

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ALABAMA ASSOCIATION OF
REALTORS®, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES, *et al.*,

Defendants.

Case No. 1:20-cv-03377-DLF

JOINT STATUS REPORT

Pursuant to the Court’s order dated January 8, 2021, the parties respectfully submit this joint status report advising the Court as to how they wish to proceed in this case.

1. On September 4, 2020, the Centers for Disease Control and Prevention (CDC) published the Eviction Moratorium, prohibiting landlords from evicting tenants who meet certain criteria to prevent the further spread of COVID-19. *See* AR0000001–11.
2. On November 20, 2020, Plaintiffs filed a complaint challenging the CDC’s Eviction Moratorium. *See* ECF 1. Plaintiffs and Defendants have each filed motions for summary judgment, which are now fully briefed. *See* ECF 6, 26–29.
3. The CDC’s Eviction Moratorium was originally set to expire on December 31, 2020. *See* AR0000011. On December 27, 2020, President Trump signed into law the Consolidated Appropriations Act, 2021. The Act extended the Eviction Moratorium’s expiration date to January 31, 2021:

The order issued by the Centers for Disease Control and Prevention under section 361 of the Public Health Service Act (42 U.S.C. 264), entitled “Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID–19” (85 Fed. Reg. 55292 (September 4,

2020) is extended through January 31, 2021, notwithstanding the effective dates specified in such Order.

4. Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. N, tit. V, § 502, 134 Stat. 1182, 2079 (2020). On January 6, 2021, Defendants filed a partial motion to dismiss for lack of subject matter jurisdiction because the “Order at issue in this case now remains in effect solely by operation of an Act of Congress.” ECF 32, at 2-3. Defendants also contended that Congress ratified the CDC’s extension of the Eviction Moratorium. *Id.* at 7-9.

5. On January 8, 2021, the Court granted Plaintiffs’ consent motion for a temporary stay in light of Congress’s extension. The Court also stayed Plaintiffs’ deadline to respond to Defendants’ partial motion to dismiss.

6. On January 29, 2021, new CDC Director Rochelle P. Walensky signed an Order extending the September 4, 2020 Eviction Moratorium through March 31, 2021. *See* Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 86 Fed. Reg. 8020 (Feb. 3, 2021); *see also* ECF 35.

7. In light of this new executive action, Defendants have withdrawn the argument that Counts I–V of the complaint are moot. *See* ECF 35.

8. It remains Defendants’ position that Counts I–V of the complaint should be dismissed because Congress ratified the Order. *See* ECF 32-1, 35. Plaintiffs disagree with Defendants’ contention that Congress ratified the CDC’s extension of the Eviction Moratorium. In light of the parties’ disagreement on the question of congressional ratification, Defendants’ pending partial motion to dismiss, and the new executive action, which Defendants contend incorporates new information relevant to the issues raised in this matter, the parties respectfully request that the Court enter the following briefing schedule:

- a. On February 15, 2021, Plaintiffs shall file a response to Defendants’ partial motion to dismiss;

- b. On February 22, 2021, Defendants shall file a reply memorandum in further support of the partial motion to dismiss, addressing both their contention that Congress ratified CDC's exercise of its authority and their contention that the additional information contained in the January 29 Order further supports the exercise of that authority;
- c. On February 22, 2021, Defendants shall file an updated certified list of the contents of the administrative record with the Court and produce to Plaintiffs a supplement to the administrative record related to the CDC's January 29 order extending the Eviction Moratorium; and
- d. On February 24, 2021, Plaintiffs shall file an Appendix pursuant to Local Civil Rule 7(n) and Standard Order 5c.

Dated: February 8, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2021, a true and correct copy of the foregoing was filed using the Court's CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

February 8, 2021

s/ Brett A. Shumate
Brett A. Shumate