

09-3182

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UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

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MARY IMMEL,  
Appellant,

v.

DOUGLAS LUMPKIN,  
Appellee.

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On Appeal from the United States District Court  
for the Southern District of Ohio, Eastern Division

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BRIEF *AMICI CURIAE* OF NATIONAL SENIOR CITIZENS LAW CENTER,  
AARP, OHIO LEGAL RIGHTS SERVICE, NATIONAL HEALTH LAW  
PROGRAM, NATIONAL ACADEMY OF ELDER LAW ATTORNEYS,  
OHIO POVERTY LAW CENTER AND LEGAL AID SOCIETY OF  
COLUMBUS IN SUPPORT OF APPELLANT AND REVERSAL

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## **F.R.A.P. 26.1 CORPORATE DISCLOSURE STATEMENTS**

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The Internal Revenue Service has determined that NSCLC is organized and operated exclusively for charitable or educational purposes pursuant to Section 501(c) (3) of the Internal Revenue Code and is exempt from income tax. NSCLC is also organized and operated as a non-profit corporation under the laws of the State of California.

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### **Ohio Poverty Law Center (“OPLC”)**

OPLC states that although it is a subsidiary of the Ohio State Legal Services Association, Inc., a private non-profit corporation, its corporate parent is not publicly owned. Consequently, OPLC is not a subsidiary or affiliate of any publicly owned corporation not named in the appeal.

### **Legal Aid Society of Columbus (“LASC”)**

LASC states that although it is a subsidiary of the Ohio State Legal Services Association, Inc., a private non-profit corporation, its corporate parent is not

publicly owned. Consequently, LASC is not a subsidiary or affiliate of any publicly owned corporation not named in the appeal.

Dated: December 1, 2009

s/Rochelle Bobroff  
Rochelle Bobroff  
Attorney for *Amici Curiae*

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

## Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit

Case Number: No. 09-3182

Case Name: Mary Immel v. Douglas Lumpkin

Name of counsel: Rochelle Bobroff, Michael Kirkman

Pursuant to 6th Cir. R. 26.1, National Senior Citizens Law Center, et al.  
*Name of Party*

makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No.

### CERTIFICATE OF SERVICE

I certify that on December 1, 2009 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/Rochelle Bobroff  
Attorney for Amici Curiae

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

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## STATEMENT OF INTERESTS OF *AMICI CURIAE*

The **National Senior Citizens Law Center** (“NSCLC”) is a non-profit organization that advocates nationwide to promote the independence and well-being of low-income older persons and people with disabilities. For more than 35 years, NSCLC has served these populations through litigation, administrative advocacy, legislative advocacy, and assistance to attorneys in legal aid programs. NSCLC’s *Herbert Semmel Federal Rights Project* works to ensure access to the federal courts to enforce safety net and civil rights statutes. Medicaid is a critical source of health insurance for millions of older persons and people with disabilities, and NSCLC has participated as counsel in numerous lawsuits regarding Medicaid. NSCLC is profoundly concerned about the impact that the Court’s decision may have on its clients’ access to the federal courts and corresponding rights under Medicaid law.

**AARP** is a nonpartisan, non-profit membership organization for people 50 and over, with nearly 40 million members nationwide. AARP advocates for health and economic security for everyone and in particular for vulnerable people of all ages, including low-income persons and persons with disabilities. AARP supports access to and expansion of quality health care through publicly administered health insurance programs, including Medicaid, an essential safety net program that provides coverage for those who otherwise would be denied health care. To

further that end, Medicaid recipients' access to the federal courts to challenge the denial of Medicaid coverage is critical.

The **Ohio Legal Rights Service** (“**LRS**”) is the protection and advocacy system (“**P&A**”) under federal law for people with disabilities in Ohio. See 42 U.S.C. § 10541 et seq. LRS is an independent state agency chartered at Ohio Revised Code § 5123.60. The LRS Commission provides governance and oversight to the service. Under both state and federal law, LRS investigates abuse, neglect, and rights violations affecting people with disabilities, and pursues administrative, legal, and policy remedies to those violations. As the P&A for Ohio, LRS' attorneys have represented hundreds of people with disabilities before administrative bodies and in the federal courts.

For more than 40 years, the **National Health Law Program** (“**NHeLP**”) has engaged in legal and policy advocacy on behalf of low income people, people with disabilities, the elderly, and children. NHeLP provides legal representation and conducts research and policy analysis on issues affecting the health status and health access of these groups. NHeLP works to help consumers and their advocates overcome barriers to health care, including a lack of affordable services or access to health care providers. NHeLP provides extensive consultation, legal analysis, and litigation support to health advocates who are navigating motions to

dismiss and other procedural attacks as they seek to obtain substantive relief for their clients.

The **National Academy of Elder Law Attorneys** (“NAELA”) is a professional organization of attorneys concerned with legal issues affecting the elderly and disabled, including eligibility for medical assistance (Medicaid) benefits. Its mission statement provides that its members provide legal advocacy, guidance, and services to enhance the lives of people with special needs and people as they age. Since its inception over twenty years ago, NAELA has grown to a current membership of 4,139 attorneys in all fifty states, the District of Columbia, and three foreign countries. It has 129 members in Ohio, where this case arose.

Since 1966, the **Ohio Poverty Law Center** (“OPLC”) has led and coordinated Medicaid advocacy by the Ohio programs providing legal services to the poor. Separately incorporated for the first time in 2009, OPLC continues to serve the dual purposes of providing advocacy support to the Ohio legal services community and general impact advocacy on behalf of low-income Ohioans. OPLC provides assistance to local legal services staff to assist and improve local direct representation of Medicaid recipients and advocates with appellee’s agency, the Ohio Department of Job and Family Services, for improvement of the Ohio Medicaid system and delivery of Medicaid services. The legal services programs of Ohio that OPLC leads, and the 1.5 million Ohio Medicaid recipients that OPLC

serves, have an acute interest in preserving access by low-income people to the federal courts when Medicaid decisions and policies violate federal law.

The **Legal Aid Society of Columbus** (“LASC”) is the non-profit legal services program serving low-income residents and senior citizens in six central Ohio counties, including Franklin County, where the case at bar arose. LASC strives to empower, and improve the lives of, its clients by providing high-quality representation on their legal needs. Since January 1, 2008, LASC has closed 582 health law cases, of which 518 involved Medicaid. During the same time period, LASC has closed cases representing households with a total of 2,147 seniors. Access by low-income people and senior citizens to the federal courts to ensure administrative Medicaid decisions comply with federal Medicaid statutes is consequently of substantial interest to LASC and its clients.

### **SUMMARY OF ARGUMENT**

The district court’s holding that the *Rooker-Feldman* doctrine bars federal court review of the decision of a state administrative agency was clearly in error. The decision below conflicts with holdings of the Supreme Court, this Court, and other circuit courts, and should therefore be reversed. Also, abstention doctrines sought by defendant do not preclude federal jurisdiction over claims under the federal Medicaid statute. A federal court can properly confirm that because Ohio accepts federal funds for its Medicaid program, the state must comply with federal

Medicaid requirements. The district court erred in failing to reach the merits of plaintiff's claim that the denial of her Medicaid benefits violated federal law.

## **ARGUMENT**

### **I. INTRODUCTION**

The diversity of both Ohio and national *amici curiae* demonstrates the concern that the district court's decision has raised. As set forth below, the district court's decision ignores Supreme Court and Sixth Circuit precedent, as well as an overwhelming amount of precedent from other courts. In doing so, the district court's opinion creates an environment where recipients will forgo less costly and less burdensome administrative proceedings in favor of a direct action in federal court.

By applying the *Rooker-Feldman* doctrine to an administrative hearing decision of a state agency, the lower court not only misconstrued the law, but also created additional concerns for those in Ohio who receive Medicaid or, indeed, any federal benefit administered by the Ohio Department of Job and Family Services. Ohio's statute contemplates a simple yet fair administrative procedure that allows beneficiaries to participate in many cases without the assistance of legal counsel. State hearing officers, however, are limited to applying state administrative code and policy dictates, not deciding whether federal law preempts state law. While this simple internal state hearing mechanism does allow for limited state judicial

review, *see* Ohio Rev. Code Ann. § 5101.35(E), those affected by improper benefit decisions have always had full recourse to federal court to enforce federal law.

## **II. THE DISTRICT COURT ERRED BECAUSE THE *ROOKER-FELDMAN* DOCTRINE DOES NOT APPLY TO A STATE AGENCY HEARING DECISION**

The district court improperly held that the *Rooker-Feldman* doctrine prohibited it from exercising jurisdiction over a claim that the denial of Medicaid benefits to plaintiff under the state's Medicaid regulations conflicted with the federal Medicaid statute. The court erred by applying the *Rooker-Feldman* doctrine to bar federal court review of whether a state administrative agency decision is preempted by federal law. The Supreme Court, this Court, and sister circuits have held that *Rooker-Feldman* does not apply to a state agency determination.

The *Rooker-Feldman* doctrine “stands for the unremarkable proposition that a federal district court lacks subject matter jurisdiction to review a state court decision.” *Pittman v. Cuyahoga County Dep't of Children and Family Servs.*, 241 F. App'x. 285, 287 (6th Cir. 2007). In the first of the two cases for which the doctrine is named, *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), parties who had lost in state court petitioned a federal district court for a declaration that the state court decision contravened the Constitution. The Supreme Court noted that district courts do not have jurisdiction to hear such an appeal; only the Supreme

Court has the authority to review a state court judgment. *Id.* at 416. Sixty years later, in *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983), plaintiffs filed suit in federal court to challenge the decision of the District of Columbia Court of Appeals, denying their requests for waivers of a District of Columbia bar examination rule, which prevented plaintiffs from sitting for the examination. The Supreme Court noted that the federal district court could not review the judicial decision regarding the waiver request for those individuals. Neither *Rooker* nor *Feldman* provided any basis for abstention from review of a state administrative agency decision.

Recently, the Supreme Court considered and summarily rejected the argument that the *Rooker-Feldman* doctrine bars federal court review of an administrative order by a state agency. *Verizon Md., Inc. v. Public Serv. Comm'n of Md.*, 535 U.S. 635, 644 n. 3 (2002). The Court explained, “the doctrine has no application to judicial review of executive action, including determinations made by a state administrative agency.” *Id.*

Subsequently, in a case involving parallel state and federal litigation, the Supreme Court emphasized the limited nature of the *Rooker-Feldman* doctrine. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 283-85 (2005). Importantly, the Court cited *Verizon* as holding that *Rooker-Feldman* “does not apply to a suit seeking review of state agency action.” *Id.* at 287.

This Court has followed the direction of the Supreme Court and applied the *Rooker-Feldman* doctrine narrowly. See *Pittman*, 241 F. App'x. at 287; see also *Coles v. Granville*, 448 F.3d 853, 857 (6th Cir. 2006). In a case challenging a decision of the Tennessee Administrative Office of the Courts, this Court reversed the district court's dismissal under *Rooker-Feldman*, holding that the doctrine "does not apply to judicial review of ... the actions of a state administrative agency." *Marks v. Tennessee*, 554 F.3d 619, 623 (6th Cir. 2009).

The district court in the instant case reasoned that *Rooker-Feldman* applied because the federal court claims were "inextricably intertwined" with the claims in the state administrative proceeding. *Immel v. Lumpkin*, 2009 WL 173862 at \* 6 (S.D. Ohio 2009). However, following *Exxon*, this Court "abandoned th[e] 'inextricably intertwined' analysis" as applied to actions other than state court judgments. *Pittman*, 241 F. App'x. at 289; see also *McCormick v. Braverman*, 451 F.3d 382, 394 (6th Cir. 2006) ("In *Exxon*, the Supreme Court implicitly repudiated the circuits' post- *Feldman* use of the phrase "inextricably intertwined" to extend *Rooker-Feldman* to situations where the source of the injury was not the state court judgment."). Thus, the district court's analysis fails as a matter of law in this circuit.

Sister circuits have similarly held that *Rooker-Feldman* does not bar federal district court review of state agency determinations. See, e.g., *Hemmer v. Ind.*

*State Bd. of Animal Health*, 532 F.3d 610, 614 (7th Cir. 2008) (state agency hearing decision was reviewable in federal court after state court judgment was voided); *Mitchell v. Fishbein*, 377 F.3d 157, 167-68 (2d Cir. 2004) (doctrine inapplicable to state judicial screening committee when it acts as an administrative body); *Woodard v. Jefferson County*, 18 F. App'x. 706, 717 (10th Cir. 2001) (state agency hearing decision not barred from federal review by doctrine). Citing the Tenth Circuit's decision in *Woodard v. Jefferson County*, a district court in Kansas issued a decision with particular relevance to the instant case when it held that *Rooker-Feldman* does *not* apply to a state agency hearing decision denying Medicaid benefits. *Sanders ex rel. Rayl v. Kan. Dep't of Soc. & Rehab. Servs.*, 317 F. Supp. 2d 1233, 1240 (D. Kan. 2004).

### **III. ABSTENTION DOCTRINES ARE INAPPLICABLE TO THE MEDICAID CLAIMS IN THIS CASE**

The district court noted that defendant sought abstention on numerous grounds, but the court specifically did not reach these arguments due to its holding regarding the *Rooker-Feldman* doctrine. Therefore, *amici* discourage the Court from unnecessarily reaching this issue. Moreover, the Supreme Court has cautioned: "Abstention should rarely be invoked because the federal courts have a virtually unflagging obligation to exercise the jurisdiction given them."

*Ankenbrandt v. Richards*, 504 U.S. 689, 705 (1992) (citation omitted). None of the

abstention doctrines relied upon by defendant are appropriate for a Medicaid claim such as the one in the instant case.

The Tenth Circuit recently held that abstention under *Younger v. Harris*, 401 U.S. 37 (1971), is unwarranted for federal court review of the denial of Medicaid benefits. *Brown ex rel. Brown v. Day*, 555 F.3d 882 (10th Cir. 2009). The court explained that *Younger* does not apply to cases involving remedial administrative proceedings, but rather only applies to coercive administrative proceedings. A coercive proceeding is one in which: 1) the state proceeding is initiated by the state; 2) the federal suit seeks to enjoin *the state proceeding itself*; and 3) the federal plaintiff is alleged to have committed some “bad act.” *Id.* at 891. As such, the court held that *Younger* abstention is inapplicable to a Medicaid claim under 42 U.S.C. § 1983, because a Medicaid fair hearing is not initiated by the state; the federal suit challenges the termination of benefits, not the state proceeding; and the plaintiff commits no bad act. *Id.* at 892. In *Executive Art Studio, Inc. v. City of Grand Rapids*, 391 F.3d 783, 791 (6th Cir. 2004), the Sixth Circuit similarly held that *Younger* is inapplicable when the government has not initiated an enforcement action against the plaintiff, although the court noted that *Executive Art Studio* did not involve a state administrative proceeding. *Accord Guillemard-Ginorio v. Contreras-Gomez*, \_\_\_ F.3d \_\_\_, 2009 WL 3466021 at \* 10 (1st Cir. 2009)

(“[P]roceedings must be coercive, and in most-cases, state-initiated, in order to warrant abstention.”).

Abstention under *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943), is similarly unwarranted. *Burford* abstention applies if a federal court's assertion of jurisdiction would necessitate the resolution of state law issues or disrupt state efforts to establish a coherent policy as to a matter of public concern. *Adrian Energy Assocs. v. Mich. Pub. Serv. Comm'n*, 481 F.3d 414, 423 (6th Cir. 2007). Numerous cases have held that *Burford* abstention is inapplicable to claims seeking to enforce federal Medicaid law under 42 U.S.C. § 1983. *See, e.g., Curtis v. Taylor*, 648 F.2d 946, 949 (5th Cir. 1980); *Parents League for Effective Autism Servs. v. Jones-Kelley*, 565 F.Supp.2d 905, 914 (S.D. Ohio 2008), *aff'd*, 2009 WL 2251310 (6th Cir. 2009); *Haymons v. Williams*, 795 F. Supp. 1511, 1517-18 (M.D. Fla. 1992); *Calkins v. Blum*, 511 F. Supp. 1073, 1086 (N.D.N.Y 1981), *aff'd*, 675 F.2d 44 (2d Cir. 1982).

The Fifth Circuit held that abstention under *R.R. Comm'n of Tex. v. Pullman Co.*, 312 U.S. 492 (1941), is likewise unjustified when a claim alleges violations of federal Medicaid law. *Curtis*, 648 F.2d at 949. *Pullman's* directive to avoid adjudication of unnecessary federal constitutional issues is simply irrelevant to statutory claims under federal Medicaid law. *Id.*; *Calkins*, 511 F. Supp. at 1086.

#### IV. BECAUSE OHIO ACCEPTS FEDERAL MEDICAID FUNDS, IT MUST COMPLY WITH FEDERAL MEDICAID LAW

Medicaid provides health and long-term care coverage to individuals who cannot afford to pay for that care. 42 U.S.C. §§ 1396-1396v (2008). The federal share of funding for Medicaid varies by state, with poorer per capita income states receiving higher federal payments. See 42 U.S.C. § 1396d(b). For FY 2009, the federal government's contribution to state Medicaid expenditures was expected to range from 50% to 75%, with the federal government paying over 60% of the costs of Ohio's Medicaid program. Kaiser Commission on Medicaid and the Uninsured, *American Recovery and Reinvestment Act (AARA): Medicaid and Health Care Provisions* (Mar. 2009), at <http://www.kff.org/medicaid/upload/7872.pdf>. In February 2009, Congress enacted the American Recovery and Reinvestment Act of 2009 ("ARRA"), Pub. L. No. 111-5, 123 Stat. 115, further increasing federal payments to states for the Medicaid program. ARRA is anticipated to provide the Ohio Medicaid program with an additional three billion dollars in federal funding for the period October 2008 to December 2010. Kaiser Commission on Medicaid and the Uninsured, *American Recovery and Reinvestment Act (AARA): Medicaid and Health Care Provisions*.

As a condition of receiving federal funds, states must comply with the requirements of federal Medicaid law. *Westside Mothers v. Haveman*, 289 F.3d 852, 856 (6th Cir.), *cert. denied*, 537 U.S. 1045 (2002), citing *Wilder v. Virginia*

*Hosp. Ass'n*, 496 U.S. 498, 502 (1990). As the Supreme Court recently noted, once a state chooses to take federal monies and participate in a federal program, the state “must comply with [the federal statute’s] mandates.” *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 520 (2007). State Medicaid laws that conflict with the federal Medicaid statute are accordingly “unenforceable.” *Ark. Dep’t of Health & Human Servs. v. Ahlborn*, 547 U.S. 268, 292 (2006). Therefore, the state cannot deny Medicaid eligibility based on a state policy in conflict with federal law. *Markva v. Haveman*, 317 F.3d 547, 552-54 (6th Cir. 2003); *see also Parents’ League for Effective Autism Servs.*, 565 F.Supp.2d at 914.

The district court has jurisdiction to reach the merits of plaintiff’s claim that the state’s denial of her Medicaid benefits is preempted by federal law. *See Indep. Living Ctr. of S. Cal., Inc. v. Shewry*, 543 F.3d 1050 (9th Cir. 2008), *cert. denied*, 129 S.Ct. 2828 (2009); *Lankford v. Sherman*, 451 F.3d 496 (8th Cir. 2006). This Court should reverse the error of the district court in refusing to reach the merits of plaintiff’s claim.

## CONCLUSION

For the reasons stated above, *Amici Curiae* respectfully request that this Court reverse the district court's order granting defendant's motion for summary judgment.

Dated: December 1, 2009

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE WITH TYPEFACE AND LENGTH

Pursuant to Fed. R. App P. 29(c) (5), the attached *amici* brief is proportionally spaced, has a typeface of 14 points or more and contains 7000 words or less. The word processing system software used to prepare this brief was Microsoft Word.

Date: December 1, 2009

s/Rochelle Bobroff  
Rochelle Bobroff  
Attorney for *Amici Curiae*

## CERTIFICATE OF SERVICE

I hereby certify that on December 1, 2009, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Date: December 1, 2009

s/Rochelle Bobroff  
Rochelle Bobroff  
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