No. 11-400

IN THE

Supreme Court of the United States

STATE OF FLORIDA, *et al*.
Petitioners,
v.
U.S. DEPT. OF HEALTH & HUMAN SERVICES, *et al*.,
Respondent.

On Writ of Certiorari to the U.S. Court of Appeals for the Eleventh Circuit

BRIEF OF *AMICI CURIAE* SUBMITTED ON BEHALF OF FAITHFUL REFORM IN HEALTH CARE AND THE WISC HEALTH CARE WORKING GROUP IN SUPPORT OF RESPONDENT'S POSITION ON MEDICAID

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EXCERPTS FROM THE BRIEF

To view the full brief visit the Medicare & Medicaid section of the Faithful Reform in Health Care website at www.FaithfulReform.org.

STATEMENTS OF INTEREST OF *AMICI CURIAE*

This brief is submitted on behalf of diverse religious organizations to inform the Court about the moral imperatives that impel the faith communities to support the Medicaid expansions and improvements in the Affordable Care Act ("ACA"). The over 60 amici organizations work together as coalition partners through Faithful Reform in Health Care and/or the Washington Interreligious Staff Community (WISC) Health Care Working Group.

Faithful Reform in Health Care, founded in 2007, is the largest interfaith coalition of national, state, and local organizations, congregations, and individuals working together around a shared moral vision for the kind of health system that would include everyone. Comprising Protestants, Catholics, Evangelical Christians, Jews, Muslims, Unitarians, Buddhists, and others, the coalition has focused on educating its members about the challenges in U.S. health care, as well as the needed changes in public policy that could lead to the creation of a health care system that better meets the needs of all. In addition to advocating system reform generally, when necessary, the coalition has engaged in educational and advocacy efforts specifically focused on protecting, strengthening, and expanding programs such as Medicaid, the Children's Health Insurance

Program ("CHIP"), and Medicare. Supporting the Medicaid improvements and expansions in the ACA is consistent with the Coalition's history and mission.

The **WISC Health Care Working Group** provides a forum through which leaders in the Washington, D.C. offices of national faith groups connect to one another around numerous health care issues. The missional activities of the group include maintaining relationships with the legislative and executive branches of the federal government; communicating legislative activities to their constituencies; communicating moral priorities to the President and Congress; and engaging in education and advocacy around health care issues that are addressed by the social justice policies of the member organizations. This group has consistently served as the link between federal policy and outreach and the work of the Faithful Reform coalition, including efforts that focus on Medicaid, CHIP, and Medicare.

Amici believe that passage of the ACA, which included important Medicaid improvements and expansions, marked a significant step toward the faith community's long-held vision of a system of health care that includes, and works well for, all. *Amici* celebrate the ACA as the first time our country successfully made a national legislative commitment to develop a health care system that will give almost everyone in the United States access to our nation's abundant health care resources.

For decades, faith communities have worked both individually and collectively to move our nation toward a more inclusive and just system of health care—with particular focus on the poor and vulnerable. Since 2008 *amici* have been guided in their work by A Faith-Inspired Vision of Health Care, an interfaith statement of the shared value of health care for all. Hundreds of organizations and thousands of individuals representing every state signed on to this vision statement, and Faithful Reform in Health Care delivered it to President Obama and Members of Congress on several occasions to help identify the faith community's perspective on how a present day government might respond to the moral imperative of health care for all.

This vision states, "As people of faith, we envision a society where each person is afforded health, wholeness, and human dignity." That vision embraces a system of health care that is: **inclusive**, affirming that health care is a shared responsibility grounded in our common humanity; **affordable**, confirming that health care must contribute to the common good by being affordable for individuals, families and society as a whole; **accessible**, ensuring that all persons have the health services that provide necessary care and contribute to wellness; and **accountable**, offering a quality, equitable and sustainable means of keeping us healthy as individuals and as a community.

Amici have been among those at the heart of support for meaningful health care reform in the United States. Grounded in values that inspire them to work on behalf of the common good, amici have promoted a moral vision for the nation's health care future and raised voices in support of affordable quality health care for all. Such commitment is a logical extension of *amici's* calling to bring comfort and healing to those who suffer, with particular concern for the poor and vulnerable who are served by Medicaid and for whom the ACA's Medicaid provisions are particularly significant.

SUMMARY OF ARGUMENT

Amici represent those faith communities that characterize our country's religious diversity. While these groups have different perspectives on many issues, they all agree that it is the calling of government to bring justice and protection to the poor and the sick, a goal that is consistent with the U.S. Constitution. For this reason, *amici* have long supported Medicaid, our nation's program for health care for the poor.

The Medicaid program was created as an amendment (Title XIX) to the Social Security Act ("SSA"). Congress passed the original SSA in the depths of the Great Depression because the states, which had traditionally provided for the welfare of the poor, were overwhelmed by the extent of the need. The SSA created the cooperative federal and state assistance programs upon which Medicaid was ultimately based. Although the original SSA did not include health insurance, the statute was amended in the 1950s and 1960s to provide the states with some health care funding. Later, the Medicaid program, created by 1965 amendments to the SSA, firmly established a federal role in funding health care and provided a legal framework for state Medicaid programs.

State Medicaid programs vary considerably. To ensure a level of minimum coverage from state to state, however, the federal government requires that the states furnish certain levels of services and cover certain populations. Since 1965, Congress has regularly expanded that coverage under the Medicaid program. The ACA's Medicaid expansions are only the latest in this series and complete a long-term trend of expanding Medicaid to cover all poor Americans.

Congress expanded Medicaid through the ACA in response to another historical crisis—the needs of fifty million uninsured Americans, many of whom are too poor to afford health insurance. Although pre-ACA Medicaid expansions and the creation of CHIP decreased dramatically the percentage of uninsured American children, the number of uninsured American adults has continued to grow. The ACA's Medicaid expansions respond to this crisis, expanding health care coverage to all adults with incomes below 133 percent of the federal poverty level.

This expansion is morally proper and legally permissible. Neither the facts nor the case law support any conclusion that states are or will be improperly coerced into participating in Medicaid. Congress has never required the states to participate in Medicaid. Rather, the ACA offers the states generous support for Medicaid expansion, 100 percent of which will be paid for by the federal government in the near term. Because states can opt out of Medicaid, the only compulsion they face is the knowledge that the Medicaid expansion is the right and moral thing to do. This Court, therefore, should reject the states' claim and affirm the constitutionality of the ACA's Medicaid expansions.

ARGUMENT

I. The obligation to care for the health of the poor, universally recognized by religious organizations, is among this country's fundamental values and is furthered by the ACA's expansion of Medicaid.

When the people of the United States established a Constitution for its government, they identified a significant purpose of government as promoting the general welfare. In so doing, they identified a moral imperative of government: to seek the common good of the American people. The faith community understands and endorses the government's legitimate and necessary role in promoting the common good.

The scriptures of the Abrahamic traditions of Christians, Jews, and Muslims, in addition to the sacred teachings of other faiths, understand that addressing the general welfare of the nation includes giving particular attention to the poor and the sick.[1]

In the most ancient of sacred teachings, this special concern was addressed to the orphan, the widow, and the alien, who at that time were among the poorest and most vulnerable. Some of these teachings enjoin the population from mistreating or oppressing the orphan, the widow or the alien (Exodus 22:21-24, Deuteronomy 24:17-21; Zechariah 7:8-10). Some teachings promote positive acts on behalf of poor and vulnerable people. Those with fields or grape arbors are commanded to leave a portion for the poor and vulnerable (Deuteronomy 14:28-29, 15:7-11, 26:12). Jesus equates faithfulness with feeding the hungry, giving drink to the thirsty, welcoming strangers, healing the sick, and visiting the imprisoned, when he says, "whatever you did for the least of these my brothers and sisters of mine, you did for me." (Matthew 25:37-40). Similarly, Muslims, as one of their five obligations, are to give alms for the poor, the needy, the workers who collect them, and those burdened by unexpected expenses. (The Holy Qur'an 9:60). Thus, acts on behalf of the needy and vulnerable, whether volunteered as individuals or commanded by society, formed the framework of the understanding of right and wrong in the history of Judaism, Christianity, and Islam.

These teachings regarding the moral imperative to provide assistance to the poor and the needy are addressed not only to individuals, but to societies and governments—requiring not only individual charity, but also social justice. These teachings extend not only to the food and property of the poor, but also their health care. Addressing the failure of Israel's government, the prophet Ezekiel (34:4) makes his accusation: "You have not strengthened the weak, you have not healed the sick, you have not bound up the injured." The prophet Jeremiah (8:22) echoes that accusation with a question: "Why, then, has the health of my poor people not been restored?"

Out of such teachings, common to this country's faith traditions, diverse faith communities created in 2011 an Interfaith Statement of Principles: Protecting Medicaid and Medicare, which they forwarded to President Obama and Members of Congress to affirm their commitment to Medicaid as a program that serves the poor and vulnerable. The principles affirmed that: all individuals, regardless of their age, income, gender, gender identity, sexual orientation, race or ethnicity, geography, employment status, or health status, deserve equal access to quality, affordable, inclusive and accountable health care. Reducing health care options for some based on any of these factors is profoundly unjust . . . concern for the most vulnerable in our

[1] For instance, the Presbyterian Church (U.S.A.) summarized what many faith groups affirm – that ". . . civil government is ordained by God to order and serve the human community and therefore is to be held in high respect and honor . . . The civil state by its own definition and tradition is to serve the causes of justice, the common well being." Presbyterian Church (U.S.A.) 200th General Assembly Minutes, Part I (1988) p. 47.

community, particularly low-income women, men and children and people with disabilities, is at the heart of our sacred texts and an affirmation of our common humanity.

Medicaid—and its expansion through the ACA—embraces these principles and applies them to a national program that incentivizes the cooperation of states. Because Medicaid is an act of social responsibility, it is important to contrast it with acts of individual kindness. Individual acts of kindness to persons suffering ill health are commendable, but they cannot replace a nationwide safety-net program like Medicaid, which currently serves millions of this country's poor and vulnerable. Imagining that the matter could be addressed voluntarily by faith communities or other non-governmental entities also poses equitable concerns because voluntary acts conform to different standards or no standards at all.

The ACA bolsters Medicaid with nationwide standards of care and eligibility, available at last to all low-income Americans. Comparable to the lawful establishment and administration of our nation's interstate highways, power grid, water supply, and communications systems, the ACA's Medicaid improvements and expansions help strengthen federal and state partnerships to create a seamless health care safety net that goes beyond the vagaries of mercy to the reliability of justice and fairness.

II. Faith teachings establishing a moral basis for health care to the poor led to the passage of the SSA, Medicaid, and the ACA.

A. The SSA of 1935, founded in a moral concern for the needy, established the foundation on which subsequent programs have been built.

The moral imperative to care for the needs of the sick and the poor, advanced by the moral philosophy of *amici*, is at the foundation of the United States', and its constituent states', commitment to the Medicaid program. While our nation chose in its Constitution to eschew an established religion (U.S. Const. amend. I), many of those persons who formed this nation, and many citizens today, are people of faith. Even Americans who do not subscribe to an organized religion have imbibed the values of the faith traditions represented by the *amici* through their families, heritage, educational institutions, or simply from the ambient American culture.

These moral teachings were the values that, on June 8, 1934, President Roosevelt invoked for a nation in the depths of the greatest depression it had known. The nation faced a crisis of immense proportions, with 18 million Americans on emergency relief and 10 million out of work. In the face of this catastrophe, President Roosevelt addressed Congress, explaining that:

> Our task of reconstruction does not require the creation of new and strange values. It is rather the finding of the way once more to known, but to some degree forgotten, ideals and values. If the means and details are in some instances new the objectives are as permanent as human nature. (*Available at* http://www.ssa.gov/history/fdrstmts.html #message1.)

President Roosevelt appointed the Committee on Economic Security ("CES" or "the Committee") to recommend a course of action to address this crisis. In its 1935 Report, the Committee described the "ravages of probably the worst depression of all time," but also

observed that even in "'normal times' . . . a large part of our population had little security." (Report of the Committee on Economic Security, 1935, *available at* http://www.ssa.gov/history/reports/ces/ ces5.html.) In particular, the Committee recognized the financial burden that illness and accidents imposed upon lower-income Americans. The Committee recommended a series of programs, which in turn laid the groundwork for the SSA of 1935. These programs, the Committee reported recalling Roosevelt's address, represented not: a change in values but rather a return to values lost in the course of our economic development and expansion. The road to these values is the way to progress. We will not rest content until we have done our utmost to move forward on that road. (quoting President Roosevelt's message to Congress of June 8, 1934).

The values that Roosevelt and the CES endorsed were grounded in moral principles advanced by the religions of *amici*. As historian Lew Daly explains:

> What distinguished Roosevelt was his "deep conviction," as he said during his fiery 1936 campaign, "that democracy cannot live without that true religion which gives a nation a sense of justice and of moral purpose." The major religious bodies stood behind him in this, despite his own rather indifferent religious life . . . No president who preceded him in the 20th century had so religious a following, or anything close to it. And none had so much support from religious leaders and particularly from Catholic thinkers. (Lew Daly, *In Search of the Common Good: The Catholic Roots of American Liberalism*, Boston Review, May/June 2007. *Available at* http://bostonreview. net/BR32.3/daly.php.)

To read the full legal argument visit:
http://www.faithfulreform.org/storage/frhc/AmicusBrief/final.pdf

CONCLUSION

In the 1930s this country faced an unprecedented crisis of poverty and unemployment. Congress and the states rose to the occasion, adopting the SSA and implementing public welfare programs for the aged, blind, and dependent children across the nation. Today the nation faces another great challenge—providing basic health care for almost one sixth of the nation's uninsured population. The ACA rises to this challenge.

Nothing in the ACA requires states to participate in this expansion. The states resist simply withdrawing from Medicaid, however, because state legislators understand that they are subject to a greater law than the ACA—a moral imperative to care for the poor and the sick. The ACA broadens our nation's understanding of the moral imperative that has long grounded SSA programs. It brings us closer to the moral vision of our faith communities—a vision that recognizes the needs of all of those who cannot afford health care, not just those who fit into particular categorical pigeon holes. It does so within the limits of, and as an expression of, the United States Constitution's declaration that promotion of the general welfare is an essential purpose of legislation. The moral vision of American faith communities has been a proper and necessary consideration in legislative approaches to promoting the general welfare from the nation's inception. *Amici* urge this Court not to reject Congress' most recent response to the "call of the distressed." Like the district court and the court of appeals, this Court should uphold the constitutionality of the Affordable Care Act's Medicaid expansion.

LIST OF SIGNERS

February 17, 2012

American Baptist Home Mission Society
American Muslim Health Professionals
Association of Professional Chaplains
Buddhist Peace Fellowship
Central Conference of American Rabbis
Disciples Home Missions, Christian Church (Disciples of Christ) in the United States and Canada
Disciples Justice Action Network
Church of the Brethren
Everence Financial (formerly Mennonite Mutual Aid)
Face to Face International Outreach Ministries
Faithful Reform in Health Care
Global Justice Institute
Interfaith Center on Corporate Responsibility
Islamic Medical Association of North America
Jewish Reconstructionist Federation
Mennonite Central Committee U.S. Washington Office
Mennonite Healthcare Fellowship
Metropolitan Community Churches
The Fellowship of Affirming Churches
The General Synod of the United Church of Christ
Union for Reform Judaism
Unitarian Universalist Association
United Methodist Church - General Board of Church and Society
Washington Interreligious Staff Community Health Care Working Group

Reverend Gradye Parsons, Stated Clerk of the General Assembly, Presbyterian Church (U.S.A), on behalf of the Social Policy of the General Assembly

Arkansas Interfaith Alliance
California Council of Churches
Catholic Health East, Pennsylvania
Detroit Interfaith Outreach Network
Faith Action Network of Washington
Holy Family Institute, Pennsylvania
Interfaith Health and Hope Coalition, Michigan
Ohio Council of Churches
Progressive Action for the Common Good, Iowa, Illinois
Michigan Unitarian Universalist Social Justice Network
Missouri Health Care for All

Missouri Interfaith IMPACT
North Carolina Council of Churches
Social Justice Mission Area Team, Detroit Metropolitan Association, United Church of Christ
Texas Impact
Wisconsin Council of Churches

Benedictine Sisters, Boerne, Texas
Congregation of the Sisters of Charity of the Incarnate Word, Texas
Dominican Congregation of Our Lady of the Rosary, New York
Dominican Sisters of Hope
Justice and Peace Committee of the Sisters of St. Joseph of Springfield, Massachusetts
Marianist Province of the United States
Sisters of Charity of St. Elizabeth Leadership Team, New Jersey
Sisters of Charity of St. Vincent De Paul of New York
Sisters of the Holy Cross Congregation Justice Committee
Sisters of the Incarnate Word and Blessed Sacrament, Corpus Christi, Texas
Sisters of Mercy West Midwest Justice Team, Nebraska
Sisters of the Most Precious Blood, Missouri
Sisters of the Presentation of the Blessed Virgin Mary, New York
Sisters of St. Dominic Congregation of the Most Holy Name
Society of the Holy Child Jesus, American Province Leadership Team
Ursuline Sisters of Tildonk, US Province

JOLT, Catholic Coalition for Responsible Investing
Region VI Coalition for Responsible Investment, Ohio, Kentucky, Tennessee
School Sisters of Notre Dame Cooperative Investment Fund
Tri-State Coalition for Responsible Investment

Cote Brilliante Presbyterian Church, Missouri
Parkside Community Church, United Church of Christ, California
United Methodist Women, Biltmore United Methodist Church

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