



1700 G Street NW, Washington, D.C. 20552

June 14, 2024

Lyle W. Cayce, Clerk of Court  
Office of the Clerk  
United States Court of Appeals for the Fifth Circuit  
F. Edward Hebert Building  
600 S. Maestri Place  
New Orleans, LA 70130-3408

Re: *Community Financial Services Ass’n of Am., Ltd.*, v. CFPB, No. 21-50826  
– Response to Plaintiffs’ Rule 28(j) Letter of May 16, 2024

Dear Mr. Cayce:

The Court should reject Plaintiffs’ request that it depart from its standard procedures when this case returns from the Supreme Court so that Plaintiffs can take the extraordinary step of trying to reopen this now-resolved appeal.

This Court resolved Plaintiffs’ non-funding claims—Counts I-III and V-IX, ROA.663-679—in its October 2022 decision, “affirm[ing] the district court’s entry of summary judgment [for] the Bureau” on those counts. 51 F.4th at 643-44. The mandate issued on December 12, 2022, marking the end of proceedings in this Court.

Plaintiffs now hope to reopen this appeal so they can petition for rehearing. But the time to seek rehearing expired on December 5, 2022. *See* F.R.A.P. 40(a)(1). Contrary to Plaintiffs’ contention, Plaintiffs did not “lack[] a prior opportunity” to seek rehearing. Rehearing petitions “may be filed by *any* party.” *Id.*; *see also* F.R.A.P. 35(b) (“*a* party”). Thus, prevailing parties may and do seek rehearing. *E.g.*, *Taylor v. Norris*, 401 F.3d 883, 884 (8th Cir. 2005); *New Era Publications Int’l, APS v. Henry Holt, Co.*, 884 F.2d 659 (2d Cir. 1989). Plaintiffs did not. Nor did they preserve a chance for later review by requesting a stay of the mandate or of their deadline to petition—even after the Bureau petitioned for certiorari. Instead, Plaintiffs filed a cross-petition for certiorari asking the Supreme Court to review their non-funding claims. The Court denied that request. 143 S.Ct.

981 (2023). This Court should not entertain Plaintiffs' bid for rehearing after Plaintiffs forwent that opportunity before.

Plaintiffs assume that the Court will issue a new judgment when this case returns from the Supreme Court. It is unclear that a new judgment is needed where Plaintiffs' non-funding claims were already resolved by this Court's 2022 judgment and mandate and their funding claim by the Supreme Court's decision and forthcoming judgment. But even if a new judgment were appropriate, that new judgment would be limited to the funding claim on which the Supreme Court granted certiorari—not Plaintiffs' other claims, which were settled by the Court's 2022 judgment and mandate and which should no longer be open to relitigation.

Respectfully submitted,

/s/ Kevin E. Friedl

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cc: Counsel of record (via CM /ECF)

## CERTIFICATE OF SERVICE

I certify that on June 14, 2024, I electronically filed this letter with the Clerk of the Court of the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. I certify that counsel for all participants are registered CM/ECF users and that service on them will be accomplished by the appellate CM/ECF system.

/s/ Kevin E. Friedl

Kevin E. Friedl