

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN SOYBEAN ASSOCIATION,
and PLAINS COTTON GROWERS, INC.,

Plaintiffs,

vs.

U.S. ENVIRONMENTAL PROTECTION
AGENCY, *et al.*,

Federal Defendants, and

BASF CORPORATION, *et al.*

Defendant-Intervenors.

Case No.: 1:20-CV-03190-RCL

GROWERS' CONSENT MOTION TO STAY PROCEEDINGS

Plaintiffs American Soybean Association and Plains Cotton Growers, Inc. (collectively, "Growers") filed their original complaint in this action challenging the Environmental Protection Agency's ("EPA"¹) registrations of the herbicide dicamba in November 2020. *See* Dkt. 1. In 2021, at EPA's request, the Court stayed this case pending resolution of related, simultaneously-filed protective proceedings consolidated in the U.S. Court of Appeals for the District of Columbia Circuit. Dkt. 72. During the pendency of the actions in both this Court and the D.C. Circuit, a separate matter was initiated in the United States District Court for the District of Arizona in December 2020 by different plaintiffs,

¹ "EPA" means defendants U.S. Environmental Protection Agency, EPA Administrator Michael S. Regan (automatically substituted for Andrew R. Wheeler under Federal Rule of Civil Procedure 25(d)), and Acting Division Director of EPA's Office of Pesticide Programs, Registration Division, Marietta Echeverria.

challenging these same dicamba registrations—but, unlike Growers here, the Arizona plaintiffs are requesting the registrations be remanded *with vacatur*. See *Ctr. for Biological Diversity v. U.S. EPA*, No. 4:20-cv-00555-DCB (D. Ariz.). That case, which raises similar legal issues to those presented in Growers’ complaint, has proceeded on the merits, and summary-judgment briefing is currently pending. Growers and other agricultural organizations filed an amicus brief in support of both EPA and the Defendant-Intervenors in that case in June 2023, opposing vacatur of the registrations. See *id.* Dkt. 238.

After Growers filed their amicus brief in the District of Arizona, on July 21, 2023, the D.C. Circuit issued its opinion in the protective proceedings related to this case. See *Am. Soybean Ass’n v. Regan*, 77 F.4th 873 (D.C. Cir. 2023). The D.C. Circuit held that because the registrations were not issued following a “public hearing” under 7 U.S.C. § 136n(b), it lacked subject-matter jurisdiction to hear the case, making this Court the proper forum for Growers’ challenge to the dicamba registrations. See *Am. Soybean Ass’n*, 77 F.4th at 880. The mandate issued on September 13, 2023, see Dkt. 79-1, Ex. A, and on September 21, 2023, this Court granted a consent motion to stay these proceedings and directed the parties to file motions to govern further proceedings in the case, see Dkt. 81.

In response to this Court’s order, Growers respectfully request—with EPA’s and Defendant-Intervenors’ consent—that the Court exercise its discretion to further stay these proceedings pending resolution of the parallel challenge to the dicamba registrations in the District of Arizona. A stay is in the best interest of the parties and will both encourage judicial efficiency and conserve court resources.

BACKGROUND

This case challenges EPA regulatory restrictions on when (through date cutoffs) and where (through spray buffers) Growers can use the herbicide dicamba over-the-top of dicamba-resistant soybean and cotton. *See* Dkt. 1, ¶¶ 1–8. EPA implemented these restrictions through three product registrations, which established rules governing Growers’ application of dicamba-based herbicides. *See id.* ¶¶ 87–89. Growers allege that several of those overly-conservative restrictions threaten to diminish crop yields, cut farmland productivity, and increase farm-operation costs, as well as that the use conditions are arbitrary and capricious and beyond EPA’s authority under law.

Before EPA answered Growers’ complaint, the agency moved to stay this case while the D.C. Circuit considered Growers’ consolidated protective proceedings challenging the same agency actions. *See* Dkt. 64. The Court granted that motion, staying this action pending issuance of the mandate in the D.C. Circuit action.² *See* Dkt. 72. Separately, shortly after Growers filed their initial complaint in this Court, four organizations—the Center for Biological Diversity, National Family Farm Coalition, Center for Food Safety, and Pesticide Action Network North America—sued EPA to challenge these same dicamba registrations in the United States District Court for the District of Arizona. *See Ctr. for Biological Diversity v. U.S. EPA*, No. 4:20-cv-00555-DCB (D. Ariz.), Dkt. 1. Unlike Growers here, however, those plaintiffs have requested the registrations be remanded *with vacatur*, due to various alleged deficiencies. *Id.* While this action lay dormant during the pendency of the D.C.

² While this case was stayed, EPA amended the challenged herbicide registrations, Growers moved to temporarily lift the stay for the limited purpose of supplementing their pleadings to include this related regulatory development in this Court, and that motion was granted. *See* Dkts. 75–76.

Circuit’s subject-matter jurisdiction analysis, the parallel Arizona action has moved forward. As of July 2023, summary-judgment briefing in that matter is complete—in fact, Growers and other agricultural organizations submitted an amicus brief supporting EPA and the Defendant-Intervenors, requesting (as here) that the registrations *not* be vacated, *see id.* Dkt. 238. The parties (and Growers) await the Arizona court’s order on summary judgment.

As discussed above, the D.C. Circuit has now issued its opinion in the protective proceedings related to this case, holding that because the registrations (and their subsequent amendments) were not issued following a “public hearing” under 7 U.S.C. § 136n(b), jurisdiction is proper in the federal *district* courts in the first instance. *See Am. Soybean Ass’n*, 77 F.4th at 880. The D.C. Circuit’s mandate issued on September 13, 2023, *see* Dkt. 79-1, Ex. A, restarting this litigation. On September 21, 2023, this Court granted a consent motion to stay these proceedings, directing the parties to file motions to govern further proceedings in the case. *See* Dkt. 81.

The forward progress of the District of Arizona litigation during the previous stay of this case has changed the landscape of the dicamba litigation more broadly. Growers—with EPA’s and Defendant-Intervenors’ consent—therefore respectfully request a further stay of this matter until a final decision on the merits is reached in the Arizona action. This will avoid potentially duplicative litigation regarding the dicamba registrations by all parties here, control party and court costs, and encourage overall judicial efficiency.

LEGAL STANDARD

“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants,” by “weigh[ing] competing interests and maintain[ing] an even

balance.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936); *see also, e.g., Unión Fenosa Gas, S.A. v. Arab Rep. of Egypt*, No. 18-2395, 2020 WL 2996085, at *3 (D.D.C. June 4, 2020) (same). The decision to stay a cause of action is therefore left to the broad discretion of the court. Courts in this district are free to “grant a stay of proceedings ‘in the interest of judicial economy and efficiency,’” *Naegele v. Albers*, No. 03-2507 (ABJ), 2014 WL 12683359, at *1 (D.D.C. Dec. 2, 2014) (quoting *Am Postal Workers Union v. U.S. Postal Serv.*, 442 F. Supp. 2d 240, 248 (D.D.C. 2006)), with an overarching aim to avoid “any possible hardship to the parties,” *Unión Fenosa Gas, S.A.*, 2020 WL 2996085, at *3. *See also, e.g., Doe v. Sipper*, 869 F. Supp. 2d 113, 115 (D.D.C. 2012) (“The Court has the discretion to stay civil proceedings in the interest of justice and ‘in the light of the particular circumstances of the case.’” (quoting *Sec. & Exch. Comm’n v. Dresser Indus., Inc.*, 628 F.2d 1368, 1375 (D.C. Cir. 1980))).

ARGUMENT

The Court should exercise its broad discretion to stay this matter pending resolution of the challenge to the dicamba registrations in the District of Arizona. This Court’s jurisprudence contemplates weighing the pros and cons for the moving and non-moving parties when deciding whether to stay a case, but no such calculus is necessary here. The parties’ interests are aligned—not competing—in favor of a stay. This Court regularly stays actions during the pendency of independent proceedings whose outcomes bear upon the case at issue, and it should do so here.

Courts in this district have routinely held that it is appropriate “to stay all proceedings in an action pending the resolution of independent proceedings elsewhere.” *Seneca Nation of Indians v. U.S. Dep’t of Health & Human Servs.*, 144 F. Supp. 3d 115, 119 (D.D.C. 2015)

(quoting *Hussain v. Lewis*, 848 F. Supp. 2d 1, 2 (D.D.C. 2012)). “Indeed, a trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case.” *Id.* (quoting *Hisler v. Gallaudet Univ.*, 344 F. Supp. 2d 29, 35 (D.D.C. 2004)). “This rule applies whether the separate proceedings are judicial, administrative, or arbitral in character, and does not require that the issues in such proceedings are necessarily controlling of the action before the court.” *Hulley Enters. Ltd. v. Russian Fed’n*, 211 F. Supp. 3d 269, 276 (D.D.C. 2016) (quotation omitted). Thus, “[i]n the case of independent proceedings, a stay may be warranted where the resolution of the other litigation will likely ‘narrow the issues in the pending cases and assist in the determination of the questions of law involved.’” *Id.* (quoting *Landis*, 299 U.S. at 253). “Litigating essentially the same issues in two separate forums is not in the interest of judicial economy or in the parties’ best interests regarding time, cost, and effort.” *Nat’l Shopmen Pension Fund v. Folger Adam Sec., Inc.*, 274 B.R. 1, 3 (D.D.C. 2002).

Here, the Growers’ case before this Court was held in limbo while the D.C. Circuit considered where jurisdiction was proper. In the interim, the District of Arizona plaintiffs proceeded with a challenge to the same registrations, making it all the way to the merits-briefing stage before the issuance of the D.C. Circuit’s mandate here. Requiring the parties to proceed from scratch in a forum where EPA has not even answered, while they are actively involved in litigation in the District of Arizona covering the same registrations that has already proceeded to the summary-judgment stage, is not in any party’s best interest.

Growers and all parties have incurred significant time and financial costs through their participation in the protective proceedings in the D.C. Circuit and the ongoing litigation in

the District of Arizona. Were the District of Arizona to vacate the dicamba registrations, it could effectively moot this litigation. And, more broadly, regardless of the outcome in Arizona, this Court has acknowledged that even in situations where the outcome of a parallel case might not bind this Court in “reasoning or outcome”—say, for example, if the registrations are upheld—such decisions “could at a minimum provide guidance that will aid the parties in their briefing and this Court in its decision.” *Carlin v. Ctrs. for Disease Control and Prevention*, No. 22-cv-800 (CRC), 2022 WL 4109661, at *2 (D.D.C. Aug. 4, 2022). Allowing the case here to proceed could therefore result in the needless expenditure of party and court resources should the registrations be remanded (with or without vacatur), or alternatively preclude the parties from fully realizing the benefits of the briefing in Arizona.

In sum, as this Court has acknowledged “[l]itigating essentially the same issues in two separate forums is not in the interest of judicial economy or in the parties’ best interests regarding time, cost, and effort.” *Nat’l Shopmen Pension Fund*, 274 B.R. at 3. Here, allowing this case to proceed while the District of Arizona litigation is ongoing would cause precisely the kind of hardship this Court is instructed to avoid. A stay is therefore appropriate, until the District of Arizona matter is resolved.

CONCLUSION

The Growers—with EPA’s and Defendant-Intervenors’ consent—respectfully request that this case be stayed pending resolution of the parallel litigation in the District of Arizona. The interests of the parties, this Court, and judicial efficiency weigh uniformly in favor of a stay.

Dated: October 4, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document was filed electronically with the United States District Court Electronic Filing System, which will electronically send copies to all counsel of record.

/s/ Kyle W. Robisch _____
Kyle W. Robisch