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In the *Child Labor Tax Case* the Court declared unconstitutional a statute imposing an annual excise equivalent to 10 per cent of the entire net profits of any person operating (1) a mine or quarry in which children under the age of 16 years were employed during any portion of the taxable year; or (2) any mill, cannery, or factory in which children under the age of 14 years were employed or where children between the ages of 14 and 16 years had been permitted to work more than 8 hours in any day or more than 6 days in any week, or after 7 p. m. or before 6 a. m. during any portion of the taxable year. Exemption from liability was allowed where the employer reasonably believed the employee to be above the specified age, relying upon a certificate of age issued by a certain board or where the incidence of the tax depended upon the employment of a child under a mistake of fact as to its age and where there was no intention to evade the tax.

Such a statute differs fundamentally from Title IX of the Social Security Act. An essential distinction is that the Child Labor Tax Law offered the taxpayer an opportunity to avoid any out-of-pocket expense if he followed a detailed and specific course of *business* conduct prescribed by the *Federal* Government; whereas Title IX offers a taxpayer virtually no opportunity to avoid out-of-pocket expenses, and allows him to divide such expenses only to the extent he is subjected to *fiscal*

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demands by a *State* Government. Moreover, the Child Labor Tax Law, unlike Title IX, imposed a tax that was not designed to raise revenue, that depended on *scienter*,[2] that was extremely onerous, and that was not proportioned to the extent to which any privilege was utilized.[3] Title IX merely adapts federal fiscal legislation to a particular type of state fiscal legislation, without penalizing those who are or those who are not subject to such state fiscal measures.

In *Hill* v. *Wallace, supra,* the Court held unconstitutional the Future Trading Act which imposed a prohibitive "tax" upon dealings in grain futures, but exempted transactions on Boards of Trade designated as "contract markets" by the Secretary of Agriculture. Submission to a complex system of regulation was necessary before a Board of Trade could be so designated.

It is plain that the Future Trading Act resembles the Child Labor Tax law, and is essentially different from Title IX of the Social Security Act. Like the Child Labor Tax, but unlike Title IX, the Future Trading Act offered the taxpayer an op-

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[2] Under the Child Labor Tax law, if the employer did not know that he was departing from the standards of child labor prescribed by the Federal Government, he did not need to pay the tax.

[3] Under the Child Labor Tax law, the 10 percent tax on the net profits for the entire year was payable if but one person under the prescribed age was knowingly employed for one day.

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portunity to avoid any out-of-pocket expense if the exchanges on which he dealt followed a detailed and specific course of *business* conduct prescribed by the *Federal* Government. The effect of the Future Trading Act was to extend the field of federal control and to penalize those who did not co-operate in effectuating this result. The effect of Title IX is not to enlarge the ambit of federal regulation, nor is it to penalize those who do not follow, or induce others to follow, any particular course of conduct. Indeed, Title IX does not take account even of conduct prescribed under state law, except fiscal conduct of the type which has consistently been taken into account in federal revenue legislation.

The statute considered in *United States* v. *Constantine, supra,* imposed, in addition to the $25 excise laid on retail liquor dealers by Section 3244, Revised Statutes, a "special excise tax" of $1,000 on such dealers carrying on their business in any State contrary to the laws of such State. In holding this special excise unconstitutional, the Court emphasized (296 U. S. 287, 295) that—

> The condition of the imposition is the commission of a crime. This, together with the amount of the tax, is again significant of penal and prohibitory intent rather than the gathering of revenue.

The circumstances in the *Constantine* case were entirely different from those surrounding the tax involved in the case at bar. Here no endeavor is

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made to penalize unlawful conduct, to discourage employment or to add sanctions for violations of State laws.

2. There is no "economic coercion" on individuals

Petitioner next urges that even though the tax here involved cannot be called a penalty, it is none the less invalid because the credit offered by Section 902 is utilized to exert economic coercion on individuals to bring them within a federal regulatory scheme which Congress is powerless to command. The argument is based on the premise that there are, by virtue of the Tenth Amendment, limits to the broad discretion allowed Congress in the granting of deductions similar to those which have been imposed on the congressional spending power by *United States* v. *Butler,* 297 U. S. 1. This is a wholly novel doctrine, not only unsupported by any direct authority but also contrary to a long-established practice of Congress in tax statutes. However, assuming that the Tenth Amendment might limit some credits, we believe that it does not apply to the credits offered by Title IX, and that the *Butler* case is clearly distinguishable.

Upon analysis of the Act, it is clear that the taxpayer is offered no inducement which restricts his voluntary choice. If he lives in a State which has no unemployment compensation law he is not offered a reward if his State does pass such a law. He is merely told that some of the money which he would otherwise be required to pay to the Fed-

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eral Government he will then be allowed to pay to his State. His out-of-pocket expenses remain roughly the same. Of course, the knowledge of the tax and the available deductions may remove an important objection that he would otherwise have to a local unemployment compensation law, namely, the fear that such a law would impose on him a burden for which his competitor in a sister State had no rough equivalent. This new freedom from competition, however, is negative in character. The taxpayer, like the States (see p. 101 *et seq., infra*) is merely enabled under the Act to favor or oppose unemployment compensation on its merits, free from the fear of devastating competition.

But it is argued that the act restricts the free choice of a taxpayer who is undecided whether to favor the enactment of an unemployment compensation law which meets the description in Section 903 (a) or one which does not. Actually his choice is not truly fettered. We have pointed out above (pp. 71–77, *supra*), that the provisions of that section are solely definitional, and do not affect the major issues in such a law which the citizens of each State may resolve in their own way. Section 903 (a) is not a limitation, but a provision by which Congress could insure that the credits against the federal tax were payments made under a *bona fide* State unemployment compensation law.

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Thus it appears that the situation at bar is entirely different from that in the *Butler* case. In the Agricultural Adjustment Act excises were levied upon processors of cotton, and the proceeds, or amounts equivalent thereto, were used by the Government to offer substantial benefit payments to cotton farmers who executed contracts by which the Federal Government directly regulated the production on their individual farms. The Court held that the taxes were invalid because the proceeds were used to coerce farmers to accept regulatory contracts by which Congress purchased compliance that it was powerless to command. It was not the mere expenditure of federal money which the Court found coercive, but the form of the offer and the form of the regulation. First, the Court pointed out that the competitive situation was such that cotton farmers had no genuine option but were forced to accept the regulatory scheme outlined. Mr. Justice Roberts said (297 U. S. 1, 70–71):

> The regulation is not in fact voluntary. The farmer, of course, may refuse to comply, but the price of such refusal is the loss of benefits. *The amount offered is intended to be sufficient to exert pressure on him to agree to the proposed regulation.* The power to confer or withhold unlimited benefits is the power to coerce or destroy. If the cotton grower elects not to accept the benefits, he will receive less for his crops; those who receive payments will be able to

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> undersell him. *The result may well be financial ruin.* [Italics added.]

Then the Court noted that the Government gave the money not upon conditions, but only upon *contracts* which gave the Government actual legal control of the farmer's production. In a significant passage (297 U. S. 1, 73), Mr. Justice Roberts recognized that the firm commitment and legal sanctions involved in a contract exercised coercion, whereas the loose inducement involved in a conditional gift might not:

> We are not here concerned with a conditional appropriation of money, nor with a provision that if certain conditions are not complied with the appropriation shall no longer be available. By the Agricultural Adjustment Act the amount of the tax is appropriated to be expended only in payment under contracts whereby the parties bind themselves to regulation by the Federal Government. *There is an obvious difference between a statute stating the conditions upon which moneys shall be expended and one effective only upon assumption of a contractual obligation to submit to a regulation which otherwise could not be enforced.* [Italics added.]

Finally, the Court observed that the regulations effected by the proceeds of the taxes was direct federal regulation. Under the contract the State did not regulate; the regulation was federal and the State could not object, "declare the contract void

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and thus prevent those under the state's jurisdiction from complying with its terms." 297 U. S. 74.

None of these coercive factors exists with respect to the tax credit offered by Section 902. There is no competitive or other situation which makes the proffered credit an irresistible financial inducement or, indeed, a financial inducement of any sort. The Federal Government asks for no contract or other tie which firmly commits any person or any State to any course of conduct. And whatever regulation may eventually occur will be state regulation, which a State is free to favor or to oppose; to inaugurate or prevent.

It is noteworthy that under the Agricultural Adjustment Act the Federal Government retained control of the object for which the expenditure was made after the disbursement of Federal money had been completed. Thus the disbursement became a mere instrument of control of local matters. *Here the conditions on which the credit is allowed are directed solely at insuring that it shall be given only for the object for which it is to be allowed, viz., payments under a genuine unemployment compensation law.* Thus, if the conditions be considered as regulatory in nature, they constitute regulation only to the extent of insuring that the credit granted is utilized for the intended purpose. They are, in other words, identical with conditions on the disbursement of money which are designed to insure that the money reaches the intended recipi-

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ents. Once the conditions have been fulfilled, the credit continues automatically and no Federal control whatever is exercised.

3. Title IX is not a means for effectuating the Federal regulation of matters not within the powers of Congress

Petitioner may assert that even if Title IX does not involve penalties or coercion, it violates the Tenth Amendment because it endeavors to effectuate the federal regulation of matters not within the powers of Congress. It is said that under this Title Congress is either regulating directly the local relationship of employer and employee, or is dictating the form of a state regulation of the local relationship of employer and employee.

A UNDER TITLE IX CONGRESS DOES NOT DIRECTLY REGULATE THE RELATIONSHIP OF EMPLOYER AND EMPLOYEE

The first half of this charge is so plainly unfounded that it requires only brief attention. Under the Social Security Act, Congress is not regulating the local relationship of employer and employee. Neither in that nor any other statute [4] has Congress established an unemployment compensation system to operate in any State. If an unemployment compensation system is established in a particular State, the regulation of employer

[4] Congress has established an unemployment compensation system for the District of Columbia. Act of Aug. 28, 1935, c. 794, 49 Stat. 946. This system, however, is strictly limited to an employment the greater part of which is performed within the District of Columbia. Sec. 1 (b).

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and employee thereby accomplished will be by state law, not by federal law. It will be the State, not the United States, which will tell employers and employees how much they shall contribute, if at all. It will be the State, not the United States, which will tell the unemployed which of them shall be paid benefits, when they shall receive these benefits, and how much the benefits shall be.[5] Even in these minor respects where the state law conforms to the descriptive features of Section 903 (a), discussed at pp. 71–77, *supra,* the regulation both in form and

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[5] The House Report, Report No. 615, p. 8, emphasizes the point that "The bill permits the States wide discretion with respect to the unemployment compensation laws they may wish to enact." And Senate Report No. 628 is equally emphatic. It is there noted that (pp. 12, 13):

"This bill does not set up a Federal unemployment compensation system. What it seeks to do is merely to make it possible for the States to establish unemployment compensation systems and to stimulate them to do so.

* * * * *

"Except for a few standards which are necessary to render certain that the State unemployment compensation laws are genuine unemployment compensation acts and not merely relief measures, the States are left free to set up any unemployment compensation system they wish, without dictation from Washington. The States may or may not add employee contributions to those required from the employers. Of the 5 States which have thus far enacted unemployment compensation laws, 2 require employee contributions, and 3 do not. Likewise, the States may determine their own compensation rates, waiting periods, and maximum duration of benefits Such latitude is very essential because the rate of unemployment varies greatly in different States, being twice as great in some States as in others."

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in substance will be state regulation, which the United States does not command, and which is accomplished by state law operating *ex proprio vigore.*

Thus the situation is entirely different from that in the cases upon which petitioner relies. In each of them the regulation was both in form and in substance directly federal. In the Bituminous Coal Conservation Act considered in *Carter* v. *Carter Coal Co.,* 298 U. S. 238, the hours, wages and other working conditions in the bituminous coal industry were regulated under a federal code. In the live poultry code under the National Industrial Recovery Act, reviewed in *Schechter Corp.* v. *United States,* 295 U. S. 495, the fair trade practices and working conditions in the live poultry industry were subjected to federal regulations. The contracts made pursuant to the Agricultural Adjustment Act, considered in *United States* v. *Butler,* 297 U. S. 1, set up a system whereby the Federal Government directly controlled the individual farmer's production. The Municipal Bankruptcy Act, invalidated in *Ashton* v. *Cameron County Water Dist.,* 298 U. S. 513, resulted in making state instrumentalities directly subject to the supervision of federal courts.

B Under Title IX Congress Does Not Indirectly Regulate the Relationship of Employer and Employee

Petitioner, however, says that the distinction we draw between the Bituminous Coal Act, the National Industrial Recovery Act, the Agricultural

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Adjustment Act, and the Municipal Bankruptcy Act, on the one hand, and Title IX of the Social Security Act, on the other hand, is a distinction of form and not of substance. It says that here the regulation of employer and employee may in form be accomplished by state laws, but none the less is in substance federal regulation.

But the mere fact that Congress in the exercise of a federal power takes into account the existence of local regulatory measures does not transform these measures into national regulations. It is a commonplace that in exercising its taxing and other powers, Congress frequently takes into account the burden and nature of local regulation. Thus the federal estate tax laws have taken into account local rules regarding the extent to which a decedent's real estate is subjected by local law to administration expenses, *Crooks* v. *Harrelson,* 282 U. S. 55, and local laws regarding succession taxes, *Florida* v. *Mellon,* 273 U. S. 12; the federal income tax laws have taken into account local rules regarding community property, *Poe* v. *Seaborn,* 282 U. S. 101, and local laws regarding fraudulent conveyances, *Phillips* v. *Commissioner,* 283 U. S. 589, 602; the federal bankruptcy laws have for many years allowed exemptions on the basis of local regulatory legislation, *Hanover National Bank* v. *Moyses,* 186 U. S. 181; cf. *Wright* v. *Vinton Branch of the Mountain Trust Bank of Roanoke,*

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No. 530, October Term, 1936, March 29, 1937; and the federal power to regulate commerce has been so exercised as to take into account local liquor regulations, *In re Rahrer,* 140 U. S. 545; *Clark Distilling Co.* v. *Western Maryland Ry. Co.,* 242 U. S. 311, and local labor regulations, *Whitfield* v. *Ohio,* 297 U. S. 431.

In taking state laws into account, as cases like *Crooks* v. *Harrelson, Florida* v. *Mellon,* and *Poe* v. *Seaborn, supra,* show, the Federal Government is not in any sense dictating regulations. One might as well assert that Congress regulates marriage when it allows a greater deduction from income tax to one who has been married than to another who has not, Revenue Act of 1934, c. 277, 48 Stat. 680, Sec. 25 (b) (1); or that Congress regulated corporations when, while exempting enterprises conducted as a partnership, it taxed similar enterprises conducted under corporate franchises granted by state law. *Flint* v. *Stone Tracy Co.,* 220 U. S. 107, 158. To draw such distinctions on the basis of state regulations is not to regulate but to *classify.* See pages 67, 71–77, *supra.*

And the classification here is no more meticulous and detailed and no more coercive or regulatory than in the cases cited. Congress has merely taxed those who are subject to a genuine state unemployment compensation law differently from those who are not. The provisions of Section 903 (a) can properly be construed in no other way.

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B. The tax and credit do not constitute a violation of the principle of the dual system of Government

We have shown that there is no substance to the assertion that the tax and credit here involved constitute a violation of the Tenth Amendment, since Congress has not attempted either directly or indirectly to impose a system of regulation of local relationships within the States. There remains to be considered the charge that the tax and credit constitute a violation of the fundamental principle of the dual nature of our system of federal and state governments. We submit that the tax and credit do not violate this principle, that no burden is laid on the States and that there is no coercion on them to adopt a course of action in a field reserved to them by the Constitution, and that the method here adopted has been expressly sanctioned by this Court.

The principle of the indestructible nature of our dual system of government finds clear expression in *Collector* v. *Day,* 11 Wall. 113, 124:

> The general government, and the States, although both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. The former in its appropriate sphere is supreme; but the States within the limits of their powers not granted, or, in the language of the tenth amendment, "re-

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> served", are as independent of the general government as that government within its sphere is independent of the States.

Hence it follows that a federal tax on essential governmental functions of a State must of necessity be invalid.

However, the principle has never been applied to denounce action either by the States or by the Federal Government through which greater cooperation between them can be secured. Abundant examples might be drawn from many varied fields of state and federal action, particularly with respect to grants by the Federal Government in aid of various activities of the States (see pp. 130–135, *infra*). The Webb-Kenyon Act, which involves cooperation under the commerce clause, is a striking illustration. By that Act (Act of March 1, 1913, c. 90, 37 Stat. 699) Congress prohibited the shipment in interstate commerce of liquor which was to be sold or used in violation of any state law. This Court, sustaining the Act in *Clark Distilling Co.* v. *Western Maryland Ry. Co.,* 242 U. S. 311, clearly pointed out that any argument was fallacious which required the conclusion (p. 331)—

> that because Congress in adopting a regulation had considered the nature and character of our dual system of government, State and Nation, and instead of absolutely prohibiting, had so conformed its regulation as to produce cooperation between the local and national forces of government to the end

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> of preserving the rights of all, it had thereby transcended the complete and perfect power of regulation conferred by the Constitution.

Cf. In re Rahrer, 140 U. S. 545; *Rhodes* v. *Iowa,* 170 U. S. 412; *Whitfield* v. *Ohio,* 297 U. S. 431; *Hanover National Bank* v. *Moyses,* 186 U. S. 181; *Poe* v. *Seaborn,* 282 U. S. 101.

It is the position of the Government that the tax here falls within the latter, rather than the former, category—that it is cooperative rather than coercive. Freedom of action by the States is not limited by Title IX. On the contrary, it is actually increased.

1. The tax levied by title IX increases, rather than decreases, the freedom of State action.

Prior to the passage of Title IX of the Social Security Act, a State, by enacting an unemployment compensation law, might seriously have prejudiced its domestic producers by causing them to lose their outside as well as their home markets to outside competition. Not only were the States powerless to act with reference to their outside markets, but, by reason of the commerce clause, it was impossible for them to act, either individually or collectively, to prevent the importation of goods from other States, the producers of which had borne no unemployment compensation expense. *Baldwin* v. *Seelig,* 294 U. S. 511. Economic conditions, in other words, blocked *in limine* the States' freedom to evaluate the merits or demerits

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of unemployment compensation.[6] See footnote 69, page 25, *supra*.

This restrictive factor—the economic coercion of the commerce clause—is effectively eliminated by the Social Security Act. Employers in every State are subject to a uniform federal tax, and no additional financial burden need be imposed on them by passage of a State unemployment law which meets the requirements of section 903, because the amount of the state contribution can be credited up to 90 percent of the amount of the federal tax.[7] A State

[6] This situation was commented upon by both the Finance Committee of the Senate and the Ways and Means Committee of the House in reporting the Social Security Act. The report of the former states (S Rep No. 628, 74th Cong., 1st Sess, p. 16):

"Unemployment compensation in this country has been long delayed. The principal explanation is that the States have not been able to establish unemployment-compensation laws because, in doing so, they would have been compelled to handicap their industries in competition with those of other States not having such laws Under the plan proposed in this bill, this handicap will be removed, and it will be possible to set up unemployment-compensation laws through State action."

See also H. Rep No. 615, 74th Cong., 1st Sess, p. 8.

[7] If a state law provides for a contribution equivalent to the federal tax, an increase of 10% in the tax burden results from the fact that the credit against the federal tax is limited to 90 percent. (Section 902) Actually a State may avoid even this slight additional burden by a law imposing a contribution amounting to 90 percent of the federal tax, or less, so that all of it may be credited. See, *e. g.*, Massachusetts General Laws (Ter. Ed), ch. 151A, Sec. 3 (a) This device has been adopted by many States in their estate or inheritance tax laws to take advantage of the similar credit allowed by the federal estate tax.

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may, therefore, still refrain from the enactment of unemployment compensation legislation. However, it now has an alternative which did not before exist, namely, to enact an unemployment compensation law without imposing upon its citizens a burden greater than that borne by their competitors in the neighboring State having no similar law. Yet the out-of-pocket expense to the employers in a State is made no less by the failure of the State to act. Under the Act the States pass upon unemployment compensation in accord with their individual opinion of its value, unhampered by the fear of ruinous competition from their neighbors.

In this respect the effect of the legislation here under consideration is closely akin to that of the statute prohibiting the transportation of prison made goods into any State prohibiting the sale of such goods, recently before this Court in *Kentucky Whip & Collar Co.* v. *Illinois Central R. R. Co.,* No. 138, October Term, 1936, January 4, 1937. There Congress "put forth its power to regulate interstate commerce so as to prevent that commerce from being used to impede the carrying out of the state policy." So here, Congress has put forth its power to tax for the same end, as well as to carry out the objective entrusted under its power to tax and provide funds for the general welfare.

Of special significance as showing the cooperative character of the statute at bar is Section 906, which permits the States to require payments to

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an unemployment compensation fund to be made by persons engaged in interstate commerce. Were no such provision made by Congress, perhaps the States would be unable to tax employers engaged in interstate commerce or to levy a tax with respect to employees engaged in such commerce. Insuperable administrative difficulties might well be encountered by the States in attempting to distinguish between the local and interstate employees in particular enterprises. Congress has thus aided the States not only by equalizing competitive disadvantages among employers in the various States, but also by removing the practical administrative barriers to state action caused by constitutional prohibitions against laying tax burdens on interstate commerce. Here Congress has acted as it did in permitting States to tax national banks shares (Section 5219, Revised Statutes; *Van Allen* v. *The Assessors,* 3 Wall. 573), or in permitting application of state prohibitory laws to goods in the original package. *Whitfield* v. *Ohio,* 297 U. S. 431.

Striking evidence of the lack of coercion of the federal statute is the fact that two States have declared through their highest courts that they did not consider themselves coerced by Title IX into passing their legislation. *Howes Bros.* v. *Massachusetts U. C. Comm.,* (Mass Sup. Jud. Ct., December 30, 1936), 5 N. E. (2d) 720; *Gillum* v. *Johnson,* (Calif. Sup. Ct.), 62 P. (2d) 1037. In addition, several States have refused to pass unemployment

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compensation laws and have preferred to have their citizens continue to pay the full tax levied by Title IX.[8]

It may be objected that even though a State may now be able to enact unemployment compensation legislation without economic prejudice, nevertheless its course of conduct is dictated in advance because to take advantage of the new alternative presented it must enact legislation complying with the requirements of Section 903 (a). Actually, although it is true that the credit is available only if the requirements of Section 903 (a) are met, that fact is of negligible consequence in limiting the freedom of State action in enacting unemployment compensation laws. The requirements have already been considered at length in our discussion of their propriety under the Fifth Amendment (pp. 71–77, *supra*). It is quite evident from that discussion that they do not limit a State to any particular type of unemployment insurance; rather, they are primarily designed to insure that no deduction be taken under a state law which does not in fact establish a state unemployment compensation system.[9] In other words, they constitute an

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[8] Thus the legislature of Illinois has several times rejected bills to provide a state unemployment compensation system. Similarly the legislature of Delaware has rejected such a bill.

[9] The one provision of Section 903 (a) which does not fall entirely within this category is subdivision (3), which provides that all money received in the unemployment fund shall

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enumeration of the prerequisites to any plan of unemployment compensation properly so called.

Brief reference to the different types of unemployment compensation which a State might establish,[10] and the major issues under each of the types which each State must work out in its own way, will show clearly that Section 903 (a) cannot properly be construed as a limitation upon the right of a State to establish whatever plan of unemployment compensation it regards as most desirable.

There are, in general, three main types of unemployment compensation which a State may enact. The first type is a pooled unemployment fund, in which all contributions are commingled and from which payments of compensation are made to unemployed workmen without reference to the employer for whom they had worked. In connection with such a fund, a separate bookkeeping account may be kept for each employer, showing what he contributes and what his workmen draw, and reduced rates, known as merit ratings, may in time be allowed for employers whose records merit such treatment. This type of law is in effect in Alabama, California, New York and several other

immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund of the State. This provision has also been discussed at pp. 77–82, *supra*.

[10] A tabular representation of the chief features of the various state unemployment compensation laws will be found in a chart inserted at the end of the Appendix.

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States. Most of these state laws provide for merit ratings.

A second type of unemployment compensation is a system of unemployment reserve acounts. In this type, each employer makes his contributions into a specially segregated account, and each workman, when he becomes unemployed, must look for compensation to the particular unemployment reserve account accumulated by his former employers. Usually, the law provides that an employer may, after his account has accumulated to a certain point and has shown ability to withstand the drain of benefit payments, contribute at a reduced rate, or not at all. This plan is in effect in Wisconsin, and, together with a system of partial pooling, in Indiana, Oregon, and Kentucky.

A third type provides for guaranteed employment accounts. By this plan, an employer undertakes to give a certain minimum period of employment during the year to each of his employees, and at the same time contributes to an account or fund which can be drawn on by any of his employees as to whom the guaranty is not fulfilled or renewed. The plan usually provides that an employer who has fulfilled his guaranty in the past shall in the future either not contribute or contribute at a reduced rate. This plan is in operation in connection with a plan of pooled funds or a plan of unemployment reserve accounts in California, Idaho, Indiana, Minnesota, Oregon, and Wisconsin.

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Not only have the States complete independence with respect to the major type of plan, or combinations of any of them, which they desire to adopt, but also they may fill in the scheme with such details as they may believe best. Within the framework of the three main types of systems above described there are now in effect eleven different variations with respect to the type of fund. The size of the firm covered shows twelve variations, ranging from employers of one or more at any time, in the District of Columbia, and employers of one or more within any 20 weeks of the year, in six States, to employers of eight or more within any 20 weeks, in twenty-three States. Types of employment which may be specifically included or excluded are completely within the discretion of the States. For example, five States exclude insurance agents, although the labor of such persons comes within the definition of employment in Title IX, and New York includes domestic service and maritime service, which are excluded from the Federal Act.

Contributions and benefits are likewise determined by the States. Employers alone may be required to contribute, as the New York act provides; employers and employees may both be included as in California, or the State may itself contribute in addition to either of the above schemes as in the District of Columbia. Contributions may be subject to future increase or reduction upon the basis

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of merit ratings as in most present state acts, or there may be no such variation, as in the acts of Massachusetts, Mississippi, New York and Rhode Island. The amount of the benefits, the variations for total and partial unemployment, the maximum and minimum periods during which benefits shall be paid, the weight, if any, to be given to the length of the prior employment, and the provisions for seasonal workers are all problems which the States have solved for themselves and in the solution of which the widest variety is found. The same is true of the conditions imposed upon the receipt of benefits—the employment qualifying period, the waiting period, and all the various disqualifications which may be found desirable by any State. For example, a State is free to impose or not to impose a "means test" as a condition to the payment of compensation. All the details of administration are subject to the same discretion, such as the appeals procedure and the agency under which the law is administered.

Had Title IX been intended as a statute to regulate the type of laws which were to be enacted by the States, compliance with the type of unemployment compensation law which Congress preferred, and its best judgment on the details, would have been made prerequisites to the deductions. This has not been done. The decision upon all these matters has been left to the States. The requirements of Section 903 (a) go no further than to require that the law which exacts contributions for

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which credits are allowed shall in fact be an unemployment compensation law, and not something different masquerading under that title.

We have discussed the various provisions of Section 903 (a) in some detail earlier (*supra,* pp. 71–77). At this point attention may be directed to the provisions of Paragraph (5) of this Section, since it may be charged that these provisions, in effect, coerce the States into the adoption of labor relations acts and hence interfere with their internal policy. Paragraph (5) requires that compensation be not denied any otherwise eligible individual for refusing to accept new work if (A) the position offered is vacant due directly to a labor dispute, (B) the wages, hours, or other conditions of employment are substantially less favorable to the individual than those prevailing for similar work in the locality, or (C) the individual is required to sign a yellow-dog contract as a condition of employment.

The appropriateness of Clause (B) is obvious. A genuine unemployment compensation law must include a standard for determining the suitability of new work, since it is manifest that benefits should not be denied to a man who refuses unsuitable work. The simplest test of suitability, which depends upon external evidence rather than an exercise of individual judgment, is that the wages, hours, and other conditions of employment shall not be substantially less favorable than those prevailing for similar work in the locality.

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The conditions contained in clauses (A) and (C) are similarly appropriate criteria of the genuineness of an unemployment compensation law. The refusal to pay unemployment benefits to a man who refuses to engage in strike-breaking activities or to sign a yellow-dog contract would amount to employing a purported unemployment compensation law as a weapon in industrial controversy, and would at the same time operate to increase the burden on the federal treasury for relief of the persons thus denied unemployment compensation.

The charge that these provisions constitute the imposition of a labor policy on the States is without substance. There is no requirement, express or implied, that a State should provide benefits for workers on strike. Indeed, some States have specifically denied benefits to strikers. *E. g.,* Massachusetts General Laws (Ter. Ed.), Ch. 151A, Sec. 19a. There is no requirement, express or implied, that the States outlaw the yellow-dog contract or enact legislation protecting collective bargaining. A State may take any position it desires towards yellow-dog contracts. It should do so, however, through appropriate legislation designed for that purpose and not through an unemployment compensation law. Far from imposing an alien policy upon the States, Congress has acted so as to insure that the granting of the credit will not result in the perversion of an unemployment compensation system into an instrument for carrying out some other policy which the State may, if it desires, carry out

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through other legislation entirely within its own control. The conditions of Section 903 (a), instead of making Title IX a disguised labor relations act, are designed to prevent a credit being given for a supposed unemployment compensation law which is in fact a disguised labor relations act. Moreover, as we have shown, the conditions of Section 903 (a) are clearly separable from the remainder of the Act.

We submit, therefore, that the tax levied by Title IX can in no proper sense be considered as compelling the States to take any action, much less action of a particular sort. On the contrary, we believe that when accurately evaluated it is a means by which the economic factors which in the past have prevented State action are removed, leaving the States with a new freedom to enact unemployment compensation legislation of any type they may individually believe best suited to their local conditions.

2. *Even if the tax levied by Title IX be considered as a factor which makes it more desirable for a State to enact an unemployment compensation law, nevertheless its validity is established by decisions of this Court*

We believe that the foregoing argument constitutes a complete answer to petitioner's contention that the tax here involved is designed to coerce state action. But, alternatively, we submit that to apply the term "coercion" to any possible inducement which may be spelled out by petitioner is to go not only far beyond any proper definition of the

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term, but also contrary to the decisions of this Court.

The chief basis upon which petitioner rests his claim of state coercion is the allegation that economically, a State is forced to allow its citizens to take advantage of the 90% credit against the Federal tax.

It must certainly be true that only in rare and exceptional circumstances will a tax be rendered invalid by a credit or a deduction. Every credit and deduction exercises a certain amount of pressure, inducing persons to act in ways they might not otherwise select and which Congress is quite powerless to command. Illustrations are abundant, but specific reference may be made to the deductions offered to life insurance companies by the Revenue Acts of 1921 and 1924 (Secs. 244, 245), which undoubtedly induced the companies to subject themselves to levies which Congress could not have required. *Helvering* v. *Independent Life Insurance Co.,* 292 U. S. 371, 380, 381. Again, the deduction from gross income for charitable contributions has undoubtedly a tendency to induce more liberal gifts. The pressure must be strong indeed to require a holding that a credit or deduction will invalidate a tax.

Hitherto this Court has held that a tax is coercive where its burden can be avoided by submission to a system of regulation prescribed by Congress. *Child Labor Tax Case,* 259 U. S. 20; *Hill* v. *Wallace,* 259 U. S. 44. In these cases the coercion existed

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by reason of the fact that the tax burden constituted an overwhelming inducement to adopt an alternative course of conduct which the Federal Government could not otherwise have prescribed. The result may be the same where the coercive effect of the tax burden operates to compel alternative action by the State in order to relieve the citizens of the State of a financial burden. An example would be a tax imposed on employers with an exemption in favor of employers in those States which had passed laws prohibiting child labor. Such a tax would perhaps stand on the same footing as the tax condemned in the *Child Labor Tax Case, supra.*

The tax and credit at bar are far different from such prohibited exactions. A State which enacts an unemployment compensation law does not give its citizens occasion to avoid the tax burden, since the taxpayer pays precisely the same amount whether there be a state law or not. If any inducement be held out to the State it is certainly not the inducement to submit to regulation as the price of escaping a crushing burden. At the most the State will find it advantageous to enact its own unemployment compensation law if it considers it desirable to provide systematic relief against unemployment. If it does not care to do so, it can suffer little, if any, detriment, since the tax burden on its citizens remains the same, and since the relief of its unemployed will, in all probability, still be undertaken in large part by the Federal Government.

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(See footnote 74, p. 27, *supra.*) [11] Consequently where a State does set up its own unemployment compensation system the pressure exerted upon it by the credit provided in the federal act is no greater, and perhaps even less, than the pressure exerted by a grant in aid such as that considered in *Massachusetts* v. *Mellon,* 262 U. S. 447. If the Federal Government had made grants in aid to the States to be distributed by the States under unemployment compensation laws enacted by them, the answer to any charge of coercion would have been that given by Mr. Justice Sutherland in the case cited (p. 482):

> Nor does the statute require the States to do or to yield anything. If Congress enacted it with the ulterior purpose of tempting them to yield, that purpose may be effectively frustrated by the simple expedient of not yielding.

Lastly, it is to be observed that whatever the degree of inducement may be, it is only an inducement with respect to fiscal legislation, to accomplish an end which could otherwise be accomplished by the spending power of the Federal Government. If a State can be said to be induced to set up an unemployment compensation system it is in-

[11] A State which enacts an approved unemployment compensation law receives the benefits of grants to aid in the expenses of administering its law under Title III, but as we shall show later these benefits are but slight and incidental inducements and do not constitute an integral part of the system. See *infra*, pp. 124–127.

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duced to undertake the relief of its unemployed who would otherwise be a charge on the Federal Government. Since the Federal Government, as we have shown earlier, is enabled under its power to appropriate for the general welfare to spend money for the relief of the unemployed, it cannot be said that it has gone beyond its power if it enacts legislation inducing the States to make expenditures for this same purpose. We have shown earlier that the Constitution permits the Federal Government to ~~require~~ encourage contributions to be made directly by the treasuries of the individual States for purposes within the federal spending power. (*Supra,* pp. 53–57.) The case is but little different where the Federal Government acts by way of inducement to bring about the raising and expenditure of moneys for the same purposes within the States.

It will be readily seen that the power here exercised, if it amounts to an inducement to the States to adopt some course of action, only induces fiscal action for a purpose for which the federal spending power is now being exercised. The power thus carries its own inherent limitations and could not conceivably be extended so as to invade the reserved field of the States or to destroy the dual system of government.

It is unnecessary to argue in the abstract about degrees of inducement, however, for there is a direct precedent which completely answers petitioner's contention. Section 301 of the Revenue Act

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of 1926 imposes a tax upon the transfer of a decedent's estate, while at the same time permitting a credit, not exceeding 80 percent for "the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or Territory." The large credit granted thereby not only has the effect of reducing substantially the federal revenues, but also operates to remove the incentive for wealthy persons to move to States having no death taxes, and induces such States to levy death taxes.

The State of Florida challenged those provisions in *Florida* v. *Mellon,* 273 U. S. 12. Florida itself had no inheritance taxes and alleged that under its constitution it could not levy any. 273 U. S. 12, 15. Indeed, by abolishing inheritance taxes, it had hoped to induce wealthy persons to become its citizens.[12] See 67 Cong. Rec., Part 1, pp. 735, 752. In this Court, Florida contended that "The Estate Tax provision was not passed for the purpose of raising federal revenue" (273 U. S. 12, 14), but rather "to coerce States into adopting estate or inheritance tax laws." 273 U. S. 12, 13.[13] In fact,

[12] Cf. H. Rep. No. 1, 69th Cong., 1st Sess., p. 15.

[13] It may be pointed out that Congress seriously considered repealing the estate tax entirely at that time. After the House had passed a bill providing for an 80 percent credit, the Senate Committee on Finance recommended repeal of the entire estate tax law, it being stated that: "The application of the 80 percent provision, together with the cost to the Government of collecting the remaining 20 percent does not justify the retention of this tax." S. Rep No

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as a result of the 80 per cent credit, 36 States did materially change their inheritance tax laws and 3 amended their constitutions. See Perkins, *State Action under the Federal Estate Tax Credit Clause,* 13 North Carolina Law Review, 271. Yet this Court found no difficulty in sustaining the validity of those provisions. The case did, it is true, involve a jurisdictional issue, but the Court also passed upon the merits of the controversy, stating that "the act assailed was passed by Congress in pursuance of its power to lay and collect taxes, and * * * must be held to be constitutional." 273 U. S., p. 17. The decision has, in fact, been cited several times as a holding upon the merits. See *Poe* v. *Seaborn,* 282 U. S. 101, 117–118; *Phillips* v. *Commissioner,* 283 U. S. 589, 602. In any event there can be no doubt as to the constitutionality of the federal estate tax. See *Rouse* v. *United States,* 65 C. Cls. 749, certiorari denied, 278 U. S. 638. *Cf. Porter* v. *Commissioner,* 288 U. S. 436; *Helvering* v. *City Bank Co.,* 296 U. S. 85.

We submit that the decision in *Florida* v. *Mellon, supra,* is conclusive in this case, and that the tax levied by Title IX is not, properly considered, a coercive act, but one which increases, rather than decreases, the freedom of the States to act. If, however, the Court believes that inducement, to a

52, 69th Cong., 1st Sess., p. 8. The Senate thereupon passed a bill repealing the estate tax. In conference, the Senate receded from its position. H Rep. No 356, 69th Cong, 1st Sess, pp. 7–24.

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degree, is offered, nevertheless the tax is not rendered invalid thereby.

IV

THE GRANTS IN AID TO THE STATES UNDER TITLE III DO NOT AFFECT THE VALIDITY OF THE TAX IMPOSED BY TITLE IX

We have shown above that the tax imposed by Title IX is a valid exercise of the powers of Congress under Article I, Section 8, Clause 1 of the Constitution, and that its character as a tax is not destroyed or affected by reason of the credits allowed under Section 902. We have also shown that, as such an exercise of the taxing power, Title IX does not violate either the Fifth Amendment, the Tenth Amendment or impair the dual character of our government.

Petitioner, however, alleges that even assuming that Title IX, standing alone, would be valid, nevertheless the presence of Title III of the Act, under which Congress has authorized an annual appropriation of $49,000,000 "for the purpose of assisting the States in the administration of their unemployment compensation laws" renders Title IX unconstitutional. Petitioner argues that even assuming that Congress framed the tax under Title IX to raise large revenues, Congress intended to use these funds to finance the grants-in-aid under Title III, and that this purpose robbed the tax under Title IX of its true tax character because a tax can be laid for general revenue only and a tax

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laid for a particular purpose is no tax at all. Moreover, petitioner alleges that even if a tax may be laid to raise revenue for a particular purpose, the tax is bad if the purpose is an improper one, and the purpose here—subventions to the States for expenses of administration of unemployment compensation laws—is improper.

We believe that Title III is wholly immaterial for purposes of the present suit. First, Title III is wholly distinct from Title IX, and for that reason need not be considered. Moreover, even if it be considered, we submit that the grants are, in all respects a constitutional exercise of the power of the Federal Government to spend money to provide for the general welfare, and that a tax may therefore be levied in order to raise the money to make those grants.

A. Title III is in fact and in law wholly separate from Title IX, and need not, therefore, be considered

1. Title III is, as a matter of fact, unrelated to Title IX

Section 905 (a) of the Act provides that the tax imposed by Title IX "shall be collected by the Bureau of Internal Revenue * * * and shall be paid into the Treasury of the United States as internal-revenue collections." The proceeds are not nominally or in substance set aside for any particular purpose, or earmarked in any way, but are, along with the proceeds of other taxes, mingled in

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the general funds of the United States Treasury.

Petitioner, however, argues that the proceeds are, in some way, related to Section 301 of the Act, which provides:

> For the purpose of assisting the States in the administration of their unemployment compensation laws, there is hereby authorized to be appropriated, for the fiscal year ending June 30, 1936, the sum of $4,000,000, and for each fiscal year thereafter the sum of $49,000,000, * * *.

The statute itself obviously does not in any way relate the revenues to be derived under Title IX to the contemplated expenditures under Title III. Taxpayer, therefore, is faced with the heavy burden of proving that there should be read into the Act a direct relation between these two titles. We submit that if the Court wishes to go behind the face of the Act, it is apparent from various factors that Congress did not intend that the Title IX revenues and the Title III expenditures should be related.

At the outset it should be noted that Title III makes no actual appropriation of the amounts specified in Section 301. It merely authorizes future appropriations for the purposes there specified,[14] but those appropriations may never be made at all, or may be wholly different in amount. Actu-

[14] The authorization has no legal effect except compliance with Rule XXI, clause 2, Jefferson's Manual and Rules of the House of Representatives.

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ally, of the $4,000,000 authorized to be appropriated for the fiscal year ending June 30, 1936, only $2,250,000 was appropriated,[15] and of the $49,000,000 authorized for the next fiscal year only $29,000,000 was appropriated.[16] These appropriations were made long before the due date of the tax imposed by Title IX.

Furthermore, even if the $49,000,000 authorized to be expended by Section 301 be accepted as a criterion of probable appropriations, it is plain that there is no equivalence between that amount and the proceeds of the Title IX tax. The rate of tax under Title IX changes from 1 percent for the first year to 2 percent for the second and 3 percent for the third, but the appropriation remains constant at $49,000,000. The estimated revenues, even if it be assumed that all employers become entitled to the 90 percent credit, will range from $20,000,000 for the first year to over $90,000,000 for the year 1950.[17] Moreover, as States enact unemployment compensation laws, and more employers thus become entitled to the 90 percent credit, the revenues under Title IX will decrease, while *pari passu* expenditures under Title III will increase. But even if all States eventually adopt unemployment compensation laws and all employers become entitled to the 90 percent credit, the revenues from

[15] Act of February 11, 1936, c. 49, 49 Stat. 1109, 1113.
[16] Act of June 22, 1936, c. 689, 49 Stat. 1597, 1605.
[17] See footnote 82, p. 42–43, *supra*.

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Title IX will far exceed the appropriations authorized under Title III.

The most that can be said is that Congress realized that the operation of the Social Security Act would require the expenditure of federal funds and therefore made provision for raising additional revenue for the general support of the Treasury. But this does not mean that the proceeds of this particular tax will be used in making the expenditures under Title III. As in *Frothingham* v. *Mellon,* 262 U. S. 447, the taxpayer's interest in the appropriation from the general funds is too remote and indefinite to give him any standing to question the expenditure. See also *Knights* v. *Jackson,* 260 U. S. 12, 15.

United States v. *Butler,* 297 U. S. 1, is not contrary to this conclusion. The sole object of the Agricultural Adjustment Act was "to restore the purchasing power of agricultural products" (p. 58), and the entire proceeds of the tax were appropriated in aid of crop control (p. 59). "A tax automatically goes into effect * * * when the Secretary of Agriculture determines that rental or benefit payments are to be made * * *. The tax is to cease when rental or benefit payments cease." (*Ibid.*) None of the revenue was made available for general governmental use (*Ibid.*). None of these striking correlations are present in the instant case; rather, it is governed by the rule of *Frothingham* v. *Mellon,* 262 U. S. 447.

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2. Titles IX and III are legally separable

Even if Title III were related in fact to Title IX, its validity is immaterial in the present case since it is, in law, clearly separable from Title IX, and should not, therefore, now be considered.

Section 1103 of the Act provides:

> If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances shall not be affected thereby.

While the separability clause does not constitute an inexorable command, it creates a strong presumption that one invalid portion of the statute will not cause it all to fall. The presumption can be overcome only by considerations which establish "the clear probability that the invalid part being eliminated the legislature would not have been satisfied with what remains" (*Williams* v. *Standard Oil Co.,* 278 U. S. 235, 242), or, as the same principle is expressed in *Utah Power & Light Co.* v. *Pfost,* 286 U. S. 165, 184–185, by evidence showing "the clear probability that the legislature would not have been satisfied with the statute unless it had included the invalid part." See *Carter* v. *Carter Coal Co.,* 298 U. S. 238, 312–313. We submit that not only is there no clear evidence of such an intention on the part of Congress, but rather that the evidence indicates that Title IX was intended to be legally distinct from Title III.

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There can be no doubt that Title IX can operate alone as a complete and workable taxing statute. It fixes the rate of tax, its subject, provides for certain credits, and establishes a procedure for its collection. And it is in no sense dependent upon Title III. The fact that Title III does not actually appropriate any funds; the absence of relation or equivalence between estimated revenues and even authorized appropriations; the mingling of the funds derived from Title IX with the general revenues of the Government and the appropriation of the grants in Title III from the general funds, all show that Congress intended the titles to operate separately.

Even more significant is the fact that the appropriations under Title III, even if considered as allocable against the proceeds of the tax, form only a part of the amount which Congress expects to collect. See p. 123, *supra.* Surely, it is unlikely that Congress would have wished to have an important revenue statute fall merely because an authorization of appropriations of a much smaller sum might be invalid. Compare *Field* v. *Clark,* 143 U. S. 649; *National Life Ins. Co.* v. *United States,* 277 U. S. 508; *Huntington* v. *Worthen,* 120 U. S. 97; *Brazee* v. *Michigan,* 241 U. S. 340; *Utah Light & Power Co.* v. *Pfost,* 286 U. S. 165, 185.

Indeed, petitioner's own argument proves that Congress intended that Title IX should stand even though Title III should be stricken down. It

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argues that the Congressional policy in passing the Act was, through the allowance of the credits, to make it possible for the States to pass unemployment compensation laws. We have already shown that the presence of this policy in framing the credits under a revenue act does not render it invalid but, in any event, it is apparent that the policy was to be achieved by means of the tax and credit rather than by the relatively small appropriations under Title III. At least, it cannot be assumed that Congress intended that an important revenue statute so framed as to achieve this policy should fall merely because the relatively unimportant authorized appropriations under Title III were beyond its power.

Moreover, the language of Section 303 (a), authorizing grants to States with unemployment compensation laws "approved under Title IX" which *in addition* meet the requirements of Section 303 (a) indicates clearly a Congressional intent to regard Title III as cumulative, rather than as an integral part of Title IX. Compare *Liggett Co.* v. *Lee,* 288 U. S. 517, in which the Court separated and sustained the basic tax despite the fact that a provision for increasing it in a particular situation was unconstitutional. See also *Sonzinsky* v. *United States, supra.*

We submit, therefore, that both in fact and in law Title III is independent of Title IX, and that its validity need not be adjudged in the present case.

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B. Title III is, in any event, a valid exercise of the spending power of Congress.

Assuming, however, that the taxpayer is in a position to question Title III, we submit that there can be no constitutional objection to grants by the Federal Government to the States "for the purpose of assisting the States in the administration of their unemployment compensation laws", nor to the levy of a tax for the purpose of raising the necessary revenue.

Article I, Section 8 of the Constitution empowers Congress—

> * * * to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; * * *.

In this clause is found both the express power to tax in order to provide for the general welfare, and the implied, correlative power to spend in order to provide for the general welfare. Of course, if Congress may tax for this purpose it must have the power to appropriate the money which is raised to the same object. *United States* v. *Butler*, 297 U. S. 1, 65–67; *United States* v. *Realty Co.,* 163 U. S. 427, 440; *Legal Tender Case,* 110 U. S. 421, 440.

Public money, then, may be appropriated to the "general welfare". That term, though a limitation on the taxing and spending powers, is not itself limited by the subsequently enumerated powers,

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but includes anything that by any "reasonable possibility" will conduce to the national welfare. The determination of what is for the general welfare is primarily for Congress; the courts will not substitute their judgment unless "*by no reasonable possibility*" can the challenged legislation fall within "the wide range of discretion" possessed by Congress. *United States* v. *Butler,* 297 U. S. 1, 67.

We submit (1) that the maintenance by the States of unemployment compensation laws will, by some reasonable possibility, conduce to the general welfare; (2) that the form of the present appropriation—conditional grants-in-aid to the States to pay administrative expenses under State laws—is entirely valid; (3) that if the grants are valid, Congress was empowered to levy taxes in order to raise the necessary revenue; and (4) that the title is not rendered invalid by any improper delegation of power to the Social Security Board.

1. The maintenance by the States of unemployment compensation laws will promote the general welfare of the United States

It is clear from the economic data already presented (pp. 9–29, *supra*) that the adoption by the States of unemployment compensation systems will certainly by some "reasonable possibility" conduce to the national welfare. Such systems will go far toward alleviating the evils of unemployment and preventing the full effect of cyclical depression periods. They will relieve intolerable

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hardships to many millions of workers and their families. They will provide a sufficient safeguard for most of the unemployment that will occur in normal times. They will aid in the prevention of pauperism, with its concomitants of crime and vice. They will aid in the promotion of the general health, well-being and morality of the worker and will help to preserve his skill and efficiency. They will help to preserve peace and good order and avoid unrest. They will help to maintain purchasing power and avoid further unemployment and economic collapse. They will very materially lessen the federal relief burden in periods of depression. Since such state systems will promote the national welfare, it follows that the Federal government may cooperate with the States in the establishment and maintenance of these laws, by making money grants to assist them in administration expenses.

2. The form of the present appropriation—conditional grants-in-aid to the States to pay administrative expenses under State laws—is valid

The system of Federal grants of money or property to the States is one which has been exercised from the beginnings of the Government as an appropriate method by which the general welfare of the United States may be advanced by the exercise of Federal powers in cooperation with those of the States. Cf. *Hoke* v. *United States,* 227 U. S. 308, 322. Although the device was used infre-

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quently by the early Congresses, its validity was never doubted, and during the last century it has become common in connection with a wide variety of matters.[18]

The practice apparently began with the Assumption Act (c. 34, 1 Stat. 138, 142) passed on August 4, 1790, by the first Congress, under which the Federal Government assumed the debts of the States incurred during the Revolution. The Act was sponsored by Alexander Hamilton. American State Papers, Finance, Vol. I, pp. 15–25. In 1803 Congress passed the first of a series of acts granting to each new State, upon its admission to the Union, certain lands for the use of the schools. Act of March 3, 1803, c. 21, 2 Stat. 225. In 1808 Congress appropriated $200,000 for the army and for equipping the state militia. Act of April 23, 1808, c. 55, 2 Stat. 490. See also Act of April 29, 1816, c. 135, 3 Stat. 320. In 1820, Congress passed the first of a long series of acts by which Congress appropriated to various states 5 percent of the proceeds of the sale of public lands within their borders, for the purposes of education, road construction or improvements. Act of March 6, 1820, c. 22, 3 Stat. 545, 547. See also, *e. g.,* Act of March 3, 1845, c. 75, 5 Stat. 788; Act of March 21, 1864, c. 36, 13 Stat.

[18] See A. F. MacDonald, *Federal Aid* (1928); *Digest of Legislation Providing Federal Subsidies for Education*, U. S. Dept. of Interior, Off. of Education, Bulletin No. 8, (1930).

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30, 32. In 1836 Congress provided that the surplus in the Treasury in excess of $5,000,000 should be deposited with the States, subject to their individual assent, under an agreement to repay upon a stated notice by the Secretary of the Treasury. Act of June 23, 1836, c. 115, 5 Stat. 52, 55. In 1841 Congress provided that the net proceeds of the sales of public lands should be divided among certain States, and that 500,000 acres of public land should be donated to each of nine specified States, and a similar amount to each new State, for purposes of internal improvement. Act of September 4, 1841, c. 16, 5 Stat. 453, 455.

The foregoing list is not intended to be exhaustive. Nor would it serve any purpose to set out in detail the vastly greater number of conditional grants which Congress has made to the States during the last century, to aid and encourage them in performing some function deemed by Congress to be conducive to the general welfare. A list of other acts of Congress providing for cooperation with the States is included in the Appendix to the Brief for the respondent Administrator in No. 32, *Duke Power Co.* v. *Greenwood County,* at pp. 90–98. Here it will be sufficient merely to refer to the larger categories.

The federal land grants, which began in 1903 (*supra,* p. 131), have been very extensive. Every State except the 13 original States and 5 others has received federal land grants for common

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schools, a total of 77,510,737 acres.[19] Grants for normal schools and universities have aggregated 3,987,954 acres.[20] Every State has a land grant college.[21] See *Hamilton* v. *Regents,* 293 U. S. 245, 259. And many millions of acres have been given to the States for public buildings, roads, and other internal improvements.[22]

Aside from the land grants, large sums of money have been granted to the States for various purposes. In 1930 educational institutions in the States had received, since the second Morrill Act in 1890,[23] an aggregate of $318,138,727.65.[24] Numerous grants have been made for highway purposes, the expenditure of the Federal Government being limited to 50 percent of the estimated cost of the approved projects.[25]

Assistance in agriculture has been given by Federal grants, for example, to match state funds for

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[19] *Digest of Legislation*, *supra*, pp. 3-4, 15.

[20] *Id.*, p. 23.

[21] Act of July 2, 1862, c. 130, 12 Stat. 503; Act of July 23, 1866, c. 209, 14 Stat. 208.

[22] See MacDonald, *supra*, p. 14. See also, *e. g.*, Act of Sept. 20, 1850, c. 61, 9 Stat. 466; Act of May 15, 1856, c. 28, 11 Stat. 9; Act of August 18, 1894, c. 301, 28 Stat. 372, 422 (grant of desert areas on condition that they be reclaimed); Act of March 1, 1911, c. 186, 36 Stat. 961, 963 (grant of 5 percent of national forest revenues); Act of February 25, 1920, c. 85, 41 Stat. 437, 450 (grant of 37½ percent of receipts from oil lands and water power licenses).

[23] Act of August 30, 1890, c. 841, 26 Stat. 417.

[24] *Digest of Legislation*, *supra*.

[25] See, *e. g.*, Act of July 11, 1916, c. 241, 39 Stat. 355; Act of February 12, 1925, c. 219, 43 Stat. 889.

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the suppression of the boll-weevil, the European corn-borer, and various cattle diseases.[26] Innumerable similar examples could be given in the fields of forest fire prevention,[27] vocational rehabilitation,[28] state militia,[29] and health and hygiene.[30]

This long-continued and well-established course of legislation is very persuasive evidence that the conditional grants here involved are an appropriate exercise by Congress of its spending power. *McCulloch* v. *Maryland,* 4 Wheat. 316, 401. The similar historical basis of a different exercise of legislative authority was evaluated by this Court in *United States* v. *Curtiss-Wright Export Corp.,* No. 98, December 21, 1936:

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[26] See, *e. g.*, Joint Res. of May 21, 1928, c 665, 45 Stat 688 (boll weevil) ; Act of February 6, 1931, c. 111, 46 Stat 1064, 1067 (same) ; Act of February 9, 1927, c. 90, 44 Stat. 1065 (corn borer) ; Act of August 11, 1916, c. 313, 39 Stat 446, 492 (cattle diseases).

[27] See, *e. g.*, Act of March 1, 1911, c 186, 36 Stat. 961; Act of March 3, 1921, c. 127, 41 Stat 1315, 1344; Act of June 7, 1924, c. 348, 43 Stat. 653. Thirty-three States have accepted benefits under the 1924 Act. MacDonald, *supra*, p. 43.

[28] Since 1920, Congress has appropriated annually $1,000,000 for this purpose, on condition that the States expend equal sums and meet certain requirements. Act of June 2, 1920, c. 219, 41 Stat. 735, 736, as amended by Act of June 5, 1924, c. 265, 43 Stat. 430, 431, and Act of June 30, 1932, c. 324, 47 Stat. 448, 449.

[29] See p. 131, *supra* See also Act of January 21, 1903, c. 196, 32 Stat. 775; Act of June 3, 1916, c. 134, 39 Stat. 166, 215.

[30] See, *e. g.*, Act of November 23, 1921, c. 135, 42 Stat 224; Act of July 9, 1918, c. 143, 40 Stat. 845, 886.

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> A legislative practice such as we have here, evidenced not by only occasional instances, but marked by the movement of a steady stream for a century and a half of time, goes a long way in the direction of proving the presence of unassailable ground for the constitutionality of the practice, to be found in the origin and history of the power involved, or in its nature, or in both combined.

See also *Hampton & Co.* v. *United States,* 276 U. S. 394, 412; *Myers* v. *United States,* 272 U. S. 52, 175; *Martin* v. *Hunter's Lessee,* 1 Wheat. 304, 352; *Stuart* v. *Laird,* 1 Cranch 299, 309. Indeed, the practice of Congress in making such grants has been recognized in a number of cases, and it has never been suggested or supposed that they were beyond the power of Congress. See, *e. g., Nashville, C. & St. L. Ry.* v. *Walters,* 294 U. S. 405, 417; *Hamilton* v. *Regents,* 293 U. S. 245, 258–260; *Ervien* v. *United States,* 251 U. S. 41, 48; *United States* v. *Gratiot,* 14 Pet. 526.

The same answer may be given to the possible argument that Congress may not attach even such conditions to a grant as insure that it will be expended in accordance with its purpose. The requirements under Section 303 (a) are, in substance, the same as the provisions of Section 903 which, as we have shown (pp. 71–77, *supra*) are not regulatory, but merely insure that the credits will be allowed only for the administration of a genuine state unemployment compensation law.

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The conditions do not differ in substance from those of many previous grants by Congress to the States. Many of them specify in detail the uses to be made of the money, require the States to meet certain Federal requirements, and provide for some degree of Federal supervision to insure that the money is spent in accordance with the terms of the grant.[31] Reasonable conditions of this sort do not amount to regulation. *United States* v. *Butler,* 297 U. S. 1, 73.

3. Since Congress was empowered to make the grants under Title III, it necessarily was empowered to levy taxes in order to raise the necessary revenue

Petitioner may argue that even if the grants are valid, nevertheless Congress could not lay a tax for the purpose of raising funds to make the grants because a tax laid to raise funds for a particular purpose, and not for general revenue only, is not a tax at all. It should be noted that the contention is not open to petitioner unless it can succeed in establishing not only that Titles III and IX are inseparable, but also that the funds raised by the tax levied under Title IX are in some fashion directly connected with the subventions under Title III (see pp. 121–127, *supra*). Even assuming, how-

[31] See, *e. g.*, Act of September 4, 1841, c 16, 5 Stat. 453, 455, Sec. 9; Act of July 2, 1862, c. 130, 12 Stat 503; Act of August 30, 1890, c. 841, 26 Stat. 417; Act of January 21, 1903, c. 196, 32 Stat. 775; Act of February 23, 1917, c. 114, 39 Stat. 929; Act of November 23, 1921, c. 135, 42 Stat. 224, Act of February 9, 1927, c. 90, 44 Stat. 1065.

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ever, that petitioner can succeed in proving that the funds levied under Title IX are, in effect, "earmarked" for appropriation under Title III, we submit that the tax is not made invalid thereby.

Taxes are, of course, levied "for the purpose of providing funds for payment of the nation's debts and making provision for the general welfare." *United States* v. *Butler,* 297 U. S. 1, 64. Ordinarily, there is no indication in the act laying the tax of the particular purpose for which the funds are to be used, but it seems apparent that there is nothing unnatural or improper in relating specific anticipated government expenditures to specific revenues.[32] Some proponents of budgetary reform, knowing that earmarked taxes educate the taxpayer and act as a restraint on profligacy, believe that the connection should be made obligatory, as it is under the constitutions of several of the States (e. g., New York Constitution, Article III, Sec. 24; Michigan Constitution, Article X, Section 6). The fact that the Federal Constitution specifically requires that taxes be for the purpose of paying the debts or providing for the common defense and general welfare (Article I, Sec. 8) assumes the propriety of including in a taxing statute the purpose for which it is laid, providing, of course, that the purpose be a proper object of governmental expenditure.

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[32] See *Report of the Select Committee on the Budget*, H. Rep. No. 14, 67th Cong., 1st Sess.

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Taxes for some particular purpose were common in England before the Constitution was adopted.[33] They are common in all the States, for purposes such as schools, roads and the like. Nor is it any new departure for Congress, by the act levying the tax, to earmark or even to appropriate the proceeds to a particular purpose. For example, in the Act of March 3, 1791, c. 15, 1 Stat. 199, 213–214, a tax was levied on spirits, and the proceeds were pledged and appropriated for the payment of interest on loans and the payment of the public debt. Again, in the Act of March 26, 1804, c. 46, 2 Stat. 291, tariffs were increased, the proceeds of the increase to be used for the sole purpose of carrying on a war against the Barbary powers. Since 1902 money for the support of the Philippine Islands has been raised by customs duties and internal revenue taxes in this country, the proceeds of which have often been earmarked for the Philippine Treasury. See, *e. g.,* Act of March 8, 1902, c. 140, 32 Stat. 54, Sec. 4; Act of June 17, 1930, c. 497, 46 Stat. 590, 686.[34]

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[33] See Holdsworth, *History of the English Law*, Vol. 6, p. 253; Blackstone, *Commentaries*, Vol. 1, p. 330 *et seq ;* Seligman, *Essays on Taxation* (1895 ed.) pp. 345–349

[34] See also, *e g.*, Act of May 8, 1792, c. 32, 1 Stat. 267, 270; Act of March 3, 1797, c. 10, 1 Stat. 503; Act of May 13, 1800, c. 66, 2 Stat. 84; Act of December 21, 1814, c. 15, 3 Stat 152, Act of March 3, 1917, c. 159, 39 Stat. 1000; Act of April 23, 1924, c. 131, 43 Stat. 106. See also Brief for the United States in No. 659, *Cincinnati Soap Co.* v. *United States*, pp. 28–35.

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Again we submit that the well-established practice of Congress cannot now be held to be unconstitutional. See p. 134, *supra; United States* v. *Curtiss-Wright Export Corp., supra.* Indeed, this Court has recognized that the relationship assumed to be present here between tax and expenditure is a normal and necessary incident of the legislative function. *Knights* v. *Jackson,* 260 U. S. 12, 15; *Patton* v. *Brady,* 184 U. S. 608, 620. See also *Carley & Hamilton* v. *Snook,* 281 U. S. 66, 71; *Nashville C. & St. L. Ry.* v. *Wallace,* 288 U. S. 249, 268; *Milheim* v. *Moffatt Tunnel District,* 262 U. S. 710, 719; *Green* v. *Frazier,* 253 U. S. 233; *Olcott* v. *The Supervisors,* 16 Wall. 678, 695, 696.

Neither the *Head Money Cases,* 112 U. S. 580, nor *United States* v. *Butler,* 297 U. S. 1, are to the contrary. In the former the Court suggested that the specification of limited purposes of the levy was some indication that the legislation was not meant to be a tax. Since in the usual case revenue measures are for general rather than limited purposes this was probably relevant as *some* indication of the Congressional purpose. The opinion in no way indicated that such a specification would invalidate a statute which was clearly an exercise of the taxing power; on the contrary, it expressly stated that, as a tax statute "it would not be difficult to show" that the levy it authorized was "made for the general welfare" (112 U. S. at 595). In the *Butler* case the vice in the statute was not the appropriation of

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the proceeds *per se,* but the appropriation to an unconstitutional purpose. Here, as we have shown, the purpose is clearly valid.

We submit, therefore, that even if the tax levied by Title IX be considered as laid for the purpose of making the subventions under Title III, the tax is nonetheless valid.

4. Title III contains no unconstitutional delegation of legislative power

The taxpayer urges that wholly apart from the foregoing considerations, Title III should be declared to be unconstitutional as an improper delegation of legislative power to the Social Security Board. The contention is based upon the provision of Section 302 (a), which provides:

> The Board shall from time to time certify to the Secretary of the Treasury for payment to each State which has an unemployment compensation law approved by the Board under Title IX, such amounts as the Board determines to be necessary for the proper administration of such law during the fiscal year in which such payment is to be made. The Board's determination shall be based on (1) the population of the State; (2) an estimate of the number of persons covered by the State law and the cost of proper administration of such law; and (3) such other factors as the Board finds relevant. The Board shall not certify for payment under this section in any fiscal year a

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> total amount in excess of the amount appropriated therefor for such fiscal year.

We submit that the contention is wholly without merit (1) because the Constitution does not require Congress to specify in detail the manner in which public money is to be expended, and, alternatively, (2) Section 302 (a) provides standards adequate to guide the Board.

A. The Constitution Does Not Require Congress to Specify in Detail the Manner in Which Public Money Is to Be Expended [35]

Article I, Section 9, Clause 7 of the Constitution provides:

> No money shall be drawn from the Treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

This clause, phrased as a restriction on the power of expenditure, contains implicit recognition of the fact that the power is entrusted to the Executive. *Collins* v. *United States,* 15 Ct. Cl. 22, 35; *Compagna* v. *United States,* 26 Ct. Cl. 316, 317. The Constitution contains no requirement concerning the detail with which acts of appropriation shall specify the manner in which expenditures are to

[35] This argument is fully developed in the Brief for the respondent Administrator in No. 32, *Duke Power Co.* v. *Greenwood County*, October Term, 1936, at pp. 120–160, to which the Court is respectfully referred.

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be made. That question the Constitution leaves in the discretion of Congress.

Congress may, of course, prescribe in the most minute detail both the objects to which funds shall be applied and the manner in which the expenditure shall be made. Correlatively, however, Congress may state in general terms the purposes for which money is appropriated and leave to the executive the determination of the details of the expenditure. The question is not one of power, but of policy. Not only the language of the Constitution, but also the historic practice, which was adopted by the Framers, and the practice of Congress since the adoption of the Constitution, make this clear.

The members of the Constitutional Convention plainly intended the function of appropriation to be the equivalent of that found in the English constitution,[36] which may thus be referred to in order to determine the dividing line between the legislative function of appropriation and the executive function of expenditure. *Ex parte Grossman,* 267 U. S. 87, 108–111; *Myers* v. *United States,* 272 U. S. 52, 118. The first grant to the King by Parlia-

[36] See statements by Madison (Formation of the United States, Documents Illustrative of the Formation of the Union of the American States, H. Doc. No. 398, 69th Cong., 1st Sess., p. 323); Wilson (*id.*, p. 337); Dickinson (*id*, p 533); and Rutledge (*id*, pp. 534–535). See also Miller, *Constitutional Law*, pp. 205–209; Wilson, *Jurisprudence and Political Science* (1896 ed.), Vol. II, 42–44.

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ment appears to have been made in 1275. See Stubbs, *Constitutional History,* Vol. II, p. 523. Sporadically, for centuries, such grants continued. Stubbs, *supra,* pp. 565–568. The important point is that the Parliamentary appropriation was not a grant of money for a narrowly specified purpose, but merely a legislative assent that the Crown should spend the proceeds of the tax in question for some broad purpose.

In 1698 there was the beginning of the "civil list." 9 & 10 Wm. III, c. 23, Sec. 14. Maitland, *Constitutional History of England,* p. 435. But not until the Civil List Act of 1782 (22 Geo. III, c. 82) passed five years before the Constitution was formed, did Parliament exercise any important supervision over ordinary civil expenditures (Maitland, *supra,* p. 436), and even that control was very limited. In some situations Parliament at that time exercised rather detailed supervision;[37] in some it attempted little or none at all beyond a broad statement of the purpose of the tax.[38] The legislative branch thus possessed a flexible limitation upon executive expenditures. Not until long after the adoption of the Constitution did more particularized appropriations become common in England.

The legislation and authoritative discussion in the years immediately following the adoption of

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[37] See, *e. g.*, Statutes at Large, 27 Geo. III, c. 33.

[38] See, *e. g.*, 20 Geo. III, c. 42, Sec. 3; Session Laws, 31 Geo. II, pp 11, 15.

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the Constitution also bear out the concept of a discretionary legislative function of appropriation which is as fully performed by a broad appropriation as by one which is detailed in character. The first appropriation act (Act of August 7, 1789, c. 9, 1 Stat. 53) appropriated an unspecified sum for the "necessary support, maintenance and repairs of all lighthouses, beacons, buoys and public piers" theretofore erected. The first general appropriation act (Act of September 29, 1789, c. 23, 1 Stat. 95) was almost wholly devoid of details as to expenditures. It is unnecessary to multiply examples [39] to make it plain that the members of this Congress, composed largely of members of the constitutional or ratifying conventions, did not understand the Constitution to require any degree of particularity in appropriation acts. Subsequent Congresses have continued the practice of appropriating money in terms which have varied widely between the minute and the exceedingly broad.[40]

[39] See also Act of March 26, 1790, c. 4, 1 Stat. 104; Act of July 1, 1790, c. 22, 1 Stat. 128; Act of July 20, 1790, c. 30, 1 Stat. 135; Act of August 4, 1790, c. 34, 1 Stat. 138; Act of March 3, 1791, c. 28, 1 Stat. 222, 224.

[40] Acts which contain very broad appropriations include those of June 14, 1809, c 2, 2 Stat. 547; Act of August 10, 1846, c. 175, 9 Stat. 85, 96; Act of July 31, 1861, c. 28, 12 Stat. 283; Act of April 3, 1874, c. 75, 18 Stat. 26; Act of March 24, 1900, c. 91, 31 Stat. 51; Joint Resolution of May 9, 1912, No. 19, 37 Stat. 633, 634; Act of February 25, 1927, c. 202, 44 Stat. 1244. A much more extended list is contained in the Appendix to the Brief for the respondent Administrator in No. 32, *Duke Power Co.* v. *Greenwood County*, at pp. 68–89.

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The early commentators likewise appeared to have viewed the power of appropriation as a discretionary check upon the executive. See Hamilton, *The Federalist,* No. 72 (Lodge ed.) p. 72; *Works* (Ham. ed.), Vol. VII, pp. 532, 533. Gallatin, *Writings* (Adams ed.) Vol. III, pp. 73, 117. As a matter of *policy,* not of power, Jefferson and Hamilton disagreed on the practice of lump sum appropriations.[41] The former seems to have prevailed, for beginning with his administration, the appropriation acts became more detailed.[42] However, again as a matter of policy, excessive detail in appropriation has been criticised as tending toward, instead of away from, irresponsibility in administration.[43]

The argument does not, however, rest upon history alone, for there is in addition sound basis for it in reason—the basic distinction between powers which are coercive or regulatory, and those which are not. To apply the prohibition against delegation of power rigidly, without regard to the nature of the power exercised, would lead to grave and novel consequences. For example, Congress has granted broad powers in the administration of

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[41] See Jefferson, in Richardson, *Messages and Papers of the Presidents*, Vol. 1, p. 329; Hamilton, in *Works* (Ham. ed.) Vol VII, p. 788.

[42] See, *e. g.*, Acts of May 9 and 14, 1836, c. 59–62, 5 Stat. 17–31

[43] *Report of Committee on Economy and Efficiency*, H. Doc. No. 854, 62d Cong., 2d Sess.

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public lands or property (*Butte City Water Co.* v. *Baker,* 196 U. S. 119, 126; *United States* v. *Chemical Foundation,* 272 U. S. 1, 12), the administration of the territories (*United States* v. *Heinszen & Co.,* 206 U. S. 370, 385), or the disposal of the property of the United States (*Ashwander* v. *Tennessee Valley Authority,* 297 U. S. 288). The same is true with respect to the power of Congress to establish fiscal agencies (*McCulloch* v. *Maryland,* 4 Wheat. 316, 335–337 (argument of counsel), 424; *Smith* v. *Kansas City Title & Trust Co.,* 255 U. S. 180, or to borrow money on the credit of the United States (See U. S. C., Title 31, Sections 752–757). Cf. *United States* v. *Curtiss-Wright Export Corp.,* No. 98, December 21, 1936.

The thorough separation of governmental powers into three departments was regarded by the framers and those upon whom they relied as the basic safeguard against tyranny or oppression by one official or body.[44] Unless coercion or regulation of individuals or private rights is involved, legislative delegation presents no danger of the results which the Framers feared.

Moreover, the decisions of both state and lower Federal courts have recognized that decision as to the details of an expenditure is not a legislative function. In *People* v. *Tremaine,* 252 N. Y. 27, the court said (pp. 44, 45):

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[44] See Gouveneur Morris (Formation of the Union, supra, p 393); Madison (*id*, p. 397–398); Wilson (*id.*, pp. 846, 947); Federalist, No 47; Montesquieu, *Esprit des Lois*, Bk. II, c. 6. See also *Myers* v. *United States*, 272 U. S. 52, 116.

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> The head of the department does not legislate when he segregates a lump sum appropriation. The legislation is complete when the appropriation is made. * * * The legislative power appropriates money and, except as to legislative and judicial appropriations, the administrative or executive power spends the money appropriated.

See also *United States* v. *Hanson,* 167 Fed. 881 (C. C. A. 9th); *Kansas Gas & Electric Co.* v. *City of Independence,* 79 F. (2d) 32 (C. C. A. 10th); *Greenwood County* v. *Duke Power Co.,* 81 F. (2d) 986 (C. C. A. 4th), rev'd on other grounds, No. 32, October Term, 1936, December 14, 1936; *State ex rel. Bonsteel* v. *Allen,* 83 Fla. 214; *Abbott* v. *Commissioners,* 160 Ga. 657; *Edwards* v. *Childer,* 102 Okla. 158; *Holmes* v. *Olcott,* 96 Ore. 33; *Moers* v. *City of Reading,* 21 Pa. 188, 202; *Chicago & N. W. R. Co.* v. *State,* 128 Wis. 553; *State* v. *Zimmerman,* 183 Wis. 132; *State* v. *Clausen,* 94 Wash. 166.[45]

Every source of authority, therefore, supports the view that the legislative function is fully performed when Congress grants money, designating the purpose and limit of its use. We submit, therefore, that there is no question of delegation raised by Section 302 (a) of the Act.

[45] A contrary result was reached in *Franklin Township* v. *Tugwell*, 85 F. (2d) 208 (App. D. C). The argument here made was not presented to or considered by the court. Cf. *Webster* v. *Fall*, 266 U. S. 507, 511.

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B. In Any Event, Title III Provides Standards Adequate to Guide the Board in the Expenditure of the Money Appropriated

However, even if the standards of delegation of powers applicable to regulatory or coercive laws be applied, nevertheless there is, we submit, no improper delegation of power by Section 302 (a). The section supplies a primary standard—the amount which "the Board determines to be necessary for the proper administration of such law during the fiscal year." That standard is, in turn, further defined and limited by the specification of four other factors which the Board is required to take into consideration: (1) the population of the State; (2) an estimate of the number of people covered by the state law; (3) the total for all States must not exceed the appropriated amount; (4) such other factors as the Board finds relevant.

The case of *Hampton & Co.* v. *United States,* 276 U. S. 394, presents a very similar situation. The Tariff Act of 1922, Section 315, provided a primary standard, with several specific factors which the President was required to take into consideration. The fourth factor there—"any other advantages or disadvantages in competition"—is very similar to the fourth factor mentioned above. In each case the clause is to be read with an eye to the *eiusdem generis* maxim. Section 302 (a) seems clearly within the *Hampton* decision. See also *Field* v. *Clark,* 143 U. S. 649, 692. Congress has legislated as far as is reasonably practicable, and has made clear the policy. *Buttfield* v. *Stran-*

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ahan, 192 U. S. 470, 496; *Jacobson* v. *Massachusetts,* 197 U. S. 11, 27. Beyond that it is not required to go.

CONCLUSION

Wherefore, we submit that Title IX of the Act should be declared constitutional in every respect, and that the decision of the court below denying the taxpayer's claim for the recovery of taxes paid should be affirmed.

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