In Armstrong v. Exceptional Child Center, the Supreme Court held 5-4 that Medicaid providers cannot rely on the Supremacy Clause or equity to sue states to enforce a Medicaid reimbursement statute.

The Court's rejection of a private cause of action under the Supremacy Clause has implications well beyond this case. Had the Supreme Court ruled otherwise, the Supremacy Clause would have provided a cause of action for every federal statute that arguably conflicts with state law.

42 U.S.C. §1396a(a)(30)(A) requires state Medicaid plans to assure that Medicaid providers are reimbursed at rates “consistent with efficiency, economy, and quality of care” while “safeguard[ing] against unnecessary utilization of . . . care and services.” Medicaid providers sued Idaho claiming that its reimbursement rates for rehabilitation services were lower than §(30)(A) permits. The Ninth Circuit held that the providers had an implied right of action under the Supremacy Clause to sue the state. The Supreme Court disagreed.

The Court first rejected the argument that the Supremacy Clause creates a private right of action. “It instructs courts what to do when state and federal law clash, but is silent regarding who may enforce federal laws in court, and in what circumstances they may do so.” The Court agreed with an argument also made in the National Governors Association and the Council of State Governments amicus brief that the constitution’s “preratification historical record” does not indicate that the Supremacy Clause creates a private right of action. And “[i]f the Supremacy Clause includes a private right of action, then the Constitution requires Congress to permit the enforcement of its laws by private actors, significantly curtailing its ability to guide the implementation of federal law.”

The Court also rejected the providers’ argument that equity should permit their case to proceed. First, the statute provided a remedy for a state’s breach—Health and Human Services (HHS) may withhold funds—suggesting Congress intended no other remedies. Second, it would be difficult for a court to fashion a remedy in this case—a reimbursement rate—given the broad and unspecific language of §(30)(A).

So what’s next for the Medicaid providers in this case? The Justices discuss this in their opinions.

Justice Scalia, writing for the majority, points out they can complain to the Secretary of HHS who can withhold federal funds—which dissenting Justice Sotomayor calls “drastic and often counterproductive.”

Justice Breyer, in a concurring opinion, notes that if withholding funds does not work, HHS may be able to sue a State to compel compliance. And if that doesn’t work providers could ask HHS to “interpret its rules to [providers] satisfaction, to modify those rules, to promulgate new rules or to enforce old ones.” And if that doesn’t work, providers could seek judicial review of HHS’s refusal and ask the court to “compel agency action unlawfully withheld or unreasonably delayed.”
But none of these options are as easy or as direct as simply suing the state.