

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.

No. 20-cv-3377 (DLF)

**DEFENDANTS' RESPONSE TO PLAINTIFFS'
NOTICE OF SUPPLEMENTAL AUTHORITY**

Defendants respectfully respond to Plaintiffs' Notice of Supplemental Authority concerning *Terkel v. Centers for Disease Control and Prevention*, No. 20-564, 2021 U.S. Dist. LEXIS 33570 (E.D. Tex. Feb. 25, 2021), which entered a declaratory judgment for the plaintiffs in that case that the Centers for Disease Control and Prevention (CDC) Order at issue here exceeds Congress's powers under the Commerce Clause and the Necessary and Proper Clause. *See* ECF No. 41. The district court in *Terkel* dismissed two plaintiffs for lack of standing, 2021 U.S. Dist. LEXIS 33570, at *9–10, and, for the five “remaining plaintiffs,” entered “summary judgment granting declaratory relief in their favor,” *id.* at *31. Defendants respectfully disagree with the *Terkel* decision, and the government has filed an appeal. For present purposes, it suffices to observe that (1) the *Terkel* opinion's holding is irrelevant to this case, as Plaintiffs here do not contend that the CDC Order exceeds Congress's powers under the Commerce Clause and the Necessary and Proper Clause, and (2) the *Terkel* judgment does not extend beyond the plaintiffs in that case and does not prohibit the application of the Order to any other parties, including the Plaintiffs in this case, *see* 28 U.S.C. § 2201 (court may “declare the rights and other legal relations *of any interested party seeking such declaration*” (emphasis added)).

Dated: February 27, 2021

Respectfully submitted,

BRIAN M. BOYNTON
Acting Assistant Attorney General

ERIC BECKENHAUER
Assistant Director, Federal Programs Branch

/s/ Steven A. Myers

STEVEN A. MYERS
Senior Trial Counsel (NY Bar No. 4823043)
LESLIE COOPER VIGEN
Trial Attorney (DC Bar No. 1019782)
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, DC 20005
Tel: (202) 305-8648
Fax: (202) 616-8470
E-mail: steven.a.myers@usdoj.gov

Counsel for Defendants