IN THE SUPREME COURT OF MISSOURI

No. SC90912

CRAIG DYDELL,
Appellant

v.

BERNARD TAYLOR, JR.,
Respondent

Appeal from the Circuit Court of Jackson County, Missouri
Sixteenth Judicial Circuit, Division 11
The Honorable W. Brent Powell, Circuit Judge

BRIEF FOR THE UNITED STATES AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

CHARLES P. ROSE
General Counsel

STEPHEN H. FRIED
MARI COLVIN
Attorneys
Department of Education
Washington, D.C. 20202

JERRY L. SHORT
Mo. Bar No. 26318
(816) 426-3122
Assistant United States Attorney
Western District of Missouri
400 East 9th Street
Kansas City, MO 64106

TONY WEST
Assistant Attorney General

MARK B. STERN
(202) 514-5089
ALISA B. KLEIN
(202) 514-1597
Attorneys, Appellate Staff
Civil Division, Room 7235
Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001

Attorneys for the United States
as *amicus curiae*

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STATEMENT OF INTEREST

The United States respectfully submits this *amicus* brief with the consent of the parties. Appellant challenges the constitutionality of certain provisions of the No Child Left Behind Act of 2001 ("NCLB"), 20 U.S.C. § 6301 *et seq.*, the federal spending program that provides funds to assist States in the education of elementary and secondary school children. The United States Department of Education administers NCLB at the federal level.

The NCLB provisions challenged here are known collectively as the Paul D. Coverdell Teacher Protection Act ("Coverdell Act") and are codified at 20 U.S.C. §§ 6731–38. If a State elects to receive federal education funds pursuant to NCLB, the Coverdell Act grants limited liability protection to teachers and other school officials under circumstances set out in the federal statute.

The Circuit Court entered summary judgment for respondent on the basis of the Coverdell Act. Appellant has invoked this Court's appellate jurisdiction, arguing that the Coverdell Act exceeds Congress's Article I powers and violates the Tenth Amendment. The United States has a strong interest in the proper resolution of these constitutional challenges to federal statute. As discussed in the

Argument below, the Coverdell Act is a valid exercise of Congress's Article I Spending Clause power and does not violate the Tenth Amendment.[1]

STATEMENT

A. Statutory Background

The No Child Left Behind Act was a comprehensive reform of the Elementary and Secondary Education Act of 1965, the federal spending program that provides funds to assist States in the education of elementary school and secondary school children. NCLB conditions the receipt of federal educational funds on an array of federal requirements designed to improve student academic achievement and teacher quality. *See* 20 U.S.C. § 6301 *et seq.*; *see also Horne v. Flores*, 129 S. Ct. 2579, 2601 (2009).

The NCLB funding conditions at issue in this case are collectively known as the Coverdell Act and are codified at 20 U.S.C. §§ 6731–38. The Coverdell Act provides limited liability protection for teachers and other school officials. The provision directly at issue here provides that "no teacher in a school shall be liable for harm caused by an act or omission of the teacher on behalf of the school if . . . (2) the actions of the teacher were carried out in conformity with Federal, State, and local laws (including rules and regulations) in furtherance of efforts to control,

[1] The United States takes no position on other issues presented in this case.

discipline, expel, or suspend a student or maintain order or control in the classroom or school." *Id*. § 6736(a). "Teacher" is broadly defined in the Act to include principals, school board members, and other administrators. *Id*. § 6733(6). The Coverdell Act's liability protection does not extend to harm caused by reckless, grossly negligent, or willful acts, *see id*. § 6736(a)(4), and it is subject to exceptions set out in the statute. *See id*. § 6736(a) & (b).

Congress specified that the Coverdell Act provisions "only apply to States that receive funds under [NCLB], and shall apply to such a State as a condition of receiving such funds." *Id*. § 6734. The Act "preempts the laws of any State to the extent that such laws are inconsistent with this subpart," other than laws that provide additional liability protection. *Id*. § 6735(a).

Although a State may elect to render the Coverdell Act provisions inapplicable by enacting legislation that declares the provisions inapplicable to civil actions in the State, *id*. § 6735(b), the State of Missouri has not enacted such legislation. The public records of the U.S. Department of Education show that the State of Missouri has received hundreds of millions of dollars in NCLB funds each year since 2001.[2]

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[2] *See* Department of Education, *State Funding History Tables By State*, http://www2.ed.gov/about/overview/budget/history/sthistbyst01to08.pdf.

B. Factual Background and Prior Proceedings

This private tort suit arises out of a student-on-student assault that occurred in Central High School in Kansas City, Missouri. On September 13, 2005, plaintiff Craig Dydell, appellant here, was attacked with a box cutter by J.W., a special education student at the school. L35. Plaintiff was rushed to the hospital where he underwent surgery to close lacerations in his neck. L36. Plaintiff alleges that J.W. obtained the box cutter from a teacher at the school on September 12 and brought it back to school on September 13, the day of the attack. L35. Plaintiff alleges that the school's metal detectors failed to detect the box cutter because they had been improperly set due to lack of supervision by defendant Bernard Taylor, the school superintendent, who is respondent here. L35.

Plaintiff filed this tort action against Taylor, alleging that Taylor was negligent in the exercise of his supervisory duty to ensure school safety. L31-32. Plaintiff alleges that Taylor had actual or constructive notice of J.W.'s violent proclivities as a result of an incident in 2004 in which J.W. had been expelled from a local charter school after attempting to bring a knife into the school. L33, L37. Plaintiff further alleges that Taylor was negligent in failing to comply with a school district rule that, plaintiff contends, requires administrators to advise

teachers of a student's past acts of violence in order to ensure that the student is adequately supervised. L53; *see also* Appellant's Opening Br. 38-42.

Taylor raised state-law defenses and also invoked the Coverdell Act. The Circuit Court denied plaintiff's motion to strike the Coverdell Act defense, and, after further briefing, granted summary judgment for Taylor on the ground that the suit is barred under the Coverdell Act. L468. Plaintiff filed a notice of appeal to this Court, urging that this Court has exclusive jurisdiction because plaintiff challenges the constitutionality of a federal statute. L470-L482.

POINTS RELIED ON

Response To Appellant's Point I. The trial court did not err because the Coverdell Act is a valid exercise of Congress's Article I spending power.

South Dakota v. Dole, 483 U.S. 203 (1987)

Sabri v. United States, 541 U.S. 600 (2004)

Norfolk Southern Railway Co. v. Shanklin, 529 U.S. 344 (2000)

Missouri Child Care Ass'n v. Cross, 294 F.3d 1034 (8th Cir. 2002)

Response to Appellant's Point III. The trial court did not err because the Coverdell Act does not violate the Tenth Amendment.

New York v. United States, 505 U.S. 144 (1992)

Printz v. United States, 521 U.S. 898 (1997)

Jinks v. Richland County, S.C., 538 U.S. 456 (2003)

Pierce County v. Guillen, 537 U.S. 129 (2003)

ARGUMENT

RESPONSE TO APPELLANT'S POINT I

THE TRIAL COURT DID NOT ERR BECAUSE THE COVERDELL ACT IS A VALID EXERCISE OF CONGRESS'S ARTICLE I SPENDING POWER.

The Coverdell Act imposes conditions on a State's receipt of federal education funds. If a State elects to receive such funds pursuant to NCLB, the Coverdell Act provides limited liability protection for school officials under circumstances set out in the statute. *See* 20 U.S.C. §§ 6731–38. Congress specified that the Coverdell Act provisions "only apply to States that receive funds under [NCLB], and shall apply to such a State as a condition of receiving such funds." *Id*. § 6734. The Coverdell Act expressly "preempts the laws of any State to the extent that such laws are inconsistent with this subpart," other than laws that provide additional liability protection. *Id*. § 6735(a).

The provisions of the Coverdell Act fall easily within Congress's broad spending power. It is settled that Congress may "fix the terms on which it shall disburse federal money to the States." *New York v. United States*, 505 U.S. 144, 158 (1992) (citation omitted). Congress's spending power is "not limited by the

direct grants of legislative power found in the Constitution" but can be used to achieve broad policy objectives beyond Article I's "enumerated legislative fields." *South Dakota v. Dole*, 483 U.S. 203, 207 (1987).

The Supreme Court in *Dole* identified four "general restrictions" on Congress's spending power. First, spending clause legislation must be in pursuit of the "general welfare," *ibid*.; however, the *Dole* Court made clear that the judiciary must "defer substantially" to the judgment of Congress on this question and suggested that the "general welfare" restriction may not be judicially enforceable at all. *Id*. at 208 n.2 (citation omitted). Second, conditions on the receipt of federal funds must be clearly stated. *Id*. at 207. Third, conditions "might be illegitimate" if "unrelated" to the purpose of the grant program. *Ibid*. Fourth, conditions on federal grants cannot require States "to engage in activities that would themselves be unconstitutional." *Id*. at 210.

Appellant does not contend that the Coverdell Act conditions contravene any of the restrictions identified by the Supreme Court in *Dole*. Through NCLB, Congress provides billions of dollars each year to assist States in the education of elementary and secondary school children. These funds are conditioned on a series of federal requirements designed to improve student academic achievement and teacher effectiveness. *See* 20 U.S.C. § 6301 *et seq*. Among the NCLB

conditions are the provisions of the Coverdell Act, which are designed to "provide teachers, principals, and other school professionals the tools they need to undertake reasonable actions to maintain order, discipline, and an appropriate educational environment." *Id*. § 6732. The Coverdell Act provisions are plainly germane to the purpose of the federal grant program and are clearly set out in the statute. They do not require the States to engage in any unconstitutional conduct. To the contrary, statutes that "limit[] liability are relatively commonplace and have consistently been enforced by the courts." *Duke Power Co. v. Carolina Environmental Study Group, Inc*., 438 U.S. 59, 88 n.32 (1978) (citation omitted).

Although the requirements of *Dole* are thus satisfied, appellant takes issue with the means by which the Coverdell Act conditions are imposed. Appellant concedes that Congress could, as a condition on receipt of federal education funds, require a State to enact legislation that provides exactly the same liability protection as the Coverdell Act. *See* Appellant's Opening Br. 17. However, appellant argues that spending clause legislation is merely a contract that cannot preempt state law directly or bind third parties. *See ibid*.; *see also id*. at 21-25.

This argument is foreclosed by Supreme Court precedent and has consistently been rejected by the federal courts of appeals. As the Eighth Circuit explained, although the Supreme Court has "used contract law as an analogy to

describe the legal relationship between the federal government and participating states," it has made clear "'that it is using the term 'contract' metaphorically, to illuminate certain aspects of the relationship formed between a State and the federal government.'" *Missouri Child Care Ass'n v. Cross*, 294 F.3d 1034, 1040-41 (8th Cir. 2002) (quoting *Westside Mothers v. Haveman*, 289 F.3d 852, 858 (6th Cir.2002)). While the "contractual nature" of Spending Clause legislation has implications for statutory interpretation, the analogy does not imply "that suits under Spending Clause legislation are suits in contract, or that contract-law principles apply to all issues that they raise." *Barnes v. Gorman,* 536 U.S. 181, 188 n.2 (2002). "Unlike normal contractual undertakings, federal grant programs originate in and remain governed by statutory provisions expressing the judgment of Congress concerning desirable public policy." *Bennett v. Kentucky Dept. of Education*, 470 U.S. 656, 669 (1985).

Accordingly, "[t]he Supreme Court has specifically held that, under the Supremacy Clause, federal Spending Clause legislation trumps conflicting state statutes or regulations." *Missouri Child Care*, 294 F.3d at 1041. For example, in *Townsend v. Swank*, 404 U.S. 282, 285 (1971), the Supreme Court held that an Illinois statute that conflicted with spending clause legislation was "invalid under the Supremacy Clause." Likewise, in *Carleson v. Remillard*, 406 U.S. 598, 604

(1972), the Supreme Court held that a California regulation that conflicted with the Social Security Act was preempted. In *Blum v. Bacon*, 457 U.S. 132, 145-46 (1982), the Supreme Court held that provisions of a New York welfare program that conflicted with federal regulations under the Social Security Act were invalid under the Supremacy Clause. And in *Bennett v. Arkansas*, 485 U.S. 395, 397 (1988) (per curiam), the Supreme Court noted that the Social Security Act "unambiguously rules out any attempt to attach Social Security benefits," while the Arkansas statute at issue in the case "just as unambiguously allows the State to attach those benefits." The Supreme Court explained that "this amounts to a 'conflict' under the Supremacy Clause — a conflict that the State cannot win." *Ibid.*; *see also Dalton v. Little Rock Family Planning Servs.*, 516 U.S. 474, 476 (1996) (per curiam) ("In a pre-emption case such as this, state law is displaced" as inconsistent with the Medicaid statute "to the extent that it actually conflicts with federal law.").

Because spending conditions that have been accepted by state governments are federal law, they bind third parties in the same manner as other federal legislation. For example, in *Philpott v. Essex Country Welfare Board*, 409 U.S. 413, 417 (1973), the Supreme Court held that funds derived from Social Security disability benefits are immune from state debt-collection processes by reason of

the Supremacy Clause, even though the funds are in private hands. In *Lawrence County v. Lead-Deadwood School District No. 40-1*, 469 U.S. 256, 257-58 (1985), the Supreme Court held that a state statute imposing restrictions on the way local governments may spend funds received from the federal government under the Payment in Lieu of Taxes Act was invalid under the Supremacy Clause. And in *Sabri v. United States*, 541 U.S. 600 (2004), the Supreme Court rejected a constitutional challenge to a spending clause statute that made it a federal crime for a person to attempt to bribe a state or local official in a state that receives more than $10,000 in annual federal grants. The Supreme Court held that this federal regulation of private conduct was an appropriate means to protect the integrity of federal grant programs. *See id*. at 605-606.

The Supreme Court's decision in *Norfolk Southern Railway Co. v. Shanklin*, 529 U.S. 344 (2000), is also instructive because, like this case, it involved preemption of state tort law. After the plaintiff's husband was killed in a railway crossing accident, she brought a state-law damages claim against the railroad. The plaintiff alleged that the warning signs posted at the crossing — which had been installed using federal funds — were insufficient to warn motorists of the danger posed by passing trains. *Ibid*. The Supreme Court held that the state tort action was preempted, explaining that "[o]nce the [Federal Highway Administration]

approved the project and the [railway crossing] signs were installed using federal funds, the federal standard for adequacy displaced Tennessee statutory and common law addressing the same subject, thereby preempting respondent's [tort] claim." *Id*. at 359.

Appellant does not discuss any of these controlling Supreme Court cases. Nor does appellant cite the federal court of appeals decisions that uniformly rejected the "contract" theory that he advances here. *See Missouri Child Care Ass'n v. Cross*, 294 F.3d 1034, 1040-41 (8th Cir. 2002); *Antrican v. Odom*, 290 F.3d 178, 188 (4th Cir. 2002); *Westside Mothers v. Haveman*, 289 F.3d 852, 857-860 (6th Cir. 2002); *Frazar v. Gilbert*, 300 F.3d 530, 550-51 (5th Cir. 2002), *rev'd on other grounds*, 540 U.S. 431 (2004).

The cases that appellant does cite (Appellant's Opening Br. 21-23) involved issues of statutory interpretation that are inapposite here. For example, in *U.S. Dept. of Transportation v. Paralyzed Veterans of America*, 477 U.S. 597 (1986), the Supreme Court held that a commercial airline that receives no direct federal funds is not a "[a] program or activity receiving federal financial assistance" within the meaning of § 504 of the Rehabilitation Act. *Id*. at 604-605. Similarly, in *Fitzgerald v. Barnstable School Committee*, 129 S. Ct. 788, 796 (2009), the Court held that "Title IX reaches institutions and programs that receive federal

funds ..., but it has consistently *been interpreted as* not authorizing suit against school officials, teachers, and other individuals. *Id*. at 796 (emphasis added). By contrast, there is no doubt that the Coverdell Act conditions bind third parties. The Coverdell Act expressly provides that the liability protection "preempts the laws of any State to the extent that such laws are inconsistent with this subpart," other than laws that provide additional liability protection. 20 U.S.C. § 6735(a).

In sum, the Coverdell Act falls well within Congress's Article I spending power. Accordingly, there is no reason for this Court to address appellant's alternative contention that the Coverdell Act would exceed Congress's power under the Commerce Clause. *See* Appellant's Opening Br. 27-31.

RESPONSE TO APPELLANT'S POINT III

THE TRIAL COURT DID NOT ERR BECAUSE THE COVERDELL ACT DOES NOT VIOLATE THE TENTH AMENDMENT

It is settled that valid conditions on receipt of federal funds do not violate the Tenth Amendment. *See, e.g.*, *New York v. United States*, 505 U.S. 144, 173 (1992); *South Dakota v. Dole*, 483 U.S. 203, 210 (1987). Appellant declares that "*[n]o* Supreme Court case can be found where a Congressional act was upheld which eliminated common law rights of action (in this case negligence) *without satisfying either the Spending Clause or the Commerce Clause of the*

Constitution." Appellant's Opening Br. 36 (second emphasis added). This argument is irrelevant because the Coverdell Act is a valid exercise of Congress's Article I spending power, as shown above.

Appellant asserts that the "judicial machinery of state courts is an area traditionally considered to be beyond the reach of Congress." Appellant's Opening Br. 35. There is no doubt, however, that state courts must apply valid federal law. The Supremacy Clause explicitly provides that federal law shall be supreme "and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const., Art. VI, cl. 2. Accordingly, the Supreme Court has stressed that the Constitution permits "imposition of an obligation on state *judges* to enforce federal prescriptions." *Printz v. United States*, 521 U.S. 898, 907 (1997) (emphasis in original).

In *Jinks v. Richland County, S.C.*, 538 U.S. 456 (2003), the Supreme Court expressly rejected the contention that Congress violated "principles of state sovereignty" by requiring state courts to toll the applicable state-law statute of limitation for the period during which a plaintiff's state law claim was previously pending in federal court. *Id*. at 464 (sustaining 28 U.S.C. § 1367(d)). *Jinks* confirmed that the principles of state sovereignty do not limit Congress's power to

"change the 'substance' of state-law rights of action" through the exercise of its enumerated powers. *Id*. at 464; *see also Pierce County v. Guillen*, 537 U.S. 129, 146-147 (2003) (upholding a federal statute that created an evidentiary privilege in information compiled or collected in connection with federal highway safety programs).

Although appellant declares that the Tenth Amendment analysis in *National League of Cities v. Usery*, 426 U.S. 833 (1976), is "pertinent to this appeal," Appellant's Opening Br. 34, the Supreme Court overruled *National League of Cities* in *Garcia v. San Antonio Metro. Transit Authority*, 469 U.S. 528, 557 (1985). Moreover, *National League of Cities* involved mandatory federal requirements rather than conditions on receipt of federal funds. The Supreme Court has stressed that conditions on federal funds present no Tenth Amendment issue because a State is free to decline the federal funds and thus avoid the conditions. *See New York*, 505 U.S. at 167-168, 173.

In short, if a State chooses to accept federal education funds under NCLB, the courts of that State must apply the federal defenses established by the Coverdell Act. That result follows from a straightforward application of the Supremacy Clause and raises no Tenth Amendment concern.

CONCLUSION

Appellant's constitutional challenges to the Coverdell Act, 20 U.S.C. §§ 6731–38, should be rejected.

Respectfully submitted,

CHARLES P. ROSE
General Counsel

STEPHEN H. FRIED
MARI COLVIN
Attorneys
Department of Education
Washington, D.C. 20202

JERRY L. SHORT
Mo. Bar No. 26318
(816) 426-3122
Assistant United States Attorney
Western District of Missouri
400 East 9th Street
Kansas City, MO 64106

TONY WEST
Assistant Attorney General

MARK B. STERN
(202) 514-5089
ALISA B. KLEIN
(202) 514-1597
Attorneys, Appellate Staff
Civil Division, Room 7235
Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001

Attorneys for the United States
as *amicus curiae*

August 31, 2010

CERTIFICATE OF COMPLIANCE

I hereby certify pursuant to Supreme Court Rule 84.06(c) that the foregoing brief contains the information required by Rule 55.03, complies with the limitations contained in Rule 84.06(b), and contains 3,239 words. I further certify that the accompanying CD has been scanned and found to be free of viruses.

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Alisa B. Klein
Attorney for the United States

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of August, 2010, I served the foregoing brief by causing two hard copies of the brief and one electronic copy on CD to be sent by Federal Express, for overnight delivery, to each of the following:

George P. Coughlin
DYSART TAYLOR LAY
COTTER & McMONIGLE, P.C.
4420 Madison Avenue
Kansas City, MO 64111
gcoughlin@dysarttarylor.com
mgeary@dysarttaylor.com
Tel: 816 931-2700

Derek T. Teeter
HUSCH BLACKWELL SANDERS, LLP
4800 Main Street, Suite 1000
Kansas City, Missouri 64112
derek.teeter@huschblackwell.com

_____
Alisa B. Klein
Attorney for the United States