

presented at ATTAC/NAPAS 25

Annual Conference

June 27, 2002

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May 31, 2002

This memo:

- Provides background on the Eleventh Amendment, sovereign immunity, and the Spending Clause
- Summarizes current precedent; and
- Updates ongoing cases raising sovereign immunity defenses to enforcement of Spending Clause

Background on the 11th

Amendment, Sovereign Immunity, and the Spending Clause

The Eleventh Amendment provides

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, com

The text applies only to suits filed by the citizens of a state against another state.

Hans v. Louisiana, 134 U.S. 1 (1890), construing the Amendment to apply to suits filed by a state

By a thin 5-4 majority, the current Supreme Court embraces a broad concept of sovereign immunity,

Alden v. Maine, 527 U.S. 706 (1999): Private individuals cannot enforce federal laws against un

Federal Maritime Comm'n v. South Carolina, 559 U.S. 170 (2002): Congress cannot authorize a fed

Limits to 11th Amendment/sovereign immunity:

Congress can abrogate immunity by legislation if (1) the federal law is affirmatively stated and (2) exhibit

The state can waive immunity. The waiver must be knowing and authorized. The mere acceptance of federal

The *Ex parte Young* doctrine is an exception to the Eleventh Amendment. See

Summary of Current Precedent

The Eleventh Amendment bars suits against a state by any citizen, including a state's citizens.

The Eleventh Amendment bars suits against a state (including agencies, boards, and commissions) or state officials.

The Eleventh Amendment bars suits against a state (including agencies, boards, and commissions) or state officials when there is no ongoing violation of federal law.

The Eleventh Amendment bars suits against a state or state official when plaintiffs seek prospective relief.

Sovereign immunity bars suits against unconsenting states in state court, 527 U.S. 766 (1999).

Sovereign immunity bars federal courts from authorizing a federal court to exercise any authority.

Ex parte Young is not available if Congress has established a "detailed remedial" scheme of law.

Ex parte Young is not available in the unusual case in which a state has a "special" circumstance.

The Eleventh Amendment does not bar suits seeking prospective relief.

The Eleventh Amendment does not bar a federal court from ordering injunctive relief.

The Eleventh Amendment does not bar suits against local governments (cities, counties, etc.).

The Eleventh Amendment does not bar suits against state officials for damages in their personal capacity.

The Eleventh Amendment does not bar suits by the federal government pursuant to its statutes.

NOTE: The Eleventh Amendment is a jurisdictional bar from 1793 (5th Cir. 1985). At district or appellate court level, it is a jurisdictional bar from 1984 (5th Cir. 1985).

Update on Cases Challenging Enforcement of Spending Clause Enactments

In legislation enacted pursuant to the Spending Clause, Congress conditions the receipt of federal funds

Circuit Courts Hold Private Expenditures Unenforceable under Medicaid Act pursuant to

Westside Mothers v. Haywood, No. 01-1494, 2002 U.S. App. LEXIS 9159 (6 Cir. May 15, 2002), *rev'd in part*

Antrican v. Odom, No. 01-1693, 2002 U.S. App. LEXIS 8910 (4 Cir. May 9, 2002), *aff'd*

The

Westside Mothers

Decision

The district opinion in *Westside Mothers* placed a number of novel arguments before the Sixth Circuit. Medicaid is Supreme Law, not a mere contract. *Pennhurst State School, 451 U.S. 1, 17 (1981)* (Bessie).

Ex parte Young applies. The Sixth Circuit went on to hold that private individuals do not have a right to enforce the EPSDT provisions of the Social Security Act through Medicaid beneficiaries and the specific Medicaid provisions.

The EPSDT provisions are not enforceable through Medicaid beneficiaries and the specific Medicaid provisions.

The

Antrican

Decision

Antrican involves Medicaid-eligible children in North Carolina who have been unable to obtain Medicaid benefits.

Medicaid is Supreme Law. The Court decided that *Ex parte Young* supreme because the state is not a sovereign. The Court decided that *Ex parte Young* supreme because the state is not a sovereign.

Special sovereign interests. The Attorney General also argued that an action should be precluded by the

Medicaid does not contain the "qualified" language. The state's argument that the Medicaid "Act" design

Additional cases rejecting *Wyatt v. Board of Education* district court :

Rancourt v. Concannon, 175 F. Supp. 2d 60 (D. Me. 2001) holding to be a "didactic exercise in his

Bryson v. Shumway , 177 F. Supp. 2s 78 (D.N.H. 2001) (on appeal to the First Circuit Court of Appeal

Memisovski v. Patla , No. 92 C 1982, 2001 U.S. Dist. LEXIS 16963 (N.D. Ill. 2001)

Markva v. Haveman , 168 F. Supp. 2s 695 (E.D. Mich. 2001) (on appeal to the Sixth Circuit Court of

Boudreau v. Ryan , No. 00 C 5392, 2001 U.S. Dist. LEXIS 2780 (N.D. Cal. 2001) Dist. LEXIS 3294 (N

See also *Frew v. Gilbert*, 109 F. Supp. 2d 579 (E.D. Tex. 2003) *Frazar*

But see *Bonnie L. v. Bush*, 180 F. Supp. 2d 1321 (S.D. Fla. 2001). This case finding Adoption in State