

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

SARA ROGERS,

Plaintiff,

v.

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

Defendants.

No. 2:21-cv-01779-DDD-SKC

JOINT STATUS REPORT

Pursuant to this Court’s March 31, 2022, Order staying this case pending resolution of *Miller v. Vilsack*, No. 4:21-cv-595-O (N.D. Tex.), ECF No. 36, the parties submit this status report (JSR) updating the Court on (1) the status of *Miller v. Vilsack*, and (2) the continued need for a stay.

1. Plaintiff challenges Section 1005 of the American Rescue Plan Act of 2021. Because this Court held in its March 31 Order that Plaintiff is a member of the classes certified in the first-filed case, *Miller v. Vilsack*, bringing the same challenge to Section 1005, the Court granted Defendants’ request for a stay of this action pending resolution of the *Miller* litigation. *See* March 31 Order. The Court further ordered the parties to file a JSR “every 90 days updating the Court on (1) the status of *Miller v. Vilsack*, and (2) the continued need for a stay.” *Id.* at 5.

2. On June 30, 2022, the parties filed a JSR informing the Court that *Miller v. Vilsack* remained ongoing, with briefing on summary judgment scheduled to complete in August of 2022, and that Plaintiff remained a member of the classes certified in that litigation. *See* JSR, ECF No. 39.

3. On September 6, 2022, Defendants filed a notice informing this Court that Section 1005 had been repealed and that the parties had jointly stipulated to the dismissal of *Miller v. Vilsack* in light of the legislative repeal. Defs.’ Notice of Repeal of ARPA Section 1005 and Dismissal of Related Class Action, ECF No. 40. The parties’ stipulation of dismissal noted that “the constitutional challenge to Section 1005 is moot.” *Id.* at 2 (quoting *Miller v. Vilsack* Joint Stipulation of Dismissal, filed at ECF No. 40-1). Defendants’ notice stated that Defendants would move to dismiss this case by September 13, 2022, if Plaintiff did not voluntarily dismiss this case or agree to file a stipulation of dismissal by that date. *Id.* at 2.

4. On September 13, 2022, Defendants moved to dismiss this case over Plaintiff’s objection. *See* Mot. to Dismiss, ECF No. 41. As of October 18, 2022, the motion was fully briefed and ripe for review. *See* Defs.’ Reply, ECF No. 43.

5. Not including *Miller v. Vilsack*, this case was one of eleven other cases filed around the country bringing similar equal-protection challenges to Section 1005. *See* March 31 Order at 2. This is the only action that remains pending. After Section 1005 was repealed, the plaintiffs in every other case except *Carpenter v. Vilsack*, No. 21-cv-103 (D. Wyo.), dismissed their lawsuit either voluntarily or by stipulation. In *Carpenter*, the Government filed an opposed motion to dismiss the Plaintiff’s equal-protection challenge to Section 1005 as moot, in light of the legislative repeal of the statute, and on October 7, 2022, *Carpenter* lifted the stay in that case and granted the Government’s motion to dismiss. *See Carpenter* Order Granting Defendants’ Motion to Lift Stay and Dismiss as Moot (filed at ECF No. 44-1). That case is currently on appeal. *Carpenter v. Vilsack*, No. 22-8079 (10th Cir.).

Dated: March 27, 2023

/s/ Erin M. Erhardt

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Counsel hereby certify that the foregoing pleading complies with the type-volume limitation set forth in Judge Domenico's Practice Standard III(A)(1).

CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2023, a copy of the foregoing was filed electronically via the Court's ECF system, which effects service on counsel of record.

/s/ Kyla M. Snow

KYLA M. SNOW

United States Department of Justice