

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

SID MILLER,

Plaintiff,

v.

TOM VILSACK,

Defendant,

Case No. 4:21-cv-00595

**THE NATIONAL BLACK FARMERS ASSOCIATION AND
THE ASSOCIATION OF AMERICAN INDIAN FARMERS’
CONDITIONAL MOTION FOR LEAVE TO INTERVENE AS DEFENDANTS**

The National Black Farmers Association (NBFA) and the Association of American Indian Farmers (AAIF) hereby file this Conditional Motion for Leave to Intervene as Defendants in this action (the “Conditional Motion”). Because, at present, NBFA and AAIF share the same ultimate objective as the Government in defending the law challenged in this action, the organizations expressly request that the Court defer consideration of this Motion until future developments in this lawsuit indicate that the organizations’ interests diverge from the Government’s. This approach balances NBFA and AAIF’s interests in timely filing their application to intervene, while also accounting for how merits arguments have yet to be developed due to the litigation’s early stage.¹

¹ See *Solid Waste Agency of N. Cook Cty. v. U.S. Army Corps of Engs.*, 101 F.3d 503, 509 (7th Cir. 1996) (“The proper way to handle such an eventuality [where the government’s representation of interest “may turn inadequate” at some future point] [is] to file at the outset of the case a standby or conditional application for leave to intervene and ask the district court to defer consideration of the question of adequacy . . .”).

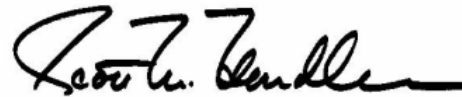
Pursuant to Fed. R. Civ. P. 24, this Conditional Motion is accompanied by (1) a Memorandum of Law in Support; and (2) NBFA and AAIF's Answer to Plaintiffs' First Amended Class Action Complaint.

Plaintiffs' counsel does not oppose the filing of a placeholder motion to secure timeliness, although they have indicated they will oppose any later request to intervene. Defendant's counsel does not take a position on this Conditional Motion.

Dated: June 9, 2021

Respectfully submitted,

HENDLER FLORES LAW, PLLC



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* *Pro hac vice* application forthcoming

CERTIFICATE OF CONFERENCE

I certify that I conferred with counsel for Plaintiffs on June 4, 2021. Plaintiffs' counsel does not oppose the filing of a placeholder motion to secure timeliness, but opposes intervention.

I certify that I conferred with counsel for Defendant on June 4, 2021. Defendant's counsel does not take a position on this Motion.

/s/ Scott M. Hendler

Scott M. Hendler

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was filed via the court's CM/ECF system on June 9, 2021, which will serve all counsel of record.

/s/ Scott M. Hendler

Scott M. Hendler

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

SID MILLER, *et al.*

Plaintiffs,

v.

TOM VILSACK,

Defendant,

Case No. 4:21-cv-00595

**MEMORANDUM OF LAW IN SUPPORT OF THE NATIONAL BLACK FARMERS
ASSOCIATION AND THE ASSOCIATION OF AMERICAN INDIAN FARMERS’
CONDITIONAL MOTION FOR LEAVE TO INTERVENE AS DEFENDANTS**

The National Black Farmers Association (NBFA) and the Association of American Indian Farmers (AAIF) file this Conditional Motion to Intervene as Defendants in this action (the “Conditional Motion”). It requests that the Court defer consideration until future developments in this lawsuit indicate that the organizations’ interests diverge from the Government’s.

This approach seeks to balance requirements for intervention set out in Federal Rule of Civil Procedure 24. NBFA and AAIF have an interest in timely filing this application to intervene and defend the laws this action seeks to enjoin—which confers financial benefits on many of their members. At the same time, the conditional nature of this request recognizes the early stage of this litigation, where merits arguments and the adequacy of the Government’s defense have yet to be fully developed.

Accordingly, this Memorandum is structured as follows. First, it provides the authority for NBFA and AAIF’s filing of a Conditional Motion. Second, it provides factual background regarding NBFA and AAIF’s purpose and membership. Third, it argues why NBFA and AAIF meet the factors required for intervention that can be ascertained at this time.

AUTHORITY FOR CONDITIONAL APPLICATION FOR INTERVENTION

NBFA and AAIF file this Conditional Motion pursuant to the approach set out by the Seventh Circuit in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 101 F.3d 503 (7th Cir. 1996). In *Army Corps*, a plaintiff sued to challenge a federal agency's denial of a water permit, and a citizens' group moved to intervene to defend the agency's decision. *Id.* at 504. The Seventh Circuit denied the request because the putative-intervenor and the agency shared the interest of defending the permitting decision and thus, "adequacy of representation [was] presumed," as the government is presumed to represent the interests of the public at large. *Id.* at 508. However, the court was also "sympathetic to the aspiring intervenor's concern that at some future point in this litigation, the government's representation of their interest may turn inadequate yet it would be too late to do anything about it." *Id.* For example, the court provided a hypothetical where the Government declined to appeal an unfavorable decision—at which point its representation of the putative-intervenor's interests "could well be thought inadequate." *Id.* at 509. The court thus set out the following solution:

The proper way to handle such an eventuality is for the would-be intervenor, when as here no present inadequacy of representation can be shown, to file at the outset of the case a standby or conditional application for leave to intervene and ask the district court to defer consideration of the question of adequacy of representation until the applicant is prepared to demonstrate inadequacy.

Id. (emphasis added).

NBFA and AAIF are in a similar posture. They presently share the same objective as the Government in defending the laws challenged by this action—but it remains possible that at some future point, the Government's handling of this litigation may turn inadequate. NBFA and AAIF thus file this Conditional Motion pursuant to the approach set out in *Army Corps* and expressly request the Court defer consideration on the motion until future developments in this lawsuit demonstrate that the organizations' interests diverge from the Government's.

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