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NCLA Argues Against Unconstitutional and Dangerous Federal Government Control over State Taxes

State of Kentucky and State of Tennessee v. Janet Yellen, et al.

Washington, DC (March 21, 2022) – The “Tax Cut Ban” provision of the [American Rescue Plan Act of 2021 \(ARPA\)](#) encroaches in an unprecedented way on a core power exclusively assigned to the states—the power to change or reduce a state’s taxation of its own citizens. Congress has imposed this novel condition on spending through ambiguous legislation and an unconstitutional delegation to the U.S. Department of Treasury, which in turn published a Final Rule that only makes the constitutional violations worse. The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, has filed an [amicus brief](#) in *Kentucky and Tennessee v. Yellen, et al.*, in the U.S. Court of Appeals for the Sixth Circuit. NCLA argues that Congress’s attempt to arrogate state legislative powers to reduce taxes or otherwise change taxation policy violates several bedrock provisions of the U.S. Constitution that define and constrain federal lawmaking.

ARPA offers nearly \$200 billion to states and their residents to assist with economic recovery from the Covid-19 pandemic, on the condition that those states not use the funds “to either directly or indirectly offset a reduction in the net tax revenue ... resulting from a change in law, regulation, or administrative interpretation ... that reduces any tax.” Treasury issued a [Final Rule](#) on January 27, 2022, that purported to implement the Tax Cut Ban through a convoluted process whereby state officials must estimate and report to Treasury whether any change in state law or policy reduces tax revenue and the amount of such reduction that was offset directly or indirectly by ARPA funds.

Federal direction of state tax policy violates the Constitution’s structure. Two limitations on Congress ensure that Spending Clause conditions do not violate state sovereignty. *First*, Congress may not coerce states into accepting a spending condition by threatening to withhold the return of large amounts of federal taxes taken from the states’ own citizens and businesses. In other words, no coercing. *Second*, the federal government may not use spending conditions to “direct the functioning of the state [government], and hence to compromise the structural framework of dual sovereignty.” In other words, no commandeering officials. ARPA’s Tax Cut Ban violates both limitations.

NCLA agrees with the Plaintiff states, Kentucky and Tennessee, that these constitutional limits on ARPA funding are not alterable by private, state, congressional, or executive consent. The Supreme Court has determined that financial inducement crosses over into unconstitutional coercion if it is so large it amounts to “a gun to the head.” The U.S. District Court for the Eastern District of Kentucky found that Kentucky and Tennessee are threatened with losing “amounts equal to roughly *one-fifth* of their general fund revenues for the preceding year.” That court ruled that sum made ARPA’s restrictions an unconstitutionally coercive grant of federal money and enjoined the enforcement of the Tax Cut Ban. NCLA has encouraged the Sixth Circuit to uphold that ruling.

NCLA released the following statements:

“Every court that has analyzed the Tax Cut Ban on the merits has found it to be unconstitutional. Congress’s attempt to use its own tax-and-spend powers to control states’ taxation and spending clearly violates the Constitution’s federal structure, which exists to safeguard personal liberty from government intrusion.”

— **Sheng Li, Litigation Counsel, NCLA**

“The pandemic has emboldened all levels of government to exceed their powers. Congress cannot condition states’ receipt of pandemic relief funds on surrender of state taxing power. By attempting to arrogate such control, Treasury intrudes on core state sovereignty, federalism, and the self-governance of Americans’ who vote for *state* officials who will be accountable for *state* tax policy.”

— **Peggy Little, Senior Litigation Counsel, NCLA**

For more information visit the case page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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