During the first week of their new Congressional session, the House Energy and Commerce Committee held a series of hearings on global warming. After determining that global warming—driven primarily by the emission of greenhouse gases—represented a significant threat to the American economy, Congress passed the comprehensive Climate Stabilization Act. It now falls upon this Court to resolve the question of the constitutionality of each element of the Act.

The petitioner before us today challenged all parts of the Climate Stabilization Act as unconstitutional, reaching beyond the scope of Congress's powers under the Commerce Clause and the Taxation and Spending Clause. However, in order to have the standing to challenge an Act of Congress, a petitioner must have experienced an injury as a result of the law. In challenging each Section of the Climate Stabilization Act, the petitioner reached beyond the scope of his own standing. The petitioner, an owner of a six-employee dry cleaning establishment in Cambridge, Massachusetts, cannot claim injury as a result of Section 1b, the second clause of Section 2, or Section 3 of the Act. Section 1b in fact benefits the petitioner over the proprietors of establishments in industries other than textile manufacturing and service, and thus cannot be said to have caused the petitioner harm. The second clause of Section 2 and the entirety of Section 3 solely affect state and local governments, and thus the petitioner cannot claim standing to challenge those sections either. The petitioner, who would be subject to the per-ton carbon dioxide emission tax and the technology installation requirement, may claim injury as a result of those clauses.[1]

Article 1, Section 8 of the United States Constitution states that Congress "shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States"; with those limitations in mind we examine Section 1 of the Climate

[1] While the petitioner cannot be granted standing to challenge all of the Act's provisions, I will be exploring the constitutionality of each section of the Act in order to anticipate the result of an appropriate challenge.

Stabilization Act, which imposes a tax of $20 per ton of carbon dioxide emissions generated by all commercial establishments. The text of Article 1, Section 8 grants Congress particularly broad authority to tax and spend for the purpose of the general welfare of the country. Given that the House Energy and Commerce Committee found that greenhouse gas emissions cause global warming, and that global warming is itself "an urgent threat to the American economy", the carbon dioxide emission tax, on its own, seems to meet the general welfare requirement. Furthermore, when it comes to taxes, Congress isn't obligated to limit the scope of their taxes to aspects of interstate commerce.

Given that, we must then consider the constitutionality of the exceptions to the tax listed in subsections A and B of Section 1 of the Climate Stabilization Act. Subsection A, which permits commercial establishments in California and Oregon to pay a halved tax rate ($10 per ton of carbon dioxide emissions, as opposed to $20 per ton) is plainly unconstitutional. One of the few limitations on the power to tax and spend granted to Congress is that federal taxes must be geographically uniform (Epstein & Walker, 259). Regardless of the *motivation* behind designing a tax levied disparately throughout various parts of the country, it cannot be found constitutional by this Court.

Subsection B of Section 1 of the Climate Stabilization Act lowers the tax rate of establishments that manufacture or service textiles to $5 per ton of carbon dioxide emissions, or one-quarter of the original tax rate. While tax rates may not vary on the basis of geographic region, the Constitution doesn't place the same requirement on excise taxes that vary as a function of industry type. Excises are defined as "taxes on the manufacture, sale, or use of goods, or on occupational or other activities" (Epstein & Walker, 258). Implicit in their definition is the ability to differentiate between particular varieties of goods and occupations, and to ultimately impose upon them accordingly differential tax rates. Excises are often placed on items and industries that Congress finds to be detrimental to the well-being of society as a whole, such as alcohol and tobacco, and given the findings of the House Energy and Commerce Committee, greenhouse gases are a logical addition to that list. Worth considering is whether varying tax rates by industry could result in *de facto* variation of tax rates by geographic region. However, such an effect would be incidental, and insufficient grounds for invalidation of Subsection B. The case of excise taxes on cigarettes exemplifies this notion: while establishments which sell cigarettes are ubiquitous nationwide, only sixteen states actually produce tobacco, and the discrepancy hasn't yet resulted in the Court striking down the excise tax on cigarettes as unconstitutional ("Economic Facts About U.S. Tobacco Production and Use", CDC).

We've affirmed that Section 1 of the Climate Stabilization Act is constitutional as written, with the exception of Subsection A; now, we move to scrutinize Section 2 of the Act, which requires that all commercial establishments employing more than five people install advanced technologies to reduce their greenhouse gas emissions, subject to inspection by town or county building inspectors. Article 1, Section 8 of the Constitution grants Congress the power to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes". The Commerce clause is the most powerful, and perhaps the sole basis of the legislative authority Congress assumes in order to justify the details of this Section. The Commerce clause allows Congress authority over interstate commerce, the instrumentalities of interstate commerce, and commercial acts with the potential to affect the national economy, whether interstate or intrastate. Congress has been found to have a relatively large degree of power under the Commerce Clause, particularly as cases regarding the Commerce clause are traditionally decided with a large amount of deference toward Congress. *National Labor Relations Board v. Jones & Laughlin Steel Corporation* demonstrated that Congress had the power to involve itself in the regulation of labor and labor disputes in large industries that are significant to the national economy; in *Wickard v. Filburn*, the Court affirmed that Congress was permitted to ban farmers from producing wheat beyond a specific acreage, on the grounds that excess wheat production had the potential to dramatically alter the agricultural market, and consequently the overall economy (Epstein & Walker, 231-236). The findings of the House Energy and Commerce Committee confirm that greenhouse gas emissions and global warming represent a great enough threat to the national economy to fall under Congressional authority under the Commerce clause. In the case of the petitioner, the fact that his establishment serves only local residents and doesn't engage in interstate commerce beyond the production of greenhouse gases is irrelevant, because he *does* produce greenhouse gases.

However, the regulations set down in Section 2 of the Climate Stabilization Act go beyond even the wide scope of the Commerce clause. While Congress does sometimes have the ability to set regulations on new construction (as was the case with the Americans with Disabilities Act, which mandated that all buildings constructed following the passage of the Act be built to be handicap-accessible), forcing establishments to retrofit their facilities by installing new, advanced technologies to reduce their greenhouse gas emissions surpasses Congress's authority when they are operating solely under the discretion of the Commerce clause (as opposed to additionally invoking the Equal Protection and Due Process clauses of the 14th and 5th Amendments, respectively). As has been shown in *National Federation of Independent Businesses v. Sebelius*, Congress cannot force individuals to participate in a market. They are able to levy taxes upon non-participating individuals, as was the case of the individual health care mandate, or on recalcitrant employers, as is the case with large employers who refuse to offer healthcare to their employees, but they may not force individuals to purchase goods or services.

In accordance with the precedent set in both *New York v. United States* and *Printz v. United States*, we find the second clause of Section 2 of the Climate Stabilization Act, which requires town or county building inspectors to inspect businesses for compliance with the Act and subsequently report non-compliance to the EPA, unconstitutional as well (Epstein & Walker, 205-209). This Court has been clear as to the inability of the federal government to commandeer state and local officials for the purpose of ensuring compliance with a federal statute, and Section 2 of the Climate Stabilization Act directly contradicts this principle. We reiterate that states and localities are not and cannot be relegated to the mere subsidiaries of the federal government. Ensuring a degree of state autonomy by maintaining the separation between federal, state, and local governments is a crucial part of preserving the federalist system of government that defines our nation. Thus, this Court finds Section 2 of the Climate Stabilization Act unconstitutional in its entirety.

The final section of the Climate Stabilization Act, Section 3, allows states "the opportunity to develop comprehensive plans to reduce greenhouse gas emissions by 50% by 2030." States that don't establish suitable plans will be penalized with a loss of 30% of their federal highway funding. In cases such as *South Dakota v. Dole* and *National Federation of Independent Businesses v. Sebelius*, this Court established several criteria for the purpose of determining the appropriateness of Congress's use of federal funding to incentivize actions by states (actions that Congress would otherwise be incapable of mandating). The federal spending in question must be in pursuit of "the general welfare"; the conditions attached to a State's receipt of funding must be unambiguous; the spending must be sufficiently related to the problem that Congress is attempting to address; there must be no separate constitutional bar to the action Congress is incentivizing; and, lastly, the amount of funding being granted or lost must not be so great that it becomes coercive (Epstein & Walker, 272-274). The first condition is not under debate: there is no question that highway and infrastructure spending is for the general good. In order to continue to receive the portion of federal highway funding in question, States must reduce greenhouse gas emissions by 50% by 2030, which is straightforward and allows each state a certain degree of flexibility in method. There is no constitutional bar against reducing greenhouse gas emissions.

Section 3 of the Climate Stabilization Act meets three of the five requirements for the use of federal funding to incentivize state action without ambiguity; however, we must examine two of the five in more depth. In *South Dakota v. Dole*, the National Minimum Drinking Age Act stipulated that non-compliance with the Act would result in the loss of 5% of federal highway funding initially, with an increase to 10% in later years (*"National Minimum Drinking Age"*, Legal Information Institute). This amount was not deemed large enough or important enough to be considered coercive. However, *NFIB v. Sebelius* established that 50-83% of a state's Medicaid budget, constituting 10-17% of the state's overall budget, was without a doubt substantial enough to be coercive. In this case, the Court believes that the funding tied to Congress's efforts to reduce state greenhouse gases more closely resembles that in *South Dakota v. Dole* rather than *NFIB v. Sebelius*. The Court arrived at this conclusion for three reasons: firstly, transportation does not constitute a large percentage of any state's budget. Second, 30% of federal highway funding, while nontrivial, does not represent a truly substantial proportion of the state's transportation budget. And lastly, as has been demonstrated by the recent actions of several state Governors, including Governor Rick Scott of Florida, many states are certainly willing to turn down quite substantial sums of federal money for transportation, which suggests that amounts considered potentially coercive in earlier years may not reach that same threshold in modern times.

The last criteria is germaneness; here the Court questions the appropriateness of the funding being used to incentivize state compliance with Section 3 of the Climate Stabilization Act. In *South Dakota v. Dole*, the link between funding and legislative goals was clear: Congress wished to raise the drinking age to combat the large number of teenage drinking and driving fatalities occurring on the roads, and if States weren't willing to comply, Congress would retract federal funding for highways, where many of the fatalities were occurring. However, the link between federal highway funding and regulating the greenhouse gas emissions of establishments is less obvious. Were Congress attempting to link federal highway funding to increased fuel efficiency standards, or some limitation on greenhouse gas emissions generated by vehicles, that would obviously be germane. However, the only link between federal highway funding and greenhouse gas emissions by stationary establishments is that businesses emit greenhouse gases just as cars do, and, perhaps, that cars can be used to perform interstate travel between business establishments. This connection is tenuous to the point that this Court believes that Congress has not met its germaneness requirement. Section 3 of the Climate Stabilization Act cannot be deemed constitutional.

The policy implications for this decision would likely be a mixed bag in terms of the balance of power between state and federal governments. The decision would reinforce the anti-commandeering principle espoused in *New York v. United States* and *Printz v United States*, as well as establish limitations on what regulations Congress can establish under the commerce clause. However, since this decision leans toward favoring judicial restraint and precedent in most respects, the balance of power between the state and federal governments wouldn't shift dramatically.

While it may initially seem like a defeat for those interested in better regulation of greenhouse gases in the future, I believe that, in the long run, the decision would be a boon to the future of regulating greenhouse gases. The decision establishes that Congress has the power to regulate greenhouse gas emissions under the authority of both the taxation/spending clause and the commerce clause. Section 1A is inconsequential to the overall goal of the law and can be stricken from the Act easily. The other sections found unconstitutional can easily be rewritten. For Section 2, the federal government could easily provide some sort of subsidy, tax incentive, or other federal program to incentivize the adoption of green technology by existing businesses. They could incentivize states to write such requirements into their building codes in the same manner, which would affect newly-constructed buildings. Lastly, all Congress would need to do to make Section 3 of the Act constitutional would be to threaten to withdraw funding more relevant to greenhouse gas emissions by businesses from the state upon noncompliance.

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