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Medicaid "Coercion" Issue to be Settled by Supreme Court

Admittedly, the question is a very "narrow" one, but it will have far-reaching impact on the future of federalism and on the power of Congress to raise and spend revenue.

In one of the cases filed against President Obama's pet project, the 11th Circuit Court of Appeals in Atlanta rejected a similar claim against provisions of Medicaid. In that suit, filed by the Attorneys General of the states of Florida, South Carolina, Texas, Utah, and Nebraska, the court held that the expansion of the program made under provisions of ObamaCare was constitutional.

The essence of the states' argument is that the use of the existing Medicaid arrangement to provide expanded healthcare coverage to citizens of the states is unduly burdensome on the governments of those states. ObamaCare mandates that the states cover 100 percent of the administrative expenses associated with implementing the new Medicaid policies set out in ObamaCare.

Furthermore, the Attorneys General averred that the alteration to the Medicaid program's partition of financing was an unconstitutional application of the so-called Spending Clause of Article I of the U.S. Constitution. Such coercion on the part of Congress is further prohibited by the terms of the Tenth Amendment, they assert.

Article I reads in relevant part: "Congress shall have power … to pay the Debts and provide for the Defence and general Welfare of the United States."

The Tenth Amendment reads: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

In ruling on the states' claim in regard to the claim of congressional coercion in applying the spending requirements of ObamaCare, the Court of Appeals held:

> Congress cannot place restrictions so burdensome and threaten the loss of funds so great and important to the state's integral function as a state — funds that the state has come to rely on heavily as part of its everyday service to its citizens — as to compel the state to participate in the "optional" legislation. This is the point where "pressure turns into compulsion."

In the present case, they continued, the demands made on state budgets by ObamaCare's expansion of Medicaid are not "unduly burdensome" and are thus constitutional exercises of the power of Congress to spend money.

The Supreme Court has never specifically ruled on the issue, but it is set to make history in the ruling ultimately handed down in the ObamaCare cases it will hear in the spring.

The other point of view, that put forth by the President and various defendant departments of the executive branch that he heads, was advocated in a recent opinion piece published in the *New York Times*:

> The health care reform law does just that. In expanding the number of people eligible for Medicaid and raising the minimum coverage, it requires states to pay for 10 percent of the added cost or else lose all federal financing for Medicaid. As the 11th Circuit said, Congress made clear when Medicaid was passed in 1965 that it reserved the right to change the program. It has done so many times without any court striking down any change as coercive.

The principal point of contention in the question of the constitutionality of the expansion of Medicaid is whether the Constitution (particularly the Spending Clause of Article I) limits Congress' power to spend money.

In order to adequately settle this matter, the Court must establish a legal definition of the "general welfare" and then move on to the matter of the scope of the grant of the power to spend money as contained in Article I of the Constitution.

Certainly one important source of enlightenment when it comes to questions of constitutional interpretation is the Founder known to history as the Father of the Constitution — James Madison.

In his "Report of 1800," Madison wrote:

> Money cannot be applied to the General Welfare, otherwise than by an application of it to some particular measure conducive to the General Welfare. Whenever, therefore, money has been raised by the general Authority, and is to be applied to a particular measure, a question arises whether the particular measure be within the enumerated authorities vested in Congress. If it be, the money requisite for it may be applied to it; if it be not, no such application can be made.

And lastly, as Madison wrote in a letter to Edmund Pendleton in 1792:

> If Congress can do whatever in their discretion can be done by money, and will promote the general welfare, the Government is no longer a limited one possessing enumerated powers, but an indefinite one subject to particular exceptions.

In arguing against the imposition of limits on Congress' power to force states to spend money according to its dictates, the article in the *New York Times* declares: "It would be a serious mistake for the court to use this case to restrict Congress's authority by placing any additional requirements for the commitment of federal money."

And it continues in that vein: "If it [the Supreme Court] accepts the coercion argument now, the Supreme Court would basically usurp Congress's authority to determine the nature and scope of federal spending for the general welfare."

All eyes will be upon the Supreme Court, including those of the state Attorneys General who are valiantly trying to repel the constant attacks by the federal government on the sovereignty of the states.

Whether or not the decision ultimately made by the Supreme Court on ObamaCare, the Spending Clause, and the definition of "general welfare," there is another option available to the states in their effort to resist the imposition of federal tyranny.

The most effective weapon in the war against the federal government's plan to exercise unchecked and absolute dominion over the states and the people is the nullification of unconstitutional federal legislation by the governments of the states. Simply stated, nullification is the principle that each state retains the right to nullify, or invalidate, any federal law that a state deems unconstitutional.

Nullification is founded on the assertion that the sovereign states formed the union, and as creators of

the compact, they hold ultimate authority as to the limits of the power of the central government to enact laws that are applicable to the states and the citizens thereof.

James Madison is clear as to his opinion on the relative positions of the states and national government created by the Constitution. The states, he assured readers, are sovereign and they retain that sovereignty under the provisions of the national Constitution. No clause or phrase of the Constitution may be accurately interpreted to enshrine the national government in a superior position to that of the state governments.

In *Federalist*, No. 46, Madison reasoned that "the federal and state governments are in fact but different agents and trustees of the people, instituted with different powers and designated for different purposes." He notes in the same paper that "the ultimate authority, wherever the derivative may be found, resides in the people alone." There is no more fixed expression of the intent of our Founders as to the locus of ultimate sovereignty in the United States.

Apart from his designation as the "Father of the Constitution," Madison may also rightly be called the "Father of Nullification." Madison and Thomas Jefferson united in their opposition to the expansion of the federal government's powers and gave expression to their stance in the Kentucky and Virginia Resolutions of 1798. The impetus for the drafting of these resolutions was the passage by the national government of the Alien and Sedition Acts.

The unvarnished aim of these laws was to squash political dissension and silence foes of the administration then in power. In the resolutions they penned and offered to the legislatures of Kentucky and Virginia, Madison and Jefferson insisted that American jurisprudence and principles of good government preserved to the states the constitutional and natural-law right to firmly resist federal encroachments into the realms of their own sovereignty, and further to void any acts of the national government they deemed unconstitutional.

Additionally, those state legislatures were justified in refusing to implement any congressional mandate not made in pursuance of the specifically enumerated powers granted Congress by the Constitution of the United States.

Finally, the *New York Times* warns: "Curbing Congress's power to impose conditions on the disbursement of federal money would upend settled precedent."

Constitutionalists hope so, but if not, that's not the end of the road that leads back to state sovereignty.