No. 24-1110

IN THE

Supreme Court of the United States

SAINT ANTHONY HOSPITAL,

Petitioner,

v.

ELIZABETH M. WHITEHORN, IN HER OFFICIAL CAPACITY AS DIRECTOR OF THE ILLINOIS DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY BRIEF FOR PETITIONER

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REASONS TO GRANT THE PETITION

Saint Anthony Hospital's Petition asked the Court to grant, vacate, and remand because the Court's then-anticipated ruling in *Medina v. Planned Parenthood South Atlantic*, 145 S. Ct. 2219 (2025), was expected to resolve the conflict between the majority and dissenting opinions below over whether *Wilder v. Virginia Hospital Association*, 496 U.S. 498 (1990), provides guidance for this case. This is Petitioner's first opportunity to address *Medina*.

Petitioner now asks the Court to grant plenary review because *Medina* further changes the evolving standards that have governed whether there is an individual right to sue in Spending Clause cases, with continuing uncertainty. This case presents an excellent opportunity to address the resulting uncertainties.

Medina did not expressly overrule *Wilder*. It said that lower courts should "resist the impulse" to consider its reasoning. 145 S. Ct. at 2234. *Medina* added a contract-based analysis largely absent in prior cases in the modern era. It creates doubt about whether traditional tools of statutory construction continue to apply, even though the Court's two pre-*Medina* Spending Clause decisions (that the Court applies in *Medina*) held that they do. *See Hosp. Corp. of Marion Cnty. v. Talevski*, 599 U.S. 166, 183 (2023); *Gonzaga Univ. v. Doe*, 536 U.S. 273, 283, 285–86 (2002). After *Medina,* lower courts will be in doubt on the proper application of traditional tools of statutory construction, including context, statutory text, legislative history, and other statements of legislative intention.

Most importantly, *Medina* does not tell lower courts how to apply the contract principles now emphasized. Review should be granted to clarify these issues.

A. Petitioner is Entitled to Seek Plenary Review.

This is not a case in which the Court granted a petition but held it pending decision in *Medina*. Rather, the Court decided *Medina* during the normal certiorari briefing process. Even had the Court granted the Petition and held it pending *Medina*, plenary review would be appropriate where intervening circumstances warrant, as here. *See* Stephen M. Shapiro et al., *Supreme Court Practice* § 6.31(E) (11th ed. 2019) ("Once the decision for which a petition is being held is issued, the petitioner may wish to submit a short supplemental brief explaining why plenary review is warranted rather than a GVR order in light of the new decision[.]"). Rather than submit a supplemental brief, Petitioner addresses the new issues in this Reply.

Resolving uncertainty in the Court's rulings is an established basis to grant review. *See id.*, § 4.5, citing *Gonzaga* as warranting plenary review when prior decisions left ambiguity in the controlling law: "*Gonzaga Univ. v. Doe*, . . . (certiorari granted 'to resolve conflict among the lower courts and in the process resolve any ambiguity in our own opinions')"; "*Gonzaga* . . . (certiorari granted in part to 'resolve any ambiguity in our opinions' which the Court conceded 'may not be models of clarity')."

B. *Medina* Did Not Resolve Uncertainty in the Controlling Law.

The responses to Saint Anthony's Petition rely heavily on *Medina*. But *Medina* leaves unanswered questions that the Court should resolve in this case.

It is not surprising that *Gonzaga* is a leading precedent for granting review to resolve ambiguities in the Court's decisions, because the Court's standards governing individual rights to sue in Spending Clause-based litigation have continually evolved. *Medina* describes the changes from *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1 (1981), through *Talevski*. *See* 145 S. Ct. 2233–34 ("Admittedly, this Court briefly experimented with a different approach, and that fact has given rise to some confusion in the lower courts."). *Wilder* is cited as one of the decisions embodying the different approach. *Id.* at 2234.

Medina cites *Gonzaga* and *Talevski* for the requirement of clear rights-granting language to give rise to an individual right. *Id.* at 2233–34. But it does not resolve *Wilder*'s continuing relevance because *Gonzaga* (which *Medina* says states controlling principles) validated the result in *Wilder*. *Gonzaga* said this about *Wilder*:

> [I]n *Wilder* . . . we allowed a § 1983 suit brought by health care providers to enforce a reimbursement provision of the Medicaid Act, on the ground that the provision . . . explicitly conferred specific monetary entitlements upon the plaintiffs. *Congress left no doubt of its intent for private enforcement, we said,*

> *because the provision required States to pay an "objective" monetary entitlement to individual health care providers, with no sufficient administrative means of enforcing the requirement against States that failed to comply.*

536 U.S. at 280–81 (emphasis added). An objective entitlement is found in the prompt payment entitlement in this case. *See* Petition 6–7 and below. *Medina* does not explain how lower courts are to deal with the fact that *Gonzaga* says that the result in *Wilder* was right, but the reasoning was not. *Medina* rejects *Wilder*'s description of the standard, but not its outcome. *Gonzaga* says the statute in *Wilder* (which is indistinguishable from the one here in stating an unequivocal, "objective" entitlement of individual health care providers to timely payment) passes the *Gonzaga* test.

Also unresolved after *Medina* is how its focus on the Federal-State contract interacts with the requirement of individual-right-granting-language, and traditional tools of statutory construction. As discussed below, the contract analysis supports an individual right in this case.

Medina raises doubt about the continuing relevance of traditional tools of statutory construction that *Gonzaga* and *Talevski* said remain relevant. While *Medina* suggests that they are of little or no relevance, it does not answer the question. *See* 145 S. Ct. at 2236 ("speculation about what Congress may have intended matters far less than what Congress actually enacted"). Among the traditional tools is legislative history. *Medina* does not provide clear guidance on when legislative history and intent are relevant or how to use them with its contract-based

analysis of the relevant statute. This case presents a good opportunity to address these issues because there is abundant evidence that Congress intended the prompt payment rules to be individually enforceable, and there is also clear evidence that the State knew that was part of the deal it accepted, which is the central element of the Court's contract law approach.

C. The State-Federal Contract Relationship Supports an Individual Right to Sue.

Medina emphasizes the need to focus on the terms of the "bargain" that "Medicaid offers States" to determine whether the States agreed to accept individual enforcement as part of their deal with the federal government to accept Medicaid payments. *See* 145 S. Ct. at 2226, 2228, 2230–33. This was a new formulation of the standard not found in the Court's recent Spending Clause decisions. Applying that focus in this case confirms Saint Anthony's right to individual enforcement.

The prompt payment rule is part of the contract that the federal government requires the States to accept to participate in the Medicaid program. The contract analysis is straightforward: 42 U.S.C. § 1396-1 states the basic Federal-State Spending Clause rule: "The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for medical assistance." To get federal Medicaid funds, States agree to comply with a State plan approved by the Secretary.

Section 1396a prescribes the requirements of the agreed State plan. Relevant here is the prompt payment requirement in Section 1396a(a)(37)(A). Petition 6–7.

Congress added it in 1977 because doctors were unwilling to serve Medicaid patients without a prompt payment guaranty. *Id*. at 7. There was no doubt that doctors ("practitioners" in the 1977 language) were granted individual rights to sue the State to enforce prompt payment because all payments were then made by the States directly under a fee-for-services model. States that chose to participate in Medicaid agreed to pay promptly on the schedule provided by Section 1396a(a)(37)(A). Doctors and other eligible medical care providers could sue States directly to enforce their right to prompt payment. Courts repeatedly so held. *See Ohio State Pharm. Ass'n v. Creasy*, 587 F. Supp. 698, 704 (S.D. Ohio 1984) ("[Section] 1396a (a)(37) does not provide the state agency discretion to deviate from the timely payment requirements of that provision."); *Massachusetts Gen. Hosp. v. Sargent*, 397 F. Supp. 1056, 1061–62 (D. Mass. 1975) (reaching the same conclusion under the prior timeliness rule in Section 1396a(a)(13)(D) for payments to hospitals).

In 1997 Congress allowed States to employ managed care organizations ("MCOs") to pay claims the States previously paid directly. Congress also made the prompt payment rule applicable to all providers, not just "practitioners," when a State elected to pay claims through MCOs. To do this, Congress adopted Section 1396u-2(f), which incorporated Section 1396a(a)(37)(A)'s prompt payment mandate. Petition 7–8. Applying the Federal-State contract principle on which *Medina* focuses, the contract was amended to add that when the State elects to pay claims via MCOs, the State is required to assure that the MCOs obey the mandate. That is clear because the 1997 amendment (Section 1396u-2(f)) repeated the prompt payment rule and directed the State to apply it to payments made by MCOs. *Id.*

As explained in the Petition, and by the en banc dissent in the Court of Appeals, App. 36a *et seq.*, in the 1997 amendment: (1) the prompt payment language is stated in mandatory terms; (2) its unmistakable focus remains on the rights of the individual providers, and each is expressly granted the right to negotiate its own payment schedule, which would be meaningless if the provider did not have an individual right to prompt payment; and (3) the 1997 amendment and a later 2009 amendment describe the 1997 amendment as the rule for prompt payment of providers, not merely as a term to be included in contracts with MCOs, Petition 8–10, 13–14. It is not, as the State argues here, only a benefit for the State rather than for providers. Br. in Opp. 9–10.

The question presented by *Medina*'s Federal-State contract analysis is whether Congress intended by the 1997 amendment to modify the 1977 "contract" to eliminate the clear duty of the States to "ensure" prompt payment. As the case law cited above shows, States had agreed to comply with the prompt payment requirement when they paid providers directly under the 1977 law. States clearly knew and expected that they had to do so because that was their deal with the federal government to participate in Medicaid.

From the contract perspective, nothing in the 1997 amendment expressly states, or even implies, that the States' prompt payment obligation ceased when they got the option to pay via MCOs. The State identifies no language that expressly supports such a result. It relies only on language granting States the option to contract with MCOs, and to direct Medicaid patients and providers to do so as well. Br. in Opp. 9–10. The State's arguments depend on implications it derives from that option. The

State's argument is nothing more than "speculation about what Congress may have intended," not "what Congress actually enacted." *Medina*, 145 S. Ct. at 2236. As a matter of contract interpretation, the 1997 amendment simply authorized States to use MCOs as intermediaries to make payments to providers (the definition of which it expanded). That limited change in the Federal-State Medicaid "bargain" did not eliminate the State's obligation to "ensure" prompt payment. Neither statutory language nor legislative history supports such a significant change in the State's duties.

Nor, contrary to the en banc majority and the State's argument, did the 1997 amendment establish an exclusive contract-based enforcement method between providers and MCOs, replacing the providers' existing rights to sue the State when it does not "ensure" prompt payment. Br. in Opp. 5–6, 9; App. 29a. The 1997 amendment itself says nothing about a separate enforcement scheme—only that under the optional procedure for using MCOs, all involved would enter into contracts to shift administration (but not State oversight or control) to MCOs. *See*, *e.g.*, 42 U.S.C. § 1396u-2(a)(1)(A).

Nothing in the 1997 amendment suggests that use of a series of contracts to carry out preexisting State duties constituted a comprehensive, exclusive, and alternative enforcement program to assure timely payment. (Only "a comprehensive enforcement scheme that is incompatible with individual enforcement under § 1983" can displace an individual right to sue. *Talevski*, 599 U.S. at 186 (cleaned up).) No such scheme exists here. Rather, the mere possibility of contract enforcement created by Section 1396u is the sole basis for the majority's reasoning and the State's argument. *See*, *e.g.*, Br. in Opp. 5–6, 9; App. 29a.

As *Medina* directs, view this as a simple contract case: Party A (the State) for over twenty years unambiguously contracted with Party B (the federal government) that it would "ensure" prompt payment to Party C (certain medical care providers) for services delivered to patients. The prompt payment requirement was crystal clear: States must pay 90% of "clean" claims within 30 days, and 99% within 90 days. Then, in 1997, the parties amended the contract to give Party A the option to use what amounts to a subcontractor (the MCOs) to administer the program, including to pay Party C for services provided, while the subcontractor remains under Party A's control and supervision. Nothing in that arrangement relieves Party A of its preexisting duty to "ensure" prompt payment to Party C. The fact that the subcontractor also contracts with Party C to hew to the same requirement as Party A does not relieve Party A of its duty. The 1997 amendment contains no language eliminating the State's clear preexisting duty to "ensure" prompt payment, and the State cites none. Yet, that is the implied amendment of the Federal-State contract (and the 1977 statute) the State claims. *See* Br. in Opp. 9–10.

That result is directly contrary to the Court's precedents consistently rejecting implied repeal of a statutory duty by a later amendment, unless the repeal is clearly stated or the statutes are irreconcilable. *See Morton v. Mancari*, 417 U.S. 535, 550 (1974) ("the only permissible justification for a repeal by implication is when the earlier and later statutes are irreconcilable"). "The rarity with which the Court has discovered implied repeals is due to the relatively stringent standard for such findings, namely, that there be an irreconcilable conflict between the two federal statutes at issue." *J.E.M. Ag Supply, Inc. v. Pioneer Hi-Bred Int'l, Inc.*, 534 U.S. 124,

142 (2001) (cleaned up). *Accord FCC v. NextWave Pers. Commc'n Inc.*, 537 U.S. 293, 304 (2003). The rule goes far back. *See Thomas Wood, Junior v. United States*, 41 U.S. 342, 348 (1842).

Here there is no irreconcilable conflict, or conflict at all. "It is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each [statute] as effective." *J.E.M.*, 534 U.S. at 143–44 (cleaned up). The dissenters below correctly applied the rule against implied repeal:

> [W]hen Congress extended the prompt payment rules of section 1396a(a)(37)(A) to managed care via section 1396u-2(f), providers . . . already had a recognized right to prompt payments. . . . Neither the majority nor the State has identified *any* indication that Congress intended to *cut back* on the providers' existing rights when it enacted section 1396u-2(f) to extend the prompt payment rule to managed care.

App. 50a–51a.

The Court should grant review to apply that analysis, so that lower courts will have guidance on what a contract-based analysis means in application.

D. Traditional Tools of Statutory Construction Confirm the Right to Sue to Enforce Timely Payment.

The Court should also grant the Petition to address how lower courts should apply the principle stated in *Talevski* and *Gonzaga*—which *Medina* does not

alter—that courts continue to apply "traditional tools of statutory construction to assess whether Congress has 'unambiguously conferred' 'individual rights upon a class of beneficiaries' to which the plaintiff belongs." *Talevski*, 599 U.S. at 183 (quoting *Gonzaga*, 536 U.S. at 285–86).

Application of "traditional tools" in this case is described in the Petition and summarized, in part, by the en banc dissenters quoted above. In addition to the language of the 1977 provision and 1997 amendment, they explain that Congress placed the amendment in a section of the enacting law entitled "Assuring Timeliness of Provider Payments." App. 51a. Later, in 2009, when Congress amended the same section to extend it to Medicaid for Native Americans, it described the 1997 amendment as the "rule for prompt payment of providers." App. 52a–53a. While titles to legislation and subsequent descriptions may not alone establish what a statute means, "headings and titles are just one of those 'traditional tools of statutory construction' that both *Talevski* and *Gonzaga* teach us to use." *Id.* at 52a.

CONCLUSION

The express language of the 1977 statute and the 1997 amendment, and what Congress had to say about the amendment, all lead to the same conclusion: The statute clearly commands the States to ensure prompt payment, using unambiguous individual-rights-granting language that *Gonzaga* and *Talevski*, as well as *Medina*, require. Traditional tools of statutory interpretation all support that conclusion. Applying *Medina*'s focus on the Federal-State contract, the State agreed that providers have the individual right to sue to enforce prompt payment as part of the State's deal with the federal government defined in

the 1977 statute. The 1997 amendment is not irreconcilably contrary to that right, or contrary at all.

It is vitally important to all Medicaid providers to be paid on a timely basis, especially when Medicaid funding is likely to be reduced. The Court should grant the Hospital's Petition.

Respectfully submitted,

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