No. 22-534

In The
Supreme Court of the United States

THERESA EAGLESON, Director of the Illinois Department of Healthcare and Family Services,

Petitioner,

v.

SAINT ANTHONY HOSPITAL,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF IN OPPOSITION

EDWARD W. FELDMAN
Counsel of Record
MICHAEL L. SHAKMAN
WILLIAM J. KATT
MARY EILEEN C. WELLS
MILLER SHAKMAN LEVINE & FELDMAN LLP
30 West Monroe Street
Suite 1900
Chicago, Illinois 60603
(312) 263-3700
efeldman@millershakman.com

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

QUESTIONS PRESENTED

A faith-based charity hospital sued the State to enforce federal law requiring prompt payment to providers of Medicaid assistance to the poor. The district court dismissed. The Seventh Circuit reversed, holding that the hospital had a right to sue. It did so by applying, step-by-step, this Court's governing precedent applicable to implied rights to enforce federal statutes. Petitioner, the director of the Illinois agency charged with overseeing the joint Federal-State Medicaid program, does not dispute that the Seventh Circuit applied the correct test. Rather, she claims this Court (1) should abandon its existing precedent, or (2) double-check the Seventh Circuit's work. The Seventh Circuit also decided that Saint Anthony Hospital should have been permitted to add a due process claim seeking disclosure of how the complex payments to it are calculated—a ruling independent of any issues raised in the Petition, but implicated by its request to vacate the opinion below.

The questions presented are:

1. Whether this Court should overrule decades of precedent describing when Spending Clause legislation can be privately enforced and replace it with a categorical rule that such legislation can never be privately enforced.

2. Whether the Seventh Circuit erred when it applied this Court's precedents to determine whether the statute at issue here can be privately enforced.

QUESTIONS PRESENTED—Continued

3. Whether this Court should, by granting the Petition, vacating, and remanding, reject the Seventh Circuit's unchallenged decision permitting the Hospital to allege its separate due process claim.

CORPORATE DISCLOSURE STATEMENT

Saint Anthony Hospital has no parent corporation and no publicly held company owns more than 10% of Saint Anthony Hospital.

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The opinion of the court of appeals, Petition Appendix ("App.") 11a-77a, is reported at 40 F.4th 492, and its opinion denying rehearing, App. 1a-10a, is reported at 48 F.4th 737. The district court's opinion and order dismissing Saint Anthony Hospital's complaint, App. 78-113a, is reported at 548 F. Supp. 3d 721, and its order denying leave to add the due process claim to the statutory claim at issue is not reported, but can be found in the district court docket at Doc. No. 110, or the short appendix attached to appellant's brief in the court of appeals at SA34-SA38.

JURISDICTIONAL STATEMENT

The court of appeals' judgment denying rehearing was entered on September 8, 2022. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

42 U.S.C. § 1396u-2(f) provides:

> **(f) Timeliness of payment; adequacy of payment for primary care services**
>
> A contract under section 1396b(m) of this title with a medicaid managed care organization shall provide that the organization shall make payment to health care providers for

items and services which are subject to the contract and that are furnished to individuals eligible for medical assistance under the State plan under this subchapter who are enrolled with the organization on a timely basis consistent with the claims payment procedures described in section 1396a(a)(37)(A) of this title, unless the health care provider and the organization agree to an alternate payment schedule. . . .

42 U.S.C. § 1396a(a)(37) provides:

A State plan for medical assistance must—

. . .

(37) provide for claims payment procedures which (A) ensure that 90 per centum of claims for payment (for which no further written information or substantiation is required in order to make payment) made for services covered under the plan and furnished by health care practitioners through individual or group practices or through shared health facilities are paid within 30 days of the date of receipt of such claims and that 99 per centum of such claims are paid within 90 days of the date of receipt of such claims. . . .

COUNTERSTATEMENT

I. Background

A. Saint Anthony Hospital

Saint Anthony Hospital is a faith-based charity hospital that provides medical care and social services to underserved residents of the west and southwest sides of Chicago, without regard to their ability to pay. It has done so since 1898. Virtually all of its patients are Medicaid recipients. Saint Anthony has been, until threatened by Illinois' recent changes to its Medicaid managed care system, fiscally sound. As the State began delegating most Medicaid claims processing and payment to large insurance companies, known as managed care organizations ("MCOs"), Saint Anthony's cash on hand and revenue-per-patient plummeted, due almost entirely to unnecessary, often unexplained payment delays and denials by the MCOs, and the State's failure to police the MCOs to comply with the law regarding timely and transparent explanations of payments.

B. Medicaid's Prompt Payment Mandate

The federal government provides Medicaid funds to States, which contribute additional funds and administer the program. States must comply with the federal Medicaid laws, including having a "plan" approved by the federal government. *See* 42 U.S.C. § 1396a(a), (b); *see also* 42 C.F.R. § 430.10-430.25. Petitioner administers the Illinois Medicaid program.

States can pay Medicaid providers directly or on a managed-care basis. Illinois has opted for the managed-care model, under which it contracts with private healthcare insurance companies (the MCOs) to review claims and pay for services to Medicaid-eligible persons who enroll in the MCOs' health plans. *See* 42 U.S.C. §§ 1396u-2, 1396b(m). The State pays the MCOs a fixed rate per member, per month. MCOs process and pay claims to providers for their enrollees. *See*, *e.g.*, 42 C.F.R. § 438.6(c). Subject to a cap, the MCOs keep Medicaid revenues that they do not pay out on claims.

Section 1396u-2(f) requires that, when a State contracts with an MCO to provide Medicaid services, it "shall provide that the [MCO] shall make payment to health care providers . . . on a timely basis consistent with the claims payment procedures described in section 1396a(a)(37)(A) of this title. . . ." 42 U.S.C. § 1396u-2(f). The "claims payment procedures" of section 1396a(a)(37)(A) must "ensure that 90 per centum of claims for payment . . . are paid within 30 days of the date of receipt . . . and that 99 per centum of such claims are paid within 90 days of the date of receipt. . . ." 42 U.S.C. § 1396a(a)(37)(A) ("Prompt Payment Mandate"). This mandate applies to so-called "clean claims" that contain all necessary information to be paid. The statutory language is direct and mandatory: "shall provide" and "ensure that."

II. Proceedings Below

A. District Court

Saint Anthony Hospital sued Petitioner for failing to ensure that MCOs paid claims within the deadlines stated by Congress in the Prompt Payment Mandate. Petitioner filed a Rule 12(b)(6) motion to dismiss, arguing, in part, that the Prompt Payment Mandate of section 1396u-2(f) only requires States to include prompt payment language in their contracts with the MCOs, but does not require that the State actually enforce prompt payment, and does not create a right of Medicaid service providers like the Saint Anthony Hospital to sue. The district court granted the motion.

Six months before that ruling, Saint Anthony Hospital sought leave to file a supplemental complaint to add a due process claim based on the MCOs' failure to explain what claims they were paying and how the payments were computed—a lack of notice related to Medicaid payments. The claim was based, in part, on information learned in expedited discovery related to Saint Anthony Hospital's motion for preliminary injunction. Four days after granting Petitioner's motion to dismiss, the district court denied Saint Anthony Hospital's motion for leave.

Saint Anthony Hospital appealed the orders granting Petitioner's motion to dismiss and denying its motion for leave to file its supplemental claim.

B. Court of Appeals

The Seventh Circuit reversed both decisions. (It also affirmed the dismissal of a second count in Saint Anthony Hospital's original complaint that is no longer at issue.)

1. Section 1396u-2(f)'s Text Confirms it is Privately Enforceable.

The Seventh Circuit first reviewed the "familiar" framework for analyzing enforcement of statutory rights, describing the three factors employed in this Court's opinion in *Blessing v. Freestone*, 520 U.S. 329 (1997), as clarified by *Gonzaga University v. Doe*, 536 U.S. 273 (2002). App. 20a-23a. In applying that framework to the statute and facts at issue in this case, the Seventh Circuit began with the text of sections 1396u-2(f) and 1396a(a)(37)(A). App. 24a. It then examined that text through the lens of each *Blessing* factor before considering whether private enforcement was foreclosed by a "comprehensive enforcement scheme"—the exact analysis this Court's precedent requires. App. 25a-49a.

For the first *Blessing* factor—whether "Congress . . . intended that the provision in question benefit the plaintiff," *Blessing*, 520 U.S. at 340-41—the Seventh Circuit found that Congress clearly expressed its intention that healthcare providers like Saint Anthony Hospital were entitled to benefit from the statute's requirement that healthcare providers be paid promptly. App. 25a-33a. The court focused on the use of "health

care providers" in the statutory text to describe to whom timely payments must be made. App. 25a (quoting 42 U.S.C. § 1396u-2(f)). Congress also titled the subsection of the act that created section 1396u-2(f) as "Assuring Timeliness of Provider Payments"—further confirming its intent to benefit "providers" by ensuring timely payments. App. 27a. The Seventh Circuit also focused on subsequent legislation confirming that Congress understood section 1396u-2(f) to ensure providers are paid promptly. It noted that Congress later, in statutory text, referred to section 1396u-2(f) as "the rule for prompt payment of providers." App. 28a (quoting 42 U.S.C. § 1396u-2(h)(2)(B)).

The Seventh Circuit also found that the statutory text confers an individual right and not a generalized benefit, satisfying the clarifying requirements of *Gonzaga*. App. 29a-31a. The court relied on the statute's express reference to "health care providers," and on an express exemption to the Prompt Payment Mandate that applies on a provider-by-provider basis. *Id*.

The court then concluded that the Prompt Payment Mandate was something a court could readily direct, i.e., that it is judicially administrable, meeting the second *Blessing* factor. App. 33a. Petitioner did not contend otherwise below. The court found that determining whether payments were or were not made within a fixed schedule was comfortably within the judiciary's competence. *Id*.

In addressing the third *Blessing* factor, the Seventh Circuit found that the statute clearly imposed a

binding obligation via its mandatory language, including a "double use of 'shall.'" App. 33a-34a. It concluded that the statute imposed an obligation not for the State merely to put the required deadlines down on paper, but to ensure that MCOs actually paid on time. App. 34a-39a. It drew this conclusion from the text of the statute, viewed in the context of the overall statutory scheme. The statute imposes specific reporting and oversight responsibilities on States that chose to contract out their Medicaid payments to MCOs. App. 35a-36a (citing examples). It provides mechanisms for state enforcement to remedy MCO noncompliance. App. 36a-37a (citing examples). Viewing the text of the statute in context, the court concluded that "'a state official who is engaged in the process of deciding whether the State should accept'" Medicaid funds, App. 38a (quoting *Arlington Central School District Board of Education v. Murphy*, 548 U.S. 291, 296 (2006)), "would not reasonably have concluded that Congress intended that the 'rule for prompt payment of providers' would be only a proverbial paper tiger." App. 39a (quoting 42 U.S.C. § 1396u-2(h)(2)(B)).

The Seventh Circuit considered and rejected the Petitioner's and dissent's argument that its holding "would lead to the district court acting effectively as the Medicaid claims processor for the State." App. 40a-41a. It correctly concluded that claim-by-claim review by the district court—or by the State—is not required by Saint Anthony Hospital's claims. The degree of oversight of MCOs that the State should provide is a remedy question, not a bar to any remedy at all. If Saint

Anthony Hospital proves its case, it will be up to the district court to craft appropriate injunctive relief that accounts for the equities based on a full record. App. 41a-44a.

Finally, the court found that Congress had not provided any "comprehensive enforcement scheme" that displaces private enforcement. App. 46a-48a. Petitioner identified no provision in the statute that forecloses private enforcement or provides another enforcement mechanism. App. 46a. The court also found that the contractual remedy created by the MCOs, which is the prospect of every provider individually arbitrating many thousands of individual claims with every MCO, may not "be manageable" at all, or "superior" to a systemic solution by the responsible State agency head. The Seventh Circuit found that individual arbitrations between providers and MCOs were not a "comprehensive enforcement scheme that is incompatible with individual enforcement" of the statute under section 1983. App. 47a-48a (quoting *Gonzaga*, 536 U.S. at 285 n.4).

2. Saint Anthony Hospital Can Plead its Due Process Claim.

The Seventh Circuit also reversed the district court's denial of Saint Anthony Hospital's motion for leave to plead its due process claim to enforce meaningful disclosure of what the MCOs are paying when they submit payments to the Hospital. App. 51a-56a.

3. The Possibility of Arbitration with MCOs Does "Not Foreclose" this Case.

Finally, the Seventh Circuit addressed the argument raised by Petitioner and intervening MCOs that Saint Anthony Hospital's claims are within the scope of mandatory arbitration provisions between Saint Anthony Hospital and some (but not all) MCOs. The court found that "[w]hile factual issues related to the MCOs appear intertwined with Saint Anthony's claim against [Petitioner], they do not foreclose Saint Anthony's section 1983 action," and Saint Anthony Hospital is "entitled to seek relief against" Petitioner. App. 56a.

4. Rehearing Denied

Petitioner sought rehearing *en banc* and intervening MCOs sought panel rehearing, raising arguments substantially the same as those raised in the Petition and the *amicus* brief in support of the Petition. The Seventh Circuit denied these requests and issued a rare supplemental opinion explaining the inaccuracies in "the petitions' exaggerated accounts of the panel's decision." App. 3a.

C. The District Court on Remand

On remand, Saint Anthony Hospital filed an amended complaint with its due process claim. Petitioner has since answered the amended complaint. Intervening MCOs renewed their motion to stay the case and compel arbitration. That motion is fully briefed.

The parties are now engaging in mediation with the assistance of the magistrate judge in an effort to resolve the lawsuit.

REASONS FOR DENYING THE PETITION

The petition for writ of certiorari should be denied. There is no conflict among the courts of appeals on any of the questions presented.

Petitioner offers no argument in support of the first question presented—whether and when Spending Clause statutes can be privately enforced. This Court answered that question in *Blessing v. Freestone*, 520 U.S. 329 (1997), *Gonzaga University v. Doe*, 536 U.S. 273 (2002), and prior cases. Petitioner provides no reason to revisit those precedents.

Petitioner also cannot show that the Seventh Circuit erred in its application of the governing test, set out in *Blessing* and *Gonzaga*, in holding that section 1396u-2(f) is privately enforceable. The court's analysis tracked the applicable test step-by-step, with a focus on the statute's text at every turn. Petitioner's disagreement with the outcome does not warrant this Court's review. *See* Rule 10 ("A petition for writ of certiorari is rarely granted when the asserted error consists of . . . misapplication of a properly stated rule of law.").

Even if the Court were interested in revisiting its precedents, this case would be a poor vehicle to do so

because, as the Seventh Circuit correctly observed, many of the Petitioner's arguments for review relate to hypothetical remedies that are virtually certain never to occur. Petitioner's arguments are premature in a case decided on the face of the complaint, before full discovery, trial, or the entry of any substantive order for compliance. The Seventh Circuit reversed a Rule 12(b)(6) dismissal of the first complaint filed in the case. Saint Anthony Hospital must still prove its claim, and only then will the district court determine an appropriate remedy, with a full record. Equitable relief is all that is available against Petitioner, and the scope of such relief—including the degree of oversight of MCO payment practices by both Petitioner and the district court—can only be addressed then. Petitioner and *amicus* dream up inappropriate ways to enforce section u-2(f) in an effort to portray judicial overreach that has not occurred, and is not likely ever to occur.

Finally, the Petition should not be held for a decision in *Health & Hospital Corporation of Marion County v. Talevski*. If this Court's ruling in *Talevski* impacts Saint Anthony Hospital's section 1396u-2(f) claim, Petitioner can file a motion in the district court to consider whatever arguments Petitioner believes are appropriate. But this Court should not hold the Petition for a GVR order because it would place in limbo the Hospital's due process claim that the Petition does not challenge.

I. The Court Should Deny the First Question.

The first question presented, whether Spending Clause legislation can ever be privately enforced, does not warrant review. There is no disagreement among the federal courts on the question and Petitioner cannot—and does not attempt to—establish that this Court's precedents answering that question are the type of unworkable outliers that the Court should overrule.

A. The Circuit Courts Agree: This Court Has Already Answered the First Question Many Times.

Petitioner has not shown that there is any disagreement among the courts of appeals that Spending Clause legislation can be privately enforced when that legislation meets the requirements of *Blessing* and *Gonzaga*, which themselves build upon older precedent like *Wilder v. Virginia Hospital Association*, 496 U.S. 498 (1990), and *Maine v. Thiboutot*, 448 U.S. 1 (1980).

B. Petitioner Offers No Reason to Overrule Established Precedent.

Petitioner also has not met her heavy burden to show that this line of cases should be overruled. The Court typically "demand[s] a 'special justification,' over and above the belief 'that the precedent was wrongly decided,'" before reversing one of its decisions. *Allen v. Cooper*, 140 S. Ct. 994, 1003 (2020) (citation omitted). The special justification is needed because

stare decisis is a "foundation stone of the rule of law." *Id*. (citation omitted). Petitioner has identified no such justification here.

Petitioner offers no reason for this Court to jettison four decades of precedent from *Thiboutot* to *Wilder* to *Blessing* to *Gonzaga* that establish the circumstances under which Spending Clause legislation can be privately enforced.

II. The Court Should Deny the Second Question.

A. The Seventh Circuit's Decision Does Not Conflict With Any Decision of this Court or any Circuit Court.

There is no dispute that the Seventh Circuit's decision does not directly conflict with any opinion of this Court or of any other court of appeals. As Petitioner acknowledged when seeking rehearing below, "the interpretation of § u-2(f) presents a question of first impression for the federal circuit courts." CA7 Doc. 67 at 2. *See also* 6a (Brennan, J., dissenting). The issue also has never been before this Court.

B. The Seventh Circuit Stated the Correct Rule of Law.

There is no dispute that the Seventh Circuit's opinion stated the proper test for determining whether legislation can be privately enforced. That test—set forth in this Court's opinions in *Blessing* and

Gonzaga—is the backbone of the majority opinion below, both analytically and structurally. Petitioner does not dispute that this is the correct test, or that the majority opinion based its analysis on it.

C. The Seventh Circuit's Application of The Correct Law Does Not Warrant Review.

Petitioner contends that the majority opinion below misapplied a properly stated rule of law. Adopting points from the dissent below, Petitioner argues that the majority opinion: (1) was not based on the text of the statute, (2) did not expressly "state" that Petitioner and the dissent's alternative interpretation of section u-2(f) was not "plausible," (3) "substituted its own policy views" when evaluating whether Congress provided an alternative remedial scheme, and (4) discussed as part of its analysis whether the asserted violation was "systemic." *See* Pet'n at 16-17. These are arguments that the Seventh Circuit—in analyzing a question of first impression at the appellate level—did not agree with Petitioner's application of precedents. That is no reason to grant a writ of certiorari. *See* S. Ct. Rule 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of . . . misapplication of a properly stated rule of law."). Petitioner's argument is also wrong.

1. The Seventh Circuit's Decision Is Grounded in the Statutory Text.

The Seventh Circuit both literally and substantively "began with the text of Section u-2(f)." *Contra* Pet'n 16 (cleaned up). After describing the correct legal test, the majority began its statutory analysis by setting forth the relevant language of sections 1396u-2(f) and 1396a(a)(37)(A). App. 24a. It then considered each *Blessing* factor with extensive direct discussion and analysis of the statutory text.

For example, the majority stated:

- "The text requires MCOs to contract that they 'shall make payment to health care *providers* . . . on a timely basis.' § 1396u-2(f) (emphasis added)." App. 25a.
- "The statutory text explains that payment must be made 'on a timely basis *consistent with the claims payment procedures* described in section 1396a(a)(37)(A) of this title.' § 1396u-2(f) (emphasis added). Those procedures include the 30/90 pay schedule." App. 27a.
- "The statutory text specifies that the State 'shall provide' that MCOs 'shall make payment to health care providers . . . on a timely basis.' 42 U.S.C. § 1396u-2(f). The focus of section 1396u-2(f) is not 'two steps removed' from the interest of providers. Its focus is directly on the interest Saint Anthony asserts here: ensuring that providers receive timely payment from MCOs." App. 30a-31a.

- "And the provision is not concerned only with whether MCOs in the aggregate pay providers on the 30/90 pay schedule, but whether *individual* providers are receiving the payments in the timeframe promised. We see this in the provision's close attention to provider-specific exemptions from the 30/90 pay schedule. Section 1396u-2(f) says that its mandate applies 'unless the health care provider and the organization agree to an alternate payment schedule.' It establishes a personal right to timely payment, which all providers are entitled to insist upon." App. 31a.
- "Section 1396u-2(f) contains mandatory language, however: 'A [State contract] . . . with a medicaid managed care organization *shall* provide that the organization *shall* make payment to health care providers . . . on a timely basis. . . .' 42 U.S.C. § 1396u-2(f) (emphasis added). The double use of 'shall' rebuts the notion that the State's obligation is anything less than mandatory." App. 33a-34a.

The Seventh Circuit also appropriately considered related statutory provisions—like 42 U.S.C. § 1396u-2(h)(2)(B), which describes Section u-2(f) as the "rule for prompt payment of providers"[1]—to ensure its interpretation was consistent with the broader context and purpose of the statute.

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[1] The dissent dismissed this statutory text of 42 U.S.C. § 1396u-2(h)(2)(B) as a "heading or title" not worthy of the force of law, App. 67a, but it is neither. It is in the body of the statute.

The majority did not ignore the statute's text. It carefully worked through that text and applied it.

2. The Seventh Circuit Did Not Find the Statute Ambiguous: It Found That Petitioner's Alternative Interpretation "Must Be" Wrong Because It "Conflicts" With the Statutory Scheme.

The majority also directly addressed, and rejected, Petitioner's and the dissent's claim that section 1396u-2(f) is ambiguous, and thus not enforceable. App. 37a-38a. *See* Pet'n 16. The majority first rejected Petitioner's alternative reading of the statute, finding that, in light of statutory text it discussed at length, section 1396u-2(f)'s "mandatory language, coupled with [Petitioner's] additional oversight and reporting responsibilities, supports the reading that section 1396u-2(f) *must be* doing more than imposing merely the formality of contract language." App. 37a-38a (emphasis added). The majority then turned to Petitioner's "ambiguity" argument, explaining that *Pennhurst State School & Hospital v. Halderman*, 451 U.S. 1, 17 (1981) "taught that Congress can impose conditions on grants of federal money only if it does so 'unambiguously' and 'with a clear voice.'" App. 38a. That means that "States cannot knowingly accept conditions of which they are 'unaware' or which they are 'unable to ascertain,'" *Arlington Central School District Board of Education v. Murphy*, 548 U.S. 291, 296 (2006) (quoting *Pennhurst*, 451 U.S. at 17), which must be viewed "'from the perspective of a state official . . . deciding whether the

State should accept Medicaid funds and the obligations that go with those funds.'" App. 38a (quoting *Arlington Central*, 548 U.S. at 17) (cleaned up). Applying that unchallenged rule of law to the text of section 1396u-2(f), the majority held:

> Such an official would not reasonably have concluded that Congress intended that the "rule for prompt payment of providers" would be only a proverbial paper tiger. See § 1396u-2(h)(2)(B) (describing section 1396u-2(f) as the "rule for prompt payment of providers"). That position *conflicts* with the State's oversight and reporting obligations and its enforcement duties under the Medicaid Act.

App. 39a (emphasis added).

Thus, the majority accurately followed *Pennhurst* and its progeny to find that Petitioner's alternative interpretation "conflicts" with the statutory scheme and "must be" wrong. App. 38a, 39a. The Seventh Circuit not using the specific words "unambiguous" or "not plausible" does not undermine its clear holding.

3. The Seventh Circuit Did Not Substitute Its Policy Views for Congress When It Considered if Private Arbitration Was Congress's Unstated "Comprehensive Enforcement Scheme."

The Seventh Circuit did not "substitute[] its own policy views for what Congress enacted" by considering

the "comparative effectiveness of contractual and statutory rights and remedies." Pet'n 16-17. The court made no such comparison at App. 34a-38a, contrary to the Petition's citation. The court correctly did consider, at App. 47a-48a, whether section 1396u-2(f) expressly or impliedly contains a "comprehensive enforcement scheme that is incompatible with enforcement under section 1983." App. 48a (citing *Gonzaga*, 536 U.S. at 285 n.4) (cleaned up). It held that the statute does not imply that Congress intended the possibility of private suits between providers and MCOs to be such an enforcement scheme. App. 47a-48a. The majority was not providing its policy view. It was reading statutory language and faithfully applying *Gonzaga*. It recognized the absence of statutory language or implication supporting Petitioner's policy view.

4. The Seventh Circuit Did Not Add a "Systemic" Requirement to Section 1396u-2(f).

Section 1396u-2(f) is expressly "systemic." It sets payment deadlines that apply, collectively, to all claims submitted by one provider to one MCO. Congress decided, and said, that 90% must be paid in 30 days, and 99% in 90 days. Thus, the statute itself permits, for example, an unusually troublesome claim to be paid beyond 90 days, as long as the MCO is otherwise paying 99% of claims within that deadline. By statutory design, only systemic problems that go beyond one-off tardiness violate the statute at all. *See* App. 45a.

The "systemic" nature of Petitioner's violations are also appropriate to consider in the context of potential equitable remedies, as the Seventh Circuit did. App. 39a-46a. Petitioner is a State agency, and only equitable relief is available to Saint Anthony Hospital. As discussed in the next section, Petitioner incorrectly argues that private enforcement of section 1396u-2(f) will turn the State and district court into Medicaid claims processers. Not so, as the majority correctly observed. The scope of State—and court—oversight is a remedy question. The degree of the violation is relevant to consider in drafting an equitable remedy. A *de minimus* violation, for example, may not support any remedy at all. Speculation about what an actual remedy might look like does not warrant this Court's intervention.

D. This Case Does Not Present an Important Question of Federal Law Justifying a Writ Of Certiorari.

1. Private Enforcement of Section 1396u-2(f) Will Not Destroy the MCO System or Undermine Arbitration.

Section 1396u-2(f)'s enforceability is not the type of important question of federal law that supports a writ of certiorari. Petitioner does not dispute that MCOs must pay providers like Saint Anthony Hospital within the deadlines in the statute. The question at issue is whether States have an enforceable oversight obligation to ensure the MCOs meet those deadlines. As a result, the outcome of the section 1396u-2(f)

portion of this case will be either: (a) MCOs must pay claims on time, with State oversight, or (b) MCOs must pay claims on time, without State oversight. Neither outcome is a "wholesale transformation" of MCOs' obligations to providers, Pet'n 20-21—oversight or not, Congress clearly said that they are supposed to pay on time. Whether the district court ultimately orders more State oversight is a narrow and discrete issue. It does not have broad-ranging implications for other legal questions in this area of the law. This is underscored by the fact that this is the first case to reach a court of appeals that addresses section 1396u-2(f).

As the Seventh Circuit observed, the degree of oversight required is a remedy question that is not yet ripe. It will be addressed, on a full record, once Saint Anthony Hospital has proven its case. App. 39a-46a. Speculating, at the pleadings stage, about dire consequences of hypothetical remedies (Pet'n 19-20) is premature, particularly where Petitioner's worst nightmare is neither the only remedy nor one Saint Anthony Hospital is seeking. The district court can properly consider the reasonableness of any remedy if and when it awards equitable relief.

The *amicus* misstates Saint Anthony Hospital's claims. In doing so, it attacks a concept that is not at issue in this case. Saint Anthony Hospital has never asked for Petitioner to "serve as the direct guarantor of MCO payments," *Amicus* Br. 2 (cleaned up), nor would the Seventh Circuit's decision (or the Eleventh Amendment) require her to be. Saint Anthony Hospital's section 1396u-2(f) claim is not about *whether* an

MCO must pay a claim, or *what amount* is due on a claim. Rather, this case, and Section 1396u-2(f), concerns *when* MCOs are required to pay claims for which there is no dispute that payment is owed.

State oversight of *when* claims are paid does not implicate the parade of horribles that *amicus* invokes. This case is not "fundamentally comprised of individual claim adjudications." *Amicus* Br. 18. Once a claim is paid—and thus has been determined by an MCO to be "clean"—determining *when* it was paid is simple. There is no need for States to wade into routine claims processing that has been delegated to MCOs. It is possible Petitioner could achieve compliance through appropriate data reporting deadlines to confirm the dates claims are submitted and paid. But, again, such concepts present a remedy question to be considered on a full record.

This case does not undermine arbitration rights because Petitioner's statutory oversight obligation undisputedly *cannot* be arbitrated. Illinois law insulates Petitioner from arbitration. *Amicus*, like the intervening MCOs below, does not claim that Saint Anthony Hospital's statutory claim can be arbitrated. They argue that Saint Anthony Hospital must arbitrate any disputes it has *with MCOs*. But Saint Anthony Hospital has not sued the MCOs. It has sued Petitioner to discharge her federal statutory obligation to oversee the MCOs. The Seventh Circuit correctly concluded that nothing in section 1396u-2(f) supports the idea that Congress intended private contracts (or State law remedies) to be a "comprehensive enforcement

scheme" to displace private enforcement. Rather, it found:

> While factual issues related to the MCOs appear intertwined with Saint Anthony's claim against HFS, they do not foreclose Saint Anthony's section 1983 action. Faced with chronic late payments, Saint Anthony is entitled to seek relief against [Petitioner] as well as against the MCOs.

App. 56a.

Amicus is also wrong that the bounds of equitable remedies must be set at that pleading stage. *Amicus* Br. 20-22. Such remedies require understanding the full record in order to craft one tailored to the situation. If, as *amicus* contends, Saint Anthony Hospital's allegations are wrong and the MCO system has no problems that justify a federal remedy, *see Amicus* Br. 22-25, then this case will never reach the remedy stage. But challenging the factual accuracy of Saint Anthony Hospital's well-pleaded facts is not a basis to dismiss its claim at the pleading stage.

2. Future Lower Court Consideration of the Seventh Circuit's Opinion is a Reason to Deny the Petition—Not a Reason to Grant It.

Petitioner's final argument turns the development of the law on its head: Petitioner claims that the Seventh Circuit's analysis needs to be corrected because other courts might see it, consider its merits, and if

they agree, they might follow it. Consideration by other courts of section 1396u-2(f)'s private enforceability is a reason to deny the Petition, not grant it. That is a feature, not a defect, of our court system. This Court often will permit an issue to percolate among the Circuits before deciding it is worthy of review. *See Arizona v. Evans*, 514 U.S. 1, 24 n.1 (1995) ("We have in many instances recognized that when frontier legal problems are presented, periods of 'percolation' in, and diverse opinions from, state and federal appellate courts may yield a better informed and more enduring final pronouncement by this Court.") (Ginsburg, J., dissenting). *See also*, *e.g.*, *Calvert v. Texas*, 141 S. Ct. 1605, 1606 (2021) (concurring in denial of certiorari because issue "would benefit from further percolation in the lower courts prior to this Court granting review") (Sotomayor, J.); *Box v. Planned Parenthood of Indiana and Kentucky, Inc.*, 139 S. Ct. 1780, 1784 (2019) (concurring in denial of certiorari because "further percolation may assist our review of this issue of first impression") (Thomas, J.).

Contrary to Petitioner's telling, allowing percolation will not signal to lower courts that this Court's "precedent need not be scrupulously observed in cases involving other Spending Clause statutes." Pet'n 22. As above, the Seventh Circuit did "scrupulously" follow precedent. Regardless, denial of certiorari has no precedential weight, and part of the benefit of having multiple federal circuits is that, particularly for developing issues, courts have the ability to reach different

outcomes, signaling that this Court's review may be needed.

Federal appellate judges are not shrinking violets. If another Circuit thinks the Seventh got it wrong, it will no doubt voice that disagreement when the issue comes to it, just as the dissenting judge did in this case. But contrary to Petitioner's premise, if sister Circuits were to *agree* with the Seventh Circuit, there would be no circuit split warranting this Court's review. Rather, such agreement would be an indication that the Seventh Circuit faithfully applied this Court's established precedent to the statute at issue.

III. The Court Should Neither Hold the Petition Nor GVR in Light of *Talevski*.

The Court should not hold the Petition for *Talevski*. *Talevski* does not address section 1396u-2(f). Its potential impact on this case will be if the Court, in deciding *Talevski*, substantially changes the *Blessing* test. If it does so, Petitioner can ask the district court to apply the revised test.

Unlike the cases Petitioner cites—*Lawrence v. Chater*, 516 U.S. 163, 167 (1996) (per curiam) and *Flowers v. Mississippi*, 136 S. Ct. 2157, 2157 (2016) (Alito, J., dissenting)—this case has only just passed the pleadings stage. The opinion below reversed a motion to dismiss. And the parties, by agreement and with district-court approval, are presently focusing on mediation. If *Talevski* changes the private-right landscape in a way that may be dispositive of the section

1396u-2(f) claim, Petitioner can ask the district court to apply it. If *Talevski* does not change the standard, a hold will have been unnecessary because the case does not otherwise warrant review.

Holding the Petition for a GVR is also inappropriate because *Talevski* will not "determine the ultimate outcome of the litigation," and it cuts against "the equities of the case." *See Lawrence on Behalf of Lawrence v. Chater*, 516 U.S. 163, 167-68 (1996). *Talevski* will only affect the section 1396u-2(f) claim if this Court overrules *Blessing*, *Gonzaga*, *Wilder* and other precedent, or substantially changes the *Blessing* test. But even if that were to happen, *Talevksi* unquestionably will not affect Saint Anthony Hospital's due process claim.

The equities do not support a GVR because there is no benefit to the delay and further cost that would result from remanding to the Seventh Circuit to resolve the section 1392u-2(f) claim. It would be simpler (and faster) to let the district court decide the fate of that count in light of *Talevski*, if such review becomes warranted. Petitioner will get the benefit, if any, of whatever ruling the Court announces in *Talevski* regardless of whether a GVR order is issued or the matter is decided by the district court in due course.

CONCLUSION

For the reasons stated above, the petition for writ of certiorari should be denied.

Respectfully submitted,

EDWARD W. FELDMAN
Counsel of Record
MICHAEL L. SHAKMAN
WILLIAM J. KATT
MARY EILEEN C. WELLS
MILLER SHAKMAN LEVINE &
FELDMAN LLP
30 West Monroe Street
Suite 1900
Chicago, Illinois 60603
(312) 263-3700
efeldman@millershakman.com