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April 21, 2022

David J. Smith
Clerk of Court
U.S. Court of Appeals for the 11th Circuit
56 Forsyth St., N.W.
Atlanta, Georgia 30303

Submitted Electronically via CM/ECF

Re: No. 22-10168: State of West Virginia, et al. v. U.S. Department of the Treasury, et al.

Dear Clerk:

Under Federal Rule of Appellate Procedure 28(j) and Eleventh Circuit IOP 6, we write to advise the Court of additional authority related to our brief dated March 25, 2022.

In our brief, we referenced a “similar suit[]” that Texas, Louisiana, and Mississippi filed to “enjoin the Tax Mandate.” Br. 3-4. The U.S. District Court for the Northern District of Texas recently issued two decisions in that case in favor of those States.

First, in denying a motion to dismiss, the court held that the States have standing to challenge the Tax Mandate. The Tax Mandate deprives States of “information [to] which [they are constitutionally] entitled.” Ex. 1, *Texas v. Yellen*, No. 2:21-CV-079, 2022 WL 989733, at *4-5 (N.D. Tex. Mar. 4, 2022). It also forces

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them to choose between losing “substantial” “federal funds” or allowing “the invasion of their constitutional authority to tax.” *Id.*

Second, the court permanently enjoined the Tax Mandate as to the plaintiff States. Ex. 2, *Texas v. Yellen*, __F. Supp. 3d__, No. 2:21-CV-079, 2022 WL 1063088 (N.D. Tex. Apr. 8, 2022). The court considered the “coercion and anti-commandeering claims together because both” ask whether the Tax Mandate is “inconsistent with the federal structure of our Government established by the Constitution.” *Id.* at *4 (quotations omitted). The court then held that “Congress’s offer of ARPA funds in exchange for acceptance of [the Tax Mandate] is coercive and commandeers Plaintiffs.” *Id.* at *6. By threatening to recoup “around 22” and “9 percent” of the States’ annual-general-fund and total-fund budgets, the federal government has asserted “undue influence,” not “relatively mild encouragement.” *Id.* at *5 (quotations omitted).

We noted in our brief the other courts that reached the merits of claims like these. *See* Br. 3-4, 19, 29, 34, 37. This decision is now the fourth one holding the Tax Mandate unconstitutional. *See West Virginia v. U.S. Dep’t of Treasury*, __F. Supp. 3d__, No. 7:21-cv-00465, 2021 WL 5300944 (N.D. Ala. Nov. 15, 2021); *Kentucky v. Yellen*, __F. Supp. 3d__, 3:21-cv-00017, 2021 WL 4394249 (E.D. Ky. Sept. 24, 2021); *Ohio v. Yellen*, 547 F. Supp. 3d 713 (S.D. Ohio 2021).

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