

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

| | | |
|------------------------------------|---|-------------------------------|
| STATE OF FLORIDA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| XAVIER BECERRA, Secretary of |) | |
| Health and Human Services, in his |) | |
| official capacity; HEALTH AND |) | Case No.: 8:21-CV-839-SDM-AAS |
| HUMAN SERVICES; ROCHELLE |) | |
| WALENSKY, Director of Centers for |) | |
| Disease Control and Prevention, in |) | |
| her official capacity; CENTERS FOR |) | |
| DISEASE CONTROL AND |) | |
| PREVENTION; UNITED STATES |) | |
| OF AMERICA, |) | |
| |) | |
| Defendants. |) | |

STATE OF ALASKA’S MOTION TO INTERVENE

The State of Alaska moves to intervene in support of plaintiff, the State of Florida, as of right pursuant to Federal Rule of Civil Procedure 24(a)(2) or, alternatively, in permissive intervention pursuant to Federal Rule of Civil Procedure 24(b). This litigation concerns the legality of an order issued by the Center for Disease Control and Prevention (“CDC”) that prohibits cruise ships from operating in waters of the United States until November 1, 2021, or until the vessel’s operator can satisfy both overly burdensome and yet to be determined requirements set by the CDC. The order directly affects the

economic health of Alaska, its small port communities, and its citizens. Moreover, Alaska has a substantial interest in the subject matter of this action because the CDC has exceeded its statutory authority by asserting a general police power over Alaska and its local communities. *See Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 536 (2012) (“The independent power of the State also serves as a check on the power of the Federal Government: ‘By denying any one government complete jurisdiction over all the concerns of public life, federalism protects the liberty of the individual from arbitrary power.’” (quoting *Bond v. United States*, 564 U.S. 211, 222, (2011)); *Skyworks, Ltd. v. Ctr. For Disease Control and Prevention*, ---F. Supp. 3d---, 2021 WL 911720, at *10 (N.D. Ohio March 10, 2021) (concluding that the CDC’s current interpretation of its statutory authority is “tantamount to creating a general federal police power”).

BACKGROUND

I. The CDC issued a No Sail Order at the start of the pandemic.

In March 2020, the CDC issued the first of a series of No Sail Orders shutting down the cruise industry in the United States. 60 Fed. Reg. 16628. The order applied to passenger vessels with a capacity of 250 or more individuals operating in waters subject to the jurisdiction of the United States with an itinerary anticipating an overnight stay for passengers or crew. *Id.* The CDC renewed the No Sail Order in separate orders issued on

April 9, July 16, and September 30, 2020. *See* 85 Fed. Reg. 21004, 85 Fed. Reg. 44085, 85 Fed. Reg. 62732.

The No Sail Orders prohibited cruise ship operators from disembarking or reembarkeing crew members except as directed by the United States Coast Guard; prevented operators from embarking any new passengers or crew except as approved; directed cruise ship operators to observe health precautions as directed by the CDC; and directed operators to comply with all CDC recommendations and guidance relating to the passengers, crew, ship, or any article or thing on board the ship. 85 Fed. Reg. at 62737. As a condition of returning to sailing, the No Sail Orders required cruise ship operators to develop and implement a “robust plan to prevent, mitigate, and respond to the spread of COVID-19 among crew onboard cruise ships.” *Id.* The orders further required operators to make this plan available to the CDC and address elements to adequately prevent, mitigate, and respond to the spread of COVID-19 among crew and minimize, to the greatest extent possible, any impact on government operations or the U.S. healthcare system. *Id.*

As a result of the pandemic, Alaska’s 2020 cruise season was canceled.¹

¹ *See Alaska’s Last Remaining Big-Ship Cruises of 2020 Have Been Canceled*, July 6, 2020, available at <https://www.adn.com/business-economy/2020/07/06/alaskas-last-remaining-big-ship-cruises-of-2020-have-been-canceled/>.

II. The CDC's Conditional Sail Order threatens Alaska's 2021 cruise season.

As of April 29, 2020, seven cruise ship operators—approximately 95% of cruise ships subject to the No Sail Orders—had submitted the necessary response plan. 85 Fed. Reg. at 62734. As of September 6, all five cruise ship operators with ships remaining in U.S. waters had submitted response plans that were “complete, accurate, and acknowledged.” *Id.*

On October 31, 2020, the CDC issued a “Conditional Sail Order” that promised a “phased resumption of cruise ship passenger operations.” 85 Fed. Reg. 70153. The initial phase consisted of testing and additional safeguards for crew members while the CDC ensures operators build the laboratory capacity needed to test future passengers. *Id.* Subsequent phases would include simulated voyages, certification for ships that meet specific requirements, and a phased return to passenger voyages. *Id.*

On April 2, 2021, the CDC issued technical guidance for phase 2a of its phased approach.² Among other requirements, this phase requires operators to create “planning materials for agreements that port authorities and local health authorities must approve to ensure cruise lines have the necessary infrastructure in place to manage an outbreak of COVID-19 on their ships to include healthcare capacity and housing to isolate infected people and

² <https://www.cdc.gov/media/releases/2021/s0402-conditional-sail-orders.html>

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