

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

STATE OF FLORIDA,

Plaintiff

v.

XAVIER BECERRA, Secretary of the
Dep't of Health and Human Services, *et*
al.,

Defendant.

Case No. 8:21-cv-839-SDM-AAS

**DEFENDANTS' MOTION FOR LEAVE TO FILE
A RESPONSE OF MORE THAN TWENTY PAGES**

Pursuant to Local Rule 3.01(b), Defendants respectfully move for a 25-page expansion of the page limit for their opposition to Plaintiff's motion for a preliminary injunction. In support of this motion, Defendants represent the following:

1. On January 31, 2020, the Secretary of Health and Human Services issued a declaration that COVID-19 constitutes a public health emergency for the entire United States. Plaintiff seeks to preliminary enjoin an emergency Centers for Disease Control ("CDC") order issued under the Public Health Services Act, 42 U.S.C. § 264(a), and 42 C.F.R. parts 70 and 71, that restricts cruise ship operations pending the implementation of certain COVID-19 safety protocols.

2. Plaintiff claims that it is likely to succeed on the merits of five separate claims—namely, that the challenged order (1) exceeds the CDC’s authority, (2) is arbitrary and capricious, (3) constitutes agency action unlawfully withheld or unreasonably delayed, (4) was issued without notice and comment, and (5) violates the nondelegation doctrine. Plaintiff’s arbitrary and capricious claim itself raises five separate theories.
3. The State of Alaska has been granted leave to file a thirteen-page amicus curiae brief in support of Florida’s motion for a preliminary injunction. An additional individual has sought the parties’ consent to the filing of an amicus brief as well.
4. To explain why the challenged order is within the CDC’s statutory authority under 42 U.S.C. § 264, Defendants’ memorandum will thoroughly explain the statutory and regulatory framework and the agency’s experience dealing with COVID-19 outbreaks on cruise ships.
5. Defendants’ memorandum will also address the threshold constitutional question of jurisdiction under Article III—only briefly addressed by Plaintiff—contending that Plaintiff lacks standing because it has not identified a legally cognizable injury that is fairly traceable to the challenged CDC Order.
6. Defendants’ memorandum will also respond to some arguments raised in the amicus briefs.
7. Unlike a typical preliminary injunction motion, Plaintiff seeks to enjoin the wholesale operation of a federal regulatory program—in place in some form

for over a year—designed to mitigate the effects of the ongoing COVID-19 pandemic. Given the importance of the program and the multiple claims raised, the additional pages requested are necessary for Defendants to provide the statutory and historic background and analysis to adequately address the issues raised by Plaintiff’s motion. Defendants will endeavor to be brief, and respectfully submit this Court would benefit from a fuller analysis of the issues presented here. The interests of justice will therefore be served by the requested extension.

8. Undersigned counsel has conferred with counsel for Plaintiff, who opposes the relief sought in this motion, but consents to an enlargement from 20 pages to 25 pages. The additional pages, however, are necessary for Defendants to describe the factual and statutory background, as well as address arguments raised by other briefs.

Defendants, therefore, respectfully ask this Court to enter an order granting them permission to file a brief of no more than 45 pages.

Dated: May 3, 2021

Respectfully submitted,

BRIAN M. BOYNTON
Acting Assistant Attorney General

ERIC BECKENHAUER
Assistant Branch Director
Federal Programs Branch, Civil Division

s/ Amy E. Powell
Amy Elizabeth Powell
Senior Trial Counsel
Federal Programs Branch
Civil Division, Department of Justice
150 Fayetteville St, Suite 2100
Raleigh, NC 27601
Phone: 919-856-4013
Email: amy.powell@usdoj.gov