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Sovereignty Is Not for Sale: NCLA Challenges Congress' Seizure of States' Taxing Authority

State of Texas, et al. v. Janet Yellen, in her official capacity as Secretary of the Treasury, et al.

Washington, DC (October 4, 2021) – The “Tax Cut Ban” provision within the [American Rescue Plan Act of 2021 \(ARPA\)](#) upends the structure of American Constitutionalism as we know it. Today, the New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed an [amicus brief](#) in *State of Texas, State of Louisiana, and State of Mississippi v. Yellen, et al.* in the U.S. District Court for the Northern District of Texas. NCLA argues that the conditions of the Tax Cut Ban violate several aspects of the Constitution, commandeer state officials, eviscerate federalism, and deny Americans a Republican form of state government. Further, the ban’s conditions are ambiguous and the regulations issued by Treasury cannot cure the nondelegation problem created by an ambiguous statute. Simply put, Congress cannot purchase states’ sovereign power of taxation.

ARPA, enacted on March 11, 2021, led to the U.S. Department of Treasury’s guidelines for the Tax Cut Ban, which impermissibly restrict states that receive aid from using the funds to “either directly or indirectly offset a reduction in the net tax revenue.” The stimulus package offers approximately \$200 billion to states to assist with recovery from the economic damage inflicted by the COVID-19 pandemic. For most states, the ARPA funds represent 20-30% of a state’s overall budget. The unprecedented need for assistance arising from the COVID-19 pandemic, combined with the dramatic financial incentive ARPA funds represent, makes it impractical for the Plaintiff states to refuse funds raised from their own taxpayers to which they are entitled.

In *New York v. United States*, 505 U.S. 144 (1992), the Supreme Court recognized that “Where Congress exceeds its authority relative to the states, ... the departure from the constitutional plan cannot be ratified by the ‘consent’ of state officials.” Looking at it through the lens of enumerated powers, the Court concluded, “[s]tate officials ... cannot consent to the enlargement of the powers of Congress beyond those enumerated in the Constitution.” The Supreme Court also recognized, in *NFIB v. Sebelius*, the clear danger posed to federalism by the unfettered use of federal tax and spending powers.

Two federal court rulings have already permanently enjoined the Secretary of the Treasury from enforcing the Tax Cut Ban provision of ARPA in Ohio, Tennessee, and Kentucky. NCLA filed an *amicus* brief in [State of Ohio v. United States Department of the Treasury, et al.](#) In the lawsuit, U.S. District Court Judge Douglas Cole noted Treasury conceded “the Tax Mandate may be ambiguous” as written and [found](#) that “[d]espite poring over this statutory language, the Court cannot fathom what it would mean to ‘indirectly offset a reduction in the net tax revenue’ of a State, by a ‘change in law ... that reduces any tax.’” But Treasury cannot resolve the Tax Cut Ban’s ambiguities through regulations. Congress would need to lay out clear statutory boundaries. U.S. District Court Judge Gregory Van Tatenhove [concluded](#) in a separate action filed by Kentucky and Tennessee that the Tax Cut Ban was unconstitutionally coercive.

The U.S. District Court for the Northern District of Texas should declare the Tax Cut Ban unconstitutional and enjoin its enforcement in the Plaintiff states.

NCLA released the following statements:

“In the boldest power grab in recent history, Congress is attempting to seize state taxing authority from the states and coerce them not to reduce taxes. This wildly unconstitutional arrogation of power to prevent Texas, Louisiana and Mississippi from providing their residents with state tax relief is lawless, to say nothing of politically tone-deaf in times of pandemic.”

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

“This law empowers unelected bureaucrats at the Department of Treasury to police tax and budgetary policies of every state, eviscerating federalism and the separation-of-powers structure that undergirds the Constitution. The potential for arbitrary and abusive enforcement against politically disfavored states is immense.”

— **Sheng Li, 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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