

# HealthBeat

## *Conservatives Boost State Objections to Medicaid Expansion in Court Briefs*

Jane Norman, CQ HealthBeat Associate Editor  
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A brief filed with the Supreme Court before oral arguments on the health care law likens states to drug addicts and the federal government to a "pusher" that provides the funds to feed their fix: their massive Medicaid programs.

The brief was filed by conservative legal groups and a Republican congressman in support of 26 states that oppose the law and are fighting it in court. The states contended in a brief filed Jan. 10 with the high court that the overhaul's Medicaid expansion amounts to unconstitutional coercion because states cannot decline to cover additional uninsured people without losing all their federal Medicaid money (See related story, CQ HealthBeat, Jan. 10, 2012).

This week, groups in line with that view were also allowed to tell the court what they think about the law's requirement that states add an estimated 16 million uninsured people to their Medicaid rolls. "You don't get much more arm twisting than this," said Timothy Sandefur, one of the authors of the brief and a lawyer with the Pacific Legal Foundation in Sacramento, Calif., who is involved with numerous legal challenges to the health care law (PL 111-148, PL 111-152).

Others signed on are Rep. Denny Rehberg, R-Mont.; the Center for Constitutional Jurisprudence, whose director, John Eastman, is the former dean of the Chapman University School of Law in Orange, Calif.; the **Cato Institute**, a libertarian think tank; and Kansas Lt. Gov. Jeff Colyer.

While the Medicaid issue was ignored at the appellate courts as challenges to the health care law made their way through the system, it was revived by U.S. Supreme Court justices, who ordered an hour of argument on the issue on March 28. That will be the third and final day of arguments on the constitutionality of the law.

The move is worrying advocates of the overhaul, who are concerned that if the expansion is thrown out, it could then unravel other attempts by the federal government to attach strings to federal funding, such as requiring that states pass seat belt laws or lose money (See related story, CQ Weekly, Nov. 21, 2011).

The conservative groups' brief says that states have become so dependent on federal money for Medicaid that "they are deprived of any real choice" when it comes to the Medicaid expansion authorized in the law. They can't decline the expansion without losing all of their federal Medicaid money and thus crippling their medical assistance efforts, the brief says.

"States are simply addicted to the existing federal spending, and, like any addict, they increasingly find themselves accepting any conditions that the federal government retroactively imposes in order to get continued access to the federal financial fix," the lawyers argue.

"And the government is the pusher who defends himself by claiming the user is a voluntary buyer. The first hit is always free, but the customers must keep coming back, sometimes doing unspeakable things just to get a fix," it adds.

States are "commandeered to do the federal government's bidding" in expanding their Medicaid program, the brief says, to an extent not seen before in other cases in which Congress attached strings to federal funding for states.

#### Economists' Brief

A second brief backing the states was filed by the American Action Fund and signed by 101 economists, including two Nobel Prize laureates and former senior government officials. "An expenditure of federal funds is unconstitutional when it coerces rather than merely encourages states to enact a federal policy," they say, and states are in "no realistic position" to give up their Medicaid money because they object to a federal policy.

Using 2009 figures, if states were suddenly forced to replace federal Medicaid money in their 2009 budgets, their total budgetary expenditures would leap by 22 percent, the economists say. "Nor are the states in a position simply to drop Medicaid coverage and allow their neediest residents to fend for themselves," they add. "The social, not to say political, costs of such a drastic change in the safety net of a state would plainly be unacceptable."

Those signing that brief include Douglas Holtz-Eakin, an economist and former director of the Congressional Budget Office, who is the head of the forum; Lawrence Lindsey, former director of the National Economic Council in the George W. Bush administration; and Arthur B. Laffer, who was the first chief economist in the Office of Management and Budget, under President Richard Nixon, and is generally known as the father of supply-side economics.

- From CQ Hot Docs: Brief from Center for Constitutional Jurisprudence and Others | Economists' Brief (pdfs)

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