



Texas Public Policy Foundation

October 3, 2021

VIA CM/ECF

Mr. Lyle W. Cayce, Clerk
United States Court of Appeals for The Fifth Circuit
600 S. Maestri Place
New Orleans, LA 70130-3408

RE: Case No. 21-40137; *Terkel, et al. v. Centers for Disease Control, et al.*

Dear Mr. Cayce:

In its instructions to attorneys preparing for oral argument, this Court advises:

If you have discovered additional authorities not cited in your brief while preparing for oral argument, do not waste your short time reciting the citations at oral argument. Prior to arriving to check-in for oral argument, electronically file a FRAP 28(j) letter giving the name of each such case or authority and its citation.

While preparing for oral argument, counsel discovered the following authorities, which he may discuss at oral argument:

- *Freedom from Religion Found., Inc. v. Abbott*, 955 F.3d 417, 425 (5th Cir. 2020) (finding jurisdiction over government's appeal of declaratory judgment because of ongoing controversy even after pledge by government that complained-of conduct would not recur)
- *Florida Board of Business Regulation v. NLRB*, 605 F.2d 916, 920 (5th Cir. 1979) (finding jurisdiction over declaratory judgment claim through the capable of repetition, yet evading review doctrine as applied in *Super Tire Eng'g Co. v. McCorkle*, 416 U.S. 115 (1974))

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- *Americana Art China Co. v. Foxfire Printing & Packaging, Inc.*, 743 F.3d 243, 246 (7th Cir. 2014) (denying an unopposed Fed. R. App. P. 42(b) voluntary dismissal because the issues in the case were “significant” and provided “an opportunity to provide additional guidance to the district courts”)
- *Albers v. Eli Lilly & Co.*, 354 F.3d 644, 646 (7th Cir. 2004) (denying an opposed Fed. R. App. P. 42(b) voluntary dismissal motion in order to “curtail strategic behavior” and “carry through so that the investment of public resources already devoted to this litigation will have some return”)

Respectfully submitted,

/s/Robert Henneke

ROBERT HENNEKE

Counsel for Appellees

cc: Counsel for Appellants (via CM/ECF)

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CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2021, I electronically filed the foregoing 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/Robert Henneke
ROBERT HENNEKE

CERTIFICATE OF COMPLIANCE

This Rule 28(j) letter complies with Federal Rule of Appellate Procedure 28(j) because it contains 258 words. This notice 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 in Times New Roman 14-point font, a proportionally spaced typeface.

Dated: October 3, 2021

/s/Robert Henneke
ROBERT HENNEKE