US: courts deny right to challenge Medicaid violations

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Recent federal court rulings in the US have dealt a sharp blow to the ability of the poor and elderly to defend their right to receive Medicaid benefits. A series of decisions has rendered sections of the Medicaid Act virtually unenforceable by private individuals. The impact of these rulings is significant, as Medicaid provides health insurance to more than 50 million low-income people.

One of the important figures in arguing this change has been John Roberts, the current nominee for chief justice of the Supreme Court.

The Medicaid Act requires that states provide all Medicaid recipients with access to health care that is equal to the access enjoyed by privately insured individuals. Under pressure from the federal government, and in an attempt to resolve budget shortfalls, many states are denying these rights and under-funding their Medicaid programs. It is then left up to private litigants to enforce these mandates.

Because of the peculiarities of American constitutional law, Medicaid and many of the most important social welfare programs derive their authority from the Spending Clause of Article 1 of the Constitution. This clause allows the federal government to condition receipt of federal funds by states with obligations on the part of the state governments. These welfare programs are usually structured as cooperative ventures between the states and the national government, with federal statutes providing funding and setting standards for state administration.

In particular, Medicaid is jointly funded by the federal government and the states. While each state administers its own program, it does so under specific guidelines established under federal law. In addition to the requirement that Medicaid recipients receive health care equal to the prevailing coverage for private individuals, the law also stipulates that certain individuals must be covered by the Medicaid program.

State compliance with the terms of statutes such as the Medicaid law is rarely enforced by the federal government. Rather, Spending Clause program requirements have been enforced by citizens and public interest lawyers acting as "private attorneys general." Until now, the primary legal means of such enforcement has been Section 1983 of Title 42 of the United States Code.

Section 1983 has its origins in the Civil Rights Act of 1871, which Congress enacted shortly after the Civil War in an effort to protect the federal rights of newly emancipated slaves in the South. In effect, the statute allows people whose federal rights are violated by a state government official to sue for damages in federal court. For the statute to be effective, a person must show that he has been deprived of a "right," not merely that a violation of the law has taken place.

Since the 1960s, however, courts have interpreted the category of a "right" broadly, and Section 1983 has been invoked for a wide array of claims—everything from welfare recipients challenging the calculation of their benefits to tenants of low-income housing seeking to enforce tenant grievance procedures.

However, as a precursor to the recent federal court decisions on Medicaid, in 2002 the US Supreme Court sharply curtailed the use of Section 1983 in a case called *Gonzaga University v. Doe*. The case involved a federal law that requires schools to protect the privacy of student records.

Current Supreme Court nominee John Roberts argued the case as a private attorney on behalf of Gonzaga University. He contended that no rights are conferred under the federal privacy law and therefore a private citizen could not invoke Section 1983 to force

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compliance. Former Chief Justice William Rehnquist, for whom Roberts once clerked, authored the opinion and agreed, holding that a federal law cannot be enforced through a private lawsuit unless Congress has manifested "an unambiguous intent to confer individual rights."

The decision of the Supreme Court represented a significant shift because, historically, people who are aggrieved by governmental lawlessness have been able to use the court system to vindicate their rights rather than relying on bureaucrats who generally are not willing to do the same. In other words, the court had previously held that federal statutory rights are presumed to be enforceable.

The new test established by Rehnquist for determining whether a law is enforceable under Section 1983 has serious implications. A plaintiff now has the burden of proving that Congress has demonstrated through "clear and unambiguous" evidence that it intended to provide individual rights to private individuals. This is a test so stringent that it has become nearly impossible to meet, as recent cases have proven.

In 2003, a Utah federal district judge, citing the test set by the Supreme Court, dismissed the claims of disabled people who asserted that they had been improperly denied care under Medicaid. Last year, the First Circuit Court of Appeals in Boston ruled that home care providers could no longer sue state officials in Massachusetts under Section 1983 to challenge cuts in their Medicaid rates.

The idea that Medicaid and other programs that provide benefits to millions of people are enforceable entitlements is now in doubt. If Section 1983 is no longer available, it is likely that the only remedy for state noncompliance with the terms of Spending Clause statutes would be for the program beneficiaries to ask the federal government to withhold funds from the program in question. This presents something of a Catch-22 situation, since the likely result of such action would only be a further crippling of the program. By eliminating private enforcement mechanisms, the court has largely eliminated any protection of the right, and therefore the right itself.

The ideology behind these rulings merits closer examination because a definite legal trend has emerged. The Supreme Court has, in recent years, limited the power of Congress to legislate under the Commerce Clause. However, many of these statutes have been reworked to pass under the Spending Clause as voluntary obligations taken on by the states. In the minds of Justices Rehnquist, Antonin Scalia, Clarence Thomas, and others, the states are being coerced into taking these obligations because the money attached is too much for the states to refuse. The *Gonzaga* ruling was an indirect attack at Congress's ability to spend "for the general welfare," because while Congress may still legislate under the Spending Clause, it now must bear the burden of enforcing its provisions, thus discouraging it from doing so.

This in general has been the theme of the Rehnquist Court since 1994. The last 10 years have witnessed a sharp increase in the number of cases taken by the Supreme Court involving issues of federalism. Federalism cases deal with the division of power between the branches of government and between the state and federal governments. The number of significant cases has doubled in the last eight years of the Rehnquist Court. It should be noted that the emergence of these issues is not mere coincidence, because the Supreme Court has discretion as to which cases it chooses to hear.

The result of these cases has been an unprecedented outpouring of decisions holding Acts of Congress unconstitutional. Surprisingly, the court has shown little deference to state legislatures either, frequently finding that state laws are preempted by federal law. In the final analysis, what can be seen is an attempt to shift power away from the elected branches of government. By contrast, the Court has often upheld the power of the coercive organs of society—the police, FBI, military, etc. Ultimately, what is sought by the ruling elite is a return to pre-1930s jurisprudence when the Supreme Court acted as a gatekeeper, striking down any law that placed the slightest restraint on the accumulation of wealth or the operations of business.

With John Roberts' approval all but certain in the Senate, with bipartisan support, the trend in this direction will only continue.

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