No. 25-

IN THE

Supreme Court of the United States

DAISEY TRUST, BY AND THROUGH ITS TRUSTEE, EDDIE HADDAD; CAPE JASMINE CT. TRUST, BY AND THROUGH ITS TRUSTEE, EDDIE HADDAD; AND SATICOY BAY LLC, SERIES 10007 LIBERTY VIEW,

Petitioners,

v.

FEDERAL HOUSING FINANCE AGENCY; WILLIAM J. PULTE, IN HIS OFFICIAL CAPACITY AS THE DIRECTOR OF THE FEDERAL HOUSING FINANCE AGENCY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. In *Consumer Financial Protection Bureau v. Community Financial Services Association of America, Limited*, 601 U.S. 416 (2024) ("*CFPB*"), this Court upheld CFPB's funding mechanism under the Appropriations Clause because—even though it is funded outside the annual appropriations process—Congress enacted a statute identifying a "source and purpose" for the funds and there was a statutory cap on how much CFPB can draw from the Federal Reserve System. The Federal Housing Finance Agency is also funded outside the annual appropriations process. But, unlike CFPB, Congress has not set a ceiling on how much FHFA may raise and spend. Does FHFA's funding mechanism, 12 U.S.C. § 4516, violate the Appropriations Clause for lack of a cap, sum certain, or other ascertainable limit?

2. In *CFPB*, members of this Court recognized "Congress obviously cannot evade the Appropriations Clause simply by placing a different label on an authorization" through a statute providing that "[f]unds . . . shall not be construed to be Government funds or appropriated monies." Similarly, 12 U.S.C. § 4516(f)(2) states that "[t]he amounts received by the Director from any assessment . . . shall not be construed to be Government or public funds or appropriated money." Does 12 U.S.C. § 4516(f)(2) violate the Appropriations Clause?

3. The nondelegation doctrine requires Congress to impose intelligible principles to constrain the Executive Branch. 12 U.S.C. § 4516 allows FHFA's Director to collect "the amount *sufficient* to provide for *reasonable* costs . . . and expenses of the Agency." Does 12 U.S.C. § 4516 violate the nondelegation doctrine?

PARTIES TO THE PROCEEDING

Petitioners (plaintiffs-appellants below) are Daisey Trust, by and through its trustee, Eddie Haddad; Cape Jasmine Ct. Trust, by and through its trustee, Eddie Haddad; and Saticoy Bay LLC, Series 10007 Liberty View.

Respondents (defendants-appellees below) are the Federal Housing Finance Agency and William J. Pulte, in his official capacity as the Director of the Federal Housing Finance Agency.

CORPORATE DISCLOSURE STATEMENT

Petitioners have no parent companies, and no publicly held company owns 10% or more of their stock.

STATEMENT OF RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

- *Daisey Trust v. Federal Housing Finance Agency*, No. 24-6433 (9th Cir.), judgment entered on January 2, 2026.

- *Daisey Trust v. Federal Housing Finance Agency*, No. 2:23-cv-00978-APG-EJY (D. Nev.), judgment entered September 23, 2024.

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INTRODUCTION

This case presents profound constitutional questions that this Court left open, in part, just two years ago. In *Consumer Financial Protection Bureau v. Community Financial Services Association of America, Limited*, 601 U.S. 416 (2024) ("*CFPB*"), the Court upheld CFPB's funding mechanism and held that the Appropriations Clause requires Congress, at least, to identify a "source and purpose" for the agency's funds. Even so, this Court highlighted throughout that CFPB has a statutory cap on the amount the agency can draw from the Federal Reserve.

The Federal Housing Finance Agency ("FHFA"), by contrast, operates with *no* upper limit on how much it can raise and spend. In 2008, Congress created FHFA as an "independent" agency and exempted it from the annual appropriations process. Congress permits FHFA to perpetually self-finance through assessments collected from entities that it regulates—Fannie Mae and Freddie Mac. But, unlike CFPB, Congress set no cap, sum certain, or ascertainable limit on the amount FHFA can extract and spend from those regulated entities. Indeed, FHFA is encouraged to assess more than it needs for operations and to keep the overage in a "working capital fund." If the Director decides he wants more, FHFA can levy additional assessments at any time. And unlike other agency set-ups, FHFA controls the same entities that it regulates through a long-running conservatorship. So, the entities from whom FHFA syphons its funds have no ability to protest. Through this unprecedented combination of features, Congress abdicated any budgetary oversight or check-and-balance. Congress gifted FHFA with a blank check.

Congress also imposed no other constraints or intelligible principles on how much FHFA can single-handedly raise and spend. There is no numerical cap or any qualitative substitute for one. Rather, FHFA's Director has the sole prerogative to collect from Fannie and Freddie whatever amounts he determines to be "*sufficient* to provide for *reasonable* costs . . . and expenses of the agency" related to a non-exhaustive list of functions. 12 U.S.C. § 4516(a) (emphasis added). In this specific statutory context, there are no congressionally imposed guardrails. FHFA's Director has the unbridled ability to legislate his own budget and spend whatever he wants.

Congress foresaw constitutional problems with FHFA's structure and tried to insulate it from judicial scrutiny. Congress purported to decree that "[t]he amounts received by the Director from any assessment . . . shall not be construed to be Government or public funds or appropriated money." *Id.* § 4516(f)(2).

But the Constitution does not allow Congress to sidestep the Appropriations Clause or bequeath an Executive Branch agency the unilateral authority to spend limitless amounts. The text, history, and *CFPB* confirm that a constitutional appropriation requires Congress to specify a sum certain, cap, or other ascertainable limit on the amount that an agency may raise from an identified source and spend for a particular purpose. Early state courts required some ceiling under their own appropriations clauses. When upholding CFPB's structure, this Court repeatedly reiterated the statutory cap as a essential feature.

Members of this Court emphasized too that Congress cannot simply decree that monies raised by an agency "shall not be construed to be . . . appropriated money." Congress must provide more detailed instructions, not less, when delegating authority over areas of national economic significance—like the housing market. Yet Congress established neither a quantitative nor qualitative limit on the Director's ability to raise and spend.

This case is exceptionally important. An entirely self-sufficient agency with a boundless budget outside the normal appropriations process imperils the rights and liberties of all Americans. This is especially true for agencies, like FHFA, that oversee critical sectors of the economy. Without congressional constraints, FHFA has amassed an enormous piggy bank. Fannie and Freddie have a combined net worth exceeding $100 billion that is at FHFA's disposal. FHFA uses this bottomless money pit for its operations, including foreclosures on property-owners such as Petitioners. There is no lid or check on how much FHFA may spend on foreclosures or anything else. This Court has recognized "there can be no question that the FHFA's control over Fannie Mae and Freddie Mac can deeply impact the lives of millions of Americans by affecting their ability to buy and keep their homes."[1]

The courts below were untroubled by this threat. The Ninth Circuit's published opinion narrowed *CFPB*'s Appropriations Clause interpretation as *only* requiring a "source and purpose" based on how this Court framed its holding when there was a cap. Despite acknowledging the many times *CFPB* emphasized the cap, the Ninth

1. *Collins v. Yellen*, 594 U.S. 220, 255 (2021).

Circuit thought it would be impermissibly adding a new Appropriations Clause requirement if it credited the cap's centrality. The Ninth Circuit did what 12 U.S.C. § 4516(f)(2) forbids. It "construed" the monies purloined from Fannie and Freddie as "appropriated money" when FHFA is funded outside the appropriations process. And the Ninth Circuit gleaned intelligible principles in Congress's delegation to the Director to collect and expend whatever amounts declared "sufficient" and "reasonable." But those two flimsy words are no constraint at all in this nationally important context.

The Ninth Circuit's decision is egregiously wrong and constitutionally dangerous. It either conflicts with *CFPB* because this Court has already held that a constitutional appropriation requires an ascertainable limit along with a source and purpose, or it is an issue of first impression that this Court should settle. This Court should also answer whether Congress can label funds as "non-appropriated" and whether "sufficient" and "reasonable" are intelligible principles in this specific circumstance.

This Court should grant certiorari, reverse, and hold that FHFA's funding mechanism violates the Appropriations Clause and nondelegation doctrine.

OPINIONS AND ORDERS BELOW

The Ninth Circuit's opinion is reported at 163 F.4th 1208 and reproduced at Pet.App.1a-16a. The district court's order is not reported, but is available at 2024 WL 4267792 and reproduced at Pet.App.19a-50a.

JURISDICTION

The Ninth Circuit issued its judgment on January 2, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

THE CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The United States Constitution's Appropriations Clause states, in relevant part, that "[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." U.S. CONST. art. I, § 9, cl. 7.

12 U.S.C. § 4516 is reproduced at Pet.App.51a-61a.

STATEMENT OF THE CASE

A. FHFA's History.

Congress created the Federal National Mortgage Association ("Fannie") and the Federal Home Loan Mortgage Corporation ("Freddie") in 1938 and 1970, respectively. *Collins*, 594 U.S. at 228 (citing National Housing Act Amendments of 1938, 52 Stat. 23; Federal Home Loan Mortgage Corporation Act, 84 Stat. 451).

Both enterprises operate under congressional charters as for-profit corporations with private shareholders. *Id.* (citing Housing and Urban Development Act of 1968, § 801, 82 Stat. 536, 12 U.S.C. § 1716b; Financial Institutions Reform, Recovery, and Enforcement Act of 1989, § 731, 103 Stat. 429-436, note following 12 U.S.C. § 1452). Their mission is to support the Nation's home mortgage system,

and they do so mainly through purchasing mortgages, pooling them, and selling them to investors. *Id.* Fannie and Freddie were—and still are—two of the largest financial institutions in the Nation with balance sheets in the trillions of dollars.

From 1992 to 2008, Fannie and Freddie were regulated by the Office of Federal Housing Enterprise Oversight ("OFHEO") within the Department of Housing and Urban Development. *Id.* at 229 n.1 (citing Federal Housing Enterprises Financial Safety and Soundness Act of 1992, §§ 1311–1313, 106 Stat. 3944-3946). OFHEO was not an independent agency. The President could remove its Director for any reason. *See* 106 Stat. 3945 § 1312.

OFHEO was subject to congressional appropriations. The Director could only levy assessments as Congress permitted. "The Director may, *to the extent provided in appropriations Acts*, establish and collect from [Fannie and Freddie] annual assessments in an amount not exceeding the amount sufficient to provide for reasonable costs and expenses of the Office[.]" 106 Stat. 3947 § 1316 (emphasis added). The Director had to submit forecasts to the Office of Management and Budget for inclusion in the President's budget submission to Congress. 106 Stat. 3949 § 1316(g).

Everything changed after the Great Recession. In 2008, Congress enacted the Housing and Economic Recovery Act ("HERA") and created FHFA as an "independent agency" charged with regulating the federal housing mortgage market, including Fannie and Freddie. *Collins*, 594 U.S. at 226 (quoting 12 U.S.C. § 4511). To make FHFA an "independent agency," Congress gave

FHFA sweeping powers and largely insulated FHFA from democratic accountability. Congress tried to achieve this goal in two ways. First, it shielded FHFA's Director from presidential removal. *See Collins*, 594 U.S. at 255-57. Second, it granted FHFA budgetary independence. *Id*. at 231.

This Court held unconstitutional the first part of FHFA's design. In *Collins*, the Court held that HERA's restrictions on the President's ability to fire the Director at will violated the separation of powers. *Id.* at 250.

B. FHFA's Funding Mechanism.

This case involves the second part of the 2008 Congress's plan to hide FHFA from democratic accountability—FHFA's budgetary independence. This Court has already observed that, unlike OFHEO, "FHFA is not funded through the ordinary appropriations process. Rather, the Agency's budget comes from the assessments it imposes on the entities it regulates, which include Fannie Mae, Freddie Mac, and the Nation's federal home loan banks." *Id.* at 231 (citing 12 U.S.C. § 4502(20), § 4516(a)). Congress tried to push FHFA farther away from the Constitution and judicial scrutiny by declaring that "[t]he amounts received by the Director from any assessment under this section shall not be construed to be Government or public funds or appropriated money." 12 U.S.C. § 4516(f)(2).

Under 12 U.S.C. § 4516(a), FHFA's Director unilaterally "establish[es] and collect[s] from the regulated entities annual assessments in an amount not exceeding the amount sufficient to provide for reasonable costs (including administrative costs) and expenses of the Agency[.]" The

Director alone decides what is "sufficient" or "reasonable." *Id.*; *id.* § 4516(b)(2) (stating assessments collected from the enterprises and the Federal Home Loan Banks "shall not exceed the amounts sufficient to provide for the costs and expenses described in subsection (a) relating to" them, respectively).

After the Director announces the assessment amounts, the entities must pay semiannually. *Id.* § 4516(b)(3). But the Director retains discretion to decide anytime that the entities must cough-up more. *Id.* § 4516(c). At any moment, FHFA may "as necessary in the discretion of the Director" adjust the semiannual payment and make an "immediate assessment to cover" any perceived deficiency. *Id.* §§ 4516(c)(1)-(3).

The Director is not restricted to assessing only the amount needed for FHFA's annual operations. On the contrary, the Director can levy "amounts in excess of actual expenses for any given year as deemed necessary by the Director to maintain a working capital fund[.]" *Id.* §§ 4516(a)(3), (e). Once more, the Director has complete autonomy to determine the "excess" amounts "deem[ed] necessary to maintain a working capital fund." *Id.* § 4516(e). The Director may choose to invest surplus funds "that, in the Director's discretion, are not required to meet the current working needs of the Agency." *Id.* § 4516(f)(6). Thus, the Director need not return the overage or to deposit it into the Treasury. *See id.* § 4516(c)(3).

Congress did not impose any sum certain, cap, or other ascertainable limit on the amounts the Director may extract, and spend, from the regulated entities. FHFA regulates entities with more than $8.1 *trillion* in

assets.[2] So as this Court has rightly noticed, the amount of FHFA's assessments and resulting pot of money to spend is "*unlimited*." *Collins*, 594 U.S. at 231 (quoting 12 U.S.C. § 4516(a)) (emphasis added).

Section 4516 identifies some permissible uses for the funds but does not provide a total budget or earmark specific amounts for any one activity. Among the uses without a price tag, the Director may compensate himself and other employees. 12 U.S.C. § 4516(f)(4). The statute also contains a catch-all allowing the Director to "use any amounts received by the Director from assessments under this section . . . for all other expenses of the Director and the Agency." *Id*. The Director has the sole prerogative to determine the "sufficient" and "reasonable" expenses and how much to spend on them.

While there are some reporting requirements, the Director has no obligation "to consult with or obtain the consent or approval of the Director of the Office of Management and Budget with respect to any report, plan, forecast, or other information . . . or oversight over the affairs or operations of the Agency." *Id*. § 4516(g)(5). Congress has left FHFA's entire budget and expenditures to the Director's whim.

C. FHFA Unconstitutionally Controls and Participates in Home Foreclosures.

Using its evergreen funding source, FHFA controls and authorizes foreclosures on homes. After HERA

2. *FHFA At-A-Glanc*e, FHFA (last visited March 25, 2026) *available at* https://www.fhfa.gov/about.

passed in September 2008, FHFA placed Fannie and Freddie into conservatorship. *Collins*, 594 U.S. at 220. Once placed in conservatorship, FHFA immediately "succeeded" to "all rights, titles, powers, and privileges of the regulated entity, and of any stockholder, officer, or Director of such regulated entity with respect to the regulated entity and the assets of the regulated entity." *Id.* at 230-231 (citing 12 U.S.C. § 4617(b)(2)(A)(i)).

FHFA may "take over the assets of and operate," "collect all obligations and money due," "perform all functions of," "preserve and conserve the assets and property of" and contract on behalf of Fannie and Freddie. 12 U.S.C. § 4617(b)(2)(B); *see id.* § 4617(b)(2)(C)-(E), (J). All of Fannie's and Freddie's assets—including mortgages—"succeeded" to FHFA and came under its control. FHFA may "transfer or sell any asset or liability of the regulated entity in default, and may do so without any approval, assignment, or consent with respect to such transfer or sale." *Id.* § 4617(b)(2)(G). FHFA has the authority to foreclose on, and sell, mortgages in default. *See id.* FHFA "is authorized to take control of a regulated entity's assets and operations, conduct business on its behalf, and transfer or sell any of its assets or liabilities"—including through foreclosures. *See Collins*, 594 U.S. at 238.[3]

"[T]here can be no question that the FHFA's control over Fannie Mae and Freddie Mac can deeply impact the lives of millions of Americans by affecting their ability to buy *and keep their homes*." *Collins*, 594 U.S. at 255 (emphasis added).

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3. As Fannie's and Freddie's conservator, FHFA is a designated "Federal Property Manager." 12 U.S.C. § 5220(a)(1)(A).

D. FHFA Threatens and Forecloses on Petitioners' Properties so They Sue.

Petitioners are entities that purchased residential properties for investment purposes at homeowners association foreclosure sales—sometimes at a steep discount. Because FHFA does not always record or disclose its interest, Petitioners were unaware FHFA was involved with the properties when they purchased the homes. *See* 4-ER-811.[4]

Years after Petitioners' purchases, FHFA threatened to foreclose if Petitioners did not pay-off the original borrowers' defaulted loan. 3-ER-524. Worried about a foreclosure, Petitioner Daisey Trust sued under 28 U.S.C. § 1331. 5-ER-1062. It alleged FHFA's then-impending foreclosure on its property was unconstitutionally funded in violation of the Appropriations Clause, nondelegation doctrine, and separation of powers principles. 5-ER-1061-72.

When Daisey Trust filed suit, *CFPB* was pending. *CFPB v. CFSA*, No. 22-448 (cert granted Feb. 27, 2023). In many ways (but not all), Daisey Trust's original complaint was patterned after the Fifth Circuit's underlying decision. *See Cmty. Fin. Servs. Ass'n of Am., Ltd. v. CFPB*, 51 F.4th 616 (5th Cir. 2022).

With the complaint, Daisey Trust moved for a temporary restraining order and preliminary injunction to enjoin FHFA's foreclosure and constitutional violations. 4-ER-790-5-ER-1060. After Daisey Trust sued, and years of forbearance, FHFA actually started foreclosing on the

4. Cites to "ER" refer to the Ninth Circuit excerpts of record.

property in a transparent effort to moot its claims. *See* 3-ER-473. Daisey Trust filed an emergency motion to stay foreclosure. 3-ER-580-90. Eventually, the district court denied Daisey Trust's motions but allowed Daisey Trust to amend its complaint. 3-ER-484-85.

To counter FHFA's new whack-a-mole strategy of foreclosing on any plaintiff challenging its unconstitutionality, Daisey Trust filed a class action complaint with two new parties (Cape Jasmine and Liberty View) and three proposed subclasses representing: 1) properties threatened with unconstitutional foreclosures; 2) properties on which FHFA unconstitutionally foreclosed and forced the owners to repurchase with additional money; and 3) properties on which FHFA unconstitutionally foreclosed but the owners could not repurchase. 3-ER-466-67, 472-75.

The proposed class representatives (Petitioners) advanced three claims under the Appropriations Clause, nondelegation doctrine, and wrongful foreclosure. 3-ER-475-80. Petitioners alleged that FHFA uses unlawful funds to threaten, direct, and control foreclosures in violation of the Appropriations Clause and nondelegation doctrine. 3-ER-464, 467-68, 471, 475-77. The amended complaint challenged the constitutionality of FHFA's perpetual self-funding through assessments and contained allegations about the lack of a cap or other ascertainable limit on FHFA's spending. 3-ER-465, 466-67, 479.

Together with compensatory damages, Petitioners requested declaratory judgments, injunctive relief, and Administrative Procedure Act remedies. 3-ER-475-81. Among other things, Petitioners sought declarations that

12 U.S.C. § 4516, generally, and 12 U.S.C. § 4516(f)(2), specifically, be declared unconstitutional and unlawful. *See, e.g.*, 3-ER-476.

Once more, FHFA moved to dismiss. 2-ER-259-461. FHFA raised several objections to avoid the merits, including standing, claim preclusion, and jurisdiction. *See generally id.*

E. This Court Issues *CFPB*.

CFPB came out while FHFA's second motion to dismiss was pending. Petitioners acknowledged *CFPB* answered some questions about the constitutionality of standing appropriations outside the annual congressional process. But Petitioners argued that FHFA's uncapped funding and spending structure remained unconstitutional after *CFPB*. 2-ER-157-61. Petitioners thought another amendment was prudent to narrow some issues and amplify others. 2-ER-158-59. FHFA disagreed because "Plaintiffs' operative amended complaint already alleges that FHFA's statutory funding mechanism violates the Appropriations Clause" and "Plaintiffs' own submissions to the Court confirm that the Amended Complaint *already* incorporates the 'cap' theory." 2-ER-159-60. The district court ordered supplemental briefing on "the effect of the *CFPB* decision on the plaintiffs' claims." 2-ER-156.

F. The District Court Dismisses Without Leave to Amend.

Ultimately, the district court granted FHFA's motion to dismiss and denied Petitioners' request to amend. Pet. App.19a-50a. The district court held Petitioners have

Article III standing and no statute precluded jurisdiction. Pet.App.29a-38a. But, on the merits, the district court upheld FHFA's funding mechanism. The district court recognized that "the CFPB's funding mechanism is similar to the FHFA's with the notable exception of the CFPB having a spending cap." Pet.App.40a.

The district court acknowledged this Court's repeated references to "the fact that the CFPB's funding mechanism includes a cap and that historically some appropriations were made in a sum certain or subject to a cap . . . may lend some support to plaintiffs' argument that a cap is necessary[.]" Pet.App.42a-43a.

But the district court discounted this Court's many statements and adopted a stilted reading of *CFPB*. It concluded that the "majority's formulation of the rule, stated several times through the opinion, does not include a cap or limit on raising or spending funds and instead reiterates that all that is required is a source and a purpose." Pet.App.41a.

On the nondelegation doctrine, the district court concluded the word "reasonable" supplied an intelligible principle to cabin the Director's discretion. Pet.App.48a-49a. Addressing hypothetical extravagant expenditures, the district court stated "[n]o one would argue that gold staplers are reasonable." Pet.App.49a. Yet the district court did not explain any limiting principle to prevent such "reasonable" or "sufficient" luxuries. It determined that "[reasonableness] is an intelligible principle," particularly given FHFA's reporting requirements. Pet.App.49a.

Petitioners appealed the judgment granting FHFA's motion to dismiss and denying leave to amend. Pet. App.17a, 50a.

G. The Ninth Circuit Affirms.

The Ninth Circuit affirmed. It agreed that Petitioners have standing to pursue their claims, Pet.App.7a-10a, but it rejected the constitutional challenges. Pet.App.10a-16a. The Ninth Circuit did not start from first principles. It did not analyze text, structure, or history. Rather, the Ninth Circuit jumped into parsing *CFPB*. Pet.App.10a-13a. It recounted several *CFPB* cap references but still said Petitioners were "incorrect" that this Court "'stressed the importance of the statutory cap.'" Pet.App.12a-13a.

Like the district court, the Ninth Circuit formulaically read *CFPB* as "mak[ing] clear that, to satisfy the Appropriations Clause, Congress need only specify a source and purpose for the expenditure of funds." Pet. App.13a. Given how this Court phrased its holding when undoubtedly there was a cap present for CFPB, the Ninth Circuit concluded that "[n]othing in the Court's decision suggests that we may expand upon these requirements." Pet.App.13a.

As a result, the Ninth Circuit determined that FHFA's funding mechanism "is entirely consistent with the rule articulated in [*CFPB*]" because "it identifies both a source of funds—annual assessments the FHFA imposes upon Fannie Mae and Freddie Mac—and a purpose for the expenditure of those funds—'reasonable costs . . . and expenses of the Agency.'" Pet.App.12a. In essence, the Ninth Circuit construed the assessments as appropriated

money under the Appropriations Clause even though 12 U.S.C. § 4516(f)(2) labels them otherwise.

The Ninth Circuit also found no nondelegation doctrine problem. It viewed the intelligible principle standard as "an exceedingly modest limitation." Pet. App.15a (quotations omitted). Accordingly, it found the phrase "amount sufficient to provide for reasonable costs" an adequate intelligible principle "that governs the FHFA's ability to collect assessments from the regulated entities." Pet.App.14a.

Petitioners have timely filed this petition for a writ of certiorari.

REASONS FOR GRANTING THE PETITION

A. The Decision Below Conflicts with *CFPB* or, at Least, Presents an Important Issue This Court Should Settle.

This Court may grant a petition for a writ of certiorari when "a United States court of appeals has [i] decided an important question of federal law that has not been, but should be, settled by this Court, or [ii] has decided an important federal question in a way that conflicts with relevant decisions of this Court." S. Ct. R. 10(c).

This case falls squarely within these categories and there are compelling reasons to grant cert. Either the Ninth Circuit's decision conflicts with *CFPB* because this Court has already held that a constitutional appropriation requires an ascertainable limit along with a source and purpose or, at minimum, it is an question of first impression

that this Court should answer. This Court should also settle whether Congress can declare that agency funds "shall not be construed to be . . . appropriated money." Finally, this Court should answer whether "sufficient" and "reasonable" are intelligible principles in this statutory setting when there is no ascertainable numerical limit or other qualitative cap.

1. The Appropriations Clause Requires Congress, By Law, to Impose a Cap or Other Ascertainable Limit.

Although constitutional questions start with the Constitution's original public meaning and then history,[5] the Ninth Circuit skipped both and dove into *CFPB*. Pet. App.10a-13a. But text and history inform *CFPB*—not the other way around. The Appropriations Clause's text and history show that an appropriation requires a cap, sum certain, or other ascertainable limit on how much an agency can raise and spend. *CFPB* mirrors this principle too.

a. Text

The Appropriations Clause states "[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." U.S. CONST. art. I, § 9, cl. 7. The term "Appropriation" connotes that a cap, sum certain, or ascertainable amount is required. "At the time the Constitution was ratified, 'appropriation' meant '[t]he

5. *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 22 (2022) (discussing "methodology centered on constitutional text and history").

act of sequestering, or assigning to a particular use or person, in exclusion of all others.'" *CFPB*, 601 U.S. at 427 (quoting 1 N. Webster, An American Dictionary of the English Language (1828)).

Other historical dictionary definitions reflect that the Founding Era understood an appropriation required separating from the whole a specific amount or quantifiable *thing*. For instance, the 1771 edition of A New General English Dictionary defined "appropriation" as "the appointing a *thing* to a particular use." *Id.* (citing T. Dyche & W. Pardon, A New General English Dictionary (14th ed. 1771)) (emphasis added). Two more defined it as "the application of *something* to a particular use" and "the application of *something* to a particular purpose." *Id.* (citing 1 J. Ash, The New and Complete Dictionary of the English Language (2d ed. 1795); 1 S. Johnson, A Dictionary of the English Language (6th ed. 1785)) (emphases added).

"In ordinary usage, then, an appropriation of public money would be a law authorizing the expenditure of *particular* funds for specified ends." *Id.* (emphasis added). Thus, even though "this evidence suggests that, at a minimum, appropriations were understood" as requiring "a source of public funds for designated purposes," these are not the only two elements. *See id.* The original public understanding indicates that an appropriation required a *particular* or quantifiable *thing* to be applied, appointed, or sequestered from the remaining universe of the *things*.

Early legal practice guides display the same understanding. For example, the 1904 edition of JUDICIAL AND STATUTORY DEFINITIONS OF WORDS AND PHRASES,

defined "appropriation" as "the setting apart from the public revenue *of a certain sum of money* for a specified object, in such manner that the executive officers of the government are authorized to use that money, *and no more*, for that object, and for no other." 1 JUDICIAL AND STATUTORY DEFINITIONS OF WORDS AND PHRASES 471 (St. Paul West Pub. Co. 1904) (collecting cases; emphasis added).

Its explanation continued, "'appropriated by law' means the act of the Legislature setting apart or assigning to a particular use *a certain sum of money* to be used in the payment of the debts or dues from the state to its creditors." *Id.* (emphasis added). The WORDS AND PHRASES compendium was the first systemic effort to present "the vast quantity of judicial interpretation and construction of the meaning of words and phrases found in the reported decisions of the American appellate courts." *Id.* at iii. It took ten years and "a page-to-page examination of the reported American cases." *Id.* Its aim was to "follow the language of the court, so that the definitions in the book will be authoritative, and to set out enough of the context or statement . . . to enable the reader to see how far the definition is applicable to his own case." *Id.* at iv.

b. Historical Practice

After England's Glorious Revolution, "Parliament's usual practice was to appropriate government revenue 'to particular purposes more or less narrowly defined.'" *CFPB*, 601 U.S. at 428 (quotations omitted). Parliament's appropriations did not categorically contain a time limit but "parliamentary grants of supplies ordinarily gave the Crown broad discretion regarding how much *to spend*

within an appropriated sum." *Id.* at 429 (emphasis added). "Statutes granting money often stated that the Crown could spend 'any Sum not exceeding' a particular amount." *Id.* (13 Anne, c. 18, § 69 (1713); 1 Anne, c. 6, § 130 (1702)).

Colonial and early statehood practice was largely the same. *Id.* at 430. "In short, the origins of the Appropriations Clause confirm that appropriations needed to designate *particular revenues* for identified purposes." *Id.* at 431 (emphasis added). To satisfy this standard, "*[s]ome appropriations required expenditure of a particular amount, while others allowed the recipient of the appropriated money to spend up to a cap.*" *Id.* (emphasis added).

The First Congress had the same approach. It made many lump-sum appropriations with "sum not exceeding" language, "authoriz[ing] disbursements up to certain amounts for those purposes." *Id.* at 432 (collecting examples). One law "appropriated a 'sum not exceeding two hundred and sixteen thousand dollars for defraying the expenses of the civil list,' which covered most nonmilitary executive officers' salaries and expenses." *Id.* (citing Act of Sept. 29, 1789, ch. 23, 1 Stat. 95; *see* 5 Papers of Alexander Hamilton 381–388 (H. Syrett & J. Cooke eds. 1962) (reporting detailed line-item estimates for civil-list expenditures)). It also appropriated a "sum not exceeding" amount to defray the Department of War's expenses. *Id.* Later appropriation laws followed a similar pattern. *Id.* (collecting examples).

A "sum not exceeding" appropriation did not require the Executive to spend the full amount. *Id.* Instead, the Executive had "discretion over how much to spend up to

a cap." *Id.* Other times, Congress allowed agencies to indefinitely fund themselves with a fee-based model. *Id.* at 433. But in those cases, Congress itself imposed a de facto spending limitation by establishing the amount of the fees that could be charged or collected. *Id.*

The early Post Office and Customs Service fit this mold. Congress "authorized the Postmaster General to pay deputy postmasters 'such commission on the monies arising from the postage of letters and packets, as he shall think adequate to their respective services,' *subject to an upper limit*." *Id.* at 434 (emphasis added). The fees themselves were established by Congress. Act of Feb. 20, 1792, § 9, 1 Stat. 234, 235. And the Post Office Act of 1792 required the Postmaster General to "render to the secretary of the treasury, a quarterly account of all the receipts and expenditures in the said department, *to be adjusted and settled as other public accounts, and shall pay, quarterly, into the treasury of the United States, the balance in his hands*." 1 Stat. 232, 234 (emphasis added).

Likewise, customs collectors were compensated based on "*fees specified by law*, and through a commission on the amount of duties raised within their districts." *CFPB*, 601 U.S. at 433 (emphasis added). "Soon after convening, Congress *enacted laws that imposed a detailed schedule of duties* on imported goods and tonnage." *Id.* (emphasis added). Some customs functionaries were paid "18 cents 'out of the revenue' collected 'for the measurement of every one hundred bushels of salt or grain.'" *Id.* Still others were paid $2.50 for every large ship or vessel entrance or 20 cents for every permit to land goods. *Id.*

By setting the amounts of fees and assessments, Congress limited how much the Customs Service and Postal Service could spend through restricting how much they could receive. In this way, there was a measurable or ascertainable limit on how much those bodies could raise and spend.

c. Early State Court Decisions and Other Authorities.

Early state courts interpreted their analogous constitutional provisions as requiring an appropriation to specify a definite, capped, or ascertainable amount. Neither the district court nor the Ninth Circuit grappled with this authority.

Here is a sampling: In 1871, the Supreme Court of Arkansas held "the expression, 'appropriated by law,' means the act of the legislature setting apart, or assigning to a particular use, *a certain sum of money* to be used in the payment of debts or dues from the state to its creditors." *Clayton v. Berry*, 27 Ark. 129, 131 (1871).

California and Nevada agreed. *See, e.g.*, *Stratton v. Green*, 45 Cal. 149, 151 (1872) ("By a specific appropriation we understand an Act by which *a named sum of money* has been set apart in the treasury and devoted to the payment of a particular claim or demand.") (emphasis added); *State v. La Grave*, 41 P. 1075, 1076 (Nev. 1895) (same); *see also State v. Eggers*, 91 P. 819, 824 (Nev. 1907) ("[I]t is usual and necessary to fix a maximum either in the general appropriation bill or in the act authorizing them specifying the amount above which they cannot be allowed.").

Other states determined "[f]rom a careful consideration of the authorities on the subject and of the terms of our Constitution . . . an appropriation, in the sense that that word is used in our Constitution, is the setting apart from the public revenue of a definite sum of money for the specified object[.]" *State ex rel. McDonald v. Holmes*, 123 N.W. 884, 886-87 (N.D. 1909). "[I]n the absence of an ascertainable limit to the amount of money which may be devoted to the object contemplated, no appropriation is made." *Id.* at 887; *see also Ristine v. State,* 20 Ind. 328, 344 (1863) (stating a statute would have "specified a fixed sum . . . had it been intended to make an appropriation"); *Peabody v. Russel,* 134 N.E. 150, 152 (Ill. 1922) ("The constitutional provision requires a definite amount for a definite object and purpose.").

The Oregon Supreme Court investigated primary sources and found "according to the weight of authority[,] the amount of an appropriation must be definite and certain[.]" *See, e.g.*, *Holmes v. Olcott,* 189 P. 202, 205 (Or. 1920).

The Nebraska Supreme Court perhaps said it best in 1896. After reviewing "the origin and history of appropriations, as well as the general lexicographic meaning of the word, to 'appropriate[,]'" the court held that an "appropriation" means "to set apart from the public revenue *a certain sum of money* for a specified object, in such manner that the executive officers of the government are authorized to use that money, and no more, for that object, and for no other." *State ex rel. Norfolk Beet-Sugar Co. v. Moore*, 69 N.W. 373, 376 (Neb. 1896) (emphasis added).

The Nebraska court considered the same sort of funding mechanism FHFA employs and determined it was inconsistent with a constitutional appropriation. The court said, "[i]t is hardly possible that the court would have considered an appropriation of 'so much as may be necessary' *without fixing any amount*, as a valid appropriation, were a legislative appropriation necessary." *Id.* at 376 (emphasis added). The court could not discover a single case under any constitutional provision where an appropriation was valid when it was uncertain in its amount. *Id.* at 377. "[C]ertainty in amount is treated as an essential requisite of a valid appropriation." *Id.* at 378.

Commenters of the period concurred. "[I]t seems difficult to say that the provision to make available to the executive an indefinite fund for indefinite purposes–with no limitation as to amount but the size of the current general fund, and no limitation as to object but use for 'ordinary regular work'—is such an appropriation as the constitution anticipated." *See The Appropriations Power: Constitutionality of Indefinite Appropriations*, 38 Harv. L. Rev. 250, 251 (1924).

d. This Court's *CFPB* Decision.

CFPB aligns with this authority. There, Congress provided CFPB with a standing source of funds outside the annual appropriations process. *CFPB*, 601 U.S. at 422. Congress passed a statute permitting CFPB to "requisition from the earnings of the Federal Reserve System 'the amount determined by [CFPB's] Director to be reasonably necessary to carry out' its duties, subject only to a statutory cap." *Id.* (citing 12 U.S.C. § 5497(a)(1)). CFPB could not "request more than 12 percent of the Federal Reserve

System's total operating expenses as reported in fiscal year 2009 (adjusted for inflation)." *Id.* at 422-23.

CFPB used the requisitioned funds to issue a regulation covering high-interest consumer loans. *Id.* at 423. Trade associations sued, arguing CFPB takes unappropriated government money. *Id.* They "contend[ed] that the Bureau's funding mechanism is too open-ended in duration and amount to satisfy the requirement that there be an 'Appropriatio[n] made by Law.'" *Id.* at 426.

This Court held that CFPB's funding statute contained the necessary characteristics of a constitutional appropriation. *Id.* at 435. The Court explained, "[t]he statute authorizes the Bureau to draw public funds from a particular source—'the combined earnings of the Federal Reserve System,' *in an amount not exceeding an inflation-adjusted cap*." *Id.* (emphasis added). It underscored that "the Bureau's authorization to draw an amount that the Director deems reasonably necessary to carry out the agency's responsibilities, *subject to a cap*, is similar to the First Congress' lump-sum appropriations." *Id.* (emphasis added). The Court reasoned that, when enacting a standing appropriation, "Congress determined the amount of the Bureau's annual funding *by imposing a statutory cap* . . . The only sense in which the Bureau decides its own funding, then, *is by exercising its discretion to draw less than the statutory cap*." *Id.* at 436 (emphases added).

The Court stressed the importance of the statutory cap no fewer than thirteen times. With the statutory cap as the linchpin, this Court held that the Appropriations Clause was satisfied. *Id.* "[W]e cannot conclude that Congress

violated the Appropriations Clause by permitting the Bureau to decide how much funding *to draw up to a cap*." *Id*. (emphasis added).

Both the Ninth Circuit and the district court downplayed the statutory cap's importance and dissected *CFPB* like the opinion was a statute. They myopically focused on a couple of sentences to the exclusion of the opinion's entire reasoning and context.

To be sure, *CFPB* said, "an appropriation is simply a law that authorizes expenditures from a specified source of public money for designated purposes" and "we conclude that appropriations need only identify a source of public funds and authorize the expenditure of those funds for designated purposes to satisfy the Appropriations Clause." *Id*. at 424, 426. But because CFPB had a cap, the challengers "offer[ed] no defensible argument that the Appropriations Clause requires more than a law that authorizes the disbursement of *specified funds* for identified purposes." *Id*. at 438 (emphasis added).

Even so, the Court summarized that an appropriation "needed to designate *particular revenues* for identified purposes" either by "require[ing] expenditure of a *particular amount*" or "allow[ing] the recipient of the appropriated money *to spend up to a cap*." *Id*. at 431-32 (emphases added). In context, the Court's use of "specified funds" and "particular revenues" encompasses more than an identified source—those phrases encapsulate the concept of an identifiable amount. No more definitive statement was needed to resolve *CFPB*.

Thus, *CFPB* holds—consistent with text and history—that the Appropriations Clause requires a cap, sum certain, or other ascertainable limit. The Ninth Circuit's decision is in conflict. It wrongly held that requiring an ascertainable limit would be "expand[ing] upon [*CFPB*'s] requirements." Pet.App.13a. But *CFPB* reflects the Appropriations Clause's textual and historical requirement for an ascertainable limit. Alternatively, the need for an upper limit remains a significant open question to the lower courts after *CFPB* because a cap was present there but did not elicit a clear enough statement. The Court should entertain this petition to (more) explicitly hold that an appropriation requires an ascertainable limit.

e. FHFA's Funding Mechanism is Unconstitutional.

Under the proper understanding of the Appropriations Clause's text, history, and precedent, FHFA's funding mechanism is unconstitutional. Section 4516 contains no cap, sum certain, or other ascertainable limit on the amount that FHFA can extract and spend from the regulated entities. The sky's no limit to how much FHFA's Director may pilfer and then use to foreclose on property owners. The Director may take more than needed and sock it away in a working capital fund for investment. 12 U.S.C. § 4516(a)(3), (e), (f)(6). The Director need not return excess to the regulated entities. *Id.* § 4516(c)(3). And the Director can always require the regulated entities to kick-in more. *Id.* Just as bad, Fannie and Freddie are captured entities through the conservatorship. 12 U.S.C. § 4617(a). Consequently, Fannie and Freddie cannot protest—or sue—over the exactions. This novel combination of features is an unprecedented violation of

the Appropriations Clause. *See Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 505 (2010) ("Perhaps the most telling indication of the severe constitutional problem . . . is the lack of historical precedent for this entity.") (quotations omitted).

2. Congress Cannot Declare the Appropriations Clause Does Not Apply.

Congress sought to avoid the Appropriations Clause requirements completely by decreeing "[t]he amounts received by the Director from any assessment under this section shall not be construed to be Government or public funds or appropriated money." 12 U.S.C. § 4516(f)(2).

Petitioners sought to declare 12 U.S.C. § 4516(f)(2) unconstitutional as part of its Appropriations Clause challenge, 3-ER-476, 481, and they have argued throughout that Congress cannot "declar[e] that FHFA's unilateral funding is outside the Appropriations Clause all together." 9th Cir. Dkt. 22.1 at 21. Petitioners asserted that the Constitution does not permit Congress to simply throw up its hands and decree that the assessments shall not be construed as appropriated money. 9th Cir. Dkt. 10.1 at 15; 2-ER-244 (quoting 12 U.S.C. § 4516(f)(2) and arguing "such congressional disclaimers of any exercise of authority under the Appropriations Clause are extraordinarily unusual").

FHFA defended the statute by saying "it carries no significance to the constitutional analysis at hand[.]" 3-ER-616. FHFA also argued for its constitutionality because other agencies have similar "shall not construe" statutes. 2-ER-191.

The Ninth Circuit seemingly sided with FHFA and effectively did exactly what 12 U.S.C. § 4516(f)(2) says it cannot do: it construed the assessments as appropriated money to dodge the Appropriations Clause violation. But all statutory interpretation "begins with the text." *Ross v. Blake*, 578 U.S. 632, 638 (2016). Courts interpret statutes using their ordinary meaning. *New Prime Inc. v. Oliveira*, 586 U.S. 105, 113 (2019); *see also* Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 69 (2012) ("The ordinary-meaning rule is the most fundamental semantic rule of interpretation.").

Here, courts must take Congress at its word. Congress instructed that the assessments on Fannie and Freddie "shall not be construed as . . . appropriated money." 12 U.S.C. § 4516(f)(2). And Congress gave this instruction even though the Appropriations Clause commands that "[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." U.S. Const. art. I, § 9, cl. 7. In other words, Congress purported to authorize FHFA to spend unappropriated money. Its attempted end-run around the Appropriations Clause is obviously unconstitutional. Without acknowledging it, the courts below rescued FHFA by construing the assessments as appropriated money, which meet the Appropriations Clause requirements. But "shall not construe" means "shall not construe." Courts must live with the language Congress enacted and cannot rewrite a statute to save an otherwise unconstitutionally structured agency.

Members of this Court have recognized that analogous "shall not construe" statutes are constitutionally problematic. In his *CFPB* dissent, Justice Alito addressed

a comparable statute—12 U.S.C. § 5497(c)(2). 601 U.S. at 451. Like 12 U.S.C. § 4516(f)(2), that statute states "[f]unds obtained by or transferred to the Bureau Fund shall not be construed to be Government funds or appropriated monies." 12 U.S.C. § 5497(c)(2). Justice Alito observed that "Congress appears to have anticipated that it might be challenged under the Appropriations Clause, and Congress therefore attempted to shield its new creation[.]" *CFPB*, 601 U.S. at 451. Justice Alito rightly noted Congress obviously cannot evade the Appropriations Clause in this way. *Id.* at 451 n.4. The majority did not respond to Justice Alito's point, leaving this issue for another day.

This Court should grant the petition for a writ of certiorari and settle that Congress cannot label appropriated monies as "unappropriated" monies to avoid the Appropriations Clause's requirements.

3. FHFA's Funding Mechanism Violates the Nondelegation Doctrine.

The Ninth Circuit also incorrectly held that FHFA's funding mechanism does not violate the nondelegation doctrine. Pet.App.14a-15a. Even if the Appropriations Clause does not require an upper limit, "there may be other constitutional checks on Congress' authority to create and fund an administrative agency[.]" *CFPB*, 601 U.S. at 441. The nondelegation doctrine is one of those other constitutional checks. It requires either a quantitative or qualitative top on how much agencies can raise and spend when they regulate a large swath of the national economy.

The Constitution provides that "[a]ll legislative Powers herein granted shall be vested in a Congress of the United States." U.S. CONST. art. I, § 1. This provision vests all legislative power in Congress. The text does not permit any delegation of those powers. *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 472 (2001).

All the same, this Court has held that Congress may delegate some of its legislative power if Congress "lay[s] down by legislative act an intelligible principle to which the person or body authorized to fix such rates is directed to conform[.]" *J.W. Hampton, Jr., & Co. v. U.S.*, 276 U.S. 394, 409 (1928). This Court "generally assesse[s] whether Congress has made clear both the general policy that the agency must pursue and the boundaries of [its] delegated authority." *FCC v. Consumers' Rsch.,* 606 U.S. 656, 673 (2025) (cleaned up).

The Ninth Circuit called the intelligible principle standard it applied to FHFA "an exceedingly modest limitation." Pet.App.15a (quotations omitted). And, without delving into FHFA's statutory scheme, the Ninth Circuit held FHFA's funding mechanism passes muster because this Court and the Circuit have approved broader delegations under differently worded statutes. Pet.App.14a-15a.

But each delegation must be reviewed on its own terms. *Consumers' Rsch.*, 606 U.S. at 684. Courts must start with the statutory words and their context. *Gundy v. U.S.*, 588 U.S. 128, 141 (2019). Just because a statutory phrase supplies an intelligible principle in one context does not mean the same statutory phrase will supply it

in every other context. *Consumers' Rsch.*, 606 U.S. at 741 (Gorsuch, J., dissenting).

Plus, "[t]he 'guidance' needed is greater . . . when an agency action will 'affect the entire national economy' than when it addresses a narrow, technical issue (e.g., the definition of 'country [grain] elevators')." *Consumers' Rsch.*, 606 U.S. at 673 (majority quoting *Whitman*, 531 U.S. at 475). Congress must provide a detailed framework if it wants an agency to regulate an entire industry. *See A. L. A. Schechter Poultry Corp. v. U.S.*, 295 U.S. 495, 541-542 (1935).

Here, FHFA wields massive authority over the Nation's housing market, which is vital to overall economic health. Indeed, Congress created FHFA "[w]hen the housing crisis hit in 2008, the companies suffered significant losses, and many feared that their troubling financial condition would imperil the national economy." *Collins*, 594 U.S. at 226. Thus, Congress should have given significant instructions in proportion to FHFA's significant power. Congress didn't.

Instead, Congress completely abdicated its legislative power to FHFA. Section 4516(a) simply tells the Director to assess an "amount *sufficient* to provide for *reasonable* costs (including administrative costs) and expenses of the Agency[.]" (emphasis added). There is no numerical cap, sum certain, or other ascertainable limit like a formula. There is no qualitative limit that substitutes for a numerical maximum.

Consumers' Research stands in stark contrast. There, this Court confronted a nondelegation doctrine challenge

to the FCC's universal service contribution mechanism. *Consumers' Rsch.*, 606 U.S. at 664. Like Section 4516(a), the relevant statute stated that the contributions collected must be "sufficient" to "advance universal service." *Id.* at 667. The Court reasoned that "sufficient" could be an intelligible principle, even without a numerical cap, if the statute prescribed the things on which the agency can spend those funds. *Id.* at 680-81. There must be an answer to "[s]ufficient for what?" *Id.* at 682. If the scope and content of the regulatory program is indeterminate "then the 'sufficiency' ceiling will do no serious work." *Id.* at 682-83.

The Court upheld the universal service contribution mechanism even though it lacked a quantitative cap because there were qualitative constraints on the agency. *Id.* at 681-85. The statute provided at least three criteria to decide which communications services fit within the definition of "universal service" and six "principles" for all universal service policies. *Id.* at 667-68, 684-85. These instructions were enough to provide intelligible principles guiding how much money was "sufficient." *Id.* at 691.

But Section 4516(a) contains no qualitative constraints on "sufficient" or "reasonable" resembling *Consumers' Research*. Far from conclusive criteria or principles, Section 4515(a) does not contain a complete list of operations that the assessments are meant to fund. Section 4516(a) leaves it open-ended through the use of the word "including—." Subsections 4516(a)(1) to (4) provide a non-exhaustive list of four operational activities. One of the four is a "working capital fund" that itself has no statutory maximum balance. Similarly, Section 4516(f)(4) allows the Director to "use any amounts received by the Director

from assessments under this section . . . for all other expenses of the Director and the Agency"—including "compensation of the Director." Below, FHFA admitted this list only "set[s] forth examples of what should be considered 'reasonable costs'" "*among other things*." 9th Cir. Dkt. 17.1 at 59 (emphasis added).

Without more corresponding substance to inform "sufficient" and "reasonable," those mushy words are not intelligible principles. *See Consumers' Research*, 606 U.S. at 682-85 (sufficient); *In re Certified Questions From United States Dist. Ct., W. Dist. of Michigan, S. Div.*, 958 N.W.2d 1, 22 (Mich. 2020) ("The word 'reasonable'—far from imposing a significant or in any way meaningful standard upon the [Executive]—is essentially surplusage. It neither affords direction to the [Executive] for how to carry out the powers that have been delegated to her nor constrains her conduct in any realistic manner."). There is no bounded answer to "[s]ufficient for what?" *Consumers' Rsch.*, 606 U.S. at 682.

And even if there was an answer, providing intelligible principles for what the Agency can *do* is different from providing intelligible principles for how much the Agency can *spend*. Describing what an agency can spend on says nothing about how much the agency can spend doing it.

Unlike other approved delegations, Section 4516 does not task the Director with finding facts. There are no factors, directions, or considerations to lead the Director to any particular amount. There are no standards or conditions. The Director has complete and absolute discretion to decide whatever is "sufficient" and "reasonable." The Director is accountable to no

one. There is no way for the courts—or the public—to judge if FHFA is overspending on foreclosures or other operations. *Consumers' Rsch.*, 606 U.S. at 673 (there must be "sufficient standards to enable both the courts and the public to ascertain whether the agency has followed the law") (cleaned up). There is nothing controlling when too much is too much.

The district court proved the point. The district court denied that the Director "could theoretically allow the FHFA to purchase gold staplers and the like [because no] one would argue that gold staplers are reasonable[.]" Pet.App.48a-49a. But the district court did not answer the underlying question: what statutory provision would stop him? Surely, some future Director may consider a gold stapler a "reasonable cost" for the agency. The nondelegation problem is not answered by saying no one would do such a thing. "The point is not one of motives, but of constitutional authority, for which the best of motives is not a substitute." *Panama Ref. Co. v. Ryan*, 293 U.S. 388, 420 (1935).

In this statutory context where FHFA manipulates the gears of the housing market—and can decide who does and doesn't keep their home—Congress did not provide intelligible principles to cage the Director's discretion. There must be a quantitative or qualitative maximum on how much an agency can raise and spend. Indeed, *CFPB*'s author—Justice Thomas—joined Justice Gorsuch's *Consumers' Research* dissent to urge that the nondelegation doctrine requires some cap, any cap, on agency revenue generating and expenditures. 606 U.S. at 743 (Justice Gorsuch, with whom Justice Thomas and Justice Alito join, dissenting) ("Forcing

Congress to supply some cap, any cap, would advance the nondelegation doctrine's purpose of ensuring that the lines of accountability [remain] clear.") (quotations omitted).

All this suggests that the Appropriations Clause and nondelegation doctrine mandate an ascertainable limit.

B. The Questions Presented are Exceptionally Important.

This case has great significance beyond the parties. "[T]here can be no question that the FHFA's control over Fannie Mae and Freddie Mac can deeply impact the lives of millions of Americans by affecting their ability to buy and keep their homes." *Collins*, 594 U.S. at 255. FHFA regulates a vital part of the economy. *Id*. at 226. Every year, FHFA oversees thousands and thousands of foreclosures. 3-ER-471. FHFA's decision to spend more or less on foreclosures affects housing prices and homebuyers. There should be no doubt—or market uncertainty—about whether FHFA is constitutionally raising and spending money to foreclose on thousands of homes and families.

Agencies with unlimited budgets outside Congress's appropriations process pose dangers to everyone's liberty. The Appropriations Clause and the nondelegation doctrine are safeguards against tyranny. The Appropriations Clause is "a bulwark of the Constitution's separation of powers" that gives Congress "exclusive power over the federal purse" as "a restraint on Executive Branch officers." *U.S. Dep't of Navy v. FLRA*, 665 F.3d 1339, 1346-47 (D.C. Cir. 2012) (Kavanaugh, J.). The nondelegation doctrine reinforces this protection because "[t]here can be no liberty where the legislative and executive powers are

united in the same person, or body of magistrates.'" *See Gundy*, 588 U.S. at 156 (Gorsuch, J., dissenting) (quoting The Federalist No. 47, at 302 (Madison)).

The Framers understood that vesting the powers of "the sword and the purse" in a single Branch "would furnish one body with all the means of tyranny." 2 Elliot, The Debates In The Several State Conventions On The Adoption Of The Federal Constitution 348-49 (2d ed. 1891) (statement of Alexander Hamilton). To avoid that result, the Constitution granted *Congress* "the power over the purse," so that Congress—and ultimately, the People—could exert "a controlling influence over the executive power." 2 Joseph Story, Commentaries on the Constitution of the United States § 530 (3d ed. 1858).

Limitless, self-funding agency structures—like FHFA's—destroy the separation of powers by handing the Executive Branch the purse and the sword. Equally troubling, this structure allows the Executive to choose the depth of its purse and size of its sword. "If [FHFA's] funding structure is constitutionally ignored, this will not be the last federal agency to assume a level of fiscal independence that shields it from any effective public accountability." *CFPB v. All Am. Check Cashing, Inc.*, 33 F.4th 218, 237 (5th Cir. 2022) (Jones, J., concurring). "Other powerful agencies are already champing at the bit for such budgetary independence." *Id.* FHFA's funding scheme "provides a blueprint" for undermining the "system of checks and balances." *Free Enter. Fund*, 561 U.S. at 500.

The Court should grant the petition for a writ of certiorari to protect all Americans' property rights and liberties.

CONCLUSION

For these reasons, this Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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March 30, 2026

APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED JANUARY 2, 2026

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 24-6433

DAISEY TRUST, BY AND THROUGH ITS TRUSTEE EDDIE HADDAD; CAPE JASMINE CT. TRUST, BY AND THROUGH ITS TRUSTEE, EDDIE HADDAD; SATICOY BAY LLC, SERIES 10007 LIBERTY VIEW,

Plaintiffs-Appellants,

v.

FEDERAL HOUSING FINANCE AGENCY; WILLIAM J. PULTE,* IN HIS OFFICIAL CAPACITY AS THE DIRECTOR OF THE FEDERAL HOUSING FINANCE AGENCY,

Defendants-Appellees.

Appeal from the United States District Court
for the District of Nevada
Andrew P. Gordon, Chief District Judge, Presiding

Argued and Submitted October 8, 2025
Las Vegas, Nevada

* We have substituted William J. Pulte as Defendant-Appellee pursuant to Federal Rule of Appellate Procedure 43(c).

Appendix A

Before: Mark J. Bennett, Gabriel P. Sanchez, and Holly A. Thomas, Circuit Judges.

Opinion by Judge H.A. Thomas.

Filed January 2, 2026

OPINION

H.A. THOMAS, Circuit Judge:

Plaintiffs Daisey Trust, Cape Jasmine Court Trust ("Cape Jasmine"), and Saticoy Bay LLC, Series 10007 Liberty View ("Saticoy Bay") sued the Federal Housing Finance Agency ("FHFA") and its Director, alleging that the FHFA's funding mechanism, as established by the Housing and Economic Recovery Act of 2008 ("Recovery Act"), violates the Appropriations Clause and the nondelegation doctrine. The district court dismissed Plaintiffs' amended complaint with prejudice and without leave to amend, ruling that the FHFA's funding mechanism is constitutional. We agree with the district court and affirm.

I.

A.

In 2012, Daisey Trust purchased a property located on Newburg Avenue in North Las Vegas, Nevada. The same year, Cape Jasmine purchased a property located on Desert Pond Avenue in Henderson, Nevada. In 2013,

Saticoy Bay purchased a property located on Liberty View Way in Las Vegas, Nevada. At the time of purchase, each of the properties was encumbered by a deed of trust owned by the Federal National Mortgage Association ("Fannie Mae") or the Federal Home Loan Mortgage Corporation ("Freddie Mac").

Daisey Trust, Cape Jasmine, and Saticoy Bay each sued Fannie Mae's or Freddie Mac's loan servicer in state court, seeking to extinguish the respective deed of trust and to quiet title. Each Plaintiff ultimately lost. The Newburg Avenue, Desert Pond Avenue, and Liberty View Way properties continued to be encumbered by Fannie Mae's or Freddie Mac's respective liens until deed-of-trust foreclosure proceedings were held between 2022 and 2024.

B.

We pause here for a bit of background. "Congress created the Federal National Mortgage Association (Fannie Mae) in 1938 and the Federal Home Loan Mortgage Corporation (Freddie Mac) in 1970 to support the Nation's home mortgage system." *Collins v. Yellen*, 594 U.S. 220, 228, 141 S. Ct. 1761, 210 L. Ed. 2d 432 (2021). Fannie Mae and Freddie Mac "operate under congressional charters as for-profit corporations owned by private shareholders." *Id.* "Their primary business is purchasing mortgages, pooling them into mortgage-backed securities, and selling them to investors." *Id.*

In 2008, during the nation's housing crisis, Congress enacted the Recovery Act in response to fears that Fannie

Mae and Freddie Mac's "troubling financial condition would imperil the national economy." *Id.* at 226; *see also* Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, 122 Stat. 2654; 12 U.S.C. § 4501 *et seq.* The Recovery Act "created the [FHFA], 'an independent agency' tasked with regulating the companies and, if necessary, stepping in as their conservator or receiver." *Collins*, 594 U.S. at 226–27 (quoting 12 U.S.C. §§ 4511, 4617). "The Agency is tasked with supervising nearly every aspect of the companies' management and operations." *Id.* at 230. Pursuant to these powers, "[i]n September 2008, . . . [the] FHFA's Director placed Fannie Mae and Freddie Mac into conservatorship," where they remain today. *Fed. Home Loan Mortg. Corp. v. SFR Invs. Pool 1, LLC*, 893 F.3d 1136, 1143 (9th Cir. 2018). By placing Fannie Mae and Freddie Mac into conservatorship, the FHFA succeeded their "rights, titles, powers, and privileges . . . with respect to [their] assets." 12 U.S.C. § 4617(b)(2)(A)(i).

"[T]he FHFA is not funded through the ordinary appropriations process. Rather, the Agency's budget comes from the assessments it imposes on the entities it regulates. . . ." *Collins*, 594 U.S. at 231. Pursuant to the Recovery Act, "[t]he [FHFA's] Director shall establish and collect from the regulated entities annual assessments in an amount not exceeding the amount sufficient to provide for reasonable costs (including administrative costs) and expenses of the Agency." 12 U.S.C. § 4516(a). These assessments "shall not exceed the amounts sufficient to provide for the costs and expenses" of the four categories of expenses outlined in subsection (a), *id.* § 4516(b)(2), which include expenses of examinations, expenses of

obtaining reviews and credit assessments, and amounts necessary to maintain a working capital fund, *id.* § 4516(a)(1)–(3). "[T]he Director shall remit to each regulated entity any amount of assessment collected from such regulated entity that . . . is in excess of the amount the Director deems necessary to maintain a working capital fund." *Id.* § 4516(e).

The Recovery Act also imposes reporting and auditing requirements on the FHFA. *See id.* § 4516(g)–(h). The FHFA's Director must provide to the Office of Management and Budget "financial operating plans and forecasts" and "quarterly reports of the Agency's financial condition and results of operations," *id.* § 4516(g)(1), and to the Comptroller General "an assertion as to the effectiveness of the internal controls that apply to financial reporting by the Agency," *id.* § 4516(g)(4). The Director must also prepare an annual statement of "assets and liabilities and surplus or deficit;" "income and expenses;" and "sources and application of funds." *Id.* § 4516(g)(2). The Comptroller General "shall annually audit the financial transactions of the Agency" and "submit to the Congress a report of each annual audit." *Id.* § 4516(h)(1)–(2).

C.

Facing the prospect of Fannie Mae's imminent foreclosure upon the Newburg Avenue property, in June 2023, Daisey Trust sued the FHFA and its Director and filed a motion for a temporary restraining order and a preliminary injunction preventing the foreclosure. Daisey Trust also filed an emergency motion to stay foreclosure in September 2023. The district court denied Daisey Trust's motions.

Appendix A

In November 2023, Cape Jasmine and Saticoy Bay were added as plaintiffs to Daisey Trust's lawsuit. That same month, Plaintiffs filed their first amended complaint on behalf of a putative class, alleging violations of the Appropriations Clause and nondelegation doctrine, as well as a state law wrongful foreclosure claim. They argued that the FHFA lacked authority to foreclose on their properties because the FHFA's funding mechanism, as established by the Recovery Act, violates the Appropriations Clause and nondelegation doctrine. The FHFA moved to dismiss the suit based on lack of standing, claim preclusion, lack of subject matter jurisdiction, and failure to state a claim.

In September 2024, the district court granted the FHFA's motion to dismiss. *See Daisey Tr. v. Fed. Hous. Fin. Agency*, No. 2:23-CV-00978-APG-EJY, 2024 U.S. Dist. LEXIS 170766, 2024 WL 4267792, at *1–12 (D. Nev. Sep. 20, 2024). The district court determined that Plaintiffs had standing to pursue their claims against the FHFA, but that Plaintiffs' claims failed on the merits. *See* 2024 U.S. Dist. LEXIS 170766, [WL] at *4–11. As to the Appropriations Clause, the district court determined that the Recovery Act met the requirements set forth in the Supreme Court's decision in *Consumer Fin. Prot. Bureau v. Cmty. Fin. Servs. Ass'n of America, Ltd.*, 601 U.S. 416, 144 S. Ct. 1474, 218 L. Ed. 2d 455 (2024) ("*CFSA*"), because the Recovery Act identified the funding source and purpose for the FHFA. *See* 2024 U.S. Dist. LEXIS 170766, [WL] at *7–10. As to the nondelegation doctrine, the district court determined that the FHFA's limitation to "reasonable costs" in the amount of its assessments was an "intelligible principle" and rejected Plaintiffs' argument

that the Recovery Act grants the FHFA "standardless authority."[1] 2024 U.S. Dist. LEXIS 170766, [WL] at *10–11. The district court also denied Plaintiffs' motion for leave to amend on the ground that amendment would be futile. *See* 2024 U.S. Dist. LEXIS 170766, [WL] at *11. Plaintiffs timely appealed.

II.

We have jurisdiction under 28 U.S.C. § 1291. "We review a district court's determination that a plaintiff has standing de novo." *Am. Encore v. Fontes*, 152 F.4th 1097, 1109 (9th Cir. 2025). "We review dismissals for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) de novo and may affirm on any ground supported by the record." *Sodha v. Golubowski*, 154 F.4th 1019, 1032 (9th Cir. 2025) (quoting *Hansen v. Musk*, 122 F.4th 1162, 1168 (9th Cir. 2024)). "We review the denial of leave to amend a complaint for abuse of discretion, but review de novo the futility of amendment." *Schwartz v. Miller*, 153 F.4th 918, 926 (9th Cir. 2025).

III.

As a preliminary matter, we reject the FHFA's argument that Plaintiffs lack Article III standing to pursue their federal claims. "[T]o satisfy Article III's

1. The district court also determined that Plaintiffs' wrongful foreclosure claim under Nevada state law failed on the merits because it was predicated on the constitutional violations alleged in Plaintiffs' federal claims. *See* 2024 U.S. Dist. LEXIS 170766, [WL] at *11. Plaintiffs do not appeal this decision.

standing requirements, a plaintiff must show (1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Jones v. L.A. Cent. Plaza LLC*, 74 F.4th 1053, 1057 (9th Cir. 2023) (alteration in original) (quoting *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 180–81, 120 S. Ct. 693, 145 L. Ed. 2d 610 (2000)). "Where, as here, a case is at the pleading stage, the plaintiff must 'clearly . . . allege facts demonstrating' each element." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338, 136 S. Ct. 1540, 194 L. Ed. 2d 635 (2016) (alteration in original) (quoting *Warth v. Seldin*, 422 U.S. 490, 518, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975)).

Plaintiffs have plausibly alleged an injury in fact. The FHFA, acting through one of its conservatees, Fannie Mae or Freddie Mac, has foreclosed upon their properties. *See, e.g., FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 381, 144 S. Ct. 1540, 219 L. Ed. 2d 121 (2024) (noting that an "injury in fact can be . . . a monetary injury" or "an injury to one's property"); *Biden v. Nebraska*, 600 U.S. 477, 489, 143 S. Ct. 2355, 216 L. Ed. 2d 1063 (2023) (explaining that "the plaintiff must have suffered an injury in fact—a concrete and imminent harm to a legally protected interest, like property or money"). Such foreclosures are "concrete and particularized" and "actual or imminent" invasions of Plaintiffs' property interests. *Spokeo*, 578 U.S. at 339 (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992)). And,

indeed, the FHFA does not meaningfully dispute that Plaintiffs have plausibly alleged an injury in fact.

Plaintiffs have also plausibly alleged that their injury is traceable to the FHFA's conduct. The FHFA argues that Plaintiffs' alleged injury is self-inflicted because Plaintiffs decided "to purchase investment properties encumbered by federally protected liens for pennies on the dollar and then not to pay off the underlying defaulted loans while Plaintiffs profited." The FHFA claims that these actions—rather than "any feature of [the] FHFA's funding mechanism"—caused any harm Plaintiffs experienced. The FHFA further argues that Plaintiffs' injury is not traceable to the FHFA's actions because, "irrespective even of [the] FHFA's continued existence," Fannie Mae, Freddie Mac, and their loan servicers "would proceed with foreclosures on [Plaintiffs'] properties." The FHFA notes that Fannie Mae and Freddie Mac—not the FHFA—operate "day-to-day foreclosure activity" and fund that activity through revenues collected in their own course of business.

The Supreme Court's decision in *Collins v. Yellen* forecloses the FHFA's arguments. In *Collins*, the Supreme Court made clear that "the relevant inquiry is whether the plaintiffs' injury can be traced to allegedly unlawful conduct of the defendant, not to the provision of law that is challenged." 594 U.S. at 243 (quotations omitted). Here, Plaintiffs allege that the FHFA has exercised unlawfully delegated authority and expended unlawfully appropriated funds to foreclose upon their properties. This allegation is sufficient under *Collins* to establish traceability.

Finally, Plaintiffs' alleged injury is judicially redressable. "If a defendant's action causes an injury, enjoining the action or awarding damages for the action will typically redress that injury." *All. for Hippocratic Med.*, 602 U.S. 381. Plaintiffs' request for declaratory, injunctive, and compensatory relief is sufficient to meet that standard. *See Collins*, 594 U.S. at 243.

IV.

A.

We turn next to the merits of Plaintiffs' claims, beginning with their Appropriations Clause challenge. The Appropriations Clause provides that "[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." U.S. Const. art. I, § 9, cl. 7. "Under the Appropriations Clause, an appropriation is simply a law that authorizes expenditures from a specified source of public money for designated purposes." *CFSA*, 601 U.S. 424.

In *CFSA*, the Supreme Court considered a funding mechanism for the Consumer Financial Protection Bureau ("CFPB") analogous to that at issue here. *See id.* at 421–23. As with the FHFA, Congress "provide[d] the [CFPB] a standing source of funding outside the ordinary annual appropriations process." *Id.* at 422. Specifically, "Congress authorized the Bureau to draw from the Federal Reserve System the amount its Director deems 'reasonably necessary to carry out' the Bureau's duties, subject only to an inflation-adjusted cap." *Id.* at 421

(quoting 12 U.S.C. § 5497(a)(1) and also citing § 5497(a)(2)). The plaintiffs in *CFSA* argued that this statute "usurp[ed] Congress's role in the appropriation of federal funds" by allowing the CFPB to take "federal money without an appropriations act." *Id.* at 424. They also asserted that the statute "allow[ed] the agency to indefinitely choose its own level of annual funding, subject only to an illusory cap." *Id.* at 426.

The Supreme Court rejected the plaintiffs' arguments. The Court held that "[b]ased on the Constitution's text, the history against which that text was enacted, and congressional practice immediately following ratification, . . . appropriations need only identify a source of public funds and authorize the expenditure of those funds for designated purposes to satisfy the Appropriations Clause." *Id.* The Court explained that: (1) "At the time the Constitution was ratified, . . . at a minimum, appropriations were understood as a legislative means of authorizing expenditure from a source of public funds for designated purposes," *id.* at 427; (2) "the origins of the Appropriations Clause confirm that appropriations needed to designate particular revenues for identified purposes," *id.* at 431; and (3) early appropriations post-ratification "displayed significant variety in their structure" but "adhered to the minimum requirements of an identifiable source of public funds and purpose," *id.* at 434. The Court thus determined that the CFPB's "funding statute contains the requisite features of a congressional appropriation" because it "authorizes the Bureau to draw public funds from a particular source" and "specifies the objects for which the Bureau can use those funds." *Id.* at 435.

The funding mechanism for the FHFA, as established by the Recovery Act, is entirely consistent with the rule articulated in *CFSA*. It identifies both a source of funds—the annual assessments the FHFA imposes upon Fannie Mae and Freddie Mac—and a purpose for the expenditure of those funds—"reasonable costs (including administrative costs) and expenses of the Agency." 12 U.S.C. § 4516(a).

Plaintiffs nevertheless argue that the FHFA's funding mechanism violates the Appropriations Clause because the Recovery Act sets "no cap or ascertainable limit on the amount [the] FHFA can extract and spend from the regulated entities." They assert that an appropriation requires a certain sum of money, and that the Supreme Court in *CFSA* "stressed the importance of the statutory cap." Plaintiffs are incorrect.

It is true that the Court noted the existence of a funding cap when describing the funding mechanisms for the CFPB and the Post Office. *See* 601 U.S. at 434–35. It is also true that—in rejecting the argument that the CFPB, "rather than Congress, decides the amount of annual funding that it draws from the Federal Reserve System"—the Court stated that "[t]he only sense in which the Bureau decides its own funding . . . is by exercising its discretion to draw less than the statutory cap." *Id.* at 436. The Court also observed that "'sums not exceeding' appropriations . . . were commonplace immediately after the founding." *Id.*

But as the Supreme Court emphasized, the Appropriations Clause grants Congress a "wide range

of discretion" to devise appropriations with "significant variety in their structure." *Id.* at 431, 434. The Court discussed two founding-era appropriations—the Customs Service and the Post Office—to illustrate those "flexible approaches to appropriations." *Id.* at 433. Congress, for example, "opted for a fee-based model" to fund the Customs Service, in which customs collectors were compensated from the fees they collected and the duties they raised within their districts. *Id.* Congress "adopted a similarly open-ended funding scheme for the Post Office," in which the Postmaster General funded the Post Office through the Office's own revenues and compensated deputy postmasters "subject to an upper limit." *Id.* at 434.

The Court's discussion in *CFSA* makes clear that, to satisfy the Appropriations Clause, Congress need only specify a source and purpose for the expenditure of funds. The Court's historical analysis supports that conclusion: while "[e]arly appropriations displayed significant variety in their structure[,] [e]ach . . . adhered to the minimum requirements of an identifiable source of public funds and purpose." *Id.* The Court's ultimate holding that the Bureau's funding statute satisfied the Appropriations Clause because it "authorizes the Bureau to draw public funds from a particular source" and "specifies the objects for which the Bureau can use those funds" is also consistent with this conclusion. *Id.* at 435. As the Court explained, "[a]lthough there may be other constitutional checks on Congress' authority to create and fund an administrative agency, specifying the source and purpose is all the control the Appropriations Clause requires." *Id.* at 441. Nothing in the Court's decision suggests that we may expand upon these requirements.

B.

We next consider Plaintiffs' argument that the FHFA's funding mechanism violates the nondelegation doctrine. We conclude that it does not. Congress "may confer substantial discretion on executive agencies to implement and enforce the laws." *Gundy v. United States*, 588 U.S. 128, 135, 139 S. Ct. 2116, 204 L. Ed. 2d 522 (2019) (plurality opinion). But the nondelegation doctrine "bars Congress from transferring its legislative power to another branch of Government." *Id.* at 132. "The constitutional question is whether Congress has supplied an intelligible principle to guide the delegee's use of discretion." *Id.* at 135.

The plain text of the Recovery Act contains an intelligible principle that governs the FHFA's ability to collect assessments from the regulated entities: an "amount sufficient to provide for reasonable costs." 12 U.S.C. § 4516(a). Although Plaintiffs argue that the Recovery Act lacks any intelligible principle to justify the delegation of authority to the FHFA, the Supreme Court has repeatedly upheld similar statutes with "broad terms" against constitutional challenges. *United States v. Pheasant*, 129 F.4th 576, 580 (9th Cir. 2025); *see also, e.g., Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381, 398–99, 60 S. Ct. 907, 84 L. Ed. 1263, 1940–1 C.B. 258 (1940) ("just and reasonable" rates); *Nat'l Broad. Co. v. United States*, 319 U.S. 190, 216–17, 63 S. Ct. 997, 87 L. Ed. 1344 (1943) ("public interest, convenience, or necessity"); *Yakus v. United States*, 321 U.S. 414, 423, 427, 64 S. Ct. 660, 88 L. Ed. 834 (1944) ("fair and equitable" prices); *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457,

472–76, 121 S. Ct. 903, 149 L. Ed. 2d 1 (2001) ("requisite to protect the public health"). And we have described "[t]he requirement that Congress set out an 'intelligible principle' to constrain executive discretion" as "'an exceedingly modest limitation.'" *Pheasant*, 129 F.4th at 579 (quoting *United States v. Melgar-Diaz*, 2 F.4th 1263, 1266 (9th Cir. 2021)).

We also reject Plaintiffs' argument that the FHFA's "Director has unfettered discretion to collect whatever amounts she thinks are needed." We recently considered—and rejected—a similar claim in *Pheasant*, where we reviewed a nondelegation challenge to Section 303(a) of the Federal Land Policy and Management Act of 1976 ("FLPMA"). *See id.* Section 303(a) empowers the Secretary of the Interior to "issue regulations necessary to implement the provisions of [the FLPMA] with respect to the management, use, and protection of the public lands, including the property located thereon." *Id.* (alteration in original) (quoting 43 U.S.C. § 1733(a)). The plaintiffs in *Pheasant* argued that "something more than an intelligible principle is required because [the Bureau of Land Management's] mission provides no inherent limitation on the scope of its regulations." *Id.* at 582. But we held that Section 303(a) "easily satisfies the 'intelligible principle' test" because the statute specifies the Secretary's responsibilities and does not permit "the Secretary to issue any regulation he wishes with a colorable connection to the use of public lands." *Id.* at 580–81. The same is true of the Recovery Act: far from conferring upon the FHFA the plenary authority to take any actions it wishes, the Director is constrained to collecting an "amount sufficient to provide for reasonable costs." 12 U.S.C. § 4516(a).

V.

"Leave to amend may be denied if the proposed amendment is futile or would be subject to dismissal." *Hunter v. U.S. Dep't of Educ.*, 115 F.4th 955, 971 (9th Cir. 2024) (quoting *Wheeler v. City of Santa Clara*, 894 F.3d 1046, 1059 (9th Cir. 2018)). Plaintiffs argue that "the mechanism by which [the] FHFA funds foreclosures is unconstitutional and thus [Plaintiffs] can state a set of facts entitling them to relief" should we decline to entirely reverse the district court. But Plaintiffs have not stated a claim, and the parties have already addressed the impact of *CFSA*—which controls the Appropriations Clause issue—in supplemental briefing before the district court. *See Parents for Priv. v. Barr*, 949 F.3d 1210, 1239 (9th Cir. 2020) ("[B]ecause Plaintiffs have not shown that any new factual allegations could alter these conclusions based on settled precedent, amendment would be futile."). Our review today only "confirms that the record clearly dictated the futility of amendment and the district court's decision." *Laws. for Fair Reciprocal Admission v. United States*, 141 F.4th 1056, 1074 (9th Cir. 2025) (quotations and alterations omitted).

VI.

For the reasons discussed above, Plaintiffs have failed to state a claim upon which relief may be granted. As we have also explained, amendment would be futile. The district court's judgment is therefore **AFFIRMED**.

APPENDIX B — JUDGMENT IN A CIVIL CASE OF THE DISTRICT COURT, DISTRICT OF NEVADA, DATED SEPTEMBER 23, 2024

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Case Number: 2:23-cv-00978-APG-EJY

DAISEY TRUST,

Plaintiff,

v.

FEDERAL HOUSING FINANCE AGENCY, *et al.*,

Defendant.

Dated September 23, 2024

JUDGMENT IN A CIVIL CASE

___ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

___ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

__X__ **Decision by Court.** This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

Appendix B

IT IS ORDERED AND ADJUDGED

Plaintiffs' motion to amend ECF No. 52 is DENIED.

IT IS FURTHER ORDERED that the defendants' motion to dismiss ECF No. 36 is GRANTED.

IT IS FURTHER ORDERED that judgment is hereby entered in favor of defendants, Federal Housing Finance Agency et. al, against plaintiff Daisey Trust, and this case is closed.

9/23/2024
Date

DEBRA K. KEMPI
Clerk

/s/ GA
Deputy Clerk

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT, DISTRICT OF NEVADA, FILED SEPTEMBER 20, 2024

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Case No.: 2:23-cv-00978-APG-EJY

DAISEY TRUST, *et al.*,

Plaintiffs,

v.

FEDERAL HOUSING FINANCE AGENCY, *et al.*,

Defendants.

Filed September 20, 2024

Order (1) Granting the Defendants' Motion to Dismiss and (2) Denying the Plaintiffs' Motion to Amend

[ECF Nos. 36, 52]

Defendant Federal Housing Finance Agency (FHFA) is a federal agency that regulates, and acts as conservator for, the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac). Plaintiffs Daisey Trust; Cape Jasmine Court Trust; and Saticoy Bay LLC, Series 10007 Liberty View own or used to own property in Nevada in which

the FHFA (through Fannie Mae or Freddie Mac) has an interest and has threatened or completed a foreclosure on the property. The plaintiffs bring this putative class action against the FHFA and its director Sandra L. Thompson asserting that the way the FHFA is funded violates the United States Constitution's Appropriations Clause and the non-delegation doctrine. The plaintiffs thus contend that the FHFA lacks authority to foreclose on their properties because it cannot constitutionally take any action unless the alleged constitutional defects are corrected. They also bring a claim for wrongful foreclosure under Nevada law based on the same grounds. They seek class-wide injunctive relief against future foreclosures, an order setting aside past foreclosures, various forms of declaratory judgment, damages, and attorney's fees and costs.

The FHFA and Thompson move to dismiss on a variety of grounds, including lack of standing, claim preclusion, lack of subject matter jurisdiction, and that the plaintiffs' claims fail on the merits as a matter of law. The plaintiffs oppose dismissal and seek leave to amend. The FHFA and Thompson oppose amendment.[1]

I grant the defendants' motion to dismiss because the plaintiffs' claims fail on the merits as a matter of law. I deny the plaintiffs' motion to amend because amendment would be futile.

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1. The FHFA and Thompson also move for an order expunging a lis pendens recorded by a non-party that is controlled by the same person who controls the plaintiffs in this case: Iyad "Eddie" Haddad. ECF No. 44. I will address that motion by separate order.

Appendix C

I. BACKGROUND[2]

A. The FHFA

Congress created the FHFA in 2008 when it passed, and the President signed, the Housing and Economic Recovery Act (HERA). ECF No. 34 at 6; *see also* 12 U.S.C. § 4511(a). Under HERA, the FHFA is an "independent agency of the Federal Government." 12 U.S.C. § 4511(a). It is "charged with regulating the federal housing mortgage market, including Fannie Mae and Freddie Mac." ECF No. 34 at 6-7; *see also* 12 U.S.C. § 4511(b). "Fannie Mae and Freddie Mac are for-profit stockholder owned corporations organized and existing under the Federal Home Loan Corporation Act" that "buy and sell mortgages, often pooling them into mortgage-backed securities for investors." ECF No. 34 at 7; *see also* 12 U.S.C. §§ 1451; 1716.

In creating the FHFA, HERA delineated how the agency was to be funded. ECF No. 34 at 7-8. The FHFA's director "shall establish and collect from the regulated entities annual assessments in an amount not exceeding the amount sufficient to provide for reasonable costs (including administrative costs) and expenses of the Agency." 12 U.S.C. § 4516(a). That amount includes "such amounts in excess of actual expenses for any given year as deemed necessary by the Director to maintain a working capital fund in accordance with subsection (e)."

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2. The facts are taken from the first amended complaint and the statutes cited therein.

Id. § 4516(a)(3). Subsection (e) allows FHFA's director to maintain a working capital fund in an "amount the Director deems necessary." *Id.* § 4516(e). The director may adjust the assessment amounts "as necessary" in her discretion, "to ensure that the costs of enforcement activities under [HERA] for a regulated entity are borne only by such regulated entity" and may collect an "immediate assessment" to cover increased costs of supervision of, or enforcement activities against, that regulated entity. *Id.* §§ 4516(c)(2)-(3). FHFA's director may use the assessed funds to compensate the director and other FHFA employees, and for "all other" FHFA expenses. *Id.* § 4516(f)(4).

If there is a surplus from these increased assessments, it must be "deducted from the assessment for such regulated entity for the following semiannual period." *Id.* § 4516(c)(3). The annual assessments are similarly subject to having a surplus applied to the next year's assessments. *Id.* § 4516(d). HERA provides that the amounts the FHFA receives "from any assessment under this section shall not be construed to be Government or public funds or appropriated money." *Id.* § 4516(f)(2). FHFA's director "may request the Secretary of the Treasury to invest such portions of amounts received by the Director from assessments paid under this section that, in the Director's discretion, are not required to meet the current working needs of the Agency." *Id.* § 4516(f)(6).

The FHFA must provide the Office of Management and Budget (OMB) copies of its "financial operating plans and forecasts," as well as quarterly reports on the

FHFA's "financial condition and results of operations." *Id.* § 4516(g)(1). It must annually prepare a statement of its assets and liabilities, whether it has a surplus or deficit, its income and expenses, and the "sources and applications of [its] funds." *Id.* § 4516(g)(2). It also must set up internal controls and report to the Comptroller General of the United States regarding those internal controls. *Id.* § 4516(g)(4). However, the FHFA does not have to obtain the OMB's consent or approval "with respect to any report, plan, forecast, or other information," nor does OMB have "any jurisdiction or oversight over the [FHFA's] affairs or operations." *Id.* § 4516(g)(5).

The Comptroller General must annually audit the FHFA's financial transactions, and representatives of the Government Accountability Office (GAO) have access to the FHFA's books and personnel "to facilitate the audit." *Id.* § 4516(h)(1); *see also id.* § 4524 (providing that the GAO may audit the FHFA's operations and the FHFA's books and records "shall be made available to the Comptroller General"). The Comptroller must submit an annual report to Congress regarding the audit, including recommendations that the Comptroller General "may deem advisable." *Id.* § 4516(h)(2). The report is also provided to the President and the FHFA. *Id.*

HERA authorized the FHFA to put Fannie Mae and Freddie Mac (the Enterprises) into a conservatorship, which the FHFA did in September 2008. *See Fed. Home Loan Mortg. Corp. v. SFR Invs. Pool 1, LLC*, 893 F.3d 1136, 1140 (9th Cir. 2018) ("Exercising a power provided by [HERA], on September 6, 2008, FHFA's

Director placed the Enterprises under the Agency's conservatorship."); *see also* 12 U.S.C. § 4617(a) (allowing FHFA's director to appoint the FHFA "as conservator . . . for a regulated entity"). By placing the regulated entities into conservatorship, FHFA succeeded to Fannie Mae and Freddie Mac's "rights, titles, powers, and privileges . . . with respect to [their] assets." 12 U.S.C. § 4617(b)(2)(A)(i).

B. The Plaintiffs

Plaintiff Cape Jasmine Court Trust owns property located at 167 Desert Pond Avenue in Henderson, Nevada, following a foreclosure sale conducted by a homeowners association (HOA) in 2012. ECF No. 34 at 10. The property is encumbered by a deed of trust that is owned by Fannie Mae or Freddie Mac, but as of the date the first amended complaint (FAC) was filed, a notice of default under the deed of trust had not yet been recorded against the property. *Id.*

Plaintiff Daisey Trust owned property located at 33 Newburg Avenue in North Las Vegas, Nevada, following an HOA foreclosure sale in 2012. *Id.* at 11. The property was encumbered by a deed of trust that Fannie Mae owns. *Id.* In September 2023, "the FHFA directly and/or indirectly directed and controlled a foreclosure sale on the Newburg Property." *Id.* Daisey Trust spent additional funds beyond those it spent at the HOA foreclosure sale to purchase the property at the FHFA's foreclosure sale. *Id.*

Plaintiff Saticoy Bay owned property located at 10007 Liberty View Way in Las Vegas, Nevada. *Id.* at

12. The property was encumbered by a deed of trust that was owned by Freddie Mac or Fannie Mae. *Id.* In 2022, FHFA's loan servicer for this loan foreclosed on the property at FHFA's "direction and control." *Id.* The property was sold to an entity that is not a party to this case. *Id.* at 12-13.

The plaintiffs contend that each of the actual or threatened foreclosures is invalid because the FHFA is unconstitutionally funded. First, they assert that FHFA's funding mechanism violates the Appropriations Clause because the FHFA is funded through assessments from the entities it regulates, it sets its own budget, there is no cap or limit to the amount it can collect, and it spends collected funds "without congressional oversight or any democratic accountability." *Id.* at 14. The plaintiffs allege that "[a]ll FHFA actions as related to foreclosure sales taken without a constitutional appropriation from Congress are void, unlawful, and must be declared so and be set aside." *Id.* at 15.

Second, the plaintiffs allege that HERA violates separation of powers and the non-delegation doctrine because it provides the FHFA with "unbounded powers to determine its funding and spending without providing an intelligible principle to guide the exercise of its vast discretion." *Id.* at 16. The plaintiffs allege that the standard of "reasonable costs" is not an intelligible principle because the FHFA's director "retains boundless discretion to determine" reasonableness. *Id.* at 17. Finally, the plaintiffs assert a wrongful foreclosure claim under state law, alleging that because FHFA's funding

mechanism violates the Appropriations Clause and the non-delegation doctrine, any foreclosures were wrongful. *Id.* at 18.

For the two federal claims, the plaintiffs seek injunctive relief to prohibit future foreclosures, declaratory relief to set aside completed foreclosures, and compensatory damages for themselves and those similarly situated who were foreclosed on and either did not buy the property or had to spend additional funds to keep the property. *Id.* at 15, 17, 19. For the wrongful foreclosure claim, the plaintiffs seek compensatory damages for the completed foreclosures. *Id.* at 18-19.

C. Procedural History

Daisey Trust initially was the only plaintiff in this case. ECF No. 1. It moved for injunctive relief to stop an impending foreclosure sale of its Newburg property. ECF Nos. 2; 3. In support of that motion, Daisey Trust relied heavily on a Fifth Circuit case, *Community Financial Services Association of America, Limited v. Consumer Financial Protection Bureau*, which found that the funding mechanism of the Consumer Financial Protection Bureau (CFPB), which has some similarities to FHFA's funding mechanism, violated the Appropriations Clause. 51 F.4th 616, 642 (5th Cir. 2022). The Supreme Court of the United States granted certiorari to hear the case on February 27, 2023. *Consumer Fin. Prot. Bureau v. Cmty. Fin. Servs. Ass'n of Am., Ltd.*, 143 S. Ct. 978, 215 L. Ed. 2d 104 (2023).

Appendix C

I held a hearing on the motion for injunctive relief in September 2023. ECF Nos. 31; 32. I denied the motion because I found that Daisey Trust was not likely to succeed on the merits of its claims, as I concluded that cases from the Second and D.C. Circuits were more persuasive than the Fifth Circuit's decision. ECF No. 32 at 92-94; *see also Consumer Fin. Prot. Bureau v. L. Offs. of Crystal Moroney, P.C.*, 63 F.4th 174 (2d Cir. 2023); *PHH Corp v. The Consumer Fin. Prot. Bureau*, 881 F.3d 75, 434 U.S. App. D.C. 98 (D.C. Cir. 2018), *overruled in part on other grounds by Seila L. LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 205, 140 S. Ct. 2183, 207 L. Ed. 2d 494 (2020). I also commented that Daisey Trust may have a problem with claim preclusion. ECF No. 32 at 92-93. At the time, the defendants' first motion to dismiss the original complaint was still pending. *Id.* at 94. Given that I denied the motion to enjoin the foreclosure sale, and in light of the discussion at the hearing, I directed the parties to consider next steps in the case and to provide a status report. *Id.* at 105-08.

The parties thereafter agreed that Daisey Trust could file an amended complaint, which Daisey Trust did. ECF Nos. 33 at 2; 34. The FAC added as plaintiffs Cape Jasmine and Saticoy Bay, and it proposed a putative class action. ECF No. 34. In light of the FAC, I denied the original motion to dismiss as moot. ECF No. 35. The defendants then moved to dismiss the FAC. ECF No. 36.

After the briefing was completed on the second motion to dismiss, the Supreme Court of the United States issued its decision in *Consumer Fin. Prot. Bureau v. Cmty.*

Fin. Servs. Ass'n of America, Ltd., 601 U.S. 416, 144 S. Ct. 1474, 218 L. Ed. 2d 455 (2024) (*CFSA*). The Supreme Court reversed the Fifth Circuit's decision and held that the CFPB's funding mechanism complied with the Appropriations Clause. *Id.* at 421.

I immediately directed the parties to "confer about how the decision impacts this case, and whether it requires amendment of the first amended complaint, withdrawal and refiling of the pending motion to dismiss, or some other action." ECF No. 43 at 1. I ordered the parties to "file a joint status report on how the case should proceed in light of this new authority." *Id.*

The parties filed a joint status report in which the plaintiffs proposed to file a second amended complaint to focus their allegations on the major difference between CFPB's funding mechanism and the FHFA's: the existence of a spending cap in CFPB's funding mechanism. ECF No. 45 at 3. The plaintiffs conceded that the FAC and the motion to dismiss briefs already addressed this issue. *Id.* The plaintiffs nevertheless wanted to amend because the lack of a cap was not their central argument before *CFSA* and because *CFSA* narrowed the issues I would need to resolve, thus rendering some of the prior briefing superfluous. *Id.* The defendants opposed amendment because the FAC already alleges an Appropriations Clause violation, and an amendment to more precisely articulate a legal theory is unnecessary. *Id.* at 4. Additionally, the FHFA agreed that the parties' briefs related to the dismissal motion already address the lack of a funding cap. *Id.* The defendants argued an amendment would only

delay resolution and increase expenses with another round of briefing. *Id.* I ordered the parties to file supplemental briefs on *CFSA*'s impact on this case, and the parties did. ECF Nos. 48; 51; 54; 56-57. The plaintiffs also moved to amend, which the defendants opposed. ECF Nos. 52; 55. Consequently, the motions currently pending before me are the defendants' motion to dismiss the FAC, the plaintiffs' motion to amend, and the defendants' motion to expunge the lis pendens and for injunctive relief. In this order, I address the motions to dismiss and for leave to amend.

II. MOTION TO DISMISS (ECF No. 36)

In considering a motion to dismiss, I take all well-pleaded allegations of material fact as true and construe the allegations in a light most favorable to the non-moving party. *Kwan v. SanMedica Int'l*, 854 F.3d 1088, 1096 (9th Cir. 2017). However, I do not "assume the truth of legal conclusions merely because they are cast in the form of factual allegations." *Navajo Nation v. Dep't of the Interior*, 876 F.3d 1144, 1163 (9th Cir. 2017). A plaintiff must make sufficient factual allegations to establish a plausible entitlement to relief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). Such allegations must amount to "more than labels and conclusions, [or] a formulaic recitation of the elements of a cause of action." *Id.* at 555.

A. Standing

The defendants argue that the plaintiffs lack Article III standing because they plead no cognizable injury

where the foreclosures are proper under the loan documents and Nevada law. The defendants contend that it is the plaintiffs' failure to pay off the loan, not the FHFA's funding mechanism, that results in the foreclosures, and the plaintiffs cannot create their own injury by failing to pay off the loan and letting the properties face foreclosure. The defendants also argue that any injury from the foreclosures is not traceable to the FHFA or Thompson's actions because regardless of the funding mechanism for the FHFA, Fannie Mae and Freddie Mac (and/or their loan servicers) would still be entitled to use their own funds to foreclose. The defendants argue that to make a constitutional challenge to a federal agency's funding mechanism, the plaintiffs must show that the agency action would not have been taken but for the funding mechanism, but the plaintiffs cannot make that showing here because the loans were subject to foreclosure before the FHFA was created or the Enterprises went into conservatorship. FHFA also contends that it is not involved in the day-to-day foreclosure activity and has instead determined to allow the Enterprises to handle foreclosure activity. And the defendants contend that the plaintiffs' claims are based on how the FHFA spends its money, not how it raises it, so there is no connection between the alleged violation and the plaintiffs' injuries. They argue that to the extent that the plaintiffs' claim is now narrowed to the lack of a spending cap in FHFA's funding mechanism, there is no connection between that alleged defect and the foreclosures because there is no basis to conclude that if FHFA had a spending cap, the ability to conduct foreclosures would be one of the things that FHFA would not expend funds on. Finally, the defendants argue that

the mismatch between the plaintiffs' injuries and their challenge to FHFA's funding mechanism means their claims are not redressable.

The plaintiffs respond that they have rights in the properties they own and thus suffer an injury in fact when their ownership interests are jeopardized or extinguished through foreclosure, and through having to pay more money to keep their properties if they want to avoid foreclosure. They contend that they suffer these injuries when FHFA lacks a constitutional source of funds to carry out the foreclosures, even if the foreclosures would otherwise be lawful. The plaintiffs argue that their injuries are traceable to FHFA's conduct of "unconstitutionally raising and spending unappropriated funds to control and direct" foreclosures. ECF No. 39 at 17. The plaintiffs argue that the FHFA cannot divorce itself from the day-to-day foreclosure activities because under HERA, it succeeded to all the Enterprises' rights and powers, so the Enterprises' foreclosure rights now belong to the FHFA. The plaintiffs contend that in other litigation, Fannie Mae has asserted that the FHFA regulates its mortgage and foreclosure activities. And the FHFA has made public statements indicating that it has decision-making authority over foreclosures. The plaintiffs assert that their injuries are redressable in the form of injunctive relief to stop future foreclosures, declaratory relief setting aside completed foreclosures, and damages. Finally, they argue that excising the funding mechanism from the statute does not solve the problem because without properly appropriated funds, the FHFA cannot take any foreclosure actions.

Appendix C

To have Article III standing, the plaintiffs must show "(1) that they have suffered an injury in fact, (2) that their injury is fairly traceable to a defendant's conduct, and (3) that their injury would likely be redressed by a favorable decision." *Mecinas v. Hobbs*, 30 F.4th 890, 896 (9th Cir. 2022). Because this case is at the pleading stage, the plaintiffs may meet their burden of showing standing through "general factual allegations of injury resulting from the defendant's conduct." *Id.* at 897 (quotation omitted).

To allege an "injury in fact," the plaintiffs' injury "must be concrete and particularized and actual or imminent, not conjectural or hypothetical." *Id.* (quotation omitted). "The fairly traceable and redressability components for standing overlap and are two facets of a single causation requirement." *Id.* at 899 (simplified). "However, they are distinct in that traceability examines the connection between the alleged misconduct and injury, whereas redressability analyzes the connection between the alleged injury and requested relief." *Id.* (quotation omitted). Thus, to "establish traceability, there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court." *Id.* (quotation omitted). Finally, "redressability analyzes the connection between the alleged injury and requested judicial relief." *Tucson v. City of Seattle*, 91 F.4th 1318, 1325 (9th Cir. 2024). For redressability, the question "is not whether a favorable decision is likely but whether a favorable decision likely will redress a plaintiff's injury."

Id. (simplified). In other words, an injury is redressable if "the district court had the power to prevent the injury at the time the complaint was filed." *Id.* (quotation omitted). The "plaintiff's burden to demonstrate redressability is relatively modest." *Id.* (quotation omitted).

The plaintiffs have plausibly alleged injuries-in-fact. Two of the plaintiffs' properties have been foreclosed on and the other is likely to face foreclosure soon. Although the defendants argue this is self-inflicted harm because the plaintiffs could pay off the loans, the plaintiffs were not the original borrowers, and they owe nothing on the loans. True, they bought the properties subject to the deeds of trust, and thus could pay off the loans and save their properties from foreclosure. But that does not mean they suffer no injury when an agency that allegedly lacks a constitutional source of funds takes action that would otherwise be lawful, as the plaintiffs assert the defendants have done or will soon do.

The plaintiffs also have plausibly alleged traceability because they can trace their injuries to the defendants' alleged unlawful conduct of collecting and spending funds that they obtained in violation of the Constitution to direct and conduct foreclosures. I agree with the defendants that the plaintiffs' injuries are not directly traceable to the FHFA's funding mechanism because prior to the FHFA's existence, Fannie Mae and its servicers could have foreclosed on the properties under the deeds of trust. HERA's enactment created the FHFA and gave the FHFA the power to put Fannie Mae and Freddie Mac into conservatorship. If the plaintiffs are correct that FHFA

was unconstitutionally funded such that it could take no action without violating the Appropriations Clause and the non-delegation doctrine, then the FHFA could not have put Fannie Mae or Freddie Mac into conservatorship in the first place. In that case, the Enterprises would exist outside FHFA's conservatorship and could foreclose.[3] On the other hand, if the plaintiffs are incorrect about the FHFA's funding mechanism being unconstitutional, then the FHFA (through the Enterprises and their servicers) can foreclose. Either way, the plaintiffs' properties are subject to foreclosure.

However, the Supreme Court has held that to establish standing, a plaintiff must trace its injury to the defendant's "allegedly unlawful conduct . . . , not to the provision of law that is challenged." *Collins v. Yellen*, 594 U.S. 220, 243, 141 S. Ct. 1761, 210 L. Ed. 2d 432 (2021) (quotation omitted). In *Yellen*, shareholders of the Enterprises challenged an agreement the FHFA made with the Department of Treasury based, in part, on the argument that FHFA's director was unconstitutionally insulated from removal by the President. *Id.* at 227. The Supreme Court rejected the argument that the shareholders' financial injuries were not traceable to the removal restriction because "the relevant action in this case is the [challenged agreement], and because the shareholders' concrete injury flows directly from that [agreement], the traceability requirement

3. The FAC alleges that "FHFA's self-funding structure must be declared unconstitutional and all unconstitutional actions that flow from it must be declared unlawful, set aside, and enjoined." ECF No. 34 at 2. That necessarily would include setting aside the conservatorships of the Enterprises.

is satisfied." *Id.* at 243-44. The Supreme Court did not require the challengers to show that but for the removal restriction, they would not have been injured for standing purposes. *See id.*

Similarly, here, the plaintiffs allege that their injuries stem from the defendants' alleged unlawful conduct of directing and conducting foreclosures by expending funds that were not validly appropriated. Under *Yellen*, even if the plaintiffs are subject to foreclosure regardless of the funding mechanism in a practical sense, they have standing because they can trace their injuries to the defendants' alleged conduct of spending unlawfully appropriated funds to foreclose.[4] The defendants do not attempt to distinguish *Yellen* or explain why that case would not support standing in this case. The cases the defendants cite discuss what remedy to employ after a constitutional defect is found, not whether the plaintiff had standing to bring the claim. *See CFPB v. L. Offs. of Crystal Moroney, P.C.*, 63 F.4th 174, 179-80 (2d Cir. 2023); *CFSA*, 51 F.4th at 643. Finally, the plaintiffs' injuries are redressable through their requested declarations, injunctions, and damages. I therefore deny the defendants' motion to dismiss for lack of standing.

4. To the extent FHFA seeks to distance itself from the day-to-day foreclosure activities or asserts that the Enterprises and servicers use their own funds and not appropriated funds to foreclose, those arguments rely on facts outside the FAC, so I do not consider them at this stage.

B. Section 4617(f)

The defendants argue that I lack jurisdiction to grant the plaintiffs' requested injunctive relief because 12 U.S.C. § 4617(f) provides that "no court may take any action to restrain or affect the exercise of powers or functions of [FHFA] as a conservator or receiver." They contend that because the FHFA is acting as a conservator over the Enterprises, an order enjoining foreclosures would violate this statutory command. The defendants contend that the alleged constitutional violations do not nullify § 4617(f) because if FHFA's funding mechanism violates the Constitution, the proper remedy is to excise the funding mechanism, not to invalidate the entire statute. The defendants assert that FHFA's powers as conservator are not dependent on the funding mechanism, so even if that violates the Constitution, it should be severed from the other parts of the statute that allow it to act as conservator.

The plaintiffs respond that § 4617(f) does not bar their claims because, under *Yellen*, the statute bars relief where the FHFA acted within its authority but permits a plaintiff to pursue a claim that the FHFA exceeded its authority. The plaintiffs contend that the FHFA exceeds its authority by raising and expending funds in violation of the Appropriations Clause and the non-delegation doctrine. Additionally, they argue that § 4617(f) does not clearly evince congressional intent to preclude judicial review of constitutional claims.

HERA provides that unless review is specifically authorized by one of its provisions or the director requests it, "no court may take any action to restrain or

affect the exercise of powers or functions of the Agency as a conservator or a receiver." 12 U.S.C. § 4617(f). This provision "prohibits relief where the FHFA action at issue fell within the scope of the Agency's authority as a conservator, but . . . relief is allowed if the FHFA exceeded that authority." *Collins v. Yellen*, 594 U.S. at 237. Thus, if "the FHFA does not exercise but instead exceeds those powers or functions, [§ 4617(f)] imposes no restrictions." *Id.*

FHFA exercises its powers as conservator by directing and conducting foreclosures because by placing the Enterprises into conservatorship, it succeeded to the Enterprises' rights and powers, including the right and power to foreclose. *See* 12 U.S.C. § 4617(b)(2)(A)(i). Thus, § 4617(f) would bar this suit if the plaintiffs were solely bringing a statutory claim. *See Yellen*, 594 U.S. at 237. However, in *Yellen*, the Supreme Court considered a challenge to the constitutionality of the removal provision of the FHFA's director despite finding that a statutory challenge was barred by § 4617(f). *Id.* at 242, 250-53. Thus, § 4617(f) does not bar constitutional claims even where the FHFA exercised its powers as conservator.[5]

To the extent § 4617(f) is jurisdictional,[6] I have jurisdiction to consider the plaintiffs' constitutional claims

5. FHFA is subject to constitutional claims in its role as conservator because its authority derives from HERA. It must interpret HERA in deciding what it can and cannot do, and its powers under HERA differ from common law conservators. *See Yellen*, 594 U.S. at 253-54.

6. I take no position on whether § 4617(f) is jurisdictional as the defendants assert.

for injunctive relief. Because I have jurisdiction to review the plaintiffs' claims for at least one form of relief, I may reach the merits without deciding whether I also have jurisdiction over the plaintiffs' damages claims[7] because I conclude the plaintiffs' claims fail as a matter of law regardless of the type of relief requested.

D. Merits[8]

1. Appropriations Clause

The Appropriations Clause provides that "[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." Art. I, § 9, cl. 7. The parties do not dispute that FHFA's funding is subject to the Appropriations Clause. They dispute only whether FHFA's funding complies with that clause.

The defendants argue that the Appropriations Clause claim fails because, under *CFSA*, the FHFA's funding mechanism must only identify a source of funds for designated purposes, which HERA does. The defendants argue that historical examples confirm that assessment-based funding complies with the Appropriations Clause, as demonstrated by the Post Office Act of 1792, and other agencies that are funded through assessments or fees.[9]

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7. The defendants offer numerous theories as to why I lack jurisdiction to consider the plaintiffs' damages claims.

8. I decline to address the defendants' claim preclusion argument. The plaintiffs' claims fail on the merits.

9. The defendants point to the funding of the Federal Reserve, the Office of the Comptroller of the Currency, the

And they assert that there is no additional requirement that the source of funds be subject to a spending cap. They contend that although the *CFSA* majority mentioned that the CFPB's funding statute included a spending cap, *CFSA* did not hold that a cap is required for a valid appropriation. The defendants assert that this is confirmed by the dissent's critique that the majority's test for a valid appropriation does not require an upper limit, and the majority did not dispute that interpretation of its test under the Appropriations Clause. And the defendants assert that the *CFSA* majority endorsed the CFPB's structure based on the historical example of two other entities that were funded from fees and commissions without a statutory cap: the Customs Service and the Post Office. They also argue that if a cap was required, then the *CFSA* majority would have addressed the challengers' argument in that case that the cap for the CFPB was set so high as to be illusory, but it did not.

The plaintiffs concede that *CFSA* has narrowed the issues in this case. But they argue that *CFSA* confirmed that a valid appropriation must be limited in amount by a sum certain or a cap. They assert that unlike the CFPB, the FHFA has no cap on the amount of money it can raise or spend. The plaintiffs contend this is a fatal flaw under the Appropriations Clause and *CFSA*.

National Credit Union Administration, the Federal Deposit Insurance Corporation, the Farm Credit Administration, the Public Company Accounting Oversight Board, the National Mint, and the Patent Office as examples of assessment-or fee-based funding.

Appendix C

The majority opinion in *CFSA* concluded that the CFPB's funding mechanism did not violate the Appropriations Clause. 601 U.S. at 421, 435. The CFPB's funding mechanism is similar to the FHFA's with the notable exception of the CFPB having a spending cap. The CFPB is funded by requisitioning from the Federal Reserve System's earnings an "amount its director deems 'reasonably necessary to carry out' the Bureau's duties, subject only to an inflation-adjusted cap." *Id.* (quoting 12 U.S.C. §§ 5497(a)(1), (2)).

The FHFA is similarly funded through annual assessments on the entities it regulates "in an amount not exceeding the amount sufficient to provide for [the FHFA's] reasonable costs." 12 U.S.C. § 4516(a). HERA identifies some of those costs, including compensating the director and other FHFA employees of the agency, expenses for examinations, obtaining reviews and credit assessments, winding up affairs of certain entities, and maintaining a working capital fund. *Id.* §§ 4516(a)(1)-(4), 4516(f)(4). With respect to the working capital fund, the director is authorized to collect assessments greater than the FHFA's "actual expenses" in an amount she "deem[s] necessary . . . to maintain a working capital fund." *Id.* §§ 4516(a)(3), (e). The FHFA may keep any surplus at the end of the year for which the assessments were collected, but the FHFA must credit that amount to the Enterprises for the next year. *Id.* § 4516(d). The director also must remit to each regulated entity any surplus in the working capital fund that is "in excess of the amount the Director deems necessary to maintain a working capital fund." *Id.* § 4516(e). Unlike the CFPB, there is no hard cap on the amount the FHFA can raise and spend.

Appendix C

The FHFA is subject to audit and reporting requirements. The FHFA must annually report to the Comptroller General of the United States regarding the financial controls it has established. *Id.* §§ 4516(g)(3), (4). The Comptroller General must annually audit the FHFA's financial transactions and submit a report to Congress and the President. *Id.* §§ 4516(h)(1), (2). The Comptroller General has a statutory right to obtain the FHFA's books and records to complete the annual audits, as well as for other audits of the FHFA that the Comptroller General is authorized to conduct. *Id.* §§ 4516(h)(1), 4524. In addition to the Comptroller General's report to Congress, the FHFA must submit a report on its activities, including the "operations, resources, and performance of the Agency." *Id.* § 4521(a)(6).

CFSA held that "appropriations need only identify a source of public funds and authorize the expenditure of those funds for designated purposes to satisfy the Appropriations Clause." 601 U.S. at 426. The *CFSA* majority's formulation of the rule, stated several times throughout the opinion, does not include a cap or limit on raising or spending funds and instead reiterates that all that is required is a source and a purpose.[10] HERA

10. *See id.* at 427 ("Pre-founding history supports the conclusion that an identified source and purpose are all that is required for a valid appropriation."); *id.* at 434 ("Postratification practice therefore confirms our interpretation of the Appropriations Clause. Early appropriations displayed significant variety in their structure. Each, however, adhered to the minimum requirements of an identifiable source of public funds and purpose."); *id.* at 438 ("The associations offer no defensible argument that the

satisfies those two requirements because it identifies a source (assessments on regulated entities) and the purposes (FHFA's reasonable expenses in exercising its statutory powers).

The *CFSA* majority opinion repeatedly references the fact that the CFPB's funding mechanism includes a cap and that historically some appropriations were made in a sum certain or subject to a cap. *See, e.g.*, *id.* at 421, 422-23, 431-32. And the majority refers to the CFPB's funding cap in rejecting the challengers' argument that the CFPB's funding was not "drawn . . . in Consequence of Appropriations made by Law." *Id.* at 435-36 (quotation omitted). The majority rejected that argument because "Congress determined the amount of the Bureau's annual funding by imposing a statutory cap," so the majority could not "conclude that Congress violated the Appropriations Clause by permitting the Bureau to decide how much funding to draw up to a cap." *Id.* at 436. While this language may lend some support

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Appropriations Clause requires more than a law that authorizes the disbursement of specified funds for identified purposes."); *id.* ("[A]s we have explained at length, both preratification and postratification appropriations practice support our source-and-purpose understanding."); *id.* at 439 ("Congress controls the source and disposition of the money used to finance Government operations and projects by enacting a law that identifies the source of public funds and authorizes the expenditure of those funds for designated purposes." (quotation omitted)); *id.* at 441 ("Although there may be other constitutional checks on Congress' authority to create and fund an administrative agency, specifying the source and purpose is all the control the Appropriations Clause requires.").

to the plaintiffs' argument that a cap is necessary, each time the majority formulated the rule to determine if an appropriation complies with the Appropriations Clause, it identified only two requirements: source and purpose. It did not require a cap.

The *CFSA* dissenters agree with this interpretation of the majority opinion, stating that the majority's interpretation imposes no temporal limit on appropriations, "[n]or does [it] require Congress to set an upper limit on the amount of money that the Executive may take." *Id.* at 448. The majority opinion does not disabuse the dissenters of this interpretation of the holding.

That an appropriation need not be subject to a cap is consistent with the majority opinion and one concurrence's review of other agencies' funding mechanisms, including some that were enacted by the First Congress, particularly, the funding of the Post Office and the Customs Service. *Id.* at 432-34, 442-44. Both were funded through revenue they collected, and neither was subject to a hard cap on how much they could collect or spend. *Id.* The only hard cap on the Post Office's expenditures was on the amount the Postmaster General could pay deputy postmasters. *Id.* at 434. The *CFSA* dissent acknowledges these examples but argues that the Customs Service and the Post Office are different because "funding Government agencies with fees charged to the beneficiaries of their services has long been viewed as consistent with the appropriations requirement." *Id.* at 465. The dissent thereafter distinguishes the CFPB from the FHFA by noting that the FHFA is funded by fees charged on the entities it regulates, suggesting the

dissenters would place the FHFA in the same category as Customs and the Post Office.[11] *Id.* at 467.

In sum, under *CFSA*, all that is required to satisfy the Appropriations Clause is a designated source and purpose. HERA satisfies those two requirements. Consequently, the plaintiffs' Appropriations Clause claim fails as a matter of law.

2. Non-delegation Doctrine

The defendants argue that the plaintiffs' non-delegation doctrine claim fails because that doctrine

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11. The dissent distinguishes the Federal Reserve Board's funding as essentially a historical anomaly. *Id.* at 467 n.16. The Federal Reserve Board is funded through assessments on the federal reserve banks in an amount "sufficient to pay [the Board's] estimated expenses," salaries, and its own building. 12 U.S.C. § 243. There is no hard cap to the assessments, although, like the FHFA, the Board must annually report on its operations to Congress. 12 U.S.C. § 247. The dissent describes the Board as "a unique institution with a unique historical background" related to financial panics "that were widely attributed to the country's lack of a national bank." *CFSA*, 601 U.S. at 467 n.16. The dissent suggests that "[f]or Appropriations Clause purposes, the funding of the Federal Reserve Board should be regarded as a special arrangement sanctioned by history." *Id.* But the dissent does not satisfactorily explain why a "special arrangement sanctioned by history" can overcome an unconstitutional appropriation. *Id.* And the FHFA was also born out of "the devastation wrought by [a] financial crisis." *See id.* at 446; *Schechter*, 295 U.S. at 528 ("Extraordinary conditions do not create or enlarge constitutional power.").

requires only that Congress set out an "intelligible principle to guide the delegee's exercise of authority." ECF No. 36 at 29 (quotation omitted). The defendants argue this standard is satisfied because the FHFA's director may collect assessments annually "in an amount not exceeding the amount sufficient to provide for" the agency's "reasonable costs . . . and expenses." *Id.* (quotation omitted). The defendants contend that HERA also provides examples of reasonable costs, such as expenses incurred in conducting examinations, credit assessments, and an amount to maintain a working capital fund. They contend that other similar, or even more broadly worded, statutes have passed scrutiny under the doctrine.

The plaintiffs respond that allowing the FHFA's director the discretion to determine what is reasonable is an illusory limit governed only by the director's determination of what is reasonable. They argue there are no factors for the director, Congress, or the public to apply to determine when the FHFA has collected too much because there is no limit to how much it can raise and it does not have to return any surplus to the Treasury. They thus contend that allowing the FHFA the ability to raise and spend unlimited funds without any checks on those powers violates the separation of powers and the non-delegation doctrine.

Congress "may not transfer to another branch powers which are strictly and exclusively legislative." *Gundy v. United States*, 588 U.S. 128, 135, 139 S. Ct. 2116, 204 L. Ed. 2d 522 (2019) (quotation omitted). However, Congress

"may confer substantial discretion on executive agencies to implement and enforce the laws." *Id.* That is so because "in our increasingly complex society, replete with ever changing and more technical problems," the Supreme Court "has understood that Congress simply cannot do its job absent an ability to delegate power under broad general directives." *Id.* (simplified). Consequently, "a statutory delegation is constitutional as long as Congress lays down by legislative act an intelligible principle to which the person or body authorized to exercise the delegated authority is directed to conform." *Id.* (simplified). I determine whether Congress has provided an intelligible principle by examining the relevant statute's language. *Id.*

HERA allows the FHFA to collect assessments "in an amount not exceeding the amount sufficient to provide for [the FHFA's] reasonable costs" along with an amount the director "deem[s] necessary . . . to maintain a working capital fund." 12 U.S.C. §§ 4516(a), (a)(3), (e). It also identifies categories of costs the FHFA can incur in carrying out its statutory duties, including compensating the director and other FHFA employees, expenses for examinations, obtaining reviews and credit assessments, and winding up affairs of certain entities. *Id.* §§ 4516(a)(1)-(4), 4516(f)(4). The Supreme Court has found similar (or even broader) descriptions of delegated power to be intelligible principles.[12]

12. *See, e.g., Lichter v. United States*, 334 U.S. 742, 785-86, 68 S. Ct. 1294, 92 L. Ed. 1694 (1948) (upholding delegation of authority to determine "excessive profits"); *American Power & Light Co. v. SEC*, 329 U.S. 90, 104-05, 67 S. Ct. 133, 91 L. Ed. 103 (1946) (upholding delegation of authority to Securities and Exchange

The plaintiffs argue, however, that this case is more akin to one of the few cases in which the Supreme Court has found a violation of the non-delegation doctrine: *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 55 S. Ct. 837, 79 L. Ed. 1570 (1935). In *Schechter*, the President approved a "Live Poultry Code" under the National Industrial Recovery Act. 295 U.S. at 522-23. That Act provided, in relevant part, that upon application by a trade or industrial group, the President "may approve a code or codes of fair competition for the trade or industry." 45 Stat. 195, 196 (June 16, 1933). Once the President approved a code, that code set the relevant industry's "standards of fair competition," the violation of which would constitute unfair competition under the Federal Trade Commission Act. *Id.* The Live Poultry Code's purpose was to establish "a code for fair competition for the live poultry industry" in the New York City metropolitan area and included various specified unfair trade practices. *Schechter*, 295 U.S. at 522-25 (quotation omitted).

Commission to prevent unfair or inequitable distribution of voting power among security holders); *Yakus v. United States*, 321 U.S. 414, 420, 426, 64 S. Ct. 660, 88 L. Ed. 834 (1944) (upholding delegation to Price Administrator to promulgate regulations fixing commodity prices that, "in his judgment will be fair and equitable and will effectuate" the relevant statute's purposes); *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 600, 64 S. Ct. 281, 88 L. Ed. 333 (1944) (upholding delegation to Federal Power Commission to determine "just and reasonable" rates); *Nat'l Broad. Co. v. United States*, 319 U.S. 190, 214, 225-26, 63 S. Ct. 997, 87 L. Ed. 1344, (1943) (upholding delegation to Federal Communications Commission to regulate broadcast licensing "as public convenience, interest, or necessity" require).

The Supreme Court held that this arrangement violated the non-delegation doctrine because the trade groups could propose any code provisions so long as the code was not monopolistic. *Id.* at 538. The President could then "approve or disapprove their proposals as he may see fit," as well as impose his own conditions, so long as the President found that the code would promote trade or industry. *Id.* The Act therefore "supplie[d] no standards for any trade, industry, or activity," did "not undertake to prescribe rules of conduct to be applied to particular states of fact determined by appropriate administrative procedure," and instead authorized that codes be made without legislatively setting standards "aside from the statement of the general aims of rehabilitation, correction, and expansion" of the industry. *Id.* at 541. The Court stated that "[i]n view of the scope of that broad declaration and of the nature of the few restrictions that are imposed, the [President's] discretion . . . in approving or prescribing codes, and thus enacting laws for the government of trade and industry throughout the country, is virtually unfettered." *Id.* at 541-42. The Supreme Court thus held that the Act's delegation of "code-making authority" to the President was unconstitutional. *Id.* at 542.

The FHFA's statutory language bears no resemblance to the National Industrial Recovery Act. It does not delegate standardless authority to the FHFA. Rather, the FHFA is directed to spend its funds for reasonable expenses and to maintain a working capital fund to carry out the FHFA's statutorily prescribed duties. Although the plaintiffs contend that "reasonable" is whatever the FHFA's director says it is, and that could theoretically

allow the FHFA to purchase gold staplers and the like, that very example defeats the plaintiffs' argument. No one would argue that gold staplers are reasonable, nor have the plaintiffs pointed to a closer question of something the FHFA has actually expended funds on that would arguably be unreasonable. Reasonableness is an intelligible principle, particularly in light of the fact that the FHFA must annually report its operations to Congress and is subject to annual and spot audits by the Comptroller General, who must report the findings of those audits to Congress. *See Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 600, 64 S. Ct. 281, 88 L. Ed. 333 (1944) (upholding delegation to Federal Power Commission to determine "just and reasonable" rates). The plaintiffs' non-delegation doctrine claim therefore fails as a matter of law.

3. Wrongful Foreclosure

Because the wrongful foreclosure claim is based on the alleged constitutional violations, it fails as a matter of law as well. I therefore grant the defendants' motion to dismiss this claim.

III. MOTION TO AMEND (ECF No. 52)

The plaintiffs move to amend the FAC to update it in response to the *CFSA* decision and to emphasize the lack of a cap as the constitutional defect. I deny the motion because amendment is unnecessary, wasteful, and futile. The FAC already alleges that the lack of a limit on FHFA's funding violates the constitution, so amendment

is unnecessary. *See* ECF No. 34 at 2 (alleging that "FHFA has no limits on the amounts it can raise from its regulated entities" and "Congress has not set forth any intelligible principles to constrain FHFA's discretion to demand or spend unlimited amounts from its regulated entities"). Allowing amendment would only delay resolution of this case and generate another round of briefing, which would merely repeat what has already been extensively briefed, thereby wasting the parties' and this court's time and resources. Finally, for all the reasons set forth in this order, amendment would be futile.

IV. CONCLUSION

I THEREFORE ORDER that the plaintiffs' motion to amend **(ECF No. 52) is DENIED**.

I FURTHER ORDER that the defendants' motion to dismiss **(ECF No. 36) is GRANTED**. The clerk of court is instructed to enter judgment in favor of the defendants and against the plaintiffs, and to close this case.

DATED this 20th day of September, 2024.

/s/ Andrew P. Gordon
ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE

APPENDIX D — RELEVANT STATUTORY PROVISIONS

12 U.S.C. § 4516

(a) Annual assessments

The Director shall establish and collect from the regulated entities annual assessments in an amount not exceeding the amount sufficient to provide for reasonable costs (including administrative costs) and expenses of the Agency, including--

(1) the expenses of any examinations under section 4517 of this title and under section 1440 of this title;

(2) the expenses of obtaining any reviews and credit assessments under section 4519 of this title;

(3) such amounts in excess of actual expenses for any given year as deemed necessary by the Director to maintain a working capital fund in accordance with subsection (e); and

(4) the windup of the affairs of the Office of Federal Housing Enterprise Oversight and the Federal Housing Finance Board under title III of the Federal Housing Finance Regulatory Reform Act of 2008.

Appendix D

(b) Allocation of annual assessment to enterprises

(1) Amount of payment

Each enterprise shall pay to the Director a proportion of the annual assessment made pursuant to subsection (a) that bears the same ratio to the total annual assessment that the total assets of each enterprise bears[1] to the total assets of both enterprises.

(2) Separate treatment of Federal home loan bank and enterprise assessments

Assessments collected from the enterprises shall not exceed the amounts sufficient to provide for the costs and expenses described in subsection (a) relating to the enterprises. Assessments collected from the Federal Home Loan Banks shall not exceed the amounts sufficient to provide for the costs and expenses described in subsection (a) relating to the Federal Home Loan Banks.

(3) Timing of payment

The annual assessment shall be payable semiannually for each fiscal year, on October 1 and April 1.

(4) "Total assets" defined

For the purpose of this section, the term "total assets" means, with respect to an enterprise, the sum of--

(A) on-balance-sheet assets of the enterprise, as determined in accordance with generally accepted accounting principles;

(B) the unpaid principal balance of outstanding mortgage-backed securities issued or guaranteed by the enterprise that are not included in subparagraph (A); and

(C) other off-balance-sheet obligations as determined by the Director.

(c) Increased costs of regulation

(1) Increase for inadequate capitalization

The semiannual payments made pursuant to subsection (b) by any regulated entity that is not classified (for purposes of subchapter II) as adequately capitalized may be increased, as necessary, in the discretion of the Director to pay additional estimated costs of regulation of the regulated entity.

(2) Adjustment for enforcement activities

The Director may adjust the amounts of any semiannual payments for an assessment under subsection (a) that are to be paid pursuant to subsection (b) by a regulated entity, as necessary in the discretion of the Director, to ensure that the costs of enforcement activities under this Act for a regulated entity are borne only by such regulated entity.

(3) Additional assessment for deficiencies

If at any time, as a result of increased costs of regulation of a regulated entity that is not classified (for purposes of subchapter II) as adequately capitalized or as the result of supervisory or enforcement activities under this Act for a regulated entity, the amount available from any semiannual payment made by such regulated entity pursuant to subsection (b) is insufficient to cover the costs of the Agency with respect to such entity, the Director may make and collect from such regulated entity an immediate assessment to cover the amount of such deficiency for the semiannual period. If, at the end of any semiannual period during which such an assessment is made, any amount remains from such assessment, such remaining amount shall be deducted from the assessment for such regulated entity for the following semiannual period.

(d) Surplus

Except with respect to amounts collected pursuant to subsection (a)(3), if any amount from any annual assessment collected from an enterprise remains unobligated at the end of the year for which the assessment was collected, such amount shall be credited to the assessment to be collected from the enterprise for the following year.

(e) Working capital fund

At the end of each year for which an assessment under this section is made, the Director shall remit to each regulated entity any amount of assessment collected from such regulated entity that is attributable to subsection (a)(3) and is in excess of the amount the Director deems necessary to maintain a working capital fund.

(f) Treatment of assessments

(1) Deposit

Amounts received by the Director from assessments under this section may be deposited by the Director in the manner provided in section 192 of this title for monies deposited by the Comptroller of the Currency.

(2) Not Government funds

The amounts received by the Director from any assessment under this section shall not be construed to be Government or public funds or appropriated money.

(3) No apportionment of funds

Notwithstanding any other provision of law, the amounts received by the Director from any assessment under this section shall not be subject to apportionment for the purpose of chapter 15 of Title 31, or under any other authority.

(4) Use of funds

The Director may use any amounts received by the Director from assessments under this section for compensation of the Director and other employees of the Agency and for all other expenses of the Director and the Agency.

(5) Availability of oversight fund amounts

Notwithstanding any other provision of law, any amounts remaining in the Federal Housing Enterprises Oversight Fund established under this section (as in effect before the effective date of the Federal Housing Finance Regulatory Reform Act of 2008, and any amounts remaining from assessments on the Federal Home Loan Banks pursuant to section 1438(b) of this title), shall, upon such effective date, be treated for purposes of this subsection as amounts received from assessments under this section.

(6) Treasury investments

(A) Authority

The Director may request the Secretary of the Treasury to invest such portions of amounts received by the Director from assessments paid under this section that, in the Director's discretion, are not required to meet the current working needs of the Agency.

(B) Government obligations

Pursuant to a request under subparagraph (A), the Secretary of the Treasury shall invest such amounts in Government obligations guaranteed as to principal and interest by the United States with maturities suitable to the needs of the Agency and bearing interest at a rate determined by the Secretary of the Treasury taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity.

(g) Budget and financial management

(1) Financial operating plans and forecasts

The Director shall provide to the Director of the Office of Management and Budget copies of the Director's financial operating plans and forecasts, as prepared by the Director in the ordinary course of the Agency's operations, and copies of the quarterly reports of the Agency's financial condition and results of operations, as prepared by the Director in the ordinary course of the Agency's operations.

(2) Financial statements

The Agency shall prepare annually a statement of--

(A) assets and liabilities and surplus or deficit;

(B) income and expenses; and

(C) sources and application of funds.

(3) Financial management systems

The Agency shall implement and maintain financial management systems that--

(A) comply substantially with Federal financial management systems requirements and applicable Federal accounting standards; and

(B) use a general ledger system that accounts for activity at the transaction level.

(4) Assertion of internal controls

The Director shall provide to the Comptroller General of the United States an assertion as to the effectiveness of the internal controls that apply to financial reporting by the Agency, using the standards established in section 3512(c) of Title 31.

(5) Rule of construction

This subsection may not be construed as implying any obligation on the part of the Director to consult with or obtain the consent or approval of the Director of the Office of Management and Budget with respect to any report, plan, forecast, or other information referred to in paragraph (1) or any jurisdiction or oversight over the affairs or operations of the Agency.

Appendix D

(h) Audit of Agency

(1) In general

The Comptroller General shall annually audit the financial transactions of the Agency in accordance with the United States generally accepted government auditing standards as may be prescribed by the Comptroller General of the United States. The audit shall be conducted at the place or places where accounts of the Agency are normally kept. The representatives of the Government Accountability Office shall have access to the personnel and to all books, accounts, documents, papers, records (including electronic records), reports, files, and all other papers, automated data, things, or property belonging to or under the control of or used or employed by the Agency pertaining to its financial transactions and necessary to facilitate the audit, and such representatives shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such books, accounts, documents, records, reports, files, papers, and property of the Agency shall remain in possession and custody of the Agency. The Comptroller General may obtain and duplicate any such books, accounts, documents, records, working papers, automated data and files, or other information relevant to such audit without cost to the Comptroller General and the Comptroller General's right of access to such information shall be enforceable pursuant to section 716(c) of Title 31.

(2) Report

The Comptroller General shall submit to the Congress a report of each annual audit conducted under this subsection. The report to the Congress shall set forth the scope of the audit and shall include the statement of assets and liabilities and surplus or deficit, the statement of income and expenses, the statement of sources and application of funds, and such comments and information as may be deemed necessary to inform Congress of the financial operations and condition of the Agency, together with such recommendations with respect thereto as the Comptroller General may deem advisable. A copy of each report shall be furnished to the President and to the Agency at the time submitted to the Congress.

(3) Assistance and costs

For the purpose of conducting an audit under this subsection, the Comptroller General may, in the discretion of the Comptroller General, employ by contract, without regard to section 6101 of Title 41, professional services of firms and organizations of certified public accountants for temporary periods or for special purposes. Upon the request of the Comptroller General, the Director of the Agency shall transfer to the Government Accountability Office from funds available, the amount requested by the Comptroller General to cover the full costs of any audit and report conducted by the Comptroller General. The Comptroller General shall credit funds

transferred to the account established for salaries and expenses of the Government Accountability Office, and such amount shall be available upon receipt and without fiscal year limitation to cover the full costs of the audit and report.