UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

Bill Word, David Daquin, *Plaintiffs*, v. U.S. Department of Energy *Defendant*.	Case No. 2:24-cv-00130-Z

PLAINTIFFS' MOTION TO ALTER OR
AMEND THE JUDGMENT UNDER F.R.C.P 59(E)

Plaintiffs respectfully move under Federal Rule of Civil Procedure 59(e) for this Court to alter or amend its judgment on November 26, 2024, Docket No. 23 ("ECF 23 Opinion") and Docket No. 24 ("ECF 24 Judgment"), that dismissed Plaintiff's complaint for lack of jurisdiction. Furthermore, Plaintiffs respectfully request that any new and resultant opinion or judgment include an analysis of 42 U.S.C. § 6306(b)(4).

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INTRODUCTION

For purposes of this motion, Plaintiffs accept as true this Court's determination that 42 U.S.C. § 6306(b)(1) creates a system of exclusive jurisdiction in the appellate court. *See* ECF 23 Opinion 3. Congress can create exceptions to that system; as this Court has recognized, 42 U.S.C. § 6306(c) does. *Id.* Plaintiffs respectfully assert that 42 U.S.C. § 6306(b)(4) constitutes a similar exception to the exclusive jurisdiction of the appellate court, and that this Court's determination that it lacks jurisdiction in this matter cannot be reconciled with that exception.

Plaintiffs acknowledge that reconsideration of a judgment after its entry is an extraordinary remedy that should be used sparingly, *Templet v. HydroChem Inc.*, 367 F.3d 473, 479 (5th Cir. 2004), but this is a rare circumstance in which reconsideration is appropriate. Rule 59(e) "motions cannot be used to raise arguments which could, and should, have been made before the judgment issued." *Simon v. United States*, 891 F.2d 1154, 1159 (5th Cir. 1990) (*quoting Federal Deposit Ins. Corp. v. Meyer*, 781 F.2d 1260, 1268 (7th Cir.1986)). Plaintiffs have already raised the argument that 42 U.S.C. § 6306(b)(4) provided this court with jurisdiction during briefing on the motion to dismiss. *See* Plaintiffs' Response to Defendant's Motion to Dismiss, ECF 18, p. 7-10. Therefore, it is not excluded from review under Rule 59(e).

Plaintiffs respectfully note that this Court's opinion failed to address 42 U.S.C. § 6306(b)(4), *Abbott Laboratories v. Gardner*, 387 U.S. 136 (1967), or any other argument raised by Plaintiffs concerning this saving clause. ECF 23 Opinion.

Without an initial decision by this Court as to the meaning of 42 U.S.C. § 6306(b)(4), any appeal would likely result in a remand for this Court to focus on matters that it did not previously address. For this reason, Plaintiffs respectfully request that this Court amend its judgment so as to make its interpretation of 42 U.S.C. § 6306(b)(4) consistent with binding law.

ARGUMENT

At a very general level, the disagreement between the Plaintiffs and the government is quite simple: the government has argued that a statute that explicitly preserves remedies also prevents jurisdiction to issue such remedies, and Plaintiffs disagree. The government's position on this matter is problematic for several reasons, including contrary legislative history and binding Supreme Court precedent that this Court has equitable jurisdiction.

When a petition is filed under 42 U.S.C. § 6306(b)(1), the appellate "court shall have jurisdiction to review the rule in accordance with chapter 7 of title 5 and to grant appropriate relief as provided in such chapter." § 6306(b)(2). The primary relief or remedy provided in title 5 chapter 7 is to "hold unlawful and set aside agency action, findings, and conclusions." 5 U.S.C. § 706(2). This is one of the "remedies provided for in this subsection" under § 6306(b)(4).

The exclusive review provided by 42 U.S.C. § 6306(b)(1) ensures that the remedies available under the Administrative Procedure Act can only be sought by petition for review in an appellate court—not this court. But § 6306(b)(4) states that

"other remedies provided by law" are not extinguished or foreclosed by this provision for judicial review.

The language in 42 U.S.C. § 6306(b)(4) has been authoritatively interpreted by the Supreme Court. In *Abbott Laboratories v. Gardner*, 387 U.S. 136 (1967), the Supreme Court held—in the course of interpreting the language in 21 U.S.C. § 371(f)(6)—that the language of 42 U.S.C. § 6306(b)(4) prevents an exclusive statutory appellate review process from extinguishing declaratory and injunctive relief in district court. Furthermore, the Supreme Court relied upon Congress's direct interpretation of that language as preserving "whatever rights exist to initiate a historical proceeding in equity to enjoin the enforcement of the regulation, and whatever rights exist to initiate a declaratory judgment proceeding." H.R. Rep. No. 2139, 75th Cong., 3d Sess., 11 (1938).

I. Congress and the Supreme Court Interpreted the Language in 42 U.S.C. § 6306(b)(4) To Allow District Court Review

The language of 42 U.S.C. § 6306(b)(4) ("The remedies provided for in this subsection shall be in addition to, and not in substitution for, any other remedies provided by law.") is rooted in statutory precedent. It was originally crafted in the Food, Drug, and Cosmetic Act of 1938, § 701(f)(6), Pub. Law 75-717, 52 Stat. 1040, 1056, codified at 21 U.S.C. § 371(f)(6). The text of that provision is: "The remedies provided for in this subsection shall be in addition to and not in substitution for any other remedies provided by law." *Id.*

It is a "longstanding interpretive principle [that w]hen a statutory term is 'obviously transplanted from another legal source,' it 'brings the old soil with it.'"

Taggart v. Lorenzen, 587 U.S. 554, 560 (2019) (quoting *Hall v. Hall*, 584 U.S. 59 (2018)); The almost identical language of 21 U.S.C. § 371(f)(6) and 42 U.S.C. § 6306(b)(4) demonstrates that Congress transplanted the language of the former to the latter. When statutory language is transplanted in that way, "It is ... well established that [w]here Congress uses terms that have accumulated settled meaning ... a court must infer, unless the statute otherwise dictates, that Congress meant to incorporate the established meaning of these terms." *Field v. Mans*, 516 U.S. 59, 69 (1995) (alteration in original).

The Food, Drug, and Cosmetic Act of 1938 was enacted early in the development of the modern administrative system, predating the Administrative Procedure Act by eight years. It was one of the first statutes to establish original jurisdiction for appellate courts to review an agency's orders. It effectively served as a protype of the APA and empowered appellate courts "to affirm the order, or to set it aside in whole or in part, temporarily or permanently." 21 U.S.C. § 701(f)(3). Given how new this process was, the most reasonable understanding of the portion of the Act that is relevant here is that its goal was, in part, to preserve existing judicial review remedies.

Congress described this language as a saving clause designed to protect the traditional equitable jurisdiction of district courts:

> There is also saved as a method to review a regulation placed in effect by the Secretary whatever rights exist to initiate a historical proceeding in equity to enjoin the enforcement of the regulation, and whatever rights exist to initiate a declaratory judgment proceeding.

H.R. Rep. No. 2139, 75th Cong., 3d Sess., 11 (1938).

Prior to the Food, Drug, and Cosmetic Act § 701(f)(6), injunctions and declaratory relief were the only means of halting wrongful agency action. Under those remedies, the rule was lawful if it was not "arbitrary and capricious." By establishing this new judicial review provision, Congress sought to elevate factual review to the modern "substantial evidence" test. The purpose of Congress in enacting this special appellate judicial review provision was described in *Abbott Laboratories v. Gardner*, 387 U.S. 136 (1967):

> The main issue in contention was whether these methods of review were satisfactory. Compare the majority and minority reports on the review provisions, H.R.Rep.No.2139, 75th Cong., 3d Sess. (1938), both of which acknowledged that traditional judicial remedies were available, but disagreed as to the need for additional procedures. The provisions now embodied in a modified form in s 701(f) were supported by those who feared the life-and-death power given by the Act to the executive officials, a fear voiced by many members of Congress. The supporters of the special-review section sought to include it in the Act primarily as a method of reviewing agency factual determinations. For example, it was argued that the level of tolerance for poisonous sprays on apple crops, which the Secretary of Agriculture had recently set, was a factual matter, not reviewable in equity in the absence of a special statutory review procedure. Some congressmen urged that challenge to this type of determination should be in the form of a de novo hearing in a district court, but the Act as it was finally passed compromised the matter by allowing an appeal on a record with a 'substantial evidence' test, affording a considerably more generous judicial review than the 'arbitrary and capricious' test available in the traditional injunctive suit.

387 U.S. at 143.

A second purpose identified by the Supreme Court in *Abbott* "was to provide broader venue to litigants challenging such technical agency determinations." *Id.* at 144. The Court concluded that "a study of the legislative history shows rather

conclusively that the specific review provisions were designed to give an additional remedy and not to cut down more traditional channels of review." *Id.* at 142. The saving clause preserved existing judicial remedies in district courts while also adding the new appellate review process.

Congress enacted the EPCA judicial review provisions eight years after *Abbott Laboratories v. Gardner* (1967). Congress was fully aware of the Supreme Court's interpretation of the language in § 6306(b)(4) as preserving district court jurisdiction for declaratory and injunctive relief, even where exclusive appellate judicial review was otherwise provided. By adopting the same language in EPCA at 42 U.S.C. § 6306(b)(4), Congress affirmed its intent to incorporate that interpretation.

II. District Court Jurisdiction for Equitable Remedies Under the Saving Clause Language Has Been Recognized by Many Courts

Plaintiff's interpretation of the language of 42 U.S.C. § 6306(b)(4) finds support in case law from courts nationwide. Consider *Gen. Motors Corp. v. Volpe,* 321 F. Supp. 1112, 1124 (D. Del. 1970) along with the Third Circuit's appellate review in 457 F.2d 922 (3d Cir. 1972): in *Volpe*, GM sued the NHSB seeking declaratory and injunctive relief from the NHSB's regulations under the National Traffic and Motor Vehicle Safety Act of 1966. "The defendants contend that the enforcement action provided for in 15 U.S.C. § 1399 is exclusive and that such an action as the present one is barred by the meaning of the Vehicle Safety Act." *Volpe*, 321 F. Supp. at 1123.

The district court in *Volpe* specifically cited the savings clause containing the language of 42 U.S.C. § 6306(b)(4) and *Abbott Laboratories v. Gardner*. *Id.* at 1124; National Traffic and Motor Vehicle Safety Act of 1966, Sec. 105(a)(6), P.L 89-563, 80 stat.721. On the basis of the saving clause, the district court found it had jurisdiction, stating, "In light of the discussion of this same language in *Abbott*, there is no good reason to discuss this point further." *Id.*

On appeal, the Third Circuit affirmed, stating "we think the court had jurisdiction and the issue was whether it chose to exercise jurisdiction under either Act." *Gen. Motors Corp. v. Volpe*, 457 F.2d 922 (3d Cir. 1972). "The court thus realized that it had 'bare' jurisdiction to entertain GM's request for declaratory relief." *Id.* at 923.

Volpe is not an isolated example. In *Am. Home Prod. Corp. v. Richardson*, 328 F. Supp. 612 (D. Del. 1971), the court cited a statutory provision with the language at issue in this case and held:

> Since the United States Supreme Court's opinion in *Abbott Laboratories v. Gardner*, 387 U.S. 136 (1967), it is clear that the existence of the 'special statutory review proceeding' provided in section 701(f) does not automatically foreclose this Court, in an appropriate case, from entertaining actions for pre-enforcement judicial review under the Declaratory Judgment Act.

Id. at 616.

Likewise, in *Home Prod. Corp. v. Finch* (D. Del. 1969), the district court held:

> The subsection of the Act (21 U.S.C. § 371(f)), which authorizes judicial review in an appropriate Court of Appeals . . . is not exclusive in that the subsection contains a 'savings clause' which also provides:

> 'The remedies provided for in this subsection shall be in addition to and not in substitution for any other remedies provided by law' (21 U.S.C. § 371(f)(6)).
>
> The 'savings clause' is to be taken at its face value, and to be read in harmony with the policy favoring judicial review in proper cases. Abbott Laboratories v. Gardner, supra at 144, 87 S.Ct. 1507.

303 F. Supp. 448, 452.

In *Upjohn Co. v. Finch*, 303 F. Supp. 241 (W.D. Mich. 1969), the district court found it had jurisdiction based on the saving clause and referred to the legislative history in H.R. Rep. No. 2139, 75th Cong., 3d Sess., 11 (1938), and *Abbott Laboratories*. The court even block-quoted *Abbott* extensively to conclude that the district court retained jurisdiction over equitable and declaratory remedies. 303 F. Supp. at 248.

III. The Government's Interpretation of 42 U.S.C. § 6306(b)(4) Renders It Mere Surplusage.

The government has advanced an interpretation of the saving clause in 42 U.S.C. § 6306(b)(4) that cannot be reconciled with *Abbott Laboratories* or with the original meaning that is evident from the legislative history.

The government claims that 42 U.S.C. § 6306(b)(4), "merely provides that the remedies available under Section 6306(b) are supplemental and not exclusive." Defendants' Reply Brief to its Motion to Dismiss, ECF 19, at 6 PageID 433. That is obviously true. But the government then draws an indefensible inference: it asserts that 42 U.S.C. § 6306(b)(4) does not "confer a cause of action" and that this Court therefore lacks jurisdiction. *Id*. That argument ignores the distinction between legal and equitable jurisdiction.

> Having a cause of action was how a plaintiff would get into a court of law, but to get into equity, a plaintiff needed something quite different. A suitor in equity needed a grievance, a good story that would motivate the court. The story needed to connect up with some recurring pattern of equitable intervention, and these patterns were called "heads of equitable jurisdiction." [Footnote 2: *See, e.g.*, Eugene A. Jones, *Manual of Equity Pleading and Practice* 31 (1916) ("[T]he plaintiff's narrative of his grievance ... must state a case remediable under some head of equity jurisdiction ....")] A plaintiff who didn't fit within one of the heads of equitable jurisdiction would be denied relief "for want of [e]quity"—not for failure to state a cause of action. [Footnote 3: *See* 1 Joseph Story, Commentaries on Equity Pleadings, and the Incidents Thereof, According to the Practice of the Courts of Equity of England and America § 472, at 372 (2d ed., Boston, Charles C. Little & James Brown 1840) (1836) ("[W]henever there is no sufficient ground shown in the Bill for the interference of a Court of Equity, the defendant may demur to the Bill for want of Equity to sustain the jurisdiction.").]

Samuel L. Bray & Paul B. Miller, *Getting into Equity*, 97 Notre Dame L. Rev. 1763, 1764 (2022). As Plaintiffs noted in their response brief:

> The cause of action under equity is not established by statute. "After Congress created federal question jurisdiction in 1875, federal courts began entertaining bills of equity that sought to enjoin allegedly unlawful administrative action. They did so on the theory that federal courts needed only a grant of jurisdiction, not a statutory cause of action." Thomas W. Merrill, Article III, *Agency Adjudication, and the Origins of the Appellate Review Model of Administrative Law*, 111 Colum. L. Rev. 939, 949 (2011).

Plaintiffs' response to Defendant's Motion to Dismiss, ECF 18, p. 4, PageID 403.

In contrast to the kind of cause of action that is based in *law*, "The ability to sue to enjoin unconstitutional actions by state and federal officers is the creation of courts of *equity*, and reflects a long history of judicial review of illegal executive action, tracing back to England." *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015) (emphasis added) (citing Jaffe & Henderson, *Judicial Review and*

the Rule of Law: Historical Origins, 72 L.Q. Rev. 345 (1956)). "It is a judge-made remedy." *Id.*

After the government claimed that a statutory cause of action was absent, it then added that "*Abbott Laboratories* says nothing to the contrary" about its position. Defendants' Reply Brief in Support of Defendants' Motion to Dismiss, ECF 19, p. 8, PageID 433. That is simply wrong. *Abbott Laboratories* expressly states that the language in 42 U.S.C. § 6306(b)(4) creates "a general grant of a right to judicial review," and it overturns the Circuit Court decision that found that the district court lacked equitable jurisdiction to declare the agency action unlawful or enjoin enforcement. 387 U.S. at 145.

In *Abbott Laboratories*, the Supreme Court noted that the language of 42 U.S.C. § 6306(b)(4) "would foreclose the Government's main argument in this case." 387 U.S. at 144. In *Abbott*, the government's position was that an exclusive review provision precluded any alternative review in equity. The government's argument failed in the most extensive and final way possible; namely, the Supreme Court determined that the government's argument was wrong. It failed then and it must fail now, due to the text of § 6306(b)(4) and the holding of *Abbott Laboratories.*

In *Abbott Laboratories*, the Supreme Court recognized that "[t]he saving clause itself contains no limitations." *Id.* at 145. Indeed, "it is difficult to think of a more appropriate place to put a general saving clause than where Congress placed it—at the conclusion of the section setting out a special procedure for use in certain specified instances." *Id.*

Furthermore, the government's position creates an entirely separate problem: "the Government's reading would result in an anomaly." *Id.* The special appellate judicial review "procedure was included in the Act in order to deal with the problem of technical determinations for which the normal equity power was deemed insufficient." *Id.* "There would seem little reason for Congress to have enacted [the exclusive judicial review], and at the same time to have included a clause aimed only at preserving for such determinations the other types of review whose supposed inadequacy was the very reason for the special-review provisions." *Id.* at 146. The Supreme Court held that the government's argument leads to surplusage:

> Under the Government's view, indeed, it is difficult to ascertain when the saving clause would even come into play: when the special provisions apply, presumably they must be used and a court would not grant injunctive or declaratory judgment relief unless the appropriate administrative procedure is exhausted. When the special procedure does not apply, the Government deems the saving clause likewise inapplicable.

Id.

Similarly, the government's position in the case at hand would create an equally absurd result: it claims § 6306 both preserves other remedies that exist at law such as declaratory relief and simultaneously deprives courts of the jurisdiction necessary to issue those remedies. Why would Congress enact a specific provision designed to allow remedies while simultaneously depriving courts of the jurisdiction to issue them? This is just the same problem that the Supreme Court identified in *Abbott Laboratories,* and it is fatal to the government's position here as well. The government's reading would render § 6306(b)(4) surplusage, having no actual legal

effect, and thus violating the rule against surplusage. *Corley v. United States*, 556 U.S. 303, 314 (2009) ("[O]ne of the most basic interpretive canons [is] that [a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." (internal quotation mark(s) omitted)).

It was Congress that interpreted the language in § 6306(b)(4) to preserve "whatever rights exist to initiate a historical proceeding in equity to enjoin the enforcement of the regulation, and whatever rights exist to initiate a declaratory judgment proceeding." H.R. Rep. No. 2139, 75th Cong., 3d Sess., 11 (1938). It is impossible to reconcile the government's argument about the meaning of § 6306(b)(4) with the relevant legislative history.

The reason why these remedies must be available is that they provide relief that cannot be achieved through § 6306(b)(1)—which itself is limited by § 6306(b)(2) to blocking the specific rule at issue. The exclusive review provision was designed to review the actions the agency was authorized to issue, unlike the *ultra vires* agency action here. Furthermore, the APA remedies do nothing to prevent future unlawful behavior by the agency. That is crucial for the case at hand, especially because (as the Fifth Circuit has already explained) the agency here—the Department of Energy—is entirely without the statutory authority that it attempts to exercise. *Louisiana v. Dep't of Energy*, 90 F.4th 461, 470 (5th Cir. 2024). Nor do the APA remedies correct the past unlawful actions by the agency that continue to harm the

Plaintiffs today. Congress intended the saving clause to ensure meaningful judicial review where the exclusive review provision is inadequate.

CONCLUSION

Plaintiffs respectfully request that this Court amend its opinion, ECF 23 Opinion, and judgment, ECF 24 Judgment, dismissing Plaintiff's complaint for lack of jurisdiction so that it can interpret the meaning of 42 U.S.C. § 6306(b)(4). This Court is bound by the Supreme Court's *Abbott Laboratories* opinion, and it should view 42 U.S.C. § 6306(b)(4) in the light of that decision: namely, it should understand its jurisdiction as including the kind of equitable remedy that Plaintiffs request. Plaintiffs respectfully ask for an amended opinion that is consistent with the interpretation of both Congress and the Supreme Court.

Dated: December 19, 2024

Respectfully submitted,

/s/ *Devin Watkins*

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CERTIFICATE OF CONFERENCE

I certify that on December 19, 2024, I conferred with Jason Lynch, attorney for Defendants and he informed me that Defendants oppose this motion.

/s/ Devin Watkins
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CERTIFICATE OF SERVICE

I certify that I served the foregoing document through CM/ECF upon Defendant's counsel.

/s/ Devin Watkins
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