

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

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SCOTT WYNN, an individual,

Civil Action

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

Plaintiff,

v.

TOM VILSACK, in his official capacity as  
U.S. Secretary of Agriculture; ZACH  
DUCHENEAUX, in his official capacity  
as Administrator, Farm Service Agency,

Defendants.

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**Response to Defendants' Notice of Supplemental Authority**

On October 22, 2021, Defendants submitted a notice of supplemental authority on the Court's partial grant of the government's motion for reconsideration in *Holman v. Vilsack*, No. 2:21-1085 (W.D. Tenn.). ECF No. 72. Because the Notice contains "argument [and] comment," *but see* Local Rule 3.01(i), Plaintiff offers this brief response to correct any misapprehension that may have been caused by Defendants' Notice.

Defendants contend that "no other challenge to Section 1005 is currently proceeding except for this case and the class action in Texas." ECF No. 72 at 1. Yet this case is proceeding at a faster pace than any other challenge to Section 1005. The scheduling conference in *Holman* was held earlier this month. *See*

*Holman*, No. 2:21-1085, ECF No. 56, and the case was expected to be briefed at the beginning of April 2022. *See Holman*, ECF Nos. 51, 56. The class action in *Miller v. Vilsack*, No. 21-0595 (N.D. Tex.) is following a similar schedule. *See Miller*, ECF Nos. 70, 85. There is no fact discovery in *Miller*, and briefing on the summary judgment motions will not be completed until April 2022. *Id.* The parties in *Miller* also propose to “file simultaneous briefs on the appropriate remedy 21 days after the Court’s order on the parties’ cross-motions for summary judgment, and simultaneous response briefs 14 days thereafter.” ECF No. 83.<sup>1</sup>

By contrast, the discovery cut-off in this case is just over a month away, and briefing is expected to be completed by January 2022. Thus, this case is uniquely positioned as the case in which the important legal issues presented will be adjudicated first. And this fact is *more* important in light of the *Miller* court’s denial of Mr. Wynn’s Motion to Opt-Out of the Certified Classes. *See Wynn*, Plt’s Surreply in Resp. to Mot. to Stay, ECF No. 61 at 2 (noting that “a *subsequent* judgment in *Miller* would not bind Mr. Wynn”).

DATED: October 27, 2021.

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<sup>1</sup> The court appears not to have acted on this proposal. *See Miller*, ECF No. 85 (scheduling order).

Respectfully submitted,

PACIFIC LEGAL FOUNDATION

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\*Special admission

**CERTIFICATE OF SERVICE**

I hereby certify that on October 27, 2021, I submitted the foregoing to the Clerk of the Court via the District Court's CM/ECF system, which will provide notice of the submission of this document to all counsel of record.

s/ Wencong Fa  
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