Another Step in the Anti-Abortion Agenda

Medina v. Planned Parenthood and its Attack on Civil Rights

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Trump's recently passed "One Big, Beautiful Bill" bars Medicaid reimbursements to Planned Parenthood for one year – a provision now temporarily blocked after Planned Parenthood filed suit. But the measure builds on, and must be read against, the backdrop of *Medina v. Planned Parenthood*, a recent and disastrous Supreme Court ruling initiated by South Carolina and now poised to inspire copycat efforts in other states. The case starkly illustrates the Court's continued alignment with an anti-abortion agenda advanced through state governments. As Justice Jackson forcefully argued, the decision forms part of a broader assault on civil rights – and its entanglement with Medicaid signals a deeper campaign against the poor and access to healthcare.

The Medina case

Though Planned Parenthood is often associated with abortion services, people around the country utilize the health provider for a variety of health needs from testing for sexually transmitted infections to cancer screening. Planned Parenthood's provision of abortion services, however, frequently places the organization into political crosshairs. "Defund Planned Parenthood" has become a Republican rally cry. Taking up this challenge, in 2018, the Governor of South Carolina issued an executive order which banned Medicaid from reimbursing abortion providers.

Medicaid is a federal healthcare program that covers some individuals who cannot afford health insurance. State government's implement the program according to federal government rules. If a state fails to comply with these rules, the federal government can withhold federal funding. One of these rules is the free-choice-of-provider provision which allows recipients of the program to select their own providers. This placed South Carolina's Executive order in conflict with the federal government requirement. Banning reimbursement means that individuals cannot choose their preferred healthcare provider if that person is located at a Planned Parenthood. In turn, patients could not avail themselves of any planned parenthood services including non-abortion services like cancer screenings.

Planned Parenthood, as well as a patient who sought to use their services, sued South Carolina's Director of Health and Human Services on the grounds of Section 1983 of the Civil Rights Act. It is relevant to note that The Civil Rights Act of 1983 was passed in 1871 as a way for individuals to fight against ongoing racism following the civil war. (The law was also known as the Ku Klux Klan Act as it was responding to the racial violence stemming from the newly formed organization). The law grants an individual the ability to sue for the enforcement of civil rights secured by the Constitution or in federal law. In this instance, the plaintiffs are arguing that the State is preventing them from utilizing the free-choice-of-provider provision in the law.

The Supreme Court, in turn, had to grapple with whether Section 1983 of the Civil Rights Act of 1871 allows "private parties to sue government actors to enforce action against "state actors who deprive individuals of federal 'rights, privileges, or immunities'" in the context of Medicaid.

In a majority opinion authored by Justice Gorsuch, the Supreme Court essentially held that the Medicaid statute, especially given that it involves the Spending Clause, does not clearly and unambiguously have language that establishes a private right of action. The Court also held that in the context of Medicaid, which is rooted in the Spending Clause of the Constitution,

Congress has the sole power to enforce the law. This means that an individual cannot bring sue the state HHS for non-compliance with federal Medicaid rules.

Political goals

Rather than read the case as narrowly about Medicaid, the case is best understood as advancing several political goals held by the majority of justices in the Court as aligned with a current attack on abortion access and in line with an anti-poor, and anti-civil rights agenda.

First, as was outlined by Justice Jackson in her dissent, which was joined by Justices Sotomayor and Kagan, *Medina* cannot be seen as an isolated instance of the Court grappling with the question of a private right of action. Instead, the case has to be understood in light of the history of the Civil Rights Act of 1871, passed at a time when states were not on board with granting rights to African-Americans. In this context, it became necessary to give individual citizen's private rights of action in order to hold state governments to account. It was not lost on Justice Jackson that South Carolina, who was seeking to deny private rights, was a state resistant to transformations in civil rights laws that would allow for African-American's to survive free of the "terrorist violence" sweeping the country after the end of slavery. Jackson highlights that the majority opinion in *Medina* is simply another step in undermining hard won civil rights, that has gone on for over a century. She makes clear that in keeping with the history of the law, and prior precedent, the law gives a clear right of action to the individual. Alongside the historical context of the law, Jackson reads precedent to arrive at the opposite conclusion from the majority. Her assessment of the law shows that the free-of-choice-provider provision of Medicaid satisfies the test of an unambiguously conferred right. She critiques the majority for their reading of the law noting that their conclusion further guts the Civil Rights Act of 1871.

Second, the decision is in keeping with the anti-abortion agenda of both the U.S. administration and the U.S. Supreme Court. Since the Supreme Court overturned the right to abortion in *Dobbs v. Jackson Women's Health* in 2022, states have taken all opportunity to block or limit access to abortion. In this instance, Planned Parenthood, which relies on Medicaid funding to administer healthcare, will slowly lose the ability to provide services given the lack of reimbursement. This will accomplish the bigger goal of diminishing the ability of Planned Parenthood to operate – but it will happen at the cost of people's healthcare. It will very likely motivate other states to take similar actions in an effort to gut Planned Parenthood of resources, despite the healthcare that many people rely on.

Finally, *Medina* furthers an old notion in reproductive health care that women ought not to be able to choose the full range of services they seek. Already, it is difficult for people who are struggling economically to access needed abortion services, and now health services from testing for sexually transmitted infections to cancer screenings will be curtailed. It is important to note that many providers refuse to see Medicaid patients, making Planned Parenthood an important player in Medicaid funded service delivery and making care available. As noted by the Guttmacher Institute, 3 in 5 Medicaid recipients in South Carolina do not identify as white and the majority of people on Medicaid are women.

It is likely that we will now see a host of states follow the example of South Carolina. As *Medina v Planned Parenthood* shows, the Supreme Court has demonstrated their willingness to support efforts to defund the healthcare provider. And in this instance, they have done so while forwarding an agenda hostile not only to civil rights but also to healthcare access for those depending on Medicaid.

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