

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

STATE OF UTAH; STATE OF TEXAS; COMMONWEALTH OF VIRGINIA; STATE OF LOUISIANA; STATE OF ALABAMA; STATE OF ALASKA; STATE OF ARKANSAS; STATE OF FLORIDA; STATE OF GEORGIA; STATE OF INDIANA; STATE OF IDAHO; STATE OF IOWA; STATE OF KANSAS; COMMONWEALTH OF KENTUCKY; STATE OF MISSISSIPPI; STATE OF MISSOURI; STATE OF MONTANA; STATE OF NEBRASKA; STATE OF NEW HAMPSHIRE; STATE OF NORTH DAKOTA; STATE OF OHIO; STATE OF SOUTH CAROLINA; STATE OF TENNESSEE; STATE OF WEST VIRGINIA; STATE OF WYOMING; LIBERTY ENERGY, INCORPORATED; LIBERTY OILFIELD SERVICES, L.L.C.; WESTERN ENERGY ALLIANCE; JAMES R. COPLAND; ALEX L. FAIRLY; STATE OF OKLAHOMA,

Plaintiffs-Appellants,

v.

LORI CHAVEZ-DEREMER, Secretary, U.S. Department of Labor; UNITED STATES DEPARTMENT OF LABOR,

Defendants-Appellees.

No. 23-11097

MOTION FOR ABEYANCE

The Department of Labor respectfully requests that this appeal be held in abeyance pending the Department's reconsideration of the challenged rule. Plaintiffs oppose this request but consent to an extension of the deadline for supplemental briefs until seven days after the disposition of this motion (in the event that the motion is denied).

1. This is a challenge to a rule addressing how the fiduciary duties imposed by the Employee Retirement Income Security Act of 1974 (ERISA) apply to fiduciaries' investment choices and exercise of shareholder rights. In July 2024, after oral argument, this Court issued a limited remand for the district court to address the effect of *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), on its prior ruling in the Department's favor. *Utah v. Su*, 109 F.4th 313 (5th Cir. 2024). After the district court issued its order on remand, this Court directed the parties to submit simultaneous letter briefs addressing the district court's order.

2. The government moved to extend the deadline for the supplemental briefs on the ground that the new leaders of the Department of Labor needed additional time, as they assumed their responsibilities, to familiarize themselves with the issues in this case. The Court granted that motion. As extended, the deadline for the initial round of supplemental briefs is April 25; reply briefs are due May 2.

3. Now that its new leadership has had the requisite time to gain familiarity with the issues in this case, the Department has determined that it intends to reconsider the challenged rule, including by considering whether to rescind the rule. The Department therefore respectfully requests

that this appeal be held in abeyance. Abeyance will greatly conserve the litigants' and the Court's resources, because the Department's reconsideration and potential rescission of the challenged rule could obviate the need for further litigation. As noted above, plaintiffs oppose abeyance.

4. In the event that the Court denies abeyance, the Department respectfully requests that the deadline for supplemental briefs be further extended to seven days after the Court's ruling on this motion. Plaintiffs consent to this request.

Respectfully submitted,

MICHAEL S. RAAB

/s/ Daniel Winik

DANIEL WINIK

*Attorneys, Appellate Staff
Civil Division, Room 7245
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530
(202) 305-8849*

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), I hereby certify that this motion complies with Federal Rule of Appellate Procedure 27(d)(1)(E) because it has been prepared in 14-point Book Antiqua, a proportionally spaced font, and that it complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 347 words, according to Microsoft Word.

/s/ Daniel Winik
Daniel Winik