NO. 23-1275

IN THE

Supreme Court of the United States

EUNICE MEDINA, in her official capacity as Interim Director, South Carolina Department of Health and Human Services,

Petitioner,

v.

PLANNED PARENTHOOD SOUTH ATLANTIC, et al.,

Respondents.

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

BRIEF FOR THE PETITIONER

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QUESTION PRESENTED

Whether the Medicaid Act's any-qualified-provider provision unambiguously confers a private right upon a Medicaid beneficiary to choose a specific provider.

PARTIES TO THE PROCEEDING

Petitioner is Eunice Medina, Interim Director of the South Carolina Department of Health and Human Services. Respondents are Julie Edwards, on her behalf and others similarly situated, and Planned Parenthood South Atlantic.

TABLE OF CONTENTS

Question Presented i
Parties to the Proceeding ii
Table of Authorities vi
Statement of Jurisdiction 1
Pertinent Statutes 1
Introduction 2
Statement of the Case 4
I. Statutory background 4
A. Congress passes the Medicaid Act to fund state medical programs. 4
B. Congress adds an any-qualified-provider provision. 5
C. South Carolina creates remedies for excluded providers. 6
II. Factual background 7
A. PPSAT is deemed unqualified. 7
B. Edwards and PPSAT sue in federal court. 12
III. Decisions below 12
A. District court grants preliminary injunction, and the Fourth Circuit affirms. 12
B. District court grants permanent injunction, and the Fourth Circuit affirms. 13
C. After a GVR, the Fourth Circuit affirms again. 14

Summary of the Argument 16

Argument 17

I. The any-qualified-provider provision does not create a private right. 17

A. Only clear rights-creating terms create a private right in spending laws. 17

B. The any-qualified-provider provision lacks clear rights-creating language. 20

C. The Court should retain its bright lines about what qualifies as clear rights-creating language. 23

1. *Talevski* proves Congress can clearly confer a private right by explicitly labeling a benefit a "right." 23

2. Titles VI and IX prove Congress can clearly confer a private right by using text from the rights-creating provisions of the U.S. Constitution. 26

3. Absent such explicit rights-creating language, spending statutes do not create private rights, as this Court's precedents prove. 28

D. The Medicaid Act's broader statutory regime reinforces that the any-qualified-provider provision does not create private rights. 33

E. Common sense confirms what text and structure prove. 36

1. Respondents' approach would drop *Talevski*'s high bar to the floor. 36

2. Finding a private right in the any-qualified-provider provision creates contradictions and problems..... 41

II. The Court need not overrule any cases, but it should clarify that it has abandoned *Blessing*'s factors and cabined *Wilder* and *Wright*..... 45

III. Reversal would respect separation of powers and enable states to better steward scarce Medicaid resources. 52

Conclusion 55

TABLE OF AUTHORITIES

Cases

31 Foster Children v. *Bush*,
329 F.3d 1255 (11th Cir. 2003)..... 22

Alexander v. *Sandoval*,
532 U.S. 275 (2001).....19, 26, 28, 32, 37

Arizona v. *Navajo Nation*,
599 U.S. 555 (2023)..... 52–53

Armstrong v. *Exceptional Child Center, Inc.*,
575 U.S. 320 (2015).....4, 35–36, 41, 46, 50

Baker v. *Planned Parenthood South Atlantic*,
141 S. Ct. 550 (2020)..... 13

Blessing v. *Freestone*,
520 U.S. 329 (1997).....12, 45, 49, 51

Bontrager v. *Indiana Family & Social Services Administration*,
697 F.3d 604 (7th Cir. 2012)..... 44

BT Bourbonnais Care, LLC v. *Norwood*,
866 F.3d 815 (7th Cir. 2017)..... 44

California v. *Sierra Club*,
451 U.S. 287 (1981)..... 20

Cannon v. University of Chicago,
441 U.S. 677 (1979)..... 19, 30–32

Carson ex rel. O. C. v. *Makin*,
596 U.S. 767 (2022)..... 50

Correctional Services Corp. v. *Malesko*,
534 U.S. 61 (2001)..... 41

Doe v. *Kidd*,
501 F.3d 348 (4th Cir. 2007)..... 44

Does v. *Gillespie*,
867 F.3d 1034 (8th Cir. 2017)..... 13, 34, 42

Douglas v. *Independent Living Center of Southern California, Inc.*,
565 U.S. 606 (2012)..... 4

Federal Law Enforcement Officers Association v. *Attorney General New Jersey*,
93 F.4th 122 (3d Cir. 2024)..... 48

Gee v. *Planned Parenthood of Gulf Coast, Inc.*,
586 U.S. 1057 (2018)..... 53

Gonzaga University v. *Doe*,
536 U.S. 273 (2002).....2, 16–20, 22–23, 25–26, 28–30, 34, 37,45–46, 49–51

Harris v. *McRae*,
448 U.S. 297 (1980)..... 33

Health & Hospital Corporation of Marion County v. *Talevski*,
599 U.S. 166 (2023).....2–4, 14, 18–20, 22–25, 28, 34, 36, 40, 43, 46–47, 51, 55

Janus v. *American Federation of State, County, and Municipal Employees, Council 31*,
585 U.S. 878 (2018)..... 52

Kennedy v. *Bremerton School District*,
597 U.S. 507 (2022)..... 48–49

Kimble v. *Marvel Entertainment, LLC*,
576 U.S. 446 (2015)..... 52

Lemon v. *Kurtzman*,
403 U.S. 602 (1971)..... 48

Locke v. *Davey*,
540 U.S. 712 (2004)..... 50

Long Term Care Pharmacy Alliance v. *Ferguson*,
362 F.3d 50 (1st Cir. 2004)..... 52

Loper Bright Enterprises v. *Raimondo*,
603 U.S. 369 (2024)..... 50

Marx v. *General Revenue Corp.*,
568 U.S. 371 (2013)..... 26

Merrill Lynch, Pierce, Fenner & Smith, Inc. v. *Curran*,
456 U.S. 353 (1982)..... 30

Midwest Foster Care & Adoption Association v. *Kincade*,
712 F.3d 1190 (8th Cir. 2013)..... 34–35

Morse v. *Republican Party of Virginia*,
517 U.S. 186 (1996)..... 28

National Federation of Independent Business v. *Sebelius*,
567 U.S. 519 (2012)..... 17

New York State Citizens' Coalition for Children v. *Poole*,
922 F.3d 69 (2d Cir. 2019)..... 51, 54

O'Bannon v. *Town Court Nursing Center*,
447 U.S. 773 (1980)..... 5

Pennhurst State School & Hospital v. *Halderman*,
451 U.S. 1 (1981)..... 16–18

Planned Parenthood of Greater Texas Family Planning & Preventive Health Services v. *Smith*,
913 F.3d 551 (5th Cir. 2019)..... 53

Planned Parenthood of Greater Texas Family Planning & Preventive Health Services, Inc. v. *Kauffman*,
981 F.3d 347 (5th Cir. 2020)..... 5, 22, 36

Romag Fasteners, Inc v. *Fossil, Inc.*,
590 U.S. 212 (2020)..... 28

Saint Anthony Hospital v. *Whitehorn*,
100 F.4th 767 (7th Cir. 2024)..... 48

Saint Anthony Hospital v. *Whitehorn*,
2024 WL 3561942 (7th Cir. July 24, 2024)..... 48

South Dakota v. *Wayfair*,
585 U.S. 162 (2018)..... 52

Suter v. *Artist M.*,
503 U.S. 347 (1992)..... 40–41

United States for Benefit & on Behalf of Glynn v. *Capeletti Brothers*,
621 F.2d 1309 (5th Cir. 1980)..... 19

Universities Research Association, Inc. v. *Coutu*,
450 U.S. 754 (1981).....19, 30–32, 34

Wilder v. *Virginia Hospital Association*,
496 U.S. 498 (1990)..... 13, 45, 51

Wright v. *City of Roanoke Redevelopment and Housing Authority*,
479 U.S. 418 (1987)..... 17, 51

Statutes

20 U.S.C. 1232g 29–30, 34

20 U.S.C. 1681 ..... 21, 26

28 U.S.C. 1254(1) 1

40 U.S.C. 3142 31

42 U.S.C. 1320a-2 ..... 35, 40

42 U.S.C. 1396-1 4

42 U.S.C. 1396a 1, 3, 5–6, 20–22, 32, 35, 37–40, 42–44

42 U.S.C. 1396c 2, 4, 33, 34

42 U.S.C. 1396r 3, 21–25, 43

42 U.S.C. 1983 18

42 U.S.C. 2000d 26

42 U.S.C. 671 41

S.C. Code Ann. § 1-23-380 ..... 6, 42

S.C. Code Ann. § 43-5-1185 7

Other Authorities

Abortion in Columbia, SC, Planned Parenthood 8

Barbara S. Klees et al., Ctrs. for Medicare & Medicaid Servs., *Brief Summaries of Medicare & Medicaid: Title XVIII & Title XIX of The Social Securities Act* (Dec. 31, 2012) 33

Department of Health & Human Services Office of the Inspector General, *States Could Do More To Prevent Terminated Providers From Serving Medicaid Beneficiaries* (Mar. 2020) 54

Healthy Connections Medicaid Search for Providers, S.C. Dep't Health & Hum. Servs. 9

John T. McNaughton, The Privilege against Self-Incrimination, 51 J. Crim. L. Criminology & Police Sci. 138 (1960) 27

Matthew Stevens, *SC DHEC files orders to shut down Planned Parenthood,* Fox 57 (Sept. 11, 2015) 8

Michael J. New, *More Abortions, More Taxpayer Dollars, and Fewer Health Services*, National Review (Apr. 17, 2024) 8

Our Medical Services, Cooperative Health 11

Planned Parenthood, Annual Report 2022–23 8

Pregnancy Testing and Planning in Charleston, SC, Planned Parenthood 8

Pregnancy Testing and Planning in Columbia, SC, Planned Parenthood 8

Prenatal and Postpartum Services in Charleston, SC, Planned Parenthood 8

Prenatal and Postpartum Services in Columbia, SC, Planned Parenthood 8

President's Proposals for Revision in the Social Security System, Hearing on H.R. 5710 before the H. Comm. On Ways and Means, Part 4 (April 6 and April 11, 1967) 5

S.C. DHHS, *Appeals and Hearings 101* 6

South Carolina At-a-Glance, State Health Access Data Assistance Center 53

The Supreme Court 2022 Term, *42 U.S.C. 1983 – Spending Clause* – Health & Hospital Corp. of Marion County v. Talevski, 137 Harv. L. Rev. 380 (2023) 47, 51

Women Have Real Choices, Charlotte Lozier Inst. ... 9

Regulations

42 C.F.R. 1002.213 ..... 6, 42

42 C.F.R. 430.12 33

S.C. Code Regs. 126–150 ..... 6, 42

S.C. Code Regs. 126–152 ..... 6, 42

S.C. Code Regs. 126–154 ..... 6, 42

S.C. Code Regs. 126–158 6

Constitutional Provisions

U.S. Const. amend. I 21

U.S. Const. amend. V 27

STATEMENT OF JURISDICTION

The Court granted the petition on December 18, 2024, and has jurisdiction under 28 U.S.C. 1254(1).

PERTINENT STATUTES

Relevant portions of the pertinent statutes are reprinted at Pet.App.147a–48a. The any-qualified-provider provision, 42 U.S.C. 1396a(a)(23)(A), states in relevant part:

> **(a) Contents**
>
> A State plan for medical assistance must—
>
> * * * * *
>
> (23) provide that (A) any individual eligible for medical assistance … may obtain such assistance from any [provider] qualified to perform the service or services required … who undertakes to provide him such services ….

INTRODUCTION

The Medicaid Act is not a civil-rights statute. It creates a cooperative-federalism program in which "federal and state actors work[] together … to carry out the statute's aims." *Health & Hosp. Corp. of Marion Cnty.* v. *Talevski*, 599 U.S. 166, 182 (2023). Unsurprisingly, the Act focuses on that relationship between the states and the federal government—not the creation of individual healthcare rights. Indeed, Congress *wanted* states to have substantial discretion to innovate with their Medicaid programs. So it made the Act a substantial-compliance regime, giving the Secretary of the Department of Health & Human Services discretion whether to withhold funding when a state's administration of its plan deviates from the Act's specifications. 42 U.S.C. 1396c(2).

Respondents would have this Court transfer that discretion to the federal courts by implying a private right in the any-qualified-provider provision. But this Court does not recognize private rights in federal statutes "as a matter of course." *Talevski*, 599 U.S. at 183. And Spending Clause legislation, in particular, must clear a "demanding bar": it "must *unambiguously* confer individual federal rights." *Id.* at 180. After all, the typical remedy in this context "is not a private cause of action for noncompliance but rather action by the Federal Government to terminate funds to the State." *Id.* at 183 (cleaned up).

To clear that high bar, it is not enough that Congress tried to benefit a specific class. *Ibid.* Instead, it is "critical" that the statute's "text and structure" use "explicit rights-creating terms." *Gonzaga Univ.* v. *Doe*, 536 U.S. 273, 284, 286–87 (2002).

The any-qualified-provider provision lacks any "clear rights-creating language." *Talevski*, 599 U.S. at 186 (cleaned up). Its text says merely that a plan must provide that an "individual eligible for medical assistance" "may obtain" it from a "qualified" provider. 42 U.S.C. 1396a(a)(23)(A). There is no mention of "rights." And structurally, the provision is nestled in a list labeled "Contents" setting out 87 disparate items that plans must include. 42 U.S.C. 1396a(a).

That text and structure is nothing like FNHRA's rights-creating provisions, which *Talevski* analyzed. Textually, those provisions involve (1) a nursing home resident's "*right* to be free from" restraints, 42 U.S.C. 1396r(c)(1)(A)(ii) (emphasis added), and (2) conditions related to a resident's "[t]ransfer and discharge *rights*," 42 U.S.C. 1396r(c)(2) (emphasis added). Structurally, both are listed in a bill of rights: "[r]equirements relating to *residents' rights*." 42 U.S.C. 1396r(c) (emphasis added). And when FNHRA discusses the choice of a provider, it is unambiguous: declaring a resident's "*right*" "to choose a personal attending physician." 42 U.S.C. 1396r(c)(1)(A)(i) (emphasis added). None of that is true here.

Reading a private right into the any-qualified-provider provision would undermine the relationship between the states and the federal government. Private enforcement subjects states to unanticipated (and expensive) lawsuits. And it takes the Secretary's enforcement flexibility and gives it to federal courts, meaning executive power is taken from the executive and given to the judiciary *by the judiciary*. The Court has set a high bar for recognizing private rights in spending statutes—and the any-qualified-provider provision doesn't clear it. The Court should reverse.

STATEMENT OF THE CASE

I. Statutory background

A. Congress passes the Medicaid Act to fund state medical programs.

In 1965, Congress created Medicaid, "a federal program that subsidizes the States' provision of medical services" to families and individuals "whose income and resources are insufficient to meet the costs of necessary medical services." *Armstrong* v. *Exceptional Child Ctr., Inc.*, 575 U.S. 320, 323 (2015) (quoting 42 U.S.C. 1396-1). The program "is a cooperative federal-state program that provides medical care to needy individuals." *Douglas* v. *Indep. Living Ctr. of S. Cal., Inc.*, 565 U.S. 606, 610 (2012).

"Like other Spending Clause legislation, Medicaid offers the States a bargain: Congress provides federal funds in exchange for the States' agreement to spend them in accordance with congressionally imposed conditions." *Armstrong*, 575 U.S. at 323. This is "cooperative federalism—*i.e.*, federal and state actors working together—to carry out the statute's aims." *Talevski*, 599 U.S. at 182 (cleaned up). States create plans and submit them to the Secretary of Health and Human Services for approval and disbursement of funds. 42 U.S.C. 1396-1. And if the Secretary later finds that a state has failed to "comply substantially" with the Act's requirements in the plan's administration, the Secretary may withhold all or part of the state's funds until "satisfied that there will no longer be any such failure to comply." 42 U.S.C. 1396c.

B. Congress adds an any-qualified-provider provision.

Two years later, Congress amended the Act to add Section 1396a(a)(23)(A) because some states were forcing recipients to choose from a very narrow list of public providers. *E.g.*, President's Proposals for Revision in the Social Security System, Hearing on H.R. 5710 before the H. Comm. On Ways and Means, Part 4 (April 6 and April 11, 1967), at 2273 (Puerto Rico required Medicaid beneficiaries to receive care at "governmental facilities"); *id.* at 2301 (Massachusetts refused to reimburse "private physicians" providing care at teaching hospitals).

The new provision requires that state plans "must" provide that "any individual eligible for medical assistance … may obtain" it "from any [provider] qualified to perform the service … who undertakes to provide" it. 42 U.S.C. 1396a(a)(23)(A). This provision is sometimes called "the 'any-qualified-provider' or 'free-choice-of-provider' provision." *Planned Parenthood of Greater Tex. Fam. Plan. & Preventive Health Servs., Inc.* v. *Kauffman*, 981 F.3d 347, 354 (5th Cir. 2020) (en banc). But the former label is more accurate because the statute does not provide for a "free choice of provider"—beneficiaries may only choose from a "range of *qualified* providers." *O'Bannon* v. *Town Ct. Nursing Ctr.*, 447 U.S. 773, 785 (1980).

The Act does not define "qualified." States retain broad authority to exclude providers "for any reason for which the Secretary could exclude the individual or entity from participation in" the Medicare program, "[i]n addition to any other authority" states possess to exclude providers. 42 U.S.C. 1396a(p)(1).

C. South Carolina creates remedies for excluded providers.

The Medicaid Act contemplates that states will provide administrative review and remedies for excluded providers. *E.g.*, 42 U.S.C. 1396a(kk)(8)(B)(ii) (a termination's effective date does not occur until "*all appeal rights applicable* to such termination have been exhausted or the timeline for any such appeal has expired") (emphasis added). So federal regulations require they do so, mandating that an excluded individual or entity have "the opportunity to submit documents and written argument against the exclusion," and requiring that the individual or entity "be given any additional appeals rights that would otherwise be available under procedures established by the State." 42 C.F.R. 1002.213.

Accordingly, South Carolina offers an administrative appeal with a hearing officer who can take testimony and make findings of fact and conclusions of law. S.C. Code Regs. 126–150, 126–152, 126–154. Providers may retain counsel. S.C. Code Regs. 126–158. And "[a]n appeal is not a rubberstamp process for agency determinations." S.C. DHHS, *Appeals and Hearings 101*, at 3, perma.cc/TV2Y-Y6F2. A provider is also entitled to state-court review to determine whether the decision violates statutory provisions or exceeds the agency's authority, S.C. Code Ann. § 1-23-380, followed by this Court's review, if necessary. Respondent Planned Parenthood South Atlantic (PPSAT) agreed—via its enrollment agreement—that this process was its "exclusive remedy." Appendix at A-115, A-139, *Planned Parenthood S. Atlantic* v. *Baker*, No. 18-2133 (4th Cir. Nov. 26, 2018), ECF No. 15.

II. Factual background

A. PPSAT is deemed unqualified.

On July 13, 2018, South Carolina Governor Henry Dargan McMaster issued an executive order directing the State Department of Health and Human Services to (1) deem abortion providers unqualified to provide family-planning services under Medicaid, (2) terminate their enrollment agreements, and (3) deny future applications from them. Pet.App.159a. That order is consistent with S.C. Code Ann. § 43-5-1185, which prohibits using public funds to pay for abortions. Because money is fungible, giving Medicaid dollars to abortion facilities frees up their other funds to provide more abortions. So the Governor concluded that "the payment of taxpayer funds to abortion clinics, for any purpose, results in the subsidy of abortion and the denial of the right to life." Pet.App.157a–58a. The same day, the Department notified PPSAT that its enrollment agreements were being terminated because it was no longer "qualified to provide services to Medicaid beneficiaries." Pet.App.128a. PPSAT can restore Medicaid funding if it stops performing abortions—but it has chosen not to do so.

PPSAT is affiliated with Planned Parenthood Federation of America, which provides operational and executive support to local offices like PPSAT. While both entities claim to offer a range of healthcare services, they mainly offer abortions, contraception, STD testing, other screenings, and experimental puberty blockers and cross-sex hormones to those who identify as transgender, including minors. In its most recent annual report, the national entity reported aborting nearly 400,000 children. Planned Parent-

hood, Annual Report 2022–23 at 7, perma.cc/AX2E-ZKRP. Year over year, Planned Parenthood is performing more abortions and fewer health services. Michael J. New, *More Abortions, More Taxpayer Dollars, and Fewer Health Services*, National Review (Apr. 17, 2024), perma.cc/E89W-6WL9.

PPSAT's two South Carolina locations offer only two prenatal/postpartum services: pregnancy tests (necessary for an abortion) and "miscarriage care" (including treatments for women who intentionally terminate their pregnancies with abortion drugs).[1] PPSAT does not deliver healthy babies or help women become pregnant, but the Columbia site does offer subsidies for abortions it provides.[2] And less than three years before its Medicaid disqualification, PPSAT's Columbia site was threatened with closure for "non-compliance with the Woman's Right to Know Act, incomplete medical and employee records, improper infectious waste disposal practices, [and] failure to report abortions to DHEC Vital Statistics in [a] timely manner, among other violations."[3]

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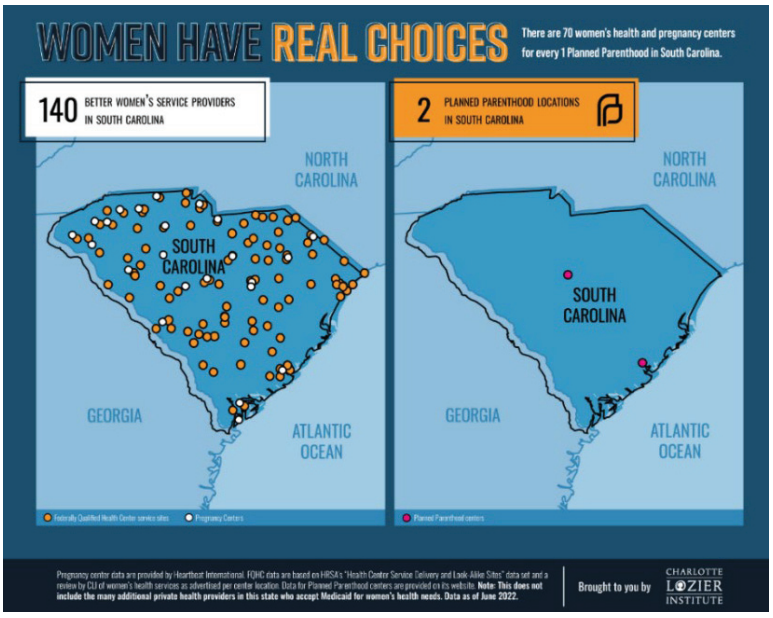
[1] *Prenatal and Postpartum Services in Columbia, SC*, Planned Parenthood, perma.cc/H7J8-KK6J; *Prenatal and Postpartum Services in Charleston, SC*, Planned Parenthood, perma.cc/TQY4-XDDT.

[2] *Pregnancy Testing and Planning in Columbia, SC*, Planned Parenthood, perma.cc/YVH6-ZAH5; *Pregnancy Testing and Planning in Charleston, SC*, Planned Parenthood, perma.cc/AC5U-H5A6 (noting that the site refers out prenatal care and adoption services); *Abortion in Columbia, SC*, Planned Parenthood, perma.cc/C4Z9-75A5.

[3] Matthew Stevens, *SC DHEC files orders to shut down Planned Parenthood,* Fox 57 (Sept. 11, 2015), perma.cc/RJ49-US3U.

While PPSAT operates only two sites in the State—in Charleston and Columbia—South Carolina has 140 federally qualified health clinics and pregnancy centers, not counting the numerous private health providers who accept Medicaid:



Women Have Real Choices, Charlotte Lozier Inst., perma.cc/8QFG-RJ47. In the population centers of Charleston County and Richland County (where PPSAT Columbia is located), there are dozens of medical clinics that accept Medicaid and offer a broad panoply of health services. *Healthy Connections Medicaid Search for Providers*, S.C. Dep't Health & Hum. Servs., img1.scdhhs.gov/search4aprovider/.

For example, Waverly Women's Health—a Cooperative Health Medicaid provider a mere 1.4-mile drive from PPSAT Columbia—provides 11 different services and treats 11 different conditions for women.

PPSAT Columbia provides less than half those services and treats only *one* of those conditions, as a comparison of their websites reveals:

SERVICES FOR WOMEN	WAVERLY WOMEN'S HEALTH	PPSAT COLUMBIA
Abortion	✗	✓
Annual exams	✓	(limited screening)
Birth control	✓	✓
C-section delivery	✓	✗
Contraception counseling	✓	✓
Gender-Affirming Care	✗	✓
High-risk pregnancy care	✓	✗
Hormone replacement therapy	✓	✗
Menopause management	✓	✗
Pregnancy ultrasound	✓	✗
Prenatal care	✓	✓
STD screening	✓	✓
Vaginal delivery*	✓	✗
CONDITIONS TREATED		
Abnormal bleeding	✓	✗
Endometriosis	✓	✗
Excessive menstrual bleeding	✓	✗
Gestational diabetes	✓	✗
Miscarriage care	✓	✓
Multiple pregnancy	✓	✗
Ovarian cysts	✓	✗
Painful periods	✓	✗
Polycystic ovary disease	✓	✗
Premature labor & delivery*	✓	✗
Vaginal infection	✓	✗

* Patients are seen on-site for care that can be provided outside a hospital, and deliveries are performed in a hospital by one of Waverly's providers.

SOURCES: *Board-Certified Obstetricians & Gynecologists*, Cooperative Health, perma.cc/8BNA-3F9Y; *Birth Control, STD Testing & Abortion - Columbia, SC*, Planned Parenthood, perma.cc/M8K3-JPDZ.

And because Waverly Women's Health is part of Cooperative Health—a broad network of medical centers—women who go there have access to a panoply of comprehensive services, including family medicine, internal medicine, vision, diabetes management, chronic disease management, and substance abuse treatment. *Our Medical Services*, Cooperative Health, perma.cc/AS69-G5FS. So a Medicaid beneficiary who visits Waverly Women's Health for birth control will receive care for her other medical issues, too.

Consider Respondent Julie Edwards's experience. She has reported multiple serious health concerns, such as Type 1 diabetes (with complications), partial blindness, and nerve damage. Decl. of Julie Edwards ¶ 2, J.A.29. But when she went to PPSAT, she was offered birth control and advised to seek care elsewhere for her elevated blood pressure. Resp. Br. for Appellees at 6, *Planned Parenthood S. Atlantic* v. *Kerr*, 27 F.4th 945 (4th Cir. 2022) (No. 21-1043). In contrast, at Waverly Women's Health, she would have been offered birth control *and* in-network access to services addressing her diabetes and other serious conditions.

Disqualifying abortion providers like PPSAT ensures that women receive comprehensive medical care. It also ensures that South Carolina's Medicaid funding goes toward improving "access to necessary medical care and important women's health and family planning services" for all women—rather than improving Planned Parenthood's ability to free up funding to pay for abortions. Pet.App.158a.

B. Edwards and PPSAT sue in federal court.

Two weeks after the disqualification, Respondents PPSAT and Julie Edwards, one of its Medicaid clients, sued in federal court. J.A.1–17. Three days later, they moved for a preliminary injunction, arguing that by disqualifying PPSAT as a Medicaid provider, South Carolina violated Ms. Edwards's right to the "qualified provider of [her] choosing under 42 U.S.C. § 1396a(a)(23)." Pls.' Mot. for TRO and Prelim. Inj. at 1, *Planned Parenthood S. Atlantic* v. *Baker*, No. 3:18-cv-02078 (D.S.C. July 30, 2018).

After Petitioner's opening brief emphasized PPSAT's right to an administrative appeal and its apparent decision to forgo that appeal, Def.'s Mem. of Law in Opp'n to Pls.' Mot. for TRO and Prelim. Inj. at 3, 9, 11, *Planned Parenthood S. Atlantic* v. *Baker*, No. 3:18-cv-02078 (D.S.C. Aug. 13, 2018), PPSAT belatedly filed an administrative appeal that remains unresolved pending the outcome of this litigation.

III. Decisions below

A. District court grants preliminary injunction, and the Fourth Circuit affirms.

The district court granted Ms. Edwards's motion for a preliminary injunction and, because that ruling resolved the issue, did not analyze PPSAT's right to the same relief. Pet.App.127a, 146a. On the "issue of whether § 1396a(a)(23)(A) creates a private right of action enforceable through § 1983," the court applied the so-called *Blessing* factors—named for *Blessing* v. *Freestone*, 520 U.S. 329 (1997)—and said that it does. Pet.App.132a–36a.

The Fourth Circuit affirmed. In analyzing whether "Congress's intent to create an individual right enforceable under § 1983" in the any-qualified-provider provision is "unambiguous," Pet.App.83a, that court also applied the *Blessing* factors, assessed whether Congress had "foreclosed a § 1983 remedy," and then joined the circuits that had found "a private right enforceable under § 1983." Pet.App.95a–102a. The court cited—but did not discuss—the Eighth Circuit's contrary holding in *Does* v. *Gillespie*, 867 F.3d 1034 (8th Cir. 2017). Pet.App.96a, 103a.

Concurring, Judge Richardson wrote separately to call for clarity: "What is the proper framework for determining whether a given statute creates a right that is privately enforceable …?" Pet.App.121a. And more specifically, has *Wilder* v. *Virginia Hospital Association*, 496 U.S. 498 (1990), "been repudiated (or even effectively overruled)?" *Ibid.*

B. District court grants permanent injunction, and the Fourth Circuit affirms.

While a petition for certiorari was pending, the district court granted summary judgment to Respondents and directed them to submit a draft order granting a permanent injunction. Pet.App.69a, 78a–79a. Five days later, they filed a brief in this Court arguing that the Court should deny the State's petition because it was about to become moot. Suppl. Br. for Resp'ts, *Baker* v. *Planned Parenthood S. Atl.*, 141 S. Ct. 550 (2020) (No. 19-1186). And the Court subsequently denied the petition. *Baker*, 141 S. Ct. 550 (2020).

Meanwhile, the district court entered an order permanently enjoining Petitioner from "terminating or excluding" PPSAT from South Carolina's Medicaid program based on its abortion activities. Pet.App.67a. And Petitioner appealed to the Fourth Circuit again.

On appeal, the Fourth Circuit acknowledged that the en banc Fifth Circuit in *Kauffman* had recently held that the any-qualified-provider provision does *not* create private rights, Pet.App.51a–52a, but the Fourth Circuit still refused to "reconsider [its] previous panel decision," Pet.App.51a.

Concurring only in the judgment, Judge Richardson wrote separately to implore this Court to clear up the "confusion and uncertainty" in the caselaw. Pet.App.65a. "*Gonzaga* arguably laid down a different test than *Wilder* and *Blessing*," he explained. *Ibid.* But until this Court plainly repudiates them, lower courts "remain[] bound by *Blessing* and *Wilder*." *Ibid.* The State filed a second petition for certiorari.

C. After a GVR, the Fourth Circuit affirms again.

Two months later, the Court granted certiorari in *Talevski*. Its opinion reaffirmed that "*Gonzaga* sets forth [the Court's] established method for ascertaining unambiguous conferral" of private rights in the Spending Clause context. *Talevski*, 599 U.S. at 183. But the Court said nothing about the ongoing validity of *Wilder* or *Blessing*. The Court then GVR'd this case. Pet.App.37a.

On remand, the Fourth Circuit reaffirmed its prior decisions. Pet.App.12a–13a. *Talevski*, the court wrote, "offered an illuminating analysis" and "a useful new example of provisions enforceable via § 1983," but the court did "not read it as toppling the existing doctrinal regime." Pet.App.4a. *Wilder* remained good law, and the court (wrongly) thought that it "would appear to doom the State's argument at the starting gate." Pet.App.27a–28a. Finally, while *Talevski* had "shed some new light on *Blessing*," it was not the Fourth Circuit's "prerogative to proclaim a Supreme Court precedent overthrown." Pet.App.21a–22a.

Again concurring only in the judgment, Judge Richardson noted that he had written separately twice before "to ask for clarity on the precedential status of *Wilder* … and, to a lesser extent, *Blessing*." Pet.App.35a. He did so for a third time "because even after [*Talevski*]," lower courts still "lack the guidance inferior judges need." Pet.App.35a–36a. They "lack sufficiently clear signals to be sure [this] Court has discarded *Wilder*'s holding (or *Blessing*'s test)." Pet.App.36a n.2. So the court was "bound to stand by [its] previous holding." Pet.App.36a.

This Court granted certiorari.

SUMMARY OF THE ARGUMENT

This Court has set a high bar for finding that a Spending Clause statute confers a federal right enforceable under Section 1983. The Medicaid Act's any-qualified-provider provision doesn't clear it. Congress must speak with a "clear voice" and an "unambiguous intent to confer individual rights" for such a provision to confer a private right. *Gonzaga*, 536 U.S. at 280 (cleaned up). Congress must use unambiguously clear *rights-creating language*. Congress did not use such language in the any-qualified-provider provision; the provision says nothing about rights at all.

To date, this Court has identified only four provisions with clear rights-creating language: the two residents'-rights provisions in *Talevski* and the two "No person shall" provisions in Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972. Congress used such language in *Talevski* by labeling the benefits conferred there as "rights." And the "No person shall" language in Titles VI and IX—two civil-rights statutes—closely mirrors the text of the Fifth Amendment.

In contrast, the any-qualified-provider provision, which says only that "any individual … may obtain" assistance from any "qualified" provider, does not speak about "rights" or use clear rights-creating language lifted from the Constitution's Bill of Rights. Absent such language, the "typical remedy for state noncompliance with federally imposed conditions is not a private cause of action … 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).

This Court has carefully cabined prior opinions that some lower courts have read to establish "a relatively loose standard for finding rights enforceable by § 1983." *Gonzaga*, 536 U.S. at 282. But while the Court has abandoned the so-called *Blessing* factors and limited *Wilder* and *Wright* v. *City of Roanoke Redevelopment and Housing Authority*, 479 U.S. 418 (1987), to their facts, the Court has not yet expressly overruled them or explicitly said that it has abandoned them. And that has left lower courts wondering if they're bound to apply them. This case is a chance to provide much-needed clarity: the Court should reiterate that it has abandoned *Blessing*'s multi-factored test and limited *Wright* and *Wilder* to specific facts not implicated here. The Court should then apply *Gonzaga* and *Talevski* and reverse.

ARGUMENT

I. The any-qualified-provider provision does not create a private right.

A. Only clear rights-creating terms create a private right in spending laws.

The "legitimacy" of Congress's exercise of its spending power depends on a state's voluntary and knowing acceptance of terms. *Pennhurst*, 451 U.S. at 17. "Respecting this limitation is critical to ensuring that Spending Clause legislation does not undermine the status of the States as independent sovereigns in our federal system." *Nat'l Fed'n of Indep. Bus.* v. *Sebelius*, 567 U.S. 519, 577 (2012) (Roberts, C.J., plurality). So "if Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously." *Pennhurst*, 451 U.S. at 17.

Abiding by that "well-established requirement" ensures states receive the "clear notice" they deserve. *Talevski*, 599 U.S. at 180 n.8. And "[b]y insisting that Congress speak with a clear voice," the Court enables states to "exercise their choice knowingly, cognizant of the consequences of their participation." *Pennhurst*, 451 U.S. at 17.

That clear-statement rule applies when a private party claims an enforceable right based on a provision in a Spending Clause statute like the Medicaid Act. "[U]nless Congress speaks with a clear voice and manifests an unambiguous intent to confer individual rights, federal funding provisions provide no basis for private enforcement by § 1983." *Gonzaga*, 536 U.S. at 280 (cleaned up). That makes sense because Section 1983 creates a cause of action for "the deprivation of any *rights*, privileges, or immunities secured by" federal law. 42 U.S.C. 1983 (emphasis added).

At least since *Gonzaga*, this Court has been clear that it will not "permit anything short of an unambiguously conferred right to support a cause of action brought under § 1983." 536 U.S. at 283. As the Court reiterated in *Talevski*, that is a "demanding bar" and a "significant hurdle." 599 U.S. at 180, 184; accord *id.* at 193 (Barrett, J., concurring) ("This bar is high, and although the FNHRA clears it, many federal statutes will not."); *id.* at 230 (Alito, J., dissenting) (agreeing about the "high bar").

Section "1983 actions are the exception—not the rule—for violations of Spending Clause statutes." *Id.* at 193–94 (Barrett, J., concurring). So the question is "whether this is the *atypical* case" in which a Spending Clause provision "unambiguously confer[s] individual rights, making those rights presumptively enforceable under § 1983." *Id.* at 183 (emphasis added) (cleaned up). It is not.

"*Gonzaga* sets forth [the Court's] established method for ascertaining unambiguous conferral." *Talevski*, 599 U.S. at 183. Under that test, it's not enough that a "plaintiff falls within the general zone of interest that the statute is intended to protect." *Gonzaga*, 536 U.S. at 283. Rather, a court must examine the statute's "text and structure" and determine whether a plaintiff has made the "critical" showing "of *'rights-creating' language*." *Id.* at 286, 287 (emphasis added) (citing *Alexander* v. *Sandoval*, 532 U.S. 275, 288–89 (2001), and *Cannon v. Univ. of Chi.*, 441 U.S. 677, 690 n.13 (1979)).

And if a provision *does* have clear rights-creating language, a plaintiff still must show that such language is "phrased in terms of the persons benefitted," with "an unmistakable focus on the benefitted class." *Gonzaga*, 536 U.S. at 284, 287 (cleaned up); accord *Universities Rsch. Ass'n, Inc.* v. *Coutu*, 450 U.S. 754, 772 n.23 (1981) (quoting *U.S. for Benefit & on Behalf of Glynn* v. *Capeletti Bros.*, 621 F.2d 1309, 1314 (5th Cir. 1980)). That means "the *Gonzaga* test is satisfied where the provision in question [1] is phrased in terms of the persons benefitted" "with an unmistakable focus on the benefited class" "*and* [2] contains rights-creating, individual-centric language." *Talevski*, 599 U.S. at 183 (emphasis added) (cleaned up).

In sum, the "question is not simply who would benefit from the Act, but whether Congress intended to confer federal rights upon those beneficiaries." *California* v. *Sierra Club*, 451 U.S. 287, 294 (1981). And "rights-creating language" is "critical" to that showing. *Gonzaga*, 536 U.S. at 287 (cleaned up).

B. The any-qualified-provider provision lacks clear rights-creating language.

The any-qualified-provider provision has nothing approaching the "clear rights-creating language" that would make this the "atypical case." *Talevski*, 599 U.S. at 183, 186 (cleaned up). The provision requires only that state plans provide that "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 … such services." 42 U.S.C. 1396a(a)(23)(A).

First and foremost, the text never mentions the word "right" or its functional equivalent. Compare with *Talevski*, 599 U.S. at 184–85 (residents' "right to be free from" restraints; "transfer and discharge rights") (cleaned up). Nor is it framed using the rights-creating "No person shall" language Congress borrowed from the Bill of Rights when it enacted the civil-rights statutes contained in Titles VI and IX.

Viewed contextually, the provision also does not "reside in" a part of the Medicaid Act that "expressly concerns" requirements "*relating to [beneficiaries'] rights*." *Talevski*, 599 U.S. at 184 (cleaned up). Instead, it resides in 42 U.S.C. 1396a, titled "State plans for medical assistance," under subsection (a), which is simply titled "Contents." 42 U.S.C. 1396a(a).

The provision also limits the scope of the benefit to "qualified" providers while later acknowledging the states' authority to decide what makes a provider qualified. See 42 U.S.C. 1396a(p)(1) ("*In addition to any other authority*, a State may exclude any individual or entity for purposes of participating under the State plan under this subchapter for any reason for which the Secretary could exclude the individual or entity ….") (emphasis added). Letting the regulated entity—here the state—decide the scope of the right would be an odd way to bestow a right. For example, it would have made no sense for the Framers to qualify the First Amendment's Free Speech Clause by allowing the regulated entity—Congress—to define what qualifies as "speech." U.S. Const. amend. I. Or for Congress to qualify Title IX by allowing the regulated entities—schools—to define what counts as "discrimination." 20 U.S.C. 1681(a). Or for Congress in FNHRA to allow nursing homes to decide what counts as "restraints." 42 U.S.C. 1396r(c)(1)(A)(ii). True rights-creating language doesn't work that way.

What's more, the provision speaks of "obtain[ing]" a benefit from a third party. But that's quite unlike clear rights-creating language, which confers a right directly and in explicit terms. For example, FNHRA did not say that any resident in a covered nursing home "may obtain" an environment free of physical or chemical restraints. Nor did it say that any resident "may obtain" advance notice of a transfer or discharge. Likewise, Congress did not write Title IX to say any citizen "may obtain" the benefits of a federally funded education program free of sex discrimination. When Congress wants to create a private right, it confers that right expressly and directly.

Tellingly, in enacting Section 1396a, Congress specifically *did* invoke the words "right" and "rights" in several places—five times in the context of payments and a few more in the context of whistleblowers, notifications about the right to accept or refuse treatment, and the disregard of certain property in determining the eligibility of Indians. 42 U.S.C. 1396a(a)(25)(H)–(I), (a)(45), (a)(68)(C), (w)(1)(A), (ff)(3)–(4). The only other mentions of "rights" in Section 1396a are when Congress is discussing *administrative appeals,* both for individuals, 42 U.S.C. 1396a(ee)(4), and for providers, 42 U.S.C. 1396a(kk)(8)(B).

Congress chose not to mention rights when directing participating states to include the any-qualified-provider provision in their plans. So at best, Respondents have to *infer* that Congress created a private right. And "an inference is not 'an unambiguously conferred right.'" *Kauffman*, 981 F.3d at 360 (quoting *Gonzaga*, 536 U.S. at 283); accord *31 Foster Child.* v. *Bush*, 329 F.3d 1255, 1270 (11th Cir. 2003) ("Ambiguity precludes enforceable rights.").

On its plain text, then, the any-qualified-provider provision, like many statutes, may confer a benefit. And Ms. Edwards may even be within the statute's zone of interests. But that's not enough to unambiguously confer a private right. The provision's text and structure are devoid of any language resembling what this Court has deemed clear rights-creating language. *Gonzaga*'s "demanding bar," *Talevski*, 599 U.S. at 180 (citing *Gonzaga*, 536 U.S. at 280), requires far more.

C. The Court should retain its bright lines about what qualifies as clear rights-creating language.

Thus far, this Court has limited "clear rights-creating language" to statutes where Congress explicitly uses the label "right" or lifts language from the rights-creating provisions of the Constitution. To keep *Gonzaga*'s bar "demanding," the Court should hold that line. The any-qualified-provider provision falls far short, as this Court's precedents prove.

1. *Talevski* proves Congress can clearly confer a private right by explicitly labeling a benefit a "right."

In *Talevski*, this Court held that two provisions of FNHRA that explicitly reference "*rights* of nursing-home residents to be free from unnecessary" restraints and to receive pre-discharge notice "unambiguously create § 1983-enforceable rights." 599 U.S. at 171–72 (emphasis added). The provisions satisfied "*Gonzaga*'s stringent standard" given their "clear rights-creating language." *Id.* at 186 (cleaned up).

"To start, … both [the unnecessary-restraint and predischarge-notice provision] reside in 42 U.S.C. § 1396r(c), which expressly concerns '[r]equirements *relating to residents' rights*.'" *Id.* at 184 (quoting 42 U.S.C. 1396r(c)). As this Court explained it, "[t]his framing is indicative of an individual 'rights-creating' focus." *Ibid.* (quoting *Gonzaga*, 536 U.S. at 284). "Examined further," the provisions' text "unambiguously confers rights upon the residents of nursing-home facilities." *Ibid.*

The unnecessary-restraint provision appears in a statutory subsection called "General *rights*" and in a subsubsection titled "Specified *rights*." 42 U.S.C. 1396r(c)(1)(A) (emphasis added). That provision requires nursing homes to "protect and promote" the *rights* of each resident, including "*[t]he right* to be free from … any physical or chemical restraints … not required to treat *the resident's* medical symptoms." *Talevski*, 599 U.S. at 184 (quoting 42 U.S.C. 1396r(c)(1)(A)(ii)). The provision sits alongside additional provisions that protect "[t]he *right* to choose a personal attending physician" (more on this in a moment), "[t]he *right* to privacy," "[t]he *right* to confidentiality," the "*right* … to reside and receive services with reasonable accommodation of individual needs," "[t]he *right* … to receive notice before the room or roommate of the resident in the facility is changed," "[t]he *right* to voice grievances," "[t]he *right* of the resident to organize and participate in resident groups," "the *right* of the resident's family to meet in the facility," "[t]he *right* of the resident to participate in social, religious, and community activities," "[t]he *right* to examine" facility survey results, "[t]he *right* to refuse a transfer to another room," and "[a]ny other *right* established by the Secretary." 42 U.S.C. 1396r(c)(1)(A)(i), (iii)-(xi) (emphasis added). FNHRA refers to these as "legal rights." *Id.* at (c)(1)(B)(i), (iv).

The "predischarge-notice provision is more of the same." *Talevski*, 599 U.S. at 184. "Nestled in a paragraph concerning 'transfer and discharge *rights*,' that provision tells nursing facilities that they 'must not transfer or discharge [a] *resident*' unless certain preconditions are met, including advance notice … to the resident and his or her family." *Id.* at 184–85

(quoting 42 U.S.C. 1396r(c)(2)) (cleaned up); accord *id.* at 192 (Gorsuch, J., concurring) ("[T]he text of the Act's operative provisions refers to individual 'rights.'"). And before effecting a transfer or discharge, FNHRA requires the nursing home to provide a notice that must include "notice of the resident's *right* to appeal the transfer or discharge." 42 U.S.C. 1396r(c)(2)(B)(i), (iii).

As a result, "the text of the unnecessary-restraint and predischarge-notice provisions unambiguously confer[] rights upon the residents." *Talevski*, 599 U.S. at 184. Those provisions "stand in stark contrast to the statutory provisions that failed *Gonzaga*'s test in *Gonzaga* itself." *Id.* at 185.

Conversely, the any-qualified-provider provision never mentions the word "right" or its equivalent. To be sure, the phrase "may obtain … assistance" might confer a benefit. But that is not enough under *Talevski* and *Gonzaga*. "[I]t is *rights*, not the broader or vaguer 'benefits' or 'interests,' that may be enforced" under Section 1983. *Gonzaga*, 536 U.S. at 283.

Driving that point home, FNHRA proves that Congress knows how to use clear rights-creating language in a Spending Clause provision when it wants to confer the right to choose a healthcare provider. As noted above, in the same subsection that this Court analyzed in *Talevski*—"Requirements relating to residents' *rights*"—Congress required that a "nursing facility must protect and promote the rights of each resident, including" the "*right*[]" of "Free choice," starting with the "*right* to choose a personal attending physician." 42 U.S.C. 1396r(c)(1)(A)(i) (emphasis added).

The text and structure of the any-qualified-provider provision contain no such rights-creating language. And Congress's "use of explicit language in other statutes cautions against inferring" Congress intended to say something it didn't say in the statute under consideration. *Marx* v. *Gen. Revenue Corp.*, 568 U.S. 371, 384 (2013). If that's true where "explicit language" is *not* required, *ibid.*, then in a context like this one, where explicit rights-creating language *is* required, the absence of that language—coupled with its presence in statutes like FNHRA—is dispositive. See *Sandoval*, 532 U.S. at 288 ("We therefore begin (and find that we can end) our search for Congress's intent with the text and structure of Title VI.").

2. Titles VI and IX prove Congress can clearly confer a private right by using text from the rights-creating provisions of the U.S. Constitution.

The two rights-creating provisions this Court identified in *Gonzaga*—Title VI and Title IX—confirm Congress knows how to use clear rights-creating language. As *Gonzaga* recognized, both contain "explicit" rights-creating terms. 536 U.S. at 284 n.3. "Title VI provides: '*No person* in the United States *shall* ... be subjected to discrimination under any program or activity receiving Federal financial assistance' on the basis of race, color, or national origin." *Ibid.* (quoting 42 U.S.C. 2000d) (emphasis added in *Gonzaga*). And "Title IX provides: '*No person* in the United States *shall,* on the basis of sex, ... be subjected to discrimination under any education program or activity receiving Federal financial assistance.'" *Ibid.* (quoting 20 U.S.C. 1681(a)) (emphasis added in *Gonzaga*).

This Court's conclusion that the phrase "No person shall," located in two civil-rights statutes, qualifies as clear rights-creating language follows naturally from the phrase's deeply rooted, rights-creating pedigree. The U.S. Constitution's Bill of Rights and analogous provisions in nearly all the states' constitutions have included that phrase for centuries. See U.S. Const. amend. V ("No person shall …"); John T. McNaughton, The Privilege against Self-Incrimination, 51 J. Crim. L. Criminology & Police Sci. 138, 139 (1960) (noting that "the constitutions of all but two states" contain verbatim "No person shall" language or its equivalent).

By contrast, the any-qualified-provider provision contains no such clear rights-creating language. Although the court below thought the phrase "any individual" "closely mirrors" the "No person … shall" phrasing highlighted in *Gonzaga*, Pet.App.57a, that conclusion is fatally flawed.

Congress could have drawn on the rights-creating pedigree of the phrase "No person shall" and required state plans to provide that "*no person shall* be denied the *free choice* of any provider qualified to perform the required services." But Congress did not write that. Instead, it used "may" in place of the more traditional rights-creating "shall," it limited the scope of the class to "eligible" individuals, it gave states authority to decide what makes a provider "qualified," and it spoke of "obtain[ing]" a benefit from a third party.

Despite all this, Respondents have argued that the any-qualified-provider provision should be read as though it were written like Titles VI and IX, but this Court usually does not "read into statutes words that

aren't there." *Romag Fasteners, Inc* v. *Fossil, Inc.*, 590 U.S. 212, 215 (2020). Accord *Morse* v. *Republican Party of Va.*, 517 U.S. 186, 286–88 (1996) (Thomas, J., dissenting, joined by Rehnquist, C.J., Scalia, J., and in relevant part, Kennedy, J.) (concluding, pre-*Gonzaga*, that Section 5 of the Voting Rights Act contained a private right of action but Section 10 did not because only the former used the familiar "no person shall" term of art).

Nor can Respondents transform the any-qualified-provider provision into a "free-choice-of-provider provision" simply by attaching that label to it. Contra Opp.i (adopting this label and inserting it into the first question presented). The provision's text does not contain the phrase "free choice," much less the clear rights-creating language in Titles VI and IX. Stretching the text, Respondents try to "conjure up a private [right] that has not been authorized by Congress." *Sandoval*, 532 U.S. at 291. But the absence of "clear rights-creating language" calls the Court to reject that effort. *Talevski*, 599 U.S. at 186.

3. Absent such explicit rights-creating language, spending statutes do not create private rights, as this Court's precedents prove.

In *Gonzaga*, a student sued his private university under Section 1983 to enforce provisions in FERPA "prohibit[ing] the federal funding of educational institutions that [had] a policy or practice of releasing education records to unauthorized persons." *Gonzaga*, 536 U.S. at 276. One provision stated:

> 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 education records (or personally identifiable information contained therein …) of students without the written consent of their parents to any individual, agency, or organization.

Id. at 279 (quoting 20 U.S.C. 1232g(b)(1)).

A second added that "[n]o funds shall be made available" to educational entities with "a policy or practice of releasing, or providing access to, [certain] personally identifiable information … unless—there is written consent from *the student's parents* … with a copy of the records to be released to *the student's parents* and *the student* if desired by the parents" or a court order approving the release." 20 U.S.C. 1232g(b)(2) (emphasis added).

The *Gonzaga* dissent thought the second provision "plainly [met] the standards" this Court "articulated in *Blessing* for establishing a federal right." *Gonzaga*, 536 U.S. at 295 (Stevens, J., dissenting). It was "directed to the benefit of individual students and parents," it was "binding on States," it was "couched in mandatory, rather than precatory, terms," it was "far from vague and amorphous," and it spoke "of the individual 'student,' not students generally." *Ibid.* (cleaned up). The dissent also highlighted the "rights-creating language in the title" of FERPA—the Family Educational *Rights* and Privacy Act—the "text of the Act," and its "overall context." *Id.* at 293, 296.

Despite all that, this Court held it was not enough. The provisions "lack[ed] the sort of 'rights-creating' language critical to showing the requisite congressional intent to create new rights." *Id.* at 287. Instead, the Act spoke "only to the Secretary of Education, directing that '[n]o funds shall be made available' to any 'educational agency or institution'" with "a prohibited 'policy or practice.'" *Ibid.* (quoting 20 U.S.C. 1232g(b)(1)). And that made the Act's "focus … two steps removed from the interests of individual students and parents." *Ibid.*

Respondents' arguments here sound like the *Gonzaga* dissent. Though the any-qualified-provider provision is a directive and uses the word "individual," the text lacks "'rights-creating' language," and speaks only to the Secretary of Health and Human Services. Compare *ibid.* That makes Section 1395a(a)(23) two steps removed from the interests of beneficiaries. *Ibid.*

"The Court consistently has found that Congress intended to create a cause of action 'where the language of the statute explicitly confers a right *directly* on a class of persons that includes the plaintiff in the case.'" *Merrill Lynch, Pierce, Fenner & Smith, Inc.* v. *Curran*, 456 U.S. 353, 391 n.91 (1982) (emphasis added) (cleaned up) (quoting *Cannon*, 441 U.S. at 690 n.13). Conversely, it has noted that there "would be far less reason to infer a private remedy in favor of individual persons" where Congress, rather than drafting the legislation "with an unmistakable focus on the benefited class," has framed the statute simply as a general prohibition or a command to a federal agency. *Coutu*, 450 U.S. at 771–73 (citing *Cannon*, 441 U.S. at 690–92 & n.13).

Similarly, in *Coutu*, the Court addressed the private enforceability of minimum-wage provisions in the Davis-Bacon Act that are analogous to the any-qualified-provider provision. 450 U.S. at 756–57. The lead provisions there required that advertised specifications for certain federal construction contracts "*shall contain* a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based" on the prevailing rates for laborers and mechanics working on similar projects. *Id.* at 756–57 (quoting what are now located at 40 U.S.C. 3142(a) and (b)) (emphasis added). A separate provision added that "[e]very contract based upon these specifications *must contain* a stipulation that the contractor shall pay wages not less than those stated in the specifications." *Id.* at 757 (emphasis added) (describing what is now located at 40 U.S.C. 3142(c)).

This Court had previously "recognized that on its face, the Act is a minimum wage law designed for the benefit of construction workers." *Id.* at 771 (cleaned up). But that "design[]" did "not end the inquiry." *Ibid.* Instead, the Court asked "whether the language of the statute indicates that Congress intended that it be enforced through private litigation." *Ibid.* That intent exists only "'where the language of the statute *explicitly confer[s] a right* directly on a class of persons that include[s] the plaintiff." *Id.* at 772 (emphasis added) (quoting *Cannon*, 441 U.S. at 690 n.13).

"Conversely," no private cause of action arises when Congress "frame[s] the statute simply as a general prohibition or a command to a federal agency." *Ibid.* (quoting *Cannon*, 441 U.S. at 690–92). And that's what Congress did in "Section 1 of the Davis-Bacon Act," which required "certain stipulations be

placed in federal construction contracts for the benefit of mechanics and laborers, but [did] not confer rights directly on those individuals." *Ibid.* Given that omission, the Act's language "provide[d] no support for the implication of a private remedy." *Id.* at 773.

So too here. Congress directed the Secretary to "approve any plan which fulfills the conditions" in 1396a(a), including that a "State plan for medical assistance must … provide that … any individual eligible for medical assistance … may obtain such assistance from any … qualified" provider. 42 U.S.C. 1396a(b), (a)(23). That condition may have been "designed to benefit a particular class," like the Davis-Bacon Act was designed to benefit mechanics and laborers, but that "does not end the inquiry." *Coutu*, 450 U.S. at 771. It also may have been stated as a mandatory component, like the Davis-Bacon Act was. *Id.* at 757 (describing stipulations that contracts "must contain"). But as *Coutu* proves, that is not enough to create a privately enforceable right where, as here, a statute is framed "simply as … a command to a federal agency" and does not "'explicitly confer[] a right directly on a class of persons that include[s] the plaintiff in the case.'" *Id.* at 772 (quoting *Cannon*, 441 U.S. at 690 n.13).

Ultimately, the question is "one of congressional intent, not one of whether this Court thinks it can improve upon the statutory scheme that Congress enacted into law." *Id.* at 770 (cleaned up). As for the any-qualified-provider provision's text, Congress's intent is clear: The "rights-creating language so critical to the Court's analysis" in its cases "is completely absent" here. *Sandoval*, 532 U.S. at 288 (cleaned up). And that ends the analysis. *Ibid.*

D. The Medicaid Act's broader statutory regime reinforces that the any-qualified-provider provision does not create private rights.

The Medicaid Act's broader statutory scheme confirms what the any-qualified-provider provision's text has already shown—that the provision does not create privately enforceable rights.

The Medicaid Act is not a civil-rights statute that imposes duties and restraints on states. It is merely a funding mechanism, and state "participation in the Medicaid program is entirely optional." *Harris* v. *McRae*, 448 U.S. 297, 301 (1980). States that choose to participate in Medicaid may also choose to change their programs, even if doing so creates the possibility that the Secretary will deny funding. 42 U.S.C. 1396c; 42 C.F.R. 430.12(c).

The Act's baseline requirement for states is providing coverage to "categorically needy" groups for some basic services. Barbara S. Klees et al., Ctrs. for Medicare & Medicaid Servs., *Brief Summaries of Medicare & Medicaid: Title XVIII & Title XIX of The Social Securities Act* 22–26 (Dec. 31, 2012). Beyond that, states can choose how they want to structure their programs when it comes to eligibility standards, scope of coverage, payment methodology, and the like. *Id.* at 22–28. The Secretary alone decides if a state has satisfied the Act's requirements and, if the state later falls out of compliance in administering its plan, whether to withhold some or all of the state's funding. 42 U.S.C. 1396c; 42 C.F.R. 430.12(c).

Put differently, the Act imposes a legally binding directive only on the Secretary, who is charged with approving plans and ensuring states substantially comply with the Act's plan requirements to continue receiving funds. 42 U.S.C. 1396c. Absent a *Talevski*-like bill of rights, "[f]ocusing on substantial compliance is tantamount to focusing on the aggregate practices of a state funding recipient." *Midwest Foster Care & Adoption Ass'n* v. *Kincade*, 712 F.3d 1190, 1201 (8th Cir. 2013).

Like the FERPA provisions in *Gonzaga*, then, Section 1396a and the any-qualified-provider provision are "primarily directed [at] the Federal Government's 'distribution of public funds,' [with] 'an aggregate, not individual, focus.'" *Talevski*, 599 U.S. at 185–86 (quoting *Gonzaga*, 536 U.S. at 290). The Secretary must look at the aggregate of more than 80 disparate plan requirements and assess a state's substantial compliance. "Even where a subsidiary provision includes mandatory language that ultimately benefits individuals, a statute phrased as a directive to a federal agency typically does not confer enforceable federal rights on the individuals." *Gillespie*, 867 F.3d at 1041 (citing *Coutu*, 450 U.S. at 756 n.1).

Just as the Medicaid Act charges the Secretary of Health and Human Services with dealing with state violations, Congress in FERPA explicitly authorized the Secretary of Education to "*deal with violations*" of that Act. *Gonzaga*, 536 U.S. at 289 (quoting 20 U.S.C. 1232g(f)). And there was "no question that FERPA's nondisclosure provisions fail[ed] to confer enforceable rights." *Id.* at 287. There is likewise no question that the any-qualified-provider provision fails to confer an enforceable right here.

The plurality's analysis in *Armstrong* bolsters that conclusion. 575 U.S. at 331–32 (Scalia, J., joined by Roberts, C.J., Thomas, J., and Alito, J.). Its opinion analyzed 42 U.S.C. 1396a(a)(30)—a subsection of the Medicaid Act parallel to the any-qualified-provider provision—and noted that it 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 of the State's decision to participate in Medicaid." *Id.* at 331. "[S]uch language reveals no congressional intent to create a private right of action." *Ibid.* (cleaned up). The same is true here.

In this case, the Fourth Circuit placed great weight on 42 U.S.C. 1320a-2 in dismissing any relevance of the any-qualified-provider provision's appearance in a statute "requiring a State plan or specifying the required contents of a State plan." Pet.App.29a (quoting 42 U.S.C. 1320a-2). But as the Eighth Circuit has explained, Section 1320a-2 simply means that a provision "cannot be deemed individually unenforceable *solely* because of its situs in a larger regime 'requiring a State plan or specifying the required contents of a state plan.'" *Midwest Foster Care*, 712 F.3d at 1200 (emphasis added). And "when a statute links funding to substantial compliance with its conditions—including forming and adhering to a state plan with specified features—this [link] counsels against the creation of individually enforceable rights." *Ibid.* That's "because, even where a state substantially complies with its federal responsibilities, a sizeable minority of its beneficiaries may nonetheless fail to receive the full panoply of offered benefits." *Id.* at 1200–01. True rights-creating provisions require more than this.

Tellingly, the *Armstrong* plurality did not think Section 1320a-2 foreclosed its consideration of this critical statutory context. See *Kauffman*, 981 F.3d at 376 (Elrod, J., concurring, joined by six other judges) (explaining that Section 1320a-2 "did not inform the analysis" in *Armstrong*). Neither should this Court.

Standing alone, the Medicaid Act's substantial compliance regime, its directive to the Secretary, or its articulation of dozens of plan requirements might not be enough to foreclose private enforceability. See *Armstrong*, 575 U.S. at 328 (making that point regarding the Secretary's ability to withhold funds). But taken together, they confirm what the text establishes—that Congress chose not to confer a privately enforceable right in the any-qualified-provider provision.

E. Common sense confirms what text and structure prove.

1. Respondents' approach would drop *Talevski*'s high bar to the floor.

In their opposition brief, Respondents argued that the any-qualified-provider provision "has an 'unmistakable focus' on the benefited class and is 'phrased in terms of the persons benefited,'" which, Respondents claimed, "'satisfie[s]' this Court's test for whether a statute contains the necessary rights-creating language." Opp.16 (quoting *Talevski*, 599 U.S. at 183). Such a reading of *Talevski* would drop *Gonzaga*'s "demanding bar" to the floor. *Talevski*, 599 U.S. at 180.

A statute that "addresses," Opp.16, a benefited class *still* must contain clear rights-creating language to confer privately enforceable rights. Per *Gonzaga*, "rights-creating" language is "*critical* to showing the requisite congressional intent to create new rights." 536 U.S. at 287 (emphasis added); accord *Sandoval*, 532 U.S. at 288 (same). Focus on a benefited class is necessary—but not sufficient.

Consider the implications of finding privately enforceable rights simply because a statute "addresses whether 'individual' Medicaid patients 'may obtain'" a benefit. Opp.16. Leaving aside that Section 1396a(a) uses the word "individual" hundreds of times, eight of the 87 listed plan-requirement provisions contain individual-focused, benefit-conferring language that likely would satisfy Respondents' lax test. Those provisions say that a "State plan for medical assistance *must*" do the following:

(3) "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 is not acted upon with reasonable promptness," 1396a(a)(3) (emphasis added);

(8) "provide that *all individuals* wishing to make application for medical assistance under the plan *shall* have opportunity to do so, and that such assistance *shall* be furnished with reasonable promptness to all *eligible individuals*," 1396a(a)(8) (emphasis added);

(10) "provide—(B) that the medical assistance made available to *any individual* described in subparagraph (A)—(i) *shall not be* less in amount, duration, or scope than the medical assistance made available to any other *such individual*, and (ii) *shall not be* less in amount, duration, or scope than the medical assistance made available to *individuals* not described in subparagraph (A)," 1396a(a)(10)(B) (emphasis added);

"provide—(D) for the inclusion of home health services for *any individual* who, under the State plan, is entitled to nursing facility services," 1396a(a)(10)(D) (emphasis added);

(12) "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*," 1396a(a)(12) (emphasis added);

(32) "provide that no payment under the plan for any care or service provided to *an individual shall be* made to anyone other than *such individual* or the person or institution providing such care or service," barring certain exceptions, 1396a(a)(32) (emphasis added);

(34) "provide that in the case of *any individual* who has been determined to be eligible for medical assistance under the plan, such assistance *will be* made available to him for care and services included under the plan and furnished in or after the third month

before the month in which he made application (or application was made on his behalf in the case of a deceased *individual*) for such assistance if *such individual* was (or upon application would have been) eligible for such assistance at the time such care and services were furnished," 1396a(a)(34) (emphasis added);

(53) "provide—(A) for notifying in a timely manner *all individuals* in the State who are determined to be eligible for medical assistance and who are pregnant women, breastfeeding or postpartum women …, or children below the age of 5, of the availability of benefits furnished by the special supplemental nutrition program under such section," 1396a(a)(53)(A) (emphasis added); and

"(B) for referring *any such individual* to the State agency responsible for administering such program," 1396a(a)(53)(B) (emphasis added);

(84) "provide that—(A) the State shall not terminate eligibility for medical assistance under the State plan … for *an individual* who is an eligible juvenile … because *the juvenile* is an inmate of a public institution …," 1396a(a)(84)(A) (emphasis added);

"(B) in the case of *an individual* who is an eligible juvenile …, the State *shall*, prior to *the individual's* release from such a public institution, conduct a redetermination of eligibility for *such individual* with respect to

> such medical assistance … and, if the State determines … that *the individual* continues to meet the eligibility requirements for such medical assistance, the State *shall restore* coverage for such medical assistance to *such an individual* upon *the individual's* release from such public institution," 1396a(a)(84)(B) (emphasis added).[4]

Each of these requirements "addresses whether 'individual' Medicaid patients," Opp.16, "shall" or "will" be given various types of medical assistance, providers, or processes to ensure timely and equal access to that assistance. Given *Gonzaga*'s "demanding bar," *Talevski*, 599 U.S. at 180, it can't be true that *all* of them create privately enforceable rights. If it were, then *Talevski* was hardly the "atypical case," *id.* at 183, and lower courts are free to "find" private rights in innumerable federal statutory provisions.

Worse, accepting Respondents' position that a provision's "'unmistakable focus' on the benefited class" and its "'phras[ing] in terms of the persons benefited'" is enough to create a private right, Opp.16 (cleaned up), would require overruling *Suter* v. *Artist M.*, in its entirety. 503 U.S. 347 (1992). That is exactly what Congress insisted it was *not* doing when it passed Section 1320a-2. 42 U.S.C. 1320a-2 (providing "that this section is not intended to alter the holding in Suter v. Artist M. that section 671(a)(15) of this title is not enforceable in a private right of action").

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[4] Accord 42 U.S.C. 1396a(a)(84)(C), (D) (requiring similar processing of applications for medical assistance submitted by "an individual who is an eligible juvenile" described in separate subsections).

The Adoption Act plan-requirement provision in *Suter* required states to specify that, "in each case, reasonable efforts will be made (A) prior to the placement of *a child* in foster care, to prevent or eliminate the need for removal of *the child* from his home, and (B) to make it possible for *the child* to return to his home." *Suter*, 503 U.S. at 351 (quoting 42 U.S.C. 671(a)(15)) (emphasis added). And yet, the Court held that provision did *not* "confer[] an enforceable private right on its beneficiaries" even though it conferred a benefit and identified the benefited individuals ("a child" and "the child" in foster care). *Id.* at 364. A "reasonable efforts" requirement—like a state's substantial-compliance requirement to allow Medicaid recipients to choose a qualified provider—"is at least as plausibly read to impose only a rather generalized duty on the State, to be enforced not by private individuals, but by the Secretary." *Id.* at 363.

In recent decades, this Court has reined in the "ready implication" of privately enforceable rights. *Armstrong*, 575 U.S. at 330 n.*. It should not return to "the heady days in which [it] assumed common-law powers to create causes of action." *Corr. Servs. Corp.* v. *Malesko*, 534 U.S. 61, 75 (2001) (Scalia J., concurring). Accepting that invitation would subject states to countless suits under a myriad of federal statutes—all without congressional approval.

2. Finding a private right in the any-qualified-provider provision creates contradictions and problems.

Additional practical reasons weigh strongly against finding a private right in the any-qualified-provider provision.

First, Respondents' position steals the discretion that Congress vested in the Secretary through the substantial-compliance statute. Under the Medicaid Act, the Secretary is charged with interpretation and enforcement, including deciding whether a state's administration of its plan is substantially compliant in its treatment of "qualified" providers. Yet under Respondents' theory, that administrative discretion is reassigned to federal district courts across the country issuing injunctions in Section 1983 actions.

Second, a provider *has* a remedy for exclusion. It can file an administrative appeal followed by state-court review and, if necessary, review by this Court. 42 U.S.C. 1396a(kk)(8)(B)(ii); 42 C.F.R. 1002.213; S.C. Code Regs. 126–150, 126–152, 126–154; S.C. Code Ann. § 1-23-380. Providers may balk at having to pursue an administrative remedy. But no one is contending that state-court review followed by a petition for certiorari is an inadequate backstop.

What's more, to suggest that Congress *also* intended beneficiaries to have a simultaneous right to sue in federal court to challenge such a decision is, to say the least, "a curious system for review of a State's determination that a Medicaid provider is not 'qualified.'" *Gillespie*, 867 F.3d at 1041–42. And because there's no reason that a judicial affirmance of a disqualification decision would have preclusive effect on a beneficiary's federal claim, this "gives … further reason to doubt that Congress … unambiguously created an enforceable federal right" here. *Ibid.*

Relatedly, it makes sense to infer a private right in the FNHRA context, where the resident and his nursing home may have adverse interests. See

Talevski, 599 U.S. at 172–74. It makes far less sense here, where the beneficiary is protected by the provider's exercise of its appeal rights. That may explain why FNHRA has a savings clause, 42 U.S.C. 1396r(h)(8), while Section 1396a does not.

Third, a ruling for Respondents would clash with the Medicaid Act's requirement that a state plan "provide … an opportunity for a fair hearing before the State agency to any individual whose claim for medical assistance under the plan is denied." 42 U.S.C. 1396a(a)(3). It would be strange for Congress to create an express administrative remedy for beneficiaries to challenge their *own* eligibility while authorizing those beneficiaries *sub silentio* to go to federal court to challenge a *provider's* eligibility.

Fourth, Respondents say that Medicaid beneficiaries need a private right of action to preserve broad access to healthcare. But nothing is further from the truth. South Carolinians in the Medicaid program have access to plenty of providers. See *supra*, pp. 9–11. And any excluded providers have an administrative remedy and judicial review to preserve their participation in the program.

Finally, accepting Respondents' position would subject states to innumerable lawsuits and accompanying attorney-fee awards—all without the clear notice that the Spending Clause requires. And that problem is not limited to the any-qualified-provider provision. Lower courts that fail to follow this Court's guidance have found a vast array of private rights enforceable under Section 1983.

Limiting the survey just to 42 U.S.C. 1396a(a), these lawsuits have included healthcare providers challenging a state's notice-and-comment process for setting payment rates, *e.g.*, *BT Bourbonnais Care, LLC* v. *Norwood*, 866 F.3d 815, 824 (7th Cir. 2017) (applying 42 U.S.C. 1396a(a)(13)(A)); individuals contesting how promptly they received medical assistance, *e.g.*, *Doe* v. *Kidd*, 501 F.3d 348, 355–57 (4th Cir. 2007) (applying 42 U.S.C. 1396a(a)(8)); and beneficiaries challenging eligibility decisions, *e.g.*, *Bontrager* v. *Ind. Fam. & Soc. Servs. Admin.*, 697 F.3d 604, 606–07 (7th Cir. 2012) (applying 42 U.S.C. 1396a(a)(10)). The cost of these federal lawsuits is not easily quantified. But there is no doubt that such lawsuits will drain state Medicaid coffers at the expense of needy families and children—harming the very people the Medicaid Act is supposed to help.

In sum, the any-qualified-provider provision lacks the kind of unambiguous rights-creating language that this Court demands to recognize a private right enforceable by Section 1983. The Medicaid Act's structure counsels strongly against recognizing a private right. And the practical ramifications of finding a private right in Section 1396a(a)(23) are so disconcerting and irrational that the Court should not impute them to Congress.

II. The Court need not overrule any cases, but it should clarify that it has abandoned *Blessing*'s factors and cabined *Wilder* and *Wright*.

The Court in *Gonzaga* and *Talevski* emphasized the clear-rights-creating-language requirement to ensure that lower courts do not loosely imply private rights enforceable through Section 1983. Yet despite this Court's best efforts, lower courts have been slow to implement these instructions. As the decision below proves, "even after" *Talevski*, some lower courts still feel they "lack the guidance inferior judges need." Pet.App.35a–36a (Richardson, J., concurring in the judgment). So the Court should provide it now.

Blessing, *Wilder*, and *Wright* continue to sow confusion, as Judge Richardson's concurrences prove. Pet.App.35a–36a, 65a, 120a–25a. In *Wilder*, the Court looked "beyond the unambiguous terms of the statute" and relied on "policy considerations purportedly derived from legislative history and superseded versions of the statute" to find a privately enforceable right. 496 U.S. at 528 (Rehnquist, C.J., dissenting). *Blessing* reached a different result, but it is remembered more for its distillation of "three factors," 520 U.S. at 340, from *Wilder* and *Wright*. Courts and litigants alike have unfortunately read all three cases as "establish[ing] a relatively loose standard for finding rights enforceable by § 1983." *Gonzaga*, 536 U.S. at 282.

Attempting to set the record straight, *Gonzaga* disavowed any reading of *Blessing*, *Wilder*, and *Wright* that might "suggest that something less than an unambiguously conferred right is enforceable by § 1983." *Ibid.* And in assessing whether FERPA's

provisions created privately enforceable rights, the Court did not apply the *Blessing* factors. *Id.* at 287–90. In fact, when Justice Stevens argued in dissent that separation of powers would be better served by the *Blessing* test, *id.* at 300–02 (Stevens, J., dissenting), the majority countered that it "fail[ed] to see how relations between the branches are served by having courts apply a multifactor balancing test to pick and choose which federal requirements may be enforced by § 1983 and which may not," *id.* at 286.

Turning to *Wilder* and *Wright*, the *Gonzaga* Court noted that in both cases, Congress had "explicitly conferred specific monetary entitlements upon the plaintiffs." *Id.* at 280. In contrast, the student plaintiff's attempt to find a federally enforceable right in FERPA was "a far cry from the sort of individualized, concrete monetary entitlement found enforceable" in *Wilder* and *Wright*. *Id.* at 288 n.6. Years later, the *Armstrong* majority took specific aim at *Wilder*, observing that "later opinions" like *Gonzaga* "plainly repudiate the ready implication of a § 1983 action that *Wilder* exemplified." 575 U.S. at 330 n.*.

More recently, this Court's decision in *Talevski* reaffirmed *Gonzaga*'s analysis. All nine Justices joined opinions confirming that *Gonzaga* establishes the "test for determining whether a particular federal law actually secures rights for § 1983 purposes." *Talevski*, 599 U.S. at 175; *id.* at 183 ("*Gonzaga* sets forth our established method for ascertaining unambiguous conferral."); *id.* at 193 (Barrett, J., concurring) ("*Gonzaga* sets the standard for determining when a Spending Clause statute confers individual rights"); *id.* at 230 (Alito, J., dissenting) (*Gonzaga* sets forth the Court's "established method")

(cleaned up). And all nine Justices agreed *Gonzaga*'s unambiguous-conferral test sets a "high" and "demanding bar." *Id.* at 180; *id.* at 184 ("significant hurdle"); *id.* at 193 (Barrett, J., concurring) ("This bar is high"); *id.* at 230 (Alito, J., dissenting) (agreeing "with the Court's understanding of the high bar").

Despite that unanimity, the Court left some things unsaid. And the Fourth Circuit used that silence to double down on its prior opinions after *Talevski*. Pet.App.12a–13a.

First, while *Talevski* did not apply the *Blessing* factors, it did not overrule *Blessing* or expressly disavow its test.[5] So on remand, the Fourth Circuit reasoned that while *Talevski* had "shed some new light on *Blessing*," it was not for the court "to proclaim a Supreme Court precedent [had been] overthrown." Pet.App.21a–22a. The court expected at least "*some* discussion of *Blessing* had it been jettisoned," so it felt that it "remain[ed] bound by *Blessing* until given explicit instructions to the contrary—instructions that have yet to come." *Ibid.*

Second, although *Talevski* did not cite *Wright* or *Wilder*, it didn't overrule them either. So the Fourth Circuit's most recent decision continued to rely on *Wilder*. In the court's view, *Wilder* had "already held that a different funding condition" in Section 1396a(a) "confers individual rights enforceable via" Section

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[5] But see The Supreme Court 2022 Term, *42 U.S.C. 1983 – Spending Clause* – Health & Hospital Corp. of Marion County v. Talevski, 137 Harv. L. Rev. 380, 388 (2023) (observing that the *Talevski* "majority affirmed the Seventh Circuit while silently abandoning the very test the Seventh Circuit believed governed," namely *Blessing*'s three-factored test).

1983. Pet.App.27a. So the Fourth Circuit thought that *Wilder* "appear[ed] to doom the State's argument" that the any-qualified-provider provision is not privately enforceable because it focuses on government officials overseeing funding. *Ibid.* And the court did not believe that the *Armstrong* majority had effectively overruled *Wilder*, insisting instead that "[t]he serious business of spurning a precedent cannot be precipitated by winks and nods." Pet.App.28a.

Against this backdrop, the Court should make clear that it has abandoned the *Blessing* test that some lower courts still feel bound to apply "even after" *Talevski*. Pet.App.35a. See, *e.g.*, *Saint Anthony Hosp.* v. *Whitehorn*, 100 F.4th 767, 779 (7th Cir. 2024) (noting that *Talevski* did not "disapprove of *Blessing*" and claiming not to "see a fundamental difference between the *Talevski/Gonzaga* standard … and the first and third *Blessing* factors"), *reh'g granted and opinion vacated,* No. 21-2325, 2024 WL 3561942 (7th Cir. July 24, 2024); *Fed. L. Enf't Officers Ass'n* v. *Att'y Gen. N.J.*, 93 F.4th 122, 130 (3d Cir. 2024) (observing that this Court "has not expressly held that the *Blessing* factors are no longer relevant" and applying those factors in a footnote).

The Court did something similar in *Kennedy* v. *Bremerton School District*, 597 U.S. 507 (2022). There, the Court clarified "that the shortcomings associated with [the] ambitious, abstract, and ahistorical approach to the Establishment Clause" adopted in *Lemon* v. *Kurtzman*, 403 U.S. 602 (1971), had become "so apparent" that the Court had "long ago abandoned *Lemon* and its endorsement test offshoot." *Id.* at 534 (cleaned up).

Before *Kennedy*, "[t]he Court [had] explained that these tests [had] invited chaos in lower courts, led to differing results in materially identical cases, and created a minefield for legislators." *Ibid.* (cleaned up). And more recently, the Court had rejected *Lemon*-based arguments while, "[i]n place of *Lemon* and the endorsement test," instructing "that the Establishment Clause must be interpreted by reference to historical practices and understandings." *Id.* at 535–36 (cleaned up). That focus had "long represented the rule rather than some exception within the Court's Establishment Clause jurisprudence." *Id.* at 536 (cleaned up). And the lower courts had "erred by failing to heed this guidance." *Ibid.*

So too here. This Court has not applied *Blessing*'s three factors since *Blessing* itself. 520 U.S. at 340–41. And even in *Blessing*, the Court merely said that they were the "three factors" the Court had "traditionally looked at … when determining whether a particular statutory provision gives rise to a federal right." *Id.* at 340. That framing is more descriptive than prescriptive. And it is no longer an accurate description of what this Court considers in this context.

What's more, in acknowledging the "confusion" and "uncertainty" *Blessing* has wrought, this Court has rejected *Blessing*-based arguments, confirming that its cases do not "permit anything short of an unambiguously conferred right to support a cause of action brought under § 1983." *Gonzaga*, 536 U.S. at 282–83. Given all this, the Court should clarify, much like it did in *Kennedy*, that it has "long ago abandoned [*Blessing*] and its [three-factor] test." *Kennedy*, 597 U.S. at 534.

The Court also should clarify that *Wilder* and *Wright* are limited to the unique monetary-entitlement-conferring provisions at issue there. Despite this Court saying that its "opinions plainly repudiate the ready implication of a § 1983 action that *Wilder* exemplified," *Armstrong*, 575 U.S. at 330 n.*, that was not enough for the court below, Pet.App.27a–28a. And while *Gonzaga* cabined *Wilder* and *Wright* to cases involving spending provisions that "explicitly confer[] specific monetary entitlements upon the plaintiffs," *Gonzaga*, 536 U.S. at 280, 288 n.6, the court below relied on *Wilder* anyway, Pet.App.15a–16a, 27a.

Again, this Court has done something similar in the Establishment Clause context. Three Terms ago, the Court explained that *Locke* v. *Davey*, 540 U.S. 712 (2004), "cannot be read beyond its narrow focus on vocational religious degrees." *Carson ex rel. O. C.* v. *Makin*, 596 U.S. 767, 789 (2022). The Court should similarly clarify here that *Wilder* and *Wright* "cannot be read beyond [their] narrow focus," *ibid.*, on "the sort of individualized, concrete monetary entitlement found enforceable" in those cases, *Gonzaga*, 536 U.S. at 288 n.6.

Finally, while the Court need not overrule *Blessing*, *Wilder*, or *Wright* to reverse the decision below, if the Court concludes more is required to guide lower courts, the Court should overrule all three. "*Stare decisis* is not an inexorable command, and the *stare decisis* considerations most relevant here—the quality of the precedent's reasoning, the workability of the rule it established, and reliance on the decision—all weigh in favor of letting [all three decisions] go." *Loper Bright Enters.* v. *Raimondo*, 603 U.S. 369, 407 (2024) (cleaned up).

1. On the quality of the reasoning, *Talevski* commands courts to "employ traditional tools of statutory construction to assess whether Congress has unambiguously conferred individual rights upon a class of beneficiaries to which the plaintiff belongs." 599 U.S. at 183 (cleaned up). But in *Blessing*, *Wilder*, and *Wright*, the Court did *not* use traditional tools of statutory interpretation, nor did it ask whether Congress had unambiguously conferred a *right*. The Court asked mainly whether Congress had imposed a mandatory benefit. See *Blessing*, 520 U.S. at 341 (asking whether Congress imposed "a binding obligation"); *Wilder*, 496 U.S. at 509–10 (looking only for mandatory benefits); *Wright*, 479 U.S. at 430–31 (same). That never should have been enough. See *Wilder*, 496 U.S. at 528 (Rehnquist, C.J., dissenting); *Wright*, 479 U.S. at 434 (O'Connor, J., dissenting).

2. This trio of cases has also proven unworkable. As shown by the decision below and the 5–2 circuit split, *Wilder* and *Wright*, along with *Blessing*'s three-factored test, have sown chaos and confusion in the lower courts. This Court tried to "resolve [that] ambiguity" in *Gonzaga*. 536 U.S. at 278. But it didn't work. "Virtually all the circuits refused to read *Gonzaga* as repudiating *Blessing*." The Supreme Court 2022 Term, 137 Harv. L. Rev. at 388 (collecting cases). "Many interpreted *Gonzaga* as merely glossing *Blessing*'s first prong and began applying this '*Blessing-Gonzaga* test' as controlling law." *Ibid.* (cleaned up) (collecting cases). Others "read *Gonzaga* as providing merely 'principles' courts should keep 'firmly in mind' as they apply the '*Blessing* test.'" *Ibid.* (quoting *N.Y. State Citizens' Coal. for Child.* v. *Poole*, 922 F.3d 69, 79 (2d Cir. 2019)).

3. This confusion means "arguments for reliance … are misplaced." *S. Dakota* v. *Wayfair*, 585 U.S. 162, 186 (2018). "This is especially so because" Congress, the states, and private parties "have been on notice for years regarding this Court's misgivings" about all three cases. *Janus* v. *Am. Fed'n of State, Cnty., and Mun. Emps., Council 31*, 585 U.S. 878, 927 (2018). Also, Congress repealed the amendment in *Wilder* "and replaced it with narrower language" to give the states more flexibility. *Long Term Care Pharmacy All.* v. *Ferguson*, 362 F.3d 50, 58 (1st Cir. 2004).

In short, given how badly their "doctrinal underpinnings have … eroded," how "unworkable" they've proved, *Kimble* v. *Marvel Ent., LLC*, 576 U.S. 446, 458–59 (2015), and how little reliance exists, the Court would be justified in overruling all three cases.

III. Reversal would respect separation of powers and enable states to better steward scarce Medicaid resources.

"Under the Constitution's separation of powers, Congress and the President may update the law to meet modern policy priorities and needs." *Arizona* v. *Navajo Nation*, 599 U.S. 555, 566 (2023). "But it is not the Judiciary's role to update the law." *Ibid.* And it is "particularly important that the federal courts not do so" in cases involving the allocation of scarce resources that leave states in a "zero-sum situation." *Ibid.*

In *Navajo Nation*, that resource was "water in the arid regions of the American West." *Ibid.* Here, it's Medicaid dollars. "And the zero-sum reality" of both "underscores that courts must stay in their proper constitutional lane and interpret the law … according

to its text and history, leaving to Congress and the President" the task of updating the law in light of "competing contemporary needs." *Id.* at 567.

The Medicaid program is expensive for states. "On average, states spend 29% of their annual budgets on costs related to Medicaid." Br. of *Amici Curiae* U.S. Senators and Representatives at 12, July 5, 2024. "That makes Medicaid the *costliest* expenditure for many state budgets." *Ibid.* (emphasis added). (Medicaid is a 24.3% share of South Carolina's state budget. *South Carolina At-a-Glance*, State Health Access Data Assistance Center, perma.cc/X3VL-25WT).

When federal courts discover private rights buried in state plan requirements, those costs increase exponentially. "Authorizing lawsuits by patients to challenge their providers' terminations burdens state agencies with redundant and intrusive oversight while the high cost of federal litigation displaces more efficient uses of state resources." *Planned Parenthood of Greater Tex. Fam. Plan. & Preventive Health Servs.* v. *Smith*, 913 F.3d 551, 571 (5th Cir. 2019) (Jones, J., concurring). And Respondents' position creates the "threat of a federal lawsuit—and its attendant costs and fees—whenever [a state makes] changes" to its list of qualified providers. *Gee* v. *Planned Parenthood of Gulf Coast, Inc.*, 586 U.S. 1057, 1058 (2018) (Thomas, J., dissenting from the denial of cert.). Even just the threat of litigation can impose real costs on real people as the "looming potential for complex litigation inevitably will dissuade state officials from making decisions that they believe to be in the public interest." *Ibid.*

The scope of such litigation is staggering. In a 2020 report, the U.S. Department of Health and Human Services' Office of Inspector General reported more than 9,000 terminated Medicaid providers in its database. Department of Health & Human Services Office of the Inspector General, *States Could Do More To Prevent Terminated Providers From Serving Medicaid Beneficiaries* at 7 (Mar. 2020), perma.cc/9JLQ-J696. Under Respondents' theory, beneficiaries in each state have a right to file a Section 1983 lawsuit that seeks the reinstatement of every one of those providers—plus damages and attorney fees.

The problem is exponentially worse when considering more than just qualified-provider litigation. Given the broader questions this case implicates, the Court's decision could impact the costs imposed on states across a host of federal spending programs. In the adoption-and-foster-care context, for example, Judge Livingston has raised the alarm that—under the kinds of arguments that Respondents raise here—state foster-care programs face an "unfortunate and unsupportable risk of increased litigation" under the Adoption Assistance and Child Welfare Act, "inconsistent results" in those cases, "and disorderly administration, none of which will inure to those programs' benefit." *Poole*, 922 F.3d at 95 (Livingston, J., dissenting) (cleaned up). That "raises the prospect that scarce foster care resources, instead of going to foster children, will be squandered in litigation destined to produce arbitrary and inconsistent results." *Id.* at 97. If those costs are to be imposed on states, that choice is best left to the people's elected representatives in Congress.

* * *

Nothing in the any-qualified-provider provision's text or structure unambiguously expresses congressional intent to confer a federal private right on anyone. To hold otherwise would encroach upon the executive and legislative branches' prerogatives while increasing the cost to the states of providing medical care to their neediest citizens. And doing so would drop *Gonzaga*'s supposedly "demanding bar," 599 U.S. at 180, to the floor. Because the text and structure of the any-qualified-provider provision do not present the "atypical case," *id.* at 183, that provision does not create private rights enforceable under Section 1983.

CONCLUSION

The judgment of the courts of appeals should be reversed.

Respectfully submitted,

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