No. 20-__

IN THE

Supreme Court of the United States

THE STATE OF LINCOLN, THE STATE OF SIERRA, THE ATLANTIC COMMONWEALTH, THE COMMONWEALTH OF THE CHESAPEAKE, THE STATE OF DIXIE,

Petitioners,

v.

GUNNZ011, PRESIDENT OF THE UNITED STATES,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the President of the United States may impound all federal grants allocated to a State government.

Whether the suspension of all federal financial assistance to the State of Lincoln to coerce the Governor violates the Tenth Amendment.

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INTRODUCTION

On March 13, 2020, Governor OKBlackBelt of Lincoln issued Executive Order 41 in response to the formation of a private "militia" group in Powell County, Lincoln. The order activated the Lincoln National Guard and directed military aid to the civil power in order to enforce the provisions of the Common Sense Gun Control Act of 2019 and the Nationalist Rebuke Act, two Lincoln statutes to whose enforcement the militia opposes itself.

On March 14, President Gunnz011 called his Lincoln counterpart and expressed his opposition to the Governor's use of the National Guard. As a result of the call, the Governor revoked Executive Order 41 and issued a new order which withdrew the National Guard, directed the State Police to take over the Guard's responsibilities, and revoked state funding to any county that declared itself a "Second Amendment sanctuary" and attempted to nullify state law.

In response to this revocation, President Gunnz issued Executive Order 11, which directed all federal agencies to cease all federal funding to the State of Lincoln and directs the Secretaries of the Interior and Health and Human Services to provide emergency federal aid to the counties impacted by the Governor's order. An hour later, Executive Order 11 was superseded by Executive Order 13, which broadly mandates similar policies but clarifies that it is "federal agency grants" that are to be halted.

REASONS TO GRANT CERTIORARI

I. The Impoundment of Congressionally-allocated Grants Clearly Exceeds the Executive Authority of the President.

The President's executive order is a dangerous violation of the separation of powers. By barring the allocation of funding to the states that Congress has approved, the President arrogates to himself the power of the purse and subverts the checks and balances of the federal budgeting process.

Although the President may attempt to shield his actions behind the fig leaf of a broad theory of executive discretion, the Court should not allow a clear instance of illegal behavior by the executive to go unchecked. It is well-established that the executive, in the exercise of its spending discretion, cannot violate a clear directive of Congress. *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 411 (1971). See also *Lincoln v. Vigil*, 508 U.S. 182, 193 (1993) ("Congress may always circumscribe agency discretion to allocate resources by putting restrictions in the operative statutes".) He does so in the instant case.

The legislative power is vested in the Congress. U.S. Const. art. I § 1. Although the President may sometimes impound funds, both the courts and the Congress have made it clear that this power may only be exercised when there is a clear grant of authority by Congress to do so. See generally *Train v. City of New York*, 420 U.S. 35 (1975) (EPA Administrator could not refuse to disburse water pollution control funds); *In re Aiken County*, 725 F.3d

255 (D.C. Cir. 2013) (NRC could not refuse to spend money on Yucca Mountain project as required by Congress); *State Highway Commission of Missouri v. Volpe*, 479 F.2d 1099 (8th Cir. 1973) (Secretary of Transportation could not withhold approval of road projects except as prescribed by law); Impoundment Control Act of 1974 (2 U.S.C. § 684). Indeed, even the executive branch has historically subscribed to this understanding. *Presidential Authority to Impound Funds Appropriated for Assistance to Federally Impacted Schools*, 1 Supp. Op. O.L.C. 303 (1969).

The executive order categorically directed all federal agencies and departments to halt "all federal grants" to Lincoln. Many federal grants are of a mandatory nature, and the President lacks the discretion to bar their disbursement to the states.

For instance, at 42 U.S. Code § 1396b, federal law provides that the Secretary of Health and Human Services "shall pay" Medicaid grants to the states "except as otherwise provided in this section" and nowhere is impoundment authorized except when a violation of the conditions enumerated in the chapter has occurred. The same is true of the Surface Transportation Block Grant, which 23 U.S. Code § 158 provides shall be "required to be apportioned to any State" except due to noncompliance with the drinking age requirement. Likewise, 42 U.S. Code § 603 provides that the family assistance grant "shall be entitled to receive" an amount prescribed by law.

The intent of Congress in enacting these sections is unambiguous: the executive branch must disburse appropriated funds and lacks the authority to withhold funds except as required by law. These are only a handful of the countless federal grants that the President has no authority to impound on the basis of disagreement with the State of Lincoln's policies towards its local governments.

The President's directive is clearly ultra vires the authority of the executive branch and ignores congressional intent. The separation of powers is the foundation of our government of limited powers, and the Court should grant review to prevent usurpation of the legislative power.

II. The Order is Unconstitutionally Coercive and Does Not Further A Valid Interest of the Federal Government.

Regardless of whether the executive branch has the lawful authority to revoke federal grants to a state, the manner by which the President has done so in the instant case exceeds the boundaries of the Tenth Amendment and blatantly flies in the face of existing case law.

In *South Dakota v. Dole*, 483 U.S. 203 (1987), the Court held that the power of the federal government to attach conditions to the receipt of funds by the states was not unlimited. A valid condition must promote the general welfare, be unambiguous, relate to the federal interest in national projects and programs and cannot be unconstitutional in itself. *Id.* at 207-8. The condition must also not be coercive to the point of compulsion. *Id. at* 211.

It is clear that the instant executive order dramatically fails the test laid out in *Dole*.

Spending in pursuit of the general power is a power reserved to the Congress. U.S. Const. art. I § 8. Longstanding precedent recognizes the broad and exclusive discretion of Congress to determine the limits of the term. See, e.g., *Buckley v. Valeo*, 424 U.S. 1, 90 (1976) ("It is for Congress to decide which expenditures will promote the general welfare."). In revoking funding in a manner not approved by the Congress, the President has directed that spending be allocated without regard for the general welfare.

Moreover, the condition was clearly not unambiguous, as it was unilaterally imposed by the President in contradiction to mutually-agreed terms. As "[t]he legitimacy of Congress' power to legislate under the spending power [...] rests on whether the State voluntarily and knowingly accepts the terms of the contract," *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1, 17 (1981) (citations omitted), the President's retroactive imposition of conditions relating to the deployment of state militia personnel and to his personal interpretation of the Second Amendment were never specified to nor accepted by the state and are facially illegal.

It is also difficult to imagine what federal interest possibly relates to a dispute between a state and a creature of the state over funding. The so-called "Second Amendment sanctuary" counties are creations of the State of Lincoln and, insofar as federal law is concerned, have no independent rights. See *Hunter v. City of Pittsburgh*, 207 U.S. 161 (1907). Federal intervention in an intrastate dispute strikes at the heart of the sovereignty of the states and fails to further a legitimate federal interest.

And of course, the condition imposed by the President is extremely coercive, as a choice not to comply on the behalf of Lincoln would mean the loss of untold billions of dollars and devastate the ability of the state government to provide even basic social services—in fields completely unrelated to the President's objective. "When, for example, such conditions take the form of threats to terminate other significant independent grants, the conditions are properly viewed as a means of pressuring the States to accept policy changes." *National Federation of Independent Business v. Sebelius*, 567 U.S. 519, 580 (2012). The President's directive in this case is no mere "mild encouragement" as figured in *Dole*, 483 U.S. at 211, but instead a "gun to the head." *Sebelius*, *supra*, at 581.

The executive order egregiously contravenes the limits to conditional federal spending prescribed by the Constitution. Accordingly, the Court should grant review to protect the sovereignty of the states against this unprecedented intervention of the federal government into the internal affairs of the states.

CONCLUSION

Petitioners seek declaratory judgment that Executive Order 13's revocation of federal grants to the State of Lincoln is ultra vires the power of the President and violates the Tenth Amendment, and further seek injunctive relief against the enforcement of the Executive Order. For the reasons stated above, the Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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