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U.S. DISTRICT COURT
N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

STATE OF WEST VIRGINIA, *et al.*, Plaintiffs, v. U.S. DEPARTMENT OF THE TREASURY, *et al.*, Defendants.	Case No. 7:21-cv-00465-LSC

PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY

On Friday, the United States District Court for the Eastern District of Kentucky issued its decision in Kentucky and Tennessee's Spending Clause challenge to the Tax Mandate. *Kentucky v. Yellen*, No. 3:21-cv-000-17 (E.D. Ky. Sep. 24, 2021).

In the opinion, the court granted the States' motion for summary judgment, holding that the Tax Mandate is unconstitutionally coercive under the Spending Clause and that "the coercion presented in the ARPA is exactly the kind of intrusion on state sovereignty that the Constitution prohibits." *Id.* at 11. In so holding, the court cited both the "sheer size of the federal government's offering" and the "economic devastation the pandemic has brought." *Id.* at 9. Considering all fifty States and the District of Columbia, the court recognized that ARPA funds represent

"roughly *twenty percent* of the annual state tax collections brought in by state governments" and held that "'refusing to accede to the conditions set out in the [law] is not a realistic option.'" *Id.* at 8 (quoting *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 681 (2012) (Scalia, J., dissenting)). The court specifically rejected Defendants' argument that *NFIB*'s coercion analysis applied only to conditions affecting the receipt of pre-existing funds, slip. op. at 7 n.3, the same argument Defendants rely on here. *See* Doc. 76 at ECF 37.

Finally, the court held that a permanent injunction was appropriate because there is "no cognizable interest of the federal government in enforcing the Tax Mandate" and because "the States' ability to set their taxing policy as a co-sovereign enhances, rather than threatens, individual liberty." Slip op. at 14. Defendants are now enjoined from seeking enforcement of the Tax Mandate against Tennessee and Kentucky.

The court's decision is attached.

DATED: September 27, 2021 Respectfully submitted,

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CERTIFICATE OF SERVICE

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