May an Independent State Agency Sue State Officials in Federal Court for Injunctive Relief to Remedy a Continuing Violation of Federal Law?

CASE AT A GLANCE

Congress authorized states to create independent agencies to protect and advocate the rights of persons with mental illnesses and developmental disabilities. These agencies have authority under federal law to investigate incidents of abuse and neglect, including obtaining state records. Virginia’s independent state agency tried to obtain state records as part of an investigation. After state officials refused to release the records, the agency sued those officials in federal court for injunctive relief.

Virginia Office for Protection and Advocacy v. Stewart
Docket No. 09-529

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From: The Fourth Circuit

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The Eleventh Amendment immunizes states from suit in federal court. But this immunity does not extend to suits against state officials in federal court for prospective relief for violation of federal law. Here, an independent state agency sued state officials in federal court, possibly raising complicating questions of state sovereignty and federalism.

ISSUE

Do the Eleventh Amendment and principles of federalism bar an independent state agency from suing state officials in federal court for injunctive relief to remedy a continuing violation of federal law?

FACTS

The Virginia Office for Protection and Advocacy (VOPA) is an independent state agency charged with protecting and advocating the rights of persons with mental illnesses and developmental disabilities. Virginia created VOPA under the federal Developmental Disabilities Assistance and Bill of Rights Act (DD Act) and the Protection and Advocacy for Individuals with Mental Illnesses Act (PAIMI Act). Congress enacted these acts to address persistent concerns about the abuse and neglect of mentally ill persons in state-run psychiatric facilities. Thus, the acts provide federal funds to improve services for individuals with developmental disabilities for any state, such as Virginia, that creates and maintains a protection and advocacy system (P&A system) to preserve the rights of these individuals.

The federal acts set certain requirements for participating state P&A systems. For example, a state P&A system must have authority to investigate reported incidents of abuse and neglect of persons within state psychiatric facilities. As part of that authority, a state P&A system must have a broad right of access to all state records that are relevant to an investigation. The federal acts permit a state to lodge its P&A system in either a state agency or a private, nonprofit organization. Under either alternative, the P&A system must be independent of any state agency that provides treatment or services to mentally ill individuals.

Consistent with these federal requirements, VOPA has authority to access “the records of an individual with a disability” when VOPA has probable cause to believe that person has been abused or neglected. Va. Code Ann. § 51.5-39.4(5); see 42 U.S.C. §§ 15043(a)(2)(I)-(J), 10805(a)(4). VOPA is a state agency (and not a private, nonprofit organization) that operates independently of all other state agencies, including the Office of the Attorney General. Va. Code Ann. §§ 2.2-510(5), 51.5-39.2(A).

This case arises from VOPA’s attempts to investigate two deaths and one injury in facilities operated by the Virginia Department of Mental Health, Mental Retardation, and Substance Abuse Services. As part of its investigations, VOPA repeatedly requested certain records related to the deaths and injury, but state officials refused to provide them.

VOPA sued the officials in the United States District Court for the Eastern District of Virginia, seeking declaratory and injunctive relief ordering the officials to provide the records. VOPA argued that the officials’ refusal to provide the records violated the DD and PAIMI Acts. The officials moved to dismiss, arguing that they were immune under the Eleventh Amendment. The district court rejected this claim and denied the motion to dismiss.

The officials appealed to the Fourth Circuit, which reversed. The Fourth Circuit held that the officials were shielded from suit by Eleventh Amendment immunity and related federalism concerns. VOPA appealed to the Supreme Court.
CASE ANALYSIS

The Eleventh Amendment provides immunity to states from suit in federal court. But the Supreme Court held over a century ago in Ex Parte Young that this immunity does not extend to a state official in a federal suit for prospective or injunctive relief designed to remedy that official’s ongoing violation of federal law. Such an official, the Court ruled, is “stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct.” Ex Parte Young, 209 U.S. 123 (1908). That official, in other words, enjoys no Eleventh Amendment immunity. This result was “necessary to permit the federal courts to vindicate federal rights and hold state officials responsible to ‘the supreme authority of the United States.’” Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89 (1984).

But the Young doctrine applies only in this limited situation: when a plaintiff sues a state official in federal court for declaratory or injunctive relief to stop an ongoing violation of federal law. The doctrine does not extend to a case where a plaintiff seeks monetary damages to be paid out of the state treasury. Permitting this kind of retroactive relief, the Court has ruled, would effectively eliminate the state’s Eleventh Amendment immunity.

By one reading, the Young doctrine merely asks whether the complaint alleges an ongoing violation of federal law, and whether the relief requested is prospective. Under this straightforward approach, if the answer to both questions is yes, then the doctrine applies, and the official may be sued. The district court applied this straightforward approach in this case and ruled in favor of VOPA. (The Seventh Circuit also applied this approach in Indiana Protection and Advocacy Servs. v. Indiana Family and Soc. Serv. Admin., 603 F.3d 365 (7th Cir. 2010), a case factually identical to this one.)

By another reading, the doctrine requires a more nuanced approach, at least in some cases. This approach recognizes that the Eleventh Amendment is a meaningful federalism principle, not susceptible to formalism. Thus the Court in Idaho v. Coeur d’Alene Tribe of Idaho, 521 U.S. 261 (1997), suggested that when “special sovereignty interests” are at stake, the Court conducts a “federalism analysis”—a consideration of the “proper understanding of [the Ex Parte Young doctrine’s] role in our federal system and respect for state courts ….” The Fourth Circuit applied this federalism analysis—ruling that VOPA’s status as a state agency raised special federalism concerns here—and ruled in favor of the state officials.

The parties frame their arguments around these opposing approaches.

VOPA argues in favor of the more traditional, straightforward approach. It argues that the Young doctrine already properly balances interests in federalism and state sovereignty against interests in federal supremacy and enforcement of federal law. Considering these competing interests, VOPA argues, the Young doctrine appropriately allows a very narrow class of suits—those against state officials for prospective relief to stop an ongoing violation of federal law. VOPA argues that this case fits squarely within that class.

Moreover, VOPA argues that the identity or status of the plaintiff does not affect this application of the Young doctrine. It argues that its status as a public agency does not mean that a judgment in its favor will come from the state’s treasury, in violation of the doctrine. VOPA points out that other states have declined to raise Eleventh Amendment claims in response to other suits by P&A systems. (VOPA further notes that Virginia itself declined to raise sovereign immunity in three other federal court cases by VOPA against state officials.) VOPA argues that its status cannot mean that federal law is splintering one component of the state against another (and thus representing excessive federal meddling in state affairs, in violation of federalism principles), because Virginia voluntarily established VOPA as a state agency. VOPA argues that the officials’ position to the contrary would also preclude an independent state agency from asserting federal constitutional rights in federal court—a result in tension with a line of cases suggesting that public agencies may assert constitutional rights in federal court.

VOPA further argues that at the time of Eleventh Amendment ratification, English courts entertained suits by governmental entities created by the King against one another, demonstrating that suits between two components of the same sovereign are nothing new to the founders. And the Supreme Court, VOPA argues, has not ruled to the contrary: a line of cases cited by the officials here did not involve the Eleventh Amendment and did not involve suits against states or state officials. Instead, those cases involved the broad authority states have in organizing and reorganizing their political subdivisions—an interest that is not at issue in this case.

Finally, VOPA distinguishes Coeur d’Alene and argues that its approach has no application here. VOPA argues that Coeur d’Alene involved extraordinary relief—an injunction that would bar the state’s officers from exercising power over disputed lands and waters, effectively removing part of the state from state control. This dramatic relief led the Court to consider broader federalism issues in that case. In contrast, the requested relief here—mere access to records—is quite modest and does not raise the same kind of federalism concerns. Moreover, VOPA argues, the case-by-case balancing approach in Coeur d’Alene has never gained majority support on the Court: only two justices, then-Chief Justice Rehnquist and Justice Kennedy, adopted it in Coeur d’Alene; and the Court later rejected it in favor of the straightforward approach in Verizon Maryland, Inc. v. Public Serv. Comm’n, 535 U.S. 635 (2002). But even if the Court adopts the Coeur d’Alene approach, VOPA argues, it should still prevail: VOPA has no effective alternative means to enforce the federal acts; the case involves, even if indirectly, important civil liberties, making federal court involvement more appropriate; and the interest in federal uniformity under the federal acts cut in favor of federal jurisdiction.

The officers argue in favor of the federalism analysis. They argue that this is a case of first impression—that the Court has never applied Ex Parte Young to allow one arm of a state to sue another, thus raising important federalism concerns—and that the Fourth Circuit was therefore right to conduct a federalism analysis. Moreover, they argue, the Court can conduct the federalism analysis under the majority approach in Coeur d’Alene without adopting the case-by-case balancing test under the two-justice plurality.

Using a federalism analysis, the officials argue that they enjoy immunity. The officials argue that Ex Parte Young does not even apply to this case, because the officials here, unlike officials in a more typical case, did not actively violate federal law. (Instead they simply asserted
a lawful state privilege in refusing to turn over the records.) Thus this looks more like a case against the state itself (and not the officials), and therefore the reason for applying the Ex Parte Young doctrine here is exceptionally thin.

The officials next argue that the state of Virginia has a sovereign interest in resolving disputes between its agencies and political subdivisions without federal court interference. Federal interference in this “intramural dispute” would violate principles of federalism and state sovereignty, claim the officials.

The officials further argue that VOPA’s English examples are inappropriate: many did not involve subdivisions of the royal government (instead, they were corporations with a right to sue and be sued); and others were unlikely “much in the minds of the founders.” They argue that, in fact, by 1786 “there was no generally effective judicial remedy against the crown” at all and that “the eighteenth century is barren of ‘common-law sovereign immunity decisions.’” Contrary to VOPA’s claim, the officials argue that at the time of the Constitution’s adoption, cases involving one subdivision suing another were anomalous or unheard of.

The officials argue that applying the Young doctrine here would effectively eviscerate the safeguards on abrogation and waiver of immunity. They argue that Congress here did not clearly abrogate immunity (as required for abrogation), and the state did not waive it. Yet VOPA’s position would lead to the same result, effecting an end-run around the safeguards on abrogation and waiver.

The officials argue that allowing the suit, without state consent, would infringe upon Virginia’s dignity as a sovereign. This infringement, they argue, is the same infringement at issue in Seminole Tribe of Florida v. Florida, 517 U.S. 44 (1996), a case in which the Court declined to apply the Young doctrine.

Finally, the officials argue that the federal acts contain sufficient oversight devices to protect federal interests (including reporting requirements, evaluation procedures, and the like). Indeed, the acts permit the federal government to withhold all or a part of funds due to a state if the state does not comply with the requirements of the federal scheme. At the same time, VOPA has an adequate remedy through the state courts—a mandamus action in the state supreme court. (Mandamus is an extraordinary and highly discretionary remedy in which the court orders a state official or lower court to do something.) Together, the officials argue, the federal protections and state alternative weigh against extending the Young doctrine to this case.

SIGNIFICANCE

The Young doctrine today operates as one of the primary methods of ensuring that states comply with federal law. It is an indisputably vital principle in federal practice; indeed, Professor Charles Alan Wright wrote in his treatise Law of Federal Courts that it “seems indispensable to the establishment of constitutional government and the rule of law.” Thus any Supreme Court case involving Ex Parte Young is significant; this one is no exception.

In particular, the case is most immediately significant for the application of the Young doctrine in cases involving an independent agency of the state suing other state officials for violations of federal law. A ruling for the officials would frustrate the federal goals under the DD and PAIMI Acts: independent state P&A systems would have a very hard time enforcing federal standards through alternative channels. Moreover, a ruling for the officials could chip away at this important tool that Congress could use to enforce other federal standards in other, similar contexts.

On the other hand, a ruling for VOPA could sweep far beyond state P&A systems. As thirteen states argue in their amicus brief, “[m]any, if not all, states have [independent] agencies and would, thus, be vulnerable to intramural lawsuits in federal courts.” As a result, federal courts could play an important role in resolving certain disputes between independent state agencies and the state.

(The agreement in favor of the application of the Young doctrine and allowing the suit is striking: six amici, including the United States, the Rhode Island Office of the Child Advocate, and a group of law professors, wrote in favor of VOPA; just one, the collection of thirteen states, wrote for the officials. Moreover, the only other circuit court to address the question, the en banc Seventh Circuit in Indiana Prot. & Advocacy Servs. unanimously disagreed with the Fourth Circuit’s approach.)

But either outcome is unlikely to shift the landscape dramatically. For example, if the Court rules for the officials, Congress could attempt to abrogate state immunity or seek a waiver in return for federal funds, thus allowing independent state agencies to sue other state officials. Moreover, some state P&A systems can already sue state officials in federal court, because they are private, nonprofit organizations (and not independent state agencies). (The Fourth Circuit explicitly recognized these alternative ways that a P&A system might sue state officials in federal court.) If the Court rules for VOPA, the ruling would almost certainly apply only to independent state agencies charged with enforcing federal law against other state subdivisions—a small group, to be sure. And these agencies would still have to satisfy other constitutional and statutory requirements to get into federal court. All this is to say that the ruling’s effects, either way, on independent state agency suits against state officials can be mitigated.

The case may also be significant for anything the Court might say about state sovereignty and federalism—and their roles in the Young doctrine. The officials’ proposed federalism analysis, and the Fourth Circuit’s actual federalism analysis, both invite the Court to consider important and potentially far-reaching federalism principles as part of a Young analysis. And the Court in Coeur d’Alene suggested that it might be open to considering broader federalism principles, at least in cases involving extraordinary relief that would so directly bear on state sovereignty. If this Court applies a federalism analysis here, the case would extend that analysis to this class of cases—a class involving somewhat less significant intrusions into state sovereignty. The result could effect a significant limitation on the Young doctrine and make it more difficult for plaintiffs to sue state officials in federal court in cases raising federalism concerns.
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