

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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Filed: July 12, 2022

Ms. Andree Sophia Blumstein

Mr. Matthew Franklin Kuhn

Mr. Brett Robert Nolan

Mr. Brandon James Smith

Mr. Daniel Winik

Re: Case No. 21-6108, *Commonwealth of KY, et al v. Janet Yellen, et al*
Originating Case No. 3:21-cv-00017

Dear Counsel,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Virginia Lee Padgett
Case Manager
Direct Dial No. 513-564-7032

cc: Mr. Robert R. Carr
Mr. Paul D. Clement
Mr. Drew Curtis Ensign
Mr. Joseph Henchman
Mr. Sheng Tao Li

Enclosure

Case No. 21-6108

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

ORDER

COMMONWEALTH OF KENTUCKY; STATE OF TENNESSEE

Plaintiffs - Appellees

v.

JANET YELLEN, In her official capacity as Secretary of the Treasury; RICHARD K. DELMAR, In his official capacity as Acting Inspector General of the Department of the Treasury; U.S. DEPARTMENT OF THE TREASURY

Defendants - Appellants

The government appeals the district court's permanent injunction of it seeking enforcement of the Tax Mandate, 42 USC 802(c)(2)(A), against the Commonwealth of Kentucky and the State of Tennessee. In this appeal currently scheduled for oral argument on July 21, 2022, the Court ORDERS the parties to file supplemental briefs on the following questions.

- (1) Assuming the States had standing when the complaint was filed on the ground that the Offset Provision could at least arguably prohibit all future tax cuts after receiving ARPA funds on the theory that money is fungible, did that alleged injury nonetheless become moot when the Treasury Department promulgated its Interim Final and Final Rules clarifying its view that the Offset Provision does not prohibit tax cuts per se, and that it does not intend to initiate recoupment actions just because a State that has accepted ARPA funds subsequently cuts taxes?

- (2) Assuming that only the "indirectly offset" portion of the Offset Provision is unconstitutionally ambiguous, could that portion of the Offset Provision be severed from the statute, leaving the remainder of the Offset Provision enforceable?

The parties should simultaneously brief these questions and submit their briefs to the Court no later than **5:00 PM EDT on Monday, July 18, 2022**. The parties' briefs are limited to 3,000 words.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk



Issued: July 12, 2022
