IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

COALITION FOR WORKFORCE INNOVATION, *et al.*,	)	
Plaintiffs-Appellees,	)	**Case No. 22-40316**
vs.	)	
JULIE SU, *et al.*,	)	
Defendants-Appellants,	)	

PLAINTIFFS' REPLY TO DEFENDANTS' RESPONSE TO MOTION TO REMAND CASE FOR FURTHER PROCEEDINGS

Plaintiffs-Appellees the Coalition for Workforce Innovation ("CWI"), Associated Builders and Contractors of Southeast Texas, Inc. ("ABCST"), Associated Builders and Contractors, Inc. ("ABC"), and the Financial Services Institute, Inc. ("FSI") (collectively the "Associations") hereby reply to the Department's Response to Plaintiffs' Motion to Remand this Case for Further Proceedings (ECF 63).

The Department has conceded that this Court "has discretion to remand the case to the district court." *See* ECF 63 at 2. Indeed, in the cases cited in the Department's Response to Plaintiff's Motion to Remand, that is exactly what the courts did. *See Diffenderfer v. Cent. Baptist Church of Miami, Fla., Inc.*, 403 U.S.

412, 415 (1972) (where challenged statute was repealed and replaced, case was properly remanded to district court because "it is possible that the appellants may wish to *amend their complaint so as to ... attack the newly enacted legislation*") (emphasis added); *Bryan v. Austin*, 354 U.S. 933 (1957) (case remanded to district court after repeal of challenged statute so that appellants could "amend their pleadings … to set forth a cause of action based on the operation of the new Act").

The Department's response does not engage with or dispute any of the cases cited in the Associations' motion, ECF No. 59, cases in which remands were ordered under circumstances remarkably similar to the present case. *See Biden v. Texas*, 142 S. Ct. 2528 (2022); *New York State Rifle & Pistol Ass'n, Inc. v. City of New York*, 140 S. Ct. 1525, 1526 (2020); *Franciscan All., Inc. v. Becerra*, 47 F.4th 368, 374 (5th Cir. 2022); *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 286 (5th Cir. 2012); *see also Newton-Nations v. Betlach*, 660 F.3d 370, 383 (9th Cir. 2011). Together with the Department's concession above, that should end the matter, and the Associations' motion for remand should expeditiously be granted.

The Department incorrectly contends that the Associations' motion rests on the "mistaken premise" that they "cannot challenge the new final rule" without a remand. ECF 63 at 3. The Associations make no such assertion. Rather, the Associations maintain that they should not be required to start over from scratch. Applicable law and the plain interests of judicial economy and efficiency require

remand to the judge who is already familiar with the case, and whose order is directly implicated by the 2024 Rule.

Finally, the Department's opposition improperly links the remand decision to a finding of mootness and vacatur under a misapplication of *United States v. Munsingwear, Inc.*, 340 U.S. 36, 40-41 (1950). As the Associations have explained fully in their response to the government's motion to vacate, ECF No. 66, *Munsingwear* has no application here. *See U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership*, 513 U.S. 18 (1984); *Staley v. Harris County*, 485 F.3d 305, 312 (5th Cir. 2007) (en banc); *Murphy v. Fort Worth Independent Sch. Dist.*, 334 F.3d 470, 471 (5th Cir. 2003); *Hall v. Louisiana*, 884 F.3d 546, 553 (5th Cir. 2018). In any event, the Court's ruling on the Department's motion to vacate should have no bearing on the Associations' motion to remand, which the Department does not seriously contest. For this reason as well, the Associations' motion to remand should be granted.

CONCLUSION

The Associations respectfully ask this Court to remand this matter for further proceedings to the District Court, with instructions for the District Court to determine whether the Department acted lawfully in withdrawing the 2021 Rule and promulgating the 2024 Rule in its place.

Respectfully submitted,

/s/ Maurice Baskin

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), the above-named counsel hereby certifies that this memorandum complies with the type-volume limitation of the Federal Rules of Appellate Procedure. As measured by the word processing system used to prepare it, this memorandum contains 597 words.

/s/ Maurice Baskin

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of January, 2024, I electronically filed a true and correct copy of the foregoing using the CM/ECF system, thereby sending notification of such filing to all counsel of record.

/s/Maurice Baskin