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Via CM/ECF

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

RE: *Missouri v. Yellen*, No. 21-2118 (argued Feb. 15, 2022)

Dear Mr. Gans:

We respond to plaintiffs' letter concerning the Ninth Circuit's decision in *Arizona v. Yellen*, 2022 WL 1574217 (May 19, 2022). The majority of the Ninth Circuit panel found that Arizona had adequately alleged jurisdiction on two theories, neither of which helps Missouri here.

First, the majority held that "Arizona ha[d] alleged sufficiently concrete and particularized harms to its ability to exercise its sovereign prerogatives" as a result of the Offset Provision. *Id.* at *9. But Missouri's complaint alleges only that its sovereignty would be undermined by what it calls the "broad interpretation" of the provision—that is, an interpretation under which the provision "would prohibit a State from enacting *any* tax-reduction policy." JA9 ¶ 7; *see* JA11-12 ¶¶ 15-18 (alleging sovereign injuries). As our brief explains, that "broad interpretation" is fictional; it bears no relationship to the statutory text, and the Treasury Department has repeatedly disavowed it. Judge Nelson's concurring opinion in the Ninth Circuit explained as much. 2022 WL 1574217, at *12 (noting that "[a] tax cut, on its own, does not fall within the Offset Provision's ambit," and that "Treasury has explicitly disavowed any prohibition against states enacting tax cuts"). The "broad interpretation" cannot support jurisdiction for Missouri to challenge the quite different statute that Congress actually enacted.

Second, the Ninth Circuit majority held that Arizona had established a reasonable fear of enforcement of the Offset Provision because it had enacted

a \$1.9 billion tax cut. That holding was incorrect for the reasons articulated by the concurrence, but even if it were correct, it would not help Missouri, which has not alleged any tax cut.

Sincerely,

/s/ Daniel Winik
Daniel Winik

cc: All counsel (via CM/ECF)