

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

OLMSTED TOWNSHIP, CUYAHOGA	)
COUNTY, OHIO,	)
A Body Politic and Corporate,	)
	)
<i>Plaintiff,</i>	)
	)
vs.	)
	)
JANET L. YELLEN, in Her Official Capacity	)
as Secretary of the Treasury,	)
	)
and	)
	)
U.S. DEPARTMENT OF THE TREASURY,	)
	)
<i>Defendants.</i>	)

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

Plaintiff, Olmsted Township, Cuyahoga County, Ohio, as and for its complaint against the defendants, Janet L. Yellen, in her official capacity as Secretary of the Treasury, and the U.S. Department of the Treasury, hereby avers as follows:

**I. PARTIES**

1. Plaintiff, Olmsted Township, Cuyahoga County, Ohio (“Olmsted”), is a political subdivision of the state of Ohio located in Cuyahoga County, Ohio. Olmsted is located within this judicial district.

2. Defendant, Janet L. Yellen, in her official capacity as Secretary of the Treasury (“Secretary”), is the Secretary of the Department of the United States Treasury.

3. Defendant, U.S. Department of the Treasury “(Treasury”)), is an agency of the United States of America.

4. The defendants are responsible for administering the Coronavirus Local Fiscal Recovery Fund created under the American Rescue Plan Act of 2021 addressed herein below.

## **II. JURISDICTION AND VENUE**

5. This Court has jurisdiction in this case pursuant to 28 U.S.C. 1331 and 2201-02.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. 1391(e)(1).

## **III. BACKGROUND AND FACTS**

7. Plaintiff Olmsted functions as a limited home rule form of township government, in accordance with Chapter 504 of the Ohio Revised Code. The plaintiff functions through a Board of Township Trustees, consisting of three (3) elected township officers, and an elected township Fiscal Officer.

8. In addition, plaintiff Olmsted provides its authorized local governmental services through a series of appointed township officials, including a Township Administrator, Police Chief, Fire Chief, Building Official, Zoning Inspector and Road Superintendent, who oversee the duties of approximately 65 employees.

9. The plaintiff Olmsted provides a wide complement of local governmental services, including but not limited to: police protection; fire safety, suppression, rescue and emergency medical services; roadway maintenance; zoning and planning; and certified building services.

10. In light of its population base and authority as a limited home rule township, Olmsted qualifies as an urban township pursuant to R.C. 504.01(B). In addition, its population and number of household units qualifies plaintiff Olmsted as a 2020 Census Urban Area.

11. Plaintiff Olmsted has previously qualified for and received Community Development Block Grant funding for eligible projects within the township, as part of an Urban County.

12. On or about March 11, 2021, the U.S. President signed into law H.R. 1319, denominated the American Rescue Plan Act of 2021 (herein referred to as the “ARPA”). The ARPA created a \$1.9 trillion stimulus package for response to the impacts from the SARS-CoV-2 pandemic. The text of the ARPA is available at: <https://www.congress.gov/bill/117th-congress/house-bill/1319/text>.

13. As part of the ARPA, Subtitle M, Congress established the Coronavirus State and Local Fiscal Recovery Funds. Among other appropriations, Congress directed the defendant Secretary, and thus defendant Treasury, to allocate \$130,200,000,000.00 for the Coronavirus Local Fiscal Recovery Fund. Section 603(a) of the ARPA provides:

Appropriation.—In addition to amounts otherwise available, there is appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, \$130,200,000,000, to remain available through December 31, 2024, for making payments under this section to metropolitan cities, nonentitlement units of local government, and counties to mitigate the fiscal effects stemming from the public health emergency with respect to the Coronavirus Disease (COVID–19).

14. The ARPA authorized various direct payments from the Coronavirus Local Fiscal Recovery Fund to metropolitan cities and counties. In addition, the ARPA allocated \$19,530,000,000.00 from the Coronavirus Local Fiscal Recovery Fund for distribution to nonentitlement units of local government through the States.

15. On or about May 10, 2021, the defendants Secretary and Treasury announced that the aggregate allocation from the Coronavirus Local Fiscal Recovery Fund for payment to nonentitlement units of local government in the state of Ohio was fixed at \$843,726, 939.00. This Treasury allocation, as well as such allocations to all other States, is available at

<https://home.treasury.gov/system/files/136/fiscalrecoveryfunds-nonentitlementfunding1-508A.pdf>.

16. The ARPA expressly provides that “[t]o the extent practicable, with respect to . . . each State for which an amount is allocated under paragraph (2) [Section 603(b)(2)(B)] for distribution to nonentitlement units of local government, . . . the Secretary shall pay from such allocation the First Tranche for such . . . State, . . . not later than 60 days after the date of enactment of this section.” Absent extension, as authorized, distributions to nonentitlement units of local government are called for under the ARPA “[n]ot later than 30 days after a State receives a payment under subparagraph (B) [Section 603(b)(2)(B)].” Thus, time is of the essence in this case.

17. Pursuant to the ARPA, “[t]he term ‘nonentitlement unit of local government’ means a ‘city’, as that term is defined in section 102(a)(5) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(5)), that is not a metropolitan city.” In turn, Section 102(a)(5) of the Housing and Community Development Act of 1974 provides:

The term “city” means (A) any unit of general local government which is classified as a municipality by the United States Bureau of the Census or (B) any other unit of general local government which is a town or township and which, in the determination of the Secretary, (i) possesses powers and performs functions comparable to these associated with municipalities, (ii) is closely settled, and (iii) contains within its boundaries no incorporated places as defined by the United States Bureau of the Census which have not entered into cooperation agreements with such town or township to undertake or to assist in the undertaking of essential community development and housing assistance activities.

As used in 42 U.S.C. 5302, “‘Secretary’ means the Secretary of Housing and Urban Development.”

42 U.S.C. 5302(a)(19). A “unit of general local government” is itself defined at Section 102(a)(1)

as follows:

The term “unit of general local government” means any city, county, town, township, parish, village, or other general purpose political subdivision of a State; Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa, or a general purpose political subdivision thereof; a combination of such political

subdivisions that, except as provided in section 5306(d)(4) of this title, is recognized by the Secretary; and the District of Columbia. Such term also includes a State or a local public body or agency (as defined in section 4512 of this title), community association, or other entity, which is approved by the Secretary for the purpose of providing public facilities or services to a new community as part of a program meeting the eligibility standards of section 4513 of this title or title IV of the Housing and Urban Development Act of 1968 [42 U.S.C. 3901 et seq.].

42 U.S.C. 5302(a)(1).

18. To date, the defendants have not issued a rule, determination or other ruling, defining the eligibility of Ohio townships, such as the plaintiff Olmsted, for allocation and payment of funds from the Coronavirus Local Fiscal Recovery Fund, giving rise to the uncertainty and real and justiciable controversy which this suit seeks to redress.

19. This Court's prompt judicial resolution of the eligibility of the plaintiff Olmsted as a qualifying nonentitlement unit of local government under the ARPA is required to settle the respective rights and responsibilities of the parties.

**IV. THREE OHIO TOWNSHIPS HAVE ALREADY QUALIFIED AS DIRECT RECIPIENTS FOR ARPA FUNDS**

20. On or about May 10, 2021, the defendants Secretary and Treasury issued and published the Allocation for Metropolitan Cities under Section 603 of the ARPA. Included as part of that allocation for direct payment from the ARPA were three Ohio townships: Colerain Township (Hamilton County, Ohio); Green Township (Hamilton County, Ohio); and West Chester Township (Butler County, Ohio). Treasury's Allocation for Metropolitan Cities can be found at: <https://home.treasury.gov/system/files/136/fiscalrecoveryfunds-metrocitiesfunding1-508A.pdf>.

21. These three Ohio townships qualified as eligible recipients under the classification "metropolitan city" in part because each has a population of fifty thousand or more. For purposes of the ARPA, metropolitan city has the same meaning as set forth in Section 102(a)(4) of the Housing and Community Development Act of 1974, which provides in part:

The term “metropolitan city” means (A) a city within a metropolitan area which is the central city of such area, as defined and used by the Office of Management and Budget, or (B) any other city, within a metropolitan area, which has a population of fifty thousand or more.

42 U.S.C. 5302(a)(4). Section 603(g)(4).

22. Aside from the population threshold for qualification as a metropolitan city, each of the three Ohio townships which have been determined eligible for direct payments of ARPA funds necessarily satisfied the Housing and Community Development Act definition of “city” as well, since that term is incorporated within the definition of metropolitan city.

23. Plaintiff Olmsted avers that the same governmental features which support the determination that Colerain Township, Green Township and West Chester Township qualify as cities as that term is defined and used in the Housing and Community Development Act equally support the identical conclusion that plaintiff Olmsted qualifies as a city, and thus as a nonentitlement unit of local government under the ARPA.

#### **V. CLAIMS FOR RELIEF**

24. Plaintiff realleges the foregoing paragraphs of the complaint as if fully rewritten herein.

25. Plaintiff Olmsted qualifies as a nonentitlement unit of local government, pursuant to Section 603 of the ARPA and the definitions drawn from the Housing and Community Development Act of 1974 utilized therein.

26. Consequently, plaintiff Olmsted is entitled to a declaration and determination that it qualifies as a recipient for an allocation and payment from the aggregate share of the Coronavirus Local Fiscal Recovery Fund payable to the state of Ohio, calculated in accordance with the population-based formula for allocation set forth in Section 603 of the ARPA.

27. This Court's declaration of the parties' respective rights and responsibilities will operate to settle this controversy and will define the legal relations placed at issue in this complaint.

28. In light of plaintiff's regularly-performed functions of local government and qualifying status as a nonentitlement unit of local government, pursuant to Section 603 of the ARPA, the plaintiff Olmsted is further entitled to injunctive relief, restraining the defendants from promulgating or issuing any rule, determination or other ruling which restricts, limits or precludes plaintiff's eligibility for payment from the Coronavirus Local Fiscal Recovery Fund.

29. Plaintiff avers that substantial harm would result to it, and similarly-situated Ohio townships, in the absence of injunctive relief and, thus, the public interest would be served by the issuance of injunctive relief.

## **VI. DEMAND FOR JUDGMENT**

**WHEREFORE**, plaintiff, Olmsted Township, Cuyahoga County, Ohio, hereby demands judgment pursuant to its claims against defendants, Janet L. Yellen, in her official capacity as Secretary of the Treasury, and the United States Department of the Treasury, as follows:

1. A declaration and determination that plaintiff Olmsted qualifies as a nonentitlement unit of local government, pursuant to Section 603 of the ARPA and the definitions drawn from the Housing and Community Development Act of 1974 utilized therein;

2. A declaration and determination that plaintiff Olmsted is entitled to receive an allocation and payment from the aggregate share of the Coronavirus Local Fiscal Recovery Fund payable to the state of Ohio, calculated in accordance with the population-based formula for allocation set forth in Section 603 of the ARPA;

3. An injunction restraining the defendants from promulgating, issuing or enforcing any alternative rule, determination or other ruling which restricts, limits or precludes plaintiff's eligibility for payment from the Coronavirus Local Fiscal Recovery Fund; and
4. Such further and additional relief as deemed proper under 28 U.S.C. 2202.

Respectfully submitted,

*s/James F. Mathews*

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