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VIA ECF

Mr. Lyle W. Cayce
Clerk of Court
United States Court of Appeals for the Fifth Circuit
F. Edward Hebert Building
600 S. Maestri Place
New Orleans, LA 70130-3408

Re: *Collins v. Mnuchin et al.*, No. 17- 20364
(Scheduled for Oral Argument March 7, 2018)

Dear Mr. Cayce:

FHFA Appellees write to notify the Court of the attached recent decision of the *en banc* D.C. Circuit in *PHH Corp. v. Consumer Financial Protection Bureau*, 2018 WL 627055 (Jan. 31, 2018). The decision rejects a constitutional challenge to the CFPB’s structure that is materially identical to Appellants’ challenge to FHFA’s structure, and repudiating the prior panel decision on which Plaintiffs’ constitutional claim is based.

The full D.C. Circuit held that “[t]here is nothing constitutionally suspect about the CFPB’s leadership structure” and “[l]aw and history put the CFPB, led by a Director shielded from removal without cause, on safe ground.” 2018 WL 627055, at *14, *15. Like the District Court here, the court rejected the notion that *Humphrey’s Executor* is limited to agencies led by a multi-member board. That “untenable” distinction “finds no footing in precedent, historical practice, constitutional principle, or the logic of presidential removal power.” *Id.* at *2; *accord* ROA.960. Therefore, *Humphrey’s Executor* and *Morrison v. Olson* both “stand in the way” of

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holding a single-director independent agency unconstitutional. *Id.* at *14; ROA.957-958.

The full D.C. Circuit’s reasoning closely tracks FHFA Appellees’ arguments to this Court and the opinion of the District Court. For example:

- Contrary to the premise of the challenge, “[i]f anything, the President’s for-cause removal prerogative may allow *more* efficient control over a solo head than a multi-member directorate.” 2018 WL 627055, at *18 (emphasis added); *see* FHFA Br. 50-51.
- “[N]ovelty” does not “establish a constitutional defect,” but even if it could, single-director independent regulatory agencies have “longstanding tradition” and “historical pedigree” tracing back to the Comptroller of the Currency in the mid-1800s, if not farther, “plac[ing] the CFPB on solid footing.” 2018 WL 627055, at *17, *21-22; *see* FHFA Br. 53-54 & n.12.
- The objection that “some future President might not get to appoint a CFPB Director” is misplaced because that flows from term length and the “constitutionality of for-cause protection does not turn on whether the term is five years or four.” 2018 WL 627055, at *19; *see* FHFA Br. 52.

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This Court should rule consistently with *PHH* and affirm the District Court.

Respectfully Submitted,

/s/ Howard N. Cayne
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Housing Finance Agency and
Melvin L. Watt*