

# THE CONSTITUTIONALITY OF THE SWAMPBUSTER: BALANCING FEDERAL CONSERVATION MANDATES WITH FARMERS’ PROPERTY RIGHTS

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## ABSTRACT

*America’s wetlands are one of its most important natural resources. 16 U.S.C. §§ 3821–3824, known as the “Swampbuster,” is a 40-year-old statute aimed at conserving these wetlands. The Swampbuster conditions a farmer’s eligibility for USDA benefits—like crop insurance and price support payments—on compliance with wetland conservation requirements, specifically the prohibition against destroying wetlands on the farmer’s property to plant agricultural commodities. CTM Holdings, an Iowa farm corporation, recently challenged the Swampbuster in federal court, claiming it is unconstitutional. This Note will describe CTM’s claims, explain the importance of the nation’s wetlands, and tour the legislative history of the Swampbuster. Finally, it will analyze whether the Swampbuster is a constitutional exercise of Congress’s power and offer a*

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*suggestion for better balancing farmers' rights with the important task of protecting wetlands.*

## I. INTRODUCTION

“What are you doing in my swamp?!” roared Shrek, the gargantuan, green ogre in DreamWorks Animation’s 2001 film *Shrek*.<sup>1</sup> *Shrek* follows the adventure of the protagonist ogre in his quest to save a beautiful princess from a dragon-guarded tower at the behest of the comically villainous, Lord Farquaad.<sup>2</sup> Why might Shrek obey the command of the hilariously short-statured and self-important Lord Farquaad? Because Shrek, the proud owner and resident of a swamp in the Kingdom of Duloc, wants nothing more than to reclaim his peaceful life of swampy solitude, free from Farquaad’s intrusion.<sup>3</sup> Lord Farquaad banished countless fairytale creatures to Shrek’s swamp, turning it into their place of refuge.<sup>4</sup> Shrek reluctantly agrees to rescue Princess Fiona in exchange for the promise of having his swamp restored to its original, quiet state, without the intrusion of the unwanted fairytale creatures.<sup>5</sup> This is the beginning of Shrek’s unlikely journey.<sup>6</sup> He is not driven to embark on his dangerous mission by loyalty to Farquaad, but rather by desire to rid his home of the intruders and regain his swampy paradise.<sup>7</sup>

As a young boy watching *Shrek* in the early 2000s, I never imagined Shrek’s sentiment might one day be reflected in my legal studies—that your swamp is your own, not to be interfered with by the government. But, as the saying goes, “Life imitates Art.”<sup>8</sup> In the spring of 2024, the standoff between Shrek and Farquaad found a surprising new stage: the United States District Court for the Northern District of Iowa.<sup>9</sup> In this real-life scenario, Shrek takes the form of CTM Holdings (CTM), an Iowan farm corporation that owns a plot of swampland in northern Iowa.<sup>10</sup> Lord Farquaad is represented by the United States government, and their

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1. SHREK, Peacock, at 0:14:24 (DreamWorks Animation 2001).

2. Roger Ebert, *Shrek*, ROGEREBERT.COM (May 18, 2001), <https://www.rogerebert.com/reviews/shrek-2001> [<https://perma.cc/QQD6-6H44>].

3. *See id.*

4. *Id.*

5. *See id.*

6. *Id.*

7. *Id.*

8. OSCAR WILDE, *The Decay of Lying*, in INTENTIONS 1, 10 (New York Brentano’s 1905).

9. *See* Complaint for Declaratory & Injunctive Relief at 1, CTM Holdings, LLC v. U.S. Dep’t of Agric., No. 6:24-CV-02016 (N.D. Iowa Apr. 16, 2024).

10. *Id.*

interests in regulating such swampland.<sup>11</sup> On April 16, 2024, CTM filed suit against the USDA, bringing the swampy standoff from screen to the courthouse.<sup>12</sup>

CTM claims that federal statutes 16 U.S.C. §§ 3821–3824, known as the “Swampbuster,” constitutes a government taking under the Fifth Amendment’s Takings Clause.<sup>13</sup> The Swampbuster conditions farmers’ USDA benefits—such as crop insurance and price support payments—on their compliance with prohibitions altering swamps on the farm property.<sup>14</sup> According to CTM, this requirement functions as a governmental conservation easement, entitling them to compensation as required by the Fifth Amendment.<sup>15</sup>

Like Shrek, CTM is battling what it sees as an impermissible government intrusion into its swamp. Although both CTM’s and Shrek’s desires for their swamps are different—CTM wishes to farm its land, and Shrek desires a return to solitude—the same question arises: what influence should a government entity be able to command over a privately owned swampland? In *Shrek*, the answer to this question is quite simple.<sup>16</sup> Farquaad’s illegitimate desire to remove the fairytale creatures from his kingdom wrongly interferes with Shrek’s ownership rights.<sup>17</sup> Unfortunately, this question is much more challenging to answer in reality, where the federal government’s interests are legitimate and laudable goals like conservation of rapidly disappearing wetlands.<sup>18</sup> This Note examines the constitutionality of government authority under the Swampbuster and seeks to clarify the rights of farmers like CTM Holdings who face similar questions by balancing individual Fifth Amendment rights with public interest in wetland conservation.

## II. THE BENEFITS OF WETLANDS

Swamplands, also known as wetlands, play an essential role in both the ecosystems and economy of the United States.<sup>19</sup> The federal government defines wetlands as “areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances

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11. *Id.*

12. *Id.*

13. *Id.* at 25.

14. 16 U.S.C. § 3821.

15. Complaint for Declaratory & Injunctive Relief, *supra* note 9, at 3.

16. *See* Ebert, *supra* note 2.

17. *Id.*

18. Michael D. Rozenboom, *Wetlands Mitigation for Farmers*, 23 DRAKE J. AGRIC. L. 113, 115 (2018).

19. *See infra* Part II.

do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.”<sup>20</sup> “Wetlands generally include swamps, marshes, bogs, and similar areas.”<sup>21</sup> Wetlands are the breeding and nesting ground of 60% of the nation’s migratory waterfowl.<sup>22</sup> They are home to countless other species of birds, fish, game animals, and wild plants.<sup>23</sup> Additionally, wetlands are vital to the filtration and storage of drinking water, acting as “nature’s kidneys,” by removing harmful nutrients and chemicals before they reach rivers, lakes, oceans, and beaches.<sup>24</sup>

Wetlands provide both flood and shoreline protection.<sup>25</sup> They are capable of capturing and storing large amounts of water from heavy rain or snowmelt, which protects property interests and enhances the safety of surrounding residential areas while slowing erosion on streambanks and shorelines.<sup>26</sup> In hurricane prone areas, one mile of wetland is estimated to save nearly \$700,000 in storm damage per year.<sup>27</sup>

In a time when greenhouse gas emissions are of increasing concern due to climate change, it is important to recognize that wetlands have “tremendous potential to store carbon in soils, which reduces the level of carbon dioxide in the atmosphere.”<sup>28</sup> Wetlands are estimated to absorb 8.1 million tons of carbon dioxide from the atmosphere annually, which has a substantial impact on the fight against climate change.<sup>29</sup> Moreover, wetlands, because of their moist nature, act as natural

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20. 40 C.F.R. § 230.41(a)(1) (2025).

21. *How Wetlands are Defined and Identified Under CWA Section 404*, U.S. ENV’T. PROT. AGENCY (July 1, 2025), <https://www.epa.gov/cwa-404/how-wetlands-are-defined-and-identified-under-cwa-section-404> [<https://perma.cc/ASS5-7BED>].

22. Press Release, U.S. Dep’t of Agric., USDA to Invest in Prairie Pothole Landscape Effort (Feb. 14, 2014), <https://www.usda.gov/article/usda-invest-prairie-pothole-landscape-effort> [<https://perma.cc/P2TB-U7LA>].

23. *5 Reasons Why We Love Wetlands*, NOAA FISHERIES (May 26, 2020), <https://www.fisheries.noaa.gov/feature-story/5-reasons-why-we-love-wetlands> [<https://perma.cc/32YS-R8AP>].

24. *Id.*

25. *Benefits of Wetlands*, WIS. WETLANDS ASS’N (Sep. 18, 2025, at 19:49 CT), <https://www.wisconsinwetlands.org/learn/about-wetlands/benefits-of-wetlands/> [<https://perma.cc/5MEP-U4MQ>].

26. *Id.*

27. *5 Reasons Why We Love Wetlands*, *supra* note 23.

28. Press Release, U.S. Dep’t of Agric., *supra* note 22.

29. *5 Reasons Why We Love Wetlands*, *supra* note 23.

fire breaks, slowing or stopping wildfires that destroy ecosystems and release carbon into the air.<sup>30</sup>

Wetlands also offer meaningful recreational and commercial benefits to the United States and its citizens.<sup>31</sup> Wetlands are the ideal destination for many hunters, birdwatchers, fishermen, and boaters.<sup>32</sup> The economic impact of wetland-related activities is significant, with millions of Americans participating in these pastimes each year.<sup>33</sup> The Environmental Protection Agency (EPA) estimated over 82 million Americans engaged in outdoor activities like fishing, hunting, and wildlife observation in 2001, which contributed more than \$108 billion to the economy.<sup>34</sup> Congress also determined the wildlife, plants, and fish dependent on wetlands provide significant benefits, including “contributions to a commercial marine harvest valued at over \$10,000,000,000 annually.”<sup>35</sup>

Lastly, wetlands are central to the identity of many states whose residents see their culture and way of life as closely intertwined with their wetlands.<sup>36</sup> Through their ecological, economic, and environmental benefits, wetlands provide significant value that the federal government has a legitimate interest in protecting.

### III. THE HISTORY OF THE SWAMPBUSTER

Because of the massive benefits provided by wetlands, it is no surprise that the United States Congress has a strong interest in protecting their existence.<sup>37</sup> In

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30. Samantha Grant, *The Role of Water in Fire and Ecological Forest Management*, AUDUBON (Feb. 15, 2023), <https://rockies.audubon.org/rivers/articles/role-water-fire-ecological-forest-management> [<https://perma.cc/V4PW-AVMP>]; SAMUEL P. SHAW & CLARENCE GORDON FREDINE, FISH AND WILDLIFE SERV., U.S. DEP'T OF THE INTERIOR, WETLANDS OF THE UNITED STATES: THEIR EXTENT AND THEIR VALUE TO WATERFOWL AND OTHER WILDLIFE 1 (1971); Patty Guerra, *Global CO2 Emissions from Forest Fires Increase by 60%*, UNIV. OF CAL. MERCED (Oct. 17, 2024), <https://news.ucmerced.edu/news/2024/global-co2-emissions-forest-fires-increase-60> [<https://perma.cc/XGG2-3FSK>].

31. See generally OFF. OF WATER, U.S. ENV'T PROT. AGENCY, EPA843-F-06-004, ECONOMIC BENEFITS OF WETLANDS (2006), [https://www.epa.gov/sites/default/files/2021-01/documents/economic\\_benefits\\_of\\_wetlands.pdf](https://www.epa.gov/sites/default/files/2021-01/documents/economic_benefits_of_wetlands.pdf) [<https://perma.cc/97EF-CJGC>] (explaining the benefits of wetlands).

32. *Id.*

33. *Id.*

34. *Id.*

35. 16 U.S.C. § 3901(a)(4)(A).

36. *Culture & Wetlands*, RAMSAR: CONVENTION ON WETLANDS (Apr. 14, 2025, at 10:09 CT), <https://www.ramsar.org/culture-wetlands> [<https://perma.cc/E9YY-MS9J>].

37. See M.W. LANG ET AL., U.S. FISH & WILDLIFE SERV., U.S. DEP'T OF THE INTERIOR, STATUS AND TRENDS OF WETLANDS IN THE CONTERMINOUS UNITED STATES 2009 TO 2019:

1986, Congress enacted the Emergency Wetlands Resource Act, which ordered the United States Fish and Wildlife Service to provide a decennial report on the state of the nation's wetlands.<sup>38</sup> The Wetlands Status and Trend Reports equipped Congress with scientific estimates on the extent and change over time of wetlands in the United States.<sup>39</sup> Each Status and Trend Report built upon the last to paint a historical and developing picture of trends in wetland loss and resurgence.<sup>40</sup>

These reports, and the public concern which ensued, ultimately spurred Congress to codify protections for wetlands.<sup>41</sup> Specifically, a Status and Trends Report published in April 1983 found that the nation's wetlands had declined from 108.1 million acres in the 1950s to 99.0 million acres by the 1970s.<sup>42</sup> The Report determined that “[n]early all the loss was due to agriculture.”<sup>43</sup> This finding was not surprising, as legislation in the United States has historically aimed to destroy wetlands to provide farmable land.<sup>44</sup> For example, the Swamp Land Act of 1850 authorized the transfer of federally owned wetlands to the states, with the intention of draining them to promote cultivation.<sup>45</sup> However, Congress determined the alarming rate of loss was unsustainable, and as part of the 1985 Food Security Act, established a conservation program titled the Erodible Land and Wetland Conservation and Reserve Program.<sup>46</sup> The program contained provisions referred to as the “Sodbuster” and “Swampbuster,” which were conservation efforts aimed at conserving highly erodible land and wetlands to protect the nation's natural resources.<sup>47</sup>

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REPORT TO CONGRESS 10 (2024), [https://www.fws.gov/sites/default/files/documents/2024-04/wetlands-status-and-trends-report-2009-to-2019\\_0.pdf](https://www.fws.gov/sites/default/files/documents/2024-04/wetlands-status-and-trends-report-2009-to-2019_0.pdf) [<https://perma.cc/6NF7-H4RY>].

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. W.E. FRAYER ET AL., U.S. FISH & WILDLIFE SERV., U.S. DEP'T OF THE INTERIOR, STATUS AND TRENDS OF WETLANDS AND DEEPWATER HABITATS IN THE CONTERMINOUS UNITED STATES, 1950'S TO 1970'S 3 (1983), <https://www.fws.gov/sites/default/files/documents/Status-and-Trends-of-Wetlands-and-Deepwater-Habitats-in-the-Conterminous-United-States-1950s-to-1970s.pdf> [<https://perma.cc/T63N-Q4AK>].

43. *Id.* at 26.

44. Rozenboom, *supra* note 18, at 114.

45. *See* Swamp Land Act of 1850, ch. 84, 9 Stat. 519, 519–20.

46. Food Security Act of 1985, Pub. L. No. 99-198, §§ 1201–1254, 99 Stat. 1354, 1504–18.

47. LANG ET AL., *supra* note 37, at 11–12; SCOUT SNOWDEN & BRIGIT ROLLINS, NAT'L AGRIC. L. CTR., FARM BILL CONSERVATION PROGRAMS: SWAMPBUSTER AND SODBUSTER NAT'L AGRIC. L. CTR. 1 (2020), <https://nationalaglawcenter.org/wp-content/uploads/assets/articles/Swampbuster-Sodbuster.pdf> [<https://perma.cc/3TDSQZXH>].

The Sodbuster was intended to “prevent the conversion of highly erodible land into cropland in order to reduce soil loss on erosion-prone lands.”<sup>48</sup> It required that producers planting on highly erodible land without an approved conservation plan would lose eligibility for USDA benefits such as price supports and disaster payments.<sup>49</sup>

Similarly, the Swampbuster, a simple one-page provision of the original 307-page Act, promoted large scale protection and conservation of the nation’s wetlands.<sup>50</sup> The Swampbuster defined wetlands as “land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.”<sup>51</sup> The Swampbuster sought to deter farmers from draining, dredging, filling, leveling, or otherwise manipulating their wetlands to allow agricultural production.<sup>52</sup> Such actions render the area a “converted wetland.”<sup>53</sup> To enforce this deterrent, the original Swampbuster denied USDA benefits—specifically, the price-support loan program, farm storage loans, federal crop insurance, disaster payments, and new loans made by the Farmers Home Administration—to farmers who planted commodity crops<sup>54</sup> on converted wetlands after December 23, 1985.<sup>55</sup>

It should be noted that the USDA benefits were to be denied for *all* land the farmer owned, not just the parcel of land that contained a converted wetland.<sup>56</sup> For example, if a farmer owned three 1,000-acre parcels of land, and converted a

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48. Brigit Rollins, *In the Dirt: Introduction to Sodbuster*, NAT’L AGRIC. L. CTR. (Apr. 1, 2021), <https://nationalaglawcenter.org/in-the-dirt-introduction-to-sodbuster/> [<https://perma.cc/9ZP4-6KEK>].

49. *Id.*

50. See Food Security Act of 1985, Pub. L. No. 99-198, 99 Stat. 1354; RALPH E. HEIMLICH ET AL., ECON. RSCH. SERV., U.S. DEP’T OF AGRIC., NO. AER-765, WETLANDS AND AGRICULTURE: PRIVATE INTERESTS AND PUBLIC BENEFITS 28 (1998), [https://ers.usda.gov/sites/default/files/\\_laserfiche/publications/40845/32664\\_aer765\\_002.pdf?v=22401](https://ers.usda.gov/sites/default/files/_laserfiche/publications/40845/32664_aer765_002.pdf?v=22401) [<https://perma.cc/7LVY-U3XZ>].

51. Food Security Act of 1985 § 1201(a)(16), 99 Stat. at 1505.

52. 7 C.F.R. § 12.1 (2025).

53. *Id.* § 12.2 (2025).

54. *Id.* §§ 12.1(a), 12.2 (defining a commodity crop as “any crop planted and produced by annual tilling of the soil”).

55. Rozenboom, *supra* note 18, at 115.

56. Bill Moritz, *Swampbuster Challenged by Iowa Farmland Owner in Lawsuit*, WILDLIFE MGMT. INST. (June 2024), <https://wildlifemanagement.institute/outdoor-news-bulletin/june-2024/swampbuster-challenged-iowa-farmland-owner-lawsuit> [<https://perma.cc/9LG9-REKX>].

wetland on just one parcel, the farmer would lose USDA benefits for all three parcels. In 2021, the average commercial farm—defined as those farms with at least \$350,000 in gross cash farm income—received \$66,314 in government payments, while intermediate and small farms received \$12,794 and \$8,354, respectively.<sup>57</sup> These benefits are necessary, as many farmers rely on them to protect themselves from the volatility of agricultural markets, insure against natural risks like droughts or floods, and sustain their livelihoods.<sup>58</sup> Losing these payments because of a wetland conversion can have severe financial consequences.

The original provision also included four exemptions that allowed farmers to remain eligible for USDA benefits even if commodity crops had been planted on converted wetlands.<sup>59</sup> The exemptions included benefits for commodities that were produced on: (1) wetlands converted before the enactment of the Swampbuster; (2) artificial lakes, ponds, or wet areas created by excavation, diking, or irrigation; (3) wet areas created by irrigation or water delivery systems; and (4) wetlands where production was possible due to natural conditions, such as drought, where the producer's actions did not destroy the natural wetland characteristics.<sup>60</sup> Additionally, the Secretary of Agriculture had discretion to exempt a landowner from the withholding of benefits if the effects of the landowner's wetland conversion were minimal.<sup>61</sup>

As passed in 1985, the Swampbuster disincentivized farmers from converting wetlands by withholding benefits for *only* the crop year in which the violation occurred, and only when the farmer planted commodity crops.<sup>62</sup> This structure allowed farmers to “game the system” by converting wetlands and planting commodity crops in high-price years when they did not need USDA benefits, and plant non-commodity crops (like hay) on the drained land in low-price years to remain eligible for benefits.<sup>63</sup>

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57. Dipak Subedi et al., *Commercial Farms Led in Government Payments in 2021*, ECON. RES. SERV., U.S. DEP'T OF AGRIC.: AMBER WAVES (May 15, 2023), <https://www.ers.usda.gov/amber-waves/2023/may/commercial-farms-led-in-government-payments-in-2021> [<https://perma.cc/JT4H-EQCC>].

58. *Protection and Recovery*, FARMERS.GOV, U.S. DEP'T OF AGRIC. (Apr. 14, 2025, at 10:02 CT), <https://www.farmers.gov/protection-recovery> [<https://perma.cc/NAS2-R273>].

59. Food Security Act of 1985, Pub. L. No. 99-198, § 1222, 99 Stat. 1354, 1508.

60. *Id.*

61. *Id.*

62. § 1221, 99 Stat. at 1507–08.

63. Anthony N. Turrini, *Swampbuster: A Report from the Front*, 24 IND. L. REV. 1507, 1510 (1991).

As will become evident by the end of this section, the Swampbuster has been subject to multiple changes.<sup>64</sup> Pursuant to a 1990 amendment, Congress closed this loophole.<sup>65</sup> Farmers lost eligibility for USDA benefits for all years following the conversion of a wetland until it was restored to its original state.<sup>66</sup> The amendment also made irrelevant whether a landowner planted commodity crops on the converted wetland—conversion for the purpose of producing an agricultural commodity alone was sufficient to revoke benefits.<sup>67</sup>

In order to strengthen the Swampbuster’s deterrent effects, the amendment bars certain USDA benefits to farmers who converted their wetlands.<sup>68</sup> The newly revokable benefits included Agricultural Conservation Program payments, Emergency Conservation payments, and Conservation Reserve Program payments, among several others.<sup>69</sup>

Additionally, the 1990 amendment introduced a process for determining whether a specific tract constituted a wetland.<sup>70</sup> The process required the Secretary of Agriculture to delineate wetlands by creating “wetland delineation maps.”<sup>71</sup> To create these maps, the Secretary, at the request of a landowner, was to make reasonable efforts to conduct an in-person determination on whether an area constituted a “wetland” as defined by the original language of the 1985 Act.<sup>72</sup> The amendment also granted landowners the right to appeal a wetland determination.<sup>73</sup> The appeal process required the Secretary to review and certify the accuracy of the delineation by conducting an on-site inspection of the subject land.<sup>74</sup> The amendment did not require the Secretary to hear appeals for a delineation made prior to the amendment if: (1) the delineation had not changed; (2) an appeal had

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64. See Doug O’Brien, *Summary and Evolution of U.S. Farm Bill Conservation Titles — Expanded Discussions*, NAT’L AGRIC. L. CTR. (Apr. 14, 2025, at 10:10 CT), <https://nationalaglawcenter.org/farmbills/conservation/expanded-discussions/> [<https://perma.cc/4T5G-UBRD>].

65. Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. No. 101-624, § 1412(d), 104 Stat. 3359, 3571.

66. *Id.*

67. *Id.*

68. O’Brien, *supra* note 64; § 1421(b), 104 Stat. at 3572.

69. O’Brien, *supra* note 64; § 1421(b), 104 Stat. at 3572.

70. O’Brien, *supra* note 64; § 1422(a), 104 Stat. at 3573.

71. § 1422(a)(1), 104 Stat. at 3573.

72. *Id.*

73. O’Brien, *supra* note 64; § 1422(g), 104 Stat. at 3575.

74. § 1442, 104 Stat. at 3573.

already been made; and (3) an on-site determination was conducted as part of that prior appeal.<sup>75</sup>

The exemptions of the 1985 provision were expanded and clarified, while additional exemptions were codified.<sup>76</sup> The amendment exempted a landowner who had previously converted a wetland from being ineligible for USDA benefits so long as the landowner fully “restored the characteristics of the converted wetland to its prior wetland state.”<sup>77</sup>

The amendment also granted the Secretary the discretion to impose “graduated sanctions” on landowners who converted their wetlands in good faith.<sup>78</sup> For the good-faith exemption to apply, the Secretary was required to find that the landowner converted the wetlands without the intent to violate the provisions of the Swampbuster, the landowner restored or was in the process of restoring the wetland, and the landowner had not violated the Swampbuster in the past 10 years.<sup>79</sup> If the good faith exemption applied, the Secretary was required to impose graduated sanctions, reducing the landowner’s USDA benefits by an amount between \$750 and \$10,000.<sup>80</sup>

Lastly, if determined that a landowner violated the Swampbuster by converting a wetland, the 1990 Amendment mandated an on-site inspection of the subject land before withholding any USDA benefits.<sup>81</sup>

The Swampbuster was amended again in 1996.<sup>82</sup> The 1996 amendment replaced the strict rule of total ineligibility for the USDA benefits listed in the Swampbuster with a more flexible system.<sup>83</sup> It gave the Secretary the discretion to impose penalties proportionate to the severity of the violation, allowing for tailored reductions in benefits, instead of complete disqualification.<sup>84</sup>

The 1996 amendment also extended the reach of the Swampbuster.<sup>85</sup> The amendment added language ensuring that if a landowner faced a reduction in

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75. § 1422(a), 104 Stat. at 3573.

76. O’Brien, *supra* note 64; *see* § 1422, 104 Stat. at 3573–74.

77. O’Brien, *supra* note 64; § 1422(h), 104 Stat. at 3575.

78. O’Brien, *supra* note 64; § 1422(h), 104 Stat. at 3575.

79. O’Brien, *supra* note 64; § 1422(h), 104 Stat. at 3575.

80. O’Brien, *supra* note 64; § 1422(h), 104 Stat. at 3575.

81. O’Brien, *supra* note 64; § 1422(c), 104 Stat. at 3573.

82. *See* Federal Agriculture Improvement and Reform Act of 1996, Pub. L. No. 104-127, 110 Stat. 888.

83. *Id.* § 321, 110 Stat. at 986.

84. *Id.*

85. *See id.*

benefits for conversion of a wetland, each affiliated landowner<sup>86</sup> would have their USDA benefits reduced proportionally to their interest in the benefits.<sup>87</sup> In effect, if three landowners own a parcel of land in a partnership, and one of the landowners converted a wetland on the parcel, all three landowners would be subject to reduction of USDA benefits in proportion to their ownership interest in the land.<sup>88</sup>

Lastly, the amendment expanded the good-faith exemption that was introduced by the 1990 amendment.<sup>89</sup> Under the 1990 amendment, if the Secretary found a landowner converted a wetland in good faith, the Secretary was required to impose a sanction of at least \$750.<sup>90</sup> With the passing of the 1996 amendment the Secretary was allowed to waive the landowner's sanction altogether, so long as the landowner began the process of restoring the converted wetland within one year of the Secretary's determination.<sup>91</sup>

A 2014 amendment added payments received from the Federal Crop Insurance Corporation to the list of benefits a violating landowner was disqualified from receiving.<sup>92</sup> Under the amendment, when a violation is determined, violators are granted the remainder of the year to begin mitigation before ineligibility of benefits applied.<sup>93</sup> Following minor modifications pursuant to a 2018 amendment, the Swampbuster has since remained unchanged.<sup>94</sup>

The Swampbuster has been amended eight times since it was passed in 1985.<sup>95</sup> The vast changes and expansion of the Swampbuster can be attributed to

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86. SNOWDEN & ROLLINS, *supra* note 47, at 1–2 (describing when someone is considered an affiliated person under the USDA program. For individual program participants, “the participant’s spouse or minor children who have a farming interest are considered affiliated persons[,]” along with “[a]ny partnership, joint venture, other enterprise, or trust in which an individual USDA program participant has a direct ownership of, or financial interest in . . . .” For partnerships, corporations, or other entities, “affiliated persons are any participant or stockholder in the entity, unless they only hold an indirect interest thorough another business enterprise with a 20[%] or less share in the entity.”).

87. § 324, 110 Stat. at 992.

88. *See id.*

89. O’Brien, *supra* note 64; § 322, 110 Stat. at 991.

90. Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. No. 101-624, § 1422(h), 104 Stat. 3359, 3575.

91. O’Brien, *supra* note 64; Federal Agriculture Improvement and Reform Act of 1996, Pub. L. No. 104-127, § 322, 110 Stat. 888, 987–92 (codified as amended at 16 U.S.C. § 3822).

92. Agricultural Act of 2014, Pub. L. No. 113-79, § 2611, 128 Stat. 649, 763 (codified as amended at 16 U.S.C. § 3821).

93. *Id.*

94. *See* 16 U.S.C. §§ 3821–3824.

95. *Id.*

the evolving challenges of balancing wetland conservation with agricultural production.<sup>96</sup> Amendments have incorporated exemptions for minimal effects and good faith violations, among others, to provide flexibility for farmers adapting to modern agricultural practices.<sup>97</sup> Conversely, the amendments have broadened enforcement by penalizing individuals affiliated with violators, as well as expanding the list of USDA benefits a landowner may be ineligible for, strengthening the Swampbuster's deterrent effect.<sup>98</sup> Pressure from agricultural and environmental groups, as well as public interest in conserving wetlands at large, has influenced these amendments, ensuring they address practical concerns while maintaining wetland protection.<sup>99</sup>

#### IV. ADMINISTRATION OF THE SWAMPBUSTER

Although the Swampbuster was passed by Congress in 1985, the Secretary of Agriculture did not implement final regulations for enforcement of the provision until 1987.<sup>100</sup> The Secretary originally made the Agricultural Stability and Conservation Service (ASCS) and the Soil Conservation Service (SCS) responsible for oversight and enforcement of the Swampbuster.<sup>101</sup> In October 1994, a reorganization of the USDA resulted in the ASCS being merged with other small USDA agencies to form the Farm Service Agency (FSA).<sup>102</sup> Later that month, the SCS was renamed the National Resource Conservation Service (NRCS).<sup>103</sup>

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96. HEIMLICH ET AL., *supra* note 50, at 3.

97. Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. No. 101-624, § 1422, 104 Stat. 3359, 3575 (codified as amended at 16 U.S.C. § 3822).

98. Federal Agriculture Improvement and Reform Act of 1996, Pub. L. No. 104-127, § 321, 110 Stat. 888, 986.

99. Brigit Rollins, *Conservation Clarified: USDA Issues New Rules for Conservation Provisions*, NAT'L AGRIC. L. CTR. (Sept. 10, 2020), <https://nationalaglawcenter.org/conservation-clarified-usda-issues-new-rules-for-conservation-provisions/> [<https://perma.cc/S33R-YZ5N>].

100. Turrini, *supra* note 63, at 1508.

101. *Id.*

102. *NRCS History*, NAT. RES. CONSERVATION SERV., U.S. DEP'T OF AGRIC. (Apr. 15, 2025, at 15:02 CT), <https://www.nrcs.usda.gov/about/history/brief-history-nrcs> [<https://perma.cc/922P-J4JP>]; Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, Pub. L. No. 103-108, § 271, 108 Stat. 3178, 3228) (1993) (codified as amended at 7 U.S.C. § 6991).

103. *Who We Are - History of NRCS*, NAT. RES. CONSERVATION SERV., U.S. DEP'T OF AGRIC. (July 27, 2025, at 16:21 CT), <https://www.nrcs.usda.gov/conservation-basics/conservation-by-state/north-dakota/who-we-are-history-of-nrcs> [<https://perma.cc/H9J6-PBQN>].

Today, the FSA and NRCS work together to implement the Swampbuster.<sup>104</sup> The NRCS primarily handles the specialized aspects of the Swampbuster such as determining whether specific areas constitute “wetlands,” and making “minimal effect” exceptions to enforcement.<sup>105</sup> The FSA administers Swampbuster’s eligibility requirements for USDA benefits and administers spot-checks to confirm farmers’ compliance.<sup>106</sup> Other ag-related agencies also perform lesser administrative tasks.<sup>107</sup>

#### V. THE SWAMPBUSTER TODAY

Given the numerous changes to Swampbuster over the decades, a brief summary of its modern application and procedural details—in light of its historical development—provides valuable context.

Today, to be eligible for certain USDA benefits, a landowner must file an AD-1026 form with the FSA.<sup>108</sup> By filling out the form, the landowner agrees not to convert a “wetland by draining, dredging, filling, leveling, removing woody vegetation, or other means for the purpose, or to have the effect, of making the production of an agricultural commodity possible.”<sup>109</sup> After this form is filed, the NRCS will determine whether the landowner’s parcel (or parcels, if the landowner holds multiple) contains a wetland.<sup>110</sup>

The NRCS initially attempts to make the determination using aerial mapping techniques or existing records.<sup>111</sup> If the landowner disputes a determination using this method, or if insufficient information is available, an on-site evaluation will be conducted by an NRCS representative.<sup>112</sup> A parcel will be found to contain a wetland if it has a “predominance of hydric soils[,] [i]s inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions[,] and [u]nder normal circumstances does support a prevalence of such vegetation . . . .”<sup>113</sup>

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104. Rozenboom, *supra* note 18, at 116.

105. 7 C.F.R. § 12.6 (2025).

106. *Id.*

107. *Id.*

108. 7 C.F.R. § 12.4.

109. *Id.*

110. *Id.*

111. *Id.* § 12.6.

112. *Id.*

113. *Id.* § 12.2.

Once the NRCS has determined the parcel is home to a wetland, the wetland is mapped onto a wetland delineation map.<sup>114</sup> After delineation, the NRCS certifies the wetland delineation map is sufficient for making USDA benefit ineligibility decisions and provides the landowner with the opportunity to appeal the delineation.<sup>115</sup> If the landowner appeals the delineation, the NRCS must conduct an on-site inspection to ensure the wetland has been accurately delineated.<sup>116</sup> If the NRCS confirms that the parcel contains a wetland, the certification will be finalized.<sup>117</sup>

Once finalized, the Swampbuster's language states that a certification remains valid as long as the land is used for agriculture, or until the landowner requests a review by the Secretary.<sup>118</sup> In implementing the Swampbuster, however, the NRCS established an administrative rule restricting a landowner's ability to request a review of a wetland delineation.<sup>119</sup> A review is only permitted if "a natural event alters the topography or hydrology of the subject land to the extent that the final certification is no longer a reliable indication of site conditions, or if NRCS concurs with an affected person that an error exists in the current wetland determination."<sup>120</sup>

By filling out the AD-1026 form, a landowner seeking benefits must grant USDA representatives access to their land to verify compliance.<sup>121</sup> The FSA may conduct on-site reviews in response to reported violations or through annual random compliance checks.<sup>122</sup> The FSA will determine a wetland has been converted when it has been drained, dredged, filled, leveled, or otherwise manipulated, including the removal of woody vegetation.<sup>123</sup>

Once it has been decided a wetland has been converted, the FSA will determine whether the landowner is subject to an exemption allowing them to

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114. *Id.* § 12.30.

115. *Id.* § 12.6.

116. *Id.* § 12.30.

117. *Id.*

118. 16 U.S.C. § 3822.

119. 7 C.F.R. § 12.30.

120. *Id.*

121. *Id.* § 12.6; see U.S. DEP'T OF AG., FARM SERVICES AGENCY, HIGHLY ERODIBLE LAND CONSERVATION AND WETLAND CONSERVATION CERTIFICATION, FORM AD-1026 (2014), <https://www.farmers.gov/sites/default/files/documents/Form-AD1026-Highly-Erodible-Land.pdf> [<https://perma.cc/QV5Q-G6L3>].

122. 7 C.F.R. § 12.6.

123. *Id.* § 12.2.

retain USDA benefits, regardless of their violation.<sup>124</sup> Exemptions include: wetlands that were converted prior to the Swampbuster's enactment in 1985; conversions with minimal effects<sup>125</sup> on the wetland's functions; conversions of artificially created wetlands; conversions that occurred because of a reliance on an earlier faulty wetland determination; and conversions that occurred in good faith and where the landowner begins actively restoring the wetland within one year of the FSA's determination.<sup>126</sup> Additionally, a landowner that has converted a wetland will be exempt from losing USDA benefit eligibility if they adhere to an NRCS-approved "mitigation plan."<sup>127</sup> A mitigation plan is a formal record laying out the necessary steps to restore the converted wetland or create a new wetland of equal size and ecological value.<sup>128</sup> The mitigation must take place before or at the same time as the wetland conversion or the production of an agricultural commodity and must occur within the same general watershed.<sup>129</sup> It must also be maintained through a recorded easement ensuring its long-term protection.<sup>130</sup>

If the FSA determines that exemptions are not applicable, the landowner, and all affiliated persons, will have certain USDA benefits reduced or revoked depending on the severity of the violation and the type of benefit to be received.<sup>131</sup>

The FSA Deputy Administrator for Farm Programs has discretion to reduce or revoke the landowner and affiliated persons' contract payments, marketing assistance loans, and price supports under federal agricultural programs, as well as farm credit loans if the funds would contribute to wetland conversion for agricultural use.<sup>132</sup> Other restricted benefits include payments under the Environmental Quality Incentives Program, Agricultural Credit Act programs, and Watershed Protection and Flood Prevention Act assistance.<sup>133</sup> Finally, if the wetland was converted after February 7, 2014, the landowner "will have [one] reinsurance year after the final determination of violation . . . to initiate a mitigation plan to remedy the violation, as determined by NRCS, before becoming

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124. 7 C.F.R. § 12.5.

125. *Id.* (defining a "minimal effects" conversion as a wetland conversion that has only a minor impact on the functions and values of wetlands in the area).

126. *See id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.* § 12.6.

132. *Id.* § 12.4.

133. *Id.*

ineligible for Federal crop insurance premium subsidies for a policy or plan of insurance under the Federal Crop Insurance Act.”<sup>134</sup>

The reduced or revoked benefits do not exist in perpetuity.<sup>135</sup> Reduction or revocation only persists one crop year at a time.<sup>136</sup> Any landowner determined to be ineligible for USDA benefits due to a wetland conversion will regain eligibility the year following restoration of the converted wetland, whether through adherence to a mitigation plan or by restoration of the converted wetland themselves.<sup>137</sup>

However, a farmer’s ineligibility for benefits begins when the wetland is converted, not when the violation is discovered.<sup>138</sup> This means they may be required to repay any benefits received between the conversion and its discovery.<sup>139</sup> For example, if a wetland was converted in 2010 but detected in 2025, the farmer loses eligibility from 2010 onward and may be forced to repay USDA benefits received during that 15 year period.<sup>140</sup>

## VI. THE LAWSUIT

Because this Note analyzes the Swampbuster in the specific context of CTM Holdings’ lawsuit, it is important to examine the core arguments presented by both CTM and the government. CTM’s arguments reflect constitutional challenges to the Swampbuster’s validity and fairness, while the government’s position highlights the statute’s authority as flowing directly from the Constitution.<sup>141</sup> By exploring these arguments, this analysis also addresses broader objections shared by many who challenge the Swampbuster’s validity and fairness.

On March 16, 2024, CTM filed its complaint in the United States District Court for the Northern District of Iowa.<sup>142</sup> The Complaint alleges, among other things, that the Swampbuster is unconstitutional, and that the USDA has exceeded its statutory authority in implementing and enforcing the Swampbuster.<sup>143</sup> The

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134. *Id.* § 12.13.

135. *Id.* § 12.4.

136. *Id.*

137. *Id.* §§ 12.4–.5; 16 U.S.C. § 3822.

138. John Schwarz, *The USDA Swampbuster: Avoid Getting Stuck*, SUCCESSFUL FARMING (Feb. 19, 2025), <https://www.agriculture.com/the-usda-swampbuster-avoid-getting-stuck-11681926> [<https://perma.cc/EP5G-VA2M>].

139. *Id.*

140. *Id.*

141. *See generally* Complaint for Declaratory & Injunctive Relief, *supra* note 9.

142. *Id.* at 1, 31.

143. *See id.* at 21–29.

claims arguing the USDA has exceeded its statutory authority are outside the scope of this Note.

CTM first claims that, while Congress has the authority to regulate the goods, channels, and instrumentalities of interstate commerce through the Constitution's Commerce Clause, "[i]ntrastate wetlands are not instrumentalities or goods in interstate commerce and they have no substantial effect on interstate commerce."<sup>144</sup> CTM further argues that the designated wetlands on its property are entirely intrastate and not connected to navigable waterways.<sup>145</sup> Accordingly, CTM contends that the Swampbuster provision is unconstitutional, both on its face and as applied to CTM, because it exceeds the authority granted to Congress under the Commerce Clause.<sup>146</sup>

CTM next claims that, because the Swampbuster is not authorized under the Commerce Clause, the conditioning of a government benefit on adherence to an unconstitutional law amounts to an "unconstitutional condition."<sup>147</sup> CTM cites the "unconstitutional conditions doctrine" which "prohibits the government from conditioning a government benefit on the waiver of a constitutional right."<sup>148</sup> Thus, because the Swampbuster requires landowners to forgo their right to be free from unconstitutional regulation in order to receive federal agricultural benefits, CTM argues that the Swampbuster is unconstitutional.<sup>149</sup>

Finally, CTM asserts that by preventing the conversion of wetlands on a landowner's property, the government requires the landowner to forfeit all available uses of the land.<sup>150</sup> They claim the forfeiture effectively grants the government a "conservation easement" over the property and that without compensation, such an easement is "an unconstitutional *per se* physical taking under the Fifth Amendment . . ."<sup>151</sup> CTM argues that by conditioning USDA benefits on an unconstitutional taking, the Swampbuster again violates the unconstitutional conditions doctrine, and is therefore invalid.<sup>152</sup>

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144. *Id.* at 22.

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.* at 25.

151. *Id.*

152. *Id.* at 26.

On January 27, 2025, the USDA filed a memorandum in support of a motion for summary judgment.<sup>153</sup> The government, in response to CTM's complaint, argued that Congress's authority to enact the Swampbuster did not stem from the Commerce Clause at all, but rather from the Spending Clause.<sup>154</sup> The government asserted that under the Spending Clause, Congress is well within its authority to impose conditions on federal funds to promote practices that serve the public interest—such as those outlined in the Swampbuster.<sup>155</sup> According to the government, because CTM *chooses* to accept those benefits, it must also comply with the conditions attached to those benefits.<sup>156</sup> The government further asserted that the only consequence of converting wetlands under Swampbuster is the loss of eligibility for federal farm benefits, not a restriction on land use that would necessitate an exercise of the Commerce Clause.<sup>157</sup>

The government contends that CTM's claims under the Takings Clause fall flat for many of the same reasons.<sup>158</sup> Again, the government points out that participation in federal agricultural programs are voluntary, and argues the conditions attached to those programs do not constitute a taking under the Fifth Amendment.<sup>159</sup> They note landowners remain free to use their property as they choose, including converting wetlands for agricultural production, but they do so with the understanding that such actions will render them ineligible for certain federal benefits.<sup>160</sup> According to the government, because the Swampbuster “does not independently take anything from, or require anything of, the landowner,” it does not qualify as a government taking.<sup>161</sup>

## VII. CONSTITUTIONALITY OF THE SWAMPBUSTER

Questions on the constitutionality of the Swampbuster begin on where Congress's authority to enact it lies (or does not lie). CTM asserts congressional authority improperly extends from the Commerce Clause, while the government argues the Spending Clause is the correct authority.<sup>162</sup> Accordingly, the proper

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153. United States' Memorandum in Support of its Motion for Summary Judgment at 1, 28, CTM Holdings, LLC v. U.S. Dep't of Agric., No. 6:24-CV-02016 (N.D. Iowa Jan. 27, 2025).

154. *Id.* at 13

155. *Id.*

156. *Id.*

157. *Id.* at 12.

158. *Id.* at 16.

159. *Id.*

160. *Id.*

161. *Id.*

162. Complaint for Declaratory & Injunctive Relief, *supra* note 9, at 21.

starting point for analyzing the Swampbuster's constitutionality is determining the source of Congress's enumerated power.<sup>163</sup>

*A. The Swampbuster as Authorized by the Spending Clause*

The few federal courts that have considered the question agree: the Swampbuster is a creature of the Spending Clause, not the Commerce Clause.<sup>164</sup> Courts have pointed out that Congress regularly utilizes its spending power to enact laws that reach beyond the enumerated powers outlined by the Constitution.<sup>165</sup> Article I, Section 8 of the Constitution permits Congress to “provide . . . for the general Welfare of the United States.”<sup>166</sup> In *South Dakota v. Dole*, the Supreme Court interpreted this power to mean:

“[T]he power of Congress to authorize expenditure of public moneys for public purposes is not limited by the direct grants of legislative power found in the Constitution.” Thus, objectives not thought to be within Article I's “enumerated legislative fields” may nevertheless be attained through the use of the spending power and the conditional grant of federal funds.<sup>167</sup>

Put differently, “Congress may purchase what it lacks the authority to compel.”<sup>168</sup> The Supreme Court has compared Spending Clause legislation to a contract.<sup>169</sup> This is precisely how the few courts that have faced this question have interpreted the Swampbuster.<sup>170</sup> In essence, the federal government attempts to purchase the adherence to the Swampbuster by granting benefits to compliant landowners.<sup>171</sup>

However, the government's power under the Spending Clause is not unlimited.<sup>172</sup> The “contract” the government offers must be voluntarily accepted

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163. United States' Memorandum in Support of its Motion for Summary Judgment, *supra* note 153, at 13.

164. *United States v. Dierckman*, 201 F.3d 915, 922 (7th Cir. 2000).

165. *South Dakota v. Dole*, 483 U.S. 203, 207 (1987).

166. U.S. CONST. art. I, § 8, cl. 1.

167. *Dole*, 483 U.S. at 207.

168. *Citizens for Honesty & Integrity in Reg'l Plan. v. Cnty. of San Diego*, 258 F. Supp. 2d 1132, 1136 (S.D. Cal. 2003).

169. *Barnes v. Gorman*, 536 U.S. 181, 186 (2002).

170. See *United States v. Dierckman*, 201 F.3d 915, 922 (7th Cir. 2000); *Citizens for Honesty*, 258 F. Supp. 2d at 1136.

171. See 16 U.S.C. §§ 3821–3824.

172. Samuel Strom, *Article I, Section 8, Clause 2: Congressional Spending and Borrowing Power*, FINDLAW (Aug. 2, 2024), <https://constitution.findlaw.com/article1/annotation27.html> [<https://perma.cc/X5K7-R3Z5>].

and within constitutional bounds.<sup>173</sup> In *Dole*, the Supreme Court laid out five factors courts should consider when assessing whether a government condition on funds—or “contract”—with a *state* under the Spending Clause is fair and valid.<sup>174</sup> Congress must: (1) unambiguously state the conditions on their funding; (2) the conditions must not be prohibited by other constitutional provisions; (3) the spending must pursue the general welfare; (4) the conditions must relate to the federal interest; and (5) the circumstances must not be so coercive that pressure turns into compulsion.<sup>175</sup>

Again, in *Dole*, these five factors applied to the federal government’s conditions on *state* funding.<sup>176</sup> In its motion for summary judgment against CTM, the government correctly argued that the fifth factor was originally applied by the Supreme Court to prevent the federal government from trampling on state sovereignty.<sup>177</sup> In turn, because private entities like CTM are not sovereigns, the government asserts the fifth factor does not apply to a court’s review of the Swampbuster’s validity under the Spending Clause.<sup>178</sup>

The Supreme Court has never directly addressed whether courts should consider coercion as a factor when reviewing the government’s conditions on the receipt of benefits on a private entity, but at least one federal district court has ruled it does not.<sup>179</sup> That case involved private nursing homes challenging conditions on Medicare and Medicaid funding that barred them from requiring residents to agree to binding arbitration prior to a dispute.<sup>180</sup> The nursing homes argued that—because their continuing operation was dependent on the receipt of Medicare and Medicaid funding—the government coerced their adherence to the conditions on that funding, and the conditions were thus in violation of the limitations on the

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173. *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 219 (2022); *South Dakota v. Dole*, 483 U.S. 203, 207–08 (1987).

174. *Dole*, 483 U.S. at 207–08.

175. *Modern Spending Clause Jurisprudence Generally*, CONST. ANNOTATED: ANALYSIS & INTERPRETATION OF THE U.S. CONST. (July 27, 2025, at 16:26 CT), [https://constitution.congress.gov/browse/essay/artI-S8-C1-2-4/ALDE\\_00013359/](https://constitution.congress.gov/browse/essay/artI-S8-C1-2-4/ALDE_00013359/) [<https://perma.cc/7U92-28HY>]; VICTORIA L. KILLION, CONG. RSCH. SERV., R46827, FUNDING CONDITIONS: CONSTITUTIONAL LIMITS ON CONGRESS’S SPENDING POWER 17 (2021).

176. *Dole*, 483 U.S. at 205.

177. United States’ Memorandum in Support of its Motion for Summary Judgment, *supra* note 153, at 14.

178. *Id.*

179. KILLION, *supra* note 175, at 22.

179. *Northport Health Servs. of Ark., LLC v. U.S. Dep’t of Health & Hum. Servs.*, 438 F. Supp. 3d 956, 963–64 (W.D. Ark. 2020).

180. *Id.*

Spending Clause.<sup>181</sup> The United States District Court for the Western District of Arkansas found that the nursing homes were responsible for their dependence on Medicare and Medicaid funding.<sup>182</sup> The court went on to note that, because the nursing homes' participation in Medicare and Medicaid was voluntary, and they could avoid regulations they disagreed with by simply choosing not to participate, their claim of governmental coercion had no merit.<sup>183</sup> The district court went on to say it was unlikely that the Eighth Circuit would "conclude that private entities are protected from coercion by the federal government on the same terms as states."<sup>184</sup> The court said, "[n]ursing homes, unlike [states], have freedom to decide whether to remain in business and thus subject themselves voluntarily to the limits imposed' by the Medicaid program."<sup>185</sup>

The district court's indifferent stance toward the continuing operation of nursing homes—while grounded in sound reasoning about voluntary participation in federal programs—should be applied cautiously when considering farmers.

Significant space is not needed to discuss the importance of farmers; they are essential to the survival of the United States—and the world. The nation's farmers provide the food we eat and contribute \$7 trillion annually to the United States' economy.<sup>186</sup> Inherent in the agriculture industry today is farmers' reliance on federal subsidies. The federal government spends about \$30 billion per year subsidizing American farmers.<sup>187</sup> "About one-third of the nation's two million farms receive regular subsidies," with larger farms (that generally produce more) receiving a greater share.<sup>188</sup> USDA data reveals that "23[%] of farms with yearly revenues of less than \$100,000 receive federal subsidies, but 69[%] of farms above that income threshold do."<sup>189</sup> Debates rage on about the need to reform the current

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181. *Id.*

182. *Id.* at 971.

183. *Id.*

184. *Northport Health Servs. of Ark., LLC v. U.S. Dep't of Health & Hum. Servs.*, No. 5:19-CV-5168, 2020 WL 2091796, at \*3 (W.D. Ark. Apr. 30, 2020).

185. *Northport Health Servs. of Ark., LLC*, 438 F. Supp. 3d at 971.

186. *Why Is Agriculture Important? Benefits and Its Role*, MARYVILLE UNIV. (July 12, 2022), <https://online.maryville.edu/blog/why-is-agriculture-important/> [<https://perma.cc/7XY7-4MSH>].

187. Chris Edwards, *Cutting Federal Farm Subsidies*, CATO INST. (Aug. 31, 2023), <https://www.cato.org/briefing-paper/cutting-federal-farm-subsidies> [<https://perma.cc/44XT-GCC9>].

188. *Id.*

189. *Id.*

farm subsidies structure, but as of now one thing is clear: many American farmers rely on them.<sup>190</sup>

In 2022, 13% of America's farmers participated in Federal Crop Insurance Programs, with the largest group of participants coming from small family farms.<sup>191</sup> This program provides critical financial stability, helping farmers manage risks and sustain their operations in a year where crop prices plummet or where a natural disaster destroys a harvest.<sup>192</sup> Economist Daniel Munch has remarked, "Crop insurance is not merely a safety net but a lifeline for farm businesses, the rural communities they support and the food supply."<sup>193</sup> However, farmers who convert wetlands on their property will lose eligibility for these benefits.<sup>194</sup> Without the protection offered by federal crop insurance, many farmers could face financial hardship, potentially forcing them out of agriculture, causing them to lose their farms, and jeopardizing the stability of the nation's food supply.<sup>195</sup> Federal Crop Insurance is only one of the many benefits a violating farmer may become ineligible to receive.<sup>196</sup> The full range of USDA benefits a farmer may lose further illustrates the potential coercive effect of the Swampbuster's conditions.

Because of their extreme importance, courts should create a carve out for farmers as a "protected economic class" when analyzing whether the Swampbuster imposes valid conditions on funds on a private entity under the Spending Clause.

Courts should consider the coercive effect potential ineligibility for USDA benefits has on farmers. The determination should be made on an individual basis. A farmer who is not reliant on USDA benefits cannot claim they are coerced into

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190. Tiarra Drisker, *Farm Subsidies: Harmful or Helpful?*, TEX. A&M UNIV. COLL. OF ARTS & SCI. (Nov. 3, 2021), <https://liberalarts.tamu.edu/blog/2021/11/03/farm-subsidies-harmful-or-helpful/> [<https://perma.cc/8NWD-PDAQ>].

191. Katherine Lacy & Katherine Lim, *Crop Insurance Payments to Farmers Vary by Farm Type*, ECON. RSCH. SERV., U.S. DEP'T OF AGRIC.: CHARTS OF NOTE (Apr. 24, 2024), <https://www.ers.usda.gov/data-products/charts-of-note/chart-detail?chartId=109049> [<https://perma.cc/DSK6-85XB>].

192. Daniel Munch, *Crop Insurance Provides a Critical ROI for Taxpayers*, FARM BUREAU (May 7, 2024), <https://www.fb.org/market-intel/crop-insurance-provides-a-critical-roi-for-taxpayers> [<https://perma.cc/PV4V-VWG5>].

193. *Id.*

194. *See* 16 U.S.C. § 3821.

195. Diane Petit, *Crop Insurance Coast to Coast - Meet the Producer Behind the Policy: Eric Borton, Borton and Sons Fruit, Yakima, Washington*, FARMERS.GOV, U.S. DEP'T OF AGRIC. (Feb. 25, 2025), <https://www.farmers.gov/blog/crop-insurance-coast-coast-meet-producer-behind-policy-eric-borton-borton-and-sons-fruit> [<https://perma.cc/7TW5-RYSK>].

196. *See* 16 U.S.C. § 3822.

compliance with the Swampbuster. Conversely, a small family farm that cannot remain in business without a program like Federal Crop Insurance should be able to provide evidence to the court that the Swampbuster coerces their adherence.

One district court hinted at considering the coercive effect a condition on federal funds has on a private entity, again in a case discussing a nursing home's reliance on Medicare and Medicaid payments.<sup>197</sup> The United States District Court for the Northern District of Mississippi reasoned that whether a condition on payments that banned pre-dispute arbitration contracts was an incentive or "economic dragooning" was relevant to the question of whether the condition was permissible.<sup>198</sup> Such analysis should apply to Swampbuster challenges, as the conditioning of USDA benefits on compliance may exert coercive economic pressure on farmers despite their unusually vital role in the United States economy.<sup>199</sup>

### *1. The Swampbuster is Permissible Under the Spending Clause*

In assessing the Swampbuster's permissibility under the Spending Clause, therefore, courts should consider all five limiting factors described in *Dole*.<sup>200</sup> First, the Swampbuster unambiguously states its conditions for the receipt of USDA benefits.<sup>201</sup> The statute states "any person who in any crop year produces an agricultural commodity on converted wetland, as determined by the Secretary, shall be [ineligible for the listed USDA benefits]." <sup>202</sup> All terms are also adequately defined.<sup>203</sup> As far as the first factor goes, the "contract" between the government and the landowner is clearly stated.

Second, the Swampbuster was enacted in pursuit of the general welfare.<sup>204</sup> The benefits of wetlands, both environmental and economic, have been discussed

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197. KILLION, *supra* note 175, at 1.

198. Am. Health Care Ass'n v. Burwell, 217 F. Supp. 3d 921, 929 (N.D. Miss. 2016).

199. See Drisker, *supra* note 190.

200. South Dakota v. Dole, 483 U.S. 203, 207 (1987).

201. 16 U.S.C. § 3821.

202. *Id.*

203. *Id.* § 3801.

204. See *Dole*, 483 U.S. at 207.

at length.<sup>205</sup> Congress has decided that preserving wetlands promotes the general welfare, and the Swampbuster was implemented to achieve that objective.<sup>206</sup>

Third, the Swampbuster conditions are directly related to the government's interest in preserving the nation's wetlands. The Supreme Court has set a relatively low bar for meeting the relatedness requirement, and the Swampbuster's conditions clear it easily.<sup>207</sup> The preservation of wetlands relates to one of the main purposes for which USDA benefits are expended—a healthy agriculture environment.<sup>208</sup> The destruction of wetlands directly frustrates such a goal.<sup>209</sup> Thus, the Swampbuster's conditions are related to the government's interest.

Fourth, as discussed earlier, whether the Swampbuster's conditions are so coercive to a farmer that its pressure turns into compulsion will be a factual inquiry to be made on an individual basis.<sup>210</sup> A farmer that cannot remain in business without USDA benefits should be able to prove he was compelled into complying with the Swampbuster.<sup>211</sup> While many farmers depend on the subsidies, most do not.<sup>212</sup> Only about one-third of the nation's farmers receive federal support, and just because a farmer receives federal support does not mean that he or she is reliant on it.<sup>213</sup> Whether CTM falls into that category of farmers that cannot remain in business but for USDA benefits requires a factual investigation by the court.

Finally, the conditions of the Swampbuster must not be prohibited by other constitutional provisions.<sup>214</sup> A condition on federal funds violates other provisions of the Constitution when the condition either induces the recipient of the funds to violate the Constitution, or when the condition itself exceeds Congress's

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205. See generally OFF. OF WATER, U.S. ENV'T PROT. AGENCY, *supra* note 31 (explaining the benefits of wetlands); see WIS. WETLANDS ASS'N, *supra* note 25.

206. *Wetlands*, FARM SERV. AGENCY, U.S. DEP'T OF AGRIC. (Apr. 14, 2025, at 9:57 CT), <https://www.fsa.usda.gov/about-fsa/environmental-cultural-resource-compliance/water-resources/wetlands> [<https://perma.cc/WXY9-9SWB>].

207. KILLION, *supra* note 175, at 1.

208. See *Land Conservation*, U.S. DEP'T OF AGRIC. (July 27, 2025, 16:31 CT), <https://www.usda.gov/sustainability/conservation/land-conservation> [<https://perma.cc/8LXR-TS8C>].

209. U.S. ENV'T PROT. AGENCY, EPA 843-F-01-002d, THREATS TO WETLANDS 1 (Sep. 2001), [https://www.epa.gov/sites/default/files/2021-01/documents/threats\\_to\\_wetlands.pdf](https://www.epa.gov/sites/default/files/2021-01/documents/threats_to_wetlands.pdf) [<https://perma.cc/VXZ3-3BRU>].

210. See *Am. Health Care Ass'n v. Burwell*, 217 F. Supp. 3d 921, 929 (N.D. Miss. 2016).

211. See *id.*

212. Edwards, *supra* note 187.

213. *Id.*

214. KILLION, *supra* note 175, at 1.

authority.<sup>215</sup> Herein lies CTM's primary argument, the Swampbuster effectively imposes a conservation easement in favor of the government, restricting wetland use without paying the owner just compensation.<sup>216</sup> By conditioning USDA benefits on compliance, CTM claims the statute forces landowners to waive their Fifth Amendment right to compensation under the Takings Clause, imposing an unconstitutional condition on receipt of the benefits.<sup>217</sup>

The Takings Clause states, "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."<sup>218</sup> "When the government physically acquires private property for a public use, the Takings Clause imposes a clear and categorical obligation to provide the owner with just compensation."<sup>219</sup>

One way a government taking can be established is when a regulation forces a landowner to allow someone else to enter onto their property.<sup>220</sup> In *Cedar Point Nursery v. Hassid*, the Supreme Court found that a California regulation that granted labor organizations a "right to take access" to a farmer's property to solicit support for unionization by requiring the farmer to allow union organizers onto their property for up to three hours per day, 120 days per year, constituted a *per se* taking.<sup>221</sup> As a result, the Court determined that the regulation warranted just compensation under the Fifth Amendment.<sup>222</sup> The Court stated,

The access regulation appropriates a right to invade the growers' property and therefore constitutes a *per se* physical taking. The regulation grants union organizers a right to physically enter and occupy the growers' land for three hours per day, 120 days per year. Rather than restraining the growers' use of their own property, the regulation appropriates for the enjoyment of third parties the owners' right to exclude.<sup>223</sup>

In its motion for summary judgment against CTM, the government argued that the Supreme Court's ruling in *Cedar Point Nursery* was inapplicable, because the "Swampbuster does not grant anyone a right to access CTM's private

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215. *Id.*

216. United States' Memorandum in Support of its Motion for Summary Judgment, *supra* note 153, at 7–11.

217. *Id.*

218. U.S. CONST. amend. V.

219. *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 147 (2021).

220. *APA Policy Guide on Takings*, AM. PLAN. ASS'N (Apr. 11, 1995), <https://www.planning.org/policy/guides/adopted/takings.htm> [<https://perma.cc/7K3E-V9Y6>].

221. *Cedar Point Nursery*, 594 U.S. at 143, 149.

222. *Id.* at 152.

223. *Id.*

property.”<sup>224</sup> In a footnote, the government pointed out that the USDA will make an on-site wetland certification “at the request” of the landowner, so no “invasion” of the landowner’s property occurs.<sup>225</sup> However, the Swampbuster’s administrative regulations also authorize the FSA to conduct random spot-checks on past wetland determinations to certify compliance with the Swampbuster.<sup>226</sup> One might scoff at the idea that the exceedingly rare and relatively quick FSA inspections constitute an “invasion” requiring the government to pay compensation. But the Court in *Cedar Point Nursery* held the fact that the right to access the land was only exercised from time to time was irrelevant; what mattered was that the government had taken a right to physically invade the property.<sup>227</sup>

Accordingly, part of the Takings Clause analysis is satisfied—the government has access to CTM’s land.<sup>228</sup> But CTM misses the second part—that the government actually *take* the access, not have it merely given to them.<sup>229</sup> CTM chose to give the FSA access to its land when it signed an AD-1026 and applied for USDA benefits.<sup>230</sup> Similarly, CTM can choose to revoke the FSA’s access to its land by refusing the benefits the USDA has to offer.<sup>231</sup> Inherent in a government taking is that the landowner has no choice in the matter.<sup>232</sup> “Conditions of participating in a government program that are rationally related to a legitimate Government interest ‘can hardly be called a taking’ when participants are aware of the conditions,” and voluntarily choose to participate.<sup>233</sup>

CTM’s claim that the Swampbuster affects a taking because it imposes a “conservation easement” that physically takes the land and renders it economically useless falls flat for the same reasons.<sup>234</sup> CTM asserts that, because of the conservation easement, CTM “cannot use the [nine] acres of wetland in an

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224. United States’ Memorandum in Support of its Motion for Summary Judgment, *supra* note 153, at 17.

225. *Id.*

226. 7 C.F.R. § 12.6(b) (2025).

227. *Cedar Point Nursery*, 594 U.S. at 153.

228. U.S. CONST. amend. V.

229. *Welty v. United States*, 135 Fed. Cl. 538, 550 (2017), *aff’d*, 926 F.3d 1319 (Fed. Cir. 2019) (“A taking involves a government action in which the landowner is given no choice but to abdicate some degree of control over the subject property.”).

230. *See* 7 C.F.R. § 12.4 (2025).

231. *Id.*

232. *Welty*, 135 Fed. Cl. at 550.

233. United States Memorandum in Support of its Motion for Summary Judgment, *supra* note 153, at 17; *Ruckelhaus v. Monsanto Co.*, 467 U.S. 986, 1007 (1984).

234. Memorandum in Support of Plaintiff’s Motion for Summary Judgment at 1, 3–4, *CTM Holdings, LLC v. U.S. Dep’t of Agric.*, No. 6:24-CV-02016 (N.D. Iowa Jan. 27, 2025).

economically beneficial or productive manner without violating [S]wampbuster.”<sup>235</sup> In other words, CTM argues that the Swampbuster not only amounts to a physical taking, but a regulatory taking as well.<sup>236</sup>

As an initial matter, it is true that the appropriation of an easement can constitute a taking.<sup>237</sup> According to Iowa law, a conservation easement is “an easement in, servitude upon, restriction upon the use of, or other interest in land owned by another,”<sup>238</sup> and is created to preserve “riparian lands [and] wetlands . . . .”<sup>239</sup> At first, this argument looks compelling. It is clear that the Swampbuster is a restriction upon the use of a landowner’s property in an attempt to preserve wetlands.<sup>240</sup> However, whether the Swampbuster amounts to a conservation easement is irrelevant if the government does not levy the easement using the Takings Clause.<sup>241</sup> An easement voluntarily granted by the landowner cannot be considered a government taking.<sup>242</sup>

For an easement to constitute a regulatory taking, it must deprive the landowner of “*all* economically beneficial uses [of the land]”—which the Swampbuster does not.<sup>243</sup> The Swampbuster only withholds USDA benefits from farmers that either produce an agricultural commodity on converted wetland or convert a wetland for the purpose of making the production of an agricultural commodity possible.<sup>244</sup> The landowner may destroy the wetland and use it for any other purpose and still remain eligible for benefits.<sup>245</sup> In fact, the federal regulation that implements the Swampbuster lists multiple potential uses such as “conversions for fish production, trees, vineyards, shrubs, cranberries, agricultural waste management structures, livestock ponds, fire control, or building and road construction . . . .”<sup>246</sup> Hence, the Swampbuster cannot be considered a regulatory taking because it does not impose a restriction on the land that limits all

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235. *Id.* at 3.

236. *Id.*

237. *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 150 (2021).

238. IOWA CODE ANN. § 457A.2 (West 2025).

239. *Id.* § 457A.1.

240. 16 U.S.C. § 3821.

241. *Welty v. United States*, 135 Fed. Cl. 538, 550. (2017), *aff’d*, 926 F.3d 1319 (Fed. Cir. 2019).

242. *Id.*

243. *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1019 (1992).

244. 16 U.S.C. § 3821.

245. *Id.*

246. 7 C.F.R. § 12.5 (2025).

economically viable uses, only those uses that result in the production of agricultural commodities.<sup>247</sup>

As to whether any potential conservation easement imposed by the Swampbuster constitutes a physical taking, CTM's claim fails for the same reason as the "physical invasion" argument.<sup>248</sup> A conservation easement qualifies as a physical taking only if the government actually *takes* the land.<sup>249</sup> As with a physical invasion claim, any restriction on a landowner's wetland use results from a voluntary choice to accept USDA benefits, rather than a government-imposed taking.<sup>250</sup>

Consequently, the Swampbuster is likely to meet all requirements laid out by the Supreme Court in *Dole* to be considered a constitutional and legitimate exercise of Congress's power under the Spending Clause.<sup>251</sup> Although originally motivated by protecting state sovereignty, courts should consider whether the Swampbuster coerces a farmer's dependence on an individual basis. Although some farmers may only be able to remain operational because of the protection offered by USDA benefits, the vast majority are not dependent on these subsidies at all and have no claim challenging the Swampbuster's constitutionality.<sup>252</sup>

*B. Even if the Commerce Clause Was the Authority, the Swampbuster Would Still Be Constitutional*

Even if Congress's power to enact the Swampbuster did flow from the Commerce Clause, and not the Spending Clause, the statute would still be constitutional. The Constitution gives Congress the power "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."<sup>253</sup> The Supreme Court has limited this power to: (1) the use of the channels of interstate commerce; (2) the use of instrumentalities of interstate commerce; or (3) activities that substantially affect interstate commerce.<sup>254</sup> The Swampbuster falls under the third category.

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247. See *Lucas*, 505 U.S. at 1004.

248. Memorandum in Support of Plaintiff's Motion for Summary Judgment, *supra* note 234, at 10.

249. *Welty v. United States*, 135 Fed. Cl. 538, 550 (2017), *aff'd*, 926 F.3d 1319 (Fed. Cir. 2019).

250. 7 C.F.R. § 12.4 (2025).

251. *Lacy & Lim*, *supra* note 191.

252. *Id.*

253. U.S. CONST. art. I, § 8, cl. 3.

254. *United States v. Lopez*, 514 U.S. 549, 558–559 (1995).

On initial appearance, a wetland—especially a completely intrastate wetland like the one on CTM’s land—might appear to have little or no effect on interstate commerce. However, upon closer inspection, the necessary connection between wetland preservation and interstate commerce becomes apparent and allows application of the Commerce Clause. As mentioned earlier, wetlands have a significant impact on the nation’s economy.<sup>255</sup> Courts have recognized wetlands’ role in supporting waterfowl and migratory birds as a sufficient link to interstate commerce, justifying regulation under the Commerce Clause.<sup>256</sup> In 1990, the United States Court of Appeals for the Seventh Circuit stated, “nearly all wetlands fall within the jurisdiction of the [Clean Water Act] since one test for whether the wetland affects interstate commerce is whether migratory birds use the wetland.”<sup>257</sup>

The Supreme Court has held that a single act in question need not have a discernable effect on interstate commerce for Congress to have jurisdiction.<sup>258</sup> As long as the aggregation of similar activities would affect interstate commerce, Congress can assert its power under the Commerce Clause and regulate the activity.<sup>259</sup> In this instance, CTM’s conversion of a small nine-acre wetland on its property may not have an obvious effect on commerce, but if every farmer in the United States destroyed their small and completely isolated wetlands, the impact on the nation’s migratory birds (among other impacts) would be substantial.<sup>260</sup> The loss of wetland habitat would reduce migratory bird populations, which in turn would negatively impact the recreational and commercial industries that rely on them.<sup>261</sup> “Millions of people spend over a billion dollars annually on recreational pursuits relating to migratory birds[,]” and a decline in these populations would have substantial economic consequences.<sup>262</sup>

In its motion for summary judgement, filed the same day as the government’s, CTM cited *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* (SWANCC) in an attempt to show the Court’s concerns

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255. 16 U.S.C. § 3901.

256. Jonathan G. Hieneman, *The Shrinking Reach of the Commerce Power: Is Wetland Jurisdiction in Danger?*, 10 J. NAT. RES. & ENV’T L. 341, 350 (1995).

257. *Rueth v. U.S. Env’t Prot. Agency.*, 13 F.3d 227, 231 (7th Cir. 1993).

258. *Wickard v. Filburn*, 317 U.S. 111, 127–28 (1942).

259. Hieneman, *supra* note 256, at 344.

260. *Wetlands – A Vital Lifeline for Migratory Birds*, WETLANDS INT’L EUR. (May 8, 2023), <https://europe.wetlands.org/wetlands-a-vital-lifeline-for-migratory-birds/> [<https://perma.cc/A7CT-436E>].

261. *Id.*

262. *Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Eng’rs*, 531 U.S. 159, 173 (2001).

with extending Commerce Clause reach to purely intrastate wetlands.<sup>263</sup> However, the Court's concern in SWANCC primarily stemmed from the statutory language of the Clean Water Act (CWA).<sup>264</sup> The CWA regulated the discharge of dredged material into the "navigable waters" of the United States.<sup>265</sup> The Court decided completely intrastate and isolated wetlands were not to be considered the "navigable waterways" referred to in the CWA.<sup>266</sup>

It is true, as CTM points out, that the Court noted the significant constitutional and federalism questions that would arise by allowing the "Migratory Bird Rule" to grant the government power over intrastate wetlands via the Commerce Clause.<sup>267</sup> However, the Court's concerns flowed from the fact that Congress, in the CWA, did not explicitly state its desire to regulate all wetlands, but rather only "navigable waters."<sup>268</sup> The Swampbuster contains no such ambiguity. Congress clearly conditioned USDA benefits on the preservation of all wetlands in the United States.<sup>269</sup> The Supreme Court's concerns about expanding the reach of the Commerce Clause to intrastate wetlands without clear congressional intent in the CWA do not apply to the Swampbuster, where Congress's intent is explicit.<sup>270</sup>

Accordingly, courts have and should continue to consider the significant impact wetlands have on commerce, specifically in the context of habitat for migratory birds, when analyzing wetland-related legislation's permissibility under the Commerce Clause.<sup>271</sup> Because the impact wetlands have on the nation's commerce is substantial, the Commerce Clause would authorize Congress to implement the Swampbuster even if the Spending Clause did not.<sup>272</sup>

### C. The District Court's Decision

On May 29, 2025, the U.S. District Court for the Northern District of Iowa issued its ruling on the motions for summary judgment filed by CTM and the

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263. Memorandum in Support of Plaintiff's Motion for Summary Judgment, *supra* note 234, at 12.

264. *Solid Waste Agency*, 531 U.S. at 166.

265. *Id.* at 167.

266. *Id.* at 170–71.

267. *Id.* at 173.

268. *Id.* at 172–73.

269. 16 U.S.C. § 3821.

270. 7 C.F.R. § 12.1 (2025).

271. Stephen S. Davis, *Defining the Limits of Wetland Regulation under the CWA and the Commerce Clause*, *United States v. Wilson*, 6 MO. ENV'T L. & POL'Y REV. (xiv) (1998).

272. U.S. CONST. art. I, § 8, cl. 3.

Government.<sup>273</sup> The court granted the Government’s motion for summary judgment, finding CTM lacked standing to bring its claims because CTM had not suffered injury, nor exhausted administrative remedies.<sup>274</sup> But the court also addressed the merits of CTM’s claims and granted the Government’s motion on those fronts as well.<sup>275</sup>

The court first agreed with the Government that the “Swampbuster is an exercise of Congress’s spending power.”<sup>276</sup> The court stated, “Congress may attach conditions on the receipt of federal funds,” and the “Swampbuster fits squarely into this category.”<sup>277</sup> The court additionally noted that, because the Swampbuster passed muster under the spending power, “Whether Swampbuster ‘violates the Commerce Clause’ is therefore immaterial.”<sup>278</sup>

The district court also rejected CTM’s claims that the Swampbuster imposed an “unconstitutional condition” on the receipt of farm benefits.<sup>279</sup> The court reasoned that, because Congress’s spending power is not as narrow as its other enumerated powers, Congress can “condition spending in areas that it could not regulate directly” under the Commerce Clause.<sup>280</sup>

CTM’s governmental taking argument met the same fate.<sup>281</sup> The district court rejected the claim that the Swampbuster creates an “unconstitutional condition” on USDA benefits by requiring farmers to give up their rights under the Takings Clause.<sup>282</sup> The court noted CTM voluntarily accepts the government’s offer by accepting the benefits, and even under CTM and the government’s agreement CTM “can use its land any way it wants at any time.”<sup>283</sup> Ultimately, CTM’s takings claim came up short.<sup>284</sup>

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273. CTM Holdings, LLC v. U.S. Dep’t of Agric., No. 23-CV-2004-CJW-MAR, 2025 WL 1532146 (N.D. Iowa May 29, 2025).

274. *Id.* at \*5.

275. *Id.* at \*7–12.

276. *Id.* at \*8.

277. *Id.*

278. *Id.*

279. *Id.* at \*10.

280. *Id.*

281. *Id.* at \*10–11.

282. *Id.* at \*11.

283. *Id.* at \*10.

284. *Id.*

Finally, the district court addressed whether the Swampbuster's conditions on USDA benefits are unduly coercive in violation of the limitations on Congress's spending power.<sup>285</sup> As expected, the district court explained:

The Supreme Court's precedent shows that coercion as a limitation on Congress's spending power is based upon a fear of the federal government trampling over the States' sovereignty in areas where states have the power to regulate and the federal government does not. But plaintiff 'is not a governmental body and lacks any sovereignty that can be trampled upon.'<sup>286</sup>

The court concluded that because the coercion factor does not apply to a private entity, a claim that the Swampbuster is unduly coercive holds no weight.<sup>287</sup>

But to its credit, the court also considered the merits of a coercion claim, assuming it could apply to private entities like CTM.<sup>288</sup> The court began by noting that CTM had failed to develop an argument showing that, without USDA benefits, it would suffer injury so severe that compliance with the Swampbuster provisions could be considered coercive.<sup>289</sup> In other words, CTM provided no evidence it would suffer financial catastrophe—or similar injury—without federal benefits.<sup>290</sup>

Further, the court stated that even if the conditions the Swampbuster placed on benefits were unduly coercive, CTM would still have to show that it was forced to give up a constitutional right for its coercion claim to have merit.<sup>291</sup> Because the court found the Swampbuster does not require plaintiff to give up any constitutional rights in violation of the unconstitutional conditions doctrine, the coercion argument fell flat.<sup>292</sup>

The court soundly reasoned that the Spending Clause—not the Commerce Clause—applied, that no unconstitutional condition existed, and that no government taking occurred.<sup>293</sup> As to its coercion analysis, CTM's failure to show it would face serious harm without USDA benefits does not undermine the broader argument that courts should consider the Swampbuster's coercive effects on farmers. Rather, it simply suggests CTM is not among the limited number of American farmers whose operations depend on federal support.

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285. *Id.* at \*11.

286. *Id.*

287. *Id.*

288. *Id.*

289. *Id.*

290. *Id.*

291. *Id.*

292. *Id.*

293. *Id.*

Similarly, the requirement a farmer shows actual deprivation of a constitutional right does not displace the argument that the Swampbuster's coercive effects should be considered. A farmer who complies with the Swampbuster can still use the land for several economically viable purposes discussed above and cannot therefore claim a government taking in the form of a conservation easement.<sup>294</sup> But in contrast, a farmer that rejects the Swampbuster's conditions—and accompanying benefits—may be forced from agriculture altogether. In such cases, one might argue that the government has burdened the right to pursue a chosen livelihood, a liberty interest protected under the Due Process Clause, and an issue of increasing interest to courts around the country.<sup>295</sup>

Thus, the district court properly addressed the merits of CTM's case. Although it acknowledged that the coercive effect of spending conditions is not a recognized limitation on private entities, the court still considered the coercion claim and found CTM's arguments came up short. Other courts facing challenges to the Swampbuster should follow the Northern District of Iowa's example. CTM has indicated it will appeal the decision to the Eighth Circuit Court of Appeals.<sup>296</sup>

#### VIII. CONCLUSION

The Swampbuster is a constitutional exercise of Congress's Spending Clause power. The statute is clearly stated and aims to promote the nation's general welfare, with the conditions on USDA benefits enacted to further Congress's interest in preserving wetlands.<sup>297</sup> Given the importance of farmers, courts should consider the coercive impact of conditioning USDA benefits on compliance with the Swampbuster. Realistically, however, most challenges to the Swampbuster are unlikely to involve the level of economic dependence on these benefits that would compel a farmer into compliance.<sup>298</sup> Lastly, the Swampbuster's conditions are not prohibited by other constitutional provisions.<sup>299</sup> The Swampbuster does not impose a regulatory taking because it does not strip a landowner's parcel of all

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294. See 7 C.F.R. § 12.5(b)(iv) (2025); *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1016 (1992).

295. *Golden Glow Tanning Salon, Inc. v. City of Columbus*, 52 F.4th 974, 981 (5th Cir. 2022) (J. Ho, concurring); David E. Bernstein, *The Due Process Right to Pursue a Lawful Occupation: A Brighter Future Ahead?*, 126 Yale L.J. F. 287 (2016).

296. Cami Koons, *Swampbuster Case Dismissed by Federal Judge*, IOWA CAP. DISPATCH (May 30, 2025, at 16:14 CT), <https://iowacapitaldispatch.com/2025/05/30/swampbuster-case-dismissed-by-federal-judge/> [<https://perma.cc/8CS7-E54J>].

297. See 16 U.S.C. § 3821; 7 C.F.R. § 12.1.

298. Edwards, *supra* note 187.

299. *CTM Holdings, LLC v. U.S. Dep't of Agric.*, No. 23-CV-2004-CJW-MAR, 2025 WL 1532146, at \*24 (N.D. Iowa May 29, 2025).

economically viable uses.<sup>300</sup> Nor does the Swampbuster inflict a physical taking in the form of an invasion or a conservation easement.<sup>301</sup> Any physical intrusion or limitation imposed upon a landowner was voluntarily accepted when the landowner requested to participate in the USDA's benefit programs.<sup>302</sup>

For example, and in keeping with the *Shrek* theme from earlier, suppose Shrek took payment from Lord Farquaad on the condition he house Farquaad's fairytale creatures. Shrek could not then turn around and claim Farquaad took his swamp without payment. At best, Shrek could argue that, without Farquaad's payment, he could not survive and was thus compelled into sheltering the fairytale creatures. This is precisely what this Note suggests; the federal government does not take a landowner's wetland via the Swampbuster—but may infrequently coerce obedience.

Additionally, even if the Swampbuster were authorized by the Commerce Clause, it would still stand as a constitutional exercise of congressional power.<sup>303</sup> The statute is rooted in Congress's legitimate interest in protecting the nation's wetlands, which have a substantial effect on interstate commerce, particularly through their role in supporting migratory bird populations.<sup>304</sup>

While the district court ultimately decided CTM lacked standing to bring its claim, the court nonetheless addressed the merits of CTM's argument. The court correctly determined that the Swampbuster is a creature of the Spending Clause, imposed no unconstitutional conditions on farm benefits, and could not amount to a government taking. Although the district court rejected the idea that conditions on funds for private entities be reviewed for coerciveness, it still engaged in the analysis in good faith. The court found CTM failed to provide evidence it was coerced by the Swampbuster.

In doing so, the court laid a sound foundation for future courts to follow. Future courts should recognize the Swampbuster as a reasonable and constitutional effort to protect the United States' wetlands while generally allowing landowners to use their farms as they see fit. Ultimately, the Swampbuster remains a valid exercise of Congress's authority under both the Spending Clause and the Commerce Clause of the Constitution of the United States.

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300. 7 C.F.R. § 12.5.

301. *CTM Holdings, LLC*, 2025 WL 1532146, at \*21.

302. 7 C.F.R. § 12.4.

303. U.S. CONST. art. I, § 8, cl. 3.

304. Wayne E. Thogmartin et al., *Potential Economic Consequences Along Migratory Flyways from Reductions in Breeding Habitat of Migratory Waterbirds*, BIOLOGICAL CONSERVATION, Sep. 2023, at 1–2.