



NSCLC

National Senior Citizens Law Center

Protecting the Rights of Low-Income Older Adults

The National Senior Citizens Law Center is a non-profit organization whose principal mission is to protect the rights of low-income older adults. Through advocacy, litigation, and the education and counseling of local advocates, we seek to ensure the health and economic security of those with limited income and resources, and access to the courts for all. For more information, visit our Web site at www.NSCLC.org.

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SUPREME COURT 2012: What's at Stake?

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Pending Supreme Court Cases

1. *Florida v. HHS*, Nos. 11-393 & 11-400
2. *Douglas v. Independent Living Center of Southern California*, Nos. 09-958, 09-1158, & 10-283
3. *Arizona v. US*, No. 11-182
4. *Coleman v. Maryland Court of Appeals*, No. 10-1016

Florida v. HHS, Patient Protection and Affordable Care Act

Four issues:

1. Constitutionality of Minimum Coverage Provision
2. Constitutionality of Medicaid Expansion
3. Anti-Injunction Act
4. Severability

648 F.3d 1235 (11th Cir. 2011)

Minimum Coverage Provision (Individual Mandate)

- Penalty if don't have insurance
- Exemptions including for low-income and religious objections
- States claim Commerce Clause does not authorize Congress to regulate “inactivity” or compel individuals to “enter commerce.”
- US claims is within Congress' power to regulate commerce as well as necessary for prohibition on exclusions for pre-existing conditions

Minimum Coverage Provision What's at Stake?

- Affordable health care for people with pre-existing conditions
- Potential challenges to regulation of arguable “inactivity” – e.g., workplace discrimination, Superfund strict liability.
- Broad challenges based on asserted interference, by state and federal laws, with individual economic liberty.

Medicaid Expansion

- States participating in Medicaid required to expand eligibility to adults with income up to 138% of federal poverty level.
- Federal government initially covers 100% of costs through 2016, though only 90% after 2020.

Medicaid Expansion

- States claim is “coercive” because all Medicaid funds at stake and therefore forced to offer expanded benefits. States allege exceeds Congress’ Spending Clause power.
- US claims states free to withdraw from Medicaid and no more coercive than prior expansions of Medicaid.

Medicaid Expansion

What's at Stake?

- Medicaid benefits for estimated 15.9 million adults as of 2019
- Would jeopardize Congress' Spending Clause authority, e.g., Rehabilitation Act, aid to education, Title VI and Title IX.
- Could block changes in existing program conditions or block all conditions on large grants.

Anti-Injunction Act

- Prohibits pre-enforcement challenge to a tax.
- Is the penalty for failing to obtain minimum health insurance coverage a “tax” within meaning of AIA?
- Both federal government and Republican states argue AIA is inapplicable, 4th Circuit held it applicable.
- Would delay challenge to individual mandate at least until 2014.

Severability

- If the minimum coverage provision is found unconstitutional, is it severable?
- States claim is not severable, entire ACA should be struck down.
- US claims is intertwined with pre-existing conditions provisions but everything else severable.

Douglas v. ILC, Preemption to Enforce Medicaid Statute

- *Gonzaga University v. Doe*, 536 U.S. 273 (2002), requires “rights-creating language” to have a cause of action under 42 U.S.C. § 1983.
- *Verizon Maryland Inc. v. Public Service Commn.*, 535 U.S. 635 (2002), held there is federal question jurisdiction for a preemption claim in telecommunications context, dismissing argument that there was no cause of action.

Douglas v. ILC

- Unanimous acceptance in courts of appeals of preemption as an alternative to § 1983.
- Rochelle Bobroff, *Section 1983 and Preemption: Alternative Means of Court Access for Safety Net Statutes*, 10 Loy. J. of Pub. Int. L. 27 (2009).

Douglas v. ILC

- California passed law reducing payments to Medicaid providers by 10% to save money, not considering whether beneficiaries would have access to care.
- Suit alleged violation of Medicaid requirement for payments consistent with efficiency, economy, and quality of care, 42 U.S.C. § 1396a(a)(30)(A).

Douglas v. ILC

- Equal access provision could not be enforced under § 1983 (prior Ninth Circuit case) but Ninth Circuit held could be enforced under the Supremacy Clause with a preemption claim. 543 F.3d 1050 (9th Cir. 2008).

Douglas v. ILC

What's at Stake?

- If the Court holds there is no claim, Medicaid provisions that cannot be enforced under § 1983 would be unenforceable by beneficiaries and providers.
- Since federal government lacks resources or political will to enforce, the lack of private enforcement would give states enormous power to ignore federal requirements

Douglas v. ILC

What's at Stake?

- Other Medicaid provisions found enforceable under preemption include reasonable standards
- Preemption would be a tool for big business, but not for the poor.

Arizona v. US, preemption to invalidate state immigration law

- Arizona law targets undocumented immigrants, making it a crime to apply for a job, work, or even be in the state without documentation. Police allowed to stop or arrest individuals to determine documentation.
- US claims Arizona law is preempted by federal immigration law.
- Arizona claims its laws cooperate with federal law and are not preempted.

Arizona v. US

- Ninth Circuit held that the Arizona law was an obstacle to the purposes and objectives of federal law. 641 F.3d 339 (9th Cir. 2011).

Arizona v. US

What's at Stake?

- Rights of undocumented immigrants to work, live and travel in all states.
- Power of local officials to target immigrant populations.
- Potential impact on preemption of local practices that impede but don't expressly conflict with federal laws.

Coleman v. Maryland Court of Appeals, Self-Care Provision of Family and Medical Leave Act

- Supreme Court upheld abrogation for Family care provision of Family Medical Leave Act, based on heightened scrutiny for gender discrimination. *Nevada Department of Human Resources v. Hibbs*, 538 U.S. 721 (2003).
- Numerous courts of appeals held that self-care provision of FMLA does not validly abrogate immunity for claims by state employees

Coleman v. Maryland Court of Appeals

- Fourth circuit denied money damages for alleged violation of self-care provision. 626 F.3d 187 (4th Cir. 2010).
- Plaintiff argues self-care provision also intended to protect against gender discrimination

Coleman v. Maryland Court of Appeals, What's at Stake?

- Swing votes of Rehnquist and O'Connor in *Hibbs* might not hold sway. Could invite future challenges to the family care provision.
- Prospective relief not addressed in question presented but could be questioned in dicta
- Other good recent sovereign immunity cases could be weakened, e.g. *Tennessee v. Lane*, 541 U.S. 509 (2004), a 5:4 decision with only O'Connor as the swing.

Recent Supreme Court Decisions

- *CompuCredit Corp. v. Greenwood*, 132 S. Ct. 665 (2012). Statutory provision requiring notice of “right to sue” does not preclude enforcement of arbitration agreement. Only Ginsburg dissents.
- *National Meat Ass’n v. Harris*, 2012 WL 171119 (2012). Chamber of Commerce urged Court to explicitly reject presumption against preemption. Unanimous decision by Kagan does not mention presumption.

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