No. 02-1523

In the Supreme Court of the United States

MARC SANFORD, GOVERNOR OF SOUTH CAROLINA, ET AL., PETITIONERS

v.

TOMMY G. THOMPSON, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Title IV-A of the Social Security Act, 42 U.S.C. 601 *et seq.*, makes block grants available to States to assist needy families. Title IV-D of that Act, 42 U.S.C. 651 *et seq.*, makes funds available to States to improve their ability to enforce the child support obligations of non-custodial parents. The question presented is whether the requirements that States operate an automated data system and a child support disbursement unit as conditions of receiving federal funding under Title IV-A and Title IV-D are a valid exercise of Congress's authority under the Spending Clause of the Constitution.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A7) is reported at 311 F.3d 316. The opinion of the district court (Pet. App. A10-A59) is reported at 121 F. Supp. 2d 854.

JURISDICTION

The judgment of the court of appeals was entered on November 15, 2002. A petition for rehearing was denied on January 13, 2003 (Pet. App. A8-A9). The petition for a writ of certiorari was filed on April 14, 2003 (a Monday). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Title IV-D of the Social Security Act, 42 U.S.C. 651 *et seq.*, authorizes the provision of funds to States to promote efforts to locate absent parents, establish paternity, and enforce child and spousal support obligations. 42 U.S.C. 651, 655(a)(2)(C) and (3)(B). In 1988, Congress amended Title IV-D through enactment of the Family Support Act, Pub. L. No. 100-485, 102 Stat. 2343. The amendment requires participating States to operate automated data processing and information retrieval systems. § 123, 102 Stat. 2352. Originally, the States had until October 1, 1995 to establish an automated system, but that deadline was later extended to October 1, 1997. 42 U.S.C. 654(24). The federal government contributes from 66% to 90% of the funding for automated systems. See 42 U.S.C. 655(a)(3)(A) (1994).

In 1996, Congress further amended Title IV-D through enactment of the Personal Responsibility and Work Opportunity Reconciliation Act, Pub. L. No. 104-193, 110 Stat. 2105. The 1996 Act requires each participating State to establish a case registry, a directory of new hires, and a statewide disbursement unit (SDU). 42 U.S.C. 654(27) and (28), 654a(e). States were required to establish and operate an SDU by October 1, 1998, or, in the case of a State that distributed support through the courts, October 1, 1999. See 42 U.S.C. 654(27); Pub. L. No. 104-193, § 312(d), 110 Stat. 2105. The purpose of the SDU requirement is to enable States to distribute support payments in a timely manner. 42 U.S.C. 654b.

2. As a condition of receiving federal funds under Title IV-D, a State must have an approved "state plan" that meets the requirements of 42 U.S.C. 654. See 42 U.S.C. 655(a)(1)(A). In order to obtain approval of its

Title IV-D Plan, a State must establish an automated system and an SDU. 42 U.S.C. 654(24) and (27)(A).

The existence of a valid Title IV-D plan is also a prerequisite for funding under Title IV-A of the Social Security Act, 42 U.S.C. 601 *et seq.*, which makes block grants available to the States to assist needy families. Congress linked funding under Title IV-A to the existence of a valid Title IV-D plan because of the relationship between the two programs: collecting child support may allow families to avoid the need for, or reduce their dependence on, welfare. Accordingly, disapproval of a State's IV-D plan could ultimately result, after notice, in the withholding of funds under Title IV-A as well as Title IV-D. See 42 U.S.C. 602(a)(2), 603.

In 1998, Congress enacted the Child Support Performance and Incentive Act, Pub. L. No. 105-200, 112 Stat. 645. That Act provides "for an alternative penalty procedure for States that fail to meet Federal child support data processing requirements." 112 Stat. 645. In 1999, Congress instituted the alternative penalty scheme for SDU non-compliance. See District of Columbia Appropriations Act, 2000, Pub. L. No. 106-113, Div. B, § 1000(a)(4), 113 Stat. 1535.

Under the alternative penalty procedure, a State that has failed to comply with the automated system and SDU requirements may receive a reduced penalty if (1) the Secretary determines that the State is making a good faith effort to comply with program requirements, and (2) the State has submitted to the Secretary a "corrective compliance plan." 42 U.S.C. 655(a)(4)(A)(i) (automated system) and(5)(A)(i) (SDU). The alternative penalty scheme imposes relatively modest, graduated financial penalties depending on how long the State remains out of compliance. See 42 U.S.C. 655(a)(4)(B) (providing for a penalty for the first year of

4% of Title IV-D funds paid to the State at the 66% rate during the prior year; 8% for the second year; 16% for the third year; 25% for the fourth year; and 30% for the fifth and any subsequent year).

3. South Carolina accepts federal funds under Title IV-D and Title IV-A, but it has failed to comply with Title IV-D's automated system and SDU requirements. Pet. App. A3, A15. South Carolina initially elected to incur the alternative penalty for failure to comply with the SDU requirement. *Id.* at A15. South Carolina later elected the alternative penalty for failure to comply with the automated system requirement. *Id.* at A3.

The Governor of South Carolina and other state officials (petitioners) filed suit in federal district court seeking, *inter alia*, a declaration that Title IV-D's automated system and SDU requirements exceed Congress's spending power and violate the Tenth Amendment. Pet. App. A15-A16 n.5. The district court rejected petitioners' claims and granted summary judgment to the Secretary of Health and Human Services. *Id.* at A10-A59.

4. The court of appeals affirmed. Pet. App. A1-A7. Applying the analysis set forth in *South Dakota* v. *Dole*, 483 U.S. 203 (1987), the court held that Title IV-D falls within Congress's power under the Spending Clause and does not violate the Tenth Amendment. Pet. App. A4-A6.

The court of appeals determined that Congress had acted in pursuit of the general welfare by making a "considered judgment" that the public would "benefit significantly from the enhanced enforcement of child-support decrees" and the reduction in the ability of parents to "avoid their obligations simply by moving across local or state lines." Pet. App. A4 (internal quotation marks omitted). The court also held that

Title IV-D's automated system and SDU requirements are unambiguous, enabling States to make choices "knowingly, cognizant of the consequences of [their] participation." *Ibid.* The court further ruled that the automated system and SDU conditions are related to Congress's goal of "efficient child support enforcement" and the "broader goal of providing assistance to needy families through the [Title IV-A] program." *Id.* at A5. Finally, the court noted that petitioners made no contention that Title IV-D induces States to violate any independent constitutional prohibition. *Ibid.*

The court of appeals rejected petitioners' contention that Title IV-D's requirements are so coercive that they violate the Tenth Amendment. Pet. App. A5-A6. The court reasoned that the alternative penalties "would result in the loss of a small fraction of the State's [Tile IV-A] funds," and "such a proportion was noncoercive." *Id.* at A6. The court concluded that "[g]iven the linkages between child support enforcement and aid to needy families and the level of the alternative penalty," Title IV-D requirements are consistent with the Tenth Amendment. *Ibid.*

Based on the plain language of Title IV-D's penalty provisions, the court of appeals rejected petitioners' contention that the Department of Health and Human Services (HHS) has discretion to deviate from the alternative penalty structure. Pet. App. A6-A7. Finally, the court of appeals refused to consider petitioners' due process claim on the ground that "this contention was never properly presented to the district court." *Id.* at A7 n.3.

DISCUSSION

The court of appeals' decision is correct, and it does not conflict with any decision of this Court or any other

court of appeals. The only other court of appeals to consider the constitutionality of Title IV-D's funding conditions has upheld them under the Spending Clause. *Kansas* v. *United States*, 214 F.3d 1196 (10th Cir.), cert. denied, 531 U.S. 1035 (2000). Further review is therefore unwarranted.

1. Petitioners contend (Pet. 8-18) that Title IV-D's automated system and SDU requirements exceed Congress's power under the Spending Clause. That contention is without merit.

The Constitution authorizes Congress to "lay and collect Taxes, Duties, Imposts, and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States." U.S. Const. Art. I, § 8, Cl. 1. "Incident to this power, Congress may attach conditions on the receipt of federal funds, and has repeatedly employed the power 'to further broad policy objectives by conditioning receipt of federal moneys upon compliance by the recipient with federal statutory and administrative directives.'" *South Dakota* v. *Dole*, 483 U.S. 203, 206 (1987) (quoting *Fullilove* v. *Klutznick*, 448 U.S. 448, 474 (1980) (opinion of Burger, C.J.)); see *New York* v. *United States*, 505 U.S. 144, 167 (1992).

The Court in *Dole* identified four limitations on Congress's spending power. First, by its terms, the Spending Clause requires that Congress legislate in pursuit of "'the general welfare.'" *Dole*, 483 U.S. at 207 (quoting U.S. Const. Art. I, § 8, Cl. 1). Second, if Congress conditions the States' receipt of federal funds, it "must do so unambiguously * * *, enabl[ing] the States to exercise their choice knowingly, cognizant of the consequence of their participation." *Ibid.* Third, this Court's cases "have suggested (without significant elaboration) that conditions on federal grants might be illegitimate if they are unrelated 'to the federal interest

in particular national projects or programs.'" *Ibid.* (citation omitted). And fourth, Congress may not seek to induce States to violate any independent constitutional prohibition. *Id.* at 208.

As the court of appeals concluded (Pet. App. A4-A7), Title IV-D does not exceed those limitations. See *Kansas*, 214 F.3d at 1199-1201. As the court explained, Congress made a considered judgment that enforcement of child-support decrees furthers the general welfare; Title IV-D clearly and unambiguously imposes the automated-system and SDU requirements as funding conditions; those requirements are related to the goals of efficient child-support enforcement and reducing dependence on welfare; and there is no claim that those conditions induce States to violate any independent constitutional prohibition. Pet. App. A4-A5.

Petitioners argue (Pet. 9-11) that the court of appeals erred in failing to evaluate the entire factual situation with a heightened level of scrutiny. The court of appeals, however, applied precisely the level of scrutiny required by this Court's decision in *Dole*. Pet. App. A4-A5. Petitioners offers no support for their view that a different analysis is required.

Petitioners suggest (Pet. 11) that Congress may not establish conditions on federal funding in areas of traditional state concern. But this Court's precedents make clear that Congress may act under the Spending Clause even when the Tenth Amendment might bar it from regulating a state activity directly. See, *e.g.*, *Dole*, 483 U.S. at 210-211; *Printz* v. *United States*, 521 U.S. 898, 917-918 (1997); *New York*, 505 U.S. at 174-176. As this Court reaffirmed in *Dole*, a "perceived Tenth Amendment limitation on congressional regulation of state affairs [does] not concomitantly limit the range of

conditions legitimately placed on federal grants." 483 U.S. at 210. Indeed, "[r]equiring States to honor the obligations voluntarily assumed as a condition of federal funding * * * simply does not intrude on their sovereignty." *Bell* v. *New Jersey*, 461 U.S. 773, 790 (1983).

2. Petitioners contend (Pet. 11-13) that Title IV's conditions on federal funding are fatally ambiguous because HHS did not promulgate regulations "explaining the functionality required in the automated system" until June 1993, after States had "accepted funding tied to the automated system requirement." Pet. 12. But Title IV-D itself clearly required that States operate an automated system. It also provided detailed specifications for that system. 42 U.S.C. 654(24); 42 U.S.C. 654(16)(A)-(E) (1994). Ambiguities in the proper "scope and interpretation" of a clear condition on funding that are later clarified through regulation do not raise any issue under the Spending Clause. *Central Midwest Interstate Low-Level Radioactive Waste Comm'n* v. *Pena*, 113 F.3d 1468, 1475 (7th Cir. 1997); *American Hosp. Ass'n* v. *Schweiker*, 721 F.2d 170, 183 (7th Cir. 1983), cert. denied, 466 U.S. 958 (1984); see *Illinois Dep't of Pub. Aid* v. *Sullivan*, 919 F.2d 428, 433 (7th Cir. 1990). In any event, HHS promulgated its regulations several years prior to the deadline for States to comply with the automated-system requirement, and South Carolina was free to choose to discontinue Title IV funding at any time. See 45 C.F.R. 307.10.

Petitioners similarly err in contending (Pet. 13) that Title IV's requirements create ambiguity because States could not know about the automated-system and SDU conditions when they first began accepting Aid to Families with Dependent Children (AFDC) funds 60

years ago, or when they began their federally-assisted child support programs. Under that theory, Congress would be powerless to amend any Spending Clause enactment without violating *Dole*'s requirement that Congress condition the States' receipt of federal funds unambiguously. That theory finds no support in this Court's cases. To the contrary, this Court has consistently upheld Congress's authority to impose conditions—including new conditions—on the future receipt of funds under previously enacted programs furnishing federal financial assistance. See *Dole*, 483 U.S. at 206; *King* v. *Smith*, 392 U.S. 309, 325-326, 333 n.34 (1968). To the extent that a State does not wish to abide by a new condition, it may simply refuse to accept any further funding.

Petitioners' contention (Pet. 12) that Title IV's waiver provisions create impermissible ambiguity is equally meritless. Title IV authorizes waiver of the automated system requirement only if the State shows that it "has or can develop an alternative system" that meets the functional requirements of the statewide system and equals its success in child support collection. 42 U.S.C. 652(d)(3)(A). That requirement is unambiguous. Nor does 42 U.S.C. 666(d) advance petitioners' argument. That Section applies only to the Secretary's discretion to exempt States from "the enactment of any law or the use of any procedure" required by section 666 itself; it does not apply to the automated-system or SDU requirements that appear in Section 654. 42 U.S.C. 666(d).

3. Petitioners argue (Pet. 14-16) that there is not a sufficient relationship between Title IV's conditions on funding and a federal interest. That argument is without merit. "[W]hereas about 30 percent of child support cases are interstate cases, only 10 percent of collections

are from interstate cases." H.R. Rep. No. 651, 104th Cong., 2d Sess. 1405 (1996). There is plainly a distinct federal interest in facilitating interstate collection efforts. Equally important, collecting child support directly furthers the strong federal interest in reducing the dependency of families on the Title IV-A welfare program, and in enabling families who are not receiving assistance under Title IV-A from having to do so in the future. See *Blessing* v. *Freestone*, 520 U.S. 329, 333 (1997); cf. *Bowen* v. *Gilliard*, 483 U.S. 587, 598-601 (1987).

4. Petitioners further contend (Pet. 16-18) that Title IV's conditions on funding are impermissibly coercive, and that the court of appeals erred by analyzing the alleged coercive effect of the Title IV conditions "solely from the standpoint of the alternative penalty." Pet. 16. That contention lacks merit. Because States may be eligible for the alternative penalty, and South Carolina obtained that option, the court of appeals correctly focused on the alternative penalty in rejecting petitioners' coercion claim.

In any event, even absent the alternative minimum penalty, Title IV-D's funding scheme would be constitutional. See *Kansas*, 214 F.3d at 1201-1202 (holding that Congress may condition Title IV-A and Title IV-D funds on States' compliance with Title IV-D conditions). This Court in *Dole* observed that its decisions "have recognized that in some circumstances the financial inducement offered by Congress might be so coercive as to pass the point at which 'pressure turns into compulsion.'" *Dole*, 483 U.S. at 211 (quoting *Steward Machine Co.* v. *Davis*, 301 U.S. 548, 590 (1937)). But the Court did not suggest that Congress lacks authority to place relevant conditions on the receipt of federal funds whenever the value of the federal offer is too

tempting to decline. To the contrary, the only case the *Dole* Court cited for the proposition that an offer of federal funding might amount to "coercion" was *Steward Machine Co.*, a decision that expressed doubt about the viability of such a theory. See 301 U.S. at 590 (finding no undue influence even "assum[ing] that such a concept can ever be applied with fitness to the relations between state and nation").

Indeed, the courts of appeals have noted the problems inherent in applying a coercion theory. See, *e.g.*, *Kansas* v. *United States*, 214 F.3d at 1202; *Texas* v. *United States*, 106 F.3d 661, 666 (5th Cir. 1997); *California* v. *United States*, 104 F.3d 1086, 1092 (9th Cir. 1997); *Oklahoma* v. *Schweiker*, 655 F.2d 401, 413-414 (D.C. Cir. 1981). Every congressional spending statute "'is in some measure a temptation.'" *Dole*, 483 U.S. at 211 (quoting *Steward Machine Co.*, 301 U.S. at 589). For that reason, "'to hold that motive or temptation is equivalent to coercion is to plunge the law in endless difficulties.'" *Ibid.* (quoting *Steward Machine Co.*, 301 U.S. at 589-590). This Court thus reaffirmed the assumption, founded on "'a robust common sense,'" that the States voluntarily exercise their power of choice when they accept the conditions attached to their acceptance of federal funds. *Ibid.* (quoting *Steward Machine Co.*, 301 U.S. at 590).

That principle is controlling here. The possibility of losing Title IV-D and Title IV-A funds, or, as in South Carolina's case, facing a much more modest alternative penalty, is not unconstitutional coercion. Like all other States, South Carolina retains "the simple expedient of not yielding to what she urges is federal coercion." *Dole*, 483 U.S. at 210 (internal quotation marks omitted). A "difficult choice remains a choice, and a

tempting offer is still but an offer." *Kansas* v. *United States*, 214 F.3d at 1203.

5. Petitioners' remaining arguments—that HHS has discretion to waive or amend the alternative penalty, and that petitioners preserved their due process claim—fall outside the questions presented. See Pet i. Accordingly, those arguments are not properly presented here.

In any event, those arguments fail to warrant this Court's review. The court of appeals correctly held that the Secretary of HHS lacks discretion either to "waive or amend the alternative penalty for noncompliance." Pet. App. A6. The text of the Act is mandatory; HHS has no discretion regarding what constitutes compliance with the automated-system and SDU requirements. See 42 U.S.C. 654(16) and (24)(A); 42 U.S.C. 654a (State "shall have in operation" automated system); 42 U.S.C. 654b(a) (State agency "must establish and operate" SDU). Nor does the Secretary have discretion to waive or amend the alternative penalty: If the State is not in compliance and the State requests the alternative penalty and satisfies the section's good faith and corrective compliance requirements, the Secretary "shall not disapprove the State plan under section 654," and instead "shall reduce the amount otherwise payable to the State." 42 U.S.C. 655(a)(4)(A)(i) and (5)(A)(i). By creating the alternative penalty scheme, Congress unambiguously identified the only sanction short of disapproval and suspension for which non-complying States are eligible.

Finally, the court of appeals' conclusion in a footnote (Pet. App. A7 n.3) that the State waived its due process argument is the type of factbound determination that does not warrant this Court's review. In any event, the State has no authority to bring a due process claim on

behalf of its citizens as parens patriae. See *Massachusetts* v. *Mellon*, 262 U.S. 447, 485-486 (1923).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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