

No. 20-14210

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

RICHARD LEE BROWN, et al.

Plaintiffs-Appellants,

v.

SECRETARY, U.S. Department of Health and Human Services, et al.,

Defendants-Appellees.

DEFENDANTS-APPELLEES' SUGGESTION OF MOOTNESS

**CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENT**

Pursuant to Eleventh Circuit Rule 26.1-1, counsel for the defendants-appellees certify that the following have an interest in the outcome of this appeal:

American Medical Association

Atlanta Legal Aid Society, Inc.

Becerra, Xavier

Beckenhauer, Eric

Benfer, Emily A.

Berger, Sherri A.

Bliss, Charles Richardson

Boulee, Honorable J.P., U.S. District Court Judge

Brown, Richard Lee

Chenoweth, Mark

Children's Healthwatch

Desmond, Matthew

Dunn, Eric

Erskine, Kurt R.

Fulmer, Jennifer Ann

Gainey, John Owen

Georgia Chapter, American Academy of Pediatrics

GLMA: Healthcare Professionals Advancing LGBTQ Equality

Gonsalves, Gregg

Hawkins, James W.

James W. Hawkins, LLC

Jerome N. Frank Legal Services Organization, Yale Law School

Jones, Sonya

Keene, Danya A.

Klein, Alisa B.

Krausz, David

Kruckenberg, Caleb

Legal Services of Northern Virginia

Leifheit, Kathryn M.

Levy, Michael Z.

Linton, Sabriya A.

Myers, Steven A.

National Apartment Association

National Hispanic Medical Association

National Housing Law Project

National Medical Association

New Civil Liberties Alliance

North Carolina Pediatric Society, State Chapter of the American Academy of
Pediatrics

Pidikiti-Smith, Dipti

Pollack, Craig E.

Pottenger, Jr., J.L.

Public Health Law Watch

Raifman, Julia

Rollins, Kara

Rondeau, Jeffrey

Salvador, Flor

Schwartz, Gabriel L.

Siegel, Lindsey Meredith

Smith, Wingo F.

South Carolina Chapter, American Academy of Pediatrics

Southern Poverty Law Center

Springer, Brian J.

The American Academy of Pediatrics

The George Consortium

U.S. Centers for Disease Control and Prevention

U.S. Department of Health and Human Services

Vigen, Leslie Cooper

Virginia Chapter, American Academy of Pediatrics

Vlahov, David

Wake Forest University School of Law

Walz, Katherine

Plaintiffs' petition for rehearing en banc is pending. The government recognizes that Federal Rule of Appellate Procedure 35(e) and 11th Circuit Rule 35-6 do not permit a response to that petition unless ordered by the Court. However, the government is generally expected to inform courts of developments that bear on mootness. Accordingly, we respectfully submit this suggestion of mootness.¹

1. Plaintiffs challenged a temporary moratorium on certain residential evictions issued by the Centers for Disease Control and Prevention (CDC) to curb the spread of COVID-19. Plaintiffs moved for a preliminary injunction, which the district court denied. This Court affirmed on the ground that plaintiffs' evidence before the district court failed to establish irreparable harm. *See Brown v. Secretary, U.S. Dep't of Health & Human Servs.*, 4 F.4th 1220 (11th Cir. 2021). Plaintiffs filed a petition for rehearing en banc, which is pending.

2. On August 26, 2021, the Supreme Court entered an order in separate litigation challenging the eviction moratorium. *See Alabama Ass'n of Realtors v. Department of Health and Human Servs. (AAR)*, 2021 WL 3783142 (U.S. Aug. 26, 2021). In that case, the district court had held that the CDC lacked statutory authority to impose an eviction moratorium and vacated the moratorium on a nationwide basis, *AAR*, 2021 WL 1779282 (D.D.C. May 5, 2021), but stayed its judgment pending appeal, *AAR*, 2021 WL 1946376 (D.D.C. May 14, 2021). After multiple rounds of

¹ Plaintiffs disagree with the suggestion that this appeal is moot.

motion practice before the D.C. Circuit and Supreme Court, the Supreme Court granted the plaintiffs' application to vacate the stay of the district court's judgment. *AAR*, 2021 WL 3783142, at *1. As a consequence of the Supreme Court's order, the district court's judgment vacating the eviction moratorium nationwide took effect.

In light of the Supreme Court's ruling, the CDC moved unopposed to voluntarily dismiss its D.C. Circuit appeal. *See AAR*, No. 21-5093, Doc. No. 1912554 (D.C. Cir. Sept. 2, 2021). The D.C. Circuit granted the government's motion, dismissed the appeal, and issued the mandate. *See AAR*, No. 21-5093, Doc. Nos. 1912768, 1912769 (D.C. Cir. Sept. 3, 2021). Thus, the district court's judgment in *AAR* is final and binding on the CDC.

3. Because the CDC is bound by the final judgment in *AAR* vacating the challenged eviction moratorium on a nationwide basis, we respectfully suggest that this appeal is moot. This is an appeal from the denial of a preliminary injunction, and plaintiffs cannot obtain a preliminary injunction to prevent the enforcement of an eviction moratorium that is no longer in effect. *See Adler v. Duval Cty. Sch. Bd.*, 112 F.3d 1475, 1477 (11th Cir. 1997) ("When the threat of future harm dissipates, the plaintiff's claims for equitable relief become moot because the plaintiff no longer needs protection from future injury."); *see also Alvarez v. Smith*, 558 U.S. 87, 93 (2009) (explaining that courts may not resolve "a dispute solely about the meaning of a law, abstracted from any concrete actual or threatened harm"); *Gagliardi v. TJC Land Tr.*, 889 F.3d 728, 733 (11th Cir. 2018) ("[A] case becomes moot when the reviewing

court can no longer offer any effective relief to the claimant.”). This Court has dismissed claims as moot in similar circumstances. *See, e.g., Gagliardi*, 889 F.3d at 733 (dismissing as moot claims for declaratory and injunctive relief where another court enjoined the challenged construction project in another case brought by different plaintiffs); *Hispanic Interest Coalition of Alabama v. Governor of Alabama*, 691 F.3d 1236, 1243 (11th Cir. 2012) (concluding that a preemption ruling in a companion case brought by a different plaintiff rendered moot a constitutional challenge to parts of the same state law provisions).

Respectfully submitted,

BRIAN M. BOYNTON
Acting Assistant Attorney General

KURT R. ERSKINE
Acting United States Attorney

ALISA B. KLEIN

s/ Brian J. Springer

BRIAN J. SPRINGER

*Attorneys, Appellate Staff
Civil Division, Room 7537
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530
(202) 616-5446
brian.j.springer@usdoj.gov*

September 2021

CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 611 words. This document also complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 27(d)(1)(E) and 32(a)(5)-(6) because it was prepared using Microsoft Word 2016 in Garamond 14-point font, a proportionally spaced typeface.

s/ Brian J. Springer

Brian J. Springer

CERTIFICATE OF SERVICE

I hereby certify that on September 7, 2021, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Eleventh 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/ Brian J. Springer

Brian J. Springer