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NCLA Amicus Brief Asks Sixth Circuit to Uphold Decision Setting Aside ARPA’s Ban on State Tax Cuts

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

Washington, DC (October 20, 2021) – An [amicus brief](#) filed Tuesday by the New Civil Liberties Alliance argues that Congress and the U.S. Treasury Department violated several bedrock provisions of the U.S. Constitution by including a “State Tax Cut Ban” in the [American Rescue Plan Act of 2021 \(ARPA\)](#). The brief filed in *Ohio v. Yellen, et al.* in the U.S. Court of Appeals for the Sixth Circuit says the provision is a historically unprecedented usurpation of each state’s sovereignty to direct its own fiscal policy and make choices about how to tax residents.

Enacted in March 2021, ARPA offers approximately \$195 billion to states and their residents to assist with economic recovery from the COVID-19 pandemic. But that relief comes with the caveat that states must not use the funds “to either directly or indirectly offset a reduction in the net tax revenue of such State ... resulting from a change in law, regulation, or administrative interpretation ... that reduces any tax.”

NCLA argues that, whatever else the Constitution permits, state taxation must remain firmly in the unfettered hands of locally elected legislatures. It is not only unconstitutional but dangerous to centralize control over taxes with federal officials, whether members of Congress, the Executive Branch, or, as here, both branches.

The Supreme Court recognized as much in *New York v. United States* (1992), ruling that Congress cannot direct states in their choices of how to govern; it cannot require them to carry out specific federal regulations; nor can it “require the States to govern according to Congress’ instructions.” The state electorate votes for *state* officials who will decide—and be accountable for—state fiscal policy. Congress’s arrogation of power over state taxation and delegation of it to the Treasury Department disenfranchises the state electorate, robs citizens of self-government at the state level, and violates the U.S. Constitution.

In July 2021, U.S. District Judge Douglas Cole [permanently enjoined](#) Treasury Secretary Janet Yellen from enforcing the Tax Cut Ban provision of ARPA in Ohio. NCLA had filed an [amicus brief](#) in support of Ohio in the U.S. District Court for the Southern District of Ohio. Last month, Treasury filed an appeal in the Sixth Circuit, asking the court to reverse the injunction barring the Tax Cut Ban. NCLA joins Ohio in asking the Sixth Circuit to uphold the lower court’s ruling.

NCLA released the following statements:

“Congress has no power to dictate state tax policy, and Treasury has no auditing control over state finances. Yet ARPA would allow federal officials to impose draconian and unreviewable penalties on any states Treasury deems to be cutting state taxes. The Treasury regulations implementing ARPA show just how far we have drifted from our original constitutional design of dual sovereignty, where state officials accountable to the people who elected them decide whether, and to what extent to tax them.”

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

“The Constitution ensures individuals have the right to local self-government by guaranteeing the independence of states. So, a state that trades away its independence, even without coercion, violates its own citizens’ right to self-government. Of course, control over taxation is absolutely necessary for state independence. States cannot contract away this power for the same reason individuals cannot contract away their personal freedom.”

— **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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