No. 13-5202

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

MATT SISSEL,

Plaintiff/Appellant,

v.

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

Defendants/Appellees.

On Appeal from the United States District Court
for the District of Columbia
Honorable Beryl A. Howell, District Judge

PETITION FOR REHEARING EN BANC

PAUL J. BEARD, II
Cal. Bar No. 210563
TIMOTHY SANDEFUR
Cal. Bar No. 224436
Pacific Legal Foundation
930 G Street
Sacramento, California 95814
Telephone: (916) 419-7111
Facsimile: (916) 419-7747

Counsel for Plaintiff/Appellant Matt Sissel

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

*Authorities upon which we chiefly rely are marked with asterisks.

Page

United States Constitution

Federal Statutes

Rule of Court

Miscellaneous

INTRODUCTION AND RULE 35(B)(1) STATEMENT

This case involves a constitutional challenge to the linchpin of the Affordable Care Act (ACA)—the mandate that most Americans buy government-approved health insurance on pain of paying a tax. Appellant Matt Sissel, a young and healthy artist who does not have, need, or want to buy health insurance, challenges the mandate as a violation of the Commerce Clause and the tax as a violation of the Origination Clause. The Origination Clause requires that "[a]ll Bills for raising Revenue shall originate in the House," not in the Senate where the ACA originated. The panel's decision to uphold the ACA against both constitutional claims merits *en banc* review.

First, the panel decision conflicts with a number of Supreme Court and Circuit Court precedents. With respect to the Commerce Clause claim, the decision erroneously treats the mandate and the tax as a single provision, contrary to the Supreme Court's analysis in *National Federation of Independent Business v. Sebelius* (*NFIB*), 132 S. Ct. 2566 (2012), and several subsequent Circuit Court opinions. On that mistaken premise, the decision upholds both the requirement to buy insurance and the tax for failing to do so under Congress's taxing power, thereby giving no legal effect whatever to the holding of a majority of the *NFIB* Justices that the individual mandate is unconstitutional under the Commerce Clause.

Moreover, the panel decision rejects Sissel's Origination Clause claim in the only way it could—by minting a new test that will insulate most revenue-raising bills

from Origination Clause challenge, as long as a court can divine a legislative purpose for the enactment other than raising revenues. The panel's "purposive approach" all but guts the Origination Clause by effectively enabling the Senate to originate tax bills that might have some broader social purpose. It also conflicts with the *NFIB* majority's holding that, *for purposes of assessing its constitutionality*, the shared responsibility payment must be analyzed under a "functional approach" that looks to what the provision actually does, without regard to congressional labels or purpose.

Second, this appeal involves a question of exceptional importance. In terms of its practical import, the appeal puts at issue one of the Act's central provisions, which undisputedly will affect the healthcare and financial decisions of every American: With the mandate and tax intact, millions of citizens will pay billions annually in taxes to the IRS and into the general Treasury to support general government operations. Without the mandate and tax, the Act cannot stand.[1] In terms of its *legal* importance, the appeal turns on the interpretation and application of two of the Constitution's structural limitations on the Federal Government: the Commerce Clause and the Origination Clause. Last month, this Court granted rehearing in *Halbig v. Burwell*, 758 F.3d. 390 (2014), another challenge to the ACA

---

[1] In its Petition for Rehearing *En Banc* in *Halbig v. Burwell* (No. 14-5018), at 3, the Government concedes that the individual mandate is one "of three interdependent measures" that is absolutely necessary to the Act's viability.

that involves a question of statutory interpretation—namely, whether the Act authorizes an IRS regulation that provides federal subsidies to individuals in states with federally established (as opposed to state-established) Exchanges.[2] If a challenge to an ACA regulation is worthy of *en banc* review, then this case—a constitutional challenge to a cornerstone provision of the Act—is *a fortiori* worthy of the same.

The panel decision raises conflicts on exceptionally important questions surrounding the constitutionality of one of the most significant pieces of federal legislation in recent memory. Sissel's petition should be granted.

FACTUAL AND PROCEDURAL BACKGROUND

The Affordable Care Act imposes a "[r]equirement to maintain minimum essential [health insurance] coverage." 26 U.S.C. § 5000A. Subsection (a) provides that every nonexempt individual[3] "shall for each month beginning after 2013 ensure that the individual, and any dependent of the individual who is [a nonexempt]

---

[2] If the Court grants rehearing in this case, it should consider holding argument together with *Halbig* in order to conserve judicial resources. If the individual mandate and shared responsibility payment are unconstitutional, then the Act cannot stand, and there will be no need to address whether the Act authorizes the IRS regulation at issue in *Halbig*.

[3] Various exemptions to the individual mandate and tax exist, including for religious objectors, incarcerated individuals, members of Indian tribes, those who cannot afford insurance, and those taxpayers whose income is below the filing threshold for federal income taxes. *See id.* § 5000A(d)-(e).

individual, is covered under minimum essential coverage for such month." Subsection (b) provides that any nonexempt individual who "fails to meet the requirement of subsection (a)" must make a "[s]hared responsibility payment" that "shall be included with a taxpayer's [federal income tax] return."

In 2010, Sissel challenged the individual mandate, seeking declaratory and injunctive relief. *Id.* He alleged that section 5000A(a)'s mandate requires him to engage in commerce (by purchasing a good or service) in violation of the Commerce Clause. *Id.* While his suit was pending, the Supreme Court decided *NFIB*, in which a majority agreed with Sissel's claim and held that section 5000A(a)—the individual mandate—violates the Commerce Clause. *NFIB*, 132 S. Ct. at 2591 (opn. of Roberts, C.J.); *id.* at 2644-50 (Scalia, Kennedy, Thomas, Alito, JJ., dissenting). A majority also held that section 5000(b)—the shared responsibility payment imposed on those who do not buy and maintain minimum essential coverage—is functionally a tax authorized by Congress's taxing power. *Id.* at 2593-94.

Thereafter, Sissel amended his complaint to add a second claim: Because the shared responsibility payment is a tax, it must satisfy other constitutional requirements for the tax to be valid—in particular, the Origination Clause. The claim alleges that the tax violates the Origination Clause, because the ACA—with all of its taxes—originated in the Senate, not the House. Moreover, Sissel sought judgment in his favor on his Commerce Clause claim, given the *NFIB* majority's holding that

the mandate to purchase health insurance violates that provision. The district court dismissed the complaint, and a panel of this Court affirmed. Opinion at 2.

ARGUMENT

I. THE PANEL'S COMMERCE CLAUSE HOLDING CONFLICTS WITH *NFIB* AND CIRCUIT COURT OPINIONS

The panel held that the *NFIB* Court "sustain[ed] the constitutionality of ***the whole*** of section 5000A"—that is, *both* the individual mandate *and* the shared responsibility payment—"under the taxing power." Opinion at 10 (emphasis added). The panel failed to give legal effect to the holding of a majority of Justices that the individual mandate itself violates the Commerce Clause—a holding that was the *sine qua non* of the Chief Justice's decision to cast the fifth vote upholding the payment as a tax. *NFIB*, 132 S. Ct. at 2601 (opn. of Roberts, C.J.) ("Without deciding the Commerce Clause question, I would find no basis to adopt such a saving construction.").

Chief Justice Roberts explained that the individual mandate—defined as the provision that "requires individuals to purchase a health insurance policy," *id.* at 2577—cannot be sustained under the Commerce Clause because it "forces individuals into commerce precisely because they elected to refrain from commercial activity." *Id.* at 2591. Four Justices agreed with this conclusion, thereby forming a majority position on the Commerce Clause question. *Id.* at 2644-50 (Scalia, Kennedy, Thomas, Alito, JJ., dissenting).

Because the Commerce Clause does not authorize the individual mandate, the Chief Justice reasoned that the government could prevail only if the Court construed Section 5000A(b) as laying a tax on people who fail to buy health insurance. *Id.* at 2593-94 (opn. of Roberts, C.J.). But it is imperative to recognize what *exactly* the *NFIB* Court sustained under the taxing power. Writing for the Court, the Chief Justice explained in Part III-C that the "*exaction* the Affordable Care Act imposes on those without health insurance looks like a tax in many respects." *Id.* at 2594 (emphasis added). The majority reasoned that the "[s]hared responsibility payment,' as the statute entitles it," bears the hallmarks of a tax, including that it is collected by the IRS, is paid into the Treasury when taxpayers file their returns, does not apply to certain classes of people based on income, and produces revenue for the government to spend on whatever it chooses. *Id.* Part III-C, which constitutes a majority opinion, concludes that "[t]he Affordable Care Act's requirement that certain individuals *pay a financial penalty for not obtaining health insurance* may reasonably be characterized as a tax." *Id.* at 2600 (emphasis added). Thus, the Court upheld the shared responsibility payment, found in subsection (b) of section 5000A, because it is based on Congress's authority to require individuals to pay taxes to the government.

The Supreme Court's opinion upholding a "tax on going without health insurance," 132 S. Ct. at 2599, thus rests on the distinction between the individual

mandate in subsection (a)—which could not withstand Commerce Clause scrutiny—and the shared responsibility payment in subsection (b)—which survives under the taxing power. *Id.* Indeed, Chief Justice Roberts highlighted that distinction in the plainest possible terms in Part III-D of his opinion when he said that the "Federal Government does not have the power to order people to buy health insurance," but it "does have the power to impose a tax on those without health insurance." *Id.* at 2600-01 (Roberts, C.J.). The Supreme Court therefore did *not* hold that the mandate survives under Congress's power to tax. It determined that the shared responsibility payment is a tax—and that *it and only it* is constitutional.

Post-*NFIB* opinions from this Court's sister Circuits confirm this understanding of *NFIB*—namely, that the decision treats subsections (a) and (b) of section 5000A separately, and finds the former unconstitutional under the Commerce Clause and the latter constitutional under the taxing power. The Fourth Circuit concluded, in no uncertain terms, that "[f]ive members of the [Supreme] Court . . . concluded that the individual mandate exceeds Congress's power under the Commerce Clause." *Liberty Univ., Inc. v. Lew*, 733 F.3d 72, 87 (2013); *see also United States v. Rose*, 714 F.3d 362, 370-71 (6th Cir. 2013), *cert. denied*, 134 S.Ct. 272 (2013) (same); *United States v. Roszkowski*, 700 F.3d 50, 58 (1st Cir. 2012), *cert. denied*, 133 S.Ct. 1278 (2013) (same). Importantly, the Fourth Circuit distinguished the mandate from the shared responsibility payment, recognizing that "the Commerce Clause does not grant

Congress the authority to 'compel' or 'mandate' an individual to enter commerce by purchasing a good or service," *Liberty Univ.*, 733 F.3d at 92, but finding that the "individual mandate ***exaction***" is a tax. *Id.* at 96 (emphasis added); *see also U.S. Citizens Ass'n v. Sebelius*, 705 F.3d 588, 597 (6th Cir. 2013) (describing shared responsibility payment as a tax); *Kinder v. Geithner*, 695 F.3d 772, 775 (8th Cir. 2012) (same). This distinction is the key to the *NFIB* Court's decision upholding the shared responsibility payment, but that the panel decision rejects.[4]

II. THE PANEL'S ORIGINATION CLAUSE HOLDING CONFLICTS WITH *NFIB* AND OTHER SUPREME COURT PRECEDENTS

The Origination Clause provides that "[a]ll Bills for raising Revenue shall originate in the House of Representatives," but that "the Senate may propose or

---

[4] Even this Court concluded, in a Commerce Clause challenge to the individual mandate decided prior to *NFIB*, that the individual mandate and penalty (*i.e.*, tax) should be viewed independently: "The individual mandate and the shared responsibility payment create different legal obligations, for different categories of people, at different times. The mandate—described as the 'requirement to maintain minimum essential coverage' in the statute—imposes a legal obligation on 'applicable individual[s]' to purchase and maintain minimum health care coverage from an insurance company for each month beginning January 2014.... By contrast, the penalty provisions are not symmetrical with the mandate. Although some who fail to comply with the individual mandate must pay a penalty (the 'shared responsibility payment') to the IRS, others—taxpayers who cannot afford coverage, or who fall below the filing threshold, members of Indian tribes, and any applicable individual whom the Secretary of Health and Human Services deems to have suffered a hardship—do not. Moreover the purchase of health insurance is not to be directed to the Government, as is true of taxes, but rather to private insurers; it is only the penalty that flows to the Government." *Seven-Sky v. Holder*, 661 F.3d 1, 9 (D.C. Cir. 2011), *abrogated by NFIB*, 132 S. Ct. 2566 (footnotes omitted).

concur with amendments as on other bills." U.S. Const. art. I, § 7, cl. 1. A bill that "raises revenue to support Government generally" is presumptively subject to the Origination Clause. *United States v. Munoz-Flores*, 495 U.S. 385, 398 (1990). Conversely, a monetary exaction that is nothing but a *means* of funding a federal government program or enforcing compliance with a federal statute—*where that program or statute is independently authorized by an Article I power*—is not a revenue-raising bill subject to the Origination Clause. *See id.* (holding that a monetary assessment on defendants convicted of federal misdemeanors was not a "bill for raising revenue" because receipts went, not into the general Treasury, but into a special Crime Victims Fund which was earmarked for compensating and assisting federal crime victims in furtherance of Congress's law enforcement powers); *Millard v. Roberts*, 202 U.S. 429, 437 (1906) (holding that a tax was not subject to the Origination Clause, where revenues were allocated to railroad companies for the express purpose of financing railroad projects in the District of Columbia, over which Congress has exclusive jurisdiction "in all Cases whatsoever"); *Twin City Nat. Bank v. Nebeker*, 167 U.S. 196, 202 (1897) (holding that tax on bank notes was not subject to Origination Clause, because it was imposed for the purpose of financing the cost of establishing a national currency—*i.e.*, in furtherance of Congress's power to coin money—and therefore was a bill "for other purposes which may incidentally create revenue"); *United States v. Ashburn*, 884 F.2d 901, 904 (6th Cir. 1989) ("[P]enalty

assessments," which "are analogous to fines," are "not taxes."); *Rodgers v. United States*, 138 F.2d 992, 994 (6th Cir. 1943) ("There is a marked distinction between taxation for revenue . . . and the imposition of sanctions by the Congress under the commerce clause.").

The shared responsibility payment is not a *means* for funding or carrying out an Article I program or statute.[5] Instead, it is an independent exercise of an Article I power—namely, Congress's taxing power. *NFIB*, 132 S. Ct. at 2600. As the Court explained, the payment has all the hallmarks of a traditional tax: The tax is paid through a federal income tax return, collected by the IRS, and placed in the Treasury for the Federal Government to spend as it pleases. *Id.* at 2594 (emphasis added).

Having all the characteristics of a traditional revenue-raising bill, the shared responsibility is subject to—and violates—the Origination Clause. *Munoz-Flores*, 495 U.S. at 398 (A "statute that raises revenue to support Government generally" is a bill for raising revenue.); *see also NFIB*, 132 S. Ct. at 2598, 2600 ("[A]ny tax must still comply with other requirements in the Constitution."). In September 2009, the House passed a six-page bill, H.R. 3590, entitled the "Service Members Home Owership Tax Act of 2009" to "amend[] the Internal Revenue Code of 1986 to modify [the] first-time homebuyers credit in the case of members of the Armed Forces

---

[5] The individual mandate (as opposed to the shared responsibility payment) is not authorized by *any* Article I power.

and certain other Federal employees." Opinion at 11 (citing Sissel complaint). While that bill had nothing to do with healthcare reform, the Senate purported to "amend" it by gutting its contents and replacing it with the 2000+ pages of the ACA—including the tax on those who do not purchase and maintain health insurance. *Id.* The Senate's substitute bill is a revenue-raising bill that is unconstitutional, because it did not originate in the House.

The panel decision avoids this inconvenient result—and the merits of Sissel's Origination Clause claim altogether—by finding that the tax "was not subject to the Origination Clause" in the first place. Opinion at 11. It crafts a vague "purposive approach" that asks whether revenue-raising is a tax's "primary purpose"—or only a purpose "incidental" to some other goal that can free the tax from Origination Clause review. *Id.* at 11-12. Under this approach, the panel decision relies on congressional findings and other subjective factors to conclude that the "substantial revenues" generated by the tax are only incidental to the tax's alleged "primary purpose" of ensuring compliance with the individual mandate. *Id.* at 12-13.

The panel decision conflicts with relevant Supreme Court precedents. In *Munoz-Flores*, the Supreme Court articulated the objective rule governing Origination Clause claims, which focuses on how a bill, on its face, *functions—i.e.*, what the bill does, where its revenues go, and what its revenues fund. The Court said that "a statute that creates a particular governmental program and that raises revenue to support that

program, ***as opposed to a statute that raises revenue to support Government generally***, is not a 'Bil[l] for raising Revenue' within the meaning of the Origination Clause." *Munoz-Flores*, 495 U.S. at 398 (emphasis added). In other words, a tax that raises revenue to support Government generally *is* a bill for raising revenue within the meaning of that Clause—period. *Id.*

The panel decision ignores this rule. Instead, it seizes on the "primary purpose" language in *Munoz-Flores*, which the Supreme Court used in a very different context. The *Munoz-Flores* Court concluded that a special assessment was not an Origination Clause tax, because it was designed to fund a particular governmental program in furtherance of an Article I power other than the taxing power—the Crime Victims Fund; there was no question there that Congress had the authority to compensate federal crime victims separate from its power to tax. *Id.* at 399. The Court acknowledged that the assessment could also generate "excess" monies that were "to go to the Treasury." *Id.* But the Court made clear that "[a]ny revenue for the general Treasury that [the special assessment] creates is . . . 'incidenta[l]' to that provision's primary purpose," which was to fund the Crime Victims Fund. *Id.* In other words, the Court compared the purposes to which the ***revenues*** from the assessment actually were put (a specific program versus general government operations). It did not compare the legislative purposes behind the assessment itself (revenue generation versus other non-revenue goals). *Id.; see also Twin City*, 167 U.S. at 202-03

(categorizing tax on bank notes—designed to "meet the expenses attending the execution of the act"—as a "bill[] for other purposes which may incidentally create revenue" for general government operations). The distinction is significant. No court has ever used the "primary purpose" analysis to exempt from Origination Clause review a tax that is imposed pursuant to Congress's taxing power and that generates "substantial revenues" into the Treasury for general government operations.[6] Opinion at 13.

The panel's reliance on subjective purposes to decide whether the shared responsibility payment constitutionally is subject to the Origination Clause also violates *NFIB*. The *NFIB* Court used a "functional approach" to decide whether the shared responsibility payment was, *as a constitutional matter*, a tax authorized by Congress's taxing power. *NFIB*, 132 S. Ct. at 2595. It considered irrelevant legislative labels and intentions, and looked exclusively to how the payment worked, how it was collected, and what it funded in order to decide whether it was

---

[6] This is consistent with the history of the framing of the Origination Clause. The Framers debated a draft version of the Clause that read in relevant part, "Bills for raising money *for the purpose of revenue*." James Madison, *Notes on the Debates in the Federal Convention of 1787*, at 442 (New York, Norton & Company, Inc. 1969). The final version dropped the italicized language, lending support to the view that the panel decision's "purposive approach" runs counter to the Origination Clause's language and the precedents that have interpreted it. For a full discussion of the original public meaning of the Origination Clause, see 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).

constitutionally a tax. *Id.* at 2594. The reason is simple: "That constitutional question was not controlled by Congress's choice of label." *Id.* at 2595.

Using a "functional approach," the *NFIB* Court concluded that the shared responsibility payment constitutionally is a tax. Yet the panel decision substitutes that approach with its own "purposive approach," taking into account factors that the *NFIB* Court specifically rejected as irrelevant to a similar constitutional inquiry. Under its approach, the panel found that the shared responsibility payment is, constitutionally, *not* a revenue-raising bill under the Origination Clause.

The panel's approach endorses a one-way ratchet in favor of the Government: The *NFIB* Court used the "functional approach" to classify the shared responsibility payment as a "tax" and afford it constitutional cover under Congress's taxing power—despite legislative intentions to the contrary. Perhaps sensing the danger of applying the "functional approach," the panel used the "purposive approach" to avoid classifying the payment as a "Bill[] for raising Revenue" and afford it constitutional cover through an Origination Clause exemption—precisely *because* of legislative intentions. This inconsistency in approach should be resolved *en banc*.

The panel's "purposive approach" is too vague to admit of meaningful enforcement. Not only do legislators often have a variety of "purposes" for the laws they pass, but in the case of an omnibus bill like the ACA, it is impossible to discern any single "primary purpose." Efforts to do so will lead courts into ascribing motives

to Congress, which introduces an element of subjectivity not present in the objective approach set out in *Munoz-Flores* and *NFIB*. Nor is it clear how deferential a court should be to legislative declarations of purpose. These considerations have led the Supreme Court to emphasize that "[t]he search for legislative purpose is often elusive enough, without a requirement that primacy be ascertained[,]" and "would allow courts to peruse legislative proceedings for subtle emphases supporting subjective impressions and preferences." *McGinnis v. Royster*, 410 U.S. 263, 276-77 (1973).

Finally, the panel decision all but concedes that its new test—and the broad exemption from Origination Clause review it creates for many revenue-raising bills—has never been endorsed by the Supreme Court. The panel's view seems to be that, until the Supreme Court expressly instructs otherwise, courts can continue to presume against applying the the Origination Clause—even to revenue-raising taxes like the shared responsibility payment. Opinion at 14 ("[N]either the Supreme Court nor this court has held that a statute *must* be so classifiable [into an exception established by Supreme Court precedent] to avoid the requirements of the Origination Clause."). The panel's method of constitutional interpretation flies in the face of the well-established rule that if a bill "raises revenue to support Government generally," it is presumptively subject to the Origination Clause. *Munoz-Flores*, 495 U.S. at 398.

CONCLUSION

For the foregoing reasons, the Court should grant rehearing en banc.

DATED: October 6, 2014.

Respectfully submitted,

PAUL J. BEARD II
TIMOTHY SANDEFUR

By /s/PAUL J. BEARD II
PAUL J. BEARD II

Counsel for Plaintiff/Appellant
Matt Sissel

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), I hereby certify that the foregoing brief complies with type-volume limitation of Rule 32(a)(7)(B), in that it contains 3,823 words.

/s/PAUL J. BEAD II
PAUL J. BEARD II

CERTIFICATE OF SERVICE

I hereby certify that the foregoing PETITION FOR REHEARING EN BANC was electronically filed with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit on October 6, 2014, by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/PAUL J. BEARD II
PAUL J. BEARD II

ADDENDUM - 1

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued May 8, 2014 Decided July 29, 2014

No. 13-5202

MATT SISSEL,
APPELLANT

v.

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, ET AL.,
APPELLEES

Appeal from the United States District Court
for the District of Columbia
(No. 1:10-cv-01263)

Timothy M. Sandefur argued the cause for appellant. With him on the briefs were *Paul J. Beard II* and *Daniel A. Himebaugh*. *Theodore Hadzi-Antich* entered an appearance.

John C. Eastman and *Anthony T. Caso* were on the brief for *amicus curiae* Center for Constitutional Jurisprudence in support of appellant.

Lawrence J. Joseph was on the brief for *amicus curiae* Association of American Physicians and Surgeons in support of appellant.

Joseph E. Schmitz and *Paul D. Kamenar* were on the brief

for *amici curiae* U.S. Representatives Trent Franks, et al. in support of appellant.

Alisa B. Klein, Attorney, U.S. Department of Justice, argued the cause for appellees. With her on the brief were *Stuart F. Delery*, Assistant Attorney General, *Ronald C. Machen Jr.*, U.S. Attorney, *Beth S. Brinkmann*, Deputy Assistant Attorney General, and *Mark B. Stern*, Attorney.

Before: ROGERS, PILLARD and WILKINS, *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge* ROGERS.

ROGERS, *Circuit Judge*: Section 5000A of the Patient Protection and Affordable Care Act, 26 U.S.C. § 5000A, mandates that as of January 2014, non-exempt individuals maintain minimum health care coverage or, with limited exceptions, pay a penalty. Matt Sissel, who is an artist and small-business owner who serves from time to time on active duty with the National Guard, appeals the dismissal of his complaint alleging that the mandate violates the Commerce Clause, U.S. CONST. art. I, § 8, cl. 3, and the Origination Clause, U.S. CONST. art. I, § 7, cl. 1. We affirm, because his contention that the mandate obligating him to buy government-approved health insurance violates the Commerce Clause fails under the Supreme Court's interpretation of the mandate in *National Federation of Independent Business v. Sebelius*, 132 S. Ct. 2566, 2598 (2012) ("*NFIB*"), and his contention that the mandate's shared responsibility payment was enacted in violation of the Origination Clause fails under Supreme Court precedent interpreting that Clause.

I.

A.

Section 5000A of the Affordable Care Act imposes a "[r]equirement to maintain minimum essential [health insurance] coverage." 26 U.S.C. § 5000A. Subsection (a) provides that "[a]n applicable individual" — that is, an individual subject to the requirement — "shall for each month beginning after 2013 ensure that the individual, and any dependent of the individual who is an applicable individual, is covered under minimum essential coverage for such month." *Id.* § 5000A(a). Subsection (b) provides that if an applicable individual "fails to meet the requirement of subsection (a)," there shall be "imposed on the taxpayer a penalty," *id.* § 5000A(b)(1), denominated the "[s]hared responsibility payment," *id.*, which "shall be included with a taxpayer's [federal income tax] return," *id.* § 5000A(b)(2). These requirements are subject to several exceptions.

Subsection (d) limits who is an "applicable individual" subject to the coverage requirement. *See id.* § 5000A(d)(2)–(4). The "[r]eligious conscience exemption," *id.* § 5000A(d)(2)(A), exempts from the minimum coverage requirement a "member of a recognized religious sect" whose beliefs oppose the acceptance of insurance benefits and an "adherent of established tenets or teachings of such sect." *See also id.* § 1402(g)(1) (criteria for religious exemption). Also exempt is a "member of a [qualifying] health care sharing ministry" whose members "share a common set of ethical or religious beliefs and share medical expenses among members in accordance with those beliefs." *Id.* § 5000A(d)(2)(B)(i) & (ii)(II). "Individuals not lawfully present" in the United States, *id.* § 5000A(d)(3), and "[i]ncarcerated individuals," *id.* § 5000A(d)(4), are likewise exempt from the insurance purchase requirement.

Subsection (e) enumerates when "[n]o penalty shall be imposed" for failure to obtain required health coverage. *Id.* § 5000A(e). Exempt are "[i]ndividuals who cannot afford coverage," that is, individuals whose "required contribution (determined on an *annual* basis) for coverage for the month exceeds 8 percent of such individual's household income for the taxable year." *Id.* § 5000A(e)(1) (emphasis added). The "required contribution" is the cost of obtaining minimum essential coverage, either through an employer-sponsored insurance plan or by purchasing in an insurance exchange "the lowest cost bronze plan available in the individual market . . . in which the individual resides." *Id.* § 5000A(e)(1)(B). Also exempt are "[t]axpayers with income below [the] filing threshold [for federal income taxes]," *id.* § 5000A(e)(2), "[m]embers of Indian tribes," *id.* § 5000A(e)(3), and individuals experiencing a "short . . . gap[]" in coverage of less than three months, *id.* § 5000A(e)(4). Individuals who "have suffered a hardship with respect to the capability to obtain coverage under a qualified health plan," as determined by the Secretary of Health and Human Services, are also exempt. *Id.* § 5000A(e)(5).

B.

According to the complaint filed October 11, 2012, Matt Sissel is an "artist who works out of his studio" in Iowa and "also works part-time . . . for the National Guard." First Am. Compl. ("Compl.") ¶ 5. "He is financially stable, has an annual income that requires him to file federal tax returns, and could afford health insurance if he wanted to obtain such coverage." *Id.* He "does not have, need, or want health insurance." *Id.* Further, "he is able to and does pay for any and all of his medical expenses out of pocket." *Id.* Because "he cannot claim any of the exemptions," *id.* ¶ 15, the Affordable Care "Act obligates [him] to purchase, at his own expense and against his will, federally approved health insurance, or pay the 'shared

responsibility payment,'" *id.* Sissel seeks declaratory and injunctive relief against the mandate and the Affordable Care Act *in toto*.

First, Sissel alleges that the Affordable Care Act's "purchase requirement," commonly known as the individual mandate, "is not a regulation of commerce, but purports to compel affected Americans, like [himself], to engage in commerce." *Id.* ¶ 34. Citing *NFIB*, 132 S. Ct. at 2600, where Chief Justice Roberts stated that "the Commerce Clause does not authorize such a command," he alleges that Section 5000A violates the Commerce Clause. *See id.* Second, he alleges that Section 5000A's "'shared responsibility payment' is a tax that raises revenue to support Government generally," *id.* ¶ 39, and violates the Origination Clause because it "originated in the Senate, not the House," *id.* ¶ 40.

The district court dismissed the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), ruling that Sissel's Commerce Clause claim was premised on a misreading of the *NFIB* decision, the Origination Clause did not apply because Section 5000A was not a bill for raising revenue, and, in any event, it satisfied the Origination Clause because there was a valid Senate amendment to a bill that originated in the House of Representatives. *See Sissel v. U.S. Dep't of Health & Human Servs.*, 951 F. Supp. 2d 159, 166–74 (D.D.C. 2013). Sissel appeals, and our review of the dismissal of the complaint is *de novo*. *See English v. Dist. of Columbia*, 717 F.3d 968, 971 (D.C. Cir. 2013). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The court assumes the truth of all well-pleaded factual allegations in the complaint and construes reasonable inferences from those allegations in the plaintiff's

favor, *see, e.g., Doe v. Rumsfeld*, 683 F.3d 390, 391 (D.C. Cir. 2012), but is not required to accept the plaintiff's legal conclusions as correct, *see id.*

II.

As a threshold matter, we must determine whether or not Sissel has standing under Article III of the Constitution in order to assure ourselves that this court has jurisdiction over his appeal. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559–60 (1992); *U.S. Telecom Ass'n v. FCC*, 295 F.3d 1326, 1330 (D.C. Cir. 2002). Standing must be shown at each stage of the judicial proceedings. *See Hollingsworth v. Perry*, 133 S. Ct. 2652, 2661 (2013). The district court concluded Sissel had standing because he claimed to have had to sell property and curtail his professional activities in order to raise funds to pay for the required health insurance coverage. *See Sissel*, 951 F. Supp. 2d at 164 n.7. Sissel's complaint, however, does not demonstrate that as of the time of his appeal, he would be subject to the Affordable Care Act's individual mandate and shared responsibility payment. Although he alleged that in January 2008 he left the National Guard where he did have health insurance during his active service, *see* Compl. ¶ 24, his counsel advised during oral argument before this court that Sissel was currently on active duty with the National Guard. *See* Oral Arg. Tr. 5:14–17 (May 8, 2014). It also was unclear from the complaint whether the circumstances relating to Sissel's annual income and relied on by the district court had changed. *See id.* at 7:8–20.

Upon review of the requested supplementation, *see* Order (May 22, 2014), we hold that Sissel has Article III standing. By signed affidavit, Sissel attests that he does not fall within any of the exemptions under the Affordable Care Act, 26 U.S.C. § 5000A(d)(2)–(4), (e)(3). For example, he avers that he has no

religious objection to purchasing health insurance, he is not a member of an Indian tribe, he is not incarcerated, and he has not been determined ineligible for Medicaid or had an individual insurance plan cancelled. *See* Sissel Aff. ¶¶ 3–13 (June 2, 2014); 26 U.S.C. § 5000A(d)(2) & (4), (e)(3) & (5). Additionally, he avers that as of June 2, 2014, he was no longer on active duty with the National Guard, and that he has not purchased health insurance through the National Guard, and is not eligible for any kind of insurance coverage or continuing care through the National Guard. *See* Sissel Aff. ¶¶ 14–15. According to Sissel, the National Guard would provide emergency care for any injuries or illnesses he might suffer while on active duty, but the Guard has no such "limited medical-emergency" obligation when he is not on active duty. *Id.* ¶ 15.

Sissel's counsel has further attested that based on available information from the "Washington Healthplanfinder" website, the cost of the least expensive qualifying health plan in the region of the country where Sissel now lives is less than 8 percent of Sissel's projected 2014 income. *See* Sandefur Aff. ¶ 2 (June 2, 2014), Ex. A; Sissel Aff. ¶ 10. In his complaint and affidavit, Sissel states that the two sources of his annual income are his work as an artist and his part-time service as a Public Affairs Specialist for the National Guard. *See* Compl. ¶ 5; Sissel Aff. ¶ 10. Consequently, Sissel maintains he does not qualify for a low-income exemption under the Affordable Care Act, 26 U.S.C. § 5000A(e)(1)(a). *See* Appellant's Supp. Br. 3–4.

Taking these factual representations as true, as we must for purposes of Article III standing, *see Defenders of Wildlife*, 504 U.S. at 561, and absent any basis to question Sissel's view of the legal obligation of the National Guard with respect to health care coverage, it appears certain that Sissel is subject to the Section 5000A mandate requiring him to purchase minimum essential

health insurance coverage or else to pay the shared responsibility payment. The government does not challenge the affiants' representations or otherwise claim that Sissel lacks Article III standing. *See* Appellees' Supp. Br. 1. Even though Sissel is still a member of the National Guard and from time to time may be called to active duty, providing him temporary health insurance coverage by the Guard, the government has not suggested this circumstance would render exempt an individual otherwise subject to the requirements of Section 5000A, and we agree. Congress has included limited, specific exemptions from Section 5000A, and, absent reason to conclude otherwise, exemptions are to be construed narrowly. *See, e.g., A.H. Phillips, Inc. v. Walling*, 324 U.S. 490, 493 (1945). This court is aware of no countervailing considerations inasmuch as the Affordable Care Act seeks "to increase the number of Americans covered by health insurance and decrease the cost of health care." *NFIB*, 132 S. Ct. at 2580. We therefore turn to the merits of Sissel's complaint.

III.

The Constitution authorizes the Congress to "regulate Commerce . . . among the several States," U.S. CONST. art. I, § 8, cl. 3, and to "make all Laws which shall be necessary and proper for carrying into Execution" that authority, *id.* art. I, § 8, cl. 18. In *NFIB*, several States and private parties challenged the Section 5000A individual mandate on the ground, among others, that the Commerce Clause did not empower Congress to require individuals to purchase health insurance. *See* State Resp'ts Br. on Minimum Coverage Provision 15–51; Private Resp'ts Br. on Individual Mandate 15–62, in *U.S. Dep't of Health & Human Servs. v. Florida*, No. 11-398, *decided sub. nom. NFIB*, 132 S. Ct. 2566. Five Justices would have held that if the individual mandate commanded individuals to purchase insurance, then its enactment would have exceeded Congress's authority under the

Commerce Clause, U.S. CONST. art. I, § 8, cl. 3; *see NFIB*, 132 S. Ct. at 2593 (separate opinion of Roberts, C.J.), 2650 (Scalia, Kennedy, Thomas, and Alito, JJ., dissenting), but the Court understood that Section 5000A gives individuals the choice of purchasing insurance or paying a tax, and sustained it as a valid exercise of Congress's taxing power, U.S. CONST. art. I, § 8, cl.1; *see NFIB*, 132 S. Ct. at 2598.

Sissel seeks to "enjoin[] the government from enforcing the individual mandate against him," Reply Br. 3, because "the Commerce Clause does not authorize Congress to impose" the mandate, Appellant's Br. 6. He maintains that in *NFIB* the Supreme Court "did not sustain the individual mandate under the taxing power." *Id.* at 7. "[I]ndeed," he suggests, "the Supreme Court did not sustain the individual mandate at all." *Id.* In Sissel's view, "[t]he *NFIB* opinion makes an essential constitutional distinction between the individual mandate — which compels people to buy health insurance — and the shared responsibility payment — which imposes a tax on people who choose not to purchase health insurance," and he maintains that only the *latter* was upheld by the Court. *Id.* at 7, 10. Unless this court declares the individual mandate invalid, he contends the mandate will "render[] [him] a violator of federal law if he fails to buy the prescribed insurance." *Id.* at 12.

Sissel's Commerce Clause claim rests on a flawed understanding of the Supreme Court's decision in *NFIB*. *See* Appellees' Br. 7–8. In *NFIB*, the government "ask[ed] [the Court] to read the mandate *not* as ordering individuals to buy insurance, but rather as imposing a tax on those who do not buy that product." *NFIB*, 132 S. Ct. at 2593 (emphasis added); *see also id.* at 2584 (separate opinion of Roberts, C.J.). Although Chief Justice Roberts stated that "[t]he most straightforward reading of the mandate is that it commands individuals to purchase insurance," *id.*, he concluded, in an opinion joined by

four other Justices, that "it *need not* be read to declare that failing to [purchase insurance] is unlawful," *id.* at 2597 (opinion of Roberts, C.J., joined by Ginsburg, Breyer, Sotomayor, and Kagan, JJ.) (emphasis added). Rather, the Court held that Section 5000A can be read to do nothing "more than impose a tax," and "[t]hat is sufficient to sustain it" under the Constitution. *Id.* at 2598.

Sissel's contention that the individual mandate "compels [him] to buy health insurance," Appellant's Br. 7, is thus foreclosed under the Supreme Court's interpretation of the mandate; in the Court's opinion, the mandate provision "leaves [Sissel] with a lawful choice" to purchase health insurance or not, "so long as he is willing to pay a tax levied on that choice," *NFIB*, 132 S. Ct. at 2600. Although the Chief Justice stated that the individual mandate "*would* . . . be unconstitutional *if* read as a command," he concluded that it is *not* unconstitutional as beyond the scope of Congressional authority because it "can reasonably be read" as *not* imposing a command. *Id.* at 2601 (separate opinion of Roberts, C.J.) (emphasis added). The Court's decision to sustain the constitutionality of the whole of Section 5000A under the taxing power necessarily disposes of Sissel's Commerce Clause claim. His reliance on later opinions in the circuits is misplaced as none denies that the Supreme Court upheld the individual mandate as a valid exercise of the taxing power. *See Liberty Univ., Inc. v. Lew*, 733 F.3d 72, 97 (4th Cir. 2013); *United States v. Rose*, 714 F.3d 362, 371 (6th Cir. 2013); *United States v. Roszkowski*, 700 F.3d 50, 58 (1st Cir. 2012).

IV.

The Origination Clause, U.S. CONST. art. I, § 7, cl. 1, states that "[a]ll Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with

Amendments as on other Bills." Sissel contends that "the shared responsibility payment is a bill for raising revenue" and that it "originated in the Senate, not the House" in violation of the Origination Clause. Appellant's Br. 20. He states in his complaint that "[i]n September, 2009, the House [of Representatives] passed H.R. 3590, entitled the 'Service Members Home Ownership Tax Act of 2009,'" to "'amend[] the Internal Revenue Code of 1986 to modify [the] first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees.'" Compl. ¶ 40. He alleges this bill "had nothing to do with health insurance reform," and yet "[i]n November of [2009], the Senate purported to 'amend' the House bill by gutting its contents, replacing them with health-insurance reforms (including the purchase requirement and associated payment), and renaming the bill the 'Patient Protection and Affordable Care Act.'" *Id.* The "substitute legislation," he alleges, was "a revenue-raising tax bill," *id.*, and the enactment of the Act violated the Origination Clause "[b]ecause the tax originated in the Senate, and not in the House," *id.* ¶ 41. Because we conclude that the shared responsibility payment in Section 5000A is not a "Bill[] for raising Revenue" within the Supreme Court's accepted meaning of that phrase, and thus was not subject to the Origination Clause, this court has no occasion to determine whether it originated in the House or the Senate.

In interpreting the Origination Clause, the Supreme Court has held from the early days of this Nation that "revenue bills are those that levy taxes in the strict sense of the word, and are not bills for other purposes which may incidentally create revenue." *Twin City Bank v. Nebeker*, 167 U.S. 196, 202 (1897) (citing 1 J. STORY, COMMENTARIES ON THE CONSTITUTION § 880). The Court has adhered to this "strict" interpretation. *See United States v. Munoz-Flores*, 495 U.S. 385, 397 (1990); *Millard v. Roberts*, 202 U.S. 429, 436 (1906); *United States v.*

Norton, 91 U.S. 566, 569 (1875). Necessarily, this court has followed suit. *See Rural Cellular Ass'n v. FCC*, 685 F.3d 1083, 1090 (D.C. Cir. 2012). Under this "strict" interpretation, the Supreme Court has upheld as not subject to the Origination Clause a tax on circulating bank notes, *see Nebeker*, 167 U.S. at 202, a tax to fund railway construction in the District of Columbia, *see Millard*, 202 U.S. at 436–37, and a "special assessment" levied on federal criminal offenders for a victims' fund, *see Munoz-Flores*, 495 U.S. at 401. In each case, consistent with its "strict" interpretation of the phrase "Bills for raising Revenue," the Court's analysis focused on the *purpose* of the challenged measure: Because the revenue raised was merely incidental to the main object or aim of the challenged measure, the requirements of the Origination Clause were held not to apply. In *Nebeker*, for example, the issue was whether "a tax upon the average amount of the notes of a national banking association in circulation[] was a revenue bill within the [Origination] [C]lause." 167 U.S. at 202. The Court observed that "[t]he *main purpose* that Congress had in view was to provide a national currency based upon United States bonds, and to that end it was deemed wise to impose the tax in question." *Id.* at 203 (emphasis added). Similarly, in *Millard*, involving the use of property taxes to fund railway construction in the District of Columbia, the Court reasoned that "[w]hatever taxes are imposed are but *means to the purposes* provided by the act." 202 U.S. at 437 (emphasis added). And in *Munoz-Flores*, the Court noted that "[a]ny revenue for the general Treasury that [the provision imposing a special assessment on defendants] creates is . . . 'incidental' to that provision's *primary purpose*," which was to provide money for a crime victims' fund. 495 U.S. at 399 (emphasis added; alterations omitted). In each instance, the Court underscored that unless a bill is aimed at "levy[ing] taxes in the strict sense," it does not fall within the limited scope of the Origination Clause. *Munoz-Flores*, 495 U.S. at 397; *Millard*, 202 U.S. at 436; *Nebeker*, 167 U.S. at 202.

The purposive approach embodied in Supreme Court precedent necessarily leads to the conclusion that Section 5000A of the Affordable Care Act is not a "Bill[] for raising Revenue" under the Origination Clause. The Supreme Court's repeated focus on the statutory provision's "object," *Nebeker*, 167 U.S. at 203, and "primary purpose," *Munoz-Flores*, 495 U.S. at 399, makes clear, contrary to Sissel's position, that the *purpose* of a bill is critical to the Origination Clause inquiry. And after the Supreme Court's decision in *NFIB*, it is beyond dispute that the paramount aim of the Affordable Care Act is "to increase the number of Americans covered by health insurance and decrease the cost of health care," *NFIB*, 132 S. Ct. at 2580, not to raise revenue by means of the shared responsibility payment. The Supreme Court explained: "Although the [Section 5000A] payment will raise considerable revenue, it is *plainly designed* to expand health insurance coverage." *Id.* at 2596 (emphasis added); *see id.* at 2596–97. This court noted in *Seven-Sky v. Holder*, 661 F.3d 1, 6 (D.C. Cir. 2012), *abrogated by NFIB*, 132 S. Ct. 2566 (2012), that the "congressional findings never suggested that Congress's purpose was to raise revenue." *See* 42 U.S.C. § 18091(2) (congressional findings). To the contrary, "the aim of the shared responsibility payment is to encourage everyone to purchase insurance; the goal is universal coverage, not revenues from penalties." *Seven-Sky*, 661 F.3d at 6. The Supreme Court acknowledged that the Section 5000A shared responsibility payment may ultimately generate substantial revenues — potentially $4 billion in annual income for the government by 2017, *see NFIB*, 132 S. Ct. at 2594 — if people do not "sign up" for coverage, but those revenues are a by-product of the Affordable Care Act's primary aim to induce participation in health insurance plans. Successful operation of the Act would mean *less* revenue from Section 5000A payments, not more.

Sissel contends, however, that the Supreme Court cases rejecting Origination Clause challenges merely embody "two exceptions" to the general "presumpt[ion]" that "[a]ll taxes" are subject to the Clause. Appellant's Br. 14; Reply Br. 6–7. He maintains that the Affordable Care Act does not fall within either exception because the Section 5000A payment neither funds a *particular* governmental program, as was true in *Munoz-Flores*, 495 U.S. at 397–98, nor enforces compliance with a statute passed under some *other* (non-taxing) constitutional power, as in *Millard*, 202 U.S. at 433. Yet even assuming Sissel is correct that the precedent can be classified in one or both of his categories, neither the Supreme Court nor this court has held that a statute *must* be so classifiable to avoid the requirements of the Origination Clause. All Sissel has demonstrated is that the Affordable Care Act's mandate does not fall squarely within the fact patterns of prior unsuccessful Origination Clause challenges, not that his challenge should succeed.

Sissel's interpretation of the taxing power also fails to adhere to Supreme Court precedent. In emphasizing that in *NFIB* the Court upheld Section 5000A *solely* as an exercise of Congress's taxing power, *see NFIB*, 132 S. Ct. at 2600, Sissel contends that the Section 5000A tax is presumptively subject to the Origination Clause because it "serves no *constitutional* purpose other than to raise revenue pursuant to Congress's taxing power." Reply Br. 7. This implicitly assumes that all exercises of the taxing power are necessarily aimed at raising revenue. In fact, "the taxing power is often, very often, applied for other purposes[] than revenue." 2 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 962, p. 434 (1833), *cited in NFIB*, 132 S. Ct. at 2596. In *United States v. Sanchez*, 340 U.S. 42 (1950), the Supreme Court stated:

> It is beyond serious question that a tax does not cease

> to be valid [under the taxing power] merely because it regulates, discourages, or even definitely deters the activities taxed. The principle applies even though the revenue obtained is obviously negligible, or the *revenue purpose of the tax may be secondary*. Nor does a tax statute necessarily fall because it touches on activities which Congress might not otherwise regulate.

Id. at 44 (emphasis added; citations omitted). That view was reiterated in *United States v. Kahriger*, 345 U.S. 22 (1953), where the Court upheld "a tax on persons engaged in the business of accepting wagers," *id.* at 23, notwithstanding the argument that "the sole purpose of the statute is to penalize . . . illegal gambling in the states through the guise of a tax measure," *id.* at 28, *abrogated on other grounds by Marchetti v. United States*, 390 U.S. 39 (1968). Because not all of Congress's exercises of the taxing power are primarily aimed at raising revenue, and a measure is a "Bill[] for raising Revenue" only if its *primary purpose* is to raise general revenues, some exercises of the taxing power are not subject to the Origination Clause. The Supreme Court's decisions in *Nebeker* and *Millard* confirm this point: Not all "taxes" are "Bills for raising Revenue." *See Nebeker*, 167 U.S. at 202; *Millard*, 202 U.S. at 436–37.

Sissel's attempts to distinguish the Supreme Court's "tax" cases confirm that the Origination Clause inquiry does not hinge on the existence (or absence) of another source of constitutional authority. For instance, Sissel contends that the tax on circulating notes in *Nebeker* was not a "Bill[] for raising Revenue" because, among other things, it was enacted "in furtherance of Congress's Article I power to coin money." Reply Br. 6; *see* U.S. CONST. art I, § 8, cl. 5. But *many* taxes are imposed to raise revenue in furtherance of the federal government's enumerated powers, and some of those taxes may

well be "Bills for raising Revenue." The mere existence of another source of Congressional power, then, cannot be what insulates a measure from the Origination Clause. Conversely, a measure that would *not* be a "Bill[] for raising Revenue" does not become one simply because Congress lacks an independent basis (apart from the taxing power) to enact it. For example, Sissel contends that the tax to finance railroad projects in *Millard* was not a "Bill[] for raising Revenue" because, among other things, Congress possessed exclusive constitutional jurisdiction over the District of Columbia. Reply Br. 7; *see* U.S. CONST. art. I, § 8, cl. 17. Yet nothing in *Millard* hints that Congress's authority over the District of Columbia affected the Origination Clause inquiry in that case. *See Millard*, 202 U.S. at 436–37.

In sum, under Supreme Court precedent, the presence of another constitutional power does not suggest that a provision is *not* a "Bill[] for raising Revenue," and the absence of another constitutional power does not, in itself, suggest that it *is*. Because the existence of another power is not necessary (or sufficient) to exempt a bill from the Origination Clause, the mere fact that Section 5000A may have been enacted *solely* pursuant to Congress's taxing power does not compel the conclusion that the entire Affordable Care Act is a "Bill[] for raising Revenue" subject to the Origination Clause. Where, as here, the Supreme Court has concluded that a provision's revenue-raising function is incidental to its primary purpose, *see NFIB*, 132 S. Ct. at 2596, the Origination Clause does not apply. The analysis is not altered by the fact that the shared responsibility payment may in fact generate substantial revenues. In light of the Supreme Court's historical commitment to a narrow construction of the Origination Clause, this court can only hold that the challenged measure — whose primary purpose "plainly" was *not* to raise revenue, *id.* at 2596 — falls outside the scope of the Clause.

Accordingly, we affirm the dismissal of the complaint for failure to state a cause of action.

ADDENDUM - 2

CERTIFICATE AS TO PARTIES AND AMICI

Pursuant to Circuit Rule 27(a)(4), the following parties and amici appeared before the district court, and/or now appear before this Court:

Plaintiff/Appellant

Matthew Sissel is the Petitioner in this case.

Defendants/Appellees

The United States Department of Health and Human Services, the United States Department of Treasury, and Timothy F. Geithner are the Respondents in this case.

Amici

The Association of American Physicians & Surgeons, Center for Constitutional Jurisprudence, Rep. Trent Franks, Rep. Michele Bachmann, Rep. Joe Barton, Rep. Kerry L. Bentivolio, Rep. Marsha Blackburn, Rep. Jim Bridenstine, Rep. Mo Brooks, Rep. Steve Chabot, Rep. K. Michael Conaway, Rep. Jeff Duncan, Rep. John Duncan, Rep. John Fleming, Rep. Bob Gibbs, Rep. Louie Gohmert, Rep. Andy Harris, Rep. Tim Huelskamp, Rep. Walter B. Jones, Jr., Rep. Steve King, Rep. Doug LaMalfa, Rep. Doug Lamborn, Rep. Bob Latta, Rep. Thomas Massie, Rep. Mark Meadows, Rep. Markwayne Mullin, Rep. Randy Neugebauer, Rep. Stevan Pearce, Rep. Robert Pittenger, Rep. Bill Posey, Rep. David P. Roe, Rep. Todd Rokita, Rep. Matt Salmon, Rep. Mark Sanford, Rep. David Schweikert, Rep. Marlin A. Stutzman, Rep. Lee

Terry, Rep. Tim Walberg, Rep. Randy K. Weber, Sr., Rep. Brad R. Wenstrup, Rep. Lyne A. Westmoreland, Rep. Rob Wittman, Rep. Ted S. Yoho, are Amici in this case.

CORPORATE DISCLOSURE STATEMENT

Pursuant to D.C. Circuit Rule 26.1, Appellant hereby states that no corporation, association, joint venture, partnership, syndicate or other similar entity is a party to this suit, and no such entity has a financial interest in this case.

DATED: October 6, 2014.

Respectfully submitted,

PAUL J. BEARD, II
TIMOTHY SANDEFUR

By /s/PAUL J. BEARD II
PAUL J. BEARD II

Counsel for Plaintiff/Appellant
Matt Sissel