No. 23-1275

IN THE

Supreme Court of the United States

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

Petitioner,

v.

PLANNED PARENTHOOD SOUTH ATLANTIC, ET AL.,

Respondents.

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

BRIEF OF *AMICI CURIAE* UNITED STATES SENATORS AND REPRESENTATIVES IN SUPPORT OF PETITIONER

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February 10, 2025

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae are members of the U.S. Senate and House of Representatives (listed in the Appendix) who are concerned that the decision below—if left uncorrected—will open the door to costly and unwarranted litigation and will undermine Congress's prerogative to decide whether a statute should be enforced through private litigation.

Congress alone can create private rights of action. *Amici* believe that because Congress has not spoken clearly here, Section 1983 cannot support Planned Parenthood's or its client's claims to a private right of action under the Medicaid Act's any-qualified-provider provision. "[U]nless Congress 'speak[s] 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 Univ. v. Doe*, 536 U.S. 273, 280 (2002).

Congress knows how to create a private right of action, but it did not do so here. *Amici* therefore urge this Court to reverse the decision below.

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[1] Pursuant to this Court's Rule 37.6, counsel for *amici curiae* certifies that this brief was not authored in whole or in part by counsel for any party and that no person or entity other than *amici curiae* or its counsel has made a monetary contribution to the preparation or submission of this brief.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

In 2018, South Carolina terminated Planned Parenthood from the state's Medicaid program, declaring abortion clinics unqualified "to provide services to Medicaid beneficiaries." App. 128a. The order stated 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." App.158a. And it explained that "abortion clinics' primary focus on denying the right to life is contrary to and conflicts with the State's obligation to protect and preserve that right." *Id.* Indeed, South Carolina state law prohibits the use of funds to pay for abortions. *See* S.C. Code Ann. §43-5-1185 (1976).

Two weeks after its termination from the program, Planned Parenthood South Atlantic and one of its Medicaid patients, Julie Edwards, sued South Carolina in federal court. They argued that by terminating Planned Parenthood from the Medicaid program, South Carolina had violated patients' right to the "qualified provider of their choosing" under the Medicaid Act. *See* 42 U.S.C. §1396a(a)(23). The district court granted Edwards a preliminary injunction. App. 127a, 146a. On appeal, the Fourth Circuit affirmed, holding that Congress unambiguously intended "to create an individual right enforceable under §1983 in the free-choice-of-provider provision." App. 83a.

That decision is wrong. "[C]onditional spending legislation" like the Medicaid Act "does not function—and, in particular, does not 'secure rights'—like laws

enacted under Congress' enumerated legislative powers." *Health & Hosp. Corp. of Marion Cnty. v. Talevski*, 599 U.S. 166, 200 (2023) (Thomas, J., dissenting). Because spending legislation requires the consent and participation of states, any asserted rights come into being (if ever) only if a state agrees to Medicaid's conditions and the Secretary approves the state's plan. Those asserted rights could then go out of being if the state later opts out of Medicaid or the Secretary terminates the state's participation. Thus the Act itself does not "[e]ffectually guar[d]" or "ma[k]e certain" Plaintiffs' asserted rights. *Secured*, Webster, American Dictionary of the English Language (1828). So, "rights provided for in spending power legislation" are not "'secured' as against States." *Talevski*, 599 U.S. at 192-93 (Gorsuch, J., concurring).

Yet even if spending legislation could be the basis for a Section 1983 claim, the any-qualified-provider provision does not meet this Court's high bar to create a private right of action. When Congress intends to create a new right "it must do so in clear and unambiguous terms." *Gonzaga Univ. v. Doe*, 563 U.S. 273, 290 (2002). Because Congress has not spoken clearly here, Section 1983 cannot support Planned Parenthood's claims to a private right of action under the Medicaid Act's any-qualified-provider provision.

Finally, allowing private enforcement of the Medicaid Act's any-qualified-provider provision will impose substantial costs on both states and the federal government. The decision below—if left to stand—will open the floodgates to costly litigation and breed uncertainty in budgeting. And it will stifle the flexibility

Congress gave states to innovate in their Medicaid programs.

The Court should reverse the decision below.

ARGUMENT

I. Medicaid recipients do not have a privately enforceable right under §1983 based on the Medicaid Act's any-qualified-provider provision.

Section 1983 provides a cause of action against "[e]very person" who deprives any other "person" "of any rights … secured by the Constitution and laws." 42 U.S.C. §1983. But Section 1983 cannot support Planned Parenthood's claims. Spending Clause legislation like the Medicaid Act does not "secure[]" rights against States. *Cf. Talevski*, 599 U.S. at 192-93 (Gorsuch, J., concurring). And the language of the Medicaid Act's any-qualified-provider provision does not create private rights. *See Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 331-32 (2015) (plurality). "[U]nless Congress 'speak[s] 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. Thus the Court should reverse the decision below.

A. Spending Clause legislation does not "secure[]" rights against the state.

Section 1983 applies only to "rights … secured by … la[w]." While Spending Clause legislation like the Medicaid Act is "la[w]" for the purposes of Section 1983, *Talevski*, 599 U.S. at 180 (citing *Maine v. Thiboutot*, 448 U.S. 1, 4 (1980)), such legislation does not "secure[]" an individual right to any qualified provider, *Talevski*, 599 U.S. at 192-93 (Gorsuch, J., concurring) (reserving the question "for another day").

To start, conditional spending laws—like the Medicaid Act—do not "secure" rights. Such laws "do[] not function … like laws enacted under Congress' enumerated legislative powers, such as the Commerce Clause." *Talevski,* 599 U.S. at 200 (Thomas, J., dissenting). Rather, spending clause legislation requires the consent and participation of states to confer benefits to private actors. The Spending Clause states that "Congress shall have Power" to "provide for the … general Welfare of the United States." U.S. Const. art. I, § 8, cl. 1. This provision allows Congress to condition federal funding for states upon compliance with certain conditions. *See South Dakota v. Dole*, 483 U.S. 203, 206-07 (1987). But Congress cannot compel any state to comply with its conditions; each state must "voluntarily" and "knowingly" accept the terms of Congress' offer. *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 577 (2012) (NFIB) (quoting *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981)). Congress can "use its spending power to create incentives for States to act in accordance with federal policies. But when 'pressure turns into compulsion,' the

legislation runs contrary to our system of federalism." *NFIB*, 567 U.S. at 577-78.

Like other conditional spending 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. Under this system of cooperative federalism, states create Medicaid plans and submit them to the Secretary of Health and Human Services. In turn, the Secretary can approve the state plans and distribute appropriate funds. *See* 42 U.S.C. §1396-1. Should a state fail to "substantially comply" with the Medicaid Act's requirement in the plan's administration, the Secretary may withhold funds until the state corrects course. *See* 42 U.S.C. §1396c.

Because the provisions of the Medicaid Act have force only after a state has accepted Congress' terms, any rights or benefits under the Act are conditional. Under such laws, any asserted rights would come into being (if ever) only if a state agrees to Medicaid's conditions and the Secretary approves the state's plan. The asserted rights could then go out of being if the state later opts out of Medicaid or the Secretary terminates the state's participation. Thus the Act itself does not "[e]ffectually guar[d]" or "ma[k]e certain" Plaintiffs' asserted rights. *Secured*, Webster, American Dictionary of the English Language (1828) ("To guard effectually from danger; to make safe … To make certain"). *See also Secure*, Johnson, A Dictionary of the English Language (4th ed. 1773) ("To make certain; to put out of hazard; … To protect; to make safe");

Secure, Webster, Revised Unabridged Dictionary (1913) ("[T]o relieve from apprehensions of, or exposure to, danger … To put beyond the hazard of losing and not receiving; to make certain."). So, "rights provided for in spending power legislation" are not "'secured' as against States." *Talevski*, 599 U.S. at 192-93 (Gorsuch, J., concurring).

If spending legislation did function the same way as laws enacted under Congress's regulatory powers, it "would unconstitutionally commandeer the States to administer" a whole host of federal programs "ranging from welfare, to healthcare, to air quality, and much more." *Talevski,* 599 U.S. at 200-02 (Thomas, J., dissenting). A "defining characteristic" of spending legislation "is the imposition of obligations on States that accept federal funds." *Id.* at 202. Viewing a state's breach of those obligations as "akin to violating rights secured by federal law" is "incompatible with th[e] Court's anticommandeering doctrine." *Id.* Under that "bedrock constitutional principle," "Congress generally cannot directly regulate the States or require them to implement federal programs." *Id.*

At bottom, Spending Clause legislation does not "secure[]" rights against the states. The any-qualified-provider provision of the Medicaid Act thus cannot provide the basis for Respondents' Section 1983 claims.

B. In any event, the Medicaid Act's any-qualified-provider provision does not unambiguously create private rights.

Even if spending legislation could be the basis for a Section 1983 claim, the any-qualified-provider provision does not meet the "demanding bar" this Court requires to create a private right of action. *Talevski*, 599 U.S. at 180. Two years ago, the Court clarified that *Gonzaga University v. Doe* is the proper "method for ascertaining unambiguous conferral" of private rights. *Id.* at 183. And *Gonzaga* instructs that when Congress intends to create a new right "it must do so in clear and unambiguous terms." *Gonzaga*, 536 U.S. at 290.

To determine whether Congress "unambiguous[ly] inten[ded] to confer individual rights," courts must look to "the text and structure of" the Act. *Id.* at 284 n.3, 286. The text must have "explicit 'right-or-duty-creating language.'" *Id.* at 284 n.3. Importantly, "it is rights, not the broader or vaguer 'benefits' or 'interests,' that may be enforced under" Section 1983. *Id.* at 283. And this Court cannot "impute … an intent to create a private right." *Id.* at 284 n.3.

Statutes that merely place an obligation upon the states (once they opt-in) to provide a benefit, absent clear rights language, fall short of creating a private enforcement right under Section 1983. Take *Gonzaga* itself. In that case, a Gonzaga University employee disclosed the details of an alleged sexual misconduct investigation against a former student to an outside

party, and that student lost employment opportunities as a result. *Gonzaga*, 536 U.S. at 277. The student sued Gonzaga under Section 1983, alleging that the University released his personal information to an "unauthorized person" in violation of the Family Educational Rights and Privacy Act. *Id.*

Congress "enacted FERPA under its spending power to condition the receipt of federal funds on certain requirements relating to the access and disclosure of student educational records." *Id.* at 278. The Act "directs the Secretary of Education to withhold federal funds from any public or private 'educational agency or institution' that fails to comply with these conditions." *Id.* It states:

> 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)). The student argued that this "statutory regime confers upon any student enrolled at a covered school or institution a federal right, enforceable in suits for damages under §1983, not to have 'education records' disclosed to unauthorized persons without the student's express written consent." *Id.*

But this Court held that "spending legislation drafted" in those terms cannot "confer enforceable

rights." *Id.* The Court noted the nondisclosure provisions "entirely lack the sort of 'rights-creating' language critical to showing the requisite congressional intent to create new rights." *Id.* at 287. And it explained that those provisions "speak only to the Secretary of Education." *Id.* The Court concluded that there was "no question" that the nondisclosure provisions "fail to confer enforceable rights." *Id.*

When this Court has determined that Congress intended a private right of action, the statutory language was much clearer. Examples of unambiguous rights include "individually focused terminology" like Title VI's command that "No person … shall … be subjected to discrimination," *id.* at 284 n.3, 287, and provisions that "expressly" create "rights," *Talevski*, 599 U.S. at 184. In *Health and Hospital Corporation of Marion County v. Talevski*, a dementia patient's family sued a nursing home for administering chemical restraints and attempting to force his transfer to a different facility. *Id.* at 172-73. The Federal Nursing Home Reform Act provides that "A nursing facility must protect and promote the rights of each resident, including … The right to be from … any physical or chemical restraints." 42 U.S.C. §1396r(c)(1)(A)(ii). And under a section titled "Transfer and Discharge Rights" the statute provides specific conditions which must be met before a nursing home can forcibly discharge a patient. 42 U.S.C. §1396r(c)(2)(A)-(B). Applying the *Gonzaga* test, the Court held that these provisions were enforceable under Section 1983 because they both contained explicit rights language and have

"an unmistakable focus on the benefited class" as opposed to the conditions under which funds ought to be distributed. *Talevski*, 599 U.S. at 183-86 (quoting *Gonzaga*, 536 U.S. at 284).

The Medicaid Act's any-qualified-provider clause resembles the provision at issue in *Gonzaga* much more than the provision in *Talevski*. That provision is styled as follows: "A state plan for medical assistance must … provide …" §1396a(a). It is not styled as a protective prohibition. Nor does it "expressly" confer "rights." *Talevski*, 599 U.S. at 184. And the mandatory language—"must provide"—is not enough to create rights. *Armstrong*, 575 U.S. at 323, 328-29. Section 1396a tells "[t]he Secretary" what "conditions" state plans must "fulfil[l]" before he "shall approve" them. §1396a(a), (b). A focus on the requirements for the Secretary's approval "does not confer the sort of 'individual entitlement' that is enforceable under §1983." *Gonzaga*, 536 U.S. at 287. And given its placement under subsection (a), the any-qualified-provider provision 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." *Armstrong*, 575 U.S. at 331 (plurality opinion). At the very least, the provision's "text and structure" create an ambiguity that defeats Planned Parenthood's claims. *Cf. Talevski*, 599 U.S. at 193 (Barrett, J., concurring) (quoting *Gonzaga*, 536 U.S. at 283, 286).

II. Reversing the decision below will limit costly litigation, ensure predictability in budgeting, and honor the flexibility Congress gave states to innovate.

Allowing private enforcement of the Medicaid Act's any-qualified-provider provision will impose substantial costs on both states and the federal government. The decision below—if left to stand—will increase costly litigation and breed uncertainty in budgeting. And it will stifle the flexibility Congress gave states to innovate in their Medicaid programs.

Medicaid costs have become staggeringly high. The total cost for the Medicaid program in 2020 was $824 billion dollars. *Total Medicaid Spending*, KFF (June 26, 2024), shorturl.at/pP4lk. And since Medicaid is jointly funded by the states, they bear substantial costs too. *See Medicaid: An Overview*, Cong. Research Serv. 18 (2019). On average, states spend 29% of their annual budgets on costs related to Medicaid. *See Medicaid Expenditures as a Percent of Total State Expenditures by Fund*, KFF (June 26, 2024), shorturl.at/TpzFT. That makes Medicaid the costliest expenditure for many state budgets, surpassing primary and secondary education spending combined. Nat'l Ass'n of State Budget Officers, *State Expenditure Report* (2023), shorturl.at/EU2gy.

Litigation is a major factor driving up the costs of Medicaid. *See, e.g.*, U.S. Dep't of Health & Hum. Servs., *Addressing the New Health Care Crisis: Reforming the Medical Litigation System to Improve the*

Quality of Health Care (2003). Defending lawsuits often take years to resolve and can cost taxpayers millions. *See, e.g.*, *Texas: A Cautionary Tale for Medicaid Management and Managed Care Companies*, Mintz (July 8, 2018) (discussing "14-year old lawsuit" over Medicaid reimbursement rates); Mary Jo Pitzl, *5 Years, $7 Million in Legal Fees and No End in Sight: Foster-Care Lawsuit Drags On*, AZ Central (Feb. 11, 2020) (discussing "five-year legal battle" that has "cost taxpayers more than $7 million"); Kelli Kennedy, *Florida Reaches Settlement in Kids' Medicaid Case*, The Ledger (Apr. 5, 2016) (discussing Florida's "decades[-]long class-action lawsuit," which cost the state "well over $7 million" to defend). Even one unfavorable judicial decision can impose budget-busting costs. Texas state officials predicted one case would cost the state "anywhere from $1 billion to $5 billion." *See, e.g.*, Robert T. Garrett, *Medicaid Ruling May Hit Surplus: Upgrading Kids' Care Could Carry $5B tab*, The Dallas Morning News (Mar. 7, 2007).

These increased costs will stifle the flexibility Congress provided states to innovate in their Medicaid programs. Congress offered this flexibility so states could "try new or different approaches to the delivery of health care services" and "adapt their programs to the special needs of particular geographic areas of groups of Medicaid enrollees." *See Medicaid: An Overview*, *supra*, at 18. Indeed, this flexibility allows for "substantial variation" among state programs in "Medicaid eligibility, covered benefits, and provider payment rates." *Id.* If this Court opens the Medicaid Act to third party enforcement, it will force states to

weigh the risk of those potential private-enforcement suits when deciding whether to innovate. That undermines Congress's desire for flexibility.

On top of that, the current trajectory of the Medicaid program is unsustainable. Even if Congress had intended to create an individual right through the Medicaid Act (which it did not), the "economic reality" of Medicaid shows that "the United States simply cannot afford" the attendant costs associated with a private right of action to enforce it. Mark A. Ison, *Two Wrongs Don't Make a Right: Medicaid, Section 1983 and the Two Wrongs Don't Make a Right: Medicaid, Section 1983 and the Cost of an Enforceable Right to Health Care*, 56 Vand. L. Rev. 1479, 1514 (2003). The long-term sustainability of Medicaid requires measures that will stem the exponential rise in the cost of the program—not increase them.

And in any event, it is Congress—not the courts—who should decide whether a statute should be enforced through private litigation. When courts usurp that power, they "bypass[]" the "legislative process with its public scrutiny and participation" and undermine "the normal play of political forces." *Cannon v. Univ. of Chi.*, 441 U.S. 677, 743 (1979) (Powell, J., dissenting). And they deny states the opportunity to avoid "potentially unnecessary and disruptive litigation." *Id.*

The Court should reverse the decision below.

CONCLUSION

For these reasons, the Court should reverse the decision below.

Respectfully submitted,

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February 10, 2025

APPENDIX

TABLE OF APPENDICES

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Andy Biggs (AZ)
Gus Bilirakis (FL)
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Mike Bost (IL)
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Tim Burchett (TN)
Kat Cammack (FL)
Ben Cline (VA)
Michael Cloud (TX)
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Jeff Crank (CO)
Dan Crenshaw (TX)
Warren Davidson (OH)
Troy Downing (MT)
Jake Ellzey (TX)
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Mike Fulcher (ID)
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Barry Loudermilk (GA)
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Addison McDowell (NC)
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Austin Scott (GA)
Keith Self (TX)
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Pete Stauber (MN)
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Austin Scott (GA)
Adrian Smith (NE)
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Tim Scott (SC)

Jim Banks (IN)
John Barrasso, M.D. (WY)
Marsha Blackburn (TN)
Ted Budd (NC)
Kevin Cramer (ND)
Ted Cruz (TX)
Steve Daines (MT)
Chuck Grassley (IA)
Josh Hawley (MO)
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Jim Justice (WV)
James Lankford (OK)
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