

No. 11-400

In The
Supreme Court of the United States

FLORIDA, ET AL.,
Petitioners,

v.

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 AMICI CURIAE OF STATE
LEGISLATORS FROM THE FIFTY STATES,
THE DISTRICT OF COLUMBIA, AND PUERTO
RICO SUPPORTING RESPONDENTS
(Medicaid)**

DOUGLAS T. KENDALL
ELIZABETH B. WYDRA*
**Counsel of Record*
CONSTITUTIONAL
ACCOUNTABILITY
CENTER
1200 18th St., NW, Ste 1002
Washington, D.C. 20036
(202) 296-6889
elizabeth@theusconstitution.org

Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF CONTENTSi

TABLE OF AUTHORITIES.....ii

INTEREST OF *AMICI CURIAE* 1

INTRODUCTION AND
SUMMARY OF ARGUMENT 2

ARGUMENT..... 5

I. The Affordable Care Act Respects The Federal-
State Partnership On Health Care And Preserves
Constitutional Federalism..... 5

II. Petitioners’ Coercion Claim and Novel Doctrinal
Limitations Are Constitutionally Baseless And
Threaten The Careful Balance Of Federal-State
Power. 13

A. Petitioners’ Suggested Limits On Congress’s
Power To Tax And Spend For The General
Welfare Are Unprecedented And
Wrong- Headed. 14

B. Petitioners’ Desire To Avoid The Political
Consequences Of Opting Out Of The Valuable
And Popular Medicaid Program Does Not
Amount To Unconstitutional Coercion Or
Commandeering..... 18

CONCLUSION 25

APPENDIX 1a

TABLE OF AUTHORITIES

Page

Cases

<i>Arkansas Dep't of Health & Human Servs. v. Ahlborn</i> , 547 U.S. 268 (2006)	6
<i>Atkins v. Rivera</i> , 477 U.S. 154 (1986)	6
<i>Frew v. Hawkins</i> , 540 U.S. 431 (2004).....	6
<i>Gregory v. Ashcroft</i> , 501 U.S. 452 (1991).....	15
<i>Harris v. McRae</i> , 448 U.S. 297 (1980)	6
<i>Jim C. v. United States</i> , 235 F.3d 1079 (8th Cir. 2000).....	3
<i>King v. Smith</i> , 392 U.S. 309 (1968).....	15
<i>New State Ice Co. v. Liebmann</i> , 285 U.S. 262 (1932)	8
<i>New York v. United States</i> , 505 U.S. 144 (1992)	16, 18, 19
<i>Oklahoma v. U.S. Civil Serv. Comm'n</i> , 330 U.S. 127 (1947)	15
<i>Pennhurst State Sch. & Hosp. v. Halderman</i> , 451 U.S. 1 (1981)	17

TABLE OF AUTHORITIES (cont'd)

	Page
<i>Printz v. United States</i> , 521 U.S. 898 (1997) ...	16, 19
<i>South Dakota v. Dole</i> , 483 U.S. 203 (1987) ..	3, 14, 17
<i>Steward Machine Co. v. Davis</i> , 301 U.S. 548 (1937)	15
<i>United States v. Am. Library Ass'n, Inc.</i> , 539 U.S. 194 (2003)	17
<i>United States v. Butler</i> , 297 U.S. 1 (1936)	23, 24
<i>Wilder v. Va. Hosp. Ass'n</i> , 496 U.S. 498 (1990)	6
<u>Constitutional Provisions and Legislative Materials</u>	
U.S. CONST. art. I, § 8	17
42 U.S.C. § 1304	6
42 U.S.C. § 1396	6, 7, 8, 9
45 C.F.R. Pt. 80, 84	7
CONG. BUDGET OFFICE, 2008 KEY ISSUES IN ANALYZING MAJOR HEALTH PROPOSALS (Dec. 2008)	11
CONG. BUDGET OFFICE, AN ANALYSIS OF HEALTH INSURANCE PREMIUMS UNDER THE PATIENT PROTECTION AND AFFORDABLE CARE ACT (Nov. 30, 2009)	12

TABLE OF AUTHORITIES (cont'd)

	Page
CONG. BUDGET OFFICE, SPENDING & ENROLLMENT DETAIL FOR CBO'S MARCH 2009 BASELINE: MEDICAID (2009)	9
CONG. BUDGET OFFICE, THE LONG-TERM BUDGET OUTLOOK (June 2009)	11
Management of Arizona Medicaid Waiver: Hear- ings before the Subcomm. on Health & the Environment of the House Comm. on Energy & Commerce, 98th Cong., 2d Sess. (1984).....	7
Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101-239, 103 Stat. 2106 (1989).....	7
Pub. L. No. 111-148, §§ 1501(a)(2), 10106(a), 124 Stat. 119, 907 (2010).....	11
Social Security Amendments of 1972, Pub. L. No. 92-603, 86 Stat. 1329 (1972)	7
 <u>Books, Articles, and Other Materials</u>	
AKHIL REED AMAR, AMERICA'S CONSTITUTION: A BIOGRAPHY (2005).....	5
Elizabeth Anderson, <i>Administering Health Care: Lessons from the Health Care Financing Administra- tion's Waiver Policy-Making</i> , 10 J.L. & POL. 215 (1994)	12

TABLE OF AUTHORITIES (cont'd)

	Page
Althea Fung, <i>Texas Considers Opting Out of Medicaid</i> , NATIONAL JOURNAL, Nov. 15, 2010	18
Carole Keeton Strayhorn (Texas Comptroller of Public Account), <i>The Uninsured: A Hidden Burden on Texas Employers and Communities</i> , Apr. 2005.....	10
Council of Economic Advisors, <i>The Impact of Health Insurance Reform on State and Local Governments</i> (Sept. 15, 2009)	10
Emily Ramshaw & Marilyn Serafini, <i>Battle Lines Drawn Over Medicaid in Texas</i> , N.Y. TIMES, Nov. 16, 2010	18
Exec. Order on Federalism No. 13132, 64 Fed. Reg. 43255, § 2(e) (Aug. 4, 1999).....	5
Institute of Medicine, AMERICA’S UNINSURED CRISIS: CONSEQUENCES FOR HEALTH AND HEALTH CARE (2009)	10, 11
JANUARY ANGELES & MATTHEW BROADUS, FEDERAL GOVERNMENT WILL PICK UP NEARLY ALL COSTS OF HEALTH REFORM’S MEDICAID EXPANSION (Center on Budget and Policy Priorities, April 20, 2010)..	7, 8, 9
Kaiser Comm’n on Medicaid & the Uninsured, <i>Medicaid Enrollment and Expenditures by Federal Core Requirements and State Options</i> (Jan. 2012)	8

TABLE OF AUTHORITIES (cont'd)

	Page
Kaiser Comm'n on Medicaid & the Uninsured, <i>Medicaid Coverage & Spending in Health Reform: National and State-by-State Results for Adults at or Below 133% FPL</i> (May 2010)	9
Letter from Douglas W. Elmendorf, Director, Cong. Budget Office, to the Hon. Nancy Pelosi, Speaker, U.S. House of Representatives (March 20, 2010)..	11
THE FEDERALIST PAPERS (Clinton Rossiter, ed. 1999).....	5, 22, 23
THE RECORDS OF THE FEDERAL CONVENTION OF 1787 (Max Farrand, ed., rev. ed. 1966).....	5
THE WRITINGS OF GEORGE WASHINGTON (John C. Fitzpatrick, ed. 1931).....	22
WASHINGTON: WRITINGS (John Rhodehamel, ed. 1997)	22

INTEREST OF *AMICI CURIAE*

Amici Curiae, a group of 539 State Legislators from all 50 States, the District of Columbia and Puerto Rico, believe that the Patient Protection and Affordable Care Act (“the Act” or “ACA”) is constitutional and are working hard in their States to implement the Act in a timely, efficient, and effective manner. They have a substantial interest in having this matter resolved expeditiously and in favor of the constitutionality of the Act. A full list of *Amici* State Legislators is contained in the Appendix.

Amici State Legislators include legislators from every single one of the States represented by the Act’s challengers. These legislators have a particular interest in this case in order to represent their constituents and many other residents and State leaders in the challengers’ respective States who disagree with these legal challenges and support health care reform. All of the *Amici* State Legislators have an interest in presenting their view of the respective powers of the federal and State governments, and whether the ACA’s Medicaid expansion “coerces” the States.¹

¹Pursuant to Supreme Court Rule 37.6, *amici curiae* state that no counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae* or their counsel made a monetary contribution to its preparation or submission. Pursuant to Supreme Court Rule 37.3, *amici curiae* state that all parties have consented to

INTRODUCTION AND SUMMARY OF ARGUMENT

Petitioner States and elected officials claim that Congress’s expansion of Medicaid in the Patient Protection and Affordable Care Act to include additional working poor and other low-income Americans violates constitutional principles of federalism. Their argument has little to do with the Constitution, and far more to do with a desire to obtain a judicial “do-over” on the Affordable Care Act, trying to get this Court to craft a health care reform law that is more to the Petitioners’ liking. *See, e.g.*, JA 21-22 (docket entry # 80, Pls.’ Mem. in Support of Summary Judgment 26 (praising the Medicaid program of the 1960s and 1970s as “the hallmark of cooperative federalism” but objecting to the “new” Medicaid standards)). That is an effort that belongs in the political arena, not in the courts.

At any rate, Petitioners’ claim that the Act’s Medicaid expansion is unconstitutionally “coercive” is fundamentally flawed in light of the fact that the States continue to have the choice to opt out of Medicaid and its various requirements altogether. Unsurprisingly, Petitioners are reluctant to end their participation in the federal-State Medicaid program, because to do so “would desert millions of their residents, leaving them without access to the healthcare services they have depended on for decades under Medicaid.” JA 57 (Second Amended Complaint ¶ 66). This is absolutely true—Americans, including the

the filing of this brief; blanket letters of consent have been filed with the Clerk of the Court.

most vulnerable among us, have come to appreciate and rely upon Medicaid. But the Constitution allows the federal government to structure or condition federal funds and programs in a certain way, allowing States to choose whether to participate and accept those conditions, or not. It is well-established that “Congress may attach conditions on the receipt of federal funds.” *South Dakota v. Dole*, 483 U.S. 203, 206 (1987). State leaders must now choose whether to comply with the new Medicaid requirements, or exercise their right to opt out of the program altogether. Petitioners cannot expect the Court to absolve them of this choice by picking and choosing among parts of the federal Medicaid program. This choice may be “politically painful,” but it is not “unconstitutionally ‘coercive.’” *Jim C. v. United States*, 235 F.3d 1079, 1082 (8th Cir. 2000).

Petitioners link coercion concerns stemming from this Court’s Spending Clause doctrine to the “anti-commandeering” principles articulated by the Court to protect our federalist system. This Court has never expressly joined these separate doctrinal spheres, and it should decline Petitioners’ invitation to do so here. But even under Petitioners’ doctrinal amalgamation, the federalism concerns articulated in the relevant cases—voluntariness, political accountability, and resources—all cut against their arguments. With respect to voluntariness, the States are and always have been able to withdraw from the Medicaid program, although *Amici* State Legislators think that would be an unwise and unpopular policy choice. With respect to resources, the ACA’s Medicaid expansion could hardly be further from an “unfunded mandate”—in fact, Petitioners appear to

argue that the ACA offers *too* generous a deal to the States. Finally, with respect to accountability, it is the Petitioners' argument that threatens the Constitution's careful balance of governmental power by asking the Court to do what they cannot or will not do through the legislative and political processes for fear of the political consequences. Despite Petitioners' contention that upholding the ACA's Medicaid expansion will wreak irreparable "structural damage to our constitutional system," Petr. Br. at 59, it is the string of entirely novel doctrinal limitations Petitioners assert—on everything from Congress's power to tax, to appropriate funds, and to control policy details, not to mention the denigration of State autonomy suggested by the Petitioners' apparently dim view of State officials' ability to represent their constituents—that poses the danger to our Constitution.

While Petitioners claim to represent the people of their respective States and the interests of the States in general, the State legislators appearing herein as *amici*—from every State in the Union, Puerto Rico, and the District of Columbia—do not agree with Petitioners' claim of "coercion." Health care reform was imperative for Americans, as well as for their State and local governments. The ever-rising costs of and limited access to insurance coverage and health care have severely stressed the budgets of State governments and American families; expanding Medicaid is perhaps the most significant way to extend access to quality, affordable health care. The Affordable Care Act's Medicaid expansion is within Congress's constitutional powers and is fully consonant with our federalist system.

ARGUMENT

I. The Affordable Care Act Respects The Federal-State Partnership On Health Care And Preserves Constitutional Federalism.

Our Constitution establishes a vibrant system of federalism, with “dual sovereignty between the States and the Federal Government.” *Gregory v. Ashcroft*, 501 U.S. 452, 457 (1991). As the Court has recognized, “this federalist structure of joint sovereigns preserves to the people numerous advantages,” including “a decentralized government that will be more sensitive to the diverse needs of a heterogenous society,” enhanced “opportunity for citizen involvement in democratic processes,” and “more innovation and experimentation in government.” *Id.* at 458.

Performing their role as “laboratories of democracy,” States historically have been leaders in policy innovations that better protect their citizens, resources, and environment. *See* Exec. Order on Federalism No. 13132, 64 Fed. Reg. 43255, § 2(e) (Aug. 4, 1999) (“States possess unique authorities, qualities, and abilities to meet the needs of the people and should function as laboratories of democracy.”) In particular, the States have a long history of leadership on health care reform—indeed, the Patient Protection and Affordable Care Act incorporated the valuable lessons learned from the experience of health care reform practices by our State and local governments.

The Medicaid Act, enacted in 1965 in Title XIX of the Social Security Act, 42 U.S.C. § 1396 *et seq.*, took advantage of the States' longstanding role in providing for the health and welfare of their citizens by establishing a federal-State partnership. Medicaid is "a cooperative federal-state program through which the Federal Government provides financial assistance to States so that they may furnish medical care to needy individuals." *Wilder v. Va. Hosp. Ass'n*, 496 U.S. 498, 502 (1990). It is, and always has been, a voluntary program for the States. *Id.* "States are not required to participate in Medicaid, but all of them do." *Arkansas Dep't of Health & Human Servs. v. Ahlborn*, 547 U.S. 268, 275 (2006).

Medicaid enables States to receive a significant amount of federal aid in exchange for the States' establishing public health insurance programs for the poor, subject to minimum federal requirements, *e.g.*, 42 U.S.C. § 1396(a)(10)(A)(I) (requiring the States to extend medical coverage to "categorically needy" individuals). "Although participation in the Medicaid program is entirely optional, once a State elects to participate, it must comply with the requirements of the [Medicaid Act]." *Harris v. McRae*, 448 U.S. 297, 301 (1980). *See also Frew v. Hawkins*, 540 U.S. 431, 433 (2004); *Atkins v. Rivera*, 477 U.S. 154, 156-57 (1986). Congress expressly reserved the "right to alter, amend, or repeal any provision" of Medicaid, 42 U.S.C. § 1304, and has done so many times. *E.g.*, Social Security Amendments of 1972, Pub. L. No. 92-603, 86 Stat. 1329 (1972) (requiring participating States to extend Medicaid to recipients of Supplemental Security Income); Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101-239, 103

Stat. 2106 (1989) (requiring States to expand Medicaid coverage to pregnant women and to children under six years old, subject to certain income limits). See U.S. Br. (Medicaid) at 5-7. In addition to complying with coverage requirements, States must also comply with certain administrative requirements, e.g., 42 U.S.C. §§ 1396a(a)(7), (9), (69), and federal civil rights laws, e.g., 45 C.F.R. Pt. 80, 84. See U.S. Br. (Medicaid) at 3-4.

Again, States do not have to participate in Medicaid at all; in fact, Arizona did not join Medicaid until 1982. See Management of Arizona Medicaid Waiver: Hearings before the Subcomm. on Health & the Environment of the House Comm. on Energy & Commerce, 98th Cong., 2d Sess. 222 (1984). However, Medicaid is an undeniably attractive partnership because it covers a broad array of services and supports that aim to meet the needs of low-income people (especially children and people with disabilities), who are more likely than people with higher incomes to be in fair or poor health. JANUARY ANGELES & MATTHEW BROADUS, FEDERAL GOVERNMENT WILL PICK UP NEARLY ALL COSTS OF HEALTH REFORM'S MEDICAID EXPANSION 2 (Center on Budget and Policy Priorities, April 20, 2010). Moreover, after adjusting for the health status of recipients, Medicaid is significantly less costly, on a per-beneficiary basis, than private insurance, largely due to its lower provider rates and administrative costs. *Id.*

Like the previous Medicaid expansions undertaken since the program began in 1965—which required States to cover infants, children, pregnant women, and the disabled, *inter alia*—the Affordable

Care Act requires participating States to cover an additional category of needy individuals. Specifically, the ACA extends Medicaid eligibility to certain individuals under 65, not receiving Medicare, and with incomes up to 133% of the federal poverty level. 42 U.S.C. § 1396a(a)(10)(A)(i)(VII). As the United States has made clear, these “eligibility standards *define* the Medicaid program, going to the very core of the offer of federal financial assistance that Congress has extended to the States and specifying how the federal dollars will be spent.” U.S. Br. (Medicaid) at 24. Beyond these minimum coverage requirements, States have the option of including additional categories of Medicaid recipients, generally at the same rate of federal reimbursement, which, prior to the ACA, was between 50% and 83%, depending on a State’s *per capita* income. Every single State has opted to extend eligibility in some manner and to provide some optional benefits. Kaiser Comm’n on Medicaid & the Uninsured, *Medicaid Enrollment and Expenditures by Federal Core Requirements and State Options*, App. B, Tbl. 1, at 4 (Jan. 2012). This allows for the diversity and innovation that is the hallmark of the States. *See generally New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) (observing that, under our federalism, “a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country”). In fact, in some States—Maine, for example—this optional expanded coverage, undertaken prior to the ACA, remains broader than the eligibility expansion contained in the Act. The ACA’s expansion of Medicaid thus reflects State experience and policy preferences, and is hardly the unreasonable

expansion Petitioners suggest (let alone an unconstitutional one).

Far from being a burden on the States, the ACA's Medicaid expansion will allow millions more Americans access to quality, affordable health care while minimizing the strain on State and local government budgets. The government will pay 100% of the costs of providing medical assistance to the expanded coverage group from 2014 to 2016, gradually decreasing the support to 95% in 2017, 94% in 2018, 93% in 2019, and 90% in 2020 and thereafter. 42 U.S.C. § 1396d(y). *See also* ANGELES & BROADUS, at 3. Largely as a result of this increased federal spending, the States will only slightly increase their Medicaid spending in the next decade, while covering substantially more of their citizens. This slight increase has been pegged at approximately 0.8% above what States were projected to spend by the Congressional Budget Office, although Petitioners cite to another study that suggests an approximate 1.75% increase. *Compare* U.S. Br. (Medicaid) at 10 (citing CONG. BUDGET OFFICE, SPENDING & ENROLLMENT DETAIL FOR CBO'S MARCH 2009 BASELINE: MEDICAID (2009)) *with* Petr. Br. at 10 (citing Kaiser Comm'n on Medicaid & the Uninsured, *Medicaid Coverage & Spending in Health Reform: National and State-by-State Results for Adults at or Below 133% FPL* (May 2010)). Using these different projections, States will increase their Medicaid spending by approximately \$20 billion to \$43.2 billion—a mere fraction of the \$1.6 trillion that States were projected to spend on Medicaid, for fewer people, over the same time frame, in the absence of health care reform. ANGELES & BROADUS, at 4. At the same time, the Congressional

Budget Office estimates that the Medicaid changes will result in \$434 billion in extra federal Medicaid and Children's Health Insurance Program money flowing to the States between 2010 and 2019. Expanding health care coverage will also substantially lower the cost to States for uncompensated care. See Council of Economic Advisors, *The Impact of Health Insurance Reform on State and Local Governments* (Sept. 15, 2009).²

The benefits of national health care reform for States and their citizens will be substantial, in part because the size of the problem with health care is so great. Despite the fact that Americans spent an estimated 2.5 trillion dollars on health care in 2009, more than 45 million Americans do not have health insurance. Pub. L. No. 111-148, §§ 1501(a)(2)(B),

² There are additional benefits and costs recovered in the long-term, which include having a more robust and healthy workforce and better quality of care overall. When communities have a large uninsured population, even insured people will have decreased access to adequate health care. Institute of Medicine, AMERICA'S UNINSURED CRISIS 108-09. States will also be better positioned to attract and maintain hospitals. Medical research facilities may increase the attention paid to diseases and health problems affecting traditionally uninsured populations, because health insurance would assure financial return. In addition, health care will become less costly for the insured, affording those families greater spending power. See Carole Keeton Strayhorn (Texas Comptroller of Public Account), *The Uninsured: A Hidden Burden on Texas Employers and Communities*, Apr. 2005.

10106(a), 124 Stat. 119, 907 (2010); *see also* CONG. BUDGET OFFICE, 2008 KEY ISSUES IN ANALYZING MAJOR HEALTH PROPOSALS 11 (Dec. 2008); CONG. BUDGET OFFICE, THE LONG-TERM BUDGET OUTLOOK 21-22 (June 2009). Individuals and families face disastrous personal and financial consequences when they find themselves with serious medical problems and no insurance. *See* Pub. L. No. 111-148, §§ 1501(a)(2)(G), 10106(a) (noting that 62% of all personal bankruptcies are precipitated in part by medical expenses); Institute of Medicine, AMERICA'S UNINSURED CRISIS: CONSEQUENCES FOR HEALTH AND HEALTH CARE 58, 78-79, 80 (2009) (observing that uninsured people have a higher likelihood of being hospitalized and of dying prematurely, and of experiencing greater limitations on their quality of life when compared to insured people). In addition, when the uninsured receive medical assistance, the uncompensated health care costs, which were \$43 billion in 2008 alone, are borne by federal, State and local governments, as well as by those who pay for insurance and health care providers. Pub. L. No. 111-148, §§ 1501(a)(2)(F), 10106(a).

The Act will help address these serious problems by reducing the number of uninsured Americans by approximately 32 million in the next decade, and lowering the average insurance premium paid by individuals and families in the individual and small-group markets. Letter from Douglas W. Elmendorf, Director, Cong. Budget Office, to the Hon. Nancy Pelosi, Speaker, U.S. House of Representatives 9 (March 20, 2010); CONG. BUDGET OFFICE, AN ANALYSIS OF HEALTH INSURANCE PREMIUMS UNDER THE PATIENT PROTECTION AND AFFORDABLE CARE ACT

23-25 (Nov. 30, 2009). This substantial number of newly covered individuals is achieved in large part by the Act's requirement that the States expand Medicaid to all non-elderly individuals with incomes up to 133% of the poverty line, or about \$29,000 for a family of four.

Amici State Legislators believe this represents a good deal for their constituents and their States. Petitioners appear to argue that this is *too* good a deal: one that they can't refuse. But it has been true for several decades, at least, that while "State participation in Medicaid is entirely voluntary, [] it is in a state's interest to participate since otherwise the state and its localities would, as a practical matter, have to provide many of the same services without the financial assistance of the federal government." Elizabeth Anderson, *Administering Health Care: Lessons from the Health Care Financing Administration's Waiver Policy-Making*, 10 J.L. & POL. 215, 220 (1994).

The federal-State partnership on health care that has already helped so many Americans through the Medicaid program is appropriately respected in the Affordable Care Act. The Act responds to a pressing, national health care crisis, while respecting the sovereignty and expertise of the States, reflecting the best of our federalism. The requirements of the Act and the funding it provides participating States will benefit both strained government budgets and the lives of each State's residents.

II. Petitioners' Coercion Claim and Novel Doctrinal Limitations Are Constitutionally Baseless And Threaten The Careful Balance Of Federal-State Power.

Petitioners allege that the Act's Medicaid-related provisions are unconstitutional because they amount to "coercion and commandeering," JA 65-66 (Second Am. Compl. ¶¶ 83-86), dramatically claiming that upholding the constitutionality of the Medicaid provisions would cause "structural damage to our constitutional system." Petr. Br. at 59. This claim fails at the outset because the States cannot be "coerced" into doing anything with respect to Medicaid—Medicaid is a voluntary federal-State partnership, which the States could opt out of if their leaders and citizens so desired, avoiding the Act's new requirements for expanded Medicaid coverage.

In an attempt to circumvent this basic truth, fatal to Petitioners' case, Petitioners declare the urgent need for this Court to place new limitations on Congress's power to tax and spend for the general welfare. But the Court has already recognized, in *South Dakota v. Dole*, the necessary limitations on Congress's Spending Clause power to preserve state sovereignty and our system of federalism. It is undisputed that the ACA's Medicaid expansion does not run afoul of those limits. Petitioners' attempt to invent additional limits that would allow them to remain in the Medicaid program, while avoiding the new requirements placed as a condition on the ACA's generous Medicaid funding grant, threatens to throw off-balance our Constitution's carefully calibrated balance of federal-State power. This Court should

decline to allow Petitioners' desire to avoid political accountability for their policy preferences to distort our constitutional system of federalism.

A. Petitioners' Suggested Limits On Congress's Power To Tax And Spend For The General Welfare Are Unprecedented And Wrong-Headed.

As discussed in detail in *Amici* State Legislators' brief in support of the constitutionality of the minimum coverage provision, the federal system in the United States is founded on a Constitution that gives broad power to the federal government to act when a national solution is necessary or preferable, while preserving the role of State and local governments to create policies responsive to local needs and customs. See 2 MAX FARRAND ED., THE RECORDS OF THE FEDERAL CONVENTION OF 1787 (rev. ed. 1966), at 131-32 (reflecting that the delegates to the Constitutional Convention instructed the Committee of Detail, which drafted the enumerated powers of Congress in Article I, that Congress should have authority to "legislate in all Cases for the general Interests of the Union, and also in those Cases to which the States are separately incompetent"). See generally Federalist No. 2 (Jay), in THE FEDERALIST PAPERS (Clinton Rossiter ed., 1999); AKHIL REED AMAR, AMERICA'S CONSTITUTION: A BIOGRAPHY 108 (2005). Providing Congress the power to tax and spend was of central importance to the drafters of our Constitution: they had witnessed the disastrous consequences of the Articles of Confederation's failure to provide for such a power. Under the Articles, Congress had some powers, but was given no means to execute those powers.

Congress could not directly tax individuals or legislate upon them; it could raise money only by making requests to the States.

This created such an ineffectual central government that, according to George Washington, it nearly cost Americans victory in the Revolutionary War, and he lamented the dire situation in which the soldiers had been placed as a result of Congress's inability to levy taxes to support the Army. *See* 18 THE WRITINGS OF GEORGE WASHINGTON 453 (John C. Fitzpatrick, ed. 1931) (Letter to Joseph Jones, May 31, 1780). *See also* WASHINGTON: WRITINGS 393 (John Rhodehamel, ed. 1997) (Circular to State Governments, Oct. 18, 1780); *id.* at 502-503 (Letter to Lund Washington, March 19, 1783). Washington believed that the inability of the central government to address common concerns such as the maintenance of an army could bring disaster: "The sufferings of a complaining army, on the one hand, and the inability of Congress and tardiness of the States on the other, are the forebodings of evil." *Id.* at 488 (Letter to Alexander Hamilton, March 4, 1783).

This historical foundation explains why the Spending Clause is the first and one of the most sweeping powers the Constitution confers upon Congress, providing the power "to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States." U.S. CONST., art. I, § 8. The power to tax and spend for the common defense and general welfare is "an indispensable ingredient in every Constitution," THE FEDERALIST PAPERS NO. 30 (Hamilton), at 184, and it was essential for the Con-

stitution to “embrace a provision for the support of the national civic list; for the payment of the national debts contracted, or that may be contracted; and, in general, for all those matters which will call for disbursements out of the national treasury.” *Id.*

Even in 1936, in the midst of a period when the Court was actively limiting the authority of the New Deal Congress, this Court recognized the broad sweep of the Spending Clause’s plain language. In *United States v. Butler*, 297 U.S. 1 (1936), this Court held that the “necessary implication from the terms of the grant is that the public funds may be appropriated ‘to provide for the general welfare of the United States.’” *Id.* at 65. Recognizing the Spending Clause as an independent grant of authority to Congress, the *Butler* Court held 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.” *Id.* The Court was unanimous on this point. *Id.* at 80-81 (Stone, J. dissenting).

Nonetheless, Petitioners now ask this Court to place a myriad of new limitations on Congress’s power to tax and spend, suggesting that these limits “are a necessary consequence of the federal government’s successful effort to broaden the spending power,” citing *Butler*. Petr. Br. at 28. These newfangled constitutional principles include:

- some sort of stricter coercion scrutiny “when Congress seeks to impose conditions on *entire blocks* of federal funding,” Petr. Br. at 57;

- a limitation on Congress’s power to spend treasury funds based on what the residents of each State pay in taxes, *e.g.*, Petr. Br. at 43-45;
- heightened scrutiny of spending legislation that touches on programs that have been popular with the States and in which the federal government’s financial assistance is “massive,” Petr. Br. at 58; and
- a presumption of unconstitutionality when Congress assumes the continued participation of States in a program that they have participated in for decades, and where Congress is offering to pay for the vast majority of the new aspects of the program, *e.g.*, Petr. Br. at 39-42.

None of these proposed limitations is supported by the Constitution or precedent—nor is Petitioners’ suggestion that *Butler* somehow “broadened” Congress’s power to tax and spend. Petr. Br. at 28. In fact, the *Butler* Court simply, and, without any dissent on this point, decided the “true construction” of the Constitution’s text. *Butler*, 297 U.S. at 66.

Petitioners’ effort to impose new limitations on Congress’s expressly delegated powers should be rebuffed, in order to preserve the constitutional balance of power that has proved adequate to the task of governing a nation and preserving individual liberty through the “double security” of strong federal and State governments. THE FEDERALIST PAPERS NO. 51 (Madison), at 320. As discussed below, the Court’s Spending Clause doctrine already contains the neces-

sary safeguards to ensure that States are not unconstitutionally coerced by Congress’s conditioned spending. Petitioners’ inability to make out a case of coercion under existing doctrine is hardly a reason to invent new constitutional rules.

B. Petitioners’ Desire To Avoid The Political Consequences Of Opting Out Of The Valuable And Popular Medicaid Program Does Not Amount To Unconstitutional Coercion or Commandeering.

Recognizing that Medicaid is a valued program that provides crucial access to care for millions of the Petitioners’ constituents, Petitioners attempt a novel argument—merging the Court’s coercion and anti-commandeering doctrines—that tries to keep what they like about the program, including substantial federal funding, while avoiding the Act’s new requirements, which they oppose. *See* JA 57 (Second Am. Compl. ¶ 65). This argument presents neither a claim of coercion nor of commandeering and should be denied.

This Court has made clear that the temptation to accept federal funds does not amount to coercion. *South Dakota v. Dole*, 483 U.S. 203, 212 (1987). The Constitution allows the federal government to structure or condition federal funds and programs in a certain way, allowing States to choose whether to participate and accept those conditions, or not. It is well-established that “Congress may attach conditions on the receipt of federal funds.” *Id.* at 206. When the Court validated the Social Security Act, for

example, it recognized that to hold that “motive or temptation [on the part of a State to comply with a condition attached to a federal appropriation grant] is equivalent to coercion is to plunge the law in endless difficulty.” *Steward Machine Co. v. Davis*, 301 U.S. 548, 589-90 (1937).

Congress’s spending power enables it to condition the disbursement of federal funds on States’ meeting particular criteria. This extends to conditions that require States to fund programs or otherwise spend state funds for particular purposes. See *King v. Smith*, 392 U.S. 309 (1968) (upholding statute that conditioned federal matching funds on certain State actions, including the expenditure of State funds, because, if Alabama wanted to continue receiving the federal funds, it had to abide by the conditions). If the State finds the conditions too onerous, it may simply refuse the federal funds. See *Oklahoma v. United States Civil Service Comm’n*, 330 U.S. 127 (1947) (upholding the Hatch Act, which required that any employee of a state highway commission [financed in whole or part with federal funds] must be removed from office if he/she was found to be engaging in political activities, because the federal government may attach conditions to disbursement of funds, and because the employee and the State have the right to refuse funds).

This may require elected State officials to face some difficult decisions, but “[i]n the tension between federal and state power lies the promise of liberty.” *Gregory v. Ashcroft*, 501 U.S. 452, 459 (1991). The interplay between principles of federalism and Congress’s Spending Clause authority leaves to “the

residents of the State” the “ultimate decision whether or not the State will comply” with conditions placed on federal funds. *New York v. United States*, 505 U.S. 144, 166-67 (1992). “If a State’s citizens view federal policy as sufficiently contrary to local interests, they may elect to decline a federal grant.” *Id.* at 168. The Petitioners do not really argue that they are truly *unable* to opt out of Medicaid if their constituents view the ACA’s expanded coverage “as sufficiently contrary to local interests”—what they are arguing is that their constituents will be displeased if Petitioners opt out of Medicaid and their States are forced to severely cut benefits or significantly raise taxes. But that isn’t coercion. It’s simply a reflection of the fact that Petitioners’ constituents probably do not “view federal policy as sufficiently contrary to local interests” that they would support declining the massive federal Medicaid grant and suffering the consequences. *Id.*

Similarly, the voluntary nature of Medicaid renders the Petitioners’ “commandeering” claim regarding the Act’s expansion of Medicaid coverage to over 16 million more low-income adults and children groundless. This Court has articulated an anti-commandeering doctrine that holds that the federal government “may not compel the States to enact or administer a federal regulatory program.” *Printz v. United States*, 521 U.S. 898, 926 (1997); *New York*, 505 U.S. at 188. As a threshold matter, however, the Court has never joined its Spending Clause coercion jurisprudence directly to its “anti-commandeering” doctrine. Petitioners argue that “[i]f Congress were free to use its spending power to coerce States into enforcing the federal government’s dictates, then the

spending power would become the exception that swallows the anti-commandeering rule.” Petr. Br. at 21. But this argument ignores a fundamental and categorical difference between federal mandates and federal spending conditions: the massive federal payments that make statutes like Medicaid work. This Court was appropriately concerned in *New York* and *Printz* about unfunded federal mandates that could divert and deplete state resources. It should be far less concerned about spending conditions that come with generous funding behind them.

Petitioners’ argument also presupposes that the limits this Court has recognized with respect to Congress’s spending power to prevent unconstitutional “coercion” are illusory, which they are not.

First, the text of the Constitution expressly limits Congress’s spending power to the pursuit of “the general welfare.” U.S. CONST. art. I, § 8; *Dole*, 483 U.S. at 207. Second, any conditions Congress places on grants to the States must be clear, thus “enable[ing] the States to exercise their choice knowingly, cognizant of the consequences of their participation.” *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981). Third, “conditions on federal grants might be illegitimate if they are unrelated ‘to the federal interest in particular national projects or programs.’” *Dole*, 483 U.S. at 207 (citation omitted). Finally, “other constitutional provisions may provide an independent bar to the conditional grant of federal funds,” *id.* at 208—Congress may “not ‘induce’ the recipient to ‘engage in activities that would themselves be unconstitutional.’” *United States v. Am. Library Ass’n, Inc.*, 539 U.S. 194, 203

(2003) (plurality) (quoting *Dole*, 483 U.S. at 210). The United States acknowledges that Congress's Spending Clause power is limited by these principles, U.S. Br. (Medicaid) at 21-22, and these four principles define when "pressure turns into compulsion."³

But even accepting Petitioners' efforts to import a version of this Court's commandeering doctrine into Spending Clause doctrine, their arguments fail. Losing federally-funded Medicaid would surely be a bitter pill to swallow for Petitioners and their constituents, but Congress may constitutionally "hold out incentives to the states as a method of influencing a state's policy choices." *New York*, 505 U.S. at 166; *see also id.* at 167 ("Where the recipient of federal funds is a State, as is not unusual today, the conditions attached to the funds by Congress may influence a State's legislative choices."). So long as Congress merely "encourages state regulation rather than compelling it, state governments remain responsive to the local electorate's preferences; state officials remain accountable to the people." *Id.* at 168.

Indeed, while Petitioners dramatically suggest that opting out of Medicaid could have "severe consequences for poor Americans" similar to those that resulted from another "health-related event," Hurricane Katrina, JA 21-22 (docket entry # 80, Pls.' Mem. In Support of Summary Judgment at 36 n.34), other State leaders (even some who also represent States of the Petitioners) have expressed their view that re-

³ Petitioners appear to view "anti-coercion" as an independent fifth limitation on the Spending Clause, but the *Dole* opinion does not support this view.

jecting the Affordable Care Act's Medicaid expansion would be in their State's best interest. For example, Texas Governor Rick Perry told a news outlet that opting out of the Medicaid program could save the state and federal government \$40 billion each over six years: "We think in Texas over the next six years that we could take and find a private insurance solution and better serve our people, put more people under coverage." Althea Fung, *Texas Considers Opting Out of Medicaid*, NATIONAL JOURNAL, Nov. 15, 2010. See also Emily Ramshaw & Marilyn Serafini, *Battle Lines Drawn Over Medicaid in Texas*, N.Y. TIMES, Nov. 16, 2010 (noting that "the idea of dropping out of Medicaid is on the table in Texas and roughly a dozen other states, including Alabama, Mississippi, Washington and Wyoming"). This may not be a wise policy choice, but it is a *possible* choice—and one that demonstrates that States are not impermissibly "coerced" or "commandeered" into remaining in the Medicaid program.

The decision State leaders face is clear: whether to take steps to implement the Act's expansion of Medicaid and work in partnership with the federal government to provide better health care for State residents, or to opt out of Medicaid altogether. Either of these choices is possible (although *Amici* State Legislators believe the first path is better for their States and their constituents). Accordingly, the political accountability concerns that animate the Supreme Court's anti-commandeering jurisprudence cut against Petitioners here. *Printz*, 521 U.S. at 929-30 (expressing the concern that, if Congress commandeered the machinery of the State, it could take credit for "solving" problems truly handled by the

State, or the States could be blamed for burdensome federal policies); *New York*, 505 U.S. at 168 (explaining that, by allowing Congress to encourage State regulation but not expressly compel it, officials are still accountable to the people for their choices). If the Court were to allow Petitioners to use its commandeering claims to, via judicial action, preserve the aspects of Medicaid they like—specifically, Medicaid prior to the passage of the Act, *see* JA 48 (Second Am. Compl. ¶¶ 39-41)—while doing away with the expanded coverage requirements of the duly enacted health reform law, the political accountability goals articulated in *New York* and *Printz* would be seriously undermined.

Congress established Medicaid in Title XIX of the Social Security Act of 1965; the States then had the option whether to jointly fund the program with the federal government, or not. Here, Congress has voted to expand Medicaid—as it expressly reserved the right to—to help reduce the number of uninsured people by 32 million over the next ten years; States can again determine whether to continue working with the federal government in the Medicaid partnership, or not. In either case, the elected federal officials and the elected State leaders will be accountable for their choices. The Petitioners seek to avoid that accountability by asking the Court to invalidate the new conditions placed on Medicaid funds while retaining the portions of the program they like. Such an argument does not properly raise a claim of unconstitutional “commandeering” or “coercion” and should be rejected.

CONCLUSION

Amici State Legislators support the steps toward effective health care reform undertaken in the Affordable Care Act and believe that the Act is fully constitutional. As State leaders who have taken an oath to be faithful to the U.S. Constitution and who are actively working to implement and prepare for various requirements of the Act, *Amici* respectfully urge the Court to uphold the constitutionality of the Affordable Care Act's expansion of Medicaid.

Respectfully submitted,

DOUGLAS T. KENDALL

ELIZABETH B. WYDRA*

**Counsel of Record*

CONSTITUTIONAL ACCOUNTABILITY
CENTER

1200 18th St., NW, Suite 1002

Washington, D.C. 20036

(202) 296-6889

elizabeth@theusconstitution.org

Counsel for Amici Curiae

State Legislators

February 17, 2012

APPENDIX

**LIST OF *AMICI CURIAE*
STATE LEGISLATORS**

Abercrombie, Catherine, Assistant Majority Whip
Representative—Connecticut

Abinanti, Thomas J.
Assemblyperson—New York

Abrams, Stacey, Minority Leader
Representative—Georgia

Adams, Alma
Representative—North Carolina

Aguiar, James
Representative—New Hampshire

Albis, James
Representative—Connecticut

Alexander, Kelly
Representative—North Carolina

Alexander, Martha
Representative—North Carolina

Alfond, Justin, Assistant Senate Minority Leader
Senator—Maine

Allen, Alma
Representative—Texas

Almy, Susan
Representative—New Hampshire

Alonzo, Roberto
Representative—Texas

Alvarado, Carol
Representative—Texas

Anchia, Rafael
Representative—Texas

Antonio, Nickie
Representative—Ohio

Anzelc, Tom
Representative—Minnesota

Appleton, Sherry
Representative—Washington

Arce Ferrer, Luz
Senator—Puerto Rico

Aresimowicz, Joe, Deputy Speaker of the House
Representative—Connecticut

Armstrong, Joe
Representative—Tennessee

Arora, Sam
Delegate—Maryland

Ashe, Kathy
Representative—Georgia

Atkins, Bert
Representative—Missouri

Austin, Terri
Representative—Indiana

BaCote, Mamyé
Delegate—Virginia

Baker, Glenn
Representative—Georgia

Bakk, Tom, Minority Leader
Senator—Minnesota

Barnett, Vicki
Representative—Michigan

Bartlett, Philip
Senator—Maine

Barve, Kumar, Majority Floor Leader
Delegate—Maryland

Bauer, Joan
Representative—Michigan

Beall, Daryl
Senator—Iowa

Beasley-Teague, Sharon
Representative—Georgia

Beavers, Roberta
Representative—Maine

Beck, Henry
Representative—Maine

Beliveau, Devin
Representative—Maine

Bell, Larry
Representative—North Carolina

Benedetto, Michael R.
Assemblyman—New York

Benn, Bernard
Representative—New Hampshire

Berry, Seth
Representative—Maine

Bobo, Elizabeth
Delegate—Maryland

Boland, Andrea
Representative—Maine

Bolkcom, Joe, Assistant Majority Leader
Senator—Iowa

Bordsen, Alice
Representative—North Carolina

Botzow, Bill
Representative—Vermont

Brannigan, Joe
Senator—Maine

Brennan, James
Assemblyperson—New York

Briggs, Sheryl
Representative—Maine

Brown, Charlie
Representative—Indiana

Brown, Michael
Representative—Missouri

Brown, Lisa, Majority Leader
Senator—Washington

Brown, Bonnie
Delegate—West Virginia

Bryant, Angela
Representative—North Carolina

Brynaert, Kathy
Representative—Minnesota

Buckner, Debbie, Minority Caucus Secretary
Representative—Georgia

Buhl, Angie
Senator—South Dakota

Bullard, Dwight
Representative—Florida

Burnam, Lon
Representative—Texas

Butler, Larry
Representative—Connecticut

Butler, Gloria
Senator—Georgia

Cain, Emily, Minority Leader
Representative—Maine

Cafaro, Capri
Senator—Ohio

Cahill, Kevin A.
Assemblyperson—New York

Camper, Karen
Representative—Tennessee

Carey, Mike
Representative—Maine

Carlson, Lyndon
Representative—Minnesota

Carlson, Susan
Representative—Missouri

Carlton, Maggie
Assemblyperson—Nevada

Carney, Becky
Representative—North Carolina

Carr, Al
Delegate—Maryland

Carr, Daniel
Representative—New Hampshire

Casavant, Alan
Representative—Maine

Carter, Jason
Senator—Georgia

Carter, Chris, Minority Caucus Vice-Chair
Representative—Missouri

Carter Peterson, Karen
Senator—Louisiana

Catania, David
Councilman—District of Columbia

Cavanagh, Phil
Representative—Michigan

Celeste, Ted
Representative—Ohio

Chapman, Ralph
Representative—Maine

Chase, Cynthia
Representative—New Hampshire

Chase, Maralyn
Senator—Washington

Chasey, Gail
Representative—New Mexico

Chavez, Eleanor
Representative—New Mexico

Chavez-Houck, Rebecca
Representative—Utah

Clark, Karen
Representative—Minnesota

Clibborn, Judy
Representative—Washington

Cobb Hunter, Gilda
Representative—South Carolina

Cody, Eileen
Representative—Washington

Coggs, Spencer
Senator—Wisconsin

Cohen, Richard
Senator—Minnesota

Cohen, Mark
Representative—Pennsylvania

Coleman, Merika
Representative—Alabama

Coleman, Mary H.
Representative—Mississippi

Coleman, Garnet
Representative—Texas

Colona, Mike, Minority Whip
Representative—Missouri

Conaway, Herb
Assemblyperson—New Jersey

Conrad, Danielle
Senator—Nebraska

Conway, Steve
Senator—Washington

Cook, Michelle
Representative—Connecticut

Copeland Hanzas, Sarah
Representative—Vermont

Cornell du Houx, Alex
Representative—Maine

Cote, David E.
Representative—New Hampshire

Cotham, Tricia
Representative—North Carolina

Council, Brenda
Senator—Nebraska

Court, Lois, Minority Caucus Chair
Representative—Colorado

Craven, Margaret
Senator—Maine

Crisco, Joseph
Senator—Connecticut

Darany, George T.
Representative—Michigan

Danielson, Jeff, President Pro Tempore
Senator—Iowa

Dannelly, Charlie S.
Senator—North Carolina

Darneille, Jeannie
Representative—Washington

Davenport, Gail
Senator—Georgia

Davis, Bettye
Senator—Alaska

Davnie, Jim
Representative—Minnesota

Delgado, William
Senator—Illinois

Dembowski, Nancy
Representative—Indiana

DiPentima, Rich
Representative—New Hampshire

Deshotel, Joe
Representative—Texas

Dibble, Scott
Senator—Minnesota

Dickerson, Pamela
Representative—Georgia

Dinowitz, Jeffrey
Assemblyperson—New York

Dill, Cynthia
Senator—Maine

Dill, Jim
Representative—Maine

Dillon, Patricia
Representative—Connecticut

Dobbs, Elisabeth J.
Representative—Georgia

Donovan, Christopher G., Speaker of the House
Representative—Connecticut

Driscoll, Timothy
Representative—Maine

Duchesne, Bob
Representative—Maine

Duff, Bob
Senator—Connecticut

Dukes, Dawna
Representative—Texas

Durhal, Fred, Jr., Legislative Black Caucus Chair
Representative—Michigan

Dvorsky, Robert
Senator—Iowa

Earle, Beverly
Representative—North Carolina

Eves, Mark
Representative—Maine

Ebbin, Adam
Senator—Virginia

Ellinger, Rory
Representative—Missouri

Ellington, Brandon
Representative—Missouri

Elliott, Joyce
Senator—Arkansas

Ellis, Rodney G.
Senator—Texas

Englin, David,
Delegate—Virginia

Erpenbach, Jon
Senator—Wisconsin

Esquibel, Ken
Representative—Wyoming

Evans, Stacey
Representative—Georgia

Falk, Andrew
Representative—Minnesota

Farmer-Butterfield, Jean
Representative—North Carolina

Farrar, Jessica, House Democratic Leader
Representative—Texas

Favola, Barbara
Senator—Virginia

Feldman, Dede
Senator—New Mexico

Ferri, Frank
Representative—Rhode Island

Finney, Gail
Representative—Kansas

Fisher, Susan
Representative—North Carolina

Fisher, Michael
Representative—Vermont

Fitzgibbon, Joe
Representative—Washington

Fleischauer, Barbara
Delegate—West Virginia

Flexer, Mae
Representative—Connecticut

Flowers, Mary
Representative—Illinois

Fludd, Virgil
Representative—Georgia

Foley, Mike
Representative—Ohio

Foster, Joyce
Senator—Colorado

Foster, Daniel
Senator—West Virginia

Frankel, Dan, Democratic Caucus Chair
Representative—Pennsylvania

Fraser, Karen, Majority Caucus Chair
Senator—Washington

Frazier, Hillman
Senator—Mississippi

French, Patsy
Representative—Vermont

Fritz, Patti
Representative—Minnesota

Frockt, David, Majority Assistant Floor Leader
Senator—Washington

Frush, Barbara
Delegate—Maryland

Galef, Sandra R.
Assemblyperson—New York

Gallegos, Mario
Senator—Texas

Garcia, Mary Jane M., Senate Majority Whip
Senator—New Mexico

Garcia, Miguel
Representative—New Mexico

Gardner, Pat
Representative—Georgia

Garland, Nancy
Representative—Ohio

Gauthier, Kerry
Representative—Minnesota

Geiss, Douglas A.
Representative--Michigan

Genga, Henry
Representative—Connecticut

Gentile, Linda
Representative—Connecticut

Gerratana, Terry
Senator—Connecticut

Gibson, Vanessa L.
Assemblyperson—New York

Gilbert, Paul E.
Representative—Maine

Gill, Rosa
Representative—North Carolina

Giron, Angela
Senator—Colorado

Glassheim, Elliott
Representative—North Dakota

Glazier, Rick, House Minority Whip
Representative—North Carolina

Glick, Deborah
Assemblyperson—New York

Godfrey, Robert, Deputy Speaker of the House
Representative—Connecticut

Gonzales, Veronica
Representative—Texas

Goodall, Seth
Senator—Maine

Goode, Adam
Representative—Maine

Goodwin, Barb
Senator—Minnesota

Gordon, J. Craig
Representative—Georgia

Gottfried, Richard
Assemblyperson—New York

Graham, Anne
Representative—Maine

Graham, Charles
Representative—North Carolina

Green, Tami, Majority Floor Leader
Representative—Washington

Greene, Marion
Representative—Minnesota

Greiling, Mindy
Representative—Minnesota

Grogins, Auden
Representative—Connecticut

Gutierrez Kenney, Phyllis
Representative—Washington

Gutierrez, Roland
Representative—Texas

Haddad, Gregory
Representative—Connecticut

Hagan, Robert
Representative—Ohio

Haire, Phil
Representative—North Carolina

Hall, Laura
Representative—Alabama

Hall, Larry D., House Minority Whip
Representative—North Carolina

Hansen, Rick, Assistant Minority Leader
Representative—Minnesota

Hansen, Drew, Assistant Majority Whip
Representative—Washington

Harbison, Ed
Senator—Georgia

Harding, Laurie
Representative—New Hampshire

Harlow, Denise
Representative—Maine

Harrison, Pricey
Representative—North Carolina

Hatch, Jack
Senator—Iowa

Hayden, Jeff
Senator—Minnesota

Hayes, Terry, Assistant House Minority Floor Leader
Representative—Maine

Head, Helen
Representative—Vermont

Healey, Anne
Delegate—Maryland

Heinz, Matt
Representative—Arizona

Higgins, Linda
Senator—Minnesota

Hernandez Luna, Ana
Representative—Texas

Hinck, John
Representative—Maine

Hixson, Sheila
Delegate—Maryland

Hobbs, Rudy
Representative—Michigan

Hodges, Steve
Representative—Missouri

Holmes, Jr., Marvin E.
Delegate—Maryland

Hope, Patrick
Delegate—Virginia

Hornstein, Frank
Representative—Minnesota

Hosch, Larry, Minority Whip
Representative—Minnesota

Hovey-Wright, Marcia
Representative—Michigan

Howard, Donna
Representative—Texas

Howze, Lisa L.
Representative—Michigan

Hubbard, James W., Assistant Majority Floor Leader
Delegate—Maryland

Hubbard, Penny
Representative—Missouri

Hucker, Tom
Delegate—Maryland

Hudgins, Zack
Representative—Washington

Hughes, Leonard
Representative—Missouri

Hummel, Jacob
Representative—Missouri

Hunt, Sam
Representative—Washington

Hunter, Bruce
Representative—Iowa

Huntley, Thomas
Representative—Minnesota

Insko, Verla
Representative—North Carolina

Isenhardt, Chuck
Representative—Iowa

Jackson, Lester G.
Senator—Georgia

Jackson, Robert L.
Senator—Mississippi

Jackson, Darren
Representative—North Carolina

Jacobs, Rhoda S., Assistant Speaker
Assemblyperson—New York

Jaffee, Ellen C.
Assemblyperson—New York

James, Donzella
Senator—Georgia

Jenkins, Laurie
Representative—Washington

Johnson, Susan
Representative—Connecticut

Johnson, Sheldon
Representative—Minnesota

Jones, Mia
Representative—Florida

Jones, Emanuel
Senator—Georgia

Jones, Sheila
Representative—Georgia

Jones, Adrienne, Speaker Pro Tem
Delegate—Maryland

Jones, Tishaura, Assistant Minority Floor Leader
Representative—Missouri

Jones McClendon, Ruth
Representative—Texas

Jordan, Darryl
Representative—Georgia

Josephs, Babette
Representative—Pennsylvania

Joyner, Arthenia, Minority Leader Pro Tempore
Senator—Florida

Kahn, Phyllis
Representative—Minnesota

Kaiser, Anne, Chief Deputy Majority Whip
Delegate—Maryland

Keever, Patsy
Representative—North Carolina

Kefalas, John
Representative—Colorado

Keiser, Karen
Senator—Washington

Kelly, Ariana
Delegate—Maryland

Kent, Peter
Representative—Maine

King, Phylis
Representative—Idaho

Kinnaird, Ellie
Senator—North Carolina

Kirkley-Bey, Marie Lopez, Deputy Speaker
Representative—Connecticut

Kirkton, Jeanne
Representative—Missouri

Kirschman, Patrick
Representative—South Dakota

Kitzmiller, Warren
Representative—Vermont

Kline, Adam
Senator—Washington

Kloucek, Frank
Representative—South Dakota

Knuth, Kate
Representative—Minnesota

Koehler, David
Senator—Illinois

Kohl-Welles, Jeanne
Senator—Washington

Kramer, Benjamin F.
Delegate—Maryland

Kratky, Michele
Representative—Missouri

Kruger, Chuck
Representative—Maine

Kumiega, Walter
Representative—Maine

Laine, Carolyn
Representative—Minnesota

Langseth, Keith
Senator—Minnesota

Lavine, Charles D.
Assemblyperson—New York

Lee, Chris
Representative—Hawaii

Lemar, Roland
Representative—Connecticut

Lensing, Vicki
Representative—Iowa

Lesser, Matthew
Representative—Connecticut

Luebke, Paul
Representative—North Carolina

Levy, Claire
Representative—Colorado

Liebling, Tina
Representative—Minnesota

Lifton, Barbara
Assemblyperson—New York

Liias, Marko
Representative—Washington

Lindberg, Steven
Representative—Michigan

Lipton, Ellen Cogan
Representative—Michigan

Liss, Lesia, Minority Vice Chair of Health Policy
Representative—Michigan

Loeffler, Diane
Representative—Minnesota

Long, Patrick
Representative—New Hampshire

Longstaff, Thomas
Representative—Maine

Lopez, Linda
Senator—Arizona

Lorber, Jason
Representative—Vermont

Lourey, Tony
Senator—Minnesota

Lucas, Marvin
Representative—North Carolina

Lucio, Eddie
Senator—Texas

Luedtke, Eric
Delegate—Maryland

Luxenberg, Geoff
Representative—Connecticut

Lyddy, Christopher
Representative—Connecticut

Ma, Fiona, Speaker pro Tempore
Assemblyperson—California

MacDonald, Bruce
Representative—Maine

Maisel, Alan
Assemblyperson—New York

Malek, Sue
Representative—Montana

Maloney, Maeghan
Representative—Maine

Manno, Roger
Senator—Maryland

Marrero, Beverly
Senator—Tennessee

Marsh, III, Henry L.
Senator—Virginia

Martin, John
Representative—Maine

Marzian, Mary Lou
Representative—Kentucky

Masland, Jim
Representative—Vermont

Mathern, Tim
Senator—North Dakota

Maxwell, Marcie
Representative—Washington

May, Karla
Representative—Missouri

Mazurek, Ed
Representative—Maine

McCann, Beth
Representative—Colorado

McCann Beatty, Gail
Representative—Missouri

McCreery, Tracy
Representative—Missouri

McCullough, Jim
Representative—Vermont

McDonald, Tom
Representative—Missouri

McGeoghegan, Eileen
Representative—Missouri

McGill, Amanda
Senator—Nebraska

McGuire, Mary Jo
Senator—Minnesota

McGuirt, Frank
Representative—North Carolina

McLawhorn, Marian
Representative—North Carolina

McManus, Kevin
Representative—Missouri

McNeil, Margo
Representative—Missouri

McSorley, Cisco
Senator—New Mexico

McVitty Weber, Lucy
Representative—New Hampshire

Megna, Robert
Representative—Connecticut

Melin, Carly
Representative—Minnesota

Merrick, Evalyn
Representative—New Hampshire

Miller, Aruna
Delegate—Maryland

Miller, Joshua
Senator—Rhode Island

Millman, Joan L.
Assemblyperson—New York

Mobley, Annie
Representative—North Carolina

Moeller, Jim, Speaker Pro Tempore
Representative—Washington

Monaghan-Derrig, Kim
Representative—Maine

Montecillo, Genise
Representative—Missouri

Moran, Rena
Representative—Minnesota

Morgan, Judy
Representative—Missouri

Morin, Russell
Representative—Connecticut

Morrison, Terry
Representative—Maine

Morrissey, Joseph
Delegate—Virginia

Morrow, Terry, Minority Whip
Representative—Minnesota

Mott Oxford, Jeanette
Representative—Missouri

Mullery, Joe
Representative—Minnesota

Murphy, Wm. Quincy
Representative—Georgia

Murphy, Patrick,
Representative—Iowa

Murphy, Erin, Assistant Minority Leader
Representative—Minnesota

Murphy, Mary
Representative—Minnesota

Murray, Ed
Senator—Washington

Mushinsky, Mary, Assistant Majority Whip
Representative—Connecticut

Naishtat, Elliott
Representative—Texas

Nasheed, Jamilah
Representative—Missouri

Neal, Yasmin
Representative—Georgia

Nelson, Mary
Representative—Maine

Nelson, Mike
Representative—Minnesota

Nelson, Sharon
Senator—Washington

Newman, Stacey
Representative—Missouri

Nichols, Mary
Representative—Missouri

Niemann, Doyle
Delegate—Maryland

Nordquist, Jeremy
Senator—Nebraska

Norton, Kim, Assistant Minority Leader
Representative—Minnesota

Oakes, Stacy Erwin
Representative—Michigan

O'Brien, Andrew
Representative—Maine

Oliver, Mary Margaret
Representative—Georgia

Orange, Linda
Representative—Connecticut

Orrock, Nan
Senator—Georgia

Ortiz, Felix
Assemblyperson—New York

Ortiz Y Pino, Jerry
Senator—New Mexico

Osienski, Edward
Representative—Delaware

Pace, Sharon
Representative—Missouri

Pappas, Sandy
Senator—Minnesota

Parfitt, Diane, Democratic Freshman Leader
Representative—North Carolina

Paris, Miriam
Senator—Georgia

Park, Al
Representative—New Mexico

Parmon, Earline
Representative—North Carolina

Partridge, Carolyn
Representative—Vermont

Pashinski, Eddie
Representative—Pennsylvania

Patterson, Daniel
Representative—Arizona

Payton, Jr., Tony
Representative—Pennsylvania

Pena-Melnyk, Joseline
Delegate—Maryland

Pendergrass, Shane
Delegate—Maryland

Peoples, Ann
Representative—Maine

Peoples-Stokes, Crystal D.
Assemblyperson—New York

Perone, Chris, Deputy Majority Leader
Representative—Connecticut

Perry, Nick N., Deputy Majority Leader
Assemblyperson—New York

Persell, John, Assistant Minority Leader
Representative—Minnesota

Peterson, Matt
Representative—Maine

Pichardo, Juan, Senate President Pro Tempore
Senator—Rhode Island

Pickett, Joe
Representative—Texas

Pierson, Tommie
Representative—Missouri

Plum, Kenneth
Delegate—Virginia

Pocan, Mark
Representative—Wisconsin

Pollet, J.D., Gerry
Representative—Washington

Prague, Edith
Senator—Connecticut

Prentice, Margarita, President Pro Tempore
Senator—Washington

Pridemore, Craig
Senator—Washington

Priest, Charles R.
Representative—Maine

Purcell, William
Senator—North Carolina

Ram, Kesha
Representative—Vermont

Ramirez, Victor
Senator—Maryland

Ramos, Dan
Representative—Ohio

Rapp, Ray
Representative—North Carolina

Raymond, Richard Pena
Representative—Texas

Read, Robin
Representative—New Hampshire

Reinert, Roger
Senator—Minnesota

Rest, Ann
Senator—Minnesota

Reynolds, Ron
Representative—Texas

Reznik, Kirill
Delegate—Maryland

Riley, Melissa
Representative—Connecticut

Ritter, Betsy
Representative—Connecticut

Ritter, Matthew
Representative—Connecticut

Rivera, Gustavo
Senator—New York

Rivera, Peter M., Speaker Pro Tempore
Assemblyperson—New York

Roberts, Mary Helen
Representative—Washington

Rochelo, Megan
Representative—Maine

Rodriguez, Robert J.
Assemblyperson—New York

Rodriguez, Jose
Senator—Texas

Roebuck, Johnnie J.
Representative—Arkansas

Rosenbaum, Diane, Senate Majority Leader
Senator—Oregon

Rosenberg, Samuel
Delegate—Maryland

Rosenthal, Linda
Assemblyperson—New York

Rosenwald, Cindy
Representative—New Hampshire

Ross, Deborah, House Minority Whip
Representative—North Carolina

Rotundo, Margaret
Representative—Maine

Roys, Kelda Helen, Democratic Caucus Chair
Representative—Wisconsin

Rukavina, Tom
Representative—Minnesota

Russell, Diane
Representative—Maine

Ryan, Kevin, Deputy Speaker of the House
Representative—Connecticut

Ryu, Cindy
Representative—Washington

Sanborn, Linda
Representative—Maine

Sanchez, Robert
Representative—Connecticut

Sawyer, Tom
Senator—Ohio

Saxhaug, Tom
Senator—Minnesota

Scalze, Bev
Representative—Minnesota

Schimel, Michelle
Assemblyperson—New York

Schupp, Jill
Representative—Missouri

Scott, Sandra
Representative—Georgia

Scott, Omeria
Representative—Mississippi

Seay, Valencia
Senator—Georgia

Segal, Kate
Representative—Michigan

Sells, Mike
Representative—Washington

Sharkey, J. Brendan, House Majority Leader
Representative—Connecticut

Shelton, Mike, Assistant Minority Floor Leader
Representative—Oklahoma

Sheran, Kathy
Senator—Minnesota

Shinn, Paul
Senator—Washington

Sickles, Mark, Minority Caucus Chairman
Delegate—Virginia

Sieben, Katie
Senator—Minnesota

Sigdestad, David
Representative—South Dakota

Simmons, Derrick T.
Senator—Mississippi

Skindell, Michael
Senator—Ohio

Slawik, Nora
Representative—Minnesota

Slocum, Linda
Representative—Minnesota

Smith, Clem
Representative—Missouri

Sol-Gutierrez, Ana
Delegate—Maryland

Spreng, Churie
Representative—Missouri

Stallworth, Thomas F. III
Representative—Michigan

Stanford, Derek
Representative—Washington

Stanley, Woodrow
Representative—Michigan

Stapleton, Maureen
Representative—Michigan

Steadman, Pat
Senator—Colorado

Steckman, Sharon
Representative—Iowa

Stephens, Mickey
Representative—Georgia

Stevenson, Eric
Assemblyperson—New York

Stewart, Mimi
Representative—New Mexico

Stuckey, Peter
Representative—Maine

Stuckey Benfield, Stephanie
Representative—Georgia

Surovell, Scott
Delegate—Virginia

Swaim, Kurt
Representative—Iowa

Swearingen, Jay
Representative—Missouri

Takumi, Roy
Representative—Hawaii

Talboy, Mike, Minority Floor Leader
Representative—Missouri

Tate, Horacena
Senator—Georgia

Tavares, Charleta
Senator—Ohio

Taylor, Sylvester
Representative—Missouri

Taylor, Kathleen
Representative—New Hampshire

Tercyak, Peter
Representative—Connecticut

Tharinger, Steve
Representative—Washington

Thissen, Paul, Minority Leader
Representative—Minnesota

Thomas, Brian, Minority Caucus Chair
Representative—Georgia

Thompson, John, Assistant Majority Whip
Representative—Connecticut

Thompson, Curt
Senator—Georgia

Till, George
Representative—Vermont

Tinsley-Talabi, Alberta
Representative—Michigan

Tlaib, Rashida
Representative—Michigan

Tolson, Joe
Representative—North Carolina

Tomassoni, David
Senator—Minnesota

Torres Ray, Patricia
Senator—Minnesota

Townsend, Charles
Representative—New Hampshire

Townsend, Jim
Michigan—Representative

Treat, Sharon
Representative—Maine

Turner, Veronica
Delegate—Maryland

Turner, Nina
Senator—Ohio

Turner, Sylvester
Representative—Texas

Upthegrove, Dave
Representative—Washington

Urban, Diana
Representative—Connecticut

Valderrama, Kriselda
Delegate—Maryland

Van de Putte, Leticia
Senator—Texas

Veasey, Mark
Representative—Texas

Wagenius, Jean
Representative—Minnesota

Waldstreicher, Jeff
Delegate—Maryland

Walker, Toni
Representative—Connecticut

Walle, Armando
Representative—Texas

Walsh Innes, Melissa
Representative—Maine

Walton Gray, Rochelle
Representative—Missouri

Ward, John
Representative—Minnesota

Watts, Vivian E.
Delegate—Virginia

Webb, Kathy
Representative—Arkansas

Webb, Steve
Representative—Missouri

Webster, David
Representative—Maine

Weed, Charles
Representative—New Hampshire

Weiss, Jennifer
Representative—North Carolina

Welsh, Joan
Representative—Maine

Weprin, David L.
Assemblyperson—New York

Wiger, Chuck
Senator—Minnesota

Wilkerson, David
Representative—Georgia

Williams, Alan
Representative—Florida

Williams, Robert W.
Representative—New Hampshire

Willis, Roberta
Representative—Connecticut

Winkler, Ryan
Representative—Minnesota

Wirth, Peter
Senator—New Mexico

Witt, Brad
Representative—Oregon

Wizowaty, Suzi
Representative—Vermont

Wolf, Alice
Representative—Massachusetts

Womack, Jimmy
Representative—Michigan

Wooley, Jessica
Representative—Hawaii

Wright, Elissa
Representative—Connecticut

Yantachka, Michael
Representative—Vermont

Zalaski, Zeke
Representative—Connecticut

46a

Zamarripa, JoCasta
Representative—Wisconsin