

No. 21-40137

**In the United States Court of Appeals
for the Fifth Circuit**

LAUREN TERKEL; PINEYWOODS ARCADIA HOME TEAM, LIMITED;
LUFKIN CREEKSIDE APARTMENTS, LIMITED; LUFKIN CREEKSIDE
APARTMENTS II, LIMITED; LAKERIDGE APARTMENTS, LIMITED;
WEATHERFORD MEADOW VISTA APARTMENTS, L.P.; MACDONALD
PROPERTY MANAGEMENT, L.L.C.,
Plaintiffs-Appellees,

v.

CENTERS FOR DISEASE CONTROL AND PREVENTION; ROCHELLE P.
WALENSKY, IN HER OFFICIAL CAPACITY AS DIRECTOR OF THE
CENTERS FOR DISEASE CONTROL AND PREVENTION; SHERRI A.
BERGER, IN HER OFFICIAL CAPACITY AS ACTING CHIEF OF STAFF FOR
THE CENTERS FOR DISEASE CONTROL AND PREVENTION; UNITED
STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; XAVIER
BECERRA, SECRETARY, U.S. DEPARTMENT OF HEALTH AND HUMAN
SERVICES; UNITED STATES OF AMERICA,
Defendants-Appellants.

On Appeal from the United States District Court
for the Eastern District of Texas, Tyler Division

MOTION FOR DIVIDED ARGUMENT

Pursuant to Federal Rule of Appellate Procedure 29(a)(8) and Fifth Circuit Rule 34.4, Plaintiffs-Appellees and amicus curiae The State of Texas jointly move this Court for permission to allow counsel for amicus curiae to participate at the upcoming October 6, 2021 oral argument in the above-captioned case. Plaintiffs-Appellees have agreed to share five minutes of their allotted argument with counsel for amicus curiae. Granting this motion would not require the Court to enlarge the overall time

for argument. Movants conferred with counsel for Defendants-Appellants, who defers to the judgment of the Court as to whether it would be helpful to have amicus participate in the oral argument.

This appeal presents the question whether the Centers for Disease Control and Prevention was authorized to enact and repeatedly extend a nationwide residential eviction moratorium under the Commerce Clause. The participation of amicus curiae's counsel at oral argument is likely to be helpful to the Court because amicus curiae has unique insights into the interpretation of the Commerce Clause in light of federalism concerns and the States' traditional regulation of real property and eviction proceedings in state courts.

In light of the different perspective amicus curiae brings to these issues and the substantial interest it has in preserving Tenth Amendment principles of federalism, amicus curiae and Plaintiffs-Appellees respectfully submit that oral presentation of amicus curiae's views would materially assist this Court. Plaintiffs-Appellees and amicus curiae therefore request that this Court grant amicus curiae permission to participate in oral argument in support of the Plaintiffs-Appellees, using five minutes of the argument time allotted to Plaintiffs-Appellees.

Respectfully submitted.

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CERTIFICATE OF CONFERENCE

On August 20, 2021, Plaintiffs-Appellees and amicus curiae conferred via email with Brian Springer, counsel for Defendants-Appellants, who defers to the judgment of the Court as to whether it would be helpful to have amicus participate in the oral argument.

/s/ Lanora C. Pettit
LANORA C. PETTIT

CERTIFICATE OF SERVICE

On August 20, 2021, this motion was served via CM/ECF on all registered counsel and transmitted to the Clerk of the Court. Counsel further certifies that: (1) any required privacy redactions have been made in compliance with Fifth Circuit Rule 25.2.13; (2) the electronic submission is an exact copy of the paper document in compliance with Fifth Circuit Rule 25.2.1; and (3) the document has been scanned with the most recent version of Symantec Endpoint Protection and is free of viruses.

/s/ Lanora C. Pettit

LANORA C. PETTIT

CERTIFICATE OF COMPLIANCE

This motion complies with: (1) the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 261 words, excluding the parts of the brief exempted by Rule 27(a)(2)(B); and (2) the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface (14-point Equity) using Microsoft Word (the same program used to calculate the word count).

/s/ Lanora C. Pettit

LANORA C. PETTIT