No. 00-329

In the Supreme Court of the United States

STATE OF KANSAS, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

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

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether Title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2198, is a valid exercise of Congress's power under Article I, Section 8, Clause 1 of the Constitution.

2. Whether *South Dakota* v. *Dole*, 483 U.S. 203 (1987), should be reconsidered.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-14a) is reported at 214 F.3d 1196. The opinion of the district court (Pet. App. 15a-30a) is reported at 24 F. Supp. 2d 1192.

JURISDICTION

The judgment of the court of appeals was entered on June 1, 2000. The petition for a writ of certiorari was filed on August 29, 2000. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Temporary Assistance to Needy Family (TANF) program, 42 U.S.C. 601 *et seq.*, provides federal block grants to States, which then use the money to provide cash assistance and other services to low-income families. The Child Support Enforcement (CSE) program, 42 U.S.C. 651 *et seq.*, provides federal funding to States in order to assist States in collecting child support from absent parents. 42 U.S.C. 651 (1994 & Supp. IV 1998). TANF and CSE are interlocking programs: the CSE program assists persons receiving benefits under the TANF program and helps to reduce their dependency on the welfare system.

Title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (1996 Act), Pub. L. No. 104-193, 110 Stat. 2198, at issue here, amends the CSE program. The purpose of the 1996 Act is to increase the efficiency of child support enforcement. Toward that end, the 1996 Act requires each participating State to establish a case registry, which contains all child support orders within the State, 42 U.S.C. 654a (Supp. IV 1998), and a directory of new hires, which contains information from employers on their new hires. 42 U.S.C. 653a (Supp. IV 1998). In order to locate parents with support obligations, those directories are matched against each other and against a federal case registry and national directory of new hires. 42 U.S.C. 653, 654 (1994 & Supp. IV 1998); 42 U.S.C. 653a, 654a (Supp. IV 1998).

The 1996 Act also requires participating States to adopt the Uniform Interstate Family Support Act (UIFSA). 42 U.S.C. 666(f) (Supp. IV 1998). The UIFSA allows state agencies to send income-withholding orders across state lines directly to employers. The

1996 Act also requires participating States to enact laws that facilitate genetic testing and paternity establishment. 42 U.S.C. 666(a)(5) (Supp. IV 1998). It requires participating States to authorize state child support agencies to take expedited enforcement actions against non-paying non-custodial parents. 42 U.S.C. 666(c) (Supp. IV 1998). And, when a parent fails to pay child support, participating States are required to suspend professional licenses, place liens on property, and notify consumer credit reporting agencies. 42 U.S.C. 652(k), 666(a)(1)-(4), (6)-(7) and (16) (Supp. IV 1998).

A State is not required to participate in the TANF or CSE programs. But a State that elects to receive the federally funded block grant under the TANF program must operate a CSE program that meets federal requirements. 42 U.S.C. 602(a)(2), 603 (Supp. IV 1998). If a State fails to conform to federal requirements, it risks a denial of CSE funding. See, *e.g.*, 42 U.S.C. 655(a)(1)(A) (Supp. IV 1998); 45 C.F.R. 301.14, 301.15(e). A State that fails to comply substantially with federal requirements also may have its TANF funding reduced. See, *e.g.*, 42 U.S.C. 609(a)(5) and (8) (Supp. IV 1998).

2. The State of Kansas (petitioner) filed suit challenging the 1996 Act on the ground that it exceeds Congress's authority under Article I, Section 8 of the Constitution and violates the Tenth Amendment and constitutional principles of dual sovereignty. Pet. App. 15a. Respondents filed a motion to dismiss the complaint for lack of standing and failure to state a claim on which relief can be granted. *Ibid.* The district court dismissed the action on the latter ground. *Id.* at 15a-30a. The district court held that while petitioner has standing to challenge the 1996 Act, *id.* at 18a-20a, the

Act is a valid exercise of Congress's authority under the Spending Clause, *id.* at 20a-29a.

The court of appeals affirmed. Pet. App. 1a-14a. The court analyzed petitioner's challenge under the four restrictions on Congress's power under the Spending Clause set forth in *South Dakota* v. *Dole*, 483 U.S. 203 (1987). The court held that the 1996 Act complies with each of those limitations. In particular, it held that the Act furthers the general welfare, that it unambiguously attaches conditions on a State's receipt of money, that the conditions in the 1996 Act are clearly related to the purposes of the TANF and CSE programs, and that the 1996 Act does not require the States to violate any independent constitutional requirement. Pet. App. 5a-8a. The court of appeals also rejected petitioner's contention that, because of the size of the federal grants, it has no choice but to accede to the requirements in the 1996 Act. The court explained that "a difficult choice remains a choice, and a tempting offer is still but an offer." *Id.* at 14a. The court concluded that the requirements in the 1996 Act "represent a reasoned attempt by Congress to ensure that its grant money is used to further the state and federal interest in assisting needy families, in part through improved child support enforcement." *Ibid.*

ARGUMENT

The court of appeals' decision is correct and does not conflict with any decision of this Court or of any other court of appeals. Further review is not warranted.

1. The court of appeals correctly held (Pet. App. 14a) that the 1996 Act is a valid exercise of Congress's spending power. 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 also *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.* (quoting *Pennhurst State Sch. & Hosp.* v. *Halderman*, 451 U.S. 1, 17 (1981)). 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.'" *Dole*, 483 U.S. at 207. And fourth, the obligations imposed by Congress may not violate any independent constitutional provisions. *Id.* at 208; see also *id.* at 210 (Congress's spending power "may not be used to induce the States to engage in activities that would themselves be unconstitutional.").

As the court of appeals concluded (Pet. App. 5a-8a), the 1996 Act easily satisfies each of those limitations. Petitioner does not contend otherwise. Rather, petitioner principally contends (Pet. 16) that the financial

inducement offered by Congress to participate in the CSE and TANF programs amounts to "unconstitutional 'coercion.'" That argument lacks merit.

The Court in *Dole* observed that "[the Court's] 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.'" 483 U.S. at 211 (quoting *Steward Mach. Co.* v. *Davis*, 301 U.S. 548, 590 (1937)). At the same time, however, the Court noted that every congressional spending statute "is in some measure a temptation." *Ibid.* (quoting *Steward Mach. 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 Mach. Co.*, 301 U.S. at 589-590). The Court in *Dole* thus reaffirmed the assumption, founded on "a robust common sense," that the States are voluntarily exercising their power of choice in accepting the conditions attached to the receipt of federal funds. *Ibid.* (quoting *Steward Mach. Co.*, 301 U.S. at 590).

That principle is controlling here. The possibility of losing CSE and TANF funds does not constitute unconstitutional coercion. Like all other States, petitioner retains "the 'simple expedient' of not yielding to what she urges is federal coercion." *Dole*, 483 U.S. at 210 (quoting *Oklahoma* v. *United States Civil Serv. Comm'n*, 330 U.S. 127, 143-144 (1947) (citation omitted)). As the court of appeals explained (Pet. App. 14a), "a difficult choice remains a choice, and a tempting offer is still but an offer."

2. Petitioner contends (Pet. 6) that this Court should "reconsider" its decision in *South Dakota* v. *Dole*, *supra*. Although "*stare decisis* is not an inexorable command, particularly when [the Court is] interpreting

the Constitution, even in constitutional cases, the doctrine carries such persuasive force that [the Court has] always required a departure from precedent to be supported by some special justification." *Dickerson* v. *United States*, 120 S. Ct. 2326, 2336 (2000) (citations and internal quotation marks omitted). Petitioner has failed to identify any "special justification" that would warrant reconsideration of *South Dakota* v. *Dole*, *supra*.

Petitioner suggests (Pet. 8) that the Court might adopt James Madison's view that the Spending Clause only gives Congress authority to spend money to implement programs undertaken pursuant to its other enumerated powers. As petitioner acknowledges (Pet. 8) however, the Court long ago rejected the Madisonian view in favor of Hamilton's position (endorsed by Justice Story) that the Spending Clause "is not limited by Congress's enumerated powers." See *Helvering* v. *Davis*, 301 U.S. 619, 640 (1937); *United States* v. *Butler*, 297 U.S. 1, 65-67 (1936). Petitioner identifies no "special justification" that would warrant overruling those decisions. And, indeed, petitioner's position, if strictly applied, would call into question the very TANF and CSE programs under which it seeks to continue to receive more than $130 million annually, albeit without the conditions Congress has found to be necessary to advance the "general Welfare" in creating an integrated, interstate system of cash assistance and child support.

Petitioner also argues (Pet. 10) that *Dole* should be overruled because it allows Congress to "impose any and all federal conditions on the receipt of federal money, irrespective of the resulting intrusion on state sovereignty." But that is not what the Court in *Dole* held. While the Court recognized that Congress has broad power under the Spending Clause, it identified

four limitations on the exercise of that power that Congress must observe in order to keep its spending programs within constitutional bounds. 483 U.S. at 207-208.

Petitioner also errs in contending (Pet. 10) that the Court's decisions in *United States* v. *Morrison*, 120 S. Ct. 1740 (2000), and *United States* v. *Lopez*, 514 U.S. 549 (1995), undermine the validity of *Dole*. Those cases involved the limits on Congress's power to regulate interstate commerce. Neither decision remotely suggests that Congress's power under the Spending Clause is not properly governed by *Dole*.

Petitioner's reliance (Pet. 10) on *New York* v. *United States*, 505 U.S. 144 (1992), and *Printz* v. *United States*, 521 U.S. 898 (1997), is equally misplaced. The Court in those cases invalidated statutory provisions that commandeered States or their officers to enact or enforce federal regulatory programs. See *Printz*, 521 U.S. at 935; *New York*, 505 U.S. at 176-177. Both cases distinguished legislation that impermissibly commandeers States to run federal programs from Spending Clause legislation that merely imposes conditions on the State's receipt of federal money. See *Printz*, 521 U.S. at 917-918; *id.* at 936 (O'Connor, J., concurring); *New York*, 505 U.S. at 174-176.

Petitioner also contends (Pet. 12) that, "at a minimum, the Court should give teeth to the third and fourth factors [in *Dole*], the 'germaneness' test and the prohibition on spending conditions that violate independent constitutional provisions." But petitioner identifies no "special justification" that would warrant reconsidering those aspects of *Dole*.

Nor has petitioner demonstrated that such a modification would invalidate the statutory provisions under challenge here. Contrary to petitioner's contention

(Pet. 13), the TANF and CSE programs are closely related. The TANF program is intended to "increase the flexibility of States in operating a program designed to * * * provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives" and "encourage the formation and maintenance of two-parent families." 42 U.S.C. 601(a)(1) and (4) (1994 & Supp. IV 1998). The CSE program complements the TANF program, because establishing paternity and collecting child support may enable families to reduce their dependence on the welfare system.

Furthermore, petitioner's objection to the condition that, in order to receive TANF funds, the State must also have a child support program that meets certain standards under the CSE program ignores the fact that the United States furnishes substantial funding to the State to satisfy that condition—66% of the operating costs of Kansas's CSE program. Pet. App. 3a. That substantial federal contribution greatly undermines petitioner's contention that the condition imposes an onerous burden on the States.

Finally, the CSE program is critical to addressing the interstate aspects of child support by promoting the enforcement by one State of support obligations owed to children in other States. Such conditions are particularly appropriate for the National Government to include in a spending program to assist the States in child support enforcement efforts generally.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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