No. 21-806

In the

Supreme Court of the United States

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

BRIEF OF MEMBERS OF CONGRESS AS *AMICI CURIAE* IN SUPPORT OF THE RESPONDENT

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INTEREST OF *AMICI CURIAE*[1]

Amici Speaker Nancy Pelosi, Majority Leader Steny H. Hoyer, Majority Whip James E. Clyburn, Senator Sherrod Brown, Senator Robert P. Casey, Jr., Senator Dick Durbin, Senator Patty Murray, Senator Ron Wyden, Representative Jerrold Nadler, Representative Richard E. Neal, Representative Frank Pallone, Jr., Representative David Scott, Representative Robert C. Scott, Representative Mark Takano, and Representative Maxine Waters are current Members of Congress who support retaining Congress' ability to pass legislation under the Spending Clause that can be enforced via 42 U.S.C. 1983. Most of these Members serve as the Chairs of United States Senate or House of Representatives Committees with jurisdiction over programs legislated pursuant to Congress' spending authority, including, among others, Social Security, Medicaid, Medicare, the Supplemental Nutrition Assistance Program, and Temporary Assistance for Needy Families.[2]

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[1] Pursuant to Supreme Court Rule 37.6, counsel for *amici* represent that they authored this brief in its entirety and that none of the parties or their counsel, nor any other person or entity other than *amici* or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief. The parties have filed blanket consents to the filing of *amici curiae* briefs in accordance with Supreme Court Rule 37.3.

[2] *Amici*'s titles and affiliations are provided in Appendix A.

Amici are thus uniquely situated to provide insight into Congress' intention and practice that Section 1983 provides a remedy for deprivations of rights secured by federal statutes, including Spending Clause statutes. Congress has relied on this presumption for a half century to negotiate and pass legislation benefiting millions of Americans. *Amici* believe that the availability of private suits to enforce rights granted under Spending Clause legislation is supported by this Court's precedent and essential for efficient administration and oversight of important federal-state programs. *Amici* further support nursing home residents' ability to enforce, via Section 1983, the rights codified in the Federal Nursing Home Reform Act, which is consistent with Congress' intent in drafting and passing that legislation.[3]

[3] Indeed, in 1987, Senator Wyden—then serving as a United States Representative on the House of Representatives Committee on Energy and Commerce—voted in favor of both referring the Federal Nursing Home Reform Act to the House of Representatives Budget Committee and as part of the Omnibus Budget Reconciliation Act of 1987.

SUMMARY OF ARGUMENT

Congress has long passed legislation pursuant to its Spending Clause powers that permits private suits brought under 42 U.S.C. § 1983 ("Section 1983") to remedy violations of such statutes. This Court should reject efforts to alter its established, uniform precedent for two primary reasons.

First, for decades, Congress has legislated against the backdrop that express rights derived from federal spending statutes may be enforced through Section 1983. The Federal Nursing Home Reform Act ("FNHRA") is one such piece of legislation. The text, legislative history, and origins of FNHRA show that Congress intended to permit individuals to seek remedies for violations of FNHRA's "[r]equirements relating to residents' rights" under Section 1983. Alteration of this precedent would undermine the text and purpose of FNHRA. Were this Court to reverse the Seventh Circuit's decision and restrict a nursing home resident's ability to sue for certain violations of FNHRA, this Court would impede Congress' intention to provide efficient and effective means of redress for nursing home quality-of-care violations, impinge on congressional authority, and imperil the separation of powers between Congress and the Court.

Second, disturbing this Court's Section 1983 doctrine more broadly—by curtailing Congress' ability to permit private enforcement of Spending Clause legislation and the programs established by that legislation—would have disastrous consequences. Congress allocates billions of dollars each year in federal funds to assist the states in providing services for the nation's most vulnerable individuals. Neither federal nor state authorities have sufficient resources to provide complete oversight over the funding funneled into state programs. Instead, their attention must often be dedicated to remedying systemic abuses, while preserving the option for aggrieved persons to seek individual remedies in federal court. Both Congress and the states depend on private enforcement of rights encapsulated in these statutes to protect vulnerable individuals and groups. Limiting Congress' ability to establish such private-enforcement mechanisms will leave federal-state programs with modest oversight. And individual violators will effectively be immunized from suit. Thus, reversal of this Court's uniform Section 1983 doctrine would leave Spending Clause beneficiaries with little recourse and would egregiously undermine Congress' purpose in enacting these statutes.

ARGUMENT

I. Congress has long relied on this Court's tradition of allowing private suits to enforce Spending Clause legislation.

A. This Court's precedent is clear: Section 1983 permits aggrieved individuals to vindicate violations of rights enumerated in Spending Clause statutes.

For over forty years, Congress has legislated against the backdrop that rights derived from federal spending statutes may be enforced through Section 1983. This Court squarely addressed this aspect of Section 1983 in *Maine v. Thiboutot*, finding that aggrieved individuals could sue for violations of rights secured by the Social Security Act—a quintessential piece of Spending Clause legislation.[4] 448 U.S. 1, 4 (1980). There was no doubt that, at the time, both the Court and litigants understood that *Thiboutot* grappled with whether Spending Clause legislation might be enforceable through Section 1983.[5] *Id.* at 25 (Powell, J., dissenting) (noting that "laws under the Spending and Commerce Clauses" would be implicated by the majority's reading of Section 1983). And this Court answered in the affirmative, finding that Section 1983 permitted private lawsuits to vindicate rights conferred via Spending Clause legislation.

In the 1980s and 1990s, this Court cabined *Thiboutot*'s reach in certain ways but repeatedly confirmed its essential holding: legislation, including Spending Clause legislation, that confers individual rights can be enforced through Section 1983 suits. For example, in *Pennhurst State School and Hospital v. Halderman*, the Court directed Congress to make the individual rights at issue clear and express, such that the legislation would "unambiguously" signal to the States a congressional intent to "impose a condition on the grant of federal moneys." 451 U.S. 1, 17 (1981). Likewise, in *Middlesex County Sewerage Authority v. National Sea Clammers Association*, the Court required Congress to demonstrate in the statute's language and structure that it intended to preserve recourse through a Section 1983 action. 453 U.S. 1, 20 (1981); *see also Smith v. Robinson*, 468 U.S. 992 (1984). Neither the *Pennhurst* nor *Sea Clammers* decisions cabined the reach of Section 1983 to only certain federal laws. Thus, Congress understood, as

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[4] *See, e.g.*, *Helvering v. Davis*, 301 U.S. 619, 640 (1937) (affirming the constitutionality of the Social Security Act as a proper exercise of Congress authority to "spend money in aid of the 'general welfare'").

[5] *See also The Supreme Court, 1979 Term - Leading Cases*, 94 Harv. L. Rev. 223, 227 (1980) ("The paradigmatic statutory 1983 suit arises out of a jointly funded entitlements program in which federal officials formulate guidelines that state and local administrators must implement."); *see also* Sasha Samberg-Champion, *How to Read* Gonzaga*: Laying the Seeds of a Coherent Section 1983 Jurisprudence*, 103 Colum. L. Rev. 1838, 1845 (2003) ("To argue that *Thiboutot* somehow leaves open the treatment of Spending Clause programs is to seriously misread its holding as contemporaries understood it.").

this Court affirmed in *Wright v. City of Roanoke Redevelopment and Housing Authority*, that it remained well-established that "if there is a state deprivation of a 'right' secured by a federal statute, [Section] 1983 provides a remedial cause of action unless . . . Congress intended to foreclose such private enforcement." 479 U.S. 418, 423 (1987).

This Court's 2002 decision in *Gonzaga University v. Doe*¸ 536 U.S. 273 (2002) altered, but did not rift, this landscape. As in *Thiboutot*, *Pennhurst*, *Sea Clammers*, and *Wright*, the Court affirmed that Section 1983 may be used to vindicate the violation of rights guaranteed by Spending Clause statutes. *Gonzaga*, 536 U.S. at 284 ("Plaintiffs suing under [Section] 1983 do not have the burden of showing an intent to create a private remedy because [Section] 1983 generally supplies a remedy for the vindication of rights secured by federal statutes."). *Gonzaga* merely underscored that, "if Congress wishes to create new rights enforceable under [Section] 1983, it must do so in clear and unambiguous terms—no less and no more than what is required for Congress to create new rights enforceable under an implied private right of action." *Id.* at 290. But *Gonzaga* did not deviate from or reverse the central holding in *Thiboutot*, and it continued to affirm that Section 1983 is available as a means of redress for individual rights guaranteed by certain Spending Clause legislation. *Id.* at 289–90.

Congress has heeded the Court at each turn, considering the Court's directives while affirming its authority to draft Spending Clause legislation that guarantees certain individual rights enforceable through Section 1983 suits. Three examples make this clear. *First*, when this Court determined, in *Suter v. Artist M.*, 503 U.S. 347, 356 (1992), that Title IV-E of the Social Security Act's "reasonable efforts" clause regarding foster-care placements lacked an enforceable right, Congress amended Section 1320a-2 to permit the private enforcement of certain portions of that statute. In the Conference Report for the underlying bill, Congress noted that the amendment "overturn[ed] any such grounds applied in *Suter v. Artist M.*" H.R. Rep. No. 103-761, at 926 (1994) (Conf. Rep.). This language was consistent with other, earlier efforts to counteract *Suter's* sweep considered by the Senate Subcommittee on Social Security and Family Policy, which had sought to develop ideas for similar language that would clearly protect citizens' right to seek redress for certain state violations of Spending Clause statutes. *See Implication of Supreme Court Decision in* Suter v. Artist M.*: Hearing Before the Subcomm. on Soc. Sec. and Fam. Pol'y, of the Comm. on Fin., U.S. Senate*, 102nd Cong. 18–20 (1992). *Second*, after this Court limited immunity protections for state court judges in *Pullman v. Allen*, 466 U.S. 522, 541–43 (1984), Congress amended the text of Section 1983 to "restore[] the doctrine of judicial immunity to the status it occupied prior to *Pullman*." S. Rep. No. 104-366, at 36–37 (1996); 141

Cong. Rec. 21836 (1995).[6] And *third*, Congress frequently considers and invokes this Court's Section 1983 doctrine to frame its legislation.[7]

At no point has Congress understood that it lacks authority to permit private enforcement of Spending Clause legislation through Section 1983. Indeed, this Court has continuously and repeatedly affirmed the opposite, and Congress has relied on those decisions when legislating pursuant to its Spending Clause powers.

B. Legislating against this backdrop, Congress drafted FNHRA with the expectation that it could be enforced through Section 1983.

1. Congress conceived of FNHRA in the face of egregious nursing home abuse.

Congress enacted the Omnibus Budget Reconciliation Act of 1987 ("OBRA") and its attendant nursing home reforms, captured in FNHRA, to improve the quality of care for nursing home

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[6] This report accompanied the Federal Courts Improvement Act (FCIA), Pub. L. No. 104-317, § 309(c), 110 Stat. 3847, 3853.

[7] *See, e.g.*, Cong. Rsch. Serv., RL31569, *Section 1983 and the Spending Power: Enforcement of Federal "Laws"* (2002); Cong. Rsch. Serv., LSB10320, *Courts Split on Whether Private Individuals Can Sue to Challenge States' Medicaid Defunding Decisions: Considerations for Congress (Part I of II)* (2019).

residents and improve state oversight of those homes that receive federal funding through Medicaid. In 1987, Congress was "deeply troubled by persistent reports that, despite th[e] massive commitment of Federal resources, many nursing homes receiving Medicaid funds [were] providing poor quality care to elderly and disabled beneficiaries." H.R. Rep. No. 100-391, at 73 (1987).

But the crisis of care in the nation's nursing homes was hardly news. Both state and federal officials had received reports for decades about poor quality of care, serious violations of patients' rights, and fraud in the nation's state-run and federally funded nursing homes.[8] From 1969 through 1974, the Senate Special Committee on Aging held 22 hearings on elder care, culminating in the multi-part Subcommittee on Long-Term Care's Committee Print, 93rd Congress, *Nursing Home Care in the United States, Failure in Public Policy*, (Comm. Print 1975). It concluded that current nursing care "standards are so vague as to defy enforcement," leaving state enforcement best characterized as "scandalous, ineffective, and, in some cases, nonexistent." *See* Staff of Subcomm. on Long-Term Care of the Spec. Comm. on Aging, U.S. Senate, 94th Cong., *Drugs in Nursing Homes: Misuse, High Costs, and Kickbacks*

[8] *See, e.g.*, Pamela Doty and Ellen Wahl Sullivan, *Community Involvement in Computing Abuse, Neglect, and Mistreatment in Nursing Homes*, 61 Milbank Mem'l Fund Q. 222, 224 (1983) (noting rampant violations of nursing home residents' rights in the 1970s).

XIII (1975). This multi-part Committee Print provided detailed analyses of untrained or unlicensed personnel, poor integration of vulnerable and minority communities, financial fraud, and drug abuse. *See id.*

Public outcry over perceived government inaction and continued abuse came to a head in a spate of Colorado lawsuits, culminating in the Tenth Circuit's 1984 decision in *Smith v. Heckler*, 747 F.2d 583, 589 (10th Cir. 1984). There, Medicaid recipients successfully sued the Secretary of Health and Human Services under Section 1983 for failing to properly enforce Title XIX (the "Medicaid Act") of the Social Security Act, 42 U.S.C. §§ 1396–1396n. The district court, despite noting that nursing homes "provide so little service that they could be characterized as orphanages for the aged," had declined to find that plaintiffs could adequately seek a Section 1983 remedy for violations of the Medicaid Act, and it held that the federal government was limited to denying funding to non-compliant state nursing home providers. *In re Estate of Smith*, 557 F. Supp. 289, 293, 296–97 (D. Colo. 1983). The Tenth Circuit reversed that decision, holding that the federal government had failed to uphold its duty and develop a system that adequately enforced Medicaid regulations in state-run nursing home facilities. *Smith*, 747 F.2d at 589. And it directed the Secretary to "establish a system to adequately inform herself as to whether the facilities receiving federal money are satisfying the requirements of the Act, including providing high quality patient care." *Id.*

In response to *Heckler*, Congress and the Health Care Financing Administration ("HCFA"), acting through the Committee on Nursing Home Regulation, renewed its interest in these issues, and requested that the Institute of Medicine ("IoM") articulate requirements and outcomes for Medicaid- and Medicare-certified nursing homes that could be translated into federal law. The IoM's 415-page report to Congress recommended comprehensive reforms to improve the quality of nursing home care. Committee on Nursing Home Regulation, IoM, *Improving the Quality of Care in Nursing Homes* (1986). The IoM outlined the need to ensure that nursing home residents "receive appropriate care" and "enjoy continued civil and legal rights," as nursing home residents in some "government-certified nursing homes" receive "shockingly deficient care," and "are likely to have their rights ignored or violated." *Id.* at 2. It recommended that, in any federal law regulating or otherwise certifying nursing homes, "[r]esidents' rights should be raised from a standard to a condition of participation," that is, that residents' rights should be a condition for receipt of federal funds. *Id.* at 27. And it advised a rigorous enforcement scheme. *Id.*

As of 1986, Congress' task appeared clear: the legislature, in coordination with the administration, needed legislation codifying nursing home residents' rights and making them individually enforceable. *See Nursing Home Care: The Unfinished Agenda (Volume I): Hearing Before the Spec. Comm. on Aging, U.S. Senate*, 99th Cong. 11 (1986). Expressing hope that

Congress could "strengthen[] federal patients' rights" and "improve the federal enforcement system," Senator John Glenn urged his colleagues in the Senate's Special Committee on Aging to adopt regulations and laws that would protect nursing home residents. *Id.* at 4. Similarly, Senator William S. Cohen referenced his repeated attempts to establish a "nursing home patients' bill of rights" while he was a member of the House, and his desire to remedy the "crux of the problem we are facing today," namely, that these rights "have not been very effectively enforced." *Id.* at 15. Numerous health advocates agreed. *See, e.g.*, *id.* at 109, 161 (statement of Toby Edelman, staff attorney, Nat'l Senior Citizens L. Ctr.) (statement of Sandra K. Casper, president, Rehabilitation Care Consultants).

2. FNHRA preserved Section 1983 remedies for violations of nursing home residents' rights.

FNHRA's drafters took seriously the history of these legislative and regulatory efforts, the IoM's recommendations, and the Section 1983 lawsuits culminating in the Tenth Circuit's decision in *Heckler*. FNHRA was designed to imbue nursing home residents with individual rights enforceable through Section 1983 lawsuits.

a. Congress emphasized nursing home residents' rights in FNHRA.

FNHRA's emphasis on preserving nursing home residents' express and enforceable individual rights has remained a consistent and central aspect of the legislation. The text makes this clear. As signed into law on December 22, 1987, its "Requirements Relating to Residents' Rights," provides that nursing home residents had, among other things, a number of "specified rights," including (1) "[t]he right to be free from physical or mental abuse, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for purposes of discipline or convenience" and (2) non-transfer rights, like the right "to remain in the facility," subject to certain conditions. 42 U.S.C. § 1396(c)(1)(A)(ii), (x)(C)(2), as added and amended Pub. L. 100-203, Dec. 22, 1987, 101 Stat 1330. In its recommendations to the House of Representatives, the Committee on Energy and Commerce explained that this language explicitly tied the articulation of express nursing home residents' rights to those rights' enforcement. *See generally* H.R. Rep. 100-391(I) (1987). The Committee noted that the proposed FNHRA's Bill of Rights "would, for purposes of compliance and enforcement, elevate residents' rights to the same level as staffing and other requirements" for nursing home care. *Id.* at 82–83. It further stated that these rights should be "vigorously enforced." *Id.*

b. Congress also preserved private enforcement remedies in FNHRA.

Petitioner contends that "the remedial scheme for the two rights Respondent asserts is so extensive that Congress cannot have intended to permit supplementation under Section 1983." Pets. Br. at 39. Not so. Congress intentionally preserved the right to seek a *remedy* for violation of its patient rights provisions under other laws, including pursuant to Section 1983. Again, the text makes this clear. FNHRA expressly provides that "[t]he remedies provided under [FNHRA] are in addition to those otherwise available under State or Federal law and shall not be construed as limiting such other remedies, including any remedy available at common law." 42 U.S.C. § 1396r(h)(8).

Congress' use of "remedy" in FNHRA's Savings Clause was deliberate. Congress was undoubtedly aware of this Court's decisions restricting Section 1983 suits when the underlying statute contains a comprehensive enforcement scheme and the statute's Savings Clause failed to demonstrate Congress' intention to preserve the availability of Section 1983 suits. Take, for example, this Court's decision in *Middlesex County Sewerage Authority v. Sea Clammers*, issued only a few years prior to the passage of FNHRA. 53 U.S. 1, 20 (1981). *Sea Clammers* found that an environmental statute failed to preserve Section 1983 lawsuits because its Savings Clause—which provided that "[n]othing is this section

shall restrict any right to which any person . . . may have under any statute or common law or to seek . . . any other relief"—merely demonstrated Congress' intention "to allow further enforcement" of standards "arising under *other* statutes or state common law." *Id.* at 20 n.31 (emphasis and alteration in original). In partial dissent, Justice Stevens reasoned that this Savings Clause preserved Section 1983 suits because the legislative history indicated that "'the section would specifically preserve any rights or remedies under any other law.'" *Id.* at 29 (Stevens, J.) (concurring in part and dissenting in part) (quoting S. Rep. No. 92–414, at 81 (1971), U.S. Code Cong. & Admin. News 1972, at 3746). But the majority dismissed his position, noting that the Savings Clause failed to use language "expressly preserv[ing Section] 1983 *remedies* for violations." *Id.* at 20 n.31 (emphasis added).

Congress thus drafted FNHRA's Savings Clause carefully. It avoided the language at issue in *Sea Clammers*, which preserved the "right" to seek remedies for violations of *other* statutes, in favor of language preserving a "remedy" under statutes like Section 1983 for violations of FNHRA itself. FNHRA's Savings Clause thus permits individual enforcement of its requirements, ensuring that its regulatory enforcement regime would not be the sole form of relief for nursing home residents deprived of their rights. In essence, Congress made sure that aggrieved beneficiaries could seek additional "remedies" for any violations of FNHRA rights

committed in federally funded nursing facilities, following this Court's guidance.

Nor was Congress silent about its intention to preserve private remedies for violations of FNHRA. Of the three bills that came to form the final FNHRA, each specified different enforcement mechanisms. H.R. 2770 and 2270, later combined into H.R. 3545, proposed public and private enforcement, and preserved the right of beneficiaries to seek Section 1983 remedies. As the Committee of Energy and Commerce "emphasize[d]" in its House Report on H.R. 3545 and the proposed Medicare and Medicaid Amendments, which contributed to the final FNHRA, "the remedies specified under [FNHRA] are not exclusive, and should not be construed to limit the use of other remedies that may be available" to either state or federal actors, or private parties, "including remedies available to residents at common law, including private rights of action to enforce compliance with requirements for nursing facilities." H.R. Rep. No. 100-391(I), at 97 (1987). The Senate's bill, S. 1108, took a slightly different tack, proposing severe penalties for noncompliance with FNHRA, while staying silent on private enforcement. The final FNHRA declined to limit available remedies, broadly adopting the enforcement language proposed by both the House and Senate bills. H.R. Rep. No. 100-495, at 724 (1987) (Conf. Rep.), 4 *U.S. Code Cong. & Ad. News*, 2313-1412, 100th Cong., 1st Sess. 1987, at 2313-1470.

Floor debates and congressional hearings regarding FNHRA confirmed the need for private enforcement of its rights, and they centered on private lawsuits brought to remedy violations of care. Legislators knew that Section 1983 lawsuits over inadequate care in state-funded nursing homes had presaged the IoM's report and the court-ordered reevaluation of federal nursing-home-monitoring standards. And Congress solicited considerable testimony from those who had sought court remedies for ineffective or inadequate nursing care, including those who expressly advocated for better or more effective private remedies.[9]

Congress was also well aware that state and federal enforcement would be insufficient, on its own, to remedy individual violations of specific residents' rights. One health advocate cautioned that without "more resources," it would be impossible for the state to "examin[e] each resident on each inspection." *Medicaid Issues in Family Welfare and Nursing Home Reform: Hearings Before the Subcomm. on Health and the Env. of the Comm. on Energy and Com., H.R.*, 100th Cong. 271 (1987) (statement of Anthony

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[9] *See, e.g.*, *Nursing Home Care: The Unfinished Agenda (Volume I): Hearing Before the Spec. Comm. on Aging, U.S. Senate*, 99th Cong. 6 (1986) (statement of John Glenn, Senator) ("Today, we will hear about *Smith v. Heckler* – the most important nursing home litigation to date."); *Medicaid Issues in Family Welfare and Nursing Home Reform: Hearings Before the Subcomm. on Health and the Env. of the Comm. on Energy and Com., H.R.*, 100th Cong. 261 (1987) (statement of Sue Mettel, president, Oxford Lane Fam. Council); *id.* at 195 (statement of Mary Fitzpatrick).

Robbins, professor, Bos. Univ.) Likewise, the American Association of Retired Persons testified that any final bill should preserve the ability for beneficiaries to pursue private legal action, because they are "most knowledgeable about conditions within the nursing home" and "are most likely to suffer personal injury as a result of substandard care." *Id.* at 501–02 ("[A] beneficiary private right of action could be an extremely effective remedy for use.") These concerns echoed those of Senator Cohen in 1986, who had long stressed the need for private rights of action to enforce nursing home residents' rights. *Nursing Home Care: The Unfinished Agenda (Volume I): Hearing Before the Spec. Comm. on Aging, U.S. Senate*, 99th Cong. 15 (1986) (remarking that enforcement could not merely be "shut[ting] down a nursing home that is in violation" or "allowing the home to continue with the existing abuses").

Congress thus enacted FNHRA with a clear intention to provide a private remedy for violations of its newly enumerated, federally protected rights.

C. Reversing this Court's longstanding precedent would impinge on the separation of powers between Congress and the Supreme Court.

This Court has long recognized that, when Congress legislates, it does so with an understanding of the law. *See, e.g.*, *Mississippi ex rel. Hood v. AU Optronics Corp.*, 571 U.S. 161, 169 (2014) ("[W]e

presume that Congress is aware of existing law when it passes legislation.") (internal quotations omitted); *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 351 (1998) ("[W]e assume that Congress is aware of existing law when it passes legislation.") (internal quotations omitted). As evidenced by Congress' response to this Court's holding in *Suter v. Artist M.* and *Pullman v. Allen*, among others, Congress also legislates with an understanding of the Supreme Court's precedent and the doctrine that will govern the interpretation of legislation it enacts. *See* Section I.A; *see also* William N. Eskridge, Jr., *Overriding Supreme Court Statutory Interpretation Decisions*, 101 Yale L.J. 331, 398 (1991) ("Congress is aware of the Court's statutory decisions and actively considers almost half of them in legislative hearings."); *see, e.g.*, *United States v. Johnson*, 481 U.S. 681, 686 (1987) (recognizing congressional support for a judicial interpretation where Congress has not "changed this standard in the close to 40 years since it was articulated" even though Congress "possesses a ready remedy to alter a misinterpretation of its intent" (internal quotations omitted)).

For more than 40 years, Congress understood that Section 1983 provides a private enforcement mechanism for certain Spending Clause legislation. And, despite the Supreme Court's repeated review of the doctrine, Congress' understanding of the law has not changed: Section 1983 can apply to Spending Clause legislation. In fact, as described above and supported by the United States, Congress expressly ratified the applicability of Section 1983 to Spending

Clause programs as part of the Social Security Act. *See* Section I.A; *see also Amicus Curiae* United States Br. at 13 ("In addition to being repeatedly recognized by this Court, Section 1983's applicability to rights created by Spending Clause laws has also been expressly ratified by Congress."). Any change in the current presumption would create a significant and costly administrative burden. Congress would need to revisit—and potentially renegotiate, rewrite, reenact, and reimplement—its past legislation addressing various programs from nursing home reforms to healthcare programs to childhood nutrition funding.

Instead, the Court should defer to Congress' long-time reliance on and affirmance of this doctrine. *See* Eskridge, *supra*, at 400 ("Specifically, the Court often gives special deference to an interpretation that Congress has left in place notwithstanding legislative hearings on the issue, reenactment of the underlying statue, and proposals in committee or on the floor to reject that interpretation."). In fact, "[t]he Supreme Court has long held that statutory precedents are entitled to greater stare decisis effect than either constitutional or common law precedents, in part because Congress and not the Court should have the primary responsibility for overriding statutory precedents." *Id.* at 397.

Here too the Court should recognize that Congress—not the Court—has responsibility for legislating the enforcement and oversight of Spending

Clause statutes. In drafting and passing FNHRA, Congress investigated the facts related to an important issue, namely, the state of federally funded nursing homes; commissioned reports; conducted hearings; drafted legislation; negotiated the specifics of that legislation; and, after that hard-fought process, voted to enact the legislation. This process culminated in a statute that reflects congressional intent, will, and authority. To dismiss the text, process, and history of FNHRA, without due consideration of that hard-fought process, would violate the separation of powers and impinge on Congress' legislative role.

II. Disturbing this established doctrine would have disastrous consequences.

Congress provides funding to states for programs that benefit millions of vulnerable Americans through Spending Clause legislation. The availability of private enforcement mechanisms, where Congress has authorized them, provides much-needed oversight for these programs. Without private enforcement, oversight of programs that receive federal funding would be limited, contravening congressional authority and intent for the proper and efficient administration of these programs.

A. Spending Clause legislation ensures funding for programs that benefit millions of Americans.

Pursuant to the Spending Clause, Congress allocates billions of dollars each year to federal-state programs for the purpose of ensuring that America's most vulnerable are protected. See Cong. Rsch. Serv., R40638, *Federal Grants to State and Local Governments: A Historical Perspective on Contemporary Issues* 1–2 (2019). This funding accounts for "more than half of state government funding for health care and public assistance," including programs such as Medicaid, the Supplemental Nutrition Assistance Program, Temporary Assistance for Needy Families. *Id.* at 1.[10] These programs are directly designed to benefit tens of millions of people and, in particular, low-income and vulnerable communities. *See generally* Cong.

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[10] "Medicaid, with $418.7 billion in expected federal outlays in FY2019, has, by far, the largest budget of any federal grant-in-aid program." Cong. Rsch. Serv., R40638, *Federal Grants to State and Local Governments: A Historical Perspective on Contemporary Issues* 6 (2019). "Ten other federal grants to state and local governments are expected to have federal outlays in excess of $10 billion in FY2019: Federal Aid Highways ($43.9 billion), Child Nutrition ($23.9 billion), Tenant Based Rental Assistance-Section 8 vouchers ($22.3 billion), the Children's Health Insurance Fund ($18.4 billion), Accelerating Achievement and Ensuring Equity (Education for the Disadvantaged—$17.4 billion), Temporary Assistance for Needy Families ($16.5 billion), Special Education ($13.2 billion), State Children and Families Services Programs ($10.9 billion), Urban Mass Transportation Grants ($10.3 billion), and the Disaster Relief Fund ($10.2 billion)." *Id.*

Rsch. Serv., R46986, *Federal Spending on Benefits and Services for People with Low Income: FY2008-FY2020* 3–4 (2021).

Petitioners dismiss this fact, arguing that Spending Clause legislation is contractual in nature, and that any "individual benefits" from such legislation, like FNHRA, "are merely incidental." Pets. Br. at 19. They hope to avoid the result that Spending Clause legislation might permit Section 1983 lawsuits, arguing that only the state or federal government, as the contracting parties, can enforce the legislation. *Id.* Petitioners are wrong. Congress could not be clearer that it intended to benefit nursing home residents in enacting FNHRA. To ignore this intent and hold that FNHRA is merely a contract between Congress and the states would undermine Congress' authority and distort the very purpose of FNHRA. As another example, Section 1901 of the Social Security Act makes clear that Congress established Medicaid "[f]or the purpose of enabling each [s]tate . . . to furnish medical assistance on behalf of families with dependent children and of aged, blind, or disable individuals . . . ." Sec. 1901 (42 U.S.C. § 1396). Such Spending Clause legislation is hardly purely "contractual in nature." Pets. Br. at 11. Where legislation states that it provides a benefit to a particular group of individuals, it is unequivocal that Congress intended *those individuals* to be the ultimate beneficiaries of Spending Clause funding, *not* the states or the public at large.

Indeed, there can be no question that Congress intends many of its programs to benefit Americans. Programs like Medicaid, for example, provide critical health coverage to 82 million Americans, primarily helping low-income children, pregnant adults, seniors, and individuals with disabilities. *See* Ctrs. for Medicare & Medicaid Servs., *May 2022 Medicaid and CHIP Enrollment Trends Snapshot* 3 (2022); *see* U.S. Dep't of Health & Hum. Servs., *Fiscal Year 2023: Budget in Brief* 87 (2023) ("*HHS Budget in Brief*"). In fiscal year 2020, "children comprised 39 percent of total Medicaid enrollment, and persons with disabilities comprised 37 percent of expenditures." *HHS Budget in Brief*, *supra*, at 87.

The federal government also provides funds to states specifically to help children and families. For example, federal funding subsidizes school meals "for nearly 30 million children in approximately 95,000 elementary and secondary schools in a typical school year." *See* Kara Clifford Billings, Cong. Rsch. Serv., R46234, *School Meals and Other Child Nutrition Programs: Background and Funding* ii (2022). "Most of the funding is provided in the form of per-meal cash reimbursements that states distribute to schools and institutions." *Id.* In fiscal year 2022, federal funding allocated for child nutritional programs totaled roughly $27 billion. *Id.*

Similarly, the Temporary Assistance for Needy Families ("TANF") program "provides funds to states and territories [for] families with financial assistance

and related support services," including state-administered programs like "childcare assistance, job preparation, and work assistance." "Temporary Assistance for Needy Families," Benefits.Gov, https://www.benefits.gov/benefit/613; *see also* Cong. Rsch. Serv., R44668, *The Temporary Assistance for Needy Families (TANF) Block Grant: A Legislative History* (2014). Congress provides a basic block grant of $16.5 billion to the states each year. *See* U.S. Dept. of Health & Hum. Servs., "States' Accuracy of Reporting TANF Spending Information," office of Inspector General, https://oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000001.asp#.

So too with the Supplemental Nutrition Assistance Program (SNAP), another quintessential piece of Spending Clause legislation, which "is designed primarily to increase the food purchasing power of eligible low-income households to help them buy a nutritionally adequate low-cost diet." Cong. Rsch. Serv., R42505, *Supplemental Nutrition Assistance Program (SNAP): A Primer on Eligibility and Benefits* 1 (2022). In fiscal year 2021, "an average of 41.6 million individuals in 21.6 million households participated in SNAP each month." *Id.* The program is "100% federally funded" and administered by the U.S. Department of Agriculture's Food and Nutrition Service. *Id.* But "[s]tates are responsible for certifying household eligibility and issuing benefits." *Id.*

These federal-state cooperative programs provide federal funds to states to administer a variety of assistance programs. Congress drafts enabling legislation for these programs to carefully balance federal and state responsibilities. In the context of Medicaid, for example, states often "design, implement, and administer" their own programs based on federal guidelines. *HHS Budget in Brief*, *supra*, at 87. But, ultimately, when a state or local entity agrees to accept federal funds, it is obligated to use those funds in the manner required by any conditions imposed by Congress. *See South Dakota v. Dole*, 483 U.S. 203, 206 (1987) ("Congress may attach conditions on the receipt of federal funds, and has repeatedly employed the power to further broad policy objectives by conditioning receipt of federal moneys upon compliance by the recipient with federal statutory and administrative directives." (internal quotations omitted)). Such conditions may include requirements for program administration, implementation, or state oversight to benefit certain beneficiaries.

FNHRA is one such piece of Spending Clause legislation, and it emphasizes that the *beneficiaries* of FNHRA are the nursing home residents. *See* 42 U.S.C. § 1396r(b)(1)(A) ("A nursing facility must care for its residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident."). It also incorporates rights-emphasizing language. In a section titled "Requirements Relating to Residents' Rights," FNHRA states "[a] nursing

home facility must protect and promote the rights of each resident." *Id.* at § 1396r(c)(1)(A). It then provides specific rights and notice requirements. *See id. at* § 1396r(c); *see also* Section I.B.2.a–b.

This is hardly the only Spending Clause legislation where Congress has emphasized the importance and centrality of beneficiaries in the text of the legislation. For example, the text of the Adoption Assistance and Child Welfare Act of 1980 "focuse[s] on the needs of individual foster children" and designates "foster parents as the intended recipients of payments" for "basic life essentials" for the children. *New York State Citizens' Coal. for Children v. Poole*, 922 F.3d 69, 80–82 (2d Cir. 2019). Similarly, the text of the Food Stamp Act's "time limits are drafted in a way that focuses on the needs of individual beneficiaries," such as calibrating need in relation to household income. *Briggs v. Bremby*, 792 F.3d 239, 241, 245–46 (2d Cir. 2015). Again, respectively, foster parents and households receiving benefits like SNAP, not the states or the public, are the intended beneficiaries of such legislation. *See also* Section II.B.2 (collecting cases).

When Congress speaks, it does so with an understanding of the law. It also says what it means. This Court should not alter its precedent based on analogies to contracts, blatantly ignoring congressional language and intent regarding who the ultimate beneficiaries are in Spending Clause legislation.

B. Congress often relies on private enforcement to provide oversight to programs enacted via Spending Clause legislation.

A reversal of this Court's longstanding precedent would have a staggering and disastrous impact on federal-state cooperative programs. This Court should not contravene congressional authority and intent where Congress contemplated the availability of private suits. The federal government cannot monitor the implementation and administration of every program for each individual beneficiary. Private suits provide essential complementary oversight of federal-state programs consistent with congressional authority and intent.

1. Without the availability of private suits, oversight of federal-state programs would be hampered.

The federal government and state authorities allocate considerable resources to provide oversight of federally cooperative programs directed to the most vulnerable and economically insecure, and to ensure that those programs' requirements are enforced. But these regulatory regimes are, by design, intended to tackle systemic problems that broadly affect those programs' ability to provide benefits to millions. Recognizing this limitation, Congress sometimes enhances state and federal enforcement mechanisms by providing beneficiaries the option to pursue a private remedy to vindicate their rights.

For Medicaid, for example, the sheer size and complexity of the program makes it nearly impossible for the federal government to address anything other than major program violations. For example, nearly 90 million beneficiaries have been enrolled in Medicaid, the Children's Health Insurance Program ("CHIP"), and Basic Health Program ("BHP") since the beginning of the COVID-19 public health emergency. See Ctrs. for Medicare & Medicaid Servs., *Eligibility & Enrollment Processing for Medicaid, CHIP, and BHP During COVID-10 Public Health Emergency Unwinding Key Requirements for Compliance* 2 (2022). "When the [public health emergency] ends, states will be tasked with addressing a significant volume of pending renewals, redeterminations, and other eligibility actions across Medicaid, CHIP, and BHP." *Id.* "The volume of pending actions is expected to place a heavy burden on state workforce and operations, and states will need to take steps to minimize the risk of inappropriate terminations of eligible individuals." *Id.*

Evaluating whether individuals qualify for Medicaid, CHIP, and BHP is a significant undertaking. And the Centers for Medicare & Medicaid Services ("CMS") has issued guidance to states indicating that "[s]tates that do not . . . comply with federal requirements" under Medicaid, such as following the governing eligibility determinations, "may be required to develop a corrective action plan." *Id.* at 3. Moreover, "[i]f at any point CMS determines that the state is not meeting the requirements

outlined in an established [corrective action plan], CMS may initiate formal compliance proceedings" and funding may be at risk. *Id.* But CMS will only be able to address widespread, systemic failures or to coax cooperation from states.[11] CMS does not have the resources to provide recourse for every individual who is denied a renewal, even if he meets eligibility requirements. Even in instances where CMS does take compliance action on behalf of individuals, there may be lengthy litigation with multiple rounds of appeals. The litigation expenses for the federal government would be extraordinary if CMS were burdened with pursuing compliance actions for every violation, overwhelming CMS's ability to actually ensure quality care and treatment.

Moreover, the federal government may not be aware of the requirements of every state Medicaid program. Certain items and services may be covered under broad federal categories but may not be specified in any documents readily available to CMS. For example, some states may cover durable medical equipment ("DME") under the "home health" benefit; but CMS may not be aware of what specific items of DME are covered. Private enforcement empowers individuals who are aware of the specific

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[11] *See, e.g.*, Edward A. Tomlinson & Jerry L. Mashaw, *The Enforcement of Federal Standards in Grant-in-Aid Programs: Suggestions for Beneficiary Involvement*, 58 Va. L. Rev. 600, 619–20 (1972) (explaining that federal agencies tend not to enforce spending programs they oversee against the states—instead, they attempt to coax cooperation).

requirements of their care and that care's shortcomings. Without it, many claims affecting the most vulnerable will ultimately go unheard.

Furthermore, as a general matter, Congress and federal agencies, like CMS, are reluctant to issue broadscale sanctions like funding disallowances, because curtailing funds ultimately injures beneficiaries—the very people Congress is seeking to help. *See* Sasha Samberg-Champion, *How to Read* Gonzaga: *Laying the Seeds of a Coherent Section 1983 Jurisprudence*, 103 Colum. L. Rev. 1838, 1839 (2003) ("Program beneficiaries desiring compliance with federal requirements could only ask the federal government to further cripple the program—not a result they are likely to seek."). Absent the independent check of private suits, the federal government might need to consider taking away money from states failing to comply with required conditions, which would only exacerbate rights violations against beneficiaries. Instead, private suits allow individuals to pursue the redress they seek without imperiling entire assistance programs and derailing important services that affect many beneficiaries.

2. Private suits effectively curtail fraud and highlight abuse, complementing federal and state enforcement actions.

While the federal government seeks to uncover systematic abuses, individual suits, brought by beneficiaries harmed by implementation of federally funded programs, highlight and remedy individual and immediate harms. Congress has long permitted individual litigants to bring suit to protect their rights. The importance of adhering to this Court's precedent is crucial because millions of Americans rely on Section 1983 to ensure that their rights under Spending Clause statues are protected.

FNHRA is hardly the first Spending Clause statute permitting Section 1983 lawsuits over certain rights abuses. Litigants have brought suit under Section 1983 to guarantee foster parents' rights to payments for food, clothing, and shelter under the Adoption Assistance and Child Welfare Act of 1980. *See New York State Citizens' Coal. for Children*, 922 F.3d at 69, 73–74, 80–81 (finding that Adoption Assistance and Child Welfare Act of 1980, which directs specific payments to identified beneficiaries, creates a right enforceable under Section 1983). They've also brought suit under Section 1983 to protect veterans' rights guaranteed by 38 U.S.C. § 5301(a). *See, e.g.*, *Nelson v. Heiss,* 271 F.3d 891, 896 (9th Cir. 2001); *Higgins v. Beyer*, 293 F.3d 683, 685, 689–90 (3d. Cir. 2002). Private suits have also been used to protect low-income tenants from utility over-billing under the Brooke Amendment to the Housing Act of 1937. *See Wright,* 479 U.S. at 419, 430–31.

Similarly, individual SNAP beneficiaries have successfully sued for redress when states failed to properly implement the program. *See Briggs*, 792 F.3d at 241, 245–46 (holding benefits provided in food stamp legislation "are privately enforceable under [Section] 1983").

Moreover, Section 1983 has been used consistently to enforce the guarantees of the Medicaid Act. *See Wilder v. Va. Hosp. Ass'n*, 496 U.S. 498, 509, 524 (1990) (upholding use of Section 1983 for health care providers—"the intended beneficiaries"—to challenge the methods used by a state for reimbursement under the Medicaid Act); *Ctr. for Spec. Needs Trust Admin., Inc. v. Olson*, 676 F.3d 688, 700 (8th Cir. 2012) (permitting Section 1983 suit for trustee of pooled special-needs trust, challenging state demand reimbursement of Medicaid benefits provided to beneficiary); *St. Anthony Hosp. v. Eagleson*, 40 F.4th 492, 512 (7th Cir. 2022) (permitting Section 1983 suit to proceed premised on the state's duty, under the Medicaid Act, to ensure that managed care organizations made timely payments); *Planned Parenthood S. Atl. v. Baker*, 941 F.3d 687, 690, 696–97 (4th Cir. 2019) (permitting Section 1983 suit premised on compliance with Medicaid Act's free-choice-of-provider provision). The ability of a program beneficiary to sue states in federal court is one of the few enforcement tools available to address Medicaid problems that affect individuals.

Additionally, individual suits under Section 1983 are a critical tool for identifying patterns of abuse, fraud, or misconduct, and can give rise to congressional action to allocate funds to address certain issues. For example, the very congressional hearings and legislation that ultimately led to FNHRA itself initially arose from a Section 1983 lawsuit brought by Medicaid recipients against the Secretary of Health and Human Services. *See* Section I.B.1 (describing *Smith v. Heckler*, 747 F.2d 583 (10th Cir. 1984)). Without private actors identifying and elevating government failures, Congress will lose an important avenue for collecting information and addressing systemic issues that arise out of Spending Clause legislation.

Overruling this Court's longstanding precedent would mean states, localities, and local institutions may be largely unaccountable for their actions, particularly for rights violations of the most vulnerable citizens. Any decision altering the status quo would dramatically impede, if not decimate, the complementary oversight of these programs provided by private suits and potentially curtail future legislation that seeks to improve the lives of millions of Americans affected by federal-state cooperative programs. This is contrary to Congress' intent in legislation, like FNHRA, that specifically provides for private suits to protect the most vulnerable beneficiaries.

CONCLUSION

For the reasons set forth above, this Court should affirm the decision of the Seventh Circuit.

Respectfully submitted,

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APPENDIX

APPENDIX A

LIST OF *AMICI CURIAE*[12]

Congresswoman Nancy Pelosi is the Speaker of the United States House of Representatives.

Congressman Steny H. Hoyer is the Majority Leader of the United States House of Representatives.

Congressman James E. Clyburn is the Majority Whip of the United States House of Representatives.

Senator Sherrod Brown is the Chairman of the United States Senate Committee on Banking, Housing, and Urban Affairs.

Senator Robert P. Casey, Jr. is the Chairman of the United States Senate Special Committee on Aging.

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[12] *Amici curiae* appear in their individual capacities; affiliations are listed for identification purposes only.

Senator Dick Durbin is the Chairman of the United States Senate Committee on the Judiciary.

Senator Patty Murray is the Chair of the United States Senate Committee on Health, Education, Labor, and Pensions.

Senator Ron Wyden is the Chairman of the United States Senate Committee on Finance.

Representative Jerrold Nadler is the Chairman of the United States House of Representatives Committee on the Judiciary.

Representative Richard E. Neal is the Chairman of the United States House of Representatives Ways and Means Committee.

Representative Frank Pallone, Jr. is the Chairman of the United States House of Representatives Committee on Energy and Commerce.

Representative David Scott is the Chairman of the United States House of Representatives Committee on Agriculture.

Representative Robert C. Scott is the Chairman of the United States House of Representatives Committee on Education and Labor.

Representative Mark Takano is the Chairman of the United States House of Representatives Committee on Veterans Affairs.

Representative Maxine Waters is the Chair of the United States House of Representatives Committee on Financial Services.