Brief Of Amici Curiae Center For Constitutional Jurisprudence, Pacific Legal Foundation, CATO Institute, Congressman Denny Rehberg And Dr. Jeff Colyer in Support Of Petitioners

Florida v. U.S. Dep't of Health & Human Services

By: Cato Institute

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Cato's second Supreme Court amicus brief in the Obamacare litigation concerns the issue of whether the health care law's Medicaid expansion is a proper exercise of the Constitution's Spending Clause. That is, states must now accept a comprehensive reorganization of Medicaid or forfeit all federal Medicaid funding — even though the spending power is circumscribed to preserve a distinction between what is local and what is national. If Congress is allowed to attach conditions to spending that the states cannot refuse in order to achieve an objective it could not outright mandate, the local/national distinction that is so central to federalism will be erased. Joining the Center for Constitutional Jurisprudence, Pacific Legal Foundation, Rep. Denny Rehberg (chairman of the House Appropriations Subcommittee on Labor, Health & Human Services, Education, and Related Agencies), and Kansas Lt. Gov. Jeffrey Colyer (also a practicing physician), we argue that, in requiring states to accept onerous conditions on federal funds that it could not impose directly, the government has exceeded its enumerated powers and violated basic principles of federalism. California is at risk of losing $25.6 billion in annual federal funding, for example, and together the states stand to lose more than a quarter trillion dollars annually. On average, states would have to increase their general revenue budgets by almost 40% in order to maintain their current level of Medicaid funding. The 1987 case of South Dakota v. Dole, however, prohibits such a coercive use of the spending power and recognizes that "in some circumstances the

financial inducement offered by Congress might be so coercive as to pass the point at which 'pressure turns into compulsion.'" Indeed, the states' obligations, should they "choose" to accept federal funding and thus commit themselves to doing the government's bidding, are far more substantial than those the Supreme Court invalidated in New York v. United States and Printz v. United States (which prohibit federal "commandeering" of state officials). Moreover, the Congress that enacted the original Social Security Act, to which Medicare and Medicaid were added in the 1960s, recognized that social safety has always been the prerogative of the states and should continue to be done under state discretion. Medicaid itself was narrowly tailored to serve particularly needy groups. In short, if Obamacare does not cross the line from valid "inducement" to unconstitutional "coercion," nothing ever will. Just as the Commerce Clause is not an open-ended grant of power, the Spending Clause too has limits that must be enforced.