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**Media Inquiries:** [Ruslan Moldovanov](mailto:ruslan.moldovanov@ncla.org), 202-869-5237

## **In NCLA Amicus Win, Fifth Circuit Upholds Permanent Block on Treasury's Illegal State Tax Cut Ban**

*State of Texas; State of Mississippi; State of Louisiana v. Janet Yellen, Richard K. Delmar, U.S. Department of the Treasury, United States of America*

**Washington, DC (June 26, 2024)** – Late yesterday, the U.S. Court of Appeals for the Fifth Circuit [affirmed](#) a permanent injunction in *States of Texas, Mississippi, Louisiana v. Yellen*, shutting down the American Rescue Plan Act's (ARPA) Tax Cut Ban condition that required the States to surrender their ability to decrease state taxes on their citizens in exchange for receiving federal rescue funds. NCLA [filed](#) *amicus curiae* briefs supporting the injunction, identifying the Tax Cut Ban as an attempt by Congress and the Treasury Department to usurp state legislative powers and prerogatives. The Ban violated bedrock provisions of the U.S. Constitution that define and constrain federal lawmaking. The Fifth Circuit ruled that Congress failed to meet its constitutional duty to make clear rules when it passed the Tax Cut Ban, finding the statute too ambiguous. The ruling marks NCLA's third *amicus* win on appeal over this issue—following [Commonwealth of Kentucky and State of Tennessee v. Janet Yellen](#) and [West Virginia v. U.S. Department of the Treasury](#), in the Sixth and Eleventh Circuits.

ARPA authorized distributing roughly \$195 billion directly to States to provide financial assistance to address the economic disruptions caused by the Covid-19 pandemic. The funds at issue here represented 13 percent of Texas's 2021 budget, 31 percent of Mississippi's budget, and 7 percent of Louisiana's budget. Those funds were made available *if and only if* a recipient State agreed not to pass any laws or regulations that would decrease state taxes. NCLA argued that after Congress passed ARPA, it unconstitutionally delegated authority to the U.S. Department of the Treasury, which in turn published a Final Rule in January 2022, purporting to implement the Tax Cut Ban. A State had to consult the Treasury's rule to test every policy decision or else risk rescue funds being clawed back. The Fifth Circuit ruled that the Tax Cut Ban's ambiguity made it impossible for a State to knowingly accept the Treasury's rule, making it unenforceable and thus invalid.

"The federal defendants ... argue that any ambiguity has been eliminated by Treasury's subsequent regulations," Judge Elrod wrote for the Fifth Circuit. "But the regulations are of no help. In arguing that statutory ambiguity can be vitiated by regulatory enactments in the context of the Spending Clause, the federal defendants claim a remarkably broad power for federal administrative agencies. But this claim is remarkably wrong."

The Tax Cut Ban also unconstitutionally commandeered state officials, and the Treasury's Final Rule compounded this violation by forcing state officials to establish and staff an unwanted and convoluted accounting-and-reporting bureaucracy. No enumerated power in the Constitution confers authority upon Congress to pass statutes that direct, let alone micromanage, state tax and accounting personnel. NCLA commends the Court for stopping this Congressional abuse of spending powers to regulate state taxation.

**NCLA released the following statements:**

“NCLA’s victory means the federal government cannot abuse its spending power to control States’ ability to set their own taxes. We are happy to see the Fifth Circuit join its sister circuits in halting this ham-fisted attempt to abridge State sovereignty.”

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

“The Fifth Circuit joins other circuit courts in recognizing that Congressional conditions on spending must observe legal and constitutional constraints essential to federalism—and must do so with clarity. NCLA is pleased that Judge Elrod’s decision holds Congress’s feet to that fire.”

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

**For more information visit the *amicus* 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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