

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:24-cv-00812-DDD-KAS

NATIONAL ASSOCIATION OF INDUSTRIAL BANKERS, AMERICAN
FINANCIAL SERVICES ASSOCIATION, and AMERICAN FINTECH
COUNCIL,

Plaintiffs,

v.

PHILIP J. WEISER, Attorney General of the State of Colorado, and MARTHA
FULFORD, Administrator of the Colorado Uniform Consumer Credit Code,

Defendants.

**DEFENDANTS' UNOPPOSED MOTION TO STAY
DISTRICT COURT PROCEEDINGS PENDING RESOLUTION OF
PRELIMINARY INJUNCTION APPEAL**

Defendants Philip J. Weiser, Attorney General of the State of Colorado, and Martha Fulford, Administrator of the Colorado Uniform Consumer Credit Code (collectively "Defendants"), move to stay the district court proceedings pending resolution of the preliminary injunction appeal currently before the U.S. Court of Appeals for the Tenth Circuit, as follows.

Certificate of Compliance with D.C.COLO.LCivR 7.1

Counsel for the Defendants conferred with Plaintiffs' counsel regarding this Motion. Plaintiffs take no position on the motion but have asked Defendants to note that Plaintiffs expect they would move for summary judgment within 30 days of a

decision on Defendants’ motion to stay proceedings pending appeal were the Court to decide not to hold the case in abeyance.

BACKGROUND

1. This Court granted Plaintiffs’ request for a preliminary injunction on June 18, 2024. Doc. 69 at 27–28.

2. The Defendants have filed a notice of appeal, seeking the Tenth Circuit’s interlocutory review of the Court’s June 18, 2024 Order pursuant to 28 U.S.C. section 1292(a)(1). Doc. 74.

3. In the interests of judicial economy and seeking clarity on the governing legal standard before proceeding to a full merits adjudication here, Defendants request that this Court stay the proceedings before the district court pending resolution by the Tenth Circuit of the issues presented by the Defendants’ notice of appeal.

ARGUMENT

The Pending Appeal May Disrupt the District Court Proceedings

4. While a district court that has entered a preliminary injunction “retains power to act on the case” even when a party files an interlocutory appeal, *State of Colo. v. Idarado Mining Co.*, 916 F.2d 1486, 1490 n.2 (10th Cir. 1990), that rule must be balanced with the practical reality that the pending appeal may “disrupt[] ongoing proceedings in the district court.” *Stewart v. Donges*, 915 F.2d 572, 575 (10th Cir. 1990), *overruled on other grounds by Cnty. of Sacramento v. Lewis*, 523

U.S. 833 (1998). The potential disruption is “especially significant” when the appeal is interlocutory and involves issues that are “central” to the remaining issues pending before the district court. *Stewart*, 915 F.2d at 575–76. The Tenth Circuit generally recognizes that a district court should refrain from exercising jurisdiction over issues directly related to the interlocutory appeal while the appeal is pending. *See, e.g., Garcia v. Burlington Northern R.R. Co.*, 818 F.2d 713 (10th Cir. 1987).

5. Here, the primary issue left to be decided is whether the Defendants should be permanently enjoined. But that implicates a core issue that the Tenth Circuit is currently considering—whether Plaintiffs are likely to succeed on the merits of their claim, thus entitling them to a preliminary injunction while the merits of their claim are fully considered. And at the heart of that analysis is what “made in” means as it is used in Section 525 (“Section 525”) of federal Depository Institutions Deregulation and Monetary Control Act. *See* Doc. 25-1, at § 525. This is a question of law that the Tenth Circuit will review *de novo*, and the Tenth Circuit’s decision will have a significant impact on the district court proceedings. Because this issue is central to both the district court and Tenth Circuit proceedings, a “significant” risk exists that the appellate court proceedings may disrupt this Court’s parallel proceedings if they are not stayed. *Stewart*, 915 F.2d at 575.

Defendants satisfy the String Cheese Factors

6. Defendants satisfy the *String Cheese* factors that a court weighs when evaluating a motion for stay. *See String Cheese Incident, LLC v. Stylus Shows, Inc.*,

No. 1:05-cv-01934-LTB-PA, 2006 WL 894955, at *2 (D. Colo. Mar. 30, 2006):

a. **Plaintiffs’ Interest in Proceeding Expeditiously and the Potential Prejudice to Plaintiffs of a Delay:** By virtue of this Court’s June 18, 2024 Order granting Plaintiffs’ motion for a preliminary injunction, Plaintiffs have already obtained substantially all the relief they sought, “render[ing] a trial on the merits largely or completely meaningless.” *Prairie Band of Potawatomi Indians v. Pierce*, 253 F.3d 1234, 1247 (10th Cir. 2001); *see also* Doc. 69. Accordingly, a stay of trial court proceedings will not result in prejudice to the Plaintiffs’ members, who may continue lending to Colorado consumers at rates permitted by the member banks’ home states, regardless of Colorado’s rate caps, unless (or until) the Tenth Circuit rules otherwise. In accord, Plaintiffs do not oppose this motion and instead take no position.

b. **Burden on the Defendants:** Forcing Defendants (and Plaintiffs) to proceed with discovery and disclosures while the preliminary injunction appeal is ongoing would impose an undue burden on the parties. Moving through discovery and disclosures would be premature before the Tenth Circuit clarifies the scope and effect of Section 525, which will inevitably affect the focus and breadth of the parties’ discovery and disclosures.

c. **The Convenience of the Court:** Proceeding with the merits of Plaintiffs’ claims now, before the Tenth Circuit resolves the ongoing preliminary injunction appeal, may end up needlessly expending this Court’s limited resources.

Should the appellate court overturn this Court's preliminary injunction ruling, it may render the Court's intervening case management orders obsolete and require starting the process anew. Staying the proceedings between Plaintiffs and Defendants pending resolution of the preliminary injunction appeal in the Tenth Circuit would thus be highly convenient to the Court.

d. **Interest of Nonparties:** Should this matter proceed to a trial on the merits while the Tenth Circuit considers Defendants' appeal of the preliminary injunction, the interest of Colorado consumers could be negatively affected. Assuming the Plaintiffs prevail at trial and this Court enters a permanent injunction in Plaintiffs' favor, state-chartered banks nationwide would be permitted to charge interest to Colorado consumers at rates prohibited by Colorado's Uniform Consumer Credit Code, so long as the loan was not "made in" Colorado under the Court's reading of Section 525. Even if the Tenth Circuit subsequently overturned this Court's preliminary injunction order, Colorado consumers will have paid interest at prohibited rates in the interim, potentially forcing consumers to default on prohibited (and other legal) loans. The effects of this Court ruling in Plaintiff's favor on the merits, in advance of the Tenth Circuit's decision, could not be undone. *See, e.g., Free the Nipple-Fort Collins v. City of Fort Collins, Colorado*, 916 F.3d 792, 797–98 (10th Cir. 2019)

e. **Public Interest:** A stay here would serve the public interest in at least three ways: (a) avoiding "unnecessary expenditures of public and private resources on

litigation”; (b) conserving judicial resources by allowing the Tenth Circuit to address potentially “dispositive issues early in the litigation”; and (c) conserving judicial and attorney resources by “clarifying and resolving disputed legal issues at the earliest possible time.” *Samuels v. Baldwin*, No. 14-cv-02588-LTB-KLM, 2015 WL 232121, at *3 (D. Colo. Jan. 16, 2015).

WHEREFORE, Defendants respectfully request that this Court enter an order staying all proceedings, including current responsive pleading deadlines, pending resolution by the Tenth Circuit of the notice of appeal of this Court’s preliminary injunction.

PHILIP J. WEISER
Attorney General

/s/ Philip Sparr

NIKOLAI FRANT, 38716*
PHILIP SPARR, 40053*
KEVIN J. BURNS, 44527*
BRIAN URANKAR, 47519*
Consumer Credit Enforcement Unit
Consumer Protection Section
Attorneys for Defendant(s)
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, CO 80203
Telephone: 720-508-6245
philip.sparr@coag.gov

*Counsel of Record for Defendants

CERTIFICATE OF TYPE-VOLUME COMPLIANCE

Defendants hereby certify that the foregoing pleading complies with the type-volume limitation set forth in Judge Domenico's Practice Standard III(A)(1).

s/ Philip Sparr

PHILIP SPARR, 40053

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of July, 2024, I filed a true and correct copy of the foregoing document via CM/EFC, which will generate notice by electronic mail to all counsel who have appeared via CM/ECF.

/s/ Philip Sparr

PHILIP SPARR, 40053