

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

VERONICA'S AUTO INSURANCE
SERVICES, INC.,

Petitioner,

v.

NATIONAL LABOR RELATIONS
BOARD,

Respondent.

Case No. 16-1180
(consolidated with No. 16-1190)

ADRIANA'S INSURANCE
SERVICES, INC.,

JUST AUTO INSURANCE
SERVICES, INC.,

Petitioners,

v.

NATIONAL LABOR RELATIONS
BOARD,

Respondent.

Case No. 16-1190
(consolidated with No. 16-1180)

REPLY IN SUPPORT OF PETITIONERS' JOINT MOTION
TO HOLD CASES IN ABEYANCE

The Board does not dispute that there is substantial overlap between the questions presented in *NLRB v. SW General, Inc.*, No. 15-1251 (U.S. cert. granted June 20, 2016), and *Price-Simms, Inc. v. NLRB*, No. 15-1457 (docketed Dec. 14, 2015), and those presented in the above-captioned cases (“Consolidated Cases”). It instead takes the view that the Consolidated Cases should not be held in abeyance because decisions favorable to Petitioners in *SW General* and *Price-Simms* will not entirely dispose of the Consolidated Cases. That has never been the standard for seeking a stay of the proceedings in this Court.

If another proceeding “may entirely, *or partially*” resolve the issues presented in a petition for review, that is reason enough to grant a stay of all proceedings pending in this Court for that petition. *See Basardh v. Gates*, 545 F.3d 1068, 1069 (D.C. Cir. 2008) (emphasis added). As a result, this Court holds cases in abeyance “in analogous situations in which a case potentially implicates a question pending before the Supreme Court,” even if “there is no certainty that the . . . decision . . . will alter the panel’s resolution.” *Nat’l Ass’n of Mfrs. v. SEC*, 748 F.3d 359, 374 (D.C. Cir. 2014) (Srinivasan, J., concurring) (citing Order, *Wagner v. FEC*, No. 13-5162 (D.C. Cir. Sept. 11, 2013) (en banc) (per curiam); *United States v. Epps*, 707 F.3d 337, 341 (D.C. Cir. 2013); *Trump Plaza Assocs. v. NLRB*, 679 F.3d 822, 826 (D.C. Cir. 2012); *Belbacha v. Bush*, 520 F.3d 452, 456-57 (D.C. Cir. 2008)).

The Board impliedly concedes the question presented in *SW General* is a necessary antecedent to the question of “whether General Counsel Griffin validly ratified Solomon’s actions,” Opp. at 3; that alone justifies a stay of the proceedings here. If the Board is correct—as it argues both here and in *SW General*—that the Acting General Counsel could lawfully delegate his authority under the Federal Vacancies Reform Act, 5 U.S.C. § 3345 *et seq.*, then there is no reason to reach questions attendant to the ratification itself, such as whether the post-hoc ratification was lawful and sufficient. Rather than requiring the parties to brief not only the issues presented in *SW General* but also issues that may be rendered moot by the Supreme Court’s decision, this Court should stay the proceedings and await the Court’s guidance as a matter of judicial efficiency. *Cf. District of Columbia v. Barry*, 387 F.2d 860, 861 (D.C. Cir. 1967) (“[A] federal court is without power to decide moot questions” (citations and internal quotation marks omitted)).

As for *Price-Simms*, the Board offers *no* adequate explanation as to why this Court should not await the decision in that fully briefed case, a case that it openly acknowledges is “similar[.]” Opp. at 3. Instead, it submits that a decision favorable to Petitioners in *Price-Simms* will address Petitioners’ arguments only partially, rather than “fully dispose” of them. *Id.* at 3-4. But as this Court noted in *Basardh*, “partially” is good enough. 545 F.3d at 1069. Even if the Consolidated Cases do not perfectly overlap with *Price-Simms*, the risk of “duplicative litigative

activity” is clear. *See id.* (quoting *Env’tl Def. Fund v. Reilly*, 909 F.2d 1497, 1507 (D.C. Cir. 1990)). That is a sufficient basis for this Court to hold the Consolidated Cases in abeyance pending the outcome of *Price-Simms*.

Respectfully submitted,

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Dated: August 8, 2016

CERTIFICATE OF SERVICE

I hereby certify that, on August 8, 2016, I electronically filed the foregoing document with the United States Court of Appeals for the District of Columbia Circuit by using the CM/ECF system. I certify that the following parties or their counsel of record are registered as ECF Filers and that they will be served by the CM/ECF:

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