

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

THE STATE OF MISSOURI,

Plaintiff,

v.

JANET L. 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. _____

NATURE OF THE ACTION

1. The States' authority to set their own tax policies is a core attribute of their sovereignty and a central principle of federalism. The U.S. Supreme Court has stated of the States' taxing power: "The extent to which it shall be exercised, the subjects upon which it shall be exercised, and the mode in which it shall be exercised, are all equally within the discretion of the legislatures to which the States commit the exercise of the power. That discretion is restrained only by the will of the people expressed in the State constitutions or through [state] elections *There is nothing in the Constitution which contemplates or authorizes any direct abridgement of this power by national legislation.*" *Lane County v. State of Oregon*, 74 U.S. 71, 77 (1868) (emphasis added).

2. This suit challenges the threatened unconstitutional application of a provision in the American Rescue Plan Act of 2021, Pub. L. No. 117-2 (the "Act"). Under an erroneously broad interpretation, this provision threatens to commandeer state taxing authority and coerce the States into accepting critical federal aid in exchange for abandoning an important aspect of their sovereignty.

3. The Act includes a \$195.3 billion aid program intended to, among other things, help States recover from the pandemic-caused downturn.

4. The aid program, which appears in § 9901 of the Act, contains a provision that adds a section 602 to Title VI of the Social Security Act. This new section 602, in section 602(c)(2)(A), contains a restriction on the use of coronavirus relief funds to "directly or indirectly offset a reduction in net tax revenue" from a state reduction in taxes (the "Tax Mandate"). *See* Pub. L. No. 117-2, § 9901 (Exhibit A, attached, p. 4).

5. As stated, the Tax Mandate prohibits the States receiving coronavirus relief funds from using such funds received under the Act to "directly or indirectly *offset* a reduction in net tax

revenue . . . resulting from a change in law, regulation, or administrative interpretation . . . that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise).” *Id.* (emphasis added). If States so use the funds, the Secretary of the Treasury may recoup them to the extent of the “offset.” *See id.* (Ex. A, p. 5).

6. Properly understood, the Tax Mandate imposes only a very narrow restriction on the States’ ability to cut taxes—it merely prohibits the States from taking COVID-19 relief funds and deliberately applying them to offset a specific tax reduction of a similar amount. This narrow interpretation is consistent with the plain meaning of the word “offset,” the text and structure of the act, the scope of Congress’s authority under the Spending Clause, relevant principles of interpretation, the U.S. Supreme Court’s clear-statement rules, and the canon of constitutional avoidance.

7. Notwithstanding this narrower interpretation, certain federal officials have advanced a broader interpretation of the Tax Mandate, which would prohibit a State from enacting *any* tax-reduction policy that would result in a net reduction of revenue through 2024 or risk forfeiting its COVID-19 relief funds. Under this broader interpretation, the Tax Mandate would be manifestly unconstitutional.

8. On March 16, 2021, the Attorneys General of Missouri and 20 other States sent a letter to Secretary of the Treasury Janet Yellen, seeking her guarantee that Treasury would apply the narrow interpretation to the Tax Mandate, which would respect and preserve the State’s sovereign authority over tax policy within their borders. *See* March 16, 2021 Letter of 21 Attorneys General to Secretary Yellen (attached as Exhibit B).

9. On March 23, 2021, Secretary Yellen responded with a letter that declined to endorse the narrow and correct interpretation of the Tax Mandate. *See* March 23, 2021 Letter of

Secretary Yellen (attached as Exhibit C). Secretary Yellen’s letter left open the possibility that the Department of the Treasury might require States receiving federal aid to “replac[e] lost revenue by other means” if they choose to enact tax cuts. *Id.* Secretary Yellen’s response, therefore, generates uncertainty, confusion, and doubt for state legislatures that are currently considering and debating tax-reduction policies—including the legislature of Missouri.

10. If adopted, the broad interpretation of the Tax Mandate would impose a draconian and unprecedented federal restriction on a core aspect of state sovereignty—each State’s authority to set its own tax policy. This interpretation would be plainly unconstitutional. It is also incorrect as a matter of statutory interpretation. The relevant principles of interpretation confirm that the narrow interpretation of the Act, which properly respects both Congress’s role and the States’ authority in our federal system, is the correct interpretation of the Tax Mandate.

11. The uncertainty created by Secretary Yellen’s response, and the prospect of Treasury imposing the broad interpretation of the Tax Mandate, threatens grave, immediate, and irreparable injury to the State of Missouri. Missouri’s legislature is currently considering and debating tax policies and tax legislation that, if enacted, would reduce taxes and could run afoul of the broad interpretation of the Tax Mandate. Moreover, Missouri’s legislative session is scheduled to end in two months. Missouri’s General Assembly cannot fairly debate such policies if the erroneous interpretation of the Tax Mandate hangs over them like a Sword of Damocles.

12. Missouri seeks immediate declaratory and injunctive relief to confirm that the Tax Mandate applies only to tax-reduction actions that are expressly and deliberately designed to apply COVID-19 relief funds to offset a tax reduction of a similar amount, and that the Tax Mandate otherwise preserves the States’ traditional authority to pursue tax-reduction policies for any other reason. In the alternative, if the Court adopts with the broad interpretation of the Tax Mandate—

which it should not—then Missouri seeks a declaration and injunction that the Tax Mandate is unconstitutional and must be severed from the Act.

JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction under 28 U.S.C. § 1331, 1346, and §§ 2201–02.

14. Venue is proper in this judicial district under 28 U.S.C. § 1391(e)(1).

15. Missouri has standing to challenge the Tax Mandate and to seek injunctive and declaratory relief both under federal statutes and under this Court’s inherent equitable powers. Under the threatened broad interpretation, the mandate would injure Missouri and other States by unconstitutionally intruding on their sovereign taxing authority, interfering with the orderly management of their fiscal affairs, interfering with state legislative functions, and creating the risk that the States may face forfeiture of billions of dollars in federal funds. The current ambiguity and uncertainty regarding the Tax Mandate’s prohibition not only injures Missouri’s sovereignty in this legislative session, but threatens Missouri’s sovereignty through 2024.

16. On the broad interpretation, the Tax Mandate would directly harm Missouri’s sovereign interests, including its ability to “exercise . . . sovereign power over individuals and entities within the relevant jurisdiction—[which] involves the power to create and enforce a legal code, both civil and criminal.” *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 601 (1982). By diminishing the Missouri’s power to adopt tax policies as it sees fit, the Tax Mandate necessarily and gravely injures its sovereign interests.

17. On the broad interpretation, the Tax Mandate also harms Missouri’s quasi-sovereign interests. By interfering with Missouri’s ability to pursue tax policies that will support working families and small businesses and promote economic growth, and by threatening to

withhold Missouri’s COVID-19 relief funds, the Tax Mandate threatens the “health and well-being—both physical and economic—of [Missouri] residents in general.” *Id.* at 607.

18. On the broad interpretation, the Tax Mandate also harms Missouri’s interest in “securing observance of the terms under which it participates in the federal system.” *Id.* at 607-08 (1982). The Tax Mandate specifically attacks those terms and affects Missouri’s sovereign power within the system.

19. Moreover, Missouri and all other States are currently subject to the Tax Mandate. The mandate applies during the “covered period,” which the Act defines as beginning “on March 3, 2021.” Pub. L. No. 117-2, § 9901 (adding § 602(g)(1)(A)).

20. Injunctive or declaratory relief would redress Missouri’s injuries.

PARTIES

21. Plaintiff State of Missouri is a sovereign State of the United States of America. Missouri sues to vindicate its sovereign, quasi-sovereign, and proprietary interests.

22. Eric S. Schmitt is the 43rd Attorney General of the State of Missouri. Attorney General Schmitt is authorized to bring actions on behalf of Missouri that are “necessary to protect the rights and interests of the state, and enforce any and all rights, interests, or claims any and all persons, firms or corporations in whatever court or jurisdiction such action may be necessary.” Mo. Rev. Stat. § 270.060.

23. Janet L. Yellen is the Secretary of the Treasury, and is sued in her official capacity. The Secretary of the Treasury is responsible for administering the coronavirus local fiscal recovery fund created the Act.

24. Richard K. Delmar is the Acting Inspector General of the Department of Treasury, and is sued in his official capacity. On information and belief, the Inspector General is responsible for monitoring and oversight of existing coronavirus relief funds to the States and is generally

responsible for informing the Secretary of the Treasury about programs administered by the Department and advising on the necessity for corrective action.

25. The Department of the Treasury is an Executive Department of the United States and is responsible for administering the coronavirus local fiscal recovery fund created by the Act.

FACTUAL ALLEGATIONS

I. The American Rescue Plan Act

26. On March 11, 2021, President Biden signed into law a \$1.9 trillion stimulus package, the “American Rescue Plan Act,” H.R. 1319. The text of the Act is available at <https://www.congress.gov/bill/117th-congress/house-bill/1319/text>. Section 9901 of the Act is attached as Exhibit A.

27. The Act appropriates \$195.3 billion in aid to the States and the District of Columbia. Pub. L. No. 117-2, § 9901 (adding §602(b)(3)(A) to the Social Security Act). Of that amount, \$25.5 billion is allocated equally among the States and the District. *Id.* (adding § 602(b)(d)(B)(ii)). The remainder, minus additional money for Washington, D.C., is distributed based on each State’s average number of unemployed individuals from October through December of 2020. *Id.* (adding §602(b)(3)(B)(iii)).

28. Congress’s stated purposes for the funds to be disbursed under the Act are to relieve certain households, small businesses, non-profits, and “impacted industries such as tourism, travel, and hospitality”; “to respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers”; to make up for the reduction in state government revenue; and “to make necessary investments in water, sewer, or broadband infrastructure.” *Id.* (adding § 602(c)(1)(A-D)).

29. One estimate indicates that Missouri should receive at least \$2.7 billion in aid under the Act. Jared Walczak, *State Aid in American Rescue Pan Act is 116 Times States’ Revenue*

Losses, TAX FOUNDATION (Mar. 3, 2021), <https://taxfoundation.org/state-and-local-aid-american-rescue-plan/>. Regardless of the precise number, the amount of anticipated aid for Missouri is in the billions of dollars and comprises a significant percentage of Missouri’s annual general fund revenues.

30. The Act’s funds “remain available” to the States “through December 31, 2024.” Pub. L. No. 117-2, § 9901 (adding § 602(a)).

31. The Act’s “Tax Mandate” provides:

A State or territory shall not use the funds provided under this section or transferred pursuant to section 603(c)(4) ***to either directly or indirectly offset a reduction in the net tax revenue*** of such State or territory resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase.

Id. (adding § 602(c)(2)(A)) (emphasis added).

32. Properly understood, the Tax Mandate prohibits only those revenue reductions that a State expressly and deliberately pays for, in whole or in part, with funds from the Act. The Tax Mandate leaves States free to pursue tax-reduction policies for any other valid reason. The text and structure of the Act, all other relevant canons of construction, clear-statement rules, Supreme Court precedent, and principles of federalism all support this narrow reading.

33. The Act grants the Treasury Secretary authority “to issue such regulations as may be necessary or appropriate to carry out” the Tax Mandate. *Id.* (adding § 602(f)).

34. On March 16, 2021, the Attorneys General for 21 States—including Missouri—sent a letter to Secretary Yellen asking that she immediately confirm that she endorses the narrow and “more sensible” interpretation of the Tax Mandate. *See* Ex. B, at 1. The States’ letter asked Secretary Yellen to confirm that the Tax Mandate “merely prohibit[s] States from *expressly* taking

COVID-19 relief funds and rolling them directly into a tax cut of a similar amount.” *Id.* at 2. It urged her to reject a reading that would “prohibit tax cuts or relief of any stripe, even if wholly unrelated to and independent of the availability of relief funds.” *Id.* And it emphasized that the latter, broader interpretation would involve “gross federal overreach,” would be “unconstitutionally coercive,” would involve “economic dragooning,” and would thrust the States into a “Hobson’s choice” between their sovereignty and the relief funds. *Id.* at 4-6. The letter requested Secretary Yellen to confirm by March 23, 2021, that the Tax Mandate “at most precludes *express* use of the funds provided under the Act for direct tax cuts rather than for the purposes specified by the Act. *Id.* at 6.

35. On March 23, 2021, Secretary Yellen responded to the States’ letter. *See* Exhibit C. In her response, Secretary Yellen declined to endorse the narrow, correct, and constitutional interpretation of the Tax Mandate, but instead implied that Treasury might endorse the broad interpretation of the Mandate. *See, e.g., id.* at 1 (“If States lower certain taxes but do not use funds under the Act to offset those cuts – for example, *by replacing the lost revenue through other means* – the limitation in the Act is not implicated.”) (emphasis added).

36. Secretary Yellen declined to provide any further clarification, or even any timeline for further clarification. Rather, she said that “Treasury is crafting further guidance” that it “will provide . . . before a State must submit a certification under § 602(d)(1).” *Id.* at 2.

37. Secretary Yellen’s response creates current uncertainty and confusion about the meaning and scope of the Tax Mandate for state legislatures that are currently debating and considering tax-reduction policies, including Missouri’s General Assembly.

38. Under the Act, if a State violates the Tax Mandate, the Treasury Secretary shall recoup the lesser of: (1) the amount of the applicable reduction to net tax revenue; or (2) the amount

of funds the State received from the federal government. Pub. L. No. 117-2, § 9901 (adding § 602(e)). Alternatively, if the Treasury Secretary chooses to exercise her discretion to withhold up to 50 percent of a State's funds under the Act, the Treasury Secretary may reduce any future payment by that same amount. *Id.* (adding § 602(b)(6)(A)(ii)(III)).

39. The Act does not provide any process for a State to dispute an alleged violation of the Tax Mandate.

II. The Budgetary Impact of the COVID-19 Relief Funds

40. It is estimated that Missouri will receive at least \$2.7 billion in relief from the American Rescue Plan Act to help Missouri and its citizens recover from the devastating effects of the pandemic.

41. The pandemic resulted in a major economic slowdown in Missouri, substantially affecting its revenue and ability to support needed programs.

42. The Act's funds fill a large and urgent need in Missouri's budget, such that Missouri has no real choice except to take the funds, especially while attempting to respond to the economic instability wrought by the COVID-19 pandemic.

43. Due to COVID-19, Missouri's economy has suffered greatly, which has resulted in severe revenue shortfalls. For example, net revenue collection for April to June of 2020 dropped over 30 percent compared to April to June of 2019. *See Revenue Information*, OFFICE OF ADMIN., <https://oa.mo.gov/budget-planning/revenue-information> (last visited Mar. 29, 2021) (June 2020 GR Detail table). *See also* Press Release, Office of Governor Michael L. Parson, Governor Parson Signs FY 2021 Budget Bills (June 30, 2020) (noting that "the state is now experience significant revenue declines" due to COVID-19). And due to expected revenue shortfalls, the Governor restricted over \$435 million of expenditures. *See 2020 Budget Information*, OFFICE OF ADMIN.,

<https://oa.mo.gov/budget-planning/budget-information/2020-budget-information> (last visited Mar. 29, 2021) (providing tables for the four restrictions).

44. Meanwhile, demand for various state services has increased. For example, almost 200,000 Missourians have enrolled in the State's Medicaid plan since last February. *See Annual Summaries for Enrollment Data*, MO. DEP'T OF SOC. SERVS., (last visited Mar. 29, 2021), <https://dss.mo.gov/mhd/mc/pages/enroll.htm>.

45. In fiscal year 2020, which ran from July 1, 2019, to June 30, 2020, expenditures out of Missouri's general fund were roughly \$20.1 billion. STATE OF MISSOURI, COMPREHENSIVE ANNUAL FINANCIAL REPORT: FISCAL YEAR ENDED JUNE 30, 2020, p. 19 (2020). That amount is similar to fiscal year 2019 general fund revenue expenditures of roughly \$19.1 billion. STATE OF MISSOURI, COMPREHENSIVE ANNUAL FINANCIAL REPORT: FISCAL YEAR ENDED JUNE 30, 2019, p. 20 (2019).

46. Thus, the over \$2.7 billion Missouri anticipates receiving from the Act is about 14 percent of Missouri's total general fund expenditures for the last two fiscal years.

III. The Tax Mandate's Immediate Interference with State Sovereignty

47. The Missouri General Assembly's current legislative session commenced on January 6, 2021, and is scheduled to adjourn on May 28, 2021.

48. The Missouri General Assembly is currently in active session and debating tax-reduction policies that, if enacted, could run afoul of the broad, erroneous interpretation of the Tax Mandate.

49. For example, the Missouri General Assembly is considering whether to enact legislation that would offer tax credits to businesses adversely affected by coronavirus-related

shutdown orders. These tax credits would effectively reduce tax revenues from such businesses without creating an offsetting tax increase to directly cover the revenue shortfall.

50. The Missouri General Assembly is also considering proposals that, if enacted, would (1) reduce the state income tax if certain revenue triggers are met, (2) offer non-refundable tax credits to working families, (3) increase a business income tax deduction available to individual taxpayers, (4) reduce and/or phase out Missouri's corporate income tax, (5) reduce Missouri's personal property tax assessment rate, (6) provide an ethanol fuel tax credit, (7) reduce certain state income tax brackets, and (8) accelerate previously enacted reductions on state income taxes, among other things. The bills proposing these tax-reduction policies were all filed before the enactment of the Act and its Tax Mandate, and thus none of these proposals attempts to "offset" tax-reduction revenues with federal relief funds. Yet the broad interpretation of the Tax Mandate now creates uncertainty, confusion, and doubt about the legal and fiscal consequences of enacting such provisions.

51. The Missouri General Assembly's ability to consider, debate, and act upon such tax-reduction policies is impaired if it cannot understand their fiscal implications. The question whether the enactment of any tax-reduction policy would result in Missouri's forfeiture of billions of dollars of federal relief funds is a critical question that requires clear answer to permit the Missouri General Assembly to give informed consideration these issues.

52. The lack of clarity created by Secretary Yellen's March 23, 2021 response thus inflicts immediate interference and irreparable injury on a core aspect of Missouri's sovereignty in our system of federalism—*i.e.*, Missouri's ability to dictate and set its own tax policy.

COUNT ONE – Statutory Interpretation

53. Plaintiff incorporates by reference the allegations in all preceding paragraphs.

54. Properly understood, the Tax Mandate’s prohibition on using funds “to either directly or indirectly *offset* a reduction in the net tax revenue” only prohibits State legislatures from deliberately using funds received under the Act expressly and deliberately to pay for (*i.e.*, “offset”) a specific tax reduction.

55. The plain meaning of “offset” is “[t]o balance or calculate against; to compensate for.” *Offset*, BLACK’S LAW DICTIONARY (11th ed. 2019). *See also Offset*, AM. HERITAGE DICTIONARY (“To counterbalance, counteract, or compensate for”), <https://ahdictionary.com/word/search.html?q=offset>; *Offset*, WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY (2002) (“counterbalance, compensate”). Thus, under its plain meaning, the Tax Mandate only prohibits States from using federal coronavirus relief funds to deliberately “balance or calculate against,” or “compensate for,” a specific tax-reduction policy. It does not prohibit them from adopting tax reduction policies for other reasons unrelated to the coronavirus relief funds. If a State legislature adopts a tax reduction for reasons unrelated to those relief funds, it is not “offsetting” those relief funds under the plain meaning of that word.

56. This interpretation is also supported by the text and structure of the Act, all relevant principles of statutory interpretation, the scope of Congress’s power under the Spending Clause, the Supreme Court’s clear-statement rules, the canon of constitutional avoidance, and basic principles of federalism. Indeed, the broader interpretation would be unconstitutional, as alleged below in Count Two.

57. A broader interpretation of the Tax Mandate would “invoke[]”—indeed, exceed—“the outer limits of Congress’ power.” *Solid Waste Agency of N. Cook Cty. v. U.S. Army Corps of Eng’rs*, 531 U.S. 159, 172 (2001). Moreover, it would “alter[] the federal-state framework by permitting federal encroachment upon a traditional state power.” *Id.* at 173. Accordingly, there

must be “a clear indication that Congress intended” such an expansive interpretation. *Id.* at 172. There is no such clear indication in the Act.

58. Secretary Yellen lacks authority to alter, vary, or change this plain meaning of the Tax Mandate through letter, regulation, or policy statement. “The power of executing the laws . . . does not include a power to revise clear statutory terms.” *Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302, 327 (2014).

59. Secretary Yellen’s failure to adopt the narrow, correct, and constitutional interpretation of the Tax Mandate imposes grave, immediate, and irreparable injury on Missouri, by creating uncertainty and confusion, and hampering the Missouri General Assembly’s ability to give meaningful and informed consideration to tax-reduction proposals.

60. Accordingly, under Count One, Plaintiff request that this Court:

- a. Declare that the Tax Mandate’s bar against using Act funds to “directly or indirectly *offset* a reduction in net tax revenue” means only that States cannot deliberately and expressly use the Act’s funds to counterbalance or compensate for a specific tax cut, while allowing the States to pursue tax-reduction policies for any other reason; and
- b. Preliminarily and permanently enjoin the defendants, and any other agency or employee of the United States, from seeking to recoup funds, as provided in Pub. L. No. 117-2, § 9901 (adding § 602(e)), or otherwise enforcing the Tax Mandate, in a manner inconsistent with this narrow and correct interpretation of the Act.

COUNT TWO – Alternative Claim for Relief – Constitutional Challenge

61. Plaintiff incorporates by reference the allegations of the preceding paragraphs.

62. In the alternative to Count One, if the Court adopts the broader interpretation of the Tax Mandate, then the Tax Mandate is unconstitutional and invalid, and must be severed from the Act.

63. The Act was enacted as an exercise of Congress's spending power under Article I, Section 8, Clause 1 of the United States Constitution.

64. Federal laws imposing conditions on the use of funds provided to the States violate Congress' spending power if they do not meet all of the following conditions: "(1) the legislation must be in pursuit of the general welfare, (2) conditions on the state's receipt of federal funds must be set out unambiguously so that the state's participation is the result of a knowing and informed choice, (3) conditions on federal funds must be related to the federal interest in particular national projects or programs, (4) conditions must not be prohibited by other constitutional provisions, and finally, (5) the circumstances must not be so coercive that pressure turns into compulsion." *Van Wyhe v. Reisch*, 581 F.3d 639, 649–50 (8th Cir. 2009) (internal quotations omitted) (citing *South Dakota v. Dole*, 483 U.S. 203, 207–11 (1987)). The Tax Mandate fails to satisfy this test.

65. If the Tax Mandate is not subject to the narrow interpretation set forth in Count One above, then it is, at best, ambiguous, and thus it fails to "unambiguously" set out the conditions for state participation, and violates the Spending Clause. *Id.*

66. If the Tax Mandate's prohibition on using funds "to either directly or indirectly offset a reduction in the net tax revenue" does not merely prohibit only the deliberate use of funds received under the Act to "offset" a specific tax reduction, then it is unconstitutionally vague. The prohibition would, in theory, allow the Secretary of the Treasury to interpret it to apply to *any* state action that arguably reduces tax revenue. Pub. L. No. 177-2 (adding § 602(f)) (vesting in the Secretary "authority to issue such regulations as may be necessary or appropriate to carry out this

section”). That would affect the legislature’s ability to make tax policy, the state executive’s ability to interpret and execute tax laws, the state judiciary’s ability to interpret state tax statutes and determine if state tax laws are valid or not, and much more.

67. The broad interpretation would mean that the Act fails to articulate “unambiguously” the conditions it imposes on the States. *South Dakota v. Dole*, 483 U.S. 203, 207 (1987). Spending Clause legislation must articulate “unambiguously” the conditions it imposes on the States, enabling them to understand the consequences of accepting funds. *Id.* Under the broad interpretation, the Tax Mandate runs afoul of this requirement, because it is ambiguous regarding what precisely constitutes a change in state tax policy that “indirectly” offsets a loss in tax revenue, among other reasons.

68. Furthermore, the broad interpretation would impermissibly impose conditions that are “unrelated ‘to the federal interest’” in COVID-19 relief. *Id.* at 207–08 (1987) (quoting *Massachusetts v. United States*, 435 U.S. 444 (1978) (plurality opinion)). That would exceed Congress’s limited and enumerated power under the Spending Clause.

69. Under the broad interpretation, the Tax Mandate is also unconstitutionally coercive as to the States.

70. Article I does not give Congress the power to “issue direct orders to the governments of the States.” *Murphy v. NCAA*, 138 S. Ct. 1461, 1476 (2018).

71. Congress may not use the Spending Clause to “indirectly coerce[] a State to adopt a federal regulatory system as its own.” *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 578 (2012) (op. of Roberts, C.J.). Congress violates the Spending Clause when it coerces States to limit their sovereign authority by offering financial inducements that States cannot practically refuse. *See id.*

72. In the current economic climate, Missouri and other States have “no real choice,” *id.* at 587, but to accept the Act’s funds. Accordingly, under the broad interpretation, the Tax Mandate is unconstitutionally coercive and intrudes unlawfully upon state sovereignty.

73. Under the broad interpretation, the Tax Mandate also violates the Tenth Amendment and its anti-commandeering principle.

74. The Tenth Amendment states: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

75. “[T]he Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress’ instructions.” *New York v. United States*, 505 U.S. 144, 162 (1992). This prohibition against commandeering state governments serves important values, such as safeguarding individual liberty and promoting political accountability. *Murphy*, 138 S. Ct. at 1477.

76. The Constitution neither takes the power to set state tax policy from the States, nor empowers the federal government to commandeer state taxing authority.

77. Under the broad interpretation, the Tax Mandate commandeers Missouri’s sovereign authority to set tax policy, and so violates the Tenth Amendment.

78. None of Congress’s other enumerated powers authorized it to enact the Tax Mandate.

79. As a result, the Secretary of the Treasury cannot interpret the Tax Mandate broadly, and the broad interpretation would violate the Constitution. Rather, she, or her designee, must interpret the term narrowly in order to avoid “the outer limits of Congress’ power.” *Id.* At a minimum, that would mean she, or her designee, cannot interpret the Tax Mandate to reach farther

than using the Act's funds to expressly and deliberately offset the revenue reductions from a specific tax cut. Any broader interpretation would violate the Constitution.

80. Accordingly, in the alternative to the relief requested in Count One, Plaintiff request that this Court:

- a. Declare that the broad interpretation of the Tax Mandate is unconstitutional under Article I, the Tenth Amendment, and governing constitutional law;
- b. Declare that the unconstitutional Tax Mandate is severable from the remainder of the Act;
- c. Preliminarily and permanently enjoin the defendants, and any other agency or employee of the United States, from interpreting or enforcing the broad interpretation of the Tax Mandate; and
- d. Preliminarily and permanently enjoin the defendants, and any other agency or employee of the United States, from recouping funds, as provided in Pub. L. No. 117-2, § 9901 (adding § 602(e)), or otherwise enforcing the broad interpretation of the Tax Mandate.

Dated: March 29, 2021

Respectfully submitted,

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