

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION**

FIREARMS REGULATORY
ACCOUNTABILITY COALITION, INC.,
STATES OF WEST VIRGINIA, NORTH
DAKOTA, *et al.*,

Plaintiffs,

v.

MERRICK B. GARLAND, *et al.*,

Defendants.

Civil Action No. 1:23-cv-24

**PLAINTIFFS' MOTION TO STAY PROCEEDINGS PENDING RESOLUTION OF
RELATED CASE**

Plaintiffs respectfully request that this Court stay the proceedings in this matter pending the resolution of the Government's appeal in *Mock v. Garland*, No. 24-10743 (5th Cir.). Defendants oppose this motion. *See* ECF No. 113.

BACKGROUND

On January 31, 2023, ATF published the rule at issue here, *see* Factoring Criteria for Firearms with Attached "Stabilizing Braces," 88 Fed. Reg. 6,478 (Jan. 31, 2023) ("Final Rule"), compelling Plaintiffs to seek a preliminary injunction from this Court. On appeal, the Eighth Circuit held Plaintiffs are "likely to succeed on the merits of [their] arbitrary-and-capricious challenge" and remanded for this Court "to address the remaining injunctive factors." *FRAC v. Garland*, 112 F.4th 507, 511, 526 (8th Cir. 2024).

While this case was on appeal, and after it was fully briefed and argued before the Eighth Circuit, a federal district court in Texas entered summary judgment in favor of challengers to the same Final Rule at issue here and vacated the Final Rule. *See Mock v. Garland*, No. 4:23-CV-00095-O, 2024 WL 2982056, at *5–*6 (N.D. Tex. June 13, 2024). The Government acknowledges

the Final Rule is vacated and, therefore, that it cannot be enforced against anyone. After the Eighth Circuit issued its opinion, the Government appealed to the Fifth Circuit the Texas court’s summary judgment decision. Consequently, the Fifth Circuit will now decide whether to affirm the judgment that “the Final Rule violated the APA’s procedural requirements because it was arbitrary and capricious and was not a logical outgrowth of the Proposed Rule.” *Mock*, 2024 WL 2982056, at *6; *see Mock v. Garland*, 24-10743 (5th Cir.). That appeal will be fully briefed by November 27, 2024.

ARGUMENT

“It is well-established that a trial court has the inherent power to stay proceedings to control its docket, to conserve judicial resources, and to ensure that each matter is handled ‘with economy of time and effort for itself, for counsel, and for litigants.’” *Barnes v. Zurn Plex, Inc.*, No. 1:07-cv-74, 2008 WL 111217, at *2 (D.N.D. Jan. 9, 2008) (Hovland, J.) (quoting *Landis v. North Am. Co.*, 299 U.S. 248, 254 (1936)). Federal courts routinely stay cases where another case raises the same or related issues and is “further along” in its proceedings. *Norris v. Miller*, 926 F. Supp. 776, 779–80 (N.D. Ill. 1996) (granting stay where related case was further along); *accord Lunde v. Helms*, 898 F.2d 1343 (8th Cir. 1990) (affirming district court stay pending related federal administrative proceedings).

The outcome in the *Mock* appeal could have a significant impact on this case. If the Fifth Circuit affirms, then the Final Rule will remain vacated, and this action may become moot. *See, e.g., Aland v. Salazar*, No. 1:08-CV-24, 2012 WL 12985149, at 1* (D. Idaho Mar. 23, 2012) (dismissing Administrative Procedure Act challenge to agency rule as moot where appellate court in other proceeding vacated the same rule). And if the Fifth Circuit reverses or limits the Texas court’s judgment in any way, this Court may still benefit from that opinion—subject of course to the undisputed vertical *stare decisis* principle that only the Eighth Circuit’s reasoning controls this

Court. *See* Dkt. 113, at 2 (Government’s acknowledgement that “the Fifth Circuit provides no determinative rule of decision for this Court”).

The Government indicates its intent to oppose a stay on the ground that “*Mock* turns, in part, on those plaintiffs’ logical outgrowth claim.” *Id.* But, as the district court there explained (and the Government’s appeal brief in *Mock* acknowledges), those plaintiffs’ logical outgrowth claim was an *additional* reason that the district court vacated the Final Rule. The district also held—like the Eighth Circuit recognized in this case—that the Final Rule is “arbitrary and capricious.” *Mock*, 2024 WL 2982056, at *6; *see* DOJ Appellant Br. 3–4, *Mock v. Garland*, 24-10743 (5th Cir.) (statement of the issues), 12 (“The district court also granted summary judgment to plaintiffs on their claim that the Rule is arbitrary and capricious[.]”). Each holding was an independent ground authorizing vacatur. And the Fifth Circuit has already held—at the preliminary injunction stage in that case—that the *Mock* plaintiffs were likely to succeed on at least one. *See Mock v. Garland*, 75 F.4th 563 (5th Cir. 2023). In any event, for the purpose of deciding this motion, it makes no difference what ground the district court invoked to vacate the Final Rule in *Mock* or which ground the Fifth Circuit may use to affirm. Vacatur is the result either way.

The Government also says it will oppose because “the *Mock* appeal challenges ... universal vacatur.” Dkt. 113, at 3. But the Supreme “Court has affirmed countless decisions that vacated agency actions, including agency rules,” *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 144 S. Ct. 2440, 2463 (2024) (Kavanaugh, J., concurring), so there is no doubt that existing law authorizes this universal remedy. *See also* Transcript of Oral Argument at 35:16-25, *United States v. Texas*, No. 22-58 (U.S. Nov. 29, 2022) (Chief Justice Roberts describing the Government’s anti-vacatur position as “fairly radical” and “inconsistent with ... established practice under the APA”);

Red River Valley Sugarbeet Growers Ass’n v. Regan, 85 F.4th 881, 883 (8th Cir. 2023) (“vacat[ing]” order that “was arbitrary and capricious”). The Government may hope to change that law by taking *Mock* all the way to the Supreme Court. But, if so, that is more reason, not less, for a stay.

Coupled with the potential legal impact of *Mock* on this case are equitable considerations about judicial and party resources. Absent a stay, the Court will expend substantial resources on summary judgment briefing as it considers the lawfulness of a rule that is already vacated and may never come back into force. *See Johnson v. N.D. Guar. & Title Co.*, No. 1:17-CV-120, 2018 WL 6706672, at *2 (D.N.D. Dec. 20, 2018) (“Factors for the court’s consideration include but are not limited to the conservation of judicial resources ...”). That effort will be wasted if the Fifth Circuit upholds the existing vacatur decision.

A stay will conserve the party resources. The private Plaintiffs have already incurred substantial costs from both the rule and this challenge. *See* Appellant’s Br. 52–56, *FRAC v. Garland*, No. 23-3230 (8th Cir.). And since this action seeks injunctive relief, Plaintiffs are not likely to recover any of those expenses. It makes little sense to compel Plaintiffs to incur further unrecoverable costs for efforts which may be rendered unnecessary by other proceedings outside of their control. For the Plaintiff States, continued activity in this case will divert resources from other important litigation matters. Should the rule survive the Government’s appeal in *Mock*, Plaintiffs stand ready and willing to immediately resume summary judgment briefing.

Conversely, a stay will not prejudice the Government. If the rule is vacated, any further efforts by the Government in this proceeding will have been entirely misplaced. Indeed, “[Defendant’s] interests would actually be served by granting a stay” since they would not “be required to incur additional expenses from simultaneous litigation” in two jurisdictions over the

same agency regulation. *Raskas v. Johnson & Johnson*, No. 4:12-cv-2174 JCH, 2013 WL 1818133, at *2 (E.D. Mo. Apr. 29, 2013). Thus, despite its opposition, the Government only stands to benefit from a stay.

Finally, any stay of proceedings will likely be short. *See Frable v. Synchrony Bank*, 215 F. Supp. 3d 818, 821 (D. Minn. 2016) (granting motion where stay was anticipated to be “relatively short in duration”). Briefing in *Mock* will be completed next month. Given the pace at which that case has moved, it is likely the Fifth Circuit will decide the issue promptly. After that, the parties can advise this Court whether further proceedings are required here.

CONCLUSION

For the foregoing reasons, this Court should stay these proceedings until the appeal in *Mock v. Garland*, No. 24-10743 (5th Cir.), is decided.

Dated: October 28, 2024

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2024, I electronically filed the above paper with the Clerk of Court using the Court's electronic case filing system, and I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

Dated: October 28, 2024

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