

## University of Akron School of Law

---

From the SelectedWorks of Wilson R. Huhn

---

January 2012

# Excerpts from Chief Justice Roberts' Opinion in NFIB v. Sebelius

Contact  
Author

Start Your Own  
SelectedWorks

Notify Me  
of New Work



Available at: [http://works.bepress.com/wilson\\_huhn/68](http://works.bepress.com/wilson_huhn/68)

# Excerpts from Chief Justice Roberts' Opinion in *National Federation of Independent Business v. Sebelius* (2012)

Prepared by Wilson Huhn

## Introduction to the Opinion

### **2. [Placing the debate over national universal health care coverage in a broader context.]**

In our federal system, the National Government possesses only limited powers; the States and the people retain the remainder. Nearly two centuries ago, Chief Justice Marshall observed that “the question respecting the extent of the powers actually granted” to the Federal Government “is perpetually arising, and will probably continue to arise, as long as our system shall exist.” *McCulloch v. Maryland*, 4 Wheat. 316, 405 (1819). In this case we must again determine whether the Constitution grants Congress powers it now asserts, but which many States and individuals believe it does not possess. Resolving this controversy requires us to examine both the limits of the Government’s power, and our own limited role in policing those boundaries.

### **5. [Describing the broad power of Congress to tax and spend.]**

Put simply, Congress may tax and spend. This grant gives the Federal Government considerable influence even in areas where it cannot directly regulate. The Federal Government may enact a tax on an activity that it cannot authorize, forbid, or otherwise control.

### **6. [Expressing the principle that the Court’s powers are limited.]**

Members of this Court are vested with the authority to interpret the law; we possess neither the expertise nor the prerogative to make policy judgments. Those decisions are entrusted to our Nation’s elected leaders, who can be thrown out of office if the people disagree with them. It is not our job to protect the people from the consequences of their political choices.

## Part II (ruling that the Anti-Injunction Act does not apply)

### **11-12. [Explaining that if the individual mandate constitutes a “tax” within the meaning of the Anti-Injunction Act, this lawsuit would have to be postponed until the year 2014.]**

Before turning to the merits, we need to be sure we have the authority to do so. The Anti-Injunction Act provides that “no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.” 26 U. S. C. §7421(a). This statute protects the Government’s ability to collect a consistent stream of revenue, by barring litigation to enjoin or otherwise obstruct the collection of taxes. Because of the Anti-Injunction Act, taxes can ordinarily be challenged only after

they are paid, by suing for a refund. See *Enochs v. Williams Packing & Nav. Co.*, 370 U. S. 1, 7–8 (1962).

The penalty for not complying with the Affordable Care Act’s individual mandate first becomes enforceable in 2014. The present challenge to the mandate thus seeks to restrain the penalty’s future collection. *Amicus* [appointed counsel] contends that the Internal Revenue Code treats the penalty as a tax, and that the Anti-Injunction Act therefore bars this suit.

## **12. [Rebutting the argument of appointed counsel that the enforcement mechanism for the individual mandate is a “tax” for purposes of the Anti-Injunction Act.]**

*Amicus* contends that the Internal Revenue Code treats the penalty as a tax, and that the Anti-Injunction Act therefore bars this suit.

The text of the pertinent statutes suggests otherwise. The Anti-Injunction Act applies to suits “for the purpose of restraining the assessment or collection of any *tax*.” §7421(a) (emphasis added). Congress, however, chose to describe the “[s]hared responsibility payment” imposed on those who forgo health insurance not as a “tax,” but as a “penalty.” §§5000A(b), (g)(2). There is no immediate reason to think that a statute applying to “any tax” would apply to a “penalty.”

Congress’s decision to label this exaction a “penalty” rather than a “tax” is significant because the Affordable Care Act describes many other exactions it creates as “taxes.”

[However] ... Congress cannot change whether an exaction is a tax or a penalty for *constitutional* purposes simply by describing it as one or the other.

## **13. [In the interpretation of the interaction between the Affordable Care Act and the Anti-Injunction Act, the text of the law is the “best evidence” of Congress’ intent.]**

The Anti-Injunction Act and the Affordable Care Act, however, are creatures of Congress’s own creation. How they relate to each other is up to Congress, and the best evidence of Congress’s intent is the statutory text.

## **Part III-A (ruling that the individual mandate is not constitutional under the Commerce Clause**

## **18. [textual argument against the individual mandate as an exercise of the Commerce Power]**

The Constitution grants Congress the power to “*regulate* Commerce.” Art. I, §8, cl. 3 (emphasis added). The power to *regulate* commerce presupposes the existence of commercial activity to be regulated. If the power to “regulate” something included the power to create it, many of the provisions in the Constitution would be superfluous. For example, the Constitution gives Congress the power to “coin Money,” in addition to the power to “regulate the Value thereof.” *Id.*, cl. 5. And it gives Congress the power to “raise and support Armies” and to “provide and maintain a Navy,” in addition to the power to “make Rules for the Government and Regulation of the land and naval Forces.” *Id.*, cls. 12–14. If the power to regulate the armed forces or the value of money included the power to bring the subject of the

regulation into existence, the specific grant of such powers would have been unnecessary. The language of the Constitution reflects the natural understanding that the power to regulate assumes there is already something to be regulated.

**19-20. [Longstanding precedent speaks of Congress’ power to regulate “economic activity”]**

Our precedent also reflects this understanding. As expansive as our cases construing the scope of the commerce power have been, they all have one thing in common: They uniformly describe the power as reaching “activity.” It is nearly impossible to avoid the word when quoting them. See, e.g., *Lopez, supra*, at 560 (“Where economic activity substantially affects interstate commerce, legislation regulating that activity will be sustained”); *Perez*, 402 U. S., at 154 (“Where the *class of activities* is regulated and that *class* is within the reach of federal power, the courts have no power to excise, as trivial, individual instances of the class” (emphasis in original; internal quotation marks omitted)); *Wickard, supra*, at 125 (“[E]ven if appellee’s activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce”); *NLRB v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 37 (1937) (“Although activities may be intrastate in character when separately considered, if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions, Congress cannot be denied the power to exercise that control”).

**20-21. [Finding that the individual mandate does not regulate commercial activity but rather requires individuals to engage in economic activity, and finding that upholding this law would greatly expand the power of Congress.]**

The individual mandate, however, does not regulate existing commercial activity. It instead compels individuals to *become* active in commerce by purchasing a product, on the ground that their failure to do so affects interstate commerce. Construing the Commerce Clause to permit Congress to regulate individuals precisely *because* they are doing nothing would open a new and potentially vast domain to congressional authority. Every day individuals do not do an infinite number of things. In some cases they decide not to do something; in others they simply fail to do it. Allowing Congress to justify federal regulation by pointing to the effect of inaction on commerce would bring countless decisions an individual could *potentially* make within the scope of federal regulation, and—under the Government’s theory—empower Congress to make those decisions for him.

**23-24. [Continuing the policy argument against allowing Congress the power to require individuals to engage in economic activity.]**

People, for reasons of their own, often fail to do things that would be good for them or good for society. Those failures—joined with the similar failures of others—can readily have a substantial effect on interstate commerce. Under the Government’s logic, that authorizes Congress to use its commerce power to compel citizens to act as the Government would have them act.

That is not the country the Framers of our Constitution envisioned. ... Accepting the Government’s theory would give Congress the same license to regulate what we do not do, fundamentally changing the relation between the citizen and the Federal government.

**24. [Intent and tradition arguments against the constitutionality of the individual mandate under the Commerce Clause.]**

To an economist, perhaps, there is no difference between activity and inactivity; both have measurable economic effects on commerce. But the distinction between doing something and doing nothing would not have been lost on the Framers, who were “practical statesmen,” not metaphysical philosophers. *Industrial Union Dept., AFL–CIO v. American Petroleum Institute*, 448 U. S. 607, 673 (1980) (Rehnquist, J., concurring in judgment). As we have explained, “the framers of the Constitution were not mere visionaries, toying with speculations or theories, but practical men, dealing with the facts of political life as they understood them, putting into form the government they were creating, and prescribing in language clear and intelligible the powers that government was to take.” *South Carolina v. United States*, 199 U. S. 437, 449 (1905). The Framers gave Congress the power to *regulate* commerce, not to *compel* it, and for over 200 years both our decisions and Congress’s actions have reflected this understanding. There is no reason to depart from that understanding now.

## **26. [Finding that the individual mandate regulates individuals, not economic activity.]**

Everyone will likely participate in the markets for food, clothing, transportation, shelter, or energy; that does not authorize Congress to direct them to purchase particular products in those or other markets today. The Commerce Clause is not a general license to regulate an individual from cradle to grave, simply because he will predictably engage in particular transactions. Any police power to regulate individuals as such, as opposed to their activities, remains vested in the States.

## **28-29. [Ruling that the individual mandate is not constitutional under the Necessary and Proper Clause.]**

As our jurisprudence under the Necessary and Proper Clause has developed, we have been very deferential to Congress’s determination that a regulation is “necessary.” We have thus upheld laws that are “‘convenient, or useful’ or ‘conducive’ to the authority’s ‘beneficial exercise.’” *Comstock*, 560 U. S., at \_\_\_ (slip op., at 5) (quoting *McCulloch, supra*, at 413, 418). But we have also carried out our responsibility to declare unconstitutional those laws that undermine the structure of government established by the Constitution. Such laws, which are not “consist[ent] with the letter and spirit of the constitution,” *McCulloch, supra*, at 421, are not “*proper* [means] for carrying into Execution” Congress’s enumerated powers. Rather, they are, “in the words of The Federalist, ‘merely acts of usurpation’ which ‘deserve to be treated as such.’” *Printz v. United States*, 521 U. S. 898, 924 (1997) (alterations omitted) (quoting The Federalist No. 33, at 204 (A. Hamilton)); see also *New York*, 505 U. S., at 177; *Comstock, supra*, at \_\_\_ (slip op., at 5) (KENNEDY, J., concurring in judgment) (“It is of fundamental importance to consider whether essential attributes of state sovereignty are compromised by the assertion of federal power under the Necessary and Proper Clause . . .”).

Applying these principles, the individual mandate cannot be sustained under the Necessary and Proper Clause as an essential component of the insurance reforms. Each of our prior cases upholding laws under that Clause involved exercises of authority derivative of, and in service to, a granted power. For example, we have upheld provisions permitting continued confinement of those *already in federal custody* when they could not be safely released, *Comstock, supra*, at \_\_\_ (slip op., at 1–2); criminalizing bribes involving organizations *receiving federal funds*, *Sabri v. United States*, 541 U. S. 600, 602, 605 (2004); and tolling state statutes of limitations while cases are *pending in federal court*, *Jinks v. Richland County*, 538 U. S. 456, 459, 462 (2003). The individual mandate, by contrast, vests Congress with the extraordinary ability to create the necessary predicate to the exercise of an enumerated power.

### **30. [Conclusion regarding the constitutionality of the individual mandate under the Commerce Clause and the Necessary and Proper Clause.]**

Just as the individual mandate cannot be sustained as a law regulating the substantial effects of the failure to purchase health insurance, neither can it be upheld as a “necessary and proper” component of the insurance reforms. The commerce power thus does not authorize the mandate. *Accord, post*, at 4–16 (joint opinion of SCALIA, KENNEDY, THOMAS, and ALITO, JJ., dissenting).

## **Part III-B (framing the issue under the General Welfare Clause)**

### **31. [Explaining that the courts have the duty to construe a statute so as to be constitutional, if that is “fairly possible.”]**

The text of a statute can sometimes have more than one possible meaning. To take a familiar example, a law that reads “no vehicles in the park” might, or might not, ban bicycles in the park. And it is well established that if a statute has two possible meanings, one of which violates the Constitution, courts should adopt the meaning that does not do so. Justice Story said that 180 years ago: “No court ought, unless the terms of an act rendered it unavoidable, to give a construction to it which should involve a violation, however unintentional, of the constitution.” *Parsons v. Bedford*, 3 Pet. 433, 448–449 (1830). Justice Holmes made the same point a century later: “[T]he rule is settled that as between two possible interpretations of a statute, by one of which it would be unconstitutional and by the other valid, our plain duty is to adopt that which will save the Act.” *Blodgett v. Holden*, 275 U. S. 142, 148 (1927) (concurring opinion).

The most straightforward reading of the mandate is that it commands individuals to purchase insurance. [But this “command” is unconstitutional under the Commerce Clause.] ... Under our precedent, it is therefore necessary to ask whether the Government’s alternative reading of the statute—that it only imposes a tax on those without insurance—is a reasonable one.

Under the mandate, if an individual does not maintain health insurance, the only consequence is that he must make an additional payment to the IRS when he pays his taxes. See §5000A(b). That, according to the Government, means the mandate can be regarded as establishing a condition—not owning health insurance—that triggers a tax—the required payment to the IRS. Under that theory, the mandate is not a legal command to buy insurance. Rather, it makes going without insurance just another thing the Government taxes, like buying gasoline or earning income. And if the mandate is in effect just a tax hike on certain taxpayers who do not have health insurance, it may be within Congress’s constitutional power to tax.

The question is not whether that is the most natural interpretation of the mandate, but only whether it is a “fairly possible” one. *Crowell v. Benson*, 285 U. S. 22, 62 (1932). As we have explained, “every reasonable construction must be resorted to, in order to save a statute from unconstitutionality.” *Hooper v. California*, 155 U. S. 648, 657 (1895). The Government asks us to interpret the mandate as imposing a tax, if it would otherwise violate the Constitution.

Granting the Act the full measure of deference owed to federal statutes, it can be so read, for the reasons set forth below.

### Part III-C (upholding the individual mandate under the General Welfare Clause)

#### **33. [Explaining why the enforcement mechanism for the individual mandate “looks like a tax,” and stating that the label attached to the provision is not determinative.]**

The exaction the Affordable Care Act imposes on those without health insurance looks like a tax in many respects. The “[s]hared responsibility payment,” as the statute entitles it, is paid into the Treasury by “taxpayer[s]” when they file their tax returns. 26 U. S. C. §5000A(b). It does not apply to individuals who do not pay federal income taxes because their household income is less than the filing threshold in the Internal Revenue Code. §5000A(e)(2). For taxpayers who do owe the payment, its amount is determined by such familiar factors as taxable income, number of dependents, and joint filing status. §§5000A(b)(3), (c)(2), (c)(4). The requirement to pay is found in the Internal Revenue Code and enforced by the IRS, which—as we previously explained—must assess and collect it “in the same manner as taxes.” *Supra*, at 13–14. This process yields the essential feature of any tax: it produces at least some revenue for the Government. *United States v. Kahriger*, 345 U. S. 22, 28, n. 4 (1953). Indeed, the payment is expected to raise about \$4 billion per year by 2017. Congressional Budget Office, *Payments of Penalties for Being Uninsured Under the Patient Protection and Affordable Care Act* (Apr. 30, 2010), in *Selected CBO Publications Related to Health Care Legislation, 2009–2010*, p. 71 (rev. 2010). It is of course true that the Act describes the payment as a “penalty,” not a “tax.” But while that label is fatal to the application of the Anti-Injunction Act, *supra*, at 12–13, it does not determine whether the payment may be viewed as an exercise of Congress’s taxing power. It is up to Congress whether to apply the Anti-Injunction Act to any particular statute, so it makes sense to be guided by Congress’s choice of label on that question. That choice does not, however, control whether an exaction is within Congress’s constitutional power to tax.

#### **35-36. [Describing the “functional approach” used in prior cases to determine whether a statute constitutes a “tax” or a “penalty,” and explaining why the enforcement mechanism of the individual mandate functions as a tax.]**

Our cases confirm this functional approach. For example, in *Drexel Furniture*, we focused on three practical characteristics of the so-called tax on employing child laborers that convinced us the “tax” was actually a penalty. First, the tax imposed an exceedingly heavy burden—10 percent of a company’s net income—on those who employed children, no matter how small their infraction. Second, it imposed that exaction only on those who knowingly employed underage laborers. Such scienter requirements are typical of punitive statutes, because Congress often wishes to punish only those who intentionally break the law. Third, this “tax” was enforced in part by the Department of Labor, an agency responsible for punishing violations of labor laws, not collecting revenue. 259 U. S., at 36–37; see also, *e.g.*, *Kurth Ranch*, 511 U. S., at 780–782 (considering, *inter alia*, the amount of the exaction, and the fact that it was imposed for violation of a separate criminal law); *Constantine*, *supra*, at 295 (same).

The same analysis here suggests that the shared responsibility payment may for constitutional purposes be considered a tax, not a penalty: First, for most Americans the amount due will be far less than the price of insurance, and, by statute, it can never be more. It may often be a reasonable financial decision to make the payment rather than purchase insurance, unlike the “prohibitory” financial punishment in *Drexel Furniture*. 259 U. S., at 37. Second, the individual mandate contains no scienter requirement. Third, the payment is collected solely by the IRS through the normal means of taxation—except that the Service is *not* allowed to use those means most suggestive of a punitive sanction, such as criminal prosecution. See §5000A(g)(2). The reasons the Court in *Drexel Furniture* held that what was called a “tax” there was a penalty support the conclusion that what is called a “penalty” here may be viewed as a tax.

**36-37. [Rebutting the argument that this is a “penalty” rather than a “tax” because it seeks to influence conduct.]**

But taxes that seek to influence conduct are nothing new. Some of our earliest federal taxes sought to deter the purchase of imported manufactured goods in order to foster the growth of domestic industry. See W. Brownlee, *Federal Taxation in America* 22 (2d ed. 2004); cf. 2 J. Story, *Commentaries on the Constitution of the United States* §962, p. 434 (1833) (“the taxing power is often, very often, applied for other purposes, than revenue”). Today, federal and state taxes can compose more than half the retail price of cigarettes not just to raise more money, but to encourage people to quit smoking. And we have upheld such obviously regulatory measures as taxes on selling marijuana and sawed-off shotguns. See *United States v. Sanchez*, 340 U. S. 42, 44–45 (1950); *Sonzinsky v. United States*, 300 U. S. 506, 513 (1937). Indeed, “[e]very tax is in some measure regulatory. To some extent it interposes an economic impediment to the activity taxed as compared with others not taxed.” *Sonzinsky*, *supra*, at 513. That §5000A seeks to shape decisions about whether to buy health insurance does not mean that it cannot be a valid exercise of the taxing power.

**37-38. [Arguing that the individual mandate is not a penalty for violating the law but simply a tax.]**

While the individual mandate clearly aims to induce the purchase of health insurance, it need not be read to declare that failing to do so is unlawful. Neither the Act nor any other law attaches negative legal consequences to not buying health insurance, beyond requiring a payment to the IRS. The Government agrees with that reading, confirming that if someone chooses to pay rather than obtain health insurance, they have fully complied with the law. Brief for United States 60–61; Tr. of Oral Arg. 49–50 (Mar. 26, 2012).

Indeed, it is estimated that four million people each year will choose to pay the IRS rather than buy insurance. See Congressional Budget Office, *supra*, at 71. We would expect Congress to be troubled by that prospect if such conduct were unlawful. That Congress apparently regards such extensive failure to comply with the mandate as tolerable suggests that Congress did not think it was creating four million outlaws. It suggests instead that the shared responsibility payment merely imposes a tax citizens may lawfully choose to pay in lieu of buying health insurance.

**39. [Rejecting the argument that the “label” that Congress placed upon the law calling the enforcement mechanism for the individual mandate a “penalty” instead of a “tax” is controlling for constitutional purposes, and rebutting the dissent’s argument that the Court is “rewriting” the legislation.]**

The joint dissenters argue that we cannot uphold §5000A as a tax because Congress did not “frame” it as such. *Post*, at 17. In effect, they contend that even if the Constitution permits Congress to do exactly what we interpret this statute to do, the law must be struck down because Congress used the wrong labels. An example may help illustrate why labels should not control here. Suppose Congress enacted a statute providing that every taxpayer who owns a house without energy efficient windows must pay \$50 to the IRS. The amount due is adjusted based on factors such as taxable income and joint filing status, and is paid along with the taxpayer’s income tax return. Those whose income is below the filing threshold need not pay. The required payment is not called a “tax,” a “penalty,” or anything else. No one would doubt that this law imposed a tax, and was within Congress’s power to tax. That conclusion should not change simply because Congress used the word “penalty” to describe the payment. Interpreting such a law to be a tax would hardly “[i]mpos[e] a tax through judicial legislation.” *Post*, at 25. Rather, it would give practical effect to the Legislature’s enactment.

**41. [Rejecting the argument that the individual mandate imposes a “direct tax” in violation of the Constitution’s requirement that direct taxes be apportioned among the states.]**

A tax on going without health insurance does not fall within any recognized category of direct tax. It is not a capitation. Capitations are taxes paid by every person, “without regard to property, profession, or *any other circumstance.*” *Hylton, supra*, at 175 (opinion of Chase, J.) (emphasis altered). The whole point of the shared responsibility payment is that it is triggered by specific circumstances—earning a certain amount of income but not obtaining health insurance. The payment is also plainly not a tax on the ownership of land or personal property. The shared responsibility payment is thus not a direct tax that must be apportioned among the several States.

**43-44. [Explaining why the power to tax is narrower than the power to regulate, and why this law is a “tax” and not a “penalty.”]**

... [A]lthough the breadth of Congress’s power to tax is greater than its power to regulate commerce, the taxing power does not give Congress the same degree of control over individual behavior. Once we recognize that Congress may regulate a particular decision under the Commerce Clause, the Federal Government can bring its full weight to bear. Congress may simply command individuals to do as it directs. An individual who disobeys may be subjected to criminal sanctions. Those sanctions can include not only fines and imprisonment, but all the attendant consequences of being branded a criminal: deprivation of otherwise protected civil rights, such as the right to bear arms or vote in elections; loss of employment opportunities; social stigma; and severe disabilities in other controversies, such as custody or immigration disputes.

By contrast, Congress’s authority under the taxing power is limited to requiring an individual to pay money into the Federal Treasury, no more. If a tax is properly paid, the

Government has no power to compel or punish individuals subject to it. We do not make light of the severe burden that taxation—especially taxation motivated by a regulatory purpose—can impose. But imposition of a tax nonetheless leaves an individual with a lawful choice to do or not do a certain act, so long as he is willing to pay a tax levied on that choice.

### Part III-D (stating the conclusion upholding the constitutionality of the individual mandate)

#### **44-45. [Chief Justice Roberts’ conclusion regarding the individual mandate.]**

The Federal Government does not have the power to order people to buy health insurance. Section 5000A would therefore be unconstitutional if read as a command. The Federal Government does have the power to impose a tax on those without health insurance. Section 5000A is therefore constitutional, because it can reasonably be read as a tax.

### Part IV (upholding the expansion of the Medicaid program but striking down the power of the federal government to withhold funding for the existing Medicaid program for any State that refuses to participate in the Medicaid expansion)

#### **46-47. [Describing Congress’ power under the General Welfare Clause and the limits upon that power to coerce the States.]**

The Spending Clause grants Congress the power “to pay the Debts and provide for the . . . general Welfare of the United States.” U. S. Const., Art. I, §8, cl. 1. We have long recognized that Congress may use this power to grant federal funds to the States, and may condition such a grant upon the States’ “taking certain actions that Congress could not require them to take.” *College Savings Bank*, 527 U. S., at 686. Such measures “encourage a State to regulate in a particular way, [and] influenc[e] a State’s policy choices.” *New York, supra*, at 166. The conditions imposed by Congress ensure that the funds are used by the States to “provide for the . . . general Welfare” in the manner Congress intended.

At the same time, our cases have recognized limits on Congress’s power under the Spending Clause to secure state compliance with federal objectives. “We have repeatedly characterized . . . Spending Clause legislation as ‘much in the nature of a *contract*.’” *Barnes v. Gorman*, 536 U. S. 181, 186 (2002) (quoting *Pennhurst State School and Hospital v. Halderman*, 451 U. S. 1, 17 (1981)). The legitimacy of Congress’s exercise of the spending power “thus rests on whether the State voluntarily and knowingly accepts the terms of the ‘contract.’” *Pennhurst, supra*, at 17. Respecting this limitation is critical to ensuring that Spending Clause legislation does not undermine the status of the States as independent sovereigns in our federal system. That system “rests on what might at first seem a counterintuitive insight, that ‘freedom is enhanced by the creation of two governments, not one.’ ” *Bond*, 564 U. S., at \_\_\_ (slip op., at 8) (quoting *Alden v. Maine*, 527 U. S. 706, 758 (1999)). For this reason, “the Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Con-

gress' instructions." *New York, supra*, at 162. Otherwise the two-government system established by the Framers would give way to a system that vests power in one central government, and individual liberty would suffer.

That insight has led this Court to strike down federal legislation that commandeers a State's legislative or administrative apparatus for federal purposes. ... Congress may use its spending power to create incentives for States to act in accordance with federal policies. But when "pressure turns into compulsion," *ibid.*, the legislation runs contrary to our system of federalism.

**48. [Stating the principle that the federal government may not "force the states to implement a federal program."]**

Permitting the Federal Government to force the States to implement a federal program would threaten the political accountability key to our federal system.

**49. [Stating that, on the other hand, if the States wish to operate as "separate and independent sovereigns," then "they have to act like it."]**

As our decision in *Steward Machine* confirms, Congress may attach appropriate conditions to federal taxing and spending programs to preserve its control over the use of federal funds. In the typical case we look to the States to defend their prerogatives by adopting "the simple expedient of not yielding" to federal blandishments when they do not want to embrace the federal policies as their own. *Massachusetts v. Mellon*, 262 U. S. 447, 482 (1923). The States are separate and independent sovereigns. Sometimes they have to act like it.

**50. [Articulating the general standard used to determine whether or not a conditional spending program is coercive against the States.]**

We have upheld Congress's authority to condition the receipt of funds on the States' complying with restrictions on the use of those funds, because that is the means by which Congress ensures that the funds are spent according to its view of the "general Welfare." Conditions that do not here govern the use of the funds, however, cannot be justified on that basis. When, for example, such conditions take the form of threats to terminate other significant independent grants, the conditions are properly viewed as a means of pressuring the States to accept policy changes.

**52-53 [Contending that the Medicaid expansion contained in the ACA is a separate and different program than existing Medicaid.]**

JUSTICE GINSBURG claims that *Dole* is distinguishable because here "Congress has not threatened to withhold funds earmarked for any other program." *Post*, at 47. But that begs the question: The States contend that the expansion is in reality a new program and that Congress is forcing them to accept it by threatening the funds for the existing Medicaid program. We cannot agree that existing Medicaid and the expansion dictated by the Affordable Care Act are all one program simply because "Congress styled" them as such. *Post*, at 49. If the expansion is not

properly viewed as a modification of the existing Medicaid program, Congress's decision to so title it is irrelevant.

Here, the Government claims that the Medicaid expansion is properly viewed merely as a modification of the existing program because the States agreed that Congress could change the terms of Medicaid when they signed on in the first place. The Government observes that the Social Security Act, which includes the original Medicaid provisions, contains a clause expressly reserving “[t]he right to alter, amend, or repeal any provision” of that statute. 42 U. S. C. §1304. So it does. But “if Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously.” *Pennhurst*, 451 U. S., at 17. A State confronted with statutory language reserving the right to “alter” or “amend” the pertinent provisions of the Social Security Act might reasonably assume that Congress was entitled to make adjustments to the Medicaid program as it developed. Congress has in fact done so, sometimes conditioning only the new funding, other times both old and new. See, e.g., Social Security Amendments of 1972, 86 Stat. 1381–1382, 1465 (extending Medicaid eligibility, but partly conditioning only the new funding); Omnibus Budget Reconciliation Act of 1990, §4601, 104 Stat. 1388–166 (extending eligibility, and conditioning old and new funds).

The Medicaid expansion, however, accomplishes a shift in kind, not merely degree. The original program was designed to cover medical services for four particular categories of the needy: the disabled, the blind, the elderly, and needy families with dependent children. See 42 U. S. C. §1396a(a)(10). Previous amendments to Medicaid eligibility merely altered and expanded the boundaries of these categories. Under the Affordable Care Act, Medicaid is transformed into a program to meet the health care needs of the entire nonelderly population with income below 133 percent of the poverty level. It is no longer a program to care for the neediest among us, but rather an element of a comprehensive national plan to provide universal health insurance coverage.

Indeed, the manner in which the expansion is structured indicates that while Congress may have styled the expansion a mere alteration of existing Medicaid, it recognized it was enlisting the States in a new health care program. Congress created a separate funding provision to cover the costs of providing services to any person made newly eligible by the expansion. While Congress pays 50 to 83 percent of the costs of covering individuals currently enrolled in Medicaid, §1396d(b), once the expansion is fully implemented Congress will pay 90 percent of the costs for newly eligible persons, §1396d(y)(1). The conditions on use of the different funds are also distinct. Congress mandated that newly eligible persons receive a level of coverage that is less comprehensive than the traditional Medicaid benefit package.

**55. [Ruling on the constitutionality of Medicaid expansion and the right of the federal government to withhold new funding from States that choose not to participate in the new program.]**

Nothing in our opinion precludes Congress from offering funds under the Affordable Care Act to expand the availability of health care, and requiring that States accepting such funds comply with the conditions on their use. What Congress is not free to do is to penalize States that choose not to participate in that new program by taking away their existing Medicaid funding.

## **56. [Ruling on constitutionality of Medicaid expansion, continued.]**

Today's holding does not affect the continued application of §1396c to the existing Medicaid program. Nor does it affect the Secretary's ability to withdraw funds provided under the Affordable Care Act if a State that has chosen to participate in the expansion fails to comply with the requirements of that Act.

## **57-58. [Ruling on "severability" upholding the remainder of the ACA.]**

We are confident that Congress would have wanted to preserve the rest of the Act. It is fair to say that Congress assumed that every State would participate in the Medicaid expansion, given that States had no real choice but to do so. The States contend that Congress enacted the rest of the Act with such full participation in mind; they point out that Congress made Medicaid a means for satisfying the mandate, 26 U. S. C. §5000A(f)(1)(A)(ii), and enacted no other plan for providing coverage to many low-income individuals. According to the States, this means that the entire Act must fall.

We disagree. The Court today limits the financial pressure the Secretary may apply to induce States to accept the terms of the Medicaid expansion. As a practical matter, that means States may now choose to reject the expansion; that is the whole point. But that does not mean all or even any will. Some States may indeed decline to participate, either because they are unsure they will be able to afford their share of the new funding obligations, or because they are unwilling to commit the administrative resources necessary to support the expansion. Other States, however, may voluntarily sign up, finding the idea of expanding Medicaid coverage attractive, particularly given the level of federal funding the Act offers at the outset.

We have no way of knowing how many States will accept the terms of the expansion, but we do not believe Congress would have wanted the whole Act to fall, simply because some may choose not to participate. The other reforms Congress enacted, after all, will remain "fully operative as a law," *Champlin, supra*, at 234, and will still function in a way "consistent with Congress' basic objectives in enacting the statute," *Booker, supra*, at 259. Confident that Congress would not have intended anything different, we conclude that the rest of the Act need not fall in light of our constitutional holding.

## **58-59 [Conclusion]**

The Affordable Care Act is constitutional in part and unconstitutional in part. The individual mandate cannot be upheld as an exercise of Congress's power under the Commerce Clause. That Clause authorizes Congress to regulate interstate commerce, not to order individuals to engage in it. In this case, however, it is reasonable to construe what Congress has done as increasing taxes on those who have a certain amount of income, but choose to go without health insurance. Such legislation is within Congress's power to tax. As for the Medicaid expansion, that portion of the Affordable Care Act violates the Constitution by threatening existing Medicaid funding. Congress has no authority to order the States to regulate according to its instructions. Congress may offer the States grants and require the States to comply with

accompanying conditions, but the States must have a genuine choice whether to accept the offer. The States are given no such choice in this case: They must either accept a basic change in the nature of Medicaid, or risk losing all Medicaid funding. The remedy for that constitutional violation is to preclude the Federal Government from imposing such a sanction. That remedy does not require striking down other portions of the Affordable Care Act.

The Framers created a Federal Government of limited powers, and assigned to this Court the duty of enforcing those limits. The Court does so today. But the Court does not express any opinion on the wisdom of the Affordable Care Act. Under the Constitution, that judgment is reserved to the people.

The judgment of the Court of Appeals for the Eleventh Circuit is affirmed in part and reversed in part.

*It is so ordered.*