

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

COMMONWEALTH OF KENTUCKY and STATE  
OF TENNESSEE,

Plaintiffs-Appellees,

v.

JANET YELLEN, in her official capacity as Secretary  
of the Treasury; RICHARD K. DELMAR, in his offi-  
cial capacity as Acting Inspector General of the De-  
partment of the Treasury; and the U.S.  
DEPARTMENT OF THE TREASURY,

Defendants-Appellants.

No. 21-6108

**MOTION TO HOLD APPEAL IN ABEYANCE PENDING THIS  
COURT’S DECISION IN A RELATED CASE**

This Court recently scheduled this case for oral argument on July 21, 2022. The federal government respectfully moves to have the case taken off the argument calendar and held in abeyance pending this Court’s disposition of *Ohio v. Yellen*, No. 21-3787, which was heard on January 26, 2022, and which presents a constitutional challenge to the same statutory provision that is at issue in this appeal.

1. The American Rescue Plan Act provided nearly \$200 billion in new federal grants to help States “mitigate the fiscal effects” of the Covid-19 pandemic. 42 U.S.C. § 802(a)(1). As relevant here, the Act provides that a State shall not use the new federal funds “to either directly or indirectly offset a reduction in the net tax revenue of such

State” resulting from a change in state law during a covered time period. *Id.* § 802(c)(2)(A). Plaintiffs challenge the constitutionality of that restriction.

2. The constitutionality of the same provision is at issue in *Ohio v. Yellen*, No. 21-3787, where this Court heard oral argument on January 26, 2022. Like plaintiffs here, Ohio argued that the funding condition is “unconstitutionally ambiguous” and that Congress “improperly coerce[d] the States into accepting” it. Ohio Br. 2. And as in this case, the federal government argued that there is no justiciable controversy and alternatively that Ohio’s claims fail on the merits.

3. We expect this Court’s decision in *Ohio* to control or, at a minimum, inform the disposition of this case. To promote judicial economy and avoid potentially inconsistent rulings, we respectfully ask the Court to remove this case from the oral argument calendar and hold it in abeyance pending the Court’s decision in the *Ohio* case, with status reports due in this case 21 days after the mandate in *Ohio* is issued.

4. Plaintiffs have informed us that they oppose this motion and intend to file a written response.

Respectfully submitted,

MARK B. STERN

ALISA B. KLEIN

*/s/ Daniel Winik*

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## CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I hereby certify that this motion complies with the requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in 14-point Garamond, a proportionally spaced font, and that it complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 313 words, according to Microsoft Word.

*/s/ Daniel Winik* \_\_\_\_\_  
Daniel Winik