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Issue Brief

Update on Private Enforcement of the Medicaid Act Pursuant to 42 U.S.C. § 1983

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Medicaid recipients and applicants may be harmed when state Medicaid officials do not comply with the requirements of the Medicaid Act, 42 U.S.C. §§ 1396-1396v. These individuals may file suit in court to obtain injunctive relief. Traditionally, Medicaid recipients have enforced the provisions of the Medicaid Act pursuant to a civil rights statute, 42 U.S.C. § 1983 ("§ 1983").[2] More recently and as discussed below, the ability to use § 1983 to enforce Medicaid provisions has been narrowed, and plaintiffs have turned to long-standing constitutional precedents allowing them to rely on the Supremacy Clause of the Constitution to obtain relief under a preemption claim.[3] Currently, the U.S. Supreme Court is considering whether individuals and providers may maintain a cause of action under the Supremacy Clause to enforce a provision of the Medicaid Act, § 1396a(a)(30)(A), which requires states to establish adequate payment rates for participating providers.[4]

While attention has been focusing on the preemption arguments, carefully constructed cases remain viable under § 1983. This Fact Sheet will provide brief background and discuss trends affecting private enforcement of the Medicaid Act under § 1983.[5]

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[2] The text of § 1983 reads: "Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

[3] *See, e.g.*, *Dalton v. Little Rock Family Planning Servs.*, 516 U.S. 474 (1996); *Maxwell-Jolly v. Indep. Living Ctr. of S. Cal.*, 572 F.3d 644 (9th Cir. 2009); *Lankford v. Sherman*, 451 F.3d 496 (8th Cir. 2006).

[4] For further discussion, see Sarah Somers, *Supreme Court Grants Review of Medicaid Cases*, National Health Law Program (Jan. 2011) (discussing *Douglas v. Indep. Living Ctr. of S. Cal.*, _ S.Ct._, No. 09-958 (Jan. 18, 2011), and related cases now before the Court) (available from TASC or NHeLP).

[5] For additional background from NHeLP, *see, e.g.,* Jane Perkins, *Developments Affecting Medicaid Cases Filed Under Section 1983*, National Health Law Program (Dec. 2008); *Trends in Medicaid Enforcement Pursuant to Section 1983*, National Health Law Program (Nov. 2007); Jane Perkins, *Using Section 1983 to Enforce Federal Laws,* 38 CLEARINGHOUSE REV. J. OF POVERTY L. AND POL. 720 (Mar.-Apr. 2005); John Vail and Jane Perkins, *Chipping at the Core of* Justice, 40 TRIAL 28 (Apr. 2004) (hereafter *Chipping at the Core)*; Jane Perkins, National Health Law Program, *Q&A: Gonzaga University v. Doe* (July 5, 2002). These materials are available from TASC or NHeLP.

Background

At the time of our Nation's founding, the constitutional framers worked against the backdrop of English laws and principles. Among these was the "invariable principle . . . that every right, when withheld, must have a remedy, and every injury its proper redress."[6] The Supreme Court's landmark decision, *Marbury v. Madison,* reflects this notion, stating that "the very essence of civil liberty" is the "right of every individual to claim the protection of the law, whenever he receives an injury. One of the first duties of government is to afford that protection."[7]

Over the years, private individuals have gone to court to obtain prospective injunctive relief when they are being harmed by state actions that are inconsistent with federal law. Some of these federal laws were enacted by Congress pursuant to the Spending Clause of the Constitution, and they make federal funding available to states that agree to operate the funded programs consistent with the requirements of the federal law.[8] The Social Security Act, of which Medicaid is a part, is an example of a Spending Clause enactment. When it added Medicaid to the Social Security Act in 1965, Congress did not include a provision authorizing individuals to enforce the Act in federal court. But in enacting Medicaid, as with other public benefits programs, Congress acted with the understanding that courts would "provide such remedies as are necessary to make effective the congressional purpose."[9] For example, in *King v. Smith*, the Court allowed welfare recipients to enforce the "reasonable promptness" provision of the Social Security Act's welfare law pursuant to § 1983.[10] In *Maine v. Thiboutot*, a 6-3 ruling, the Court again addressed enforcement under § 1983 and held that "the phrase 'and laws' means what it says" and, thus, § 1983 enforcement applies not only to constitutional rights but also to rights defined in federal statutes.[11]

Subsequently, however, the Court cautioned that § 1983 actions require the plaintiff to assert a violation of a federal "right," not merely a violation of federal law.[12] The Supreme

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[6] *Chipping at the Core, supra* note 5 (quoting William Blackstone, Commentaries on the Laws of England 109 (1765)).

[7] *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803).

[8] *See* U.S. Const., art. I, § 8, cl. 1.

[9] *J.I. Case Co. v. Borak*, 377 U.S. 426, 433 (1964). *See, e.g.*, *supra* notes 2-5 and accompanying text. *But see Alexander v. Sandoval*, 532 U.S. 275, 287 (2001) (finding that understanding to have been abandoned and noting that "[h]aving sworn off the habit of venturing beyond Congress's intent, we will not accept respondent's invitation to have one last drink.").

[10] 392 U.S. 309 (1968) ("There is of course no question that the Federal Government, unless barred by some controlling constitutional prohibition, may impose the terms and conditions upon which its money allotments to the States shall be disbursed, and that any state law or regulation inconsistent with such federal terms and conditions is to that extent invalid."); *see also, e.g.*, *Edelman v. Jordan*, 415 U.S. 651, 675 (1974) ("Suits in federal court under Section 1983 are proper to secure compliance with the provisions of the Social Security Act on the part of participating states."); *Rosado v. Wyman*, 397 U.S. 397, 421-22 (1970) ("We are most reluctant to assume Congress has closed the avenue of effective judicial review to those individuals most directly affected by the administration of its program . . . . [W]e find not the slightest indication that Congress meant to deprive federal courts of their traditional jurisdiction to hear and decide federal questions in this field.").

[11] 448 U.S. 1, 6-8 (1980) (enforcing a Social Security Act provision). *See also*, *e.g.*, *Wilder v. Va. Hosp. Ass'n*, 496 U.S. 498 (1990) (allowing private enforcement of a Medicaid Act provision concerning payment for institutional services). *But cf.* Brief for the United States as Amicus Curiae Supporting Petitioners, Wilder v. Virginia Hosp. Ass'n, 498 U.S. 496 (1990) (No. 88-2043) (Deputy Solicitor General John Roberts arguing *Pennhurst* precluded enforcement under § 1983).

[12] *Golden State Transit Corp. v. City of L.A.*, 493 U.S. 103, 106 (1989). *See also Blessing v. Freestone*, 520 U.S. 329, 340 (1997) (citing *Golden State Transit*).

Court has announced a three-prong test for lower courts to use to determine whether a federal law creates a federal right: (1) Was the federal provision in question intended to benefit the plaintiff; (2) Does the provision contain sufficiently specific language so that a court knows what to enforce; and (3) Does the provision create a binding obligation on the state?[13] If these questions are answered affirmatively, there is a presumption that the plaintiff can enforce the provision. The defendant can overcome the presumption by showing that Congress has foreclosed enforcement through § 1983, expressly or by including a comprehensive remedial scheme in the substantive federal law.[14] The Supreme Court has explicitly held that the Medicaid Act does not include such a remedial scheme.[15]

Over the years, lower courts applied this three-prong test, finding some federal laws created federal rights and were therefore judicially enforceable while others did not. Despite this history, recent Supreme Court Justices have been reluctant to allow private individuals to enforce spending clause enactments. One year after *Maine v. Thiboutot* (and Justice Marshall's departure), the Court began cutting back the right to private enforcement in *Pennhurst State School & Hospital v. Halderman*.[16] While the decision concerned the Developmentally Disabled Assistance and Bill of Rights Act, which is not part of the Social Security Act, Justice Rehnquist's majority opinion equated legislation enacted pursuant to the Spending Clause to a contract between the federal government and the states with the typical remedy for state noncompliance being an action by the federal government to terminate funding.[17] Justice Scalia subsequently cited Rehnquist's contract analogy in his concurrence in *Blessing v. Freestone*, musing that like a third-party beneficiary to a contract, a Medicaid beneficiary is a "stranger" to a contract and therefore should not be able to sue upon it.[18]

In 2002, the Rehnquist Court issued *Gonzaga Univ. v. Doe* to clarify and tighten the enforcement test.[19] Writing for the majority, Chief Justice Rehnquist initially noted that *Gonzaga* involved a Spending Clause enactment.[20] Citing *Pennhurst*, he explained that spending clause programs are similar to contracts, with the typical remedy for a violation being termination of funding by the federal agency.[21] The *Gonzaga* Court then held that a

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[13] *E.g. Blessing*, 520 U.S. at 341-42.

[14] *Id.* at 341 ("Even if a plaintiff demonstrates that a federal statute creates an individual right, there is only a rebuttable presumption that the right is enforceable under § 1983. Because our inquiry focuses on congressional intent, dismissal is proper if Congress 'specifically foreclosed a remedy under § 1983.'" (quoting Smith v. Robinson, 468 U.S. 992, 1005 n. 9 (1984)).

[15] *See Wilder v. Virginia Hosp. Ass'n*, 496 U.S. 498, 521 (1990) ("The Medicaid Act contains no . . . provision for private judicial or administrative enforcement."); *see also City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 121-22 (2005) (citing *Wilder* and including Medicaid in a list of statutes whose enforcement is not foreclosed).

[16] 451 U.S. 1 (1981).

[17] *Id.* at 17, 28 ("[L]egislation enacted pursuant to the spending power is much in the nature of a contract: in return for federal funds, the States agree to comply with federally imposed conditions…. Accordingly, if Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously…. In legislation enacted pursuant to the spending power, the typical remedy for state noncompliance with federally imposed conditions is not a private cause of action for noncompliance but rather action by the Federal Government to terminate funds to the State.").

[18] 520 U.S. at 349 (Scalia, J. concurring). Justice Scalia pointed out that his assertions could not be confirmed "without further consideration." *Id.* at 350.

[19] 536 U.S. 273 (2002) (refusing to allow § 1983 enforcement of a Federal Education Rights and Privacy Act provision that prohibited federal funding to any entity with a policy or practice of permitting the release of private records without written consent of the student/parent).

[20] *Id.* at 279.

[21] *Id.* at 280.

federal law is not privately enforceable unless Congress has unambiguously manifested its intent to confer individual rights on the plaintiff.[22] Moreover, this initial inquiry into whether a statute creates a federal right under § 1983 "is no different from the initial inquiry in an implied right of action case."[23] Thus, the provision must contain "rights- or duty-creating language" and have an individual rather than an aggregate focus.[24]

Significantly, *Gonzaga* turns on the need to discern congressional intent.[25] Notably, in 1994, Congress added 42 U.S.C. § 1320a-2 to recognize that provisions of the Social Security Act are privately enforceable.[26] The amendment requires all courts, in Social Security Act cases, to apply the grounds for enforcement recognized by the Supreme Court prior to 1994 (grounds, which as discussed above, include both preemption and § 1983 claims).[27] Interestingly, not all courts have deferred to § 1320a-2.[28] Of particular note is a pithy, but incorrect, analysis by Ninth Circuit Court Judge O'Scannlain in a Social Security Act Medicaid case, *Sanchez v. Johnson*.[29] The decision dismisses § 1320a-2, finding it is "hardly a model of clarity" and concluding that it does not disturb the reasoning of *Pennhurst.*[30] However, Congress enacted § 1320a-2 specifically to preserve the long history of private enforcement of the Social Security Act, and *Pennhurst* is *not* a Social Security Act case.[31]

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[22] *Id.* ("We made clear [in *Pennhurst*] that unless Congress 'speak[s] with a clear voice,' and manifests an 'unambiguous' intent to confer individual rights, federal funding provisions provide no basis for private enforcement by § 1983." (quoting Pennhurst, 45 U.S. at 17, 28 and n. 21)).

[23] 536 U.S. at 279.

[24] *Id.*

[25] *See supra* note 13 and accompanying text.

[26] 42 U.S.C. §§ 1320a-2 (repeated at § 1320a-10) states:

> In an action brought to enforce a provision of the Social Security Act, such provision is not to be deemed unenforceable because of its inclusion in a section of the Act requiring a State plan or specifying the required contents of a State plan. This section is not intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in *Suter v. Artist* M, 112 S.Ct. 1360 (1992), but not applied in prior Supreme Court decisions respecting such enforceability; provided, however, that this section is not intended to alter the holding in *Suter v. Artist M.* that section 471(a)(15) of the Act is not enforceable in a private right of action.

The amendment overruled parts of *Suter v. Artist M.,* 503 U.S. 347 (1992), a Social Security Act case which appeared to hold plaintiffs had no enforceable rights so long as the state had a submitted and federally approved plan for implementing the federal Adoption Assistance and Child Welfare Act. *See also* Brief for the United States as Amicus Curiae Supporting Respondents, Blessing v. Freestone, 520 U.S. 329 (1997) (No. 95-1441) (emphasizing that the Court's pre-Suter precedents must continue to govern the availability of suits under § 1983 to enforce provisions of the Social Security Act)

[27] *Id.*

[28] *Compare Rabin v. Wilson-Coker,* 362 F.3d 190 (2d Cir. 2004) (citing § 1320a-2 to allow beneficiaries to enforce a Medicaid Act provision); *S.D. v. Hood*, 391 F.3d 581, 603 (5th Cir. 2004) (same) *with Sanchez v. Johnson*, 416 F. 3d 1051, 1057 (9th Cir. 2005).

[29] *Sanchez*, 416 F. 3d 1051, 1057 (9th Cir. 2005).

[30] *Id.* at 1057 n.5 (citing Pennhurst, 451 U.S. 1, 28 (1981)).

[31] *See* H.R. Rep. No. 103-761, at 819 (1994) (Conf. Rep.) ("The intent of this provision is to assure that individuals who have been injured by a State's failure to comply with the Federal mandates of the State plan titles of the Social Security Act are able to seek redress in the federal courts to the extent they were able to prior to the decision in Suter v. Artist M. . . . .").

Medicaid enforcement under § 1983

Lower courts applying *Gonzaga* in the Medicaid context have viewed the case as clarifying and narrowing the first prong of the enforcement test—whether the provision in question was intended to benefit the plaintiff. Of particular note are the thirty cases decided by the federal courts of appeals. This activity is summarized in the tables, below.

Table 1 shows where the cases have occurred. As of May 31, 2011, ten of the twelve circuit courts had reviewed at least one § 1983 Medicaid case since *Gonzaga* was decided. The First, Sixth, and Ninth Circuit Courts of Appeals have been the most active circuits. Two circuits—the Eleventh and D.C.—have not decided a Medicaid case. However, a Medicaid case is pending before the D.C. circuit court that could result in a § 1983 enforcement ruling.[32]

Table 1
Medicaid § 1983 cases in the circuits, June 2002-May 2011

1st	2d	3d	4th	5th	6th	7th	8th	9th	10th	11th	DC
5	2	2	3	2	4	1	2	6	3	0	0

Table 2 shows that, since 2002, the appellate courts have reviewed the enforceability of eighteen Medicaid Act provisions.[33] The decisions reflect an outstanding consistency in holdings, thus evidencing that the courts clearly understand how to apply the three-prong enforcement test as clarified by *Gonzaga*. There are no circuit court splits of opinion as to whether or not a Medicaid Act provision is enforceable.

The courts of appeals have allowed just over half (eleven of eighteen) of the Medicaid provisions at issue to be privately enforced. The vast majority of these cases recognize Medicaid enrollees as the intended beneficiaries of the provision; however, multiple circuits (the 1st and 4th) have allowed federally qualified health centers to enforce a Medicaid payment provision, 42 U.S.C. § 1396a(bb). Another Medicaid payment provision, § 1396a(a)(30)(A)—by far the most heavily litigated (approximately a third of post-*Gonzaga* Medicaid cases)—has consistently been held not to create a federal right enforceable by health care providers (and in some of the cases enrollees as well). Since *Gonzaga, s*ix of the federal circuits (1st, 2d, 5th, 6th, 9th, 10th) have held Section (30)(A) is not privately enforceable under § 1983.[34]

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[32] *Salazar v. D.C.*, No. 10-7106 (D.C. Cir.). The District is asking the Court to vacate a consent decree which concerns, among other things, Medicaid early and periodic screening and treatment services for children. Citing Fed. R. Civ. P. 60(b), the District is arguing that *Gonzaga* was a significant change in the law that voids the agreement.

[33] Courts review enforcement on a provision-by-provision basis. Although the provision-by-provision assessment does require careful pleading of the complaint and exact more painstaking analysis from the parties and the court, it is the consistent with the Supreme Court's teachings. *E.g. Blessing*, 520 U.S. at 342 ("Only when the complaint is broken down into manageable analytic bites can a court ascertain whether each separate claim satisfies the various criteria we have set forth for determining whether a federal statute creates rights.").

[34] A decision from the Eighth Circuit that allowed private enforcement based on previously controlling circuit precedent was vacated by the Supreme Court. *See Ped. Specialty Care v. Ark. Dep't of Human Servs.*, 443 F.3d 1015 (8th Cir. 2006), *vacated on other grounds by Selig v. Ped. Specialty Care*, 551 U.S. 142 (2007). A decision from the Third Circuit came slightly ahead of *Gonzaga*, applying an analysis remarkably similar to what *Gonzaga* would eventually hold. *See Pa. Pharm. Ass'n v. Houstoun*, 283 F.3d 551 (3d Cir. 2002).

Table 2
Circuit Court Enforcement of Medicaid Provisions, June 2002-May 2011

Medicaid Provision (42 U.S.C. § 1396)	Held Enforceable	Held Unenforceable
a(a)(3)-fair hearing	6th (2003)	
a(a)(8)-reasonable promptness	1st (2002), 3d (2004) 4th (2011, 2007), 6th (2006)	
a(a)(10)(A)-eligibility	3d (2004), 5th (2004), 6th (2006), 8th (2002), 9th (2006)	
a(a)(10)(C) – medically needy methodologies		10th (2009)
a(a)(13)(A) – institutional payment rates; notice process		2d (2006)
a(a)(17)-reasonable standards		8th (2006); 9th (2006); 10th (2009)
a(a)(19)-best interests		7th (2003)
a(a)(23)-free choice of provider	6th (2006)	
a(a)(30)(A)- payments	none*	1st (2004), 2d (2006), 5th (2007), 6th (2010, 2006), 9th (2007, 2005, 2005), 10th (2007)
a(a)(43), d(a)(4)(B), d(r)-EPSDT	5th (2004), 6th (2010, 2006), 8th (2002)	
a(bb)-FQHC payment	1st (2008, 2005), 4th (2007)	
b(m)-managed care		9th (2009)
d(a)-services	3d (2004), 8th (2006)	
n(c)-home and community-based waiver provisions	9th (2007)	
o-cost sharing	9th (2007)	
p(d)(4)(A) - trusts		10th (2009)**
r(b), (e)-nursing home reform	1st (2003), 3d (2009)	
r-6-transitional Medicaid	2d (2004)	

* An 8th Circuit decision was vacated by the Supreme Court on other grounds, *see* note 32 *supra*.
** The 10th circuit decision rests upon the 2d enforcement prong.[35]

[35] The Tenth Circuit found the Medicaid trust provision, 42 U.S.C. § 1396p(d)(4)(A), did not impose an unambiguous, binding obligation on the state. *See Hobbs v. Zemderman*, 579 F.3d 1171, 1179 (10th Cir. 2009). Citing a previous case, *Keith v. Rizzuto*, 212 F.3d 1190 (10th Cir. 2000), which held the federal trust provisions left states free to make decisions, the *Hobbs* Court said a contrary construction of the statute in the § 1983 context was foreclosed by *Keith* absent en banc reconsideration or a contrary decision from the Supreme Court. *Id.* at 1180.

The Supreme Court has not decided a Medicaid/§ 1983 enforcement case since *Gonzaga*. However, as noted above, the Court is currently reviewing whether Section (30)(A) can be enforced through a preemption/Supremacy Clause claim. A decision in that case is expected next year.

Recommendations, trends, and conclusions

Consider § 1983 enforcement of a Medicaid Act provision carefully. Do not seek to enforce provisions through § 1983 that have a poor track record, and do not ask a judge to apply a provision to facts in novel ways, unsupported by the direct words of the statute and discussion in the case law. Remember that adverse decisions will affect not just the named plaintiffs but all Medicaid beneficiaries in the federal district or appellate jurisdiction and will be applied to other Medicaid provisions in future cases. Make sure to consult and address both Medicaid and non-Medicaid cases that establish § 1983 enforcement precedent in your jurisdiction.

The following trends should be carefully monitored and considered:

1. While courts had long viewed § 1983 litigation as within the broad remedial scope of the civil rights statutes, the recent Supreme Court decisions have reversed this assumption to the point where many judges begin their review with the presumption that the Medicaid Act provision at issue is not enforceable. Establishing the framework for the court's review is, therefore, quite important.
2. Consistent with Blessing, Medicaid enforcement questions are being decided on a provision-by-provision basis and, thus, complaints must be pled in "manageable analytic bites." Blessing, 520 U.S. at 342.
3. Privately enforceable Medicaid Act provisions typically speak in terms of the "individual" and specifically describe the state's responsibilities to those individuals.[36]
4. Gonzaga focuses on the intent to benefit the named plaintiff; however, courts continue to apply the three-prong test.[37] Thus, while some judges argue that Gonzaga replaced Blessing altogether,[38] attorneys should continue to assess each provision at issue against all three prongs of the enforcement test when developing and briefing the claims in the case.
5. Courts are not allowing private enforcement of federal regulations through § 1983, but regulations can fill out statutes that are themselves privately enforceable.[39]
6. Wilder v. Virginia Hospital Association is critical, but its future is uncertain. Wilder, a 5-4 decision from 1990, found a Medicaid provision to create a federal right

[36] NHeLP maintains a § 1983 docket that charts Medicaid Act enforcement provision-by-provision. Consult this docket when considering litigation.

[37] *See, e.g.*, *Bruggeman v. Blagojevich*, 324 F.3d 906 (7th Cir. 2003) (finding plaintiff failed to meet 2d prong); *Keup v. Wis. Dep't of Health & Fam. Serv.*, 2004 WI 16 (2004) (finding plaintiff failed to meet 3d prong).

[38] *E.g., Doe v. Kidd*, 501 F.3d 348, 365-68 (Whitney, J., dissenting) (arguing the three-factor test of *Blessing* should not control).

[39] *Gonzaga* and another decision, *Alexander v. Sandoval,* 532 U.S. 275 (2001), have caused lower courts to revisit the question of whether federal regulations can independently create rights under § 1983, and the clear trend is that they cannot. *See, e.g., Price v. Stockton*, 390 F.3d 1105, 1112 n.6 (9th Cir. 2004) ("It is well settled that regulations *alone* cannot create rights ... however, regulations 'may be relevant in determining the scope of the right conferred by Congress' and 'therefore may be considered in applying the three-prong *Blessing* test.'") (citation omitted); S*outh Camden Citizens v. New Jersey Dep't of Environmental Protection*, 274 F.3d 771 (3d Cir. 2001). *See also, e.g., Harris v. James*, 127 F.3d 993, 465 (11th Cir. 1997).

enforceable by hospitals under § 1983. The Gonzaga Court did not overrule Wilder but did limit the case, describing it as dealing with a provision that "conferred specific monetary entitlements upon the plaintiffs."[40]

7. A looming issue is the Supreme Court's general interest in the extent of Congress's power to enact laws pursuant to the Spending Clause. As discussed in previous publications, state officials and private individuals are challenging Congress's authority under the Spending Clause to enact the Medicaid expansions contained in the Affordable Care Act.[41] Eleven of these cases are now at the appellate level, and Supreme Court review of at least one of these cases is expected, perhaps as early as next year.[42]

[40] 536 U.S. at 280.

[41] For discussion, *see* Jane Perkins, *Update on Litigation Challenging the Affordable Care Act*, National Health Law Program (Nov. 2010) (available from TASC or NHeLP).

[42] Courts' case schedules are regularly updated by the National Health Law Program and Georgetown University O'Neill Institute for National and Global Health Law at http://www.healthlawandlitigation.com and at the National Health Law Program website, http://www.healthlaw.org/index.php?option=com_content&view=article&id=457:health-reform-litigation&catid=51 (*see Health Reform Litigation Case Scheduling* (last updated June 16, 2011)).