

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NEWSGUARD TECHNOLOGIES, INC.,

Plaintiff,

v.

FEDERAL TRADE COMMISSION and
ANDREW FERGUSON, in his official capacity
as Chairman of the Federal Trade Commission,

Defendants.

Case No.: 1:26-cv-00353-DLF

Hon. Dabney L. Friedrich

**PLAINTIFF’S MOTION TO HOLD PROCEEDINGS IN ABEYANCE PENDING
INTERLOCUTORY APPEAL**

Plaintiff NewsGuard moves to hold further proceedings in abeyance pending resolution of its interlocutory appeal from this Court’s denial without prejudice of NewsGuard’s preliminary injunction motion. *See NewsGuard Technologies, Inc. v. Federal Trade Commission*, No. 26-5138 (D.C. Cir. *appeal docketed* Apr. 28, 2026).

NewsGuard does not seek a stay of the Court’s order, an injunction pending appeal, or any other affirmative interim relief. It seeks only a temporary case-management pause while the D.C. Circuit considers a threshold legal issue that will directly affect further proceedings in this Court: the applicable standard for irreparable harm in the First Amendment context.

Following the D.C. Circuit’s decision, NewsGuard anticipates amending its Complaint and, if appropriate, filing a renewed request for preliminary relief. Absent abeyance, the parties may be required to litigate—and this Court may be asked to decide—a renewed preliminary injunction motion before the D.C. Circuit resolves the irreparable harm standard that would govern that request. Proceeding in parallel would risk duplicative briefing and unnecessary expenditure of

party and judicial resources. A temporary pause pending the D.C. Circuit’s decision provides the most efficient path forward.¹

A. Procedural Background.

NewsGuard brought this action on February 6, 2026, alleging First Amendment injuries, including viewpoint-based retaliation by the FTC both directly and through intermediaries. ECF 1. NewsGuard challenged the FTC’s sweeping Civil Investigative Demand (“CID”) and the Omnicom-IPG merger condition barring the merged advertising entity from using third-party services that evaluate “viewpoints as to the veracity of news reporting” and “adherence to journalistic standards or ethics.” ECF 1 ¶¶ 3, 125; *see also* Omnicom Consent Order, ECF 11-25.

On February 11, 2026, NewsGuard moved for a preliminary injunction. ECF 11-1. The Court denied that motion without prejudice on irreparable harm grounds. ECF 36. On April 22, 2026, NewsGuard filed a notice of interlocutory appeal. ECF 37. That appeal is pending before the D.C. Circuit as *NewsGuard Technologies, Inc. v. Federal Trade Commission*, No. 26-5138. The appeal presents an issue central to NewsGuard’s request for preliminary relief: the standard for irreparable harm in First Amendment actions.

Intervening developments have also materially changed the scope of this case, increasing the likelihood that NewsGuard will amend its Complaint. On April 15, 2026, after briefing and argument on NewsGuard’s preliminary injunction motion, the FTC entered into consent orders with Dentsu, WPP, and Publicis—three of the largest global advertising agency holding companies. *See* ECF 33-2, 33-3, 33-4. Those orders impose conditions materially identical to the Omnicom condition, expanding restrictions on the use of NewsGuard’s services to five of the “Big

¹ Pursuant to Local Civil Rule 7(m), counsel for Plaintiff has conferred in good faith with counsel for Defendants, who oppose abeyance.

Six” advertising agencies. The next day, the FTC withdrew the CID issued to NewsGuard.² ECF 33-5. These developments—together with the D.C. Circuit’s forthcoming decision—will shape any amended pleading and any renewed request for preliminary relief.

B. 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.” *Landis v. North Am. Co.*, 299 U.S. 248, 254 (1936). Whether “to stay or to hold a matter in abeyance pending the outcome of a related or parallel proceeding turns upon the unique circumstances of the case, and is largely a matter of discretion for the court.” *Khadr v. Bush*, 587 F. Supp. 2d 225, 229 (D.D.C. 2008). In exercising that discretion, courts “weigh competing interests and maintain an even balance between the court’s interests in judicial economy and any possible hardship to the parties.” *Ready to Win v. Federal Election Comm’n*, No. 22-3282, 2023 WL 10512144, at *2 (D.D.C. July 28, 2023) (citations and internal quotation marks omitted) (granting First Amendment plaintiff’s motion to stay pending interlocutory appeal from denial of preliminary injunction because the D.C. Circuit’s decision could narrow further district court proceedings).

² In *First Choice Women’s Resource Centers, Inc. v. Davenport*, 608 U.S. ___, No. 24-781, 2026 WL 1153029 (Apr. 29, 2026), the Supreme Court addressed First Amendment injury and mootness principles in the context of government investigative demands. The Court—citing *Media Matters for Am. v. Paxton*, 138 F.4th 563, 582–83 (D.C. Cir. 2025)—held that a plaintiff can establish injury in fact by alleging ongoing First Amendment injury from a subpoena itself, even before enforcement, observing that “[t]he value of a sword of Damocles is that it hangs—not that it drops.” *First Choice*, 2026 WL 1153029, at *9, *10 (quoting *Arnett v. Kennedy*, 416 U.S. 134, 231 (1974) (Marshall, J., dissenting)). The Court also reiterated that the voluntary cessation doctrine imposes a “heavy burden” on a defendant, who must show there is no reasonable expectation it will resume the challenged conduct. *Id.* at *12 (quoting *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 457 n.1 (2017)).

Notably, “a stay of the proceedings in one case is justifiable even where the parallel proceedings ‘may not settle every question of fact and law,’ but would settle some outstanding issues and simplify others.” *Bridgeport Hosp. v. Sebelius*, No. 9-1344, 2011 WL 862250, at *1 (D.D.C. Mar. 10, 2011) (quoting *Landis*, 299 U.S. at 256). And a stay “may be particularly appropriate where resolution of the other litigation will likely narrow the issues and assist in determination of questions of law.” *Wilderness Soc’y v. Trump*, Nos. 1:17-cv-2587, 1:17-cv-2591, 2024 WL 4880449, at *2 (D.D.C. Nov. 25, 2024).³ See *Volokh v. James*, 148 F.4th 71, 82 (2d Cir. 2025) (noting stay of district court proceedings pending interlocutory appeal of preliminary injunction in First Amendment challenge).

C. Proceedings Should Be Held in Abeyance Pending Resolution of NewsGuard’s Appeal.

Abeyance will promote judicial economy. The Court denied NewsGuard’s preliminary injunction motion without prejudice on irreparable harm grounds. NewsGuard’s appeal asks the D.C. Circuit to clarify the irreparable harm standard applicable where a news organization alleges viewpoint-based retaliation that burdens its speech and impairs its opportunities to disseminate its speech to its news consumers through its data journalism for licensees, journalistic reports, daily newsletter reporting for tens of thousands of consumers and other exercises of its protected speech. That standard would govern any renewed request for preliminary relief in this Court.

Proceeding in parallel with the appeal would create a substantial risk of duplicative litigation. As noted above, NewsGuard anticipates amending its Complaint to account for the

³ Because NewsGuard seeks only a temporary pause in district court proceedings—not a stay of this Court’s order or injunctive relief pending appeal—the Court’s inherent authority to manage its docket supplies the relevant legal standard. The factors governing a stay of an order or injunction pending appeal, *see, e.g., Alcresta Therapeutics, Inc. v. Azar*, 318 F. Supp. 3d 321, 323–24 (D.D.C. 2018), do not apply.

Dentsu consent orders and may then seek renewed preliminary relief. But if those steps proceed before the D.C. Circuit rules, the parties may be required to brief—and this Court may be asked to decide—a renewed preliminary injunction motion under a legal standard the D.C. Circuit is actively considering and may soon clarify.

Abeyance would avoid that inefficiency. If the D.C. Circuit agrees with NewsGuard, its ruling may affect the disposition of NewsGuard’s original preliminary injunction motion and will almost certainly inform any renewed request for preliminary relief. If the D.C. Circuit disagrees, its decision will nonetheless provide clear guidance for further proceedings. Either way, the parties and the Court will benefit from having the governing standard clarified before expending resources on amendment, renewed preliminary injunction briefing, and responsive pleadings. Abeyance is appropriate here even if NewsGuard’s appeal does not resolve every issue in the case, so long as it is likely to “settle some outstanding issues and simplify others.” *Bridgeport Hosp.*, 2011 WL 862250, at *1.

This Court has recognized the utility of pausing further proceedings where a pending appeal from a preliminary injunction order could bear on the next phase of district court litigation. In *Cabrera v. U.S. Department of Labor*, after the defendants appealed this Court’s order granting the plaintiffs’ preliminary injunction motion, the Court stated it was “not inclined to decide the parties’ summary judgment motions until after the D.C. Circuit issues an opinion on the Court’s [prior] Order.” No. 1:25-cv-1909-DLF, Minute Order (Nov. 26, 2025). Although the posture here is not identical, the Court’s approach is instructive: where an appeal from a preliminary injunction order may “assist in determination of questions of law” bearing on the next phase of district court litigation, abeyance may provide an efficient course. *See Wilderness Soc’y*, 2024 WL 4880449, at *2.

A temporary abeyance will not prejudice Defendants. NewsGuard does not seek an injunction pending appeal, a stay of this Court’s order, or any affirmative interim relief. Abeyance would not alter the status quo. It would merely defer further district court litigation until the D.C. Circuit resolves an issue central to the case. And the pause would not be “unreasonably long.” *See Landis*, 299 U.S. at 258. NewsGuard intends to seek expedited review in the D.C. Circuit. And, as the parties noted in their April 29, 2026 joint status report, if the Court grants this motion, the parties have committed to submit regular reports on the status of appellate proceedings. *See* ECF 39. NewsGuard further proposes that the parties file a joint status report within fourteen days of the D.C. Circuit’s resolution of the appeal.

D. Conclusion.

For these reasons, NewsGuard respectfully requests that the Court hold further proceedings in this matter in abeyance pending resolution of NewsGuard’s interlocutory appeal.

Dated: May 15, 2026

Respectfully Submitted,

/s/ Robert Corn-Revere

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Not Admitted to the D.C. Bar. D.C. Practice
limited to U.S. federal courts and related
matters under D.C. Ct. App. R. 49(c)(3).

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