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.

ST. ANTHONY HOSPITAL,
Respondent.

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

REPLY BRIEF FOR PETITIONER

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I. The Court Should Hold this Case Pending Its Decision in *Talevski* and then Grant, Vacate, and Remand.

Respondent, like the Seventh Circuit, acknowledges that this Court's decision in *Health & Hospital Corp. of Marion County v. Talevski* (No. 21-806) may significantly affect the proper interpretation of Section u-2(f) of the Medicaid Act, 42 U.S.C. § 1396u-2(f). App. 3a, 8a–9a; D. Ct. Dkt. 135 at 5–6. Respondent nevertheless contends that the Court should deny the petition without holding it for *Talevski*. Respondent maintains that even if *Talevski* materially affects the relevant analysis for interpreting Section u-2(f), "[i]t would be simpler (and faster) to let the district court decide the fate of" Respondent's claim under Section u-2(f). Br. in Opp. 27. The opposite is obviously true. The time and place to correct the Seventh Circuit's opinion is in that court on direct remand from this Court, consistent with the Court's regular practice of entering GVR orders in similar circumstances. Pet. 11. Section u-2(f)'s meaning presents a pure question of law, and no further factual development is necessary to decide whether it imposes the duties on States and creates the private rights that the Seventh Circuit attributed to it. Thus, denying the petition without awaiting the Court's decision in *Talevski* would needlessly prolong the proper resolution of that important question.

Nor should this Court, if it vacates the Seventh Circuit's judgment, limit the scope of its vacatur to exclude the Seventh Circuit's separate ruling on Respondent's motion to file a supplemental complaint adding a nonstatutory claim. App. 51a–56a. Respondent offers no authority or precedent for that manner of proceeding, which is inconsistent with the Court's normal practice. And on remand the Seventh Circuit can determine how to achieve an efficient and orderly resolution of that nonstatutory claim.

II. In the Alternative, the Court Should Grant Review of the Second Question Presented.

Full review of the second question presented, involving the proper interpretation of Section u-2(f), is warranted for two reasons: the Seventh Circuit plainly violated this Court's precedent governing the interpretation of Spending Clause statutes, and the question has extraordinary significance.

A. The Seventh Circuit's Opinion Plainly Disregarded the Court's Precedent Governing Interpretation of Spending Clause Statutes.

Respondent contends that the Seventh Circuit majority correctly described and followed this Court's precedent governing the interpretation of Spending Clause statutes, and that there is no "conflict" with that precedent, but at most a disagreement about the Seventh Circuit's "application" of that precedent to Section u-2(f). Br. in Opp. 14–15. That characterization of the Seventh Circuit's opinion is untenable. The panel majority did not just misapply this Court's precedent. It made no genuine attempt to apply that precedent, and repeatedly violated it.

1. The panel majority contravened the Court's controlling precedent by reading into Section u-2(f) a statutory duty that Congress nowhere expressed.

The critical threshold issue before the Seventh Circuit was whether Section u-2(f), which expressly requires States to put the Timely Payment Clause in their contracts with MCOs, also impliedly imposes on States a statutory duty to ensure that MCOs comply with that Clause. On that issue, the majority's opinion repeatedly violated the Court's established jurisprudence by transforming a provision of the Medicaid Act that defines *MCOs' contractual* commitment to States regarding the MCOs' payments to healthcare providers into a provision that imposes a *statutory* duty on *States* to ensure that MCOs comply with that commitment.

Most seriously, the panel majority disregarded the Court's precedent holding that a Spending Clause statute can impose specific duties on States only when it does so "unambiguously," *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981), so that no other interpretation of the statute is even "plausible," *Graham Cnty. Soil & Water Conservation Dist. v. U.S. ex rel. Wilson*, 545 U.S. 409, 419 (2005). It did so through a series of violations of the Court's well-established precedent that collectively displaced the statutory text in favor of the majority's policy preferences. Pet. 13–18.

Respondent asserts that the Seventh Circuit's interpretation of Section u-2(f) was faithful to the Court's precedent because it was "grounded in the statutory text" and "both literally and substantively

began with the text of Section u-2(f)." Br. in Opp. 16 (cleaned up). That assertion is manifestly wrong. The panel majority's analysis did not "start with the specific statutory language in dispute," *Murphy v. Smith*, 138 S. Ct. 784, 787 (2018), "giving the words used their ordinary meaning," *Artis v. Dist. of Columbia*, 138 S. Ct. 594, 603 (2018) (cleaned up). The majority's opinion did quote Section u-2(f). App. 24a. But a court must do more than recite a statute's text. See *Ross v. Blake*, 578 U.S. 632, 638 (2016) (noting that lower court "made no attempt to ground its analysis in" statute's language). And not a single sentence of the majority opinion examined or analyzed the meaning of Section u-2(f)'s actual text or attempted to explain how any word or phrase in Section u-2(f) could plausibly, much less unambiguously, be read to impose on States the statutory duty the opinion attributes to it. The dissent repeatedly emphasized this omission, App. 63a, 64a, 66a, 68a, 71a, and the majority did not contest it.

Respondent also disputes that the majority substituted its own policy preferences for what Congress actually enacted. Br. in Opp. 19-20. But the majority unmistakably rested its holding on its view that giving States contractual discretion to enforce the Timely Payment Clause—which the majority disparaged as a mere "'paper' requirement" and "paper tiger" (even though Petitioner had exercised it)—would not sufficiently fulfill Congress's goal to have providers paid on a timely basis. App. 25a, 34a–39a, 45a–46a. This again violates the Court's precedent because "no legislation pursues its purposes at all costs," *Rodriguez v. United States*, 480 U.S. 522, 525–526 (1987), and such policy decisions are for Congress, not the courts, which "may

not replace the actual text with speculation as to Congress' intent," and instead must "presume . . . that the legislature says what it means and means what it says," *Oklahoma v. Castro-Huerta*, 142 S. Ct. 2486, 2496–2497 (2022) (cleaned up); see *Niz-Chavez v. Garland*, 141 S. Ct. 1474, 1486 (2021) ("no amount of policy-talk can overcome a plain statutory command"); *Fla. Dep't of Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 51–52 (2008) (similar).

Respondent further maintains that the majority opinion actually, if not explicitly, found that the dissent's interpretation of Section u-2(f) was not even "plausible," even though the majority, relying on other parts of the Medicaid Act, stated only that its interpretation was "more coherent." Br. in Opp. 19; App. 37a. Again, Respondent's position merely highlights the majority's disregard of the Court's precedent. According to the majority, those other provisions of the Medicaid Act regarding state monitoring and enforcement of MCOs' payment obligations to providers "conflict" with the dissent's text-based interpretation of Section u-2(f) and show that Section u-2(f) "must be doing more" than just giving States contractual rights to enforce the Timely Payment Clause in their contracts with MCOs. App. 37a–39a. But this is not a conflict at all, much less one that makes the dissent's interpretation of Section u-2(f) implausible.

No one disputes that Congress gave States contractual rights to require MCOs to pay providers according to the Timely Payment Clause. App. 34a. And the Medicaid Act's monitoring and enforcement mechanisms for States to oversee MCOs' compliance with their obligations under the Timely Payment Clause are fully consistent with, not in conflict with,

this regime of contractual enforcement that Congress expressly adopted in Section u-2(f). *Maracich v. Spears*, 570 U.S. 48, 68 (2013) ("There can be no justification for needlessly rendering provisions in conflict if they can be interpreted harmoniously.") (cleaned up); accord *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1624 (2018). This statutory structure thus reflects Congress's choice of contract rights over Section 1983 litigation, with all the burdens on States and federal courts that such statutory rights and Section 1983 litigation would entail, to enforce providers' right to timely payment by MCOs. See *Rodriguez*, 480 U.S. at 525–526 ("no legislation pursues its purposes at all costs"); cf. *Jackson Transit Auth. v. Loc. Div. 1285, Amalgamated Transit Union, AFL-CIO-CLC*, 457 U.S. 15, 20–23, 29 & nn.12, 13 (1982) (recognizing Congress's reliance on mandatory contract provisions, not statutory rights adjudicated in federal court, to implement specific policies). That is especially true where Congress repeatedly demonstrated in the Medicaid Act, including in Section u-2 itself, that it knew how to impose specific statutory duties on States, and did so expressly. See *Jama v. Immigration & Customs Enforcement,* 543 U.S. 335, 341 (2005); App. 61a–62a. Thus, as the dissent explained, the majority's reliance on these other provisions reflects the improper substitution of its own policy views about the best way to implement Congress's goal to have providers timely paid. App. 68a–69a. Even if the Seventh Circuit had said so, therefore, the dissent's reading of Section u-2(f) cannot be characterized as implausible.

2. The panel majority further violated the Court's precedent by adding to Section u-2(f) the condition that MCOs "systemically" fail to make timely payments to providers.

The Seventh Circuit's failure to follow this Court's precedent is especially obvious in its addition to Section u-2(f) of the limiting condition, which is nowhere found in the statutory text, that States must prevent only "systemic," or "systematic," failures by MCOs to pay providers on a timely basis. App. 20a, 37a, 42a–43a, 48a, 56a. Courts may not "engraft on a statute additions which [they] think the legislature logically might or should have made." *Return Mail, Inc. v. United States Postal Serv.*, 139 S. Ct. 1853, 1867 n.11 (2019) (cleaned up); accord *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 90 (2017) ("the proper role of the judiciary . . . [is] to apply, not amend, the work of the People's representatives").

Respondent unsuccessfully tries to deny the existence of this problem, contending that the majority's reference to systemic payment delays by MCOs relates only to "remedies" for a State's violation of its duty under Section u-2(f), and that any such violation is, by definition, systemic. Br. in Opp. 20–21. Thus, by Respondent's logic, *every* MCO violation of the Timely Payment Clause's payment schedule, no matter how minor (e.g., paying 89.9% of clean claims in 30 days), violates a State's duty to ensure that MCOs comply with this Clause. But that is not a systemic violation in the sense adopted by the majority, which also made clear that a State violates its implied statutory *duty* only if MCOs "systematically" fail to pay providers on a timely basis. App. 20a, 37a, 41a 46a, 56a.

The panel majority apparently saw that limitation as necessary to avoid the obvious problems associated with holding that Section u-2(f) requires States to "ensure" that MCOs pay providers according to the Timely Payment Clause, and consequently to determine themselves, among other things, whether claims are "clean," the services are covered by the MCO's plan, and the provider obtained any required advance approval. Pet. 19–20; see also *infra* at 9–10. But that limitation, like the duty the majority imposed on States, has no basis in Section u-2(f)'s text and shows once again the Seventh Circuit's failure to respect this Court's precedent.

B. The Seventh Circuit's Misinterpretation of Section u-2(f) Presents a Question of Great Importance.

1. Section u-2(f)'s interpretation has immense real-world consequences.

The panel majority recognized the "magnitude" of its decision interpreting Section u-2(f), with "high stakes for the State." App. 48a. Respondent nonetheless attempts to minimize the huge practical impact of the Seventh Circuit's holding on state administration and federal court enforcement of managed care programs. Those attempts are unconvincing.

Respondent identifies the relevant issue as being whether "MCOs must pay claims on time . . . with . . . or without State oversight," with "[t]he scope of State —and court—oversight [being] a remedy question." Br. in Opp. 21–22. Again, however, Respondent mischaracterizes the Seventh Circuit's opinion to make its real-world consequences seem less significant. No one interprets Section u-2(f) to eliminate state oversight of

MCO payment practices, which facilitates States' exercise of their contractual rights against MCOs in accordance with Section u-2(f)'s express terms. And the Seventh Circuit's opinion leaves no doubt that the statutory *duty* it says Section u-2(f) imposes on States, not just the *remedy* for a violation of that duty, requires them to "ensure," and thus "guarantee," that MCOs pay providers on time. App. 20a, 27a, 37a, 56a.

Respondent also suggests that fulfilling that duty and adjudicating Section 1983 claims that a State failed to do so are simple and straightforward matters that will impose no real burden on States or federal courts. Br. in Opp. 22–23. That suggestion, again intended to avoid the necessary ramifications of the Seventh Circuit's interpretation of Section u-2(f), rests on false premises. In particular, it incorrectly assumes that the timeliness of an MCO's payment under the Timely Payment Clause does not depend on whether the MCO paid the amount actually owed, and that to satisfy its alleged statutory duty a State can accept whatever an MCO says about whether a claim is "clean," whether the services are covered by its plan, and whether the provider obtained any necessary prior approval.

On the contrary, a timely payment by an MCO in accordance with the Timely Payment Clause is not just the payment of *any* amount, regardless of what the MCO actually owes. Not surprisingly, Respondent's complaint made clear its position, as the Seventh Circuit and district court both recognized, that Section u-2(f) requires a State to ensure timely payment by MCOs of the full amount owed on each claim. App. 41a, 79a, 83a; D. Ct. Dkt. 1 at 4–5. And the claims-processing procedures referenced in Section u-2(f),

whose fulfillment Respondent says States must ensure, specify a schedule for paying claims that are *actually* clean, not just claims that an MCO *says* are clean. Pet. 2–3. Thus, requiring States to "ensure" that MCOs timely pay the correct amount owed on clean claims means that States must duplicate the very claims-processing functions that managed care programs were intended to relieve States from performing. Pet. 19–20. And if an MCO disputes a provider's allegations that the MCO did not pay claims on time, a federal court must resolve that factual dispute to determine whether a State violated its claimed statutory duty under Section u-2(f). Pet. 20.

Respondent also insists that the Seventh Circuit's interpretation of Section u-2(f) will not undermine arbitration rights that are often contained in MCO agreements with providers because States' "statutory oversight obligation undisputedly cannot be arbitrated." Br. in Opp. 23 (emphasis omitted). This overlooks the critical overlap between a provider's claims against an MCO and against a State. The Seventh Circuit admitted that "factual issues related to the MCOs appear intertwined with [respondent's] claim against [petitioner]." App. 56a. And a necessary element of any Section u-2(f) claim against a State under the majority's reading of the statute is that the MCO breached its contract with the provider. Thus, if the MCO disputes that it breached the contract, requiring a federal court to resolve that dispute, as part its adjudication of the provider's claim to enjoin the State to force the MCO to change its payment practices, would effectively defeat the MCO's arbitration rights.

2. The Seventh Circuit's refusal to follow this Court's precedent should not go unreviewed.

Granting the petition on the second question is also warranted because the ramifications of the Seventh Circuit's decision go far beyond its major restructuring of Medicaid managed care programs. They also implicate the extent to which lower courts will, or will not, faithfully follow the Court's precedent regarding the interpretation of Spending Clause legislation, which implicates vital federalism concerns. See *Pennhurst*, 451 U.S. at 17. Those concerns are particularly acute where, as here, Congress expressly adopted a contract-based scheme, rather than one relying on federal court enforcement of statutory rights, to implement a specific objective.

Respondent dismisses the notion that letting the Seventh Circuit's decision go unreviewed will signal to other courts that the Court's precedent adopting strict standards for finding state duties and private rights in Spending Clause statutes need not be scrupulously followed in practice. Br. in Opp. 24–26. But the unmistakable message of the Seventh Circuit's approach will not be lost on other courts if the Court acquiesces in such a clear failure to respect its bedrock holdings.

Respondent also asserts that the Court can grant review if another circuit court disagrees with the Seventh Circuit's reading of Section u-2(f). Br. in Opp. 26. This again overlooks the broader, more significant issue concerning lower court fidelity to the Court's jurisprudence on Spending Clause statutes. The flaws in the Seventh Circuit's opinion are not confined to its interpretation of a single provision of the Medicaid Act, which, like many Spending Clause statutes,

contains many provisions that private parties could argue create state duties they have a right to enforce. Waiting to correct the pervasive and troublesome flaws in the Seventh Circuit's approach until at least two circuits disagree about a particular provision would do too little, too late, to address this broader concern. This case is, therefore, a perfect vehicle for the Court to address this serious concern.

CONCLUSION

For the foregoing reasons and those stated in the petition for a writ of certiorari, the Court should hold the petition for *Talevski* and either enter a GVR order or grant plenary review on the second question presented.

Respectfully submitted,

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