss." *Wazee* Mem. Op. at 11. "Accordingly," the court held, "Plaintiff's motion to amend its complaint to include these allegations is futile because the proffered amendments cannot withstand a motion to dismiss." *Id.*

LEGAL STANDARD

Courts have latitude to deny leave to amend on myriad grounds, including when amendment would be futile. *See Skatemore v. Whitmer*, 40 F.4th 727, 737-38 (6th Cir. 2022); *see also Rose v. Hartford Underwriters Ins. Co.*, 203 F.3d 417, 420 (6th Cir. 2000) (district courts have broad "discretion to deny a motion to amend after an answer has been filed").

An amendment is futile if it "could not withstand a Rule 12(b)(6) motion to dismiss." *Riverview Health Inst. LLC v. Med. Mut. of Ohio*, 601 F.3d 505, 512 (6th Cir. 2010) (quoting *Rose*, 203 F.3d at 420). To withstand a Rule 12(b)(6) motion to dismiss, in turn, "a plaintiff must allege facts [that], when accepted as true, are sufficient to raise a right to relief above the speculative level." *Nitz-Lentz v. Metro. Life Ins. Co.*, 2024 WL 4555413, at *1 (W.D. Mich. Oct. 10, 2024) (citation omitted).

ARGUMENT

I. The Proposed Amendments Are Futile

The Court should deny leave to amend because Defendants are entitled to judgment as a matter of law on the grounds set forth in their pending motions, and nothing in the proposed SAC could save them from that outcome and justify further litigation. The same theories Plaintiffs seek to inject here have already been tested and consistently found lacking at the pleading stage. Nothing in the Federal Rules entitles plaintiffs to keep asserting the same non-meritorious theories over and over again before different judges around the country. Doing so needlessly prolongs litigation and wastes the Court's and Defendants' time and resources.

A. Multiple Courts Have Rejected the Same Claims Asserted in the Proposed SAC

As set forth in Defendants' pending motions for judgment on the pleadings, Plaintiffs face an intractable quandary in trying to argue that the unconstitutional removal provision harmed junior Enterprise shareholders (*i.e.*, Plaintiffs) in a way that warrants relief. Under both the operative complaint and proposed SAC, Plaintiffs' assertions of harm all revolve around the theory that Treasury received excessive benefits as senior preferred shareholder and that absent the removal provision those benefits would have been reduced or eliminated—to the benefit of junior shareholders.

The problem for Plaintiffs is that neither they, nor any of the shareholder plaintiffs in whose footsteps they follow, have been able to articulate how a removal restriction applying to *FHFA's Director* could impede a President from having *Treasury* reduce its interest if deemed expedient or necessary. As the Federal Circuit explained, "most importantly, there was adequate presidential oversight over the actions of all FHFA Directors regarding the net worth sweep by virtue of the fact that all the FHFA's policies relating to its actions as conservator of the Enterprises were jointly created by the FHFA and Treasury and the latter's Secretary was removable at will." *Fairholme Funds*, 26 F.4th at 1305 (citation omitted).

The proposed SAC does not solve this quandary. The crux of Plaintiffs' proposed new theory is that, absent the removal provision, Defendants would have "necessarily eliminated the liquidation preference on Treasury's senior preferred stock." ECF No. 106-1 PageID.2316. But that would not have been possible because

the liquidation preferences belonged to Treasury, not FHFA. The proposed SAC never explains how an FHFA Director's removal protection could have prevented the President and Treasury from voluntarily reducing Treasury's interest. As the Sixth Circuit has emphasized while discussing *Collins*, "[t]o invalidate an agency action due to a removal restriction, that constitutional infirmity must 'cause harm' to the challenging party," in the sense of "*specifically* impact[ing] the agency actions of which [plaintiffs] complain[]." *Calcutt v. FDIC*, 37 F.4th 293, 315, 316 (6th Cir. 2022), *rev'd on other grounds*, *Calcutt v. FDIC*, 598 U.S. 623 (2023).

Indeed, Plaintiffs' proposed SAC is a near carbon copy of complaints these same Plaintiffs' counsel previously filed in *Collins* and *Bhatti*, and attempted unsuccessfully to file in *Wazee*. The courts in those cases have thoroughly analyzed Plaintiffs' allegations and theories and found them lacking.

For example, the district court in *Bhatti* wrote that Plaintiffs' theory not only "reads far too much into *Collins*" but amounts to "an exercise in rank speculation." *Bhatti*, 646 F. Supp. 3d at 1012, 1013. The "alternate history spanning over two years" presupposed by Plaintiffs' theory is "the work of fiction authors, not federal judges." *Id.* at 1013, 1014. The Eighth Circuit agreed that the shareholders "failed to plausibly plead the requisite connection or causation" between "the harm claimed by the shareholders (here, lost profits due to the Treasury's liquidation preference)" and "the president's inability to remove [FHFA Director] Watt." *Bhatti*, 97 F.4th at 561.

In *Collins* itself—the progenitor of this entire litigation campaign—the district court found Plaintiffs' liquidation-preference elimination theory "contradictory," "largely non-cognizable," and "incongruous with the Supreme Court's remand." *Collins*, 642 F. Supp. 3d at 586. The shareholders did not "plausibly demonstrate compensable harm or the Court's ability to provide the requested relief." *Id.* at 584. The Fifth Circuit confirmed that the new theory rested on a "level of uncertainty and speculation that cannot survive a motion to dismiss." *Collins*, 83 F.4th at 984.

Plaintiffs' theory also fails to grapple with "the inconvenient fact that, under [President] Trump's chosen director, FHFA twice agreed to *increase* the liquidation preference." *Bhatti*, 646 F. Supp. 3d at 1015; *id.* at 1008 (explaining that September 2019 and January 2021 amendments to the preferred stock purchase agreements changed the form of the dividends from cash to increases in the liquidation preferences); *see Collins*, 642 F. Supp. 3d at 585 ("Under both Directors Watt and Calabria, FHFA took similar steps to enable the GSEs to retain capital while simultaneously amending the PSPAs to *increase* Treasury's liquidation preferences."). In fact, the *Collins* plaintiffs complained to the Supreme Court that those amendments "only further entrenched Treasury's status as the sole shareholder that can ever receive a return on its investment" and "mak[e] it impossible for the Companies to raise additional capital" through those amendments. Letter in

Response of Patrick J. Collins, *Collins v. Yellen*, No. 19-422 (U.S. Mar. 31, 2021), *available at* https://tinyurl.com/3d68c8t3.[3]

The proposed SAC in this case now incongruously embraces these same amendments as benefiting the Enterprises and their junior shareholders by stopping cash dividends to Treasury and even asserts a claim that, absent the removal restriction, these amendments would have occurred sooner. *See* ECF No. 106-1 PageID.2308, 2316, 2323. But that argument ignores that the flip side of stopping the cash dividends was a series of commensurate increases to the Treasury liquidation preferences that Plaintiffs consider antithetical to their interests and that they contend were slated for total elimination. In short, the proposed SAC is hopelessly mired in fatal contradictions. Plaintiffs do not—and cannot—*articulate* a coherent claim, much less plausibly allege facts to support one.

Plaintiffs' motion treats futility as an afterthought, ignoring the directly-on-point *Bhatti*, *Collins*, and *Fairholme* decisions entirely. ECF No. 107 at 5-6. Plaintiffs state that their "proposed additional allegations contain precisely the information that the Supreme Court said would be required to establish entitlement to a retrospective remedy." *Id.* at 5. But the courts in these precursor cases those same allegations before them and disagreed with Plaintiffs' position, uniformly rejecting their misconception of *Collins*. And while Plaintiffs raise concerns about briefing on this motion for leave to amend being "relatively truncated" (*id.* at 6), it

[3] The Court may take judicial notice of filings on the Supreme Court's docket. *See Lyons v. Stovall,* 188 F.3d 327, 332 n.3 (6th Cir. 1999).

was Plaintiffs' choice to file a six-page motion with just two paragraphs on futility that ignored all of the adverse precedent.

The court in *Wazee* just yesterday denied plaintiff's motion for leave to amend based on futility in a similar posture. *Wazee* Mem. Op. at 11. A full round of Rule 12(b) motion practice would be just another burdensome set of briefs in this protracted case. Further briefing is not necessary when so many judicial decisions filled with cogent analysis make short work of Plaintiffs' baseless claims.

B. Section 4617(f) Bars the Relief Sought in the Proposed SAC

FHFA's pending motion for judgment on the pleadings demonstrates that the claims in Plaintiffs' first amended complaint are barred by 12 U.S.C. § 4617(f), which forbids judicial relief that would "restrain or affect the exercise of [the] powers or functions of the Agency as a conservator." *See* ECF No. 100 PageID.2241-43. Far from helping Plaintiffs to overcome that problem, the proposed SAC only makes it much worse—an independent basis for finding futility.

Indeed, the proposed SAC's request for an impermissible injunction that would "(a) direct Defendants to eliminate the liquidation preference on Treasury's senior preferred stock (either by writing down the liquidation preference on Treasury's senior preferred stock to zero or by converting Treasury's senior preferred stock to common stock); and (b) prohibit Defendants from further increasing the liquidation preference on Treasury's senior preferred stock" (ECF No. 106-1 PageID.2323) epitomizes the type of judicial interference Congress was determined to avoid through § 4617(f). Such relief would fundamentally alter the terms of the

instruments the Conservator negotiated with Treasury to keep the Enterprises out of insolvency.[4]

The Supreme Court unanimously held in *Collins* that the Third Amendment was within FHFA's authorized Conservator powers and functions, including "put[ting] the regulated entity in a sound and solvent condition" and "carry[ing] on the business of the regulated entity." *Collins*, 594 U.S. at 238 (quoting 12 U.S.C. § 4617(b)(2)(D)); *see id.* at 239. Because "FHFA did not exceed its authority as a conservator," *id.* at 242, and because its "business decisions are protected from judicial review, *id.* at 254, section 4617(f) barred Plaintiffs' requested relief of invalidating the Third Amendment.

The same logic applies with equal or greater force to the proposed SAC's requested injunctive relief. If the Third Amendment to the preferred stock purchase agreements was within the Conservator's authorized powers and functions—and *Collins* by unanimous decision held it was—it necessarily follows that the same is true of the underlying preferred stock purchase agreements themselves, which include the terms through which Treasury's liquidation preferences accrued over time and continue to accrue. The injunctions sought in the proposed SAC would shred those agreements and terms, overhauling the capital structures of both Enterprises and wipe out what the Supreme Court saw as the foremost of Treasury's "key entitlements" under the agreements. *Collins*, 594 U.S. at 232.

[4] As noted *supra* at 1 n.1, to the extent Plaintiffs seek injunctive relief that implicates Fed. R. Civ. P. 65(c), Plaintiffs would be required to post a bond to cover all damages caused by such an injunction.

Such a draconian injunction would undoubtedly "restrain or affect" the Conservator, which Congress entrusted by statute with managing the Enterprises' finances. That is why, in the very similar *Bhatti* remand, the court squarely held that § 4617(f) barred the shareholders' claims because "any FHFA action with respect to the liquidation preference is within the scope of the agency's authority as conservator." *Bhatti*, 646 F. Supp. 3d at 1017.[5]

II. Plaintiffs' Consent Argument Lacks Merit

Unable to confront the overwhelming weight of authority demonstrating futility on the merits, Plaintiffs' motion primarily resorts to criticizing Defendants for opposing amendment at all. That criticism is based on informal discussions among counsel about an earlier round of potential amendments *almost two years ago*, in which defense counsel advised that Defendants would consent to certain types of amendments to the complaint (subject to extensive Rule 12(b) motions directed at those amendments) but not to the addition of Appropriations Clause claims. Those discussions related solely to the 2023 proposed amended complaint, and the Court's

[5] The Fifth Circuit held on remand in *Collins* that, while § 4617(f) generally barred the shareholders' claims, it did not apply to one count that purported to arise "directly under the Constitution." 83 F.4th at 980. The Fifth Circuit based that exception on *Webster v. Doe*, 486 U.S. 592 (1988), which requires statutes to have a "clear statement" to "deny any judicial forum for a colorable constitutional claim." 83 F.4th at 980 (citing *Webster*, 486 U.S. at 603). As the *Bhatti* district court persuasively explained, however, *Webster* is "inapposite," as it concerned a provision "that bar[red] judicial review altogether," whereas § 4617(f) bars only certain forms of relief. *Bhatti*, 646 F. Supp. 3d at 1017. The Fifth Circuit also relied on a prior decision applying a limiting construction to a similar anti-injunction provision in the FDIC's statute, *FDIC v. Bank of Coushatta*, 930 F.2d 1122, 1130 (5th Cir. 1991). That decision is not binding on this Court, however, and the Sixth Circuit's cases reflect no such limiting construction.

denial of those amendments made any prior purported agreement irrelevant and inapplicable to the actions contemplated herein by Plaintiffs in 2025.

Contrary to Plaintiffs' assertions, nothing in those discussions precludes Defendants from opposing leave to file the proposed SAC. Plaintiffs ask "what has changed." *Id.* at 1-2. The answer is virtually everything. Since the parties' informal discussions in the summer of 2023, two appellate courts (*Collins* and *Bhatti*) unanimously confirmed that the claims Plaintiffs now seek to add here have no merit whatsoever. And now, yet another district court (*Wazee*) has rejected plaintiffs' efforts to reinvent their case through amendment. *Wazee* Mem. Op. at 9-11.

After the Court denied leave to amend in early December 2024, Plaintiffs delayed attempts at further amendments for almost four months. In the interim, Defendants were required to answer the first amended complaint (at no small effort and expense, given its 77 pages and 178 paragraphs), and they have now filed motions for judgment on the pleadings. In view of these significant intervening developments, Plaintiffs' reliance on old discussions at a prior stage of the case falls flat and should be seen for what it is: a needless attempt to distract from the fatal flaws in Plaintiffs' claims.

CONCLUSION

For the foregoing reasons, this Court should deny Plaintiffs' motion for leave to amend.

Dated: April 15, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing complies with Local Rule 7.2(b)(i), and contains 4,285 words, including headings, footnotes, citations, and quotations. The foregoing word count was generated using Microsoft Word 365.

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