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Court of Appeals of New York - Giaquinto v. Comm'r of New York State Dep't of Health

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COURT OF APPEALS OF NEW YORK

Giaquinto v. Commissioner of New York State Department of Health[1]

(decided June 12, 2008)

Dominick Giaquinto, a resident of an adult care facility, commenced an Article 78 proceeding seeking, in part, that the Commissioner of the Department of Health ("DOH") declare him eligible for Medicaid benefits retroactive to the date of his application and attorney's fees and costs pursuant to Sections 1983[2] and 1988[3] of Title 42 of the United States Code ("42 U.S.C. § 1983" and "42 U.S.C. § 1988"). The state supreme court granted the petition and found that the DOH acted arbitrarily, capriciously and without a basis in law in its determination to deny Medicaid benefits to Giaquinto.[4] The court vacated the DOH's determination and awarded attorney's fees to Giaquinto.[5] DOH appealed only the award of attorney's fees to the Appellate Division, Third Department, which reversed the award, holding that Giaquinto was not entitled to the award under 42 U.S.C. § 1988 because he did not prevail in his claim under 42 U.S.C. §

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[1] 897 N.E.2d 116 (N.Y. 2008).

[2] 42 U.S.C. § 1983 (2000) provides, in pertinent part: A citizen of the United States may bring a claim against a "person" who, under color of state law, "subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and [federal] laws."

[3] 42 U.S.C. § 1988(b) (2000) provides, in pertinent part: "In any action or proceeding to enforce a provision of section [ ] . . . 1983 . . . the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs . . . ."

[4] *Giaquinto*, 897 N.E.2d at 119.

[5] *Id.*

1983.[6] Giaquinto appealed to the New York Court of Appeals, which addressed whether the award of attorney's fees was barred by the doctrine of sovereign immunity set forth under the Eleventh Amendment[7] to the U.S. Constitution.[8] The Court of Appeals reversed, holding that the Eleventh Amendment's sovereign immunity was not an obstacle to the recovery of attorney's fees in the subject action.[9] However, the court remitted to the trial court for further proceedings because the court stated that it could not conclude that the state supreme court in fact awarded Giaquinto relief on federal grounds.[10]

In October 2004, while Giaquinto was a resident of an adult care facility and his wife, the "community spouse," resided in the marital home, Giaquinto applied to the Montgomery County Department of Social Services ("DSS") to obtain Medicaid benefits for nursing services that began on August 1, 2004.[11] DSS denied the application because Giaquinto and his wife had "household income and resources in excess of [the] permissible limits for Medicaid eligibility."[12] Subsequently, an "Administrative Fair Hearing" was held at which Giaquinto requested a reversal of DSS's decision to deny the benefits and an increase in the community spouse resource allowance

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[6] *Id.*

[7] U.S. CONST. amend XI, states: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another state, or by Citizens or Subjects of any Foreign State."

[8] *Giaquinto*, 897 N.E.2d at 117.

[9] *Id.* at 121.

[10] *Id.* at 123.

[11] *Id.* at 117; A "community spouse" refers to the non-Medicaid spouse who remains in the community. The Medicare Catastrophic Coverage Act of 1988, which set out to protect resources for community spouses, created legislation which separates the income and assets of spouses. This enables the community spouse to retain a certain sum of assets if the other spouse is required to deplete assets in order to qualify for Medicaid. *Id.* at 118 n.2.

[12] *Id.* at 117-18.

("CSRA") for his wife.[13]

A fair hearing decision was issued by DOH on April 15, 2005 affirming DSS's denial of Giaquinto's application and held that Giaquinto's wife was entitled to an increased CSRA.[14] The case was remanded to Montgomery County with direction that DSS should calculate how much of Giaquinto's excess resources should be given to his wife so that she could purchase a "single premium immediate life annuity to generate sufficient income" to raise her monthly income to the minimum level.[15] Giaquinto subsequently filed an Article 78 proceeding against DOH alleging that the determination of DOH to require his wife to "purchase a 'single premium immediate life annuity' was arbitrary, capricious," and in violation of state and federal Medicaid laws.[16] Giaquinto sought the following: (1) an annulment of the Fair Hearing decision; (2) a judgment directing DOH to find him "eligible for Medicaid retroactive to the date of his original application"; (3) a determination that his wife "could retain all of her resources as of [the application] date"; and (4) attorney's fees and costs pursuant to 42 U.S.C. §§ 1983 and 1988.[17]

The Supreme Court of Albany County found that DOH acted arbitrarily, capriciously, and without any basis in law in calculating the CSRA, and accordingly vacated the fair hearing decision and

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[13] *Giaquinto*, 897 N.E.2d at 118. Community spouse resource allowance refers to the marital partner's entitlement, under federal and state law, to a minimum level of monthly income. The sum of the CSRA is not included when determining whether an institutionalized spouse is eligible for Medicaid benefits. *Id.* at 118 n.2.

[14] *Id.*

[15] *Id.*

[16] *Id.* at 118-19.

[17] *Id.* at 119.

DOH's April 2005 determination and awarded attorney's fees to Giaquinto.[18] The court determined that DOH acted contrary to its prior policy and without any explanation for doing so when it directed the community spouse to purchase a certain type of investment.[19] For that reason, the court vacated the determination as arbitrary and lacking a rational basis.[20] DOH appealed only the award of attorney's fees to the Appellate Division, Third Department.[21]

On appeal, the appellate division reversed the award of attorney's fees based on its characterization of the relief as retrospective in nature and therefore barred by the Eleventh Amendment.[22] The court explained that, pursuant to 42 U.S.C. § 1988(b), an award of reasonable attorney's fees is permissible to a party who prevails on a valid federal claim.[23] Furthermore, the court noted that the judicially created exception to the Eleventh Amendment's doctrine of sovereign immunity[24] allows state officers to be sued in their official capacity under 42 U.S.C.A. § 1983 only when the petitioner seeks " 'injunctive or prospective relief to prevent a continuing violation of the law.' "[25]

The appellate division conceded that the subject suit against the Commissioner of DOH was permissible under the narrow excep-

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[18] *Giaquinto*, 897 N.E.2d at 119.

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Giaquinto*, 897 N.E.2d at 119.

[24] Edelman v. Jordan, 415 U.S. 651, 663 (1974) (holding that the Eleventh Amendment bars "a suit by private parties seeking to impose a liability which must be paid from public funds in the state treasury.").

[25] *Giaquinto*, 897 N.E.2d at 119 (quoting Giaquinto v. Comm'r of N.Y.S. Dep't of Health, 833 N.Y.S.2d 301 (App. Div. 3d Dep't 2007)).

tion to the sovereign immunity doctrine.[26] However, the court rejected Giaquinto's argument that the relief sought was prospective because he sought approval of his Medicaid application and an increase in his wife's CSRA, resulting in his entitlement to future benefits.[27] Instead, the court stated that the relief sought was "retrospective, remedying a prior erroneous decision, even though a grant of such relief would result in his eligibility for and receipt of benefits in the future."[28] The court seemed to be concentrating on the form of the relief rather than the substance of the relief, i.e., the ultimate goal of obtaining Medicaid benefits. As a result, the appellate court held that Giaquinto was not entitled to the award of attorney's fees because his Section 1983 claim failed.[29] Subsequently, Giaquinto appealed the decision to the New York Court of Appeals.[30]

At issue before the Court of Appeals was whether Giaquinto's claim for attorney's fees from DOH pursuant to 42 U.S.C. § 1988(b) was barred by the Eleventh Amendment.[31] The court disagreed with the appellate division and held that Giaquinto's relief was prospective in nature and, therefore, the suit was not barred by the Eleventh Amendment.[32] The court characterized the claim as prospective in that it involved Giaquinto's ongoing entitlement to "current and future Medicaid benefits."[33] The fact that such eligibility would be ret-

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[26] *Giaquinto*, 833 N.Y.S.2d at 303.
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] *Giaquinto*, 897 N.E.2d at 119.
[31] *Id.* at 117.
[32] *Id.* at 121.
[33] *Id.*

roactive to the date of the application was subordinate and inconsequential to the primary relief sought.[34]

As the foundation for its decision, the court first recognized the special exception to the rule that the Eleventh Amendment bars suits against state officials as established in the Supreme Court's landmark decision of *Ex parte Young*.[35] The *Ex parte Young* doctrine provides that a state official, acting in his official capacity, may be sued in federal court for prospective relief based on conduct that violates federal law.[36] The Court held that:

> If the act which the state [officer] seeks to enforce be a violation of the Federal Constitution, the officer, in proceeding under such enactment, comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The state has no power to impart to him any immunity from responsibility to the supreme authority of the United States.[37]

Based on the holding in *Ex parte Young*, federal courts have consistently issued prospective declaratory and injunctive relief against state officials acting contrary to federal law.

Although *Ex parte Young* permits federal courts to issue prospective injunctive relief against state officials, the United States Supreme Court held in *Edelman v. Jordan*[38] that the Eleventh Amend-

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[34] *Id.*
[35] 209 U.S. 123 (1908).
[36] *Id.* at 159-60.
[37] *Id.*
[38] 415 U.S. 651 (1974).

ment bars an action if the plaintiff seeks "to impose a liability which must be paid from public funds in the state treasury."[39] In *Edelman*, the plaintiffs brought a class action seeking declaratory and injunctive relief against state officials responsible for administering the federal-state programs of Aid to the Aged, Blind or Disabled ("AABD").[40] The plaintiffs alleged that the state officials were managing the AABD in violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, as well as in violation of federal regulations which require that the state administrators process AABD eligibility applications within prescribed time periods.[41]

The district court granted a permanent injunction requiring that the state officials abide by the federally mandated time limits.[42] Additionally, the district court ordered the defendants to " 'release and remit AABD benefits wrongfully withheld to all applicants for AABD in the State of Illinois' " who applied between the date of the federal regulations and the date of the district court's preliminary injunction.[43]

On appeal to the Seventh Circuit Court of Appeals, the defendants argued that the award was retroactive in nature and therefore barred by the Eleventh Amendment because the state treasury was to make payments to those whose benefits were wrongfully withheld.[44]

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[39] *Id.* at 663.
[40] *Id.* at 653.
[41] *Id.*
[42] *Id.* at 656.
[43] *Edelman*, 415 U.S. at 656.
[44] *Id.* at 657-58.

However, the circuit court characterized the retroactive award of monetary relief as "equitable restitution," not damages, and therefore not violative of the Eleventh Amendment.[45]

The United States Supreme Court granted certiorari and reversed.[46] Although the Court explained that an award requiring payment of state funds necessary for future compliance with a federal claim would not be barred by the Eleventh Amendment, the Court concluded that the subject relief was an award of damages against the State for a "past breach of a legal duty."[47] Such an award is expressly precluded by the Eleventh Amendment.[48] *Edelman* made it clear that a federal court cannot order state officials to pay benefits retroactively even if the benefits are wrongfully withheld because of a state official's unconstitutional conduct.[49]

In determining that the relief sought was prospective in *Giaquinto*, the court relied on the United States Supreme Court decision in *Papasan v. Allain*,[50] which held that the Eleventh Amendment did not bar a Fourteenth Amendment equal protection claim. In *Papasan*, the plaintiffs were local school officials and schoolchildren in Mississippi who filed suit against state officials for allegedly violating the Equal Protection Clause of the Fourteenth Amendment.[51] The plaintiffs alleged that in the 1850s, Mississippi mismanaged lands held in trust for the plaintiff schoolchildren resulting in the loss of

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[45] *Id.* at 663-64.
[46] *Id.* at 658-59.
[47] *Id.* at 667-68.
[48] *Edelman*, 415 U.S. at 668.
[49] *Id.* at 651.
[50] 478 U.S. 265 (1986).
[51] *Id.* at 274.

those lands.[52] The plaintiffs asserted that this past state conduct resulted in the current "disparity between the financial support available to [its] schools and other schools in the State, which . . . deprived . . . [its] schoolchildren of a minimally adequate level of education."[53]

The district court held that the plaintiff's claims were barred by the Eleventh Amendment because the " 'only possible relief could come only from a monetary award against the state treasury.' "[54] The Fifth Circuit Court of Appeals affirmed the district court's dismissal of the complaint, although it did so on different grounds.[55] The circuit court disagreed that the plaintiffs' claims were barred by the Eleventh Amendment, and instead recognized the possibility that there was prospective relief available to correct the existing unequal distribution of state funds which would not be proscribed by the Eleventh Amendment although the plaintiff plead only retrospective relief in the form of land or money.[56]

The United States Supreme Court granted certiorari, vacated the judgment of the circuit court, and remanded for further proceedings.[57] The Supreme Court agreed with the circuit court that the present disparity in the distribution of state funds to school districts resulted in an ongoing equal protection violation which was not barred by the Eleventh Amendment.[58] The Court held that the "Eleventh Amendment would not bar relief necessary to correct [Mississippi's]

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[52] *Id.*
[53] *Id.*
[54] Papasan v. United States, 756 F.2d 1087, 1092 (5th Cir. 1985).
[55] *Id.* at 1089.
[56] *Id.* at 1094-95.
[57] *Papasan*, 478 U.S. at 275.
[58] *Id.* at 282.

current violation of the Equal Protection Clause" because the State's unequal distribution of funds was "precisely the type of continuing violation for which a remedy may permissibly be fashioned under *Young*."[59] In sum, the Court held that prospective relief seeking to end an ongoing or future violation of law was not proscribed by the Eleventh Amendment.[60]

In *Papasan*, the Court set forth the rationale of the *Ex parte Young* doctrine stating that:

> *Young's* applicability has been tailored to conform as precisely as possible to those specific situations in which it is "necessary to permit the federal courts to vindicate federal rights and hold state officials responsible to 'the supreme authority of the United States.' " Consequently, *Young* has been focused on cases in which a violation of federal law by a state official is ongoing as opposed to cases in which federal law has been violated at one time or over a period of time in the past, as well as on cases in which the relief against the state official directly ends the violation of federal law as opposed to cases in which that relief is intended indirectly to encourage compliance with federal law through deterrence or directly to meet third-party interests such as compensation. . . . "Remedies designed to end a continuing violation of federal law are necessary to vindicate the federal interest in assuring the supremacy of that law. But compensatory or deterrence interests are insufficient to overcome the dictates of the Eleventh Amendment."
> . . . [R]elief that serves directly to bring an end to a present violation of federal law is not barred by the Eleventh Amendment even though accompanied by a

[59] *Id.*
[60] *Id.*

substantial ancillary effect on the state treasury.[61]

Hutto v. Finney[62] exemplifies another form of permissible "ancillary" relief under the Eleventh Amendment recognized by the Supreme Court. In *Hutto*, state prisoners brought an action against state prison officials alleging that the conditions of their confinement violated the Eighth Amendment's prohibition on cruel and unusual punishment.[63] The district court entered judgment for the plaintiffs and ordered that the constitutional violations at the prison be corrected.[64]

In subsequent hearings to supervise the remedial order, the district court found that the prison officials "had acted in bad faith" in failing to correct the constitutional violations and awarded attorney's fees to be paid from prison funds.[65] The State appealed to the Eighth Circuit Court of Appeals, arguing that paying the award of attorney's fees with public funds was barred by the Eleventh Amendment.[66]

However, the Supreme Court affirmed, holding that the award of attorney's fees to be paid from the state treasury for time spent obtaining injunctive relief against the state prison was not barred by the Eleventh Amendment.[67] The Court reasoned that such an award of "costs" was ancillary to the federal court's power to impose injunctive relief and, as such was permissible to enforce prospective re-

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[61] *Id.* at 277-78 (citations omitted).
[62] 437 U.S. 678 (1978).
[63] *Id.* at 680.
[64] *Id.*
[65] *Id.* at 684-85.
[66] *Id.* at 689-90.
[67] *Hutto*, 437 U.S. at 680-81.

lief.[68]

The Court noted the often indistinct line between retroactive and prospective relief and rationalized the ancillary cost by stating that:

> In exercising their prospective powers under *Ex parte Young* and *Edelman v. Jordan*, federal courts are not reduced to issuing injunctions against state officers and hoping for compliance. Once issued, an injunction may be enforced. . . . The principles of federalism that inform Eleventh Amendment doctrine surely do not require federal courts to enforce their decrees only by sending high state officials to jail. The less intrusive power to impose a fine is properly treated as ancillary to the federal court's power to impose injunctive relief.[69]

Hence, the Eleventh Amendment did not proscribe an award of attorney's fees against the prison officials in their official capacities.[70] The Court recognized that without the power to impose such an "ancillary" cost to its injunctive power, the judicial prospective power under *Ex parte Young* would necessarily become ineffective.[71]

The New York Court of Appeals in *Giaquinto* additionally addressed what it termed "the split" in the circuit court on the Eleventh Amendment issue as specifically applied to Medicaid.[72] Accordingly, the Court of Appeals referred to the Second Circuit Court

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[68] *Id.* at 690.
[69] *Id.* at 690-91 (emphasis omitted).
[70] *Id.* at 692.
[71] *Id.* at 691.
[72] *Giaquinto*, 897 N.E.2d at 122.

of Appeals decision in *Tekkno Laboratories, Inc. v. Perales*.[73] In *Tekkno*, the plaintiff was a clinical laboratory and Medicaid provider that was notified by the Department of Social Services ("DSS") that DSS was withholding payment of Medicaid claims submitted by the plaintiff until the veracity of plaintiff's claims could be determined.[74] The plaintiff brought a 42 U.S.C. § 1983 suit against DSS alleging that DSS's "withholding of payment of these claims constituted a deprivation of its property without due process of law."[75]

The Second Circuit reversed the district court's order, which granted plaintiff's motion for a preliminary injunction prohibiting the withholding of payment of the Medicaid claims.[76] The court's decision was based on the characterization of the type of relief sought as retrospective in nature and therefore barred by the Eleventh Amendment.[77] The court rejected the plaintiff's argument that the relief sought was " 'not compensation for the damage suffered by Tekkno, it merely direct[ed] that the illegal deprivation shall not continue to Tekkno's further injury.' "[78] Instead, the court stated that the injunctive order "explicitly ordered the State to pay moneys out of its treasury in compensation of the claims submitted by Tekkno 'prior to the date of this order.' "[79] Since the court did not find any award of prospective relief in the injunctive order, the court held that it was barred

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[73] 933 F.2d 1093 (2d Cir. 1991).
[74] *Id.* at 1094.
[75] *Id.* at 1095.
[76] *Id.* at 1094.
[77] *Id.* at 1098.
[78] *Tekkno*, 933 F.2d at 1098.
[79] *Id.*

by the Eleventh Amendment.[80]

In contrast, in *Kostok v. Thomas*,[81] a case decided six years later, the Second Circuit found that a Medicaid plaintiff's relief was not violative of the Eleventh Amendment.[82] In *Kostok*, the plaintiff was a quadriplegic nursing home resident who received Medicaid benefits.[83] When DSS refused to pay the cost of a new customized wheelchair to replace a fifteen-year old wheelchair that was no longer medically nor physically sufficient, plaintiff filed an application for a preliminary injunction against DSS's continued withholding of payment approval for the new wheelchair.[84] The plaintiff's complaint alleged a due process violation of the Fourteenth Amendment.[85]

The Second Circuit disagreed with the district court that the relief sought was retroactive money damages and, thus, barred by the Eleventh Amendment.[86] Rather, the circuit court stated that the relief was "truly prospective: a wheelchair from this time forward. The relief sought cannot be deemed retroactive simply because it costs money. Kostok does not seek compensation for any suffering caused by his use of an unsuitable wheelchair; he simply seeks the suitable wheelchair now."[87] The court clearly stated that simply because there is a cost to the state treasury, that alone does not necessarily render

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[80] *Id.*
[81] 105 F.3d 65 (2d Cir. 1997).
[82] *Id.* at 69.
[83] *Id.* at 66.
[84] *Id.* at 66-67.
[85] *Id.* at 68.
[86] *Kostok*, 105 F.3d at 66.
[87] *Id.* at 69 (citation omitted)

the form of relief as retrospective.[88] Consequently, the court held that the plaintiff's claim was not retroactive and therefore it was not barred by the Eleventh Amendment.[89]

Giaquinto also relied on the Second Circuit's recent decision in *Morenz v. Wilson-Coker*,[90] which similarly found prospective relief in a Medicaid dispute which was not violative of the Eleventh Amendment.[91] In *Morenz*, the plaintiff was a nursing home resident who made an application to DSS for Medicaid benefits.[92] In order to qualify for the benefits, the plaintiff assigned his spousal support rights to the State, which assignment immunized the non-institutionalized spouse's assets from inclusion when calculating Medicaid eligibility for the institutionalized spouse.[93] Despite the assignment of spousal support rights, DSS denied the plaintiff's application based on the plaintiff's "combined [spousal] resources [that] exceeded the statutory eligibility amount."[94]

Subsequently, the plaintiff made an application for a temporary restraining order and preliminary injunction to prohibit DSS from including his spouse's assets in the calculation of his eligibility for Medicaid benefits.[95] The district court granted summary judgment to plaintiff enjoining DSS from denying plaintiff's Medicaid application and also ordered, in accordance with the Medicaid statute,

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[88] *Id.*
[89] *Id.*
[90] 415 F.3d 230 (2d Cir. 2005).
[91] *Id.* at 237.
[92] *Id.* at 232.
[93] *Id.* at 232-33.
[94] *Id.* at 233.
[95] *Morenz*, 415 F.3d at 233.

that the plaintiff be eligible for benefits retroactively.[96] DSS appealed to the Second Circuit, arguing that the retroactive Medicaid eligibility constituted retroactive relief in violation of the Eleventh Amendment.[97]

The court rejected DSS's argument, finding that the order granting benefits retroactively to plaintiff was not compensation for the State's past violations of federal law proscribed by the Eleventh Amendment.[98] Rather, the award of retroactive benefits was simply incidental to compliance with the "present eligibility determination required by the Medicaid statute."[99] Since the retroactive benefits were a necessary consequence of compliance with the prospective injunction, and not an award of restitution for a past breach by DSS, the court held that the district court's order was not in violation of the Eleventh Amendment.[100]

When determining if an award against a sovereign is barred by the Eleventh Amendment, the New York Court of Appeals decision in *Gianquinto* is in line with the trend of Second Circuit decisions, which focus on the substance of relief, rather than the form of relief. In other words, the recent decisions appropriately recognize the primarily prospective nature of entitlement to benefits in the future and do not bar a claim as violative of the Eleventh Amendment simply because there is an additional ancillary or incidental retroactive award. For instance, in *Giaquinto*, the substantive award re-

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[96] *Id.*
[97] *Id.* at 233-34.
[98] *Id.* at 237.
[99] *Id.*
[100] *Morenz*, 415 F.3d at 237.

sulted in plaintiff's ongoing entitlement to current and future Medicaid benefits, which is clearly prospective in nature. The fact that the award also included Medicaid eligibility retroactively to a date prior to the award was not fatal to the constitutional claim because it was merely incidental to the substantive relief awarded.

Permitting such ancillary retrospective relief is likely to be an inevitable consequence of adhering to the *Ex parte Young* doctrine. An injunctive order against a state official to correct a constitutional violation prospectively may permissibly result in a fiscal consequence on the state treasury. As evidenced by the cases herein, awards paid from the state treasury are permissible when they are a necessary result of compliance with court orders, which by their terms are prospective in nature. Because it is unlikely that courts will deviate from the landmark decision of *Ex parte Young*, future court decisions on this Eleventh Amendment issue will most likely follow the reasoning of the court decisions discussed herein.

Although Judge Theodore T. Jones, Jr. in *Giaquinto* characterized the holding in *Tekkno* as contrary to the more recent Second Circuit holdings in *Morenz* and *Kostok*, it can be argued that the holding in *Tekkno* was actually consistent with the court's subsequent decisions on the Eleventh Amendment issue. Following the Supreme Court's holding in *Edelman*, *Tekkno* held that a federal court cannot order state officials to pay benefits retroactively even if the benefits are wrongfully withheld because of a state official's unconstitutional conduct. Since the plaintiff in *Tekkno* was terminated as a Medicaid provider and, therefore, had not submitted any new Medicaid claims

to DSS, there was no possible prospective relief which could be granted by the court.[101] Hence, the injunctive order to pay the Medicaid claims retroactively was barred by the Eleventh Amendment.[102] Therefore, the reasoning of the courts' holdings in *Morenz*, *Kostok*, and *Tekkno* can be viewed as consistent with each other.

As mentioned in *Giaquinto*, there is ample reason for the New York Court of Appeals to continue to follow the Second Circuit precedent on this Eleventh Amendment issue. Most notable is the federal-state nature of the Medicaid program, which allows claims to be brought in both state and federal courts. Consistent holdings between the state and federal courts would allay any forum shopping concerns and ensure that claimants will not face inconsistent substantive law in the federal and state courts.

Heather Wine

[101] *Tekkno*, 933 F.2d at 1098.
[102] *Id.*

SEARCH & SEIZURE

United States Constitution Amendment IV:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

New York Constitution article I, section 12:

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.