and hence invalid under the supremacy clause. The cases considered below are overwhelmingly about federal legislation based on the Commerce Clause, but the principles enunciated are identical whatever source of power Congress uses.

The general principle of preemption is that conflicting state law and policy must yield to the exercise of Congress's delegated powers,[6] The Supremacy Clause, however, operates whether the authority of Congress is express or implied, and whether the power is solely Congress's or if it is conditional upon state acceptance. The latter may be seen in a series of cases concerning the validity of state legislation enacted to bring the states within the various programs authorized by Congress pursuant to the Social Security Act.[7] State participation in the programs is voluntary, technically speaking, and no state is compelled to enact legislation comporting with the requirements of federal law. Once a state is participating, however, any of its legislation that is contrary to federal requirements is void under the Supremacy Clause.[8]

In applying the Supremacy Clause to subjects that have been regulated by Congress, the Court's primary task is to ascertain whether a challenged state law is compatible with the policy expressed in the federal statute.[9] When Congress legislates with regard to a subject, the extent and nature of the legal consequences of the regulation are federal questions, the answers to which are to be derived

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[6] Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1, 210–11 (1824). *See also* Cipollone v. Liggett Group, Inc., 505 U.S. 504 (1992); Morales v. TWA, 504 U.S. 374 (1992); Maryland v. Louisiana, 451 U.S. 725, 746 (1981); Jones v. Rath Packing Co., 430 U.S. 519, 525 (1977).

[7] By the Social Security Act of 1935, 49 Stat. 620, 42 U.S.C. §§ 301 *et seq.*, Congress established a series of programs operative in those states that joined the system and enacted the requisite complying legislation. Although participation is voluntary, the underlying federal tax program induces state participation. *See* Steward Machine Co. v. Davis, 301 U.S. 548, 585–98 (1937).

[8] On the operation of federal spending programs upon state laws, *see* South Dakota v. Dole, 483 U.S. 203 (1987) (under highway funding programs). On the preemptive effect of federal spending laws, *see* Lawrence County v. Lead-Deadwood School Dist., 469 U.S. 256 (1985). An early example of states being required to conform their laws to the federal standards is King v. Smith, 392 U.S. 309 (1968). Private parties may compel state acquiescence in federal standards to which they have agreed by participation in the programs through suits under a federal civil rights law (42 U.S.C. § 1983). Maine v. Thiboutot, 448 U.S. 1 (1980). The Court has imposed some federalism constraints in this area by imposing a "clear statement" rule on Congress when it seeks to impose new conditions on states. Pennhurst State School & Hosp. v. Halderman, 451 U.S. 1, 11, 17–18 (1981).

[9] Although preemption is basically constitutional in nature, deriving its forcefulness from the Supremacy Clause, it is much more like statutory decisionmaking, in that it depends upon an interpretation of an act of Congress in determining whether a state law is ousted. *E.g.*, Douglas v. Seacoast Products, Inc., 431 U.S. 265, 271–72 (1977). *See also* Swift & Co. v. Wickham, 382 U.S. 111 (1965). "Any such preemption or conflict claim is of course grounded in the Supremacy Clause of the Con-