

The Constitutionality of the Medicaid Expansion: The Stealth Claim



The ACA's Medicaid Expansion

- Medicaid eligibility is generally dependent on age, disability, and family status – it does not cover childless adults without disabilities
- The ACA would have required states to cover all citizens with incomes up to 133 % of the Federal Poverty Level (FPL)
- This was expected to cover around 16 million individuals
- 100 % of the expansion would be paid for by the federal government until 2016, then 90%

Medicaid

- Medicaid is a joint/federal program authorized by the Spending Clause
- States receive federal dollars and are required to comply with federal requirements
- Since Medicaid was established in 1965, Congress has amended and expanded the program more than 50 times

The Spending Power

- Since the 1930s it has been established that Congress can attach conditions to money it gives the states
- *South Dakota v. Dole* (1987) established 4 requirements for conditional spending; it must promote the general welfare; the condition must be unambiguous; there must be a nexus between the condition and the money received; and the condition must not induce the states to do something otherwise unconstitutional
- But conditional spending cannot be unduly coercive so that states have no choice
- Until the ACA, the Court has never found a conditional spending program unconstitutionally coercive on the states.

The States' Claim

- The Medicaid expansion is unconstitutionally coercive because states risked losing *all* their Medicaid funds if they did not expand their program
- Medicaid is a very large percentage of state budgets; states can't risk losing it
- The very fact that the feds will pay 100% of the expansion makes it a deal too good to turn down, so there is no real choice
- No lower court found merit to the claim

The Supreme Court

- 7 Justices found that the expansion was unconstitutional: Roberts, Kennedy, Scalia, Alito, Thomas, Breyer and Kagan
- 4 Justices would have invalidated the entire Medicaid expansion
- Chief Justice Roberts joined by Justices Breyer and Kagan found that the expansion could go forward if read as optional for the states

The Court's Reasoning

- No majority opinion
- Chief Justice Roberts seemed to focus on two factors, the size of Medicaid, and the fact that in his view the expansion was qualitatively different than other expansions, transforming Medicaid in ways that states could not have foreseen they first signed on to Medicaid



- Justice Scalia, Kennedy, Thomas and Alito emphasized the financial impact of withdrawing from Medicaid on states; as well as the mandate (which will pressure states to find a way to cover their low income residents)

If States Refuse to Expand their Programs

- Low income residents may remain uninsured – persons with incomes under 100% FPL will not receive subsidies to purchase insurance on the exchanges
- Some of the uninsured could be subject to the mandate – though this may be waived
- Hospitals will have less funding to cover uncompensated care in the emergency room
- Congress may need to act

Broader Implications

- For the rest of Medicaid?
- For other federal conditional spending programs, e.g., IDEA, Unemployment Insurance, TANF, NCLB, the Rehabilitation Act, Title VI?
- For federal-state relations: will the federal government be forced to either federalize a program or simply provide block grants?