

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

SCOTT WYNN, an individual,

Plaintiff,

v.

TOM VILSACK, in his official capacity
as Secretary of Agriculture, *et al.*,

Defendants.

No. 3:21-cv-00514-MMH-JRK

JOINT NOTICE

The Court ordered the parties to “confer and submit to the Court a proposed expedited schedule to resolve the merits of this action.” ECF No. 41 at 49. The parties have conferred in good faith but are unable to reach agreement on a schedule to govern further proceedings in this matter. The parties’ respective positions are as follows:

Plaintiff’s Position:

In this case, Plaintiff Scott Wynn challenges Section 1005 of the American Rescue Plan Act of 2021, which directs Defendants to provide loan assistance to certain farmers and ranchers nationwide on the basis of their race. The Court granted Mr. Wynn’s request for a preliminary injunction against full implementation of Section 1005. ECF No. 41. Recognizing the magnitude of that injunction, the Court directed the parties to “proceed with the greatest of speed in reaching a final adjudication in this case” and to propose a schedule that would both “complete any discovery that

may be required on an expedited basis” and include “a swift deadline for the submission of dispositive motions.” *Id.* at 48.

Plaintiff believes that many of the key facts in this case will be undisputed, such that discovery and dispositive motion briefing can be accomplished on an expedited schedule. During the parties’ meet-and-confer on June 28, 2021, Defendants’ counsel stated that they do not anticipate extensive discovery from Plaintiff Scott Wynn. Plaintiff also does not anticipate extensive discovery from Defendants. Although Defendants “anticipate” relying on expert testimony, they have not stated how many experts they are considering; nor have they identified any specific issues in this case that will require the submission of expert opinion. Plaintiff believes that Defendants’ proposal to defer expert reports until December—more than five months—is excessive. Defendants were served with the Complaint more than a month ago, *see* ECF No. 15, and Plaintiff believes that a shorter schedule is reasonable. Additionally, although Defendants note that Plaintiff has already obtained a preliminary injunction, they have declined to state whether they intend to appeal that injunction to the Eleventh Circuit.

Accordingly, Plaintiff proposes the following expedited schedule:

- Defendants’ Answer – July 6, 2021
- Initial Disclosures and Start of Discovery – July 6, 2021
- Initial Expert Reports – August 3, 2021
- Rebuttal Expert Reports – August 24, 2021
- Close of Discovery – September 7, 2021

- Simultaneous Cross-Motions for Summary Judgment – September 21, 2021
- Simultaneous Response Briefs – October 8, 2021
- Simultaneous Reply Briefs – October 15, 2021

Plaintiff believes that this expedited schedule is both consistent with the Court’s direction that the parties “proceed with the greatest of speed” and will allow the parties to fully and fairly litigate disputed issues so that the Court can issue a final ruling on the merits.

Defendants’ Position:

Plaintiff challenges, and seeks to permanently enjoin on a universal basis, a major and recent Congressional initiative to redress the lingering consequences of a long history of discrimination against socially disadvantaged farmers and ranchers. Given the significance of a final judgment evaluating the constitutionality of an Act of Congress, Defendants believe that a period of several months is needed to develop an adequate and complete factual record to inform the Court’s final judgment. Defendants anticipate relying on expert testimony to address the claims in this case, and it will take substantial time for Defendants to first identify and retain such expert(s), for the expert(s) to review and analyze data reaching back decades and spanning the entire country, for the expert(s) to detail their findings in a report, for the parties to review the competing reports and develop rebuttal reports as may be appropriate, for the parties to depose the expert(s), and for the parties to then incorporate that information, together with other information available, into briefing.

Defendants propose the following schedule:

- Defendants' Answer – July 12, 2021
- Initial Disclosures – July 26, 2021
- Initial Expert Reports – December 17, 2021
- Rebuttal Expert Reports – January 14, 2022
- Expert Depositions Complete by – February 11, 2022
- Simultaneous cross-motions for summary judgment – March 11, 2022
- Simultaneous response briefs – April 1, 2022

Defendants are mindful of the Court's desire to resolve this matter on an expedited basis, and have condensed the proposed timeline considerably in comparison to similar litigation. *Compare, e.g.,* Scheduling Order, *Ultima Servs. v. USDA*, No. 2:20-cv-41, ECF No. 34 (E.D. Tenn. Apr. 9, 2021) (allowing nine months between answer and expert disclosures in Fifth Amendment challenge to government contracting program). Plaintiffs have already obtained a preliminary injunction of the challenged policy. As this Court has recognized, “[t]he chief function of a preliminary injunction is to preserve the status quo until the merits of the controversy can be fully and fairly adjudicated.” ECF No. 41 at 4 (quoting *Robinson v. Attorney General*, 957 F.3d 1171, 1178-79 (11th Cir. 2020)). Defendants respectfully submit that the schedule that Plaintiffs have proposed is inadequate to the needs of this case and that such expedition is

not warranted in this case—especially where the parties have already engaged in expedited briefing and this court has already issued a preliminary injunction.¹

DATED: June 29, 2021

Respectfully submitted,

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Counsel for Defendants

¹ Defendants have not appealed or sought a stay of this Court’s preliminary injunction, but reserve their right to do so. However, should Defendants prevail in any such appeal, that success will reflect the judgment of the Court of Appeals that a preliminary injunction is not warranted pending a full and fair adjudication of the merits.

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CERTIFICATE OF SERVICE

I hereby certify that on June 29, 2021, I filed with the Court and served on opposing counsel through the CM/ECF system the foregoing document.

DATED: June 29, 2021

/s/ Michael F. Knapp
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