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SUPREME COURT OF THE UNITED STATES

Nos. 91–543, 91–558 AND 91–563

NEW YORK, PETITIONER
91–543 *v.*
UNITED STATES ET AL.

COUNTY OF ALLEGANY, NEW YORK, PETITIONER
91–558 *v.*
UNITED STATES

COUNTY OF CORTLAND, NEW YORK, PETITIONER
91–563 *v.*
UNITED STATES ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[June 19, 1992]

JUSTICE O'CONNOR delivered the opinion of the Court.

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

Constitution's allocation of power to the Federal Government.

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

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

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

The Governors of Washington and Nevada announced plans to shut their sites permanently. App. 142a, 152a.

Faced with the possibility that the Nation would be left with no disposal sites for low level radioactive waste, Congress responded by enacting the Low-Level Radioactive Waste Policy Act, Pub. L. 96–573, 94 Stat. 3347. Relying largely on a report submitted by the National Governors' Association, see App. 105a-141a, Congress declared a federal policy of holding each State "responsible for providing for the availability of capacity either within or outside the State for the disposal of low-level radioactive waste generated within its borders," and found that such waste could be disposed of "most safely and efficiently . . . on a regional basis." §4(a)(1), 94 Stat. 3348. The 1980 Act authorized States to enter into regional compacts that, once ratified by Congress, would have the authority beginning in 1986 to restrict the use of their disposal facilities to waste generated within member States. §4(a)(2)(B), 94 Stat. 3348. The 1980 Act included no penalties for States that failed to participate in this plan.

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

The 1985 Act was again based largely on a proposal submitted by the National Governors' Association. In broad outline, the Act embodies a compromise among

the sited and unsited States. The sited States agreed to extend for seven years the period in which they would accept low level radioactive waste from other States. In exchange, the unsited States agreed to end their reliance on the sited States by 1992.

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

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

1. *Monetary incentives.* One quarter of the surcharges collected by the sited States must be transferred to an escrow account held by the Secretary of Energy. §2021e(d) (2)(A). The Secretary

then makes payments from this account to each State that has complied with a series of deadlines. By July 1, 1986, each State was to have ratified legislation either joining a regional compact or indicating an intent to develop a disposal facility within the State. §§2021e(e)(1)(A), 2021e(d)(2)(B)(i). By January 1, 1988, each unsited compact was to have identified the State in which its facility would be located, and each compact or stand-alone State was to have developed a siting plan and taken other identified steps. §§2021e(e)(1)(B), 2021e(d)(2) (B)(ii). By January 1, 1990, each State or compact was to have filed a complete application for a license to operate a disposal facility, or the Governor of any State that had not filed an application was to have certified that the State would be capable of disposing of all waste generated in the State after 1992. §§2021e(e)(1)(C), 2021e(d)(2)(B)(iii). The rest of the account is to be paid out to those States or compacts able to dispose of all low level radioactive waste generated within their borders by January 1, 1993. §2021e(d)(2)(B)(iv). Each State that has not met the 1993 deadline must either take title to the waste generated within its borders or forfeit to the waste generators the incentive payments it has received. §2021e(d)(2)(C).

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

States belonging to compacts that have not filed such applications, may be charged triple surcharges. §§2021e(e)(1)(D), 2021e(e)(2)(D).

3. *The take title provision.* The third type of incentive is the most severe. The Act provides:

> "If a State (or, where applicable, a compact region) in which low-level radioactive waste is generated is unable to provide for the disposal of all such waste generated within such State or compact region by January 1, 1996, each State in which such waste is generated, upon the request of the generator or owner of the waste, shall take title to the waste, be obligated to take possession of the waste, and shall be liable for all damages directly or indirectly incurred by such generator or owner as a consequence of the failure of the State to take possession of the waste as soon after January 1, 1996, as the generator or owner notifies the State that the waste is available for shipment." §2021e(d)(2)(C).

These three incentives are the focus of petitioners' constitutional challenge.

In the seven years since the Act took effect, Congress has approved nine regional compacts, encompassing 42 of the States. All six unsited compacts and four of the unaffiliated States have met the first three statutory milestones. Brief for United States 10, n. 19; *id.,* at 13, n. 25.

New York, a State whose residents generate a relatively large share of the Nation's low level radioactive waste, did not join a regional compact. Instead, the State complied with the Act's requirements by enacting legislation providing for the siting and financing of a disposal facility in New York. The State has identified five potential sites, three in Allegany County and two in Cortland County. Residents of the two counties oppose the State's choice of location. App. 29a–30a, 66a-68a.

Petitioners—the State of New York and the two

counties—filed this suit against the United States in 1990. They sought a declaratory judgment that the Act is inconsistent with the Tenth and Eleventh Amendments to the Constitution, with the Due Process Clause of the Fifth Amendment, and with the Guarantee Clause of Article IV of the Constitution. The States of Washington, Nevada, and South Carolina intervened as defendants. The District Court dismissed the complaint. 757 F. Supp. 10 (NDNY 1990). The Court of Appeals affirmed. 942 F. 2d 114 (CA2 1991). Petitioners have abandoned their Due Process and Eleventh Amendment claims on their way up the appellate ladder; as the case stands before us, petitioners claim only that the Act is inconsistent with the Tenth Amendment and the Guarantee Clause.

In 1788, in the course of explaining to the citizens of New York why the recently drafted Constitution provided for federal courts, Alexander Hamilton observed: “The erection of a new government, whatever care or wisdom may distinguish the work, cannot fail to originate questions of intricacy and nicety; and these may, in a particular manner, be expected to flow from the the establishment of a constitution founded upon the total or partial incorporation of a number of distinct sovereignties.” The Federalist No. 82, p. 491 (C. Rossiter ed. 1961). Hamilton's prediction has proved quite accurate. While no one disputes the proposition that “[t]he Constitution created a Federal Government of limited powers,” *Gregory* v. *Ashcroft*, 501 U. S. ___, ___ (1991) (slip op., at 3); and while the Tenth Amendment makes explicit that “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people”; the task of ascertaining the constitutional line between federal and state power has given rise to many of the Court's

most difficult and celebrated cases. At least as far back as *Martin* v. *Hunter's Lessee*, 1 Wheat. 304, 324 (1816), the Court has resolved questions "of great importance and delicacy" in determining whether particular sovereign powers have been granted by the Constitution to the Federal Government or have been retained by the States.

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

It is in this sense that the Tenth Amendment "states but a truism that all is retained which has not been surrendered." *United States* v. *Darby*, 312 U. S. 100, 124 (1941). As Justice Story put it, "[t]his amendment is a mere affirmation of what, upon any just reasoning, is a necessary rule of interpreting the constitution. Being an instrument of limited and enumerated powers, it follows irresistibly, that what is

not conferred, is withheld, and belongs to the state authorities." 3 J. Story, Commentaries on the Constitution of the United States 752 (1833). This has been the Court's consistent understanding: "The States unquestionably do retai[n] a significant measure of sovereign authority . . . to the extent that the Constitution has not divested them of their original powers and transferred those powers to the Federal Government." *Garcia* v. *San Antonio Metropolitan Transit Authority*, *supra*, at 549 (internal quotation marks omitted).

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

The benefits of this federal structure have been extensively catalogued elsewhere, see, *e.g.*, *Gregory* v. *Ashcroft*, *supra*, at ___–___; Merritt, The Guarantee Clause and State Autonomy: Federalism for a Third Century, 88 Colum. L. Rev. 1, 3–10 (1988); McConnell, Federalism: Evaluating the Founders' Design, 54 U. Chi. L. Rev. 1484, 1491–1511 (1987), but they need not concern us here. Our task would be the same even if one could prove that federalism secured no advantages to anyone. It consists not of devising our preferred system of government, but of

understanding and applying the framework set forth in the Constitution. "The question is not what power the Federal Government ought to have but what powers in fact have been given by the people." *United States* v. *Butler*, 297 U. S. 1, 63 (1936).

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

First, the Constitution allocates to Congress the power "[t]o regulate Commerce . . . among the several States." Art. I, §8, cl. 3. Interstate commerce was an established feature of life in the late 18th century. See, *e.g.*, The Federalist No. 42, p. 267 (C. Rossiter ed. 1961) ("The defect of power in the existing Confederacy to regulate the commerce between its several members [has] been clearly pointed out by experience"). The volume of interstate commerce and the range of commonly accepted objects of government regulation have, however, expanded considerably in the last 200 years, and the regulatory authority of Congress has expanded along with them. As interstate commerce has become ubiquitous, activities once considered purely local have come to have effects on the national economy, and have accordingly come within

the scope of Congress' commerce power. See, *e.g.*, *Katzenbach* v. *McClung*, 379 U. S. 294 (1964); *Wickard* v. *Filburn*, 317 U. S. 111 (1942).

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

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

Finally, the Constitution provides that "the Laws of the United States . . . shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U. S. Const., Art. VI, cl. 2. As the Federal Government's willingness

to exercise power within the confines of the Constitution has grown, the authority of the States has correspondingly diminished to the extent that federal and state policies have conflicted. See, *e.g.*, *Shaw* v. *Delta Air Lines, Inc.*, 463 U. S. 85 (1983). We have observed that the Supremacy Clause gives the Federal Government "a decided advantage in th[e] delicate balance" the Constitution strikes between State and Federal power. *Gregory* v. *Ashcroft*, 501 U. S., at ___ (slip op., at 6).

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

Petitioners do not contend that Congress lacks the power to regulate the disposal of low level radioactive waste. Space in radioactive waste disposal sites is frequently sold by residents of one State to residents of another. Regulation of the resulting interstate market in waste disposal is therefore well within Congress' authority under the Commerce Clause. Cf. *Philadelphia* v. *New Jersey*, 437 U. S. 617, 621–623 (1978); *Fort Gratiot Sanitary Landfill, Inc.* v. *Michigan Dept. of Natural Resources*, 504 U. S. ___, ___ (1992) (slip op., at 5). Petitioners likewise do not dispute that under the Supremacy Clause Congress could, if it wished, pre-empt state radioactive waste regulation.

Petitioners contend only that the Tenth Amendment limits the power of Congress to regulate in the way it has chosen. Rather than addressing the problem of waste disposal by directly regulating the generators and disposers of waste, petitioners argue, Congress has impermissibly directed the States to regulate in this field.

Most of our recent cases interpreting the Tenth Amendment have concerned the authority of Congress to subject state governments to generally applicable laws. The Court's jurisprudence in this area has traveled an unsteady path. See *Maryland* v. *Wirtz*, 392 U. S. 183 (1968) (state schools and hospitals are subject to Fair Labor Standards Act); *National League of Cities* v. *Usery*, 426 U. S. 833 (1976) (overruling *Wirtz*) (state employers are *not* subject to Fair Labor Standards Act); *Garcia* v. *San Antonio Metropolitan Transit Authority*, 469 U. S. 528 (1985) (overruling *National League of Cities*) (state employers are once again subject to Fair Labor Standards Act). See also *New York* v. *United States*, 326 U. S. 572 (1946); *Fry* v. *United States*, 421 U. S. 542 (1975); *Transportation Union* v. *Long Island R. Co.*, 455 U. S. 678 (1982); *EEOC* v. *Wyoming*, 460 U. S. 226 (1983); *South Carolina* v. *Baker*, 485 U. S. 505 (1988); *Gregory* v. *Ashcroft*, 501 U. S. ___ (1991). This case presents no occasion to apply or revisit the holdings of any of these cases, as this is not a case in which Congress has subjected a State to the same legislation applicable to private parties. Cf. *FERC* v. *Mississippi*, 456 U. S. 742, 758–759 (1982).

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

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

The Court reached the same conclusion the following year in *FERC* v. *Mississippi, supra*. At issue in *FERC* was the Public Utility Regulatory Policies Act of 1978, a federal statute encouraging the States in various ways to develop programs to combat the Nation's energy crisis. We observed that "this Court never has sanctioned explicitly a federal command to the States to promulgate and enforce laws and regulations." *Id.*, at 761–762. As in *Hodel*, the Court upheld the statute at issue because it did not view the statute as such a command. The Court emphasized: "Titles I and III of [the Public Utility Regulatory Policies Act of 1978 (PURPA)] require *only consideration* of federal standards. And if a State has no utilities commission, or simply stops regulating in the field, it need not even entertain the federal proposals." 456 U. S., at 764 (emphasis in original). Because "[t]here [wa]s nothing in PURPA `directly compelling' the States to enact a legislative program," the statute was not inconsistent with the Constitution's division of authority between the Federal Government and the States. *Id.*, at 765

(quoting *Hodel* v. *Virginia Surface Mining & Reclamation Assn., Inc.*, *supra*, at 288). See also *South Carolina* v. *Baker*, *supra,* at 513 (noting "the possibility that the Tenth Amendment might set some limits on Congress' power to compel States to regulate on behalf of federal interests"); *Garcia* v. *San Antonio Metropolitan Transit Authority*, *supra,* at 556 (same).

These statements in *FERC* and *Hodel* were not innovations. While Congress has substantial powers to govern the Nation directly, including in areas of intimate concern to the States, the Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress' instructions. See *Coyle* v. *Oklahoma*, 221 U. S. 559, 565 (1911). The Court has been explicit about this distinction. "Both the States and the United States existed before the Constitution. The people, through that instrument, established a more perfect union by substituting a national government, acting, with ample power, *directly upon the citizens*, instead of the Confederate government, which acted with powers, greatly restricted, only upon the States." *Lane County* v. *Oregon*, 7 Wall., at 76 (emphasis added). The Court has made the same point with more rhetorical flourish, although perhaps with less precision, on a number of occasions. In Chief Justice Chase's much-quoted words, "the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National government. The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States." *Texas* v. *White*, 7 Wall. 700, 725 (1869). See also *Metcalf & Eddy* v. *Mitchell*, 269 U. S. 514, 523 (1926) ("neither government may destroy the other nor curtail in any substantial manner the exercise of its powers"); *Tafflin* v. *Levitt*, 493 U. S. 455, 458

(1990) ("under our federal system, the States possess sovereignty concurrent with that of the Federal Government"); *Gregory* v. *Ashcroft*, 501 U. S., at ___ (slip op., at 7) ("the States retain substantial sovereign powers under our constitutional scheme, powers with which Congress does not readily interfere").

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

The inadequacy of this governmental structure was responsible in part for the Constitutional Convention. Alexander Hamilton observed: "The great and radical vice in the construction of the existing Confederation is in the principle of LEGISLATION for STATES or GOVERNMENTS, in their CORPORATE or COLLECTIVE CAPACITIES, and as contradistinguished from the INDIVIDUALS of whom they consist." The Federalist No. 15, p. 108 (C. Rossiter ed. 1961). As Hamilton saw it, "we must resolve to incorporate into our plan those ingredients which may be considered as forming the characteristic difference between a league and a government; we must extend the authority of the Union to the persons of the citizens—the only proper objects of government." *Id.*, at 109. The new National Government "must carry its agency to the persons of the citizens. It must stand in need of no intermediate legislations . . . . The government of the Union, like that of each State, must be able to address itself immediately to the hopes and fears of individuals." *Id.,* No. 16, p. 116.

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

Under one preliminary draft of what would become the New Jersey Plan, state governments would occupy a position relative to Congress similar to that contemplated by the Act at issue in this case: "[T]he laws of the United States ought, as far as may be consistent with the common interests of the Union, to

be carried into execution by the judiciary and executive officers of the respective states, wherein the execution thereof is required." 3 *id.,* at 616. This idea apparently never even progressed so far as to be debated by the delegates, as contemporary accounts of the Convention do not mention any such discussion. The delegates' many descriptions of the Virginia and New Jersey Plans speak only in general terms about whether Congress was to derive its authority from the people or from the States, and whether it was to issue directives to individuals or to States. See 1 *id.,* at 260–280.

In the end, the Convention opted for a Constitution in which Congress would exercise its legislative authority directly over individuals rather than over States; for a variety of reasons, it rejected the New Jersey Plan in favor of the Virgina Plan. 1 *id.,* at 313. This choice was made clear to the subsequent state ratifying conventions. Oliver Ellsworth, a member of the Connecticut delegation in Philadelphia, explained the distinction to his State's convention: "This Constitution does not attempt to coerce sovereign bodies, states, in their political capacity. . . . But this legal coercion singles out the . . . individual." 2 J. Elliot, Debates on the Federal Constitution 197 (2d ed. 1863). Charles Pinckney, another delegate at the Constitutional Convention, emphasized to the South Carolina House of Representatives that in Philadelphia "the necessity of having a government which should at once operate upon the people, and not upon the states, was conceived to be indispensable by every delegation present." 4 *id.,* at 256. Rufus King, one of Massachusetts' delegates, returned home to support ratification by recalling the Commonwealth's unhappy experience under the Articles of Confederation and arguing: "Laws, to be effective, therefore, must not be laid on states, but upon individuals." 2 *id.,* at 56. At New York's convention, Hamilton (another delegate in Philadelphia) exclaimed: "But can we believe that

one state will ever suffer itself to be used as an instrument of coercion? The thing is a dream; it is impossible. Then we are brought to this dilemma—either a federal standing army is to enforce the requisitions, or the federal treasury is left without supplies, and the government without support. What, sir, is the cure for this great evil? Nothing, but to enable the national laws to operate on individuals, in the same manner as those of the states do." 2 *id.*, at 233. At North Carolina's convention, Samuel Spencer recognized that "all the laws of the Confederation were binding on the states in their political capacities, . . . but now the thing is entirely different. The laws of Congress will be binding on individuals." 4 *id.,* at 153.

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

This is not to say that Congress lacks the ability to encourage a State to regulate in a particular way, or that Congress may not hold out incentives to the States as a method of influencing a State's policy choices. Our cases have identified a variety of

methods, short of outright coercion, by which Congress may urge a State to adopt a legislative program consistent with federal interests. Two of these methods are of particular relevance here.

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

Second, where Congress has the authority to regulate private activity under the Commerce Clause, we have recognized Congress' power to offer States the choice of regulating that activity according to federal standards or having state law pre-empted by federal regulation. *Hodel* v. *Virginia Surface Mining & Reclamation Assn., Inc.*, *supra*, at 288. See also *FERC* v. *Mississippi*, *supra*, at 764–765. This arrangement, which has been termed "a program of cooperative federalism," *Hodel*, *supra*, at 289, is replicated in numerous federal statutory schemes. These include

the Clean Water Act, 86 Stat. 816, as amended, 33 U. S. C. §1251 *et seq.*, see *Arkansas* v. *Oklahoma*, 503 U. S. ___, ___ (1992) (slip op., at 8) (Clean Water Act Act "anticipates a partnership between the States and the Federal Government, animated by a shared objective"); the Occupational Safety and Health Act of 1970, 84 Stat. 1590, 29 U. S. C. §651 *et seq.*, see *Gade* v. *National Solid Wastes Management Assn.*, ___ U. S. ___, ___ (1992) (slip op., at ___); the Resource Conservation and Recovery Act of 1976, 90 Stat. 2796, as amended, 42 U. S. C. §6901 *et seq.*, see *United States Dept. of Energy* v. *Ohio*, 503 U. S. ___, ___ (1992) (slip op., at 2); and the Alaska National Interest Lands Conservation Act, 94 Stat. 2374, 16 U. S. C. §3101 *et seq.*, see *Kenaitze Indian Tribe* v. *Alaska*, 860 F. 2d 312, 314 (CA9 1988), cert. denied, 491 U. S. 905 (1989).

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

By contrast, where the Federal Government compels States to regulate, the accountability of both state and federal officials is diminished. If the

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

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

The parties in this case advance two quite different views of the Act. As petitioners see it, the Act imposes a requirement directly upon the States that they regulate in the field of radioactive waste disposal in order to meet Congress' mandate that "[e]ach State shall be responsible for providing . . . for the disposal of . . . low-level radioactive waste." 42 U. S. C. §2021c(a)(1)(A). Petitioners understand this provision as a direct command from Congress, enforceable independent of the three sets of incentives provided by the Act. Respondents, on the other hand, read this provision together with the

incentives, and see the Act as affording the States three sets of choices. According to respondents, the Act permits a State to choose first between regulating pursuant to federal standards and losing the right to a share of the Secretary of Energy's escrow account; to choose second between regulating pursuant to federal standards and progressively losing access to disposal sites in other States; and to choose third between regulating pursuant to federal standards and taking title to the waste generated within the State. Respondents thus interpret §2021c(a) (1)(A), despite the statute's use of the word “shall,” to provide no more than an option which a State may elect or eschew.

The Act could plausibly be understood either as a mandate to regulate or as a series of incentives. Under petitioners' view, however, §2021c(a)(1)(A) of the Act would clearly “commandee[r] the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program.” *Hodel* v. *Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U. S., at 288. We must reject this interpretation of the provision for two reasons. First, such an outcome would, to say the least, “upset the usual constitutional balance of federal and state powers.” *Gregory* v. *Ashcroft*, 501 U. S., at ___ (slip op., at 6). “[I]t is incumbent upon the federal courts to be certain of Congress' intent before finding that federal law overrides this balance,” *ibid.* (internal quotation marks omitted), but the Act's amenability to an equally plausible alternative construction prevents us from possessing such certainty. Second, “where an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress.” *Edward J. DeBartolo Corp.* v. *Florida Gulf Coast Building & Construction Trades Council*, 485 U. S. 568, 575 (1988). This rule of

statutory construction pushes us away from petitioners' understanding of §2021c(a)(1)(A) of the Act, under which it compels the States to regulate according to Congress' instructions.

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

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

The first of these steps is an unexceptionable exercise of Congress' power to authorize the States to burden interstate commerce. While the Commerce Clause has long been understood to limit the States' ability to discriminate against interstate commerce, see, *e.g.*, *Wyoming* v. *Oklahoma*, 502 U. S. ___, ___ (1992) (slip op., at 15–16); *Cooley* v. *Board of Wardens of Port of Philadelphia*, 12 How. 299 (1851), that limit may be lifted, as it has been here, by an expression of the "unambiguous intent" of Congress. *Wyoming*, *supra*, at ___ (slip op., at 19); *Prudential Ins. Co.* v. *Benjamin*, 328 U. S. 408, 427–431 (1946). Whether or not the States would be permitted to burden the interstate transport of low level radioactive waste in the absence of Congress' approval, the States can clearly do so *with* Congress' approval, which is what the Act gives them.

The second step, the Secretary's collection of a percentage of the surcharge, is no more than a

federal tax on interstate commerce, which petitioners do not claim to be an invalid exercise of either Congress' commerce or taxing power. Cf. *United States* v. *Sanchez*, 340 U. S. 42, 44–45 (1950); *Steward Machine Co.* v. *Davis*, 301 U. S. 548, 581–583 (1937).

The third step is a conditional exercise of Congress' authority under the Spending Clause: Congress has placed conditions—the achievement of the milestones—on the receipt of federal funds. Petitioners do not contend that Congress has exceeded its authority in any of the four respects our cases have identified. See generally *South Dakota* v. *Dole*, 483 U. S., at 207–208. The expenditure is for the general welfare, *Helvering* v. *Davis*, 301 U. S. 619, 640–641 (1937); the States are required to use the money they receive for the purpose of assuring the safe disposal of radioactive waste. 42 U. S. C. §2021e(d)(2)(E). The conditions imposed are unambiguous, *Pennhurst State School and Hospital* v. *Halderman*, 451 U. S., at 17; the Act informs the States exactly what they must do and by when they must do it in order to obtain a share of the escrow account. The conditions imposed are reasonably related to the purpose of the expenditure, *Massachusetts* v. *United States*, 435 U. S., at 461; both the conditions and the payments embody Congress' efforts to address the pressing problem of radioactive waste disposal. Finally, petitioners do not claim that the conditions imposed by the Act violate any independent constitutional prohibition. *Lawrence County* v. *Lead-Deadwood School Dist.*, 469 U. S. 256, 269–270 (1985).

Petitioners contend nevertheless that the *form* of these expenditures removes them from the scope of Congress' spending power. Petitioners emphasize the Act's instruction to the Secretary of Energy to "deposit all funds received in a special escrow account. The funds so deposited shall not be the property of the United States." 42 U. S. C. §2021e(d)

(2)(A). Petitioners argue that because the money collected and redisbursed to the States is kept in an account separate from the general treasury, because the Secretary holds the funds only as a trustee, and because the States themselves are largely able to control whether they will pay into the escrow account or receive a share, the Act "in no manner calls for the spending of federal funds." Reply Brief for Petitioner State of New York 6.

The Constitution's grant to Congress of the authority to "pay the Debts and provide for the . . . general Welfare" has never, however, been thought to mandate a particular form of accounting. A great deal of federal spending comes from segregated trust funds collected and spent for a particular purpose. See, *e.g.*, 23 U. S. C. §118 (Highway Trust Fund); 42 U. S. C. §401(a) (Federal Old-Age and Survivors Insurance Trust Fund); 42 U. S. C. §401(b) (Federal Disability Insurance Trust Fund); 42 U. S. C. §1395t (Federal Supplementary Medical Insurance Trust Fund). The Spending Clause has never been construed to deprive Congress of the power to structure federal spending in this manner. Petitioners' argument regarding the States' ability to determine the escrow account's income and disbursements ignores the fact that Congress specifically provided the States with this ability as a method of encouraging the States to regulate according to the federal plan. That the States are able to choose whether they will receive federal funds does not make the resulting expenditures any less federal; indeed, the location of such choice in the States is an inherent element in any conditional exercise of Congress' spending power.

The Act's first set of incentives, in which Congress has conditioned grants to the States upon the States' attainment of a series of milestones, is thus well within the authority of Congress under the Commerce and Spending Clauses. Because the first set of

incentives is supported by affirmative constitutional grants of power to Congress, it is not inconsistent with the Tenth Amendment.

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

This is the choice presented to nonsited States by the Act's second set of incentives: States may either regulate the disposal of radioactive waste according to federal standards by attaining local or regional self-sufficiency, or their residents who produce radioactive waste will be subject to federal regulation authorizing sited States and regions to deny access to their disposal sites. The affected States are not compelled by Congress to regulate, because any burden caused by a State's refusal to regulate will fall on those who generate waste and find no outlet for its disposal, rather than on the State as a sovereign. A State whose citizens do not wish it to attain the Act's milestones may devote its attention and its resources to issues its citizens deem more worthy; the choice remains at all times with the residents of the State, not with Congress. The State need not expend any

funds, or participate in any federal program, if local residents do not view such expenditures or participation as worthwhile. Cf. *Hodel*, *supra*, at 288. Nor must the State abandon the field if it does not accede to federal direction; the State may continue to regulate the generation and disposal of radioactive waste in any manner its citizens see fit.

The Act's second set of incentives thus represents a conditional exercise of Congress' commerce power, along the lines of those we have held to be within Congress' authority. As a result, the second set of incentives does not intrude on the sovereignty reserved to the States by the Tenth Amendment.

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

We must initially reject respondents' suggestion that, because the take title provision will not take effect until January 1, 1996, petitioners' challenge thereto is unripe. It takes many years to develop a new disposal site. All parties agree that New York must take action now in order to avoid the take title provision's consequences, and no party suggests that the State's waste generators will have ceased producing waste by 1996. The issue is thus ripe for review. Cf. *Pacific Gas & Elec. Co.* v. *State Energy Resources Conservation and Development Comm'n*, 461 U. S. 190, 201 (1983); *Regional Rail Reorganization Act Cases*, 419 U. S. 102, 144–145 (1974).

The take title provision offers state governments a

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

Because an instruction to state governments to take title to waste, standing alone, would be beyond the authority of Congress, and because a direct order to regulate, standing alone, would also be beyond the authority of Congress, it follows that Congress lacks the power to offer the States a choice between the two. Unlike the first two sets of incentives, the take title incentive does not represent the conditional exercise of any congressional power enumerated in the Constitution. In this provision, Congress has not held out the threat of exercising its spending power or its commerce power; it has instead held out the

threat, should the States not regulate according to one federal instruction, of simply forcing the States to submit to another federal instruction. A choice between two unconstitutionally coercive regulatory techniques is no choice at all. Either way, "the Act commandeers the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program," *Hodel* v. *Virginia Surface Mining & Reclamation Assn., Inc., supra*, at 288, an outcome that has never been understood to lie within the authority conferred upon Congress by the Constitution.

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

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

Respondents raise a number of objections to this

understanding of the limits of Congress' power.

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

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

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

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

Additional cases cited by the United States discuss the power of federal *courts* to order state officials to comply with federal law. See *Puerto Rico* v. *Branstad*, 483 U. S. 219, 228 (1987); *Washington* v. *Washington State Commercial Passenger Fishing Vessel Assn.*, 443 U. S. 658, 695 (1979); *Illinois* v. *City of Milwaukee*, 406 U. S. 91, 106–108 (1972); see also *Cooper* v. *Aaron*, 358 U. S. 1, 18–19 (1958); *Brown* v. *Board of Ed.*, 349 U. S. 294, 300 (1955); *Ex parte Young*, 209 U. S. 123, 155–156 (1908). Again,

however, the text of the Constitution plainly confers this authority on the federal courts, the "judicial Power" of which "shall extend to all Cases, in Law and Equity, arising under this Constitution, [and] the Laws of the United States . . . ; [and] to Controversies between two or more States; [and] between a State and Citizens of another State." U. S. Const., Art. III, §2. The Constitution contains no analogous grant of authority to Congress. Moreover, the Supremacy Clause makes federal law paramount over the contrary positions of state officials; the power of federal courts to enforce federal law thus presupposes some authority to order state officials to comply. See *Puerto Rico* v. *Branstad*, *supra*, at 227–228 (overruling *Kentucky* v. *Dennison*, 24 How. 66 (1861)).

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

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

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

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

The sited State respondents focus their attention on the process by which the Act was formulated. They correctly observe that public officials representing the State of New York lent their support to the Act's enactment. A Deputy Commissioner of the State's Energy Office testified in favor of the Act. See Low-Level Waste Legislation: Hearings on H.R. 862, H.R. 1046, H.R. 1083, and H.R. 1267 before the Subcommittee on Energy and the Environment of the House Comm. on Interior and Insular Affairs, 99th

Cong., 1st Sess. 97–98, 190–199 (1985) (testimony of Charles Guinn). Senator Moynihan of New York spoke in support of the Act on the floor of the Senate. 131 Cong. Rec. 38423 (1985). Respondents note that the Act embodies a bargain among the sited and unsited States, a compromise to which New York was a willing participant and from which New York has reaped much benefit. Respondents then pose what appears at first to be a troubling question: How can a federal statute be found an unconstitutional infringement of State sovereignty when state officials consented to the statute's enactment?

The answer follows from an understanding of the fundamental purpose served by our Government's federal structure. The Constitution does not protect the sovereignty of States for the benefit of the States or state governments as abstract political entities, or even for the benefit of the public officials governing the States. To the contrary, the Constitution divides authority between federal and state governments for the protection of individuals. State sovereignty is not just an end in itself: "Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power." *Coleman* v. *Thompson*, 501 U. S. ___, ___ (1991) (slip op., at 2) (BLACKMUN, J., dissenting). "Just as the separation and independence of the coordinate Branches of the Federal Government serves to prevent the accumulation of excessive power in any one Branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front." *Gregory* v. *Ashcroft*, 501 U. S., at ___ (1991) (slip op., at 4). See The Federalist No. 51, p. 323.

Where Congress exceeds its authority relative to the States, therefore, the departure from the constitutional plan cannot be ratified by the "consent" of state officials. An analogy to the separation of powers among the Branches of the Federal Government clarifies this point. The Constitu-

tion's division of power among the three Branches is violated where one Branch invades the territory of another, whether or not the encroached-upon Branch approves the encroachment. In *Buckley* v. *Valeo*, 424 U. S. 1, 118–137 (1976), for instance, the Court held that the Congress had infringed the President's appointment power, despite the fact that the President himself had manifested his consent to the statute that caused the infringement by signing it into law. See *National League of Cities* v. *Usery*, 426 U. S., at 842, n. 12. In *INS* v. *Chadha*, 462 U. S. 919, 944–959 (1983), we held that the legislative veto violated the constitutional requirement that legislation be presented to the President, despite Presidents' approval of hundreds of statutes containing a legislative veto provision. See *id.*, at 944–945. The constitutional authority of Congress cannot be expanded by the “consent” of the governmental unit whose domain is thereby narrowed, whether that unit is the Executive Branch or the States.

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

choosing a location or having Congress direct the choice of a location—the state official may also prefer the latter, as it may permit the avoidance of personal responsibility. The interests of public officials thus may not coincide with the Constitution's intergovernmental allocation of authority. Where state officials purport to submit to the direction of Congress in this manner, federalism is hardly being advanced.

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

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

Federal Government, we need only address the applicability of the Guarantee Clause to the Act's other two challenged provisions.

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

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

This view has not always been accepted. In a group of cases decided before the holding of *Luther* was elevated into a general rule of nonjusticiability, the Court addressed the merits of claims founded on the Guarantee Clause without any suggestion that the claims were not justiciable. See *Kies* v. *Lowrey*, 199 U. S. 233, 239 (1905); *Forsyth* v. *Hammond*, 166 U. S.

506, 519 (1897); *In re Duncan*, 139 U. S. 449, 461–462 (1891); *Minor* v. *Happersett*, 21 Wall. 162, 175–176 (1875). See also *Plessy* v. *Ferguson*, 163 U. S. 537, 563–564 (1896) (Harlan, J., dissenting) (racial segregation "inconsistent with the guarantee given by the Constitution to each State of a republican form of government").

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

We need not resolve this difficult question today. Even if we assume that petitioners' claim is justiciable, neither the monetary incentives provided by the Act nor the possibility that a State's waste producers may find themselves excluded from the disposal sites of another State can reasonably be said to deny any State a republican form of government. As we have seen, these two incentives represent permissible conditional exercises of Congress' authority under the Spending and Commerce Clauses respectively, in forms that have now grown commonplace. Under each, Congress offers the States a legitimate choice rather than issuing an unavoidable command. The States thereby retain the ability to set their legislative agendas; state government officials remain accountable to the local

electorate. The twin threats imposed by the first two challenged provisions of the Act—that New York may miss out on a share of federal spending or that those generating radioactive waste within New York may lose out-of-state disposal outlets—do not pose any realistic risk of altering the form or the method of functioning of New York's government. Thus even indulging the assumption that the Guarantee Clause provides a basis upon which a State or its subdivisions may sue to enjoin the enforcement of a federal statute, petitioners have not made out such a claim in this case.

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

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

and still the great body of the statute have operative force, and the force contemplated by the legislature in its enactment." *Reagan* v. *Farmers*' *Loan & Trust Co.*, 154 U. S. 362, 396 (1894). See also *United States* v. *Jackson*, 390 U. S. 570, 585–586 (1968).

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

the invalidation of the take title provision, so we may leave the remainder of the Act in force.

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

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

Whatever the outer limits of that sovereignty may be, one thing is clear: The Federal Government may not compel the States to enact or administer a federal regulatory program. The Constitution permits both the Federal Government and the States to enact legislation regarding the disposal of low level radioactive waste. The Constitution enables the Federal Government to pre-empt state regulation

contrary to federal interests, and it permits the Federal Government to hold out incentives to the States as a means of encouraging them to adopt suggested regulatory schemes. It does not, however, authorize Congress simply to direct the States to provide for the disposal of the radioactive waste generated within their borders. While there may be many constitutional methods of achieving regional self-sufficiency in radioactive waste disposal, the method Congress has chosen is not one of them. The judgment of the Court of Appeals is accordingly

Affirmed in part and reversed in part.