

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

MICHAEL ROP, STEWART KNOEPP, and  
ALVIN WILSON,

Plaintiffs,

Case No. 1:17-cv-00497

v.

THE FEDERAL HOUSING FINANCE  
AGENCY, MELVIN L. WATT, in his official  
capacity as Director of the Federal Housing  
Finance Agency, and THE DEPARTMENT  
OF THE TREASURY,

Defendants.

**UNOPPOSED MOTION OF FHFA AND MELVIN L. WATT TO EXTEND PAGE  
LIMITATIONS FOR BRIEFS IN SUPPORT OF MOTION TO DISMISS**

Pursuant to Local Civil Rule 7.1(c), Defendants Federal Housing Finance Agency and Melvin L. Watt (“FHFA Defendants”) move for an order allowing the FHFA Defendants to file a 35-page brief in support of its motion to dismiss to be filed on September 8, 2017. This motion is unopposed. In support of this motion, the FHFA Defendants state as follows:

1. Plaintiffs filed their Complaint in the above-captioned case on June 1, 2017 and an Amended Complaint on July 27, 2017.
2. The FHFA Defendants intend to move to dismiss the Amended Complaint. By prior order on the joint motion of all parties (ECF No. 10), the FHFA Defendants’ motion to dismiss is due September 8, 2017.
3. Under W.D. Mich. LCivR. 7.2(b), any brief filed in support of or in opposition to a dispositive motion is not to exceed 25 pages in length, exclusive of cover sheet, tables, and

indices. However, in its discretion the Court may shorten or enlarge the page limit. *See id.* 7.1(c).

4. On August 25, 2017, all parties submitted a joint motion to extend page limitations for a variety of briefs, including briefs in support of all Defendants' motions to dismiss, responses and replies to those motions, and briefs in connection with Plaintiffs' anticipated motion for summary judgment (ECF No. 18). The Court denied that motion without prejudice, finding that the parties had not shown good cause for a modification of any of the page limits discussed. (ECF No. 19).

5. Because the prior motion was denied without prejudice, the FHFA Defendants now submit this motion, seeking an extension solely for their opening brief in support of their motion to dismiss at this time,<sup>1</sup> to provide the showing of good cause that the Court found was lacking from the parties' prior motion.

6. The FHFA Defendants' motion to dismiss will address Plaintiffs' Amended Complaint, which is 76 pages and 177 paragraphs long. In the Amended Complaint, Plaintiffs seek, *inter alia*, to vacate an amendment to senior preferred stock purchase agreements between FHFA as Conservator for Fannie Mae and Freddie Mac, on the one hand, and the Department of the Treasury ("Treasury"), on the other; to declare that FHFA may no longer operate as an independent agency; and to strike down certain provisions of the Housing and Economic Recovery Act of 2008. Plaintiffs seek this relief through five counts each asserting distinct constitutional claims: (a) violation of the President's constitutional removal authority; (b)

---

<sup>1</sup> The FHFA Defendants will evaluate the need for extra pages for future briefs on a case by case basis when the time comes and will seek any such extensions by separate motion supported by the necessary showing of good cause.

separation of powers; (c) Appointments Clause; (d) violation of the nondelegation doctrine; and (e) private nondelegation doctrine.

7. The FHFA Defendants' motion to dismiss will include both standing and other threshold jurisprudential arguments, and arguments that Plaintiffs' constitutional claims fail to state a claim upon which relief may be granted.

8. While the FHFA Defendants will make every effort toward brevity, the FHFA Defendants believe they will not be able to give the issues raised by the 76-page Amended Complaint the treatment that is warranted absent relief from the 25-page limit. The 25-page limit would leave the FHFA Defendants with less than five pages per count on average to address all justiciability and merits issues for that count.

9. The stakes of this case also weigh in favor of relief from the 25-page limit. Plaintiffs seek relief—vacatur of the Third Amendment to the senior preferred stock purchase agreements—that would effectively result in a transfer of over \$200 billion from the United States Treasury. Plaintiffs also seek a declaration “that FHFA’s structure violates the separation of powers, that FHFA may no longer operate as an independent agency, and striking down” three statutes enacted by Congress. PageID.271 (Am. Compl., Prayer for Relief paragraph (d)). The public significance and magnitude of these issues calls for a modest extension of the page limit to ensure that the issues can be adequately presented to the Court.

10. The FHFA Defendants are mindful of the need to be as concise as possible. In addition, the FHFA Defendants intend to incorporate the arguments of Defendant Treasury by reference, where possible, in order to avoid duplication. The FHFA Defendants have been working diligently to prepare their brief and have formed a good sense of how much space is required to adequately address the issues. Under these circumstances, the FHFA Defendants

believe that 35 pages for their motion-to-dismiss brief will be sufficient. The FHFA Defendants respectfully ask the Court to consider this showing of good cause and to grant the relief requested.

11. Plaintiffs' counsel have represented that Plaintiffs do not oppose the relief sought in this motion. Counsel for Treasury have represented that Treasury does not oppose the relief sought in this motion.

WHEREFORE, the FHFA Defendants respectfully request that the Court allow the FHFA Defendants to file a 35-page brief in support of their motion to dismiss to be filed on September 8, 2017.

Respectfully submitted,

/s/ Asim Varma

Howard N. Cayne (D.C. Bar # 331306)  
Asim Varma  
ARNOLD & PORTER KAYE SCHOLER  
LLP  
601 Massachusetts Avenue NW  
Washington, DC 20001  
(202) 942-5000  
howard.cayne@apks.com

/s/ D. Andrew Portinga

D. Andrew Portinga (P55804)  
MILLER JOHNSON  
45 Ottawa Avenue SW, Ste. 1100  
Grand Rapids, MI 49503  
(616) 831-1700  
portingaa@millerjohnson.com

*Attorneys for Defendant Federal Housing  
Finance Agency and Melvin L. Watt, in his  
official capacity as Director of Federal  
Housing Finance Agency*

Dated: September 1, 2017