

Sec. 8—Powers of Congress

Cl. 1—Power To Tax and Spend

der this part of the test.⁶⁵¹ Fourth, the power to condition funds may not be used to induce the states to engage in activities that would themselves be unconstitutional.⁶⁵² Fifth, the Court has suggested that in some circumstances the financial inducement offered by Congress might be so coercive as to pass the point at which “pressure turns into compulsion.”⁶⁵³ Certain federalism restraints on other federal powers, however, were deemed not relevant to spending conditions.⁶⁵⁴

When the Court did ultimately strike down a grant condition, it purported to do so under the “pressure turns to compulsion” standard, but the issue of relatedness also seemed to permeate the opinion. In 2010, Congress passed the Patient Protection and Affordable Care Act (ACA),⁶⁵⁵ which established a comprehensive health care system for the United States. As part of this new system, the act expanded which persons were eligible for Medicaid, a program which is financed jointly by the federal and state governments. Failure of a state to implement such expansion could, in theory, have resulted in the withholding of all Medicaid reimbursements, including payments for persons previously covered by the Medicaid program. In *National Federation of Independent Business (NFIB) v. Sebelius*,⁶⁵⁶ seven Justices (in two separate opinions) held that the requirement that states either comply with the requirements of the Medicaid expansion under the ACA or lose all Medicaid funds violated the Tenth Amendment.⁶⁵⁷ The Court held, however, that withholding of just the funds associated with that expansion raised no significant constitutional concerns, essentially making the Medicaid expansion voluntary.

⁶⁵¹ The relationship in *South Dakota v. Dole*, 483 U.S. at 208–09, in which Congress conditioned access to certain highway funds on establishing a 21-years-of-age drinking qualification was that the purpose of both funds and condition was safe interstate travel. The federal interest in *Oklahoma v. Civil Service Comm’n*, 330 U.S. 127, 143 (1947), as we have noted, was assuring proper administration of federal highway funds.

⁶⁵² *South Dakota v. Dole*, 483 U.S. at 210–11.

⁶⁵³ *Steward Machine Co. v. Davis*, 301 U.S. 548, 589–90 (1937); *South Dakota v. Dole*, 483 U.S. 203, 211–12. See *North Carolina ex rel. Morrow v. Califano*, 445 F. Supp. 532 (E.D.N.C. 1977) (three-judge court), *aff’d* 435 U.S. 962 (1978).

⁶⁵⁴ *South Dakota v. Dole*, 483 U.S. at 210 (referring to the Tenth Amendment: “the ‘independent constitutional bar’ limitation on the spending power is not . . . a prohibition on the indirect achievement of objectives which Congress is not empowered to achieve directly”).

⁶⁵⁵ Pub. L. 111–148, as amended.

⁶⁵⁶ 567 U.S. ___, No. 11–393, slip op. (2012).

⁶⁵⁷ Chief Justice Roberts’ opinion was joined by Justices Breyer and Kagan on this point, while Justices Scalia, Kennedy, Thomas, and Alito made a similar point in a joint dissenting opinion. The authoring Justices of the two opinions, however, did not join in either the reasoning or judgment of the other opinion.