UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION AT FRANKFORT

COMMONWEALTH OF KENTUCKY AND STATE OF TENNESSEE, *Plaintiffs*, 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; and U.S. DEPARTMENT OF THE TREASURY, *Defendants*.	No. 3:21-cv-00017-GFVT

MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE* CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND NATIONAL FEDERATION OF INDEPENDENT BUSINESS SMALL BUSINESS LEGAL CENTER SUPPORTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 7.1 of the Local Rules of the U.S. District Court for the Eastern District of Kentucky, the Chamber of Commerce of the United States of America and the National Federation of Independent Business Small Business Legal Center (together, "*amici*") request leave to file a brief *amici curiae* in support of the plaintiff States' motion for summary judgment (Dkt. No. 25). Plaintiffs and Defendants consent to this motion.

The Chamber of Commerce of the United States of America (the "Chamber") is the world's largest business federation. It represents approximately 300,000 members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. The National Federation of Independent Business ("NFIB") is the Nation's leading small business association, representing members in Washington, D.C., and all 50 state capitals. Founded in 1943 as a nonprofit, nonpartisan organization, NFIB's mission is to promote and protect the rights of its members to own, operate, and grow their businesses. The NFIB Small Business Legal Center is a nonprofit, public-interest law firm established to provide legal resources and be the voice for small businesses in the Nation's courts through representation on issues of public interest affecting small businesses.

To fulfill their role as a voice for the business and small business communities, the Chamber and Legal Center regularly file *amicus curiae* briefs in cases that will impact their interests, and they have recently done so in litigation involving the same issue presented by Kentucky's motion for summary judgment. *See, e.g.*, Br. of *Amici Curiae* Chamber of Commerce of the United States of Am. & NFIB Small Bus. Legal Center, *Ohio v. Yellen*, No. 1:21-cv-181 (S.D. Ohio Apr. 9, 2021).

Amici and their members have a strong interest in this case, as they are concerned that the tax mandate in the American Rescue Plan Act will prevent States from exercising their sovereign authority to tailor and implement their own tax policies, including those directly affecting businesses. Many States have recently passed legislation that promote economic recovery by easing tax burdens on businesses of all kinds, including, especially, small businesses harmed by the COVID-19 pandemic. These policies and others may be stymied by the tax mandate's prohibition on the use of federal funds to offset any decrease in a State's tax revenue. Because the implications of the tax mandate for American businesses are severe, *amici* seek to represent the interests of their members in this Court with the attached brief. *Amici* believe that the analysis presented in their brief provides important context on the lack of constitutional authority for the tax mandate, as well as the expected practical effects of this provision on businesses across the Nation.

For the foregoing reasons, *amici* respectfully request that this Court grant leave for the filing of the accompanying *amici curiae* brief.

Respectfully submitted,

s/Paul D. Clement
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July 12, 2021

CERTIFICATE OF SERVICE

I hereby certify that on July 12, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Eastern District of Kentucky by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

July 12, 2021

s/Paul D. Clement
Paul D. Clement