

Affordable Care Act Arguments: The Medicaid Expansion

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On Wednesday, March 28, 2012, the Supreme Court of the United States (the Court) heard oral argument nearly two years after 26 states (collectively, the states) filed a lawsuit challenging the constitutionality of the Medicaid expansion found in the Patient Protection and Affordable Care Act of 2010 (the Act). The United States Circuit Court of Appeals for the Eleventh Circuit, the only appellate court to previously hear the challenge, ruled in favor of the federal government and upheld the Medicaid expansion. The Court's decision to not only grant *certiorari* but to schedule a full hour for oral argument surprised many legal scholars, leading popular media to dub it the *sleeper issue* of the case. In fact, the hearing lived up to expectations as the often lively arguments ran nearly 30 minutes past the time originally allotted by the Court.

The Medicaid Expansion

As one of several means of achieving near universal health care coverage in the U.S., one of the Act's key elements is an expansion to the existing Medicaid program, a federal-state cooperative medical assistance program. Medicaid has typically only covered certain categories of low-income groups, including children and pregnant women. The Act expanded Medicaid eligibility to all adults under 65 years of age with incomes up to 133 percent of the federal poverty level, which covers individuals earning approximately \$15,000 annually or a family of four with a combined annual income slightly above \$30,000. To help states offset the costs associated with the significant expansion, the Act provides that the federal government will fund the full cost of the Medicaid expansion through 2016, and beginning in 2017, the states will begin sharing the costs of the new covered population.

Offer You Can't Refuse or Politically Difficult State Choice?

The legal arguments are focused on a theory of economic coercion. The attorney for the states argued that the expansion unconstitutionally coerces state participation, as it simultaneously offers billions of dollars in federal funding to support the expansion, while conditioning the continued receipt of existing federal Medicaid funds on participation in the expansion. The federal government (the government) responded that placing conditions on the use of federal funds is precisely within Congress's spending power to set the terms and conditions on which federal funds may be appropriated.

The basic question the parties presented to the Court is whether the Act's extension of Medicaid eligibility is a valid exercise of Congress' authority under its spending power, or whether the Act is unconstitutionally coercive by leveraging existing Medicaid funding to force states to enact the expansion. The analysis of the limits of Congress' spending power focused on whether the Act's use of continued Medicaid participation as leverage for the expansion, and sheer size of federal share of the expansion, amounts to impermissible economic coercion of the states.

(I) Federal Conditions

Medicaid has become an essential element in nearly every state budget. States have become so dependent on these funds, that by conditioning all federal Medicaid dollars on implementation of the expansion, the states argued that participation is essentially mandatory. Somewhat surprisingly, Chief Justice Roberts remarked during the argument, that by becoming dependent on the program in the first place, "[the states] tied the strings, [and] they shouldn't be surprised if the federal government isn't going to start pulling them."

The government maintained that Congress has the authority under the spending clause to attach conditions to the receipt of federal funds. Further, the government argued that regardless of any conditions, by definition, no coercion may exist if the states are given a voluntary choice to participate in the program. The government pointed out that the take it or leave it approach is not novel, and in fact, it has been used in every major Medicaid expansion since 1984. In addition, the Secretary of Health and Human Services has always had the discretionary authority under the Medicaid statute to withhold federal funding from the states for Medicaid noncompliance. However, this was an issue that caused pause for many of the justices, including Justice Breyer, who pushed the government's attorney to explain the

limitations of the secretary's authority to threaten or actually cut off *all* Medicaid funding for a specific unrelated act of non-compliance.

(II) Federal Funding Levels

The states maintain that by setting off the threat of the complete withdrawal of all federal Medicaid funding against the sheer size of the billions of federal dollars the states would stand to gain by participating in the expansion makes the choice clearly coercive. Justice Kagan immediately took issue with the states' position, questioning "why is a big gift from the federal government a matter of coercion?" The states take the position that it is not a gift as the funds are coming from their own taxpayers. If the offer is refused, tax dollars from the refusing state will fund the programs in participating states, forcing the refusing state to further raise taxes to create and support their own programs.

The government argued that the decision of whether to participate in the program and accept the federal funds is a voluntary choice. The government recognized that although for some states it may be a politically difficult choice, such difficulty is not a matter of constitutional consequence. However, Justice Scalia compared the choice to a hold-up scenario "your money or your life," as the choice faced by states is not a meaningful one. He remarked that a situation in which any other choice is inconceivable is by definition a coercive one. The states pointed out in their brief that Congress recognized that such refusal to accept the Medicaid expansion was inconceivable, as the Act does not provide an alternative to Medicaid (such as a subsidy) for otherwise Medicaid eligible individuals.

The Decision

Ultimately, the challenge to the Medicaid expansion is fundamentally a question of federalism. As may be expected, much of the questioning fell among philosophical lines. Overall, many of the justices seemed sympathetic to the states' case, particularly the fact that the expansion threatens to cut off all Medicaid funds, not just withhold the federal funding related to the expansion efforts. However, any decision on this issue will inevitably have to carefully consider the effects that limiting the federal spending power would have on other federal aid programs.

The Court's final decision on this issue is expected in June 2012. At this point, there is no clear indication on how the Court will rule.

Lawyers from Ice Miller's Health Care Group are closely monitoring all developments on this and related matters and will be preparing future updates as issues arise.

For answers to your health reform and other health care questions, please contact [Greg Pemberton](#) at (317) 236-2313 or gregory.pemberton@icemiller.com or any member of the Ice Miller [Health Care Reform](#) Group.

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