

No. 21-30037

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

CHAMBLESS ENTERPRISES, L.L.C.; APARTMENT ASSOCIATION OF
LOUISIANA, INCORPORATED,

Plaintiffs-Appellants,

v.

ROCHELLE WALENSKY; SHERRI BERGER; UNITED STATES
DEPARTMENT OF HEALTH AND HUMAN SERVICES; MERRICK
GARLAND, U.S. Attorney General; XAVIER BECERRA, Secretary, U.S.
Department of Health and Human Services; CENTER FOR DISEASE CONTROL
AND PREVENTION,

Defendants-Appellees.

On Appeal from the United States District Court
for the Western District of Louisiana

RESPONSE TO PLAINTIFFS' MOTION TO EXPEDITE

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CERTIFICATE OF INTERESTED PERSONS

No. 21-30037, Chambless Enterprises, L.L.C. v. Walensky

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Acadiana Legal Service Corporation

Alker & Rather, LLC

American Academy of Pediatrics

American Medical Association

Apartment Association of Louisiana, Inc.

Becerra, Xavier

Beckenhauer, Eric

Benfer, Emily A.

Berger, Sherri

Blevins, Ethan W.

Boynton, Brian M.

Chambless Enterprises, L.L.C.

Chambless, Joshua

Children's Healthwatch

Desmond, Matthew

Doughty, Terry A., U.S. District Court Judge

E sponge, Tammy

Garland, Merrick

George Consortium

GLMA

Gonsalves, Gregg

Hayes, Karen L., U.S. District Court Magistrate Judge

Health Professionals Advancing LGBTQ Equality

Hepburn, Peter

Kenne, Danya A.

Klein, Alisa B.

Leifheit, Kathryn M.

Levy, Michael Z.

Linton, Sabriya L.

Louisiana Fair Housing Action Center

Marcley, Hannah S.

McClatchey Jr., Walter P.

Myers, Steven A.

National Hispanic Medical Association

National Medical Association

Pacific Legal Foundation

Pollack, Craig E.

Public Health Law Watch

Raifman, Julia

Rather, Jr., James C.

Schwartz, Gabriel L.

Simpson, Steven M.

Southeast Louisiana Legal Services, Amicus Curiae

Springer, Brian J.

U.S. Centers for Disease Control and Prevention

U.S. Department of Health and Human Services

Van Hook, Alexander C.

Vigen, Leslie Cooper

Vlahov, David

Wake, Luke A.

Walensky, Rochelle

Williams, David

s/ Alisa B. Klein

Alisa B. Klein
Attorney for defendants-appellees

The government respectfully responds to plaintiffs' motion to expedite their appeal of the district court's December 22, 2020 order denying their motion for a preliminary injunction. Plaintiffs ask the Court to schedule this case for oral argument as soon as practicable following the conclusion of the current briefing schedule, under which their reply brief is due on May 12. *See* Mot. 5. As plaintiffs note (Mot. 1 n.1), the government generally defers to the Court as to the scheduling of this case. We outline certain pertinent considerations below.

1. The question presented by this appeal is whether the district court abused its discretion in concluding that plaintiffs failed to establish the prerequisites for a preliminary injunction against a temporary moratorium on certain evictions that the federal government issued to prevent the spread of COVID-19. Every federal court to address the question—including the district court in this case—has found that the plaintiff landlords failed to demonstrate that they will experience irreparable harm as a result of the temporary eviction moratorium.¹ Because irreparable harm is an indispensable prerequisite to the issuance of a preliminary injunction, the district court's denial may be affirmed without oral argument. *See, e.g.*, Gov. Br. iv, 10.

¹ *See Tiger Lily LLC v. U.S. Dep't of Housing & Urban Dev.*, --- F. Supp. 3d ---, No. 20-2692, 2020 WL 7658126 (W.D. Tenn. Nov. 6, 2020); *Brown v. Azar*, --- F. Supp. 3d ---, No. 20-3702, 2020 WL 6364310 (N.D. Ga. Oct. 29, 2020), *appeal filed*, No. 20-14210 (11th Cir. Nov. 9, 2020), *mot. for inj. pending appeal denied*, No. 20-14210 (11th Cir. Dec. 17, 2020); Order, *Dixon Ventures, Inc. v. Dep't of Health & Human Servs.*, No. 20-1518 (E.D. Ark. Apr. 23, 2021), ECF No. 18; Order, *KBW Inv. Props. LLC v. Azar*, No. 20-4852 (S.D. Ohio Sept. 25, 2020), ECF No. 16.

2. As plaintiffs acknowledge (Mot. 2), the temporary eviction moratorium will expire on June 30 unless it is extended. If the moratorium expires, this case will be moot. Plaintiffs state that under those circumstances, “important questions in this case will evade judicial review.” Mot. 4. But an abstract interest in legal questions is not an Article III injury and could not constitute the irreparable harm needed for a preliminary injunction.

3. Finally, we note that a challenge to the moratorium is pending before this Court in another case in which briefing is ongoing. *See Terkel v. Centers for Disease Control and Prevention*, No. 21-40137 (5th Cir.). There, the district court declared that the temporary eviction moratorium—which Congress specifically approved and extended, *see* Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. N, tit. V, § 502, 134 Stat. 1182, 2078-79 (2020)—exceeds Congress’s powers under the Commerce Clause and Necessary and Proper Clause. *See Terkel v. Centers for Disease Control & Prevention*, --- F. Supp. 3d ---, No. 20-0564, 2021 WL 742877 (E.D. Tex. Feb. 25, 2021). Plaintiffs here have relied on the district court’s *Terkel* decision. *See* Pl. Br. 30-32, 35. Accordingly, this Court may wish to consider this appeal and the *Terkel* appeal together, assuming that the appeals do not become moot due to the moratorium’s expiration.

Respectfully submitted,

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ALEXANDER C. VAN HOOK
Acting United States Attorney

s/ Alisa B. Klein

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April 2021

CERTIFICATE OF COMPLIANCE

This response complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 531 words. This response also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Microsoft Word 2016 in Garamond 14-point font, a proportionally spaced typeface.

s/ Alisa B. Klein

Alisa B. Klein

CERTIFICATE OF SERVICE

I hereby certify that on April 26, 2021, I electronically filed the foregoing response with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/ Alisa B. Klein

Alisa B. Klein