

IN THE SUPREME COURT OF THE UNITED STATES

No. 21-806

HEALTH AND HOSPITAL CORPORATION OF MARION COUNTY, *et al.*,

Petitioners,

v.

IVANKA TALEVSKI, Personal Representative of the Estate of
GORGI TALEVSKI, Deceased,

Respondent.

On Writ of Certiorari to the United States
Court of Appeals for the Seventh Circuit

MOTION OF THE STATE OF INDIANA TO PARTICIPATE IN ORAL ARGUMENT AS *AMICUS CURIAE* AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the State of Indiana, on behalf of itself and Alabama, Alaska, Arkansas, Florida, Idaho, Kansas, Kentucky, Louisiana, Mississippi, Montana, Nebraska, New Hampshire, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and West Virginia (collectively, *Amici States*), respectfully moves for leave to participate in the oral argument in this case as *amicus curiae* supporting Petitioners and requests that the State be allowed five minutes of argument time. Counsel for Petitioners Lawrence

Robbins has authorized undersigned counsel to represent that Petitioners support this motion and have agreed to cede five minutes of their argument time to the State.

This case presents the questions of whether, and if so under what circumstances, Spending Clause statutes give rise to private rights enforceable via 42 U.S.C. section 1983. As counterparties to major Spending Clause agreements, the *Amici* States have a critical interest in the resolution of the questions presented. Congress must speak clearly as to the “conditions” and “consequences of . . . participation” in federal Spending Clause programs. *South Dakota v. Dole*, 483 U.S. 203, 207 (1987).

Notwithstanding the clear-statement rule, the Court has adhered to a standard allowing courts to conclude some Spending Clause provisions give rise to *implied* rights enforceable in a private Section 1983 action. *See Wilder v. Virginia Hosp. Ass’n*, 496 U.S. 498 (1990). Inferring private causes of actions in these statutes interferes with the administration and enforcement mechanisms created by Congress and disrupts the participation and negotiation calculus of States and federal agencies. *See Armstrong v. Exceptional Child Center, Inc.*, 575 U.S. 320, 328–29 (2015). Moreover, because not all courts of appeals agree which rights (if any) are enforceable, States face disparate liability under the same statutory provisions. *See Astra USA, Inc. v. Santa Clara Cnty.*, 563 U.S. 110, 120 (2011).

The Court has frequently granted argument time to States as *amici curiae* in cases implicating significant state interests when States can add a valuable perspective not fully articulated by the parties. *See, e.g., Sturgeon v. Frost*, No. 17-949 (2018)

(Alaska); *Tennessee Wine & Spirits Retailers Ass’n v. Thomas*, No. 18-96 (2018) (Illinois); *Gamble v. United States*, No. 17-646 (2018) (Texas); *ONEOK, Inc. v. Learjet, Inc.*, No. 13-271 (2015) (Kansas); *United Haulers Ass’n v. Oneida-Herkimer Solid Waste Mgmt. Auth.*, No. 05-2024 (2007) (New York); *City of Littleton v. Z.J. Gifts D-4, LLC*, No. 02-1609 (2004) (Ohio); *City of Boerne v. Flores*, 519 U.S. 1088 (1997) (Ohio).

Likewise in this case, Indiana respectfully submits that its participation in oral argument would be of material assistance to the Court. The State filed with the Court in this case two *amicus* briefs—joined by seventeen States at the petition stage and twenty-two States at the merits stage—presenting critical state interests aligned with, but distinct from, Petitioners’ interests. States carry out many of the largest and most significant federal grant programs (including Medicaid and TANF among others) and are responsible for adhering to the conditions on those grants. At argument, Indiana would convey its perspective on the dynamics that arise between state and federal agencies in the administration of grant such programs, including how implied private rights of action affect those dynamics and undermine the political accountability of state and federal officials alike—a concern that is particularly acute given the need to safeguard States’ capacities to function as independent sovereigns. Petitioner Health and Hospital Corporation of Marion County lacks the same institutional interests and experiences.

The State therefore respectfully moves for leave to participate in the oral argument in this case as *amicus curiae* supporting Petitioners and requests that the State be allowed five minutes of Petitioners' argument time.

Respectfully submitted,

/s/Thomas M. Fisher

THOMAS M. FISHER

Solicitor General

Office of the Attorney General

IGC South, Fifth Floor

302 W. Washington Street

Indianapolis, IN 46204

(317) 232-6255

Tom.Fisher[atg.in.gov]

Counsel for Amici States

Dated: September 9, 2022