

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

FEDERATION OF AMERICANS FOR §  
CONSUMER CHOICE, INC.; JAMES §  
HOLLOWAY; JAMES JOHNSON; TX §  
TITAN GROUP, LLC; PROVISION §  
BROKERAGE, LLC; and V. ERIC §  
COUCH, §

*Plaintiffs,*

v.

UNITED STATES DEPARTMENT §  
OF LABOR and LORI CHAVEZ- §  
DEREMER, in her official capacity as §  
SECRETARY OF LABOR, §

*Defendants.*

C.A. No. 6:24-cv-00163

**UNOPPOSED MOTION FOR ENTRY OF FINAL JUDGMENT**

Plaintiffs Federation of Americans for Consumer Choice, Inc., James Holloway, James Johnson, TX Titan Group, LLC, Provision Brokerage, LLC, and V. Eric Couch (collectively, “Plaintiffs”) move for the entry of a final judgment with respect to Plaintiffs’ claims herein and in support thereof would show the following:

1. This is an action under the Administrative Procedure Act (“APA”). Plaintiffs have sued Defendants United States Department of Labor (“DOL”) and Lori Chavez-DeRemer, in her Official Capacity as Secretary of Labor (together with the DOL, “Defendants”), seeking to vacate (a) a new rule promulgated by the DOL on April 23, 2024 (the “2024 Fiduciary Rule”), which redefined who is an investment advice fiduciary for

purposes of the Employee Retirement Income Security Act of 1974 (“ERISA”), replacing the DOL’s 1975 regulation that had established a five-part test, and (b) an amendment to Prohibited Transaction Exemption (“PTE”) 84-24. 89 Fed. Reg. 32122 *et seq.* (Apr. 25, 2024). [Doc. 1.] The 2024 Fiduciary Rule and amended PTE 84-24 were scheduled to go into effect on September 23, 2024. On Plaintiffs’ motion, however, this Court entered its Memorandum Opinion and Order (“Order”) on July 25, 2024, which stayed the effective date of the 2024 Fiduciary Rule and amended PTE 84-24 during the pendency of this action. [Doc. 32.]

2. In its Order, the Court held that Plaintiffs were likely to succeed on the merits of their claims because the 2024 Fiduciary Rule conflicts with ERISA in at least the following ways: (a) by eliminating critical elements of the five-part test and thereby capturing transactions that do not meet the relationship of trust and confidence standard contemplated by ERISA, including one-time recommendations to roll over assets from an ERISA Title I plan to an Individual Retirement Account (“IRA”); (b) by treating any fee or other compensation received in connection with the sale of an investment product recommended by a financial professional as a fee for investment advice and thereby improperly including compensation incidental to the sale of an annuity to an ERISA plan or IRA owner as a fee for investment advice in contravention of ERISA; and (c) by imposing ERISA Title I duties on IRA service providers and thereby ignoring the distinction between the DOL’s authority under Title I and Title II, the latter of which does not impose statutory duties of loyalty and prudence on IRA fiduciaries and does not give

DOL authority to regulate IRA service providers in tandem with Title I fiduciaries. The Court further held that Plaintiffs were likely to prevail on the merits of their claim that the related amendments to PTE 84-24 are unreasonable, arbitrary, and capricious.

3. Defendants filed an appeal from the Order to the Fifth Circuit Court of Appeals [Doc. 39], but subsequently voluntarily dismissed such appeal before briefing was concluded. Moreover, Defendants have now agreed not to oppose the entry of a final judgment for Plaintiffs in conformity with the Court's prior Order. In this regard, Defendants acknowledge that, as stated in the Order, the Court is bound by the Fifth Circuit's opinion in *Chamber of Commerce of United States of Am. v. United States Dep't of Labor*, 885 F.3d 360 (5th Cir. 2018), and Defendants have already had a full and fair opportunity to present any arguments why the court should not act to vacate the 2024 Fiduciary Rule and the related amendments to PTE 84-24. Accordingly, Plaintiffs and Defendants agree that no further purpose is served by requiring the parties and Court to incur the time and expense of additional briefing or evidentiary submissions on a motion for summary judgment that would be effectively duplicative of the briefing already submitted on the motion to stay. For the reasons stated in the Order, the 2024 Fiduciary rule is inconsistent with the Fifth Circuit's *Chamber of Commerce* decision.

4. The proposed final judgment provides that the 2024 Fiduciary Rule and amendments to PTE 84-24 be vacated pursuant to 5 U.S.C. § 706. It is Plaintiffs' position that the rule in the Fifth Circuit is clear that when an agency action is contrary to law or arbitrary and capricious, the "default rule is that vacatur is the appropriate remedy."

*Restaurant Law Ctr. v. Dep't of Labor*, 120 F.4th 163, 177 (5th Cir. 2024) (quoting *Data Mktg. P'ship, LP v. U.S. Dep't of Lab.*, 45 F.4th 846, 859 (5th Cir. 2022)); *see also* *Braidwood Mgmt., Inc. v. Becerra*, 104 F.4th 930, 952 (5th Cir. 2024); *Chamber of Com. v. U.S. Sec. & Exch. Comm'n*, 88 F.4th 1115, 1118 (5th Cir. 2023). It is Defendants' position that the APA does not authorize a court to vacate an agency rule, and that if vacatur is an available remedy, then like all equitable remedies, such relief must be subject to traditional equitable limitations, including the principle of party-specific relief. Defendants acknowledge, however, that there is substantial authority opposing this position in some circuits, including the Fifth Circuit, although the Supreme Court has not ruled on the issue. In not opposing this motion, Defendants agree not to pursue this position in this case, but reserve the right to continue to advance this position in other cases.

5. Accordingly, Plaintiffs hereby request, and Defendants do not oppose, that the Court enter a final judgment vacating the 2024 Fiduciary Rule and amendments to PTE 84-24 in the form submitted contemporaneously herewith.

Dated: March 11, 2026

Respectfully submitted,

By: /s/ Don Colleluori

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**ATTORNEYS FOR PLAINTIFFS**

### **CERTIFICATE OF CONFERENCE**

I hereby certify that I have conferred with Jody D. Lowenstein, counsel for Defendants, regarding the foregoing motion for entry of a final judgment, and Ms. Lowenstein has confirmed that Defendants do not oppose the relief requested herein.

/s/ Don Colleluori

Don Colleluori

### **CERTIFICATE OF SERVICE**

I hereby certify that on March 11, 2026, this document was served, via email, on all attorneys deemed to accept electronic service in this matter through the Court's electronic filing system.

/s/ Don Colleluori

Don Colleluori