



Case Explainer: *Health & Hospital System of Marion Co., Indiana v. Talevski*

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In [Health and Hospital System of Marion County, Indiana v. Talevski](#), the Supreme Court addressed whether provisions of federal safety net programs can be enforced by individuals pursuant to 42 U.S.C. § 1983 and, if so, whether individuals can enforce provisions of the Medicaid Nursing Home Reform Act. The Court ruled for Talevski by a comfortable margin on both questions.

This case explainer summarizes *Talevski* and discusses some important considerations in light of the case.

A Brief History of Private Enforcement¹

When added to the Social Security Act in 1965, the Medicaid Act did not include an express cause of action for private (*i.e.*, beneficiary) enforcement. Nevertheless, for over 50 years, beneficiaries have relied on a federal civil rights statute, 42 U.S.C. § 1983, to enforce Medicaid provisions.

Section 1983 provides individuals with a cause of action against any person who, acting “under color of” state law, deprives them of “any rights, privileges, or immunities secured by the Constitution and laws” of the United States.² In *Maine v. Thiboutot*, a case involving a claim under the Social Security Act, the Supreme Court held § 1983 means what it says and is not

¹ For in-depth discussion, see Jane Perkins, Nat’l Health L. Prog., Q&A: Private Enforcement of the Medicaid Act (Jan. 12, 2023) (available from TASC or NHeLP); Jane Perkins, *Pin the Tail on the Donkey: Beneficiary Enforcement of the Medicaid Act Over Time*, 9 ST. LOUIS UNIV. J. OF LAW & HEALTH POL. 207 (2016).

² 42 U.S.C. § 1983.

limited to enforcing constitutional claims or only some federal laws.³

Despite this straightforward holding, the Court has not made private enforcement easy, particularly when it comes to laws, like Medicaid, that Congress has enacted pursuant to the Constitution's Spending Clause. A year after it decided *Thiboutot*, the Court began to restrict private enforcement in *Pennhurst State School & Hospital v. Halderman*.⁴ Discussing the Developmentally Disabled Assistance and Bill of Rights Act (which is not part of the Social Security Act), Justice Rehnquist's majority opinion equated legislation enacted pursuant to the Spending Clause to a contract between the federal government and the states with the "typical remedy" for state noncompliance being an action by the federal government to terminate federal funding to the state.⁵ Subsequently, the Court cautioned that § 1983 actions require a plaintiff to assert a violation of a federal "right," not merely a violation of federal law.⁶ In *Blessing v. Freestone*, the Court clearly stated its "traditional" three-part test for determining whether a federal law creates a federal right:

- (1) Is the provision in question intended to benefit the plaintiff?
- (2) Is the provision written with specificity so that a court knows what to enforce?
- (3) Does the provision create a binding obligation on the state?⁷

According to *Blessing*, if these questions are answered affirmatively, the statute is presumptively enforceable. The defendant can overcome the presumption only by showing that Congress foreclosed § 1983 enforcement expressly or by including a comprehensive remedial scheme in the underlying substantive federal statute.⁸

In 2002, *Gonzaga University v. Doe* further tightened the enforcement test.⁹ *Gonzaga* clarified that Congress must *unambiguously* manifest its intent to confer individual rights on the

³ *Maine v. Thiboutot*, 448 U.S. 1 (1980); see also *Wilder v. Va. Hosp. Ass'n*, 496 U.S. 498 (1990) (allowing enforcement of a Medicaid provider payment provision, noting that the Medicaid Act does not contain a comprehensive remedial scheme).

⁴ *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1 (1981).

⁵ *Id.* at 17, 28 ("[L]egislation enacted pursuant to the spending power is much in the nature of a contract: in return for federal funds, the States agree to comply with federally imposed conditions . . . Accordingly, if Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously. . . ."). Of note, the "typical" remedy has rarely if ever been used by the federal Medicaid agency because it would cut off funding for the health care coverage that low-income people need.

⁶ *Golden State Transit Corp. v. City of L.A.*, 493 U.S. 103, 106 (1989).

⁷ *Blessing v. Freestone*, 520 U.S. 329, 341-42 (1996) (citation omitted).

⁸ *Id.* at 346 (stating this is a "difficult showing").

⁹ *Gonzaga Univ. v. Doe*, 536 U.S. 273, 279-80 (2002) (assessing provisions of the Family Educational Rights and Privacy Act of 1974, which is not part of the Social Security Act).

plaintiff.¹⁰ This occurs only when the statutory provision in question is “phrased in terms of the persons benefited” and contains “rights- or duty-creating language” with an “unmistakable focus on the benefitted class” as opposed to an aggregate focus.¹¹

To sum up, over time and particularly since 2002 (after *Gonzaga*), the § 1983 enforcement test has become an exacting one. The test turns on discerning congressional intent to create an enforceable federal right. Notably, in 1994, Congress enacted 42 U.S.C. § 1320a-2, recognizing that provisions of the Social Security Act can be privately enforced.¹² Unfortunately, courts have often ignored § 1320a-2.

The Supreme Court decides *Talevski*

In the 20 years after *Gonzaga*, the Supreme Court denied a number of petitions seeking reversal of § 1983 enforcement decisions.¹³ So, it was a major development when the Court granted certiorari in *Health & Hospital Corporation of Marion County, Indiana v. Talevski*, a

¹⁰ *Id.* at 279.

¹¹ *Id.* at 284, 287, 290.

¹² 42 U.S.C. § 1320a-2 (repeated at § 1320a-10) states:

In an action brought to enforce a provision of the Social Security Act, such provision is not to be deemed unenforceable because of its inclusion in a section of the Act requiring a State plan or specifying the required contents of a State plan. This section is not intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in *Suter v. Artist M*, 112 S. Ct. 1360 (1992), but not applied in prior Supreme Court decisions respecting such enforceability[.]

See also, e.g., H.R. Rep. No. 103-761, at 819 (1994) (Conf. Rep.) (“[T]he intent of this provision is to assure that individuals who have been injured by a State’s failure to comply with the Federal mandates of the State plan titles of the Social Security Act are able to seek redress in the federal courts to the extent they were able to prior to” the decision in *Suter v. Artist M. . . .*”).

¹³ A notable example involved a Medicaid provision that requires states to ensure that “any individual eligible for medical assistance . . . may obtain such assistance from any . . . person, qualified to perform the service. . . .” 42 U.S.C. § 1396a(a)(23)(A). Until 2017, all six federal circuits to review the provision (the 4th, 5th, 6th, 7th, 9th, and 10th) allowed beneficiaries to enforce it. A split was created when the Eighth Circuit ruled, 2-1, otherwise. *Does v. Gillespie*, 867 F.3d 1034 (8th Cir. 2017). The Supreme Court denied requests to address the split, with three justices taking the unusual step of publishing a written dissent. *See Gee v. Pl. P’hood of Gulf Coast*, 139 S. Ct. 408 (2018) (Thomas, Alito, Gorsuch, JJ, dissenting).

case from the Seventh Circuit Court of Appeals.¹⁴ The grant was of particular concern because all three circuits to have decided the matter had ruled that beneficiaries could enforce the Federal Nursing Home Reform Act (FNHRA).¹⁵

The case began when the Talevskis filed an action in an Indiana federal court against a Health and Hospital Corporation (HHC) nursing facility. They alleged that HHC had violated Mr. Talevski's rights under the FNHRA to be free from unnecessary chemical restraints and to be discharged/transferred only in certain circumstances.¹⁶ After the Seventh Circuit allowed the provisions to be enforced, HHC petitioned the Supreme Court, presenting two questions:

Ques. 1: Whether, in light of compelling historical evidence to the contrary, the Court should reexamine its holding that Spending Clause legislation gives rise to privately enforceable rights under Section 1983.

Ques. 2: Whether, assuming Spending Clause statutes ever give rise to private rights enforceable via Section 1983, FNHRA's transfer and medication rules do so.¹⁷

A ruling for the petitioner on the first question would have reversed more than 50 years of precedent, including *Maine v. Thiboutot*. Such a ruling would have placed private enforcement of *any* Medicaid Act provision off limits along with provisions in other Spending Clause enactments, affecting everything from housing and nutrition to education and disability laws. An adverse ruling on the second question would have left residents unable to challenge abusive situations in nursing facilities. By a 7-2 margin, the Court ruled for Talevski on both questions, as follows:

Question 1—Spending Clause enforcement: Citing *Pennhurst*, HHC argued that Spending Clause enactments are contracts between the federal government and a willing state and that private individuals are third party beneficiaries of that contract. HHC told the Court that, when § 1983 was enacted in the 1870s, third party beneficiaries were barred from enforcing contract obligations.

¹⁴ *Health & Hosp. Corp. of Marion Co. v. Talevski*, 599 S. Ct. ___, 143 S. Ct. 1444 (2023), *aff'g*, 6 F.4th 713 (7th Cir. 2021), *rev'g*, No. 2:19CV13, 2020 WL 1472132 (N.D. Ind. Mar. 26, 2020). The National Health Law Program, joined by 42 other organizations, filed an [amicus brief](#) with the Supreme Court emphasizing the important role of statutory stare decisis and urging affirmance.

¹⁵ *See Talevski*, 6 F.4th 713 (7th Cir. 2021); *Grammer v. John J. Kane Reg. Ctr.*, 570 F.3d 520 (3d Cir. 2009); *Rolland v. Romney*, 318 F.3d 42 (1st Cir. 2003).

¹⁶ *See Talevski*, 143 S. Ct. at 1450-51 (summarizing the treatment Mr. Talevski received); *see also* 42 U.S.C. § 1396r(c)(1)(A)(ii) (regarding restraints); *id.* § 1396r(c)(2)(A) (regarding discharge/transfer).

¹⁷ Petition for Writ of Certiorari, *Talevski*, No. 21-806 (U.S. Nov. 23, 2021).

All the justices, except Justice Thomas, rejected this argument. The majority cited “two well-established principles.”¹⁸ First, HHC’s key plank—that third party beneficiaries could not sue to enforce contract obligations is the 1870s—was “at a minimum, contestable” and something more than “ambiguous historical evidence” was needed to overrule prior decisions.¹⁹ Second, § 1983 is a tort claim, so HHC’s focus on contract law was “at the very least, perplexing.”²⁰

Question 2—FNHRA enforcement: HHC also argued that the FNHRA provisions could not be privately enforced because they focused on what states/nursing facilities must do, not on individual program beneficiaries. As with Question 1, all the justices, except Justice Thomas, rejected this argument. Noting that “our precedent sets a demanding bar,” the majority concluded that the FNHRA provisions cleared that bar.²¹ Writing for the Court, Justice Jackson noted that the provisions are describing protections for “residents” and referring to them as “resident’s rights.” And while acknowledging HHC’s argument that the provisions also establish who it is that must respect these rights (the nursing facilities), she concluded that “it would be strange to hold that a statutory provision fails to secure rights simply because it considers, alongside the rights bearers, the actors that might threaten those rights (and we have never so held).”²²

Continuing with the enforcement test, the Court next looked at whether HHC had overcome the presumption that the FNHRA provisions are enforceable through a § 1983 action. As noted above, HHC had to establish that Congress had created a comprehensive enforcement scheme, expressly or by implication, that displaced resort to § 1983. By a 7-2 margin (Justices Alito and Thomas dissenting), the Court held that Congress had not: “Our precedents make clear that the *sine qua non* of a finding that Congress implicitly intended to preclude a private right of action under § 1983 is *incompatibility* between enforcement under § 1983 and the enforcement scheme that Congress has enacted.”²³ HHC pointed to the FNHRA’s enforcement provisions authorizing government agencies to survey and investigate nursing facilities and to impose sanctions and/or terminate facilities from Medicaid participation. However, the Court discerned no incompatibility: “In focusing on what the FNHRA contains, they ignore what it lacks—a private judicial right of action, a private federal administrative remedy, or any careful congressional tailoring.”²⁴

¹⁸ *Health & Hosp. Corp. of Marion Co. v. Talevski*, 599 U.S. ___, 143 S. Ct. 1444, 1454 (2023).

¹⁹ *Id.* at 1454-55.

²⁰ *Id.* at 1455.

²¹ *Id.* Justice Barrett’s concurring opinion, joined by Chief Justice Roberts, emphasized that “[c]ourts must tread carefully” before allowing Spending Clause statutes to be privately enforced because the “bar is high” and “§ 1983 actions are the exception—not the rule. . . .” *Id.* at 1463-64 (Barrett, J, Roberts, CJ, concurring).

²² *Id.* at 1458.

²³ *Id.* at 1459 (emphasis added).

²⁴ *Id.* at 1461 (cleaned up).

Conclusion and Recommendations

Medicaid enrollees and advocates breathed a great sigh of relief when the Supreme Court issued the *Talevski* opinion on June 8, 2023. Nevertheless, in the coming months, states can be expected to test *Talevski*'s boundaries. When considering filing a § 1983 claim, advocates should:

1. Be aware that *Talevski* has raised some questions about how advocates will argue that a provision meets the enforcement test, for example:
 - What is the status of *Blessing*'s three-prong enforcement test?
 - The *Talevski* Court cites *Blessing* with favor when discussing whether the FNHRA contains a comprehensive remedial scheme,²⁵ but it does not cite the *Blessing* three-part test for discerning whether a provision creates a federal right. The Court says *Gonzaga* sets forth the “established method” for determining whether a provision is enforceable.²⁶ This raises the question about the status of the three-part test.

After *Gonzaga* was announced in 2002, the vast majority of courts treated *Gonzaga* as clarifying the first prong of the *Blessing* test—whether the provision is intended to benefit the individual plaintiff—and continued to assess the provision in question against all three *Blessing* prongs.²⁷ *Talevski* does not overrule *Blessing* and does not rebuke its approach. At this point, advocates are encouraged to discuss all *Blessing* prongs when briefing a motion to dismiss a § 1983 claim. Of early note, in *Jackson v. Seifried*, a New Jersey federal court allowed the plaintiff to enforce 42 U.S.C. § 1396n(c)(2)(A), requiring states to protect the health and welfare of waiver enrollees.²⁸ The court applied the *Blessing* three-part test while citing *Talevski* at the conclusion of the analysis when noting the absence of a comprehensive remedial scheme.²⁹

²⁵ *Id.* at 1460.

²⁶ *Id.* at 1457.

²⁷ *Gonzaga* quotes *Blessing* when deciding whether the provision at issue created an individual right. 122 S. Ct. at 287-88.

²⁸ *Jackson v. Seifried*, No. 20-17410 (GC) (JBD), 2023 WL 4627815 (D.N.J. July 19, 2023) (also citing *Waskul v. Washtenaw Cnty. Cmty. Mental Health*, 979 F.3d 426, 455 (6th Cir. 2020) (finding private right of action to enforce § 1396n(c)(2)(A)) (not for publication).

²⁹ *Id.* at *3-4.

- What is the status of *Wilder v. Virginia Hospital Association*?
 - For many years, state attorneys have argued, and some courts have said, that *Wilder* was implicitly repealed by *Gonzaga*. The *Talevski* majority does not mention *Wilder*, but Justice Barrett’s concurring opinion cites it as an example of the unusual case allowing private enforcement.³⁰ Advocates should continue to cite *Wilder*.
 - What is the status of 42 U.S.C. § 1320a-2, which states congressional intent that provisions of the Social Security Act are enforceable as they were in 1994, prior to the *Suter v. Artist M* decision?
 - *Talevski* does not mention this statute. However, that silence does not mean the statute does not exist. It is a statement of congressional intent, which is what the § 1983 enforcement test is supposed to be all about. Advocates should continue to cite it.
2. Do not be fooled: *Talevski* maintains the traditional, restrictive enforcement test; it did not make private enforcement any easier.

Eight of the justices concluded that the FNHRA provisions in question met the *Gonzaga* standard. However, advocates should in no way read *Talevski* as easing the test for private enforcement. To the contrary, the Court repeatedly notes the high bar that must be cleared. Proceed with extreme caution. The vast majority of the Medicaid Act is not privately enforceable. Of the 31 Medicaid provisions that plaintiffs have attempted to enforce through § 1983, courts have allowed about half of them to be enforced.³¹ Avoid provisions with a poor enforcement history, and do not attempt to enforce provisions in a way that is not tied tightly to the words of the statute.

3. Monitor case law developments.

Courts will be deciding private enforcement questions through a *Talevski* lens. This is already happening. See *Jackson*, No. 20-17410 (GC) (JBD), 2023 WL 4627815 (D.N.J. July 19, 2023) (allowing enforcement of 42 U.S.C. § 1396n(c)(2)(A) (not for publication); *United States v. Gallagher*, __ F. Supp. 3d __, 2023 WL 4317264, *13 (M.D. Tenn. July 3, 2023) (citing *Talevski* and *Gonzaga* and holding the Freedom of Access to Clinic Entrances Act grants a federal right to “freedom from certain types of interference in the access and/or provision of

³⁰ *Id.* at 1453 (Barrett, J, Roberts, CJ, concurring).

³¹ Jane Perkins, Nat’l Health L. Prog., Q&A: Private Enforcement of the Medicaid Act at 3-5 (Jan. 12, 2023) (available from NHeLP).

reproductive health services, including abortion”).

Also, of note, *Talevski* has returned to the Seventh Circuit Court of Appeals. The plaintiff has suggested that the appellate court remand the case to the U.S. District Court for the Northern District of Indiana and also asked the appellate court to consider reassigning the case.³²

After the Court decided *Talevski*, it also sent two certiorari-pending cases back to their respective circuit courts for consideration in light of *Talevski*:

(1) *Planned Parenthood Southern Atlantic v. Kerr* has returned to the Fourth Circuit (No. 21-1043), which previously concluded that Medicaid beneficiaries can enforce 42 U.S.C. § 1396a(a)(23), the free choice of provider provision.³³

(2) *St. Anthony Hospital v. Eagleson* is back at the Seventh Circuit (No. 21-2325). The Seventh Circuit previously concluded that health care providers can enforce 42 U.S.C. § 1396u-2(f), which requires managed care organizations to make timely and adequate payments to providers for primary care services.³⁴

Briefing is also underway in *Family Health Centers of Southwest Florida v. Weida*, an Eleventh Circuit case that will decide whether a federally qualified health center can enforce the FQHC payment provision, 42 U.S.C. § 1396a(bb).³⁵ Advocates should monitor case law developments.³⁶

³² *Talevski*, No. 20-1664 (July 24, 2023) (Statement of Position of Plaintiff-Appellant Following Remand), ECF No. 79.

³³ *Pl. P'hood So. Atl. v. Kerr*, 27 F.4th 945 (D.S.C. 2020), *cert. granted and case vacated and remanded*, __ S. Ct. __, 2023 WL 4065140.

³⁴ *St. Anthony Hosp. v. Eagleson*, 48 F. 4th 737 (7th Cir. 2022), *cert. granted and case vacated and remanded*, __ S. Ct. __, 2023 WL 4065381 (June 20, 2023). The district court had also held health care providers could not enforce the Medicaid reasonable promptness provision, 42 U.S.C. § 1396a(a)(8), *see* 548 F. Supp. 3d 721 (N.D. Ill. 2021).

³⁵ *Family Health Centers of Southwest Florida v. Weida*, No. 2:21-cv-278 (M.D. Fla. Feb. 28, 2023) (Opin. & Order, ECF No. 78), on appeal, No. 23-10992.

³⁶ The National Health Law Program maintains a Medicaid case enforcement docket that is available to beneficiary advocates upon request.