

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

MICHAEL ROP, STEWART KNOEPP, and  
ALVIN WILSON,

Plaintiffs,

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.

Case No. 1:17-cv-00497

Hon. Paul L. Maloney

**PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY  
CONCERNING DEPARTMENT OF JUSTICE BRIEF IN *BHATTI v. FHFA***

FHFA recently filed a notice of supplemental authority trumpeting the district court's dismissal of a constitutional challenge to the Net Worth Sweep in *Bhatti v. FHFA*, 2018 WL 3336782 (D. Minn. July 6, 2018); Dkt. 50, FHFA Notice of Suppl. Authority, Pg.ID 1502. That case is now on appeal to the Eighth Circuit, and earlier this week the Department of Justice filed a brief on behalf of the Treasury Department. *See* Br. for the Treasury Dep't, *Bhatti v. FHFA*, No. 18-2506 (8th Cir. Nov. 14, 2018) (Exhibit A). The Department of Justice's brief is noteworthy for several reasons. First, the brief says that the district court in *Bhatti* "erred in concluding that plaintiffs lacked standing on the ground there was no reason to believe that increasing Executive Branch influence over FHFA will somehow result in a revised Third Amendment that is less favorable to the Executive Branch." *Id.* at 26 n.3 (quotation marks omitted). On yet another critical issue, the Department of Justice has disagreed with FHFA and embraced Plaintiffs' position: we are "not required to show that FHFA would have made a

different decision had it been differently structured in order to demonstrate standing to raise [the] claim that FHFA is unconstitutionally structured.” *Id.* (quotation marks omitted) (citing *Landry v. FDIC*, 204 F.3d 1125, 1131 (D.C. Cir. 2000)); see Dkt .32, Pls.’ Opp’n to FHFA’s Mot. to Dismiss at 2–3, Pg.ID 882–83.

Second, the Department of Justice’s brief reiterates its position that Plaintiffs are correct that FHFA’s structure violates the separation of powers. “[T]here would be no rational limiting principle if *Humphrey’s Executor* were extended beyond multi-member boards to single-headed agencies like FHFA.” Exhibit A at 34. Reading *Humphrey’s Executor* in the manner FHFA proposes would “threaten to swallow Article II’s general rule” that the President has the authority to remove those who assist him in carrying out his duties, “even for Cabinet officers like the Secretary of the Treasury or Labor.” Exhibit A at 35.

Third, although Treasury argued in the district court in *Bhatti* that it was not a proper defendant and that claim preclusion barred the plaintiffs’ claims, see Mem. in Supp. of Department of the Treasury’s Mot. to Dismiss at 7–11, 13–22, *Bhatti v. FHFA*, No. 17-2185 (D. Minn. Sept. 15, 2017), Doc. 36, the Department of Justice did not deem those arguments sufficiently meritorious to bear repeating before the Eighth Circuit. This Court should reject Treasury’s joinder and claim preclusion arguments for the reasons explained in Plaintiffs’ briefs. See Dkt. 31, Pls.’ Br. in Opp’n to Treasury’s Mot. to Dismiss at 17–25, Pg.ID 600–08; Dkt. 39, Reply Br. in Supp. of Pls.’ Mot for Summ. Disposition at 9–10, Pg.ID 1074–75.

Dated: November 16, 2018

Respectfully submitted,

/s/ Matthew T. Nelson

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 16th day of November 2018, I caused a true and correct copy of the foregoing to be filed electronically using the Court's CM/ECF system, causing a true and correct copy to be served on all counsel of record.

/s/ Matthew T. Nelson  
Matthew T. Nelson