

# Cooper & Kirk

Lawyers

A Professional Limited Liability Company

David H. Thompson  
(202) 220-9659  
dthompson@cooperkirk.com

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

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

March 31, 2021

Honorable Scott S. Harris  
Clerk  
Supreme Court of the United States  
Washington, D.C. 20543

Re: *Collins v. Yellen*, No. 19-422, & *Yellen v. Collins*, No. 19-563

Dear Mr. Harris:

The plaintiff shareholders agree with the Acting Solicitor General that the January 14, 2021 amendments to the Preferred Stock Purchase Agreements do not render this case moot. With all agreed that recent developments have no effect on this Court's jurisdiction, the extra-record evidence attached to the Acting Solicitor General's letter of March 18, 2021 should not be considered as part of this appeal.

Even after the January 14 letter agreement, Fannie and Freddie continue to have enormous capital deficits that were caused by the Net Worth Sweep. *See* J.A. 102–03. And while the Acting Solicitor General promotes the new arrangement as allowing the Companies to “build up substantial capital reserves” over a period of “multiple years,” this purported capital build-up is entirely ephemeral because it will be offset by a corresponding and equal increase in the liquidation preference on Treasury's senior preferred stock. Through the January 14 letter agreement, FHFA and Treasury have done nothing to reverse the nationalization of Fannie and Freddie but only further entrenched Treasury's status as the sole shareholder that can ever receive a return on its investment. This arrangement is inherently unsound and inconsistent with FHFA's conservatorship mission because it makes it impossible for the Companies to raise additional capital through the sale of new stock at a time when they are massively undercapitalized due to FHFA's previous unlawful conduct.

The January 14 letter agreement is also subject to the same constitutional objection already before the Court, for it was negotiated between Treasury and FHFA's (Senate-confirmed) Director.

Please distribute this letter to the Members of the Court.

Sincerely,

/s/ David H. Thompson

David H. Thompson

*Counsel for Patrick J. Collins, et al.*

cc: See Attached Service List

*Patrick J. Collins, et al. v. Janet L. Yellen, Sec'y of Treasury, et al.*, No. 19-422

Elizabeth B. Prelogar  
Acting Solicitor General  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530  
(202) 514-2217  
SupremeCtBriefs@USDOJ.gov

Jason Alan Levine  
Vinson & Elkins LLP  
2200 Pennsylvania Avenue, NW  
Suite 500 – West  
Washington, DC 20037  
(202) 639-6500  
jlevin@velaw.com

Aaron Llyod Nielson  
J. Reuben Clark Law School  
Brigham Young University  
516 JRCB  
Provo, UT 84602  
(801) 422-2669  
nielsona@law.byu.edu

Michael Pepson  
Americans for Prosperity  
1310 N. Courthouse Road  
Suite 700  
Arlington, VA 22201  
mpepson@AFPHQ.org

Matthew P. Cavedon  
Director of Operations  
P.O. Box 390  
Gainesville, GA 30503  
mcavedon@post.harvard.edu

Cynthia Fleming Crawford  
Americans for Prosperity Foundation  
1310 Courthouse Road, 7th Floor  
Arlington, VA 22201  
(571) 329-2227  
ccrawford@afphq.org

Linda C. Goldstein  
Dechert LLP  
1095 Avenue of the Americas  
New York, NY 10036  
(212) 698-3500  
Linda.goldstein@dechert.com

Brianne J. Gorod  
Constitutional Accountability Center  
1200 18th St., NW  
Ste. 501  
Washington, DC 20036  
(202) 296-6889  
brianne@theusconstitution.org

John Harrison  
University of Virginia, School of Law  
580 Massie Road  
Charlottesville, VA 22903  
(434) 924-3093  
Jh8m@law.virginia.edu

Rachel F. Homer  
Protect Democracy Project  
2020 Pennsylvania Avenue, NW  
Ste. 1163  
Washington, DC 20006  
(202) 997-2166  
Rachel.homer@protectdemocracy.org

Jeffrey W. McCoy  
Pacific Legal Foundation  
3100 Clarendon Blvd.  
Ste. 610  
Arlington, VA 22201-5330  
(916) 419-7111  
jmccoy@pacificlegal.org

Lawrence D. Rosenberg  
Jones Day  
51 Louisiana Ave., NW  
Washington, DC 20001  
(202) 879-3939  
ldrosenberg@jonesday.com

Richard A. Samp  
New Civil Liberties Alliance  
1225 19th Street NW  
Ste. 450  
Washington, DC 20036  
(202) 588-0302  
richsamp@ncla.legal

Robert Carter Schubert  
Schubert Jonckheer & Kolbe LLP  
Three Embarcadero Center  
San Francisco, CA 94111  
(415) 788-4220  
rschubert@sjk.law

*Janet L. Yellen, Sec'y of Treasury, et al. v. Patrick J. Collins, et al.*, No. 19-563

Elizabeth B. Prelogar  
Acting Solicitor General  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530  
(202) 514-2217  
SupremeCtBriefs@USDOJ.gov

Jason Alan Levine  
Vinson & Elkins LLP  
2200 Pennsylvania Avenue, NW  
Suite 500 – West  
Washington, DC 20037  
(202) 639-6500  
jlevin@velaw.com

Aaron Llyod Nielson  
J. Reuben Clark Law School  
Brigham Young University  
516 JRCB  
Provo, UT 84602  
(801) 422-2669  
nielsona@law.byu.edu

Michael Pepson  
Americans for Prosperity  
1310 N. Courthouse Road  
Suite 700  
Arlington, VA 22201  
mpepson@AFPHQ.org

Robert Carter Schubert  
Schubert Jonckheer & Kolbe LLP  
Three Embarcadero Center  
San Francisco, CA 94111  
(415) 788-4220  
rschubert@sjk.law