

**UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

CHAMBLESS ENTERPRISES, LLC,  
and APARTMENT ASSOCIATION  
OF LOUISIANA, INC.,

Plaintiffs-Appellants,

v.

ROCHELLE WALENSKY; SHERRI  
BERGER; UNITED STATES  
DEPARTMENT OF HEALTH AND  
HUMAN SERVICES; ROBERT M.  
WILKINSON, ACTING U.S.  
ATTORNEY GENERAL; NORRIS  
COCHRAN, ACTING SECRETARY,  
U.S. DEPARTMENT OF HEALTH  
AND HUMAN SERVICES; CENTER  
FOR DISEASE CONTROL AND  
PREVENTION,

Defendants-Appellees.

Case No. 21-30037

**PLAINTIFFS-APPELLANTS'  
STATEMENT OF ISSUES**

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In compliance with Federal Rule of Appellate Procedure 10(b)(3), Plaintiffs-Appellants herein submit their statement of issues for this appeal.

This case concerns a national eviction moratorium order adopted initially by the Center for Disease Control and Prevention (CDC) on September 4, 2020. Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55,292 (Sept. 4, 2020). CDC recently renewed this eviction

moratorium Order on January 29, 2021. *See* Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19 (Jan. 29, 2021), *available at* <https://www.cdc.gov/coronavirus/2019-ncov/more/pdf/CDC-Eviction-Moratorium-01292021.pdf>. Plaintiffs-Appellants refer to these orders collectively as “CDC’s Eviction Moratorium Orders.”

Defendants-Appellees maintain that CDC’s Eviction Moratorium Orders are authorized under the Public Health Service Act. The Act authorizes the Secretary of Health and Human Services to “make and enforce such regulations as in his judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases...” 42 U.S.C. § 264(a). But Plaintiffs-Appellants argue that the canons of construction—including the canon of constitutional avoidance—require a limiting construction, such that the CDC is permitted only to pursue conventional disease control measures and is precluded from imposing a national eviction moratorium. Additionally, Plaintiffs-Appellants maintain that the CDC’s Eviction Moratorium Orders violate the Administrative Procedure Act.

In the proceedings below the District Court denied Plaintiffs-Appellants’ motion for preliminary injunction. As such, the issues presented in this appeal are:

1. Whether Plaintiffs-Appellants are likely to succeed on the merits because: (a) CDC lacks statutory authority to issue and enforce its Eviction Moratorium Orders; (b) If the CDC’s Eviction Moratorium Orders are not ultra vires,

CDC's statutory authority violates the non-delegation doctrine; (c) CDC's Eviction Moratorium Orders were issued without notice and comment, in violation of the Administrative Procedure Act, or; (d) CDC's Eviction Moratorium Orders are arbitrary and capricious.

2. Whether Plaintiffs-Appellants are suffering irreparable harm because either they are: (a) Suffering a deprivation of rights under an agency order that violates separation of powers; (b) Unlikely to have their injuries redressed in any future proceeding against insolvent tenants, or; (c) Denied the right to exercise immediate control and dominion over their property.

3. Whether the public interest and the balance of equities weigh in favor of issuing a preliminary injunction to prevent unlawful enforcement of CDC's Eviction Moratorium Orders should the Court find Plaintiffs-Appellants have a substantial likelihood of prevailing on the merits in this case.

DATED: February 5, 2021.

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Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 5, 2021, I electronically filed the foregoing document with the Clerk of the Court via the CM/ECF system, which will cause a copy to be served upon counsel of record.

/s/ Steven M. Simpson  
STEVEN M. SIMPSON

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