

19-563 YELLEN V. COLLINS

DECISION BELOW: 938 F.3d 553

LOWER COURT CASE NUMBER: 17-20364

QUESTION PRESENTED:

During the national housing crisis of 2008, the Federal Housing Finance Agency (FHFA) exercised its authority under a federal statute to appoint itself as conservator of Fannie Mae and Freddie Mac. FHFA, as conservator, negotiated agreements with the Department of the Treasury under which Treasury committed to investing billions of dollars in the enterprises in return for compensation consisting, in part, of fixed dividends. In 2012, after numerous quarters in which the enterprises' dividend obligations exceeded their total earnings - forcing the enterprises to draw more money from Treasury just to pay the dividends - FHFA and Treasury negotiated the Third Amendment to their agreements. The Third Amendment replaced the fixed dividend with a variable quarterly dividend equal to the enterprises' net worth minus a specified capital reserve. The questions presented are:

1. Whether the statute's anti-injunction clause, which precludes courts from taking any action that would "restrain or affect the exercise of powers or functions of the Agency as a conservator," 12 U.S.C. 4617(f), precludes a federal court from setting aside the Third Amendment.
2. Whether the statute's succession clause - under which FHFA, as conservator, inherits the shareholders' rights to bring derivative actions on behalf of the enterprises - precludes the shareholders from challenging the Third Amendment.

CONSOLIDATED WITH 19-422 FOR ONE HOUR ORAL ARGUMENT.

ORDER OF AUGUST 17, 2020:

AARON NIELSON, ESQUIRE, OF PROVO, UTAH, IS INVITED TO BRIEF AND ARGUE, AS *AMICUS CURIAE*, IN SUPPORT OF THE POSITION THAT THE STRUCTURE OF THE FEDERAL HOUSING FINANCE AGENCY DOES NOT VIOLATE THE SEPARATION OF POWERS.

CERT. GRANTED 7/9/2020