No. _____

In the

Supreme Court of the United States

MATT SISSEL,

Petitioner,

v.

DEPARTMENT OF HEALTH AND HUMAN SERVICES, SYLVIA BURWELL, in her official capacity as United States Secretary of Health and Human Services; UNITED STATES DEPARTMENT OF THE TREASURY; JACOB LEW, in his official capacity as United States Secretary of the Treasury,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Constitution provides that "all Bills for raising Revenue" must "originate in the House of Representatives," but it allows the Senate to "propose or concur with Amendments" to revenue-raising bills originated by the House. Art. I, § 7. Among many other taxes, the Patient Protection and Affordable Care Act (PPACA) imposes "[a] tax on going without health insurance." *Nat'l Fed'n of Indep. Bus. (NFIB) v. Sebelius*, 132 S. Ct. 2566, 2599 (2012). The PPACA did not originate in the House, but in the Senate, which erased the entire text of a House-passed bill relating to a different subject and replaced it with what became PPACA. Petitioner alleges that enactment of PPACA violated the Origination Clause. The Court of Appeals dismissed, ruling over a lengthy dissent that because PPACA's "primary purpose" was to overhaul the nation's health insurance market, it was not a "Bill[] for raising Revenue" subject to the Origination Clause.

The questions presented are:

1. Is the tax on going without health insurance a "Bill[] for raising Revenue" to which the Origination Clause applies?

2. Was the Senate's gut-and-replace procedure a constitutionally valid "amend[ment]" pursuant to the Origination Clause?

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PETITION FOR WRIT OF CERTIORARI

Matt Sissel respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit.

OPINIONS BELOW

The panel opinion of the Court of Appeals is published at 760 F.3d 1 (D.C. Cir. 2014), and included in Petitioner's Appendix (Pet. App.) at A. The denial of the petition for rehearing *en banc*, as well as the dissenting and concurring opinions regarding that denial, appear at 2015 WL 5157032 (D.C. Cir. Aug. 7, 2015), and are included in Pet. App. at C. The opinion of the district court granting the motion to dismiss is published at 951 F. Supp. 2d 159 (D.D.C. 2013), and is included in Pet. App. at B.

JURISDICTION

On June 28, 2013, the district court granted the Defendants' motion to dismiss. Plaintiff Matt Sissel filed a timely appeal to the D.C. Circuit Court of Appeals, which affirmed dismissal on July 29, 2014. Sissel filed a timely petition for rehearing *en banc*. On August 7, 2015, the court denied the petition. Judges Henderson, Brown, Griffith, and Kavanaugh filed a dissent from denial of rehearing. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

The Origination Clause of the United States Constitution art. I, § 7, cl. 1, provides:

> All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

The PPACA, 26 U.S.C. § 5000A, provides that

> An applicable individual shall for each month beginning after 2013 ensure that the individual . . . is covered under minimum essential coverage . . . . If a[n] . . . applicable individual . . . fails to meet the requirement . . . there is hereby imposed on [him] . . . a penalty.

INTRODUCTION AND STATEMENT OF THE CASE

In *Nat'l Fed'n of Indep. Bus. (NFIB) v. Sebelius*, 132 S. Ct. 2566 (2012), this Court upheld the constitutionality of the Individual Mandate provision of the PPACA, 26 U.S.C. § 5000A, on the grounds that it imposes "[a] tax on going without health insurance," rather than a regulation of interstate commerce. 132 S. Ct. at 2599. The question here is whether that tax was enacted in violation of the constitutional rule that all bills for raising revenue must originate in the House of Representatives.

Petitioner Matt Sissel is an artist and small business owner who makes a living through his

painting and drawing. He is also a reservist in the National Guard, and was decorated for his service as a medic in Iraq. Sissel prefers to devote his resources to building up his art business rather than buying health insurance. Petitioner's Appendix (Pet. App.) at B-4. But because he is an "applicable individual" under PPACA, and does not qualify for any exemption from the Individual Mandate, his failure to purchase insurance means that he must pay the tax on going without health insurance. *Id.* at A-7 - A-8.

A. How the Senate Originated the PPACA

On October 8, 2009, the House of Representatives approved the "Service Members Home Ownership Tax Act," denominated H.R. 3590. Pet. App. at D. That bill was six pages long, and contained six sections. The first four gave military service members a tax credit for purchasing their first homes and extended the period during which service members could exclude certain fringe benefits from calculation of their incomes. The fifth increased by $21 the penalty for S-corporations that failed to file required paperwork. The sixth increased by a half a percent the interest rate for corporations paying past-due taxes on an installment plan. The bill did not increase taxes, levy any new tax, or relate in any way to health insurance.

On December 24, 2009, the Senate "amended" H.R. 3590 by striking out all of its text and replacing it with the 2,076 pages of what, along with a later "reconciliation" bill, became the PPACA, Pub. Law 111-148, 124 Stat. 119-1025 (2010). *See* Cong. Rec. S13891 (Dec. 24, 2009). The tax on going without health insurance, 26 U.S.C. § 5000A(b), was one of the

provisions that originated in the Senate as part of this "amendment." Pet. App. at A-11.

That tax requires all applicable individuals who are not specifically exempted to purchase "minimum essential coverage," as defined by the Secretary of Health and Human Services, or pay a tax, calculated based on a formula specified in the statute. The tax is paid to the Internal Revenue Service, and remitted to the general treasury. No provision of PPACA specifies that these funds must be spent in any particular way, or on any specific persons; they are not earmarked for health care-related expenses or any other particular program.

B. Proceedings in the District Court and Court of Appeals

Sissel filed suit on July 28, 2010, against the federal Respondents, seeking an injunction to bar enforcement of PPACA on the grounds that it exceeded Congress's authority under the Commerce Clause. The case was stayed pending resolution of *NFIB*, and after *NFIB* was decided, he filed an amended complaint, seeking the same relief but alleging that the tax on going without health insurance violated the Origination Clause. Pet. App. B-5 - B-7.

The District Court dismissed the amended complaint on June 28, 2013. *Id.* at B-14 - B-19. Although there was "no dispute" that the tax on going without health insurance "raises revenues," and "no dispute that those revenues are 'paid into the Treasury by taxpayers,'" and also no dispute that "revenues collected . . . do not support a 'particular governmental program,'" the District Court found that PPACA was not a "bill for raising revenue" because it was

"'designed to expand health insurance coverage,'" and therefore it was not subject to the Origination Clause. *Id.* at B-17 (citations omitted). It further held that even if PPACA were a bill for raising revenue, it satisfied the Origination Clause because the Senate's choice to eliminate the entire text of the House-enacted H.R. 3590 and substitute unrelated wording of its own was a constitutionally valid "amend[ment]" of that bill. *Id.* at B-20 - B-29.

The Court of Appeals affirmed. After finding that Sissel had standing because he was an applicable individual and did not qualify for any exemption from the Individual Mandate, it ruled that PPACA was not a bill for raising revenue. It reasoned that "a measure is a 'Bill[] for raising Revenue' only if its *primary purpose* is to raise general revenues," and that the purpose of the PPACA was to overhaul the nation's health insurance industry, not to raise money for the government. *Id.* at A-16. Therefore, notwithstanding the fact that PPACA includes at least 20 new taxes, together estimated to generate at least $500 billion annually for the general treasury of the federal government,[1] the Origination Clause did not apply. *Id.* at A-18. Because it resolved the case on this ground, the panel did not address the District Court's alternative ground.

Sissel moved for rehearing *en banc* on October 6, 2014. On August 5, 2015, a divided Court of Appeals denied that petition. *Id.* at C-1. Judge Kavanaugh dissented, joined by Judges Henderson, Brown, and Griffith. *Id.* at C-33 - C-66. The Dissenters viewed the

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[1] *See* Internal Revenue Service, Affordable Care Act (ACA) Tax Provisions (Aug. 3, 2015), http://www.irs.gov/Affordable-Care-Act.

panel's "purpose" approach as "untenable," *id.* at C-33, noting that there was "[n]o case or precedent" suggesting "that a law that raises revenues for general governmental use is exempt from the Origination Clause merely because the law has other, weightier non-revenue purposes." *Id.* at C-43. The Dissenters believed PPACA "easily qualifies as a bill 'for raising Revenue,' " *id.* at C-42, and that the panel's holding was not merely "flawed," *id.* at C-64, but "wrong in a way that, if followed, would degrade the House of Representative's constitutional prerogative to originate revenue-raising bills." *Id.* at C-56.

Given "the importance of this issue to our constitutional structure and to the individual liberty protected by that structure," *id.*, the dissenting judges favored rehearing. They proposed an alternative holding, contending that PPACA would satisfy the Origination Clause because while PPACA was a bill for raising revenue, the Senate's actions in erasing the entire content of H.R. 3590 and replacing it with unrelated text was a constitutionally valid amendment of a House-originated revenue bill. *Id.* at C-58 n.6.

The panel responded to the dissent by reiterating its belief in the "purpose" approach on the grounds that "[t]he Clause's critical word . . . is 'for.'" *Id.* at C-18. In their view, a bill is "for raising Revenue" if "raising revenue" is its "purpose or object." *Id.* It found that there was no need to determine how such a precedent might apply to bills that incorporate taxes with provisions having other significant purposes. *Id.* at C-14.

The panel also rejected the Dissenters' proposed alternative holding as "doubt[ful]," *id.* at C-17, and

"infirm," *id.* at C-4, and warned that a rule allowing the Senate to "amend" House-enacted bills by replacing them with completely unrelated text would be "contrary to congressional practice" and would "treat[] the Origination Clause as empty formalism." *Id.* Moreover, the panel believed that this Court rejected such an approach in the controlling Origination Clause precedent, *United States v. Munoz-Flores*, 495 U.S. 385 (1990).

REASONS FOR GRANTING THE PETITION

I

THE "PURPOSE-OF-THE-ACT-AS-A-WHOLE" TEST CREATED BY THE PANEL CONFLICTS WITH ORIGINATION CLAUSE PRECEDENTS FROM THIS COURT AND OTHER CIRCUITS, IS UNWORKABLE, AND UNDERMINES THE CONSTITUTION'S STRUCTURE

As the Dissenters below wrote, "[t]his case raises a serious constitutional question about the 2010 Affordable Care Act, one of the most consequential laws ever enacted by Congress." Pet. App. at C-33.

The Fifth Circuit agrees: "the underlying merits of this appeal present issues of exceptional importance." *Hotze v. Burwell*, 784 F.3d 984, 999 (5th Cir. 2015).[2] Although "the Origination Clause is rarely litigated," it "was critical to the Framers and ratifiers

[2] *Hotze* raised the same Origination Clause issue presented here, but was dismissed for lack of standing.

of the Constitution," and PPACA "is, of course, a statute of great and wide-ranging importance." *Id.*

Yet the panel below affirmed dismissal of this case by fashioning a dangerously flawed new rule for the application of the Origination Clause that, as dissenting Judges Kavanaugh, Brown, Griffith, and Henderson wrote, "is too important to let linger and metastasize." Pet. App. at C-34; *see also id.* at C-36.

The Origination Clause was designed to ensure as much democratic control as possible over the taxing power, by vesting that power in a House of Representatives elected biennially by the people. *Munoz-Flores*, 495 U.S. at 395. The panel's new test allows the Senate to circumvent that constitutional mandate merely by asserting that a tax the Senate originates is meant to serve some larger goal, or by embedding that tax in an omnibus bill that serves a variety of different goals. "By newly exempting a substantial swath of tax legislation from the Origination Clause, the panel opinion degrades the House's origination authority in a way contrary to the Constitution's text and history, and contrary to congressional practice." Pet. App. at C-34 - C-35. This "upsets the longstanding balance of power between the House and the Senate regarding the initiation of tax legislation," *id.*, and endangers the liberty secured by the Constitution's procedural requirements. *Cf. Munoz-Flores*, 495 U.S. at 395 ("Provisions for the separation of powers within the Legislative Branch . . . safeguard liberty.").

Rather than let the panel's newly-minted exception to the Origination requirement "linger and metastasize," Pet. App. at C-66, this Court should

grant certiorari and make good its pledge in *Munoz-Flores* to enforce the Origination Clause.

A. The Panel's "Primary Purpose of the Whole Law" Approach Is Impracticable and Renders the Origination Clause an Easily-Evaded Formality

The reason the Constitution requires all bills for raising revenue to originate in the House is to keep the taxing power—of which the founders were justly suspicious—in the hands of the most democratic branch of the federal government. *See The Federalist* No. 58, at 394 (James Madison) (J. Cooke, ed., 1961) ("This power over the purse, may in fact be regarded as the most compleat and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance."). The Clause was meant to ensure that the taxing power was confided to officials answerable directly to voters every two years, rather than to Senators, who are never simultaneously up for re-election, and who serve lengthy, six-year terms. *See generally* Priscilla H.M. Zotti & Nicholas M. Schmitz, *The Origination Clause: Meaning, Precedent, and Theory from the 12th to 21st Century*, 3 Brit. J. Am. Legal Stud. 71 (2014).

This Court acknowledged the importance of the Clause in *Munoz-Flores*, 495 U.S. at 394-95, but found that there is a limited exception to it: laws that "create[] a particular governmental program and . . . raise[] revenue to support that program," are not subject to the Clause. *Id.* at 398. Thus in *Munoz-Flores*, the law requiring certain convicted criminals to pay into a Crime Victims Fund that helped compensate

victims for their injuries was not a bill for raising revenue for purposes of the Origination Clause.[3]

Beyond these exceptions, any "statute that raises revenue to support Government generally" must begin its life in the House. *Id.* Under this test, PPACA qualifies as a law for raising revenue, because it does not create a discrete program and fund that program through the revenues of the Section 5000A tax. Instead, funds raised by that tax are deposited in the general treasury to be spent however Congress chooses. *See* Pet. App. at C-55.

The panel expanded the narrow discrete-fund exception into a broad general rule that swallows the entire Clause. It held that the question of whether a bill is "for raising Revenue" should be answered by looking at the purpose of the "larger, more comprehensive whole" of the statute, *id.* at C-13, and "not [at] any single provision of it." *Id.* at C-18. If challenged legislation, *viewed in its entirety*, has a "*primary purpose*" broader than revenue-raising, it is not subject to the Origination Clause. *Id.* at A-13.

This creates a vague, unworkable standard that, if left undisturbed, transforms the Clause into an easily-evaded formalism. *See id.* at C-43. The Senate could bypass the Clause by originating a tax and embedding it in a bill for other purposes, or originating a tax with some broadly-phrased regulatory or public safety goal. The Senate could originate a tax on

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[3] "Penalty assessments" such as fines are also not bills for raising revenue, *United States v. Ashburn*, 884 F.2d 901, 904 (6th Cir. 1989), but that exception is not applicable here, because PPACA's tax on going without health insurance is not a penalty. *NFIB*, 132 S. Ct. at 2594-95.

gasoline by saying it served the broader goal of independence from oil, or the development of fuel-efficient cars, or it could tax cigarettes or alcohol by saying it was trying to discourage smoking or drinking. *Cf. id.* As this Court said in another context, such a technique could be used in almost any case, so the panel's test "amounts to a test of whether the legislature has a stupid staff." *Lucas v. S. Carolina Coastal Council*, 505 U.S. 1003, 1025 n.12 (1992).

The essential flaw in the test created by the panel is that interpretation of purpose always depends on the level of generality. A hammer's "purpose" is to drive nails, but in a larger sense, its purpose is to build furniture, and in a still larger sense, its purpose is to serve the carpentry industry. This generality problem becomes more complex when the explicandum has multiple purposes, as taxes do. A tax's purpose is to raise money, but more broadly, its purpose is to run the government, deter undesirable behavior, protect domestic industry, promote the general welfare, etc. As *NFIB* observed, *[e]very* tax is in some measure regulatory.'" 132 S. Ct. at 2596 (emphasis added; citation omitted). This Court has not hesitated to declare that even taxes with regulatory goals are nevertheless revenue laws. *United States v. Jin Fuey Moy*, 241 U.S. 394, 402 (1916), for instance, recognized that a tax on opium "ha[d] a moral end as well as revenue in view," but was nevertheless "a revenue measure." *Cf. In re Kollock*, 165 U.S. 526, 536 (1897) ("The act before us is on its face an act for levying taxes, and, although it may operate in so doing to prevent [undesirable activity] . . . its primary object must be assumed to be the raising of revenue."). Yet the panel's test focuses not on whether PPACA imposes taxes, but on Congress's *motives* when creating those

taxes. This essentially renders "*every* tax," *NFIB*, 132 S. Ct. at 2596, immune from an Origination Clause challenge, making the Clause vulnerable to semantic gamesmanship.

That is why this Court employed no such bill-as-a-whole approach in *Munoz-Flores*. On the contrary, as the Dissent observes, the Court was confronted with that argument, and rejected it. Pet. App. at C-35.

Munoz-Flores involved 18 U.S.C. § 3013, a statute adopted as part of an omnibus continuing-appropriations bill, H.J. Res. 648, enacted as Public Law 98-473 (Oct. 12, 1984). That bill occupies 363 pages of *Statutes at Large,* and, among other things, increased sentencing for the use of illegal ammunition, expanded the War in the Pacific National Park, and funded construction of the CIA's headquarters. Rather than dismiss the Origination Clause challenge on the grounds that 18 U.S.C. § 3013 was only part of a "larger, more comprehensive whole" which was not primarily concerned with revenue, this Court instead entertained an Origination Clause challenge to the specific levy involved. *See* 495 U.S. at 398-99.

The government took the position endorsed by the panel here, that a tax is not a bill for raising revenue if it has purposes broader than generating income for the government. *See*, *e.g.*, Petitioner's Reply Brief, *United States v. Munoz-Flores* (No. 88-1932) at 7 (bill was not a tax because "its purposes are to assist victims of crime and to penalize violators of federal law"). The Court refused to endorse that argument, and instead held that the bill was not a revenue measure because it "was passed as part of a particular program to provide money for that program." 495 U.S. at 399. That is not true of PPACA. Funds raised by its

tax on going without health insurance are deposited in the general fund to be spent however Congress chooses.

As the dissent below noted, the argument adopted by the panel was also offered during oral argument in *Munoz-Flores*, when Justice O'Connor asked whether the federal government was taking the position that if Congress "decided we needed a new national network of roads or needed to . . . expend money to repair those we have and enacted an income tax increase for that purpose and put the money in the general revenue with the idea that it wanted to support the road building," there would be "no Origination Clause problem if the bill originates in the Senate." Transcript of Oral Argument, *United States v. Munoz-Flores* (No. 88-1932) at 19 (cited at Pet. App. at C-35). When the Deputy Solicitor General answered "that's correct," *id.*, Justice O'Connor labeled that "a pretty extreme position." *Id.* at 20. In the end, the Court rejected it, holding instead that the Crime Victims Fund was not subject to the Origination Clause because the funds were sequestered, and (with *de minimis* exceptions) were *not* directed to the general treasury. That is the opposite of this case.

Bills often have multiple purposes, particularly omnibus bills,[4] or bills that, like the PPACA, bundle together "hundreds of laws on a diverse array of

[4] The Origination Clause refers to "the" purpose of a bill because the framers assumed bills would have a single purpose. As the dissenting judges explained, omnibus legislation should be regarded as a collection of bills, which triggers the Origination Clause if any of its provisions is a revenue-raising measure. Pet. App. at C-57 n.5. The Clause refers not to "a bill," but to "all bills." Regarding an omnibus bill as a group of bills, each subject to the Origination requirement, would respect that text and be consistent with *Munoz-Flores*.

subjects." *Florida ex rel. Attorney Gen. v. U.S. Dep't of Health & Human Servs.*, 648 F.3d 1235, 1241 (11th Cir. 2011). As the government admits, PPACA includes a smorgasbord of taxes, restrictions, mandates and subsidies, "only some of which are connected to health coverage." Brief of Respondents (Severability), *NFIB v. Sebelius* (Nos. 11-393 & 11-400), at 8. *See also* Transcript of Oral Argument, *NFIB v. Sebelius (Day 3)* at 46 (Mr. Kneedler: "this is a huge act with many provisions that are completely unrelated to market reforms and operate in different ways."). Given these "myriad" and "wholly unrelated" provisions, Brief, *supra*, at 30 (citation omitted), it makes little sense to ask whether the "*primary purpose*" of the "comprehensive whole" was to raise revenue. Pet. App. at A-13.

The panel's new bill-as-a-whole test effectively neutralizes the Origination Clause. Although the panel strove to distinguish the tax on going without health insurance from the many other taxes in PPACA, *see id.* at A-13 - A-14, its test would immunize even the most obvious revenue-raising measure from Origination Clause challenge.

For example, PPACA imposes a tax on tanning salons. *See* 26 U.S.C. § 5000B. This provision exists solely to raise revenues which are deposited in the general treasury to be spent as Congress chooses. This is indisputably an ordinary revenue-raising tax, one of the "commonplace bills that all of the relevant players have previously understood to be subject to the Origination Clause." Pet. App. at C-56. Like the rest of PPACA, that tax originated in the Senate. Yet the panel's new rule would shield it, too, from Origination Clause scrutiny because PPACA *as a whole* was aimed

at increasing health insurance coverage. This demonstrates the unworkability of the panel's test and justifies the dissent's warning that such a test "if followed, would degrade the House of Representatives' constitutional prerogative to originate revenue-raising bills." *Id.*

Considering the democratic goals of the Origination Clause, the consequences of the panel's newly-fashioned rule are troubling, particularly in cases involving compound or omnibus bills which are frequently designed to short-circuit meaningful deliberation. Legislators and voters can easily understand the contents of a discrete, single-issue tax bill and carefully debate its merits. But when amassed in an omnibus bill with dozens or hundreds of unrelated provisions, it becomes "insulate[d] . . . from congressional (and public) scrutiny." Brannon P. Denning & Brooks R. Smith, *Uneasy Riders: The Case for a Truth-in-Legislation Amendment*, 1999 Utah L. Rev. 957, 974. The panel's rule renders the Clause's mandate for democratic debate ineffective in exactly those instances when it matters most: when the Senate seeks to impose a tax which would fail the test of democratic accountability by incorporating it into a larger piece of legislation.[5]

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[5] One reason Madison opposed the Origination Clause was because he recognized that the Senate might "couch extraneous matter" with taxes in the same bill, and feared that "no line could be drawn" between a law that raises revenues and one that, for example, regulated trade. He feared the Clause would be "a fruitful source of dispute." 2 *Records of the Federal Convention of 1787* at 276 (Max Farrand ed., 1911). Nevertheless, aware of these difficulties, the framers chose to add it, and the people to ratify it. Faithfully enforcing the Clause therefore requires the (continued...)

Even if it is "not [the Court's] job to protect the people from the consequences of their political choices," *NFIB*, 132 S. Ct. at 2579, it is at least the Court's job to ensure that Congress makes its choices "in accord with [the] single, finely wrought and exhaustively considered, procedure" specified in the Constitution. *I.N.S. v. Chadha*, 462 U.S. 919, 951 (1983). The panel's vague purpose-of-the-whole test fundamentally handicaps that procedure.

B. The "Purpose of the Whole" Approach Is Unprecedented

The panel claimed that its purpose-of-the-whole test was consistent with existing precedent, but those precedents—*Twin City Nat'l Bank of New Brighton v. Nebeker*, 167 U.S. 196 (1897), *Millard v. Roberts*, 202 U.S. 429 (1906), and *Munoz-Flores*, *supra*—announced no such rule. Instead, as the dissent explained, those cases declared that a bill falls outside the Origination Clause only when it establishes a discrete government program, and imposes an assessment to fund that discrete program. Pet. App. at C-50 - C-51.

As noted above, *Munoz-Flores* distinguished between "a statute that raises revenue to support Government generally," which is subject to the Origination Clause, and "a statute that creates a particular governmental program and that raises revenue to support that program," which is not. 495 U.S. at 398. Critical to *Munoz-Flores*'s holding that

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[5] (...continued)
Court to draw such lines. The panel below refused to do so, holding that when the Senate "couches extraneous matter" along with a tax, that tax is consequently *exempt* from the Origination requirement—the opposite of what the framers contemplated.

the statute in question was exempt from the Origination Clause was the fact that the money it raised was earmarked for a specific program: the income would "provide funds primarily to support the Crime Victims Fund." *Id.* at 400.

Nebeker and *Millard* also involved specific projects funded by particular assessments imposed under enumerated powers other than the taxing power, rather than levies gathering revenues for the general fund.

Nebeker involved a statute, 13 Stat. 99 (1864), enacted under Congress' interstate commerce power, which directed private banks to turn over their banknotes to a newly-established currency bureau within the Treasury Department, which would exchange federal currency for those notes. The statute provided that the bureau's costs, including the costs of producing the new currency itself, would be covered by an assessment levied on the banks: "the expenses necessarily incurred in executing the provisions of this act . . ., and all other expenses of the bureau," were to be "paid out of the proceeds of the taxes or duties . . . assessed on the circulation" of the notes. The Senate-originated bill provided that "in lieu of all existing taxes, every association shall pay . . . a duty . . . upon the average amount of its notes in circulation." *Id.* at 111.

When the bill was challenged on Origination Clause grounds, the Court of Appeals ruled that it was not a bill for raising revenue because it only "remunerate[d] the government for its trouble and expenses in connection" with the particular program established by the statute, and "might also add something to its revenues by way of return for the

benefits conferred." *Twin City Nat'l Bank of New Brighton v. Nebeker*, 3 App. D.C. 190, 201 (D.C. Cir. 1894). This Court agreed, holding that the levy was designed to "meet the expenses attending the execution of the act" and to validate the "pledge of bonds of the United States." *Nebeker*, 167 U.S. at 202. These factors meant that the levy was more of an assessment than a tax *per se*: it imposed a levy on specific persons to fund a particular program, rather than on all persons "to be applied in meeting the expenses or obligations of the Government" generally. *Id.* at 203.

The distinction was also key in *Millard*. That case involved a subsidy to two railroad companies to remove grade crossings in the District of Columbia and to build Union Station. Congress, exercising its plenary power over the District, imposed an assessment on property there, to fund the subsidy. This Court found that this assessment was not a bill for raising revenue, because the funds raised were to be spent on that specific project, "practically [as in] a contract between the United States and the District of Columbia on the one side and the railroad companies on the other." 202 U.S. at 437 (citation omitted). The levy was therefore an assessment for specified local improvements, not a tax to provide money for the general treasury which Congress could expend at will. *Cf. D.C. v. Sisters of the Visitation of Washington*, 15 App. D.C. 300, 306 (D.C. Cir. 1899) (explaining the law at issue in *Millard*).

These decisions made clear that the way to differentiate between what Justice Story called taxes "in the strict sense" and "bills for other purposes,"[6] is

[6] 1 Joseph Story, *Commentaries* § 880 at 621 (Thomas Cooley ed., 4th ed. 1873). Story's words have often been quoted—and the (continued...)

that the former provide funds for the general treasury to be spent at Congress's discretion, while the latter establish a discrete program and impose an assessment to fund that program. *Munoz-Flores* drew

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[6] (...continued)
panel called them the "basis" for its ruling, Pet. App. at C-30—but they should not be regarded as authoritative, and their context should be kept in mind. First, Story was expressing his personal opinion in a treatise, not a judgment in a court opinion. Second, that treatise was published before Madison's notes of the Philadelphia Convention were. Those debates show that the Clause was intended to sweep more broadly than Story realized. *See* J. Michael Medina, *The Origination Clause in the American Constitution: A Comparative Survey*, 23 Tulsa L. Rev. 165, 167-68 (1987).

Moreover, the context makes clear that Story was *not* claiming that a bill that, like PPACA, actually levies a tax, and is enacted solely pursuant to Congress' taxing power, would be immune from the Origination Clause simply because that tax was meant to serve some larger purpose. Story was refuting St. George Tucker's claim that bills enacted pursuant to Congress' other enumerated powers—raising the price of postage or setting foreign exchange rates—would qualify as bills for raising revenue. "No one" would assume that these are bills to raise revenue for purposes of the Clause, Story wrote, any more than"bill[s] to sell any of the public lands, or to sell public stock," because that sort of legislation does not "levy taxes in the strict sense of the words." Story, *supra*, at 621-22.

PPACA *does*, however, levy taxes in the strict sense of the words. As this Court explained in *NFIB*, it imposes an involuntary levy on applicable individuals, which "is paid into the Treasury by 'taxpayer[s]' when they file their tax returns," and the amount of that levy is based on "such familiar factors as taxable income, number of dependents, and joint filing status." 132 S. Ct. at 2594. Story's phrase "tax in the strict sense" simply means a law that imposes a tax, whether or not they serve broader purposes. Pursuant to *NFIB*, PPACA imposes a tax in the strict sense: "[a] tax on going without health insurance." *Id.* at 2574. It is the fact that it influences behavior that is incidental—not the fact that it is a tax. *Id.*

the same line, when it declared that the Crime Victims Fund was "a bill creating a discrete governmental program and providing sources for its financial support," and therefore "not a revenue bill." 495 U.S. at 400. As the Dissenters below put it, *this* is "the critical distinction" between "laws that raise revenues paid into the general treasury and available for general government revenues," which *are* subject to the Origination Clause, and laws that create and fund discrete programs or services, which are not. Pet. App. at C-51. Were that distinction applied here, the PPACA would plainly be a bill for raising revenue, because it rests solely on Congress' taxing power—not any other enumerated power—and levies a tax in the strict sense, gathering money for the general fund.

The panel, however, disregarded this distinction to fashion a new, broader test, which focuses on whether "the paramount aim," *id.* at A-14, of "the entire . . . Act," *id.* at A-18, is some goal broader than revenue-enhancement. The panel made no mention of *Munoz-Flores*'s emphasis on discrete government programs, or its distinction between laws that generate money for the general treasury, and those earmarked for specific funds. When the Dissenters challenged them on this point, the panel reiterated that the only relevant determination is whether the bill as a whole has raising revenue as its "*primary purpose*." *Id.* at C-6.

The panel's newly-minted test conflicts with decisions of this Court and other courts that follow the traditional rule that the Origination Clause exemption is only available for bills that earmark revenues for a specific program.

C. The Panel's New Test Conflicts With Other Circuits That Have Uniformly Followed the *Munoz-Flores* Rule

Among lower court cases, it conflicts most directly with *Hubbard v. Lowe*, 226 F. 135 (S.D.N.Y. 1915), which held that the Cotton Futures Act violated the Origination Clause. It was undisputed that the purpose of that Act was *not* to raise revenue. "[N]othing was further from the intent or desire of the lawmakers than the production of revenue," the court declared, *id.* at 137, but because that bill in fact imposed a tax which funded the general treasury, it qualified as a bill for raising revenue subject to the Origination Clause. "It is immaterial what was the intent behind the statute; it is enough that the tax was laid." *Id.* In contrast, the panel below held that the intent behind the statute is dispositive.

The panel decision also conflicts with *United States ex rel. Michels v. James*, 26 F. Cas. 577 (C.C.S.D.N.Y. 1875), which held that a law increasing the price of postage was not a bill for raising revenue because a postage stamp is more in the nature of a fee, for which the purchaser gets a specific service, than a revenue act which funds the general treasury. The "feature which characterizes bills for raising revenue" is that "[t]hey draw money from the citizen," and "give no direct equivalent in return," except for "the enjoyment, in common with the rest of the citizens of the benefit of good government." *Id.* at 578. The decision below rejects that test and declares that any revenue measure which serves some broader purpose is excluded from "Bills for raising Revenue," regardless of whether it gives some equivalent in return to the payer.

The panel's purpose-of-the-whole test also conflicts with the Fifth Circuit's decision in *Texas Office of Pub. Util. Counsel v. F.C.C.*, 183 F.3d 393 (5th Cir. 1999), which rejected an Origination Clause challenge to provisions of the Telecommunications Act of 1996. Those provisions required mobile phone carriers to pay into a fund which provided for the construction of a wider telecommunications network. The court did not ask whether the Telecommunications Act as a whole had the primary purpose of raising revenue or the broader purpose of improving the nation's telecommunications infrastructure. Instead, it examined the specific levy the plaintiffs challenged, and found that "*Munoz-Flores* teaches us (1) to determine whether the funds are 'part of a particular program to provide money for that program . . .' and (2) to establish a connection between the payors and the beneficiaries." *Id.* at 427. Because the payments were "part of a particular program" to expand the communications network, and the payments come from "those companies benefitting from the provision of universal service," the court found that "[t]his design prevents the sums being used to support the universal service program from being classified as 'revenue' within the meaning of the Origination Clause." *Id.* at 427-28.

The decision below also conflicts with the Ninth Circuit's decision in *Armstrong v. United States,* 759 F.2d 1378, 1381 (9th Cir. 1985), that "*all* legislation relating to taxes . . . must be initiated in the House." (Emphasis original.) That case involved the 1982 Tax Equity and Fiscal Responsibility Act (TEFRA),[7] which

[7] TEFRA was subjected to many Origination Clause challenges (continued...)

began as a bill to decrease taxes, but which the Senate amended to raise taxes instead. The plaintiff argued that only revenue-increasing bills were subject to the Origination Clause, so that they could not begin in the Senate, but revenue-*decreasing* bills could. The Ninth Circuit rejected this theory in part because it might unconstitutionally expand the Senate's power. Because it is often hard to determine whether a bill will increase or decrease revenues, such a rule might enable the Senate to originate a revenue-raising bill under the guise of a tax-cutting measure—which was prohibited because the Senate may not "initiate *any* sort of revenue bill, even one that lowers taxes." *Id.* (emphasis added). In other words, contrary to the D.C. Circuit's ruling here, the Ninth Circuit held that the focus is *not* on the broader purposes a tax is meant to serve, but on whether a bill *actually levies a tax.*

Even before this Court made clear in *Munoz-Flores* that the relevant distinction in Origination Clause cases is whether the bill (a) funds a specific program, or (b) raises money for the general treasury, the Third, Fifth, Sixth, and Seventh Circuits had followed that longstanding distinction. By rejecting that distinction, the court below placed itself in conflict with the many cases upholding the Crime Victims Fund for the same reasons this Court articulated in *Munoz-Flores*.

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[7] (...continued)
because, like PPACA, it involved a Senate gut-and-replace measure. This Court never reviewed any such challenges, most of which were dismissed for lack of standing. *See generally* Thomas L. Jipping, *TEFRA and the Origination Clause: Taking the Oath Seriously*, 35 Buff. L. Rev. 633, 669-84 (1986).

In *United States v. Simpson*, 885 F.2d 36 (3d Cir. 1989), for example, the Third Circuit turned away an Origination Clause challenge to that program because the law generated funds only to "defray the costs of the program established by the bill," *id.* at 42, and did not raise money for "the government's general-fund coffers." *Id.* at 43. The *Simpson* court did not ask whether the purpose of the bill as a whole was revenue, or some other purpose, but instead followed *Millard* and *Nebeker* in concluding that the relevant inquiry is whether the challenged statute "establish[es] [a] government program[] and also impose[s] taxes or fees to defray the costs of [that] program[]." *Id.* at 41.

Likewise, the Sixth Circuit in *Ashburn*, 884 F.2d at 904, rejected an Origination Clause attack on the Crime Victims Fund because "[t]he penalty assessments established by the statute" were actually "fines, not taxes," and the revenue collected was earmarked for "victim assistance programs." *See also United States v. Newman*, 889 F.2d 88, 100 (6th Cir. 1989) ("if the revenue . . . is to be used to fund victim assistance programs, then the statute is not a revenue bill in the relevant sense.").

In *United States v. Herrada*, 887 F.2d 524, 527 (5th Cir. 1989), the Fifth Circuit concluded that the Fund was not a bill for raising revenue because it did not "rais[e] . . . general funds for the United States Treasury," but levied a "special assessment . . . to fund the Crime Victims Assistance Fund." *See also United States v. Tholl*, 895 F.2d 1178, 1182-84 (7th Cir. 1990) (Crime Victims Assistance Fund satisfied Origination Clause because it funded a discrete program to compensate victims). All of these pre-*Munoz-Flores* decisions remain valid law, and are all in conflict with

the "primary-purpose-of-the-whole" test fashioned by the panel here.

The panel's purpose-of-the-whole test *is* consistent with *Sperry Corp. v. United States*, 925 F.2d 399 (Fed. Cir. 1991), which, in a strongly split decision, rejected an Origination Clause challenge to an assessment under the Iran Claims Settlement Act. The majority ruled that although the Act imposed a levy that funded the general treasury, and which was not enacted as part of a specific program, it was nevertheless not a bill for raising revenue because "the primary purpose of the bill that led to the Act" was to finance adjudications by the Iran Claims Settlement Tribunal. *Id.* at 401.[8] In dissent, Judge Mayer argued that the Act was a bill for raising revenue because it "neither create[d] a separate fund for the user fee proceeds, like the Crime Victims Fund in *Munoz-Flores*, nor otherwise earmark[ed] the funds for the support of a particular program, as was true in fact if not in law of the exactions in *Millard*" and its progeny. *Id.* at 403 (Mayer, J., dissenting). He rejected the majority's effort to determine the purpose of the bill as a whole because "[t]he Act's omnibus character makes any attempt to determine its 'primary purpose' misdirected if not disingenuous." *Id.* at 405.

The discrete-fund versus general-revenues approach articulated in *Munoz-Flores* and applied by most of the nation's federal courts is also the approach used by several state courts construing analogous origination clauses in state constitutions. Massachusetts' highest court has held that its

[8] Unlike in this case, the plaintiff in *Sperry* "[did] not say that the bill . . . levied taxes," *id.*, and the majority concluded that the assessment actually imposed only "a user fee." *Id.* at 402.

Origination Clause is synonymous with the federal Constitution's, and it follows federal precedent when interpreting the clause. *Opinion of the Justices to the House of Representatives*, 32 N.E.3d 287, 294 (Mass. 2015). Yet in June, it refused to follow the purpose-of-the-whole test used by the panel below because a bill that "serves a multitude of purposes . . . cannot soundly be said to have one or more 'main objects.'" *Id.* at 297. It explained that only bills "devoted to specific, well-defined programs and goals" are exempt from the state's Origination Clause. *Id.* at 297 (citing *Munoz-Flores*, 495 U.S. at 397; *Millard*, 202 U.S. at 436; and *Nebeker*, 167 U.S. at 202-03), and because the revenues generated by the law at issue in that case were made "available in the Commonwealth's coffers," that exemption did not apply. *Id*. at 298.

Oregon's Constitution also has an Origination Clause identical to the federal Constitution's, and that state's courts rejected the relaxed standard employed by the panel below. In *Bobo v. Kulongoski*, 107 P.3d 18, 23-25 (Or. 2005), the Oregon Supreme Court explained that "bills that assess a fee for a specific purpose are not 'bills raising revenue,'" *id.* at 24, and set forth a two-pronged test, consistent with *Munoz-Flores*, for determining whether a challenged measure is a bill for raising revenue: first, "whether the bill collects or brings money into the treasury. If it does not, that is the end of the inquiry." If it does, "the remaining question is whether the bill possesses the essential features of a bill levying a tax." *Id.*

Pennsylvania courts, too, have held that if "the revenue derived from the tax imposed" is deposited "into the treasury of the exacting sovereign for its own general governmental uses," it qualifies as a bill for

raising revenue. *Mikell v. Sch. Dist. of Philadelphia*, 58 A.2d 339, 341 (Pa. 1948).

From *Nebeker* to *Munoz-Flores*, federal and state courts have held that the exception to the Origination Clause only applies when an assessment creates a specific program and generates income to fund that specific program. As the dissent below notes, the panel's decision "transforms that heretofore narrow and rare exception . . . into a broad new exemption" that immunizes ordinary revenue bills from the Clause's requirement. Pet. App. at C-56. Thus the decision conflicts with rulings of this Court and lower courts that have followed the traditional rule, and threatens the stability of "our constitutional structure" and the "liberty protected by that structure." *Id.*

II

THE LOWER COURTS' REFUSAL TO ACKNOWLEDGE THE ORIGINATION CLAUSE'S "GERMANENESS" REQUIREMENT CONFLICTS WITH THE DECISIONS OF OTHER CIRCUITS AND THIS COURT'S PRECEDENTS, AND ROBS THE ORIGINATION CLAUSE OF VIRTUALLY ALL MEANING

The dissent below suggested an alternative ground for dismissing Sissel's case: that PPACA satisfies the Origination Clause because the Senate's purported "amendment" to H.R. 3590 fell within the Senate's power to "propose or concur with Amendments as on other Bills." The panel rightly rejected this as "doubt[ful]" and "infirm," Pet. App. at C-17, C-4, and that issue also warrants certiorari. Lower court decisions reflect considerable confusion as to whether

the Senate has *carte blanche* to amend House-originated bills, or whether the Origination Clause requires that Senate amendments be germane to the subject of the bill passed by the House.

This Court employed the germaneness requirement in *Flint v. Stone Tracy Co.*, 220 U.S. 107 (1911), when it upheld the constitutionality of a corporation tax which the Senate substituted for an inheritance tax that had appeared in the House-originated bill. The substitution was constitutional, the Court said, because it "was germane to the [original] subject-matter of the bill." *Id.* at 143. Since then, many lower courts have followed this germaneness requirement. *See*, *e.g.*, *Wyoming Trucking Ass'n, Inc. v. Bentsen*, 82 F.3d 930, 935 (10th Cir. 1996); *Wardell v. United States*, 757 F.2d 203, 205 (8th Cir. 1985); *Harris v. U.S.I.R.S.*, 758 F.2d 456, 458 (9th Cir. 1985); *Texas Ass'n of Concerned Taxpayers, Inc. v. United States*, 772 F.2d 163, 168 (5th Cir. 1985). But the Dissenters—like the District Court, in its alternative holding—concluded that there is no such requirement.

The Dissenters asserted that this Court abandoned the germaneness rule in *Rainey v. United States*, 232 U.S. 310 (1914). But *Rainey* did not expressly reject that requirement, or even refer to it. On the contrary, the germaneness requirement was *satisfied* in *Rainey,* which involved a Senate amendment adding a tax on foreign-made yachts to a House-originated bill imposing an import tariff. *Rainey* made no mention of *Flint*, and appeared to assert a non-justiciability doctrine that this Court expressly rejected in *Munoz-Flores*. *Compare Rainey*, 232 U.S. at 317 ("Having become an enrolled and duly

authenticated act of Congress, it is not for this court to determine whether the amendment was or was not outside the purposes of the original bill" (citation and quotation marks omitted)), *with Munoz-Flores*, 495 U.S. at 395 ("The Government . . . suggests that . . . [t]he Court could not . . . determin[e] either whether a bill is 'for raising Revenue' or where a bill 'originates.' We do not agree."). The suggestion that *Rainey* overruled *Flint*, therefore, runs afoul of this Court's repeated proclamations that lower courts should "leav[e] to this Court the prerogative of overruling its own decisions." *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989).

Flint's germaneness requirement accords with common sense and the purpose of the Origination Clause, since without it, the Senate would be free to originate revenue bills without any limit, rendering the Clause ineffectual. "If there were no germaneness requirement, then the Origination Clause would be wholly superfluous, and furthermore the word 'amend' in the Clause certainly does not mean 'replace' in any dictionary of plain English." Zotti & Schmitz, *supra*, at 106-07. Absent a germaneness requirement, the Clause would be redundant of art. I, § 7, cl. 2, which lays out how all *non*-revenue bills are to be enacted.[9] Such a reading would do violence to "the 'finely wrought' procedure commanded by the Constitution." *Clinton v. City of New York*, 524 U.S. 417, 447 (1998)

[9] The Dissenters sought to bolster their argument for rejecting the germaneness requirement by observing that the Senate's internal rules do not include a germaneness requirement. Pet. App. at C-61 n.7. The Senate's rules, however, are not a reliable guide for interpreting the Origination Clause. The Senate cannot be expected to scrupulously defend the prerogatives of the House of Representatives, such as the power to originate revenue bills.

(citation omitted). That is why the panel below rejected the Dissenters' proposal. It concluded that abandoning the germaneness requirement would allow the Senate to "amend House-originated revenue bills without limit," and make the Origination Clause an "empty formalism." Pet. App. at C-4. The Senate could then transform non-revenue bills into revenue bills via gut-and-replace "amendments," as it did here.[10]

The Dissenters' proposal would conflict with decisions of several circuits, which have relied expressly on *Flint*'s germaneness requirement. For example, the Eighth Circuit ruled that although the Senate added the tax increase to TEFRA, the original House-created bill had been meant to set comprehensive tax policy, and therefore "the Senate amendments to [the House bill] were germane to the subject matter, revenue collection." *Wardell*, 757 F.2d at 205 (citation omitted).

The Ninth Circuit agreed, holding that "[t]he bill that ultimately became TEFRA 'originated' in the House as revenue legislation, and the Senate's amendments, while far-reaching and extensive, were 'germane to the subject-matter of the bill [reform of the income tax system].'" *Armstrong*, 759 F.2d at 1382 (brackets in original). As the Ninth Circuit held elsewhere, "[a] taxation bill which originates in the

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[10] While gut-and-replace "amendments" are a longstanding legislative practice with regard to *non-revenue* bills, the use of such procedures in the case of revenue bills is of recent vintage, and appears to have been unknown as a time of the founding. *See* Robert G. Natelson, *The Founders' Origination Clause and Implications for the Affordable Care Act*, 38 Harv. J.L. & Pub. Pol'y 629, 687 (2015).

House and is subsequently amended in the Senate is constitutionally enacted when the amendment is 'germane to the subject-matter of the bill.'" *Harris*, 758 F.2d at 458.

The Fifth Circuit held that the Senate amendment to TEFRA "'was germane to the subject matter of the bill,'" because "'[s]ubject matter' appears to merely require that both the amendment and the amended portion address revenue collection," and the "Senate's amendment, adding new taxes, was germane to the subject matter and thus within the range of amendments permitted by the origination clause." *Texas Ass'n of Concerned Taxpayers*, 772 F.2d at 168. The Tenth Circuit, too, relied on germaneness when rejecting an Origination Clause challenge to a fuel tax which originated in the Senate as an amendment to a House bill that also contained a fuel tax. Because the amendment was "at least as germane . . . as [the] corporate tax [was] to [the] inheritance tax" in *Flint*, the amendment was constitutional. *Bentsen*, 82 F.3d at 935.

Nevertheless, given the paucity of Supreme Court precedent on the question, confusion regarding the germaneness requirement persists. The District Court here, for example, read *Flint* and *Rainey* to stand for the proposition that germaneness "is *sufficient* to comport with the Origination Clause," but not necessary. Pet. App. at A-24 (emphasis added). Commenting on the lack of this Court's guidance—*see, e.g.*, *id.* at A-26 (noting the "brief discussion" of the judiciary's role in Origination Clause questions in an "'oblique footnote'" of *Munoz-Flores* which "'def[ies] easy comprehension,'" and which "did not purport to address the justiciability of inquiring into the

'germaneness'" question)—the District Court concluded that any such germaneness requirement is not judicially enforceable. *See id.* The panel below did not address the question, and the Dissenters concluded that "relevant Supreme Court case law forecloses the germaneness requirement." *Id.* at C-61.

Yet in *Hotze v. Sebelius*, 991 F. Supp. 2d 864 (S.D. Tex. 2014), the District Court ruled the opposite way—declaring that while it is "unclear whether any of the cited cases *actually* impose such a requirement," 991 F. Supp. 2d at 883, that requirement, if it exists, *is* judicially enforceable. It concluded that "[t]o the extent that the Constitution requires 'germaneness' under the Origination Clause, the Court is required, under *Munoz-Flores*, to examine the Senate amendment in light of the original House bill to see if this requirement has been met." *Id.* at 884 n.55.

Legal scholars are also divided on the question of whether Senate amendments to House-originated bills must be germane to the original bill, or whether the Senate may use a House-enacted bill as a "shell" to be gutted and replaced with Senate-originated language on an entirely different subject. For example, Professor Kysar contends that there is no such requirement, Rebecca M. Kysar, *The "Shell Bill" Game: Avoidance and the Origination Clause*, 91 Wash. U.L. Rev. 659, 690 (2014), while Zotti & Schmitz, *supra*, at 106, contend that germaneness is a common-sense requirement necessary to prevent the Origination Clause from becoming "wholly superfluous." Professor Natelson concludes that the founders did not understand "amend" to include complete substitutions of text, *even if germane*. *See* Natelson, *supra*, at 665.

This case presents an excellent vehicle for addressing the germaneness question, given that it calls for no complicated line-drawing by the Court. The most common argument advanced against applying such a requirement is that determining whether an amendment is germane would often be "nettlesome." Kysar, *supra*, at 684. But no such complications apply here. The Senate amendment that gave rise to PPACA was not germane to H.R. 3590, because it replaced the entire contents of that bill with completely unrelated material, and originated a revenue-raising bill where H.R. 3590 had contained no taxes at all.

In *Munoz-Flores*, 495 U.S. at 395-96, this Court rejected the argument that courts could not fashion legal standards to enforce the Origination Clause, finding "no reason" to believe "that developing such standards will be more difficult in this context than in any other." Some argued that "determining . . . where a bill 'originates'" would be impossible, but this Court considered this a "prosaic judgment[]" involving considerations "familiar to the courts." *Id.* at 395 (citation omitted). Likewise, here, the application of the germaneness requirement would call for no political or policy judgments, but simply an ordinary determination that PPACA was not germane to H.R. 3590 in its original form. To paraphrase *NFIB*, 132 S. Ct. at 2606, wherever the line of the Senate's power to "amend" may be, the Senate's choice to erase the entire content of a bill and replace it with a Senate-originated revenue bill is surely beyond it.

CONCLUSION

The petition for writ of certiorari should be *granted*.

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