No. 23-1275

In the Supreme Court of the United States

EUNICE MEDINA, INTERIM DIRECTOR, SOUTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES, PETITIONER

v.

PLANNED PARENTHOOD SOUTH ATLANTIC, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

To participate in the Medicaid program, States must submit and maintain a "plan for medical assistance" that satisfies a comprehensive list of federal requirements. 42 U.S.C. 1396a(a) and (b). One requirement is that state Medicaid plans must "provide" that "any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy, or person, qualified to perform the service or services required * * * who undertakes to provide him such services." 42 U.S.C. 1396a(a)(23)(A). The question presented is:

Whether Section 1396a(a)(23)(A) unambiguously confers on Medicaid beneficiaries an individual right enforceable against state actors in an action under 42 U.S.C. 1983.

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INTEREST OF THE UNITED STATES

This case concerns whether Medicaid beneficiaries have a right of action under 42 U.S.C. 1983 to challenge a State's administration of its Medicaid plan as inconsistent with 42 U.S.C. 1396a(a)(23). Substantial federal funding supports the Medicaid program. The statute directs the Secretary of Health and Human Services to review and approve state Medicaid plans if they comply with federal requirements including Section 1396a(a)(23), and to withhold federal funding if States fail to comply substantially with those requirements. See 42 U.S.C. 1396-1, 1396a(b), 1396c. The United States has a substantial interest in the manner in which Section 1396a(a)(23) is enforced.

INTRODUCTION

Section 1983 is a landmark civil-rights law that enables private plaintiffs to sue state actors for violating "rights * * * secured by the Constitution and laws" of the United States. 42 U.S.C. 1983. But, as this Court recently emphasized, federal-law guarantees do not support Section 1983 suits "as a matter of course." *Health & Hosp. Corp. of Marion County* v. *Talevski*, 599 U.S. 166, 183 (2023). Only provisions of federal law that "unambiguously secure[]" individual rights presumptively trigger Section 1983 suits, lest courts trench on Congress's constitutional role in creating causes of action. See *id.* at 186. Even then, express or implicit signs that "Congress did not intend" to allow for Section 1983 enforcement can defeat "unambiguous[]" rights-securing provisions. *Ibid.* (citation omitted).

Spending Clause legislation "in particular" must overcome a "significant hurdle." *Talevski*, 599 U.S. at 183, 184. Congress expected that "the typical remedy for state noncompliance" with such legislation would be for "the Federal Government to terminate funds to the State," not for private plaintiffs to bring Section 1983 suits. *Id.* at 183 (citation omitted). And States assume new responsibilities by accepting federal funds only if they received clear notice of the terms of the federal-State bargain, including the prospect of Section 1983 litigation.

Talevski clarified just how high the bar for Spending Clause legislation is. There, this Court relied on multiple statutory indicia to identify provisions of the Federal Nursing Home Reform Act as the kind of unmistakable standouts that can sustain Section 1983 suits. Congress collected those provisions in a subsection dedicated to "[r]equirements relating to residents' rights."

42 U.S.C. 1396r(c). Congress reiterated that those provisions concerned specific "rights" for individual nursing-home residents to be free from unnecessary restraints and improper discharges. Congress added numerous details associated with individual residents' health and medical needs. And Congress provided that the statutory enforcement remedies were "in addition to" other state and federal remedies, not limitations on them. 42 U.S.C. 1396r(h)(8). Since 1990, those are the only Spending Clause provisions that this Court has held create rights actionable under Section 1983. Courts should "tread carefully" before finding more. *Talevski*, 599 U.S. at 195 (Barrett, J., concurring).

Talevski makes clear that the Medicaid provision at issue—the so-called any-qualified-provider provision, 42 U.S.C. 1396a(a)(23)—is the non-actionable rule, not a special rights-creating exception. Congress included that provision alongside 86 others in an undifferentiated list describing the "[c]ontents" that "[a] State plan for medical assistance must" provide. 42 U.S.C. 1396a(a). Congress sandwiched Section 1396a(a)(23) between a provision that tells States how to describe medical personnel involved in plan administration and one mandating consultative services for healthcare providers. See 42 U.S.C. 1396a(a)(22) and (24). And Section 1396a(a)(23)(A) lacks the sort of unmistakable, repeat references to "rights" and individual conditions that the Court relied on in *Talevski*. The provision simply instructs State plans to "provide that (A) any individual eligible for medical assistance * * * may obtain such assistance from any institution * * * qualified" to provide it. 42 U.S.C. 1396a(a)(23).

Congress did not put States on notice that Section 1396a(a)(23) would expose them to potential Section

1983 liability by burying a special, privately enforceable right deep within Section 1396a(a) and failing to use the term "right" or other equally unmistakable rights-conferring language. Indeed, Section 1396a(a)(23) uses garden-variety Spending Clause language. Misclassifying it as a rights-creating rara avis would thus invite private enforcement of numerous Spending Clause statutes—exactly what this Court has warned against.

The United States previously advanced a different view of Section 1396a(a)(23). In a footnote in the amicus brief it filed in this Court in *Talevski* and in several amicus briefs in courts of appeals, the United States contended that the any-qualified-provider provision creates a right enforceable under Section 1983.[1] But *Talevski* has elucidated just how unmistakable and unusual rights-conferring statutes must be within the broader statutory context. After the change in Administration and in light of *Talevski*, the United States has concluded that Section 1396a(a)(23) does not create Section 1983-enforceable rights. Any contrary reading of Section 1396a(a)(23) would contravene *Talevski*'s admonitions about the rarity of rights-creating language and potentially greenlight private Section 1983 suits to enforce a dozen or more similar provisions.

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[1] U.S. Amicus Br. at 22 n.5, *Talevski*, *supra* (No. 21-806); U.S. Amicus Br. at 7-9, *Planned Parenthood of Gulf Coast, Inc.* v. *Gee*, 837 F.3d 477 (5th Cir. 2016) (No. 15-30987); U.S. Amicus Br. at 21-24, *Planned Parenthood Arizona Inc.* v. *Betlach*, 727 F.3d 960 (9th Cir. 2013) (No. 12-17558); U.S. Amicus Br. at 22-31, *Planned Parenthood of Ind., Inc.* v. *Commissioner of the Ind. State Dep't of Health*, 699 F.3d 962 (7th Cir. 2012) (No. 11-2464); U.S. Amicus Br. at 22-30, *Harris* v. *Olszewski*, 442 F.3d 456 (6th Cir. 2005) (No. 05-1047).

STATEMENT

1. Like all Spending Clause legislation, the federal Medicaid statute, 42 U.S.C. 1396 *et seq.*, is a bargain between Congress and the States. Since 1965, Congress has agreed to provide funding to the States for health care for low-income individuals. In exchange for federal funding, participating States must comply with certain federal requirements. See *Armstrong* v. *Exceptional Child Ctr., Inc.*, 575 U.S. 320, 323 (2015). Specifically, a State must receive the Secretary of Health and Human Services' approval of a "State plan for medical assistance" detailing the nature and scope of the State's Medicaid plan. 42 U.S.C. 1396a(a)(10)(A) and (b).

Section 1396a of the Medicaid statute comprehensively lists federal requirements for state Medicaid plans. Section 1396a(a)—entitled "Contents"—describes what a state plan "must" provide to obtain federal approval. 42 U.S.C. 1396a(a) and (b). Section 1396a(a) alone includes 87 detailed paragraphs that span over 15 pages of the U.S. Code, many of which include their own highly reticulated subparagraphs. Those 87 paragraphs address everything from general record-keeping practices to the manner of administering examinations for blindness. See, *e.g.*, 42 U.S.C. 1396a(a)(4) and (12).

The Secretary reviews the State's plan (and any subsequent amendments) for compliance with federal requirements. 42 U.S.C. 1316(a)(1) and (b), 1396a(b); 42 C.F.R. 430.10 *et seq.* Even after approval, the Secretary (through the Centers for Medicare & Medicaid Services) can review the administration of state Medicaid plans "to determine whether the State is complying with the Federal requirements and the provisions of its plan." 42 C.F.R. 430.32(a).

The statute and federal regulations provide for several enforcement mechanisms. If a State "fail[s] to comply substantially with any such provision" of Section 1396a in administering its plan, the Secretary "shall make no further payments to such State" until he is satisfied that the State has returned to compliance. 42 U.S.C. 1396c(2). By regulation, States must create administrative procedures for Medicaid providers to bring certain challenges. See, *e.g.*, 42 C.F.R. 1002.213. And States must create hearing systems through which individuals can bring challenges relating to their claims for eligibility or covered benefits under the plan. See 42 C.F.R. 431.201, 431.220.

This case concerns Section 1396a(a)'s twenty-third subsection, often called the "any-qualified-provider" provision or the "free-choice-of-provider" provision. See *Planned Parenthood of Greater Tex. Family Planning & Preventative Health Servs., Inc.* v. *Kauffman*, 981 F.3d 347, 354 (5th Cir. 2020) (en banc). Section 1396a(a)(23)(A) states:

> "A State plan for medical assistance must—
>
> * * *
>
> (23) provide that (A) any individual eligible for medical assistance * * * may obtain such assistance from any institution, agency, community pharmacy, or person, qualified to perform the service or services required * * * who undertakes to provide him such services."

42 U.S.C. 1396a(a)(23)(A). The statute does not define the word "qualified." Longstanding federal regulations, however, recognize States' authority to "set[] reasonable standards relating to the qualifications of providers." 42 C.F.R. 431.51(c)(2); see 43 Fed. Reg.

45,176, 45,189 (Sept. 29, 1978). The final lines of Section 1396a(a)(23) state that States need not provide payments to providers with certain felony convictions. 42 U.S.C. 1396a(a)(23). And a separate provision contemplates that "*[i]n addition to any other authority*, a State may exclude" any provider from Medicaid for certain reasons "for which the Secretary could exclude" the provider from participating in Medicare. 42 U.S.C. 1396a(p)(1) (emphasis added).

2. Respondent Planned Parenthood South Atlantic operates two clinics in South Carolina, at which it performs abortions. Pet. App. 6a. Planned Parenthood also provides other services at those two clinics, including contraceptive counseling and screenings for sexually transmitted infections. *Ibid.* Before 2018, South Carolina's Medicaid program covered non-abortion services at Planned Parenthood. *Id.* at 6a-7a.[2]

On July 13, 2018, the Governor of South Carolina issued an executive order directing the State's Department of Health and Human Services to: (1) deem all abortion clinics enrolled in the state Medicaid program "unqualified" to provide any family-planning services; (2) "immediately terminate" their enrollment in the program; and (3) deny any future enrollment applications that they might submit. Pet. App. 157a-159a. The order relied on a South Carolina law prohibiting the use of state funds to pay for abortions, explaining that "the payment of taxpayer funds to abortion clinics, for any purpose, results in the subsidy of abortion and the

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[2] Under the Hyde Amendment, federal Medicaid funds cannot be "expended for any abortion," except in the case of rape or incest or to save the life of the mother. Further Consolidated Appropriations Act, 2024, Pub. L. No. 118-47, Tit. V, §§ 506-507, 138 Stat. 703.

denial of the right to life." *Id.* at 157a-158a (citing S.C. Code Ann. § 43-5-1185 (2015)).

The South Carolina Department of Health and Human Services implemented the executive order by immediately terminating respondent Planned Parenthood South Atlantic's enrollment in the State's Medicaid program. Pet. App. 161a-162a. Pursuant to the executive order, the State determined Planned Parenthood "no longer [to be] qualified to provide services to Medicaid beneficiaries." *Id.* at 162a.

3. a. Respondents Planned Parenthood South Atlantic and Julie Edwards, a Planned Parenthood patient covered by Medicaid, sued South Carolina's Director of Health and Human Services under 42 U.S.C. 1983, seeking declaratory and injunctive relief. Pet. App. 128a-129a. Section 1983, however, supplies a private right of action only for plaintiffs who have been deprived of "rights * * * secured by the Constitution and laws." 42 U.S.C. 1983. Respondents identified 42 U.S.C. 1396a(a)(23) as the source of their putative federal right, contending that by terminating Planned Parenthood's participation as a provider in the State's Medicaid program, South Carolina abridged Medicaid beneficiaries' right to obtain care from the "qualified" provider of their choice. Pet. App. 130a.

The district court entered a preliminary injunction. Pet. App. 146a. The court first held that Section 1983 provides a private right of action for individual Medicaid beneficiaries to enforce the any-qualified-provider provision. *Id.* at 132a-136a. The court explained that only federal statutes that confer "a federal right, not simply a benefit or interest," are enforceable via Section 1983. *Id.* at 133a. The court concluded that the any-qualified-provider provision "unambiguously confers a

right upon Medicaid-eligible patients" like respondent Edwards to "obtain assistance from any qualified and willing provider." *Id.* at 134a.[3] The court further held that South Carolina likely abridged that right by terminating Planned Parenthood's participation as a Medicaid program provider. *Id.* at 138a-141a.

The court of appeals affirmed. Pet. App. 80a-125a. The court analyzed the right-of-action question by applying the three factors this Court articulated in *Blessing* v. *Freestone*, 520 U.S. 329, 340-341 (1997). Pet. App. 95a-98a. The court of appeals determined that Edwards had a right to sue because the any-qualified-provider provision (1) has an "unmistakable focus" on Medicaid-eligible individuals; (2) is not too "vague and amorphous" for courts to assess; and (3) imposes a "mandatory" obligation on States. *Ibid.* (citations omitted). The court also affirmed the district court's holding that respondents were likely to succeed on the merits of their underlying claim. *Id.* at 106a-117a.

Judge Richardson concurred separately to urge this Court to clarify the appropriate framework for determining whether statutory requirements are enforceable under Section 1983. Pet. App. 120a-125a.

b. While petitioner's petition for a writ of certiorari was pending, the district court granted summary judgment to respondents. Pet. App. 68a-79a. The court reiterated its conclusion that Edwards has a right of action under Section 1983 to enforce the any-qualified-provider provision, and it ruled for respondents on the merits of their claim. *Id.* at 74a-79a. After this Court

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[3] The district court did not consider, and respondents have not pressed, an argument that providers like respondent Planned Parenthood have a right of action under Section 1983 to enforce the any-qualified-provider provision.

denied petitioner's pending petition for a writ of certiorari, 141 S. Ct. 550, the district court entered a permanent injunction. Pet. App. 66a-67a.

The court of appeals affirmed the permanent injunction. Pet. App. 38a-65a. The court rejected petitioner's request to reconsider its prior holding that Edwards has a right of action under Section 1983. *Id.* at 51a-64a. Judge Richardson concurred in the judgment, asking anew for this Court to clarify the proper framework for deciding enforceability under Section 1983. *Id.* at 65a.

c. While petitioner's second petition for a writ of certiorari was pending, this Court decided *Health & Hospital Corp. of Marion County* v. *Talevski*, 599 U.S. 166 (2023), which clarified the proper framework for deciding whether a statute creates individual rights that are privately enforceable under Section 1983. *Talevski*, however, addressed provisions of the Federal Nursing Home Reform Act, not the Medicaid provisions at issue here. This Court then granted the pending petition filed by petitioner in this case, vacated the court of appeals' decision, and remanded for further proceedings in light of *Talevski*. 143 S. Ct. 2633.

d. After additional briefing and argument, the court of appeals again affirmed the district court's permanent injunction. Pet. App. 1a-36a. The court of appeals concluded that "*Talevski* did not change the law to an extent that would call [its] previous determinations into question." *Id.* at 12a. The court then analyzed Section 1396a(a)(23) "to determine whether it 'unambiguously creates § 1983-enforceable rights.'" *Id.* at 24a (quoting *Talevski*, 599 U.S. at 172) (brackets omitted). The court determined that Section 1396a(a)(23) does create such a right, relying on its references to "any individual" and

the entities that provide "him" with services. *Id.* at 25a (quoting 42 U.S.C. 1396a(a)(23)) (emphasis omitted).

The court of appeals rejected petitioner's contrary arguments. First, the court dismissed the argument that "the word 'right' cannot be found" in the statutory text, stating that "'magic words'" are not required. Pet. App. 26a (quoting *FAA* v. *Cooper*, 566 U.S. 284, 291 (2012)). Second, the court rejected petitioner's argument that Section 1396a(a)(23) is not sufficiently focused on individual rights because it is part of a list of state-plan requirements. *Id.* at 27a-29a. The court noted that this Court "has already held that a different funding condition enumerated in § 1396a(a) confers individual rights enforceable" under Section 1983. *Id.* at 27a (citing *Wilder* v. *Virginia Hospital Ass'n*, 496 U.S. 498, 509-510 (1990)). The court of appeals also noted that in a separate provision, 42 U.S.C. 1320a-2, Congress "rejected the view that its inclusion of an individual right in a list of requirements for a state plan" precludes the possibility of enforcement under Section 1983. *Id.* at 29a. Third, the court rejected petitioner's argument that the provision is not focused on individual rights because a State need only "comply substantially" to avoid the withholding of federal funding. *Id.* at 29a-31a. The court noted that both *Wilder* and *Talevski* concerned substantial-compliance regimes. *Ibid.* Petitioner did not reraise, and the court thus did not revisit, its previous holding that respondents prevailed on the merits of their claim because Planned Parenthood is a "qualified" provider.

Judge Richardson concurred in the judgment, explaining that although "*Talevski* suggests a different path" from *Wilder*, he was "bound to stand by" the court of appeals' "previous holding." Pet. App. 35a-36a.

SUMMARY OF ARGUMENT

I. In the past 40 years, this Court has found Spending Clause provisions to be sufficiently clear to create federally enforceable rights under Section 1983 only three times. See *Health & Hosp. Corp. of Marion County* v. *Talevski*, 599 U.S. 166 (2023); *Wilder* v. *Virginia Hosp. Ass'n*, 496 U.S. 498 (1990); *Wright* v. *City of Roanoke Redevelopment & Hous. Auth.*, 479 U.S. 418 (1987). The any-qualified-provider provision of the Medicaid statute, 42 U.S.C. 1396a(a)(23)(A), does not fit the mold, and it cannot be privately enforced through Section 1983 suits.

A. Section 1983 enables private plaintiffs to sue state actors for violations of "rights" conferred by federal laws. But federal laws do not ordinarily create Section 1983-enforceable rights. Only the rare statutory provisions that "unambiguously" confer individual rights are privately enforceable under Section 1983—and then, only if there are no countervailing signs that Congress sought to rule out Section 1983 suits. *Gonzaga Univ.* v. *Doe*, 536 U.S. 273, 283 (2002). Spending Clause statutes face a particularly "significant hurdle." *Talevski*, 599 U.S. at 184. Because the typical remedy for States' noncompliance with Spending Clause statutory requirements is the withholding of federal funding, this Court is especially loath to infer that such provisions confer privately enforceable rights. That "unambiguous conferral" requirement respects federalism interests that loom large in Spending Clause legislation, where States must be on clear notice of the conditions they agree to shoulder in exchange for federal funds. Requiring unmistakable evidence that Congress intended to create Section 1983-enforceable rights also guards against judicial encroachment into Congress's rights-creating

role, and prevents private plaintiffs from displacing the Executive as the primary enforcers of Spending Clause laws.

This Court's precedents offer guideposts about what features of Spending Clause provisions can clear the stringent rights-creating bar. In *Talevski*, this Court held that a nursing-home-specific law within the Medicaid statute conferred Section 1983-enforceable rights because Congress created a separate statutory section focused on "rights," and repeatedly referred to nursing-home "residents" and their "rights" in the provisions at issue. By contrast, provisions setting out generalized policies with which entities must comply to receive federal funding do not unambiguously create individual rights.

B. Applying these precepts, Section 1396a(a)(23) does not unambiguously confer any rights on individual beneficiaries enforceable via Section 1983. Whereas the nursing-home provisions in *Talevski* grouped rights-conferring provisions together in one place under a rights-focused heading, Section 1396a(a) lists 87 provisions of state-plan requirements without differentiation. Whereas the nursing-home provisions set rights-related provisions apart, Section 1396a(a)(23)'s any-qualified-provider provision falls partway through a long list, most of which are not even arguably rights-conferring.

Further, whereas the particular nursing-home provisions in *Talevski* repeatedly referred to "rights" and focused on specific aspects of patient care, Section 1396a(a)(23) never mentions "rights." Although the provision briefly mentions "individual[s]," individual Medicaid beneficiaries are not its primary focus. Rather, the provision instructs States on what must be included in

their Medicaid plans and directs the *Secretary* about what he must find in a state plan to approve it and continue federal funding. States also need to comply only "substantially," not perfectly, to maintain funding, showing that Section 1396a(a)(23) is more concerned with state decisionmaking in the aggregate. As *Talevski* underscores, Congress knew how to employ Section 1983-triggering language in another part of the Medicaid statute—but tellingly eschewed similar statutory words or structure here.

The line-drawing, litigation-inviting consequences of deeming Section 1396a(a)(23)'s any-qualified-provider provision to create a privately enforceable individual right also militate against doing so. Scattered throughout the list of 87 state-plan requirements are several other provisions whose phrasing resembles Section 1396a(a)(23). Other Spending Clause statutes use overlapping language. Finding the any-qualified-provider provision to be privately enforceable would invite private enforcement of those other provisions. Far from treading carefully before recognizing Section 1983-triggering rights, bringing Section 1396a(a)(23) within the fold could trigger recognition of a dozen or more similarly worded provisions.

Further counseling against finding a privately enforceable right in Section 1396a(a)(23), alternative enforcement mechanisms are available. The Secretary can of course withhold funding from States, in whole or in part. Federal regulations require a state administrative hearing process for providers excluded from Medicaid enrollment. And the Medicaid statute requires States to provide beneficiaries with an opportunity for an administrative hearing in certain circumstances.

II. The court of appeals' contrary conclusion that Section 1396a(a)(23) is privately enforceable under Section 1983 reflects multiple legal errors. Most significantly, the court parsed fragments of the any-qualified-provider provision—like the phrases "any individual" and "may obtain"—in isolation, but ignored the provision as a whole and broader statutory context. The court also misread this Court's decisions and 42 U.S.C. 1320a-2 as foreclosing all consideration of the provision's place in the statutory scheme. The court of appeals thus mistook a commonplace formulation for the exceptional case.

ARGUMENT

I. THE ANY-QUALIFIED-PROVIDER PROVISION DOES NOT CREATE INDIVIDUAL RIGHTS ENFORCEABLE UNDER 42 U.S.C. 1983

Private individuals seeking to enforce Spending Clause legislation through an action under 42 U.S.C. 1983 face a demanding bar: Congress must have unambiguously conferred individual federal rights in the statute. *Gonzaga Univ.* v. *Doe*, 536 U.S. 273, 280 (2002). That "stringent standard" will be satisfied only in the "atypical case." *Health & Hosp. Corp. of Marion County* v. *Talevski*, 599 U.S. 166, 183, 186 (2023). This case is not atypical. The Medicaid statute's any-qualified-provider provision, 42 U.S.C. 1396a(a)(23)(A), is buried in a long, undifferentiated list of requirements for state Medicaid plans, and its text lacks "explicit rights-creating" language. *Gonzaga*, 536 U.S. at 284.

A. Spending Clause Statutes Must Unambiguously Confer Individual Rights To Be Privately Enforceable Under Section 1983

1. Section 1983 creates a private cause of action against any person who, under color of state law, deprives another "of any rights, privileges, or immunities secured by the Constitution and laws." 42 U.S.C. 1983. Section 1983 thus authorizes suits against state actors who violate "rights" created by federal laws. See *Maine* v. *Thiboutot*, 448 U.S. 1, 4 (1980). Not every violation of a federal statute constitutes a deprivation of "rights" under Section 1983. See *Gonzaga*, 536 U.S. at 283. Instead, private plaintiffs cannot enforce a federal statute under Section 1983 unless the statute unmistakably "confer[s] individual rights upon a class of beneficiaries." *Id.* at 285. Even then, Section 1983 enforcement may be unavailable, if Congress signaled expressly or implicitly that it displaced the Section 1983 remedy with others. See *City of Rancho Palos Verdes* v. *Abrams*, 544 U.S. 113, 120 (2005).

Legislation enacted under the Spending Clause, U.S. Const. Art. I, § 8, Cl. 1, is particularly unlikely to confer enforceable individual rights. The "typical remedy for state noncompliance with" conditions imposed in Spending Clause legislation "is not a private cause of action for noncompliance but rather action by the Federal Government to terminate funds to the State." *Pennhurst State Sch. & Hosp.* v. *Halderman*, 451 U.S. 1, 28 (1981). Unless Congress "'speak[s] with a clear voice'" and "manifests an '*unambiguous*' intent to confer individual rights," a Spending Clause statute is not privately enforceable under Section 1983. *Gonzaga*, 536 U.S. at 280 (quoting *Pennhurst*, 451 U.S. at 17, 28, & n.21) (emphasis added).

2. That rigorous standard harks to similarly stringent rules in related contexts. Courts do not interpret statutes to abrogate States' sovereign immunity unless Congress makes "its intention unmistakably clear in the language of the statute." *Dellmuth* v. *Muth*, 491 U.S. 223, 228 (1989) (citation omitted). And only "explicit 'right- or duty-creating language'" suffices to show that Congress created a private right of action. *Gonzaga*, 536 U.S. at 284 n.3 (citing *Alexander* v. *Sandoval*, 532 U.S. 275, 288 (2001)). Those rules are rarely satisfied. The same is true here, not least because reading Spending Clause legislation to create rights privately enforceable via Section 1983 can raise similar concerns.

Start with federalism considerations. This Court has required Congress to speak clearly when its legislation disrupts the usual federal-State balance of power. See *Gregory* v. *Ashcroft*, 501 U.S. 452, 460 (1991). In Spending Clause programs like Medicaid, that balance is carefully tailored: the federal government establishes conditions for funding, but within those parameters, States generally have latitude to develop their own programs. See *Alexander* v. *Choate*, 469 U.S. 287, 303 (1985). Indeed, Spending Clause legislation operates "much in the nature of a contract." *Pennhurst*, 451 U.S. at 17. The "legitimacy" of the federal-State bargain "rests on whether the State voluntarily and knowingly accepts the terms of the 'contract.'" *Ibid.* A State cannot knowingly accept those terms if it "is unaware of the conditions or is unable to ascertain what is expected of it." *Ibid.* Congress is thus expected to "speak with a clear voice" before imposing a condition on federal funding. *Ibid.* The same degree of clarity is called for when the funding condition involves a grant of individual rights

that could expose States to private enforcement suits under Section 1983.

Requiring an unambiguous conferral of individual rights also alleviates potential "separation-of-powers concerns." *Gonzaga*, 536 U.S. at 286. Congress, not the judicial branch, has "primacy" over creating causes of action, and courts transgress that line by finding judicially enforceable rights where Congress leaves some doubt that it intended to create them. *Talevski*, 599 U.S. at 183. The rigorous standard of "unambiguous conferral" also safeguards the Executive's role as the primary enforcer of state compliance with federal funding conditions. See *ibid.* If Congress intends the Executive to share that enforcement with potentially millions of beneficiaries, Congress can be expected to say so clearly.

3. Earlier decisions of this Court appeared to "suggest that something less than an unambiguously conferred right" could still render Spending Clause provisions enforceable under Section 1983. *Gonzaga*, 536 U.S. at 282. In *Wilder* v. *Virginia Hospital Ass'n*, 496 U.S. 498 (1990), the Court reasoned that Spending Clause legislation could be enforceable under Section 1983 as long as the provision was "intend[ed] to benefit the putative plaintiff" and the plaintiff's asserted interest in the statute was not "too vague and amorphous" for courts to enforce. *Id.* at 509 (citations omitted). The Court's analysis in *Blessing* v. *Freestone*, 520 U.S. 329 (1997), also led some courts to permit private plaintiffs to enforce federal statutes under Section 1983 "so long as the plaintiff falls within the general zone of interest that the statute is intended to protect." *Gonzaga*, 536 U.S. at 283.

But in *Gonzaga*, the Court "repudiate[d] the ready implication of a § 1983 action that *Wilder*" and other

early cases exemplified. *Armstrong* v. *Exceptional Child Center, Inc.*, 575 U.S. 320, 330 n.* (2015). *Gonzaga* held that nothing "short of an unambiguously conferred right" could "support a cause of action brought under § 1983." 536 U.S. at 283. Only when the statutory "text and structure" unambiguously contain "explicit rights-creating" language and an "individual" focus can federal statutes conceivably create Section 1983-enforceable rights. *Id.* at 284, 286. Policy-focused language—like a provision that "[n]o funds shall be made available" to "any educational agency or institution which has a policy or practice of permitting the release of [students'] education records" without parents' written consent—fails that bar. *Id.* at 279 (quoting 20 U.S.C. 1232g(b)(1)).

Even after *Gonzaga* was decided in 2002, courts of appeals continued to mix statutory analysis of a particular provision with a more freewheeling inquiry into questions like whether Congress "intended that the provision in question benefit the plaintiff." *Planned Parenthood Arizona Inc.* v. *Betlach*, 727 F.3d 960, 966 (9th Cir. 2013) (quoting *Blessing*, 520 U.S. at 341), cert. denied, 571 U.S. 1198 (2014). This Court in *Talevski* put a stop to that approach, instructing that *Gonzaga* alone "sets the standard for determining when a Spending Clause statute confers individual rights." 599 U.S. at 193 (Barrett, J., concurring). *Talevski* emphasized how "stringent" that standard is, and how infrequently it will be met. *Id.* at 186 (majority opinion). Only in the "atypical case" will Spending Clause legislation clear the "significant hurdle" of an unambiguous conferral of individual rights. *Id.* at 183-184. Thus, "§ 1983 actions are the exception—not the rule—for violations of Spending Clause statutes." *Id.* at 193-194 (Barrett, J., concurring).

B. The Any-Qualified-Provider Provision Does Not Unambiguously Confer Individual Federal Rights

1. This Court's cases illustrate the hallmarks of unusual, rights-conferring provisions versus features that do not suffice.

On one end of the spectrum, *Talevski* exemplifies the "atypical case" where Congress clearly and unambiguously created individual-focused rights enforceable under Section 1983. 599 U.S. at 183. Again, *Talevski* involved two provisions of a statute governing nursing homes that Congress appended to the federal Medicaid statute. One required nursing homes to "protect and promote" residents' "right to be free from" certain "physical or chemical restraints." 42 U.S.C. 1396r(c)(1)(A)(ii). The second provided that nursing homes "must not transfer or discharge [a] resident" unless certain preconditions were satisfied. 42 U.S.C. 1396r(c)(2)(A) and (B). To parse those provisions, this Court began with their "place in the overall statutory scheme." *Talevski*, 599 U.S. at 184. Both provisions were housed in a subsection of the statute titled "Requirements *relating to residents' rights*." *Id.* at 184-185 (citations omitted). Zeroing in on the provisions' text, the Court observed that they made multiple references to an individual beneficiary (the "resident"), and several express references to "rights." *Ibid.* The Court held that the combined effect of the text and structure "inexorably" recognized individual rights enforceable under Section 1983. *Id.* at 192. Even then, the Court considered whether other statutory features rebutted that unambiguous rights-creating language by suggesting that Congress had ruled out Section 1983 remedies. *Id.* at 186-191.

Many other types of provisions fall short. Consider the provision in *Gonzaga*: "No funds shall be made

available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of [students'] education records * * * without the written consent of their parents." 20 U.S.C. 1232g(b)(1). That nondisclosure provision includes no "'rights-creating' language," "speak[s] only to the Secretary of Education," and concerns only whether entities have a generalized policy that would disqualify them from funding. *Gonzaga*, 536 U.S. at 287-288 (citation omitted). Further, institutions needed to comply only "substantially" to avoid termination of funding. *Id.* at 288. The absence of any mention of "rights," the provision's focus on the Secretary rather than individuals, and its placement in a substantial-compliance regime all foreclosed Section 1983 enforcement.

Or take the Medicaid provision in *Armstrong*, 42 U.S.C. 1396a(a)(30)(A), which requires state plans to "provide such methods and procedures" as necessary to assure that "care and services are available under the plan at least to the extent * * * available to the general population in the geographic area." In a footnote, *Armstrong* explained that the medical-provider plaintiffs had not tried to bring a suit under Section 1983, even though *Wilder* had found a privately enforceable right for a nearby Medicaid provision requiring state plans to provide "for payment" of certain services through "reasonable and adequate" reimbursement rates. 575 U.S. at 330 n.*; 42 U.S.C. 1396a(a)(13)(A) (1982).[4] The Court approved of that strategic decision "since our later opinions plainly repudiate the ready implication of a § 1983 action that *Wilder* exemplified." 575 U.S. at 330 n.*.

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[4] The provision in *Wilder* has since been repealed. See Balanced Budget Act of 1997, Pub. L. No. 105-33, § 4711, 111 Stat. 507-508.

2. Applying those precedents, the any-qualified-provider provision of the Medicaid statute, 42 U.S.C. 1396a(a)(23)(A) cannot surmount the "demanding bar" for unmistakably clear, rights-conferring language. *Talevski*, 599 U.S. at 180. The statutory "text and structure" do not reveal the requisite unambiguous conferral of individual rights. *Gonzaga*, 536 U.S. at 286.

a. The Court in *Talevski* began by focusing on the FNHRA provisions' "place in the overall statutory scheme." 599 U.S. at 184 (citation omitted). The Court observed that the provisions were set off from the rest of the statute in a subsection expressly titled "Requirements *relating to residents' rights*." *Ibid.* (quoting 42 U.S.C. 1396r(c)). That distinctive place in the statute was, at the outset, "indicative of an individual rights-creating focus." *Ibid.* (citation omitted).

Beginning in the same place here, the any-qualified-provider provision lacks any special, distinctive place in Section 1396a(a). The any-qualified-provider provision is housed in 42 U.S.C. 1396a, a section titled "State plans for medical assistance." Subsection (a) of that statute, titled "Contents," includes 87 paragraphs of requirements for state Medicaid plans, of which the any-qualified-provider provision is number 23. See 42 U.S.C. 1396a(a)(1)-(87). Those paragraphs are not arranged in any discernible order, let alone under subheadings that mention "rights." See 42 U.S.C. 1396a(a).

Many of the surrounding 86 paragraphs in 42 U.S.C. 1396a(a) lack even arguably rights-conferring language. For example, paragraph (a)(58) requires state plans to provide for the development of a certain "written description of the law of the State." 42 U.S.C. 1396a(a)(58). And paragraph (a)(6) requires state plans to "provide that the State [Medicaid] agency will make

such reports, in such form and containing such information, as the Secretary may from time to time require." 42 U.S.C. 1396a(a)(6). That is simply a reporting requirement—a generalized "'policy or practice'" of the sort this Court held does not confer individual rights. *Gonzaga*, 536 U.S. at 288-289. Section 1396a(a) includes many other similarly generalized policies.[5] Some were added in the same amendments as the any-qualified-provider provision. See, *e.g.*, Social Security Amendments of 1967, Pub. L. No. 90-248, §§ 227-229, 81 Stat. 903-905. Paragraph (a)(24), for example, requires state plans to "provide for consultative services by health agencies" to "hospitals, nursing homes," and other institutions. § 228(a)(3), 81 Stat. 904 (codified as amended at 42 U.S.C. 1396a(a)(24)).

It is not apparent why Congress would have buried a rights-conferring provision deep within a long list riddled with generalized policies. If Congress intended to single out the any-qualified-provider provision as the "atypical case," one would expect the statutory structure to reflect that choice, as in *Talevski*.

b. Section 1396a(a)(23)'s place in the broader Medicaid statute reinforces its lack of special, Section 1983-enforceable features. This Court has already observed that provisions in a substantial-compliance regime for States are less likely to trigger Section 1983. *Gonzaga*, 536 U.S. at 288. A substantial-compliance regime tends to indicate a focus on the "aggregate practices" of the

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[5] See, *e.g.*, 42 U.S.C. 1396a(a)(1) (State plan must "provide that" it "shall be in effect in all political subdivisions of the State"); 42 U.S.C. 1396a(a)(59) (State must "maintain a list" of "all physicians who are certified to participate under the State plan"); 42 U.S.C. 1396a(a)(71) (State plan must "provide that the State will implement an asset verification program").

funding recipient, not "whether the needs of any particular person have been satisfied." *Does* v. *Gillespie*, 867 F.3d 1034, 1042 (8th Cir. 2017) (citation omitted); *Gonzaga*, 536 U.S. at 288 (citation omitted).

The Medicaid statute is a case in point: a State need only "comply substantially" with Section 1396a(a) requirements to continue receiving federal funding. 42 U.S.C. 1396c(2). Congress has even authorized the Secretary to waive entirely States' compliance with Section 1396a(a) requirements under certain circumstances. *E.g.*, 42 U.S.C. 1315(a)(1) (authorizing waivers for States to conduct pilot projects). As in *Gonzaga*, the fact that Congress tied federal funding to substantial compliance with Section 1396a(a)(23) and its brethren—and permitted States not to comply at all if the Secretary grants a waiver—undercuts the inference that Section 1396a(a)(23) unambiguously secures individual rights.

c. In *Talevski*, the Court then evaluated the text of the at-issue provisions alongside their place in the statutory scheme. See 599 U.S. at 185. There, the recurrent references to "rights" in various levels of subprovisions—and to "residents" in the specific provisions—showed that Congress was unmistakably conferring Section 1983-enforceable rights. That same approach yields the opposite inference here: Section 1396a(a)(23)'s text, read in context, does not confer individual rights with the requisite clarity.

First, Section 1396a(a)(23) lacks "explicit rights-creating" language. *Gonzaga*, 536 U.S. at 284. Again, the nursing-home provisions in *Talevski* were replete with references to "rights": nursing homes were required to protect "the *right* to be free from" certain restraints, and the provisions were nestled within subheadings concerning "requirements *relating to*

residents' rights" and "transfer and discharge *rights*." 599 U.S. at 184-185 (brackets and citations omitted). But Section 1396a(a)(23)'s any-qualified-provider provision never mentions "rights," let alone repeatedly. While "rights" is not a magic word, the dearth of even synonyms for "rights" in Section 1396a(a)(23) makes it harder to read the provision to unambiguously confer them.

The closest that Section 1396a(a)(23) comes is the phrase "may obtain": state plans must provide that an eligible individual "*may obtain*" care from "any institution," "qualified to perform the service" required, "who undertakes to provide him such services." 42 U.S.C. 1396a(a)(23)(A) (emphasis added); see Br. in Opp. 25. In isolation, that phrase could be read as a freestanding guarantee that beneficiaries "may obtain" medical care from their choice of qualified provider. But other parts of the text undercut that reading.

Section 1396a(a)(23) lacks an "unmistakable focus on the benefited class." *Talevski*, 599 U.S. at 186 (citation omitted). In *Talevski*, the nursing-home provisions at issue, found in Section 1396r, were not directives to States about what to include in plans or instructions to the Secretary about preconditions State plans had to meet to obtain approval. Those provisions instead described "rights" for individual nursing-home patients throughout. Here, however, while Section 1396a(a)(23) mentions "individual[s]" who benefit from the federal-State bargain to furnish medical care, individual beneficiaries are not the focus in the same way. Read as a whole, Section 1396a(a)(23) is directed to two other actors: the States and the Secretary.

As to the States, all of Section 1396a(a) instructs States what the required "Contents" of their state plans

must be. Language in Section 1396a(a)(23) shifts the focus to States further, granting them the authority to decline to provide payments to certain providers "convicted of a felony" and to "determine[]" which felony convictions should qualify. See 42 U.S.C. 1396a(a)(23).

Meanwhile, Section 1396a is ultimately directed to the Secretary of HHS, since the provision's reticulated prescriptions for plans tell the Secretary what to look for before approving a State plan. See 42 U.S.C. 1396a(b)) ("The Secretary shall approve any plan which fulfills the conditions specified in subsection (a)."); see *Gillespie*, 867 F.3d at 1041. That feature of the statute led a plurality of this Court in *Armstrong* to conclude that a nearby provision, 42 U.S.C. 1396a(a)(30)(A), "is phrased as a directive to the federal agency charged with approving state Medicaid plans, not as a conferral of the right to sue upon the beneficiaries." 575 U.S. at 331 (plurality opinion). In sum, the any-qualified-provider provision "serve[s] primarily to direct the Federal Government's distribution of public funds." *Talevski*, 599 U.S. at 183-184 (brackets and citation omitted).

Congress could have taken another approach. As *Talevski* illustrates, even within the Medicaid framework, Congress knows how to create individual rights. The FNHRA is part of the Medicaid statute, and state plans must provide for compliance with its provisions to be approved by the Secretary. See 42 U.S.C. 1396a(a)(28)(A). But Congress did not purport to confer individual rights through that state-plan requirement. Instead, Congress created a separate, separately subtitled provision focused expressly on rights, see *Talevski*, 599 U.S. at 184, and cross-referenced that section in the state-plan requirements for purposes of the Secretary's evaluation of plan compliance. Had Congress wanted to

create similarly enforceable individual rights to choose any qualified provider, Congress could have taken the same tack.

C. Finding A Privately Enforceable Individual Right In This Case Would Create Line-Drawing Problems

If Section 1396a(a)(23) creates privately enforceable rights, many analogous provisions sprinkled throughout the Medicaid statute and similar federal benefits programs presumptively might as well. Far from being "atypical" exceptions, rights-creating provisions could swallow the "rule," contravening this Court's admonitions in *Talevski*, 599 U.S. at 183; *id.* at 193 (Barrett, J., concurring). Other Spending Clause statutes likewise include state-plan requirements that refer to "individuals" and their benefits. But respondents offer no principled way to draw lines between which of those provisions confer individual rights and which do not. That respondents' theory could potentially make many other Spending Clause provisions privately enforceable is an additional reason to reject it, given *Talevski*'s directive that Section 1983 enforcement of Spending Clause legislation is meant to be atypical.

Scattered among the generalized state-plan policies in Section 1396a are several other provisions that, like Section 1396a(a)(23)'s any-qualified-provider provision, refer to "individual" beneficiaries. For example, paragraph (a)(12) requires Medicaid plans to "provide that, in determining whether an individual is blind, there shall be an examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select." 42 U.S.C. 1396a(a)(12). Like the any-qualified-provider provision, paragraph (a)(12) references an "individual" and suggests that the plan must provide that he "*may* select" the eye specialist of his

choice. If the words "individual" and "may" suffice to unambiguously confer Section 1983-enforceable rights in paragraph (a)(23)'s any-qualified-provider provision, then presumably they would unambiguously confer rights in paragraph (a)(12), too.

Other provisions with similar phrasing crop up amidst Section 1396a(a)'s 87 paragraphs in no discernible order. See pp. 22-23, *supra*. Take paragraph (a)(3), which requires state plans to "provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for medical assistance under the plan is denied or not acted upon with reasonable promptness." 42 U.S.C. 1396a(a)(3). Or paragraph (a)(26): state plans must provide, "with respect to each patient receiving" certain services, for "a written plan of care." 42 U.S.C. 1396a(a)(26). Or consider paragraph (a)(53): state plans are to provide "for notifying in a timely manner all [eligible] individuals" of "the availability of benefits furnished by the special supplemental nutrition program." 42 U.S.C. 1396a(a)(53).

Other examples include paragraph (a)(32), which requires States to provide that "no payment" for care "provided to an individual shall be made to anyone other than such individual," or paragraph (a)(84), which requires state plans to provide that they will not terminate coverage "for an individual who is an eligible juvenile" because he is "an inmate of a public institution." 42 U.S.C. 1396a(a)(32); 42 U.S.C. 1396a(a)(84) (2018); see Pet. Br. 37-40.

Under respondents' theory, these provisions would also trigger Section 1983. And the line-drawing difficulties these provisions present under that approach are already apparent. Lower courts have found some of those provisions to be rights-conferring, but others not

to be. See, *e.g.*, *Shakhnes* v. *Berlin*, 689 F.3d 244, 247 (2d Cir. 2012) (finding a privately enforceable right in paragraph (a)(3)), cert. denied, 569 U.S. 918 (2013); *Aliser* v. *SEIU California*, 419 F. Supp. 3d 1161, 1168 (N.D. Cal. 2019) (holding that paragraph (a)(32) "does not create an individually enforceable right").

Treating Section 1396a(a)(23) as a Section 1983-enforceable provision would open the door for similar provisions—and the attendant line-drawing problems—in other Spending Clause statutes. The Food and Nutrition Act of 2008, 7 U.S.C. 2011 *et seq.*, includes a long list of state-plan requirements mentioning individual "households," including that the State shall "promptly determine the eligibility of each applicant household" for supplemental nutrition assistance benefits. 7 U.S.C. 2020(e)(3); see *Briggs* v. *Bremby*, 792 F.3d 239 (2d Cir. 2015) (finding Section 1983-enforceable right). The federal adoption-assistance statute requires state plans to, among other things, provide for a "fair hearing" to "any individual" whose claim for benefits is denied or not acted upon with "reasonable promptness." 42 U.S.C. 671(a)(12); see *ASW* v. *Oregon*, 424 F.3d 970, 978 (9th Cir. 2005) (finding Section 1983-enforceable right), cert. denied, 549 U.S. 812 (2006). And other benefits statutes require state plans to provide that assistance "shall be furnished with reasonable promptness to all eligible individuals." *E.g.*, 42 U.S.C. 302(a)(8), 1202(a)(11). Those provisions also mention individual beneficiaries and specific benefits. Respondents' theory offers no way to distinguish between these provisions. And those broad consequences for analogous provisions suggest that Section 1396a(a)(23) cannot qualify as the "atypical case" of a privately enforceable Spending Clause provision. See *Talevski*, 599 U.S. at 183.

D. Other Enforcement Mechanisms Protect Beneficiaries

Just because Section 1396a(a)(23) is not privately enforceable does not leave beneficiaries without protection. Alternative enforcement mechanisms protect individual beneficiaries' interests, both with respect to the any-qualified-provider provision and other similarly worded state-plan provisions. If anything, those mechanisms cut further against the notion that Congress unmistakably designated Section 1396a(a)(23) as a trigger for Section 1983 suits. The existence of an alternative "mechanism that Congress chose to provide for enforcing" certain provisions "buttresse[s]" the "conclusion that [those] provisions fail to confer enforceable rights." *Gonzaga*, 536 U.S. at 289.

The primary enforcement mechanism for Spending Clause legislation is the termination of federal funding. *Talevski*, 599 U.S. at 183; see 42 U.S.C. 1396c(2). In addition, the Secretary has rejected plan amendments that fail to satisfy the any-qualified-provider provision and leave individual beneficiaries with insufficient choice among qualified providers. See, *e.g.*, Letter from Thomas A. Scully, Admin., Dep't of Health & Human Servs., to Kathryn A. Plant, Dir., N.J. Div. of Med. Assistance & Health Servs. (Sept. 19, 2002).

The Secretary has also required States to give providers the right to an administrative appeal of their exclusion from Medicaid. See 42 C.F.R. 1002.213. Respondents contend that it would have been futile for Planned Parenthood to pursue such an appeal given that South Carolina terminated its enrollment pursuant to state law. Br. in Opp. 15 n.2. But predicted outcomes in individual cases do not make the procedure an ineffective remedy across the board. States terminate providers' participation in Medicaid for different rea-

sons, many of which are well suited to challenge in the administrative appeals process. The existence of that alternative mechanism for challenging the termination of a particular provider thus "buttresse[s]" the conclusion that Congress did not intend to create a privately enforceable right for beneficiaries under Section 1983. *Gonzaga*, 536 U.S. at 289.

Given the availability of alternative remedies, finding a Section 1983-enforceable right in this case "would result in a curious system" of duplicative enforcement. *Gillespie*, 867 F.3d at 1041; see Pet. Br. 42-43. Providers would be able to challenge their disqualification in state administrative proceedings while individuals were challenging the same decision in federal court, potentially rendering conflicting decisions. See *ibid.* Subjecting States to competing litigation might also "dissuade state officials from making decisions that they believe to be in the public interest" when amending or implementing their Medicaid plans. *Gee* v. *Planned Parenthood of Gulf Coast, Inc.*, 586 U.S. 1057, 1058 (2018) (Thomas, J., dissenting from denial of certiorari).

For other state-plan provisions that mention "individuals," see pp. 27-29, *supra*, additional enforcement mechanisms may be available. For example, Section 1396a(a)(3) requires state plans to provide for fair hearings for individuals whose claims for medical assistance are denied. 42 U.S.C. 1396a(a)(3). By federal regulation, state fair-hearing systems must "meet the due process standards set forth in *Goldberg* v. *Kelly*, 397 U.S. 254 (1970)," 42 C.F.R. 431.205(d), and provide the opportunity for a hearing when an individual claims that the State has erroneously terminated, suspended, or reduced his Medicaid benefits or eligibility, 42 C.F.R. 431.201, 431.220. And as those federal regulations

reflect, the Due Process Clause independently requires notice and a fair hearing before States can deprive individuals of particular entitlements. See *Goldberg*, 397 U.S. 254. Rejecting respondents' broad theory of private enforcement here thus would not leave individual beneficiaries without a remedy.

II. THE COURT OF APPEALS ERRED IN FINDING AN INDIVIDUAL FEDERAL RIGHT

The Fourth Circuit's decision allowing respondents' Section 1983 action misapplied this Court's cases and contravened this Court's recent admonitions about the rarity of rights-conferring provisions. The court focused on isolated language in the any-qualified-provider provision's text but failed to properly consider how Section 1396a(a)(23) fits within Section 1396a(a) and the Medicaid statute writ large.

1. Courts "must read the words Congress enacted 'in their context and with a view to their place in the overall statutory scheme.'" *Turkiye Halk Bankasi A.S.* v. *United States*, 598 U.S. 264, 275 (2023) (citation omitted). Thus, as noted, *Talevski* first examined the broader statutory scheme governing nursing homes before discussing how the at-issue provisions fit within that scheme. 599 U.S. at 184-185.

Here, however, the court of appeals below focused narrowly on Section 1396a(a)(23)'s references to "any individual" and that eligible individuals "may obtain" medical assistance from qualified providers. Pet. App. 25a. Even if that language, in isolation, could be read to confer individual rights, additional statutory context dispels any inference that Congress *unambiguously* conferred privately enforceable individual rights. The any-qualified-provider provision is simply one of a long list of conditions that the Secretary must find to be

satisfied before approving state Medicaid plans, and there are other ways of ensuring that Medicaid recipients have a choice of qualified providers. See pp. 30-31, *supra*.

By ignoring the provision's place in the broader statute, the court of appeals failed to follow *Talevski*'s mode of analysis and violated the basic rule that "the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *King* v. *Burwell*, 576 U.S. 473, 492 (2015) (citation omitted).

2. The court of appeals discounted broader evidence that Section 1396a(a)(23) does not confer privately enforceable rights based on an erroneous view of this Court's precedents and a 1994 statute. See Pet. App. 27a-31a.

The court of appeals downplayed the any-qualified-provider provision's place in the broader statute because the Court in *Wilder* "already held that a different funding condition enumerated in § 1396a(a) confers individual rights enforceable via 42 U.S.C. § 1983." See Pet. App. 27a-28a. As discussed, *Wilder*'s reasoning has been repudiated. See p. 21, *supra*. *Wilder* supplies a cautionary tale, not interpretive instruction.

The court of appeals also invoked a separate statutory provision, 42 U.S.C. 1320a-2, which provides, in relevant part:

> In an action brought to enforce a provision of [the Social Security Act], such provision is not to be deemed unenforceable because of its inclusion in a section of this chapter requiring a State plan or specifying the required contents of a State plan. This section is not intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by

> overturning any such grounds applied in Suter v. Artist M., 112 S. Ct. 1360 (1992), but not applied in prior Supreme Court decisions.

Ibid. The court of appeals seemed to read Section 1320a-2 as a directive to consider whether a provision, in isolation, "speak[s] in clear and unambiguous terms," Pet. App. 29a, and to place no weight on whether the provision is a state-plan requirement. That was error. Section 1320a-2 prohibits courts from deeming provisions unenforceable under Section 1983 merely because of their inclusion in a state plan. See *Midwest Foster Care & Adoption Ass'n* v. *Kincade*, 712 F.3d 1190, 1200 (8th Cir. 2013). It does not require courts to ignore entirely the contextual significance of a provision's placement in a list of state-plan requirements.

For similar reasons, the court of appeals was wrong to dismiss the argument that "the overlay of a substantial compliance regime indicates" that Section 1396a(a)(23) "has an aggregate rather than individual focus." Pet. App. 30a. The court noted that *Wilder* and *Talevski* both involved provisions within substantial-compliance regimes. *Ibid.* But again, *Wilder* supplies no interpretive guidance. And *Talevski* did consider broad features of the Medicaid program, including that the typical remedy for noncompliance with state-plan requirements is to cut off federal funds. 599 U.S. at 181-182. The Court simply found those features outweighed by the FNHRA's recurrent, explicit textual and structural focus on individuals and their "rights." See *id.* at 183. *Talevski* thus shows that courts should consider the broader statutory context; what courts cannot do is treat placement in a list of state-plan requirements as the beginning and end of the analysis.

3. In an earlier decision, the court of appeals also misread this Court's decision in *O'Bannon* v. *Town Court Nursing Center*, 447 U.S. 773 (1980). See Pet. App. 62a-63a.[6] The court of appeals stated that to the extent *O'Bannon* is relevant, it "supports the existence of a private right," because of a statement in the decision that Section 1396a(a)(23) gives Medicaid recipients "'the *right* to choose among a range of qualified providers.'" Pet. App. 62a-63a (quoting *O'Bannon*, 447 U.S. at 787) (emphases added and omitted).

The court of appeals read *O'Bannon*'s language out of context. *O'Bannon* was a due-process case, not a Section 1983 right-of-action case. The Court held that Pennsylvania did not violate the Due Process Clause by terminating a nursing home's participation in the state Medicaid plan without first holding a hearing, because Section 1396a(a)(23) does not create a cognizable property interest for Medicaid recipients "to enter an unqualified home and demand a hearing to certify it." *O'Bannon*, 447 U.S. at 785. As an aside, *O'Bannon* observed that Section 1396a(a)(23) purportedly did create "the right to choose among a range of *qualified* providers." *Ibid.* But to the extent *O'Bannon* was recognizing any "right" in that passage, it was a property interest sounding in due process, not an unambiguous conferral of a Section 1983-enforceable statutory right.

Moreover, read in context, *O'Bannon*'s discussion of rights actually cuts against finding a privately enforceable right here. For purposes of due process, *O'Bannon* held that Section 1396a(a)(23) "clearly does not confer"

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[6] The court of appeals discussed *O'Bannon* in its second decision, which this Court subsequently vacated in light of *Talevski*. See Pet. App. 62a-63a. The court of appeals then declined to revisit its "previous determinations" on remand. *Id.* at 12a.

the very right that respondents assert here: the right to challenge a State's termination of a particular provider as unqualified. 447 U.S. at 785-786. It would make little sense to interpret the same provision as "unambiguously" conferring an individual right to bring such a challenge via Section 1983.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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FEBRUARY 2025