

The Supreme Court and the Future of Medicaid



TIMOTHY STOLTZFUS JOST
WASHINGTON AND LEE UNIVERSITY

Douglas v. Independent Living Center

132 S.Ct. 1204 (2012)



- Can Medicaid recipients and providers sue states for violation of federal Medicaid law under the Supremacy Clause?
- Specifically at issue, claim under 42 U.S.C. 1396a(a)(30)(A) which provides states must ensure that payment rates:
 - are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area
- Ninth Circuit had held Supremacy Clause suit permissible

Douglas



- Supreme Court vacated judgment and remanded in 5-4 decision
- Determined that intervening approval of state plan by HHS required further consideration by lower court
- Vigorous dissent by Roberts asserting no Supremacy Clause action permissible
- Supremacy Clause litigation lives to fight another day (perhaps)

Florida v. HHS



- Challenge to Affordable Care Act Medicaid expansion covering adults up to 138 percent of poverty
- 26 states claim that they are “coerced” into expansion under the threat of loss of all Medicaid funding
- Based on dicta in two earlier Supreme Court cases speculating that inducement to participate in a federal program:
 - “might be so coercive as to pass the point at which ‘pressure turns into compulsion.’”

Florida v. HHS



- No federal court has ever held a statute unconstitutional on this theory
- Theory rejected by both lower courts
- Problem for federal government is that ACA provides no other program for households below 100 percent of poverty
- Problem for states is that there is no limiting principle to their theory

Florida v HHS



- **Remedy: strike expansions or ACA or simply allow states to choose whether or not to expand**
- **Consequences if expansion barred**
 - For low-income families
 - For insurers
 - For providers
 - For federal programs

Sources



- **Rosenbaum, Suing States over Threatened Access to Care — The *Douglas* Decision**
 - New England Journal, April 12, 2012
 - <http://www.nejm.org/doi/full/10.1056/NEJMp1202223>
- **Jost, Is Medicaid Constitutional?**
 - New England Journal, April 18, 2012
 - <http://www.nejm.org/doi/full/10.1056/NEJMp1204347>