

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

SCOTT WYNN, an individual,

*Plaintiff,*

v.

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

*Defendants.*

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

**NOTICE OF SUPPLEMENTAL AUTHORITY**  
**SUPPORTING DEFENDANTS' MOTION TO STAY PROCEEDINGS**

On July 12, 2021, Defendants filed a motion to stay proceedings in this case in light of the certification of classes in the Northern District of Texas that include Plaintiff here and, like Plaintiff, are challenging Section 1005 of the American Rescue Plan (“ARPA”) on equal protection grounds. *See* ECF No. 44. As indicated therein, Defendants filed similar motions to stay proceedings in nine other challenges to Section 1005 across the country. At this point, with the most recent order that is the subject of this notice, no other challenge to Section 1005 is currently proceeding except for this case and the class action in Texas.

On August 2, 2021, the court in *Holman v. Vilsack*, No. 2:21-1085 (W.D. Tenn.), denied Defendants’ stay motion, based in part on the plaintiff’s representation that he “may choose to opt out of the *Miller* classes,” and also in part because the plaintiff

raised two additional claims not at issue in the class action. *See Holman*, Order, ECF No. 49. Upon consideration of further briefing, the same court subsequently granted Defendants' similar stay motion in *Joyner v. Vilsack*, 1:21-1089 (W.D. Tenn.), based in part on its observation that "classes certified under Rule 23(b)(2) are mandatory, providing 'no opportunity' for class members to opt out and not even requiring district courts to afford class members notice of the certification." ECF No. 55; *id.* Ex. 1. Thereafter, the court in *Miller v. Vilsack*, No. 21-0595 (N.D. Tex.), denied a motion by five plaintiffs in lawsuits challenging Section 1005, including Plaintiff in this action, to opt out of the classes certified in *Miller*. *See* ECF No. 65; *id.* Ex. 1. Based on the court's decision in *Joyner* granting Defendants' motion to stay proceedings, as well as the *Miller* decision denying plaintiffs' motion to opt out of the certified classes, the Government asked the *Holman* court to reconsider its decision denying the Government's stay motion in that case or, alternatively, to stay discovery and all other case deadlines while it considers the Government's motion to dismiss the two additional claims in that case that are not at issue in the class action. *See Holman*, Defs.' Mot. for Reconsideration, ECF No. 58. On October 22, 2021, the court in *Holman* partially granted the Government's motion for reconsideration, staying discovery and other case deadlines pending resolution of Defendants' motion to dismiss. Defendants have attached that order for this Court's reference and in further support of Defendants' motion to stay proceedings in this case. *See* Exhibit 1.

Dated: October 22, 2021

Respectfully submitted,

BRIAN M. BOYNTON  
Acting Assistant Attorney General

LESLEY FARBY  
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Civil Division, Federal Programs Branch

/s/ Emily Newton  
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*Counsel for Defendants*

**Certificate of Service**

I hereby certify that on October 22, 2021, a copy of the foregoing motion was filed electronically via the Court's ECF system, which effects service on counsel of record.

/s/ Emily Newton  
EMILY SUE NEWTON  
U.S. Department of Justice

# Exhibit 1

*Order Partially Granting Defendants' Motion  
for Reconsideration*

*ECF No. 59, Holman v. Vilsack, No. 1:21-cv-1085 (W.D. Tenn.)  
October 22, 2021*

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION

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ROBERT HOLMAN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 1:21-cv-01085-STA-jay
	)	
THOMAS J. VILSACK, in his official	)	
capacity as Secretary of the United States	)	
Department of Agriculture; and ZACH	)	
DUCHENEAUX, in his official capacity	)	
as Administrator of the Farm Service Agency,	)	
	)	
Defendants.	)	

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ORDER PARTIALLY GRANTING  
DEFENDANTS' MOTION FOR RECONSIDERATION

Before the Court is Defendants' Motion for Reconsideration of Stay Decision or to Stay Discovery and Other Case Deadlines Pending Resolution of Motion to Dismiss. (ECF No. 58.) For good cause shown, Defendants' Motion for Reconsideration is **PARTIALLY GRANTED**. Discovery and other case deadlines will be stayed pending resolution of Defendants' motion to dismiss.

IT IS SO ORDERED.

s/ **S. Thomas Anderson**  
S. THOMAS ANDERSON  
CHIEF UNITED STATES DISTRICT JUDGE

DATE: October 22, 2021