In The

Supreme Court of the United States

No. 2022–1218

Alex Murray; State of New Storke,

Petitioners,

v.

Elise Pritchett, Secretary of Education,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourteenth Circuit

Order of the Court

The petition for a writ of certiorari is granted. Argument time for the Petitioners will be allotted to counsel for Alex Murray on Question 1 and counsel for the State of New Storke on Question 2.

1. Whether Section 3 of the Native American Medical Care Act violates the Fifth Amendment's guarantee of equal protection?

2. Whether Section 4 of the Native American Medical Care Act violates the anti-commandeering doctrine of the Tenth Amendment?

Revised February 8, 2023

In the United States Court of Appeals
for the Fourteenth Circuit

No. 0903-1001

Alex Murray; State of New Storke, *Plaintiffs—Appellees*

v.

Elise Pritchett, Secretary of Education, *Defendant—Appellant*

Appeal from the United States District Court
for the District of New Storke

Chen, C.J, delivered the opinion of the Court, in which Cayleen, J., joined. Rusani, J., filed a dissenting opinion.

Chief Judge Chen:

This case concerns a challenge to provisions of the Native American Medical Care Act of 2019 (NAMCA) that regulate medical school admissions.

Plaintiff Alex Murray filed this suit in federal district court. Murray argued that her rejection from the Trinity School of Medicine resulted from an unconstitutional admissions preference for Native American applicants imposed by the Act. The State of New Storke subsequently joined as a co-plaintiff, alleging that the Act's scheme of tuition subsidies unlawfully commandeered its authority to set admissions policies at state-run medical schools. After a bench trial, the district court ruled that Sections 3 and 4 of NAMCA violated the Fifth and Tenth Amendments to the U.S. Constitution and enjoined the Secretary of Education from administering the admissions program.

The Secretary timely appealed to this court. In this proceeding, all parties have stipulated to the facts set out in Part I of this opinion. No issues of material fact, standing, or procedure are properly preserved on appeal. For the reasons stated herein, we now reverse the judgment of the district court.

I

A

On January 13, 2019, the United States Indian Health Service (IHS) published a report entitled *Tribal Healthcare In Troubling State*. The report found significant disparities between availability and quality of medical care within tribal communities and their surrounding areas. For every 10,000 people, tribal reservations have an average of 5 physicians while surrounding areas have an average of 28.2 physicians. Just 0.4% of physicians practicing in the United States are affiliated with a tribal community.

Because of these disparities, Native Americans experience longer wait and appointment times, face disrespect or confusion when it comes to traditional medical practices, and are at greater risk of heart diseases, diabetes, chronic liver diseases, and respiratory illnesses. The report cited several peer-reviewed research studies to confirm these observations. On average, Native Americans live 5.5 years fewer than the general United States population. The IHS notes that these disparities can be addressed by increasing the number of Native American doctors in areas with significant Native populations.

Following the release of the IHS report, the Senate Committee on Indian Affairs considered new measures to improve healthcare on reservations. Renowned pediatrician and scholar Dr. Sam Chan testified that many outstanding inequities in Native American healthcare could be solved by increasing the number of doctors on reservations. Furthermore, Dr. Chan presented studies suggesting Native American patients are statistically more likely to receive higher quality medical care when the treating physician is also Native American. In 2016, Dr. Chan and his team surveyed 3,000 Native American patients about the quality of their medical care.

The survey found that Native American patients considered Native American doctors to be both more likely to take their concerns seriously and more effective in treating their ailments.

On October 7, 2019, Congress passed the Native American Medical Care Act along partisan lines. President Jean Ganituk signed the bill into law shortly thereafter.

NAMCA is a conditional federal grant issued to medical schools that agree to allocate 5% of their seats to Native Americans as well as create an outreach program to actively recruit Native American students. In return, NAMCA's federal grant covers the full cost of tuition of every student who attends that medical school. [1]

B

New Storke is home to four of the top thirty public medical schools in the country, including Trinity Medical School. In 2019, Trinity Med was named the 7th best medical school in the nation according to the *U.S. News & World Report* medical school rankings.

Almost all medical schools receive federal funding in the form of grants. With their federal funding, these schools can pursue life-saving research, employ novel technology, and train the next generation of medical practitioners. Aspiring doctors across the nation pay (on average) $39,000 dollars a year for in-state tuition fees and $61,000 a year for private schools. The cost of medical school has increased at an alarming rate; in the last 20 years median medical school tuition has increased by 312%, and is predicted to continue rising. The median graduate of a public medical school accrues over $119,000 of student loan debt.

[1] The Congressional Budget Office estimated that the total cost of the tuition subsidy program would be $5 billion per year if all medical schools in the United States participated. The Act's provisions relating to Technology for Innovative Medical Endeavors (TIME) grants were found to have a negligible fiscal impact because of the TIME program's small size.

In 2018, Trinity Med conducted a survey of prospective students to determine the most important factors in their choice of school. 74% of respondents ranked "Cost of tuition and/or amount of debt post-graduation" as the most compelling reason; 52% of those ranked "Scholarships and financial aid offered" as second. Among students from low-income backgrounds, the numbers are even higher. 97% of students ranked cost related reasons first and 93% ranked scholarship and financial aid opportunities second.

C

NAMCA has dramatic effects on medical schools, regardless of whether or not they participate in its grant program. 96% of all accredited medical schools in the nation (both public and private) participated in the NAMCA grant program in its first year. An internal study conducted by the Department of Education (DOE) found that medical schools that participated in NAMCA's grant program saw a 10% uptick in applications to their schools.

By contrast, the four medical schools (all private) that did not adopt NAMCA in 2020 experienced a 75% reduction in their applications. Even their students are less qualified. From 2019 to 2020, the average incoming freshman's MCAT score dropped by approximately one standard deviation. The DOE study concluded that non-compliant schools would soon struggle to fill their classes with qualified students and see a sharp decline in prestige as a result of enrollment difficulties.

In a 2019 interview with Trinity Med students conducted by the College Communication Organization (COCO), a quoted student said, "Oh my god it wouldn't even be a question — I would go wherever the free tuition is. Not just for myself, but I'm pretty sure my parents would give me no other option." Fellow students echoed these sentiments, and many even expressed the desire to transfer if Trinity Med did not choose to participate in the NAMCA tuition subsidy.

After evaluating its options, Trinity Medical School adopted NAMCA's admissions policies in 2020.

D

Petitioner Alex Murray is 24 years old. Murray grew up below the poverty line and was the first in her family to graduate college. She completed her undergraduate degree in Cellular Biology at Abernathy University and graduated in the top 10% of her class. Murray spent her summers volunteering for a clinic on a local Indian reservation. Her experience gave her a deep understanding of the challenges associated with providing satisfactory medical care to underserved Indian constituencies. Her dream after graduation was to attend Trinity Medical School and one day practice medicine on the reservation. Murray is Scottish American and has no Native American ancestry.

On February 17, 2021, Murray was rejected from Trinity Med. Initially, Murray accepted the decision, but after learning about NAMCA, Murray quickly became frustrated. Murray believes that NAMCA unjustly bars aspiring doctors like herself from making meaningful differences in vulnerable communities. Murray obtained an affidavit by Trinity Med admissions officer Joseph Gorbanzo stating that if Murray were a "qualified Indian" applicant under NAMCA, it is virtually certain that she would have been admitted.

Murray filed suit in district court on April 1, 2021, alleging that NAMCA's admissions preference constituted unlawful race-based discrimination. Shortly thereafter, New Storke, whose new governor had campaigned against NAMCA, joined Murray's lawsuit as a co-plaintiff. The district court found for the plaintiffs on both Murray's Fifth Amendment claim and New Storke's Tenth Amendment claim and enjoined U.S. Secretary of Education Elise Pritchett from administering the program. Secretary Pritchett appealed. We now take each issue in turn.

II

Murray argues that NAMCA's requirement that participating medical schools set aside 5% of each freshman class for "qualified Indians" is unconstitutional race-based discrimination. We disagree. Because it is well-established that governmental regulation of Native American affairs does not constitute racial discrimination, we hold that Section 3 of NAMCA does not violate the Fifth Amendment's equal protection guarantee.

A

The Supreme Court has repeatedly upheld "the plenary power of Congress to deal with the special problems of Indians," including with legislation that "singles Indians out" for favorable treatment. *Morton v. Mancari*, 417 U.S. 535, 551–552 (1974). In *Morton v. Mancari*, the Court recognized that these preferences are generally constitutional, be they placement in "government programs for training teachers of Indian children," or hiring conducted by agencies such as the Bureau of Indian Affairs (BIA). 417 U.S. at 548–549. The Court's holding rested on a simple premise: a hiring preference for "qualified Indians" was not a "racial preference," but instead "an employment criterion reasonably designed to further the cause of Indian self-government and to make the BIA more responsive to the needs of its constituent groups." *Id.* at 553–554.

In the case at bar, the federal government's interest remains essentially the same. As this court sees it, NAMCA will produce well-trained physicians and researchers whose backgrounds prove advantageous in being able to serve a particular constituency's unique healthcare needs. Preferencing Native Americans, as the Act does, treats them as "not a discrete racial group, but, rather, as members of quasi-sovereign tribal entities." *Id.* at 554. Ensuring tribal governments have the resources to address an ongoing healthcare crisis is an action that "furthers the cause of Indian self-government." *Id.* Under the standard set out by *Mancari*, that alone is sufficient to reject Murray's claim.

The dissent argues that Section 3 of the Act imposes a racial quota, and thus proves unconstitutional under the Supreme Court's holding in *Rice v. Cayetano*, 528 U.S. 495 (1996). In *Cayetano*, the State of Hawaii "specifically grant[ed] the [right to] vote" in elections for Trustees in the Office of Hawaiian Affairs "to persons of [Native Hawaiian] ancestry and no others." *Cayetano*, 528 U.S. at 496. The Court's opinion, written by Justice Kennedy, correctly held that "ancestry [was] a proxy for race." *Id.*

Simply because Section 3 expands the definition of a "qualified Indian" to those with a Native American parent or grandparent, however, does not render it unconstitutional. The *Cayetano* Court did not hold that probing one's familial ties

inherently indicates that a government is pursuing a race-based scheme, and the dissent misses this key nuance.

Courts, following *Cayetano*, consider whether the government's "eligibility criteria" for a certain program constitutes a racial classification. Certainly in *Cayetano*, determining voting status based on ancestry was. In this case, however, the federal government has race-neutral rationales for the consideration of grandparentage. Specifically, having a "qualified Indian" grandparent may indicate that a person actively interacts with Indian constituencies, or is likely to do so (as grandparents age, grandchildren often visit, even assisting in care). The federal government also contends that grandparents often impart on their grandchildren their culture, traditions, and values. Considering grandparentage may thus identify candidates appreciative of the unique aspects of constituencies that they will likely practice in.

This court is not a fact-finding body, and we defer to these findings. Accordingly, we hold that Section 3 of the Act makes a political classification, not a racial one.

B

Because the admissions preference for Native Americans acts as a political classification and not a racial one, we need only subject it to rational basis review, which it surely musters. See *Mancari*, 417 U.S. at 554 (upholding a BIA hiring preference for "qualified Indians" because it was "reasonably and directly related to a legitimate, nonracially based goal"). For the sake of completeness, however, we consider the application of strict scrutiny. We find that the Act satisfies any level of equal protection scrutiny.

1

The Court's precedents require that strict scrutiny be applied to a statute that makes a racial classification. *Gratz v. Bollinger*, 539 U.S. 244, 270 (2003).[2] Under strict scrutiny, the most stringent form of review, the government must show that its "use of race… employs narrowly tailored measures that further compelling governmental interests." *Id.* (internal quotation marks omitted).

We begin with the governmental interest. The Court has found that "attaining a diverse student body" is a compelling interest under strict scrutiny. *Grutter v. Bollinger*, 539 U.S. 306, 328 (2003). While that interest does apply here, the government's interests here go far beyond that. As the legislative history indicates, Congress was motivated to action by studies showing substantial disparities in health outcomes and life expectancy for Native Americans relative to the general population. Exacerbating this, studies found, was a dire shortage of healthcare, including doctors and nurses, on Native American reservations. Particularly given the United States' "solemn commitment" and obligation towards Indian tribes, the government's interest in addressing these disparities is of the highest order.

Because several compelling governmental interests are at play here, we turn next to the question of whether Section 3 is narrowly tailored.

2

It is true that the Supreme Court has found that quota systems in university admissions generally fail strict scrutiny. *E.g. Regents of the University of California v. Bakke*, 438 U.S. 265 (1978). But we will not overread the applicability of those precedents to novel circumstances. This case implicates fundamentally different governmental interests from those concerned in *Bakke*. In that case, a quota system was

[2] Though this case concerns a challenge under the Fifth Amendment's implicit equal protection guarantee, rather than the Fourteenth Amendment's Equal Protection Clause, the Court has held that the protections they provide are substantively identical. See *Gratz*, 539 U.S. at 270 ("Thus, any person, of whatever race, has the right to demand that *any governmental actor* subject to the Constitution justify any racial classification subjecting that person to unequal treatment under the strictest of judicial scrutiny.") (internal quotation marks omitted) (emphasis added).

not narrowly tailored to a university's interest in a diverse student body. "Preferring members of any one group for no reason other than race or ethnic origin is discrimination for its own sake." *Id.* at 307.

Not so here. The government aims to reserve a certain number of seats in medical school classes because meeting its interest requires *a certain number of doctors* to practice on reservations. Any alternative admissions policy that does not consider an individual's connection to a tribal entity falls victim to a numbers problem: Congress found that individuals without any familial connection to a tribe are far less likely to practice medicine on a reservation. At best, then, barring the government from considering tribal status in admissions would require Congress to enact far more sweeping changes to medical school admissions to ensure a sufficient number of physicians will practice on reservations. At worst, the government's compelling interest in long-term health equity would be unachievable.

Narrow tailoring is exacting, but it "does not require exhaustion of every conceivable race-neutral alternative." *Grutter*, 539 U.S. at 339. So long as Congress' remedy directly addresses its interest, it has the latitude to devise a scheme that it deems workable for all stakeholders. The percentage-based admissions preference is simple to enforce, simple to adopt for medical schools, and is tailored to eliminate the physician disparity that concerned Congress. That is sufficient for purposes of narrow tailoring.

The dissent argues that the government could have achieved its goals with race-neutral alternatives, such as with an admissions program in which students from any background may commit to practicing medicine on a reservation after their graduation. *Post*, at 16. Beyond the manifold issues of practicality, the dissent's proposal does not reckon with the aforementioned findings that Native American doctors are more likely to practice on a reservation in the long term, and are better equipped to navigate the healthcare challenges facing reservation communities.

The means Congress has employed will achieve its stated goals with minimal disruption to admissions policies. We find no reason to strike it down.

III

We turn next to the Tenth Amendment challenge. We hold that Section 4 of NAMCA does not violate the Tenth Amendment's anti-commandeering doctrine.

Under Article I of the Constitution, Congress may use its powers to tax and spend to "provide for the common Defence and general Welfare of the United States." The healthcare crisis facing the Native American population is a matter of general welfare and cause for national concern. Congress, in addressing the ongoing crisis of health care, used its plenary power to enact the Native American Medical Care Act. NAMCA is a constitutional exercise of congressional power that does not unlawfully commandeer state authority.

A

"The Constitution created a Federal Government of limited powers." *New York v. United States*, 505 U.S. 144, 155 (1992) (internal quotation marks omitted). The necessity for a division between national and state governments is not contested. What is subject to interpretation is what powers the framers intended for the national government to hold.

The delineation between federal and state powers is made explicit in the text of the Tenth Amendment: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." In enforcing the Constitution's design of federalism, the Supreme Court has devised a set of principles known as the anti-commandeering doctrine. See *id.* at 145. ("Congress may not commandeer the States' legislative processes by directly compelling them to enact and enforce a federal regulatory program.").

Although it places an important limit on congressional power, the anti-commandeering doctrine does not entirely preclude Congress from encouraging certain behaviors from the states. So long as Congress does not attempt to regulate public actors directly or order states as to what laws and policies they must or must not pass, Congress has at its disposal "a variety of methods, short of outright coercion,

by which Congress may urge a State to adopt a legislative program consistent with federal interests." *New York*, 505 U.S. at 145.

One permissible method is the use of monetary incentives. To coax certain behaviors, it has long been recognized that Congress, in exercising its Commerce Clause authority, "may attach conditions on the receipt of federal funds." *South Dakota v. Dole*, 483 U.S. 203, 206 (1987). The incentives may be in the form of federal grants, cuts in funding, or taxes. Indeed, from the beginning of our republic, "Congress provided federal land grants to finance state governments." *Garcia v. San Antonio Metro. Transit Authority*, 469 U.S. 528, 552 (1985). Section 4 of NAMCA falls into this category.

B

The financial incentive in today's case is unlike any that have been found unconstitutional. Distinct from precedent like *New York*, the policy in question serves only to benefit those who comply and leaves alone those who do not. Previously there have been more significant penalties for noncompliance; take, for example, *New York v. United States*. In that case, states who did not comply with the federal government's preferred scheme for radioactive waste disposal were forced to take responsibility for disposing of radioactive contents and handle any direct or indirect consequences. This Court found that this penalty was unconstitutionally coercive.

When navigating this new territory of potentially coercive benefits, this court reconsiders how monetary incentives may be used to execute the federal government's wishes upon its citizens. There is no material change to our interpretation of this aspect of Congress's spending and taxing power. We acknowledge that Congress's ability to condition the receipt of funds is not without its limits, for there exist circumstances in which "[t]he constitutional line is crossed… when Congress compels the States to make law in their sovereign capacities." *Printz v. United States*, 521 U.S. 898, 927 (1997).

This case presents no such compulsion and is no different from many other instances in which Congress exercises its Commerce Clause power to pressure

states into adopting its regulatory scheme. See *Dole*, 483 U.S. at 204 (holding that "indirect encouragement of state action to obtain uniformity in the States' drinking ages is a valid use of the spending power."); see also *New York*, 505 U.S. 144. In today's case, "Congress conditioned the receipt of federal funds in a way reasonably calculated to address this particular impediment to a purpose for which the funds are expended." *Dole*, 483 U.S. at 209.

We find NAMCA falls comfortably within this interpretation. The generous provision of tuition for all medical students eliminates barriers to higher learning for all, but most importantly students from Native American tribes. Historically disadvantaged because of insufficient education quality and disproportionate rates of poverty, Indian students fixing on a career in medicine find their hopes dashed when confronted with the exorbitant price tag on an education in medicine.

These benefits are clear to states. It is the aim of NAMCA for all medical schools to adopt its standards. However, the penalties for noncompliance are inconsequential. The reality is that, if a state declines NAMCA, the status quo of the state's schools will hardly be altered. It is true that their refusal to adopt the policy will additionally result in a small funding decrease from their preexisting Technology for Innovative Medical Endeavors (TIME) grant. However, this funding cut amounts to just 0.3% of Trinity Med's annual budget and hardly approaches the constitutional limit of coercion. See *Dole*, 483 U.S. at 204 ("The State's loss of only 5% of federal funds otherwise obtainable under certain highway grant programs… is not so coercive as to pass the point at which pressure turns into compulsion"). Thus, in the instant case, "the argument as to coercion is shown to be more rhetoric than fact." *Dole*, 483 U.S. at 211.

The state of New Storke has a choice: to adopt NAMCA and receive additional federal grant money, or to refuse and not receive the funding. "If a State's citizens view federal policy as sufficiently contrary to local interests, they may elect to decline a federal grant." *New York*, 505 U.S. at 168. Similarly, if New Storke considers NAMCA so contrary to their interests, then they may elect to decline the federal grant. This is consistent with well principled precedent in which Congress uses indirect encouragement via funding incentives.

The dissent, however, posits that NAMCA is functionally coercive, arguing that the act offers no reasonable choice at all. This is not substantiated by precedent or reality. Anti-commandeering precedent indicates that a financial incentive can constitute coercion in some cases. But the Court has only ever found such compulsions in the context of taking money away from preexisting state funding, not in depriving states of receiving heretofore yet administered additional grants. In *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 581 (2012), for instance, the coercion was derived from Congress "threatening to withhold all of a State's Medicaid grants." Importantly, these were grants which the state had already come to rely upon. Thus, the difference is in the obvious distinction between the threat of punishment, and the promise of a reward. The instant case considers the latter and it is thus not coercive.

C

The nature of taxes and grants is such that there will most always be some degree of an advantageous or deleterious effect. The standard suggested by the dissent is wholly unworkable, and would require Congress to consider the indirect effects of every tax and every grant on everyone, making legislation unconstitutional so long as some entity could argue they were indirectly harmed. But that is not what precedent dictates, and it is not our role as a court to perform that inquiry. New Storke's decision to decline the NAMCA grant should not deprive other states and other schools from the opportunity NAMCA provides. Ultimately, this is a case in which Congress draws upon its well-established authority under the Commerce Clause to act in a way that it has since the time of the framers: to "attach conditions on the receipt of federal funds." *Dole*, 483 U.S. at 206.

IV

In upholding NAMCA, we recognize "the unique legal status of Indian tribes under federal law and… the plenary power of Congress… to legislate on behalf of federally recognized Indian tribes. *Mancari*, 417 U.S. at 551. This authority, drawn "explicitly and implicitly from the Constitution itself," grants Congress the power to enact NAMCA. *Id.*

Neither Murray nor New Storke has demonstrated that NAMCA is constitutionally deficient. The judgment of the district court is REVERSED, and the permanent injunction entered by the district court is VACATED.

It is so ordered.

JUDGE RUSANI, dissenting:

Today's opinion allows the federal government to sic market forces upon states to coerce them into adopting a scheme of racial discrimination. Because the majority embraces a misguided departure from precedent, I respectfully dissent.

I

I begin with the Fifth Amendment issue. NAMCA establishes an illegal scheme of racial balancing. Such a scheme violates the Constitution's guarantee of equal protection.

A

The majority is correct that in *Morton v. Mancari*, 417 U.S. 535 (1974), the Supreme Court recognized that the federal government may "single out for special treatment a constituency of tribal Indians" 417 U.S. at 552. However, the Court in *Mancari* did not sanction what the majority deems constitutional. The opinion of the Court, written by Justice Blackmun, plainly states that special treatment can be conferred on those "tribal Indians living on or near reservations." *Id.* The Bureau of Indian Affairs' policy properly identified those "qualified Indians" for special treatment.

Ancestry, or "grandparentage," as the majority terms it, should not be a factor of consideration. The federal government contends that it must be, as medical school candidates with a "qualified Indian" grandparent may participate in tribal life at a greater rate and possess heightened cultural awareness.

Still, the government in *Rice v. Cayetano* invoked the *Mancari* interest of "further[ing] Indian self-govern[ance]." 528 U.S. 495, 520 (1996). This interest was not enough to shield the State of Hawaii's voting restriction from rightfully being struck down as instituting racial discrimination. The Court held that regardless of that apparent interest, Hawaii could not "establish a voting scheme limit[ing] the electorate for its public officials to a class of tribal Indians, to the exclusion of all non-Indian citizens." *Id.*

In my view, the federal government has established a similar scheme in the present case. I disagree with the majority that considering "grandparentage" somehow does not map neatly to a race-based classification. NAMCA's definition of a "qualified Indian" does not require an applicant to be a member of an Indian tribe, or even to reside on a reservation. The only connection it requires, in other words, is an ancestral one. In my view, grandparentage implies, at the very least, a multigenerational racial connection—the true form of the classification at issue.

Through NAMCA, the federal government functionally purchases seats in the nation's medical schools and then instructs schools to hold them for "qualified Indians." Grandparentage serves as little more than a flimsy veil to cover the ugly face of invidious racial discrimination. I therefore cannot agree with the majority that consideration of "grandparentage" is proper under *Mancari*. *Mancari*'s hiring preference applied to those "living on or near reservations." *Mancari*, 417 U.S. at 552. It is this group, not a group determined by race or ancestry, that the *Mancari* Court held could be afforded special treatment under some circumstances.

B

Because NAMCA imposes a racial classification in its admissions scheme, it must be subject to strict scrutiny. As the majority correctly notes, strict scrutiny requires the Act be narrowly tailored to achieve a compelling governmental interest.

1

With respect to the government's interest, the majority and I are in agreement. Few interests are so compelling—and few failures so egregious—as the pur-

suit of equal access to healthcare for all Americans. Racial disparities in health outcomes are well-documented. Congress' efforts to address the needs of a community it has historically mistreated are, if nothing else, commendable.

2

Where Congress errs, however, is the means it has employed to address that interest. To show that Section 3 is narrowly tailored, the government bears "the ultimate burden of demonstrating that race-neutral alternatives that are both available and workable do not suffice." *Fisher v. University of Texas at Austin*, 136 S. Ct. 2198, 2208 (2016). That burden cannot be met here.

The government claims its interests go beyond the oft-invoked interest in student-body diversity to justify its claim that, somehow, this racial quota is different. My examination of the Act leaves me with the impression that Congress has engaged in impermissible racial balancing.

The government could as easily have instituted an admissions preference for those that live on Native American reservations, regardless of ancestry. Or it could have established a service program through which individuals could commit to practicing in under-resourced areas of the country, such as reservations. Instead, Congress chose to exclude those, like Murray, who hope to serve reservation communities one day in favor of applicants who express no similar interest and merely happen to be related to a member of an Indian tribe. The classification the Act draws is thus both overinclusive and underinclusive of the individuals that would allow Congress to mitigate the physician shortage. The common factor on both sides is that Congress preferences an individual's ancestry (or "grandparentage," to use the majority's favored euphemism) over addressing its supposed interests. It may be true that Native American doctors are "more likely" to practice in reservation communities than the "average white doctor," but "there are more precise and reliable ways to identify applicants who are genuinely interested in the medical problems of minorities than by race." *Regents of the University of California v. Bakke*, 438 U.S. 265, 310–311 (1978).

One possible defense of the government's racial set-aside remains. The government cites evidence that Native American patients are more comfortable being treated by Native American physicians, for reasons relating to cultural understanding. That may be true, but it does not give Congress license to impose racial and religious segregation in all facets of society where people may prefer to interact with someone of the same background. The Court rejected a similar theory in *Wygant v. Jackson Board of Education*, 476 U.S. 267 (1986), finding that a school board could not justify a racially discriminatory layoff policy on the premise that minority students would benefit from exposure to "role model" teachers of the same race. To say that only Native American doctors can adequately treat Native American patients is to caricature individuals on the basis of race in exactly the manner the Court has prohibited.

Far from employing racial classifications only where no feasible alternatives exist, NAMCA smuggles an expansive racial-balancing scheme into law, which the Court "has time and again held patently unconstitutional." *Fisher*, 136 S. Ct. at 2225 (internal quotation marks omitted). To justify its departure from precedent that so states, the majority pleads that this case poses "novel circumstances," given the public health interests implicated by this case. *Ante*, at 8. Were that true, it might merit further discussion. But it is not true.

In fact, the Court considered a medical school's admissions quota for minority racial groups in *Bakke*. The university in that case raised "improving the delivery of health-care services to communities currently underserved" as a central purpose of its quota program. *Bakke*, 438 U.S. at 310 (opinion of Powell, J.). Nevertheless, the Court rejected that justification as inadequate and found the university's admissions program unconstitutional.

Bakke's holding likewise binds the case at hand. NAMCA is little more than a new face on the race-balancing quota schemes the Court has long rejected. NAMCA is not narrowly tailored to any compelling governmental interest raised here. In my view, it must fail strict scrutiny.

C

Inequitable access to healthcare is indeed one of the most urgent problems facing our nation. But Congress cannot address it with an expansive program of racial discrimination in medical school admissions. I would find that the Fifth Amendment's equal protection guarantee prohibits the statutory scheme set out by Section 3 of NAMCA.

II

The majority blurs the sharp lines of federalism set out by the Constitution by allowing the federal government to dictate state policy. I cannot accept the dangerous precedent this sets for future federal action.

The majority describes NAMCA's tuition subsidy program as a "potentially coercive benefit." *Ante*, at 11. No speculation is required; the record makes obvious the coercive economic effects fomented by NAMCA. This court's approval of NAMCA's coercive policies, if allowed to stand, would irrevocably alter the balance of power between federal and state governments.

A

I do not dispute the severity of the Native American health crisis, nor the necessity of action. The issue lies in the monetary incentive scheme promulgated by NAMCA and its downstream economic effects. Although Congress using financial pressure as a means of motivating the states to adopt its legislation is constitutional, financial coercion is not. *New York*, 505 U.S. at 165. NAMCA presents only a facade of choice to the states of our nation. NAMCA offers states the option between compliance and free tuition for medical schools, and noncompliance accompanied by a cut in the federal TIME grant. Analysis of the latter option reveals the ultimatum that NAMCA implicitly poses.

Medical schools who do not accept the standards in the act are accepting no uncertain fate: they will be forced to shut down. These schools cannot hope to compete with the guarantee of free tuition, left to flounder in the wake of their quickly advancing competitors. The majority writes that the status quo of the school will hardly be altered. This is only true if conceived of in a vacuum. Relative to every

other medical school in the nation, New Storke's medical schools will face crises of enrollment and revenue that would threaten their continued existence.

Additionally, the majority addresses the novelty of a comparatively large monetary incentive and notes that "the Court has only ever found such compulsions in the context of taking money away from preexisting state funding." *Ante*, at 13. This, although true, is immaterial. Operating under the presupposition that non-compliant medical schools are left unscathed, the majority ignores the reality that the practical effect of NAMCA is a "gun to the head" of New Storke. *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 581 (2012). The threat of ruin presented by non-compliance with NAMCA is so serious a threat that all public medical schools in the nation acceded to the Act's standards. They did so not for the benefits, but for avoidance of catastrophic consequences. The underlying principles of the Court's precedent applies in equal measure here. Coercion is unconstitutional, regardless of the particular scheme the government devises to effect it.

The majority also fails to consider the aggregate effects of forgoing federally funded tuition and the cut in the TIME grant. Although individually these actions may not be severe or even nearing consequential, when combined, the effects upon medical schools are compounded. With fewer students motivated to attend, public medical schools in New Storke are already pressured to find alternative sources of income. The additional cut from their TIME grant is doubly debilitating.

The majority is correct that, on the surface, New Storke has the autonomy decline the NAMCA grant. However, the majority fails to properly consider that "in some circumstances, the financial inducement offered by Congress" might be so coercive as to pass the point at which "pressure turns into compulsion." *South Dakota v. Dole*, 483 U.S. 283, 211 (1987). The instant case lies within this classification. NAMCA presents two choices for the state of New Storke: either accept the grant or perish. This is hardly a "choice." For New Storke, "[A] choice between… [accepting or denying NAMCA] is no choice at all." *New York*, 505 U.S. at 176.

A "do this, or die" attitude of congressional legislation over the states is coercive and unconstitutional under *Dole*, *New York*, and *Sebelius*, even when

cloaked as a financial incentive. Thus, the majority opinion misunderstands the gravity of NAMCA and its truly coercive nature.

B

Beyond its coercive incentive scheme, NAMCA runs afoul of the Constitution because it deprives states of "their sovereign capacity to regulate their own citizens" *Reno v. Condon*, 528 U.S. 141, 142 (2000). Similar to this court's finding in *Printz* that barred the federal government from "impress[ing] into its service—and at no cost to itself—the police officers of the 50 States" *Printz*, 521 U.S. at 899, NAMCA intends to enforce its policies through the admissions officers of state-run medical schools to establish outreach programs and admissions procedures. In *Printz*, it was found that the regulation of state officials was equivalent to regulating the state itself. Thus, NAMCA commandeers state policy. This cannot stand; "the Framers explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States." *New York*, U.S. 144, 166.

The federal government's efforts may be noble. The state of Native American healthcare "is a pressing national problem, but a judiciary that licensed extraconstitutional government with each issue of comparable gravity would, in the long run, be far worse." *New York*, 505 U.S. at 187. Our federalist system is intentional and, although inconvenient at times, "divides power among sovereigns and among branches of government precisely so that we may resist the temptation to concentrate power in one location as an expedient solution to the crisis of the day." *Id.* Congress may seek to address this crisis, but it may not do so by coercing state governments. With NAMCA, "the financial inducement" Congress has chosen is far more than "relatively mild encouragement;" it is "a gun to the head." *Sebelius*, 567 U.S. at 581.

The majority notes that a finding against NAMCA would present an unworkable standard in which the Tenth Amendment could be violated with every tax and grant made. This is a misrepresentation of precedent. All that is required is a determination similar to the Supreme Court's findings in *Dole* and *Sebelius*, in which it identified coercive financial tactics. Congress' power to tax and spend has not been undermined by those cases, and neither would it with NAMCA. The true threat is that of congressional overreach.

This case typifies the abuses of power that the Tenth Amendment was intended to prevent. Individual states, as constituent parts of the whole that is the United States, are inherently vulnerable to intrusions upon their sovereignty by the centralized government. The anti-commandeering doctrine exists to protect the sovereignty of states and protects the "delicate balance the Constitution strikes between state and federal power." *New York v. United States*, 505 U.S. 144, at 159 (1992) (internal quotations omitted); see also *Reno*, 528 U.S. at 147 (2000). With NAMCA, Congress intrudes upon that delicate balance.

The policies of NAMCA fall squarely within the powers reserved to the states, not to Congress. In enacting NAMCA, Congress, for all intents and purposes, coerces states into adopting its standard by offering a grant so lucrative that state-run medical schools must either comply with its conditions or face ruin. Offering no meaningful choice, NAMCA is coercive and runs afoul of "the principles of federalism contained in the Tenth Amendment" *Reno*, 528 U.S. at 147.

III

Today's decision undermines the nation's system of federalism and the guarantee of equal treatment under the law. All Americans should be alarmed by the abuse of federal power embodied by NAMCA, and even more so by the majority's dutiful acquiescence to that abuse. I respectfully dissent.

Appendix A

Native American Medical Care Act of 2019

Section 1. Findings and Purposes

(a) Findings

Congress finds that—

(1) it is the role of Congress and the federal government to concern itself with the health of its people and enact policies and programs to that end;

(2) the United States has a special obligation to Native American tribes in light of the unique historical and political relationships between the nation and sovereign tribes;

(3) wide disparities exist in health outcomes between Native Americans and the general population;

(4) a major contributing factor to these disparities is poorer access to healthcare services on tribal reservations;

(5) medical facilities within reservations face a severe shortage of physicians and other medical professionals;

(6) alleviating this shortage will improve health outcomes for members of Native American tribes;

(7) individuals with immediate familial connections to Native American tribes are more likely to elect to practice on tribal reservations and better understand the unique challenges facing Native American patients; and

(8) increasing the number of doctors of Native American descent through the reform of medical school admissions is likely to alleviate the physician shortage on reservations.

(b) Purpose

It is the purpose of this Act—

(1) to improve the general welfare of Native American people and indigenous tribes of the United States;

(2) to increase the number of physicians practicing on Native American reservations; and

(3) to ensure equal access to high-quality healthcare for all Native Americans.

Section 2. Definitions

As used in this Act:

(a) Qualified Indian

(1) In general

The term "Qualified Indian" shall include:

(A) An individual who is a member of a federally-recognized Indian tribe; or

(B) An individual who has at least one parent who is a member of a federally-recognized tribe; or

(C) An individual who as at least one grandparent who is a member of a federally-recognized tribe.

(b) Medical school

(1) In general

The term "medical school" means:

(A) An accredited institution for the training of individuals to become physicians.

(2) Exclusions

The term "medical school" shall not include

(A) Any institution operated by a branch of the United States military.

Section 3. Eligibility for Grant Programs

(a) In order to be eligible for the grant programs set out in Section 4 of this Act, a medical school must—

(1) establish an outreach program for prospective Native American students to encourage applications; and

(2) establish admissions procedures that ensure at least 5% of matriculated students per academic year are Qualified Indians.

(b) Certification

(1) The Secretary shall issue certifications of compliance with the requirements of subsection (a) to eligible medical schools.
(2) The Secretary is authorized to issue regulations as necessary to establish a certification process for eligible medical schools.

Section 4. Grant Programs

The following grant programs are established for eligible medical schools that certify compliance with Section 3 of this Act.

(a) Tuition subsidy program
    (1) Eligible medical schools shall receive a grant each academic year equal to the total tuition fee for all matriculated students.
    (2) No student of an eligible medical school that receives a tuition subsidy grant under this Act shall pay any tuition fee to the eligible medical school.
    (3) Reasonableness
        (A) If the Secretary deems an eligible medical school's fee structure to be unreasonable, the Secretary is authorized to suspend the eligible medical school's participation in the subsidy program at any time.
        (B) The Secretary is authorized to issue regulations as necessary to govern the reasonableness of tuition fees subsidized by this Act.
(b) Modifications to the Technology for Innovative Medical Endeavors (TIME) grant program
    (1) Medical schools that certify compliance under Section 3 of this Act shall be eligible for 100% of their present funding allocation under the TIME grant program.
    (2) Medical schools that do not certify compliance under Section 3 of this Act shall be eligible for 90% of their present funding allocation under the TIME grant program.

Table of Authorities

Issue 1

Morton v. Mancari, 417 U.S. 535 (1974) (PDF)

Regents of the University of California v. Bakke, 438 U.S. 265 (1978) (PDF)

Wygant v. Jackson Board of Education, 476 U.S. 267 (1986) (PDF)

Rice v. Cayetano, 528 U.S. 495 (2000) (PDF)

Gratz v. Bollinger, 539 U.S. 244 (2003) (PDF)

Grutter v. Bollinger, 539 U.S. 306 (2003) (PDF)

Fisher v. University of Texas at Austin, 136 S. Ct. 2198 (2016) (PDF)

Issue 2

Garcia v. San Antonio Metro. Transit Auth, 469 U.S. 528 (1985) (PDF)

South Dakota v. Dole, 483 U.S. 203 (1987) (PDF)

New York v. United States, 505 U.S. 144 (1992) (PDF)

Printz v. United States, 521 U.S. 898 (1997) (PDF)

Reno v. Condon, 528 U.S. 141 (2000) (PDF)

Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519 (2012) (PDF)

Acknowledgements

Murray v. Pritchett was written by the NAMC Case Committee: Sydney Chen, Sean Ignatuk, Caillian Sheehy, and Faiz Surani.

We thank Komal Surani, Adam Wesley, Jackson Streit, Louis Chuang, Sam Chen, Audrey Wang, and Matthew Meyers for their contributions to the case. We are also grateful to Moot Court at UCSB, Duke Moot Court, Yale Undergraduate Moot Court, and Moot Court at Cornell University for logistical support.