



ATTORNEY GENERAL OF MISSOURI
ERIC SCHMITT

February 7, 2022

VIA CM/ECF

Mr. Michael Gans
Clerk of Court
U.S. Court of Appeals for the Eighth Circuit
Thomas F. Eagleton Federal Courthouse
111 South 10th Street, Room 24.329
St. Louis, MO 63102

RE: *State of Missouri v. Yellen, et al.*, No. 21-2118
Supplemental Authority under Rule 28(j)

Dear Mr. Gans:

On November 15, 2021, the U.S. District Court for the Northern District of Alabama concluded (1) that a coalition of States had standing to challenge the Tax Mandate, 42 U.S.C. § 802(c)(2)(A), (2) that the law exceeded Congress's authority under the spending clause, and (3) that it should be permanently enjoined it. *See West Virginia v. U.S. Department of Treasury*, 2021 WL 5300944 (N.D. Ala. Nov. 15, 2021).

As to standing, and as relevant here:

First, the district court affirmed that "being presented with an ambiguous deal" constitutes an injury in fact." *Id.* at *7.

Second, the district court held that for States who have accepted ARPA funds, they "suffer ... harm to their sovereign authority to set their own tax policies." *Id.*

Third, the district court noted it had earlier concluded that the States had standing to bring a pre-enforcement challenge, but concluded that “this method of establishing” standing “is not well suited” to the case because the States had already suffered an injury. *Id.* at *8 n.3.

As to the merits, the court concluded “that the Tax Mandate [under the broad interpretation] is an unconstitutionally ambiguous condition” *Id.* at *14. The court distinguished *Benning v. Georgia*, 391 F.3d 1299 (11th Cir. 2004), noting that “the strict scrutiny standard” at issue there is something “every lawyer is familiar with” while the broad interpretation “provides *no guidance* on critical interpretive questions.” *Id.* at *16–*17. The district court also noted that the parties agreed that the Interim Final Rule (which Missouri and the Government agree is substantively the same as the Final Rule) could not “cure that ambiguity,” and itself had ambiguities. *See id.* at *18–*19.

Finally, the district court enjoined the law. It noted that “the Tax Mandate has and will continue to inflict irreparable injury” because it provides States with an unconstitutionally ambiguous “deal” that intrudes on their taxing authority. *Id.* at *19. The court also said that States “have a strong interest” in protecting their sovereign authority from an unconstitutional law “while the [Government has] no legitimate interest in enforcing that law.” *Id.*

Sincerely,

/s/ D. John Sauer
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cc: Counsel for Appellees (via electronic filing)

CERTIFICATE OF SERVICE

I hereby certify that on February 7, 2022, the foregoing was electronically filed with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit using the CM/ECF system, which serve all counsel of record.

/s/ D. John Sauer

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the body of this letter contains 348 words as determined by the word-count feature of Microsoft Word. This letter has been scanned for viruses and is virus-free.

/s/ D. John Sauer



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Dear Mr. Gans:

As the Government notes, the Final Rule implements the Tax Mandate the same way as the Interim Final Rule. The State of Missouri also wishes to make the Court aware that the Final Rule requires the same accounting and reporting requirements as the Interim Final Rule. *See Coronavirus State and Local Fiscal Recovery Funds*, 87 Fed. Reg. 4,338, 4,428–29 (Jan. 27, 2022); *see also* Dep’t of the Treasury, *Compliance and Reporting Guidance* § C.11 (last updated Nov. 15, 2021), <https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf> (detailing the accounting and reporting requirements and cross-referenced in the Final Rule, 87 Fed. Reg. at 4,428 n.364).

Sincerely,

/s/ D. John Sauer

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The undersigned hereby certifies that the body of this letter contains 99 words as determined by the word-count feature of Microsoft Word. This letter has been scanned for viruses and is virus-free.

/s/ D. John Sauer