Supreme Court Hears Case Claiming "Cradle to Grave" Congressional Power

by Joe Wolverton, II, J.D. April 18 2013

Wednesday, April 17, the Supreme Court heard arguments in a case of extraordinary impact on the Constitution and the power of the federal government to control every aspect of citizens' lives. Not surprisingly, it's a case you've never heard of.

United States v. Kebodeaux is of such immeasurable importance that if the Obama administration is victorious, it will — perhaps irreversibly — accelerate the consolidation of all power in Washington, D.C. As one commentator observed, should the court decide in favor of the president, he will have "gained total power to rule the lives of US citizens from cradle to grave."

How is this usurpation accomplished? By way of the assumption by the federal government of powers reserved to the states, specifically that spectrum of authority over the individual known as "police power."

The Constitution as drafted and ratified by the states granted to the federal government a limited slate of powers (described by James Madison as "few and defined"), leaving the residue in the hands of the states.

Among the powers not delegated by the states to the federal government in the Constitution is the "general power of governing," that is to say "police power." This direct influence over the life, liberty, and property of citizens is reserved by the state governments.

There are, admittedly, a couple of exceptions. For example, Article I, Section 8 of the Constitution places the military and obviously federal property within the jurisdiction of the federal government. Also, the Interstate Commerce Act of 1887 expanded the scope of the federal government, including the addition of a few "police powers" formerly restricted to the states.

An example of the practical execution of this power is the array of state laws governing abortion, voting eligibility, marriage, etc. Notably, in recent years, the federal government has legislated in each of these areas.

Unfortunately, state legislatures have — perhaps unwittingly — participated in the centralization in Washington of all power. According to the facts of the creation of the Constitution and the explicit text of the 10th Amendment, states may rightfully reject any federal act that exceeds the narrow range of powers granted to it in the Constitution. However, the federal government has grown so powerful and the states proportionately have become so weak that the federal government can now unconstitutionally compel obedience to its many mandates by withholding billions in grant money and “matching funds” from insubordinate states.

One recent example cited in the report mentioned above is the clash that occurred when the National Highway Transportation and Safety Administration required that all cars be equipped with seat belts. Then, in an effort to force states to pass mandatory seat belt laws, the federal government offered grant money and highway improvement money. States that refused to toe the federal line were kept away from the federal trough.

Presently, the relationship between federal and state power has become so imbalanced that states are so dependent on federal funds that state lawmakers and governors are afraid to bite the hand that feeds them for fear of having to cut state programs that are nearly fully funded by the federal government.

As The New American has reported, every state depends in some degree on federal largesse for the bulk of their budget.

For example, in Wisconsin, nearly 33 percent of the state budget comes from Washington, D.C. In Florida, almost 37 percent of the budget is contributed by the federal government. In Ohio, the governor cashes checks from Congress that account for just shy of 39 percent of the Buckeye State's budget. Utah receives 31.5 percent of its state's funds from the feds, while Arizona’s state coffers are filled nearly 46 percent with federal money.

At the ends of the federal dependency spectrum are the states of Alaska at 24 percent and Mississippi at 49 percent.

Federal ascendancy will rocket toward absolutism should the Supreme Court rule against Anthony Kebodeaux.

A short case history will help one appreciate the historical significance of the federal power grab that would be strengthened by a favorable ruling. The follow procedural recitation is taken from Kebodeaux's brief in opposition to sending the case to the Supreme Court:

In 2006, Congress enacted the Sex Offender Registration and Notification Act (SORNA), which imposes registration requirements on those convicted of sex offenses under state or federal law. Both classes of offenders are subject to criminal penalties if they cross state lines to avoid registration. A federal offender, however, may be punished even without interstate travel. Kebodeaux is a federal offender by virtue of his 1999 military conviction for having consensual sex with a 15-year-old girl.

Additional background is provided by an Internet commentary on the case:

Between the years 1999-2006 Kebodeaux lived trouble free in Texas until he failed to register as a "sex offender" during a short move and a time of great personal upheaval in his life. The State of Texas had no interest in prosecuting him, but the same could not be said of the Bush regime.

Arrested by Federal police, not the State of Texas, in 2006, Kebodeaux was charged under a Federal law recently enacted, and 7 years after he had been unconditionally released. Though he was tried and convicted by a Federal jury, and served 1-year and 1-day in Federal prison, his conviction was overturned upon appeal by the US Court of Appeals for the Fifth Circuit, in a unanimous decision, who ruled his arrest and prosecution were unconstitutional.

Enter the Supreme Court. The high court agreed to hear the Obama administration's appeal of the Fifth Circuit Court's unanimous decision and has endowed itself, once again, as the ultimate arbiter of where to draw the line between state and federal authority.

If the federal government is successful in its appeal, the Supreme Court will "give Congress nearly limitless power," continuing the trend it supported in its decision in the ObamaCare case NFIB v. Sebelius.

Should the Supreme Court continue along the path they set out on in Sebelius, the Cato Institute warns in an amicus brief that “the government’s arguments [in Kebodeaux] would permit not just ‘unending criminal authority’ over Kebodeaux but unending authority over every American who was once in federal jurisdiction, which is, of course, every American.”

Furthermore, Cato’s argument written by Professor Ilya Somin of George Mason University School of Law explains the threat to liberty should the Supreme Court once again overturn a constitutionally sound ruling of a lower federal court. Somin writes:

Stripped to its essence, the government’s argument would ultimately allow perpetual jurisdiction over anyone merely because they were once subject to federal jurisdiction and are now deemed to be dangerous to the public. [Emphasis in original.]

Moreover, the government’s theory cannot be limited to past federal criminals. After all, anyone who was once under Congress’s jurisdiction for any reason may later pose a threat or an obstacle to a future congressional goal. To allow Congress to regulate any citizen who was ever in federal jurisdiction on this premise is to improperly give Congress a vast and unbounded power.

In a sense, the government’s theory treats federal jurisdiction like the Hotel California: You can enter any time, you may even be able to check out, [b]ut you can never leave.”

A decision on the Kebodeaux case is expected some time this summer. Regardless of the Supreme Court’s decision, the federal government will likely continue on its quest to consolidate all power and to assume control over every aspect of human existence. It is urgent, then, that states immediately begin to resist this frontal assault on freedom and become the bulwarks of liberty they are meant to be.