

ENSURING THE SUPREMACY OF FEDERAL LAW: WHY THE DISTRICT COURT WAS WRONG IN *WESTSIDE MOTHERS V. HAVEMAN*

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IN RECENT YEARS, the Supreme Court has greatly expanded the scope of state sovereign immunity. In *Alden v. Maine*, the Court held that sovereign immunity broadly protects state governments from being sued in state court without their consent, even to enforce federal laws.¹ In *Seminole Tribe v. Florida*, the Court greatly limited the ability of Congress to authorize suits against state governments and to override sovereign immunity.² The Court applied this jurisprudence in the past couple of years to bar suits against States for patent infringement,³ for age discrimination,⁴ and for disability discrimination.⁵

Despite the significant expansion in state sovereign immunity, the Court has been adamant that this does not excuse state violations of federal law. The Court has thus stressed that state officers can be sued, even though suits against the state are barred to ensure state compliance with federal law. In its most recent sovereign immunity decision, *Board of Trustees of the*

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¹ 527 U.S. 706 (1999).

² 517 U.S. 44 (1996).

³ See *Florida Prepaid Postsecondary Educ. Expense Bd. v. Coll. Sav. Bank*, 526 U.S. 627 (1999) (striking down the Patent and Plant Variety Protection Remedy Clarification Act).

⁴ See, e.g., *Kimel v. Florida Bd. of Regents*, 528 U.S. 62 (2000) (holding that the Age Discrimination in Employment Act of 1967 is not a valid abrogation of States' Eleventh Amendment immunity).

⁵ See *Bd. of Trs. of the Univ. of Ala. v. Garrett*, 121 S. Ct. 955 (2001) (holding that employee suits against the state university under Title I of the Americans with Disabilities Act of 1990 were barred by the Eleventh Amendment).

University of Alabama v. Garrett,⁶ Chief Justice Rehnquist's majority opinion was explicit in emphasizing the power to sue state officers, even though state governments may not be sued:

Our holding here that Congress did not validly abrogate the States' sovereign immunity from suit by private individuals for money damages under Title I does not mean that persons with disabilities have no federal recourse against discrimination. Title I of the ADA still prescribes standards applicable to the States. Those standards can be enforced by the United States in actions for money damages, as well as by private individuals in actions for injunctive relief under *Ex parte Young*.⁷

Now, however, a district court has created very substantial new exceptions to the ability to sue state officers to enforce federal law. In *Westside Mothers v. Haveman*,⁸ a federal district court in Michigan went much further than any court in the country in restricting the ability to sue federal officers. Simply put, the district court's ruling is several giant steps to the right of the Supreme Court, or any other court. This article analyzes the district court's opinion and explains why it is fundamentally wrong and dangerous to ensuring the supremacy of federal law.

The case involved a suit against state officers for injunctive relief to remedy violations of a federal statute, Title XIX of the Social Security Act,⁹ which requires the State to provide preventative health care for children. The district court gave two reasons why the suit against state officers cannot go forward. First, the court ruled that state officers cannot be sued pursuant to *Ex parte Young*, to ensure state compliance with the terms of federal statutes establishing spending programs.¹⁰ The district court gave several reasons for this conclusion. Most importantly, the court held that suits against state officers cannot be brought under *Ex parte Young*, stating that "congressional enactments pursuant to the Spending Power . . . are not the supreme law of the land."¹¹ The district court also said that the

⁶ *Id.*

⁷ *Id.* at 968 n.9.

⁸ 133 F. Supp. 2d 549 (E.D. Mich. 2001).

⁹ 42 U.S.C.A. §§ 1396-1396v (West 1995 & Supp. 2001).

¹⁰ 133 F. Supp. 2d at 561-62.

¹¹ *Id.* at 561.

Eleventh Amendment precluded this suit for injunctive relief against government officers because “the State of Michigan is the real defendant in this suit, and the doctrine of *Ex Parte Young* does not apply, even though plaintiffs have nominally named individual state officers as defendants. . . . Michigan’s officers share the State’s immunity from private suit so long as they are acting within the lawful authority delegated to them by the State.”¹² In other words, the State is the real party in interest if its officers act within their lawful authority. The court additionally said that a suit under *Ex parte Young* is not available because the statute leaves discretion to the officers in implementing the law and because it has a detailed remedial scheme.¹³

Second, and independently, the district court held that there is not a cause of action pursuant to 42 U.S.C. § 1983 to enforce the provisions of Title XIX of the Social Security Act because “§ 1983 does not create a blanket cause of action for Spending Power programs operated pursuant to voluntary federal-state agreements.”¹⁴ In other words, the district court said that even if sovereign immunity did not bar the suit, there still would be no cause of action under § 1983 to enforce the federal law because it was a spending program.

Simply put, the district court announced new rules limiting federal court jurisdiction that, if upheld, would undermine the enforcement of all conditions created by Congress as part of federal statutes creating spending programs. If the district court had followed the clearly established law in this area, then there should have been no doubt the provisions of the Medicaid law at issue here were enforceable against individual officers through a § 1983 action. Instead, by radically changing the law, the district court articulated an approach that would undermine the supremacy of a large body of federal law.

Part I of this paper explains why the district court was wrong in its analysis of *Ex parte Young* and why suits against individual officers must be available to enforce laws enacted under the spending clause. Part II then discusses why the district court erred in its approach to § 1983 and why there is a cause of action to enforce spending laws, like the Medicaid Act.

¹² *Id.* at 573-74.

¹³ *Id.* at 574-75.

¹⁴ *Id.* at 576.

I. THE WESTSIDE MOTHERS COURT ERRED IN FAILING TO FOLLOW THE LONG-ESTABLISHED PRINCIPLE THAT THE ELEVENTH AMENDMENT DOES NOT BAR SUITS AGAINST STATE OFFICERS FOR INJUNCTIVE RELIEF

A. The Eleventh Amendment Does Not Bar Suits Against State Officers for Injunctive Relief

As mentioned above, this case is a suit against state officers for injunctive relief to remedy violations of a federal statute, Title XIX of the Social Security Act,¹⁵ which requires the State to provide preventative health care for children. The law is settled and clearly established that state officers may be sued for injunctive relief, even when the suit enjoins official state policy and even where the State cannot be named as a defendant.¹⁶

In fact, in its most recent sovereign immunity decision, *Board of Trustees of the University of Alabama v. Garrett*,¹⁷ the Supreme Court expressly declared that state officers may be sued to enforce Title I of the Americans with Disabilities Act even though suits directly against the state government are barred by the Eleventh Amendment. Likewise, federal courts of appeals—such as the Sixth Circuit, which is considering *Westside Mothers v. Haveman* on appeal—have consistently and unequivocally followed *Ex parte Young* and held that state officers may be sued for injunctive relief.¹⁸

The importance of this basic principle—that sovereign immunity does not bar suits against state officers for injunctive

¹⁵ 42 U.S.C.A. §§ 1396-1396v (West 1995 & Supp. 2001).

¹⁶ See *Ex parte Young*, 209 U.S. 123, 155-56 (1908) (stating there is “ample justification for the assertion that individuals, who, as officers of the State, are clothed with some duty . . . to enforce against parties affected an unconstitutional act, violating the Federal Constitution, may be enjoined by a Federal court of equity from such action”); see also *Idaho v. Coeur d’Alene Tribe*, 521 U.S. 261, 269 (1997) (“We do not . . . question the continuing validity of the *Ex Parte Young* doctrine.”); *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 105 (1984) (“[T]he *Young* doctrine has been accepted as necessary to permit the federal courts to vindicate federal rights and hold state officials responsible to ‘the supreme authority of the United States.’”); *Hutto v. Finney*, 437 U.S. 678, 690 (1978) (reaffirming that “state officers are not immune from prospective injunctive relief”).

¹⁷ 121 S. Ct. 955, 968 n.9 (2001).

¹⁸ *Lawson v. Shelby County*, 211 F.3d 331, 335 (6th Cir. 2000); *Mich. Bell Tel. Co. v. Climax Tel. Co.*, 202 F.3d 862, 867 (6th Cir. 2000); *Futernick v. Sumpter Township*, 78 F.3d 1051, 1055 (6th Cir. 1996).

relief—cannot be overstated. The decision in *Ex parte Young* long has been recognized as essential to ensuring state compliance with federal law. As Professor Charles Alan Wright noted, “the doctrine of *Ex parte Young* seems indispensable to the establishment of constitutional government and the rule of law.”¹⁹ For this reason, *Ex parte Young* has been heralded as ‘one of the three most important decisions the Supreme Court of the United States has ever handed down.’²⁰ As the Supreme Court explained, “the availability of prospective relief of the sort awarded in *Ex parte Young* gives life to the Supremacy Clause. Remedies designed to end a continuing violation of federal law are necessary to vindicate the federal interest in assuring the supremacy of that law.”²¹

The principle that government officers can be sued for injunctive relief, even where the government itself cannot be named as a defendant, can be traced to English law. Although the King could not be sued, the King’s officers could be named as defendants.²²

The United States Supreme Court has followed this principle since the earliest days of American history. For example, *United States v. Peters*²³ was the first case to interpret the Eleventh Amendment and it expressly held that there is no bar to suing an individual officer, even where the State has an interest in the outcome of the suit. In *Osborn v. Bank of the United States*,²⁴ the Supreme Court, in an opinion by Chief Justice John Marshall, held that the rule of law requires that suits against government officers be permitted even where the government is protected by sovereign immunity. Throughout the 19th century, the Court adhered to the basic principle that suits against state

¹⁹ CHARLES ALAN WRIGHT, *THE LAW OF FEDERAL COURTS* 292 (4th ed. 1983).

²⁰ *Allied Artists Pictures Corp. v. Rhodes*, 473 F. Supp. 560, 564 (S.D. Ohio 1979) (quoting 17 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, *FEDERAL PRACTICE AND PROCEDURE* § 4231 (1978)).

²¹ *Green v. Mansour*, 474 U.S. 64, 68 (1985).

²² See 10 WILLIAM S. HOLDSWORTH, *A HISTORY OF ENGLISH LAW* 651 (1938) (discussing how although no tort could be imputed to the King, his servants could be held personally answerable); Louis L. Jaffe, *Suits Against Governments and Officers: Sovereign Immunity*, 77 HARV. L. REV. 1, 9 (1963) (concluding that since the thirteenth century it was clearly established that the King’s officers could be sued).

²³ 9 U.S. (5 Cranch) 115, 139-140 (1809).

²⁴ 22 U.S. (9 Wheat.) 738, 842-44 (1824).

officers are permitted in circumstances where the State could not be named as a defendant.²⁵

Indeed, *Ex parte Young* distinguishes between the State and its officers in much the same way as the common law always has distinguished between a principal and its agents.²⁶ For example, a corporate officer who is performing acts that the corporation cannot legally authorize “is said to be acting ‘*ultra vires*’ or ‘beyond the powers’ conferred on the corporation.”²⁷ Such an officer cannot claim the authority of the corporation. Similarly, in *Young* the Court concluded that an officer acting illegally is stripped of state authority and therefore the Eleventh Amendment does not bar suits against officers.

B. The District Court Erred in Concluding that the Eleventh Amendment Barred a Suit Against State Officers to Ensure Compliance with the Provisions of the Social Security Act

Against this historical background, the *Westside Mothers* court clearly erred in finding the Eleventh Amendment barred this suit against state officers to ensure compliance with federal law. In coming to this conclusion, the district court invented new exceptions to the doctrine of *Ex parte Young* that have no basis in the precedents of the Supreme Court, this Court, or any court in the country.

²⁵ See *Smyth v. Ames*, 169 U.S. 466, 518-19 (1898) (holding that within the meaning of the Eleventh Amendment, a suit against a state officer to prevent him from enforcing an unconstitutional act is not a suit against the State); *Ex parte Ayers*, 123 U.S. 443, 506 (1887) (discussing how individual defendants, under “the color of the authority of unconstitutional legislation by the state, are guilty of personal trespass”); *Cunningham v. Macon & Brunswick R.R. Co.*, 109 U.S. 446, 452 (1883) (stating that a court does not lose jurisdiction when a government officer “asserts authority as such officer”); *Davis v. Gray*, 83 U.S. (16 Wall.) 203, 220 (1872) (“Making a State officer a party does not make the State a party, although her law may have prompted his action, and the State may stand behind him as the real party in interest.”); *Governor of Georgia v. Madrazo*, 26 U.S. (1 Pet.) 110, 122 (1828) (“[A]lthough the claims of a state may be ultimately affected by the decision of a cause, yet if the state be not necessarily a defendant, the Courts of the United States are bound to exercise discretion.”).

²⁶ See, e.g., RESTATEMENT (SECOND) OF AGENCY § 7 (1958) (distinguishing authority from other powers); HAROLD GILL REUSCHLEIN & WILLIAM A. GREGORY, HANDBOOK ON THE LAW OF AGENCY AND PARTNERSHIP § 13 (2d ed. 1979) (distinguishing power and authority).

²⁷ JOHN V. ORTH, THE JUDICIAL POWER OF THE UNITED STATES: THE ELEVENTH AMENDMENT IN AMERICAN HISTORY 133 (1987).

1. Spending Programs Are the Supreme Law of the Land

The first, and perhaps the most important, reason given by the district court for not following *Ex parte Young* was its astounding statement that “congressional enactments pursuant to the Spending Power . . . are not the supreme law of the land.”²⁸ The district court flatly declared that the doctrine of *Ex Parte Young* “does not apply to congressional enactments under the Spending Power.”²⁹

But statutes creating spending programs, such as the Social Security Act and its provisions, unquestionably are federal laws. Nothing in the Constitution’s language, or any Supreme Court precedent, draws a distinction among federal laws, denying some status as the supreme law of the land. Indeed, the Supreme Court and every court have recognized that spending statutes are the supreme law in finding that they preempt conflicting state and local laws.³⁰

The Supreme Court consistently has expansively defined the scope of Congress’s power under the spending clause. In *United States v. Butler*,³¹ the Court held that Congress has broad power to tax and spend for the general welfare so long as it does not violate other constitutional provisions.

Subsequent cases affirmed Congress’s expansive authority under the taxing and spending clauses, specifically with regard to the Social Security Act, which is the statute at issue in *Westside Mothers*. In *Steward Machine Co. v. Davis*,³² the Court upheld the constitutionality of the federal unemployment compensation system created by the Social Security Act. In *Helvering v. Davis*,³³ the Court upheld the constitutionality of the Social Security Act’s old age pension program, which was sup-

²⁸ *Westside Mothers v. Haveman*, 133 F. Supp. 2d 549, 561 (E.D. Mich. 2001).

²⁹ *Id.*

³⁰ See *Dalton v. Little Rock Family Planning Servs.*, 516 U.S. 474, 478 (1996) (enjoining portion of Amendment 68 of the Arkansas Constitution that conflicted with Medicaid abortion funding); *Planned Parenthood Affiliates of Mich. v. Engler*, 73 F.3d 634 (6th Cir. 1996) (holding that section 109a of the Social Welfare Act of Michigan prohibiting state expenditures to pay for an abortion violated federal law); *Elizabeth Blackwell Health Ctr. for Women v. Knoll*, 61 F.3d 170, 178 (3d Cir. 1995) (stating the Supremacy Clause requires the invalidation of Pennsylvania’s Abortion Control Act because it conflicted with Medicaid).

³¹ 297 U.S. 1 (1936).

³² 301 U.S. 548 (1937).

³³ 301 U.S. 619 (1937).

ported exclusively by federal taxes. Justice Cardozo, writing for the Court explained:

The discretion [to decide whether taxing and spending advances the general welfare] belongs to Congress, unless the choice is clearly wrong, a display of arbitrary power, not an exercise of judgment. . . . Nor is the concept of the general welfare static. Needs that were narrow or parochial a century ago may be interwoven in our day with the well-being of the Nation.³⁴

No case since the 1930's has limited or even called into question the broad scope of Congress's spending powers.

The district court rests its conclusion that spending programs are not the supreme law of the land on the fact that States choose whether to participate. It declared that "[c]ongress has no power to compel the States to participate in voluntary federal programs like Medicaid."³⁵ This analysis confuses two different choices: whether to participate in the federal program and whether to comply with the requirements of the program once the State has decided to participate. The former is voluntary, but the latter is obligatory. A State certainly gets to decide whether to participate in a federal program like Medicaid; but once it has made the choice to participate, it must comply with the terms of that law, just as it must follow all federal laws that apply to it. As a federal court recently persuasively explained:

[W]e do not agree with the appraisal of laws passed pursuant to the Spending Clause as having inferior dignity to other laws. Certainly the Supreme Court has not articulated any such distinction; to the contrary, it has struck down state laws or regulations which violated a federal welfare statute, Aid to Families with Dependent Children, on the basis that such laws violated the Supremacy Clause.³⁶

³⁴ *Id.* at 640-41.

³⁵ *Westside Mothers v. Haveman*, 133 F. Supp. 2d 549, 561 (E.D. Mich. 2001).

³⁶ *Boudreau v. Ryan*, No. 00 C 5392, slip op. at 12 (N.D. Ill. May 1, 2001), (citing *Blum v. Bacon*, 457 U.S. 132, 138 (1982); *Carleson v. Remillard*, 406 U.S. 598, 600 (1972); *Townsend v. Swank*, 404 U.S. 282, 285-86 (1971)).

Indeed, Eleventh Amendment concerns are less weighty in spending clause cases precisely because States have chosen to participate. The Supreme Court is understandably most concerned about federalism when Congress is compelling state government action.³⁷ In contrast, the Court has been clear that Congress can induce state government action through the use of its spending powers. For example, in *South Dakota v. Dole*,³⁸ the Court upheld the constitutionality of Congress requiring States to set an eighteen-year-old drinking age as a condition for receipt of federal highway money. The difference, of course, is that with spending programs States get to make a choice, and once they decide to participate they can be forced to meet the requirements of the program.

The *Westside Mothers* court justified its conclusion by characterizing the Medicaid program as a “contract” between the federal government and the States.³⁹ The problem with this argument is that it takes an analogy literally; Medicaid, as with other spending programs, is like a contract in that the parties each have made a voluntary choice to participate, but it is different from a contract in that the terms are set by federal statute and thus are the supreme law of the land. As the Supreme Court has explained, in speaking about another spending program:

Although we agree with the State that Title I grant agreements had a contractual aspect, the program cannot be viewed in the same manner as a bilateral contract governing a discrete transaction. . . . Unlike normal contractual undertakings, federal grant programs originate in and remain governed by statutory provisions expressing the judgment of Congress concerning desirable public policy.⁴⁰

The district court’s view, if followed, would undermine the enforcement of *every* federal spending program.

³⁷ See *Printz v. United States*, 521 U.S. 898 (1997) (holding the background-check requirements of the Brady Handgun Violence Prevention Act violated the Tenth Amendment); *New York v. United States*, 505 U.S. 144 (1992) (holding the “take title” provision of the Low-Level Radioactive Waste Policy Amendments Act of 1985 violated the Tenth Amendment).

³⁸ 483 U.S. 203 (1987).

³⁹ *Westside Mothers*, 133 F. Supp. 2d at 557.

⁴⁰ *Bennett v. Kentucky Dep’t of Educ.*, 470 U.S. 656, 669 (1985) (citations omitted).

2. The Eleventh Amendment Does Not Bar Suits Against State Officers Even Though the State Government is the “Real Party in Interest”

The second reason given by the district court for barring the suit in *Westside Mothers*, based on the Eleventh Amendment, was that Michigan was the real party in interest.⁴¹ The court explained that the defendant officers “are acting in their official capacities within the authority delegated to them by the State, and the relief sought against them is in reality to be inflicted only against the State.”⁴²

But this is true in every instance in which a state officer is sued to enjoin state laws and policies that conflict with federal law. In *Ex parte Young*, the State was the real party in interest because the suit against the Minnesota Attorney General was to enjoin a state statute limiting railroad rates enacted by the Minnesota legislature and signed into law by its governor.

The Supreme Court consistently has held the Eleventh Amendment does not prohibit a federal court from giving injunctive relief against a state officer even though compliance with the injunction will cost the State a great deal of money in the future.⁴³ In countless instances, the State was the real party in interest; in all, compliance with the injunction would force significant state expenditures; and yet in all, the Court held that there was no Eleventh Amendment bar to the suit against the officers for injunctive relief.

In *Westside Mothers*, the suit named state officers as defendants and sought an injunction against them. This is exactly what *Ex parte Young*, and countless decisions before and after it, permits. If the district court is correct that state officers cannot be sued where the State is the real party in interest, the doctrine of *Ex parte Young* is effectively overruled because it never could be used to enjoin state laws or policies.

⁴¹ *Westside Mothers*, 133 F. Supp. 2d at 562-74.

⁴² *Id.* at 573.

⁴³ See *Green v. Mansour*, 474 U.S. 64, 68 (1985) (discussing how remedies designed “to end a continuing violation of federal law are necessary to vindicate the federal interest in assuring the supremacy of that law,” but retrospective relief is not permitted by the Eleventh Amendment); *Milliken v. Bradley*, 433 U.S. 267, 289 (1977) (stating federal courts can enjoin state officials conduct notwithstanding a “direct and substantial impact on the state treasury”); *Edelman v. Jordan*, 415 U.S. 651 (1974) (holding a court’s remedial power is limited to prospective relief, and may not include a retroactive award).

3. State Officers Have the Duty to Comply with the Terms of the Social Security Act

The *Westside Mothers* court concluded that *Ex parte Young* does not apply because federal law accords state officers discretion in making certain choices. The district court stated, “even if Michigan were obligated to provide all of the services plaintiffs argue are required . . . the federal laws upon which plaintiffs rely do not explain how those levels of service are to be reached, nor do those federal laws require that the State provide service in a particular manner.”⁴⁴

This argument commits a basic logical fallacy: it concludes that everything is discretionary because some things are discretionary. Once the State chooses to participate in the Federal Medicaid program its officers are required to provide the Early and Periodic Screening, Diagnosis, and Treatment Services (EPSDT) required by federal law. Even though they may make some choices in how to comply with these mandates, state officers have no discretion as to whether to provide the services required by federal law. As the Tenth Circuit has explained, *Ex parte Young* does not “preclude judicial review of discretionary acts that violate federal law.”⁴⁵ Again, if the district court’s approach were followed, nothing would remain of *Ex parte Young* because virtually every federal mandate leaves some choices to state officials.

4. The Medicaid Statute Does Not Provide a Detailed Remedial Scheme that Precludes Suits for Injunctive Relief Under *Ex Parte Young*

Finally, the *Westside Mothers* court concluded that “[t]he existence of a limited remedy in the Medicaid statute precludes the use of *Ex Parte Young* to enforce the statutory scheme by other means.”⁴⁶ The district court, however, misstated the law by omitting key words from the Supreme Court, which stated, “where Congress has prescribed a *detailed* remedial scheme . . . a court should hesitate before casting aside those limitations and

⁴⁴ *Westside Mothers*, 133 F. Supp. 2d at 574.

⁴⁵ *Elephant Butte Irrigation Dist. v. Dep’t of the Interior*, 160 F. 3d 602, 611 (10th Cir. 1998).

⁴⁶ *Westside Mothers*, 133 F. Supp. 2d at 575.

permitting an action against a state officer based upon *Ex parte Young*.”⁴⁷

No other court in the country has held that the Medicaid law creates a “detailed” remedial scheme or that allowing suits against state officers to enforce it would “cast aside” limitations in the law. Quite the contrary, every other court to consider the issue has rejected this argument.⁴⁸ As these courts have held, there is nothing in the Medicaid law that is inconsistent with enforcement via suits against individual officers. If the *Westside Mothers* court’s approach were followed, then no suits would be permitted to enforce this, or countless other, federal statutes.

In conclusion, the *Westside Mothers* court’s opinion calls into question the very validity of *Ex parte Young* and the ability to sue individual officers to enforce federal laws. The district court’s view that there cannot be suits against officers when the relief effectively is against the State would leave nothing remaining of *Ex parte Young*. The key mechanism for ensuring state compliance with federal law, and thus upholding the basic principle of federal supremacy, would be lost. But even the district court’s narrower rationale—that spending programs cannot be enforced via suits against officers—would mean that States could disregard the terms of countless federal laws and not need to worry about enforcement actions. The district court, in its obvious concern about federalism, forgets one of the most basic aspects of American federalism: the supremacy of federal law, which is expressly required by Article VI of the Constitution.

⁴⁷ *Seminole Tribe v. Florida*, 517 U.S. 44, 74 (1996) (emphasis added).

⁴⁸ See *Md. Psychiatric Soc’y, Inc. v. Wasserman*, 102 F.3d 717, 719 n.* (4th Cir. 1996); *Reynolds v. Giuliani*, 118 F. Supp. 2d 352, 382 (S.D.N.Y. 2000); *Md. Cmty. Health Sys., LLP. v. Glendening*, 115 F. Supp. 2d 599, 602 (D. Md. 2000).

**II. THE WESTSIDE MOTHERS COURT ERRED IN
FAILING TO FOLLOW THE CLEARLY
ESTABLISHED LAW THAT THE PROVISIONS OF
THE SOCIAL SECURITY ACT ARE
ENFORCEABLE VIA A SUIT UNDER 42 U.S.C.
§ 1983**

**A. The Law Is Clearly Established that the Provisions of the
Social Security Act Are Enforceable Via a Suit Under 42 U.S.C.
§ 1983**

The *Westside Mothers* court also held that there is not a cause of action pursuant to 42 U.S.C. § 1983 to enforce the provisions of Title XIX of the Social Security Act because “§ 1983 does not create a blanket cause of action for Spending Power programs operated pursuant to voluntary federal-state agreements.”⁴⁹ The district court’s reasoning, if followed, would mean that there is no cause of action under § 1983 to enforce the provisions of the Social Security Act or any other federal spending program. This would dramatically change the law because the Supreme Court consistently and unequivocally has held that suits under § 1983 are available to enforce the Social Security Act and other federal spending programs.

The seminal case concerning the availability of § 1983 to redress violations of federal statutes is *Maine v. Thiboutot*,⁵⁰ which was a suit to enforce provisions of the Social Security Act concerning the calculation of welfare benefits. The State argued, as the *Westside Mothers* court concluded, that § 1983 could not be used to enforce the Social Security Act. The Supreme Court unequivocally rejected this argument:

The question before us is whether the phrase “and laws,” as used in § 1983, means what it says, or whether it should be limited to some subset of laws. Given that Congress attached no modifiers to the phrase, the plain language of the statute undoubtedly embraces respondents’ claim that petitioners violated the Social Security Act.⁵¹

⁴⁹ *Westside Mothers*, 133 F. Supp. 2d at 576.

⁵⁰ 448 U.S. 1 (1980).

⁵¹ *Id.* at 4.

In fact, in *Wilder v. Virginia Hospital Ass'n*,⁵² the Supreme Court expressly ruled that the provisions of the Medicaid law, which are the focus of the *Westside Mothers* litigation, are enforceable via a § 1983 action. The district court's reasoning, that contractual agreements cannot be enforced via a § 1983 action, was foreclosed by *Wilder's* explicit holding that suits to collect money owed under the terms of federal law are permissible. Courts of Appeals, including the Sixth Circuit, have followed this clearly established law and held that the provisions of Title XIX of the Social Security Act may be enforced through § 1983 suits.⁵³

B. Congress Clearly Intended that the Provisions of the Social Security Act Be Enforced Through a § 1983 Action

In *Wright v. City of Roanoke Redevelopment and Housing Authority*,⁵⁴ the Supreme Court held that the presumption is in favor of the availability of § 1983 to enforce a federal statute. The Court emphasized that the burden is on the defendant to demonstrate "by express provision or other specific evidence from the statute itself that Congress intended to foreclose [§ 1983 litigation]."⁵⁵

There is nothing in the Social Security Act, its Medicaid provisions, or any of the legislative history that evidences congressional intent to foreclose § 1983 actions. Quite the contrary, there have been many attempts to amend the Social Security Act to preclude § 1983 suits to enforce its provisions, but all have failed. Congress rejected bills introduced in 1981, 1985, 1987, and 1996 that would have limited § 1983 precisely as done by the district court.⁵⁶ In 1995, Congress passed a provision that would have repealed the right to sue under § 1983 to enforce the Medicaid statute, but President Clinton vetoed it.⁵⁷ In *Maine v.*

⁵² 496 U.S. 498, 501-02, 509-10 (1990).

⁵³ See *Boatman v. Hammons*, 164 F.3d 286 (6th Cir. 1998) (challenging Michigan's Medicaid transportation policy); *Linton v. Comm'r of Health and Evn't*, 65 F.3d 508 (6th Cir. 1995) (challenging Tennessee's implementation of distinct part certification); *Wood v. Tompkins*, 33 F.3d 600 (6th Cir. 1994) (challenging Ohio's administration of its Medically Fragile Waiver program).

⁵⁴ 479 U.S. 418 (1987).

⁵⁵ *Id.* at 423.

⁵⁶ See H.R. 4314, 104th Cong. § 309(a) (1996); S. 325, 100th Cong. (1987); S. 436, 99th Cong. (1985); S.584, 97th Cong. (1981).

⁵⁷ The House Budget Committee stated "[t]he bill would remove the existing right of an applicant, beneficiary, provider, or health plan to sue a State official under

Thiboutot,⁵⁸ the Court invited the legislative process to change the law if it thought the Court's interpretation of congressional intent was in error. The failure of the legislative process to do so, despite many attempts, is a clear indication that the provisions of the Social Security Act are enforceable via a §1983 action.

Moreover, the one time the Supreme Court found a provision of the Social Security Act to be non-enforceable via a § 1983 action, Congress immediately overturned that decision by statute. In *Suter v. Artist M.*, the Court held that § 1983 could not be used to enforce the Adoption Assistance and Child Welfare Act of 1980.⁵⁹ Congress quickly adopted a law, 42 U.S.C. § 1320a-2, to reestablish the private right of action as it existed before this decision.⁶⁰ The statute adopted after *Suter* represents a clear Congressional re-endorsement of *Maine v. Thiboutot's* holding that the provisions of the Social Security Act are enforceable through a § 1983 action.

42 U.S.C 1983 to require prospective enforcement of the Medicaid statute." H.R. REP. NO. 104-280, at 639 (1995).

⁵⁸ 448 U.S. 1, 8 (1980).

⁵⁹ 503 U.S. 347 (1992).

⁶⁰ See H.R. CONF. REP. NO. 102-1034 (1992) (stating the purpose of the bill "is to assure that individuals who have been injured by a States 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.*"). I note that I played some part in helping in the drafting of this language. It is a fascinating story of the legislative process at work. The Senate Finance Committee held a hearing in the fall of 1992 after *Suter v. Artist M.* had been decided. There were four witnesses at the hearing: representatives of the Attorney General's offices from Illinois (who had argued *Suter* in the Supreme Court) and Florida; James Wild, then of the Children's Defense Fund; and me. After the four witnesses made their statements and were asked some questions, a bell went off. Senator Moynihan, who was presiding, said that the Senators had to go to a floor vote. He asked each of us when our plane was to go home. None of us had a flight for several hours. He asked us to go with his staff to try and draft some language. So the four witnesses accompanied the staff to what was literally a back room off the hearing room. We were followed by a group of lobbyists. The witnesses and the staff sat around the table and the lobbyists sat around the room behind us. We actually drafted some language. (I still have the sheet of legal paper where I scribbled an idea for some of it.) The language we drafted was the basis for a provision that the Senate passed. It was put in a bill that President George Bush vetoed in November 1992. The new Congress passed it and President Clinton signed it into law.

C. Under the Test Articulated By the Supreme Court, the Provisions of Title XIX of the Social Security Act Are Enforceable Via § 1983 Action

The Supreme Court has held that a statute creates rights enforceable under 42 U.S.C. § 1983 if: (1) ‘the provision in question was intend[ed] to benefit the putative plaintiff;’⁶¹ (2) the statute imposes “a binding obligation on the government unit” rather than “reflects merely a ‘congressional preference’ for a certain kind of conduct;”⁶² and (3) the interest asserted is not “‘too vague and amorphous’ such that it is ‘beyond the competence of the judiciary to enforce.’”⁶³ The district court wrongly ignored this test and relied instead on *Will v. Michigan Department of State Police*,⁶⁴ which did not even involve the question of whether § 1983 can be used to enforce federal statutes.⁶⁵

Under this three-part test, which is controlling in deciding whether a suit can be brought under § 1983 to enforce a federal law, there can be no doubt that the Medicaid provisions of the Social Security Act are enforceable via a § 1983 action. First, as many courts have expressly recognized, children are the intended beneficiaries of the Early and Periodic Screening, Diagnosis, and Treatment Services provisions of the law.⁶⁶

Second, these provisions of the Social Security Act are binding upon States participating in the Medicaid program. The statutory language is unequivocal that States “shall” provide these services and that the requirement is “mandatory” upon

⁶¹ *Wilder v. Va. Hosp. Ass’n*, 496 U.S. 498, 509 (1990) (quoting *Golden State Transit Corp. v. Los Angeles*, 493 U.S. 103, 106 (1989)).

⁶² *Id.* (quoting *Pennhurst State Sch. & Hosp. V. Halderman*, 451 U.S. 1, 19 (1981)).

⁶³ *Id.* (quoting *Golden State Transit Corp. v. Los Angeles*, 493 U.S. 103, 106 (1989)).

⁶⁴ 491 U.S. 58 (1989). The issue in *Will* was whether a state government can be named as a defendant in a § 1983 suit in state court. *Id.* This case has no application here where it is a § 1983 suit pursuant to *Ex parte Young* against state officers in federal court.

⁶⁵ *Westside Mothers v. Haveman*, 133 F. Supp. 2d 549 (E.D. Mich. 2001).

⁶⁶ *Dajour B. v. City of New York*, No. 00 Civ. 2044 (JGK), 2001 U.S. Dist. LEXIS 10251, at *26 (S.D.N.Y. April 10, 2001); see *Miller ex rel. Miller v. Whitburn*, 10 F.3d 1315, 1319 (7th Cir. 1993); *Mitchell v. Johnston*, 701 F.2d 337, 342 n.7 (5th Cir. 1983); *Antrican v. Buell*, 158 F. Supp. 2d 663, 672-73 (E.D.N.C. 2001); *Frew v. Gilbert*, 109 F. Supp. 2d 579, 662 (E.D. Tex. 2000).

them.⁶⁷ Thus, courts have properly concluded that “it is clear . . . that the Department has a binding obligation” to provide preventative health care services to a Medicaid eligible child.⁶⁸

Third, the provisions that *Westside Mothers* had cited in their complaint are not too vague to be enforced. The statutory duties are clearly stated and thus courts consistently have found that they are sufficiently specific to be enforceable via a § 1983 action.⁶⁹

If the *Westside Mothers* court had applied the proper test, as prescribed by the United States Supreme Court, there is no doubt that it would have had to conclude that a cause of action exists under § 1983 to enforce the contested provisions of Title XIX of the Social Security Act. Instead, the district court created a new and unprecedented rule that would dramatically change the law in holding that § 1983 cannot be used to enforce federal spending programs. Congress could, if it wished to do so, create such a law, but it is not for the courts to do.

CONCLUSION

It may seem unusual to devote an entire article to analyzing one district court’s opinion, especially before the appellate court even has had the opportunity to consider it. Yet, for many reasons the district court’s opinion in *Westside Mothers v. Havenman*⁷⁰ warrants this attention.

The case involves basic principles of American law, especially the ability to ensure the supremacy of federal law. Ultimately, the issue is about holding government accountable. Can state governments violate the terms of federal statutes with impunity? If the district court’s view is accepted, then there will be no way to enforce in court any federal statute that creates a spending program. This, of course, would encourage state gov-

⁶⁷ See 42 U.S.C.A § 1396a(a)(1) (West Supp. 2001) (“A State plan for medical assistance must — provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them.”), § 1396a(a)(8) (mandating that all individuals wishing to apply for assistance shall have the opportunity to do so and assistance shall be provided with reasonable promptness), § 1396a(10)(A) (listing those qualified for medical assistance under state plans), § 1396a(a)(43) (mandating required procedures concerning early periodic screening, diagnostic, and treatment services).

⁶⁸ *Miller ex rel. Miller*, 10 F.3d at 1319.

⁶⁹ See *Antrican*, 158 F. Supp. 2d at 670; *Dajour B.*, No. 00 Civ. 2044 (JGK), 2001 U.S. Dist. LEXIS 10251, at *26; *Frew*, 109 F. Supp. 2d at 663.

⁷⁰ 133 F. Supp. 2d 549 (E.D. Mich. 2001).

ernments to ignore the terms of federal statutes. The federal government theoretically still could enforce the laws by cutting off funds to non-complying States. But such fund cutoffs rarely occur and besides, it only makes things worse as the beneficiaries in need are denied all funds.

This is a time of greatly renewed emphasis on federalism by the United States Supreme Court. I have no doubt that the Rehnquist Court will be most remembered for its revival of federalism as a limit on federal power. The Court has narrowed the scope of Congress's powers under the Commerce Clause and section five of the Fourteenth Amendment; used the Tenth Amendment as a limit on federal authority; and significantly expanded state sovereign immunity. All of this has occurred in the last decade—much in just the last five years. Therefore, it is uncertain how far the federalism revolution will go in limiting federal powers in the name of protecting States' rights.

It is precisely for this reason that the district court's decision in *Westside Mothers* is so dangerous and so important. This district court has gone much further than any other court in pushing to restrict federal court power and greatly expand state immunity to suit. That is why it is so important to examine the decision carefully and explain why the decision is fundamentally wrong about the law and even more about basic principles of American government.

Forgotten in all of this, unfortunately, is the reality that this litigation is about making sure that children get preventative medical care. With all of the technical arguments about jurisdiction, *Ex parte Young*, and § 1983, it is easy to forget that this case concerns preventing children from becoming ill and providing essential medical care. The State of Michigan took federal money for this purpose and is violating its statutory obligations.

The Sixth Circuit should reverse the district court and explain all of the reasons why the district court erred. Ultimately, the Supreme Court should reaffirm the basic principles implicated by this litigation: state officers may be sued to enforce federal laws to ensure compliance with their terms and that, of course, includes spending laws.