SUPREME COURT OF THE UNITED STATES

No. 01–188

PHARMACEUTICAL RESEARCH AND MANUFACTURERS OF AMERICA, PETITIONER *v.* PETER E. WALSH, ACTING COMMISSIONER, MAINE DEPARTMENT OF HUMAN SERVICES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

[May 19, 2003]

JUSTICE BREYER, concurring in part and concurring in the judgment.

I join Parts I–III and Part VI of the Court's opinion and Parts IV and VII of the plurality's opinion. I also agree with Part V's conclusion. The District Court's entry of a preliminary injunction rested upon a determination that federal Medicaid law pre-empted the Maine Rx program as long as Maine's prior authorization program posed some obstacle, *"'[n]o matter how modest,'"* to realizing federal Medicaid goals. *Ante,* at 12 (majority opinion) (emphasis added). Like the plurality, I believe that the italicized phrase understates the strength of the showing that the law required petitioner to make. *Ante,* at 21.

To prevail, petitioner ultimately must demonstrate that Maine's program would "seriously compromise important federal interests." *Arkansas Elec. Cooperative Corp.* v. *Arkansas Pub. Serv. Comm'n,* 461 U. S. 375, 389 (1983). Cf. *Rosado* v. *Wyman,* 397 U. S. 397, 422–423 (1970). Petitioner consequently cannot obtain a preliminary injunction simply by showing minimal or quite "modest" harm—even though Maine offered no evidence of countervailing Medicaid-related benefit, *post,* at 5 (O'CONNOR, J., concurring in part and dissenting in part). The relevant statu-

tory language, after all, expressly permits prior authorization programs, 42 U. S. C. §1396r–8(d)(1), and Congress may well have believed that such programs, in general, help Medicaid by generating savings. See *ante,* at 3–6, and n. 7 (majority opinion). That being so, Congress would not have intended to forbid prior authorization programs virtually *per se*—*i.e.,* on the showing of slight harm—even if no specific Medicaid-related benefit is apparent in a particular case.

I recognize that petitioner presented evidence to the District Court that could have justified a stronger conclusion. *E.g.,* App. 57, 103–104. Cf. Brief for Legal Services Organizations Representing Medicaid Beneficiaries as *Amici Curiae* 14. Yet the District Court's preliminary injunction nonetheless rests upon premises that subsequent developments have made clear are unrealistic. For one thing, despite Maine's initial failure to argue the matter, Maine's program may further certain Medicaid-related objectives, at least to some degree. *Ante,* at 16–18 (plurality opinion). For another, the Secretary of Health and Human Services (whose views are highly relevant to the question before us, *infra,* at 3) has indicated that state programs somewhat similar to Maine's may prove consistent with Medicaid objectives, and the Secretary has approved at least one such program. *Ante,* at 14, n. 30 (plurality opinion); Letter from Theodore B. Olson, Solicitor General, to William K. Suter, Clerk of the Court (Jan. 10, 2003). As a result, it is now apparent that proper determination of the pre-emption question will demand a more careful balancing of Medicaid-related harms and benefits than the District Court undertook. Cf. *California* v. *FERC,* 495 U. S. 490, 506 (1990) (finding a state law pre-empted where it "would disturb and conflict with the balance embodied in [a] considered federal agency determination"). These post-entry considerations, along with the general importance of the pre-emption question, convince

me that we should not overlook the District Court's technical misstatement of the proper legal standard, and that we should therefore affirm the Court of Appeals' judgment vacating the injunction.

By vacating the injunction, we shall also help ensure that the District Court takes account of the Secretary's views in further proceedings that may involve a renewed motion for a preliminary injunction. It is important that the District Court do so. The Department of Health and Human Services (HHS) administers the Medicaid program. Institutionally speaking, that agency is better able than a court to assemble relevant facts (*e.g.,* regarding harm caused to present Medicaid patients) and to make relevant predictions (*e.g.,* regarding furtherance of Medicaid-related goals). And the law grants significant weight to any legal conclusion by the Secretary as to whether a program such as Maine's is consistent with Medicaid's objectives. See, *e.g., Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U. S. 837 (1984); *Skidmore* v. *Swift & Co.,* 323 U. S. 134 (1944). Cf. *post,* at 6–7 (THOMAS, J., concurring in judgment).

The Medicaid statute sets forth a method through which Maine may obtain those views. A participating State must file a Medicaid plan with HHS and obtain HHS approval. 42 U. S. C. §1396. A State must also promptly file a plan amendment to reflect any "[m]aterial changes in State law, organization, or policy, or in the State's operation of the Medicaid program." 42 CFR §430.12(c) (2002). And the Secretary has said that a statute like Maine's is a "significant component of a state plan" with respect to which Maine is expected to file an amendment. App. to Brief for United States as *Amicus Curiae* 48a.

In addition, the legal doctrine of "primary jurisdiction" permits a court itself to "refer" a question to the Secretary. That doctrine seeks to produce better informed and uniform legal rulings by allowing courts to take advantage of

an agency's specialized knowledge, expertise, and central position within a regulatory regime. *United States* v. *Western Pacific R. Co.,* 352 U. S. 59, 63–65 (1956). "No fixed formula exists" for the doctrine's application. *Id.,* at 64. Rather, the question in each instance is whether a case raises "issues of fact not within the conventional experience of judges," but within the purview of an agency's responsibilities; whether the "limited functions of review by the judiciary are more rationally exercised, by preliminary resort" to an agency "better equipped than courts" to resolve an issue in the first instance; or, in a word, whether preliminary reference of issues to the agency will promote that proper working relationship between court and agency that the primary jurisdiction doctrine seeks to facilitate. *Far East Conference* v. *United States,* 342 U. S. 570, 574–575 (1952); see also *Western Pacific R. Co., supra,* at 63–65. Cf. 2 R. Pierce, Administrative Law §14.4, p. 944 (2002) (relatively frequent application of the doctrine in pre-emption cases).

Where such conditions are satisfied—and I have little doubt that they are satisfied here—courts may raise the doctrine on their own motion. *E.g., Williams Pipe Line Co.* v. *Empire Gas Corp.,* 76 F. 3d 1491, 1496 (CA10 1996). See also 5 J. Stein, G. Mitchell, & B. Mezines, Administrative Law §47.01[1], pp. 47–5 to 47–6 (2002); 2 Federal Procedure: Lawyers Edition §2:337, p. 373 (2003). A court may then stay its proceedings—for a limited time, if appropriate—to allow a party to initiate agency review. *Western Pacific R. Co., supra,* at 64; see also *Wagner & Brown* v. *ANR Pipeline Co.,* 837 F. 2d 199, 206 (CA5 1988) (stay of limited duration). Lower courts have sometimes accompanied a stay with an injunction designed to preserve the status quo. *E.g., Wheelabrator Corp.* v. *Chafee,* 455 F. 2d 1306, 1316 (CADC 1971). And, in my view, even if Maine should choose not to obtain the Secretary's views on its own, the desirability of the District Court's having

those views to consider, *supra,* at 3, is relevant to the "public interest" determination that often factors into whether a preliminary injunction should issue, see, *e.g., MacDonald* v. *Chicago Park District,* 132 F. 3d 355, 357 (CA7 1997); 11A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure §2948, pp. 131–133 (1995). But cf. *Rosado,* 397 U. S., at 406.

For these reasons, I concur in the Court's judgment and in major part in the plurality's opinion.