IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

CTM HOLDINGS, LLC, an Iowa limited liability company, Plaintiff, vs. THE UNITED STATES DEPARTMENT OF AGRICULTURE; THOMAS J. VILSACK, in his official capacity as the Secretary of the United States Department of Agriculture; THE NATURAL RESOURCES CONSERVATION SERVICE; TERRY COSBY, in his official capacity as Chief of the Natural Resources Conservation Service; and JON HUBBERT, in his official capacity as Iowa State Conservationist, Defendants. IOWA FARMERS UNION, IOWA ENVIRONMENTAL COUNCIL, FOOD & WATER WATCH, and DAKOTA RURAL ACTION, Intervenors.	Case No. 24-CV-2016-CJW-MAR **INTERVENORS' REPLY TO PLAINTIFF'S RESISTANCE TO INTERVENORS' MOTION FOR SUMMARY JUDGMENT AND/OR DISMISSAL**

Intervenors submit this Reply to Plaintiff's Resistance to Intervenors' Motion for Summary Judgment and/or Dismissal pursuant to LR 7(g) and LR 56(d).

I. Plaintiff's reliance on *NFIB v. Sebelius* is misplaced.

A. Swampbuster does not threaten the balance of power between State and Federal governments.

Plaintiff relies on *Nat'l Fed. of Independent Businesses (NFIB) v. Sebelius* to argue that Swampbuster is unduly coercive and therefore a violation of the Spending Clause. But *NFIB's* holding is distinguishable because it concerned conditions placed on state governments, not individuals. In 2010, Congress enacted the Affordable Care Act, which was immediately subject to litigation on several grounds, including that the Medicaid expansion provision threatened states with the loss of all Medicaid funding if they refused to expand the program. *See Nat'l Fed. of Independent Businesses v. Sebelius*, 567 U.S. 519, 542 (2012). Despite finding that Medicaid expansion exceeded Congress's spending power, the *NFIB* case reaffirmed Congress' longstanding power to condition a receipt of funds on "taking certain actions that Congress could not require them to take." *Id.* at 576 (cleaned up).[1] As the Court noted, "Congress may attach appropriate conditions to federal taxing and spending programs to preserve its control over the use of federal funds." *Id.* at 579.

Importantly, the *NFIB* case explored the limits of the spending power "to secure *state* compliance with federal objectives." *Id.* at 576 (emphasis added). The Court did not announce a new test in *NFIB*, rather it applied the same test the Court applied in *Dole* to the specific facts in *NFIB*. In both *Dole* and *NFIB*, the Court asked, "whether the financial inducement offered by Congress was so coercive as to pass the point at which pressure turns into compulsion." *Id.* at 580 (citing *South Dakota v. Dole*, 483 U.S. 203, 211 (1987) (cleaned up). This limitation is critical because without it "the two-government system established by the Framers would give way to a

[1] Despite citing *NFIB* extensively in its Resistance, Plaintiff ignores this portion of *NFIB* and instead cites to *United States v. Butler*, 297 U.S. 1, 72-73 (1936), to argue that the spending clause does not allow Congress to condition funding on actions it could not otherwise require.

system that vests power in one central government." *Id.* at 577. As Defendants noted, such a concern is not implicated when, as in the case of Swampbuster, the condition is placed on an individual and not a sovereign state. Def. Br. in Support of SJ at 14.

B. Plaintiff presents no evidence that Swampbuster is coercive.

Even if this coercion test did apply to individuals, it would not help Plaintiff's case. In *NFIB*, the Court noted that Medicaid spending accounted for over 20 percent of the average state's budget with the federal government's portion accounting for 50 to 83 percent of that. *Nat'l Fed. of Independent Businesses*, 567 U.S. at 581. As a result, the Court found that Medicaid expansion was "much more than relatively mild encouragement—it is a gun to the head." *Id*. Swampbuster does not come close. Plaintiff argues—without explanation or support—that "farmers are left with little alternative but to submit to Swampbuster's coercive regulatory scheme." Pl. Resistance at 14. Plaintiff, however, ignores that *most* farmers and property owners (including Plaintiff itself) do not participate in Farm Benefits. In fact, only 25% of farms receive any direct federal benefits,[2] and only 13% of farms participate in federal crop insurance benefits.[3] Given this, Swampbuster provides, at best, "mild encouragement" to preserve wetlands, and it is far from a "gun to the head" situation. *See Nat'l Fed. of Independent Businesses*, 567 U.S. at 581.

Moreover, Plaintiff has not introduced a single piece of evidence to support its assertions that farmers believe Swampbuster is coercive; not even Plaintiff's own declaration asserts as much,

[2] According to USDA's 2022 Census of Agriculture, as of 2022, there were a total of 1,900,487 farms in the United States. *Historical Highlights: 2022 and Earlier Census Years*, USDA NATIONAL AGRICULTURAL STATISTICS SERVICE, https://www.nass.usda.gov/Publications/AgCensus/2022/Full_Report/Volume_1,_Chapter_1_US/st99_1_001_001.pdf (last visited Feb. 25, 2025). Of those, only 483,211 received direct payments from the federal government. *Id.*

[3] Katherine Lacy & Katherine Lim, *Crop insurance payments to farmers vary by farm type*, USDA ECONOMIC RESEARCH SERVICE (Mar. 24, 2024) (last visited Feb. 25, 2025), https://www.ers.usda.gov/data-products/charts-of-note/chart-detail?chartId=109049.

nor could it, given that Plaintiff stopped participating in Farm Benefits programs months ago. Indeed, the docket reflects numerous declarations from farmers, not one of which suggests that Swampbuster puts a "gun to the[ir] head[s]," or anything similar. To the contrary, Intervenor farmer declarants voluntarily choose to comply with Swampbuster because they think it is the right thing to do for their farms,[4] their businesses,[5] their families,[6] their neighbors,[7] and the environment.[8] Many of them would continue to comply with Swampbuster even if it was invalidated.[9] Plaintiff's attempt to analogize Swampbuster to the coercion at issue in *NFIB* is ungrounded hyperbole and should be rejected. *See Davidson & Assocs. v. Jung*, 422 F.3d 630, 638 (8th Cir. 2005) (at summary judgment, a "plaintiff may not merely point to unsupported self-serving allegations, but must substantiate allegations with sufficient probative evidence that would permit a finding in the plaintiff's favor.").

[4] In his sworn declaration, Iowa farmer Aaron Lehman stated: "Even if Swampbuster and Sodbuster were invalidated by this lawsuit, I do not intend to fill or drain any of our wetland areas []. We simply wouldn't get the level of benefits that we get from keeping this land in CRP." ECF No. 23-3, ¶ 16. Farmer Lehman further explained that "[f]illing in the wetland [] would be more trouble than it's worth" because he's tried to farm the wetland before but "[y]ields were low and it required a lot of extra time and labor." *Id.* ¶ 18.

[5] Farmer Nick Nemec stated: "In a world without Swampbuster and Sodbuster, I worry that large farming operations that can withstand price fluctuations will continue to expand to the detriment of small farmers and those hoping to start." ECF. No. 23-9, ¶ 10. He further explained that "[l]and and modern equipment are already prohibitively expensive, and I am concerned that removing Swampbuster and Sodbuster would only add to the barriers prospective farmers must overcome." *Id.*

[6] South Dakota Farmer Seth Watkins noted: "I rely on the continued preservation of natural resources for my family business, the value of my land, the benefit of my cattle, and recreation. Removing Swampbuster or Sodbuster provisions will accelerate this resource loss." ECF No. 23-7, ¶ 9.

[7] Iowa farmer John Gilbert explained: "Even if the Swampbuster rules went away and we were suddenly allowed to drain that area, we would not do it. Again, the wetland helps us and our neighbors in terms of reduced flooding and better water quality, and it provides a habitat for migratory and resident waterfowl, various kinds of frogs and other amphibians, a plethora of seasonal insects like bees and dragonflies, an occasional muskrat, and provides a watering hole for game species like deer, turkeys and pheasants." ECF No. 23-8, ¶ 12.

[8] Iowa farmer Elle Gadient, who lives and farms 12 miles downstream from Plaintiff, stated that wetlands "are tools for flood control, water quality improvement, and habitat for wildlife," ECF No. 42-1, ¶ 14, and that she "believe[s] strongly that in order to receive federal subsidies, farmers should be good stewards of the land." *Id.* ¶ 13.

[9] *See* ECF No. 23-3, ¶ 16; ECF No. 23-8, ¶ 12.

C. Plaintiff's Spending Clause argument ignores relevant precedent and undermines Plaintiff's other theories.

Plaintiff tries to minimize two cases holding that Swampbuster is a valid exercise of Congress' Spending Power by noting the cases were decided prior to *NFIB*. *See United States v. Dierckman*, 201 F.3d 915, 922 (7th Cir. 2000); *Horn Farms, Inc. v. Johanns*, 397 F.3d 472, 476–77 (7th Cir. 2005). These cases were decided before *NFIB* and after *Dole*, but as noted above, *NFIB* and *Dole* used the same test for coercion. If these courts did not find coercion when they decided them, *NFIB* would not dictate a different result.

Finally, Plaintiff's coercion argument undermines Plaintiff's takings argument. Plaintiff is wrong that Swampbuster amounts to a taking as noted at Section IV(C)(iii)–(iv) of Intervenors' Brief in Support of its Motion for Summary Judgment. Even if it did, Swampbuster provides just compensation. *See Lingle v. Chevron U.S.A Inc.*, 544 U.S. 528, 537 (2005) (the Takings Clause "is designed not to limit the governmental interference with property rights per se, but rather to secure compensation in the event of otherwise proper interference amounting to a taking"). Plaintiff cannot argue in good faith that the Farm Benefits are so significant that the risk of losing them amounts to "a gun to the head," Pl. Resistance at 14, while at the same time insisting those Benefits are not valuable enough to provide just compensation.

* * *

In the words of Iowa Farmers Union President Aaron Lehman: "At the end of the day, no farmer is required to participate in government support payments. Our farmers who do participate in farm programs and comply with requirements of Swampbuster and Sodbuster don't feel they are entitled to a government subsidy unless they hold up their end of the bargain with the American public, which is to put in at least a minimal amount of effort to protect our irreplaceable natural resources." ECF. No. 23-3, ¶ 36. Plaintiff's coercion arguments would strain credulity even if they

were offered by a farmer who actually receives and relies on Farm Benefits. When pressed by a Chicago attorney who "owns several farms," Pl. Combined Resp. to SOMF (ECF No. 65-1), at 11, and chose to stop receiving Farm Benefits months after filing this lawsuit, they fall utterly flat.

II. Plaintiff has not suffered economic injury related to renting the wetlands.

Plaintiff's last-ditch contention that it has suffered an economic injury because it cannot lease the Wetland does not establish standing. *First*, this injury—which was not alleged in Plaintiff's Complaint—is demonstrably false. The existing lease between Plaintiff and Plaintiff's tenant covers the entirety of the property purchased by Plaintiff, including the Wetland. *See* Int. App. 24 (description of Property in deed), *and* Int. App. 63 (functionally identical description of premises leased). *Second*, Plaintiff has provided no evidence demonstrating any difficulty leasing the Wetland, whether individually or part of the Property as a whole. Even if such difficulty could be demonstrated, it would not constitute a legally cognizable injury because Plaintiff purchased the Property with full knowledge of the wetlands designation. *See Goertz v. City of Kirkland*, 641 F. Supp. 3d 990, 1001 (9th Cir. 2022) (granting summary judgment to government defendant where plaintiff landowners failed to identify any economic injury attributable to a wetland regulation that predated their purchase of the property); *see also* Defs. Resp. Br. at 6 ("[I]f the wetland determination reduces the property's market value, CTM has benefitted as much as it has lost [because] it bought the property at that reduced value."). There has been no diminution in value since Plaintiff purchased the property, and Plaintiff has suffered no injury.

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For the reasons described in Intervenors' Motion for Summary Judgment and/or Dismissal, ECF No. 54-1, Intervenors request the Court grant summary judgment and/or dismissal in Defendants' favor on all Claims.

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Respectfully submitted,

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