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NCLA Notches Yet Another Amicus Win Against Congress's Unconstitutional State Tax Cut Ban

State of Texas, et al. v. Janet Yellen, et al.

Washington, DC (April 13, 2022) – The U.S. District Court for the Northern District of Texas handed down a ruling on Friday in *Texas, et al. v. Yellen, et al.* that permanently prohibits the Secretary of the Department of Treasury from enforcing an unconstitutional "Tax Cut Ban" against the states of Texas, Louisiana, and Mississippi. The ruling marks the third consecutive *amicus* win for the New Civil Liberties Alliance at the District Court level in suits over this law—including *Ohio v. Yellen, et al.* and *West Virginia, et al. v. Yellen, et al.*—contesting Congress's attempt to usurp state taxing authority.

On March 11, 2021, President Biden signed the American Rescue Plan Act (ARPA) into law, allocating nearly $200 billion to states to mitigate the fiscal effects of the Covid-19 pandemic. But in an historically unprecedented move, Congress attached a condition on the receipt of ARPA funds: the states must surrender their core taxing power. A provision in ARPA, the Tax Cut Ban, prohibits states from using ARPA funds "to either directly or indirectly offset a reduction in the net tax revenue … resulting from a change in law, regulation, or administrative interpretation … that reduces any tax." ARPA further authorizes Treasury to claw back any funds spent in violation of the Tax Cut Ban.

In his ruling, U.S. District Court Judge Matthew Kacsmaryk found "Congress exceeded its Spending Clause authority and violated the anti-commandeering doctrine when it enacted [the Tax Cut Ban]." Judge Kacsmaryk held that Congress cannot order states to waive a sovereign power through "a conditional offer a State cannot refuse." The Supreme Court has determined that financial inducement crosses over into unconstitutional coercion when the amount is so large that it puts "a gun to the head" of recipients. Here, the ARPA funds dangled in front of the states are approximately 22 percent of all states' annual general-fund budgets. Accordingly, Congress has unlawfully coerced states into accepting a spending condition by offering a massive amount of funding.

Judge Kacsmaryk further concluded that "of all the powers the Constitution reserves to the States, there is no power more central to state sovereignty than the power to tax." 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 Court found that the Plaintiff states have met the conditions for injunctive relief to prevent the ongoing harm that this constitutional violation is causing. Thus, the Court permanently enjoined the Secretary from enforcing the Tax Cut Ban against the states of Texas, Louisiana, and Mississippi.

NCLA released the following statement:

"All federal courts to have reached the merits to date have held that Congress cannot use its spending power to intrude upon the states' sovereignty and dictate to them that they may not cut state taxes, even indirectly. These courts have fulfilled their duty to enforce the Constitution and stop Congress from controlling state budget matters leagues beyond the enumerated powers conferred upon the national legislature by the Constitution."
— **Peggy Little, Senior 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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