Yale Law School

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BY ELECTRONIC MAIL

May 11, 2026

The Hon. Allison H. Eid, Chair
Prof. Stephen Sachs, Reporter
Advisory Committee on Appellate Rules

RE: Automatic Administrative Stays

Dear Judge Eid and Prof. Sachs:

During the past few presidential administrations, federal district courts have repeatedly blocked major national policies from coming into effect. Until the Supreme Court's decision in *Trump v. CASA, Inc.*, courts often blocked such policies with "universal injunctions." *See* 145 S. Ct. 2540 (2025); Cong. Research Serv., Nationwide Injunctions in the First Hundred Days of the Second Trump Administration (May 16, 2025); Cong. Research Serv., Nationwide Injunctions Under the First Trump Administration and the Biden Administration (Mar. 20, 2025). But district courts still have power to enter effectively universal relief. Specifically, current law permits aggregate litigation brought by governments, associations, and putative classes of plaintiffs; pre-enforcement review of many government policies; and remedies in which courts declare policies illegal, vacate administrative action entirely, or broadly enjoin the application of a policy. Forum-shopping also ensures that any district court considering a challenge to a government policy is likely to be favorable to the plaintiffs' arguments. While such a system empowers district courts to respond effectively to unlawful government activity, it also permits federal district courts to block legitimate government policies. Judicial orders blocking major government policies may pressure the courts of appeals and the Supreme Court to intervene with limited briefing and without adequate time to consider the legal issues presented.

I suggest that the Committee consider rulemaking to address one limited aspect of this problem. In particular, I propose that the Federal Rules of Appellate Procedure (FRAP) provide for automatic, short-term administrative stays for a limited class of judgments and orders that effectively block statewide or national policies. Automatic administrative stays would postpone the effective date of certain district court orders while the court of appeals considers the underlying motion for a stay pending

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appeal. Such automatic stays could reduce the conflict between federal district courts and the political branches and ensure that the courts of appeals have adequate time to adjudicate motions to stay in consequential cases. At the same time, the amendment should ensure that district courts may issue timely relief to specific plaintiffs threatened by imminent illegality.

While drafting precise language would be premature, a proposed amendment will clarify the recommendation. I thus propose amending FRAP 8 substantially as follows, with a new subsection (d):

RULE 8. STAY OR INJUNCTION PENDING APPEAL.

. . . .

(d) STAYS IN CASES AGAINST A STATE OR THE UNITED STATES.

(1) The circuit clerk must enter an administrative stay of a judgment or order upon the filing of a motion for a stay pending appeal under Rule 8(a) if the movant is a State (or any officer or agency thereof) or the United States (or any officer or agency thereof) and the movant certifies that:

(A) the judgment or order enters prospective relief, including a preliminary or final injunction or temporary restraining order, a declaratory judgment, or an order setting aside agency action (whether entered pursuant to the Administrative Procedure Act, *see* 5 U.S.C. §§ 701-706, or otherwise);

(B) such judgment or order is entered against a State (or any officer or agency thereof) or the United States (or any officer or agency thereof); and

(C) such judgment or order is entered on behalf of:

(i) a class or putative class of plaintiffs under Rule 23 of the Federal Rules of Civil Procedure;

(ii) an associational plaintiff alleging injuries to its members; or

(iii) a State (or any officer or agency thereof) or the United States (or any officer or agency thereof).

> (2) The administrative stay entered under subsection (1) will remain in effect for 14 days, unless the court extends or terminates the stay.

Generally, the proposed amendment would switch the default rule for certain orders or judgments that effectively block statewide or national policies. Instead of going into effect when the district court enters the order or judgment *unless* the district court or court of appeals enters a stay, *see* FED. R. CIV. P. 62(c); FED. R. APP. P. 8, the order or judgment would be automatically administratively stayed once the appellant files a motion for a stay pending appeal.

That approach ensures that the court of appeals can review an order blocking a government policy before the district court's order becomes effective. It thus allows the government defendant to seek appellate review before its policy is blocked, and it provides the court of appeals with a brief window to make an intelligent decision on the motion for a stay. But the amendment does not stop district courts from entering tailored relief for individuals threatened with imminent illegality, and it thus allows a prospective plaintiff to structure her claims to avoid the automatic-stay provision.

The proposed automatic administrative stay has analogues in current practice:

- First, an administrative stay is "a flexible, short-term tool" designed to "minimize harm while the court deliberates." *See United States v. Texas*, 144 S. Ct. 797, 798-799 (2024) (Barrett, J., concurring); *see also* Rachel Bayefsky, *Administrative Stays: Power and Procedure*, 97 NOTRE DAME L. REV. 1941 (2022). Courts of appeals already make case-by-case determinations about whether to enter such administrative stays, and this proposed amendment substitutes a bright-line rule for case-by-case discretion—though the court of appeals retains authority to modify the administrative stay in any given case.
- Second, in the immigration context, some courts of appeals enter automatic stays of removal if a noncitizen files a petition for review and a motion to stay an order of removal. *See* American Immigration Council, Practice Advisory: Stays of Removal at 14 (Jan. 17, 2025), https://tinyurl.com/muewumbd. The default rule for the automatic stay proposed above would be similar to those automatic stays, because some circuits impose no time limit for such stays, while others impose time limits of 10 or 14 days. *See id.* (noting that the Second, Third,

and Ninth Circuits permit indefinite automatic stays, while the First and Fourth Circuits impose time limits).

- Third, the Federal Rules of Civil Procedure (FRCP) automatically stay some judgments entered by district courts. Currently, the "execution on a judgment" is automatically stayed for 30 days, but that provision expressly excludes injunctions from the automatic-stay provision. *See* FED. R. CIV. P. 62(a), (c). Thus, although the amendment would require automatic administrative stays in additional circumstances, similar administrative stays—including automatic ones—are a standard tool in the federal courts.

The proposed amendment alters the default rule only in the limited set of cases in which there is a serious risk of conflict between the federal courts and the political branches.

- Subsections (d)(1)(A) and (B) of the proposed amendment limit the automatic administrative stay to cases seeking prospective relief against States or the United States (and their officers or agencies). Only prospective relief threatens to interfere with legitimate government policies, and any automatic-stay amendment should therefore be limited to such cases. The proposed amendment also references "officers or agencies" to ensure that it covers suits brought under the Administrative Procedure Act and suits for equitable relief against government officials (whether brought under *Ex parte Young*, 42 U.S.C. § 1983, or an implied constitutional cause of action).
- Subsection (d)(1)(C) likewise limits the amendment to relief that is broad enough to effectively block state or national policies. The Supreme Court has barred "universal injunctions" that once allowed district courts to "prohibit enforcement of a law or policy against *anyone*," *CASA,* 145 S. Ct. at 2548, but district courts have other procedural and remedial tools that effectively replicate universal injunctions. In particular, class actions, claims brought by associations representing the interests of many members, and claims brought by the United States and the States all permit plaintiffs to obtain relief that sometimes functionally approximates a universal injunction.[1] Though these tools might be

[1] For example, after the Supreme Court's decision in *CASA*, lower courts enjoined (or affirmed injunctions against) enforcement of the same policy at issue in *CASA* in class actions and in suits brought by States. *See Washington v. Trump*, 145 F.4th 1013, 1038 (9th Cir. 2025); *Barbara v. Trump*, 790 F. Supp. 3d 80 (D.N.H. 2025). For the argument that these avenues provide relief similar in effect to a nationwide injunction, see, for example, Mila Sohoni, *In* CASA *You Missed It*, 78 STAN. L. REV. at 3 (forthcoming 2026) ("*CASA* left open

lawful after *CASA*, they risk perpetuating "a state of affairs where almost every major presidential act is immediately frozen by a federal district court." William Baude & Samuel L. Bray, *Proper Parties, Proper Relief*, 137 HARV. L. REV. 153, 174 (2023).

- At the same time, subsection (d)(1)(C) preserves the capacity of district courts to enter tailored relief on behalf of individual plaintiffs. The amendment does not apply to an individual plaintiff, or even a group of individuals joined as plaintiffs, seeking prospective relief to prevent threatened illegality. What is more, potential plaintiffs who need immediate judicial relief may structure their lawsuits to avoid the automatic-stay provision by proceeding individually rather than as a class (or by seeking a targeted preliminary injunction while still proceeding as a class), and the proposed amendment thus incentivizes plaintiffs to seek narrower relief when the threat of harm is imminent.
- Subsection (d)(2) ensures that the automatic administrative stay applies only long enough for the court of appeals to rule on the underlying motion for a stay pending appeal. The automatic 14-day stay is no "longer than necessary to make an intelligent decision on the motion for a stay pending appeal," *United States v. Texas*, 144 S. Ct. 797, 799 (2024) (Barrett, J., concurring), though a court of appeals that needs more or less time may extend the stay or terminate it early.

The Committee should consider several potential concerns about the amendment, which I raise and briefly address here:

- *Circuit shopping*. One factor that contributes to judicial orders blocking major government policies is forum shopping. This amendment might marginally reduce the incentive for litigants to select a favorable district court, but litigants will still have an incentive to select a favorable circuit. But shifting decision-making responsibility from district courts to the courts of appeals should still reduce the benefits of forum-shopping, because the issues will be resolved by randomly selected panels of judges. Although the incentive to select a favorable district and circuit will remain, it would not be possible to eliminate that incentive without more radical changes to the federal system.
- *Automatic stays in the district court*. The amendment contemplates that the automatic stay will be entered by the court of appeals instead of the

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other avenues to the same endpoint, including 'complete relief' injunctions, universal remedies under the APA and other statutes, class actions, and relief based on associational and state standing.").

district court. One concern might be that the automatic stay should be issued, if at all, by the district court instead. But there are several reasons to consider an amendment to FRAP. First, the amendment to FRAP requires an administrative stay only if the government defendant chooses to appeal and to file a motion for a stay pending appeal, thus ensuring that the automatic-stay provision applies only if the matter is significant enough that the defendant chooses to seek appellate review. Second, one of the amendment's aims is to ensure that the court of appeals has adequate time to resolve the underlying motion for a stay. As written, the timeline for this administrative stay begins when a motion for a stay pending appeal has been filed. Third, the automatic-stay provision also permits the court of appeals to terminate the stay by order, which couples a bright-line rule imposing an administrative stay with case-by-case discretion for the court of appeals. A district court that has just entered an order blocking a government policy, and which has authority to terminate an automatic stay on a case-by-case basis, might be particularly inclined to terminate that administrative stay—which would defeat the purpose of the amendment. Thus, an amendment to FRAP seems preferable.

- *Erroneous automatic stays.* Subsection (d)(1) would require the circuit clerk to enter an administrative stay if the "movant certifies" that the conditions have been met. An automatic stay conditioned upon the movant's certification implements the bright-line default rule requiring automatic stays. One risk of this mandatory approach is that movants will erroneously certify that the district court's order should be stayed. But the risk is low. First, the automatic stay is designed to expire automatically in relatively short order. Second, if the automatic stay has been entered erroneously, the court of appeals may terminate the administrative stay by order. Third, the court of appeals may sanction lawyers or parties for flagrant abuses of the automatic-stay provision. *See Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991).
- *The APA "set aside" remedy.* The proposed amendment applies to the remedy of vacatur under the APA, but only if vacatur is entered on behalf of plaintiffs identified in subsection (d)(1)(C). Under the current understanding of the APA, however, courts may vacate agency action entirely even for individual plaintiffs. *See Corner Post v. Board of Governors*, 144 S. Ct. 2440, 2462-2463 (2024) (Kavanaugh, J., concurring). Accordingly, some vacatur orders will effectively block agency rules but will not fall within the scope of the proposed amendment. A potential alternative, which the Committee might consider, would be to apply the automatic-stay provision to all APA remedies—irrespective of the limitations in subsection (d)(1)(C).

Though that approach could arguably make the amendment over-inclusive, the amendment would still apply only to claims brought in federal district court—not to agency action challenged first in the courts of appeals.

- *Multidistrict litigation.* The amendment could encourage plaintiffs who would have sought relief as a class or in a claim brought by an association to proceed instead as individual plaintiffs. If so, parties might seek to consolidate the claims using the multidistrict litigation statute. *See* 28 U.S.C. § 1407; Andrew D. Bradt & Zachary D. Clopton, *MDL v. Trump: The Puzzle of Public Law in Multidistrict Litigation*, 112 NW. U. L. REV. 905 (2018). The decision whether to consolidate would fall to the Judicial Panel on Multidistrict Litigation, but consolidation would also ameliorate the problem of forum-shopping, because the JPML selects the district where consolidated proceedings will occur.

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The proposed amendment to FRAP 8 would ensure that the courts of appeals could review most district court orders that block major government policies before those orders go into effect. The automatic administrative stay, however, would operate only long enough for the court of appeals to review the underlying motion for a stay pending appeal. And the proposed amendment would allow district courts to immediately enter relief that is tailored to protect individuals (or groups of individuals) threatened with imminent harm from illegal government action.

I hope this is helpful to you. Please do not hesitate to contact me if there is more information that I can provide, and thank you for your time and attention.

Respectfully,

E. Garrett West

cc: Carolyn A. Dubay, Secretary
Committee on Rules of Practice and Procedure