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**In NCLA Amicus Win, Sixth Circuit Strikes Down Congress’s Unconstitutional State Tax Cut Ban**

*Commonwealth of Kentucky and State of Tennessee v. Janet Yellen, in her official capacity as Treas. Sec’y, et al.*

**Washington, DC (November 22, 2022)**—The U.S. Court of Appeals for the Sixth Circuit has [affirmed](#) a lower court decision prohibiting the Secretary of the Treasury from enforcing an unconstitutional “Tax Cut Ban” against the state of Tennessee. The New Civil Liberties Alliance filed an [amicus curiae brief](#) in *Commonwealth of Kentucky and State of Tennessee v. Janet Yellen, et al.*, contesting Congress’s attempt to usurp state taxing authority. The American Rescue Plan Act (ARPA), enacted on March 11, 2021, includes a short—but constitutionally alarming—provision, which impermissibly seizes taxing authority from state governments.

ARPA authorizes distributing roughly \$195 billion directly to states, but bars states from enacting tax cuts or using those funds to “directly or indirectly offset a reduction in [their] net tax revenue.” Because money is fungible, enacting *any* tax cut and then spending ARPA funds could be construed as an impermissible indirect offset. This vague condition upends the Constitution’s structure by prohibiting states that accept ARPA funds from reducing their own taxes. The federal government cannot rely on unclear language to purchase the submission (or consent) of any lesser body, in this case, the sovereign states. State taxation must remain firmly and exclusively in the hands of locally elected legislatures. NCLA argues in its brief that it is both unconstitutional and dangerous to centralize control over state taxes in the hands of federal officials.

Judge John K. Bush, delivering the opinion of the court, found that the Tax Cut Ban “is impermissibly vague under the Spending Clause.” NCLA contends that the Tax Cut Ban not only unconstitutionally uses vague language to commandeer state tax policy, but Treasury’s Final Rule compounds this violation by forcing state officials to establish an unwanted and convoluted accounting-and-reporting bureaucracy. Judge Bush wrote that the three-judge panel was particularly concerned with these related compliance costs, specifically the additional labor and other expenses that Tennessee would incur to ensure that its recent and proposed tax cuts do not violate the Tax Cut Ban. Judge Bush concluded that “Treasury cannot use its Rule to impose compliance requirements upon Tennessee that are not clearly authorized by the [Tax Cut Ban] itself.”

No enumerated power in the Constitution confers authority upon Congress to pass statutes that direct, let alone micromanage, state tax policy. Congress may tax and spend, but Congress’s spending power has limits, and the Tax Cut Ban’s spending condition on the states exceeds Congress’s authority under the Spending Clause. The Sixth Circuit correctly found that Tennessee has met the conditions for injunctive relief to prevent the ongoing harm that this constitutional violation causes.

**NCLA released the following statements:**

“Congress’s Tax Cut Ban is not only unconstitutional—it is unworkable. Court after court reaching the merits has recognized that this is an unintelligible and unconstitutional incursion on state sovereignty that eviscerates Americans’ rights to be governed by consent—and accountability. The Constitution confers no enumerated power on Congress to determine state tax policy.”

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

“The Sixth Circuit correctly concluded that Congress’s ‘indirectly offset’ spending condition was unconstitutionally vague. Treasury cannot fix that vagueness with a regulation because it has no greater insight into what the condition requires than the court or anyone else. As such, Treasury’s attempt to ‘clarify’ the unintelligible condition through regulation amounts to an impermissible enactment of its own agency-created Spending Clause condition.”

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

For more information visit the *amicus* brief 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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