



Sam Bagenstos at Michigan Law School has long distinguished himself as one of the most thoughtful constitutional doctrinalists in the country (and maybe the best disability scholar as well). He is out with a new article in the *Georgetown Law Journal* concerning the Spending Clause implications of the health care case.

Environmental lawyers and scholars should care about this for obvious reasons: major environmental statutes rely on funding incentives to get states to comply with them. Significant curtailing of the Spending Clause could impair their effectiveness. Fortunately enough, says Bagenstos, there is no reason to read the health care case in this way.

This Article offers an initial assessment of the Supreme Court's Spending Clause holding in *National Federation of Independent Business v. Sebelius* (NFIB), which addressed the constitutional challenge to the Affordable Care Act. As Justice Ginsburg pointed out, NFIB marks "the first time ever" that the Court has held that a spending condition unconstitutionally coerced the states. The implications of that holding are potentially massive, and some of the language in the decision, if read broadly, would seriously threaten the constitutionality of a broad swath of federal spending legislation.

Notwithstanding some of the Court's language, this Article contends that the case is not best read as rendering federal spending conditions unconstitutional simply because they are attached to large amounts of federal money, change the terms of participation in entrenched cooperative programs, or tie together separate programs into a package deal. Rather, Chief Justice Roberts's pivotal opinion is best read as adopting an "anti-leveraging principle" that will find

coercion only where all three of these conditions are present at the same time. The anti-leveraging principle both makes the most sense of what the Chief Justice actually said in NFIB and does a better job of accommodating the relevant constitutional values than do plausible alternative readings of the case. Although that principle threatens the constitutionality of far fewer conditional-spending laws than do those alternative readings, it raises challenging questions about the constitutionality of certain spending conditions. And it gives states an important new tool in negotiations with federal administrators.

You can see the whole article [here](#).