No. 00-8544

In the Supreme Court of the United States

SINGLETON GAMING ENTERPRISES, LLC,

Petitioner,

v.

ZINNA SENBETTA,

Governor of South Carolina,
Respondent

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PRINCETON UNIVERSITY MOOT COURT TOURNAMENT
FALL 2017
Oral Argument Scheduled for October 13-14, 2017

Last Revised August 14, 2017

FACT PATTERN:

Federally recognized Native American tribes[1] exercise partial sovereignty over their members and their territory. Pursuant to Article I, Section 8 of the U.S. Constitution, only the federal government may make laws that apply to these tribes. However, "state laws may be applied to tribal Indians on their reservations if Congress has expressly so provided."[2] Gambling on Native American reservations can aid tribes' economic development and can provide much-needed revenue to states. For instance, Foxwoods Resort Casino, one of the most successful Native American casinos, has raised almost $4 billion for the state of Connecticut over 25 years.

In 1987, the Supreme Court ruled that state governments could not regulate gambling that occurs on Native American reservations. In response to this ruling, the federal Indian Gaming Regulatory Act (IGRA) was enacted in 1988. The act divides gaming into three classes; "class III gaming" includes lotteries, slot machines, blackjack, and other casino games.

Under the IGRA, if a state completely prohibits a given type of class III gaming, that type of gaming cannot occur on Native American lands in that state. By contrast, if a state allows a given type of class III gaming, even for a limited purpose, a Native American tribe in that state can operate that type of gaming. In this latter case, any restrictions a state imposes on that type of gaming (such as bet limits) do not automatically apply to the Native American tribe.

Native American tribes that wish to authorize a legal type of class III gaming on their lands must first adopt a tribal ordinance that is approved by the chairman of the federally established National Indian Gaming Commission (NIGC). Then, the tribe must negotiate a "tribal-state compact" with the state. Such an agreement may restrict the number, type, and operation of class III games and may include a revenue-sharing clause that allocates a portion of gaming proceeds to the state.

States are required to negotiate tribal-state compacts in good faith. A provision of the IGRA allowed tribes to sue states for failure to negotiate, but the Supreme Court overturned this provision in 1996. Therefore, if a state fails to negotiate a tribal-state compact in good faith, the Secretary of the Interior is permitted to authorize and regulate class III gaming unilaterally.

In 2014, the state of South Carolina enacted the South Carolina Gaming Act (SCGA), which legalized certain types of class III gaming, including roulette, blackjack, poker, and slot machines, for the first time. The act established a South Carolina Gaming Commission that was authorized to grant one gaming license in each of three defined regions. (The regions were based on an earlier economic study, which concluded that each region could support only one profitable casino.)

Prospective gaming operators were to submit applications and bids to the Commission, which would review them in a competitive process. Section 27 of the act states that "notwithstanding any other provision of this act, the governor may enter into a tribal-state compact with a federally

[1] The term "Indian" is often used in legal writings, including the Constitution and Supreme Court opinions, to refer to Native Americans. The two terms will be used interchangeably in this case packet.
[2] *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987), 207.

recognized Indian tribe that holds land within the state. If an Indian tribe operates class III gaming in a given region, the Commission shall not grant any additional gaming licenses in that region."

In January 2015, Singleton Gaming Enterprises (SGE), the petitioner in this case, applied to the South Carolina Gaming Commission with a plan to build a 300,000 square-foot casino near Myrtle Beach, in the SCGA's northern region. In February 2015, the federally recognized Catawba Indian Nation announced plans to build a casino on its reservation. Membership in this tribe is based on ancestry: Prospective members must prove that they are directly descended from a person listed in one of three historical tribal membership rolls. The proposed casino would be near Charlotte, North Carolina, and would also be in the SCGA's northern region.

In May 2015, the Catawba tribe adopted an ordinance approving the casino, and the NIGC chairman approved the ordinance in June 2015. In August 2015, South Carolina Governor Zinna Senbetta, the respondent in this case, began to negotiate a tribal-state contract with the tribe. Negotiations were complete by February 2016, and the Secretary of the Interior approved the compacts on March 15, 2016. Local and tribal officials broke ground for the Catawba Casino on April 1, 2016.

On March 25, 2016, the South Carolina Gaming Commission declined SGE's application for a gaming license, citing Section 27 of the SCGA. SGE then sued Senbetta in federal court, alleging that the SCGA violated the Fourteenth Amendment's Equal Protection Clause.

In district court, Judge Sarah Wiest declared the SCGA unconstitutional. In her opinion, she argued that "the Supreme Court has made it abundantly clear: Racial classifications are 'subject to the most rigid scrutiny.' Whatever the stated purpose of the South Carolina Gaming Act, its effect is to make a racial classification, and it does not survive strict-scrutiny analysis."

Senbetta appealed the ruling to the Fourth Circuit, which reversed the lower court's decision. Writing for the majority, Judge Tyler Lee cited "Congress' unique obligation toward the Indians" and argued that the South Carolina Gaming Act establishes a "reasonable and rational preference designed to further Indian self-government," one that was entitled to judicial deference.

In a lengthy dissent, Judge Robert Marshall alleged that the SCGA was unconstitutional because the federal IGRA violated the Tenth Amendment. His opinion included the contention that "the Indian Gaming Regulatory Act compels states to administer a federal regulatory program. States that decline to follow Congress' order to negotiate tribal-state compacts are left with two options—either prohibit gaming outright, or allow Indian tribes to negotiate directly with the National Indian Gaming Commission. In the latter case, states would lose all access to Indian gaming revenue. They would also have to handle the social costs of gambling, such as reduced economic productivity and higher bankruptcy rates, without any extra funds. Given the economic interests associated with negotiating a tribal-state compact, this 'choice' is nothing short of coercion."

SGE appealed to the Supreme Court. In a January 2017 press conference, Senbetta announced her intention to defend the constitutionality of the IGRA, saying, "I believe the IGRA strikes the

right balance between federal, state, and tribal interests, and I am confident that the Supreme Court will uphold our efforts to promote tribal self-reliance and development in a fair manner."

In light of the important federalism and equal protection questions raised by this case, the Supreme Court granted cert.
It is therefore ordered that counsel present oral argument on the following questions:

1. Assuming that the federal Indian Gaming Regulatory Act is constitutional, is the South Carolina Gaming Act subject to strict scrutiny?
2. Assuming that governmental preferences favoring Native American tribes or their members are racial preferences, is the South Carolina Gaming Act narrowly tailored to serve the interests of tribal self-sufficiency and economic development?
3. Does the Indian Gaming Regulatory Act violate the Tenth Amendment?

Author's Note:

This case lies at the intersection of three complex fields of Supreme Court jurisprudence—Native American law, affirmative action, and federalism. Although the particular legal questions at hand may seem obscure, you will hopefully find that the underlying principles also apply to contemporary controversies.

As you read the case packet, you might find the following suggestions helpful:

-Read the fact pattern carefully, making note of key details that will be useful to each side.

-Develop a succinct explanation of both the fact pattern and your argument. While judges do receive basic information about the case packet, they might not be as familiar with the material as you.

-Prepare enough material to fill most of the 25-minute oral argument, but make sure to allow enough time to answer judges' questions fully.

-Pay attention to each of the theories presented in the case law, even ones you do not plan to present. Judges might bring up such theories in their questions.

-Consider the precedent that you're asking the judges to set. Does your argument rely on reaffirming established legal principles or setting a new precedent? If your argument is adopted, how will it affect the legal arguments in future cases?

Acknowledgements:

Writing this case would have been impossible without drawing on the work of legal scholars. These include Jacob Berman, Luiz Antonio Salazar Arroyo, Sarah Krakoff, Joel P. Brous, Randall K. Q. Akee, Katherine A. Spilde, Jonathan B. Taylor, Earl L. Grinols, Michael D. Cox,

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RELEVANT LEGISLATION:

Excerpts from Indian Gaming Regulatory Act, 25 U.S. Code § 2710

(d) Class III gaming activities; authorization; revocation; Tribal-State compact

(1) Class III gaming activities shall be lawful on Indian lands only if such activities are—

(A) authorized by an ordinance or resolution that—

(i) is adopted by the governing body of the Indian tribe having jurisdiction over such lands,

(ii) meets the requirements of subsection (b) of this section, and

(iii) is approved by the Chairman [of the National Indian Gaming Commission],

(B) located in a State that permits such gaming for any purpose by any person, organization, or entity, and

(C) conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State under paragraph (3) that is in effect…

(3)

(A) Any Indian tribe having jurisdiction over the Indian lands upon which a class III gaming activity is being conducted, or is to be conducted, shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities. Upon receiving such a request, the State shall negotiate with the Indian tribe in good faith to enter into such a compact.

(B) …such compact shall take effect only when notice of approval by the Secretary [of the Interior] of such compact has been published…

(C) Any Tribal-State compact negotiated under subparagraph (A) may include provisions relating to…

(iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity…

(vii) any other subjects that are directly related to the operation of gaming activities…

(7)

(A) The United States district courts shall have jurisdiction over—

(i) any cause of action initiated by an Indian tribe arising from the failure of a State to enter into negotiations with the Indian tribe for the purpose of entering into a Tribal-State compact under paragraph (3) or to conduct such negotiations in good faith*…

(B) [If the state continues to negotiate in bad faith, the court will appoint a mediator, who will propose a tribal-state compact to the state.*]

(vii) If the State does not consent during the 60-day period described…to a proposed compact submitted by a mediator…the mediator shall notify the Secretary [of the Interior]* and the Secretary shall prescribe, in consultation with the Indian tribe, procedures…

(II) under which class III gaming may be conducted on the Indian lands over which the Indian tribe has jurisdiction…

* This provision of the law was overturned by the 1996 Supreme Court case *Seminole Tribe of Florida v. Florida*.

RELEVANT CONSTITUTIONAL PROVISIONS:

You may discuss any section of the Constitution, including its amendments, during oral argument—even sections that are not included here.

Excerpt from Article I, Section 8

The Congress shall have Power…To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes...

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Amendment XIV, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

RELEVANT CASE LAW:

Several cases appear in excerpted form. Only the excerpted parts of these cases may be referenced during oral argument.

Morton v. Mancari, 417 U.S. 535 (1974)

Syllabus

Appellees, non-Indian employees of the Bureau of Indian Affairs (BIA), brought this class action claiming that the employment preference for qualified Indians in the BIA provided by the Indian Reorganization Act of 1934 contravened the anti-discrimination provisions of the Equal Employment Opportunities Act of 1972, and deprived them of property rights without due process of law in violation of the Fifth Amendment. A three-judge District Court held that the Indian preference was implicitly repealed by § 11 of the 1972 Act proscribing racial discrimination in most federal employment, and enjoined appellant federal officials from implementing any Indian employment preference policy in the BIA.

Held:...

2. The Indian preference does not constitute invidious racial discrimination in violation of the Due Process Clause of the Fifth Amendment, but is reasonable and rationally designed to further Indian self-government.

(a) If Indian preference laws, which were derived from historical relationships and are explicitly designed to help only Indians, were deemed invidious racial discrimination, 25 U.S.C. in its entirety would be effectively erased and the Government's commitment to Indians would be jeopardized.

(b) The Indian preference does not constitute "racial discrimination" or even "racial" preference, but is rather an employment criterion designed to further the cause of Indian self-government and to make the BIA more responsive to the needs of its constituent groups.

(c) As long as the special treatment of Indians can be tied rationally to the fulfillment of Congress' unique obligation toward Indians, such legislative judgments will not be disturbed.

359 F.Supp. 585, reversed and remanded.

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

The Indian Reorganization Act of 1934, also known as the Wheeler-Howard Act, 48 Stat. 984, 25 U.S.C. § 461 *et seq.,* accords an employment preference for qualified Indians in the Bureau of Indian Affairs (BIA or Bureau). Appellees, non-Indian BIA employees, challenged this preference as contrary to the anti-discrimination provisions of the Equal Employment Opportunity Act of 1972, 86 Stat. 103, 42 U.S.C. § 2000e *et seq.* (1970 ed., Supp. II), and as violative of the Due Process Clause of the Fifth Amendment. A three-judge Federal District Court concluded that the Indian preference under the 1934 Act was impliedly repealed by the 1972 Act. 359 F.Supp. 585 (NM 1973). We noted probable jurisdiction in order to examine the

statutory and constitutional validity of this longstanding Indian preference. 414 U.S. 1142 (1974); 415 U.S. 946 (1974).

I

Section 12 of the Indian Reorganization Act, 48 Stat. 986, 25 U.S.C. § 472, provides:

"The Secretary of the Interior is directed to establish standards of health, age, character, experience, knowledge, and ability for Indians who may be appointed, without regard to civil service laws, to the various positions maintained, now or hereafter, by the Indian Office, in the administration of functions or services affecting any Indian tribe. Such qualified Indians shall hereafter have the preference to appointment to vacancies in any such position."

In June 1972, pursuant to this provision, the Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, issued a directive (Personnel Management Letter No. 72-12) (App. 52) stating that the BIA's policy would be to grant a preference to qualified Indians not only, as before, in the initial hiring stage, but also in the situation where an Indian and a non-Indian, both already employed by the BIA, were competing for a promotion within the Bureau. The record indicates that this policy was implemented immediately.

Shortly thereafter, appellees, who are non-Indian employees of the BIA at Albuquerque, instituted this class action, on behalf of themselves and other non-Indian employees similarly situated, in the United States District Court for the District of New Mexico, claiming that the "so-called Indian Preference Statutes," App. 15, were repealed by the 1972 Equal Employment Opportunity Act, and deprived them of rights to property without due process of law, in violation of the Fifth Amendment. Named as defendants were the Secretary of the Interior, the Commissioner of Indian Affairs, and the BIA Directors for the Albuquerque and Navajo Area Offices. Appellees claimed that implementation and enforcement of the new preference policy "placed and will continue to place [appellees] at a distinct disadvantage in competing for promotion and training programs with Indian employees, all of which has and will continue to subject the [appellees] to discrimination and deny them equal employment opportunity." App. 16.

A three-judge court was convened pursuant to 28 U.S.C. § 2282 because the complaint sought to enjoin, as unconstitutional, the enforcement of a federal statute. Appellant Amerind, a nonprofit organization representing Indian employees of the BIA, moved to intervene in support of the preference; this motion was granted by the District Court and Amerind thereafter participated at all stages of the litigation.

After a short trial focusing primarily on how the new policy, in fact, has been implemented, the District Court concluded that the Indian preference was implicitly repealed by § 11 of the Equal Employment Opportunity Act of 1972, Pub.L. 92-261, 86 Stat. 111, 42 U.S.C. § 2000e-16(a) (1970 ed., Supp. II), proscribing discrimination in most federal employment on the basis of race. Having found that Congress repealed the preference, it was unnecessary for the District Court to pass on its constitutionality. The court permanently enjoined appellants "from implementing any policy in the Bureau of Indian Affairs which would hire, promote, or reassign any person in preference to another solely for the reason that such person is an Indian."

The execution and enforcement of the judgment of the District Court was stayed by Mr. Justice Marshall on August 16, 1973, pending the disposition of this appeal.

II

The federal policy of according some hiring preference to Indians in the Indian service dates at least as far back as 1834. Since that time, Congress repeatedly has enacted various preferences of the general type here at issue. The purpose of these preferences, as variously expressed in the legislative history, has been to give Indians a greater participation in their own self-government; to further the Government's trust obligation toward the Indian tribes; and to reduce the negative effect of having non-Indians administer matters that affect Indian tribal life.

The preference directly at issue here was enacted as an important part of the sweeping Indian Reorganization Act of 1934. The overriding purpose of that particular Act was to establish machinery whereby Indian tribes would be able to assume a greater degree of self-government, both politically and economically. Congress was seeking to modify the then-existing situation whereby the primarily non-Indian-staffed BIA had plenary control, for all practical purposes, over the lives and destinies of the federally recognized Indian tribes. Initial congressional proposals would have diminished substantially the role of the BIA by turning over to federally chartered self-governing Indian communities many of the functions normally performed by the Bureau. Committee sentiment, however, ran against such a radical change in the role of the BIA. The solution ultimately adopted was to strengthen tribal government while continuing the active role of the BIA, with the understanding that the Bureau would be more responsive to the interests of the people it was created to serve.

One of the primary means by which self-government would be fostered and the Bureau made more responsive was to increase the participation of tribal Indians in the BIA operations. In order to achieve this end, it was recognized that some kind of preference and exemption from otherwise prevailing civil service requirements was necessary. Congressman Howard, the House sponsor, expressed the need for the preference:
"The Indians have not only been thus deprived of civic rights and powers, but they have been largely deprived of the opportunity to enter the more important positions in the service of the very bureau which manages their affairs. Theoretically, the Indians have the right to qualify for the Federal civil service. In actual practice, there has been no adequate program of training to qualify Indians to compete in these examinations, especially for technical and higher positions; and even if there were such training, the Indians would have to compete under existing law, on equal terms with multitudes of white applicants. . . . The various services on the Indian reservations are actually local, rather than Federal, services and are comparable to local municipal and county services, since they are dealing with purely local Indian problems. It should be possible for Indians with the requisite vocational and professional training to enter the service of their own people without the necessity of competing with white applicants for these positions. This bill permits them to do so."
78 Cong.Rec. 11729 (1934).

Congress was well aware that the proposed preference would result in employment disadvantages within the BIA for non-Indians. Not only was this displacement unavoidable if

room were to be made for Indians, but it was explicitly determined that gradual replacement of non-Indians with Indians within the Bureau was a desirable feature of the entire program for self-government.

Since 1934, the BIA has implemented the preference with a fair degree of success. The percentage of Indians employed in the Bureau rose from 34% in 1934 to 57% in 1972. This reversed the former downward trend, *see* n. 16, *supra,* and was due, clearly, to the presence of the 1934 Act. The Commissioner's extension of the preference in 1972 to promotions within the BIA was designed to bring more Indians into positions of responsibility and, in that regard, appears to be a logical extension of the congressional intent. *See Freeman v. Morton,* 162 U.S.App.D.C. 358, 499 F.2d 494 (1974), and n. 5, *supra*...

IV

We still must decide whether, as the appellees contend, the preference constitutes invidious racial discrimination in violation of the Due Process Clause of the Fifth Amendment. *Bolling v Sharpe,* 347 U. S. 497 (1954). The District Court, while pretermitting this issue, said: "[W]e could well hold that the statute must fail on constitutional grounds." 359 F.Supp. at 591.

Resolution of the instant issue turns on the unique legal status of Indian tribes under federal law and upon the plenary power of Congress, based on a history of treaties and the assumption of a "guardian-ward" status, to legislate on behalf of federally recognized Indian tribes. The plenary power of Congress to deal with the special problems of Indians is drawn both explicitly and implicitly from the Constitution itself. Article I, § 8, cl. 3, provides Congress with the power to "regulate Commerce . . . with the Indian Tribes," and thus, to this extent, singles Indians out as a proper subject for separate legislation. Article II, § 2, cl. 2, gives the President the power, by and with the advice and consent of the Senate, to make treaties. This has often been the source of the Government's power to deal with the Indian tribes. The Court has described the origin and nature of the special relationship:

"In the exercise of the war and treaty powers, the United States overcame the Indians and took possession of their lands, sometimes by force, leaving them an uneducated, helpless and dependent people, needing protection against the selfishness of others and their own improvidence. Of necessity, the United States assumed the duty of furnishing that protection, and with it the authority to do all that was required to perform that obligation and to prepare the Indians to take their place as independent, qualified members of the modern body politic. . . ." *Board of County Comm'rs v. Seber,* 318 U. S. 705, 318 U. S. 715 (1943). *See also United States v. Kagama,* 118 U. S. 375, 118 U. S. 383-384 (1886).

Literally every piece of legislation dealing with Indian tribes and reservations, and certainly all legislation dealing with the BIA, single out for special treatment a constituency of tribal Indians living on or near reservations. If these laws, derived from historical relationships and explicitly designed to help only Indians, were deemed invidious racial discrimination, an entire Title of the United States Code (25 U.S.C.) would be effectively erased and the solemn commitment of the Government toward the Indians would be jeopardized. *See Simmons v. Eagle Seelatsee,* 244 F.Supp. 808, 814 n. 13 (ED Wash.1965), *aff'd,* 384 U. S. 209 (1966).

It is in this historical and legal context that the constitutional validity of the Indian preference is to be determined. As discussed above, Congress in 1934 determined that proper fulfillment of it trust required turning over to the Indians a greater control of their own destinies. The overly paternalistic approach of prior years had proved both exploitative and destructive of Indian interests. Congress was united in the belief that institutional changes were required. An important part of the Indian Reorganization Act was the preference provision here at issue.

Contrary to the characterization made by appellees, this preference does not constitute "racial discrimination." Indeed, it is not even a "racial" preference.[24] Rather, it is an employment criterion reasonably designed to further the cause of Indian self-government and to make the BIA more responsive to the needs of its constituent groups. It is directed to participation by the governed in the governing agency. The preference is similar in kind to the constitutional requirement that a United States Senator, when elected, be "an Inhabitant of that State for which he shall be chosen," Art. I, § 3, cl. 3, or that a member of a city council reside within the city governed by the council. Congress has sought only to enable the BIA to draw more heavily from among the constituent group in staffing its projects, all of which, either directly or indirectly, affect the lives of tribal Indians. The preference, as applied, is granted to Indians not as a discrete racial group, but, rather, as members of *quasi*-sovereign tribal entities whose lives and activities are governed by the BIA in a unique fashion. *See* n. 24, *supra.* In the sense that there is no other group of people favored in this manner, the legal status of the BIA is truly *sui generis.* Furthermore, the preference applies only to employment in the Indian service. The preference does not cover any other Government agency or activity, and we need not consider the obviously more difficult question that would be presented by a blanket exemption for Indians from all civil service examinations. Here, the preference is reasonably and directly related to a legitimate, nonracially based goal. This is the principal characteristic that generally is absent from proscribed forms of racial discrimination.

On numerous occasions, this Court specifically has upheld legislation that singles out Indians for particular and special treatment. *See, e.g., Board of County Comm'rs v. Seber,* 318 U. S. 705 (1943) (federally granted tax immunity); *McClanahan v. Arizona State Tax Comm'n,* 411 U. S. 164 (1973) (same); *Simmons v. Eagle Seelatsee,* 384 U. S. 209 (1966), *aff'g* 244 F.Supp. 808 (ED Wash.1965) (statutory definition of tribal membership, with resulting interest in trust estate); *Williams v. Lee,* 358 U. S. 217 (1959) (tribal courts and their jurisdiction over reservation affairs). *Cf. Morton v. Ruiz,* 415 U. S. 199 (1974) (federal welfare benefits for Indians "on or near" reservations). This unique legal status is of long standing, *See Cherokee Nation v. Georgia,* 5 Pet. 1 (1831); *Worcester v. Georgia,* 6 Pet. 515 (1832), and its sources are diverse. *See generally* U.S. Dept. of Interior, Federal Indian Law (1958); Comment, The Indian Battle for Self-Determination, 58 Calif.L.Rev. 445 (1970). As long as the special treatment can be tied rationally to the fulfillment of Congress' unique obligation toward the Indians, such legislative judgments will not be disturbed. Here, where the preference is reasonable and rationally designed to further Indian self-government, we cannot say that Congress' classification violates due process.

[24] The preference is not directed towards a "racial" group consisting of "Indians"; instead, it applies only to members of "federally recognized" tribes. This operates to exclude many individuals who are racially to be classified as "Indians." In this sense, the preference is political rather than racial in nature…

The judgment of the District Court is reversed, and the cases are remanded for further proceedings consistent with this opinion.

It is so ordered.

Washington v. Yakima Indian Nation, 439 U.S. 463 (1979)

Syllabus

Section 6 of Pub.L. 280 authorizes the people of States whose constitutions or statutes contain organic law disclaimers of jurisdiction over Indian country to amend "where necessary" their constitutions or statutes to remove any legal impediment to assumption of such jurisdiction under the Act, notwithstanding the provision of any Enabling Act for the admission of the State, but provided that the Act shall not become effective with respect to such assumption of jurisdiction until the people of the State have appropriately amended their state constitution or statutes, as the case may be. In § 7 of Pub.L. 280, Congress gave the consent of the United States "to any other State . . . to assume jurisdiction at such time and in such manner as the people of the State shall, by affirmative legislative action, obligate and bind the State to assumption thereof."

The State of Washington's Constitution contains a disclaimer of authority over Indian country, and hence the State is one of those covered by § 6. In 1963, after the Washington Supreme Court, in another case, had held that the barrier posed by the disclaimer could be lifted by the state legislature, the legislature enacted a statute (Chapter 36) obligating the State to assume civil and criminal jurisdiction over Indians and Indian territory within the State, subject only to the condition that, in all but eight subject matter areas, jurisdiction would not extend to Indians on trust or restricted lands unless the affected tribe so requested. Appellee Yakima Nation, which did not make such a request, brought this action in Federal District Court challenging the statutory and constitutional validity of the State's partial assertion of jurisdiction on its Reservation. The Tribe contended that the State had not complied with the procedural requirements of Pub.L. 280...; that, in any event, Pub.L. 280 did not authorize the State to assert only partial jurisdiction within an Indian reservation; and that Chapter 36, even if authorized by Congress, violated the equal protection and due process guarantees of the Fourteenth Amendment. The District Court rejected both the statutory and constitutional claims, and entered judgment for the State. The Court of Appeals, while rejecting the contention that Washington's assumption of only partial jurisdiction was not authorized by Congress, reversed, holding that the "checkerboard" jurisdictional system produced by Chapter 36 had no rational foundation, and therefore violated the Equal Protection Clause.

Held:...

3. The "checkerboard" pattern of jurisdiction ordained by Chapter 36 is not, on its face, invalid under the Equal Protection Clause.

(a) The classifications based on tribal status and land tenure implicit in Chapter 36 are not "suspect," so as to require that they be justified by a compelling state interest, nor does Chapter 36 abridge any fundamental right of self-government.

(b) Chapter 36 is valid as bearing a rational relationship to the State's interest in providing protection to non-Indian citizens living within a reservation, while at the same

time allowing scope for tribal self-government on trust or restricted lands, the land-tenure classification being neither an irrational nor arbitrary means of identifying those areas within a reservation in which tribal members have the greatest interest in being free of state police power.

552 F.2d 1332, reversed.

MR. JUSTICE STEWART delivered the opinion of the Court.

In this case, we are called upon to resolve a dispute between the State of Washington and the Yakima Indian Nation over the validity of the State's exercise of jurisdiction on the Yakima Reservation. In 1963, the Washington Legislature obligated the State to assume civil and criminal jurisdiction over Indians and Indian territory within the State, subject only to the condition that, in all but eight subject matter areas, jurisdiction would not extend to Indians on trust or restricted lands without the request of the Indian tribe affected. Ch. 36, 1963 Wash.Laws. The Yakima Nation did not make such a request. State authority over Indians within the Yakima Reservation was thus made by Chapter 36 to depend on the title status of the property on which the offense or transaction occurred and upon the nature of the subject matter.

The Yakima Nation brought this action in a Federal District Court challenging the statutory and constitutional validity of the State's partial assertion of jurisdiction on its Reservation. The Tribe contended that the federal statute upon which the State based its authority to assume jurisdiction over the Reservation, Pub.L. 280, imposed certain procedural requirements…and that, in any event, Pub.L. 280 did not authorize the State to assert only partial jurisdiction within an Indian reservation. Finally, the Tribe contended that Chapter 36, even if authorized by Congress, violated the equal protection and due process guarantees of the Fourteenth Amendment.

The District Court rejected both the statutory and constitutional claims and entered judgment for the State. On appeal, the contention that Washington's assumption of only partial jurisdiction was not authorized by Congress was rejected by the Court of Appeals for the Ninth Circuit, sitting en banc. The en banc court then referred the case to the original panel for consideration of the remaining issues…The three-judge panel, confining itself to consideration of the constitutional validity of Chapter 36, concluded that the "checkerboard" jurisdictional system it produced was without any rational foundation, and therefore violative of the Equal Protection Clause of the Fourteenth Amendment. Finding no basis upon which to sever the offending portion of the legislation, the appellate court declared Chapter 36 unconstitutional in its entirety, and reversed the judgment of the District Court…

The State then brought an appeal to this Court… [W]e requested the parties to address the issue whether the partial geographic and subject matter jurisdiction ordained by Chapter 36 is authorized by federal law, as well as the Equal Protection Clause issue. 435 U.S. 903.

I

The Confederated Bands and Tribes of the Yakima Indian Nation comprise 14 originally distinct Indian tribes that joined together in the middle of the 19th century for purposes of their

relationships with the United States. A treaty was signed with the United States in 1855, under which it was agreed that the various tribes would be considered "one nation," and that specified lands located in the Territory of Washington would be set aside for their exclusive use. The treaty was ratified by Congress in 1859. 12 Stat. 951. Since that time, the Yakima Nation has, without interruption, maintained its tribal identity.

The Yakima Reservation is located in the southeastern part of the State of Washington, and now consists of approximately 1,387,505 acres of land, of which some 80% is held in trust by the United States for the Yakima Nation or individual members of the Tribe. The remaining parcels of land are held in fee by Indian and non-Indian owners…The Tribe receives the bulk of its income from timber, and over half of the Reservation is closed to permanent settlement in order to protect the forest area. The remaining lands are primarily agricultural. There are three incorporated towns on the Reservation, the largest being Toppenish, with a population of under 6,000.

The land held in fee is scattered throughout the Reservation, but most of it is concentrated in the northeastern portion, close to the Yakima River and within the three towns of Toppenish, Wapato, and Harrah. Of the 25,000 permanent residents of the Reservation, 3,074 are members of the Yakima Nation, and tribal members live in all of the inhabited areas of the Reservation. In the three towns—where over half of the non-Indian population resides—members of the Tribe are substantially outnumbered by non-Indian residents occupying fee land.

Before the enactment of the state law here in issue, the Yakima Nation was subject to the general jurisdictional principles that apply in Indian country in the absence of federal legislation to the contrary. Under those principles, which received their first and fullest expression in *Worcester v. Georgia,* 6 Pet. 515, 31 U. S. 517, state law reaches within the exterior boundaries of an Indian reservation only if it would not infringe "on the right of reservation Indians to make their own laws and be ruled by them." *Williams v. Lee,* 358 U. S. 217, 358 U. S. 219-220. As a practical matter, this has meant that criminal offenses by or against Indians have been subject only to federal or tribal laws, *Moe v. Salish & Kootenai Tribes,* 425 U. S. 463, except where Congress, in the exercise of its plenary and exclusive power over Indian affairs, has "expressly provided that State laws shall apply." *McClanahan v. Arizona State Tax Comm'n,* 411 U. S. 164, 411 U. S. 170-171.

Public Law 280, upon which the State of Washington relied for its authority to assert jurisdiction over the Yakima Reservation under Chapter 36, was enacted by Congress in 1953 in part to deal with the "problem of lawlessness on certain Indian reservations, and the absence of adequate tribal institutions for law enforcement." *Bryan v. Itasca County,* 426 U. S. 373, 426 U. S. 379; H.R.Rep. No. 848, 83d Cong., 1st Sess., 5-6 (193). The basic terms of Pub.L. 280, which was the first federal jurisdictional statute of general applicability to Indian reservation lands, are well known. To five States, it effected an immediate cession of criminal and civil jurisdiction over Indian country, with an express exception for the reservations of three tribes. Pub.L. 280, §§ 2 and 4. To the remaining States it gave an option to assume jurisdiction over criminal offenses and civil causes of action in Indian country without consulting with or securing the consent of the tribes that would be affected. States whose constitutions or statutes contained organic law disclaimers of jurisdiction over Indian country were dealt with in § 6. The people of those States

were given permission to amend "where necessary" their state constitutions or existing statutes to remove any legal impediment to the assumption of jurisdiction under the Act. All others were covered in § 7.
The Washington Constitution contains a disclaimer of authority over Indian country, and the State is, therefore, one of those covered by § 6 of Pub.L. 280. The State did not take any action under the purported authority of Pub.L. 280 until 1957. In that year, its legislature enacted a statute which obligated the State to assume criminal and civil jurisdiction over any Indian reservation within the State at the request of the tribe affected. Under this legislation, state jurisdiction was requested by and extended to several Indian tribes within the State.

In one of the first prosecutions brought under the 1957 jurisdictional scheme, an Indian defendant whose tribe had consented to the extension of jurisdiction challenged its validity on the ground that the disclaimer clause in the state constitution had not been amended in the manner allegedly required by § 6 of Pub.L. 20. *State v. Paul,* 53 Wash.2d 789, 337 P.2d 33. The Washington Supreme Court rejected the argument, construing the state constitutional provision to mean that the barrier posed by the disclaimer could be lifted by the state legislature.

In 1963, Washington enacted Chapter 36, the law at issue in this litigation. The most significant feature of the new statute was its provision for the extension of at least some jurisdiction over all Indian lands within the State, whether or not the affected tribe gave its consent. Full criminal and civil jurisdiction to the extent permitted by Pub.L. 280 was extended to all fee lands in every Indian reservation and to trust and allotted lands therein when non-Indians were involved. Except for eight categories of law, however, state jurisdiction was not extended to Indians on allotted and trust lands unless the affected tribe so requested. The eight jurisdictional categories of state law that were thus extended to all parts of every Indian reservation were in the areas of compulsory school attendance, public assistance, domestic relations, mental illness, juvenile delinquency, adoption proceedings, dependent children, and motor vehicles.

The Yakima Indian Nation did not request the full measure of jurisdiction made possible by Chapter 36, and the Yakima Reservation thus became subject to the system of jurisdiction outlined at the outset of this opinion. This litigation followed…

V

Having concluded that Chapter 36 violates neither the procedural nor the substantive terms of Pub.L. 280, we turn, finally, to the question whether the "checkerboard" pattern of jurisdiction applicable on the reservations of nonconsenting tribes is, on its face, invalid under the Equal Protection Clause of the Fourteenth Amendment. The Court of Appeals for the Ninth Circuit concluded that it is, reasoning that the land-title classification is too bizarre to meet "any formulation of the rational basis test." 552 F.2d at 1335. The Tribe advances several different lines of argument in defense of this ruling.

First, it argues that the classifications implicit in Chapter 36 are racial classifications, "suspect" under the test enunciated in *McLaughlin v. Florida,* 379 U. S. 184, and that they cannot stand unless justified by a compelling state interest. Second, it argues that its interest in self-government is a fundamental right, and that Chapter 36—as a law abridging this right—is

presumptively invalid. Finally, the Tribe argues that Chapter 36 is invalid even if reviewed under the more traditional equal protection criteria articulated in such cases as *Massachusetts Bd. of Retirement v. Murgia,* 427 U. S. 307.

We agree with the Court of Appeals to the extent that its opinion rejects the first two of these arguments and reflects a judgment that Chapter 36 must be sustained against an Equal Protection Clause attack if the classifications it employs "rationally furthe[r] the purpose identified by the State." *Massachusetts Bd. of Retirement v. Murgia, supra* at 427 U. S. 314. It is settled that "the unique legal status of Indian tribes under federal law" permits the Federal Government to enact legislation singling out tribal Indians, legislation that might otherwise be constitutionally offensive. *Morton v. Mancari,* 417 U. S. 535, 417 U. S. 551-552. States do not enjoy this same unique relationship with Indians, but Chapter 36 is not simply another state law. It was enacted in response to a federal measure explicitly designed to readjust the allocation of jurisdiction over Indians. The jurisdiction permitted under Chapter 36 is, as we have found, within the scope of the authorization of Pub.L. 280. And many of the classifications made by Chapter 36 are also made by Pub.L. 280. Indeed, classifications based on tribal status and land tenure inhere in many of the decisions of this Court involving jurisdictional controversies between tribal Indians and the States, *see, e.g., United States v. McBratney,* 104 U. S. 621. For these reasons, we find the argument that such classifications are "suspect" an untenable one. The contention that Chapter 36 abridges a "fundamental right" is also untenable. It is well established that Congress, in the exercise of its plenary power over Indian affairs, may restrict the retained sovereign powers of the Indian tribes. *See, e.g., United States v. Wheeler,* 435 U. S. 313. In enacting Chapter 36, Washington was legislating under explicit authority granted by Congress in the exercise of that federal power.

The question that remains, then, is whether the lines drawn by Chapter 36 fail to meet conventional Equal Protection Clause criteria, as the Court of Appeals held. Under those criteria, legislative classifications are valid unless they bear no rational relationship to the State's objectives. *Massachusetts Bd. of Retirement v. Murgia, supra* at 427 U. S. 314. State legislation "does not violate the Equal Protection Clause merely because the classifications [it makes] are imperfect." *Dandridge v. Williams,* 397 U. S. 471, 397 U. S. 485. Under these standards, we have no difficulty in concluding that Chapter 36 does not offend the Equal Protection Clause.

The lines the State has drawn may well be difficult to administer. But they are no more or less so than many of the classifications that pervade the law of Indian jurisdiction. *See Seymour v. Superintendent,* 368 U. S. 351; *Moe v. Salish & Kootenai Tribes,* 425 U. S. 463. Chapter 36 is fairly calculated to further the State's interest in providing protection to non-Indian citizens living within the boundaries of a reservation, while at the same time allowing scope for tribal self-government on trust or restricted lands. The land-tenure classification made by the State is neither an irrational nor arbitrary means of identifying those areas within a reservation in which tribal members have the greatest interest in being free of state police power. Indeed, many of the rules developed in this Court's decisions in cases accommodating the sovereign rights of the tribes with those of the States are strikingly similar. *See, e.g., United States v. McBratney, supra; Draper v. United States,* 164 U. S. 240; *Williams v. Lee,* 358 U. S. 217; *McClanahan v. Arizona State Tax Comm'n,* 411 U. S. 164. In short, checkerboard jurisdiction is not novel in Indian law, and does not, as such, violate the Constitution.

For the reasons set out in this opinion, the judgment of the Court of Appeals is reversed.

It is so ordered.

Rice v. Cayetano, 528 U.S. 495 (2000)

Syllabus

The Hawaiian Constitution limits the right to vote for nine trustees chosen in a statewide election. The trustees compose the governing authority of a state agency known as the Office of Hawaiian Affairs, or OHA. The agency administers programs designed for the benefit of two subclasses of Hawaiian citizenry, "Hawaiians" and "native Hawaiians." State law defines "native Hawaiians" as descendants of not less than one-half part of the races inhabiting the islands before 1778, and "Hawaiians"—a larger class that includes "native Hawaiians"—as descendants of the peoples inhabiting the Hawaiian Islands in 1778. The trustees are chosen in a statewide election in which only "Hawaiians" may vote. Petitioner Rice, a Hawaiian citizen without the requisite ancestry to be a "Hawaiian" under state law, applied to vote in OHA trustee elections. When his application was denied, he sued respondent Governor (hereinafter State), claiming, *inter alia,* that the voting exclusion was invalid under the Fourteenth and Fifteenth Amendments. The Federal District Court granted the State summary judgment. Surveying the history of the islands and their people, it determined that Congress and Hawaii have recognized a guardian-ward relationship with the native Hawaiians, which is analogous to the relationship between the United States and Indian tribes. It examined the voting qualifications with the latitude applied to legislation passed pursuant to Congress' power over Indian affairs, see *Morton* v. *Mancari,* 417 U. S. 535, and found that the electoral scheme was rationally related to the State's responsibility under its Admission Act to utilize a part of the proceeds from certain public lands for the native Hawaiians' benefit. The Ninth Circuit affirmed, finding that Hawaii "may rationally conclude that Hawaiians, being the group to whom trust obligations run and to whom OHA trustees owe a duty of loyalty, should be the group to decide who the trustees ought to be." 146 F.3d 1075, 1079.

Held: Hawaii's denial of Rice's right to vote in OHA trustee elections violates the Fifteenth Amendment.

(a) The Amendment's purpose and command are set forth in explicit and comprehensive language. The National Government and the States may not deny or abridge the right to vote on account of race. The Amendment reaffirms the equality of races at the most basic level of the democratic process, the exercise of the voting franchise. It protects all persons, not just members of a particular race. Important precedents give instruction in the instant case. The Amendment was quite sufficient to invalidate a grandfather clause that did not mention race but instead used ancestry in an attempt to confine and restrict the voting franchise, *Guinn v. United States,* 238 U. S. 347, 364-365; and it sufficed to strike down the white primary systems designed to exclude one racial class (at least) from voting, see, *e. g., Terry v. Adams, 345* U. S. 461, 469-470. The voting structure in this case is neither subtle nor indirect; it specifically grants the vote to persons of the defined ancestry and to no others. Ancestry can be a proxy for race. It is that proxy here. For centuries Hawaii was isolated from migration. The inhabitants shared common physical characteristics, and by 1778 they had a common culture. The provisions at issue reflect

the State's effort to preserve that commonality to the present day. In interpreting the Reconstruction Era civil rights laws this Court has observed that racial discrimination is that which singles out "identifiable classes of persons ... solely because of their ancestry or ethnic characteristics." *Saint Francis College v. Al-Khazraji,* 481 U. S. 604, 613. The very object of the statutory definition here is to treat the early Hawaiians as a distinct people, commanding their own recognition and respect. The history of the State's definition also demonstrates that the State has used ancestry as a racial definition and for a racial purpose. The drafters of the definitions of "Hawaiian" and "native Hawaiian" emphasized the explicit tie to race. The State's additional argument that the restriction is race neutral because it differentiates even among Polynesian people based on the date of an ancestor's residence in Hawaii is undermined by the classification's express racial purpose and its actual effects. The ancestral inquiry in this case implicates the same grave concerns as a classification specifying a particular race by name, for it demeans a person's dignity and worth to be judged by ancestry instead of by his or her own merit and essential qualities. The State's ancestral inquiry is forbidden by the Fifteenth Amendment for the further reason that using racial classifications is corruptive of the whole legal order democratic elections seek to preserve. The law itself may not become the instrument for generating the prejudice and hostility all too often directed against persons whose particular ancestry is disclosed by their ethnic characteristics and cultural traditions. The State's electoral restriction enacts a race-based voting qualification.

(b) The State's three principal defenses of its voting law are rejected. It argues first that the exclusion of non-Hawaiians from voting is permitted under this Court's cases allowing the differential treatment of Indian tribes. However, even if Congress had the authority, delegated to the State, to treat Hawaiians or native Hawaiians as tribes, Congress may not authorize a State to create a voting scheme of the sort created here. Congress may not authorize a State to establish a voting scheme that limits the electorate for its public officials to a class of tribal Indians to the exclusion of all non-Indian citizens. The elections for OHA trustee are elections of the State, not of a separate quasi sovereign, and they are elections to which the Fifteenth Amendment applies. *Morton v. Mancari, supra,* distinguished. The State's further contention that the limited voting franchise is sustainable under this Court's cases holding that the one-person, one-vote rule does not pertain to certain special purpose districts such as water or irrigation districts also fails, for compliance with the one-person, one-vote rule of the Fourteenth Amendment does not excuse compliance with the Fifteenth Amendment. Hawaii's final argument that the voting restriction does no more than ensure an alignment of interests between the fiduciaries and the beneficiaries of a trust founders on its own terms, for it is not clear that the voting classification is symmetric with the beneficiaries of the programs OHA administers. While the bulk of the funds appears to be earmarked for the benefit of "native Hawaiians," the State permits both "native Hawaiians" and "Hawaiians" to vote for trustees. The argument fails on more essential grounds; it rests on the demeaning premise that citizens of a particular race are somehow more qualified than others to vote on certain matters. There is no room under the Amendment for the concept that the right to vote in a particular election can be allocated based on race.

146 F.3d 1075, reversed.

JUSTICE KENNEDY delivered the opinion of the Court.

A citizen of Hawaii comes before us claiming that an explicit, race-based voting qualification has barred him from voting in a statewide election. The Fifteenth Amendment to the Constitution of the United States, binding on the National Government, the States, and their political subdivisions, controls the case.

The Hawaiian Constitution limits the right to vote for nine trustees chosen in a statewide election. The trustees compose the governing authority of a state agency known as the Office of Hawaiian Affairs, or OHA. Haw. Const., Art. XII, § 5. The agency administers programs designed for the benefit of two subclasses of the Hawaiian citizenry. The smaller class comprises those designated as "native Hawaiians," defined by statute, with certain supplementary language later set out in full, as descendants of not less than one-half part of the races inhabiting the Hawaiian Islands prior to 1778. Haw. Rev. Stat. § 10-2 (1993). The second, larger class of persons benefited by OHA programs is "Hawaiians," defined to be, with refinements contained in the statute we later quote, those persons who are descendants of people inhabiting the Hawaiian Islands in 1778. *Ibid.* The right to vote for trustees is limited to "Hawaiians," the second, larger class of persons, which of course includes the smaller class of "native Hawaiians." Haw. Const., Art. XII, § 5.

Petitioner Rice, a citizen of Hawaii and thus himself a Hawaiian in a well-accepted sense of the term, does not have the requisite ancestry even for the larger class. He is not, then, a "Hawaiian" in terms of the statute; so he may not vote in the trustee election. The issue presented by this case is whether Rice may be so barred. Rejecting the State's arguments that the classification in question is not racial or that, if it is, it is nevertheless valid for other reasons, we hold Hawaii's denial of petitioner's right to vote to be a clear violation of the Fifteenth Amendment.

I

When Congress and the State of Hawaii enacted the laws we are about to discuss and review, they made their own assessments of the events which intertwine Hawaii's history with the history of America itself. We will begin with a very brief account of that historical background. Historians and other scholars who write of Hawaii will have a different purpose and more latitude than do we. They may draw judgments either more laudatory or more harsh than the ones to which we refer. Our more limited role, in the posture of this particular case, is to recount events as understood by the lawmakers, thus ensuring that we accord proper appreciation to their purposes in adopting the policies and laws at issue. The litigants seem to agree that two works in particular are appropriate for our consideration, and we rely in part on those sources. See L. Fuchs, Hawaii Pono:
An Ethnic and Political History (1961) (hereinafter Fuchs); 1-3 R. Kuykendall, The Hawaiian Kingdom (1938); (1953); (1967) (hereinafter Kuykendall).

The origins of the first Hawaiian people and the date they reached the islands are not established with certainty, but the usual assumption is that they were Polynesians who voyaged from Tahiti and began to settle the islands around A. D. 750. Fuchs 4; 1 Kuykendall 3; see also G. Daws,

Shoal of Time: A History of the Hawaiian Islands xii-xiii (1968) (Marquesas Islands and Tahiti). When England's Captain Cook made landfall in Hawaii on his expedition in 1778, the Hawaiian people had developed, over the preceding 1,000 years or so, a cultural and political structure of their own. They had well-established traditions and customs and practiced a polytheistic religion. Agriculture and fishing sustained the people, and, though population estimates vary, some modern historians conclude that the population in 1778 was about 200,000-300,000. See Fuchs 4; R. Schmitt, Historical Statistics of Hawaii 7 (1977) (hereinafter Schmitt). The accounts of Hawaiian life often remark upon the people's capacity to find beauty and pleasure in their island existence, but life was not altogether idyllic. In Cook's time the islands were ruled by four different kings, and intra-Hawaiian wars could inflict great loss and suffering. Kings or principal chieftains, as well as high priests, could order the death or sacrifice of any subject. The society was one, however, with its own identity, its own cohesive forces, its own history.

In the years after Cook's voyage many expeditions would follow. A few members of the ships' companies remained on the islands, some as authorized advisers, others as deserters. Their intermarriage with the inhabitants of Hawaii was not infrequent.

In 1810, the islands were united as one kingdom under the leadership of an admired figure in Hawaiian history, Kamehameha I. It is difficult to say how many settlers from Europe and America were in Hawaii when the King consolidated his power. One historian estimates there were no more than 60 or so settlers at that time. 1 Kuykendall 27. An influx was soon to follow. Beginning about 1820, missionaries arrived, of whom Congregationalists from New England were dominant in the early years. They sought to teach Hawaiians to abandon religious beliefs and customs that were contrary to Christian teachings and practices.

The 1800's are a story of increasing involvement of westerners in the economic and political affairs of the Kingdom. Rights to land became a principal concern, and there was unremitting pressure to allow non-Hawaiians to use and to own land and to be secure in their title. Westerners were not the only ones with pressing concerns, however, for the disposition and ownership of land came to be an unsettled matter among the Hawaiians themselves.

The status of Hawaiian lands has presented issues of complexity and controversy from at least the rule of Kamehameha I to the present day. We do not attempt to interpret that history, lest our comments be thought to bear upon issues not before us. It suffices to refer to various of the historical conclusions that appear to have been persuasive to Congress and to the State when they enacted the laws soon to be discussed.

When Kamehameha I came to power, he reasserted suzerainty over all lands and provided for control of parts of them by a system described in our own cases as "feudal." *Hawaii Housing Authority v. Midkiff,* 467 U. S. 229, 232 (1984); *Kaiser Aetna v. United States,* 444 U. S. 164, 166 (1979). A well-known description of the King's early decrees is contained in an 1864 opinion of the Supreme Court of the Kingdom of Hawaii. The court, in turn, drew extensively upon an earlier report which recited, in part, as follows:

"'When the islands were conquered by Kamehameha 1., he followed the example of his predecessors, and divided out the lands among his principal warrior chiefs, retaining, however, a portion in his own hands to be cultivated or managed by his own immediate servants or

attendants. Each principal chief divided his lands anew and gave them out to an inferior order of chiefs or persons of rank, by whom they were subdivided again and again after (often) passing through the hands of four, five or six persons from the King down to the lowest class of tenants. All these persons were considered to have rights in the lands, or the productions of them, the proportions of which rights were not clearly defined, although universally acknowledged .... The same rights which the King possessed over the superior landlords and all under them, the several grades of landlords possessed over their inferiors, so that there was a joint ownership of the land, the King really owning the allodium, and the person in whose hands he placed the land, holding it in trust.'" *In re Estate of His Majesty Kamehameha* IV, 2 Haw. 715, 718-719 (quoting Principles Adopted by the Board of Commissioners to Quiet Land Titles, 2 Stat. Laws 81-82 (Haw. Kingdom 1847)).

Beginning in 1839 and through the next decade, a successive ruler, Kamehameha III, approved a series of decrees and laws designed to accommodate demands for ownership and security of title. In the words of the Hawaiian Supreme Court, "[t]he subject of rights in land was one of daily increasing importance to the newly formed Government, for it was obvious that the internal resources of the country could not be developed until the system of undivided and undefined ownership in land should be abolished." 2 Haw., at 721.

Arrangements were made to confer freehold title in some lands to certain chiefs and other individuals. The King retained vast lands for himself, and directed that other extensive lands be held by the government, which by 1840 had adopted the first Constitution of the islands. Thus was effected a fundamental and historic division, known as the Great Mahele. In 1850, foreigners, in turn, were given the right of land ownership.

The new policies did not result in wide dispersal of ownership. Though some provisions had been attempted by which tenants could claim lands, these proved ineffective in many instances, and ownership became concentrated. In 1920, the Congress of the United States, in a Report on the bill establishing the Hawaiian Homes Commission, made an assessment of Hawaiian land policy in the following terms:
"Your committee thus finds that since the institution of private ownership of lands in Hawaii the native Hawaiians, outside of the King and the chiefs, were granted and have held but a very small portion of the lands of the Islands. Under the homestead laws somewhat more than a majority of the lands were homesteaded to Hawaiians, but a great many of these lands have been lost through improvidence and inability to finance farming operations. Most frequently, however, the native Hawaiian, with no thought of the future, has obtained the land for a nominal sum, only to turn about and sell it to wealthy interests for a sum more nearly approaching its real value. The Hawaiians are not business men and have shown themselves unable to meet competitive conditions unaided. In the end the speculators are the real beneficiaries of the homestead laws. Thus the tax returns for 1919 show that only 6.23 per centum of the property of the Islands is held by native Hawaiians and this for the most part is lands in the possession of approximately a thousand wealthy Hawaiians, the descendents of the chiefs." H. R. Rep. No. 839, 66th Cong., 2d Sess., 6 (1920).

While these developments were unfolding, the United States and European powers made constant efforts to protect their interests and to influence Hawaiian political and economic affairs

in general. The first "articles of arrangement" between the United States and the Kingdom of Hawaii were signed in 1826, 8 Department of State, Treaties and Other International Agreements of the United States of America 1776-1949, p. 861 (C. Bevans compo 1968), and additional treaties and conventions between the two countries were signed in 1849, 1875, and 1887, see Treaty with the Hawaiian Islands, 9 Stat. 977 (1849) (friendship, commerce, and navigation); Convention between the United States of America and His Majesty the King of the Hawaiian Islands, 19 Stat. 625 (1875) (commercial reciprocity); Supplementary Convention between the United States of America and His Majesty the King of the Hawaiian Islands, 25 Stat. 1399 (1887) (same). The United States was not the only country interested in Hawaii and its affairs, but by the later part of the century the reality of American dominance in trade, settlement, economic expansion, and political influence became apparent.

Tensions intensified between an anti-Western, pro-native bloc in the government on the one hand and western business interests and property owners on the other. The conflicts came to the fore in 1887. Westerners forced the resignation of the Prime Minister of the Kingdom of Hawaii and the adoption of a new Constitution, which, among other things, reduced the power of the monarchy and extended the right to vote to non-Hawaiians. 3 Kuykendall 344-372.

Tensions continued through 1893, when they again peaked, this time in response to an attempt by the then-Hawaiian monarch, Queen Liliuokalani, to promulgate a new constitution restoring monarchical control over the House of Nobles and limiting the franchise to Hawaiian subjects. A so-called Committee of Safety, a group of professionals and businessmen, with the active assistance of John Stevens, the United States Minister to Hawaii, acting with United States Armed Forces, replaced the monarchy with a provisional government. That government sought annexation by the United States. On December 18 of the same year, President Cleveland, unimpressed and indeed offended by the actions of the American Minister, denounced the role of the American forces and called for restoration of the Hawaiian monarchy. Message of the President to the Senate and House of Representatives, reprinted in H. R. Rep. No. 243, 53d Cong., 2d Sess., 3-15 (1893). The Queen could not resume her former place, however, and, in 1894, the provisional government established the Republic of Hawaii. The Queen abdicated her throne a year later.

In 1898, President McKinley signed a Joint Resolution, sometimes called the Newlands Resolution, to annex the Hawaiian Islands as territory of the United States. 30 Stat. 750. According to the Joint Resolution, the Republic of Hawaii ceded all former Crown, government, and public lands to the United States. *Ibid.* The resolution further provided that revenues from the public lands were to be "used solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes." *Ibid.* Two years later the Hawaiian Organic Act established the Territory of Hawaii, asserted United States control over the ceded lands, and put those lands "in the possession, use, and control of the government of the Territory of Hawaii ... until otherwise provided for by Congress." Act of Apr. 30, 1900, ch. 339, § 91, 31 Stat. 159.

In 1993, a century after the intervention by the Committee of Safety, the Congress of the United States reviewed this history, and in particular the role of Minister Stevens. Congress passed a Joint Resolution recounting the events in some detail and offering an apology to the native Hawaiian people. 107 Stat. 1510.

Before we turn to the relevant provisions two other important matters, which affected the demographics of Hawaii, must be recounted. The first is the tragedy inflicted on the early Hawaiian people by the introduction of western diseases and infectious agents. As early as the establishment of the rule of Kamehameha I, it was becoming apparent that the native population had serious vulnerability to diseases borne to the islands by settlers. High mortality figures were experienced in infancy and adulthood, even from common illnesses such as diarrhea, colds, and measles. Fuchs 13; see Schmitt 58. More serious diseases took even greater tolls. In the smallpox epidemic of 1853, thousands of lives were lost. *Ibid.* By 1878, 100 years after Cook's arrival, the native population had been reduced to about 47,500 people. *Id.,* at 25. These mortal illnesses no doubt were an initial cause of the despair, disenchantment, and despondency some commentators later noted in descendents of the early Hawaiian people. See Fuchs 13.

The other important feature of Hawaiian demographics to be noted is the immigration to the islands by people of many different races and cultures. Mostly in response to the demand of the sugar industry for arduous labor in the cane fields, successive immigration waves brought Chinese, Portuguese, Japanese, and Filipinos to Hawaii. Beginning with the immigration of 293 Chinese in 1852, the plantations alone drew to Hawaii, in one estimate, something over 400,000 men, women, and children over the next century. *Id.,* at 24; A. Lind, Hawaii's People 6-7 (4th ed. 1980). Each of these ethnic and national groups has had its own history in Hawaii, its own struggles with societal and official discrimination, its own successes, and its own role in creating the present society of the islands. See E. Nordyke, The Peopling of Hawai'i 28-98 (2d ed. 1989). The 1990 census figures show the resulting ethnic diversity of the Hawaiian population. U. S. Dept. of Commerce, Bureau of Census, 1990 Census of Population, Supplementary Reports, Detailed Ancestry Groups for States (Oct. 1992).

With this background we turn to the legislative enactments of direct relevance to the case before us.

II

Not long after the creation of the new Territory, Congress became concerned with the condition of the native Hawaiian people. See H. R. Rep. No. 839, at 2-6; Hearings on the Rehabilitation and Colonization of Hawaiians and Other Proposed Amendments to the Organic Act of the Territory of Hawaii before the House Committee on the Territories, 66th Cong., 2d Sess. (1920). Reciting its purpose to rehabilitate the native Hawaiian population, see H. R. Rep. No. 839, at 1-2, Congress enacted the Hawaiian Homes Commission Act, which set aside about 200,000 acres of the ceded public lands and created a program of loans and long-term leases for the benefit of native Hawaiians. Act of July 9, 1921, ch. 42, 42 Stat. 108. The Act defined "native Hawaiian[sJ" to include "any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to *1778." Ibid.*

Hawaii was admitted as the 50th State of the Union in 1959. With admission, the new State agreed to adopt the Hawaiian Homes Commission Act as part of its own Constitution. Pub. L. 86-3, §§ 4, 7, 73 Stat. 5, 7 (Admission Act); see Haw. Const., Art. XII, §§ 1-3. In addition, the United States granted Hawaii title to all public lands and public property within the boundaries

of the State, save those which the Federal Government retained for its own use. Admission Act §§ 5(b)-(d), 73 Stat. 5. This grant included the 200,000 acres set aside under the Hawaiian Homes Commission Act and almost 1.2 million additional acres of land. Brief for United States as *Amicus Curiae 4*.

The legislation authorizing the grant recited that these lands, and the proceeds and income they generated, were to be held "as a public trust" to be "managed and disposed of for one or more of" five purposes:
"[1] for the support of the public schools and other public educational institutions, [2] for the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended, [3] for the development of farm and home ownership on as widespread a basis as possible[,] [4] for the making of public improvements, and [5] for the provision of lands for public use." Admission Act § 5(f), 73 Stat. 6.

In the first decades following admission, the State apparently continued to administer the lands that had been set aside under the Hawaiian Homes Commission Act for the benefit of native Hawaiians. The income from the balance of the public lands is said to have "by and large flowed to the department of education." Hawaii Senate Journal, Standing Committee Rep. No. 784, pp. 1350, 1351 (1979).

In 1978 Hawaii amended its Constitution to establish the Office of Hawaiian Affairs, Haw. Const., Art. XII, § 5, which has as its mission "[t]he betterment of conditions of native Hawaiians ... [and] Hawaiians," Haw. Rev. Stat. § 10-3 (1993). Members of the 1978 constitutional convention, at which the new amendments were drafted and proposed, set forth the purpose of the proposed agency:
"Members [of the Committee of the Whole] were impressed by the concept of the Office of Hawaiian Affairs which establishes a public trust entity for the benefit of the people of Hawaiian ancestry. Members foresaw that it will provide Hawaiians the right to determine the priorities which will effectuate the betterment of their condition and welfare and promote the protection and preservation of the Hawaiian race, and that it will unite Hawaiians as a people." 1 Proceedings of the Constitutional Convention of Hawaii of 1978, Committee of the Whole Rep. No. 13, p. 1018 (1980).

Implementing statutes and their later amendments vested OHA with broad authority to administer two categories of funds: a 20 percent share of the revenue from the 1.2 million acres of lands granted to the State pursuant to § 5(b) of the Admission Act, which OHA is to administer "for the betterment of the conditions of native Hawaiians," Haw. Rev. Stat. § 10-13.5 (1993), and any state or federal appropriations or private donations that may be made for the benefit of "native Hawaiians" and/or "Hawaiians," Haw. Const., Art. XII, § 6. See generally Haw. Rev. Stat. §§ 10-1 to 10-16. (The 200,000 acres set aside under the Hawaiian Homes Commission Act are administered by a separate agency. See Haw. Rev. Stat. § 26-17 (1993).) The Hawaiian Legislature has charged OHA with the mission of "[s]erving as the principal public agency ... responsible for the performance, development, and coordination of programs and activities relating to native Hawaiians and Hawaiians," "[a]ssessing the policies and practices of other agencies impacting on native Hawaiians and Hawaiians," "conducting advocacy efforts for native Hawaiians and Hawaiians," "[a]pplying for, receiving, and

disbursing, grants and donations from all sources for native Hawaiian and Hawaiian programs and services," and "[s]erving as a receptacle for reparations." § 10-3.

OHA is overseen by a nine-member board of trustees, the members of which "shall be Hawaiians" and-presenting the precise issue in this case-shall be "elected by qualified voters who are Hawaiians, as provided by law." Haw. Const., Art. XII, § 5; see Haw. Rev. Stat. §§ 13D-1, 13D-3(b)(1) (1993). The term "Hawaiian" is defined by statute:
" 'Hawaiian' means any descendant of the aboriginal peoples inhabiting the Hawaiian Islands which exercised sovereignty and subsisted in the Hawaiian Islands in 1778, and which peoples thereafter have continued to reside in Hawaii." § 10-2.
The statute defines "native Hawaiian" as follows:
"'Native Hawaiian' means any descendant of not less than one-half part of the races inhabiting the Hawaiian Islands previous to 1778, as defined by the Hawaiian Homes Commission Act, 1920, as amended; provided that the term identically refers to the descendants of such blood quantum of such aboriginal peoples which exercised sovereignty and subsisted in the Hawaiian Islands in 1778 and which peoples thereafter continued to reside in Hawaii." *Ibid.*

Petitioner Harold Rice is a citizen of Hawaii and a descendant of preannexation residents of the islands. He is not, as we have noted, a descendant of pre-1778 natives, and so he is neither "native Hawaiian" nor "Hawaiian" as defined by the statute. Rice applied in March 1996 to vote in the elections for OHA trustees. To register to vote for the office of trustee he was required to attest: "I am also Hawaiian and desire to register to vote in OHA elections." Affidavit on Application for Voter Registration, Lodging by Petitioner, Tab 2. Rice marked through the words "am also Hawaiian and," then checked the form "yes." The State denied his application.

Rice sued Benjamin Cayetano, the Governor of Hawaii, in the United States District Court for the District of Hawaii. (The Governor was sued in his official capacity, and the Attorney General of Hawaii defends the challenged enactments. We refer to the respondent as "the State.") Rice contested his exclusion from voting in elections for OHA trustees and from voting in a special election relating to native Hawaiian sovereignty which was held in August 1996. After the District Court rejected the latter challenge, see *Rice v. Cayetano,* 941 F. Supp. 1529 (1996) (a decision not before us), the parties moved for summary judgment on the claim that the Fourteenth and Fifteenth Amendments to the United States Constitution invalidate the law excluding Rice from the OHA trustee elections.

The District Court granted summary judgment to the State. 963 F. Supp. 1547 (Haw. 1997). Surveying the history of the islands and their people, the District Court determined that Congress and the State of Hawaii have recognized a guardian-ward relationship with the native Hawaiians, which the court found analogous to the relationship between the United States and the Indian tribes. *Id.,* at 1551-1554. On this premise, the court examined the voting qualification with the latitude that we have applied to legislation passed pursuant to Congress' power over Indian affairs. *Id.,* at 1554-1555 (citing *Morton v. Mancari,* 417 U. S. 535 (1974)). Finding that the electoral scheme was "rationally related to the State's responsibility under the Admission Act to utilize a portion of the proceeds from the § 5(b) lands for the betterment of Native Hawaiians," the District Court held that the voting restriction did not violate the Constitution's ban on racial classifications. 963 F. Supp., at 1554-1555.

The Court of Appeals affirmed. 146 F.3d 1075 (CA9 1998). The court noted that Rice had not challenged the constitutionality of the underlying programs or of OHA itself. *Id.,* at 1079. Considering itself bound to "accept the trusts and their administrative structure as [it found] them, and assume that both are lawful," the court held that Hawaii "may rationally conclude that Hawaiians, being the group to whom trust obligations run and to whom OHA trustees owe a duty of loyalty, should be the group to decide who the trustees ought to be." *Ibid.* The court so held notwithstanding its clear holding that the Hawaii Constitution and implementing statutes "contain a racial classification on their face." *Ibid.*

We granted certiorari, 526 U. S. 1016 (1999), and now reverse.

III

The purpose and command of the Fifteenth Amendment are set forth in language both explicit and comprehensive. The National Government and the States may not violate a fundamental principle: They may not deny or abridge the right to vote on account of race. Color and previous condition of servitude, too, are forbidden criteria or classifications, though it is unnecessary to consider them in the present case.

Enacted in the wake of the Civil War, the immediate concern of the Amendment was to guarantee to the emancipated slaves the right to vote, lest they be denied the civil and political capacity to protect their new freedom. Vital as its objective remains, the Amendment goes beyond it. Consistent with the design of the Constitution, the Amendment is cast in fundamental terms, terms transcending the particular controversy which was the immediate impetus for its enactment. The Amendment grants protection to all persons, not just members of a particular race.

The design of the Amendment is to reaffirm the equality of races at the most basic level of the democratic process, the exercise of the voting franchise. A resolve so absolute required language as simple in command as it was comprehensive in reach. Fundamental in purpose and effect and self-executing in operation, the Amendment prohibits all provisions denying or abridging the voting franchise of any citizen or class of citizens on the basis of race. "[B]y the inherent power of the Amendment the word white disappeared" from our voting laws, bringing those who had been excluded by reason of race within "the generic grant of suffrage made by the State." *Guinn v. United States,* 238 U. S. 347,363 (1915); see also *Neal v. Delaware,* 103 U. S. 370, 389 (1881). The Court has acknowledged the Amendment's mandate of neutrality in straightforward terms: "If citizens of one race having certain qualifications are permitted by law to vote, those of another having the same qualifications must be. Previous to this amendment, there was no constitutional guaranty against this discrimination: now there is." *United States* v. *Reese,* 92 U. S. 214, 218 (1876).

Though the commitment was clear, the reality remained far from the promise. Manipulative devices and practices were soon employed to deny the vote to blacks. We have cataloged before the "variety and persistence" of these techniques. *South Carolina v. Katzenbach,* 383 U. S. 301, 311312 (1966) (citing, *e. g., Guinn, supra* (grandfather clause); *Myers v. Anderson,* 238 U. S.

368 (1915) (same); *Lane v. Wilson,* 307 U. S. 268 (1939) ("procedural hurdles"); *Terry v. Adams,* 345 U. S. 461 (1953) (white primary); *Smith v. Allwright,* 321 U. S. 649 (1944) (same); *United States v. Thomas,* 362 U. S. 58 (1960) *(per curiam)* (registration challenges); *Gomillion v. Lightfoot,* 364 U. S. 339 (1960) (racial gerrymandering); *Louisiana v. United States,* 380 U. S. 145 (1965) ("interpretation tests")). Progress was slow, particularly when litigation had to proceed case by case, district by district, sometimes voter by voter. See 383 U. S., at 313-315.
Important precedents did emerge, however, which give instruction in the case now before us. The Fifteenth Amendment was quite sufficient to invalidate a scheme which did not mention race but instead used ancestry in an attempt to confine and restrict the voting franchise. In 1910, the State of Oklahoma enacted a literacy requirement for voting eligibility, but exempted from that requirement the "'lineal descendant[s]'" of persons who were "'on January 1, 1866, or at any time prior thereto, entitled to vote under any form of government, or who at that time resided in some foreign nation.'" *Guinn, supra,* at 357. Those persons whose ancestors were entitled to vote under the State's previous, discriminatory voting laws were thus exempted from the eligibility test. Recognizing that the test served only to perpetuate those old laws and to effect a transparent racial exclusion, the Court invalidated it. 238 U. S., at 364-365.

More subtle, perhaps, than the grandfather device in *Guinn* were the evasions attempted in the white primary cases; but the Fifteenth Amendment, again by its own terms, sufficed to strike down these voting systems, systems designed to exclude one racial class (at least) from voting. See *Terry, supra,* at 469-470; *Allwright, supra,* at 663-666 (overruling *Grovey v. Townsend,* 295 U. S. 45 (1935)). The Fifteenth Amendment, the Court held, could not be so circumvented: "The Amendment bans racial discrimination in voting by both state and nation. It thus establishes a national policy ... not to be discriminated against as voters in elections to determine public governmental policies or to select public officials, national, state, or local." *Terry, supra,* at 467.

Unlike the cited cases, the voting structure now before us is neither subtle nor indirect. It is specific in granting the vote to persons of defined ancestry and to no others. The State maintains this is not a racial category at all but instead a classification limited to those whose ancestors were in Hawaii at a particular time, regardless of their race. Brief for Respondent 38-40. The State points to theories of certain scholars concluding that some inhabitants of Hawaii as of 1778 may have migrated from the Marquesas Islands and the Pacific Northwest, as well as from Tahiti. *Id.,* at 38-39, and n. 15. Furthermore, the State argues, the restriction in its operation excludes a person whose traceable ancestors were exclusively Polynesian if none of those ancestors resided in Hawaii in 1778; and, on the other hand, the vote would be granted to a person who could trace, say, one sixty-fourth of his or her ancestry to a Hawaiian inhabitant on the pivotal date. *Ibid.* These factors, it is said, mean the restriction is not a racial classification. We reject this line of argument.

Ancestry can be a proxy for race. It is that proxy here. Even if the residents of Hawaii in 1778 had been of more diverse ethnic backgrounds and cultures, it is far from clear that a voting test favoring their descendants would not be a race-based qualification. But that is not this case. For centuries Hawaii was isolated from migration. 1 Kuykendall 3. The inhabitants shared common physical characteristics, and by 1778 they had a common culture. Indeed, the drafters of the statutory definition in question emphasized the "unique culture of the ancient Hawaiians" in explaining their work. Hawaii Senate Journal, Standing Committee Rep. No. 784, at 1354; see

ibid. ("Modern scholarship also identified such race of people as culturally distinguishable from other Polynesian peoples"). The provisions before us reflect the State's effort to preserve that commonality of people to the present day. In the interpretation of the Reconstruction era civil rights laws we have observed that "racial discrimination" is that which singles out "identifiable classes of persons ... solely because of their ancestry or ethnic characteristics." *Saint Francis College v. Al-Khazraji,* 481 U. S. 604, 613 (1987). The very object of the statutory definition in question and of its earlier congressional counterpart in the Hawaiian Homes Commission Act is to treat the early Hawaiians as a distinct people, commanding their own recognition and respect. The State, in enacting the legislation before us, has used ancestry as a racial definition and for a racial purpose.

The history of the State's definition demonstrates the point. As we have noted, the statute defines "Hawaiian" as

"any descendant of the aboriginal peoples inhabiting the Hawaiian Islands which exercised sovereignty and subsisted in the Hawaiian Islands in 1778, and which peoples thereafter have continued to reside in Hawaii." Haw. Rev. Stat. § 10-2 (1993).

A different definition of "Hawaiian" was first promulgated in 1978 as one of the proposed amendments to the State Constitution. As proposed, "Hawaiian" was defined as "any descendant of the races inhabiting the Hawaiian Islands, previous to 1778." 1 Proceedings of the Constitutional Convention of Hawaii of 1978, Committee of the Whole Rep. No. 13, at 1018. Rejected as not ratified in a valid manner, see *Kahalekai v. Doi,* 60 Haw. 324, 342, 590 P. 2d 543, 555 (1979), the definition was modified and in the end promulgated in statutory form as quoted above. See Hawaii Senate Journal, Standing Committee Rep. No. 784, at 1350, 1353-1354; *id.,* Conf. Comm. Rep. No. 77, at 998. By the drafters' own admission, however, any changes to the language were at most cosmetic. Noting that "[t]he definitions of 'native Hawaiian' and 'Hawaiian' are changed to substitute 'peoples' for 'races,'" the drafters of the revised definition "stress[ed] that this change is non-substantive, and that 'peoples' does mean 'races.'" *Ibid.;* see also *id.,* at 999 ("[T]he word 'peoples' has been substituted for 'races' in the definition of 'Hawaiian'. Again, your Committee wishes to emphasize that this substitution is merely technical, and that 'peoples' does mean 'races'").

The next definition in Hawaii's compilation of statutes incorporates the new definition of "Hawaiian" and preserves the explicit tie to race:

"'Native Hawaiian' means any descendant of not less than one-half part of the races inhabiting the Hawaiian Islands previous to 1778, as defined by the Hawaiian Homes Commission Act, 1920, as amended; provided that the term identically refers to the descendants of such blood quantum of such aboriginal peoples which exercised sovereignty and subsisted in the Hawaiian Islands in 1778 and which peoples thereafter continued to reside in Hawaii." Haw. Rev. Stat. § 10-2 (1993).

This provision makes it clear: "[T]he descendants ... of [the] aboriginal peoples" means "the descendants ... of the races." *Ibid.*

As for the further argument that the restriction differentiates even among Polynesian people and is based simply on the date of an ancestor's residence in Hawaii, this too is insufficient to prove the classification is nonracial in purpose and operation. Simply because a class defined by

ancestry does not include all members of the race does not suffice to make the classification race neutral. Here, the State's argument is undermined by its express racial purpose and by its actual effects.

The ancestral inquiry mandated by the State implicates the same grave concerns as a classification specifying a particular race by name. One of the principal reasons race is treated as a forbidden classification is that it demeans the dignity and worth of a person to be judged by ancestry instead of by his or her own merit and essential qualities. An inquiry into ancestral lines is not consistent with respect based on the unique personality each of us possesses, a respect the Constitution itself secures in its concern for persons and citizens.
The ancestral inquiry mandated by the State is forbidden by the Fifteenth Amendment for the further reason that the use of racial classifications is corruptive of the whole legal order democratic elections seek to preserve. The law itself may not become the instrument for generating the prejudice and hostility all too often directed against persons whose particular ancestry is disclosed by their ethnic characteristics and cultural traditions. "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." *Hirabayashi v. United States, 320* U. S. 81, 100 (1943). Ancestral tracing of this sort achieves its purpose by creating a legal category which employs the same mechanisms, and causes the same injuries, as laws or statutes that use race by name. The State's electoral restriction enacts a race-based voting qualification.

IV

The State offers three principal defenses of its voting law, any of which, it contends, allows it to prevail even if the classification is a racial one under the Fifteenth Amendment. We examine, and reject, each of these arguments.

A

The most far reaching of the State's arguments is that exclusion of non-Hawaiians from voting is permitted under our cases allowing the differential treatment of certain members of Indian tribes. The decisions of this Court, interpreting the effect of treaties and congressional enactments on the subject, have held that various tribes retained some elements of quasi-sovereign authority, even after cession of their lands to the United States. See *Brendale v. Confederated Tribes and Bands of Yakima Nation,* 492 U. S. 408, 425 (1989) (plurality opinion); *Oliphant v. Suquamish Tribe, 435* U. S. 191, 208 (1978). The retained tribal authority relates to self-governance. *Brendale, supra,* at 425 (plurality opinion). In reliance on that theory the Court has sustained a federal provision giving employment preferences to persons of tribal ancestry. *Mancari,* 417 U. S., at 553-555. The *Mancari* case, and the theory upon which it rests, are invoked by the State to defend its decision to restrict voting for the OHA trustees, who are charged so directly with protecting the interests of native Hawaiians.

If Hawaii's restriction were to be sustained under *Mancari* we would be required to accept some beginning premises not yet established in our case law. Among other postulates, it would be necessary to conclude that Congress, in reciting the purposes for the transfer of lands to the State and in other enactments such as the Hawaiian Homes Commission Act and the Joint Resolution

of 1993-has determined that native Hawaiians have a status like that of Indians in organized tribes, and that it may, and has, delegated to the State a broad authority to preserve that status. These propositions would raise questions of considerable moment and difficulty. It is a matter of some dispute, for instance, whether Congress may treat the native Hawaiians as it does the Indian tribes. Compare Van Dyke, The Political Status of the Native Hawaiian People, 17 Yale L. & Pol'y Rev. 95 (1998), with Benjamin, Equal Protection and the Special Relationship: The Case of Native Hawaiians, 106 Yale L. J. 537 (1996). We can stay far off that difficult terrain, however.

The State's argument fails for a more basic reason. Even were we to take the substantial step of finding authority in Congress, delegated to the State, to treat Hawaiians or native Hawaiians as tribes, Congress may not authorize a State to create a voting scheme of this sort.

Of course, as we have established in a series of cases, Congress may fulfill its treaty obligations and its responsibilities to the Indian tribes by enacting legislation dedicated to their circumstances and needs. See *Washington v. Washington State Commercial Passenger Fishing Vessel Assn.,* 443 U. S. 658, 673, n. 20 (1979) (treaties securing preferential fishing rights); *United States v. Antelope,* 430 U. S. 641, 645-647 (1977) (exclusive federal jurisdiction over crimes committed by Indians in Indian country); *Delaware Tribal Business Comm. v. Weeks,* 430 U. S. 73, 84-85 (1977) (distribution of tribal property); *Moe v. Confederated Salish and Kootenai Tribes of Flathead Reservation,* 425 U. S. 463, 479-480 (1976) (Indian immunity from state taxes); *Fisher v. District Court of Sixteenth Judicial Dist. of Mont.,* 424 U. S. 382, 390-391 (1976) *(per curiam)* (exclusive tribal court jurisdiction over tribal adoptions). As we have observed, "every piece of legislation dealing with Indian tribes and reservations ... single[s] out for special treatment a constituency of tribal Indians." *Mancari, supra,* at 552.

Mancari, upon which many of the above cases rely, presented the somewhat different issue of a preference in hiring and promoting at the federal Bureau of Indian Affairs (BIA), a preference which favored individuals who were "'one-fourth or more degree Indian blood and ... member[s] of a Federally-recognized tribe.'" 417 U. S., at 553, n. 24 (quoting 44 BIAM 335, 3.1 (1972)). Although the classification had a racial component, the Court found it important that the preference was "not directed towards a 'racial' group consisting of 'Indians,'" but rather "only to members of 'federally recognized' tribes." 417 U. S., at 553, n. 24. "In this sense," the Court held, "the preference [was] political rather than racial in nature." *Ibid.;* see also *id.,* at 554 ("The preference, as applied, is granted to Indians not as a discrete racial group, but, rather, as members of quasi-sovereign tribal entities whose lives and activities are governed by the BIA in a unique fashion"). Because the BIA preference could be "tied rationally to the fulfillment of Congress' unique obligation toward the Indians," and was "reasonable and rationally designed to further Indian self-government," the Court held that it did not offend the Constitution. *Id.,* at 555. The opinion was careful to note, however, that the case was confined to the authority of the BIA, an agency described as *"sui generis." Id.,* at 554.

Hawaii would extend the limited exception of *Mancari* to a new and larger dimension. The State contends that "one of the very purposes of OHA—and the challenged voting provision—is to afford Hawaiians a measure of self-governance," and so it fits the model of *Mancari.* Brief for Respondent 34. It does not follow from *Mancari,* however, that Congress may authorize a State

to establish a voting scheme that limits the electorate for its public officials to a class of tribal Indians, to the exclusion of all non-Indian citizens.

The tribal elections established by the federal statutes the State cites illuminate its error. See Brief for Respondent 22 (citing, *e. g.,* the Menominee Restoration Act, 25 U. S. C. § 903b, and the Indian Reorganization Act, 25 U. S. C. § 476). If a non-Indian lacks a right to vote in tribal elections, it is for the reason that such elections are the internal affair of a quasi sovereign. The OHA elections, by contrast, are the affair of the State of Hawaii. OHA is a state agency, established by the State Constitution, responsible for the administration of state laws and obligations. See Haw. Const., Art. XII, §§ 5-6. The Hawaiian Legislature has declared that OHA exists to serve "as the principal public agency in the State responsible for the performance, development, and coordination of programs and activities relating to native Hawaiians and Hawaiians." Haw. Rev. Stat. § 10-3(3) (1993); see also Lodging by Petitioner, Tab 6, OHA Annual Report 1993-1994, p. 5 (May 27, 1994) (admitting that "OHA is technically a part of the Hawai'i state government," while asserting that "it operates as a semi-autonomous entity"). Foremost among the obligations entrusted to this agency is the administration of a share of the revenues and proceeds from public lands, granted to Hawaii to "be held by said State as a public trust." Admission Act §§ 5(b), (f), 73 Stat. 5, 6; see Haw. Const., Art. XII, § 4.

The delegates to the 1978 constitutional convention explained the position of OHA in the state structure:
"The committee intends that the Office of Hawaiian Affairs will be independent from the executive branch and all other branches of government although it will assume the status of a state agency. The chairman may be an ex officio member of the governor's cabinet. The status of the Office of Hawaiian Affairs is to be unique and special….The committee developed this office based on the model of the University of Hawaii. In particular, the committee desired to use this model so that the office could have maximum control over its budget, assets and personnel. The committee felt that it was important to arrange a method whereby the assets of Hawaiians could be kept separate from the rest of the state treasury." 1 Proceedings of the Constitutional Convention of Hawaii of 1978, Standing Committee Rep. No. 59, at 645.
Although it is apparent that OHA has a unique position under state law, it is just as apparent that it remains an arm of the State.

The validity of the voting restriction is the only question before us. As the Court of Appeals did, we assume the validity of the underlying administrative structure and trusts, without intimating any opinion on that point. Nonetheless, the elections for OHA trustee are elections of the State, not of a separate quasi sovereign, and they are elections to which the Fifteenth Amendment applies. To extend *Mancari* to this context would be to permit a State, by racial classification, to fence out whole classes of its citizens from decisionmaking in critical state affairs. The Fifteenth Amendment forbids this result.

B

Hawaii further contends that the limited voting franchise is sustainable under a series of cases holding that the rule of one person, one vote does not pertain to certain special purpose districts such as water or irrigation districts. See *Ball v. James,* 451 U. S. 355 (1981); *Salyer Land Co. v.*

Tulare Lake Basin Water Storage Dist., 410 U. S. 719 (1973). Just as the *Mancari* argument would have involved a significant extension or new application of that case, so too it is far from clear that the *Salyer* line of cases would be at all applicable to statewide elections for an agency with the powers and responsibilities of OHA.

We would not find those cases dispositive in any event, however. The question before us is not the one-person, one-vote requirement of the Fourteenth Amendment, but the race neutrality command of the Fifteenth Amendment. Our special purpose district cases have not suggested that compliance with the one-person, one-vote rule of the Fourteenth Amendment somehow excuses compliance with the Fifteenth Amendment. We reject that argument here. We held four decades ago that state authority over the boundaries of political subdivisions, "extensive though it is, is met and overcome by the Fifteenth Amendment to the Constitution." *Gomillion,* 364 U. S., at 345. The Fifteenth Amendment has independent meaning and force. A State may not deny or abridge the right to vote on account of race, and this law does so.

C

Hawaii's final argument is that the voting restriction does no more than ensure an alignment of interests between the fiduciaries and the beneficiaries of a trust. Thus, the contention goes, the restriction is based on beneficiary status rather than race.

As an initial matter, the contention founders on its own terms, for it is not clear that the voting classification is symmetric with the beneficiaries of the programs OHA administers. Although the bulk of the funds for which OHA is responsible appears to be earmarked for the benefit of "native Hawaiians," the State permits both "native Hawaiians" and "Hawaiians" to vote for the office of trustee. The classification thus appears to create, not eliminate, a differential alignment between the identity of OHA trustees and what the State calls beneficiaries.

Hawaii's argument fails on more essential grounds. The State's position rests, in the end, on the demeaning premise that citizens of a particular race are somehow more qualified than others to vote on certain matters. That reasoning attacks the central meaning of the Fifteenth Amendment. The Amendment applies to "any election in which public issues are decided or public officials selected." *Terry, 345* U. S., at 468. There is no room under the Amendment for the concept that the right to vote in a particular election can be allocated based on race. Race cannot qualify some and disqualify others from full participation in our democracy. All citizens, regardless of race, have an interest in selecting officials who make policies on their behalf, even if those policies will affect some groups more than others. Under the Fifteenth Amendment voters are treated not as members of a distinct race but as members of the whole citizenry. Hawaii may not assume, based on race, that petitioner or any other of its citizens will not cast a principled vote. To accept the position advanced by the State would give rise to the same indignities, and the same resulting tensions and animosities, the Amendment was designed to eliminate. The voting restriction under review is prohibited by the Fifteenth Amendment.

***

When the culture and way of life of a people are all but engulfed by a history beyond their control, their sense of loss may extend down through generations; and their dismay may be

shared by many members of the larger community. As the State of Hawaii attempts to address these realities, it must, as always, seek the political consensus that begins with a sense of shared purpose. One of the necessary beginning points is this principle: The Constitution of the United States, too, has become the heritage of all the citizens of Hawaii.

In this case the Fifteenth Amendment invalidates the electoral qualification based on ancestry. The judgment of the Court of Appeals for the Ninth Circuit is reversed.

It is so ordered.

Adarand Constructors, Inc. v. Pena, 515 U.S. 200 (1995)

Syllabus

Most federal agency contracts must contain a subcontractor compensation clause, which gives a prime contractor a financial incentive to hire subcontractors certified as small businesses controlled by socially and economically disadvantaged individuals, and requires the contractor to presume that such individuals include minorities or any other individuals found to be disadvantaged by the Small Business Administration (SBA). The prime contractor under a federal highway construction contract containing such a clause awarded a subcontract to a company that was certified as a small disadvantaged business… Petitioner Adarand Constructors, Inc., which submitted the low bid on the subcontract but was not a certified business, filed suit against respondent federal officials, claiming that the race-based presumptions used in subcontractor compensation clauses violate the equal protection component of the Fifth Amendment's Due Process Clause. The District Court granted respondents summary judgment. In affirming, the Court of Appeals assessed the constitutionality of the federal race-based action under a lenient standard, resembling intermediate scrutiny, which it determined was required by *Fullilove v. Klutznick,* 448 U. S. 448, and *Metro Broadcasting, Inc. v. FCC,* 497 U. S. 547.

Held: The judgment is vacated, and the case is remanded…

JUSTICE O'CONNOR delivered an opinion with respect to Parts I, II, III-A, III-B, III-D, and IV, which was for the Court…, concluding that…

2. All racial classifications, imposed by whatever federal, state, or local governmental actor, must be analyzed by a reviewing court under strict scrutiny.

(a) In *Richmond v. J. A. Croson Co.,* 488 U. S. 469, a majority of the Court held that the Fourteenth Amendment requires strict scrutiny of all race-based action by state and local governments. While *Croson* did not consider what standard of review the Fifth Amendment requires for such action taken by the Federal Government, the Court's cases through *Croson* had established three general propositions with respect to governmental racial classifications. First, skepticism: "'Any preference based on racial or ethnic criteria must necessarily receive a most searching examination,'" *Wygant v. Jackson Bd. of Ed.,* 476 U. S. 267, 273-274. Second, consistency: "[T]he standard of review under the Equal

Protection Clause is not dependent on the race of those burdened or benefited by a particular classification," *Croson, supra,* at 494. And third, congruence: "Equal protection analysis in the Fifth Amendment area is the same as that under the Fourteenth Amendment," *Buckley v. Valeo,* 424 U. S. 1, 93. Taken together, these propositions lead to the conclusion that any person, of whatever race, has the right to demand that any governmental actor subject to the Constitution justify any racial classification subjecting that person to unequal treatment under the strictest judicial scrutiny.

(b) However, a year after *Croson,* the Court, in *Metro Broadcasting,* upheld two federal race-based policies against a Fifth Amendment challenge. The Court repudiated the long-held notion that "it would be unthinkable that the same Constitution would impose a lesser duty on the Federal Government" than it does on a State to afford equal protection of the laws, *Bolling v. Sharpe,* 347 U. S. 497, 500, by holding that congressionally mandated "benign" racial classifications need only satisfy intermediate scrutiny. By adopting that standard, *Metro Broadcasting* departed from prior cases in two significant respects. First, it turned its back on *Croson's* explanation that strict scrutiny of governmental racial classifications is essential because it may not always be clear that a so-called preference is in fact benign. Second, it squarely rejected one of the three propositions established by this Court's earlier cases, namely, congruence between the standards applicable to federal and state race-based action, and in doing so also undermined the other two.

(c) The propositions undermined by *Metro Broadcasting* all derive from the basic principle that the Fifth and Fourteenth Amendments protect persons, not groups. It follows from that principle that all governmental action based on race—a group classification long recognized as in most circumstances irrelevant and therefore prohibited—should be subjected to detailed judicial inquiry to ensure that the personal right to equal protection has not been infringed. Thus, strict scrutiny is the proper standard for analysis of all racial classifications, whether imposed by a federal, state, or local actor. To the extent that *Metro Broadcast*ing is inconsistent with that holding, it is overruled.

(d) The decision here makes explicit that federal racial classifications, like those of a State, must serve a compelling governmental interest, and must be narrowly tailored to further that interest. Thus, to the extent that *Fullilove* held federal racial classifications to be subject to a less rigorous standard, it is no longer controlling. Requiring strict scrutiny is the best way to ensure that courts will consistently give racial classifications a detailed examination, as to both ends and means. It is not true that strict scrutiny is strict in theory, but fatal in fact. Government is not disqualified from acting in response to the unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country. When race-based action is necessary to further a compelling interest, such action is within constitutional constraints if it satisfies the "narrow tailoring" test set out in this Court's previous cases.

3. Because this decision alters the playing field in some important respects, the case is remanded to the lower courts for further consideration. The Court of Appeals did not

> decide whether the interests served by the use of subcontractor compensation clauses are properly described as "compelling." Nor did it address the question of narrow tailoring in terms of this Court's strict scrutiny cases. …

JUSTICE O'CONNOR announced the judgment of the Court and delivered an opinion with respect to Parts I, II, III-A, III-B, III-D, and IV, which is for the Court…

Petitioner Adarand Constructors, Inc., claims that the Federal Government's practice of giving general contractors on Government projects a financial incentive to hire subcontractors controlled by "socially and economically disadvantaged individuals," and in particular, the Government's use of race-based presumptions in identifying such individuals, violates the equal protection component of the Fifth Amendment's Due Process Clause. The Court of Appeals rejected Adarand's claim. We conclude, however, that courts should analyze cases of this kind under a different standard of review than the one the Court of Appeals applied. We therefore vacate the Court of Appeals' judgment and remand the case for further proceedings.

I

In 1989, the Central Federal Lands Highway Division (CFLHD), which is part of the United States Department of Transportation (DOT), awarded the prime contract for a highway construction project in Colorado to Mountain Gravel & Construction Company. Mountain Gravel then solicited bids from subcontractors for the guardrail portion of the contract. Adarand, a Colorado-based highway construction company specializing in guardrail work, submitted the low bid. Gonzales Construction Company also submitted a bid.

The prime contract's terms provide that Mountain Gravel would receive additional compensation if it hired subcontractors certified as small businesses controlled by "socially and economically disadvantaged individuals," App. 24. Gonzales is certified as such a business; Adarand is not. Mountain Gravel awarded the subcontract to Gonzales, despite Adarand's low bid, and Mountain Gravel's Chief Estimator has submitted an affidavit stating that Mountain Gravel would have accepted Adarand's bid, had it not been for the additional payment it received by hiring Gonzales instead. *Id.,* at 28-31. Federal law requires that a subcontracting clause similar to the one used here must appear in most federal agency contracts, and it also requires the clause to state that "[t]he contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other minorities, or any other individual found to be disadvantaged by the [Small Business] Administration pursuant to section 8(a) of the Small Business Act." 15 U. S. C. §§ 637(d)(2), (3). Adarand claims that the presumption set forth in that statute discriminates on the basis of race in violation of the Federal Government's Fifth Amendment obligation not to deny anyone equal protection of the laws…

After losing the guardrail subcontract to Gonzales, Adarand filed suit against various federal officials in the United States District Court for the District of Colorado, claiming that the race-based presumptions involved in the use of subcontracting compensation clauses violate Adarand's right to equal protection. The District Court granted the Government's motion for summary judgment. *Adarand Constructors, Inc. v. Skinner,* 790 F. Supp. 240 (1992). The Court

of Appeals for the Tenth Circuit affirmed. 16 F.3d 1537 (1994). It understood our decision in *Fullilove v. Klutznick, 448* U. S. 448 (1980), to have adopted "a lenient standard, resembling intermediate scrutiny, in assessing" the constitutionality of federal race-based action. 16 F. 3d, at 1544. Applying that "lenient standard," as further developed in *Metro Broadcasting, Inc. v. FCC,* 497 U. S. 547 (1990), the Court of Appeals upheld the use of subcontractor compensation clauses. 16 F. 3d, at 1547. We granted certiorari. 512 U. S. 1288 (1994)…

III

…Respondents concede, however, that "the race-based rebuttable presumption used in some certification determinations under the Subcontracting Compensation Clause" is subject to some heightened level of scrutiny. *Id.,* at 27. The parties disagree as to what that level should be…
Adarand's claim arises under the Fifth Amendment to the Constitution, which provides that "No person shall ... be deprived of life, liberty, or property, without due process of law." Although this Court has always understood that Clause to provide some measure of protection against *arbitrary* treatment by the Federal Government, it is not as explicit a guarantee of *equal* treatment as the Fourteenth Amendment, which provides that "No *State* shall ... deny to any person within its jurisdiction the equal protection of the laws" (emphasis added). Our cases have accorded varying degrees of significance to the difference in the language of those two Clauses…

A

Through the 1940's, this Court had routinely taken the view in non-race-related cases that, "[u]nlike the Fourteenth Amendment, the Fifth contains no equal protection clause and it provides no guaranty against discriminatory legislation by Congress."…When the Court first faced a Fifth Amendment equal protection challenge to a federal racial classification, it adopted a similar approach, with most unfortunate results. In *Hirabayashi v. United States,* 320 U. S. 81 (1943), the Court considered a curfew applicable only to persons of Japanese ancestry. The Court observed—correctly—that "[d]istinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality," and that "racial discriminations are in most circumstances irrelevant and therefore prohibited." *Id.,* at 100. But it also cited *Detroit Bank* for the proposition that the Fifth Amendment "restrains only such discriminatory legislation by Congress as amounts to a denial of due process," 320 U. S., at 100, and upheld the curfew because "circumstances within the knowledge of those charged with the responsibility for maintaining the national defense afforded a rational basis for the decision which they made." *Id.,* at 102.

Eighteen months later, the Court again approved wartime measures directed at persons of Japanese ancestry. *Korematsu v. United States,* 323 U. S. 214 (1944), concerned an order that completely excluded such persons from particular areas…[I]t began by noting that "all legal restrictions which curtail the civil rights of a single racial group are immediately suspect ... [and] courts must subject them to the most rigid scrutiny." 323 U. S., at 216…But in spite of the "most rigid scrutiny" standard it had just set forth, the Court then inexplicably relied on "the principles we announced in the *Hirabayashi* case," id., at 217, to conclude that, although "exclusion from the area in which one's home is located is a far greater deprivation than constant confinement to

the home from 8 p. m. to 6 a. m.," id., at 218, the racially discriminatory order was nonetheless within the Federal Government's power…

Later cases…did not distinguish between the duties of the States and the Federal Government to avoid racial classifications…

B

…In 1978, the Court confronted the question whether race-based governmental action designed to *benefit* such groups should also be subject to "the most rigid scrutiny." *Regents of Univ. of Cal. v. Bakke,* 438 U. S. 265, involved an equal protection challenge to a state-run medical school's practice of reserving a number of spaces in its entering class for minority students…Two years after *Bakke,* the Court faced another challenge to remedial race-based action, this time involving action undertaken by the Federal Government. In *Fullilove v. Klutznick,* 448 U. S. 448 (1980), the Court upheld Congress' inclusion of a 10% set-aside for minority-owned businesses in the Public Works Employment Act of 1977. As in *Bakke,* there was no opinion for the Court…In *Wygant v. Jackson Bd. of Ed.,* 476 U. S. 267 (1986), the Court considered a Fourteenth Amendment challenge to another form of remedial racial classification. The issue in *Wygant* was whether a school board could adopt race-based preferences in determining which teachers to layoff…The Court's failure to produce a majority opinion in *Bakke, Fullilove,* and *Wygant* left unresolved the proper analysis for remedial race-based governmental action…Lower courts found this lack of guidance unsettling…

The Court resolved the issue, at least in part, in 1989. *Richmond v. J. A. Croson Co.,* 488 U. S. 469 (1989), concerned a city's determination that 30% of its contracting work should go to minority-owned businesses…With *Croson,* the Court finally agreed that the Fourteenth Amendment requires strict scrutiny of all race-based action by state and local governments. But *Croson* of course had no occasion to declare what standard of review the Fifth Amendment requires for such action taken by the Federal Government…

Despite lingering uncertainty in the details, however, the Court's cases through *Croson* had established three general propositions with respect to governmental racial classifications. First, skepticism: "'Any preference based on racial or ethnic criteria must necessarily receive a most searching examination,'" *Wygant,* 476 U. S., at 273 (plurality opinion of Powell, J.); *Fullilove,* 448 U. S., at 491 (opinion of Burger, C. J.)…Second, consistency: "[T]he standard of review under the Equal Protection Clause is not dependent on the race of those burdened or benefited by a particular classification," *Croson,* 488 U. S., at 494 (plurality opinion); id., at 520 (SCALIA, J., concurring in judgment)… And third, congruence: "Equal protection analysis in the Fifth Amendment area is the same as that under the Fourteenth Amendment," *Buckley v. Valeo,* 424 U. S., at 93;…Taken together, these three propositions lead to the conclusion that any person, of whatever race, has the right to demand that any governmental actor subject to the Constitution justify any racial classification subjecting that person to unequal treatment under the strictest judicial scrutiny…

A year later, however, the Court took a surprising turn. *Metro Broadcasting, Inc. v. FCC, supra,* involved a Fifth Amendment challenge to two race-based policies of the Federal

Communications Commission (FCC). In *Metro Broadcasting,* the Court repudiated the long-held notion that "it would be unthinkable that the same Constitution would impose a lesser duty on the Federal Government" than it does on a State to afford equal protection of the laws, *Bolling, supra,* at 500. It did so by holding that "benign" federal racial classifications need only satisfy intermediate scrutiny, even though *Croson* had recently concluded that such classifications enacted by a State must satisfy strict scrutiny…Applying this test, the Court first noted that the FCC policies at issue did not serve as a remedy for past discrimination. *Id.,* at 566. Proceeding on the assumption that the policies were nonetheless "benign," it concluded that they served the "important governmental objective" of "enhancing broadcast diversity," *id*., at 566-567, and that they were "substantially related" to that objective, id., at 569. It therefore upheld the policies.

By adopting intermediate scrutiny as the standard of review for congressionally mandated "benign" racial classifications, *Metro Broadcasting* departed from prior cases in two significant respects. First, it turned its back on *Croson's* explanation of why strict scrutiny of all governmental racial classifications is essential:
"Absent searching judicial inquiry into the justification for such race-based measures, there is simply no way of determining what classifications are 'benign' or 'remedial' and what classifications are in fact motivated by illegitimate notions of racial inferiority or simple racial politics. Indeed, the purpose of strict scrutiny is to 'smoke out' illegitimate uses of race by assuring that the legislative body is pursuing a goal important enough to warrant use of a highly suspect tool. The test also ensures that the means chosen 'fit' this compelling goal so closely that there is little or no possibility that the motive for the classification was illegitimate racial prejudice or stereotype." *Croson, supra,* at 493 (plurality opinion of O'CONNOR, J.).

We adhere to that view today, despite the surface appeal of holding "benign" racial classifications to a lower standard, because "it may not always be clear that a so-called preference is in fact benign," *Bakke, supra,* at 298 (opinion of Powell, J.). "[M]ore than good motives should be required when government seeks to allocate its resources by way of an explicit racial classification system." Days, Fullilove, 96 Yale.

Second, *Metro Broadcasting* squarely rejected one of the three propositions established by the Court's earlier equal protection cases, namely, congruence between the standards applicable to federal and state racial classifications, and in so doing also undermined the other two—skepticism of all racial classifications and consistency of treatment irrespective of the race of the burdened or benefited group…Under *Metro Broadcasting,* certain racial classifications ("benign" ones enacted by the Federal Government) should be treated less skeptically than others; and the race of the benefited group is critical to the determination of which standard of review to apply. *Metro Broadcasting* was thus a significant departure from much of what had come before it.

The three propositions undermined by *Metro Broadcasting* all derive from the basic principle that the Fifth and Fourteenth Amendments to the Constitution protect *persons,* not *groups.* It follows from that principle that all governmental action based on race—a *group* classification long recognized as "in most circumstances irrelevant and therefore prohibited," *Hirabayashi,* 320 U. S., at 100—should be subjected to detailed judicial inquiry to ensure that the *personal* right to equal protection of the laws has not been infringed. These ideas have long been central to this Court's understanding of equal protection, and holding "benign" state and federal racial

classifications to different standards does not square with them. "[A] free people whose institutions are founded upon the doctrine of equality," *ibid.,* should tolerate no retreat from the principle that government may treat people differently because of their race only for the most compelling reasons. Accordingly, we hold today that all racial classifications, imposed by whatever federal, state, or local governmental actor, must be analyzed by a reviewing court under strict scrutiny. In other words, such classifications are constitutional only if they are narrowly tailored measures that further compelling governmental interests. To the extent that *Metro Broadcasting* is inconsistent with that holding, it is overruled…

D

Our action today makes explicit what Justice Powell thought implicit in the *Fullilove* lead opinion: Federal racial classifications, like those of a State, must serve a compelling governmental interest, and must be narrowly tailored to further that interest. See *Fullilove,* 448 U. S., at 496 (concurring opinion). (Recall that the lead opinion in *Fullilove* "d[id] not adopt ... the formulas of analysis articulated in such cases as *[Bakke]." Id.,* at 492 (opinion of Burger, C. J.).) Of course, it follows that to the extent (if any) that *Fullilove* held federal racial classifications to be subject to a less rigorous standard, it is no longer controlling. But we need not decide today whether the program upheld in *Fullilove* would survive strict scrutiny as our more recent cases have defined it…

We think that requiring strict scrutiny is the best way to ensure that courts will consistently give racial classifications that kind of detailed examination, both as to ends and as to means. *Korematsu* demonstrates vividly that even "the most rigid scrutiny" can sometimes fail to detect an illegitimate racial classification, compare *Korematsu, 323* U. S., at 223 ("To cast this case into outlines of racial prejudice, without reference to the real military dangers which were presented, merely confuses the issue. Korematsu was not excluded from the Military Area because of hostility to him or his race"), with Pub. L. 100-383, § 2(a), 102 Stat. 903904 ("[T]hese actions [of relocating and interning civilians of Japanese ancestry] were carried out without adequate security reasons ... and were motivated largely by racial prejudice, wartime hysteria, and a failure of political leadership"). Any retreat from the most searching judicial inquiry can only increase the risk of another such error occurring in the future.

Finally, we wish to dispel the notion that strict scrutiny is "strict in theory, but fatal in fact." *Fullilove, supra,* at 519 (Marshall, J., concurring in judgment). The unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country is an unfortunate reality, and government is not disqualified from acting in response to it. As recently as 1987, for example, every Justice of this Court agreed that the Alabama Department of Public Safety's "pervasive, systematic, and obstinate discriminatory conduct" justified a narrowly tailored race-based remedy. See *United States v. Paradise,* 480 U. S., at 167 (plurality opinion of Brennan, J.); id., at 190 (STEVENS, J., concurring in judgment)… When race-based action is necessary to further a compelling interest, such action is within constitutional constraints if it satisfies the "narrow tailoring" test this Court has set out in previous cases.

IV

Because our decision today alters the playing field in some important respects, we think it best to remand the case to the lower courts for further consideration in light of the principles we have announced. The Court of Appeals, following *Metro Broadcasting* and *Fullilove,* analyzed the case in terms of intermediate scrutiny…The Court of Appeals…did not address the question of narrow tailoring in terms of our strict scrutiny cases, by asking, for example, whether there was "any consideration of the use of race-neutral means to increase minority business participation" in government contracting, *Croson, supra,* at 507, or whether the program was appropriately limited such that it "will not last longer than the discriminatory effects it is designed to eliminate," *Fullilove, supra,* at 513 (Powell, J., concurring)…

Accordingly, the judgment of the Court of Appeals is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

United States v. Paradise, 480 U.S. 149 (1987)

Syllabus

In 1972, upon finding that, for almost four decades, the Alabama Department of Public Safety (Department) had systematically excluded blacks from employment as state troopers in violation of the Fourteenth Amendment, the District Court issued an order imposing a hiring quota and requiring the Department to refrain from engaging in discrimination in its employment practices, including promotions. By 1979, no blacks had attained the upper ranks of the Department. The court therefore approved a partial consent decree in which the Department agreed to develop within one year a procedure for promotion to corporal that would have no adverse impact on blacks and would comply with the Uniform Guidelines on Employee Selection Procedures (Guidelines), and thereafter to develop similar procedures for the other upper ranks (1979 Decree). As of 1981, however, more than a year after the 1979 Decree's deadline, no black troopers had been promoted. The court approved a second consent decree in which the parties agreed that the Department's proposed corporal promotion test would be administered to applicants, that the results would be reviewed to determine any adverse impact on blacks under the Guidelines, that the determination of a procedure would be submitted to the court if the parties were unable to agree thereon, and that no promotions would occur until the parties agreed or the court ruled upon the promotion method to be used (1981 Decree). Of the 60 blacks to whom the test was administered, only 5 (8.3%) were listed in the top half of the promotional register, and the highest ranked black was number 80. The Department then declared that it had an immediate need for between 8 and 10 new corporals, and stated its intention to elevate between 16 and 20 individuals before constructing a new list. The United States objected to any use of the list in making promotions. In 1983, the District Court held that the test had an adverse impact on blacks, and ordered the Department to submit a plan to promote at least 15 qualified candidates to corporal in a manner that would not have an adverse racial impact. The Department proposed to promote 4 blacks among the 15 new corporals, but the court rejected that proposal and ordered that "for a period of time," at least 50% of those promoted to corporal must be black, if qualified black candidates were available, and imposed a 50% promotional requirement in the other upper ranks, but only if there were qualified black candidates, if a particular rank were less than 25% black, and if the Department had not developed and implemented a promotion plan without adverse impact for the relevant rank. The Department was also ordered to submit a realistic schedule for the development of promotional procedures for all ranks above the entry level. Subsequently, the Department promoted eight blacks and eight whites under the court's order, and submitted its proposed corporal and sergeant promotional procedures, at which times the court suspended the 50% requirement for those ranks. The United States appealed the court's order on the ground that it violated the Fourteenth Amendment's equal protection guarantee. The Court of Appeals affirmed the order.

Held: The judgment is affirmed.

767 F.2d 1614, affirmed.

JUSTICE BRENNAN, joined by JUSTICE MARSHALL, JUSTICE BLACKMUN, and JUSTICE POWELL, concluded that, even under a strict scrutiny analysis, the one-black-for-one-white promotion requirement is permissible under the Equal Protection Clause of the Fourteenth Amendment…

3. The one-for-one promotional requirement is narrowly tailored to serve its purposes, both as applied to the initial corporal promotions and as a continuing contingent order with respect to the upper ranks.

(a) The one-for-one requirement is necessary to eliminate the effects of the Department's long-term, open, and pervasive discrimination, including the absolute exclusion of blacks in the upper ranks; to ensure expeditious compliance with the 1979 and 1981 Decrees by inducing the implementation of a promotional procedure that would not have an adverse racial impact; and to eradicate the ill effects of the Department's delay in producing such a procedure. The option proffered by the Department—to promote 4 blacks and 11 whites as a stopgap measure, and to allow additional time for the development and submission of a nondiscriminatory procedure—would not have satisfied any of the above purposes…

(b) The one-for-one requirement is flexible in application at all ranks, in that it applies only when the Department needs to make promotions and does not require gratuitous promotions. Furthermore, the requirement may be waived by the court if there are no qualified black troopers, and, in fact, this has already happened with respect to lieutenant and captain positions. Moreover, the requirement is temporary, its term being contingent upon the Department's successful implementation of valid promotional procedures. It was, in fact, suspended upon the timely submission of procedures for promotion to corporal and sergeant.

(c) The numerical relief ordered bears a proper relation to the percentage of nonwhites in the relevant work force, since the District Court ordered 50% black promotions until each rank is 25% black, whereas blacks constitute 25% of the relevant labor market. The one-for-one requirement is not arbitrary when compared to the 25% minority labor pool, since the 50% figure is not itself the goal, but merely represents the speed at which the 25% goal will be achieved, some promptness being justified by the Department's history of discrimination and delays. Although the 50% figure necessarily involves a degree of imprecision, it represents the District Court's informed attempt to balance the rights and interests of the plaintiffs, the Department, and white troopers.

(d) The one-for-one requirement does not impose an unacceptable burden on innocent white promotion applicants. The requirement is temporary and limited in nature, has only been used once, and may never be used again. It does not bar, but simply postpones, advancement by some whites, and does not require the layoff or discharge of whites or the promotion of unqualified blacks over qualified whites…

JUSTICE BRENNAN announced the judgment of the Court and delivered an opinion in which JUSTICE MARSHALL, JUSTICE BLACKMUN, and JUSTICE POWELL join.

The question we must decide is whether relief awarded in this case, in the form of a one-black-for-one-white promotion requirement to be applied as an interim measure to state trooper promotions in the Alabama Department of Public Safety (Department), is permissible under the equal protection guarantee of the Fourteenth Amendment.

In 1972, the United States District Court for the Middle District of Alabama held that the Department had systematically excluded blacks from employment in violation of the Fourteenth Amendment. Some 11 years later, confronted with the Department's failure to develop promotion procedures that did not have an adverse impact on blacks, the District Court ordered the promotion of one black trooper for each white trooper elevated in rank, as long as qualified black candidates were available, until the Department implemented an acceptable promotion procedure. The United States challenges the constitutionality of this order.

I

Because the Department's prior employment practices and conduct during this lawsuit bear directly on the constitutionality of any race-conscious remedy imposed upon it, we must relate the tortuous course of this litigation in some detail…

In 1972, the National Association for the Advancement of Colored People (NAACP) brought this action challenging the Department's longstanding practice of excluding blacks from employment...

On December 15, 1983…confronted with the Department's immediate need to promote 15 troopers to corporal and the parties' inability to agree, the [District Court] was required…to fashion a promotion procedure. The District Judge summarized the situation:
"On February 10, 1984, less than two months from today, twelve years will have passed since this court condemned the racially discriminatory policies and practices of the Alabama Department of Public Safety. Nevertheless, the effects of these policies and practices remain pervasive and conspicuous at all ranks above the entry-level position. Of the 6 majors, *there is still not one black.* Of the 25 captains, *there is still not one black.* Of the 35 lieutenants, *there is still not one black.* Of the 65 sergeants, *there is still not one black.* Of the 66 corporals, *only four are black.* Thus, the department *still* operates an upper rank structure in which almost every trooper obtained his position through procedures that totally excluded black persons. Moreover, the department is *still* without acceptable procedures for advancement of black troopers into this structure, and it does not appear that any procedures will be in place within the near future. The preceding scenario is intolerable, and must not continue. The time has now arrived for the department to take affirmative and substantial steps to open the upper ranks to black troopers." *Id.* at 74 (emphasis in original).

The court then fashioned the relief at issue here. It held that "for a period of time," at least 50% of the promotions to corporal must be awarded to black troopers, if qualified black candidates were available. The court also held that "if there is to be within the near future an orderly path for black troopers to enter the upper ranks, any relief fashioned by the court must address the department's delay in developing acceptable promotion procedures for all ranks." *Id.* at 75. Thus,

the court imposed a 50% promotional quota in the upper ranks, but only if there were qualified black candidates, if the rank were less than 25% black, and if the Department had not developed and implemented a promotion plan without adverse impact for the relevant rank. The court concluded that the effects of past discrimination in the Department "will not wither away of their own accord," and that, "without promotional quotas, the continuing effects of this discrimination cannot be eliminated." *Id.* at 75 and 76. The court highlighted the temporary nature and flexible design of the relief ordered, stating that it was "specifically tailored" to eliminate the lingering effects of past discrimination, to remedy the delayed compliance with the consent decrees, and to ensure prompt implementation of lawful procedures. *Ibid.*

Finally, the Department was ordered to submit within 30 days a schedule for the development of promotion procedures for all ranks above the entry level. The schedule was to be "based upon realistic expectations," as the court intended that "the use of the quotas . . . be a one-time occurrence." *Ibid.* The District Court reasoned that, under the order it had entered, the Department had "the prerogative to end the promotional quotas at any time, simply by developing acceptable promotion procedures." *Id.* at 76…

On appeal the Court of Appeals for the Eleventh Circuit affirmed the District Court's order. The Court of Appeals concluded that the relief at issue was designed to remedy the present effects of past discrimination—"effects which, as the history of this case amply demonstrates, will not wither away of their own accord.'" *Paradise v. Prescott*, 767 F.2d 1514, 1533 (1985) (quoting 585 F.Supp. at 75). In addition, the relief awarded was deemed to "exten[d] no further than necessary to accomplish the objective of remedying the 'egregious' and longstanding racial imbalances in the upper ranks of the Department." 767 F.2d at 1532-1533.

We granted certiorari. 478 U.S. 1019 (1986). We affirm…

III

While conceding that the District Court's order serves a compelling interest, the Government insists that it was not narrowly tailored to accomplish its purposes—to remedy past discrimination and eliminate its lingering effects…by bringing about the speedy implementation of a promotion procedure that would not have an adverse impact on blacks, and to eradicate the ill effects of the Department's delay in producing such a procedure. We cannot agree.

In determining whether race-conscious remedies are appropriate, we look to several factors, including the necessity for the relief and the efficacy of alternative remedies; the flexibility and duration of the relief, including the availability of waiver provisions; the relationship of the numerical goals to the relevant labor market; and the impact of the relief on the rights of third parties. *Sheet Metal Workers,* 478 U.S. at 478 U. S. 481 (opinion of BRENNAN, J.); *id.* at 478 U. S. 486 (POWELL, J., concurring in part and concurring in judgment). When considered in light of these factors, it was amply established, and we find that the one-for-one promotion requirement was narrowly tailored to serve its several purposes, both as applied to the initial set of promotions to the rank of corporal and as a continuing contingent order with respect to the upper ranks.

A

To evaluate the District Court's determination that it was necessary to order the promotion of eight whites and eight blacks to the rank of corporal at the time of the motion to enforce, we must examine the purposes the order was intended to serve. First, the court sought to eliminate the effects of the Department's "long-term, open, and pervasive" discrimination, including the absolute exclusion of blacks from its upper ranks…Finally, the court needed to eliminate so far as possible the effects of the Department's delay in producing such a procedure. Confronted by the Department's urgent need to promote at least 15 troopers to corporal, *see Paradise v. Prescott,* 580 F.Supp. at 173, the District Court determined that all of its purposes could be served only by ordering the promotion of eight blacks and eight whites, as requested by the plaintiff class.

The options proffered by the Government and the Department would not have served the court's purposes. The Department proposed, as a stopgap measure, to promote 4 blacks and 11 whites, and requested additional time to allow the department of personnel to develop and submit a nondiscriminatory promotion procedure. The United States argues that the Department's proposal would have allowed this round of promotions to be made without adverse impact on black candidates.

The Department's proposal was inadequate because it completely failed to address two of the purposes cited above. The Department's *ad hoc* offer to make one round of promotions without an adverse impact ignored the court's concern that an acceptable procedure be adopted with alacrity. As early as 1972, the Department had been enjoined from engaging in any promotional practices "for the purpose or with the effect of discriminating against any employee . . . on the ground of race or color." *NAACP v. Allen,* 340 F.Supp. at 706…Given the record of delay, we find it astonishing that the Department should suggest that, in 1983 the District Court was constitutionally required to settle for yet another promise that such a procedure would be forthcoming "as soon as possible." 2 Record 358…

The Government suggests that the trial judge could have imposed heavy fines and fees on the Department pending compliance. This alternative was never proposed to the District Court. Furthermore, the Department had been ordered to pay the plaintiffs' attorney's fees and costs throughout this lengthy litigation; these court orders had done little to prevent future foot-dragging. *See, e.g., United States v. Frazer,* 317 F.Supp. 1079, 1093 (1970); *NAACP v. Allen,* 340 F.Supp. at 708-710. In addition, imposing fines on the defendant does nothing to compensate the plaintiffs for the long delays in implementing acceptable promotion procedures. Finally, the Department had expressed an immediate and urgent need to make 15 promotions, and the District Court took this need into consideration in constructing its remedy. As we observed only last Term, "a district court may find it necessary to order interim hiring or promotional goals pending the development of nondiscriminatory hiring or promotion procedures. In these cases, the use of numerical goals provides a compromise between unacceptable alternatives: an outright

ban on hiring or promotions . . . [or] continued use of a discriminatory selection procedure," or, we might add, use of no selection procedure at all.

By 1984, the District Court was plainly justified in imposing the remedy chosen. Any order allowing further delay by the Department was entirely unacceptable. *Cf. Green v. New Kent County School Board,* 391 U. S. 430, 391 U. S. 438, 391 U. S. 439 (1968) ("[A] plan that at this late date fails to provide meaningful assurance of prompt and effective disestablishment of a dual system is . . . intolerable. . . . The burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work *now*"). Not only was the immediate promotion of blacks to the rank of corporal essential, but, if the need for continuing judicial oversight was to end, it was also essential that the Department be required to develop a procedure without adverse impact on blacks, and that the effect of past delays be eliminated.

We conclude that, in 1983, when the District Judge entered his order, "it is doubtful, given [the Department's] history in this litigation, that the District Court had available to it any other effective remedy." *Sheet Metal Workers,* 478 U.S. at 478 U. S. 486 (POWELL, J., concurring in part and concurring in judgment).

B

The features of the one-for-one requirement and its actual operation indicate that it is flexible in application at all ranks. The requirement may be waived if no qualified black candidates are available. The Department has, for example, been permitted to promote only white troopers to the ranks of lieutenant and captain, since no black troopers have qualified for those positions. Further, it applies only when the Department needs to make promotions. Thus, if external forces, such as budget cuts, necessitate a promotion freeze, the Department will not be required to make gratuitous promotions to remain in compliance with the court's order.

Most significantly, the one-for-one requirement is ephemeral; the term of its application is contingent upon the Department's own conduct. The requirement endures only until the Department comes up with a procedure that does not have a discriminatory impact on blacks -- something the Department was enjoined to do in 1972 and expressly promised to do by 1980. As noted at n. 21 *supra,* the court has taken into account the difficulty of validating a test, and does not require validation as a prerequisite for suspension of the promotional requirement. The one-for-one requirement evaporated at the ranks of corporal and sergeant upon implementation of promotion procedures without an adverse impact, demonstrating that it is not a disguised means to achieve racial balance. *Cf. Sheet Metal Workers, supra,* at 478 U. S. 487 (POWELL, J., concurring in part and concurring in judgment).

Finally, the record reveals that this requirement was flexible, waivable, and temporary in application. When the District Court imposed the provision, the judge expressed the hope that its use would be "a one-time occurrence." 585 F.Supp. at 76. The court believed that this hope would be fulfilled: at the January 15, 1984, hearing on the plaintiffs' motion to enforce the consent decrees, "the Personnel Department pledged that it would now devote its full resources to assisting the Public Safety Department in not only developing acceptable promotion procedures as required by the two consent decrees, but in doing so within the near future." App.

141. The Department has since timely submitted procedures for promotions to corporal and sergeant, and the court has consequently suspended application of the promotional order with respect to those ranks. In the higher ranks, the Department has been permitted to promote only white troopers. It now appears that the effect of the order enforcing the decrees will be "the development of acceptable promotion procedures for all ranks and the nullification of the promotion quota." 767 F.2d at 1538, n. 19. The remedy chosen has proved both effective and flexible.

C

We must also examine the relationship between the numerical relief ordered and the percentage of nonwhites in the relevant work force. The original hiring order of the District Court required the Department to hire 50% black applicants until 25% of the state trooper force was composed of blacks; the latter figure reflects the percentage of blacks in the relevant labor market. 585 F.Supp. at 75, n. 2. The enforcement order at issue here is less restrictive: it requires the Department to promote 50% black candidates until 25% of the rank in question is black, but *only* until a promotion procedure without an adverse impact on blacks is in place. Thus, had the promotion order remained in effect for the rank of corporal, it would have survived only until 25% of the Department's corporals were black.

The Government suggests that the one-for-one requirement is arbitrary because it bears no relationship to the 25% minority labor pool relevant here. This argument ignores that the 50% figure is not itself the goal; rather, it represents the speed at which the goal of 25% will be achieved. The interim requirement of one-for-one promotion (had it continued) would simply have determined how quickly the Department progressed toward this ultimate goal. This requirement is therefore analogous to the imposition in *Sheet Metal Workers* of an end date, which regulated the speed of progress toward fulfillment of the hiring goal. *Sheet Metal Workers,* 478 U.S. at 478 U. S. 487-488 (POWELL, J., concurring in part and concurring in judgment).

To achieve the goal of 25% black representation in the upper ranks, the court was not limited to ordering the promotion of only 25% blacks at any one time. Some promptness in the administration of relief was plainly justified in this case, and use of deadlines or end dates had proved ineffective. In these circumstances, the use of a temporary requirement of 50% minority promotions, which, like the end date in *Sheet Metal Workers,* was crafted and applied flexibly, was constitutionally permissible.

The District Court did not accept the argument that, in order to achieve a goal of 25% representation, it could order only 25% of any particular round of promotions to be awarded to minorities. Had it done so, the court would have implemented the Department's proposal to promote 4 blacks and 11 whites when it issued its order enforcing the consent decree, because this proposal approximated the 25% figure. Again, however, this proposal completely ignores the fact and the effects of the Department's past discrimination and its delay in implementing the necessary promotion procedure…

D

The one-for-one requirement did not impose an unacceptable burden on innocent third parties. As stated above, the temporary and extremely limited nature of the requirement substantially limits any potential burden on white applicants for promotion. It was used only once at the rank of corporal, and may not be utilized at all in the upper ranks. Nor has the court imposed an "absolute bar" to white advancement. *Sheet Metal Workers, supra,* at 478 U. S. 481. In the one instance in which the quota was employed, 50% of those elevated were white.

The one-for-one requirement does not require the layoff and discharge of white employees, and therefore does not impose burdens of the sort that concerned the plurality in *Wygant,* 476 U.S. at 476 U. S. 283 (opinion of POWELL, J.) ("[L]ayoffs impose the entire burden of achieving racial equality on particular individuals, often resulting in serious disruption of their lives"); *id.* at 476 U. S. 295 (WHITE, J., concurring) (same). Because the one-for-one requirement is so limited in scope and duration, it only postpones the promotions of qualified whites. Consequently, like a hiring goal, it "impose[s] a diffuse burden, . . . foreclosing only one of several opportunities." *Id.* at 476 U. S. 283. "Denial of a future employment opportunity is not as intrusive as loss of an existing job," *id.* at 476 U. S. 282-283 (opinion of POWELL, J.), and plainly postponement imposes a lesser burden still.

Finally, the basic limitation, that black troopers promoted must be qualified, remains. Qualified white candidates simply have to compete with qualified black candidates. To be sure, should the District Court's promotion requirement be applied, black applicants would receive some advantage. But this situation is only temporary, and is subject to amelioration by the action of the Department itself.

Accordingly, the one-for-one promotion requirement imposed in this case does not disproportionately harm the interests, or unnecessarily trammel the rights, of innocent individuals…

IV

The remedy imposed here is an effective, temporary, and flexible measure. It applies only if qualified blacks are available, only if the Department has an objective need to make promotions, and only if the Department fails to implement a promotion procedure that does not have an adverse impact on blacks. The one-for-one requirement is the product of the considered judgment of the District Court which, with its knowledge of the parties and their resources, properly determined that strong measures were required in light of the Department's long and shameful record of delay and resistance.

The race-conscious relief imposed here was amply justified and narrowly tailored to serve the legitimate and laudable purposes of the District Court. The judgment of the Court of Appeals, upholding the order of the District Court, is

Affirmed.

JUSTICE POWELL, concurring…

In determining whether an affirmative action remedy is narrowly drawn to achieve its goal, I have thought that five factors may be relevant: (i) the efficacy of alternative remedies; (ii) the planned duration of the remedy; (iii) the relationship between the percentage of minority workers to be employed and the percentage of minority group members in the relevant population or workforce; (iv) the availability of waiver provisions if the hiring plan could not be met; and (v) the effect of the remedy upon innocent third parties. *Id.* at 478 U. S. 485-486; *Fullilove v. Klutznick,* 448 U. S. 448, 448 U. S. 510-511, 514 (1980) (opinion of POWELL, J.). The plurality opinion today makes clear that the affirmative action ordered by the District Court and approved by the Court of Appeals for the Eleventh Circuit was narrowly drawn to achieve the goal of remedying the proven and continuing discrimination. In view of the plurality's thorough opinion, I will mention only certain aspects of the plan before us.

The District Court imposed the one-for-one promotion requirement only on one occasion, when it ordered the promotion of eight blacks and eight whites to the rank of corporal in February, 1984. Because the Department urgently needed at least 15 additional corporals, see *Paradise v. Prescott,* 580 F.Supp. 171, 173 (MD Ala. 1983), there appears to have been no alternative remedy that would have met the then-existing need. Given the findings of persistent discrimination, the Department's longstanding resistance to necessary remedies, and the exigent circumstances presented to the District Court, the imposition of a one-for-one requirement for the particular promotions at issue did not violate the Equal Protection Clause.

The District Court's order contains significant elements of flexibility and fairness. First, it applies only if qualified black candidates are available for promotion. Second, the court suspended the order when the Department proposed procedures that appeared likely to have no adverse impact on minority applicants. It thus appears that the court's order is based upon "realistic expectations," and that the one-for-one requirement is likely to be, as the court intended, a "one-time occurrence." *Paradise v. Prescott, supra,* at 75-76. The court's actions indicate that the order will be enforced in a constitutional manner if it is reimposed. As in *Sheet Metal Workers,* "[a]n examination of what *has occurred* in this litigation over the years makes plain that the District Court has not enforced the goal in [a] rigid manner." 478 U.S. at 478 U. S. 489, n. 4 (emphasis in original).

Finally, and particularly important, the effect of the order on innocent white troopers is likely to be relatively diffuse. Unlike layoff requirements, the promotion requirement at issue in this case does not "impose the entire burden of achieving racial equality on particular individuals," and does not disrupt seriously the lives of innocent individuals….although the burden of a narrowly prescribed promotion goal, as in this case, is not diffused throughout society generally, the burden is shared by the nonminority employees over a period of time. As noted above, only qualified minority applicants are eligible for promotion, and qualified nonminority applicants remain eligible to compete for the available promotions. Although some white troopers will have their promotions delayed, it is uncertain whether any individual trooper, white or black, would have achieved a different rank, or would have achieved it at a different time, but for the promotion requirement.

In view of the purpose and indeed the explicit language of the Equal Protection Clause, court-ordered or government-adopted, affirmative action plans must be most carefully scrutinized. The plurality in its opinion today has done this. I therefore join the opinion.

New York v. United States, 505 U.S. 144 (1992)

Syllabus

Faced with a looming shortage of disposal sites for low level radioactive waste in 31 States, Congress enacted the Low-Level Radioactive Waste Policy Amendments Act of 1985, which, among other things, imposes upon States, either alone or in "regional compacts" with other States, the obligation to provide for the disposal of waste generated within their borders, and contains three provisions setting forth "incentives" to States to comply with that obligation. The first set of incentives-the monetary incentives-works in three steps: (1) States with disposal sites are authorized to impose a surcharge on radioactive waste received from other States; (2) the Secretary of Energy collects a portion of this surcharge and places it in an escrow account; and (3) States achieving a series of milestones in developing sites receive portions of this fund. The second set of incentives—the access incentives—authorizes sited States and regional compacts gradually to increase the cost of access to their sites, and then to deny access altogether, to waste generated in States that do not meet federal deadlines. The so-called third "incentive"—the take title provision—specifies that a State or regional compact that fails to provide for the disposal of all internally generated waste by a particular date must, upon the request of the waste's generator or owner, take title to and possession of the waste and become liable for all damages suffered by the generator or owner as a result of the State's failure to promptly take possession. Petitioners, New York State and two of its counties, filed this suit against the United States, seeking a declaratory judgment that, *inter alia,* the three incentives provisions are inconsistent with the Tenth Amendment—which declares that "powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States"—and with the Guarantee Clause of Article IV, § 4—which directs the United States to "guarantee to every State ... a Republican Form of Government." The District Court dismissed the complaint, and the Court of Appeals affirmed.

Held:
1. The Act's monetary incentives and access incentives provisions are consistent with the Constitution's allocation of power between the Federal and State Governments, but the take title provision is not.

(a) In ascertaining whether any of the challenged provisions oversteps the boundary between federal and state power, the Court must determine whether it is authorized by the affirmative grants to Congress contained in Article I's Commerce and Spending Clauses or whether it invades the province of state sovereignty reserved by the Tenth Amendment.

(b) Although regulation of the interstate market in the disposal of low level radioactive waste is well within Congress' Commerce Clause authority, cf. *Philadelphia v. New Jersey,* 437 U. S. 617, 621-623, and Congress could, if it wished, pre-empt entirely state regulation in this area, a review of this Court's decisions, see, *e. g., Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.,* 452 U. S. 264, 288, and the history of the

Constitutional Convention, demonstrates that Congress may not commandeer the States' legislative processes by directly compelling them to enact and enforce a federal regulatory program, but must exercise legislative authority directly upon individuals.

(c) Nevertheless, there are a variety of methods, short of outright coercion, by which Congress may urge a State to adopt a legislative program consistent with federal interests. As relevant here, Congress may, under its spending power, attach conditions on the receipt of federal funds, so long as such conditions meet four requirements. See, *e. g., South Dakota v. Dole,* 483 U. S. 203, 206-208, and n. 3. Moreover, where Congress has the authority to regulate private activity under the Commerce Clause, it may, as part of a program of "cooperative federalism," offer States the choice of regulating that activity according to federal standards or having state law pre-empted by federal regulation. See, *e. g., Hodel, supra,* at 288, 289.

(d) This Court declines petitioners' invitation to construe the Act's provision obligating the States to dispose of their radioactive wastes as a separate mandate to regulate according to Congress' instructions. That would upset the usual constitutional balance of federal and state powers, whereas the constitutional problem is avoided by construing the Act as a whole to comprise three sets of incentives to the States.

(e) The Act's monetary incentives are well within Congress' Commerce and Spending Clause authority and thus are not inconsistent with the Tenth Amendment. The authorization to sited States to impose surcharges is an unexceptionable exercise of Congress' power to enable the States to burden interstate commerce. The Secretary's collection of a percentage of the surcharge is no more than a federal tax on interstate commerce, which petitioners do not claim to be an invalid exercise of either Congress' commerce or taxing power. Finally, in conditioning the States' receipt of federal funds upon their achieving specified milestones, Congress has not exceeded its Spending Clause authority in any of the four respects identified by this Court in *Dole, supra,* at 207-208. Petitioners' objection to the *form* of the expenditures as nonfederal is unavailing, since the Spending Clause has never been construed to deprive Congress of the power to collect money in a segregated trust fund and spend it for a particular purpose, and since the States' ability largely to control whether they will pay into the escrow account or receive a share was expressly provided by Congress as a method of encouraging them to regulate according to the federal plan.

(f) The Act's access incentives constitute a conditional exercise of Congress' commerce power along the lines of that approved in *Hodel, supra,* at 288, and thus do not intrude on the States' Tenth Amendment sovereignty. These incentives present nonsited States with the choice either of regulating waste disposal according to federal standards or having their waste-producing residents denied access to disposal sites. They are not compelled to regulate, expend any funds, or participate in any federal program, and they may continue to regulate waste in their own way if they do not accede to federal direction.

(g) Because the Act's take title provision offers the States a "choice" between the two unconstitutionally coercive alternatives—either accepting ownership of waste or

regulating according to Congress' instructions—the provision lies outside Congress' enumerated powers and is inconsistent with the Tenth Amendment. On the one hand, either forcing the transfer of waste from generators to the States or requiring the States to become liable for the generators' damages would "commandeer" States into the service of federal regulatory purposes. On the other hand, requiring the States to regulate pursuant to Congress' direction would present a simple unconstitutional command to implement legislation enacted by Congress. Thus, the States' "choice" is no choice at all.
(h) The United States' alternative arguments purporting to find limited circumstances in which congressional compulsion of state regulation is constitutionally permissible—that such compulsion is justified where the federal interest is sufficiently important; that the Constitution does, in some circumstances, permit federal directives to state governments; and that the Constitution endows Congress with the power to arbitrate disputes between States in interstate commerce—are rejected.

(i) Also rejected is the sited state respondents' argument that the Act cannot be ruled an unconstitutional infringement of New York sovereignty because officials of that State lent their support, and consented, to the Act's passage. A departure from the Constitution's plan for the intergovernmental allocation of authority cannot be ratified by the "consent" of state officials, since the Constitution protects state sovereignty for the benefit of individuals, not States or their governments, and since the officials' interests may not coincide with the Constitution's allocation. Nor does New York's prior support estop it from asserting the Act's unconstitutionality.

(j) Even assuming that the Guarantee Clause provides a basis upon which a State or its subdivisions may sue to enjoin the enforcement of a federal statute, petitioners have not made out a claim that the Act's money incentives and access incentives provisions are inconsistent with that Clause. Neither the threat of loss of federal funds nor the possibility that the State's waste producers may find themselves excluded from other States' disposal sites can reasonably be said to deny New York a republican form of government.

2. The take title provision is severable from the rest of the Act, since severance will not prevent the operation of the rest of the Act or defeat its purpose of encouraging the States to attain local or regional self-sufficiency in low level radioactive waste disposal; since the Act still includes two incentives to encourage States along this road; since a State whose waste generators are unable to gain access to out-of-state disposal sites may encounter considerable internal pressure to provide for disposal, even without the prospect of taking title; and since any burden caused by New York's failure to secure a site will not be borne by other States' residents because the sited regional compacts need not accept New York's waste after the final transition period.

942 F.2d 114, affirmed in part and reversed in part.

JUSTICE O'CONNOR delivered the opinion of the Court.

These cases implicate one of our Nation's newest problems of public policy and perhaps our oldest question of constitutional law. The public policy issue involves the disposal of radioactive

waste: In these cases, we address the constitutionality of three provisions of the Low-Level Radioactive Waste Policy Amendments Act of 1985, Pub. L. 99-240, 99 Stat. 1842, 42 U. S. C. § 2021b *et seq.* The constitutional question is as old as the Constitution: It consists of discerning the proper division of authority between the Federal Government and the States. We conclude that while Congress has substantial power under the Constitution to encourage the States to provide for the disposal of the radioactive waste generated within their borders, the Constitution does not confer upon Congress the ability simply to compel the States to do so. We therefore find that only two of the Act's three provisions at issue are consistent with the Constitution's allocation of power to the Federal Government.

I

We live in a world full of low level radioactive waste. Radioactive material is present in luminous watch dials, smoke alarms, measurement devices, medical fluids, research materials, and the protective gear and construction materials used by workers at nuclear power plants. Low level radioactive waste is generated by the Government, by hospitals, by research institutions, and by various industries. The waste must be isolated from humans for long periods of time, often for hundreds of years. Millions of cubic feet of low level radioactive waste must be disposed of each year. See App. 110a-111a; Berkovitz, Waste Wars: Did Congress "Nuke" State Sovereignty in the Low-Level Radioactive Waste Policy Amendments Act of 1985?, 11 Harv. Envtl. L. Rev. 437, 439-440 (1987).

Our Nation's first site for the land disposal of commercial low level radioactive waste opened in 1962 in Beatty, Nevada. Five more sites opened in the following decade: Maxey Flats, Kentucky (1963), West Valley, New York (1963), Hanford, Washington (1965), Sheffield, Illinois (1967), and Barnwell, South Carolina (1971). Between 1975 and 1978, the Illinois site closed because it was full, and water management problems caused the closure of the sites in Kentucky and New York. As a result, since 1979 only three disposal sites—those in Nevada, Washington, and South Carolina—have been in operation. Waste generated in the rest of the country must be shipped to one of these three sites for disposal. See Low-Level Radioactive Waste Regulation 39-40 (M. Burns ed. 1988).

In 1979, both the Washington and Nevada sites were forced to shut down temporarily, leaving South Carolina to shoulder the responsibility of storing low level radioactive waste produced in every part of the country. The Governor of South Carolina, understandably perturbed, ordered a 50% reduction in the quantity of waste accepted at the Barnwell site. The Governors of Washington and Nevada announced plans to shut their sites permanently. App. 142a, 152a.

Faced with the possibility that the Nation would be left with no disposal sites for low level radioactive waste, Congress responded by enacting the Low-Level Radioactive Waste Policy Act, Pub. L. 96-573, 94 Stat. 3347. Relying largely on a report submitted by the National Governors' Association, see App. 105a-141a, Congress declared a federal policy of holding each State "responsible for providing for the availability of capacity either within or outside the State for the disposal of low-level radioactive waste generated within its borders," and found that such waste could be disposed of "most safely and efficiently ... on a regional basis." § 4(a)(1), 94 Stat. 3348. The 1980 Act authorized States to enter into regional compacts that, once ratified by

Congress, would have the authority beginning in 1986 to restrict the use of their disposal facilities to waste generated within member States. § 4(a)(2)(B), 94 Stat. 3348. The 1980 Act included no penalties for States that failed to participate in this plan.

By 1985, only three approved regional compacts had operational disposal facilities; not surprisingly, these were the compacts formed around South Carolina, Nevada, and Washington, the three sited States. The following year, the 1980 Act would have given these three compacts the ability to exclude waste from nonmembers, and the remaining 31 States would have had no assured outlet for their low level radioactive waste. With this prospect looming, Congress once again took up the issue of waste disposal. The result was the legislation challenged here, the Low-Level Radioactive Waste Policy Amendments Act of 1985.

The 1985 Act was again based largely on a proposal submitted by the National Governors' Association. In broad outline, the Act embodies a compromise among the sited and unsited States. The sited States agreed to extend for seven years the period in which they would accept low level radioactive waste from other States. In exchange, the unsited States agreed to end their reliance on the sited States by 1992.

The mechanics of this compromise are intricate. The Act directs: "Each State shall be responsible for providing, either by itself or in cooperation with other States, for the disposal of ... low-level radioactive waste generated within the State," 42 U. S. C. § 2021c(a)(1)(A), with the exception of certain waste generated by the Federal Government, §§ 2021c(a)(1)(B), 2021c(b). The Act authorizes States to "enter into such [interstate] compacts as may be necessary to provide for the establishment and operation of regional disposal facilities for low-level radioactive waste." § 2021d(a)(2). For an additional seven years beyond the period contemplated by the 1980 Act, from the beginning of 1986 through the end of 1992, the three existing disposal sites "shall make disposal capacity available for low-level radioactive waste generated by any source," with certain exceptions not relevant here. § 2021e(a)(2). But the three States in which the disposal sites are located are permitted to exact a graduated surcharge for waste arriving from outside the regional compact-in 1986-1987, $10 per cubic foot; in 1988-1989, $20 per cubic foot; and in 1990-1992, $40 per cubic foot. § 2021e(d)(1). After the 7-year transition period expires, approved regional compacts may exclude radioactive waste generated outside the region. § 2021d(c).

The Act provides three types of incentives to encourage the States to comply with their statutory obligation to provide for the disposal of waste generated within their borders.

1. Monetary incentives. One quarter of the surcharges collected by the sited States must be transferred to an escrow account held by the Secretary of Energy. § 2021e (d)(2)(A). The Secretary then makes payments from this account to each State that has complied with a series of deadlines. By July 1, 1986, each State was to have ratified legislation either joining a regional compact or indicating an intent to develop a disposal facility within the State. §§ 2021e (e)(1)(A), 2021e(d)(2)(B)(i). By January 1, 1988, each unsited compact was to have identified the State in which its facility would be located, and each compact or stand-alone State was to have developed a siting plan and taken other identified steps. §§ 2021e(e)(1)(B), 2021e(d)(2)(B)(ii). By January 1, 1990, each State or compact was to have filed a complete

application for a license to operate a disposal facility, or the Governor of any State that had not filed an application was to have certified that the State would be capable of disposing of all waste generated in the State after 1992. §§ 2021e (e)(l)(C), 2021e(d)(2)(B)(iii). The rest of the account is to be paid out to those States or compacts able to dispose of all low level radioactive waste generated within their borders by January 1, 1993. § 2021e(d)(2)(B)(iv). Each State that has not met the 1993 deadline must either take title to the waste generated within its borders or forfeit to the waste generators the incentive payments it has received. § 2021e(d)(2)(C).

2. Access incentives. The second type of incentive involves the denial of access to disposal sites. States that fail to meet the July 1986 deadline may be charged twice the ordinary surcharge for the remainder of 1986 and may be denied access to disposal facilities thereafter. § 2021e(e)(2)(A). States that fail to meet the 1988 deadline may be charged double surcharges for the first half of 1988 and quadruple surcharges for the second half of 1988, and may be denied access thereafter. § 2021e(e)(2)(B). States that fail to meet the 1990 deadline may be denied access. § 2021e (e)(2)(C). Finally, States that have not filed complete applications by January 1, 1992, for a license to operate a disposal facility, or States belonging to compacts that have not filed such applications, may be charged triple surcharges. §§ 2021e(e)(1)(D), 2021e(e)(2)(D).

3. The take title provision. The third type of incentive is the most severe. The Act provides:
"If a State (or, where applicable, a compact region) in which low-level radioactive waste is generated is unable to provide for the disposal of all such waste generated within such State or compact region by January 1, 1996, each State in which such waste is generated, upon the request of the generator or owner of the waste, shall take title to the waste, be obligated to take possession of the waste, and shall be liable for all damages directly or indirectly incurred by such generator or owner as a consequence of the failure of the State to take possession of the waste as soon after January 1, 1996, as the generator or owner notifies the State that the waste is available for shipment." § 2021e(d)(2)(C).
These three incentives are the focus of petitioners' constitutional challenge.

In the seven years since the Act took effect, Congress has approved nine regional compacts, encompassing 42 of the States. All six unsited compacts and four of the unaffiliated States have met the first three statutory milestones. Brief for United States 10, n. 19; *id.,* at 13, n. 25.
New York, a State whose residents generate a relatively large share of the Nation's low level radioactive waste, did not join a regional compact. Instead, the State complied with the Act's requirements by enacting legislation providing for the siting and financing of a disposal facility in New York. The State has identified five potential sites, three in Allegany County and two in Cortland County. Residents of the two counties oppose the State's choice of location. App. 29a-30a, 66a-68a.

Petitioners—the State of New York and the two counties—filed this suit against the United States in 1990. They sought a declaratory judgment that the Act is inconsistent with the Tenth and Eleventh Amendments to the Constitution, with the Due Process Clause of the Fifth Amendment, and with the Guarantee Clause of Article IV of the Constitution. The States of Washington, Nevada, and South Carolina intervened as defendants. The District Court dismissed the complaint. 757 F. Supp. 10 (NDNY 1990). The Court of Appeals affirmed. 942 F.2d 114 (CA2 1991). Petitioners have abandoned their due process and Eleventh Amendment claims on

their way up the appellate ladder; as the cases stand before us, petitioners claim only that the Act is inconsistent with the Tenth Amendment and the Guarantee Clause.

II

A

In 1788, in the course of explaining to the citizens of New York why the recently drafted Constitution provided for federal courts, Alexander Hamilton observed: "The erection of a new government, whatever care or wisdom may distinguish the work, cannot fail to originate questions of intricacy and nicety; and these may, in a particular manner, be expected to flow from the establishment of a constitution founded upon the total or partial incorporation of a number of distinct sovereignties." The Federalist No. 82, p. 491 (C. Rossiter ed. 1961). Hamilton's prediction has proved quite accurate. While no one disputes the proposition that "[t]he Constitution created a Federal Government of limited powers," *Gregory v. Ashcroft,* 501 U. S. 452, 457 (1991); and while the Tenth Amendment makes explicit that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people"; the task of ascertaining the constitutiona lline between federal and state power has given rise to many of the Court's most difficult and celebrated cases. At least as far back as *Martin v. Hunter's Lessee,* 1 Wheat. 304, 324 (1816), the Court has resolved questions "of great importance and delicacy" in determining whether particular sovereign powers have been granted by the Constitution to the Federal Government or have been retained by the States.

These questions can be viewed in either of two ways. In some cases the Court has inquired whether an Act of Congress is authorized by one of the powers delegated to Congress in Article I of the Constitution. See, *e. g., Perez v. United States,* 402 U. S. 146 (1971); *McCulloch v. Maryland,* 4 Wheat. 316 (1819). In other cases the Court has sought to determine whether an Act of Congress invades the province of state sovereignty reserved by the Tenth Amendment. See, *e. g., Garcia v. San Antonio Metropolitan Transit Authority,* 469 U. S. 528 (1985); *Lane County v. Oregon,* 7 Wall. 71 (1869). In a case like these, involving the division of authority between federal and state governments, the two inquiries are mirror images of each other. If a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of that power to the States; if a power is an attribute of state sovereignty reserved by the Tenth Amendment, it is necessarily a power the Constitution has not conferred on Congress. See *United States v. Oregon,* 366 U. S. 643, 649 (1961); *Case v. Bowles,* 327 U. S. 92, 102 (1946); *Oklahoma ex rel. Phillips v. Guy F. Atkinson Co.,* 313 U. S. 508, 534 (1941).

It is in this sense that the Tenth Amendment "states but a truism that all is retained which has not been surrendered." *United States v. Darby,* 312 U. S. 100, 124 (1941). As Justice Story put it, "[t]his amendment is a mere affirmation of what, upon any just reasoning, is a necessary rule of interpreting the constitution. Being an instrument of limited and enumerated powers, it follows irresistibly, that what is not conferred, is withheld, and belongs to the state authorities." 3 J. Story, Commentaries on the Constitution of the United States 752 (1833). This has been the Court's consistent understanding: "The States unquestionably do retai[n] a significant measure of sovereign authority ... to the extent that the Constitution has not divested them of their original

powers and transferred those powers to the Federal Government." *Garcia v. San Antonio Metropolitan Transit Authority, supra,* at 549 (internal quotation marks omitted).

Congress exercises its conferred powers subject to the limitations contained in the Constitution. Thus, for example, under the Commerce Clause Congress may regulate publishers engaged in interstate commerce, but Congress is constrained in the exercise of that power by the First Amendment. The Tenth Amendment likewise restrains the power of Congress, but this limit is not derived from the text of the Tenth Amendment itself, which, as we have discussed,is essentially a tautology. Instead, the Tenth Amendment confirms that the power of the Federal Government is subject to limits that may, in a given instance, reserve power to the States. The Tenth Amendment thus directs us to determine, as in this case, whether an incident of state sovereignty is protected by a limitation on an Article I power.

The benefits of this federal structure have been extensively cataloged elsewhere, see, *e. g., Gregory v. Ashcroft, supra,* at 457-460; Merritt, The Guarantee Clause and State Autonomy: Federalism for a Third Century, 88 Colum. L. Rev. 1, 3-10 (1988); McConnell, Federalism: Evaluating the Founders' Design, 54 U. Chi. L. Rev. 1484, 1491-1511 (1987), but they need not concern us here. Our task would be the same even if one could prove that federalism secured no advantages to anyone. It consists not of devising our preferred system of government, but of understanding and applying the framework set forth in the Constitution. "The question is not what power the Federal Government ought to have but what powers in fact have been given by the people." *United States v. Butler,* 297 U. S. 1, 63 (1936).

This framework has been sufficiently flexible over the past two centuries to allow for enormous changes in the nature of government. The Federal Government undertakes activities today that would have been unimaginable to the Framers in two senses; first, because the Framers would not have conceived that *any* government would conduct such activities; and second, because the Framers would not have believed that the *Federal* Government, rather than the States, would assume such responsibilities. Yet the powers conferred upon the Federal Government by the Constitution were phrased in language broad enough to allow for the expansion of the Federal Government's role. Among the provisions of the Constitution that have been particularly important in this regard, three concern us here.

First, the Constitution allocates to Congress the power "[t]o regulate Commerce ... among the several States." Art. I, § 8, cl. 3. Interstate commerce was an established feature of life in the late 18th century. See, *e. g.,* The Federalist No. 42, p. 267 (C. Rossiter ed. 1961) ("The defect of power in the existing Confederacy to regulate the commerce between its several members [has] been clearly pointed out by experience"). The volume of interstate commerce and the range of commonly accepted objects of government regulation have, however, expanded considerably in the last 200 years, and the regulatory authority of Congress has expanded along with them. As interstate commerce has become ubiquitous, activities once considered purely local have come to have effects on the national economy, and have accordingly come within the scope of Congress' commerce power. See, *e. g., Katzenbach v. McClung,* 379 U. S. 294 *(1964); Wickard v. Filburn,* 317 U. S. 111 (1942).

Second, the Constitution authorizes Congress "to pay the Debts and provide for the ... general Welfare of the United States." Art. I, § 8, cl. 1. As conventional notions of the proper objects of government spending have changed over the years, so has the ability of Congress to "fix the terms on which it shall disburse federal money to the States." *Pennhurst State School and Hospital v. Halderman,* 451 U. S. 1, 17 (1981). Compare, *e. g., United States v. Butler, supra,* at 72-75 (spending power does not authorize Congress to subsidize farmers), with *South Dakota v. Dole,* 483 U. S. 203 (1987) (spending power permits Congress to condition highway funds on States' adoption of minimum drinking age). While the spending power is "subject to several general restrictions articulated in our cases," *id.,* at 207, these restrictions have not been so severe as to prevent the regulatory authority of Congress from generally keeping up with the growth of the federal budget.

The Court's broad construction of Congress' power under the Commerce and Spending Clauses has of course been guided, as it has with respect to Congress' power generally, by the Constitution's Necessary and Proper Clause, which authorizes Congress "[t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers." U. S. Const., Art. I, § 8, cl. 18. See, *e. g., Legal Tender Case,* 110 U. S. 421, 449-450 (1884); *McCulloch v. Maryland,* 4 Wheat., at 411-421.

Finally, the Constitution provides that "the Laws of the United States ... shall be the supreme Law of the Land ... any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U. S. Const., Art. VI, cl. 2. As the Federal Government's willingness to exercise power within the confines of the Constitution has grown, the authority of the States has correspondingly diminished to the extent that federal and state policies have conflicted. See, *e. g., Shaw v. Delta Air Lines, Inc.,* 463 U. S. 85 (1983). We have observed that the Supremacy Clause gives the Federal Government "a decided advantage in th[e] delicate balance" the Constitution strikes between state and federal power. *Gregory v. Ashcroft,* 501 U. S., at 460.

The actual scope of the Federal Government's authority with respect to the States has changed over the years, therefore, but the constitutional structure underlying and limiting that authority has not. In the end, just as a cup may be half empty or half full, it makes no difference whether one views the question at issue in these cases as one of ascertaining the limits of the power delegated to the Federal Government under the affirmative provisions of the Constitution or one of discerning the core of sovereignty retained by the States under the Tenth Amendment. Either way, we must determine whether any of the three challenged provisions of the Low-Level Radioactive Waste Policy Amendments Act of 1985 oversteps the boundary between federal and state authority.

B

Petitioners do not contend that Congress lacks the power to regulate the disposal of low level radioactive waste. Space in radioactive waste disposal sites is frequently sold by residents of one State to residents of another. Regulation of the resulting interstate market in waste disposal is therefore well within Congress' authority under the Commerce Clause. Cf. *Philadelphia v. New Jersey,* 437 U. S. 617, 621-623 (1978); *Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dept. of Natural Resources,* 504 U. S. 353, 359 (1992). Petitioners likewise do not dispute that under the

Supremacy Clause Congress could, if it wished, pre-empt state radioactive waste regulation. Petitioners contend only that the Tenth Amendment limits the power of Congress to regulate in the way it has chosen. Rather than addressing the problem of waste disposal by directly regulating the generators and disposers of waste, petitioners argue, Congress has impermissibly directed the States to regulate in this field.

Most of our recent cases interpreting the Tenth Amendment have concerned the authority of Congress to subject state governments to generally applicable laws. The Court's jurisprudence in this area has traveled an unsteady path. See *Maryland v. Wirtz,* 392 U. S. 183 (1968) (state schools and hospitals are subject to Fair Labor Standards Act); *National League of Cities v. Usery,* 426 U. S. 833 (1976) (overruling *Wirtz)* (state employers are *not* subject to Fair Labor Standards Act); *Garcia v. San Antonio Metropolitan Transit Authority,* 469 U. S. 528 (1985) (overruling *National League of Cities)* (state employers are once again subject to Fair Labor Standards Act). See also *New York v. United States,* 326 U. S. 572 (1946); *Fry v. United States,* 421 U. S. 542 (1975); *Transportation Union v. Long Island R. Co.,* 455 U. S. 678 (1982); *EEOC v. Wyoming,* 460 U. S. 226 (1983); *South Carolina v. Baker,* 485 U. S. 505 (1988); *Gregory v. Ashcroft, supra.* This litigation presents no occasion to apply or revisit the holdings of any of these cases, as this is not a case in which Congress has subjected a State to the same legislation applicable to private parties. Cf. *FERC v. Mississippi,* 456 U. S. 742, 758-759 (1982).

This litigation instead concerns the circumstances under which Congress may use the States as implements of regulation; that is, whether Congress may direct or otherwise motivate the States to regulate in a particular field or a particular way. Our cases have established a few principles that guide our resolution of the issue.

1

As an initial matter, Congress may not simply "commandee[r] the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program." *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.,* 452 U. S. 264, 288 (1981). In *Hodel,* the Court upheld the Surface Mining Control and Reclamation Act of 1977 precisely because it did *not* "commandeer" the States into regulating mining. The Court found that "the States are not compelled to enforce the steep-slope standards, to expend any state funds, or to participate in the federal regulatory program in any manner whatsoever. If a State does not wish to submit a proposed permanent program that complies with the Act and implementing regulations, the full regulatory burden will be borne by the Federal Government." *Ibid.*

The Court reached the same conclusion the following year in *FERC v. Mississippi, supra.* At issue in *FERC* was the Public Utility Regulatory Policies Act of 1978, a federal statute encouraging the States in various ways to develop programs to combat the Nation's energy crisis. We observed that "this Court never has sanctioned explicitly a federal command to the States to promulgate and enforce laws and regulations." *Id.,* at 761-762. As in *Hodel,* the Court upheld the statute at issue because it did not view the statute as such a command. The Court emphasized: "Titles I and III of [the Public Utility Regulatory Policies Act of 1978 (PURPA)] require *only consideration* of federal standards. And if a State has no utilities commission, or simply stops regulating in the field, it need not even entertain the federal proposals." 456 U. S.,

at 764 (emphasis in original). Because "[t]here [wa]s nothing in PURPA 'directly compelling' the States to enact a legislative program," the statute was not inconsistent with the Constitution's division of authority between the Federal Government and the States. *Id.,* at 765 (quoting *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc., supra,* at 288). See also *South Carolina v. Baker, supra,* at 513 (noting "the possibility that the Tenth Amendment might set some limits on Congress' power to compel States to regulate on behalf of federal interests"); *Garcia v. San Antonio Metropolitan Transit Authority, supra,* at 556 (same).

These statements in *FERC* and *Hodel* were not innovations. While Congress has substantial powers to govern the Nation directly, including in areas of intimate concern to the States, the Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress' instructions. See *Coyle v. Smith,* 221 U. S. 559, 565 (1911). The Court has been explicit about this distinction. "Both the States and the United States existed before the Constitution. The people, through that instrument, established a more perfect union by substituting a national government, acting, with ample power, *directly upon the citizens,* instead of the Confederate government, which acted with powers, greatly restricted, only upon the States." *Lane County v. Oregon,* 7 Wall., at 76 (emphasis added). The Court has made the same point with more rhetorical flourish, although perhaps with less precision, on a number of occasions. In Chief Justice Chase's much-quoted words, "the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National government. The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States." *Texas v. White,* 7 Wall. 700, 725 (1869). See also *Metcalf & Eddy v. Mitchell,* 269 U. S. 514, 523 (1926) ("[N]either government may destroy the other nor curtail in any substantial manner the exercise of its powers"); *Tafflin v. Levitt,* 493 U. S. 455, 458 (1990) ("[U]nder our federal system, the States possess sovereignty concurrent with that of the Federal Government"); *Gregory v. Ashcroft,* 501 U. S., at 461 ("[T]he States retain substantial sovereign powers under our constitutional scheme, powers with which Congress does not readily interfere").

Indeed, the question whether the Constitution should permit Congress to employ state governments as regulatory agencies was a topic of lively debate among the Framers. Under the Articles of Confederation, Congress lacked the authority in most respects to govern the people directly. In practice, Congress "could not directly tax or legislate upon individuals; it had no explicit 'legislative' or 'governmental' power to make binding 'law' enforceable as such." Amar, Of Sovereignty and Federalism, 96 Yale L. J. 1425, 1447 (1987).

The inadequacy of this governmental structure was responsible in part for the Constitutional Convention. Alexander Hamilton observed: "The great and radical vice in the construction of the existing Confederation is in the principle of LEGISLATION for STATES or GOVERNMENTS, in their CORPORATE or COLLECTIVE CAPACITIES, and as contradistinguished from the INDIVIDUALS of whom they consist." The Federalist No. 15, p. 108 (C. Rossiter ed. 1961). As Hamilton saw it, "we must resolve to incorporate into our plan those ingredients which may be considered as forming the characteristic difference between a league and a government; we must extend the authority of the Union to the persons of the citizens-the only proper objects of government." *Id.,* at 109. The new National Government "must carry its agency to the persons of the citizens. It must stand in need of no intermediate legislations .... The government of the

Union, like that of each State, must be able to address itself immediately to the hopes and fears of individuals." *Id.,* No. 16, at 116.

The Convention generated a great number of proposals for the structure of the new Government, but two quickly took center stage. Under the Virginia Plan, as first introduced by Edmund Randolph, Congress would exercise legislative authority directly upon individuals, without employing the States as intermediaries. 1 Records of the Federal Convention of 1787, p. 21 (M. Farrand ed. 1911). Under the New Jersey Plan, as first introduced by William Paterson, Congress would continue to require the approval of the States before legislating, as it had under the Articles of Confederation. 1 *id.,* at 243-244. These two plans underwent various revisions as the Convention progressed, but they remained the two primary options discussed by the delegates. One frequently expressed objection to the New Jersey Plan was that it might require the Federal Government to coerce the States into implementing legislation. As Randolph explained the distinction, "[t]he true question is whether we shall adhere to the federal plan [*i. e.,* the New Jersey Plan], or introduce the national plan. The insufficiency of the former has been fully displayed .... There are but two modes, by which the end of a Gen[eral] Gov[ernment] can be attained: the 1st is by coercion as proposed by Mr. P[aterson's] plane, the 2nd] by real legislation as prop[osed] by the other plan. Coercion [is] *impracticable, expensive, cruel to individuals* .... We must resort therefore to a national *Legislation over individuals."* 1 *id.,* at 255-256 (emphasis in original). Madison echoed this view: "The practicability of making laws, with coercive sanctions, for the States as political bodies, had been exploded on all hands." 2 *id.,* at 9.

Under one preliminary draft of what would become the New Jersey Plan, state governments would occupy a position relative to Congress similar to that contemplated by the Act at issue in these cases: "[T]he laws of the United States ought, as far as may be consistent with the common interests of the Union, to be carried into execution by the judiciary and executive officers of the respective states, wherein the execution thereof is required." 3 *id.,* at 616. This idea apparently never even progressed so far as to be debated by the delegates, as contemporary accounts of the Convention do not mention any such discussion. The delegates' many descriptions of the Virinia and New Jersey Plans speak only in general terms about whether Congress was to derive its authority from the people or from the States, and whether it was to issue directives to individuals or to States. See 1 *id.,* at 260-280.

In the end, the Convention opted for a Constitution in which Congress would exercise its legislative authority directly over individuals rather than over States; for a variety of reasons, it rejected the New Jersey Plan in favor of the Virginia Plan. 1 *id.,* at 313. This choice was made clear to the subsequent state ratifying conventions. Oliver Ellsworth, a member of the Connecticut delegation in Philadelphia, explained the distinction to his State's convention: "This Constitution does not attempt to coerce sovereign bodies, states, in their political capacity .... But this legal coercion singles out the ... individual." 2 J. Elliot, Debates on the Federal Constitution 197 (2d ed. 1863). Charles Pinckney, another delegate at the Constitutional Convention, emphasized to the South Carolina House of Representatives that in Philadelphia "the necessity of having a government which should at once operate upon the people, and not upon the states, was conceived to be indispensable by every delegation present." 4 *id.,* at 256. Rufus King, one of Massachusetts' delegates, returned home to support ratification by recalling the Commonwealth's unhappy experience under the Articles of Confederation and arguing: "Laws,

to be effective, therefore, must not be laid on states, but upon individuals." 2 *id.,* at 56. At New York's convention, Hamilton (another delegate in Philadelphia) exclaimed: "But can we believe that one state will ever suffer itself to be used as an instrument of coercion? The thing is a dream; it is impossible. Then we are brought to this dilemma—either a federal standing army is to enforce the requisitions, or the federal treasury is left without supplies, and the government without support. What, sir, is the cure for this great evil? Nothing, but to enable the national laws to operate on individuals, in the same manner as those of the states do." 2 *id.,* at 233. At North Carolina's convention, Samuel Spencer recognized that "all the laws of the Confederation were binding on the states in their political capacities, ... but now the thing is entirely different. The laws of Congress will be binding on individuals." 4 *id.,* at 153.

In providing for a stronger central government, therefore, the Framers explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States. As we have seen, the Court has consistently respected this choice. We have always understood that even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts. *E. g., FERC v. Mississippi,* 456 U. S., at 762-766; *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.,* 452 U. S., at 288-289; *Lane County v. Oregon,* 7 Wall., at 76. The allocation of power contained in the Commerce Clause, for example, authorizes Congress to regulate interstate commerce directly; it does not authorize Congress to regulate state governments' regulation of interstate commerce.

2

This is not to say that Congress lacks the ability to encourage a State to regulate in a particular way, or that Congress may not hold out incentives to the States as a method of influencing a State's policy choices. Our cases have identified a variety of methods, short of outright coercion, by which Congress may urge a State to adopt a legislative program consistent with federal interests. Two of these methods are of particular relevance here.

First, under Congress' spending power, "Congress may attach conditions on the receipt of federal funds." *South Dakota v. Dole,* 483 U. S., at 206. Such conditions must (among other requirements) bear some relationship to the purpose of the federal spending, *id.,* at 207-208, and n. 3; otherwise, of course, the spending power could render academic the Constitution's other grants and limits of federal authority. Where the recipient of federal funds is a State, as is not unusual today, the conditions attached to the funds by Congress may influence a State's legislative choices. See Kaden, Politics, Money, and State Sovereignty: The Judicial Role, 79 Colum. L. Rev. 847, 874-881 (1979). *Dole* was one such case: The Court found no constitutional flaw in a federal statute directing the Secretary of Transportation to withhold federal highway funds from States failing to adopt Congress' choice of a minimum drinking age. Similar examples abound. See, *e. g., Fullilove v. Klutznick,* 448 U. S. 448, 478-480 (1980); *Massachusetts v. United States,* 435 U. S. 444, 461-462 (1978); *Lau v. Nichols,* 414 U. S. 563, 568-569 *(1974); Oklahoma v. United States Civil Service Comm'n,* 330 U. S. 127, 142-144 (1947).

Second, where Congress has the authority to regulate private activity under the Commerce Clause, we have recognized Congress' power to offer States the choice of regulating that activity according to federal standards or having state law pre-empted by federal regulation. *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc., supra,* at 288. See also *FERC v. Mississippi, supra,* at 764-765. This arrangement, which has been termed "a program of cooperative federalism," *Hodel, supra,* at 289, is replicated in numerous federal statutory schemes. These include the Clean Water Act, 86 Stat. 816, as amended, 33 U. S. C. § 1251 *et seq.,* see *Arkansas v. Oklahoma,* 503 U. S. 91, 101 (1992) (Clean Water Act "anticipates a partnership between the States and the Federal Government, animated by a shared objective"); the Occupational Safety and Health Act of 1970, 84 Stat. 1590, 29 U. S. C. § 651 *et seq.,* see *Gade v. National Solid Wastes Management Assn., ante,* at 97; the Resource Conservation and Recovery Act of 1976, 90 Stat. 2796, as amended, 42 U. S. C. § 6901 *et seq.,* see *Department of Energy v. Ohio,* 503 U. S. 607, 611-612 (1992); and the Alaska National Interest Lands Conservation Act, 94 Stat. 2374, 16 U. S. C. § 3101 *et seq.,* see *Kenaitze Indian Tribe v. Alaska,* 860 F.2d 312, 314 (CA9 1988), cert. denied, 491 U. S. 905 (1989).

By either of these methods, as by any other permissible method of encouraging a State to conform to federal policy choices, the residents of the State retain the ultimate decision as to whether or not the State will comply. If a State's citizens view federal policy as sufficiently contrary to local interests, they may elect to decline a federal grant. If state residents would prefer their government to devote its attention and resources to problems other than those deemed important by Congress, they may choose to have the Federal Government rather than the State bear the expense of a federally mandated regulatory program, and they may continue to supplement that program to the extent state law is not pre-empted. Where Congress encourages state regulation rather than compelling it, state governments remain responsive to the local electorate's preferences; state officials remain accountable to the people.

By contrast, where the Federal Government compels States to regulate, the accountability of both state and federal officials is diminished. If the citizens of New York, for example, do not consider that making provision for the disposal of radioactive waste is in their best interest, they may elect state officials who share their view. That view can always be pre-empted under the Supremacy Clause if it is contrary to the national view, but in such a case it is the Federal Government that makes the decision in full view of the public, and it will be federal officials that suffer the consequences if the decision turns out to be detrimental or unpopular. But where 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. Accountability is thus diminished when, due to federal coercion, elected state officials cannot regulate in accordance with the views of the local electorate in matters not pre-empted by federal regulation. See Merritt, 88 Colum. L. Rev., at 61-62; La Pierre, Political Accountability in the National Political Process-The Alternative to Judicial Review of Federalism Issues, 80 Nw. U. L. Rev. 577, 639-665 (1985).

With these principles in mind, we turn to the three challenged provisions of the Low-Level Radioactive Waste Policy Amendments Act of 1985.

III

The parties in these cases advance two quite different views of the Act. As petitioners see it, the Act imposes a requirement directly upon the States that they regulate in the field of radioactive waste disposal in order to meet Congress' mandate that "[e]ach State shall be responsible for providing ... for the disposal of ... low-level radioactive waste." 42 U. S. C. § 2021c(a)(1)(A). Petitioners understand this provision as a direct command from Congress, enforceable independent of the three sets of incentives provided by the Act. Respondents, on the other hand, read this provision together with the incentives, and see the Act as affording the States three sets of choices. According to respondents, the Act permits a State to choose first between regulating pursuant to federal standards and losing the right to a share of the Secretary of Energy's escrow account; to choose second between regulating pursuant to federal standards and progressively losing access to disposal sites in other States; and to choose third between regulating pursuant to federal standards and taking title to the waste generated within the State. Respondents thus interpret § 2021c(a)(1)(A), despite the statute's use of the word "shall," to provide no more than an option which a State may elect or eschew.

The Act could plausibly be understood either as a mandate to regulate or as a series of incentives. Under petitioners' view, however, § 2021c(a)(1)(A) of the Act would clearly "commandee[r] the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program." *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.,* 452 U. S., at 288. We must reject this interpretation of the provision for two reasons. First, such an outcome would, to say the least, "upset the usual constitutional balance of federal and state powers." *Gregory v. Ashcroft,* 501 U. S., at 460. "[I]t is incumbent upon the federal courts to be certain of Congress' intent before finding that federal law overrides this balance," *ibid.* (internal quotation marks omitted), but the Act's amenability to an equally plausible alternative construction prevents us from possessing such certainty. Second, "where an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress." *Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Construction Trades Council, 485* U. S. 568, 575 (1988). This rule of statutory construction pushes us away from petitioners' understanding of § 2021c (a)(l)(A) of the Act, under which it compels the States to regulate according to Congress' instructions.

We therefore decline petitioners' invitation to construe § 2021c(a)(1)(A), alone and in isolation, as a command to the States independent of the remainder of the Act. Construed as a whole, the Act comprises three sets of "incentives" for the States to provide for the disposal of low level radioactive waste generated within their borders. We consider each in turn.

A

The first set of incentives works in three steps. First, Congress has authorized States with disposal sites to impose a surcharge on radioactive waste received from other States. Second, the Secretary of Energy collects a portion of this surcharge and places the money in an escrow account. Third, States achieving a series of milestones receive portions of this fund.

The first of these steps is an unexceptionable exercise of Congress' power to authorize the States to burden interstate commerce. While the Commerce Clause has long been understood to limit the States' ability to discriminate against interstate commerce, see, *e. g., Wyoming v. Oklahoma, 502* U. S. 437, 454-455 (1992); *Cooley v. Board of Wardens of Port of Philadelphia ex rel. Society for Relief of Distressed Pilots,* 12 How. 299 (1852), that limit may be lifted, as it has been here, by an expression of the "unambiguous intent" of Congress. *Wyoming, supra,* at 458; *Prudential Ins. Co. v. Benjamin,* 328 U. S. 408, 427-431 (1946). Whether or not the States would be permitted to burden the interstate transport of low level radioactive waste in the absence of Congress' approval, the States can clearly do so *with* Congress' approval, which is what the Act gives them.

The second step, the Secretary's collection of a percentage of the surcharge, is no more than a federal tax on interstate commerce, which petitioners do not claim to be an invalid exercise of either Congress' commerce or taxing power. Cf. *United States v. Sanchez,* 340 U. S. 42, 44-45 (1950); *Steward Machine Co. v. Davis,* 301 U. S. 548, 581-583 (1937).

The third step is a conditional exercise of Congress' authority under the Spending Clause: Congress has placed conditions—the achievement of the milestones—on the receipt of federal funds. Petitioners do not contend that Congress has exceeded its authority in any of the four respects our cases have identified. See generally *South Dakota v. Dole,* 483 U. S., at 207-208. The expenditure is for the general welfare, *Helvering v. Davis,* 301 U. S. 619, 640-641 (1937); the States are required to use the money they receive for the purpose of assuring the safe disposal of radioactive waste. 42 U. S. C. § 2021e(d)(2)(E). The conditions imposed are unambiguous, *Pennhurst State School and Hospital v. Halderman,* 451 U. S., at 17; the Act informs the States exactly what they must do and by when they must do it in order to obtain a share of the escrow account. The conditions imposed are reasonably related to the purpose of the expenditure, *Massachusetts v. United States,* 435 U. S., at 461; both the conditions and the payments embody Congress' efforts to address the pressing problem of radioactive waste disposal. Finally, petitioners do not claim that the conditions imposed by the Act violate any independent constitutional prohibition. *Lawrence County v. Lead-Deadwood School Dist. No.* 40-1, 469 U. S. 256, 269-270 (1985).

Petitioners contend nevertheless that the *form* of these expenditures removes them from the scope of Congress' spending power. Petitioners emphasize the Act's instruction to the Secretary of Energy to "deposit all funds received in a special escrow account. The funds so deposited shall not be the property of the United States." 42 U. S. C. § 2021e(d)(2)(A). Petitioners argue that because the money collected and redisbursed to the States is kept in an account separate from the general treasury, because the Secretary holds the funds only as a trustee, and because the States themselves are largely able to control whether they will pay into the escrow account or receive a share, the Act "in no manner calls for the spending of federal funds." Reply Brief for Petitioner State of New York 6.

The Constitution's grant to Congress of the authority to "pay the Debts and provide for the ... general Welfare" has never, however, been thought to mandate a particular form of accounting. A great deal of federal spending comes from segregated trust funds collected and spent for a particular purpose. See, *e. g.,* 23 U. S. C. § 118 (Highway Trust Fund); 42 U. S. C. §401(a)

(Federal Old-Age and Survivors Insurance Trust Fund); 42 U. S. C. § 401(b) (Federal Disability Insurance Trust Fund); 42 U. S. C. § 1395t (Federal Supplementary Medical Insurance Trust Fund). The Spending Clause has never been construed to deprive Congress of the power to structure federal spending in this manner. Petitioners' argument regarding the States' ability to determine the escrow account's income and disbursements ignores the fact that Congress specifically provided the States with this ability as a method of encouraging the States to regulate according to the federal plan. That the States are able to choose whether they will receive federal funds does not make the resulting expenditures any less federal; indeed, the location of such choice in the States is an inherent element in any conditional exercise of Congress' spending power.

The Act's first set of incentives, in which Congress has conditioned grants to the States upon the States' attainment of a series of milestones, is thus well within the authority of Congress under the Commerce and Spending Clauses. Because the first set of incentives is supported by affirmative constitutional grants of power to Congress, it is not inconsistent with the Tenth Amendment.

B

In the second set of incentives, Congress has authorized States and regional compacts with disposal sites gradually to increase the cost of access to the sites, and then to deny access altogether, to radioactive waste generated in States that do not meet federal deadlines. As a simple regulation, this provision would be within the power of Congress to authorize the States to discriminate against interstate commerce. See *Northeast Bancorp, Inc. v. Board of Governors,* FRS, 472 U. S. 159, 174-175 (1985). Where federal regulation of private activity is within the scope of the Commerce Clause, we have recognized the ability of Congress to offer States the choice of regulating that activity according to federal standards or having state law pre-empted by federal regulation. See Hodel *v.* Virginia Surface Mining & Reclamation Assn., Inc., 452 U. S., at 288; FERC *v.* Mississippi, 456 U. S., at 764-765.

This is the choice presented to nonsited States by the Act's second set of incentives: States may either regulate the disposal of radioactive waste according to federal standards by attaining local or regional self-sufficiency, or their residents who produce radioactive waste will be subject to federal regulation authorizing sited States and regions to deny access to their disposal sites. The affected States are not compelled by Congress to regulate, because any burden caused by a State's refusal to regulate will fall on those who generate waste and find no outlet for its disposal, rather than on the State as a sovereign. A State whose citizens do not wish it to attain the Act's milestones may devote its attention and its resources to issues its citizens deem more worthy; the choice remains at all times with the residents of the State, not with Congress. The State need not expend any funds, or participate in any federal program, if local residents do not view such expenditures or participation as worthwhile. Cf. *Hodel, supra,* at 288. Nor must the State abandon the field if it does not accede to federal direction; the State may continue to regulate the generation and disposal of radioactive waste in any manner its citizens see fit.

The Act's second set of incentives thus represents a conditional exercise of Congress' commerce power, along the lines of those we have held to be within Congress' authority. As a result, the

second set of incentives does not intrude on the sovereignty reserved to the States by the Tenth Amendment.

C

The take title provision is of a different character. This third so-called "incentive" offers States, as an alternative to regulating pursuant to Congress' direction, the option of taking title to and possession of the low level radioactive waste generated within their borders and becoming liable for all damages waste generators suffer as a result of the States' failure to do so promptly. In this provision, Congress has crossed the line distinguishing encouragement from coercion.

We must initially reject respondents' suggestion that, because the take title provision will not take effect until January 1, 1996, petitioners' challenge thereto is unripe. It takes many years to develop a new disposal site. All parties agree that New York must take action now in order to avoid the take title provision's consequences, and no party suggests that the State's waste generators will have ceased producing waste by 1996. The issue is thus ripe for review. Cf. *Pacific Gas & Elec. Co. v. State Energy Resources Conservation and Development Comm'n,* 461 U. S. 190, 201 (1983); *Regional Rail Reorganization Act Cases,* 419 U. S. 102, 144145 (1974).

The take title provision offers state governments a "choice" of either accepting ownership of waste or regulating according to the instructions of Congress. Respondents do not claim that the Constitution would authorize Congress to impose either option as a freestanding requirement. On one hand, the Constitution would not permit Congress simply to transfer radioactive waste from generators to state governments. Such a forced transfer, standing alone, would in principle be no different than a congressionally compelled subsidy from state governments to radioactive waste producers. The same is true of the provision requiring the States to become liable for the generators' damages. Standing alone, this provision would be indistinguishable from an Act of Congress directing the States to assume the liabilities of certain state residents. Either type of federal action would "commandeer" state governments into the service of federal regulatory purposes, and would for this reason be inconsistent with the Constitution's division of authority between federal and state governments. On the other hand, the second alternative held out to state governments-regulating pursuant to Congress' direction-would, standing alone, present a simple command to state governments to implement legislation enacted by Congress. As we have seen, the Constitution does not empower Congress to subject state governments to this type of instruction.

Because an instruction to state governments to take title to waste, standing alone, would be beyond the authority of Congress, and because a direct order to regulate, standing alone, would also be beyond the authority of Congress, it follows that Congress lacks the power to offer the States a choice between the two. Unlike the first two sets of incentives, the take title incentive does not represent the conditional exercise of any congressional power enumerated in the Constitution. In this provision, Congress has not held out the threat of exercising its spending power or its commerce power; it has instead held out the threat, should the States not regulate according to one federal instruction, of simply forcing the States to submit to another federal instruction. A choice between two unconstitutionally coercive regulatory techniques is no choice at all. Either way, "the Act commandeers the legislative processes of the States by directly

compelling them to enact and enforce a federal regulatory program," *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc., supra,* at 288, an outcome that has never been understood to lie within the authority conferred upon Congress by the Constitution.

Respondents emphasize the latitude given to the States to implement Congress' plan. The Act enables the States to regulate pursuant to Congress' instructions in any number of different ways. States may avoid taking title by contracting with sited regional compacts, by building a disposal site alone or as part of a compact, or by permitting private parties to build a disposal site. States that host sites may employ a wide range of designs and disposal methods, subject only to broad federal regulatory limits. This line of reasoning, however, only underscores the critical alternative a State lacks: A State may not decline to administer the federal program. No matter which path the State chooses, it must follow the direction of Congress.

The take title provision appears to be unique. No other federal statute has been cited which offers a state government no option other than that of implementing legislation enacted by Congress. Whether one views the take title provision as lying outside Congress' enumerated powers, or as infringing upon the core of state sovereignty reserved by the Tenth Amendment, the provision is inconsistent with the federal structure of our Government established by the Constitution.

IV

Respondents raise a number of objections to this understanding of the limits of Congress' power.

A

The United States proposes three alternative views of the constitutional line separating state and federal authority. While each view concedes that Congress *generally* may not compel state governments to regulate pursuant to federal direction, each purports to find a limited domain in which such coercion is permitted by the Constitution.

First, the United States argues that the Constitution's prohibition of congressional directives to state governments can be overcome where the federal interest is sufficiently important to justify state submission. This argument contains a kernel of truth: In determining whether the Tenth Amendment limits the ability of Congress to subject state governments to generally applicable laws, the Court *has* in some cases stated that it will evaluate the strength of federal interests in light of the degree to which such laws would prevent the State from functioning as a sovereign; that is, the extent to which such generally applicable laws would impede a state government's responsibility to represent and be accountable to the citizens of the State. See, *e. g., EEOC v. Wyoming,* 460 U. S., at 242, n. 17; *Transportation Union v. Long Island R. Co.,* 455 U. S., at 684, n. 9; *National League of Cities v. Usery,* 426 U. S., at 853. The Court has more recently departed from this approach. See, *e. g., South Carolina v. Baker,* 485 U. S., at 512-513; *Garcia v. San Antonio Metropolitan Transit Authority,* 469 U. S., at 556-557. But whether or not a particularly strong federal interest enables Congress to bring state governments within the orbit of generally applicable *federal* regulation, no Member of the Court has ever suggested that such a federal interest would enable Congress to command a state government to enact *state* regulation. No matter how powerful the federal interest involved, the Constitution simply does

not give Congress the authority to require the States to regulate. The Constitution instead gives Congress the authority to regulate matters directly and to pre-empt contrary state regulation. Where a federal interest is sufficiently strong to cause Congress to legislate, it must do so directly; it may not conscript state governments as its agents.

Second, the United States argues that the Constitution does, in some circumstances, permit federal directives to state governments. Various cases are cited for this proposition, but none support it. Some of these cases discuss the well established power of Congress to pass laws enforceable in state courts. See *Testa v. Katt,* 330 U. S. 386 (1947); *Palmore v. United States,* 411 U. S. 389, 402 (1973); see also *Second Employers' Liability Cases,* 223 U. S. 1, 57 (1912); *Claflin v. Houseman,* 93 U. S. 130, 136-137 (1876). These cases involve no more than an application of the Supremacy Clause's provision that federal law "shall be the supreme Law of the Land," enforceable in every State. More to the point, all involve congressional regulation of individuals, not congressional requirements that States regulate. Federal statutes enforceable in state courts do, in a sense, direct state judges to enforce them, but this sort of federal "direction" of state judges is mandated by the text of the Supremacy Clause. No comparable constitutional provision authorizes Congress to command state legislatures to legislate.

Additional cases cited by the United States discuss the power of federal *courts* to order state officials to comply with federal law. See *Puerto Rico v. Branstad,* 483 U. S. 219, 228 *(1987); Washington v. Washington State Commercial Passenger Fishing Vessel Assn.,* 443 U. S. 658, 695 (1979); *Illinois v. City of Milwaukee,* 406 U. S. 91, 106-108 (1972); see also *Cooper v. Aaron,* 358 U. S. 1, 18-19 (1958); *Brown v. Board of Education,* 349 U. S. 294, 300 (1955); *Ex parte Young,* 209 U. S. 123, 155-156 (1908). Again, however, the text of the Constitution plainly confers this authority on the federal courts, the "judicial Power" of which "shall extend to all Cases, in Law and Equity, arising under this Constitution, [and] the Laws of the United States ... ; [and] to Controversies between two or more States; [and] between a State and Citizens of another State." U. S. Const., Art. III, § 2. The Constitution contains no analogous grant of authority to Congress. Moreover, the Supremacy Clause makes federal law paramount over the contrary positions of state officials; the power of federal courts to enforce federal law thus presupposes some authority to order state officials to comply. See *Puerto Rico v. Branstad, supra,* at 227-228 (overruling *Kentucky v. Dennison,* 24 How. 66 (1861)).

In sum, the cases relied upon by the United States hold only that federal law is enforceable in state courts and that federal courts may in proper circumstances order state officials to comply with federal law, propositions that by no means imply any authority on the part of Congress to mandate state regulation.

Third, the United States, supported by the three sited regional compacts as *amici,* argues that the Constitution envisions a role for Congress as an arbiter of interstate disputes. The United States observes that federal courts, and this Court in particular, have frequently resolved conflicts among States. See, *e. g., Arkansas v. Oklahoma,* 503 U. S. 91 (1992); *Wyoming v. Oklahoma,* 502 U. S. 437 (1992). Many of these disputes have involved the allocation of shared resources among the States, a category perhaps broad enough to encompass the allocation of scarce disposal space for radioactive waste. See, *e. g., Colorado v. New Mexico,* 459 U. S. 176 (1982); *Arizona v. California,* 373 U. S. 546 (1963). The United States suggests that if the Court may

resolve such interstate disputes, Congress can surely do the same under the Commerce Clause. The regional compacts support this argument with a series of quotations from The Federalist and other contemporaneous documents, which the compacts contend demonstrate that the Framers established a strong National Legislature for the purpose of resolving trade disputes among the States. Brief for Rocky Mountain Low-Level Radioactive Waste Compact et al. as *Amici Curiae 17,* and n. 16.

While the Framers no doubt endowed Congress with the power to regulate interstate commerce in order to avoid further instances of the interstate trade disputes that were common under the Articles of Confederation, the Framers did *not* intend that Congress should exercise that power through the mechanism of mandating state regulation. The Constitution established Congress as "a superintending authority over the reciprocal trade" among the States, The Federalist No. 42, p. 268 (C. Rossiter ed. 1961), by empowering Congress to regulate that trade directly, not by authorizing Congress to issue trade-related orders to state governments. As Madison and Hamilton explained, "a sovereignty over sovereigns, a government over governments, a legislation for communities, as contradistinguished from individuals, as it is a solecism in theory, so in practice it is subversive of the order and ends of civil polity." *Id.,* No. 20, at 138.

B

The sited state respondents focus their attention on the process by which the Act was formulated. They correctly observe that public officials representing the State of New York lent their support to the Act's enactment. A Deputy Commissioner of the State's Energy Office testified in favor of the Act. See Low-Level Waste Legislation: Hearings on H. R. 862, H. R. 1046, H. R. 1083, and H. R. 1267 before the Subcommittee on Energy and the Environment of the House Committee on Interior and Insular Affairs, 99th Cong., 1st Sess., 97-98, 190-199 (1985) (testimony of Charles Guinn). Senator Moynihan of New York spoke in support of the Act on the floor of the Senate. 131 Congo Rec. 38423 (1985). Respondents note that the Act embodies a bargain among the sited and unsited States, a compromise to which New York was a willing participant and from which New York has reaped much benefit. Respondents then pose what appears at first to be a troubling question: How can a federal statute be found an unconstitutional infringement of state sovereignty when state officials consented to the statute's enactment?

The answer follows from an understanding of the fundamental purpose served by our Government's federal structure. The Constitution does not protect the sovereignty of States for the benefit of the States or state governments as abstract political entities, or even for the benefit of the public officials governing the States. To the contrary, the Constitution divides authority between federal and state governments for the protection of individuals. State sovereignty is not just an end in itself: "Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power." *Coleman v. Thompson,* 501 U. S. 722, 759 (1991) (BLACKMUN, J., dissenting). "Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in anyone branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front." *Gregory v. Ashcroft,* 501 U. S., at 458. See The Federalist No. 51, p. 323 (C. Rossiter ed. 1961).

Where Congress exceeds its authority relative to the States, therefore, the departure from the constitutional plan cannot be ratified by the "consent" of state officials. An analogy to the separation of powers among the branches of the Federal Government clarifies this point. The Constitution's division of power among the three branches is violated where one branch invades the territory of another, whether or not the encroached-upon branch approves the encroachment. In *Buckley v. Valeo,* 424 U. S. 1, 118-137 (1976), for instance, the Court held that Congress had infringed the President's appointment power, despite the fact that the President himself had manifested his consent to the statute that caused the infringement by signing it into law. See *National League of Cities v. Usery,* 426 U. S., at 842, n. 12. In *INS v. Chadha,* 462 U. S. 919, 944-959 (1983), we held that the legislative veto violated the constitutional requirement that legislation be presented to the President, despite Presidents' approval of hundreds of statutes containing a legislative veto provision. See *id.,* at 944-945. The constitutional authority of Congress cannot be expanded by the "consent" of the governmental unit whose domain is thereby narrowed, whether that unit is the Executive Branch or the States.

State officials thus cannot consent to the enlargement of the powers of Congress beyond those enumerated in the Constitution. Indeed, the facts of these cases raise the possibility that powerful incentives might lead both federal and state officials to view departures from the federal structure to be in their personal interests. Most citizens recognize the need for radioactive waste disposal sites, but few want sites near their homes. As a result, while it would be well within the authority of either federal or state officials to choose where the disposal sites will be, it is likely to be in the political interest of each individual official to avoid being held accountable to the voters for the choice of location. If a federal official is faced with the alternatives of choosing a location or directing the States to do it, the official may well prefer the latter, as a means of shifting responsibility for the eventual decision. If a state official is faced with the same set of alternatives—choosing a location or having Congress direct the choice of a location—the state official may also prefer the latter, as it may permit the avoidance of personal responsibility. The interests of public officials thus may not coincide with the Constitution's intergovernmental allocation of authority. Where state officials purport to submit to the direction of Congress in this manner, federalism is hardly being advanced.

Nor does the State's prior support for the Act estop it from asserting the Act's unconstitutionality. While New York has received the benefit of the Act in the form of a few more years of access to disposal sites in other States, New York has never joined a regional radioactive waste compact. Any estoppel implications that might flow from membership in a compact, see *West Virginia ex rel. Dyer v. Sims,* 341 U. S. 22,35-36 (1951) (Jackson, J., concurring), thus do not concern us here. The fact that the Act, like much federal legislation, embodies a compromise among the States does not elevate the Act (or the antecedent discussions among representatives of the States) to the status of an interstate agreement requiring Congress' approval under the Compact Clause. Cf. *Holmes v. Jennison,* 14 Pet. 540, 572 (1840) (plurality opinion). That a party collaborated with others in seeking legislation has never been understood to estop the party from challenging that legislation in subsequent litigation.

V

Petitioners also contend that the Act is inconsistent with the Constitution's Guarantee Clause, which directs the United States to "guarantee to every State in this Union a Republican Form of Government." U. S. Const., Art. IV; § 4. Because we have found the take title provision of the Act irreconcilable with the powers delegated to Congress by the Constitution and hence with the Tenth Amendment's reservation to the States of those powers not delegated to the Federal Government, we need only address the applicability of the Guarantee Clause to the Act's other two challenged provisions.

We approach the issue with some trepidation, because the Guarantee Clause has been an infrequent basis for litigation throughout our history. In most of the cases in which the Court has been asked to apply the Clause, the Court has found the claims presented to be nonjusticiable under the "political question" doctrine. See, *e. g., City of Rome v. United States,* 446 U. S. 156, 182, n. 17 (1980) (challenge to the preclearance requirements of the Voting Rights Act); *Baker v. Carr,* 369 U. S. 186, 218-229 (1962) (challenge to apportionment of state legislative districts); *Pacific States Telephone & Telegraph Co. v. Oregon,* 223 U. S. 118, 140-151 (1912) (challenge to initiative and referendum provisions of state constitution).

The view that the Guarantee Clause implicates only nonjusticiable political questions has its origin in *Luther v. Borden,* 7 How. 1 (1849), in which the Court was asked to decide, in the wake of Dorr's Rebellion, which of two rival governments was the legitimate government of Rhode Island. The Court held that "it rests with Congress," not the judiciary, "to decide what government is the established one in a State." *Id.,* at 42. Over the following century, this limited holding metamorphosed into the sweeping assertion that "[v]iolation of the great guaranty of a republican form of government in States cannot be challenged in the courts." *Colegrove v. Green,* 328 U. S. 549, 556 (1946) (plurality opinion).

This view has not always been accepted. In a group of cases decided before the holding of *Luther* was elevated into a general rule of nonjusticiability, the Court addressed the merits of claims founded on the Guarantee Clause without any suggestion that the claims were not justiciable. See *Attorney General of Michigan ex rel. Kies v. Lowrey,* 199 U. S. 233, 239 (1905); *Forsyth v. Hammond,* 166 U. S. 506, 519 *(1897); In re Duncan,* 139 U. S. 449, 461-462 (1891); *Minor v. Happersett,* 21 Wall. 162, 175-176 (1875). See also *Plessy v. Ferguson,* 163 U. S. 537, 563-564 (1896) (Harlan, J., dissenting) (racial segregation "inconsistent with the guarantee given by the Constitution to each State of a republican form of government").

More recently, the Court has suggested that perhaps not all claims under the Guarantee Clause present nonjusticiable political questions. See *Reynolds v. Sims,* 377 U. S. 533, 582 (1964) ("[S]ome questions raised under the Guarantee Clause are nonjusticiable"). Contemporary commentators have likewise suggested that courts should address the merits of such claims, at least in some circumstances. See, *e. g.,* L. Tribe, American Constitutional Law 398 (2d ed. 1988); J. Ely, Democracy and Distrust: A Theory of Judicial Review 118, n., and 122-123 (1980); W. Wiecek, The Guarantee Clause of the U. S. Constitution 287-289, 300 (1972); Merritt, 88 Colum. L. Rev., at 70-78; Bonfield, The Guarantee Clause of Article IV; Section 4: A Study in Constitutional Desuetude, 46 Minn. L. Rev. 513, 560-565 (1962).

We need not resolve this difficult question today. Even if we assume that petitioners' claim is justiciable, neither the monetary incentives provided by the Act nor the possibility that a State's waste producers may find themselves excluded from the disposal sites of another State can reasonably be said to deny any State a republican form of government. As we have seen, these two incentives represent permissible conditional exercises of Congress' authority under the Spending and Commerce Clauses respectively, in forms that have now grown commonplace. Under each, Congress offers the States a legitimate choice rather than issuing an unavoidable command. The States thereby retain the ability to set their legislative agendas; state government officials remain accountable to the local electorate. The twin threats imposed by the first two challenged provisions of the Act—that New York may miss out on a share of federal spending or that those generating radioactive waste within New York may lose out-of-state disposal outlets—do not pose any realistic risk of altering the form or the method of functioning of New York's government. Thus even indulging the assumption that the Guarantee Clause provides a basis upon which a State or its subdivisions may sue to enjoin the enforcement of a federal statute, petitioners have not made out such a claim in these cases.

VI

Having determined that the take title provision exceeds the powers of Congress, we must consider whether it is severable from the rest of the Act.

"The standard for determining the severability of an unconstitutional provision is well established: Unless it is evident that the Legislature would not have enacted those provisions which are within its power, independently of that which is not, the invalid part may be dropped if what is left is fully operative as a law." *Alaska Airlines, Inc. v. Brock,* 480 U. S. 678, 684 (1987) (internal quotation marks omitted). While the Act itself contains no statement of whether its provisions are severable, "[i]n the absence of a severability clause, ... Congress' silence is just that—silence—and does not raise a presumption against severability." *Id.,* at 686. Common sense suggests that where Congress has enacted a statutory scheme for an obvious purpose, and where Congress has included a series of provisions operating as incentives to achieve that purpose, the invalidation of one of the incentives should not ordinarily cause Congress' overall intent to be frustrated. As the Court has observed, "it is not to be presumed that the legislature was legislating for the mere sake of imposing penalties, but the penalties ... were simply in aid of the main purpose of the statute. They may fail, and still the great body of the statute have operative force, and the force contemplated by the legislature in its enactment." *Reagan v. Farmers' Loan & Trust Co.,* 154 U. S. 362, 396 (1894). See also *United States v. Jackson, 390* U. S. 570, 585-586 (1968).

It is apparent in light of these principles that the take title provision may be severed without doing violence to the rest of the Act. The Act is still operative and it still serves Congress' objective of encouraging the States to attain local or regional self-sufficiency in the disposal of low level radioactive waste. It still includes two incentives that coax the States along this road. A State whose radioactive waste generators are unable to gain access to disposal sites in other States may encounter considerable internal pressure to provide for the disposal of waste, even without the prospect of taking title. The sited regional compacts need not accept New York's waste after the 7-year transition period expires, so any burden caused by New York's failure to

secure a disposal site will not be borne by the residents of other States. The purpose of the Act is not defeated by the invalidation of the take title provision, so we may leave the remainder of the Act in force.

VII

Some truths are so basic that, like the air around us, they are easily overlooked. Much of the Constitution is concerned with setting forth the form of our government, and the courts have traditionally invalidated measures deviating from that form. The result may appear "formalistic" in a given case to partisans of the measure at issue, because such measures are typically the product of the era's perceived necessity. But the Constitution protects us from our own best intentions: It divides power among sovereigns and among branches of government precisely so that we may resist the temptation to concentrate power in one location as an expedient solution to the crisis of the day. The shortage of disposal sites for radioactive waste is a pressing national problem, but a judiciary that licensed extraconstitutional government with each issue of comparable gravity would, in the long run, be far worse.

States are not mere political subdivisions of the United States. State governments are neither regional offices nor administrative agencies of the Federal Government. The positions occupied by state officials appear nowhere on the Federal Government's most detailed organizational chart. The Constitution instead "leaves to the several States a residuary and inviolable sovereignty," The Federalist No. 39, p. 245 (C. Rossiter ed. 1961), reserved explicitly to the States by the Tenth Amendment.

Whatever the outer limits of that sovereignty may be, one thing is clear: The Federal Government may not compel the States to enact or administer a federal regulatory program. The Constitution permits both the Federal Government and the States to enact legislation regarding the disposal of low level radioactive waste. The Constitution enables the Federal Government to pre-empt state regulation contrary to federal interests, and it permits the Federal Government to hold out incentives to the States as a means of encouraging them to adopt suggested regulatory schemes. It does not, however, authorize Congress simply to direct the States to provide for the disposal of the radioactive waste generated within their borders. While there may be many constitutional methods of achieving regional self-sufficiency in radioactive waste disposal, the method Congress has chosen is not one of them. The judgment of the Court of Appeals is accordingly

Affirmed in part and reversed in part.

National Federation of Independent Businesses v. Sebelius, 567 U.S 519 (2012)

Syllabus

In 2010, Congress enacted the Patient Protection and Affordable Care Act in order to increase the number of Americans covered by health insurance and decrease the cost of health care. One key provision is the individual mandate, which requires most Americans to maintain "minimum essential" health insurance coverage…

Another key provision of the Act is the Medicaid expansion. The current Medicaid program offers federal funding to States to assist pregnant women, children, needy families, the blind, the elderly, and the disabled in obtaining medical care. 42 U. S. C. § 1396d(a). 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 by 2014 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. § 1396a(a)(10)(A)(i)(VIII). The Act increases federal funding to cover the States' costs in expanding Medicaid coverage. § 1396d(y)(1). But 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. § 1396c.

Twenty-six States, several individuals, and the National Federation of Independent Business brought suit in Federal District Court, challenging the constitutionality of the individual mandate and the Medicaid expansion. The Court of Appeals for the Eleventh Circuit upheld the Medicaid expansion as a valid exercise of Congress's spending power, but concluded that Congress lacked authority to enact the individual mandate. Finding the mandate severable from the Act's other provisions, the Eleventh Circuit left the rest of the Act intact.

Held: The judgment is affirmed in part and reversed in part.

648 F. 3d 1235, affirmed in part and reversed in part…

5. Chief Justice Roberts, joined by Justice Breyer and Justice Kagan, concluded in Part IV that the Medicaid expansion violates the Constitution by threatening States with the loss of their existing Medicaid funding if they decline to comply with the expansion.

(a) The Spending Clause grants Congress the power "to pay the Debts and provide for the . . . general Welfare of the United States." Art. I, § 8, cl. 1. Congress may use this power to establish cooperative state-federal Spending Clause programs. The legitimacy of Spending Clause legislation, however, depends on whether a State voluntarily and knowingly accepts the terms of such programs. *Pennhurst State School and Hospital v. Halderman*, 451 U. S. 1. "[T]he Constitution simply does not give Congress the authority to require the States to regulate." *New York v. United States*, 505 U. S. 144. When Congress threatens to terminate other grants as a means of pressuring the States to accept

a Spending Clause program, the legislation runs counter to this Nation's system of federalism. Cf. *South Dakota v. Dole*, 483 U. S. 203.

(b) Section 1396c gives the Secretary of Health and Human Services the authority to penalize States that choose not to participate in the Medicaid expansion by taking away their existing Medicaid funding. 42 U. S. C. §1396c. The threatened loss of over 10 percent of a State's overall budget is economic dragooning that leaves the States with no real option but to acquiesce in the Medicaid expansion. The Government claims that the expansion is properly viewed as only a modification of the existing program, and that this modification is permissible because Congress reserved the "right to alter, amend, or repeal any provision" of Medicaid. §1304. But the expansion accomplishes a shift in kind, not merely degree. The original program was designed to cover medical services for particular categories of vulnerable individuals. 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. 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. The Medicaid expansion thus violates the Constitution by threatening States with the loss of their existing Medicaid funding if they decline to comply with the expansion…

6. Justice Ginsburg, joined by Justice Sotomayor, is of the view that the Spending Clause does not preclude the Secretary from withholding Medicaid funds based on a State's refusal to comply with the expanded Medicaid program…Because The Chief Justice finds the withholding—not the granting—of federal funds incompatible with the Spending Clause, Congress' extension of Medicaid remains available to any State that affirms its willingness to participate...

CHIEF JUSTICE ROBERTS announced the judgment of the Court and delivered…an opinion with respect to Part IV, in which Justice Breyer and Justice Kagan join…

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 disabled. 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 mandate. §§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 increase 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 unemployment 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]

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.

[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.

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…

***

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…

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.

Justice GINSBURG, with whom Justice SOTOMAYOR joins…concurring in part, concurring in the judgment in part, and dissenting in part…

V

Through Medicaid, Congress has offered the States an opportunity to furnish health care to the poor with the aid of federal financing. To receive federal Medicaid funds, States must provide health benefits to specified categories of needy persons, including pregnant women, children, parents, and adults with disabilities. Guaranteed eligibility varies by category: for some it is tied to the federal poverty level (incomes up to 100% or 133%); for others it depends on criteria such as eligibility for designated state or federal assistance programs. The ACA enlarges the population of needy people States must cover to include adults under age 65 with incomes up to 133% of the federal poverty level. The spending power conferred by the Constitution, the Court has never doubted, permits Congress to define the contours of programs financed with federal funds. See, e.g., *Pennhurst State School and Hospital v. Halderman*, 451 U. S. 1, 17 (1981)...

Medicaid is a prototypical example of federal-state cooperation in serving the Nation's general welfare. Rather than authorizing a federal agency to administer a uniform national health-care system for the poor, Congress offered States the opportunity to tailor Medicaid grants to their particular needs, so long as they remain within bounds set by federal law…

The Chief Justice acknowledges that Congress may "condition the receipt of [federal] funds on the States' complying with restrictions on the use of those funds," ante, at 50, but nevertheless concludes that the 2010 expansion is unduly coercive. His conclusion rests on three premises, each of them essential to his theory…Third, the threatened loss of funding is so large that the States have no real choice but to participate in the Medicaid expansion. The Chief Justice therefore—for the first time ever—finds an exercise of Congress' spending power unconstitutionally coercive…

States have no entitlement to receive any Medicaid funds; they enjoy only the opportunity to accept funds on Congress' terms. Future Congresses are not bound by their predecessors' dispositions; they have authority to spend federal revenue as they see fit. The Federal Government, therefore, is not, as The Chief Justice charges, threatening States with the loss of "existing" funds from one spending program... Congress is simply requiring States to do what States have long been required to do to receive Medicaid funding: comply with the conditions Congress prescribes for participation…

Because The Chief Justice finds the withholding—not the granting—of federal funds incompatible with the Spending Clause, Congress' extension of Medicaid remains available to any State that affirms its willingness to participate.

A

…Between 1966 and 1990, annual federal Medicaid spending grew from $631.6 million to $42.6 billion; state spending rose to $31 billion over the same period. See Dept. of Health and Human Services, National Health Expenditures by Type of Service and Source of Funds: Calendar Years 1960 to 2010 (table). And between 1990 and 2010, federal spending increased to $269.5 billion. *Ibid*. Enlargement of the population and services covered by Medicaid, in short, has been the trend.

Compared to past alterations, the ACA is notable for the extent to which the Federal Government will pick up the tab. Medicaid's 2010 expansion is financed largely by federal outlays. In 2014, federal funds will cover 100% of the costs for newly eligible beneficiaries; that rate will gradually decrease before settling at 90% in 2020. 42 U. S. C. §1396d(y) (2006 ed., Supp. IV). By comparison, federal contributions toward the care of beneficiaries eligible pre-ACA range from 50% to 83%, and averaged 57% between 2005 and 2008. §1396d(b) (2006 ed., Supp. IV); Dept. of Health and Human Services, Centers for Medicare and Medicaid Services, C. Truffer et al., 2010 Actuarial Report on the Financial Outlook for Medicaid, p. 20.

Nor will the expansion exorbitantly increase state Medicaid spending. The Congressional Budget Office (CBO) projects that States will spend 0.8% more than they would have, absent the ACA. See CBO, Spending & Enrollment Detail for CBO's March 2009 Baseline. But see *ante*, at 44–45 ("[T]he Act dramatically increases state obligations under Medicaid."); *post*, at 45 (joint opinion of Scalia, Kennedy, Thomas, and Alito, JJ.) ("[A]cceptance of the [ACA expansion] will impose very substantial costs on participating States."). Whatever the increase in state obligations after the ACA, it will pale in comparison to the increase in federal funding.

Finally, any fair appraisal of Medicaid would require acknowledgment of the considerable autonomy States enjoy under the Act. Far from "conscript[ing] state agencies into the national bureaucratic army," ante, at 55 (citing *FERC v. Mississippi*, 456 U. S. 742, 775 (1982) (O'Connor, J., concurring in judgment in part and dissenting in part) (brackets in original and internal quotation marks omitted)), Medicaid "is designed to advance cooperative federalism." *Wisconsin Dept. of Health and Family Servs. v. Blumer*, 534 U. S. 473, 495 (2002) (citing *Harris v. McRae*, 448 U. S. 297, 308 (1980)). Subject to its basic requirements, the Medicaid Act empowers States to "select dramatically different levels of funding and coverage, alter and experiment with different financing and delivery modes, and opt to cover (or not to cover) a range of particular procedures and therapies. States have leveraged this policy discretion to generate a myriad of dramatically different Medicaid programs over the past several decades." Ruger, Of Icebergs and Glaciers, 75 Law & Contemp. Probs. 215, 233 (2012) (footnote omitted). The ACA does not jettison this approach. States, as first-line administrators, will continue to guide the distribution of substantial resources among their needy populations.

The alternative to conditional federal spending, it bears emphasis, is not state autonomy but state marginalization. In 1965, Congress elected to nationalize health coverage for seniors through Medicare. It could similarly have established Medicaid as an exclusively federal program. Instead, Congress gave the States the opportunity to partner in the program's administration and development. Absent from the nationalized model, of course, is the state-level policy discretion and experimentation that is Medicaid's hallmark; undoubtedly the interests of federalism are better served when States retain a meaningful role in the implementation of a program of such importance…

Although Congress "has no obligation to use its Spending Clause power to disburse funds to the States," *College Savings Bank v. Florida Prepaid Postsecondary Ed. Expense Bd.*, 527 U. S. 666, 686 (1999), it has provided Medicaid grants notable for their generosity and flexibility. "[S]uch funds," we once observed, "are gifts," id., at 686–687, and so they have remained through decades of expansion in their size and scope.

B

The Spending Clause authorizes Congress "to pay the Debts and provide for the . . . general Welfare of the United States." Art. I, §8, cl. 1. To ensure that federal funds granted to the States are spent "to 'provide for the . . . general Welfare' in the manner Congress intended," *ante*, at 46, Congress must of course have authority to impose limitations on the States' use of the federal dollars. This Court, time and again, has respected Congress' prescription of spending conditions, and has required States to abide by them. See, e.g., *Pennhurst*, 451 U. S., at 17 ("[O]ur cases have long recognized that Congress may fix the terms on which it shall disburse federal money to the States."). In particular, we have recognized Congress' prerogative to condition a State's receipt of Medicaid funding on compliance with the terms Congress set for participation in the program…

Congress' authority to condition the use of federal funds is not confined to spending programs as first launched. The legislature may, and often does, amend the law, imposing new conditions grant recipients henceforth must meet in order to continue receiving funds. See *infra*, at 54

(describing *Bennett v. Kentucky Dept. of Ed*., 470 U. S. 656 –660 (1985) (enforcing restriction added five years after adoption of educational program)).

Yes, there are federalism-based limits on the use of Congress' conditional spending power. In the leading decision in this area, *South Dakota v. Dole*, 483 U. S. 203 (1987), the Court identified four criteria. The conditions placed on federal grants to States must (a) promote the "general welfare," (b) "unambiguously" inform States what is demanded of them, (c) be germane "to the federal interest in particular national projects or programs," and (d) not "induce the States to engage in activities that would themselves be unconstitutional." Id., at 207–208, 210 (internal quotation marks omitted).
The Court in Dole mentioned, but did not adopt, a further limitation, one hypothetically raised a half-century earlier: In "some circumstances," Congress might be prohibited from offering a "financial inducement . . . so coercive as to pass the point at which 'pressure turns into compulsion.'" Id., at 211 (quoting *Steward Machine Co. v. Davis*, 301 U. S. 548, 590 (1937)). Prior to today's decision, however, the Court has never ruled that the terms of any grant crossed the indistinct line between temptation and coercion.

Dole involved the National Minimum Drinking Age Act, 23 U. S. C. §158, enacted in 1984. That Act directed the Secretary of Transportation to withhold 5% of the federal highway funds otherwise payable to a State if the State permitted purchase of alcoholic beverages by persons less than 21 years old. Drinking age was not within the authority of Congress to regulate, South Dakota argued, because the Twenty-First Amendment gave the States exclusive power to control the manufacture, transportation, and consumption of alcoholic beverages. The small percentage of highway-construction funds South Dakota stood to lose by adhering to 19 as the age of eligibility to purchase 3.2% beer, however, was not enough to qualify as coercion, the Court concluded.

This case does not present the concerns that led the Court in *Dole* even to consider the prospect of coercion. In Dole, the condition—set 21 as the minimum drinking age— did not tell the States how to use funds Congress provided for highway construction. Further, in view of the Twenty-First Amendment, it was an open question whether Congress could directly impose a national minimum drinking age.

The ACA, in contrast, relates solely to the federally funded Medicaid program; if States choose not to comply, Congress has not threatened to withhold funds earmarked for any other program. Nor does the ACA use Medicaid funding to induce States to take action Congress itself could not undertake. The Federal Government undoubtedly could operate its own health-care program for poor persons, just as it operates Medicare for seniors' health care. See *supra*, at 44.

That is what makes this such a simple case, and the Court's decision so unsettling. Congress, aiming to assist the needy, has appropriated federal money to subsidize state health-insurance programs that meet federal standards. The principal standard the ACA sets is that the state program cover adults earning no more than 133% of the federal poverty line. Enforcing that prescription ensures that federal funds will be spent on health care for the poor in furtherance of Congress' present perception of the general welfare…

C…

3

The Chief Justice ultimately asks whether "the financial inducement offered by Congress . . . pass[ed] the point at which pressure turns into compulsion." *Ante*, at 50 (internal quotation marks omitted). The financial inducement Congress employed here, he concludes, crosses that threshold: The threatened withholding of "existing Medicaid funds" is "a gun to the head" that forces States to acquiesce. Ante, at 50–51 (citing 42 U. S. C. §1396c).[24]
The Chief Justice sees no need to "fix the outermost line," *Steward Machine*, 301 U. S., at 591, "where persuasion gives way to coercion," ante, at 55. Neither do the joint dissenters. See post, at 36, 38. [25] Notably, the decision on which they rely, *Steward Machine*, found the statute at issue inside the line, "wherever the line may be." 301 U. S., at 591.

When future Spending Clause challenges arrive, as they likely will in the wake of today's decision, how will litigants and judges assess whether "a State has a legitimate choice whether to accept the federal conditions in exchange for federal funds"? *Ante*, at 48. Are courts to measure the number of dollars the Federal Government might withhold for noncompliance? The portion of the State's budget at stake? And which State's—or States'—budget is determinative: the lead plaintiff, all challenging States (26 in this case, many with quite different fiscal situations), or some national median? Does it matter that Florida, unlike most States, imposes no state income tax, and therefore might be able to replace foregone federal funds with new state revenue? Or that the coercion state officials in fact fear is punishment at the ballot box for turning down a politically popular federal grant?

The coercion inquiry, therefore, appears to involve political judgments that defy judicial calculation. See *Baker v. Carr*, 369 U. S. 186, 217 (1962). Even commentators sympathetic to robust enforcement of *Dole*'s limitations, see *supra*, at 46, have concluded that conceptions of "impermissible coercion" premised on States' perceived inability to decline federal funds "are just too amorphous to be judicially administrable." Baker & Berman, Getting off the Dole, 78 Ind. L. J. 459, 521, 522, n. 307 (2003) (citing, e.g., Scalia, The Rule of Law as a Law of Rules, 56 U. Chi. L. Rev. 1175 (1989)).

[24] The joint dissenters, for their part, would make this the entire inquiry. "[I]f States really have no choice other than to accept the package," they assert, "the offer is coercive." *Post*, at 35. The Chief Justice recognizes Congress' authority to construct a single federal program and "condition the receipt of funds on the States' complying with restrictions on the use of those funds." *Ante*, at 50. For the joint dissenters, however, all that matters, it appears, is whether States can resist the temptation of a given federal grant. Post, at 35. On this logic, any federal spending program, sufficiently large and well-funded, would be unconstitutional. The joint dissenters point to smaller programs States might have the will to refuse. See post, at 40–41 (elementary and secondary education). But how is a court to judge whether "only 6.6% of all state expenditures," post, at 41, is an amount States could or would do without? Speculations of this genre are characteristic of the joint dissent. See, e.g., *post*, at 35 ("it *may* be state officials who will bear the brunt of public disapproval" for joint federal-state endeavors); *ibid*., ("federal officials . . . *may* remain insulated from the electoral ramifications of their decision"); *post*, at 37 ("a heavy federal tax . . . levied to support a federal program that offers large grants to the States . . . *may*, as a practical matter, [leave States] unable to refuse to participate"); *ibid*. (withdrawal from a federal program "would *likely* force the State to impose a huge tax increase"); post, at 46 (state share of ACA expansion costs "*may* increase in the future") (all emphasis added; some internal quotation marks omitted). The joint dissenters are long on conjecture and short on real-world examples.

At bottom, my colleagues' position is that the States' reliance on federal funds limits Congress' authority to alter its spending programs. This gets things backwards: Congress, not the States, is tasked with spending federal money in service of the general welfare. And each successive Congress is empowered to appropriate funds as it sees fit. When the 110th Congress reached a conclusion about Medicaid funds that differed from its predecessors' view, it abridged no State's right to "existing," or "pre-existing," funds. But see ante, at 51–52; post, at 47–48 (joint opinion of Scalia, Kennedy, Thomas, and Alito, JJ.). For, in fact, there are no such funds. There is only money States *anticipate* receiving from future Congresses…

I would uphold the Eleventh Circuit's decision that the Medicaid expansion is within Congress' spending power…

Justice SCALIA, Justice KENNEDY, Justice THOMAS, and Justice ALITO, dissenting…

IV

The Medicaid Expansion

We now consider respondents' second challenge to the constitutionality of the ACA, namely, that the Act's dramatic expansion of the Medicaid program exceeds Congress' power to attach conditions to federal grants to the States.

The ACA does not legally compel the States to participate in the expanded Medicaid program, but the Act authorizes a severe sanction for any State that refuses to go along: termination of all the State's Medicaid funding. For the average State, the annual federal Medicaid subsidy is equal to more than one-fifth of the State's expenditures. A State forced out of the program would not only lose this huge sum but would almost certainly find it necessary to increase its own health-care expenditures substantially, requiring either a drastic reduction in funding for other programs or a large increase in state taxes. And these new taxes would come on top of the federal taxes already paid by the State's citizens to fund the Medicaid program in other States.

The States challenging the constitutionality of the ACA's Medicaid Expansion contend that, for these practical reasons, the Act really does not give them any choice at all. As proof of this, they point to the goal and the structure of the ACA. The goal of the Act is to provide near-universal medical coverage, 42 U. S. C. §18091(2)(D), and without 100% State participation in the Medicaid program, attainment of this goal would be thwarted…In light of the ACA's goal of near-universal coverage, petitioners argue, if Congress had thought that anything less than 100% state participation was a realistic possibility, Congress would have provided a backup scheme. But no such scheme is to be found anywhere in the more than 900 pages of the Act. This shows, they maintain, that Congress was certain that the ACA's Medicaid offer was one that no State could refuse.

In response to this argument, the Government contends that any congressional assumption about uniform state participation was based on the simple fact that the offer of federal funds associated with the expanded coverage is such a generous gift that no State would want to turn it down.

To evaluate these arguments, we consider the extent of the Federal Government's power to spend money and to attach conditions to money granted to the States…

C

[O]ur cases have long held that the power to attach conditions to grants to the States has limits…Where all Congress has done is to "encourag[e] state regulation rather than compe[l] it, state governments remain responsive to the local electorate's preferences; state officials remain accountable to the people. [But] where the Federal Government compels States to regulate, the accountability of both state and federal officials is diminished." *New York*, *supra*, at 168.

Amici who support the Government argue that forcing state employees to implement a federal program is more respectful of federalism than using federal workers to implement that program. See, e.g., Brief for Service Employees International Union et al. as *Amici Curiae* in No. 11-398, pp. 25-26. They note that Congress, instead of expanding Medicaid, could have established an entirely federal program to provide coverage for the same group of people. By choosing to structure Medicaid as a cooperative federal-state program, they contend, Congress allows for more state control. *Ibid*.

This argument reflects a view of federalism that our cases have rejected—and with good reason. When Congress compels the States to do its bidding, it blurs the lines of political accountability… If a program is popular, state officials may claim credit; if it is unpopular, they may protest that they were merely responding to a federal directive.

Once it is recognized that spending-power legislation cannot coerce state participation, two questions remain: (1) What is the meaning of coercion in this context? (2) Is the ACA's expanded Medicaid coverage coercive? We now turn to those questions.

D

1

The answer to the first of these questions—the meaning of coercion in the present context—is straightforward. As we have explained, the legitimacy of attaching conditions to federal grants to the States depends on the voluntariness of the States' choice to accept or decline the offered package. Therefore, if States really have no choice other than to accept the package, the offer is coercive, and the conditions cannot be sustained under the spending power. And as our decision in *South Dakota v. Dole* makes clear, theoretical voluntariness is not enough.

In *South Dakota v. Dole*, we considered whether the spending power permitted Congress to condition 5% of the State's federal highway funds on the State's adoption of a minimum drinking age of 21 years. South Dakota argued that the program was impermissibly coercive, but we disagreed, reasoning that "Congress ha[d] directed only that a State desiring to establish a minimum drinking age lower than 21 lose a relatively small percentage of certain federal highway funds." 483 U. S., at 211. Because "all South Dakota would lose if she adhere[d] to her chosen course as to a suitable minimum drinking age [was] 5% of the funds otherwise obtainable under specified highway grant programs," we found that "Congress ha[d] offered relatively mild encouragement to the States to enact higher minimum drinking ages than they would otherwise choose." *Ibid*. Thus, the decision whether to comply with the federal condition "remain[ed] the prerogative of the States not merely in theory but in fact," and so the program at issue did not exceed Congress' power. *Id*., at 211–212 (emphasis added).

The question whether a law enacted under the spending power is coercive in fact will sometimes be difficult, but where Congress has plainly "crossed the line distinguishing encouragement from coercion," *New York*, supra, at 175, a federal program that coopts the States' political processes must be declared unconstitutional…

2

The Federal Government's argument in this case at best pays lip service to the anticoercion principle. The Federal Government suggests that it is sufficient if States are "free, *as a matter of law*, to turn down" federal funds. Brief for Respondents in No. 11–400, p. 17 (emphasis added); see also id., at 25. According to the Federal Government, neither the amount of the offered federal funds nor the amount of the federal taxes extracted from the taxpayers of a State to pay for the program in question is relevant in determining whether there is impermissible coercion. *Id*., at 41–46.

This argument ignores reality. When a heavy federal tax is levied to support a federal program that offers large grants to the States, States may, as a practical matter, be unable to refuse to participate in the federal program and to substitute a state alternative. Even if a State believes that the federal program is ineffective and inefficient, withdrawal would likely force the State to impose a huge tax increase on its residents, and this new state tax would come on top of the federal taxes already paid by residents to support subsidies to participating States.

Acceptance of the Federal Government's interpretation of the anticoercion rule would permit Congress to dictate policy in areas traditionally governed primarily at the state or local level. Suppose, for example, that Congress enacted legislation offering each State a grant equal to the State's entire annual expenditures for primary and secondary education. Suppose also that this funding came with conditions governing such things as school curriculum, the hiring and tenure of teachers, the drawing of school districts, the length and hours of the school day, the school calendar, a dress code for students, and rules for student discipline. As a matter of law, a State could turn down that offer, but if it did so, its residents would not only be required to pay the federal taxes needed to support this expensive new program, but they would also be forced to pay an equivalent amount in state taxes. And if the State gave in to the federal law, the State and its subdivisions would surrender their traditional authority in the field of education. Asked at oral argument whether such a law would be allowed under the spending power, the Solicitor General responded that it would. Tr. of Oral Arg. 44–45 (Mar. 28, 2012).

E

Whether federal spending legislation crosses the line from enticement to coercion is often difficult to determine, and courts should not conclude that legislation is unconstitutional on this ground unless the coercive nature of an offer is unmistakably clear. In this case, however, there can be no doubt. In structuring the ACA, Congress unambiguously signaled its belief that every State would have no real choice but to go along with the Medicaid Expansion. If the anticoercion rule does not apply in this case, then there is no such rule.

1

The dimensions of the Medicaid program lend strong support to the petitioner States' argument that refusing to accede to the conditions set out in the ACA is not a realistic option. Before the ACA's enactment, Medicaid funded medical care for pregnant women, families with dependents, children, the blind, the elderly, and the disabled. See 42 U. S. C. §1396a(a)(10) (2006 ed., Supp.

IV). The ACA greatly expands the program's reach, making new funds available to States that agree to extend coverage to all individuals who are under age 65 and have incomes below 133% of the federal poverty line. See §1396a(a) (10)(A)(i)(VIII). Any State that refuses to expand its Medicaid programs in this way is threatened with a severe sanction: the loss of all its federal Medicaid funds. See §1396c (2006 ed.).

Medicaid has long been the largest federal program of grants to the States. See Brief for Respondents in No. 11–400, at 37. In 2010, the Federal Government directed more than $552 billion in federal funds to the States. See Nat. Assn. of State Budget Officers, 2010 State Expenditure Report: Examining Fiscal 2009–2011 State Spending, p. 7 (2011) (NASBO Report). Of this, more than $233 billion went to pre-expansion Medicaid. See id., at 47. This amount equals nearly 22% of all state expenditures combined. See *id*., at 7.

The States devote a larger percentage of their budgets to Medicaid than to any other item. *Id*., at 5. Federal funds account for anywhere from 50% to 83% of each State's total Medicaid expenditures, see §1396d(b) (2006 ed., Supp. IV); most States receive more than $1 billion in federal Medicaid funding; and a quarter receive more than $5 billion, NASBO Report 47. These federal dollars total nearly two thirds—64.6%—of all Medicaid expenditures nationwide. *Id*., at 46.

The Court of Appeals concluded that the States failed to establish coercion in this case in part because the "states have the power to tax and raise revenue, and therefore can create and fund programs of their own if they do not like Congress's terms." 648 F. 3d 1235, 1268 (CA11 2011); see Brief for Sen. Harry Reid et al. as *Amici Curiae* in No. 11–400, p. 21 ("States may always choose to decrease expenditures on other programs or to raise revenues"). But the sheer size of this federal spending program in relation to state expenditures means that a State would be very hard pressed to compensate for the loss of federal funds by cutting other spending or raising additional revenue. Arizona, for example, commits 12% of its state expenditures to Medicaid, and relies on the Federal Government to provide the rest: $5.6 billion, equaling roughly one-third of Arizona's annual state expenditures of $17 billion. See NASBO Report 7, 47. Therefore, if Arizona lost federal Medicaid funding, the State would have to commit an additional 33% of all its state expenditures to fund an equivalent state program along the lines of pre-expansion Medicaid. This means that the State would have to allocate 45% of its annual expenditures for that one purpose. See *ibid*.

The States are far less reliant on federal funding for any other program. After Medicaid, the next biggest federal funding item is aid to support elementary and secondary education, which amounts to 12.8% of total federal outlays to the States, see *id*., at 7, 16, and equals only 6.6% of all state expenditures combined. See *ibid*. In Arizona, for example, although federal Medicaid expenditures are equal to 33% of all state expenditures, federal education funds amount to only 9.8% of all state expenditures. See *ibid*. And even in States with less than average federal Medicaid funding, that funding is at least twice the size of federal education funding as a percentage of state expenditures. *Id*., at 7, 16, 47.

A State forced out of the Medicaid program would face burdens in addition to the loss of federal Medicaid funding. For example, a nonparticipating State might be found to be ineligible for other

major federal funding sources, such as Temporary Assistance for Needy Families (TANF), which is premised on the expectation that States will participate in Medicaid. See 42 U. S. C. §602(a)(3) (2006 ed.) (requiring that certain beneficiaries of TANF funds be "eligible for medical assistance under the State['s Medicaid] plan"). And withdrawal or expulsion from the Medicaid program would not relieve a State's hospitals of their obligation under federal law to provide care for patients who are unable to pay for medical services…If providers could not look to the Medicaid program to pay for this care, they would find it exceedingly difficult to comply with federal law unless they were given substantial state support. See, e.g., Brief for Economists as *Amici Curiae* in No 11–400, p. 11.

For these reasons, the offer that the ACA makes to the States—go along with a dramatic expansion of Medicaid or potentially lose all federal Medicaid funding—is quite unlike anything that we have seen in a prior spending-power case. In *South Dakota v. Dole*, the total amount that the States would have lost if every single State had refused to comply with the 21-year-old drinking age was approximately $614.7 million—or about 0.19% of all state expenditures combined…See *ibid*. Under the ACA, by contrast, the Federal Government has threatened to withhold 42.3% of all federal outlays to the states, or approximately $233 billion. See NASBO Report 7, 10, 47. South Dakota stands to lose federal funding equaling 28.9% of its annual state expenditures. See id., at 7, 47. Withholding $614.7 million, equaling only 0.19% of all state expenditures combined, is aptly characterized as "relatively mild encouragement," but threatening to withhold $233 billion, equaling 21.86% of all state expenditures combined, is a different matter.

2

What the statistics suggest is confirmed by the goal and structure of the ACA. In crafting the ACA, Congress clearly expressed its informed view that no State could possibly refuse the offer that the ACA extends.

The stated goal of the ACA is near-universal health care coverage. To achieve this goal, the ACA mandates that every person obtain a minimum level of coverage. It attempts to reach this goal in several different ways. The guaranteed issue and community-rating provisions are designed to make qualifying insurance available and affordable for persons with medical conditions that may require expensive care. Other ACA provisions seek to make such policies more affordable for people of modest means. Finally, for low-income individuals who are simply not able to obtain insurance, Congress expanded Medicaid, transforming it from a program covering only members of a limited list of vulnerable groups into a program that provides at least the requisite minimum level of coverage for the poor. See 42 U. S. C. §§1396a(a)(10)(A)(i)(VIII) (2006 ed., Supp. IV), 1396u–7(a), (b)(5), 18022(a). This design was intended to provide at least a specified minimum level of coverage for all Americans, but the achievement of that goal obviously depends on participation by every single State. If any State—not to mention all of the 26 States that brought this suit—chose to decline the federal offer, there would be a gaping hole in the ACA's coverage…

If Congress had thought that States might actually refuse to go along with the expansion of Medicaid, Congress would surely have devised a backup scheme so that the most vulnerable

groups in our society, those previously eligible for Medicaid, would not be left out in the cold. But nowhere in the over 900-page Act is such a scheme to be found…

These features of the ACA convey an unmistakable message: Congress never dreamed that any State would refuse to go along with the expansion of Medicaid. Congress well understood that refusal was not a practical option.

The Federal Government does not dispute the inference that Congress anticipated 100% state participation, but it argues that this assumption was based on the fact that ACA's offer was an "exceedingly generous" gift. Brief for Respondents in No. 11–400, at 50. As the Federal Government sees things, Congress is like the generous benefactor who offers $1 million with few strings attached to 50 randomly selected individuals. Just as this benefactor might assume that all of these 50 individuals would snap up his offer, so Congress assumed that every State would gratefully accept the federal funds (and conditions) to go with the expansion of Medicaid.

This characterization of the ACA's offer raises obvious questions. If that offer is "exceedingly generous," as the Federal Government maintains, why have more than half the States brought this lawsuit, contending that the offer is coercive? And why did Congress find it necessary to threaten that any State refusing to accept this "exceedingly generous" gift would risk losing all Medicaid funds? Congress could have made just the new funding provided under the ACA contingent on acceptance of the terms of the Medicaid Expansion. Congress took such an approach in some earlier amendments to Medicaid, separating new coverage requirements and funding from the rest of the program so that only new funding was conditioned on new eligibility extensions. See, e.g., Social Security Amendments of 1972, 86 Stat. 1465.

Congress' decision to do otherwise here reflects its understanding that the ACA offer is not an "exceedingly generous" gift that no State in its right mind would decline. Instead, acceptance of the offer will impose very substantial costs on participating States. It is true that the Federal Government will bear most of the initial costs associated with the Medicaid Expansion, first paying 100% of the costs of covering newly eligible individuals between 2014 and 2016. 42 U. S. C. §1396d(y). But that is just part of the picture. Participating States will be forced to shoulder substantial costs as well, because after 2019 the Federal Government will cover only 90% of the costs associated with the Expansion, see *ibid*., with state spending projected to increase by at least $20 billion by 2020 as a consequence…After 2019, state spending is expected to increase at a faster rate; the CBO estimates new state spending at $60 billion through 2021. Statement of Douglas W. Elmendorf, supra, at 24. And these costs may increase in the future because of the very real possibility that the Federal Government will change funding terms and reduce the percentage of funds it will cover. This would leave the States to bear an increasingly large percentage of the bill. See Tr. of Oral Arg. 74–76 (Mar. 28, 2012). Finally, after 2015, the States will have to pick up the tab for 50% of all administrative costs associated with implementing the new program, see §§1396b(a)(2)–(5), (7) (2006 ed., Supp. IV), costs that could approach $12 billion between fiscal years 2014 and 2020…

In sum, it is perfectly clear from the goal and structure of the ACA that the offer of the Medicaid Expansion was one that Congress understood no State could refuse. The Medicaid Expansion therefore exceeds Congress' spending power and cannot be implemented…