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NCLA *Amicus* Contests Congress' Tax Cut Ban that Unlawfully Seizes State Taxing Authority

State of West Virginia, et al. v. United States Department of the Treasury, et al.

Washington, DC (April 30, 2021) – In the boldest federal power grab in recent memory, Congress is attempting to usurp the sovereign powers of the States and seize their taxing authority. [The American Rescue Plan Act of 2021 \(ARPA\)](#), signed by President Biden on March 11, includes a Tax Cut Ban that requires States receiving federal rescue funds to give up their ability to decrease taxes for three or more years.

The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed an [amicus brief](#) today in the U.S. District Court for the Northern District of Alabama against the U.S. Department of Treasury, arguing that the Tax Cut Ban is an unprecedented and unconstitutional seizure of state taxing power by Congress. The Ban is unconstitutional because it places a coercive condition on spending, commandeers state government officials in violation of the Tenth Amendment, and assaults a core component of state sovereignty that is pre-Constitutional.

ARPA authorizes distributing roughly \$195 billion directly to States to provide financial assistance to address the economic disruptions caused by the COVID-19 pandemic and other infrastructure and broadband initiatives. But those funds, which represent in many cases 20-30% of a State's overall budget, are available *if and only if* a recipient State agrees not to pass any laws or regulations that would decrease state taxes. Any action taken by a recipient State that directly or indirectly reduces state tax revenue subjects them to a federal clawback of the rescue funds. Given the well-understood fungibility of money, and the ambiguous and illogical condition forbidding taxation policy that directly or indirectly lowers taxes, the Tax Cut Ban is forbidden by the Constitution. Providing economic relief to the States bears no reasonable relation to a Tax Cut Ban. The power of taxation is a core power of state legislatures, which are far better positioned, responsive, and nimble in determining what sectors of their economy would benefit from a tax cut.

ARPA's enforcement provisions, along with the broad and ambiguous scope of the Tax Cut Ban, effectively freeze state tax law and policy for over three years, against the will of the state legislatures. This Ban takes away Americans' rights to govern themselves under the clause of the Constitution that guarantees the States a Republican form of state government. Congress instead has arrogated to itself the power to determine a national taxation response. Congress can't do that, so the Tax Cut Ban cannot stand.

NCLA released the following statements:

“Congress has no power to control how the sovereign states tax—or provide tax relief to—their residents. It cannot acquire that power by making it a condition of receiving federal taxpayer dollars—money collected from the States' citizens. This unprecedented—even breathtaking—seizure of power undermines the entire structure of American government power and should be swiftly declared unconstitutional and enjoined by the courts.”

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

"The ban on state tax cuts bears no relation to Congress' goal, which is to provide economic relief to individuals still reeling from the Covid-19 pandemic. Preventing a State from lowering those individuals' taxes has the opposite effect; those suffering economic hardship would surely welcome a cut in their tax bills."

— **Rich Samp, 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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