FILED
2021 May-14 PM 03:08
U.S. DISTRICT COURT
N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

STATE OF WEST VIRGINIA, *et al.*, Plaintiffs, v. U.S. DEPARTMENT OF THE TREASURY, *et al.*, Defendants.	Case No. 7:21-cv-00465-LSC

REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Legislative Bills

Other Authority

The federal government has used a once-in-a-century pandemic to launch a first-of-its-kind invasion into the sovereignty of the States. Knowing that States and their people are struggling to recover from the COVID-19 crisis, and that only the federal government can quickly amass trillions of dollars, the federal government borrowed extraordinary sums on behalf of taxpayers and made them a "generous" offer of a few hundred billion dollars, care of their State governments. Doc. 54 at 21. Like nearly all Spending Clause legislation, ARPA tells States how they must spend that money. But unlike any law before it, ARPA also tells States how they must exercise their authority over *any* decision that might lower *state* revenue. That is why any State that receives funds must, for years to come, report to Defendants "all modifications to the State's … tax revenue sources." 42 U.S.C. § 802(d)(2).

Despite these facts, Defendants suggest that the Tax Mandate is merely a "straightforward" provision that "ensure[s] that the new federal funds [will] be used for the" four purposes outlined in ARPA. Doc. 54 at 1. But that's not right, for ARPA's requirement that the money be spent on the purposes listed in § 801(c)(1) already accomplishes that goal. The Tax Mandate does something more—dictating what a State must not do with its sovereign taxing authority and other State funds.

Worse still, under ARPA's Tax Mandate, States are actually better off lighting State dollars on fire than returning them to State taxpayers. Here's why. If a State had planned to spend $1 billion of State funds on COVID relief, it is free to move

that money aside and instead spend $1 billion of ARPA funds on COVID relief. The State can then spend that $1 billion of State funds on anything it pleases without any recoupment risk—as long as the taxpayer money isn't returned to taxpayers. The State could build a football stadium, buy a fleet of yachts, or even burn the money in a bonfire with no federal penalty. But if the State uses the surplus State funds for tax relief, it will pay a steep price.

This absurdity reflects the Tax Mandate's unconstitutionality. First, it underscores the coercive nature of the mandate, for like the requirement invalidated in *NFIB v. Sebelius*, 567 U.S. 519 (2012), the Tax Mandate goes beyond requiring States to spend federal dollars as directed. To obtain sorely needed funds, States must accept restrictions on all decisions regarding revenue for years to come.

Second, the Tax Mandate is not germane to ARPA's purpose because the provision "does not mandate any particular spending … level" on COVID relief. Doc. 54 at 21. To the contrary, it *penalizes* States for tax cuts and credits that promote COVID relief, while leaving States free to spend surplus State funds on anything but tax relief. Thus, the Tax Mandate's aim is not an increase in COVID relief, but rather an increase in the size of government for big government's sake. The Tax Mandate thus fails *South Dakota v. Dole*'s germaneness test. And for similar reasons, the Tax Mandate fails under the anticommandeering doctrine. Indeed, the Mandate's perverse effects suggest that commandeering is its raison d'être.

Third, the Tax Mandate must also be invalidated because it is ambiguous. When Congress seeks to use the Spending Clause to alter the relationship between the federal government and the States, Congress must offer unmistakable clarity. Defendants' own trouble interpreting this provision confirms that it cannot be constitutionally applied. And the Treasury Department's recently issued interim final rule cannot make that unconstitutional provision constitutional.

The Tax Mandate has been harming Plaintiffs since it went into effect March 3, 2021, as any reduction in revenue considered or enacted since has been under a cloud of uncertainty. Plaintiffs have passed tax cuts and credits that they may need to amend or repeal soon because the laws will likely trigger ARPA's pre-disbursement certification provisions, ongoing reporting provisions, and then possibly the recoupment provision. Moreover, the Alabama Legislature recently tabled a needed tax cut due at least in part to the lack of clarity on ARPA's reach. Thus, even if Plaintiffs later prevail in recoupment proceedings, harm from the Tax Mandate is already occurring and is irreparable. This Court should ameliorate these harms by enjoining all three aspects of the enforcement of the Tax Mandate.

I. The Tax Mandate Is Unconstitutional.

A. The Tax Mandate Exceeds Congress' Spending Clause Authority.

The Tax Mandate is coercive. ARPA's Tax Mandate requires Plaintiff States to sacrifice either core elements of their sovereignty or billions of dollars of relief

funds the States cannot realistically turn down in the aftermath of the pandemic. In short, Congress has impermissibly used "financial inducements to exert a 'power akin to undue influence.'" *NFIB*, 567 U.S. at 577 (op. of Roberts, C.J.).[1]

Defendants respond that "[n]othing in the Constitution or Spending Clause jurisprudence gives States the broad right to do whatever they want with federal funds." Doc. 54 at 22. True enough, but Plaintiffs have never contested whether the federal government can require States to spend *federal* funds on the four purposes in § 802(c)(1). The problem is that the Tax Mandate does far more—it regulates how States may use *State* funds. The coercion test applies to Spending Clause laws that "pressur[e] the States to accept policy changes." *NFIB*, 567 U.S. at 580. The Tax Mandate's restriction on direct or indirect state tax cuts pressures States into adopting a particular—and federally preferred—tax policy. While Defendants try to frame the Tax Mandate as a garden-variety restriction on the use of federal funds, Congress cannot evade the limits on its authority by artful drafting. *Id.* at 582.

Defendants attempt to distinguish *NFIB* by arguing that the conditions at issue there threatened not just prospective funds, but funds that States had received in past years. Doc. 54 at 23–24. *NFIB*, however, relied not on the fact that the threatened funds were pre-existing, but that they were *distinct* from the challenged condition. *NFIB*, 567 U.S. at 580 (noting importance of "threats to terminate other significant

[1] Citations to *NFIB* are to the controlling opinion of Chief Justice Roberts.

independent grants"). Defendants admit that *NFIB* emphasized that for States to receive old Medicaid funds, they had to agree not only to spend the funds on old Medicaid, but also to implement additional policy changes. Doc. 54 at 23. The same is true here. To receive ARPA funds, States must agree not only to spend them on ARPA purposes, but to implement only those tax policies approved by the federal government. *Id.* Thus, the Tax Mandate is not a way to direct federal funds, but rather a way to control States' pocketbooks.

Finally, the Tax Mandate is not more "modest" than the statute at issue in *NFIB* simply because the Secretary may recoup only a portion of the funds a State receives. *See* Doc. 54 at 24. The Tax Mandate's problem is not only the amount of money States stand to lose if they violate the condition (which is an "all or nothing proposition" for an as-yet undisclosed amount), but the sovereignty they must sacrifice to obtain the money. "[T]he size of the new financial burden imposed on a State is irrelevant in analyzing whether the State has been coerced into accepting that burden. 'Your money or your life' is a coercive proposition, whether you have a single dollar in your pocket or $500." *NFIB*, 567 U.S. at 582 n.12.

The Tax Mandate is unrelated to ARPA's purpose. Because restricting States' ability to use their funds for tax cuts is wholly unrelated to ARPA's purpose of providing COVID relief, the Tax Mandate violates the requirement that spending conditions be germane to the purposes of the grant. *See New York v. United States*,

505 U.S. 144, 167 (1992). Defendants claim that the Tax Mandate "ensure[s] that the broad outlay of funds is used for the identified purposes." Doc. 54 at 6. It doesn't. States are already required by 42 U.S.C. § 802(c)(1) to spend the federal funds on ARPA's identified purposes. And unlike the maintenance-of-effort conditions cited in Defendants' brief, *see* Doc. 54 at 19-21, the Tax Mandate "does not mandate any particular spending … level" on COVID relief. *Id.* at 21. A State could zero out its spending on COVID, fund those expenditures with ARPA funds, and use the surplus State funds on *anything* except tax relief. Thus, beyond clarifying that a COVID-relief tax cut does not fall within § 802(c)(1), the Tax Mandate does nothing to further the goal of providing COVID relief. Indeed, by allowing States to spend State funds on non-COVID purposes while punishing them for providing tax relief to those affected by the pandemic, the Tax Mandate undercuts ARPA's ultimate goal. After all, ARPA itself provides tax relief. *See* ARPA, Pub. L. No. 117-2, § 9621 (expanding earned income tax credit), § 9673 (exempting small business revitalization funds). And ARPA allows localities to provide otherwise forbidden tax relief by providing them funds free from any Tax Mandate. *See* 42 U.S.C. § 803.

The Tax Mandate is ambiguous. Ambiguous Spending Clause provisions are unconstitutional. *South Dakota v. Dole*, 483 U.S. 203, 207 (1987). Secretary Yellen admits that interpreting the Tax Mandate presents "thorny" issues, and Defendants' counsel indicated at the initial hearing in this case that Defendants were still figuring

out how the Tax Mandate applies to States. The Tax Mandate thus fails to provide the clarity required for Spending Clause conditions.

The Tax Mandate can "plausib[ly]" be read to cover varying scopes of conduct. *See Graham Cnty. Soil & Water Conservation Dist. v. United States*, 545 U.S. 409, 419 n.2 (2005) (holding that statute is ambiguous where the "text, literally read, admits of two plausible interpretations"). Under a narrow reading, all the Tax Mandate does is clarify that States must use ARPA funds to pay for COVID-relief *expenditures* rather than COVID-relief *tax cuts*. Next there is Defendants' focus on the "volitional" nature of the word "use," (Doc. 54 at 26) suggesting that legislative intent might be the key to identifying an indirect offset. And there is Defendants' even broader reading where, because money is fungible, any change in tax policy that effects a reduction in net tax revenue could be an improper use of ARPA funds.

Insisting that the Tax Mandate is unambiguous, Defendants repeat that the Tax Mandate simply requires States "not to use the funds to offset a reduction in net tax revenue resulting from changes to state law." Doc. 54 at 27. But that's just a restatement of the Tax Mandate itself, not an explanation of what it clearly means—and speaking in terms of "offsets" generally does not provide clear limits on the potentially *un*limited nature of "indirect" offsets.

Defendants next argue that ARPA need not clarify what its condition *means*, so long as it communicates that a condition *exists*. *See id.* at 26–28. This argument

is nonsensical—a party does not knowingly agree to contract terms simply because the other party assures it that there are *some* terms hidden in the document. That is precisely why "the *conditions* imposed by Congress must be unambiguous." *Benning v. Georgia*, 391 F.3d 1299, 1305 (11th Cir. 2004) (emphasis added).

Surprisingly, Defendants also assert that States can "s[eek] clarification" as a factor that weighs against a finding of ambiguity. Doc. 54 at 26–27. But the need to seek clarity is an admission that ARPA is insufficiently clear.

Finally, Treasury's recently issued interim final rule cannot and does not solve the ambiguity problem. As a threshold matter, it is "*Congress*" that must speak "unambiguously" if it "intends to impose a condition on the grant of federal moneys." *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981) (emphasis added). Thus, "[i]t is axiomatic that statutory ambiguity defeats altogether a claim by the Federal Government that Congress has unambiguously conditioned the States' receipt of federal monies in the manner asserted." *Va. Dep't of Educ. v. Riley*, 106 F.3d 559, 567 (4th Cir. 1997) (en banc). Just as an agency cannot "cure an unlawful delegation of legislative power by adopting in its discretion a limiting construction of the statute," *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 472 (2001), an agency cannot make an unconstitutionally vague condition enforceable through later action. To hold otherwise would allow the Executive to materially alter a bargain between the States and Congress. And allowing the Executive to "attach

new conditions to federal grants, unauthorized by Congress, … would give the Executive enormous power to pressure states and localities." Ilya Somin, *Making Federalism Great Again*, 97 Tex. L. Rev. 1247, 1285 (2019).

In any event, Treasury's rule introduces uncertainty by, for example, subjecting States to recoupment for administrative "interpretation[s] that would result in the reduction of net tax revenue," unless the interpretations are "corrections to replace prior inaccurate interpretations." Doc. 55-1 at 85. How Treasury will determine whether a state agency's interpretation of state law was accurate now or before is anyone's guess.

B. The Tax Mandate Violates The Anticommandeering Doctrine.

Defendants breeze past the argument that the Tax Mandate runs afoul of the anticommandeering doctrine, limiting their response to less than a page. Doc. 54 at 25. They offer no response to the Tax Mandate's intrusion on State sovereignty in an area the Constitution reserves for the States: tax policy. *See* Doc. 21 at 31–33. And the Tax Mandate prevents voters from holding their lawmakers accountable, *see id.* at 33–34, for it undeniably restricts States' ability to cut at least some taxes. When a State imposes (or keeps in place) taxes only because of Congressional command, responsibility is blurred and political accountability avoided. *See New York*, 505 U.S. at 168–69. The Tenth Amendment forbids this outcome.

II. Plaintiff States Have Standing And This Case Is Ripe For Review.

Plaintiffs have standing if they suffer an injury in fact, fairly traceable to the defendant's conduct, that is likely to be redressed by a favorable ruling. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). Defendants contest only whether Plaintiffs have shown an injury in fact. Because Plaintiffs have already been harmed by the Tax Mandate and Defendants have already intruded into Plaintiffs' sovereign authority, Plaintiffs have suffered an injury in fact and established standing.

As the Supreme Court has emphasized for over two centuries, a State's authority to set its tax policy is "central to state sovereignty"—indeed, it is existential. *Dep't of Revenue of Or. v. ACF Indus., Inc.*, 510 U.S. 332, 345 (1994); *McCulloch v. Maryland*, 17 U.S. 316, 428 (1819) ("[T]he power of taxing the people and their property[] is essential to the very existence of government."). Here, Plaintiff States are injured by being allowed to obtain a federal benefit *only* by surrendering to an invasion "or relinquishment" of their "constitutional right" to continue exercising their sovereign authority. *Bourgeois v. Peters*, 387 F.3d 1303, 1324 (11th Cir. 2004). That injury—the injury inherent in having to choose between forgoing a benefit or accepting unconstitutional terms—is the same one that creates standing in every unconstitutional-conditions case. *Id.*

By framing Plaintiffs' lawsuit as a pre-enforcement challenge, Defendants misunderstand the nature of Plaintiffs' injury. Plaintiffs have already suffered harm

because of the Tax Mandate's broad and ambiguous scope. As Secretary Yellen acknowledged in her Senate testimony, determining what the Tax Mandate means presents a "thorny" issue. Doc. 1 ¶ 105. And at a recent oral argument in a similar case, "the federal government was largely unwilling to hazard a guess as to what it meant either." *Ohio v. Yellen*, No. 1:21-CV-181, 2021 WL 1903908, at *12 (S.D. Ohio May 12, 2021). After 21 state Attorneys General asked Secretary Yellen whether their States could implement various policies that potentially implicated the Tax Mandate, the Secretary's response failed to provide any clarity for States crafting laws under the specter of federal enforcement action. *See* Doc. 21 at 20–24.

Absent Congressional correction, Plaintiffs remain subject to recoupment for tax cuts they have enacted or are in the process of enacting. Given that States have no realistic choice but to accept ARPA funds, the States must attempt to comply with the Tax Mandate. And if States guess incorrectly, they forfeit much-needed federal funds. Requiring this sort of guesswork necessarily harms States' ability to "exercise … sovereign power over individuals and entities within the relevant jurisdiction—[which] involves the power to create and enforce a legal code, both civil and criminal." *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 601 (1982); *see* Doc. 1 ¶ 8–9. This is not a hypothetical injury. For example, the Alabama Legislature has already tabled a tax relief package at least in part because it does not know the terms of the Tax Mandate "contract" required for it to receive

the federal funds.[2] Oklahoma lawmakers announced yesterday a state budget that would reduce corporate and personal income taxes.[3] And New Hampshire is in the middle of its biennial budgeting process, *see* N.H. Rev. Stat. Ann. §§ 9:2-:3, which ends in late June 2021 and requires adoption of a balanced operating budget, § 9:8-b. House Bill 2 (2021) contains "any changes to statutory law deemed necessary for the ensuing biennium," N.H. Rev. Stat. Ann. § 9:2-a, and presently includes several potential tax cuts.[4] Thus, because States like New Hampshire are "in the middle of budgeting for the next biennium *right now*, … a lack of clarity as to potential funding sources creates current hardships for that process." *Ohio*, 2021 WL 1903908, at *8.

Moreover, it is a matter of public record that Plaintiff States have enacted numerous laws that will implicate the Tax Mandate. For example, Utah passed three bills that provide about $100 million in tax cuts by increasing dependent tax exemptions to help families,[5] eliminating income tax on military retirement to help veterans,[6] and eliminating income taxes on social security income to help Utah

[2] *See* Mary Sell, *Legislation to untax Rescue Plan relief may have to wait*, ALABAMA DAILY NEWS (May 10, 2021), https://perma.cc/JY2M-VZW7 (noting postponement until legislators "have more federal guidance" where it "seemed like a good idea to wait and get more information").
[3] Carson Forman, *Proposed $8.3B Oklahoma state budget includes tax cuts, increased education funding*, OKLAHOMAN (May 13, 2021), https://perma.cc/VS82-256E.
[4] As the budgeting process continues, the trailer bill may change. The current version can be viewed at any time by going to http://gencourt.state.nh.us/bill_status/, searching Session Year "2021," selecting "Bill Number," and entering bill number "hb2."
[5] 2021 Utah Laws Ch. 75 (S.B. 153).
[6] 2021 Utah Laws Ch. 68 (S.B. 11).

seniors living on a fixed income.[7] West Virginia has passed at least eight laws that cut taxes during its 2021 legislative session, including exempting certain rental and leasing equipment from sales and use tax,[8] reducing taxes on arms and ammunition manufacturing,[9] and creating a small business tax credit for creating new jobs.[10] Montana passed at least 18 bills that could create a net tax reduction of $78 million, including a law creating tax credits for trades education.[11] Without clarity from this Court, these States must either revise their laws or budget for possible recoupment.

As such, even through the lens of pre-enforcement caselaw, Plaintiffs have alleged "an intention to engage in a course of conduct" (cutting taxes and accepting ARPA funds) that is "arguably affected with a constitutional interest" (the States' Tenth Amendment rights and inherent limits on Congress's Spending Clause power) that is "arguably proscribed by the statute" (based on a plain reading of the statute) and that comes with a substantial "threat of future enforcement" (recoupment). *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 161–64 (2014) (internal citations omitted). This is not a controversial application of pre-enforcement standing; both *NFIB* and *South Dakota v. Dole* were pre-enforcement actions—*NFIB* was filed the day the President signed the law, 567 U.S. at 540. Further, in a similar context, the

[7] 2021 Utah Laws Ch. 428 (H.B. 86).
[8] 2021 West Virginia Laws S.B. 34 (West's No. 244).
[9] 2021 West Virginia Laws H.B. 2499 (West's No. 72).
[10] 2021 West Virginia Laws H.B. 2760 (West's No. 270).
[11] 2021 Montana Laws Ch. 248 (H.B. 252).

Supreme Court advised that litigants could challenge a statute based on "a judicial prediction or assumption that the statute's very existence may cause" individuals to refrain from protected conduct. *Virginia v. Am. Booksellers Ass'n, Inc.*, 484 U.S. 383, 392 (1988) (internal citation omitted). And in *City & County of San Francisco v. Trump*, the Ninth Circuit held that plaintiff counties established standing where they "demonstrated that, if their interpretation of the Executive Order is correct, they will be forced to either change their policies or suffer serious consequences." 897 F.3d 1225, 1236 (9th Cir. 2018). Here Congress is directing Treasury to disburse funds to the States, but the particular branch of government at fault is constitutionally irrelevant to whether the conditions themselves are appropriate.

The decision in *Missouri v. Yellen*, No. 4:21CV376 HEA, 2021 WL 1889867 (E.D. Mo. May 11, 2021), does not weigh against a finding of standing in this case. There, Missouri argued that a "correct" interpretation of the Tax Mandate would render the provision constitutional. *Id.* at *1. Here, however, Plaintiffs argue that the Tax Mandate is unconstitutional under any plausible reading. Further, the *Missouri* decision was based on a holding that "Missouri does not have a constitutional interest in accepting ARPA funds" because "Congress both appropriated recovery funds and placed a condition on a State's receipt of the funds." *Id.* at *3–4. Thus, the court necessarily held that Congress "placed a condition" on funds that is valid. *Id.* Here, Plaintiffs argue that the condition Congress placed on ARPA funds is invalid.

Plaintiff States' claims are also ripe for the Court's review. "Ripeness analysis involves the evaluation of two factors: the hardship that a plaintiff might suffer without court redress and the fitness of the case for judicial decision." *Elend v. Basham*, 471 F.3d 1199, 1211 (11th Cir. 2006). Because Plaintiffs' claims are "purely legal" and "will not be clarified by further factual development," they are fit for judicial decision. *Thomas v. Union Carbide Agr. Prod. Co.*, 473 U.S. 568, 581 (1985). The analysis will remain the same even when Treasury finalizes its rule because the *statute* remains unconstitutional as written. And for the reasons just discussed, a delay will harm Plaintiff States who are awaiting court action before planning their fiscal affairs, and who currently face a Hobson's choice—harm your citizens by not cutting their taxes when they need it most or cut taxes and risk losing ARPA dollars. Forcing Plaintiffs to make tax policy "without knowing" what laws the Tax Mandate punishes "would impose a palpable and considerable hardship." *Id.* These harms will persist, even if States might later prevail in recoupment proceedings. This case is thus ripe for review and immediate relief is appropriate.

III. Plaintiff States Are Entitled To An Injunction.

Plaintiff States ask this Court to enjoin enforcement of the Tax Mandate, which under ARPA includes (1) imminent prefunding certification of compliance with the Tax Mandate; (2) immediate and repeated reporting on state tax cuts, state

revenues and other information to show ongoing compliance with the Tax Mandate; and (3) Treasury recoupment actions related to the Tax Mandate.[12]

Defendants argue against the propriety of a preliminary injunction on the ground that any harm done to Plaintiff States is monetary alone and the score can be settled in the context of a recoupment action. Doc. 54 at 29–30. But Defendants ignore the non-monetary issues of certification and reporting as to an unconstitutional mandate and the near impossibility of the State recouping from taxpayers any tax cuts which would be necessary in the event of a Treasury recoupment of billions of dollars. They also ignore the significant harm to the Plaintiff States' sovereign interest, a harm that is happening *now*. *See supra* § II. That "[l]oss of sovereignty is an irreparable harm." *Georgia v. Pruitt*, 326 F. Supp. 3d 1356, 1367 (S.D. Ga. 2018) (citing *Kansas v. United States*, 249 F.3d 1213, 1227 (10th Cir. 2001) and *Akiachak Native Cmty. v. Jewell*, 995 F. Supp. 2d 7, 17 (D.D.C. 2014)). The Tax Mandate is the sort of "interference with the State's orderly management of its fiscal affairs" that requires prompt relief. *Cf. Barnes v. E-Sys., Inc. Grp. Hosp. Med. & Surgical Ins. Plan*, 501 U.S. 1301, 1304 (1991) (Scalia, J., in chambers) (granting stay of district court order that had enjoined state tax law).

[12] Plaintiffs do not object to certification and reporting as to the four spending categories listed in § 802(c)(1). Their request for an injunction includes only those forms of enforcement connected to the Tax Mandate.

While the *Ohio* court properly held that Ohio was likely to succeed on its challenge to the Tax Mandate, the court should have also held that "injunctive relief will prevent or terminate th[e] ongoing harm." 2021 WL 1903908, at *14. Although recoupment may not occur until later, the basis for recoupment is happening *now* and States need to act *now*. Enjoining enforcement of the Tax Mandate for actions taken during pendency of the injunction would free States from unlawful parts of ARPA's certification and reporting requirements and restore sovereign authority to the States.

Finally, while an injunction will inflict on the United States the "form of irreparable injury" that a sovereign suffers when it is barred from "effectuating statutes enacted by representatives of its people," *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers), "the public … has no interest in enforcing an unconstitutional law," *Scott v. Roberts*, 612 F.3d 1279, 1297 (11th Cir. 2010).

CONCLUSION

The Court should enjoin enforcement of the Tax Mandate.

DATED: May 14, 2021 Respectfully submitted,

/s/ Edmund G. LaCour, Jr.
STEVE MARSHALL
Alabama Attorney General
Edmund G. LaCour, Jr.
Alabama Solicitor General
James W. Davis
A. Reid Harris
Assistant Attorneys General
Office of the Alabama
Attorney General
501 Washington Ave.
P.O. Box 300152
Montgomery, AL 36130
Tel: (334) 353-2196
edmund.lacour@alabamaAg.gov
jim.davis@AlabamaAG.gov
reid.harris@AlabamaAG.gov
Counsel for State of Alabama

/s/ Lindsay S. See
PATRICK MORRISEY
West Virginia Attorney General
Lindsay S. See (*pro hac vice*)
West Virginia Solicitor General
David C. Tryon (*pro hac vice*)
Special Assistant to the Attorney General
(Admitted in Ohio; practicing under supervision of West Virginia attorneys)
Jessica A. Lee (*pro hac vice*)
Assistant Solicitor General
Office of the West Virginia
Attorney General
1900 Kanawha Blvd. East
Building 1, Room E-26
Charleston, WV 25305
Tel: (304) 558-2021
Lindsay.S.See@wvago.gov
Counsel for State of West Virginia

/s/ Bryan M. Taylor
Bryan M. Taylor
Bachus Brom & Taylor LLC
300 Vestavia Parkway, Suite 3700
Birmingham, AL 35216
Tel: (334) 595-9650
btaylor@bachusbrom.com

/s/ Nicholas Bronni
LESLIE RUTLEDGE
Arkansas Attorney General
Nicholas J. Bronni (*pro hac vice*)
Arkansas Solicitor General
Vincent M. Wagner (*pro hac vice*)
Deputy Solicitor General
Dylan L. Jacobs (*pro hac vice*)
Assistant Solicitor General
Office of the Arkansas
Attorney General
323 Center Street, Suite 200
Little Rock, Arkansas 72201
Tel: (501) 682-6302
nicholas.bronni@arkansasag.gov
Counsel for State of Arkansas

/s/ John M. Ptacin
TREG R. TAYLOR
Attorney General of Alaska
John M. Ptacin (*pro hac vice*)
Chief Assistant Attorney General
Alaska Department of Law
1031 West Fourth Avenue, Suite 200
Anchorage, Alaska 99501
Tel: (907) 269-5100
Facsimile: (907) 276-3697
John.ptacin@alaska.gov
Counsel for State of Alaska

/s/ Jason Hilborn
ASHLEY MOODY
Florida Attorney General
Jason H. Hilborn (*pro hac vice*)
Assistant Solicitor General
Office of the Florida
Attorney General
Office of the Attorney General
State of Florida
PL-01 The Capitol
Tallahassee, FL 32399
Tel: (850) 414-3300
Jason.Hilborn@myfloridalegal.com
Counsel for State of Florida

/s/ Jeffrey S. Thompson
THOMAS J. MILLER
Attorney General of Iowa
Jeffrey S. Thompson*
Solicitor General
1305 East Walnut Street
Des Moines, IA 50319
Tel: 515-281-5164
jeffrey.thompson@ag.iowa.gov
Counsel for State of Iowa

/s/ Dwight R. Carswell
DEREK SCHMIDT
Kansas Attorney General
Dwight R. Carswell (*pro hac vice*)
Assistant Solicitor General
Office of the Kansas
Attorney General
120 SW 10th Ave., 3rd Floor
Topeka, Kansas 66612
Tel: (785) 368-8410
dwight.carswell@ag.ks.gov
Counsel for State of Kansas

/s/ David M.S. Dewhirst
AUSTIN KNUDSEN
Attorney General of Montana
David M.S. Dewhirst (*pro hac vice*)
Solicitor General
Office of the Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401
Tel: (406) 444-4145
David.Dewhirst@mt.gov
Counsel for the State of Montana

/s/ Daniel E. Will
Daniel E. Will*
New Hampshire Solicitor General
Office of the New Hampshire
Attorney General
33 Capitol Street
Concord, NH 03301-6397
Tel: (603) 271-1119
Daniel.E.Will@doj.nh.gov
Counsel for the State of
New Hampshire

/s/ Mithun Mansinghani
MIKE HUNTER
Oklahoma Attorney General
Mithun Mansinghani (*pro hac vice*)
Solicitor General
Oklahoma Office Of The
Attorney General
313 NE Twenty-First St.
Oklahoma City, OK 73105
Tel: (405) 521-3921
mithun.mansinghani@oag.ok.gov
Counsel for the State of Oklahoma

/s/ J. Emory Smith, Jr.
ALAN WILSON
South Carolina Attorney General
J. Emory Smith, Jr. (*pro hac vice*)
Deputy Solicitor General
Office of the South Carolina
Attorney General
Post Office Box 11549
Columbia, SC 29211
Tel: (803) 734-3680
esmith@scag.gov
Counsel for State of South Carolina

/s/ Jeffery J. Tronvold
JASON RAVNSBORG
South Dakota Attorney General
Jeffery J. Tronvold (*pro hac vice*)
Deputy Attorney General
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Tel: (605) 773-3215
Jeffery.tronvold@state.sd.us
Counsel for State of South Dakota

/s/ Melissa A. Holyoak
SEAN REYES
Utah Attorney General
Melissa A. Holyoak (*pro hac vice*)
Utah Solicitor General
Office of the Utah Attorney General
160 E. 300 S., 5th Floor
Salt Lake City, UT 84114
Tel: (801) 366-0260
Counsel for State of Utah

*Pro hac vice application forthcoming

CERTIFICATE OF SERVICE

I hereby certify that on May 14, 2021, I filed with the Court and served on all counsel through the CM/ECF system the foregoing document.

/s *Edmund G. LaCour Jr.*
Counsel for the State of Alabama