

Cooper & Kirk

Lawyers

A Professional Limited Liability Company

Charles J. Cooper
(202) 220-9660
ccooper@cooperkirk.com

1523 New Hampshire Avenue, N.W.
Washington, D.C. 20036

(202) 220-9600
Fax (202) 220-9601

May 23, 2017

Via ECF

Deborah S. Hunt, Esq.
Clerk of the Court
United States Court of Appeals for the Sixth Circuit
Potter Stewart U.S. Courthouse
100 East Fifth Street
Cincinnati, OH 45202

Re: *Robinson v. Federal Housing Finance Agency*, No. 16-6680

Dear Ms. Hunt:

Because *Starr International Co. v. United States*, 2017 WL 1843031 (Fed. Cir. May 9, 2017), concerned only illegal exactions and takings claims, the court had no occasion to decide whether the plaintiffs could sue directly on their own behalf under the APA's generous review provisions. *See* Reply Br. at 19–22 (Apr. 26, 2017), Doc. 28. Unlike the claims at issue in *Starr*, “the laws governing” Plaintiff's APA claims make clear that these claims “belong to the stockholder” and thus are direct as a matter of both federal and Delaware law. *Citigroup Inc. v. AHW Inv. P'ship*, 140 A.3d 1125, 1126 (Del. 2016).

Furthermore, the nub of the claims deemed derivative in *Starr* was that AIG overpaid for an infusion of capital that was the result of arms' length negotiations between the Federal Reserve and AIG's private management. Unlike the Net Worth Sweep, the Federal Reserve's investment in AIG was not an “agreement” that the Government made with itself, and existing shareholders did not lose their entire investments. *Starr* and Treasury's other corporate overpayment cases are inapposite because none of them involved a dominant shareholder using its influence over the corporation's management to expropriate minority shareholders' investments in full.

Minority shareholders are directly harmed by such expropriations, and an order restoring Plaintiff's economic rights would benefit her directly without regard to its effect on Fannie and Freddie.

Finally, Plaintiff notes that under Federal Circuit precedent, her claims could go forward even if they were derivative because FHFA is conflicted when deciding whether to sue itself and Treasury. *First Hartford Corp. Pension Plan & Tr. v. United States*, 194 F.3d 1279, 1283 (Fed. Cir. 1999). This Court should follow *First Hartford*, and it thus need not decide whether Plaintiff's APA claims are direct or derivative. Reply Br. 24–26.

Respectfully submitted,

/s/ Charles J. Cooper
Charles J. Cooper

Counsel for Appellant

cc: Counsel of Record (by ECF)