No. 21-806

IN THE

Supreme Court of the United States

HEALTH AND HOSPITAL CORP. OF MARION COUNTY, ET AL.

Petitioners,

v.

IVANKA TALEVSKI, PERSONAL REPRESENTATIVE OF THE ESTATE OF GORGI TALEVSKI, DECEASED,

Respondent.

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

BRIEF OF *AMICI CURIAE* THE NATIONAL HEALTH LAW PROGRAM AND FORTY-TWO OTHER NONPROFIT ORGANIZATIONS IN SUPPORT OF RESPONDENT

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WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002

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INTEREST OF *AMICI CURIAE*[1]

The National Health Law Program (NHeLP) advocates, educates, and litigates at the federal and state levels to further its mission of improving access to quality health care for low-income people. For 50 years, NHeLP's work has focused on ensuring access and coverage for Medicaid beneficiaries, including children, people with disabilities, and older people, including by facilitating suits under Section 1983 for private enforcement of federal statutory rights.

In addition to NHeLP, the amici are National Disability Rights Network, Alabama Disability Advocacy Program, Alaska Legal Services, William E. Morris Institute for Justice (Arizona), Legal Aid of Arkansas, Western Center on Law and Poverty (California), Disability Rights California, Colorado Center on Law and Policy, Disability Rights Connecticut, Community Legal Aid Society, Inc. (Delaware), Florida Health Justice Project, Atlanta Legal Aid Society (Georgia), Idaho Legal Aid Services, Legal Council for Health Justice (Illinois), Indiana Justice Project, Kentucky Equal Justice Center, Massachusetts Law Reform Institute, Public Justice Center (Maryland), Disability Rights Maine, Center for Civil Justice (Michigan), Mid-Minnesota Legal Aid, Mississippi Center for Justice, Legal Services of Eastern Missouri, Nebraska Appleseed, New Hampshire Legal Assistance, Disability Rights

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[1] Pursuant to Supreme Court Rule 37.6, counsel for *amici* certify that no counsel for any party authored this brief in whole or in part, and no party or counsel for a party, or any other person other than *amici* or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Counsel for all parties have filed blanket consents to the filing of *amicus* briefs.

New Jersey, New York Legal Assistance Group, Charlotte Center for Legal Advocacy (North Carolina), Legal Aid Society of Columbus (Ohio), Legal Aid Services of Oklahoma, Oregon Law Center, Community Legal Services of Philadelphia (Pennsylvania), Disability Rights Rhode Island, South Carolina Appleseed, Tennessee Justice Center, Disability Rights Texas, Disability Law Center (Utah), Disability Law Project at Vermont Legal Aid, Virginia Poverty Law Center, Legal Aid Justice Center (Virginia), Northwest Health Law Advocates (Washington), and Mountain State Justice (West Virginia).

While each *amici* has particular interests, the ability of individuals to enforce provisions of the Medicaid Act that meet this Court's well-established requirements for enforcing a statute under 42 U.S.C. § 1983 is essential to each of their missions. As such, *amici* have an interest in protecting Medicaid beneficiaries' rights to enforce provisions of the Medicaid Act through civil suits.

INTRODUCTION AND SUMMARY OF ARGUMENT

As this Court first recognized more than forty years ago, "the phrase 'and laws,'" as used in 42 U.S.C. Section 1983, "means what it says." *Maine* v. *Thiboutot*, 448 U.S. 1, 4 (1980). It is not "limited to some subset of laws." *Id.* The statute is equally clear when it comes to the rights secured by those laws. Section 1983 provides a means to vindicate "any rights" created by federal laws, not just some rights.

Petitioners seek to supplant that well-established reading of Section 1983's unambiguous text in favor of an approach where laws passed under the Spending Clause are treated differently than laws passed under other federal powers. But the text of Section 1983 brooks no such distinction, and fundamental principles of statutory interpretation prevent the judicial branch from rewriting the statute in the manner that Petitioners urge. This Court should not discard decades of precedent to stray from what Congress has written—particularly not on the back of a highly uncertain historical record and in a context where statutory *stare decisis* has particular force.

Amici believe the decision below was correctly decided and should be upheld. Regardless of this Court's views on the particular statute before it, however, *amici* urge the Court not to undo four decades of settled statutory meaning in favor of an under-theorized and anachronistic alternative reading Section 1983.

ARGUMENT

I. THE TEXT OF THE STATUTE PROVIDES A CAUSE OF ACTION FOR DEPRIVATIONS OF RIGHTS SECURED BY ANY FEDERAL LAW, INCLUDING LAWS ENACTED PURSUANT TO CONGRESS'S ARTICLE I SPENDING POWER.

Section 1983's text is straightforward: It provides a private cause of action for deprivations of "any rights, privileges, or immunities secured by the Constitution and laws." 42 U.S.C. § 1983. By its terms, the statute applies to all federal laws, and all rights secured by those laws.

Petitioners ask this Court to depart from what Congress has written by drawing on a thin historical record and policy arguments about how best to advance federalism. But this Court has long understood that the proper way to interpret statutes is to begin—and end—with the text. If the "express terms of a statute give us one answer," that answer does not buckle to "extratextual considerations." *Bostock* v. *Clayton Cnty.*, 140 S. Ct. 1731, 1737 (2020). Nor does it yield to whatever expectations "the enacting Congress" may have "formed in light of the contemporary legal context." *Alexander* v. *Sandoval*, 532 U.S. 275, 287-288 (2001); see also *id.* ("search for Congress's intent" can "begin" and "end" with "text and structure"); *Oklahoma* v. *Castro-Huerta*, 142 S. Ct. 2486, 2496-2497 (2022) (same). This Court's job "isn't to write or revise legislative policy," but rather "to apply it faithfully." *Nieves* v. *Bartlett*, 139 S. Ct. 1715, 1730 (2019) (Gorsuch, J., concurring in part).

Fidelity to the text is a "bedrock separation-of-powers principle." *Bostock*, 140 S. Ct. 1731, 1824 (Ka-

vanaugh, J., dissenting). If courts could "add to, remodel, update, or detract from old statutory terms" by drawing on "extratextual sources and [their] own imaginations," they would "risk amending statutes outside the legislative process reserved for the people's representatives." *Id.* at 1738 (Gorsuch, J.). The Framers warned against precisely this kind of judicial arrogation of power. See The Federalist No. 78 (Alexander Hamilton) (If courts were "disposed to exercise will instead of judgment, the consequence would equally be the substitution of their pleasure to that of the legislative body.").

Adherence to text also safeguards the rule of law. Grafting onto statutes words that Congress has not written "deprives the citizenry of fair notice of what the law is." *Bostock*, 140 S. Ct. at 1828 (Kavanaugh, J., dissenting). Moreover, it "den[ies] the people the right to continue relying on the original meaning of the law they have counted on to settle their rights and obligations." *Id.* at 1738 (Gorsuch, J.). Interpreting statutes in accordance with their plain meaning ensures that the law remains accessible and predictable to those who are obligated to follow it.

Here, there is simply no indication in the text of Section 1983 that Congress intended to treat statutes passed under one font of federal authority differently than others.

To start, the statute refers to "laws," full stop. It contains no modifiers or exclusions. *Thiboutot*, 448 U.S. 1, 4. It is "a fundamental principle of statutory interpretation" that "'absent provision[s] cannot be supplied by the courts.'" *Rotkiske* v. *Klemm*, 140 S. Ct. 355, 360-361 (2019) (quoting A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 94

(2012)) (alterations in original); see also *Sale* v. *Haitian Centers Council, Inc.*, 509 U.S. 155, 168 n.16 (1993) (same). If Congress meant to refer only to some laws, passed under only some of its powers, it would have said so. "To supply omissions transcends the judicial function." *Iselin* v. *United States*, 270 U.S. 245, 251 (1926).

The statute likewise protects "any rights" secured by the laws of the United States, without qualification. 42 U.S.C. § 1983. Here, too, Congress did not limit the kinds of federal statutory rights that Section 1983 protects. "As this Court has 'repeatedly explained,' 'the word 'any' has an expansive meaning.'" *Patel* v. *Garland*, 142 S. Ct. 1614, 1622 (2022) (quoting *Babb* v. *Wilkie*, 140 S. Ct. 1168, 1173 n.2 (2020)). All the more so where "Congress did not add any language limiting the breadth of that word." *United States* v. *Gonzales*, 520 U.S. 1, 5 (1997). If a statute encompasses "any" of something, its directive is "comprehensive." *SAS Inst., Inc.* v. *Iancu*, 138 S. Ct. 1348, 1354 (2018).[2]

The word "any" carried the same meaning when Congress passed Section 1983. In a case decided the year before Section 1983 became law, this Court found it "quite clear" that a statute prohibiting suit "in any court" used the phrase in its "ordinary sense," and thus prohibited suit in both federal and state courts. *Collector* v. *Hubbard*, 79 U.S. (12 Wall.) 1, 15 (1870). Dictionaries from that era fortify this understanding.

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[2] See also, e.g., *Ali* v. *Fed. Bureau of Prisons*, 552 U.S. 214, 218-219 (2008) (same); *United States* v. *Alvarez-Sanchez*, 511 U.S. 350, 358 (1994) (same); *Harrison* v. *PPG Indus., Inc.*, 446 U.S. 578, 589 (1980) (same).

See N. Webster, An American Dictionary of the English Language (Webster) (1878) ("One out of many; indefinitely."); S. Johnson, A Dictionary of the English Language (Johnson) (1859) ("Every"; "Whoseover"; "Whatsoever"); A. Reid, A Dictionary of the English Language (Reid) (1871) ("Whoever"; "Whatsoever"); and Joseph E. Worcester, A Primary Dictionary of the English Language (Worcester) (1880) ("Every; whoever"). The statute thus protects all federal statutory rights, not just some.

Petitioners make no effort to square their reading of Section 1983 with the text of the statute. Instead, they make the extraordinary claim—tucked away in a section on *stare decisis*—that Section 1983 should be treated as a "common-law statute," freeing the judiciary from the usual constraints on statutory interpretation. Pet. Br. at 36 (emphasis omitted).

But the cases they cite for this novel proposition only affirm the primacy of text. Both concern the Sherman Act, which this Court has described as a "common-law statute" because federal courts define its prohibitions in a manner that "evolve[s] to meet the dynamics of present economic conditions," *Leegin Creative Leather Prods., Inc.* v. *PSKS, Inc.*, 551 U.S. 877, 899 (2007). By affixing this label to the federal antitrust laws, however, this Court did not actually mean to exempt an entire body of federal law from the tools that traditionally inform statutory meaning. To the contrary: This Court was merely interpreting the text as Congress wrote it, concluding that the Sherman Act's open-ended prohibition on "restraint[s] of trade," 15 U.S.C. § 1, demands that judges take a dynamic approach, akin to that used in the "common-law tradition." *State Oil Co.* v. *Khan*, 522 U.S. 3, 20 (1997) (quoting *Nat'l Soc'y of Prof. Engs.* v. *United States*, 435

U.S. 679, 688 (1978)). In other words, *the text itself* invited—indeed required—the common law approach that courts have followed.

The text of Section 1983 contains no similar invitation. Its plain language leaves no room for judges to cherry-pick which laws or which rights fall within its reach. This Court therefore should not presume that Congress meant to refer to some subset of rights when it wrote the phrase "any rights" into the statute, nor that it meant to carve out some laws when it wrote the word "laws." Section 1983 says no such thing.

II. PRINCIPLES OF STATUTORY *STARE DECISIS* FORECLOSE PETITIONERS' ARGUMENT THAT THE LONG-ESTABLISHED MEANING OF SECTION 1983 SHOULD BE CAST ASIDE.

Even if Petitioners' reading of the statute had any footing in the text—and it does not—this Court settled the matter long ago. See *Maine* v. *Thiboutot*, 448 U.S. 1, 4-8 (1980) (permitting a Section 1983 action for a provision of the Social Security Act). And *stare decisis* applies with greatest force when this Court has construed a statutory provision. Because Congress has the power to revise or discard judicial interpretations that are at odds with its intended meaning, this Court rarely if ever revisits its definitive interpretations of federal statutes.

Adherence to precedent is a bedrock restraint on the judicial power. Although "not absolute," it is nevertheless "fundamental to the American judicial system," and particularly to "the stability of American law." *Dobbs* v. *Jackson Women's Health Org.*, 142 S. Ct. 2228, 2306 (2022) (Kavanaugh, J., concurring). Generations of Justices have recognized that "[t]o 'overrule an important precedent is serious business.'"

Ramos v. *Louisiana*, 140 S. Ct. 1390, 1413 (2020) (Kavanaugh, J., concurring in part) (quoting Jackson, *Decisional Law and Stare Decisis*, 30 A.B.A. J. 334 (1944)). And the importance of this principle transcends case-specific particulars. *Stare decisis* must be applied "neutral[ly]," lest the doctrine be "transformed into a tool that favors particular outcomes." *Ramos*, 140 S. Ct. at 1432 (2020) (Alito, J., dissenting).

Stare decisis weighs particularly "heavily" for questions of statutory interpretation. *Pearson* v. *Callahan*, 555 U.S. 223, 233 (2009); see also *FEC* v. *Wis. Right to Life, Inc.*, 551 U.S. 449, 500 (2007) (Scalia, J., concurring in part) (*stare decisis* applies more "rigidly" in statutory cases). Two interconnected reasons justify the added weight this Court gives to its statutory precedents. First, doing so maintains the proper equilibrium between the judiciary and the legislature. This Court operates under the "general presumption" that "legislative changes should be left to Congress." *Pearson*, 555 U.S. at 233 (citation omitted). For statutory matters, where "Congress is free to change this Court's interpretation," this Court has thus long deferred to the people's elected representatives to do so (or not) as they think best. *Id*; see also *Ramos*, 140 S. Ct. at 1413 (Kavanaugh, J., concurring in part) (same).

In the same vein, Congress incorporates this Court's statutory decisions into its expectations about how legislation will operate. When this Court adopts a reading of a statute, that reading becomes "part of the statutory scheme," a "ball[] tossed into Congress's court" for it to accept or reject in its discretion. *Kimble* v. *Marvel Ent., LLC*, 576 U.S. 446, 456 (2015). Precedents that establish the meaning of particular statutes "generate reliance interests in the process," entitling them to a "special, heightened form of *stare decisis*."

Kisor v. *Wilkie*, 139 S. Ct. 2400, 2444 (2019) (Gorsuch, J., concurring).

In this case, Petitioners seek to go a step further still—overruling any case that has ever identified a cause of action under Section 1983 for a statutory right created under Congress's Spending Clause power. Numerous precedents from this Court as well as the Courts of Appeal would fall, altering the meaning of not just one federal statute, but many. See, e.g., *Wilder* v. *Va. Hosp. Ass'n*, 496 U.S. 498, 524 (1990) (allowing enforcement of a Medicaid Act provision concerning payment for institutional services); *Wright* v. *City of Roanoke Redevelopment & Housing Auth.*, 479 U.S. 418, 420 (1987) (allowing enforcement of a rent ceiling provision in the Housing Act); *King* v. *Smith*, 392 U.S. 309, 333-334 (1968) (allowing enforcement of the "reasonable promptness" provision of a Social Security Act program) (citation omitted); *City of Rancho Palos Verdes* v. *Abrams*, 544 U.S. 113, 121-122 (2005) (Scalia, J.) (citing *Wilder* and *Wright* for the proposition that Section 1983 claims are available for certain violations of the Medicaid and Housing Acts).

In doing so, this Court would upset the States' longstanding expectations about how the federal government will enforce cooperative spending programs. It would disturb Congress's expectations as well; for decades, Congress has been legislating based on the assumption that rights legislatively conferred on beneficiaries of spending clause programs can be enforced under Section 1983. There are no grounds for that kind of disruption—let alone any "strong grounds," *Janus* v. *AFSCME*, 138 S. Ct. 2448, 2478 (2018).

A. The Historical Record Does Not Justify Departing from Settled Statutory Meaning.

Petitioners have asked this Court to overturn more than four decades of precedent in order to re-configure one of the most significant statutes in the United States Code. To justify this sea change in the meaning of Section 1983, they point to purported insights about congressional intent that they claim to glean from the historical record.

"Something more than 'ambiguous historical evidence' is required," however, before "'flatly overrul[ing] a number of major decisions of this Court." *Gamble* v. *United States*, 139 S. Ct. 1960, 1969 (2019) (quoting *Welch* v. *Texas Dep't of Highways and Public Transp.*, 483 U.S. 468, 479 (1987)). That is particularly true for questions of statutory interpretation, where Congress can "override" any judicial "errors" through "ordinary legislation." *Id.*

Petitioners cannot come close to making the kind of historical showing that might warrant reconsideration of the settled meaning of Section 1983. Instead, they have asked this Court to repudiate decades of precedent based on nothing more than confusion about how Congress intended Section 1983's dynamic reference to "rights" secured by the "laws" of the United States to operate, an anachronistic reading of the Spending Clause, and inconclusive evidence about 19th-century contract law.

1. Petitioners' argument is misconceived at the most fundamental level. The scope and meaning of statutory rights enforceable under Section 1983 are properly determined by reference to prevailing understandings at the time the rights-creating law in ques-

tion was passed. This Court has never looked to Reconstruction-era understandings to redefine the meaning of substantive statutory rights when they arise in the context of a Section 1983 suit, and it should not start now.

To state the obvious, Section 1983 does not refer only to laws in existence when Congress first passed the statute. Instead, "it is of course true that newly enacted laws are automatically embraced within § 1983." See *Blessing* v. *Freestone*, 520 U.S. 329, 350 (1997) (Scalia, J., concurring). This follows from a straightforward application of the reference canon. Where a statute "refers to a subject generally," Congress means to "adopt[] the law on the subject at the time the law is invoked." Norman J. Singer & J.D. Shambie Singer, 2B Sutherland Statutory Construction § 51:8 7th ed. 2021); see also *New Prime Inc.* v. *Oliveira*, 139 S. Ct. 532, 539 (2019) (same). By enacting Section 1983 to provide a cause of action to enforce all rights-securing "laws," the Reconstruction Congress thus understood that the statute's reach would contract or expand based on exercises of the legislative power by future Congresses. The text and structure of the statute knowingly give future legislators the authority to determine the substantive rights that may be enforced under Section 1983.

Petitioners would have this Court throw that approach by the wayside. Instead of asking whether the Congress that actually passed a given law meant for the statute to confer enforceable rights, Petitioners contend that the only statutory rights that may be enforced via Section 1983 are those that the 1871 Congress would have recognized as such.

Petitioners offer no justification—whether from text, structure, or other traditional tools of interpretation—for reading the statute in this way. Nor do those methods point in their direction. For one thing, defining the "rights" secured by laws based on the enacting Congress's expectations ensures consistency with the reference canon, which this Court has already suggested applies in the same manner to statutory references to "rights" as it does to references to general bodies of law. *Jam* v. *Int'l Finance Corp.*, 139 S. Ct. 759, 768 (2019) (Civil Rights Act of 1866 gave freed slaves the "same right" to make and enforce contracts as "white citizens," which is "of course understood to guarantee continuous equality between white and nonwhite citizens with respect to the rights in question."). For another, it is administrable. Rather than forcing courts to intuit what the Congress of 1871 would have thought about text written by other legislators, judges would merely identify rights by using the same approach they take for virtually all other statutory language: "in accord with the ordinary public meaning of its terms at the time of its enactment," *Bostock*, 140 S. Ct. at 1738.

Equally to the point, Petitioners' approach makes a hash of how Section 1983 relates to the substantive rights it protects. Section 1983, after all, does not create or confer any rights. It is just one (particularly important) means of securing relief for violations of rights that arise from some other source of authority—be it a federal statute or a provision of the United States Constitution. A right does not vanish simply because the path to relief under Section 1983 has been foreclosed, whether through the application of common-law immunities, the expiration of the statute of limitations, or some other pitfall of litigation. *Nieves*, 139 S. Ct. at 1730 (Gorsuch, J., concurring in part).

Instead, this Court has repeatedly explained that rights exist independent of the specific vehicles available to vindicate them, particularly when it comes to the availability of suits for money damages against government officials. Cf. *Correctional Servs. Corp.* v. *Malesko*, 534 U.S. 61, 72 (2001) (pointing out the alternative ways the plaintiffs in a putative *Bivens* action could vindicate their constitutional rights); *Wilkie* v. *Robbins*, 551 U.S. 537, 555 (2007) (same).[3]

Applying hard-to-divine 19th-century expectations about which laws might confer which rights would disrupt this well-settled delineation between rights and remedies. In effect, it would permit Section 1983 to change the substantive meaning of laws that post-date its passage, transforming it from a statute that supplies a civil remedy into something more akin to an interpretive canon that cuts across every federal statute and every constitutional provision.

Instead of confronting these foundational difficulties with their approach, Petitioners point to other contexts in which this Court has applied 19th-century common law principles to cases arising under Section 1983. Pet. at 12 (quoting *Will* v. *Mich. Dep't of State Police*, 491 U.S. 58, 67 (1989)). Those precedents are inapposite. They concern how Section 1983 is supposed to operate *as a civil remedy*. See, e.g., *Kalina* v. *Fletcher*, 522 U.S. 118, 123 (1997) (common law appropriate for "identifying both the elements of the cause of action and the defenses available" under Section 1983); *Manuel* v. *City of Joliet*, 137 S. Ct. 911, 920

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[3] Given this distinction, courts routinely dismiss Section 1983 claims on qualified immunity grounds while nevertheless holding that the plaintiff's substantive rights have been violated. See *Camreta* v. *Greene*, 563 U.S. 692, 705-707 (2011) (describing this common practice).

(2017) (common law tort principles "specify[] the conditions for recovery" through Section 1983) (citation omitted); *Wallace* v. *Kato*, 549 U.S. 384, 388 (2007) (common law principles determine when the statute of limitations for a Section 1983 action begins to run). In that context, this Court understandably looks to how the Congress of 1871 would have expected its words to land; it is filling in gaps for a tool the Congress of 1871 itself created.[4]

The same does not hold true when it comes to defining the "rights" secured by "laws" under Section 1983. Those rights exist separate from the availability of damages under Section 1983. *Nieves*, 139 S. Ct. at 1730 (Gorsuch, J., concurring in part) (question of whether common law principles "foreclose[d]" a Section 1983 claim as a "statutory matter" did not "erase a First Amendment violation"). Their scope should therefore be interpreted independent of the common law gloss this Court uses to answer the narrower question of whether a private party can vindicate a right by bringing a claim for money damages.

2. Even if it were proper to look to 19th-century expectations about which "rights" would be secured by "laws" under Section 1983, there is no evidence that the 1871 Congress thought Spending Clause statutes actually operated in the nature of contracts. This Court first drew an analogy between Spending Clause statutes and contract law in *Pennhurst State School and Hospital* v. *Halderman*, 451 U.S. 1, 17 (1981). As recently as 2002, Justice Stevens called this Court's

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[4] Notably, the premise that Section 1983 incorporates state common-law immunities is now subject to historical debate. See Alexander Reinert, *Qualified Immunity's Flawed Foundation*, 111 Cal. L. Rev. 101, 116 (forthcoming 2023).

reliance on "the rules of contract law" to interpret a Spending Clause statute "novel." *Barnes* v. *Gorman*, 536 U.S. 181, 192 (2002) (Stevens, J., concurring).

The Reconstruction Congress admittedly used its Spending Clause power more sparingly than it does today, which raises challenges for inferring how Congress during that era might have expected complex conditional spending programs like Medicaid to operate. If anything, however, the evidence indicates that Congress may have analogized statutes passed under Congress's Article I spending power to trusts, not contracts, in 1871. See, e.g., *Tucker* v. *Ferguson*, 89 U.S. (22 Wall.) 527, 572 (1874) ("The State accepted the grant subject to all the conditions prescribed. She thereupon became the agent and trustee of the United States."). Then, as now, the beneficiaries of a trust could sue the trustee to enforce its terms. See, e.g., *Duncan* v. *Jaudon*, 82 U.S. (15 Wall.) 165 (1872).[5]

Regardless, this Court has never suggested that Spending Clause statutes should be treated as actual contracts, 19th-century or otherwise. Even precedents that draw on contract principles to interpret the proper scope of Congress's spending power treat contract law as a useful analogy, not a binding set of legal rules. This Court has been "careful" to avoid suggesting that "*all* contract-law rules apply to Spending Clause legislation." *Barnes*, 536 U.S. at 186 (Scalia, J.) (emphasis in original). Contract law may have "*implications*" for interpreting the nature and scope of obligations that Spending Clause statutes impose on

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[5] Respondent suggests the better analogy would have been to a treaty between two sovereigns. Resp. Br. at 30. Those agreements could also be enforced through suits by third-party individual beneficiaries, likewise undermining Petitioners' argument. *Id.*

those who accept federal funds provided under particular programs, but that does not mean "contract-law principles apply to all issues" raised by suits arising from statutes passed under the Spending Clause. *Id.* at 189, n.2 (quoting *Gebser* v. *Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 287 (1998) (emphasis in original); see also *Barnes*, 536 U.S. at 190-191 (Souter & O'Connor, JJ., concurring) (recognizing the limits of the analogy). At the end of the day, Spending Clause statutes are "laws," not contracts. The "contract-law analogy," *Barnes*, 536 U.S. at 186, while instructive in some circumstances, is not deterministic.

Essentially, then, Petitioners have asked this Court to extend a judicially-created 21st-century metaphor in order to graft what they claim to be 19th-century expectations onto 20th- and 21st-century laws. That roundabout trip through history is insupportable on its own terms. It cannot possibly overcome the force of statutory *stare decisis*.

3. In all events, Petitioners' historical argument is unpersuasive. The record is far from clear that third-party beneficiaries could not sue to enforce contracts when Congress passed Section 1983. To the contrary: Evidence indicates that American courts routinely recognized breach of contract claims brought by third-party beneficiaries in the 1870's. Resp. Br. at 28-31 (citing Theophilus Parsons, *Law of Contracts* 467 (6th ed. 1873); William W. Story, *A Treatise on the Law of Contracts Not Under Seal* 82 (1st ed. 1844); 1 William W. Story, *A Treatise on the Law of Contracts Not Under Seal* 549 (4th ed. 1856); and Christopher C. Langdell, *A Summary of the Law of Contracts* 80 (2d ed. 1880)).

At best, the law around third-party beneficiaries to contracts was unsettled when Congress passed

Section 1983. At worst, Petitioners are flat wrong. Either way, the historical evidence does not provide anything close to a sufficient justification for overturning forty years of precedent.

B. No Other Factors Justify Ignoring Statutory *Stare Decisis* Here.

Historical record aside, Petitioners have not otherwise shouldered the heavy burden required to justify this kind of sharp break from settled statutory meaning. None of the factors that have sparingly justified parting ways with precedent cut in their favor here—much less decisively enough to overcome the especially strong reasons to stick with precedents that interpret statutes. This Court's longstanding test for identifying statutory rights for the purpose of Section 1983 claims is consistent with principles of federalism, has generated particularly important reliance interests for both the States and Congress, and is workable.

1. Existing case law already accounts appropriately for the federalism concerns Petitioners invoke. Consistency with doctrinal "'underpinnings'" is, of course, an important element in the *stare decisis* analysis. *Janus*, 138 S. Ct. at 2482 (quoting *United States* v. *Gaudin*, 515 U.S. 506, 521 (1995)). But the present-day test for identifying statutory rights bakes in the same principles of notice and clarity that this Court has recognized as critical to protecting States' sovereignty in the Spending Clause context.

To the extent Spending Clause legislation is "in the nature of a contract," that is because—like in the contracts context—federal funding conditions must be "unambiguous[]," so the States can "knowing[ly] accept[]" federal funds with full understanding of "what is expected" in exchange. *Pennhurst State School and Hosp.* v. *Halderman*, 451 U.S. 1, 17 (1981). Just like

parties to a contract must fully apprehend what is expected of them at the outset, States cannot accept a "deal with the Federal Government" unless they "clearly understand the obligations that would come along with doing so." *Cummings* v. *Premier Rehab Keller, PLLC*, 142 S. Ct. 1562, 1570 (2022) (quotations omitted & alterations accepted).

Governing precedent on how to identify cognizable statutory rights already encompasses those requirements. For twenty years, *Gonzaga University* v. *Doe*, 536 U.S. 273, 283 (2002), has supplied the relevant test for whether individual litigants can vindicate statutory guarantees through Section 1983. And for twenty years, that test has been plain as day: Plaintiffs cannot vindicate statutory entitlements under Section 1983 based on "anything short of an unambiguously conferred right" to do so. *Gonzaga*, 536 U.S. at 283; see also *Armstrong* v. *Exceptional Child Center, Inc.*, 575 U.S. 320, 330 n.* (2015) (explaining that, following *Wilder*, this Court has clarified that private rights of action must be "unambiguously conferred").[6] That is a far cry from the "unpredictable and shifting multi-factor balancing tests" Petitioners ask this Court to upend its precedents to address, Pet. Br. at 2;

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[6] *Armstrong*, it bears mentioning, did not concern the availability of suit under Section 1983. In that case, the Court considered whether the plaintiffs could enforce statutory guarantees under the Supremacy Clause of the United States Constitution, federal courts' inherent equitable powers, or (in a passage joined by a mere plurality of the Court) the bare terms of the Medicaid Act itself. See 575 U.S. at 326, 328, 331. Although the Eighth Circuit has erroneously applied *Armstrong* to the Section 1983 context, see *Does* v. *Gillespie*, 867 F.3d 1034, 1041 (8th Cir. 2017), the *Armstrong* plurality itself explicitly recognized that the plaintiffs had not "assert[ed] a § 1983 action," 575 U.S. at 330 n.*.

see also States Br. at 3 (criticizing this Court's precedents as establishing a "multipart, flexible standard of indeterminate meaning").[7]

The *Gonzaga* test therefore incorporates the same federalism considerations Petitioners cite as reason to abandon it. Statutory rights are cognizable under Section 1983 only if Congress's intent that they be vindicated in this manner is "unambiguous[]." *Gonzaga*, 536 U.S. at 283. Surely such a strong statutory signal is also sufficient for the States to "knowingly" agree to spending conditions, *Cummings*, 142 S. Ct. at 1570.

In short, Petitioners suggest that only a blanket rule against bringing Section 1983 claims on guarantees secured through Congress's Spending Clause powers would workably put the states on adequate notice of their obligations. But Petitioners do not explain how a longstanding rule that any private cause of action must be "unambiguous" fails to ensure consistency with the constitutional requirements of notice and clarity.

2. If anything, the importance of certainty and predictability for the States in the Spending Clause context means that statutory *stare decisis* should apply with even greater force here. The kind of "[t]raditional reliance interests" that justify adherence to

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[7] Although Petitioners and their *amici* frame their argument as a call to overrule *Wilder*, that framing distorts the current state of the law. This Court has already acknowledged that *Wilder* and related cases were not "models of clarity." *Gonzaga*, 536 U.S. at 278. Recognizing the need to provide predictable guidance to states about the conditions that attach to federal funding, the Court in *Gonzaga* took steps to "resolve" that uncertainty by laying down a refined, more predictable framework. *Gonzaga*, 536 U.S. 273 (2002).

precedent "arise 'where advance planning of great precision is most obviously a necessity.'" *Dobbs*, 142 S. Ct. at 2276 (2022) (quoting *Planned Parenthood of Se. Pa.* v. *Casey*, 505 U.S. 833, 856 (1992)). For that reason, "[c]onsiderations in favor of *stare decisis* are at their acme" in cases that touch on "contract rights," *Payne* v. *Tennessee*, 501 U.S. 808, 828 (1991), the very analogy that forms the basis for Petitioners' argument.

Those reliance interests are particularly critical in this context. This Court has repeatedly recognized that States must be able to plan, with certainty, both the financial inflows and attendant obligations that come from participating in conditional federal spending programs. See, e.g., *Pennhurst*, 451 U.S. at 25 ("Congress'[s] power to legislate under the spending power," while "broad," does not "include surprising participating States."); *NFIB* v. *Sebelius*, 567 U.S. 519, 584 (2012) (States' expectations about the terms of a federal spending program constrain Congress from "transform[ing]" "dramatically" the existing terms of a spending program). Certainty and predictability are more than a matter of comity in this context. They have constitutional dimensions—operating as essential safeguards of the "legitimacy" of Congress's "power to legislate under the spending power." *Pennhurst*, 451 U.S. at 17.

Overruling *Gonzaga* would inject both uncertainty and unpredictability into an area of law that, as a matter of constitutional design, tolerates neither. There is no obvious way for this Court to reverse course on Section 1983 claims for Spending Clause statutes on only a prospective basis. If Spending Clause statutes do not give rise to causes of action under Section 1983, then that interpretation surely applies full-stop—not just to those statutes for which this

Court (or the lower courts, unanimously) has not previously held otherwise. In so-ruling, this Court would upend existing enforcement schemes for important federal spending programs that have been cognizable under Section 1983 for decades.

Eliminating Section 1983 as an enforcement mechanism would be highly disruptive. For decades, federal agencies have relied on the availability of private enforcement as an important means of ensuring compliance with the requirements of federal Spending Clause programs. It is hard to predict how the federal government might adjust to an altered enforcement landscape. In the Medicaid context, for example, the federal government would be left only with the extreme remedy of exercising its power to terminate or withhold funding to states that do not "comply substantially" with federal requirements, 42 U.S.C. § 1396c, a remedy that may be highly disproportionate to a state's violation and therefore difficult to invoke in many situations. Cf. *Sebelius*, 567 U.S. 519, 581 (2012). And agencies could well be forced to substantially expand their compliance and enforcement regimes to compensate for the lack of private enforcement. Congress might even make wholesale alterations to existing statutory schemes.

Whatever happens, however, will surely upset the apple cart, disturbing States' longstanding assumptions about how these important federal programs will operate and spurring a re-examination of the terms by which they wish to participate. Cf. *Cummings*, 142 S. Ct. at 1570-1571 (2022) ("[P]rospective recipient[s]" would "surely" consider "what sort of penalties might be on the table" before accepting federal funding.). By undoing decades of settled expectations, Petitioners' proposed reading of the statute would

thus undermine the very principles that undergird their policy argument about federalism.

3. Then there is the matter of congressional reliance. *Stare decisis* is particularly potent where Congress has "long acquiesced in the interpretation" this Court has laid down. *John R. Sand & Gravel Co.* v. *United States*, 552 U.S. 130, 139 (2008). Those reliance interests only grow with "time," whose passage "enhance[es] even the usual precedential force" of this Court's statutory decisions. *Shepard* v. *United States*, 544 U.S. 13, 23 (2005).

But this is no ordinary case of congressional reliance on decades of established meaning. Here, Congress has more than acquiesced to this Court's precedents permitting private parties to enforce Spending Clause statutes through Section 1983 claims. It has explicitly ratified those cases' basic holding into law. In *Suter* v. *Artist M.*, 503 U.S. 347 (1992), this Court held that private parties could not sue under Section 1983 to force States into compliance with a requirement listed among the mandatory elements of a state implementation plan for the Social Security Act. *Id.* at 358. In reaching that conclusion, however, this Court adopted reasoning that had potentially far-reaching implications for the private enforcement of other provisions of the Act. Congress intervened to limit *Suter*'s reach, in the process affirming this Court's pre-*Suter* framework for identifying statutory rights subject to enforcement through Section 1983. See 42 U.S.C. §§ 1320a-2, 1320a-10; H.R. Conf. Rep. No. 761, 103d Cong., 2d Sess., at 926 (1994), reprinted in 1994 U.S.C.C.A.N. 2901, 3257 ("The intent of this provision is to assure that individuals . . . are able to seek redress in federal courts to the extent they were able to prior to the decision in *Suter* v. *Artist M.*");

see also U.S. Br. at 12-15 (explaining Congress's post-*Suter* ratification in greater detail).[8]

In effect, Petitioners' arguments "amount to the claim that had Congress been more careful," it "might have acted differently." *Thiboutot*, 448 U.S. at 8. But "[t]hat argument" is "best . . . addressed to Congress." *Id.* And Congress has rejected it—instead choosing to legislate for decades off the premise that statutory rights created under its Article I spending power may be vindicated through Section 1983 claims.

4. Finally, decades of experience illustrate that the *Gonzaga* standard is administrable. In the many years since *Gonzaga*, appellate courts' decisions on whether a particular Medicaid provision could be privately enforced have been remarkably consistent. See Jane Perkins, *Pin the Tail on the Donkey: Beneficiary Enforcement of the Medicaid Act Over Time*, 9 St. Louis U. J. Health L. & Pol'y 207, 226 tbl.2 (2016). For

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[8] Congress has also rejected legislative efforts to limit private enforcement through Section 1983. See S. 584, 97th Cong., 1st Sess. § 1 (1981); S. 436, 99th Cong., 1st Sess. § 1 (1985); S. 325, 100th Cong., 1st Sess., § 1 (1987); H.R. 4314, 104th Cong., 1st Sess., § 309(a) (1996). This Court is, concededly, "reluctant" to make "inferences" about statutory interpretation based on "Congress's failure to act." *Brecht* v. *Abrahamson*, 507 U.S. 619, 632 (1993) (citation omitted). But it has nevertheless found meaning where Congress declines to overrule a construction that has "been brought to Congress's attention through legislation specifically designed to supplant it." *United States* v. *Riverside Bayview Homes, Inc.*, 474 U.S. 121, 137 (1985); see also *Bob Jones Univ.* v. *United States*, 461 U.S. 574, 600 (1983) ("Non-action by Congress," while "not often a useful guide," is "significant" where Congress was obviously on notice of a statutory construction and rejected legislation specifically designed to change it.).

example, every circuit to have considered whether private parties can sue under Section 1983 to enforce 42 U.S.C. Section 1396a(a)(10)(A), Medicaid's requirement that states furnish medical assistance to all who meet the eligibility pre-requisites, has reached the same answer (yes).[9] So, too, for 42 U.S.C. Section 1396a(a)(8), a provision of the Medicaid Act that requires States to provide medical assistance to all eligible individuals with reasonable promptness.[10] The circuits' consistency cuts in both directions. For instance, every circuit to have considered the question has held that private parties cannot sue under Section 1983 to enforce Medicaid's reasonable standards provision, 42 U.S.C. Section 1396a(a)(17).[11] They have likewise uniformly reached the same conclusion for Medicaid's

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[9] See *Waskul* v. *Washtenaw Cnty. Comty. Mental Health*, 979 F.3d 426, 447 (6th Cir. 2020) (Section 1983 claim permissible to enforce Medicaid's mandatory-care provision, 42 U.S.C. Section 1396a(a)(10)); *Watson* v. *Weeks*, 436 F.3d 1152, 1162 (9th Cir. 2006) (same); *Sabree ex rel. Sabree* v. *Richman*, 367 F.3d 180, 183 (3d Cir. 2004) (same); *S.D. ex rel. Dickson* v. *Hood*, 391 F.3d 581, 605-606 (5th Cir. 2004) (same).

[10] See *Waskul*, 979 F.3d at 426 (Section 1983 claim permissible to enforce Medicaid's reasonable promptness requirement, 42 U.S.C. Section 1396a(a)(8)); *Bryson* v. *Shumway*, 308 F.3d 79, 89 (1st Cir. 2002) (same); *Sabree ex rel. Sabree*, 367 F.3d at 183 (same); *Doe* v. *Kidd*, 419 F. App'x 411, 415 (4th Cir. 2011), *reaffirming*, 501 F.3d 348, 356 (4th Cir. 2007) (same); *Romano* v. *Greenstein*, 721 F.3d 373, 379 (5th Cir. 2013) (same); *Westside Mothers* v. *Olszewski*, 454 F.3d 532, 544 (6th Cir. 2006) (same).

[11] See *Davis* v. *Shah*, 821 F.3d 231 (2d Cir. 2016) (no Section 1983 claim to enforce Medicaid's reasonable standards provision, 42 U.S.C. Section 1396a(a)(17)); *Hobbs ex rel. Hobbs* v. *Zenderman*, 579 F.3d 1171 (10th Cir. 2009) (same); *Lankford* v. *Sherman*, 451 F.3d 496 (8th Cir. 2006) (same); *Watson* v. *Weeks*, 436 F.3d 1152 (9th Cir. 2006) (same).

equal access provision, 42 U.S.C. Section 1396a(a)(30)(A).[12]

Even the case at hand is telling. Before this Court granted certiorari, there was no division among the Courts of Appeals over whether, applying the *Gonzaga* test, private parties can enforce provisions of the FNHRA through Section 1983. Compare *Talevski* v. *Health and Hosp. Corp. of Marion Cnty.,* 6 F.4th 713, 716 (7th Cir. 2021) (opinion below) with *Anderson* v. *Ghaly*, 930 F.3d 1066, 1069 (9th Cir. 2019) (individuals can vindicate right to appeal nursing home transfer under FNHRA through § 1983); *Grammer* v. *John J. Kane Regional Centers-Glen Hazel*, 570 F.3d 520, 532 (3d Cir. 2009) (individuals can vindicate several rights under FNHRA through § 1983, including the right to be free from chemical restraint).

In any event, episodic disagreements among the lower courts hardly suggest that *Gonzaga* is unworkable, let alone that it should be thrown out in favor of a flat prohibition on Section 1983 claims for any statute passed under Congress's spending power. Occasional circuit splits are inevitable given "the inability of hu-

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[12] See *Long Term Care Pharm. All.* v. *Ferguson*, 362 F.3d 50, 59 (1st Cir. 2004) (no Section 1983 claim to enforce Medicaid's equal access provision, 42 U.S.C. Section 1396a(a)(30)(A)); *N.Y. Ass'n of Homes & Servs. For the Aging, Inc.* v. *DeBuono*, 444 F.3d 147, 148 (2d Cir. 2006) (same); *Equal Access for El Paso, Inc.* v. *Hawkins*, 509 F.3d 697, 703 (5th Cir. 2007) (same); *John B.* v. *Goetz*, 626 F.3d 356, 363 (6th Cir. 2010) (same); *Westside Mothers*, 454 F.3d at 543; *Ball* v. *Rodgers*, 492 F.3d 1094, 1119, 1120 (9th Cir. 2007) (same); *Sanchez* v. *Johnson*, 416 F.3d 1051, 1068 (9th Cir. 2005) (same); *Clayworth* v. *Bonta*, 140 F. App'x 677 (9th Cir. 2005) (same); *Okla. Chapter of Am. Acad. of Pediatrics* v. *Fogarty*, 472 F.3d 1208, 1215 (10th Cir. 2007) (same); *Mandy R. ex rel. Mr. & Mrs. R.* v. *Owens*. 464 F.3d 1139, 1148 (10th Cir. 2006) (same).

man language to be fully unequivocal in every context"—a difficulty that forms the very premise of the judicial role. *Gamble* v. *United States*, 139 S. Ct. 1960, 1986 (Thomas, J., concurring). And determining whether statutory text is ambiguous or not is hardly the sort of "unwieldy and inappropriate task" that makes adherence to longstanding precedent untenable, *Dobbs*, 142 S. Ct. at 2275.

CONCLUSION

In view of the above, *amici* respectfully request that the Court affirm the opinion below.

Respectfully submitted,

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