No. 11-400

In the Supreme Court of the United States

STATE OF FLORIDA, ET AL.,
Petitioners,
v.
UNITED STATES DEPARTMENT
OF HEALTH AND HUMAN SERVICES, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF OF CATHOLIC SISTERS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS (MEDICAID EXPANSION)

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QUESTION PRESENTED

The Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029, provides that, beginning in 2014, eligibility for Medicaid shall extend to certain individuals with income up to 133% of the federal poverty level. 42 U.S.C. § 1396a(a)(10)(A)(i)(VIII) (Supp. IV 2012).

The question presented is whether the extension of Medicaid eligibility is a valid exercise of Congress's power to set the terms on which it will appropriate federal funds.

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INTERESTS OF *AMICI CURIAE*[1]

Amici curiae represent the leadership of Catholic women's religious orders from across the United States. *Amici* and the orders they serve have a long history of public service in healthcare in America dating back to the 1700s. These services include founding hospitals and free clinics and providing free healthcare to the underprivileged and uninsured. The work by *Amici* gives them a unique perspective on the unmet healthcare needs of the poor, as well as on the positive impact that will result from the Patient Protection and Affordable Care Act ("ACA" or the "Act"). A complete list of *Amici* can be found in the Appendix.

Amici have witnessed firsthand the national crisis that prompted Congress to pass the ACA. In particular, *Amici* have seen the devastating impact of the lack of affordable health insurance and healthcare on women, children, and other vulnerable members of society.

Amici believe that a civilized society must ensure the provision of basic healthcare to its citizens regardless of their ability to pay for it. They further believe it is a moral imperative that all levels of

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[1] Pursuant to Supreme Court Rule 37.6, counsel for *Amici* represent that no counsel for a party authored this brief in whole or in part and that none of the parties or their counsel, nor any other person or entity other than *Amici* or its counsel, made a monetary contribution intended to fund the preparation or submission of this brief. All parties have consented to the filing of amicus briefs and have filed letters reflecting their blanket consent with the Clerk.

government institute programs that ensure the poor receive such care. They believe Medicaid expansion under the Act is critical to the communities they serve. *Amici* and other Catholic Sisters therefore advocated for passage of the Act. In a letter to Congress sent shortly before the Act was passed, the Sisters wrote:

> We have witnessed firsthand the impact of our national healthcare crisis, particularly its impact on women, children and people who are poor. We see the toll on families who have delayed seeking care due to a lack of health insurance coverage or lack of funds with which to pay high deductibles and co-pays. We have counseled and prayed with men, women, and children who have been denied health care coverage by insurance companies. We have witnessed early and avoidable deaths because of delayed medical treatment.
>
> The health care bill . . . will expand coverage to over 30 million uninsured Americans. While it is an imperfect measure, it is a crucial next step in realizing health care for all. It will invest in preventative care. It will bar insurers from denying coverage based on pre-existing conditions. It will make crucial investments in community health centers that largely serve poor women and children.[2]

The Sisters believe that the ACA provides crucial support for those most in need of assistance. In

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[2] *See* http://www.networklobby.org/legislation/catholic-sisters-letter-support-healthcare-reform-bill.

particular, by the year 2014 the Medicaid expansion will provide healthcare to an estimated 9 million Americans of the 50 million who are currently uninsured. In the next decade, the protections provided by the Medicaid expansion will grow to cover more than 17 million Americans.

Amici submit this brief to explain the critical importance of the expanded Medicaid program to the welfare of the United States, as well as to demonstrate why every state should welcome the expanded Medicaid provisions.

SUMMARY OF ARGUMENT

As part of the ACA, Congress expanded Medicaid to respond to a dire and growing problem faced by millions of Americans who are unable to obtain health insurance or pay for quality healthcare. *Amici*, whose work includes serving those without access to affordable healthcare, submit this brief to explain how the Medicaid expansion helps to resolve this problem and therefore serves the general welfare of the United States. *Amici*'s work with the uninsured compels their conclusion that the Medicaid expansion will greatly improve the lives of millions of Americans—and their relatives and communities—by providing them with access to quality healthcare.

Amici also submit this brief to refute Petitioners' argument that they are being coerced to accept the expanded Medicaid. In truth, Petitioners receive the significant benefit of expanded health coverage for their most vulnerable citizens largely paid for by the federal government. This is why *Amici,* who provide care for the poor, advocated for the ACA's passage. Likewise, decisions of this Court and the circuit courts have repeatedly held that similar laws, including similar expansions of Medicaid itself, are non-coercive. Indeed, given the discretion afforded the states under the Act, the states have great flexibility to address local concerns.

ARGUMENT

I. THE ACA'S MEDICAID EXPANSION HELPS ADDRESS A NATIONAL PROBLEM OF CRITICAL IMPORTANCE AND SERVES THE COUNTRY'S GENERAL WELFARE

A. The ACA's Medicaid Expansion Helps to Resolve a Crisis that Threatens the National Economy

The crisis resulting from the high number of uninsured Americans is dire. Approximately 50 million individuals in America are uninsured, with significant costs to our national economy. *See Florida v. United States Dep't of Health & Human Servs.*, 648 F.3d 1235, 1244 & n.7 (11th Cir. 2011). As the congressional findings supporting the Act recognize, the uncompensated expense of providing healthcare to uninsured individuals costs as much as $43 billion annually, much of which is passed on to the insured in the form of higher insurance premiums. *See* ACA, 42 U.S.C. § 18091(a)(2)(F). Underwriting costs add as much as $90 billion annually. *Id.* § 18091(a)(2)(J). As a result of the poorer health and shorter life spans of the uninsured, the economy loses up to $207 billion a year. *Id.* § 18091(a)(2)(E). *Amici* find that much of their efforts to provide care to the uninsured address care sought only when the need becomes a crisis, which results in the need for more complex care, worse clinical outcomes, and expenditure of scarce healthcare funds that should have been unnecessary.

The Constitution grants Congress the right to "lay and collect Taxes . . . to . . . provide for the . . . general Welfare of the United States." U.S. Const. art. 1, § 8,

cl. 1. *Amici* submit this brief to explain that the Medicaid expansion helps to resolve the crisis in health insurance and healthcare, thereby serving the general welfare of the United States.

Amici, some of whom run "safety net" hospitals or other facilities or programs that serve a significant portion of the uninsured, bear a disproportionate portion of the costs by the high number of uninsured. For example, the Sisters of Mercy of the Americas sponsor or co-sponsor six health systems and many health-related facilities throughout the United States, including hospitals, long-term care facilities, rehabilitation centers, and family care and outreach centers. The Franciscan Sisters of Mary provide free or discounted care to the uninsured and minimally-insured in their community, and in 2010 they absorbed $31 million in unpaid Medicaid costs. For facilities like those run by *Amici*, uncompensated care can amount to more than 20% of total costs, compared to the average 5.5% of total costs for all hospitals. *See* Changes in Health Care Financing & Org., *Challenges Facing the Health Care Safety Net* (Feb. 2008).[3]

As *Amici* see in their daily work with the uninsured, the economic effects on average American families are severe. As Congress recognized, more than 60% of all personal bankruptcies are caused in part by medical expenses. 42 U.S.C. § 18091(a)(2)(G).

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[3] *Available at* http://www.hcfo.org/publications/challenges-facing-health-care-safety-net (citing "How Are Safety Net Hospitals Financed? Who Pays for 'Free Care?'" Nat. Ass'n of Public Hosps. & Health Sys. (Sept. 2004)).

As part of its overall solution, Congress expanded Medicaid eligibility. Specifically, the federal government will help participating states to provide coverage for most adults under age 65 with incomes up to 133% of the federal poverty level ("FPL"), or about $29,000 for a family of four. *Id.* § 1396a(a)(10)(A)(i)(VIII). Participating states will also provide Medicaid to all children whose families earn up to 133% of the FPL. *Id.* §§ 1396a(a)(10)(A)(i)(VII), 1396a(*l*)(1)(D), 1396a(*l*)(2)(C). And such states may not decrease existing Medicaid eligibility levels for adults and children that were in place as of March 23, 2010, until a state's Exchange is fully operational. *Id.* § 1396a(gg)(1). Children under age 26 who were receiving Medicaid but "aged out" of foster care will be newly eligible to continue receiving Medicaid. Pub. L. No. 111-148 § 2004, 124 Stat. 119 (to be codified at 42 U.S.C. § 1396a(a)(10)(A)(i)(IX) effective Jan. 1, 2014).

To support the expanded Medicaid coverage, the federal government agreed to greatly expand its participation in providing Medicaid subsidies. In 2013 and 2014, primary care physicians will be paid at 100% of the Medicare payment rate. *Id.* § 1396a(a)(13)(C). States will receive 100% federal funding for the cost of the increasing payment rates for 2013 and 2014. *Id.* § 1396d(dd).

As a result of the Act's Medicaid expansion, an estimated 9 million of the 50 million uninsured will be covered by 2014 (increasing to 16 million by 2016 and

17 million by 2021). *See Florida*, 648 F.3d at 1246 & n.15.[4]

B. The Courts Have Afforded Congress Broad Latitude to Spend Funds in Support of the General Welfare

Congress has "wide latitude" to place conditions on federal funds to advance its policy objectives. *United States v. American Library Ass'n*, 539 U.S. 194, 203 (2003). Congressional spending must be intended to serve the general welfare and, perhaps, not add "conditions . . . unrelated 'to the federal interest in particular national projects or programs.'" *South Dakota v. Dole*, 483 U.S. 203, 207 (1987) (citation omitted); U.S. Const. art. 1, § 8, cl. 1. The ACA's Medicaid expansion serves the general welfare, and the federal interests served are at least as critical as the interests served in previous decisions where courts rejected coercion challenges to Medicaid revisions.

In *West Virginia v. U.S. Dep't. of Health & Human Servs.*, 289 F.3d 281 (4th Cir. 2002), the Fourth Circuit rejected a challenge to the constitutionality of Medicaid amendments requiring states to recover certain Medicaid expenditures from the estates of deceased beneficiaries. In 1993, Congress amended the Medicaid Act to compel states to either implement such "estate recovery" provisions or lose all or part of

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[4] *Citing CBO's Analysis of the Major Health Care Legislation Enacted in March 2010*, Before the Subcomm. on Health of the H. Comm. on Energy & Commerce 112th Cong. 18 tbl.3 (2011) (Statement of Douglas Elmendorf, Director, Cong. Budget Office), *available at* http://www.cbo.gov/ftpdocs/121xx/doc12119/03–30–HealthCareLegislation.pdf.

their federal Medicaid funds. *Id.* at 284. Recovered funds were to be split between the federal government and a state in proportion to the share of the state program's Medicaid expenditures each funded. *Id.* at 285. The Fourth Circuit ruled that Congress's action did not constitute impermissible coercion. *Id.* at 292.

In *West Virginia*, Congress imposed the mandatory estate recovery condition in response to "rapidly escalating medical-care costs." *Id.* at 284. Congress anticipated its amendment would save the federal government $300 million over five years. *Id.* at 285. In enacting the legislation, therefore, Congress sought to advance the important, albeit routine, interest of restraining federal expenditures to save money. Congress's "pursuit of the general welfare" in that instance was less closely related to the legislation it enacted than the ACA is to the effort to extend health care benefits to millions of low-income Americans. As discussed above, there is a close connection between the ACA and the national project of reforming the health care system to better serve all Americans, including the neediest among us.

In *Oklahoma v. Schweiker*, 655 F.2d 401 (D.C. Cir. 1981), the D.C. Circuit upheld two sets of provisions that conditioned a state's receipt of Medicaid funds on how the state provided grants to the elderly, blind, and disabled. The Social Security Act established programs through which the federal government reimbursed the states for a portion of cash payments a state made to assist the needy in acquiring food, shelter, and medical care. *Id.* at 403 (referencing Titles I, X, and XIV of the Social Security Act). In 1972, Congress established the Supplemental Security Income (SSI) program to federalize these cash

assistance programs by, among other changes, setting a uniform level of benefits for all recipients. *Id.* at 404 (discussing amended Title XVI of the Social Security Act); *see also* 42 U.S.C. § 1381 (providing SSI was designed "[f]or the purpose of establishing a national program to provide supplemental security income to individuals who have attained age 65 or are blind or disabled"). In some states, the new federal payment was less than what the now-superseded state programs offered recipients. *Schweiker*, 655 F.2d at 404. Congress, therefore, required states that provided a higher level of assistance to make supplemental payments "[i]n order to ensure that no one suffered as a result of the new program." *Id.* To enforce this requirement, Congress conditioned Medicaid eligibility on a state's agreement to fill any shortfall between the federal SSI benefit and the amount a beneficiary received from a state program. *Id*.

Oklahoma challenged this requirement, as well as a separate federal condition on the receipt of Medicaid funds that required states to agree to pass through to SSI recipients the full amount of annual federal cost-of-living increases. The D.C. Circuit upheld both sets of conditions, holding that Congress had the right to "set conditions on the grant of federal funds." *Id.* at 411. By imposing these restrictions, the court held Congress sought to protect elderly, blind, and disabled beneficiaries from reductions in the real value of their supplemental benefits resulting both from the transition from state programs to the federal SSI program, and from many states' failure to pass through SSI cost-of-living increases. Through both conditions, Congress sought to further the federal interest of ensuring that needy Americans received

sufficient financial support. In comparison, Congress, through the ACA, has attempted to ensure that needy individuals just above the poverty line have access to health care. The federal interest in both cases is similar: protecting the basic welfare of the nation's neediest citizens. Just as the D.C. Circuit upheld the challenged federal conditions in *West Virginia*, this Court should uphold the ACA.

Finally, multiple Courts of Appeals have rejected challenges to the federal government's conditioning of Medicaid funds on a state's agreement to provide emergency medical services to undocumented immigrants. *See, e.g., Texas v. United States*, 106 F.3d 661, 666 (5th Cir. 1997); *California v. United States*, 104 F.3d 1086, 1092 (9th Cir. 1997); *Padavan v. United States*, 82 F.3d 23, 29 (2d Cir. 1996). Under Medicaid, a state must provide care and services necessary to treat emergency medical conditions of aliens not lawfully admitted for permanent residence and not otherwise permanently residing in the United States. 42 U.S.C. § 1396b(v)(2); *see also* H.R. Rep. No. 99-1012, at 399-400 (1986) (Conf. Rep.) (discussing Congress's enactment of this provision). The Second, Fifth, and Ninth Circuits disagreed that this condition represented unconstitutional coercion, reasoning that the states voluntarily choose to participate in Medicaid and, for this reason alone, are required by the federal government to provide aliens with emergency medical care. *Texas*, 106 F.3d at 666; *California*, 104 F.3d at 1092 (citing *Padavan* on the coercion theory); *Padavan*, 82 F.3d at 29.

Congress sought to ensure that the most vulnerable members of society receive access to health care at critical moments by requiring states with Medicaid

programs to provide emergency medical care to undocumented immigrants. Through the ACA, Congress worked to advance this "national project" by protecting another group of highly vulnerable individuals—those with incomes just above the poverty line, and particularly the uninsured among them. If anything, Congress's imposition of conditions on Medicaid funds under the ACA is more closely related to the pursuit of the general welfare and a national project of high importance than the previous emergency medical care expansion, given that the ACA extends full Medicaid coverage and services to a broader range of individuals. This Court should follow the multiple Circuit Courts that have upheld previous Medicaid conditions and uphold the ACA as a proper exercise of congressional authority to attach conditions to Medicaid funds.

II. THE ACA'S MEDICAID EXPANSION IS NOT COERCIVE

A. The ACA Provided the States with Significant Funds to Cover the Cost of Expanding Medicaid

Congress assumed much of the cost of the ACA's expanded Medicaid coverage. The federal government will assume 100% of the costs associated with the Medicaid expansion for the first three years of the new program. Federal support will decrease slightly so that by 2020 and thereafter, the federal government will be responsible for roughly 90% of the costs of covering individuals made eligible for Medicaid as a result of the ACA. The Court should reject Petitioners' argument, which appears to be that the complete federal subsidy of the first three years makes

acceptance of the longer term Medicaid expansion too tempting for the states to pass up. By any reasonable definition that is not coercion.

B. The ACA's Medicaid Expansion Is Exactly the Sort of Program Held Non-Coercive in Prior Cases

Petitioners' coercion argument concedes that the federal government may condition a grant of funds to a state on the latter's adoption of particular legislation, assuming the other requirements under the Spending Clause are met, which here they undisputedly are. Brief of State Petitioners on Medicaid at 22 (hereinafter "State Brief") (acknowledging that the provisions of ACA giving states the option to either accept federal exchanges or set up their own are constitutional); *Id.* at 37-38 (acknowledging that Medicaid expansions that conditioned only new federal money would be constitutional). However, when the funds that would be withheld from a state for noncompliance are sufficiently sizable, Petitioners contend that this same procedure becomes unconstitutionally "coercive." A difference of degree assertedly becomes a difference of kind, and there is no apparent reason Petitioners' argument would only apply to subsequent changes and not every time Congress crafts a joint program, funds it generously, and includes numerous standards that it deems appropriate.

Petitioners can point to no precedent supporting their proposition, only dicta raising the issue in two cases, *South Dakota*, 483 U.S. 203, and *Steward Machine Co. v. Davis*, 301 U.S. 548, 590 (1937). As the Eleventh Circuit noted in rejecting this same

argument, no case has ever struck down an act of Congress as unconstitutionally coercive under the Spending Clause. *Florida, et al., v. Dep't of Health and Human Servs. et al.* 648 F.3d 1235, 1266 (11th Cir. 2011). Cases applying the Tenth Amendment's prohibition on commandeering state government have all involved federal statutes that directly compelled a state to act or purported to "exclu[de] . . . the state from otherwise lawful activity." *College Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 687 (1999); *Printz v. United States*, 521 U.S. 898, 923-24 (1997); *New York v. United States*, 505 U.S. 144, 176-77 (1992). This Court has never held that a difference in the amount (of conditioned funds) rises to the level of a difference of kind in a context like this one.

To the contrary, as discussed above, the Court and numerous lower courts have approved prior instances where Congress conditioned continued participation in the entirety of Medicaid on acceptance of a particular expansion or modification of the program. *See also Wilder v. Virginia Hosp. Ass'n*, 496 U.S. 498, 502 (1990) (Medicaid is an entirely voluntary "cooperative federal-state program through which the Federal Government provides financial assistance to the States. . . ."). As with those decisions, this Court should reject Petitioners' coercion argument here.

C. The Court Should Decline Petitioners' Invitation to Expand the Definition of "Coercion" Because None of the Asserted Rationales for the Coercion Doctrine Apply

Even assuming that a large enough potential loss of federal funding could alone constitute "coercion," this Court still ought not craft a standard that would encompass this case. The Petitioners argue that a conditional federal grant is coercive if it is "so great and important to the state's integral function . . . as to compel the state to participate in the 'optional' legislation." Petition for Writ of Certiorari at 20, *quoting Florida*, 648 F.3d at 1267. Yet the provision of health insurance to those unable to obtain it in the private marketplace cannot be an "integral function" of the states, because the states have rarely offered such coverage independent of the federal government, and have (with few and limited exceptions) failed to insure the very populations brought into Medicaid by the ACA.

The Petitioners suggest that the withdrawal of all federal Medicaid funds provided for in the ACA would force them to provide a program that would perform Medicaid's functions. State Brief at 23. As a legal matter, this is indisputably incorrect. *See DeShaney v. Winnebago County Dep't of Social Servs.,* 489 U.S. 189, 196-97 (1989) ("[T]he Due Process Clauses generally confer no affirmative right to governmental aid, even where such aid may be necessary to secure life, liberty, or property interests of which the government itself may not deprive the individual"). Indeed, any such conclusion is foreclosed by Petitioners' own argument. Providing a program to

cover those outside Medicaid is exactly what the state Petitioners contend they are not obligated to do with respect to the intended recipients of the ACA Medicaid expansion. Petitioners do not suggest any constitutional distinction between the present Medicaid population and the expanded Medicaid population under the ACA. It is inconsistent for Petitioners to argue in one breath that the federal government is forbidden to incentivize them to cover one group of citizens, and in the next breath that the potential withdrawal of federal funds is coercive because the states are obligated to cover another group of citizens.

This contradiction is not merely a matter of logical inconsistency. From the perspective of *Amici* as caregivers, the Petitioners' argument uses the legal concept of "coercion" in a way that is divorced from the real-world consequences of the Medicaid expansion. The Petitioners portray an overwhelmingly federally-funded extension of care to those unable to obtain it otherwise as a threat to cripple the states. The premise of their argument is that the states' moral obligation to care for the neediest is so compelling that they must avoid the withdrawal of the federal government funds they need, or prefer to use, for that purpose. Yet the reality is that Petitioners have never recognized nor fulfilled any such obligation. This amounts to asserting a right to coerce Congress to keep funding states that reject standards of participation Congress has found to be appropriate to its balancing of competing interests and its own limited resources.

For the uninsured served by *Amici*, Medicaid presents a critical lifeline to which there is no feasible

alternative. *Amici* believe they have a moral obligation to provide care where the states have failed to do so. That is precisely why *Amici* and other Catholic Sisters lobbied so hard for passage of the ACA Medicaid expansion.

Petitioners cloud the issue when they try to foreclose consideration of the degree of benefit offered. This ignores the reality that what makes it difficult for Petitioners to now choose to reject the Medicaid "deal" is not federal coercion but Medicaid's overall attractiveness—effectiveness at low cost to the states—despite certain standards of participation with which they disagree. The ACA Medicaid provisions represent an extraordinarily generous expansion of coverage funded almost entirely by the federal government, which requires only a small contribution from the states. While many more of the states' residents will be covered, the program will cost the states little or nothing for three years, followed by a contribution that gradually rises to just 10%.

Petitioners contend that a holdup for $5 is no less coercive than a holdup for $5000. But the analogy here is to a "holdup" where the federal government asks for a small percentage of matching funds years from now, so long as the states allow it to give them each $100 for the next three years, then $95 for a couple of years, and $90 for every year after. The Petitioners may respond that coercion is still coercion, whatever the amount of the stickup, but they themselves have already admitted that degree matters. It is the premise of their entire argument.

D. The Expansion of Medicaid Increases States' Flexibility to Tailor Healthcare Efforts

Not only is the ACA's expansion of Medicaid not unduly coercive on the states, but it will increase the states' flexibility with regard to the provision and administration of healthcare. Although Petitioners argue that the expansion of Medicaid infringes upon Tenth Amendment rights reserved to the states, they leave out a key fact in their analysis: the states actually want Medicaid. State Brief at 23. Without a Medicaid-like program, the states admit they would still want to provide healthcare services for their neediest citizens—even though there is no constitutional requirement that they do so—and probably would substantially raise taxes or cut other types of funding to achieve this. *Id*. While *Amici* agree that the states should be morally compelled to provide their neediest citizens with access to healthcare if the states refuse federal funds, they write to emphasize that this would leave states with much less flexibility to use state funds in other ways.

Indeed, the state-federal partnership model, of which Medicaid is the largest-scale example, allows the federal government to help states achieve their goals with regard to citizens' health while preserving the states' ability to determine many facets of administration and implementation. It is an example of "a program of cooperative federalism." *New York v. United States*, 505 U.S. at 167 (1992) (quoting *Hodel v. Virginia Surface Mining & Reclamation Ass'n*, 452 U.S. 264, 288 (1981)). And the ACA is hardly the first law Congress has passed with this state-federal

scheme in mind.[5] A state may choose to decline participation in the state-federal partnership if the states' residents and their representatives disagree with what the federal policy is trying to accomplish. States may also decline federal money and use their own taxing power to create a program better suited to their needs. That this is difficult to do because there is limited money to go around does not change the constitutional posture of the case; state budgets are now and have always been limited, and there are always difficult decisions to be made. This is why state residents elect the representatives they believe will best allocate state resources. And this is why the federal government's offer to provide 100% of the initial funding to expand Medicaid to more state residents is a great deal that gives states the flexibility to deal with what all agree is a staggering nationwide problem. 42 U.S.C. § 1396(a). With the expansion of Medicaid, states will have more of their needy residents receiving crucial healthcare services while paying nothing for these services initially and only 10% later. Nat'l Ass'n of State Budget Officers, *2010 State Expenditure Report: Examining Fiscal 2009-2011 State Spending*, at 44 (2011).[6]

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[5] Myriad examples of federal-state partnerships reflect the acceptance of the right of the federal government to address what federal and state governments agree is a shared problem with a shared objective. *See, e.g.,* Clean Water Act, 86 Stat. 816, as amended, 33 U.S.C. § 1251 *et seq*.; Occupational Safety & Health Act of 1970, 84 Stat. 1590, 29 U.S.C. § 651 *et seq*.; Resource Conservation & Recovery Act of 1976, 90 Stat. 2796, as amended, 42 U.S.C. § 6901 *et seq*.; Alaska National Interest Lands Conservation Act, 94 Stat. 2371, 16 U.S.C. § 3101 *et seq*.

[6] Available at http://nasbo.org/.

Furthermore, the many health problems Americans increasingly confront—obesity, heart disease, high blood pressure, diabetes—often result in emergency room visits and medical services for which the recipients never end up paying. *See* Richard Niska et al., National Hospital Ambulatory Medical Care Survey: 2007 Emergency Department Summary, National Health Statistics Reports, No. 26 at 3 (Aug. 6, 2010).[7] Currently, states have little choice; they must simply accept that many low-income individuals use emergency services and do not pay, leaving service providers unpaid and raising costs for everyone in return. *Id.* By expanding Medicaid to cover uninsured, low-income adults, the states will have far more flexibility in how they manage this population. Rather than the reactionary approach states have had to take with the provision of emergency services, Medicaid expansion will allow states to create prophylactic plans for medical care. The residents formerly relegated to emergency room visits can instead be sent to primary care providers, in offices, clinics, or hospitals, who can both provide preventive services to help avert major health problems, and can avoid the extra expense associated with emergency room visits. States will be left with actual choices with regard to how to structure the provision of healthcare services to their citizens.

In our system of federalism, the federal and state governments are not exclusive, conflicting entities. State governments represent state citizens, but the federal government also represents those citizens. The state petitioners essentially argue that the federal

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[7] *Available at* http://www.cdc.gov/nchs/data/nhsr/nhsr026.pdf.

government is taking away states' right to provide healthcare to their citizens as they wish. State Brief at 24. But Congress consists of representatives of states, elected by the citizens of those states, sitting as one body to represent the national interest. The state-by-state and district-by-district formation of Congress ensures a natural check within the federal government to ensure that states' interests are represented.

In this case, twenty-six states are suing the federal government, and yet these states had representation in Congress just as the twenty-four states that do not contest this law, and apparently see no threat to their sovereignty. If some citizens of half the states think they know better than the majorities in Congress as to how best to structure affordable health care, the solution is not to declare the law unconstitutional; it is to engage in representative democracy. ACA's expansion of Medicaid represents a national endeavor to address the critical health care insurance crisis, and the Court should uphold it as such.

CONCLUSION

For the foregoing reasons, this Court should affirm the decision of the Court of Appeals that the ACA's Medicaid expansion provisions do not unconstitutionally coerce states.

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February 17, 2012

APPENDIX

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Appendix A: List of *Amici Curiae*. 1a

APPENDIX A

List of *Amici Curiae*

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Congregation of the Sisters of St. Joseph

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Franciscan Sisters of Mary

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Leadership Council, Sisters, Servants of the
Immaculate Heart of Mary (Monroe)

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