No. 11-400

IN THE

Supreme Court of the United States

STATE OF FLORIDA, *et al.*,
Petitioners,
v.
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF OF SERVICE EMPLOYEES INTERNATIONAL UNION AND CHANGE TO WIN AS *AMICI CURIAE* SUPPORTING RESPONDENTS AND SUGGESTING AFFIRMANCE ON THE MEDICAID ISSUE

JUDITH A. SCOTT
WALTER KAMIAT
MARK SCHNEIDER
Service Employees International Union
1800 Massachusetts Ave., N.W.
Washington, D.C. 20036
Tel: (202) 730-7455

Counsel for Amicus Curiae *Service Employees International Union*

STEPHEN P. BERZON
Counsel of Record
SCOTT A. KRONLAND
MATTHEW J. MURRAY
Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, CA 94108
Tel: (415) 421-7151
sberzon@altshulerberzon.com
Counsel for Amici Curiae *Service Employees International Union and Change to Win*

[Additional Counsel on Inside Cover]

February 17, 2012

Peake DeLancey Printers, LLC - (301) 341-4600 - Cheverly MD

ADDITIONAL COUNSEL FOR *AMICI CURIAE*

PATRICK J. SZYMANSKI
Change to Win
1900 L Street, N.W., Suite 900
Washington, D.C. 20036
Tel: (202) 721-6035
Counsel for Amicus Curiae *Change to Win*

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES Page

CONSTITUTION AND STATUTES

MISCELLANEOUS

INTEREST OF *AMICI CURIAE*

Amicus curiae Service Employees International Union ("SEIU") is the nation's largest healthcare union, with more than half its 2.1 million members in the healthcare field, many of whom provide care under the federal Medicaid program.

Amicus curiae Change to Win is a federation of four labor unions — the International Brotherhood of Teamsters, United Farm Workers of America, United Food and Commercial Workers International Union, and SEIU — which collectively represent 5.5 million working men and women. Change to Win and SEIU are committed to achieving affordable healthcare for all workers and their families.[1]

SUMMARY OF ARGUMENT

Petitioners do not question the constitutionality of the existing Medicaid conditional spending program. They challenge only its expansion.[2] Yet they fail to identify any constitutionally relevant and judicially manageable distinction between the pre-existing federal spending program they desire to continue and the expanded program they challenge.

---

[1] No counsel for a party authored this brief in whole or in part, and no person other than *amici* or their counsel made a monetary contribution to the preparation or submission of this brief. The parties have filed letters of consent with the Clerk of the Court.

[2] The Medicaid expansion comprises portions of Title II of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (hereinafter "ACA").

1. Petitioners' challenge does not present the type of potential concern with impermissible "coercion" discussed in dicta in *South Dakota v Dole*, 483 U.S. 203 (1987), or the type at issue in *New York v. United States*, 505 U.S. 144 (1992).

In *Dole*, the Court discussed in dicta the possibility that in some circumstances Congressional actions associated with a spending power program *might* be limited by a concern that Congress not impermissibly "coerce" the States. The potential concern with coercion at issue there, however, was not with spending conditions that, like those at issue here, simply describe the types of programs that federal funds may be used to support. Rather, the concern in *Dole* was with Congress' conditioning receipt of federal funds on a requirement that the States act *outside the scope* of the federally-subsidized program itself. Nonetheless, no federal court has ever struck down a federal spending condition on such grounds. The Court need not decide here whether there might be some extreme circumstance in which such a "coercion" challenge to a measure associated with a spending program might be viable. Petitioners' challenge here goes directly to Congress' fundamental decision to expand the Medicaid program, not to a condition outside the scope of the program.

Nor does Petitioners' challenge implicate the "coercion" issue presented in *New York*, where Congress imposed burdens directly on States that opted out of a federal program. The ACA does not impose requirements on States that choose to opt out of Medicaid.

2. a. Petitioners' allegation that Congress assumed no State would opt out of Medicaid does not make the Medicaid expansion unconstitutionally coercive. The Court rejected a similar argument in *Dole*, and with good reason. Whatever Congress may have assumed about the attractiveness of the deal it has offered here, the "ultimate decision" whether to participate in Medicaid rests, as it always has, with the States. *New York*, 505 U.S. at 168.

Medicaid provides the States substantial federal subsidies and significant flexibility to design and administer healthcare programs — and it will continue to do so after the expansion. Congress thus had every reason to expect the States would continue their long-standing participation in the program.

In any event, Petitioners are wrong that the structure of the ACA necessarily reflects a congressional assumption that every State would participate. The ACA offers subsidies to Medicaid-eligible individuals above the federal poverty line so they can purchase affordable insurance; Medicaid is not their only alternative. And the minimum coverage provision (which Petitioners fundamentally misconstrue) will have no effect on most individuals below the federal poverty line. Any political pressure on the States to opt in to Medicaid that might flow from the possibility of that provision resulting in a modest federal tax increase on some subset of the Medicaid-eligible population pales in comparison to analogous pressure created by the conditional federal tax upheld in *Steward Machine Co. v. Davis*, 301 U.S. 548 (1937).

b. Ultimately, Petitioners' challenge rests on the contention that the Medicaid expansion is impermissibly "coercive" because Medicaid is just too large, important, and generous for the States to decline to participate. But this argument fundamentally misconceives the breadth of Congress' spending powers to address important social problems. The logic of Petitioners' argument would lead to the perverse result that the larger and more important the social problem Congress seeks to address, the more popular and effective Congress' design proves to be, and the more that States find that solution to benefit their citizens, the more constitutionally suspect the program would become.

Congress has exclusive control over federal funds, U.S. Const. Art. I, §9, Cl. 7, and full authority to spend those funds to promote its reasonable conception of the "general Welfare," *id.* Art. I, §8, Cl. 1. Congress could have chosen to establish a single national health insurance program to provide coverage for low-income individuals directly, and it could replace the current federal-state Medicaid program with an exclusively federal program. By pursuing a "cooperative federalism" approach to solving social problems, and thereby offering the States more flexibility and control, Congress does not forfeit its constitutional authority to address problems of national importance or its future ability to alter its programs or control federal funds. It should be no surprise, then, that the Court has long rejected challenges to federal funding conditions that simply delineate the scope of programs that Congress is willing to support. *See, e.g.*, *Massachusetts v. Mellon*, 262 U.S. 447,

480 (1923); *Oklahoma v. United States Civ. Serv. Comm'n*, 330 U.S. 127, 143 (1947); *Lau v. Nichols*, 414 U.S. 563, 569 (1974).

Moreover, not only do Petitioners' arguments find no support in the text or structure of the Constitution, but accepting them would force the judiciary to become enmeshed in political and policy judgments. The "discretion" to determine what kinds of programs best promote the general welfare rests with Congress, not the courts or the States. *Helvering v. Davis*, 301 U.S. 619, 640, 645 (1937). It would be beyond the proper judicial role for the courts to decree that a program which Congress has chosen to fund only if operated in an integrated fashion must instead be separated into smaller parts, with Congress required to fund them in isolation over its express objection.

Although Petitioners disclaim any "vested" right to "pre-existing" Medicaid funding, that is the essence of their challenge. They effectively argue that the States have become so dependent on the old Medicaid program that Congress may no longer expand it. But the States cannot compel the use of federal funds on terms other than those Congress has prescribed. And Congress' authority to define the scope of the programs it is willing to support cannot constitutionally be limited by the fact that a past Congress supported certain programs that have become large and popular: "'One legislature . . . cannot abridge the powers of a succeeding legislature.'" *Lockhart v. United States*, 546 U.S. 142, 147 (2005) (Scalia, J., concurring) (quoting *Fletcher v. Peck*, 6 Cranch 87, 135 (1810)).

In enacting the Medicaid expansion in question, Congress has done nothing more than expand the scope of an existing federal program. No constitutional principle precludes Congress from doing so.

ARGUMENT

Petitioners do not question the constitutionality of the pre-existing Medicaid conditional spending program. Indeed, not only is it settled law that Congress may grant money to the States on condition that it be used to support programs that meet federal parameters,[3] but the remedy Petitioners seek is for the Court to force Congress to continue to fund the pre-existing Medicaid program rather than the expanded Medicaid program that Congress has now decided is necessary to serve the "general Welfare." U.S. Const. Art. 1, §8, cl. 1.

That being so, Petitioners' argument that the Medicaid expansion is unconstitutionally "coercive" requires them to identify some constitutionally relevant and judicially manageable distinction between the pre-existing federal spending program and the expanded program they challenge. This they fail to do.

Moreover, Petitioners' challenge to the expanded program goes directly to Congress' power to spend federal money on those programs (and only those programs) that Congress deems worthy of support.

---

[3] *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 296 (2006); *New York v. United States*, 505 U.S. 144, 167 (1992); *South Dakota v. Dole*, 483 U.S. 203, 206 (1987).

Congress operates at the zenith of its powers and competence when it decides on the scope of a federal spending program — and the vision of the "general Welfare" reflected in such a program — that will be funded from the federal Treasury. The desire of some States to be offered federal money for a more limited program, or on a more flexible "pick and choose" basis, ultimately presents a political and policy issue for Congress and those States, not one subject to judicial intervention.

I. PETITIONERS' CHALLENGE TO THE MEDICAID EXPANSION DOES NOT IMPLICATE THE POTENTIAL CONCERNS WITH IMPERMISSIBLE "COERCION" DISCUSSED IN *DOLE* AND *NEW YORK*

As an initial matter, Petitioners' challenge rests almost entirely on dicta in *South Dakota v. Dole*, 483 U.S. 203, 211 (1987), which quoted dicta in *Steward Machine Co. v. Davis*, 301 U.S. 548, 590 (1937), suggesting that Congress' spending power might in some circumstances be limited by a concern that it not be used to impermissibly "coerce" the States. Petitioners also point to the Court's reference to impermissible coercion in *New York v. United States*, 505 U.S. 144, 169, 175 (1992), and argue that, if the Medicaid expansion does not represent an impermissibly "coercive" exercise of the spending power, "no Act of Congress ever will." Pet. Br. 21, 32, 52-53. But the types of potentially impermissible "coercion" discussed in those cases are not even at issue here. While accepting Petitioners' theories would undermine the most basic prerogatives reserved to Congress by the Constitution, rejecting

Petitioners' challenge would not affect the possible viability of the kinds of challenges to federal statutes raised in those cases.

1. In *Dole*, the Court rejected a challenge to a federal statute that required withholding of a portion of federal highway funding to any State that did not enact a state-wide 21-year-old drinking age. *Dole*, 483 U.S. at 205. Although the drinking-age condition "related to one of the main *purposes* for which highway funds are expended — safe interstate travel," *id.* at 208 (emphasis added) — the condition did not set a requirement for the actual projects on which Congress would expend federal funds: the design, construction, and maintenance of particular highways. Rather, through the condition, Congress sought to leverage the States' interest in federal highway money to induce the States to adopt a regulation *outside* the scope of the specific transportation projects federal moneys would directly support.

It was in that context that the Court in *Dole*, while reaffirming Congress' well-settled authority to "act[] indirectly under its spending power to encourage" the States to adopt regulations, also held open the possibility that "in *some circumstances* the financial inducement offered by Congress *might* be so coercive as to pass the point at which 'pressure turns into compulsion.'" *Id.* at 206, 211 (quoting *Steward Machine*, 301 U.S at 590 (emphases added)). But the Court concluded that Congress' conditioning of five percent of federal highway funds on the drinking-age requirement did not raise such a potential coercion

issue, and therefore did not discuss the issue further. *Id.*[4]

In *Steward Machine*, the Court had also left open the possibility of impermissible coercion where conditions are imposed *outside* the scope of the federal program. The Court there rejected a challenge to a federal tax on employers that provided a 90% credit in States that adopted unemployment insurance programs meeting federal specifications. *Steward Machine*, 301 U.S. at 574. The Court questioned whether the concept of impermissible "coercion" through the offer of conditional funds "can *ever* be applied with fitness to the relations between state and nation." *Id.* at 590 (emphasis added). But while stressing that, in the case before it, the Court saw "[n]othing . . . suggest[ing]" impermissible "coercion," it made clear that it was not reaching the question whether a federal tax would be valid "if it [were] laid upon the condition that a state may escape its

[4] Justice O'Connor's dissent makes clear that *Dole* was focused on conditions *outside* the scope of programs supported by federal funds. Justice O'Connor saw a threat to state autonomy in permitting Congress "to insist as a condition of the use of highway funds that the State impose or change regulations in *other areas* of the State's social and economic life because of *an attenuated or tangential relationship* to highway use or safety." *Dole*, 483 U.S. at 215 (O'Connor, J., dissenting) (emphases added). She would have avoided that threat by holding similar conditions categorically outside Congress' spending power, upholding only conditions that "*specif[y] in some way how the money should be spent*, so that Congress' intent in making the grant will be effectuated." *Id.* at 216 (O'Connor, J., dissenting) (emphasis added) (internal quotation marks omitted).

operation through the adoption of a statute *unrelated* in subject-matter to activities fairly within the scope of national policy and power." *Id.* (emphasis added).

No federal court has ever struck down a Spending Clause statute on the ground that it impermissibly "coerces" the States. While Petitioners here cite *Dole*, their challenge here does not in any sense implicate the potential concern *Dole* raised. Petitioners are not challenging a requirement that to receive Medicaid funding they must engage in some activity or adopt some regulation outside the scope of Medicaid. Rather, they are challenging Congress' fundamental decision to expand the scope of the federal Medicaid program itself, seeking directly to limit the discretion of Congress regarding how federal money should be spent.

The Court has elsewhere noted a fundamental distinction between, on the one hand, Congress' clear right to limit the types of programs that will be supported by federal funds, and on the other, congressional efforts that "effectively prohibit[] the recipient from engaging in . . . protected conduct *outside the scope of the federally funded program.*" *Rust v. Sullivan*, 500 U.S. 173, 197 (1991) (emphasis added). The same conceptual distinction separates the conditions at issue here from those conditions that might raise *Dole*'s concern with potentially impermissible coercion.

As relevant here, the Medicaid expansion raises Medicaid's minimum eligibility requirements, for States that choose to participate, to include coverage

of non-disabled adults under age 65 with incomes below roughly 138% of the federal poverty line. *See* 42 U.S.C. §1396a(a)(10)(A)(i)(VIII) (eligibility expanded to 133% of poverty line); *id.* §1396a(e)(14)(I) (5% income disregard). By establishing such minimum requirements, Congress has done nothing more than exercise its constitutional authority to "define the limits" of programs that it will pay for with federal funds. *Rust*, 500 U.S. at 194.

Moreover, Congress' changes here are not different in kind from Congress' changes to Medicaid in the past. Congress has always established minimum eligibility requirements for state Medicaid plans. *See Wilder v. Virginia Hosp. Ass'n*, 496 U.S. 498, 502 (1990); *Harris v. McRae*, 448 U.S. 297, 308 (1980). As Petitioners acknowledge, Congress has repeatedly amended such minimum requirements over time. Pet. Br. 5-6. The amendment Petitioners challenge is not different in any relevant respect.

Likewise, the maintenance-of-effort provision, 42 U.S.C. §1396a(gg), does not require States to act in any area *outside the scope* of the federally-subsidized Medicaid program. Rather, as it repeatedly has in the past, Congress has simply described the kinds of programs that may be funded from the federal Treasury (i.e., programs in which participating States do not reduce their current levels of service in the short term).

None of these aspects of the Medicaid expansion involves conditions on state receipt of federal funds that are "attenuated or tangential" to how the federal money is to be spent. *Dole*, 483 U.S. at 215

(O'Connor, J., dissenting). They thus have nothing to do with the potential concern with impermissible coercion held open in *Dole*.[5]

2. Petitioners' challenge to the Medicaid expansion also does not implicate the concern with "commandeering" of state authority at issue in *New York*. In that case, Congress commanded the States either to regulate radioactive waste according to Congress' specifications or to "take title" to, and assume legal liability for, radioactive waste produced within their borders. *New York*, 505 U.S. at 153. The Court held the "take title" provision to be unconstitutionally coercive because, under that provision, "[n]o matter which path the State chooses, it must follow the direction of Congress." *Id.* at 177.

Here, by contrast, Congress has not legally compelled the States to do anything. Petitioners argue that the ACA "effectively order[s]" each State either to opt in to Medicaid or to "assum[e] the full burden of its neediest residents' medical costs." Pet. Br. 23,

---

[5] This case also does not implicate a different (though arguably related) potential concern with improper "coercion" that has been suggested in dicta by one lower court. *Cf. Virginia Dep't of Educ. v. Riley*, 106 F.3d 559, 570 (4th Cir. 1997) (en banc) (plurality opinion of Luttig, J.). That concern focused on the possibility of the federal government withholding all funding in a Spending Clause program based on a truly "insubstantial" state violation of minimum requirements set by Congress. *Id.* Petitioners' argument here is not that Congress is using the elephant of federal Medicaid funding as leverage to go after a mouse, but that they object to Congress' fundamental decision to redirect federal Medicaid spending towards accomplishing a revised and expanded purpose.

52. Not so. While a State may feel a moral or political impetus to provide or subsidize healthcare for low-income individuals if it declines to participate in Medicaid, Congress has not *compelled* it to do so, and Congress certainly has not compelled it to provide *any particular level* of healthcare services, or *any particular method* of delivering them. A State that opts out of Medicaid would have full freedom to decide the nature of the "burden," if any, that it wishes to "assum[e]" regarding healthcare for previously Medicaid-eligible individuals. Pet. Br. 23.

As this Court has repeatedly recognized, there is a basic difference between a direct command requiring the States to act and a conditional offer of federal funds encouraging them to do so. *See New York*, 505 U.S. at 168; *College Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 687 (1999); *Printz v. United States*, 521 U.S. 898, 917-18 (1997). Petitioners' protests notwithstanding, Congress has not ordered the States to do anything with respect to healthcare, and thus the coercion concern discussed in *New York* is not implicated.

What Petitioners complain of as improperly "coercive," therefore, is quite distinct from what was at issue in any of the prior cases on which they rely. Petitioners here complain of nothing beyond an exercise by Congress of its undisputed authority to design a federal spending program to further an entirely legitimate vision of the "general Welfare" that Congress believed merits a substantial outlay of federal funds.

II. THE FEATURES THAT PETITIONERS IDENTIFY DO NOT MAKE THE MEDICAID EXPANSION UNCONSTITUTIONALLY COERCIVE

Unable to rely on precedent, Petitioners point to several features of the ACA as supposedly justifying court intervention to check the power of Congress to expand Medicaid. But they fail to identify in those features any constitutionally relevant or judicially manageable principle for fashioning a new limit on Congress' authority to determine the kinds of spending programs it is willing to subsidize with federal funds.[6]

A. Petitioners' allegation that Congress assumed that no State would opt out of Medicaid does not make the expansion unconstitutional; nor does the ACA necessarily reflect any such assumption.

Petitioners dedicate much of their brief to arguing that Congress in adopting the ACA *assumed* no State would opt out of Medicaid. Pet. Br. 22-23, 33-39. According to Petitioners, that alleged assumption "is

---

[6] Petitioners raise the specter of an "unlimited spending power" (Pet. Br. 28, 29; *see also id.* at 21), but rejecting their challenge does not lead to such a result. There is no dispute that federal funding program conditions on States must (a) promote the "general welfare," (b) be stated "unambiguously," (c) relate "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." *Dole*, 483 U.S. at 207-08, 210 (internal quotation marks omitted). The Medicaid expansion satisfies each of these requirements.

all the proof the Court should need to find the Act unconstitutionally coercive." Pet. Br. 39; *see also id.* at 55. This argument falls apart upon examination.

1. Petitioners' argument here is strikingly similar to an argument that this Court has previously rejected as both logically and legally faulty — that a record of widespread state participation in a federal spending program is somehow evidence of impermissible "coercion." To accept such an argument, the *Dole* Court explained, would be to find that "a conditional grant of federal money . . . is unconstitutional simply by reason of its success in achieving the congressional objective." *Dole*, 483 U.S. at 211.

Perhaps recognizing that precedent and logic foreclose any impermissible "coercion" argument based on the actual record of universal participation by the States in Medicaid, Petitioners argue that Congress acted unconstitutionally because it supposedly *assumed* that the States' uniform participation would continue after the expansion. As we shall explain, Petitioners are wrong that the ACA necessarily reflects such a congressional assumption. *See* pp. 18-20, *infra*. But even if it did, such an assumption would not change the fact that, as a legal matter, the "ultimate decision" whether to participate in Medicaid rests, as it always has, with the States. *New York*, 505 U.S. at 167-68.

In any case, there are perfectly legitimate reasons why Congress might have assumed full state participation. The expanded Medicaid program offers the States billions of dollars in federal money to pay for providing services that state residents generally

regard as vitally important: healthcare for low-income populations. The high percentage of Medicaid expenses covered by the federal Treasury – 50% to 83% generally, 42 U.S.C. §1396d(b), and 90% to 100% of expenditures for "newly eligible" individuals under the expansion, *id.* §1396d(y) – reflects the attractive nature of the arrangement offered to the States. Put simply, by accepting these lucrative grants of federal aid, the States are able to deliver valuable services to their citizens far more efficiently and at a small fraction of the cost of those services. That reality explains why all States participated in Medicaid prior to the expansion, and why it was reasonable for Congress to expect such universal participation to continue after the expansion, especially since the expansion would greatly increase the percentage of Medicaid expenses that would be federally subsidized.

Moreover, the substantial leeway the States themselves have always had in determining the structure and design of their state Medicaid programs will continue under expanded Medicaid. While Petitioners emphasize the federal minimum standards that limit state Medicaid programs, they ignore that States retain substantial freedom to choose how to define and design their own (highly federally subsidized) state Medicaid programs to better meet their citizens' needs.[7]

---

[7] *See, e.g.*, 42 U.S.C. §1396a(a)(10)(A)(ii), (C) (state options to cover additional populations and additional services beyond federal minimums, generally at the same rate of federal reimbursement); *id.* §1396a(a)(17) (state flexibility to set stan-

(continued)

Given all this, Congress had little reason when it enacted the Medicaid expansion to adopt a "contingency plan" (Pet. Br. 38) to address issues that might arise if a State were to opt out of Medicaid in reaction to the expansion — especially when the expansion would not take effect until January 1, 2014. *See* 42

(continued)

dards for amount, duration, and scope of services to cover); *id.* §1396a(a)(30)(A) (state flexibility to set provider rates); *id.* §§1396a(k)(1), 1396u-7(b) (state flexibility to design benefits packages for newly eligible individuals by providing "benchmark," "benchmark-equivalent," or expanded coverage); *id.* §1315 (waivers of most Medicaid Act provisions to facilitate state "demonstration" projects); *id.* §1396n(b) (waivers granting States flexibility to provide services through managed care delivery systems or otherwise select and set standards for providers); *id.* §1396n(c)-(d) (waivers granting States flexibility regarding coverage of home and community-based services); *id.* §1396n(e) (same regarding coverage of services for young children with certain conditions); *id.* §1396n(g) (state flexibility regarding coverage of case management services); *id.* §1396n(i) (state option to cover medical assistance for home and community-based services for elderly and disabled individuals); *see generally* Kaiser Commission on Medicaid and the Uninsured, *Federal Core Requirements and State Options in Medicaid: Current Policies and Key Issues* (April 2011), http://www.kff.org/medicaid/upload/8174.pdf (describing state options regarding eligibility, benefits and cost-sharing, care delivery and provider payment, long-term services and supports, and care of individuals eligible for both Medicaid and Medicare); U.S. Dep't of Health & Human Servs., *Letter of the Secretary on State Flexibility and Federal Support Available for Medicaid* (Feb. 3, 2011), www.hhs.gov/news/press/2011pres/01/20110203c.html.

U.S.C. §1396a(a)(10)(A)(i)(VIII).[8] Congress had (and has) plenty of time to respond with possible further legislation should one or more States in the future choose to opt out of Medicaid or express a serious intention to do so. Indeed, should States actually withdraw from or threaten to withdraw from the expanded Medicaid program, Congress would be far better able to determine at that point what appropriate actions to take.

2. In any event, even if it were relevant (and it is not), Petitioners are wrong in their threshold premise that the structure of the ACA necessarily reflects a Congressional assumption that every State would opt in to Medicaid. To support this contention, Petitioners primarily point to the fact that that the ACA includes a minimum coverage provision, 26 U.S.C. §5000A(a)-(b), yet the ACA (they assert) "provid[es] no alternative to Medicaid for the most needy" to comply with that provision. Pet. Br. 22. Not so.

Congress did, in fact, provide alternatives for many of the most needy who would lose coverage if a State withdrew from Medicaid. In particular, Congress provided income tax credits and authorized federal payments to insurers so that individuals with income between 100% and 138% of the federal poverty line could purchase affordable health insur-

[8] The Medicaid expansion Petitioners challenge does not impermissibly impose "retroactive conditions." Pet. Br. 45 n.17. Rather, the new requirements apply only prospectively to new grants, which the States are free to accept or decline. *Contrast Bennet v. New Jersey*, 470 U.S. 632, 638 (1985).

ance, even though those same individuals would be eligible for Medicaid under the expansion if their State chose to participate. *See* 26 U.S.C. §36B(a), (b)(3); 42 U.S.C. §18071(c)(2)-(3).

Petitioners gloss over this population, and focus instead on individuals below the federal poverty line. Pet. Br. 36. But Petitioners also ignore that the vast majority of these individuals will not be subject to the minimum coverage penalty in any case. The minimum coverage provision does nothing other than state a condition predicate for imposition of a tax penalty on certain federal income *taxpayers* (who do not obtain "minimum essential" insurance coverage). 26 U.S.C. §5000A(a)-(b).[9] Were any State to opt out of Medicaid, the vast majority of its Medicaid-eligible residents with income below the federal poverty line would be unaffected by this penalty, because they do not earn income in excess of the federal income tax filing threshold. *See id.* §5000A(e)(2).[10] And those within the small sliver of the population with income

---

[9] *See* U.S. Medicaid Br. 49-50; U.S. Minimum Coverage Br. 20-21, 52-56, 60-62; Br. of SEIU and Change to Win as *Amici Curiae* Addressing the Minimum Coverage Provision 2, 4-7, 11-15.

[10] In 2011, the federal income tax filing threshold for an individual under age 65 was $9,500, just modestly below the $10,890 federal poverty line for an individual (outside Alaska and Hawaii); the filing threshold for a married couple of two under 65 filing jointly was $19,000, well above the $14,710 federal poverty line for a family of the same size (outside Alaska and Hawaii). *See* IRS, *Publication 501: Exemptions, Standard Deduction, and Filing Information* 2-3 & Tbl. 1

(continued)

above the filing threshold but still below the federal poverty line also would almost assuredly be unaffected. Some might be covered by policies offered by their employers, *id.* §5000A(f)(1)(B), or obtained by their parents, 42 U.S.C. §1396gg-14 (requiring insurers to extend dependent coverage up to age 26). Even those without such coverage would likely be unaffected by the minimum coverage provision because it creates no tax penalty unless minimum essential health insurance is available for purchase at eight percent or less of a taxpayer's income, 26 U.S.C. §5000A(e)(1), which would be exceedingly unlikely for individuals with such low earnings.[11] Moreover, even if such inexpensive insurance were available, these individuals could apply to the Secretary of Health and Human Services for "hardship" waivers. *Id.* §5000A(e)(5). A State's decision to opt out of Medicaid would no doubt provide a strong case for such waivers.

3. A final point on the minimum coverage provision is in order. Although they do not argue the point

---

(continued)

(2011), http://www.irs.gov/pub/irs-pdf/p501.pdf (filing thresholds); U.S. Dep't of Health & Human Servs., *Annual Update of the HHS Poverty Guidelines*, 76 Fed. Reg. 3637-38 (Jan. 20, 2011) (federal poverty lines).

[11] For example, individuals with income at the 2011 federal poverty line ($10,890 outside Alaska and Hawaii, *see* note 10, *supra*) in States that opt out of Medicaid would be unaffected by the minimum coverage provision, unless minimum essential insurance coverage were available to them at just $72.60 per month or less.

explicitly, Petitioners seem to suggest that any burden placed by the ACA on some subset of Medicaid-eligible citizens as a consequence of their State's withdrawal from Medicaid would somehow constitute a form of impermissible "coercion" of the State. But here, as we have shown, the extent of any such legal burden would be quite modest: giving such individuals a choice between obtaining alternative healthcare coverage (with those above the poverty line granted substantial federal subsidies to assist them) and paying an income tax penalty (with most of the rest falling below the minimum income thresholds for such penalty to apply). In stark contrast, this Court in *Steward Machine* rejected an impermissible "coercion" argument in a context where the burdens on a State's constituents were by any measure far greater.

In that case, Congress exacted a tax *ten times* greater in magnitude on employers in States that chose not to implement an unemployment insurance program meeting federal specifications. *Steward Machine*, 301 U.S. at 574. Yet the Court concluded that the federal statute involved no impermissible "coercion" of the States (*id.* at 589), even though, as Petitioners' concede (Pet. Br. 51), Congress made *no* commitment to provide a federal unemployment insurance system if a State declined to enact one of its own. *See Steward Machine*, 301 U.S. at 574 (proceeds from federal tax "not earmarked in any way"); *id.* at 589 (Congress "retain[ed] undiminished freedom" to spend revenues from the tax "as it pleased"). If the political pressure placed on the States by the conditional federal tax at issue in that case did not cause constitutional concern, the same must be true

of any analogous political pressure to opt in to Medicaid caused by the far more modest possible tax consequences of the minimum coverage provision.

B. The scope and importance of Medicaid do not make its expansion unconstitutional.

Because Petitioners' allegation that Congress assumed full state participation in expanded Medicaid does nothing to advance their challenge, Petitioners' case ultimately must rest on their theory that the expansion of Medicaid is unconstitutionally "coercive" because of the "sheer size" and importance of the program. Pet. Br. 39. They argue that Medicaid is so large, important, and popular that States cannot as a practical matter decline to participate. *Id.* at 23, 39-48. Hence, they argue that the expansion is impermissible because Congress cannot condition the "pre-existing" federal Medicaid funding that the States desire (and that the States and their populations have found so beneficial) on the States' acceptance of a larger program. *Id.* at 40. Their argument is untenable.

1. The essential problem with Petitioners' argument is that it fundamentally misconceives the legitimate breadth of Congress' spending powers to address important social problems. The logic of Petitioners' argument also would lead to the truly perverse result that the larger and more important the social problem Congress seeks to address, the more popular and effective Congress' design proves to be, and the more that States find that Congress'

program benefits their citizens, the more constitutionally suspect the program would become.[12] This cannot be the law. Congress has every right (indeed, a solemn responsibility) to spend federal moneys to ameliorate serious social problems. The extent to which Congress succeeds in addressing such problems of national concern simply cannot be a factor leading to the invalidation of federal legislation.

The Constitution's text is unmistakably clear that Congress has the full authority to raise and spend federal funds to serve the "general Welfare of the United States," as Congress reasonably judges that welfare should be served. U.S. Const. Art. I, §8, Cl. 1. Moreover, through the Appropriations Clause, the Constitution separately makes clear that control over the use of federal funds is exclusively the province of Congress acting through federal law. *Id.* Art. I, §9, Cl. 7. That these powers result in substantial federal

---

[12] Although federal subsidies will cover the overwhelming portion of the costs of expanded Medicaid, Petitioners nonetheless complain that States that choose to participate in the expansion will incur some additional costs above those they currently expend. Pet. Br. 16-18. But Petitioners ultimately disclaim that this is the basis for their challenge to the expansion. According to Petitioners, "[c]oercion is measured by how much a State stands to lose if it *rejects* Congress' terms, not by how much it stands to lose if it *accepts* them." *Id.* at 46 (emphases in original). Petitioners recognize they cannot have it both ways: the States cannot complain that Congress has been too generous with federal money for them to turn down the offer, while at the same time complaining that Congress has not been generous enough to States accepting those funds. Petitioners have chosen to attack Medicaid for being too generous, not too miserly.

authority that may reach deeply into American life should be no surprise.[13]

Congress could have chosen to establish a single national health insurance program to provide coverage for low-income individuals directly — as it has with Medicare for individuals over age 65 (42 U.S.C. §1395 *et seq.*) — rather than structuring Medicaid as "a cooperative federal-state program." *Wilder*, 496 U.S. at 502; *see*, *e.g.*, *Helvering*, 301 U.S. at 645 (upholding national Old Age Benefits program); *Steward Machine*, 301 U.S. at 588-89 (upholding tax credit scheme based on premise that federal government could enact fully national unemployment insurance program). That Congress has the power to pursue an exclusively federal program to provide for its citizens' healthcare — as an aspect of the "general Welfare" — reflects the unassailable truth that under our Constitution the relationship of the federal government to the citizenry is a "'direct relationship'" of sovereign and citizen, with "'its own privity, its own set of mutual rights and obligations,'" and is not a relationship inherently mediated by the States. *Printz*, 521 U.S. at 920 (quoting *U.S. Term Limits*, *Inc. v. Thorton*, 514 U.S. 779, 838 (1995) (Kennedy, J., concurring)).

By the same reasoning, Congress can convert a cooperative federal-state spending program into a

---

[13] The "breadth" of Congress' spending power "was made clear in *United States v. Butler*, 297 U. S. 1, 66 (1936), where the Court . . . determined that 'the power of Congress to authorize expenditure of public moneys for public purposes is not limited by the direct grants of legislative power found in the Constitution.'" *Dole*, 483 U.S. at 207.

solely federal spending program. For example, in 1972, Congress nationalized what had previously been federal-state cooperative cash assistance programs for the aged, blind, and disabled by establishing the Supplemental Security Income ("SSI") program. *See Schweiker v. Gray Panthers*, 453 U.S. 34, 38 (1981). That Congress can make such a change reflects the basic principle that the States do not gain a "vested" or otherwise constitutionally protected interest in the continuation of a federal-state cooperative spending program after Congress determines that continued federal subsidization of such a program is no longer its preferred course.[14]

By choosing to structure Medicaid as a scheme of "cooperative federalism," Congress allows for *more* state control and flexibility than would be available under a fully national program. It would be highly counterintuitive, to say the least, for Congress' choice to proceed in this fashion to somehow require that Congress limit the scope, effectiveness, or beneficial nature of its efforts, so as to avoid creating a program that is "too large," "too beneficial," or "too popular" for the States to decline. The States, as

[14] This Federal right to change course can certainly be no surprise to the States here, since it has been made explicit within the Medicaid program itself. Since Medicaid was first created, its underlying statute has explicitly stated that Congress could at any time "alter, amend, or repeal" any aspects of the program, including the eligibility rules, on a going forward basis. 49 Stat. 648 (1935), *codified at* 42 U.S.C. §1304. Of course, Congress' "right" to amend the Medicaid program stems from the Constitution itself, not from this express "reservation" via statute.

sovereign entities, must have the legal ability to decline to participate if they choose. But States have no constitutional interests in limiting the degree to which joint state-federal spending programs can meet the serious national needs of the populace. Our system of federalism does not protect state sovereignty by seeking to limit the effectiveness of otherwise proper federal actions.

In any case, little would be accomplished with regard to safeguarding state prerogatives by adopting the peculiar approach advocated by Petitioners here. If Congress cannot expand Medicaid simply because it is too big, too successful, and too generous to the States, that would incentivize Congress to adopt a fully national program, as it did with SSI. That would deprive the States of the control and flexibility over the program that they currently maintain, and that they will continue to maintain after the expansion (and deny the citizenry of the advantages that such flexibility represents). An appropriate respect for the values of federalism would discourage, not promote, such a result.

2. Given the arguments above, it should be no surprise that Petitioners find no support for their challenge to the size of expanded Medicaid in this Court's prior Spending Clause cases. To the contrary, the Court has long rejected challenges to federal funding conditions that simply delineate the scope of programs that Congress is willing to support.

For example, in *Massachusetts v. Mellon*, 262 U.S. 447 (1923), the Court rejected a State's challenge to the federal Maternity Act, which appropriated funds

to States that adopted programs complying with its provisions designed "to reduce maternal and infant mortality and protect the health of mothers and infants." *Id.* at 479. The Court did not suggest that the amount of federal funding was relevant, holding instead that Massachusetts' suit "present[ed] no justiciable controversy, either in its own behalf or as the representative of its citizens," because "the powers of the state [we]re not invaded, since the statute impose[d] no obligation but simply extend[ed] an option which the state [wa]s free to accept or reject." *Id.* at 480.

Similarly, in *Lau v. Nichols*, 414 U.S. 563 (1974), the Court rejected a challenge to Title VI of the Civil Rights Act of 1964, which conditions *all* federal funding to a given state agency or department on a prohibition on discrimination based on race, ethnicity, or national origin within that state entity. The Court based its decision on the basic proposition that "the Federal Government has power to fix the terms on which its money allotments to the States shall be disbursed." *Id.* at 569. The Court also relied on *Oklahoma v. United States Civil Service Commission*, 330 U.S. 127 (1947), where the Court upheld a Hatch Act requirement prohibiting state and local officials in agencies subsidized by federal funds from "tak[ing] any active part in political management or in political campaigns." *Id.* at 129 n.1 (internal quotation marks omitted). Together, *Lau* and *Oklahoma* reflect this Court's consistent view that, at least where Congress has done nothing more than direct that federal funds not be expended for purposes it does not support, the alleged "coercive effect" of

withholding otherwise allocated federal moneys is not an "interference with the reserved powers of the state." *Oklahoma*, 330 U.S. at 142-43; *see Lau*, 414 U.S. at 569.

The only case in which this Court suggested that the amount of federal funding put into jeopardy by a condition might be relevant to a challenge of that condition was *Dole*, 483 U.S. at 211. And, as previously explained (pp. 8-12, *supra*), the condition at issue there, unlike the conditions at issue here, fell outside the scope of the federal spending program itself. *Cf. Rust*, 500 U.S. at 196-97.

Finally, since *Dole*, the Court has not hesitated to enforce conditions on state participation in a federal spending program where those conditions would otherwise be within federal power, even if, by the Court's own acknowledgment, rejecting the federal funds would be "unrealistic." *Board of Educ. of Westside Cmty. Schs. v. Mergens*, 496 U.S. 226, 241 (1990).[15] There is simply no independent constitutional principle that the States must remain free of

---

[15] In *Mergens*, the Court rejected a First Amendment challenge to the Equal Access Act, which prohibits public secondary schools that receive federal financial assistance and that "permit[] one or more 'noncurriculum related student groups' to meet on campus before or after classes" from denying "'equal access'" to campus facilities to other student groups, including religious groups. 496 U.S. at 233, 237 (quoting 20 U.S.C. §4071(a)-(b)). In the course of interpreting the Act in a manner that gave it broad application, the Court explained that "a school district seeking to escape the statute's obligations could simply forgo federal funding." *Id.* at 241. The Court

(continued)

having to make hard political choices in determining whether to participate in a federal spending program that is otherwise clearly within Congress' authority to offer.

3. As we have shown, the arguments offered by Petitioners are rooted in neither the structure of the Constitution nor in the precedents of this Court. But they should fail for another reason as well. Petitioners essentially argue that States face tremendous political pressures from their own residents to provide similar benefits to those in pre-expansion Medicaid, but would face difficulties in doing so absent federal funds because increasing local taxes would be politically intolerable. Judging these assertions in any meaningful way, if they were deemed legally relevant, would enmesh the judiciary in evaluating the relative strengths of various local political pressures and the relative merits of possible political tradeoffs. But evaluating such purely political forces and policy options is not a normal judicial function. "[T]he Justices of this Court lack both the expertise and the familiarity with local problems so necessary to the making of wise decisions with respect to the raising and disposition of public revenues." *San*

(continued)

"d[id] not doubt that in some cases this may be an *unrealistic* option," *id.* (emphasis added), but the Court did not even suggest that the possible practical infeasibility of rejecting federal funding might raise any substantial constitutional questions. Rather, the Court explained that the obligation to adhere to the Equal Access Act's provisions was simply "the price a federally funded school must pay if it opens its facilities to noncurriculum-related student groups." *Id.*

Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 41 (1973).

Accepting Petitioners' arguments would also inevitably thrust the judiciary into a realm of quintessentially political decision-making regarding the relative importance and inter-relationship of different aspects of a federal spending program that Congress has linked together as necessary to promote the general welfare. Petitioners demand access to "pre-existing" federal funds (Pet. Br. 40) to support smaller, previously funded programs that Congress is no longer willing to support in such form. It would be beyond the proper judicial role (and judicial expertise) for the courts to determine when a program that Congress has chosen to finance only if operated in an integrated fashion must instead be separated into smaller parts, with Congress required to fund certain parts separately over its express objection. This Court has long recognized that, "[i]n determining essentials" of the programs it is willing to subsidize, "Congress must have the benefit of a fair margin of discretion." *Steward Machine*, 301 U.S. at 594. Judicial disagreement about the "fundamental quality of one or more of the conditions . . . will not avail to vitiate [a] statute" unless "the basic standards" Congress has adopted are no more than arbitrary. *Id.*

Congress here made a reasonable judgment that to most effectively promote the general welfare it is willing to fund only an integrated Medicaid program that takes a sufficiently broad approach to the issue of healthcare coverage for low-income individuals. Congress enacted the Medicaid expansion as part of comprehensive legislation designed to address the

national healthcare crisis, including the gap in coverage that left some 50 million people uninsured in 2009. U.S. Census Bureau, *Income, Poverty, and Health Insurance Coverage in the United States: 2009*, Tbl. 8, at 23 (2010).[16] Congress concluded that its prior, smaller scale Medicaid program failed to address that problem adequately. It determined that continuing federal funding to programs in individual States that limited themselves to such smaller scale would not promote the comprehensive healthcare approach that Congress sought to achieve. The Court should reject Petitioners' invitation to enmesh the judiciary in the political and policy-driven debates about the wisdom of Congress' judgment.

4. In the end, although Petitioners deny that they are asserting a "vested" right under the Constitution to the continued benefits of a now superseded federal spending program (Pet. Br. 41), that really is the essence of what they contend. In effect, they assert that the States have become so "dependen[t]" on Medicaid funding that Congress may no longer make material changes to the program, such as might condition continued receipt of old-program benefits on any new requirements. Pet. 40-42. Petitioners seem to argue that once Congress has created this "dependency," it loses its discretion to make any such alterations in the program that the States have come to enjoy.

---

[16] *See* U.S. Minimum Coverage Br. 9-12 (discussing framework of incentives and regulations established by the ACA designed to reform health insurance markets and expand access to healthcare services).

Accepting this novel argument not only would treat the States in a manner highly inconsistent with the constitutional plan — i.e., treat them as dependent entities in need of forced federal assistance, secured by judicial intervention — but it also would mean that Congress' authority to define the scope of the programs it is willing to fund is limited by either the States' present desires or the spending decisions of prior Congresses. It is settled law that Congress' power cannot be so constrained.

Nothing could be clearer than that "a State cannot compel use of federal property [or funds] on terms other than those prescribed or authorized by Congress. . . . Article VI of the Constitution, of course, forbids state encroachment on the supremacy of federal legislative action." *Ivanhoe Irrigation Dist. v. McCracken*, 357 U.S. 275, 295 (1958); *see Helvering*, 301 U.S. at 645 ("When money is spent to promote the general welfare, the concept of welfare or the opposite is shaped by Congress, not the states."); *Florida Prepaid*, 527 U.S. at 686-87.[17]

This bedrock principle flows not only from the Supremacy Clause, but from the Appropriations Clause, as well. U.S. Const. Art. I, §9, cl. 7; *see Office of Personnel Mgmt. v. Richmond*, 496 U.S. 414, 428 (1990) (Appropriations Clause serves to "assure that public funds will be spent according to the letter of the difficult judgments reached by Congress as to the common good"). "'However much money may be in

[17] *See also Buckley v. Valeo*, 424 U.S. 1, 90 (1976) (per curiam); *Dole*, 483 U.S. at 207.

the Treasury at any one time, not a dollar of it can be used in the payment of anything not . . . previously sanctioned [by Congress.]'" *Id.* at 425 (quoting *Reeside v. Walker*, 52 U.S. 272, 291 (1850)); *accord Cincinnati Soap Co. v. United States*, 301 U.S. 308, 321 (1937); *Knote v. United States*, 95 U.S. 149, 154 (1877). To the extent they seek continued access to federal funds to support programs of a size that Congress has decided no longer to subsidize, Petitioners seek this Court's assistance to compel a result expressly forbidden by these constitutional commands.

Moreover, Congress' authority to define the scope of the programs it is willing to support cannot constitutionally be limited by the fact that past Congresses supported certain programs that have become large and popular. "'One legislature . . . cannot abridge the powers of a succeeding legislature.'" *Lockhart v. United States*, 546 U.S. 142, 147 (2005) (Scalia, J., concurring) (quoting *Fletcher v. Peck*, 6 Cranch 87, 135 (1810)); *see also Marbury v. Madison*, 1 Cranch 137, 177 (1803) (a statute is "alterable when the legislature shall please to alter it"). This Court's cases "have uniformly endorsed this principle." *Lockhart*, 546 U.S. at 147 (Scalia, J., concurring) (citing cases).

Congress could terminate the Medicaid program entirely. And Congress could subsequently create a new program identical to the one established by the Medicaid expansion at issue here. That is, in practical effect, exactly what Congress has done here. Petitioners' complaint about Congress' decision to tie the present Medicaid expansion to "pre-existing"

funding (Pet. Br. 40) therefore is not of constitutional moment, because Petitioners have no right to that "pre-existing" funding.[18]

---

[18] Petitioners seek to bolster their supposed "right" to continue under an unamended Medicaid program by complaining that residents in a State that opted out of Medicaid would continue to pay general federal taxes, but obtain lesser benefits than those in States that had not opted out. Pet. Br. 43-44. They add that this level of federal tax burden would make it more difficult for such a State to finance a comparable state healthcare program free of the federal requirements. *Id.* at 44-45. Indeed, they analogize the federal tax burden that corresponds to federal Medicaid costs to the work of a "pickpocket who takes a wallet and gives the true owner the 'option' of agreeing to certain conditions to get it back or having it given to a stranger." *Id.* at 44. But this inflammatory characterization adds nothing of constitutional relevance. Such a complaint could apply to *every* conditional federal funding program, regardless of size, and does not comport with basic constitutional principles. *See*, *e.g.*, *Steward Machine*, 301 U.S. at 589-90. When the federal government imposes taxes on individuals, it is taxing them as residents of the United States of America, not as residents of any particular State. Federal taxes therefore do not take for federal use anything to which the States have some entitlement. That is why this Court has long held that when a federal tax "has the effect of removing property [or funds] from [a State's] reach which otherwise would be within it, that is a contingency which affords no ground for judicial relief." *Florida v. Mellon*, 273 U.S. 12, 17 (1927).

Similarly, when the federal government appropriates money from the federal Treasury, it has no obligation to allocate those funds among the States in direct proportion to taxation revenues from the residents of the States. Indeed, "[t]his

(continued)

* * *

Congress, in enacting the Medicaid expansion in question, has done nothing more than expand the scope of an existing federal program. In doing so, Congress acted well within the core of its powers. Petitioners have offered no coherent, constitutionally justified, or judicially manageable principle suggesting otherwise.

If States disagree with the wisdom of Congress' spending choices, they may use their substantial political influence to convince Congress to take a different approach. Nothing prevents the States from joining together to persuade Congress that its view of the general welfare is mistaken, or from collectively exerting pressures on Congress to enact changes. If Congress' conception of the general welfare is at odds with the popular conception, the political process gives the States ample power to influence Congress to adopt a different course.

(continued)

Court has repudiated the suggestion, whenever made, that the Constitution requires the benefits derived from the expenditure of public moneys to be apportioned to the burdens of the taxpayer . . . ." *Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495, 522-23 (1937) (citing cases). Contrary to Petitioners' implicit – and radical – argument, it is well-established that "[a] tax is not an assessment of benefits." *Id.* Rather, it is "a means of distributing the burden of the cost of government," and "[t]he only benefit to which the taxpayer is constitutionally entitled is that derived from his enjoyment of the privileges of living in an organized society, established and safeguarded by the devotion of taxes to public purposes." *Id.*

CONCLUSION

The judgment below upholding the Medicaid expansion should be affirmed.

Respectfully submitted,

STEPHEN P. BERZON
Counsel of Record
SCOTT A. KRONLAND
MATTHEW J. MURRAY
Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, CA 94108

JUDITH A. SCOTT
WALTER KAMIAT
MARK SCHNEIDER
Service Employees
International Union
1800 Massachusetts
Avenue, N.W.
Washington, D.C. 20036

PATRICK J. SZYMANSKI
Change to Win
1900 L Street, N.W.,
Suite 900
Washington, D.C. 20036

February 17, 2012