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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PENDLETON DIVISION

KATHRYN DUNLAP, et al.,

Case No.: 2:21-cv-00942-SU

Plaintiffs,

v.

**THE NATIONAL BLACK FARMERS
ASSOCIATION AND THE ASSOCIATION
OF AMERICAN INDIAN FARMERS'
MOTION TO APPEAR AND FILE BRIEF AS
AMICUS CURIAE IN OPPOSITION TO
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

THOMAS J. VILSACK, in his official
capacity as Secretary of the United States
Department of Agriculture, et al.,

Defendants.

LOCAL RULE 7-1 CERTIFICATION

Pursuant to Local Rule 7-1, undersigned counsel certifies that counsel for proposed *amici curiae* National Black Farmers Association (NBFA) and Association of American Indian Farmers (AAIF) conferred in good faith with all parties on the relief requested in this motion. Plaintiffs oppose this motion. Defendants do not oppose this motion.

MOTION

The National Black Farmers Association (NBFA) and the Association of American Indian Farmers (AAIF) respectfully move for leave to file the attached brief as *amicus curiae* in opposition to Plaintiffs' motion for preliminary injunction.

"The district court has broad discretion to appoint *amici curiae*" who may be "helpful to [the Court] in investigating the facts." *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), *overruled on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995); *see also Greater Hells Canyon Council v. Stein*, 2018 WL 438924, at *1 (D. Or. Jan. 16, 2018). The "classic role of *amicus curiae*" includes "assisting in a case of general public interest, supplementing the efforts of counsel, and drawing the court's attention to law that escaped consideration." *Miller-Wohl Co. v. Comm'r of Labor & Indus. State of Mont.*, 694 F.2d 203, 204 (9th Cir. 1982). Leave to file an *amicus* brief is appropriate here based on the interest and unique perspective that *amici* can provide the Court in these circumstances.

NBFA and AAIF are nonprofit, membership-based organizations that advocate for the interests of Black and Native American farmers, respectively. NBFA and AAIF have a direct interest in opposing Plaintiffs' motion for preliminary injunction because their members are eligible for the law's loan forgiveness provisions and would be harmed should the Court enjoin the law. In that respect, they also have a unique perspective to offer the Court as *amici curiae*, as

socially disadvantaged farmers who stand to benefit from the challenged laws and whose voices are distinct from those of the existing parties to this action.

For those reasons, NBFA and AAIF respectfully request that the Court grant their motion to appear as *amici curiae* and file the attached *amicus* brief.

Respectfully submitted this 13th day of July, 2021.

/s/ Nadia H. Dahab

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**THE NATIONAL BLACK FARMERS
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AMICUS CURIAE BRIEF IN OPPOSITION
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THOMAS J. VILSACK, in his official
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Defendants.

The National Black Farmers Association (NBFA) and the Association of American Indian Farmers (AAIF) are nonprofit, membership-based organizations that advocate for the interests of Black and Native American farmers and ranchers, respectively. Declaration of John Boyd, Jr. in Support of NBFA and AAIF Motion to Appear as *Amicus Curiae* and Conditional Motion to Intervene (“J. Boyd Decl.”) ¶ 3; Declaration of Kara Boyd in Support of NBFA and AAIF Motion to Appear as *Amicus Curiae* and Conditional Motion to Intervene (“K. Boyd Decl.”) ¶ 3. NBFA and AAIF have a substantial interest in this case because they have advocated at length for the debt relief provisions in Section 1005 of the American Rescue Plan Act (the “Act”), which Plaintiffs seek to preliminarily enjoin, and because many of their members are eligible for the law’s loan forgiveness provisions. *See* J. Boyd. Decl. ¶ 5; K. Boyd Decl. ¶¶ 7–8. NBFA and AAIF respectfully submit this brief as *amici curiae* to ensure that the voices of the farmers and ranchers who are actually affected by Section 1005 are heard as the Court balances the equities and the public interest in entertaining Plaintiffs’ request for a nationwide injunction. Those interests tilt the balance decidedly against granting the extraordinary relief requested.

Whether to grant a preliminary injunction is “often dependent as much on the equities of a given case as the substance of the legal issues it presents.” *Trump v. Int’l Refugee Assistance Project*, 137 S. Ct. 2080, 2087 (2017). This requires a court “to explore the relative harms to applicant and respondent, as well as the interests of the public at large.” *Id.*

Therefore, in considering Plaintiffs’ motion, the Court must consider how an injunction would impact the socially disadvantaged farmers and ranchers who relied on the Government’s representation that they would receive loan relief. NBFA and AAIF’s members, who are themselves financially vulnerable farmers and ranchers, had a reasonable expectation that they would receive debt forgiveness based on the Government’s legislation, and they made plans in

reliance on that expectation. In the event of an injunction, NBFA and AAIF's members would suffer real and palpable harms, tilting the balancing decidedly against preliminary injunctive relief.

NBFA member Ivan Isidore Williams, for instance, is a 60-year-old African-American farmer who grows soybeans and corn on over 65 acres in his hometown of Beulaville, NC (population 1,296), where his family has farmed for generations. Declaration of Ivan Isidore Williams in Support of NBFA and AAIF Motion to Appear as *Amicus Curiae* and Conditional Motion to Intervene ("Williams Decl.") ¶ 1. Mr. Williams works second jobs to make ends meet and presently works a manufacturing job at a fiber optic plant. *Id.* ¶ 4. Mr. Williams took out a USDA loan around the year 2000 to purchase farm equipment and fund operating expenses for his farm. *Id.* ¶ 5. He has personally experienced racial discrimination from USDA representatives, who discouraged him in the past from applying for additional loans because of his outstanding balance. Mr. Williams is aware that white farmers in his area have routinely been able to take out additional USDA loans notwithstanding existing loan balances. *Id.* ¶ 8.

Mr. Williams currently carries an outstanding balance on his loan and, while he has generally made timely payments, he has been threatened with foreclosure by USDA when he has been late. *Id.* ¶ 7. Recently, he asked his local USDA representative about the Act's loan forgiveness provisions, and the representative confirmed that his outstanding debt would be forgiven. *Id.* ¶ 10. As a result, Mr. Williams has looked forward to repurposing money that would have been used to make his annual loan payment on other important life expenses, such as his mortgage payment on his residential home. *Id.* ¶ 10.

NBFA member Shade Lewis is similarly situated. Mr. Lewis is a 30-year-old, first-generation African-American rancher who took out a USDA loan in 2014 to purchase a cattle farm in his hometown of La Grange, MO (population 958), where he currently raises between 100–200

heads of cattle on 100 acres of land. Declaration of Shade Lewis in Support of NBFA and AAIF Motion to Appear as *Amicus Curiae* and Conditional Motion to Intervene (“Lewis Decl.”) ¶¶ 2–3, 6. Mr. Lewis spent years building up his ranching experience and credit to pursue this goal. *Id.* ¶ 4. Like Mr. Williams, Mr. Lewis works two jobs so he can maintain his ranch due to the unpredictability of the ranching business. *Id.* Despite these efforts, Mr. Lewis has been late on certain loan payments and, as a result, has also received foreclosure warnings from USDA. *Id.* ¶¶ 7, 9. When Mr. Lewis learned about the passage of Section 1005, he immediately accounted for how the law would affect his financial situation. *Id.* ¶ 10. For example, he invested time and effort exploring how loan forgiveness would allow him to pay off other debt he has incurred for purchasing livestock. *Id.* ¶ 10.

Plaintiffs’ request for a nationwide injunction would harm socially disadvantaged farmers and ranchers like Messrs. Williams and Lewis and undermine the expectations that the Government has established in the months following the Act’s passage. Doing so at this moment is particularly disruptive given Section 1005 concerns farm loans. It currently is planting season in many parts of the country, during which farmers and ranchers must stretch their cash and credit to ensure their yields and income. *See* J. Boyd Decl. ¶ 7. Many farmers and ranchers who have reasonably relied on the expectations of loan forgiveness set by the Government are likely to have already made investments that would be undermined by an injunction.

By contrast, the harm that Plaintiffs identify is entirely speculative. Plaintiffs’ purported harm assumes they are right on the merits and thus that the public is served because their argument vindicates their constitutional rights. But the Court must consider the effect that injunctive relief might have on the lives of real farmers and ranchers who reasonably believed they could rely on

enacted Government programs. When those interests are considered, the equities strongly disfavor a preliminary injunction.

Respectfully submitted this 13th day of July, 2021.

/s/ Nadia H. Dahab

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