



August 2012

A Guide to the Supreme Court's Decision on the ACA's Medicaid Expansion

On June 28, 2012, the U.S. Supreme Court issued its decision in the case challenging the constitutionality of the Affordable Care Act (ACA), *National Federation of Independent Business (NFIB) v. Sebelius*.¹ Two main provisions of the 2010 health reform law were at issue. The Court upheld the constitutionality of the ACA's minimum essential coverage provision, known as the individual mandate, which requires most people to maintain a minimum level of health insurance coverage beginning in 2014.² The most complex part of the Court's decision concerned the ACA's Medicaid expansion: a majority of the Court found the ACA's Medicaid expansion unconstitutionally coercive of states because states did not have adequate notice to voluntarily consent to this change in the Medicaid program, and all of a state's existing federal Medicaid funds potentially were at risk for non-compliance. However, a different majority of the Court held that this issue was fully remedied by limiting the Health and Human Services (HHS) Secretary's enforcement authority, thus leaving the Medicaid expansion (and all other ACA provisions) intact in the law.

This policy brief examines the Court's ruling on the Medicaid expansion. A companion brief considers questions about implementation of the Medicaid-related provisions of the health reform law in light of the Court's decision.³

Background

The Medicaid Program

The Medicaid program provides health insurance coverage to people with low incomes. It is jointly funded by the federal and state governments. The share of federal matching funds that a state receives varies based on average per capita income and in 2012, ranges from 50% to 74.18% of a state's Medicaid costs.⁴ States are not required to participate in the Medicaid program, but all states currently do.

States that choose to participate in Medicaid have substantial discretion in determining whether to cover optional groups and benefits, how care is delivered, and how and what providers are paid. However, participating states must follow certain federal rules as a condition of receiving federal matching funds.⁵ When it first established the Medicaid program, Congress gave the HHS Secretary authority to enforce state compliance with federal Medicaid program rules by withholding all or a portion of a state's federal matching funds.⁶ Such a penalty can only be imposed after notice and the opportunity for a hearing and is subject to judicial review.⁷ The Secretary never has withheld a state's entire Medicaid grant as a penalty for noncompliance with federal requirements.

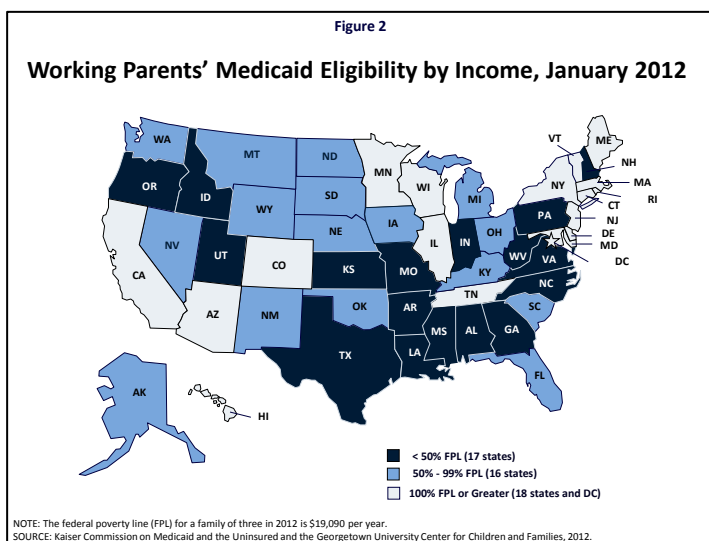
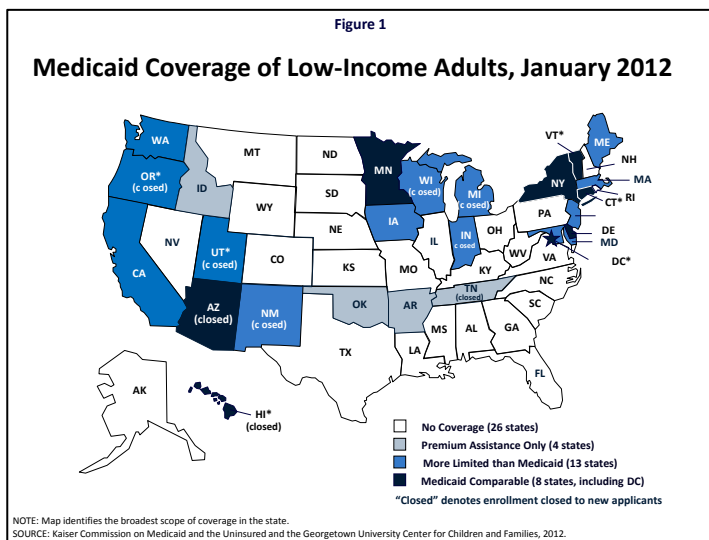
Since the program's enactment in 1965, federal Medicaid law has required participating states to cover certain groups of people, and Congress subsequently has expanded the mandatory coverage groups. Prior to the ACA, these mandatory coverage groups principally included pregnant women and children under age 6 with family incomes at or below 133% of the federal poverty level (FPL, \$30,657 per year for a family of four in 2012), children ages 6 through 18 with family incomes at or below 100% FPL (\$23,050 for a family of four in 2012), parents and caretaker relatives who meet the financial eligibility requirements for the former AFDC (cash assistance) program, and elderly people and people with disabilities who qualify for Supplemental Security Income (SSI) benefits based on their low income and resources.

Federal law prior to the ACA excluded from Medicaid coverage non-disabled, non-pregnant adults without dependent children, unless states obtained waivers to expand coverage. As of 2012, only 8 states provided full Medicaid benefits to these low-income adults, with some of these states establishing very low income thresholds and/or limiting the number of adults who may enroll (Figure 1).

Medicaid eligibility for working parents also is limited, with nearly two-thirds of states (33) restricting Medicaid eligibility to parents earning less than 100% FPL, and 17 states setting parent eligibility at less than half the federal poverty level in 2012 (Figure 2).⁸

The ACA's Medicaid Expansion

One of Congress' goals in enacting the ACA was to reduce the number of uninsured Americans by expanding access to affordable health insurance coverage. Congress sought to achieve this goal through a variety of means, building on the system of employer-sponsored coverage by adding insurance market reforms and the individual mandate, which requires most people to maintain minimum essential coverage or pay a penalty beginning in 2014.⁹ The ACA also establishes health insurance exchanges, which are new marketplaces that will be operable in 2014, where people can purchase qualified health plans and gain access to premium tax credits and cost-sharing subsidies. In addition, the ACA expands access to affordable coverage through its expansion of eligibility for Medicaid benefits.

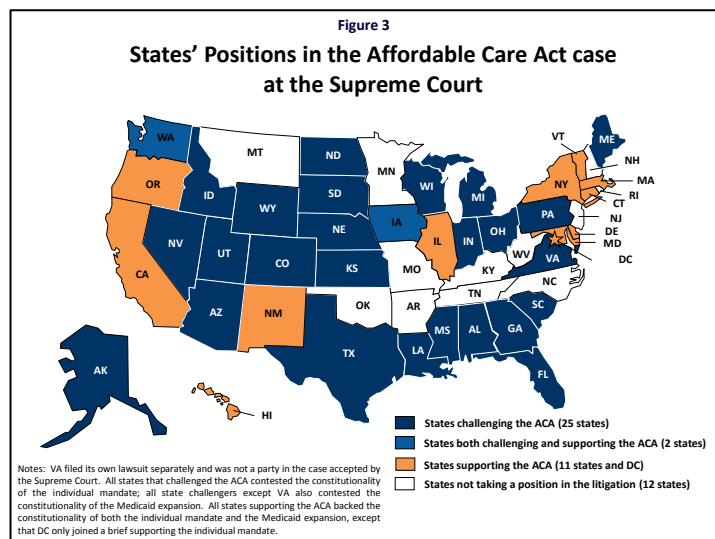


The ACA's Medicaid expansion requires that, beginning in 2014, participating states cover nearly all people under age 65, who are not pregnant, not entitled to Medicare, not described in an existing mandatory coverage group, and who have incomes at or below 138% FPL (\$15,415 per year for an individual in 2012).¹⁰ To fund this coverage expansion, the ACA provides that the federal government will fund 100% of most states' costs in 2014 through 2016, gradually decreasing to 90% in 2020 and thereafter.¹¹ The ACA also requires states to provide newly eligible Medicaid beneficiaries with a benchmark benefits package (which at state option may be the same as the state's traditional state plan benefits package), which must include the 10 categories of "essential health benefits" specified elsewhere in the ACA.¹²

Prior to the Court's decision, the Congressional Budget Office (CBO) estimated that the ACA's Medicaid expansion would cover 17 million uninsured low-income Americans by 2022. In July, 2012, the CBO revised that estimate to 11 million people, in light of the Court's decision.¹³

The Lawsuit Challenging the ACA's Medicaid Expansion

The constitutional challenge to the ACA's Medicaid expansion was filed by the state of Florida, joined by 25 other states, including Alabama, Alaska, Arizona, Colorado, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Maine, Michigan, Mississippi, Nebraska, Nevada, North Dakota, Ohio, Pennsylvania, South Carolina, South Dakota, Texas, Utah, Washington, Wisconsin, and Wyoming (Figure 3).¹⁴ Thirteen states, including California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maryland, Massachusetts, New Mexico, New York, Oregon, Vermont, and Washington, filed *amicus* ("friend of the court") briefs supporting the constitutionality of the Medicaid expansion. Two states, Iowa and Washington, were on both sides of the case, as their governors and attorneys general took opposite positions.



Congress' Authority to Place Conditions on Federal Grants to States

The challenge to the ACA's Medicaid expansion raised questions about the proper balance of power between the federal government and the states. The Constitution grants Congress certain enumerated powers, and when Congress acts within those power, its laws are supreme. All powers that are not specifically enumerated in the Constitution as belonging to the federal government remain with the states pursuant to the Tenth Amendment. If Congress oversteps by enacting a law that exceeds its powers, the Supreme Court has authority to declare the law invalid.

Congress' enumerated powers include its spending power. Article I, section 8 of the Constitution in pertinent part provides that "Congress shall have Power. . . [to] provide for the common Defense and general Welfare of the United States."

The Supreme Court has long recognized that Congress may attach conditions to the federal funds that it disburses to states under its spending power to ensure that funds are spent according to Congress' vision of the general welfare. This power has been interpreted broadly to allow Congress to achieve policy objectives that it could not attain by legislating directly through its enumerated powers. While such conditions can be viewed as extending into areas traditionally encompassed by the states' general police power to regulate the public's health, safety and welfare, at the same time, "states have traditionally been considered by courts to be [sovereign governments and therefore] relatively resistant to such coercion."¹⁵

Prior to *NFIB v. Sebelius*, the Court upheld Congress' power to fix the terms on which it disburses federal money to states as long as the condition satisfies four factors: it must be (1) related to the general welfare, (2) stated unambiguously, (3) clearly related to the program's purpose, and (4) not otherwise unconstitutional.¹⁶ In only two earlier cases, one in the 1930s, and another in the 1980s, the Court noted as an aside that there possibly could be a future case in which a financial inducement offered by Congress could pass the point at which permissible pressure on states to legislate according to Congress' policy objectives crosses the line and becomes unconstitutional coercion.¹⁷

The Supreme Court's Decision About the ACA's Medicaid Expansion

In *NFIB v. Sebelius*, the Court for the first time found that a federal condition on a grant to states was unconstitutionally coercive. This conclusion was reached by Chief Justice Roberts in an opinion joined by Justices Breyer and Kagan. The same conclusion also was reached in the unsigned dissenting opinion joined by Justices Scalia, Kennedy, Thomas, and Alito, yielding a seven justice majority. Justice Ginsburg, joined by Justice Sotomayor, disagreed with the majority view and found that the ACA's Medicaid expansion was a constitutional exercise of Congress' spending power.

The Court also split on the appropriate remedy for the unconstitutional coercion. On this issue, Chief Justice Roberts, along with Justices Breyer and Kagan, found that the Secretary's power to enforce state compliance with the ACA's Medicaid expansion should be constrained. Justice Ginsburg along with Justice Sotomayor agreed with this view, for a five justice majority. The four joint dissenters instead found that the entire ACA should be invalidated. The breakdown of the Court's votes on the ACA's Medicaid expansion is summarized in Table 1, and the Court's reasoning is explained below.

Table 1:
Supreme Court Votes on the ACA's Medicaid Expansion

Issue	Chief Justice Roberts	Justice Breyer	Justice Kagan	Justice Ginsburg	Justice Sotomayor	Justice Scalia	Justice Kennedy	Justice Thomas	Justice Alito
The ACA's Medicaid Expansion is Unconstitutionally Coercive (7:2)	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes
The Secretary's Enforcement Authority Should be Limited (5:4)	Yes	Yes	Yes	Yes	Yes	N/A	N/A	N/A	N/A
The Entire ACA Should be Invalidated (4:5)	No	No	No	No	No	Yes	Yes	Yes	Yes

The Medicaid Expansion is Unconstitutionally Coercive of States Because States Lacked Adequate Notice to Voluntarily Consent and the Secretary Could Withhold All Existing Medicaid Funds

In determining the constitutionality of the ACA's Medicaid expansion, the Court revisited the overarching question about the proper division of power between the federal government and the states when Congress exercises its spending power. All members of the Court agreed that Congress may offer grants to states and require states to comply with certain conditions in return. The Court disagreed, however, about the limits on the scope of Congress' power in this area. The differing views on this issue led to divergent conclusions about the constitutionality of the ACA's Medicaid expansion and its relationship to the rest of the Medicaid program. The three main opinions that comprise the Court's decision about the constitutionality of the Medicaid expansion are summarized in Table 2.

The Roberts Plurality

Chief Justice Roberts along with Justices Breyer and Kagan emphasized that states, as independent sovereigns, must have a "genuine choice"¹⁸ about whether to accept offers of federal funds that have conditions attached. If states do not have a true choice, according to the Roberts plurality, the federal government can achieve its policy objectives while remaining insulated from the political ramifications of its decisions.¹⁹ Chief Justice Roberts also cautioned that the legitimacy of federal conditions on grants to states rests on the states' knowing and voluntary acceptance of the terms; while Congress may use its spending power to create incentives for states to act in accordance with federal policies, Congress may not exert undue influence by compelling states' policy choices.²⁰ In addition, Chief Justice Roberts noted that Congress may not surprise states with post-acceptance or retroactive conditions.²¹ The Roberts plurality found that when conditions on the use of federal funds "take the form of threats to terminate other significant independent grants," as opposed to governing the use of the funds themselves, Congress has impermissibly pressured states to implement policy changes.²²

Applying these principles to the ACA's Medicaid expansion, the Roberts plurality found that Congress had unconstitutionally threatened non-compliant states with the loss of all of their existing Medicaid funds, which amounted to a "gun to the head."²³ While the threatened loss of five percent of federal

highway funds in an earlier case was only “mild encouragement” and therefore permissible, Chief Justice Roberts concluded that the threatened loss of all Medicaid funds, which constitute over 10% of a state’s overall budget, is “economic dragooning that leaves the States with no real option but to acquiesce in the Medicaid expansion.”²⁴ The Roberts plurality found the ACA’s enhanced federal matching funds to implement the Medicaid expansion irrelevant to its analysis, instead concluding that “‘your money or your life’ is a coercive proposition, whether you have a single dollar in your pocket or \$500.”²⁵ While concluding that the ACA’s Medicaid expansion is coercive, the Court did not establish the line where permissible persuasion gives way to impermissible coercion.²⁶

The Roberts plurality characterized the Medicaid expansion as a “shift in kind, not merely degree,” constituting an “element of a comprehensive national plan to provide universal health insurance coverage” rather than a program to cover only certain discrete categories of needy individuals.²⁷ Chief Justice Roberts noted that prior amendments to Medicaid altered and expanded the boundaries of the original coverage groups of people with disabilities, people who are blind, seniors, and needy families with dependent children, whereas the ACA’s Medicaid expansion reaches the “entire nonelderly population with income below 133 percent of the poverty level.”²⁸ The Roberts plurality used the ACA’s separate funding for the Medicaid expansion along with the requirement that states provide the expansion group with coverage that is “less comprehensive than the traditional Medicaid benefit package” to bolster its conclusion that the ACA’s Medicaid expansion transformed the nature of the program.²⁹

The Ginsburg Concurrence

Justice Ginsburg, along with Justice Sotomayor, disagreed and found that Congress’ spending power is appropriately constrained by the existing factors contained in the Court’s earlier decision that require spending clause conditions to be related to the general welfare, stated unambiguously, clearly related to the program’s purpose, and not otherwise unconstitutional.³⁰ In Justice Ginsburg’s view, federal spending clause grants to states are gifts, and rather than marginalizing states, such federal grants enable states to participate in the development and administration of spending clause programs.³¹

Justices Ginsburg and Sotomayor concluded that the ACA’s Medicaid expansion was not coercive because states had nearly four years’ notice of the change and had been on notice since 1965 that Congress reserved the right to amend the program.³² Justice Ginsburg noted that Congress had amended Medicaid more than 50 times since its enactment, with a trend of enlarging the population and services covered by the program.³³

In Justice Ginsburg’s view, the Medicaid program as amended by the ACA is not a new program but rather a “single program with a constant aim.”³⁴ It was created to provide medical assistance to needy people, and according to Justice Ginsburg, “[s]ingle adults earning no more than \$14,856 per year -- 133% of the current federal poverty level -- surely rank among the Nation’s poor.”³⁵ Justice Ginsburg noted that the ACA leaves the “vast majority” of the Medicaid Act unchanged – it “adds beneficiaries to the existing program and specifies the rate at which States will be reimbursed for services provided to the added beneficiaries.”³⁶

The Joint Dissent

In their joint dissent, Justices Scalia, Kennedy, Thomas, and Alito stressed that the “legitimacy of attaching conditions to federal grants to the States depends on the voluntariness of the States’ choice to accept or decline the offered package.”³⁷ According to this group, while Congress may encourage states to regulate in a certain manner, Congress may not compel states to do so because political accountability would be threatened.³⁸ Like the Roberts plurality, the joint dissent notes that Congress is prohibited from directly “commandeer[ing] the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program,” and Congress should not be able to effectively accomplish the same goal by coercing states to participate in federal spending programs.³⁹

Turning to the ACA’s Medicaid expansion, the joint dissenters concluded that denying non-consenting states all Medicaid funding was unconstitutionally coercive.⁴⁰ The joint dissenters observed that the “sheer size” of the Medicaid program means that a state “would be very hard pressed to compensate for the loss of federal funds by cutting other spending or raising additional revenue” to create and fund its own program.⁴¹ They also found that the fact that Congress provided no “backup scheme” to cover people with incomes below the poverty line demonstrated that Congress believed states had no choice about whether to expand their Medicaid programs.⁴² Like the Roberts plurality, the joint dissent does not draw a line between permissible persuasion and impermissible coercion, but the joint dissent does emphasize how the size of the overall Medicaid program and the potential “severe sanction” of losing all existing funds for failing to implement the ACA’s expansion make this case distinctive.⁴³

Like the Roberts plurality, the joint dissenters concluded that the ACA’s Medicaid expansion changed the program from one that covered only members of a limited list of vulnerable groups into one that provides at least the requisite minimum level of coverage for all poor people.⁴⁴

Table 2:
Summary of Supreme Court Opinions on the Constitutionality of the ACA's Medicaid Expansion

What is the proper scope of Congress' power in relation to the states under the Spending Clause?	Congress may offer states grants and require states to comply with accompanying conditions, but states, as independent sovereigns, must have a genuine choice about whether to accept such offers. When a state has no choice, the federal government can achieve its policy objectives while remaining insulated from the political ramifications of its decisions. Congress may not surprise participating states with post-acceptance or retroactive conditions. When conditions on the use of federal funds take the form of threats to terminate other significant independent grants, they impermissibly pressure states to accept policy changes.	The proper scope of Congress' spending power is defined by the 4 pre-existing factors which require spending clause conditions to be related to the general welfare, stated unambiguously, clearly related to the program's purpose, and not otherwise constitutional. The Court has never before invalidated a spending clause condition as unconstitutionally coercive of states. Spending clause grants to states are gifts. The alternative to conditional federal spending is not state autonomy but state marginalization through the establishment of exclusively federal programs without the opportunity for states to participate.	The legitimacy of attaching conditions to federal grants to states depends on the voluntariness of the states' choice to accept or decline the offered package. Theoretical voluntariness is not enough. If states really have no choice other than to accept the package, the offer is coercive. The Constitution has never been understood to require states to govern according to Congress' instructions. Where all Congress has done is to encourage state regulation rather than to compel it, state governments remain accountable to the local electorate. But where the federal government compels states to regulate, the accountability of both state and federal officials is diminished.
Is the ACA's Medicaid expansion coercive of states?	Yes. The ACA's Medicaid expansion violates the Constitution by threatening existing Medicaid funding. States have no choice because they must either accept a basic change in the nature of Medicaid or risk losing all Medicaid funding.	No. The ACA's Medicaid expansion does not take effect until 2014, and states have been on notice since 1965 that Congress reserved right to alter, amend or repeal the program. Congress has amended the Medicaid program on more than 50 occasions, with enlargement of the population and services covered by Medicaid as the trend.	Yes. The ACA's Medicaid expansion exceeds federal power in denying non-consenting states all Medicaid funding. The sheer size of Medicaid in relation to state expenditures means that a state would be very hard pressed to compensate for the loss of federal funds by cutting other spending or raising additional revenue to create and fund its own program. In addition, Congress provided no backup insurance scheme for individuals with incomes below FPL.
Is the ACA's Medicaid expansion different from the existing Medicaid program and its prior expansions?	Yes. The ACA dramatically increases state obligations under Medicaid by requiring coverage of all individuals under age 65 with incomes up to 133% FPL by 2014, whereas the current program requires coverage of only certain discrete categories of needy individuals. The Medicaid expansion is a shift in kind, not merely in degree – it is no longer a program to care for the neediest but rather an element of a comprehensive national plan to provide universal health insurance coverage.	No. The Medicaid program as amended by the ACA is a single program with a constant aim: Medicaid was created to enable states to provide medical assistance to needy persons. By bringing health care within reach of a larger population of Americans unable to afford it, the ACA's Medicaid expansion is an extension of that basic aim. Single adults earning no more than \$14,856 (133% FPL) surely rank among the nation's poor.	Yes. Congress expanded Medicaid, transforming it from a program covering only members of a limited list of vulnerable groups into a program that provides at least the minimum level of coverage for the poor required to satisfy the ACA's individual mandate.

The Unconstitutionality of the Medicaid Expansion is Fully Remedied By Circumscribing the Secretary's Enforcement Authority, Allowing the Medicaid Expansion to Survive in the ACA

After a majority of the Court determined that the ACA's Medicaid expansion is unconstitutionally coercive of states, the Court considered the appropriate remedy. Here a different majority emerged, which allowed the ACA's Medicaid expansion to remain in the law, with the Secretary's power to enforce state compliance with the Medicaid expansion circumscribed. The three main opinions that comprise the Court's decision about the remedy are summarized in Table 3.

The Roberts Plurality

Having concluded that the ACA's Medicaid expansion is unconstitutionally coercive of states, the Roberts plurality determined that the constitutional violation is "fully remedi[ed]" by prohibiting the Secretary from withdrawing existing Medicaid funds for a state's failure to comply with the ACA's Medicaid expansion.⁴⁵ However, the Secretary may withhold ACA expansion funds if states that choose to participate in the expansion fail to meet its requirements.⁴⁶

The Roberts plurality noted that "nothing in [the Court's decision] precludes Congress from offering funds under the [ACA] to expand [Medicaid] and requiring that States accepting such funds comply with the conditions on their use."⁴⁷ The result of the remedy fashioned by the Roberts plurality means that all provisions of the ACA, including the Medicaid expansion, remain in effect as written by Congress.⁴⁸ In addition, other than the limitation on the Secretary's ability to enforce compliance with the ACA's Medicaid expansion, the remainder of the Medicaid Act is unaffected, and the Secretary retains her present authority to withhold existing program funds to enforce state compliance with the existing program.⁴⁹

The Ginsburg Concurrence

While Justice Ginsburg disagreed that the ACA's Medicaid expansion is unconstitutionally coercive, she agreed with the Roberts plurality about the appropriate remedy given that a majority of the Court accepted the argument that "prospective withholding of funds formerly available exceeds Congress' spending power."⁵⁰ Justice Ginsburg noted that the limitation on the Secretary's enforcement authority imposed by the Court means that the ACA's Medicaid expansion "remains available to any State that affirms its willingness to participate."⁵¹ She also observed that the Court's decision "does not strike down any provision of the ACA," that the ACA's enhanced federal funding for the Medicaid expansion "remains intact," and that the "Secretary's authority to withhold funds for reasons other than non-compliance with the [ACA's Medicaid] expansion remains unaffected."⁵²

The Joint Dissent

The four dissenting justices would have imposed a different remedy for the Court's conclusion that the ACA's Medicaid expansion is unconstitutional. The joint dissenters found that the ACA's Medicaid expansion is "central to [the law's] design and operation, and all the Act's other provisions would not have been enacted without" it (and the individual mandate, which the joint dissenters also found

unconstitutional on all grounds).⁵³ Consequently, the joint dissent would have invalidated the entire ACA.⁵⁴ The dissenters criticize the majority's remedy as improperly writing a new law and replacing the one drafted by Congress.⁵⁵

Table 3:
Summary of Supreme Court Opinions on the Appropriate Remedy for the Unconstitutional Coercion of the ACA's Medicaid Expansion

Issue	Chief Justice Roberts joined by Justices Breyer and Kagan	Justice Ginsburg joined by Justice Sotomayor	Joint dissent of Justices Scalia, Kennedy, Thomas, and Alito
What is the appropriate remedy for the ACA's Medicaid expansion's unconstitutional coercion?	Congress may offer funds to states to expand Medicaid and require states accepting such funds to comply with conditions on their use. Congress may not penalize states that choose not to participate in the new program by taking away existing Medicaid funds. The constitutional violation is fully remedied by prohibiting the Secretary from withdrawing existing Medicaid funds for a state's failure to comply with the requirements of the ACA's Medicaid expansion. The Secretary may withhold ACA expansion funds if states that choose to participate in the expansion fail to comply with its requirements.	Given that a majority of the Court buys the argument that prospective withholding of federal funds formerly available exceeds Congress' spending power, the appropriate remedy is to bar the impermissible withholding. Congress' extension of Medicaid through the ACA remains available to any state that affirms its willingness to participate. The Court prohibits the application of the Secretary's authority to withhold existing Medicaid funds from states that decline to conform their Medicaid plans to the ACA's requirements.	The Medicaid expansion is central to the ACA's design and operation, and all the ACA's other provisions would not have been enacted without it (and the individual mandate). It must follow that the entire statute is inoperable.
What is the effect on the rest of the ACA?	The remainder of the ACA is unaffected, as is the rest of the Medicaid Act.	The Court does not strike down any portion of the ACA. The ACA's authorization of funds to finance the Medicaid expansion remains intact.	The entire ACA should be invalidated.
What is the effect on the Secretary's authority to enforce state compliance with existing Medicaid provisions?	The Court's decision does not affect the Secretary's authority to withhold existing program funds to enforce state compliance with the existing Medicaid program.	The Secretary's authority to withhold federal Medicaid funds for reasons other than noncompliance with the ACA's Medicaid expansion remains unaffected.	Not addressed.

Looking Ahead

The Supreme Court's decision about Medicaid expansion did not strike down any provision of the ACA. The ACA's expansion group continues to exist in the law as written by Congress, as a new mandatory coverage group beginning in 2014. However, the practical effect of the Court's decision makes the ACA's Medicaid expansion optional for states because, if states do not implement the expansion, states can lose only ACA Medicaid expansion funds. The Court ruled that the Secretary may not withhold all or part of a state's matching funds for the rest of the Medicaid program if a state does not implement the expansion.

The Court's decision did not disturb other Medicaid-related provisions of the ACA. The decision also leaves intact the existing Medicaid program and the Secretary's long-standing authority to withhold all or a portion of a state's federal Medicaid funds for non-compliance with existing federal program rules.

Now that the constitutionality of the ACA's Medicaid expansion has been settled by the Supreme Court, implementation of health reform continues to proceed. As states move toward 2014, a number of questions about implementation of the Medicaid-related provisions of the ACA have arisen in light of the Court's decision, which are the subject of a companion brief.⁵⁶

This policy brief was prepared by MaryBeth Musumeci of the Kaiser Family Foundation's Commission on Medicaid and the Uninsured.

Endnotes

¹ 567 U.S. ____ (2012), available at <http://www.supremecourt.gov/opinions/11pdf/11-393c3a2.pdf>.

² For a general discussion of the Court's decision, see Kaiser Family Foundation, *A Guide to the Supreme Court's Affordable Care Act Decision* (July 2012), available at <http://www.kff.org/healthreform/8332.cfm>.

³ Kaiser Family Foundation, *Implementing the ACA's Medicaid-Related Health Reform Provisions After the Supreme Court's Decision* (Aug. 2012), available at <http://www.kff.org/medicaid/8346.cfm>.

⁴ Kaiser Commission on Medicaid and the Uninsured, *An Overview of Changes in the Federal Medical Assistance Percentages (FMAP) for Medicaid* (July, 2011), available at <http://www.kff.org/medicaid/8210.cfm>.

⁵ For more information about the Medicaid program's required and optional elements, see Kaiser Commission on Medicaid and the Uninsured, *Federal Core Requirements and State Options in Medicaid: Current Policies and Key Issues* (April 2011), available at <http://www.kff.org/medicaid/8174.cfm>.

⁶ 42 U.S.C. § 1396c.

⁷ 42 C.F.R. § 430.38.

⁸ Kaiser Commission on Medicaid and the Uninsured and Georgetown University Center for Children and Families, *Performing Under Pressure: Annual Findings of a 50-State Survey of Eligibility, Enrollment, Renewal and Cost-Sharing Policies in Medicaid and CHIP, 2011-2012* (Jan. 2012), available at <http://www.kff.org/medicaid/8272.cfm>.

⁹ People exempt from the individual mandate include undocumented immigrants, religious objectors, and people who are incarcerated. People exempt from the mandate's financial penalty include people for whom annual insurance premiums exceed 8% of household adjusted gross income, members of American Indian tribes, people who receive financial hardship waivers, people with incomes below the federal income tax filing threshold, and people who lack insurance for less than three months during a year. Almost 9 in 10 non-elderly people in 2014 would either satisfy the mandate automatically, because they already are insured, or be exempt from it. Kaiser Family Foundation, Health Reform Source, Notes on Health Insurance and Reform, *The Individual Mandate: How Sweeping?* (March 21, 2012), available at <http://healthreform.kff.org/notes-on-health-insurance-and-reform.aspx?source=QL&page=1>.

¹⁰ ACA § 2001(a)(1), codified at 42 U.S.C. § 1396a(a)(10)(A)(i)(VIII). The ACA expands coverage to 133% FPL and also provides for an income disregard of 5% FPL, effectively extending eligibility for the Medicaid expansion group to 138% FPL (\$15,415 for an individual and \$31,809 for a family of four in 2012). ACA § 2002(a), adding 42 U.S.C. § 1396a(e)(14)(I).

¹¹ For states that were covering childless adults at their existing federal matching rates prior to March 23, 2010, the ACA phases in an increase in the federal matching rate so that federal matching rates for this population will equal the rate for the newly eligible Medicaid expansion population at 93% in 2019 and 90% in 2020 and prospectively. Kaiser Commission on Medicaid and the Uninsured, *Medicaid Coverage and Spending in Health Reform: National and State-by-State Results for Adults at or Below 133% FPL* (May 2010), available at <http://www.kff.org/healthreform/8076.cfm>.

¹² Certain people are exempt from mandatory enrollment in benchmark coverage and must receive the Medicaid state plan benefits package. See Kaiser Family Foundation, *Explaining Health Reform: Benefits and Cost-Sharing for Adult Medicaid Beneficiaries* (Aug. 2010), available at <http://www.kff.org/healthreform/8092.cfm>; see also 42 C.F.R. § 440.330(d); CMS, *Frequently Asked Questions on Essential Health Benefits Bulletin*, available at <http://cciio.cms.gov/resources/files/Files2/02172012/ehb-faq-508.pdf>.

¹³ Congressional Budget Office, *Estimates for the Insurance Coverage Provisions of the Affordable Care Act Updated for the Recent Supreme Court Decision* (July 2012), available at <http://www.cbo.gov/sites/default/files/cbofiles/attachments/43472-07-24-2012-CoverageEstimates.pdf>.

¹⁴ The case was filed as *Florida v. HHS*, and subsequently combined with *NFIB v. Sebelius*. Separately, Virginia filed its own lawsuit challenging the ACA's individual mandate but not the Medicaid expansion. The Supreme Court did not agree to hear Virginia's case.

¹⁵ Kenneth R. Thomas, Congressional Research Service, *Federalism Challenge to Medicaid Expansion Under the Affordable Care Act: Florida v. Department of Health and Human Services* at 6 (Feb. 21, 2012); see also I. Glenn Cohen and James F. Blumstein, "The Constitutionality of the ACA's Medicaid Expansion Mandate," *The New England Journal of Medicine* (Jan. 12, 2012) (recognizing that Congress' spending power is broad).

¹⁶ *South Dakota v. Dole*, 483 U.S. 203 (1987).

¹⁷ *Id.*; *Steward Machine Co. v. Davis*, 301 U.S. 548 (1937).

¹⁸ *NFIB v. Sebelius*, 567 U.S. ___, Roberts, C.J., slip opin. at 57 (2012).

¹⁹ *Id.* at 48.

²⁰ *Id.* at 47.

²¹ *Id.* at 54.

²² *Id.* at 50.

²³ *Id.* at 51.

²⁴ *Id.* at 51, 52.

²⁵ *Id.* at 52, n.12.

²⁶ *Id.* at 55.

²⁷ *Id.* at 53.

²⁸ *Id.* The ACA expands Medicaid up to 133% FPL and also includes a 5% FPL income disregard, effectively expanding eligibility to 138% FPL. ACA § 2002(a), adding 42 U.S.C. § 1396a(e)(14)(I).

²⁹ *Id.* at 54.

³⁰ *Id.*, Ginsburg, J., slip opin. at 46.

³¹ *Id.* at 44.

³² *Id.* at 54.

³³ *Id.* at 41.

³⁴ *Id.* at 39.

³⁵ *Id.* at 50. The ACA expands Medicaid up to 133% FPL and also includes a 5% FPL income disregard, effectively expanding eligibility to 138% FPL. ACA § 2002(a), adding 42 U.S.C. § 1396a(e)(14)(I).

³⁶ *Id.* at 49.

³⁷ *Id.*, Joint Dissent, slip opin. at 35.

³⁸ *Id.* at 34-35.

³⁹ *Id.* at 34.

⁴⁰ *Id.* at 38, 40.

⁴¹ *Id.* at 40.

⁴² *Id.* at 43-44.

⁴³ *Id.* at 38-42.

⁴⁴ *Id.* at 38-39.

⁴⁵ *Id.*, Roberts, C.J., slip opin. at 56.

⁴⁶ *Id.*

⁴⁷ *Id.* at 55.

⁴⁸ *Id.* at 58.

⁴⁹ *Id.* at 56.

⁵⁰ *Id.*, Ginsburg, J., slip opin. at 40.

⁵¹ *Id.* at 41.

⁵² *Id.* at 60-61.

⁵³ *Id.*, Joint Dissent, slip opin. at 3.

⁵⁴ *Id.* at 49.

⁵⁵ *Id.* at 48.

⁵⁶ Kaiser Family Foundation, *Implementing the ACA's Medicaid-Related Health Reform Provisions After the Supreme Court's Decision* (Aug. 2012), available at <http://www.kff.org/healthreform/8348.cfm>.

This publication (#8347) is available on the Kaiser Family Foundation's website at www.kff.org.