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FOR IMMEDIATE RELEASE
October 4, 2021

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FEDERAL JUDGE STRIKES DOWN ARPA'S TAX MANDATE

Federal Judge Gregory Van Tatenhove gave Kentucky and Tennessee an important legal victory when he ruled that the American Rescue Plan Act (ARPA)'s restrictions on state fiscal autonomy were unconstitutional and enjoined (blocked) the enforcement of those provisions against both states, according to the nonpartisan Washington-based Tax Foundation. The judge held that the ARPA provision, which limited states' authority to cut taxes if they accepted their share of the \$195.3 billion in state Fiscal Recovery Funds provided under the bill, was unduly coercive and therefore unconstitutional.

"In issuing a permanent injunction against the mandate, Judge Van Tatenhove focused exclusively on the coercion argument," writes the foundation's Jared Walczak "The ruling acknowledges that the states 'may very well be correct' about the other three grounds but refrained from anticipating additional questions of constitutional law when, in the court's opinion, answering only one would suffice."

The judge noted that the federal government can offer conditioned funds to states, but this power comes with limits. The government can prohibit the direct use of ARPA funds to facilitate tax cuts if it so chooses, but difficulties arise when Congress goes beyond conditioning the direct use of the funds to putting broad limits on "indirect" use which implicates a wide range of state fiscal choices.

Kentucky and Tennessee cases show, that "refusing to accede to the conditions set out in the [law] is not a realistic option."

The power to tax is central to state governmental authority, a principle that has been affirmed by the Supreme Court going all the way back to *Gibbons v. Ogden* (1824). However, Congress's restriction of this crucial aspect of our system of fiscal federalism exceeded the powers afforded the federal government by the U.S. Constitution.

The foundation states that the law's provision is simultaneously coercive and ambiguous, and are the most likely grounds for rulings against the Tax Mandate.

"The Kentucky and Tennessee case, like the Ohio one before it, only affects the states named as plaintiffs. In his opinion, the judge notes that the coercive elements are universally present, but he

nonetheless restricts the scope of the injunction to the plaintiff states, declining to issue a nationwide injunction.”

The foundation concludes, “The process is far from over, but Friday’s ruling is a major development.”

“This is as important ruling and precedent,” said Jim Tobin, president of Taxpayers United of America. “The ruling cuts down the outrageous condition that prevented states from cutting taxes if they accepted Fiscal Recovery Funds.”

Source: <https://taxfoundation.org/american-rescue-plan-tax-cuts-federal-judge/>