The Affordable Care Act Cases[*]
(11-393, 11-398, 11-400) (2012)

NATIONAL FEDERATION OF INDEPENDENTBUSINESS, ET AL., PETITIONERS
v.
KATHLEEN SEBELIUS, SEC. OF HEALTHAND HUMAN SERVICES, ET AL.

I

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

II

Before turning to the merits, we need to be sure we have the authority to do so. The Anti-Injunction Act provides that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the per-son against whom such tax was assessed." 26 U. S. C. §7421(a). This statute protects the Government's ability to collect a consistent stream of revenue, by barring litigation to enjoin or otherwise obstruct the collection of taxes. Because of the Anti-Injunction Act, taxes can ordinarily be challenged only after they are paid, by suing for a refund. See *Enochs* v. *Williams Packing & Nav. Co.*, 370 U. S. 1, 7–8 (1962).

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

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

Amicus argues that even though Congress did not label the shared responsibility payment a tax, we should treat it as such under the Anti-Injunction Act because it functions like a tax.

The Anti-Injunction Act and the Affordable Care Act, however, are creatures of Congress's own creation. How they relate to each other is up to Congress, and the best evidence of Congress's intent is the statutory text. We have thus applied the Anti-Injunction Act to statutorily described "taxes" even where that label was inaccurate. See *Bailey* v. *George*, 259 U. S. 16 (1922) (Anti- Injunction Act applies to "Child Labor Tax" struck down as exceeding Congress's taxing power in *Drexel Furniture*). […]

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[*]Note: This majority opinion has been edited from the original text by Travis Braidwood for classroom use. The full case text can be found here: < http://www.supremecourt.gov/opinions/11pdf/11-393c3a2.pdf >

The Government disagrees. It argues that §5000A(g)(1) does not direct courts to apply the Anti-Injunction Act, because §5000A(g) is a directive only to the Secretary of the Treasury to use the same "'methodology and procedures'" to collect the penalty that he uses to collect taxes. Brief for United States 32–33 (quoting *Seven-Sky*, 661 F. 3d, at 11). […]

In light of the Code's consistent distinction between the terms "tax" and "assessable penalty," we must accept the Government's interpretation: §6201(a) instructs the Secretary that his authority to assess taxes includes the authority to assess penalties, but it does not equate assessable penalties to taxes for other purposes.

The Affordable Care Act does not require that the penalty for failing to comply with the individual mandate be treated as a tax for purposes of the Anti-Injunction Act. The Anti -Injunction Act therefore does not apply to this suit, and we may proceed to the merits.

III

The Government advances two theories for the proposition that Congress had constitutional authority to enact the individual mandate. First, the Government argues that Congress had the power to enact the mandate under the Commerce Clause. Under that theory, Congress may order individuals to buy health insurance because the failure to do so affects interstate commerce, and could undercut the Affordable Care Act's other reforms. Second, the Government argues that if the commerce power does not support the mandate, we should nonetheless uphold it as an exercise of Congress's power to tax. According to the Government, even if Congress lacks the power to direct individuals to buy insurance, the only effect of the individual mandate is to raise taxes on those who do not do so, and thus the law may be upheld as a tax.

A

The Government's first argument is that the individual mandate is a valid exercise of Congress's power under the Commerce Clause and the Necessary and Proper Clause. According to the Government, the health care market is characterized by a significant cost-shifting problem. Every-one will eventually need health care at a time and to an extent they cannot predict, but if they do not have insurance, they often will not be able to pay for it. Because state and federal laws nonetheless require hospitals to provide a certain degree of care to individuals without regard to their ability to pay, see, *e.g.,* 42 U. S. C. §1395dd; Fla. Stat. Ann. §395.1041, hospitals end up receiving compensation for only a portion of the services they pro-vide. To recoup the losses, hospitals pass on the cost to insurers through higher rates, and insurers, in turn, pass on the cost to policy holders in the form of higher premiums. Congress estimated that the cost of uncompensated care raises family health insurance premiums, on average, by over $1,000 per year. 42 U. S. C. §18091(2)(F).

In the Affordable Care Act, Congress addressed the problem of those who cannot obtain insurance coverage because of preexisting conditions or other health issues. It did so through the Act's "guaranteed-issue" and "community-rating" provisions. These provisions together prohibit insurance companies from denying coverage to those with such conditions or charging unhealthy individuals higher premiums than healthy individuals. See §§300gg, 300gg–1, 300gg–3, 300gg–4.

The Government contends that the individual mandate is within Congress's power because the failure to purchase insurance "has a substantial and deleterious effect on interstate commerce" by creating the cost-shifting problem. Brief for United States 34. The path of our Commerce Clause decisions has not always run smooth, see *United States* v. *Lopez*, 514 U. S. 549, 552–559 (1995), but it is now well established that Congress has broad authority under the Clause. We have recognized, for example, that "[t]he power of Congress over interstate commerce is not confined to the regulation of commerce among the states," but extends to activities that "have a substantial effect on interstate commerce." *United States* v. *Darby*, 312 U. S. 100, 118–119 (1941). Congress's power, more-over, is not limited to regulation of an activity that by itself substantially affects interstate commerce, but also extends to activities that do so only when aggregated with similar activities of others. See *Wickard*, 317 U. S., at 127–128. […]The Constitution grants Congress the power to "*regulate* Commerce." Art. I, §8, cl. 3 (emphasis added). The power to *regulate* commerce presupposes the existence of commercial activity to be regulated. If the power to "regulate" something included the power to create it, many of the provisions in the Constitution would be superfluous. […]

Our precedent also reflects this understanding. As expansive as our cases construing the scope of the commerce power have been, they all have one thing in com-mon: They uniformly describe the power as reaching "activity." […]

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

Wickard has long been regarded as "perhaps the most far reaching example of Commerce Clause authority over intrastate activity," *Lopez*, 514 U. S., at 560, but the Government's theory in this case would go much further. […] The farmer in *Wickard* was at least actively engaged in the production of wheat, and the Government could regulate that activity because of its effect on commerce. The Government's theory here would effectively override that limitation, by establishing that individuals may be regulated under the Commerce Clause whenever enough of them are not doing something the Government would have them do. […]

To consider a different example in the health care market, many Americans do not eat a balanced diet. […] Under the Government's theory, Congress could address the diet problem by ordering everyone to buy vegetables. […]

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

That is not the country the Framers of our Constitution envisioned. […] The Government's theory would erode those limits, permitting Congress to reach beyond the natural extent of its authority, "everywhere extending the sphere of its activity and drawing all power into its impetuous vortex." The Federalist No. 48 […]

The Government sees things differently. It argues that because sickness and injury are unpredictable but unavoidable[.]

The Government repeats the phrase "active in the market for health care" throughout its brief, see *id.,* at 7, 18, 34, 50, but that concept has no constitutional significance. An individual who bought a car two years ago and may buy another in the future is not "active in the car market" in any pertinent sense. The phrase "active in the market" cannot obscure the fact that most of those regulated by the individual mandate are not currently engaged in any commercial activity involving health care, and that fact is fatal to the Government's effort to "regulate the uninsured as a class." *Id.*, at 42. Our precedents recognize Congress's power to regulate "class[es] of *activities*," *Gonzales* v. *Raich*, 545 U. S. 1, 17 (2005) (emphasis added), not classes of *individuals*, apart from any activity in which they are engaged, see, *e.g., Perez*, 402 U. S., at 153 ("Petitioner is clearly a member of the class which engages in 'extortionate credit transactions' . . ." (emphasis deleted)).

The individual mandate's regulation of the uninsured as a class is, in fact, particularly divorced from any link to existing commercial activity. The mandate primarily affects healthy, often young adults who are less likely to need significant health care and have other priorities for spending their money. It is precisely because these individuals, as an actuarial class, incur relatively low health care costs that the mandate helps counter the effect of forcing insurance companies to cover others who impose greater costs than their premiums are allowed to reflect. See 42 U. S. C. §18091(2)(I) (recognizing that the mandate would "broaden the health insurance risk pool to include healthy individuals, which will lower health insurance premiums"). If the individual mandate is targeted at a class, it is a class whose commercial inactivity rather than activity is its defining feature. […]

Asserting that "[t]here is no temporal limitation in the Commerce Clause," the Government argues that because "[e]veryone subject to this regulation is in or will be in the health care market," they can be "regulated in advance." Tr. of Oral Arg. 109 (Mar. 27, 2012).

The proposition that Congress may dictate the conduct of an individual today because of prophesied future activity finds no support in our precedent. We have said that Congress can anticipate the *effects* on commerce of an eco-nomic activity. See, *e.g., Consolidated Edison Co.* v. *NLRB*, 305 U. S. 197 (1938) (regulating the labor practices of utility companies); *Heart of Atlanta Motel, Inc.* v. *United States*, 379 U. S. 241 (1964) (prohibiting discrimination by hotel operators); *Katzenbach* v. *McClung*, 379 U. S. 294 (1964) (prohibiting discrimination by restaurant owners). But we have never permitted Congress to anticipate that activity itself in order to regulate individuals not currently engaged in commerce. Each one of our cases, including those cited by JUSTICE GINSBURG, *post*, at 20–21, involved preexisting economic activity. See, *e.g., Wickard*, 317 U. S., at 127–129 (producing wheat); *Raich*, *supra*, at 25 (growing marijuana). […]

Everyone will likely participate in the markets for food, clothing, transportation, shelter, or energy; that does not authorize Congress to direct them to purchase particular products in those or other markets today. […]

The Government says that health insurance and health care financing are "inherently integrated." […] The individual mandate forces individuals into commerce precisely because they elected to refrain from commercial activity. Such a law cannot be sus-tained under a clause authorizing Congress to "regulate Commerce."

2

The Government next contends that Congress has the power under the Necessary and Proper Clause to enact the individual mandate because the mandate is an "integral part of a comprehensive scheme of economic regulation"—the guaranteed-issue and community-rating insurance reforms. […]

As our jurisprudence under the Necessary and Proper Clause has developed, we have been very deferential to Congress's determination that a regulation is "necessary." We have thus upheld laws that are "'convenient, or use-ful' or 'conducive' to the authority's 'beneficial exercise.'" *Comstock*, 560 U. S., at ___ (slip op., at 5) (quoting *McCul-loch*, *supra*, at 413, 418). But we have also carried out our responsibility to declare unconstitutional those laws that undermine the structure of government established by the Constitution. […]

Applying these principles, the individual mandate can-not be sustained under the Necessary and Proper Clause as an essential component of the insurance reforms. […]

B

That is not the end of the matter. Because the Com-merce Clause does not support the individual mandate, it is necessary to turn to the Government's second argument: that the mandate may be upheld as within Congress's enumerated power to "lay and collect Taxes." Art. I, §8, cl. 1.

The Government's tax power argument asks us to view the statute differently than we did in considering its commerce power theory. In making its Commerce Clause argument, the Government defended the mandate as a regulation requiring individuals to purchase health insurance. The Government does not claim that the taxing power allows Congress to issue such a command. Instead, the Government asks us to read the mandate not as order-ing individuals to buy insurance, but rather as imposing a tax on those who do not buy that product. […]

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

C

The exaction the Affordable Care Act imposes on those without health insurance looks like a tax in many respects. […] The requirement to pay is found in the Internal Revenue Code and enforced by the IRS, which—as we previously explained—must assess and collect it "in the same manner as taxes." *Supra*, at 13–14. This process yields the essential feature of any tax: it produces at least some revenue for the Government. *United States* v. *Kahriger*, 345 U. S. 22, 28, n. 4 (1953). Indeed, the payment is expected to raise about $4 billion per year by 2017. […]

It is of course true that the Act describes the payment as a "penalty," not a "tax." But while that label is fatal to the application of the Anti-Injunction Act, *supra*, at 12–13, it does not determine whether the payment may be viewed as an exercise of Congress's taxing power. It is up to Congress whether to apply the Anti-Injunction Act to any particular statute, so it makes sense to be guided by Congress's choice of label on that question. That choice does not, however, control whether an exaction is within Congress's constitutional power to tax.

Our precedent reflects this: In 1922, we decided two challenges to the "Child Labor Tax" on the same day. In the first, we held that a suit to enjoin collection of the so-called tax was barred by the Anti-Injunction Act. *George*, 259 U. S., at 20. Congress knew that suits to obstruct taxes had to await payment under the Anti-Injunction Act; Congress called the child labor tax a tax; Congress therefore intended the Anti- Injunction Act to apply. In the second case, however, we held that the same exaction, although labeled a tax, was not in fact authorized by Congress's taxing power. *Drexel Furniture*, 259 U. S., at 38. That constitutional question was not controlled by Congress's choice of label.

[…] We thus ask whether the shared responsibility payment falls within Congress's taxing power, "[d]isregarding the designation of the exaction, and viewing its substance and application." *United States* v. *Constantine*, 296 U. S. 287, 294 (1935); cf. *Quill Corp.* v. *North Dakota*, 504 U. S. 298, 310 (1992) ("[M]agic words or labels" should not "disable an otherwise constitutional levy" (internal quotation marks omitted)); *Nelson* v. *Sears*, *Roebuck & Co.*, 312 U. S. 359, 363 (1941) ("In passing on the constitutionality of a tax law, we are concerned only with its practical operation, not its definition or the precise form of descriptive words which may be applied to it" (internal quotation marks omitted)); *United States* v. *Sotelo*, 436 U. S. 268, 275 (1978) ("That the funds due are referred to as a 'penalty'…does not alter their essential character as taxes").

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

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

In distinguishing penalties from taxes, this Court has explained that "if the concept of penalty means anything, it means punishment for an unlawful act or omission." […]

Indeed, it is estimated that four million people each year will choose to pay the IRS rather than buy insurance. […] Congress did not think it was creating four million outlaws. It suggests instead that the shared responsibility payment merely imposes a tax citizens may lawfully choose to pay in lieu of buying health insurance. […]

The joint dissenters argue that we cannot uphold §5000A as a tax because Congress did not "frame" it as such. […] That conclusion should not change simply because Congress used the word "penalty" to describe the pay-ment. Interpreting such a law to be a tax would hardly "[i]mpos[e] a tax through judicial legislation." *Post,* at 25. Rather, it would give practical effect to the Legislature's enactment.[…]

Even if the taxing power enables Congress to impose a tax on not obtaining health insurance, any tax must still comply with other requirements in the Constitution. Plaintiffs argue that the shared responsibility payment does not do so, citing Article I, §9, clause 4. That clause provides: "No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken." This requirement means that any "direct Tax" must be apportioned so that each State pays in proportion to its population. According to the plaintiffs, if the individual mandate imposes a tax, it is a direct tax, and it is unconstitutional because Congress made no effort to apportion it among the States.

Even when the Direct Tax Clause was written it was unclear what else, other than a capitation (also known as a "head tax" or a "poll tax"), might be a direct tax. See *Springer* v. *United States*, 102 U. S. 586, 596–598 (1881). Soon after the framing, Congress passed a tax on owner-ship of carriages, over James Madison's objection that it was an unapportioned direct tax. *Id.,* at 597. This Court upheld the tax, in part reasoning that apportioning such a tax would make little sense, because it would have re-quired taxing carriage owners at dramatically different rates depending on how many carriages were in their home State. See *Hylton* v. *United States*, 3 Dall. 171, 174 (1796) (opinion of Chase, J.). The Court was unanimous, and those Justices who wrote opinions either directly asserted or strongly suggested that only two forms of taxation were direct: capitations and land taxes. See *id.*, at 175; *id.* , at 177 (opinion of Paterson, J.); *id.*, at 183 (opinion of Iredell, J.). […]

A tax on going without health insurance does not fall within any recognized category of direct tax. It is not a capitation. Capitations are taxes paid by every person, "without regard to property, profession, or *any other circumstance*." *Hylton*. […] The payment is also plainly not a tax on the ownership of land or personal property. The shared responsibility payment is thus not a direct tax that must be apportioned among the several States. […]

If it is troubling to interpret the Commerce Clause as authorizing Congress to regulate those who abstain from commerce, perhaps it should be similarly troubling to permit Congress to impose a tax for not doing something.

Three considerations allay this concern. First, and most importantly, it is abundantly clear the Constitution does not guarantee that individuals may avoid taxation through inactivity. […]

Second, Congress's ability to use its taxing power to influence conduct is not without limits. A few of our cases policed these limits aggressively, invalidating punitive exactions obviously designed to regulate behavior other-wise regarded at the time as beyond federal authority. See, *e.g.*, *United States* v. *Butler*, 297 U. S. 1 (1936); *Drexel Furniture*, 259 U. S. 20. […]

Third, although the breadth of Congress's power to tax is greater than its power to regulate commerce, the taxing power does not give Congress the same degree of control over individual behavior […]

By contrast, Congress's authority under the taxing power is limited to requiring an individual to pay money into the Federal Treasury, no more. If a tax is properly paid, the Government has no power to compel or punish individuals subject to it. […]But imposition of a tax nonetheless leaves an individual with a lawful choice to do or not do a certain act, so long as he is willing to pay a tax levied on that choice.[1111]

The Affordable Care Act's requirement that certain individuals pay a financial penalty for not obtaining health insurance may reasonably be characterized as a tax. Be-cause the Constitution permits such a tax, it is not our role to forbid it, or to pass upon its wisdom or fairness.

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.[…]

The Medicaid provisions of the Affordable Care Act, in contrast, require States to expand their Medicaid pro-grams by 2014 to cover *all* individuals under the age of 65

[11] Of course, individuals do not have a lawful choice not to pay a tax due, and may sometimes face prosecution for failing to do so (although not for declining to make the shared responsibility payment, see 26 U. S. C. §5000A(g)(2)). But that does not show that the tax restricts the lawful choice whether to undertake or forgo the activity on which the tax is predicated. Those subject to the individual mandate may lawfully forgo health insurance and pay higher taxes, or buy health insurance and pay lower taxes. The only thing they may not lawfully do is not buy health insurance and not pay the resulting tax.

with incomes below 133 percent of the federal poverty line. […]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 de-creases, to a minimum of 90 percent. *Ibid.* In light of the expansion in coverage mandated by the Act, the Federal Government estimates that its Medicaid spending will in-crease by approximately $100 billion per year, nearly 40 percent above current levels.

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. […]

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)). […]

That insight has led this Court to strike down fed-eral legislation that commandeers a State's legislative or administrative apparatus for federal purposes. See, *e.g., Printz*, 521 U. S., at 933. […]

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. […]

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[..]"

Given the nature of the threat and the programs at issue here, we must agree. […]
We [ask] 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). […]

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. […]

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

[…]

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. […] In light of the Court's holding, the Secretary cannot apply §1396c to withdraw existing Medicaid funds for failure to comply with the requirements set out in the expansion.

That fully remedies the constitutional violation we have identified. The chapter of the United States Code that contains §1396c includes a severability clause confirming that we need go no further. That clause specifies that "[i]f any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, and the application of such provision to other persons or circumstances shall not be affected thereby." §1303. Today's holding does not affect the continued application of §1396c to the existing Medicaid program. Nor does it affect the Secretary's ability to withdraw funds pro-vided under the Affordable Care Act if a State that has chosen to participate in the expansion fails to comply with the requirements of that Act.[…]

We are confident that Congress would have wanted to preserve the rest of the Act. It is fair to say that Congress assumed that every State would participate in the Medicaid expansion, given that States had no real choice but to do so. The States contend that Congress enacted the rest of the Act with such full participation in mind[.] We disagree. The Court today limits the financial pres-sure the Secretary may apply to induce States to accept the terms of the Medicaid expansion. As a practical matter, that means States may now choose to reject the expansion; that is the whole point. […]

* * *

The Affordable Care Act is constitutional in part and unconstitutional in part. […]

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 re-served 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.