

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,**

Plaintiff,

v.

ANNE PRAMAGGIORE,

Defendant.

)
)
) **Hon. Franklin U.**
) **Valderrama**
)
) **No. 1:23-cv-14252**
)
)
)
)
)

**PLAINTIFF’S BRIEF IN OPPOSITION TO
DEFENDANT’S MOTION TO STAY PROCEEDINGS**

A convicted defendant’s confidence in her prospects on appeal does not create the kind of “special circumstances” that warrant a stay of a parallel civil proceeding. But defendant Anne Pramaggiore’s motion for a stay is *far weaker* than that of the average such movant. On rare occasions a federal court will stay a civil case—on the off-chance the criminal conviction is thrown out—to protect the defendant’s Fifth Amendment rights. Here, by contrast, there are no such concerns, since Pramaggiore *already testified* at her criminal trial. Thus, unlike most such defendants, she needn’t worry about waiving her Fifth Amendment rights. That ship has sailed.

Then there's the not-so-small matter of the lengthy stay that Pramaggiore seeks "pending the conclusion of the appeal in the criminal case." (ECF No. 11, p. 2.) How lengthy, no one knows, but as a practical matter it could be *years*. After all, she won't so much as *file* her notice of appeal until Judge Leinenweber has sentenced her *and* ruled on post-trial motions. A brief in support of Pramaggiore's post-trial motion was filed as recently as Thursday. So it may be a while. And once she *can* appeal, she anticipates it being a long road. "Exhibit A" is her apparent expectation that she'll be arguing her case before the Supreme Court. (ECF No. 12, p. 9.)

Meanwhile, she fails to explain how the outcome of the indisputably lengthy criminal appeals process could imperil the viability of the SEC's claims in this case. Short answer: It won't.

These reasons compel denial of her motion.

BACKGROUND

The SEC filed its complaint on September 28, 2023. (ECF No. 1.) Pramaggiore served as Commonwealth Edison Company's CEO and later as Exelon Utilities' CEO. The SEC alleges that in these capacities she participated in a fraudulent scheme to corruptly influence then-Speaker of the Illinois General Assembly Michael Madigan. Under her watch and with her active participation, ComEd showered Madigan confederates with over a million dollars in payments.

The SEC alleges that the goal was to ingratiate ComEd to Madigan so he would do its political bidding in Springfield. The payments were supposedly for services rendered. But the SEC alleges that Pramaggiore knew those payments bought ComEd clout—not legal, lobbying, or consulting services. The SEC alleges that Pramaggiore concealed this scheme and those bribes from Exelon’s investors; from ComEd’s and Exelon’s auditor; and from the companies’ books, records and internal controls. The SEC charges Pramaggiore with securities fraud and other securities laws violations.

By the time the SEC filed this lawsuit, a jury had already convicted Pramaggiore. *See United States v. Pramaggiore, et al.*, 1:20-CR-812 (N.D. Ill.). During three of the 22 trial days, Pramaggiore testified in her own defense.

Pramaggiore’s sentencing submission is due December 22, 2023. *Id.*, ECF No. 338. She is scheduled to be sentenced on January 16, 2024. *Id.*, ECF No. 251. Defendants’ post-trial motions are pending.

ARGUMENT

“There is no general federal constitutional, statutory, or common law rule barring the simultaneous prosecution of separate civil and criminal actions by different federal agencies against the same defendant involving the same transactions. Parallel civil and criminal proceedings instituted by different federal agencies are not uncommon occurrences because of the overlapping nature of

federal civil and penal laws.” *SEC v. First Fin. Grp. of Texas, Inc.*, 659 F.2d 660, 666–67 (5th Cir. 1981)

For this reason, “stays of civil proceedings when there is a parallel criminal proceeding are appropriate only under ‘special circumstances’ where there is a need to avoid ‘substantial and irreparable prejudice’ in the interests of justice.” *SEC v. Henderson*, No. 1:19-CV-06183, 2021 WL 11628279, at *1 (N.D. Ill. June 22, 2021) (citations omitted). To determine whether a defendant will face “substantial and irreparable prejudice” absent a stay, federal courts apply certain factors to balance the competing interests of the plaintiff, the defendant, and the public, including:

- whether the civil and criminal matters involve the same subject;
- whether the governmental entity that has initiated the criminal case or investigation is also a party in the civil case;
- the posture of the criminal proceeding;
- the effect of granting or denying a stay on the public interest;
- the interest of the civil-case plaintiff in proceeding expeditiously;
- the potential prejudice the plaintiff may suffer from a delay; and
- the burden that any particular aspect of the civil case may impose on defendants if a stay is denied.

Chagolla v. City of Chicago, 529 F. Supp. 2d 941, 945 (N.D. Ill. 2008).

As discussed below, these factors weigh heavily against the movant and the stay she seeks.

**A. There Are No “Special Circumstances”
Supporting A Stay, And The Procedural
Posture Of The Two Cases Weighs Against It.**

There’s nothing “special” or unique about a convicted defendant insisting she is innocent. To distinguish herself from every other such defendant, Pramaggiore leans on superlatives—saying her case is “far from over” because her appeal is a “serious challenge” concerning “deeply unsettled legal questions.”

That sounds a lot like the defendant’s optimism in *SEC v. Gordon*, No. 09-CV-0061, 2010 WL 4956106, at *1 (N.D. Okla. Dec. 1, 2010). That defendant told the judge in the parallel SEC action that he was “likely to prevail on his appeal of the criminal case” and that “the Tenth Circuit’s decision on appeal may impact this Court’s rulings on factual and legal issues in this civil case.” *Id.* The court rejected that argument, holding that the defendant’s “criminal case has been completed and the Court finds no reason to continue the stay of this civil case.” *Id.*

While the court expressed “no opinion” about the likelihood of reversal, it held that “the mere possibility that his conviction or sentence will be overturned is not a sufficient reason to stay this case.” *Id.* The court, noting that the defendant had provided no estimate of how long the appeal may take, declined to “authorize an indefinite delay of this case.” *Id.*

So it is here. The lack of any such estimate or time-limited request is itself telling. As Pramaggiore apparently knows, the likely timeline isn’t pretty. First her

appeal must ripen, which itself could take months given the myriad post-trial motions and briefing; followed by the Seventh Circuit; then perhaps a request for *en banc* review and a petition to the Supreme Court. *Cf. SEC v. Blackwell*, 477 F. Supp. 2d 891, 901 (S.D. Ohio 2007) (“Allowing Defendants to avoid the preclusive effect of the Criminal Action until their appeal is finalized would halt the process of justice. Defendants have the ability to delay their criminal appeals for years by requesting en banc hearings, petitioning the U.S. Supreme Court for certiorari, and filing habeas corpus petitions.”).

All the while, this case will languish on this Court’s docket. The relevant underlying events in the complaint will grow old and recede from memory. Justice will be delayed, then delayed some more.

The defendant in *SEC v. Blackwell* was similarly optimistic of being vindicated on appeal. *Id.*, No. 2:03-CV-00063, 2006 WL 8445724, at *2 (S.D. Ohio Feb. 22, 2006). The court wasn’t swayed. It lifted the stay. If that meant the SEC moved for summary judgment on claim preclusion, the court held, so be it, as “a pending criminal appeal does not bar the Court from applying principles of claim preclusion to the Plaintiff’s case.” *Id.* (citing cases). *See also SEC v. Breslau*, No. 14-01290, 2015 WL 9591482, at *3 (C.D. Cal. Dec. 29, 2015) (a stay lasting through appeal would be prejudicial to the SEC given “the lengthy appeals

process” and “the amount of time that has passed since the events at issue took place”).

Critically, the courts in *Gordon*, *Blackwell*, and *Breslau* didn’t feel the need to assess the merits of those defendants’ criminal appeals. *See, e.g., Gordon*, 2010 WL 4956106, at *1 (“The Court expresses no opinion about the likelihood that Gordon will prevail on appeal”). Rather, those courts held that regardless, the minimal benefits of a stay were far outweighed by the needless and prejudicial delays that would result.

All of which stands to reason, since even if Pramaggiore’s optimism is warranted,¹ a stay of this case would *still* be unnecessary and thus inequitable. Here’s why: Whether or not the payments amounted to *criminal* bribes has no bearing on whether or not Pramaggiore violated *civil* securities fraud statutes by fraudulently misrepresenting the nature of Exelon’s lobbying efforts to the investing public; in the company’s books and records; and to its auditors. *See SEC v. Mulcahey*, 311 F. App’x 509, 511 (2d Cir. 2009) (affirming imposition of officer

¹ The SEC declines to weigh-in on whether the criminal statute in question requires a *quid pro quo*, except to note that the United States strongly disagrees with Pramaggiore’s take on the *Snyder* decision. *See* Ex. 1 hereto, *Government’s Consolidated Response to Defendants’ Motions for Judgment of Acquittal and For a New Trial*, pp. 83-88. But if Judge Leinenweber agrees with defendants, presumably he will grant their post-trial motion in relevant part, thus obviating the need for Pramaggiore to appeal the matter.

and director bar issued against a defendant in his SEC case after he was acquitted in his criminal case); *SEC v. Falbo*, 14 F. Supp. 2d 508, 529 (S.D.N.Y. 1998) (granting SEC's motion for summary judgment and imposing remedies against defendant who was acquitted in parallel criminal case); *SEC v. Antar*, 15 F. Supp. 2d 477, 533 (D.N.J. 1998) (after defendant was acquitted in parallel criminal case, the court found him liable for all claims brought against him by the SEC and imposed remedies).

But again, let's afford Pramaggiore the benefit of the doubt. Even if arguing the legal issue about the criminal statute—or the ultimate disposition of the criminal case more generally—impacts this case, she will have ample opportunity to bring such developments to the Court's attention, including through a motion for summary judgment or a Rule 60(b) motion. *See Blackwell*, 477 F. Supp. 2d at 901 (“In the event that their criminal conviction is overturned, Defendants may invoke Rule 60(b) of the Federal Rules of Civil Procedure and obtain relief from the civil judgment.”); *SEC v. Farkas*, 557 F. App'x 204, 208 (4th Cir. 2014) (“Should Farkas prove successful in vacating his convictions under § 2255, he may seek relief from the civil judgment in the district court pursuant to Rule 60(b) of the Federal Rules of Civil Procedure.”).

Pramaggiore cites *SEC v. Salis*, but that case doesn't help her cause. Critically, in that case the SEC didn't object to the stay in light of the posture of

that case. *Id.*, No. 2:16-CV-231, 2016 WL 7239916, at *2 (N.D. Ind. Dec. 14, 2016) (“Ordinarily, the interests of the SEC would be on the other side of the equation, but here the SEC will not be prejudiced by a stay and doesn’t oppose one.”). Here, by contrast, the SEC *has* objected precisely because it *will* be prejudiced by Pramaggiore’s proposed stay. Moreover, in *Salis* the court stayed the SEC case in order to avoid complicating or compromising the criminal case, *which had not yet been tried*. *Id.* (“discovery in criminal cases is by design more narrow than civil discovery, and the public has an interest in ensuring the criminal discovery process is not subverted”).

Here, Pramaggiore has already been convicted. In this regard, she mischaracterizes herself as “under criminal indictment.” (ECF No. 12, p. 8.) She’s way beyond that. She’s a convict. That’s an outcome dispositive distinction between her, on the one hand, and the defendants in the cases she relies upon.

B. The Public’s Interest and the SEC’s Interest in Proceeding Expeditiously Are Fully Aligned, And Weigh Heavily Against A Stay.

“In the context of SEC enforcement actions, courts have recognized that the public has a strong interest in ‘expeditious civil litigation’ to encourage public confidence in the integrity of securities markets.” *SEC v. Neman*, No. 12cv03142, 2015 WL 12806459, at *4 (C.D. Cal. Mar. 18, 2015) (citations omitted). Thus, “[t]he SEC’s and the public’s interests are intertwined, and both have an interest in

prompt resolution of this case.” *SEC v. Mueller*, No. 21-CV-00785, 2022 WL 818678, at *4 (W.D. Tex. Mar. 17, 2022). Along the same lines, “the public interest lies with combatting and deterring securities violations without unnecessary delay.” *SEC v. Marin*, No. 1:19-MC-20493, 2019 WL 13216127, at *4 (S.D. Fla. Oct. 25, 2019); *see also SEC v. Byers*, No. 08 CIV. 7104, 2009 WL 4582454, at *1 (S.D.N.Y. Dec. 3, 2009) (“The [SEC] initiated this action to serve the public’s interest in a well-regulated securities market and in protecting individual investors.”).

The equitable relief the SEC seeks in this matter—including an order barring Pramaggiore from serving as an officer or director of a publicly-held company—is unique to SEC enforcement actions. Such an order would further the interests of the investing public.

**C. Moving Forward With This Case
Would Not Prejudice Pramaggiore.**

It is disingenuous for Pramaggiore to lament being “forced to choose between fully defending herself in this action and invoking her Fifth Amendment right against self-incrimination.” (ECF No. 12, p. 11.) She *already made* her choice. She chose to testify in the criminal trial. Having made that choice in April 2023, she needn’t worry about being “forced to choose” any longer. The die is cast. That sets her apart from every defendant in the cases she cites.

In *Booth v. Acacia Corporation Management, LLC*, the defendant sought a stay to preserve his Fifth Amendment right against self-incrimination. *Id.*, No. 1:12-CV-00171, 2012 WL 6569765, at *2 (E.D. Cal. Dec. 17, 2012). The court rejected that argument because the defendant “has already testified in his own defense in the criminal proceedings,” so the defendant’s Fifth Amendment rights were “no longer implicated for purposes of this proceeding.” *Id.*

Along the same lines, in *ESG Capital Partners LP v. Stratos*, the court rejected the defendant’s use of the Fifth Amendment to support a stay because he “was eager to testify at the detention hearing concerning the facts surrounding the ESG scheme.” *Id.*, 22 F. Supp. 3d 1042, 1046 (C.D. Cal. 2014). “[H]e can’t have it both ways,” the court held, “using the Fifth Amendment only when it is convenient for him and his interests.” *Id.* The same applies with full force to Pramaggiore.

By contrast, in the cases Pramaggiore cites, defendants either had not testified in their criminal case and/or there was no reason to believe they would testify at their criminal trials/retrials. *See Hollinger International, Inc. v. Hollinger Inc.*, No. 04 C 698, 2008 WL 161683, at *3 (N.D. Ill. Jan. 16, 2008) (“Proceeding with discovery would force the Defendants into the uncomfortable position of having to choose between waiving their Fifth Amendment privilege or effectively forfeiting the civil suit”); *Chartis Prop. Cas. Co. v. Huguely*, No. 13CV1479, 2013

WL 5634266, at *4 (D. Md. Oct. 15, 2013) (“Huguely generally has an interest in avoiding the conflict between waiving his Fifth Amendment rights and, in essence, compromising his defense in this matter.”); *CFTC v. Nowak*, No. 19-CV-6163, 2020 WL 3050225, at *2 (N.D. Ill. June 8, 2020); *Sterling Nat’l Bank v. A-1 Hotels Int’l, Inc.*, No. 00 CIV. 7352, 2004 WL 1418201, at *1 (S.D.N.Y. June 23, 2004).

Pramaggiore—presumptuously looking ahead to a criminal retrial—argues that, absent a stay here, criminal prosecutors will unfairly gain access to whatever the SEC collects during relatively liberal civil discovery. (ECF No. 10, p. 7.) But in the next breath she assures the Court that the SEC won’t be prejudiced by a stay since “key evidence already has been preserved by virtue of the criminal proceedings.” (p. 10.) Both can’t be true.

In fact, neither are. If there is a criminal retrial, Pramaggiore will be free to seek whatever relief she wants before Judge Leinenweber concerning the government’s access to the discovery in this case. And if Pramaggiore is concerned about criminal prosecutors’ gaining access to **additional** information in this case **absent a stay**, the necessary corollary is that the SEC will be more dependent upon the **limited** evidence from the criminal case should this Court **grant a stay**.

Moreover, Pramaggiore’s fears would only be realized **if** (a) she ultimately prevails on appeal **and** (b) there is a retrial **and** (c) Judge Leinenweber gives the government discovery from this case **and** (d) the government ultimately somehow

benefits from any additional information. The SEC, by contrast, will suffer prejudice from a long stay of this case *no matter if she wins or loses on appeal*.

In other words, while Pramaggiore's harm absent a stay is entirely theoretical and highly contingent, the prejudice the SEC will suffer from a years-long stay is a virtual certainty.

CONCLUSION

For these reasons, the motion should be denied.

Dated: December 4, 2023

Respectfully Submitted,

/s/ Jonathan S. Polish

Jonathan S. Polish

Attorney for Plaintiff

U.S. Securities and Exchange Commission

175 West Jackson Blvd., Suite 1450

Chicago, Illinois 60604

(312) 353-7390

(312) 353-7398 (facsimile)

PolishJ@sec.gov