



Swampbuster Stands, Part 2: The Constitutionality of Conservation Compliance

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“It is hardly a lack of due process for the Government to regulate that which it subsidizes” (*Wickard v. Filburn*, 1942). That admonition from Justice Robert Jackson, writing for a unanimous Supreme Court, was from the landmark decision upholding the acreage allotment and marketing quota provisions of the Agricultural Adjustment Act of 1938 under the Commerce Clause of the U.S. Constitution. The line provides a fundamental reminder about challenging policy provisions that are part of a subsidy system, including conservation compliance provisions that determine eligibility for federal farm support programs. This article returns to the discussion of a recent unsuccessful challenge to Swampbuster compliance provisions by a farm entity in Iowa (*CTM Holdings LLC v. USDA*). The previous article reviewed the background facts of the case, as well as the decision by the District Court that the plaintiff lacked standing to sue USDA (*farmdoc daily*, [October 9, 2025](#)). The plaintiff, CTM Holdings LLC, also raised constitutional claims against Swampbuster and those claims are reviewed in this article.

Background

A long line of Supreme Court precedent supports the ability of Congress to include conditions on support programs and policies. As a result, courts have consistently found that conservation compliance falls within Congress’s power to tax and spend for the nation’s general welfare (See e.g., *Horn Farms, Inc. v. Johanns* (7th Cir. 2005); *U.S. v. Dierckman* (7th Cir. 2000); *Foster v. USDA* (Dist. S.D. 2022)). The district court ruling in *CTM Holdings, LLC v. USDA* continued this trend and upheld the wetlands conservation compliance provision known as Swampbuster. Specifically, Article I, Section 8, of the U.S. Constitution, gives Congress the “Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States” ([U.S. Const. art.I, §8, cl.1](#)).

However, even when the clause was written, founders debated its meaning. On one side, Madison argued that “the grant of power to tax and spend for the general national welfare must be confined to the” enumerated powers granted to Congress that come later in Article I, Section 8 (*U.S. v. Butler*). On the other side, Hamilton argued that power to tax and spend for the general national welfare is “separate and

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distinct from those later enumerated” and it is “limited only by the requirement that it shall be exercised to provide for the general welfare of the United States” (*Butler*). Over a century and a half later, in 1938, the Supreme Court settled this debate by ruling in *U.S. v. Butler*, which upheld Hamilton’s interpretation. In the years following the ruling *Butler*, the Court took several opportunities to further explain this unique, limited, power (See *Koontz v. St. Johns River Water Management District* (2013); *South Dakota v. Dole* (1987); *Pennhurst State School and Hospital v. Halderman* (1981); *Massachusetts v. U.S.* (1978); *Oklahoma v. Civil Service Commission* (1947); *Helvering v. Davis* (1937)).

Discussion

Claim I: Violation of the Commerce Clause

CTM attempted to claim that Swampbuster was an invalid exercise of Congress’s commerce power. In general, Congress’s commerce power is limited to regulating channels, instrumentalities, and goods in interstate commerce, or intrastate activities that have a substantial effect on interstate commerce (citing *U.S. v. Lopez* (1995)). CTM tried to argue that conservation compliance was beyond the commerce power of Congress because wetlands are neither channels, instrumentalities, nor goods in interstate commerce. It also argued that wetlands do not have a substantial effect on interstate commerce.

According to the district court, however, CTM “misses the point” on Swampbuster because Congress did not enact the provision under its power to regulate commerce. Congress enacted Swampbuster under its power to tax and spend for the general welfare, as a condition on the provision of subsidies to farmers. Relying on the Supreme Court opinion in *Dole*, the district court found that “Swampbuster fits squarely into [the] category” of a conditional grant of federal funds, and, thus, is constitutional under the taxing and spending clause (citing *Dole*, at 206).

Congress’ power is not unlimited, however. Over time, the Supreme Court has explained five limitations to Congress’s taxing and spending power. First, Congress’s spending power “must be in pursuit of the general welfare.” Second, when Congress conditions funding, it must “do so unambiguously.” Third, the conditions must relate “to the federal interest in particular national projects or programs.” Fourth, the “conditions must not be prohibited by other constitutional provisions.” And lastly, the conditions “must not be so coercive that ‘pressure turns into compulsion.” (*CTM Holdings, LLC*, at *9). Swampbuster, as a condition on farm subsidies to avoid converting wetlands to farmlands with federal dollars, passed the general welfare test.

Claim II: Unconstitutional Condition – Commerce Clause

CTM next attempted to have the court apply the fourth and fifth limitations: Congress cannot create conditions that are prohibited by other constitutional provisions, and the conditions cannot be unduly coercive. These limitations are generally known as the unconstitutional condition doctrine. The unconstitutional condition doctrine holds that “the government may not deny a benefit to a person because he exercises a constitutional right” (citing *Koontz v. St. Johns River Water Management District* (2013)). Overall, the doctrine “vindicates the Constitution’s enumerated rights by preventing the government from coercing people into giving them up.” (*Koontz*, at 604).

Essentially, CTM argued “that because Congress could not regulate intrastate wetlands directly under the Commerce Clause, Congress cannot [regulate wetlands indirectly] through conditional spending” (Plaintiff’s Complaint at 23). In effect, CTM argued that Congress’s power to tax and spend should be confined to the later enumerated powers, specifically, the power to regulate interstate commerce. As the district court pointed out, however, this is the exact argument that the Supreme Court rejected in *Dole*. In *Dole*, the Supreme Court held that “Congress’s spending power is not as narrow as its other enumerated powers, and Congress can therefore condition spending in areas that it could not regulate directly.” (citing *Dole*, at 209).

The district court also easily dismissed the argument that Swampbuster was unduly coercive. The court explained that this limitation is based on “our system of federalism” (citing *National Federation of Independent Businesses v. Sebelius* (2012)). In other words, Congress cannot make conditions so coercive that States are essentially required to regulate. But because CTM is not a state, “it lacks any sovereignty that can be trampled upon” (citing *Horn Farms, Inc.*, at 467).

Claim III: Unconstitutional Condition – Fifth Amendment Takings Clause

Finally, CTM attempted another attack on Swampbuster under the unconstitutional condition doctrine. For this claim, CTM turned to the Fifth Amendment's takings clause. Under the Fifth Amendment of the Constitution, "private property [shall not] be taken for public use, without just compensation" ([U.S. Const. amend. V](#)). CTM argued that "Swampbuster [] requires farmers to transfer a conservation easement to the government that limits farmers' use of wetlands" (Plaintiff's Resistance to Summary Judgment at 18).

As USDA pointed out, however, "Swampbuster does not independently take anything from, or require anything of, the landowner" (Defendant's Motion for Summary Judgment at 16). Instead, under Swampbuster, CTM "can use its land any way it wants at any time. The only consequence is a potential loss of certain USDA benefits." It is less of an easement and more of a contract: "[CTM] is voluntarily accepting the government's offer by accepting USDA benefits. In return, [CTM] is promising to not destroy or alter its wetlands in a way that makes the cultivating of an agricultural commodity possible on that land." (*CTM Holdings, LLC*, at *10).

The district court agreed with USDA's argument and went further. The court pointed out the "peculiar" nature of the company's argument stating, "[CTM's] remedy under its Takings Clause argument would be compensation. But [CTM] is receiving compensation in the form of USDA benefits in return for not using its wetlands in a certain way" (*CTM Holdings, LLC*, at *10). In other words, the takings clause does not prevent a taking of private property but conditions any taking on the payment of just compensation. Again, CTM was not prevented from draining the wetland, nor was it forced into an easement on its property. CTM agreed to these conditions as part of a contract with the federal government for the receipt of taxpayer funds in the form of federal subsidies. If that constitutes a taking, which it is difficult to see how it would, any taking was compensated by the subsidies received.

Conclusion

Although the district court did not invoke the landmark case *Wickard v. Filburn*, the similarities are notable and many of the Supreme Court's findings are applicable to Swampbuster and CTM. In summary, that case involved a farmer who planted wheat above his allotment and exceeded the marketing quota instituted by USDA. He was penalized and challenged the provisions as unconstitutional. Mr. Filburn had a fundamental problem with his case in that he was benefiting from the price-supporting loans that were part of the policy scheme to help farmers. Having agreed to abide by the conditions on federal support, he had only a few choices: he could either comply with the conditions of his contract, or he could pay the penalty. Instead, he challenged the constitutionality of the Act, making it all the way to the United States Supreme Court. The Court concluded unanimously that the policy was within the commerce powers of Congress and that such powers extended all the way to local activity if "it exerts a substantial economic effect on interstate commerce" regardless of whether that effect was direct or indirect (*Wickard*, at 125). Arguably more pertinent to CTM, the Court also stated that, under the Act, "the Government gave the farmer a choice which was, of course, designed to encourage cooperation and discourage non-cooperation." In the Court's view, "if [Mr. Filburn] could get all that the Government gives and do nothing that the Government asks, he would be better off than [the Act] allows." And denying him the opportunity to be "better off," did not violate his constitutional rights (*Wickard*, at 133).

Similarly, conservation compliance gives farmers a choice that is designed to encourage cooperation and discourage non-cooperation. Conservation compliance is a condition on the contract for federal, taxpayer-funded subsidies. If a farmer chooses to convert wetlands or plow highly erodible soils with no conservation plan, then they are not eligible for certain USDA benefits; if they want to receive the benefits, they must agree to conserve those ecologically sensitive areas. In other words, with Swampbuster, the Government is saying a farmer or landowner can convert wetlands into a commodity crop, but because wetlands are of high value to society, society is not going to pay them to do so. To borrow another line from *Wickard*, "[i]t is of the essence of regulation that it lays a restraining hand on the self-interest of the regulated and that advantages from the regulation commonly fall to others." (*Wickard*, at 129).

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