National Federation of Independent Businesses v Sebelius

531 U.S. 98 (2012)

This excerpt from *National Federation of Independent Businesses v. Sebelius* contains Chief Justice Roberts' majority opinion assessing the constitutionality of the Affordable Care Act expansion of Medicaid in view of the Spending Clause, Art. I, §8, cl. 1, and Federalism.

Chief Justice Roberts announced the judgment of the Court and delivered the opinion of the Court with respect to … Part IV.

I

In 2010, Congress enacted the Patient Protection and Affordable Care Act, 124Stat. 119. The Act aims to increase the number of Americans covered by health insurance and decrease the cost of health care. The Act's 10 titles stretch over 900 pages and contain hundreds of provisions. This case concerns constitutional challenges to two key provisions, commonly referred to as the individual mandate and the Medicaid expansion.

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The second provision of the Affordable Care Act directly challenged here is the Medicaid expansion. Enacted in 1965, Medicaid offers federal funding to States to assist pregnant women, children, needy families, the blind, the elderly, and the disabled in obtaining medical care. See 42 U. S. C. §1396a(a)(10). In order to receive that funding, States must comply with federal criteria governing matters such as who receives care and what services are provided at what cost. By 1982 every State had chosen to participate in Medicaid. Federal funds received through the Medicaid program have become a substantial part of state budgets, now constituting over 10 percent of most States' total revenue.

The Affordable Care Act expands the scope of the Medicaid program and increases the number of individuals the States must cover. For example, the Act requires state programs to provide Medicaid coverage to adults with incomes up to 133 percent of the federal poverty level, whereas many States now cover adults with children only if their income is considerably lower, and do not cover childless adults at all. See §1396a(a)(10)(A)(i)(VIII). The Act increases federal funding to cover the States' costs in expanding Medicaid coverage, although States will bear a portion of the costs on their own. §1396d(y)(1). If a State does not comply with the Act's new coverage requirements, it may lose not only the federal funding for those requirements, but all of its federal Medicaid funds. See §1396c.

Along with their challenge to the individual mandate, the state plaintiffs in the Eleventh Circuit argued that the Medicaid expansion exceeds Congress's constitutional powers. The Court of Appeals unanimously held that the Medicaid expansion is a valid exercise of Congress's power under the Spending Clause. U. S. Const., Art. I, §8, cl. 1. And the court rejected the States' claim that the threatened loss of all federal Medicaid funding violates the Tenth Amendment by coercing them into complying with the Medicaid expansion. 648 F. 3d, at 1264, 1268.

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IV

A

The States also contend that the Medicaid expansion exceeds Congress's authority under the Spending Clause. They claim that Congress is coercing the States to adopt the changes it wants by threatening to withhold all of a State's Medicaid grants, unless the State accepts the new expanded funding and complies with the conditions that come with it. This, they argue, violates the basic principle that the "Federal Government may not compel the States to enact or administer a federal regulatory program." *New York, 505 U. S., at 188.*

There is no doubt that the Act dramatically increases state obligations under Medicaid. The current Medicaid program requires States to cover only certain discrete categories of needy individuals—pregnant women, children, needy families, the blind, the elderly, and the dis-abled. 42 U. S. C. §1396a(a)(10). There is no mandatory coverage for most childless adults, and the States typically do not offer any such coverage. The States also enjoy considerable flexibility with respect to the coverage levels for parents of needy families. §1396a(a)(10)(A)(ii). On average States cover only those unemployed parents who make less than 37 percent of the federal poverty level, and only those employed parents who make less than 63 percent of the poverty line. *Kaiser Comm'n on Medicaid and the Uninsured, Performing Under Pressure 11, and fig. 11 (2012).*

The Medicaid provisions of the Affordable Care Act, in contrast, require States to expand their Medicaid programs by 2014 to cover all individuals under the age of 65 with incomes below 133 percent of the federal poverty line. §1396a(a)(10)(A)(i)(VIII). The Act also establishes a new "[e]ssential health benefits" package, which States must

provide to all new Medicaid recipients—a level sufficient to satisfy a recipient's obligations under the individual man-date. §§1396a(k)(1), 1396u–7(b)(5), 18022(b). The Affordable Care Act provides that the Federal Government will pay 100 percent of the costs of covering these newly eligible individuals through 2016. §1396d(y)(1). In the following years, the federal payment level gradually decreases, to a minimum of 90 percent. Ibid. In light of the expansion in coverage mandated by the Act, the Federal Government estimates that its Medicaid spending will in-crease by approximately $100 billion per year, nearly 40 percent above current levels. *Statement of Douglas W. Elmendorf, CBO's Analysis of the Major Health Care Legislation Enacted in March 2010, p. 14, Table 2 (Mar. 30, 2011).*

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 Congress' 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. See, e.g., *Printz, 521 U. S., at* 933 (striking down federal legislation compelling state law enforcement officers to perform federally mandated background checks on handgun purchasers); New York, supra, at 174–175 (invalidating provisions of an Act that would compel a State to either take title to nuclear waste or enact particular state waste regulations). It has also led us to scrutinize Spending Clause legislation to ensure that

Congress is not using financial inducements to exert a "power akin to undue influence." *Steward Machine Co. v. Davis, 301 U. S. 548, 590 (1937).* 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. "[T]he Constitution simply does not give Congress the authority to require the States to regulate." *New York, 505 U. S., at 178.* That is true whether Congress directly commands a State to regulate or indirectly coerces a State to adopt a federal regulatory system as its own.

Permitting the Federal Government to force the States to implement a federal program would threaten the political accountability key to our federal system. "[W]here the Federal Government directs the States to regulate, it may be state officials who will bear the brunt of public disapproval, while the federal officials who devised the regulatory program may remain insulated from the electoral ramifications of their decision." Id., at 169. Spending Clause programs do not pose this danger when a State has a legitimate choice whether to accept the federal conditions in exchange for federal funds. In such a situation, state officials can fairly be held politically accountable for choosing to accept or refuse the federal offer. But when the State has no choice, the Federal Government can achieve its objectives without accountability, just as in *New York* and *Printz.* Indeed, this danger is heightened when Congress acts under the Spending Clause, because Congress can use that power to implement federal policy it could not impose directly under its enumerated powers.

We addressed such concerns in *Steward Machine.* That case involved a federal tax on employers that was abated if the businesses paid into a state unemployment plan that met certain federally specified conditions. An employer sued, alleging that the tax was impermissibly "driv[ing] the state legislatures under the whip of economic pressure into the enactment of unemployment compensation laws at the bidding of the central government." *301 U. S., at 587.* We acknowledged the danger that the Federal Government might employ its taxing power to exert a "power akin to undue influence" upon the States. *Id., at 590.* But we observed that Congress adopted the challenged tax and abatement program to channel money to the States that would otherwise have gone into the Federal Treasury for use in providing national unemployment services. Congress was willing to direct businesses to instead pay the money into state programs only on the condition that the money be used for the same purposes. Predicating tax abatement on a State's adoption of a particular type of un-employment legislation was therefore a means to "safeguard [the Federal Government's] own treasury." *Id., at 591.* We held that "[i]n such circumstances, if in no others, inducement or persuasion does not go beyond the bounds of power." Ibid.

In rejecting the argument that the federal law was a "weapon[ ] of coercion, destroying or impairing the autonomy of the states," the Court noted that there was no reason to suppose that the State in that case acted other than through "her unfettered will." *Id., at 586, 590.* Indeed, the State itself did "not offer a suggestion that in passing the unemployment law she was affected by duress." *Id., at 589.*

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.

The States, however, argue that the Medicaid expansion is far from the typical case. They object that Congress has "crossed the line distinguishing encouragement from coercion," *New York, supra, at 175*, in the way it has structured the funding: Instead of simply refusing to grant the new funds to States that will not accept the new conditions, Congress has also threatened to withhold those States' existing Medicaid funds. The States claim that this threat serves no purpose other than to force unwilling States to sign up for the dramatic expansion in health care coverage effected by the Act.

Given the nature of the threat and the programs at issue here, we must agree. 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.

In *South Dakota v. Dole,* we considered a challenge to a federal law that threatened to withhold five percent of a State's federal highway funds if the State did not raise its drinking age to 21. The Court found that the condition was "directly related to one of the main purposes for which highway funds are expended—safe interstate travel." *483 U. S., at 208.* At the same time, the condition was not a restriction on how the highway funds—set aside for specific highway improvement and maintenance efforts—were to be used.

We accordingly asked whether "the financial inducement offered by Congress" was "so coercive as to pass the point at which 'pressure turns into compulsion.' " *Id., at 211 (*quoting *Steward Machine, supra, at 590)*. By "financial inducement" the Court meant the threat of losing five percent of highway funds; no new money was offered to the States to raise their drinking ages. We found that the inducement was not impermissibly coercive, because Congress was offering only "relatively mild encouragement to the States." *Dole, 483 U. S., at 211.* We observed that "all South Dakota would lose if she adheres to her chosen course as to a suitable minimum drinking age is 5%" of her highway funds. Ibid. In fact, the federal funds at stake constituted less than half of one percent of South Dakota's budget at the time. See *Nat. Assn. of State Budget Officers, The State Expenditure Report 59 (1987); South Dakota v. Dole, 791 F. 2d 628, 630 (CA8 1986)*. In consequence, "we conclude[d] that [the] encouragement to state action [was] a valid use of the spending power." *Dole, 483 U. S., at 212.* Whether to accept the

drinking age change "remain[ed] the prerogative of the States not merely in theory but in fact." *Id., at 211–212.*

In this case, the financial "inducement" Congress has chosen is much more than "relatively mild encouragement"—it is a gun to the head. Section 1396c of the Medicaid Act provides that if a State's Medicaid plan does not comply with the Act's requirements, the Secretary of Health and Human Services may declare that "further payments will not be made to the State." 42 U. S. C. §1396c. A State that opts out of the Affordable Care Act's expansion in health care coverage thus stands to lose not merely "a relatively small percentage" of its existing Medicaid funding, but all of it. *Dole, supra, at 211.* Medicaid spending accounts for over 20 percent of the average State's total budget, with federal funds covering 50 to 83 percent of those costs. *See Nat. Assn. of State Budget Officers, Fiscal Year 2010 State Expenditure Report, p. 11, Table 5 (2011); 42 U. S. C. §1396d(b).* The Federal Government estimates that it will pay out approximately $3.3 trillion between 2010 and 2019 in order to cover the costs of pre-expansion Medicaid. Brief for United States 10, n. 6. In addition, the States have developed intricate statutory and administrative regimes over the course of many decades to implement their objectives under existing Medicaid. It is easy to see how the Dole Court could conclude that the threatened loss of less than half of one percent of South Dakota's budget left that State with a "prerogative" to reject Congress's desired policy, "not merely in theory but in fact." *483 U. S., at 211–212.* The threatened loss of over 10 percent of a State's overall budget, in contrast, is economic dragooning that leaves the States with no real option but to acquiesce in the Medicaid expansion.[12]

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.[13]

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, 86Stat. 1381–1382, 1465* (extending Medicaid eligibility,

but partly conditioning only the new funding); *Omnibus Budget Reconciliation Act of 1990, §4601, 104Stat. 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 de-signed 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.[14]

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. §1396a(k)(1); see Brief for United States 9.

As we have explained, "[t]hough Congress' power to legislate under the spending power is broad, it does not include surprising participating States with post acceptance or 'retroactive' conditions." *Pennhurst, supra, at 25*. A State could hardly anticipate that Congress's reservation of the right to "alter" or "amend" the Medicaid program included the power to transform it so dramatically.

Justice Ginsburg claims that in fact this expansion is no different from the previous changes to Medicaid, such that "a State would be hard put to complain that it lacked fair notice." Post, at 56. But the prior change she dis-cusses—presumably the most dramatic alteration she could find—does not come close to working the transformation the expansion accomplishes. She highlights an amendment requiring States to cover pregnant women and increasing the number of eligible children. Ibid. But this modification can hardly be described as a major change in a program that—from its inception—provided health care for "families with dependent children." Previous Medicaid amendments simply do not fall into the same category as the one at stake here.

The Court in *Steward Machine* did not attempt to "fix the outermost line" where persuasion gives way to coercion. *301 U. S., at 591*. The Court found it "[e]nough for present purposes that wherever the line may be, this statute is within it." Ibid. We have no need to fix a line either. It is enough for today that wherever that line may be, this statute is surely beyond it. Congress may not simply "conscript state [agencies] into the

national bureaucratic army," *FERC v. Mississippi, 456 U. S. 742, 775 (1982) (O'Connor, J., concurring in judgment in part and dissenting in part*), and that is what it is attempting to do with the Medicaid expansion.

B

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. Section 1396c gives the Secretary of Health and Human Services the authority to do just that. It allows her to withhold all "further [Medicaid] payments . . . to the State" if she determines that the State is out of compliance with any Medicaid requirement, including those contained in the expansion. 42 U. S. C. §1396c. In light of the Court's holding, the Secretary cannot apply §1396c to withdraw existing Medicaid funds for failure to comply with the requirements set out in the expansion.

That fully remedies the constitutional violation we have identified. The chapter of the United States Code that contains §1396c includes a severability clause confirming that we need go no further. That clause specifies that "[i]f any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, and the application of such provision to other persons or circumstances shall not be affected thereby." §1303. 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 pro-vided 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.

This is not to say, as the joint dissent suggests, that we are "rewriting the Medicaid Expansion." Post, at 48. Instead, we determine, first, that §1396c is unconstitutional when applied to withdraw existing Medicaid funds from States that decline to comply with the expansion. We then follow Congress's explicit textual instruction to leave unaffected "the remainder of the chapter, and the application of [the challenged] provision to other persons or circumstances." §1303. When we invalidate an application of a statute because that application is unconstitutional, we are not "rewriting" the statute; we are merely enforcing the Constitution.

The question remains whether today's holding affects other provisions of the Affordable Care Act. In considering that question, "[w]e seek to determine what Congress would have intended in light of the Court's constitutional holding." *United States v. Booker, 543 U. S. 220, 246 (2005)* (internal quotation marks omitted). Our "touchstone for any decision about remedy is legislative intent, for a court cannot use its remedial powers to circumvent the intent of the legislature." *Ayotte v. Planned Parenthood of Northern New Eng., 546 U. S. 320, 330 (2006)* (internal quotation marks omitted). The question here is whether Congress would have wanted the rest of the Act to stand, had it known that States would have a genuine choice whether to participate in the new Medicaid expansion. Unless it is "evident" that the answer is no, we must leave

the rest of the Act intact. *Champlin Refining Co. v. Corporation Comm'n of Okla., 286 U. S. 210, 234 (1932).*

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.

* * *

The Affordable Care Act is constitutional in part and unconstitutional in part.

…

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.

Notes

12 Justice Ginsburg observes that state Medicaid spending will increase by only 0.8 percent after the expansion. Post, at 43. That not only ignores increased state administrative expenses, but also assumes that the Federal Government will continue to fund the expansion at the current statutorily specified levels. It is not unheard of, however, for the Federal Government to increase requirements in such a manner as to impose unfunded mandates on the States. More importantly, the size of the new financial burden imposed on a State is irrelevant in analyzing whether the State has been coerced into accepting that burden. "Your money or your life" is a coercive proposition, whether you have a single dollar in your pocket or $500.

13 Nor, of course, can the number of pages the amendment occupies, or the extent to which the change preserves and works within the existing program, be dispositive. Cf. post, at 49–50 (opinion of Ginsburg, J.). Take, for example, the following hypothetical amendment: "All of a State's citizens are now eligible for Medicaid." That change would take up a single line and would not alter any "operational aspect[ ] of the program" beyond the eligibility requirements. Post, at 49. Yet it could hardly be argued that such an amendment was a permissible modification of Medicaid, rather than an attempt to foist an entirely new health care system upon the States.

14 Justice Ginsburg suggests that the States can have no objection to the Medicaid expansion, because "Congress could have repealed Medicaid [and,] [t]hereafter, . . . could have enacted Medicaid II, a new program combining the pre-2010 coverage with the expanded coverage required by the ACA." Post, at 51; see also post, at 38. But it would certainly not be that easy. Practical constraints would plainly inhibit, if not preclude, the Federal Government from repealing the existing program and putting every feature of Medicaid on the table for political reconsideration. Such a massive undertaking would hardly be "ritualistic." Ibid. The same is true of Justice Ginsburg's suggestion that Congress could establish Medicaid as an exclusively federal program. Post, at 44.