

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Daniel D. Domenico**

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, in his official capacity as Attorney General of the
State of Colorado; and
MARTHA FULFORD, in her official capacity as Administrator of the
Colorado Uniform Consumer Credit Code,

Defendants.

**ORDER DENYING MOTION
TO STAY PRELIMINARY INJUNCTION PENDING APPEAL**

Defendants Colorado Attorney General Philip J. Weiser and Colorado Uniform Consumer Credit Code Administrator Martha Fulford (collectively, “the State”) move to stay, pending interlocutory appeal, the Court’s order preliminarily enjoining them from enforcing the interest rates in the Colorado Uniform Consumer Credit Code with respect to certain loans made by banks that are members of Plaintiffs National Association of Industrial Bankers, American Financial Services Association, and American Fintech Council. Doc. 76. The motion is denied.

BACKGROUND

On June 18, 2024, the Court issued its Order Granting Motion for Preliminary Injunction. Doc. 69. That order preliminarily enjoins the State:

from enforcing the interest rates in the Colorado Uniform Consumer Credit Code with respect to any loan made by the plaintiffs' members, to the extent that (a) the applicable interest rate in 12 U.S.C. § 1831d(a) exceeds the rate that would be permitted in the absence of that subsection, and (b) the loan is not "made in" Colorado within the meaning of the Effective Date note to 12 U.S.C. § 1831d as explained above; the State may only apply its UCCC interest rates to loans made by lenders in Colorado, regardless of the location or residence of the borrower.

Id. at 27-28. As explained in the order, the determination of which state a loan is "made in" for purposes of the Effective Date note to Section 1831d depends on where the lender is located and performs its loan-making functions, and not on the borrower's location. *See generally id.*

On July 18, the State filed a notice of appeal of the preliminary-injunction order, Doc. 74, and the next day it filed the instant motion to stay the preliminary injunction pending appeal, Doc. 76.

LEGAL STANDARD

In evaluating a motion to stay a preliminary injunction pending interlocutory appeal, a court must consider:

- (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits;
- (2) whether the applicant will be irreparably injured absent a stay;
- (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and
- (4) where the public interest lies.

Nken v. Holder, 556 U.S. 418, 434 (2009). The first two of these factors are the most critical; the movant must show more than a possibility of success on appeal, and more than a possibility of irreparable injury in

the absence of a stay. *Id.* at 434-35. If a movant satisfies the first two factors, the court must then assess the potential harm to the opposing party and the public interest. *Id.* at 435. “There is substantial overlap between these and the factors governing preliminary injunctions, not because the two are one and the same, but because similar concerns arise whenever a court order may allow or disallow anticipated action before the legality of that action has been conclusively determined.” *Id.* at 434 (citation omitted).

DISCUSSION

The State has not made the showing required to obtain a stay of the preliminary injunction pending appeal. The State contends that (1) the Court incorrectly construed the phrase “loans made in such State” in Section 1831d’s opt-out provision; (2) the Court incorrectly found that the plaintiffs have pleaded a viable cause of action in equity under *Ex parte Young*; and (3) the Court did not properly apply the heightened standard required to obtain a “disfavored” preliminary injunction and incorrectly balanced the harms at stake. *See* Doc. 76.

As to the State’s first and second contentions, the its motion largely rehashes the arguments made in its preliminary-injunction briefing, and to the extent it now presents new arguments in response to the Court’s order, *see, e.g.*, Doc. 76 at 10 (discussing the phrase “commitment to make [a] loan”), I am not persuaded that the State is likely to succeed in persuading the appellate court that the preliminary-injunction order is incorrect as to the plaintiffs’ likelihood of success on the merits of their claims. And as to the State’s third contention, though I expressed skepticism that the heightened standard for a disfavored preliminary injunction applies here, *see* Doc. 69 at 6-7 & n.2, I found that even assuming the heightened standard applies, the plaintiffs have satisfied it, *id.* at 7, 23, 25. The State’s arguments as to the balance of

harms and the public interest again rehash those made in its preliminary-injunction briefing, and I find here that those factors weigh in the plaintiffs' favor for the same reasons detailed in the preliminary-injunction order.

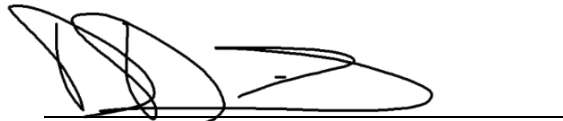
The State has not made the required showing for a stay, particularly on the "critical" merits factor, and its motion to stay the preliminary injunction is therefore denied.

CONCLUSION

It is **ORDERED** that the defendants' Motion for Stay of the Preliminary Injunction Pending Appeal, **Doc. 76**, is **DENIED**.

DATED: October 11, 2024

BY THE COURT:

A handwritten signature in black ink, appearing to read "Daniel D. Domenico", is written over a horizontal line.

Daniel D. Domenico
United States District Judge