No. _____

In the

Supreme Court of the United States

GIANINNA GALLARDO, AN INCAPACITATED PERSON, BY AND THROUGH HER PARENTS AND CO-GUARDIANS PILAR VASSALLO AND WALTER GALLARDO,

Petitioner,

v.

SIMONE MARSTILLER, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE FLORIDA AGENCY FOR HEALTH CARE ADMINISTRATION,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

SCOTT L. NELSON
PUBLIC CITIZEN LITIGATION GROUP
1600 20th Street NW
Washington, DC 20009
(202) 588-1000

FLOYD FAGLIE
STAUNTON & FAGLIE, PL
189 E. Walnut Street
Monticello, FL 32344
(850) 997-6300

BRYAN S. GOWDY
Counsel of Record
MEREDITH A. ROSS
CREED & GOWDY, P.A.
865 May Street
Jacksonville, FL 32204
(904) 350-0075
bgowdy@appellate-firm.com

Counsel for Petitioner

March 9, 2021

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

QUESTION PRESENTED

Whether the federal Medicaid Act provides for a state Medicaid program to recover reimbursement for Medicaid's payment of a beneficiary's *past* medical expenses by taking funds from the portion of the beneficiary's tort recovery that compensates for *future* medical expenses.

PARTIES TO THE PROCEEDINGS

Petitioner Gianinna Gallardo, an incapacitated person, by and through her parents and co-Guardians Pilar Vassallo and Walter Gallardo, was the plaintiff-appellee below.

Respondent Simone Marstiller is, in her official capacity, the current Secretary of the Florida Agency for Healthcare Administration. Her predecessors (Mary Mayhew, Justin Senior, and Elizabeth Dudek) were—during their respective tenures and in their official capacities as Secretaries of the Florida Agency for Health Care Administration—previously named as the defendant-appellant below.

RELATED PROCEEDINGS

U.S. Court of Appeals for the Eleventh Circuit:

Gallardo by and through Vassallo v. Dudek, No. 17-13693 (11th Cir. June 26, 2020) (reported at 963 F.3d 1167) (opinion)

Gallardo by and through Vassallo v. Dudek, No. 17-13693 (11th Cir. October 20, 2020) (reported at 977 F.3d 1366) (denial of rehearing and rehearing en banc)

U.S. District Court for the Northern District of Florida:

Gallardo by and through Vassallo v. Dudek, No. 4:16-cv-116 (N.D. Fla. April 18, 2017) (reported at 263 F. Supp. 3d 1247) (order)

Gallardo by and through Vassallo v. Senior, No. 4:16-cv-116 (N.D. Fla. July 18, 2017) (unreported at 2017 WL 3081816) (order)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitution and Statutes

Other Authorities

PETITION FOR A WRIT OF CERTIORARI

This case involves a direct, acknowledged conflict between a federal court of appeals and a state supreme court within its circuit over a recurring and important question of law: Whether a State Medicaid program may recover *past* medical payments it made on behalf of an accident victim from tort settlement payments compensating the victim for *future* medical expenses. In the decision below, the Eleventh Circuit held that the Medicaid Act authorizes a Florida statute granting the State a lien over settlement proceeds attributable to future medical expenses. But two years earlier, the Florida Supreme Court held exactly the opposite—that the Medicaid Act preempts the same Florida statute and limits the State to seeking reimbursement from settlement amounts attributable to past medical expenses. *Giraldo v. Agency for Health Care Admin.,* 248 So. 3d 53 (Fla. 2018).

The question dividing the courts is outcome-determinative in this case. Petitioner Gianinna Gallardo was catastrophically injured when she was hit by a truck after getting off her school bus, and remains in a persistent vegetative state. She eventually recovered $800,000 in a court-approved settlement. The settlement applied to Ms. Gallardo's past medical expenses, future medical expenses, lost wages, and other damages but compensated her for only a fraction of each of the categories of damages she suffered as a result of her injuries.

Medicaid had paid $862,688.77 towards Ms. Gallardo's past medical expenses and, pursuant to Florida law, the State agency sought to recover

approximately $300,000 of this amount from Ms. Gallardo's settlement. The State agency specifically sought to recover this amount from the portion of the settlement representing Ms. Gallardo's past *and future* medical expenses even though it had only paid for Ms. Gallardo's *past* medical expenses. Ms. Gallardo sought a federal-court determination of her rights under the Medicaid Act.

In allowing Florida to recover its past expenditures from the amount Ms. Gallardo received for future medical expenses, the Eleventh Circuit acknowledged that its ruling squarely conflicted with the Florida Supreme Court's decision in *Giraldo*, which it said was simply "incorrect." But the conflict on this issue runs much deeper: One state court of last resort aligns with the Eleventh Circuit, and three align with the Florida Supreme Court. Other lower courts—both state and federal—are also split.

The uncertainty created by this ongoing conflict is untenable. Every State has passed some type of third-party recovery act to comply with the Medicaid Act. Given the national dissonance on the question presented in this case, at least some of these States are violating federal law. These irreconcilable, state-by-state variances in Medicaid administration are intolerable for States and Medicaid beneficiaries alike. The conflict urgently needs resolving, and only this Court can resolve it.

OPINIONS BELOW

The Eleventh Circuit's opinion, Pet. App. 1-60, is reported at 963 F.3d 1167, and its order denying Petitioner's petition for rehearing en banc, Pet. App. 119-125, is reported at 977 F.3d 1366. The Northern

District of Florida's summary judgment order, Pet. App. 88-115, is reported at 263 F. Supp. 3d 1247, and its unreported order granting in part and denying in part Respondent's motion to alter or amend the judgment, Pet. App. 61-85, is available at 2017 WL 3081816.

JURISDICTION

The Eleventh Circuit entered judgment on June 26, 2020. Petitioner filed a timely petition for rehearing en banc on July 17, 2020, and the Eleventh Circuit denied rehearing on October 20, 2020. On March 19, 2020, this Court issued a blanket order extending the time to file a petition for a writ of certiorari to 150 days from the date of an order denying a timely petition for rehearing. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Supremacy Clause, U.S. Const. art. VI, cl. 2, provides:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The question presented implicates five provisions of the Medicaid Act, 42 U.S.C. § 1396 *et seq.*, as well as Florida's reimbursement statute, Fla. Stat. §§ 409.910(11)(f), 17(b) (2016). Petitioner refers to the

relevant federal provisions throughout her petition as:

- the "anti-lien provision" (42 U.S.C. § 1396p(a)(1));
- the "anti-recovery provision" (42 U.S.C. § 1396p(b)(1));
- the "third-party liability provision" (42 U.S.C. § 1396a(a)(25)(A)-(B));
- the "payment-recovery provision"[1] (42 U.S.C. § 1396a(a)(25)(H)); and
- the "assignment/cooperation provision"[2] (42 U.S.C. § 1396k(a)-(b)).

The federal and state statutory provisions are reproduced in the appendix to this petition. Pet. App. 126-35.

STATEMENT OF THE CASE

A. Legal Background

Medicaid is a joint federal-state program that provides healthcare coverage for people who otherwise could not afford it. *Ark. Dep't of Health and Human Servs. v. Ahlborn*, 547 U.S. 268, 275 (2006). As a condition of receiving federal Medicaid funds, a State must agree to administer its Medicaid program in accordance with the requirements of the Medicaid Act, 42 U.S.C. § 1396 *et seq*. This case concerns the intersection of two Medicaid requirements: (i) a general rule and (ii) a limited exception, concerning

---

[1] The Eleventh Circuit dissent used the name "specific assignment provision." Pet. App. 29-30.

[2] The Eleventh Circuit dissent used the name "general assignment provision." Pet. App. 29.

the circumstances in which a State may be reimbursed from tort settlements for medical expenses paid on a beneficiary's behalf.

First, the general rule: A State is prohibited from imposing a lien on a Medicaid recipient's property to recover the State's payments for medical assistance. This general rule is set out in the Medicaid Act's anti-lien and anti-recovery provisions, 42 U.S.C. §§ 1396p(a)(1), 1396p(b)(1). The anti-lien provision states, with exceptions not applicable here, that "[n]o lien may be imposed against the property of any individual prior to his death on account of medical assistance paid *or to be paid* on his behalf under the State plan." *Id.* § 1396p(a)(1) (emphasis added). The anti-recovery provision provides, also with exceptions not applicable here, that "[n]o adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the State plan may be made." *Id.* § 1396p(b)(1).

Next, the limited exception to this general rule: A State may seek reimbursement of its past Medicaid payments to the extent of a third party's legal liability to pay for care and services that were provided by Medicaid. This limited exception is derived from the Medicaid Act's third-party liability and payment-recovery provisions and, when applicable, the assignment/cooperation provision. *Id.* § 1396a(a)(25)(A)-(B),(H); § 1396k(a)-(b).

The third-party liability provision requires a State "to ascertain the legal liability of third parties … to pay for care and services *available under the plan*." *Id.* § 1396a(a)(25)(A) (emphasis added). The State must "seek reimbursement for [medical] assistance to the extent of such legal liability" in "any case where

such a legal liability is found to exist *after medical assistance has been made available* on behalf of the individual." *Id.* § 1396a(a)(25)(B) (emphasis added).

The payment-recovery provision is associated with the third-party liability provision. It applies "to the extent that *payment has been made* under the State plan for medical assistance in any case where a third party has a legal liability to make payment for such assistance." *Id.* § 1396a(a)(25)(H) (emphasis added). In that event, the State must have "in effect laws under which, to the extent that *payment has been made* under the State plan for medical assistance for *health care items or services furnished* to an individual, the State is considered to have acquired the rights of such individual to payment by any other party for *such health care items or services*." *Id.* § 1396a(a)(25)(H) (emphasis added).

The assignment/cooperation provision provides that a beneficiary must assign the State rights to "*payment for medical care* from any third party." *Id.* § 1396k(a)(1)(A) (emphasis added). This provision also requires the beneficiary to "cooperate with the State" in identifying and helping the State pursue potentially liable third parties. *Id.* § 1396k(a)(1)(C). It then notes the State can keep the payments collected by the State under the assignment "as is necessary to reimburse it for medical assistance *payments made* on behalf of an individual with respect to whom such assignment was executed … and the remainder of such amount collected shall be paid to such individual." *Id.* §1396k(b) (emphasis added).

Twice before, these frequently litigated provisions have given rise to conflicts in the lower courts that required this Court's intervention. *See Ahlborn*, 547

U.S. at 275-92; *Wos v. E.M.A. ex rel. Johnson*, 568 U.S. 627, 633-44 (2013). This Court's decisions in those cases set the stage for the question presented here.

In *Ahlborn*, this Court considered whether the Medicaid Act permitted a State to "recover the entirety of the costs it paid" on a recipient's behalf by claiming "more than just [the] portion of a judgment or settlement that represents payment for medical expenses." 547 U.S. at 278. This Court said no. *Id.* at 280-81. It held that the plain text of the Act limits the State's recovery to "the third-party tortfeasor's particular liability … '*for such health care items or services*'" that "'the State plan for medical assistance for health care items or services furnished to'" the beneficiary. *Id.* at 281 (quoting the payment-recovery provision, 42 U.S.C. § 1396a(a)(25)(H)). This Court further concluded the anti-lien provision places "express limits on the State's powers to pursue recovery of funds it paid on the recipient's behalf." *Id.* at 283. Thus, under federal law, the State could not assert a lien on the settlement in an amount greater than the portion of the settlement that the recipient and the State had stipulated was the amount representing "reimbursement for medical payments made." *Id.* at 274.

In *Wos*, this Court addressed whether the anti-lien provision preempted a statute requiring that up to one-third of a beneficiary's tort recovery be paid to the State to reimburse it for past Medicaid payments. 568 U.S. at 630. Distilling what *Ahlborn* had "held," *Wos* recognized "that the Medicaid Act sets both a floor and a ceiling on a State's potential share of a beneficiary's tort recovery." *Id.* at 633. The State in *Wos* had "no evidence to substantiate" that its

irrebuttable presumption—that one-third of any tort recovery by a beneficiary was attributable to medical expenses—was "reasonable in the mine run of cases." *Id.* at 637. Nor did the State have any process "for determining whether [such an allocation was] a reasonable approximation in any particular case." *Id.* Based on these reasons, this Court concluded the State's allocation conflicted with the anti-lien provision. *Id.*

In this case, as in *Ahlborn* and *Wos*, the question presented is whether a State statute enacted to satisfy the relevant provisions of the Medicaid Act is consistent with federal law. The relevant statute is Florida Statute § 409.910 (2016), which allows the State to recover its *past* payments on behalf of a Medicaid beneficiary from the parts of a tort settlement attributable to both past *and future* medical expenses.[3]

Florida's statute establishes a formula to allocate the portion of the beneficiary's tort recovery due to Florida's Agency for Health Care Administration ("the State," "State agency," or "Florida"). Fla. Stat. § 409.910(11)(f). The formula first reduces the beneficiary's gross recovery by 25% to account for attorney's fees. *Id.* §§ 409.910(11)(f)1, (3). The formula also deducts taxable costs from the gross recovery. *Id.* §409.910(11)(f)1. The reduced total is then cut in half, with Florida receiving the lesser of

---

[3] The Florida Legislature amended this statute in 2017. *See* Ch. 2017-129, § 19, Laws of Fla. The amendments are not material to the preemption analysis. The current version of the statute still permits Florida to recover from the portion of a recipient's settlement "allocated as past and future medical expenses." Fla. Stat. § 409.910(17)(b) (2020).

the total amount it actually paid or the resulting number. *Id.* § 409.910(11)(f)1 ("one-half of the remaining recovery shall be paid to the agency up to the total amount of medical assistance provided by Medicaid"). The remaining amount is paid to the beneficiary. *Id.* § 409.910(11)(f)2; *see also Agency for Health Care Admin. v. Riley*, 119 So. 3d 514, 515 n.3 (Fla. Dist. Ct. App. 2013) (describing how § 409.910(11)(f) operates).

A beneficiary may challenge this statutory presumption in an administrative proceeding. Fla. Stat. § 409.910(17)(b). To do so successfully, the beneficiary must present "clear and convincing evidence[] that a lesser portion of the total recovery should be allocated as reimbursement for past and future medical expenses than the amount calculated by the agency pursuant to the formula." *Id.* § 409.910(17)(b). Florida law thus expressly directs recovery from the portion of a tort recovery "allocated as reimbursement for past *and future* medical expenses," even though payment has been made under the State plan for past medical expenses only. *Id.* § 409.910(17)(b) (emphasis added). Whether federal law permits Florida to do so is the question presented in this petition.

B. This Case

1. Facts

In November 2008, Gianinna Gallardo—then a thirteen-year-old student—was struck by a truck after her school bus dropped her off. Pet. App. 95. She suffered catastrophic physical injuries and brain damage, and she remains in a persistent vegetative state. *Id*. Medicaid paid $862,688.77 for a portion of her past medical expenses. *Id*. The remainder of her

past medical expenses, $21,499.30, was paid by a private insurer. *Id.*

Ms. Gallardo's parents sued in state court to recover damages against the tortfeasors allegedly responsible for her injuries—the truck's owner and driver, and the school board. *Id.* The state-court action sought recovery of Ms. Gallardo's past medical expenses, as well as future medical expenses, lost earnings, and other damages. *Id.* The state-court action eventually settled, with court approval, for $800,000. *Id.*

Ms. Gallardo's counsel notified the State agency of her lawsuit, and later of the settlement. *Id.* 95-96. The State agency also was notified that the settlement—which applied to Ms. Gallardo's claims for past medical expenses, future medical expenses, lost earnings, and other damages—represented only a fraction of the total damages she had sought in her lawsuit. *Id.* 96. The settlement failed to compensate Ms. Gallardo for all her past medical expenses. *Id.*

Although the State agency had the authority to intervene in Ms. Gallardo's suit or institute its own suit to seek reimbursement directly from the responsible third party, it did not do so. *Id.* 112. It instead asserted a lien against Ms. Gallardo's cause of action for the amount it had expended in past medical expenses: $862,688.77. *Id.* 95. No portion of the lien represented expenditures for Ms. Gallardo's future medical expenses. *Id.* According to Florida's statutory formula, the State agency was entitled to

approximately $300,000 of the $800,000 settlement.[4] *Id.* 95-96.

Ms. Gallardo chose to contest the lien through the procedure established in Florida Statute § 409.910(17)(b). *Id.* 96. Pursuant to the statute, she deposited the formula amount into an interest-bearing trust account for the benefit of the State and filed a petition with the administrative agency. *Id.* Consistent with the terms of the Florida statute, the State agency took the position that it is entitled to recover its past medical expenses from the portion of Ms. Gallardo's settlement representing compensation for both past *and future* medical expenses. *Id.* The administrative proceeding was held in abeyance during the pendency of the federal court proceedings in this case. *Id.* 116-118.

2. The District Court's Decision

Like the beneficiary in *Wos*, 568 U.S. at 632, Ms. Gallardo invoked 42 U.S.C. § 1983 to seek a federal-court determination of her rights under the Medicaid Act. Specifically, she sought an injunction and declaratory judgment that Florida's reimbursement statute violated the Medicaid Act to the extent it allowed the State agency to satisfy its lien for *past* medical expenses from the portion of her tort recovery compensating her for *future* medical expenses. The parties agreed that the State agency was seeking recovery of its past Medicaid payments from more

[4] The district court mistakenly calculated the amount as $323,508.29, Pet. App. 96, as it apparently applied the formula to the amount paid by Medicaid ($862,688.77), rather than the settlement amount ($800,000).

than the portion of Ms. Gallardo's settlement representing compensation for past medical expenses.

The district court resolved the case on cross-motions for summary judgment. Pet. App. 88-115. It agreed with Ms. Gallardo that the Medicaid Act preempted Florida Statute § 409.910 (2016), insofar as it allowed the State agency "to satisfy its lien from a Medicaid recipient's recovery for future medical expenses." *Id.* 98. The court rested its conclusion on a "plain reading" of the "unambiguous" text of the Medicaid Act. *Id.* 98-100. The court also relied on *Ahlborn* and *Wos*, though it acknowledged neither case directly controlled. *Id.* 100-101. The court accordingly issued a declaratory judgment that the Medicaid Act prohibits the State from "seeking reimbursement of past Medicaid payments from portions of a recipient's recovery that represents future medical expenses." *Id.* 86-87. It also enjoined the State agency from enforcing the portion of the Florida statute purporting to allow such reimbursement. *Id.*[5]

3. The Eleventh Circuit's Decision

Three years later, in a 2-1 decision, the Eleventh Circuit reversed. Pet. App. 1-60. The majority opinion, authored by Judge Branch and joined by Judge Anderson, held that the Medicaid Act does not preclude the State agency from seeking reimbursement of its past medical expenses from the

[5] The district court also agreed with Ms. Gallardo that Florida's procedure for allocating a settlement between medical expenses and other damages does not comply with the Medicaid Act. Pet. App. 103-115. The Eleventh Circuit reversed that holding, and Ms. Gallardo does not seek further review of that aspect of the Eleventh Circuit's decision.

portion of Ms. Gallardo's settlement representing future medical expenses. *Id.* 14-23.

The majority anchored its holding on the "presumption against preemption," *id.* 11-13, even though *Ahlborn* and *Wos* never applied this presumption to determine whether the Medicaid Act preempted a State's Medicaid laws. *See Ahlborn*, 547 U.S. at 268-92 (unanimous); *Wos*, 568 U.S. at 627-44 (per Kennedy, J.). Moreover, *Wos* described the Medicaid Act as providing a "floor and a ceiling" on a State's recovery, clearly evincing recognition of preemptive intent. 568 U.S. at 633 (citing *Ahlborn*, 547 U.S. at 282, 284). Indeed, the Eleventh Circuit majority's reasoning for applying the presumption—that Florida's reimbursement statute implicated its "traditional authority … 'to provide tort remedies to [its] citizens'"—was the same reasoning *rejected* in *Wos*. *Compare* Pet. App. 11 (quoted), *with Wos*, 568 U.S. at 639-40 (rejecting the State's argument that its reimbursement statute was "an exercise of the State's general authority to regulate its tort system."); *see also* Pet. App. 12 (citing the *Wos* dissent). The majority then determined "[t]he very existence of [a] dispute about the federal statutory text answer[ed] the preemption question" because there was no "'clear and manifest purpose' to supersede the states' traditional powers over health care and tort law." Pet. App. 18-19 n.16.

Judge Wilson dissented. *Id.* 27-52. Like the district court, the dissent relied on the "plain text" of the Medicaid Act to conclude that the State agency could not "pocket funds marked for things it never paid for." *Id.* 28-39. The dissent further explained that its textual conclusion was compelled by *Ahlborn*

and consistent with that of the majority of courts that had addressed the issue. *Id.* 39-50. Notably, this majority includes the Florida Supreme Court, which unanimously held in 2018 that federal law preempts Florida's reimbursement statute to the extent it permits reimbursement of past medical expenses from tort recoveries for future medical expenses. *Id.* 50 (discussing *Giraldo*, 248 So. 3d at 56-59). The dissent closed by observing that the Eleventh Circuit's contrary ruling had "cut[] a chasm between federal and Florida law" and "sown the seeds for forum shopping":

> Recipients will rush to state court. Florida will rush to federal court. And whoever gets the ruling first will win. That is a stereotypical forum-shopping scenario. And it is an arbitrary outcome that warrants either en banc or Supreme Court review.

Id. 52.

4. The Eleventh Circuit Acknowledges the Conflict

The Eleventh Circuit denied Ms. Gallardo's petition for rehearing and rehearing en banc. Pet. App. 119-125. Judge Branch's order denying the petition conceded that her majority opinion for the panel had created a conflict between the Eleventh Circuit and the Florida Supreme Court on a question of federal law: "[I]t is unfortunate that our interpretation of federal law conflicts with the Florida Supreme Court's interpretation of federal law and presents a forum shopping possibility…." *Id.* 120.

Judge Wilson dissented again. *Id.* 121-125. He remained "steadfast" in his view that the Eleventh

Circuit got it wrong and, conversely, that the Florida Supreme Court got it right. *Id.* 125. Judge Wilson outlined the problem facing Medicaid beneficiaries in Florida:

> Florida Medicaid recipients must straddle two worlds: one where they win, and one where they lose. It is an arrangement as arbitrary as it is wrong; a system that awards first place not to the winner of the case, but to the winner of the race to the courthouse. At some point, someone must decide whether [the Florida Supreme Court in] *Giraldo* or [the Eleventh Circuit in] *Gallardo* got it right.

Id.

REASONS FOR GRANTING THE PETITION

I. The Eleventh Circuit's decision directly conflicts with a decision of the Florida Supreme Court.

The Florida Supreme Court in *Giraldo* unanimously held that "the federal Medicaid Act prohibits [Florida] from placing a lien on the future medical expenses portion of a Medicaid recipient's tort recovery." 248 So. 3d at 56; *see id.* at 57-58 (Polston, J., concurring in part and dissenting in part on other grounds). The court's conclusion was "compelled by *Ahlborn* and *Wos*" and by "the plain language of the Medicaid Act." *Id.* at 56 (majority).

The divided Eleventh Circuit panel held just the opposite. Pet. App. 14-23. It concluded that federal law "does not preempt [Florida's] practice of seeking reimbursement from portions of a settlement that represent all medical expenses." *Id.* 14. The Eleventh Circuit majority openly acknowledged the conflict

with *Giraldo*, and it explicitly stated its view that the Florida Supreme Court had made "the same mistake in logic" that it said was made here by the district court and Judge Wilson in his dissent. Pet. App. 23.

As Judge Wilson's dissent notes, the Eleventh Circuit's decision has "cut[] a chasm between federal and Florida law" that only this Court can resolve. Pet. App. 52. This Court frequently grants certiorari where a federal court of appeals and a state high court within the same circuit disagree on whether a state law is preempted. *See, e.g.*, *Coventry Health Care of Mo., Inc. v. Nevils*, 137 S. Ct. 1190, 1196 (2017); *DIRECTV, Inc. v. Imburgia*, 136 S. Ct. 463, 467-68 (2015). This Court granted certiorari in *Wos* to resolve just such a conflict between the Fourth Circuit and the North Carolina Supreme Court. 568 U.S. at 632. It should do the same here.

II. The Eleventh Circuit's decision deepens an acknowledged conflict among federal courts of appeals and state courts of last resort.

This conflict is not limited to the Eleventh Circuit and the Florida Supreme Court. Like the Eleventh Circuit, one state court of last resort—the Idaho Supreme Court—has held that a State may "seek recovery of its payments from a Medicaid recipient's total award of damages for medical care whether for past, present, or future care." *In re Matey*, 213 P.3d 389, 394 (Idaho 2009).

Three other state courts of last resort (including the Florida Supreme Court in *Giraldo*) have reached the opposition conclusion. A fourth state court of last resort has limited a State to the portion of a settlement representing past medical expenses paid for by the State. And the Fourth Circuit—while not

squarely addressing the question presented here—has recited the majority view.

In *Latham v. Office of Recovery Services,* 448 P.3d 1241 (Utah 2019), the Utah Supreme Court unanimously held that the payment-recovery provision "speaks directly to the issue presented here" and dictates that a State "cannot collect from [a] settlement award beyond the portion that can be fairly apportioned to past medical expenses." *Id.* at 1247-48.

Similarly, in *In re E.B.*, 729 S.E.2d 270 (W. Va. 2012), the West Virginia Supreme Court held that a State is "limited to funds allocated solely to past, not future, medical expenses in seeking reimbursement." *Id.* at 298. In so doing, the court specifically acknowledged the "split of authority" on the question presented. *Id.* at 298 & nn. 33-34; *see id.* at 305-06 (Davis, J., concurring) (explaining that the court had embraced "[t]he *majority* view" and rejected the "*minority* view" of the Idaho Supreme Court). Two justices dissented and espoused the minority view. *See id.* at 306-07 (Ketchum, C.J., dissenting); *id.* at 307-09 (Workman, J., concurring in part and dissenting in part).

In *Doe v. Vermont Office of Health Access*, 54 A.3d 474 (Vt. 2012), the Supreme Court of Vermont held "the State is limited to the portion of the settlement representing 'the amount paid by the agency.'" *Id.* at 529 (quoting Vt. Stat. Ann. 33, § 1910(a) (2001)[6]). There, although both the State and the recipient had paid for the recipient's past medical expenses, the

[6] The post-2001 amendments to the Vermont statute would not change the Supreme Court of Vermont's holding in *Doe*.

trial court permitted the State to recover from the portion of the settlement representing *all* past medical expenses, not just those past medical expenses paid by Medicaid. *Id.* at 524, 527. After reviewing *Ahlborn* and determining that the assignment/cooperation provision did not apply, the Supreme Court of Vermont reversed and concluded the state statute did not "allow the State to assert a lien against any recovery for money not paid by Medicaid." *Id.* at 529.

Similarly, the Fourth Circuit, in the decision affirmed by this Court in *Wos*, stated: "[F]ederal Medicaid law limits a State's recovery to settlement proceeds that are shown to be properly allocable to *past* medical expenses." *See E.M.A. ex rel. Plyer v. Cansler*, 674 F.3d 290, 312 (4th Cir. 2012) (emphasis added). Although the Fourth Circuit did not analyze the applicable statutory provisions, its statement would, at a minimum, likely be treated as highly persuasive, if not binding, by district courts within that circuit.

Thus, in addition to creating a direct conflict with the Florida Supreme Court, the Eleventh Circuit's decision has deepened an acknowledged conflict among other state courts of last resort and federal courts of appeals. This ongoing conflict presents an additional compelling reason to grant this petition.

III. The Eleventh Circuit's decision also conflicts with the weight of authority in other lower courts.

Federal district courts and lower state appellate courts also have diverged on the question presented. Most of these courts have disagreed with the Eleventh Circuit's minority position. *See McKinney v. Phil.*

Hous. Auth., 2010 WL 3364400, at *9 (E.D. Pa. Aug. 24, 2010); *Price v. Wolford*, 2008 WL 4722977, at *2 (W.D. Okla. Oct. 23, 2008); *Bolanos v. Superior Ct.*, 87 Cal. Rptr. 3d 174, 180 (Cal. Ct. App. 2009); *Lugo v. Beth Israel Med. Ctr.*, 819 N.Y.S.2d 892, 895 (N.Y. Sup. Ct. 2006); *see also Sw. Fiduciary, Inc. v. Ariz. Health Care Cost Containment Sys. Admin.*, 249 P.3d 1104, 1110 (Ariz. Ct. App. 2011) (disagreeing with the minority position and holding that a State may recover only from "that portion of a settlement allocated to medical *payments*," albeit not in a case where the State had attempted to recover from a portion allocated to future expenses). Two lower courts, however, have adopted the minority view taken by the Eleventh Circuit here; their analysis is sparse. *See I.P. v. Henneberry*, 795 F. Supp. 2d 1189 (D. Colo. 2011); *Special Needs Tr. for K.C.S. v. Folkemer*, 2011 WL 1231319, at *13 (D. Md. Mar. 28, 2011).

This split among lower courts illustrates the recurring nature of the question and further confirms the need for this Court's guidance.

IV. This Court should resolve the conflict.

A. Only this Court can resolve the entrenched disagreement in the lower courts and the direct conflict between the Eleventh Circuit and the Florida Supreme Court.

The question presented has long divided the lower courts, which have called on this Court to "clarify this issue for the benefit of the states' individual Medicaid programs." *E.B.*, 729 S.E.2d at 299 n.35. And now, the question presented has divided the Eleventh Circuit and the Florida Supreme Court. As a result, the

identical Florida statute is preempted in, and not enforced by, the Florida courts, while it is not preempted in, and enforced by, the federal courts. This situation is an "arbitrary outcome" for Florida Medicaid beneficiaries that "warrants … Supreme Court review." Pet. App. 52. (Wilson, J., dissenting).

Last year, this Court denied Utah's petition seeking review of the Utah Supreme Court's decision in *Latham* after the respondent noted that the only state high-court decision then on the other side of the split—the Idaho Supreme Court's *Matey* decision—predated *Wos* and the series of state high-court decisions adopting the majority view. *See* Brief in Opposition at 2-3, 13-17, *Office of Recovery Servs. v. Latham*, 140 S. Ct. 852 (2020) (No. 19-539). The respondent argued that this pattern "strongly suggest[ed] further percolation will eradicate any conflict that exists." Brief in Opposition at 12, *Latham*, 140 S. Ct. 852 (No. 19-539).

The respondent's prediction in *Latham* was wrong. The Eleventh Circuit's decision eliminates any possibility that the conflict will resolve itself. After surveying the conflicting decisions, including the Florida Supreme Court's unanimous decision adopting the majority position, the Eleventh Circuit deepened the split by adopting the minority position. Pet. App. 9, 18-19 n.16, 23. The Eleventh Circuit then cemented its position on the short side of the conflict by denying rehearing en banc. *Id.* 120. As Judge Wilson observed, "there is nothing left to do in the Eleventh Circuit or the Florida Supreme Court"; only this Court can "decide whether *Giraldo* or *Gallardo* got it right." *Id.* 124-25.

B. The uncertainty created by the ongoing conflict puts States and their legislatures in an untenable position.

States in general, and Florida in particular, are in an untenable position until this Court resolves the question presented in this case. As this Court emphasized in *Wos*, "the Medicaid statute sets both a floor and a ceiling on a State's potential share of a beneficiary's tort recovery." 568 U.S. at 633. A State *must* have in place laws that allow it to seek recovery up to the full amount authorized by the third-party liability and payment-recovery provisions, 42 U.S.C. §1396a(a)(25)(A-B),(H). But under the anti-lien and anti-recovery provisions, 42 U.S.C. §§ 1396p(a)(1), (b)(1), those state laws *must not* authorize any further recovery.

These federal Medicaid mandates should be consistently administered by all the States. Currently, however, they are being administered *in*consistently. And, given the judicial conflict, at least some States and their legislatures are necessarily violating federal law.

Some legislatures have adopted the majority judicial interpretation of federal Medicaid law—now rejected by the Eleventh Circuit. Under California's statute, for example, the State may recover only from the portion of a tort recovery "that represents payment for medical expenses, or medical care," that already has been "provided on behalf of the beneficiary"—that is, from the portion attributable to past medical expenses. Cal. Wel. & Inst. Code § 14124.76(a). And in West Virginia, the recipient's assignment of her right to recover from third parties is limited to "past medical expenses paid for by the

Medicaid program." W. Va. Code Ann. § 9-5-11 (b)(1). If the Eleventh Circuit is right, then State legislatures like California and West Virginia are violating their obligations under the Medicaid Act.

Other legislatures have enacted statutes reflecting the minority judicial interpretation. Florida, of course, expressly permits the State agency to recover from the portion of a tort settlement allocated as reimbursement for future medical expenses. Fla. Stat. § 409.910(17)(b) (2020). Likewise, in Massachusetts, the State "may assert its claim and recover from any allocation for future medical expenses" if the allocation for past medical expenses is insufficient to satisfy the State's "claim for full recovery of medical assistance benefits paid." Mass. Gen. Laws ch. 118E § 22(b). If the Eleventh Circuit is wrong and the majority judicial interpretation is right, then these State legislatures are violating their obligations under the Medicaid Act.

The question presented in this case is not limited to the few states mentioned above. Every State has passed some type of third-party recovery statute to comply with the mandates of the Medicaid Act.[7] Unless and until this Court resolves the conflict, the States and their legislatures cannot know what federal law requires of them. There is an urgent need for this Court's guidance on the question presented.

---

[7] *See, e.g.,* Hinshaw & Culbertson LLP, *50 State Primer on Medicaid Recovery Laws*, On the Law Series, Vol. 2 (2d ed. July 2019), available at https://www.hinshawlaw.com/assets/htmldocuments/Booklets/50StatePrimeronMedicaidRecoveryLawsMrMedicare.pdf.

C. The question presented arises frequently inside and outside of litigation, and the conflicting judicial answers result in unjustified differences in how the States resolve the liens of identically situated Medicaid beneficiaries.

The uncertainty on the issue affects millions of Americans who rely on Medicaid for health care coverage. A beneficiary's federal Medicaid rights should not depend on whether she lives in Idaho, West Virginia, or Massachusetts. But until this Court resolves the question presented, identically situated Medicaid beneficiaries will receive different treatment under federal law. An Idahoan's recovery for her future medical expenses will be up for grabs by the State, while a West Virginian's recovery for the same will be protected by federal law. *Compare In re Matey*, 213 P.3d at 394, *with* W. Va. Code Ann. § 9-5-11 (b)(1), *and In re E.B.*, 729 S.E.2d at 298. A Bay Stater's position is uncertain: Her state's laws authorize seizure of her recovery for future medical expenses, but the courts in her state have not spoken yet. *See* Mass. Gen. Laws ch. 118E § 22(b).

The situation is even worse for the 3.8 million Medicaid beneficiaries in Florida. The result for a Floridian who litigates a Medicaid lien depends on *which court* happens to decide the issue. A state court bound by the Florida Supreme Court's *Giraldo* decision will reach one result, while a federal court bound by the Eleventh Circuit's decision in this case will reach the opposite result. *See Carnival Corp. v. Carlisle*, 953 So. 2d 461, 465 (Fla. 2007) ("Although state courts are bound by the decisions of the United States Supreme Court construing federal law … there

is no similar obligation with respect to decisions of the lower federal courts.") (internal quotations and citations omitted); *Tafflin v. Levitt*, 493 U.S. 455, 465 (1990) (federal courts are not bound by a state court's interpretation of a federal statute).

The question presented arises frequently in litigation. For instance, in the last three years alone, two state high courts and the Eleventh Circuit in this case have weighed in on the question presented. *See Giraldo*, 248 So. 3d at 56; *Latham*, 448 P.3d at 1246. Many lower state and federal courts have also addressed the question presented. *See* Part III, *supra* at 18. The uncertainty on the issue "will no doubt lead to more litigation in the future." *E.B.*, 729 S.E.2d at 299 n.35.

The question presented, moreover, is not just addressed by courts and administrative tribunals. In Florida, for example, only about one percent of the State agency's liens are contested before an administrative tribunal and thus subject to potential judicial review.[8] These liens often are resolved by negotiations between, on the one hand, the State agency or its vendor and, on the other hand, a Medicaid recipient who may not always be represented by counsel. Outside of formal proceedings, each side may pick the decision—*Gallardo* (Eleventh Circuit) or *Giraldo* (Florida Supreme Court)—that favors its position in seeking

[8] *See* Letter from Dan Gabric, Medicaid Third Party Liability Administrator, Florida Agency for Health Care Administration, to Bryan Gowdy, Counsel for Petitioner (Sept. 29, 2020) (responding to public records request with number of liens asserted (14,565), number of liens paid (12,182), and number of administrative cases filed (138) since July 1, 2013).

to negotiate and resolve the lien. The question presented demands a clear resolution not just for the sake of the lower courts, administrative tribunals, and State legislatures, but also for the many Medicaid beneficiaries who must negotiate with agencies in all 50 States to resolve liens on tort recoveries.

D. This case is an excellent vehicle for resolving the conflict.

This case squarely and cleanly presents the question that has divided the lower courts. That question was raised and decided at every stage of the proceedings. The Eleventh Circuit's decision finally resolves the case. The relevant issues were exhaustively aired in thorough opinions by the district court, the Eleventh Circuit majority, and Judge Wilson's dissent. Pet. App. 1-85, 88-115, 119-25. And the question presented is outcome-determinative: The relevant portion of the district court's judgment stands or falls depending on the answer, and that judgment will determine the State's and Ms. Gallardo's respective rights to the portion of the settlement funds attributable to her future medical expenses.

V. The Eleventh Circuit's decision is wrong.

On the merits, the Eleventh Circuit's decision is wrong: It disregards the Medicaid Act's plain text and the logic and result of this Court's decision in *Ahlborn*. The decision also hinges on two fundamentally flawed premises: (1) the "presumption against preemption" applies to a State's laws on Medicaid liens, and (2) the assignment/cooperation provision is determinative.

A. The Medicaid Act's plain text limits a State to the portion of a beneficiary's recovery that represents payment for past medical expenses.

"Statutory interpretation, as [this Court] always say[s], begins with the text." *Ross v. Blake*, 136 S. Ct. 1850, 1856 (2016). Here, it ends there too. The Medicaid Act's plain text resolves the question presented.

The anti-lien and anti-recovery provisions prohibit Florida from seizing Ms. Gallardo's tort recovery except to the extent authorized by the Medicaid Act. 42 U.S.C. §§ 1396p(a)(1),(b)(1). Those provisions provide the general rule: A State may not impose a lien on a Medicaid beneficiary's property or otherwise seek to recover its payments for medical assistance from the beneficiary. This general rule expressly prohibits a lien "on account of medical assistance paid *or to be paid*" by Medicaid. *Id.* § 1396p(a)(1) (emphasis added). Absent an exception, this general rule bars Florida from taking Ms. Gallardo's tort recovery. *See Ahlborn*, 547 U.S. at 284-85.

The payment-recovery provision, 42 U.S.C. § 1396a(a)(25)(H), is an exception to this general rule, and it speaks directly to the question presented here. It requires States to provide by law that, "to the extent that payment *has been made* under the State plan for medical assistance *for health care items or services furnished* to an individual, the State is considered to have acquired the rights of such individual to payment by any other party *for such health care items or services*." 42 U.S.C. § 1396a(a)(25)(H) (emphasis added).

The relevant meaning of the word "such" is "[t]hat or those; having just been mentioned." *Black's Law Dictionary* 1570 (9th ed. 2009). "Such" as used in the payment-recovery provision thus plainly refers to those "health care items or services" that have just been mentioned: that is, those that have been "furnished" by the State to the recipient. Stated differently, the State acquires an individual's right to payment for medical expenses from a third party only to the extent that party is liable to pay for medical care for which "payment has been made" under the state Medicaid plan—that is, payment for *past* medical expenses—and *not* for "medical assistance … to be paid" in the *future*. *See* 42 U.S.C. §§ 1396a(a)(25)(H), 1396p(a)(1) (quoting).

The Eleventh Circuit's contrary reading of the payment-recovery provision—that it defines only which of its payments a State can recover, not what third-party payments it can recover from—cannot be squared with this plain statutory text.

B. The logic and result of this Court's *Ahlborn* decision reinforce what the statutory text makes clear.

The Medicaid Act's plain text is determinative. But if there is any doubt about what the text means, the logic and the result of this Court's decision in *Ahlborn* resolve it.

As Judge Wilson's dissent explains, the logic of *Ahlborn* is that the Medicaid Act limits a State to the portion of a tort recovery representing compensation for expenses borne by the State. Pet. App. 39-42. *Ahlborn* emphasized that it would make no sense, and would be "unfair," to allow the State to recover reimbursement for past medical expenses by taking

funds paid to compensate for *other* injuries borne by the recipient. 547 U.S. at 288. This Court illustrated its point with an example: a state-court worker's compensation case concluding that a State agency could not satisfy its lien out of loss-of-consortium damages because it would be "absurd and fundamentally unjust" for it to "share in damages *for which it has provided no compensation*." *Id.* at 288 n. 19 (emphasis added)(internal quotations omitted).

The logic of *Ahlborn* fits here. Just as a State cannot recover from the portion of a settlement allocated to loss-of-consortium damages because it has not paid for those injuries, it cannot recover for the portion of a settlement allocated to *future* medical expenses because it has not paid for those expenses either. Pet. App. 39-42 (Wilson, J. dissenting). Yet, that is exactly what the Eleventh Circuit permits: It "tells Florida that it can pocket funds marked for things it never paid for." *Id.* 28.

Not only does *Ahlborn*'s logic reinforce the plain text reading of the Medicaid Act, but the result in *Ahlborn* also compels it. *Id.* 43-47. The *Ahlborn* plaintiff's tort recovery included compensation for both past and *future* medical expenses. *Ahlborn*, 547 U.S. at 273. The parties stipulated to the amount representing *past* medical expenses. *Id.* at 274. This Court then used the term "medical expenses" to refer to that stipulated amount—i.e., to past, not future, medical expenses. *E.g., id.* at 280. And this Court ultimately held that the Medicaid Act prohibited the State from recovering anything more than the stipulated amount. *Id.* at 292.

What was clear to Judge Wilson from *Ahlborn* was also clear to the Florida Supreme Court in *Giraldo*.

There, all seven justices agreed that "the federal Medicaid Act prohibits [Florida] from placing a lien on the future medical expenses portion of a Medicaid recipient's tort recovery." 248 So. 3d at 56; *id.* at 57-58 (Polston, J., concurring). Six of the justices reasoned that *Ahlborn* appeared to "compel" this result, but even if it did not, the plain language of the Medicaid Act did. *Id.* at 56. The seventh justice reasoned, in a concurring opinion, that *Ahlborn* undoubtedly compelled this result. *Id.* at 57 (Polston, J., concurring).

C. The Eleventh Circuit's contrary arguments were mistaken.

The Eleventh Circuit did not conclude its interpretation was the best reading of the Medicaid statute's text. Instead, the Eleventh Circuit believed it was bound to put a thumb on the scale by applying a "presumption against preemption," and that the assignment/cooperation provision created enough ambiguity to preclude a finding of preemption here. Pet. App. 11, 14-23. Both steps of that analysis were erroneous.

1. The presumption against preemption does not support the Eleventh Circuit's decision.

This Court has sometimes applied a presumption against preemption when Congress has "legislated … in a field which the States have traditionally occupied." *Medtronic v. Lohr*, 518 U.S. 470, 485 (1996) (citation omitted). This presumption does not apply here, for two reasons.

First, this case does not concern "a field which the States have traditionally occupied." *Medtronic*, 518

U.S. at 485. This case concerns the scope of the State's authority and duty to pursue reimbursement of funds paid under a federal statutory program. As this Court has repeatedly held, "no presumption against pre-emption obtains" in such an "inherently federal" context. *Buckman Co. v. Plaintiffs' Legal Comm.*, 531 U.S. 341, 347-48 (2001); *see, e.g., United States v. Locke*, 529 U.S. 89, 108 (2000) ("[A]n 'assumption' of nonpre-emption is not triggered when the State regulates in an area where there has been a history of significant federal presence.").

Second, no presumption against preemption applies because the provisions of the Medicaid Act at issue here preempt state law *no matter how they are construed*. As this Court recognized in *Wos*, "the Medicaid statute sets both a floor and a ceiling on a State's potential share of a beneficiary's tort recovery." 568 U.S. at 633. If the minority view adopted by the Eleventh Circuit prevails, then every State *must* enact laws like Florida's, and State legislatures that have adopted the majority judicial interpretation—like California and West Virginia—will have their laws preempted. Because federal law will have preemptive effect no matter how the interpretative dispute is resolved, the presumption against preemption provides no assistance.

2. The assignment/cooperation provision does not support the Eleventh Circuit's decision.

The Eleventh Circuit read the assignment/cooperation provision as authorizing a State to impose a lien on the portion of a tort recovery compensating the beneficiary for *all* medical expenses—past or future. Pet. App. 15-20. The

Eleventh Circuit's isolated reading of this provision is wrong for at least three reasons.

First, as this Court observed in *Ahlborn*, the assignment/cooperation provision governs circumstances in which *the State*—not the beneficiary—brings an action to recover from a third party. 547 U.S. at 281; *see also* 42 U.S.C. §1396k(b) (referring to "any amount collected by the State under an assignment"). By its plain text, the assignment/cooperation provision applies only when a State sues tortfeasors or other responsible third parties in the name of the injured Medicaid beneficiary. 42 U.S.C. §1396k. It does not apply where, as here, "the State does not actively participate in the litigation." *Ahlborn*, 547 U.S. at 281; *see also Doe*, 54 A.3d at 482 (observing that the "plain terms" of the provision "governs assignments only"); *Tristani ex rel. Karnes v. Richman*, 652 F.3d 360, 382 (3d Cir. 2011) (Pollak, J., dissenting) (construing the assignment/cooperation provision to "evince[] a legislative intent that [the States] directly pursue liable third parties").

Second, even if the assignment/cooperation provision did apply, it simply "reiterate[s]" the more precise directive in the payment-recovery provision. *Ahlborn*, 547 U.S. at 276; *see also id.* at 281 (stating that the payment-recovery provision "echoes the requirement of a mandatory assignment of rights" in the assignment/cooperation provision). Read in context, the words of the assignment/cooperation provision—"payment for medical care"—speak to an assignment of rights for past medical care paid by Medicaid. *See* 42 U.S.C. §§ 1396a(a)(25)(A)-(B),(H); 1396k(a)-(b); 1396p(a)(1),(b)(1). The assignment/

cooperation provision merely grants the State the power to *control* the prosecution of the beneficiary's personal injury claim against the tortfeasor. In contrast, the payment-recovery provision *defines the payment, or the specific damages* (past medical expenses paid by Medicaid), which the State is entitled to collect from that claim, but it does not grant the State the power to control the prosecution of the claim.

The Eleventh Circuit's reading—that the assignment/cooperation provision requires a Medicaid beneficiary to assign *all* rights "to payment for medical care from any third party" with no temporal limitation, Pet. App. 20—does not make sense. It would amount to a lifetime assignment. A person who went on Medicaid as a teenager would have to assign the State her rights to all third-party payments for future medical care—including, for example, her right to reimbursement from her employer-provided insurance for a surgery performed decades later. The Eleventh Circuit's reading is also nonsensical because it means the assignment/cooperation provision compels an assignment of a beneficiary's rights to a tort recovery for future medical care for which Medicaid has not yet paid and may never pay at all.

Third, even if the Eleventh Circuit were correct that the payment-recovery and assignment/cooperation provisions conflict, the former provision would control as the more specific and later-enacted provision. *See D. Ginsberg & Sons v. Popkin*, 285 U.S. 204, 208 (1932) ("General language of a statutory provision, although broad enough to include it, will not be held to apply to a matter specifically dealt with

in another part of the same enactment."); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 330 (2012) (explaining that later-enacted laws "will often change the meaning that would otherwise be given to an earlier provision that is ambiguous"). As Judge Wilson explained, the payment-recovery provision "describes what happens when the state seeks to recover third-party payments for medical care that the state fronted for the recipient—exactly the issue presented here." Pet. App. 35. Thus, because the payment-recovery provision "comes closer to addressing the very problem posed by this case," it is "more deserving of credence." Scalia and Garner, *supra* 183.

The Eleventh Circuit placed outsized importance on the assignment/cooperation provision. That provision does not authorize a State to impose a lien on the portion of a tort recovery compensating the recipient for future medical care that has not been paid by Medicaid. The Eleventh Circuit's contrary decision is wrong.

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Scott L. Nelson
Public Citizen
Litigation Group
1600 20th Street NW
Washington, DC 20009
(202) 588-1000
snelson@citizen.org

Bryan S. Gowdy
Counsel of Record
Meredith A. Ross
Creed & Gowdy, P.A.
865 May Street
Jacksonville, FL 32204
(904) 350-0075
bgowdy@appellate-firm.com
mross@appellate-firm.com

Floyd Faglie
Staunton & Faglie, PL
189 E. Walnut Street
Monticello, FL 32344
(850) 997-6300
floyd@faglielaw.com

Counsel for Petitioner

March 9, 2021