ENVIRONMENTAL LAW
Lewis & Clark Law School

VOLUME 43 SPRING 2013 NUMBER 2

ESSAYS

the Commerce Clause does not permit Congress to compel individuals to purchase health insurance suggests some limits on the extent to which Congress may compel participation in certain pollution-control and abatement markets. Second, the Court's decision that Congress cannot "compel" states to adopt the Medicaid extension under the threat of losing all Medicaid funding suggests further limits on the extent to which Congress may withhold funding from states that do not or cannot implement federal environmental laws. Lastly, the basis for upholding the individual mandate as a tax actually has the potential to provide additional constitutional justification for federal environmental laws should the Court ever reconsider their Commerce Clause foundations. Nonetheless, the *Sebelius* opinion is unlikely to have a significant impact on federal environmental laws because they can be effectively distinguished from the Court's healthcare ruling.

ARTICLES

Both energy efficiency and renewable resources offer significant benefits to utilities, their customers, and society as a whole. Yet energy efficiency programs face formidable barriers to adoption that renewable resources do not. While both renewable and efficiency resources have received significant funding in recent years, government support for renewables continues to dwarf that for efficiency measures, and regulatory policies consistently discourage utilities from investing in efficiency measures even while they incentivize investment in renewables. This Article examines the parallel development of renewable resource and energy efficiency programs within utilities, compares the differing treatment of each, and offers concrete recommendations for enhancing energy efficiency adoption by modifying existing policies to more closely resemble those applied to renewable resources. The Article concludes that the historic disincentives to implementing efficiency policies can be remedied by: 1) updating ratemaking structures to ensure utilities can recover and earn on efficiency investments; 2) streamlining cost-effectiveness tests that presently encourage utilities to under-estimate and under-invest in efficiency programs; and 3) addressing market barriers by strengthening consumer incentives and market transformation efforts.