Early Analysis of Affordable Care Act Supreme Court Challenge: Medicaid Expansion

In framing the arguments surrounding the Medicaid provisions of the Affordable Care Act ("ACA"), in the last of four arguments about the statute, Justice Kagan asked: if you offer to pay someone $10 million dollars to work for them, is the offer coercive, or is it just "a great choice"? The challengers to the ACA framed the issue differently: is the offer of such extensive federal health care funding too good to be true? Does the offer, along with a concomitant requirement that states abide by new federal regulations or lose all Medicaid funding, amount to an unconstitutionally coercive exercise of federal power that threatens the very nature of federal state relations?

The Affordable Care Act requires that all state Medicaid plans cover everyone under 65 with individual or family incomes up to 133% of the federal poverty level beginning in 2014. Under the ACA, the federal government will pay 100% of the expansion's costs for the first two years, and will then pay a decreasing amount of the cost of the expansion, down to 90% in 2020.

Twenty-six states have sued to prevent implementation of the requirement that they expand Medicaid eligibility, concerned that they would have to leave Medicaid entirely if they do not comply with these new requirements.

Wednesday afternoon's arguments centered on whether Congress has the authority under its spending powers to place the above-described conditions on the receipt of federal Medicaid dollars. The arguments were presented against a significant legal backdrop: the Supreme Court has not found that Congress has exceeded its spending powers since 1936. Since that time, Congress has routinely required states to meet particular conditions to participate in federal programs and receive federal money. However, the Supreme Court has suggested in two cases—one in 1937 and another in 1987—that Congress cannot place conditions on federal spending if they are so "coercive" that they in effect compel (rather than merely pressure) a state to choose a policy it otherwise would not. Notwithstanding, Justice Ginsburg noted that "we have never had, in the history of this country or the Court, any Federal program struck down because it was so good that it becomes coercive to be in it."

Based on this extensive history, it was expected that the Medicaid expansion's challengers would face an uphill battle. And, they most certainly did.

Paul Clement, arguing for the law's challengers, and perhaps recognizing the unprecedented nature of the challenger's requests, contended that the Medicaid expansion was uniquely coercive for a number of reasons, including that (1) the amount of money involved was so extensive that states effectively had to accept it, and (2) that states stand to lose *all* of their prior Medicaid funding (funding they have relied upon for years) if they fail to comply with the new provisions.

Clement faced intense questioning from four Justices (Ginsburg, Breyer, Sotomayor, and Kagan), who expressed skepticism that the Medicaid expansion is in fact "coercive." Justice Kagan interrupted Clement's argument right at the beginning, asking "Why is a big gift from the federal government a matter of coercion?", adding that the Medicaid expansion is "a boatload of federal money. . . . It doesn't sound coercive to me." These Justices seemed convinced that states retain the choice to decline Medicaid funding from the federal government if they disagree with the new provisions of the ACA.

These Justices strongly pressed the ACA challengers to define the limits of their theory of what amounts to unconstitutional "coercion" when the federal government provides states funding pursuant to the Spending Clause powers. These questions searching for an outer limit to this authority were pressed on the challengers just as hard as the federal government was pressed yesterday about the limits of Congress' commerce power.

Four other Justices (Roberts, Scalia, Kennedy, and Alito), on the other hand, suggested that the Medicaid provisions of the ACA may in fact be "coercive," contending that states really have no choice but to accept the Medicaid expansion. In this context, the Justices expressed concern over state sovereignty. Justice Alito asked "How could that not be coercion?", and Justices Scalia and Roberts likened it to a "money or your life" situation—where you have no real choice at all. Interestingly, Chief Justice Roberts suggested during the argument that, no matter how coercive the Medicaid expansion may be, the states may have already "compromised their status as independent sovereigns" when they decided to take Medicaid money decades ago. The states "tied the strings, they shouldn't be surprised if the Federal Government isn't going to start pulling them."

Wednesday afternoon's argument appears to reinvigorate a debate the Supreme Court has struggled with over the past two decades: namely, the nature of federal-state relations and state sovereignty. While the federal government has had historically broad powers in choosing how to spend federal money, questions by Justices Kennedy, Alito, Scalia, and Roberts suggest that some members of the Court share a concern about political accountability under the Spending Clause. It is unclear at this point if these concerns are significant enough for the Court to strike down the ACA's Medicaid provisions as unconstitutional, particularly in light of the significant precedent that broadly interprets Congress' spending powers.

Contact Information

If you have any questions about this or other related issues, please contact:

James P. Dowden
T +1 617 951 7970
James.Dowden@ropesgray.com

Douglas H. Hallward-Driemeier
T +1 202 508 4776
Douglas.Hallward-Driemeier@ropesgray.com