

On May 9th, the Fourth Circuit Court of Appeals became the first circuit court to decide a novel set of sovereign immunity issues that are being raised in three other federal circuit courts. The case, *Antrican v. Odom*, was a unanimous decision written by Judge Niemeyer. See 2002 U.S.App. LEXIS 8910.

Antrican involves Medicaid-eligible children in North Carolina who have been unable to obtain dental services as the Medicaid Act requires, due in large part to a lack of Medicaid-participating dentists. The children also claim that the Medicaid provisions for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) are being violated.

After District Judge Malcolm Howard rejected the state's motion to dismiss, the State Attorney General appealed the decision to the Fourth Circuit. There, the state raised a number of sovereign immunity claims seeking to bar plaintiffs' from obtaining injunctive relief pursuant to the *Ex parte Young* exception to the Eleventh Amendment. Significantly, they argued that private individuals can never enforce the Medicaid Act or any other spending clause enactment.

The Fourth Circuit rejected each of the Attorney General's arguments. The Court also refused to exercise pendent jurisdiction over the state's claims regarding enforcement of Medicaid through section 1983, finding these claims are not "inextricably intertwined" with the Eleventh Amendment immunity claims.

Argument: The relief requested is not prospective.

Because the suit would require expenditure of funds from the state fisc, the state argued that the relief sought, at its core, was not truly prospective. The Court rejected this argument: "Simply because the implementation of such prospective relief would require the expenditure of substantial sums of money does not remove a claim from the *Ex parte Young* exception. [T]he focus on an injunction's impact on the State's treasury is misdirected. Rather, the proper focus must be directed at whether the injunctive relief sought is prospective or retroactive in nature."

Argument: No ongoing violation of federal law

The state next argued that there was no ongoing violation because the plaintiffs were presently receiving dental treatment. The Court found this argument "misreads the substance of the plaintiffs' complaint." The complaint did not rest on the notion that children could obtain no dental services but rather alleged that the State was failing to provide a Medicaid program under which beneficiaries could obtain prompt and adequate dental services on an ongoing basis as would be available to the general public.

Argument: The plaintiffs seek to enforce state, not federal, law

The state argued that merely because a state enacts a program that complies with federal requirements does not automatically constitute federal law for purposes of *Ex parte Young*. The Court quickly rejected this argument and, in doing so, distinguished its earlier decision regarding the Surface Mining Act, which by its terms gives exclusive jurisdiction to states. By contrast, the Medicaid Act maintains shared, cooperative responsibilities and administration.

Argument: Spending Clause enactments are not Supreme Law of the Land

The state argued that Medicaid and other Spending Clause enactments are not enforceable through *Ex parte Young* because, lacking the power of compulsion, these statutes are not the Supreme law of the Land; further, the role of *Ex parte Young* is to give life to the Supremacy Clause. Rejecting this argument, the Court noted that the state relied on Judge Cleland's decision in *Westside Mothers v. Haveman*, 133 F. Supp. 2d 549 (E.D. Mich. 2001): "The North Carolina officials' novel position is, however, at odds with existing, binding precedent." Thus, the Court was constrained to reject it.

Argument: The case is against the state because the state is the real party in interest

The Court rejected this argument quickly, noting that this assertion applies to every *Ex parte Young* action. While the ultimate order in the case may intrude on North Carolina's sovereignty, "it would be precisely the type of order that is allowed under *ex parte Young* and its progeny."

Argument: North Carolina's special sovereignty interests protect it from suit

The Attorney General argued that the state has a special sovereignty interest in determining how its limited Medicaid funds will be spent. The Court rejected this argument, saying: "North Carolina elected to participate in the federal Medicaid program and, therefore to be bound by the requirements of the Medicaid Act. If the State did not want to face this federal involvement, it was free to decline federal funds and operate a State program for medical assistance using its own standards or to decline to operate such a program at all."

Argument: The remedial scheme of the Medicaid Act displaces *Ex parte Young*

The Court found "no merit" in this argument: "[I]n designing an act in which a State could participate entirely or not at all, such as the Medicaid Act, Congress has not prescribed a detailed remedial scheme for dealing with noncompliance with the Act once a State elects to participate. On the contrary, the Supreme Court has concluded that the Medicaid Act does not

provide this type of detailed remedial scheme that would supplant an Ex parte Young action."

Argument: The action is not proper because it involves discretion

Rejecting the state's final argument, the Court found: "This argument lacks merit because the Medicaid Act does not provide participating States with discretion to deny dental screening and treatment as specified in the Act. To the contrary, the Medicaid Act clearly mandates that a State provide a certain level and quality of dental care. In this case, the plaintiffs seek only an order requiring North Carolina officials to comply with the mandates of the Medicaid Act to provide a specified type and level of care, not how to exercise any discretion conferred by that Act."

The issues decided by the Fourth Circuit are also before the 5th, 6th, and 1st circuit courts of appeal.