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

BRIEF OF *AMICI CURIAE* 46 SOUTH CAROLINA STATE LEGISLATORS IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

Amici are 46 South Carolina state legislators.

Amici have compelling interests in supporting the State of South Carolina's longstanding tradition of promoting a culture that values human life, in upholding South Carolina state law prohibiting state family planning funds from being used to pay for abortions, and in ensuring that agencies that do *not* perform abortions receive sufficient funding to provide medical care and important women's health and family planning services to women in South Carolina.

Amici also have an acute interest in ascertaining that, when the State of South Carolina enters into agreements with the federal government, this State knows the terms of those agreements—including whether private third parties will be allowed to sue to enforce them.

Furthermore, *Amici* have a substantial interest in maintaining their authority to determine whether providers are qualified to provide certain medical services under the State of South Carolina's Medicaid program.

A list of the *amici* legislators and former legislators is included in the appendix of this brief.

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[1] No counsel for a party authored this brief in whole or in part, and no person other than *amici* and their counsel made any monetary contribution intended to fund the preparation or submission of this brief. Counsel were timely notified of this brief as required by Supreme Court Rule 37.2.

INTRODUCTION AND SUMMARY OF ARGUMENT

Medicaid represents more than 15% of every healthcare dollar spent in the United States. Because of the program's size, the federal government vests states with considerable authority over how to run their Medicaid programs, leaving many program aspects to a state's discretion. If a state Medicaid plan deviates from those broad federal guidelines, there is a simple remedy: the federal government can withhold the federal funding stream. But unless there is express language to the contrary, the Medicaid statutory regime generally does not confer Medicaid providers or beneficiaries with private rights that can be invoked in a federal lawsuit such as a § 1983 civil rights action. Provider and beneficiary complaints must be made, if at all, through the state's administrative appeal process.

The State of South Carolina has public policy interests in promoting life, safeguarding taxpayer dollars from funding abortions, and ensuring that providers of family planning services that receive state funding do not contravene those interests. In furtherance of this policy, South Carolina deemed abortion clinics and associated medical practices unqualified under the Medicaid program.

Planned Parenthood South Atlantic (hereinafter "Planned Parenthood") operates two sites in South Carolina, and both are heavily devoted to abortion-related services. (Br. of Petitioner, pp. 8-9.) Numerous other private health care providers provide more comprehensive health services. (*Id.*)

Planned Parenthood could end this litigation today by ceasing its practice of abortions in South Carolina. Julie Edwards would continue to have access to Planned Parenthood as a provider, and South Carolina could protect its citizens from funding abortions. Instead, Planned Parenthood, through its clients, has prosecuted litigation all around the country. Rather than contesting its disqualification through an administrative appeal, the "sole and exclusive remedy" to which agreed in its Enrollment Agreement, Planned Parenthood joined in this suit brought by one of its clients in federal court.

If Julie Edwards' complaint were that she was prevented from obtaining service from an undisputedly qualified provider, this would be a very different case. But Edwards has injected herself into the determination over which providers are *qualified* when the Medicaid Act grants the authority to determine which providers are qualified to the states, subject to an administrative appeal remedy or the federal government's decision to withhold funding.

The Circuits are sharply split 5–2 over whether Medicaid's any-qualified-provider directive, 42 U.S.C. § 1396a(a)(23)(A),[2] creates a private right of action in favor of Medicaid recipients seeking medical services. This Court should restore the bargain South Carolina struck with the federal government.

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[2] The Fourth Circuit adopted Planned Parenthood and Edwards' characterization of section 1396a(a)(23)(A) as the "free-choice-of-provider provision." (*See* Pet. for Cert., App'x, p. 3a.) Following the statutory language, *amici* refer to it as the "any-qualified-provider" provision.

Federal funding provisions are not privately enforceable "unless Congress speaks with a clear voice, and manifests an unambiguous intent to confer individual rights." *Gonzaga Univ. v. Doe*, 536 U.S. 273, 279 (2002). This is a "demanding bar" only met in "atypical cases" in which a Spending Clause statute "*unambiguously* confers" individual rights. *Health and Hosp. Corp. of Marion County v. Talevski*, 599 U.S. 166, 180, 183 (2023) (emphasis in original).

While paying lip service to this Court's standard for implying private rights, as outlined in *Gonzaga* and *Talevski* (see Pet. for Cert., App'x, p. 37a), the Fourth Circuit effectively applied a much more lenient standard. That impacts the State of South Carolina by eliminating or substantially compromising its statutory ability to protect the public with respect to proper qualifications for Medicaid providers.

All agree Edwards may seek treatment from any qualified provider under the Medicaid Act. But here Edwards, with full knowledge of Planned Parenthood's commitment to the termination of unborn human life, seeks to not only privately enforce the any-qualified-provider provision, but also to force South Carolina to accept Planned Parenthood as a qualified provider. The precedent Edwards seeks may drastically and adversely affect the ability of states to determine qualified providers under the Medicaid Act.

The court of appeals interpreted the word "qualified" within the Medicaid Act as being limited to provider competence. *Planned Parenthood S. Atlantic v. Kerr*, 95 F.4th 152, 169 (4th Cir. 2024). But this is not a licensing case. The question is not whether

Planned Parenthood may provide services in the private market, but whether public funding must be used to support Planned Parenthood given its dogged determination to practice abortions. The Fourth Circuit's competence standard for qualification effectively reads out of the Medicaid Act the provisions empowering states to set qualification standards as well as the administrative remedy for such disputes. It prevents states from disqualifying Medicaid providers for any non-competence reason, such as fostering an environment of sexual harassment, wasting state resources, or discriminating against certain classes of clients.

The Fourth Circuit identified an ambiguity. Does the word "qualified" in the "any-qualified-provider" statute refer to the qualification under the Medicaid Act? Or does it refer general competence standards? This is a classic ambiguity in that the word is susceptible to more than one interpretation. *See Ruan v. U.S.*, 597 U.S. 450, 459 (2022).

The Fourt Circuit erred in relying upon an ambiguous term to imply a private right of action. The any-qualified-provider statute does not clearly and *unambiguously* demonstrate intent to confer rights.

Accordingly, *amici* respectfully request that this Court hold that Edwards lacks a private right enforceable under section 1983 to challenge South Carolina's qualification of medical providers under the Medicaid Act.

ARGUMENT

I. South Carolina's actions were consistent with its public policy interest in avoiding indirect use of taxpayer funds to pay for abortions.

South Carolina has a "strong culture and longstanding tradition of protecting and defending life and liberty of the unborn." (Executive Order No. 2017-15, Pet. for Cert., App'x, p. 149a.) In furtherance of that policy, a South Carolina statute specifically prohibits state funds appropriated for family planning from being used to pay for abortions. S.C. Code Ann. § 43-5-1185. Pursuant to that statute, South Carolina's governor issued an executive order directing the State Department of Health and Human Services (DHHS) to, among other things, deem abortion clinics and associated medical practices unqualified under the Medicaid program to provide family planning services. (Exec. Order No. 2018-21, Pet. for Cert., p. 157a.)

II. *Talevski* reaffirmed that private enforceability of Spending Clause legislation should be interpreted narrowly.

Planned Parenthood seeks to establish a new exception to the general rule that Spending Clause specifications do not establish rights under 42 U.S.C. § 1983. This Court has repeatedly held that "unless Congress speaks with a clear voice, and manifests an unambiguous intent to confer individual rights, federal funding provisions provide no basis for private enforcement under § 1983." *Gonzaga*, 536 U.S. at 280.

The typical remedy for state noncompliance with federally imposed conditions is termination of funds by the federal government. *Talevski*, 599 U.S. at 183.

Under § 1983, citizens have a cause of action for the deprivation of rights, privileges, or immunities secured by the Constitution and federal laws. 42 U.S.C. § 1983. This statute provides a remedy for violation of rights secured by the Constitution and federal laws. *Gonzaga*, 536 U.S. at 283. Enforcement under § 1983 is not limited to federal civil rights laws. *Talevski*, 599 U.S. at 174-77. However, § 1983 only enforces federal rights, not mere "benefits" or "interests." *Gonzaga*, 536 U.S. 283.

Legislation enacted pursuant to the Spending Clause can create rights enforceable under section 1983. *Talevski*, 599 U.S. at 180. However, statutory provisions must unambiguously imply a private right of action. *Id.* What the any-qualified-provider statute confers is better classified as a benefit or interest, not a right.

This Court previously summarized prior law and articulated three factors that it traditionally considered in determining whether a particular statute creates a federal right. *Blessing v. Freestone*, 520 U.S. 329, 340-41 (1997). Seizing on some of the more malleable language in *Blessing*, the courts below inferred a private right of action from the any-qualified-provider directive.

But this Court's most recent pronouncement is that "*Gonzaga* sets forth our established method for ascertaining unambiguous conferral." *Talevski*, 599 U.S. at 183. *Talevski* does not even mention the three-

factor *Blessing* test in its "unambiguous conferral" inquiry. *See Kerr*, 95 F.4th at 158-59 (relying heavily on *Blessing*).

The Fourth Circuit, while cloaking its opinion (following this Court's remand) in *Gonzaga* garb, effectively applied the "relatively loose standard" *Gonzaga* expressly rejected. *See* 536 U.S. at 282. The Fourth Circuit appears to have held that merely because a state Medicaid program must extend certain benefits to specified individuals, an implied private right exists. *See Kerr*, 95 F.4th at 165-66. The Fourth Circuit's analysis pays little heed to the precedent this Court set forth to guide the analysis and instead focused on catch phrases. In practice, the courts below ignored this Court's frequent admonitions that private enforcement is available only in exceptional cases. *Talevski*, 599 U.S. at 183.

III. The any-qualified provider provision is not enforceable under *Gonzaga*.

A private right of action is inferred from Spending Clause legislation only when unambiguously conferred. *Talevski*, 599 U.S. at 183. "Ambiguity" means "[a]n uncertainty of meaning or intention." Black's Law Dictionary 33 (2d Pocket ed. 2001). The prefix "un-" means "contrary to" or "against." *Id.* at 730. Thus, "unambiguous" means there can be no uncertainty as to meaning or intent.

The core aim of the *Gonzaga* inquiry is to ascertain whether Congress unambiguously intended to create a federal right for the identified class. *Talevski*, 599 U.S. at 183. Traditional tools of

statutory interpretation are used for this assessment. *Id.*

The *Gonzaga* test "is satisfied where the provision in question is phrased in terms of the persons benefitted and contains rights-creating, individual-centric language with an unmistakable focus on the benefited class." *Talevski*, 599 U.S. at 183 (quoting *Gonzaga*). Private enforcement is unavailable when "the statutory provision contained no rights-creating language; had an aggregate, not individual focus; and served primarily to direct the Federal Government's distribution of public funds." *Id.* at 183-84.

These descriptions, though helpful, are not the primary test. Rather, they must be read in light of the overarching aim, which is whether Congress clearly and unambiguously intended to confer a private right of action.

The cases *Gonzaga* cited are instructive. This Court cited Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972 as examples of statutes unambiguously creating privately enforceable federal rights. *Gonzaga*, 536 U.S. at 284. The *Gonzaga* court repeatedly referred to the list of similar-worded statutes in footnote 13 of *Cannon v. University of Chicago*, 441 U.S. 677 (1979). This Court held that the determination whether private enforceability under § 1983 follows this Court's implied-right-of-action jurisprudence. *Gonzaga*, 536 U.S. at 284-85.

A. Implication of remedies requires unambiguous evidence of Congressional intent.

To imply a right of action, "the focus of the inquiry is on whether Congress intended to create a remedy." *California v. Sierra Club*, 451 U.S. 287, 297 (1981). "The federal judiciary will not engraft a remedy on a statute, no matter how salutary, that Congress did not intend to provide." *Id*. This is so for a couple of reasons. First, Congress knows how to expressly provide that federal statutes are privately enforceable. *Touche Ross & Co. v. Redington*, 442 U.S. 560, 572 (1979). Second, implication of private enforcement raises concerns that courts of limited jurisdiction are extending their authority to embrace disputes Congress has not assigned them to resolve. *Cannon*, 441 U.S. at 746 (Stevens, J., dissenting).

B. Remedies are generally not implied in Spending Clause statutes.

Courts should be doubly cautious when asked to imply private enforcement of Spending Clause legislation. Congress cannot issue direct orders to state governments. *Murphy v. Nat'l Collegiate Athletic Ass'n*, 584 U.S. 453, 471, (2018). The federal government may not adopt measures to indirectly coerce a State to adopt a federal regulatory system as its own. *Nat'l Fed'n of Independent Business v. Sebelius*, 567 U.S. 519, 578 (2012). This healthy balance of power is designed to reduce the risk of tyranny and abuse by the government. *Murphy*, 584 U.S. at 471. It also places political accountability on the governmental actors who devised the regulatory program. *National Federation*, 567 U.S. at 578 (2012).

For these reasons, legislation affecting the federal balance requires a clear statement of Congressional intent. *Bond v. U.S.*, 572 U.S. 844, 858 (2014). Federal courts must be certain of legislative intent before interpreting a federal law to intrude on state police powers. *Id.* at 858-60. Any ambiguity in the federal statute will be resolved in favor of the state. *Id.* at 859-60.

The Spending Clause in the federal Constitution has been interpreted to allow Congress to grant federal funds to the States while conditioning the grant upon compliance by the States with measures Congress could not directly mandate. *National Federation*, 567 U.S. at 576. "Relatively mild encouragement" of this type is permissible, whereas "economic dragooning that leaves the States with no real option but to acquiesce" is forbidden. *Id.* at 580-82.

Spending Clause provisions extend federal funding to states with strings attached. *Pennhurst State Sch. and Hosp. v. Halderman*, 451 U.S. 1, 16 (1981). Legislation under the Spending Clause is in the nature of a contract. *Pennhurst*, 451 U.S. at 17. The federal government offers federal funds if certain conditions are met, and the States have the option to agree to comply with the conditions in return for receipt of the federal funds. *Id.* The legitimacy of Spending Clause legislation depends upon whether a State voluntarily and knowingly accepts the terms of the contract. *Id.* Thus, any conditions on the grant of federal funds must be unambiguous. *Id.*

Talevski represented only the third occasion upon which private enforcement of a Spending Clause

provision has ever been allowed. 599 U.S. at 194 (Barrett, J., concurring); *Gonzaga*, 536 U.S. at 280. On remand, this Court's directive was to consider "the text and structure" of the relevant statute and to apply ordinary interpretive tools. *See Talevski*, 599 U.S. at 193-94, *Gonzaga*, 536 U.S. at 286. With this background in mind, it is worthwhile to review the language of the statutes that have been found to satisfy the *Gonzaga* standard. Their language and contexts are much different from the Medicaid statute in question.

C. The statutes in *Wright* and *Talevski* contained clear and direct commands.

The first case was *Wright v. City of Roanoke Redevelopment and Housing Authority*, 479 U.S. 418 (1987). The statute in *Wright* read as follows: "Rental payments . . . A family shall pay as rent . . . [no more than] 30 per centum of the family's monthly adjusted income." *Id.* at 420 n.2. The plaintiffs, tenants in low-income housing projects, alleged they were being overcharged on rent and utilities. *Id.* at 419-20. This Court held that the statute "could not be clearer." *Id.* at 430. This Court also noted that the statute lacked an effective enforcement procedure mechanism. *Id.* Private enforceability was both necessary and expected. *Id.* at 426-28.

The statute in *Wright* flatly limited rent to a specified amount of a family's monthly income. That provision focused on the victims of discrimination and commanded all government actors to refrain from discriminating against them. It strongly implied "not just a private right but also a private remedy." *Id.* at

286. Its categorical prohibition is similar to the language of civil rights statutes in which private enforceability has been implied. *See Alexander v. Sandoval*, 532 U.S. 275, 288 (2001) (citing 42 U.S.C. § 2000d, which provides that "no person shall be subjected to discrimination"). The examples provided in *Cannon* are similarly direct. 441 U.S. at 690 n. 13 (listing statutes providing that all citizens shall have the same rights as white citizens, that "no person shall be denied the right to vote," and that "Employees shall have the right to organize and bargain collectively through representatives.").

Talevski addressed two Federal Nursing Home Reform Act provisions that were equally clear. 599 U.S. at 171. They provided as follows:

> **Requirements for nursing facilities**
>
> * * *
>
> **(c) Requirements relating to residents' rights**
>
> **(1) General rights**
>
> **(A) Specified rights**
>
> A nursing facility must protect and promote the rights of each resident, including each of the following rights:
>
> * * *
>
> **(ii) Free from restraints**
>
> The right to be free from . . . any physical or chemical restraints . . . .
>
> * * *

> **(2) Transfer and discharge rights** A nursing facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility unless [certain enumerated preconditions are met].

42 U.S.C. § 1396r. This Court had little difficulty finding that these express provisions created enforceable rights under § 1983. *Talevski*, 599 U.S. at 185. That's not surprising; the provisions contained "clear rights-creating language," spoke "in terms of the persons benefited," and had "an unmistakable focus on the benefited class." *See id.* at 186.

D. The any-qualified-provider statute fails to afford states clear notice.

In stark contrast, the any-qualified-provider provision speaks to the HHS Secretary and lacks any rights-creating language. Nowhere does the statutory language suggest that a Medicaid beneficiary has an independent right to have a particular provider declared "qualified" after a state reaches the opposite conclusion.

Implication of remedies from Spending Clause statutes is allowed only if States are given clear notice of liability they may incur by accepting Medicaid funds. *Pennhurst*, 451 U.S. at 17. Any ambiguity is resolved against private enforceability. *Bond*, 572 U.S. at 859-60.

The any-qualified provider provision is doubly ambiguous. First, it does not clearly confer a right to

obtain services from any provider chosen. Second, the statute limits eligibility to qualified providers.

The any-qualified-provider provision does not contain the simple, direct command that this Court has demanded to imply private enforceability. The provision merely requires a state plan for medical assistance to "provide that [any eligible individual] may obtain such assistance from any institution . . . qualified to perform the service or services required." 42 U.S.C. § 1396a(a)(23). This is a plan requirement, not a rights-creating provision.

The only other exception to the general rule that Spending Clause statutes are not privately enforceable came in *Wilder v. Virginia Hosp. Ass'n*, 496 U.S. 498 (1990). That case, like this one, involved the Medicaid plan requirement statute. The specific provision, at the time, read that "a State plan for medical assistance must . . . provide . . . for payment . . . of the hospital services, . . . through the use of rates . . . which the State finds, and makes assurances satisfactory to the Secretary, are reasonable and adequate to meet the costs [of providing the services]." *Id.* at 502-03. Health care providers sued the State alleging that the state rates were not reasonable and adequate. *Id.* at 503. Importantly, the State conceded that the statute required some level of reimbursement, and that it was required to make findings that its rates were reasonable and adequate, and to make assurances to that effect to the Secretary of Health and Human Services. *Id.* at 512-13. This Court held that without a way of contesting the State's findings and assurances, the statutory requirement would be a dead letter. *Id.* at 513-15.

The *Wilder* holding was not based solely on the language of the statute, but also on the legislative history, admissions made by the state, and the lack of meaningful redress for the medical providers whose economic interests were affected. 496 U.S. at 516-19; *Koroma v. Richmond Redevelopment & Hous. Auth.*, No. CIVA 3:09CV736, 2010 WL 1704745, at *7 (E.D. Va. Apr. 27, 2010). Collectively, these directly required the State to make findings and assurances to the Secretary that the rates it was paying medical providers through Medicaid were reasonable and adequate. The statute, under these circumstances, "actually required the States to adopt reasonable and adequate rates." *Suter v. Artist M.*, 503 U.S. 347, 359 (1992). Thus, *Wilder* does not stand for the proposition that plan requirements in and of themselves are privately enforceable.

The statute addressed in *Wilder* is no longer in effect. *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 330 (2015). In a footnote, this Court stated that *Wilder* did not support a private right of action under the statute that replaced it because "our later opinions plainly repudiate the ready implication of a § 1983 action that *Wilder* exemplified." *Id.*, n.*. This has been interpreted as an "express disavowal of *Wilder*'s form of analysis." *Does v. Gillespie*, 867 F.3d 1034, 1042 (8th Cir. 2017).

A statute addressing the enforceability of Medicaid plan requirements preserved *Wilder* but did not extend it. In *Suter*, it was alleged that a state social-service agency failed to adequately comply with a Spending Clause plan requirement relating to removal of children from their homes due to charges

of child abuse and neglect. 503 U.S. at 351-52. This Court pointed out that the statute only required the State to "have a plan approved by the Secretary which contains the 16 listed features." *Id.* at 358. Congress subsequently clarified that statutory provisions are not unenforceable merely because they are contained in a list of plan requirements. 42 U.S.C. § 1320a-2. On the other hand, this Court held, after that statute was enacted, that a plan requirement did not create privately enforceable rights. *Armstrong*, 575 U.S. at 331. Some courts have taken this as a repudiation of the *Wilder* decision. *Gillespie*, 867 F.3d at 1045-46.

The *Suter* opinion was not based solely on the "plan requirement" issue. The Court held that the Adoption Act statute was distinguishable from the circumstances of *Wilder* in that the mandate had a different context. *Suter*, 503 U.S. at 359-60. Although "reasonable efforts" were required, how to comply with that directive was left up to the State. *Id.* at 360. Importantly, other sections of the Adoption Act provided mechanisms for enforcing the "reasonable efforts" requirement. *Id.* These other mechanisms prevented the "reasonable efforts" clause from being rendered a dead letter. *Id.* This reasoning was reiterated in *Armstrong*. 575 U.S. at 331-32.

Applying these principles, Medicaid's any-qualified-provider provision suggests neither a private right nor a private remedy. The focus is on the plan, not individual rights. The statute requires state Medicaid plans to allow eligible individuals choice of qualified providers. But the text and structure of the provision contains no hint that Congress intended to give clients *private rights* that are *privately*

enforceable. The Fifth and Eighth Circuits correctly held that the any-qualified-provider provision creates no private rights. *Planned Parenthood of Greater Texas Family Planning and Preventative Health Servs., Inc. v. Kauffman*, 981 F.3d 347 (5th Cir. 2020); *Gillespie*, 867 F.3d at 1046.

The any-qualified-provider provision is a far cry from the direct mandates in *Wright*, *Cannon*, and *Talevski*. It does not expressly or impliedly convey rights or use any synonym of the word "right." *See Kerr*, 95 F.4th at 166. It does not state: "Eligible individuals have a right to their free choice of qualified providers;" nor does it provide: "No State shall deny eligible individuals their free choice of qualified provider."

The Fourth Circuit's characterizations of the statute do not match its language. Nowhere in section 1396a(a)(23) does it say that "discrete beneficiaries" are "guaranteed a choice free from state interference." *See Kerr*, 95 4th at 165. The statute benefits all Medicaid-eligible individuals, not a discrete subset. Moreover, the only express guarantee pertains to the contents of state plans. Nor does the Medicaid statute state that "beneficiaries must have unfettered access to qualified providers." *Id.* at 167. These glosses overinflate the statute to float it over the *Gonzaga* hurdle.

The reference to "individual" in the any-qualified-provider provision is not outcome-determinative. This Court has warned that certain words such as "reasonable" and "benefits" that happened to be relevant to prior cases are not necessarily dispositive in other cases. *Suter*, 503 U.S.

at 357; *Gonzaga*, 536 U.S. at 282. Moreover, the word "individual" is not talismanic in this context. A quick review of the Medicaid plan statute demonstrates that the word "individual" appears over 400 times. *Kauffman*, 981 F.3d at 373 n.2 (Elrod, C.J., concurring). The inclusion of the word "individual" cannot be enough to imply private rights or virtually the entire statute creates private rights enforceable in § 1983 actions, contrary to all indicia of Congressional intent.

The any-qualified-provider statute at issue fails even under *Wilder*. There is nothing in the statute that commands a state to do anything beyond submitting a plan meeting the statutory requirements. *Kaufmann*, 981 F.3d at 373 (Elrod, C.J., concurring). While this, in and of itself, does not count against an implied right of private enforcement, it does not count for it either. 42 U.S.C. § 1320a-2; *Armstrong*, 575 U.S. at 331. The statute does not require a state to make findings or assurances, or even "reasonable efforts." At most, this results in an ambiguity, which dooms any inference of private enforceability.

Furthermore, as in *Suter*, other statutory mechanisms prevent the any-qualified provision from becoming a dead letter. Planned Parenthood can directly contest its decertification by filing an administrative appeal and, if necessary, appealing through the state-court system. The any-qualified-provider statute does not expressly or impliedly grant Edwards or any other client the right to challenge a disqualification in federal court.

IV. Congress did not unambiguously confer a private right of action to challenge South Carolina's decision to disqualify Planned Parenthood as a provider under its Medicaid program.

There is no allegation in this case that the State of South Carolina took any action directly against Edwards. The alleged harm is that the State of South Carolina violated Edwards' rights by terminating Planned Parenthood from South Carolina's Medicaid program. *Planned Parenthood South Atlantic v. Baker*, 326 F. Supp. 3d 39, 42 (D.S.C. 2018).

Implication of a private right of action in this context affects two separate Medicaid provisions. Not only must a right be implied that is not present in the language of the any-qualified-provider directive, the courts below inferred a right to interfere with a state's qualification determinations.

The Fourth Circuit interpreted the word "qualified" in the any-qualified-provider statute to only refer to professional qualifications for performing the requested services. *Kerr*, 95 F.4th at 169. This interpretation requires a court to take the additional step of implying a private right to challenge state decertification decisions. *See Planned Parenthood S. Atlantic v. Baker*, 941 F.3d 687, 694 (4th Cir. 2019). But this Court has squarely held that patients cannot challenge state decertification decisions. *O'Bannon v. Town Court Nursing Ctr.*, 447 U.S. 773, 788 (1980).

A. The courts below erred in implying a right to challenge decertification decisions.

A separate statute establishes the authority of a State to qualify or disqualify a medical provider from its Medicaid program. *Kauffman*, 981 F.3d at 360. The Medicaid Act sets forth the exclusion power of a State in 42 U.S.C. § 1396a(p) (hereinafter "the qualification provision").

This Court has held that a party seeking to enforce a statute must possess a private right of action under the particular statute sought to be enforced. *Blessing*, 520 U.S. at 342; *Alexander*, 532 U.S. at 285-86. Because Edwards claims harm only through South Carolina's disqualification of Planned Parenthood as a provider, she must have a private right of action to enforce the *qualification provision*, either separately or in addition to a private right of action under the any-qualified-provider provision.

Edwards can do no such thing. The qualification provision bluntly specifies that a State may exclude a Medicaid provider for any reason that HHS could exclude that provider "in addition to any other authority." 42 U.S.C. § 1396a(p)(1). The qualification provision is not contained in a list of requirements for a state Medicaid plan. Thus, 42 U.S.C. §§ 1320a-2 does not apply and the strict requirements of *Alexander*, *Gonzaga*, and *Armstrong* control with full force. Those cases set a high hurdle for proving a right of private enforcement.

B. Patients have no right to challenge state decertification determinations under this Court's precedent.

O'Bannon held that the any-qualified-provider statute "does not confer a right on a recipient to enter an unqualified [provider] and demand a hearing to certify it." 447 U.S. at 785. Indeed, this Court expressly rejected the argument that the any-qualified-provider directive creates substantive rights in favor of Medicaid beneficiaries concerning state actions directed against Medicaid providers. *Id.* at 786 ("In holding that [the any-qualified-provider requirement and two other] provisions create a *substantive* right to remain in the home of one's choice . . . the Court of Appeals failed to give proper weight to the contours of the right conferred by the statutes and regulations.") (emphasis added). This Court did not limit its holding to constitutional due process claims. This Court's specific holding was that the state's action against the provider "did not directly affect the patients' legal rights." *O'Bannon*, 447 U.S. at 790. Under *O'Bannon*, Edwards lacks a right to demand that Planned Parenthood be qualified.

C. Private enforcement is incompatible with administrative remedies.

Furthermore, the administrative remedies in the Medicaid Act are incompatible with private enforcement of the qualification provision. "The express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others." *Alexander*, 532 U.S. at 290. The existence of such remedies is relevant not only to

rebut a presumption of Congressional intent to create a private right of action under *Blessing*, but also to the question whether Congress intended to create a private right in the first place. *Alexander*, 532 U.S. at 290; *Suter*, 503 U.S. at 360-61. When it is clear that Congress intended to confer a right, then the lack of an adequate scheme of administrative remedies supports an inference that the injured party may sue under Section 1983. *Wright*, 479 U.S. at 224-29. However, when there is no indication Congress intended to benefit a claimant, the lack of administrative remedies only buttresses the conclusion that a private right of action in favor of that claimant was not contemplated. It would be anomalous to imply a private right of action from Congressional silence after this Court has expressly held that no such right exists. *O'Bannon*, 447 U.S. at 790.

Nothing in the qualification provision provides the least hint of any indication that Congress intended Medicaid clients to be allowed to privately enforce it under Section 1983. The structure and language of the Medicaid Act show that a State's qualification or disqualification is reviewable only through the prescribed administrative system and by only the directly affected party—the medical provider.

V. Recognition of a private right of action to challenge a state's qualification determination frustrates South Carolina's interests and Congressional intent.

The qualification provision "preserves the state's ability to exclude entities from participating in Medicaid under 'any other authority.'" *First Med.*

Health Plan, Inc. v. Vega-Ramos, 479 F.3d 46, 53 (1st Cir. 2007). The legislative history indicates that the qualification provision "was intended to permit a state to exclude an entity from its Medicaid program for *any* reason established by state law." *Id.* "The program was designed to provide the states with a degree of flexibility in designing plans that meet their individual needs." *Addis v. Whitburn*, 153 F.3d 836, 840 (7th Cir. 1998). Therefore, "states are given considerable latitude in formulating the terms of their own medical assistance plans." *Id.* This reflects the fact that establishing qualifications for medical providers is a traditional state function. *Manion v. N.C. Med. Bd.*, 693 Fed. App'x 178, 181 (4th Cir. 2017). It also recognizes that States must expend significant taxpayer resources to participate in the Medicaid program. *Kauffman*, 981 F.3d at 364.

The Fourth Circuit held that the any-qualified-provider provision "imposes limits on a state's qualification authority." *Baker*, 941 F.3d at 704. This is incorrect. The any-qualified-provider provision is limited by the qualification provision, not vice versa. *O'Bannon*, 447 U.S. at 785 (holding that the any-qualified provider requirement "gives recipients the right to choose among a range of *qualified* providers, without government interference"); *Kelly Kare, Ltd. v. O'Rourke*, 930 F.2d 170, 177-78 (2nd Cir. 1991) (holding that Medicaid beneficiaries have a legitimate entitlement to a choice in providers only to the extent those providers are qualified and participating in the Medicaid program); *Kauffman*, 981 F.3d at 357-58 (same); *Gillespie*, 867 F.3d at 1046 (same).

Ambiguities must be resolved *against* implication of private enforceability. *Bond*, 572 U.S. at 859-60. The lack of a definition of "qualified" in the any-qualified-provider directive reflects the fact that States are given great latitude to determine qualifications for medical providers under the Medicaid Act. *See Addis*, 153 F.3d at 840. The Medicaid Act generally uses the term to refer to qualifications under the statute, not just qualifications to perform a particular operation.

The Fourth Circuit erred in construing "qualified" solely through the lens of Medicaid beneficiaries' rights under the any-qualified-provider provision. HHS does not appear to interpret the word "qualified" in that provision independently of the qualification provision. An HHS regulation promulgated under the any-qualified-provider provision associates the word "qualified" with the freedom of States to set reasonable standards for qualifications of providers. 42 C.F.R. § 431.51(a)(1), (b) and (c)(2).

The word "qualified" in the any-qualified-provider provision refers to the qualification provision, and while its meaning *encompasses* both professional competence and licensure requirements, it is broad enough to include other state-specific reasons for making eligibility decisions as well. *Kauffman*, 981 F.3d at 358. The Fourth Circuit's contrary interpretation wrongly posits an ambiguity, and then attempts to use it to prove the *unambiguous* conferral of a privately enforceable right.

VI. Lack of private enforceability does not nullify the any-qualified-provider directive.

The Fourth Circuit worried that unless federal courts step in and second-guess state disqualifications of Medicaid providers, the any-qualified-provider directive will be robbed of all meaning. Not so. This Court has held that private enforcement rights should not be implied unless the lack of enforcement mechanisms would reduce those rights to "a dead letter." *Suter*, 503 U.S. at 360-61. Refusing to allow private enforcement of a state qualification determination does not reduce the rights of Medicaid beneficiaries to a dead letter because they can still choose *among* qualified providers. And both the federal HHS and the affected medical provider can contest the State's determination if appropriate. *See Kauffman*, 981 F.3d at 362. Under South Carolina's Medicaid program, for example, medical providers have a right to a hearing before a proposed exclusion, suspension, or termination. S.C. Code Regs. 126-404. South Carolina also allows administrative appeals. S.C. Code Regs. 126-150.B.

The Eighth Circuit recognized that allowing a private right of action in favor of Medicaid beneficiaries "would result in a curious system for review." *Gillespie*, 867 F.3d at 1041. The administrative regime requires the medical provider to exhaust its administrative remedies before seeking judicial review. *Id.* But a private right of action allows individual beneficiaries to separately litigate the qualifications of a provider immediately in federal court under Section 1983. *Id.* The potential for

parallel litigation and inconsistent results rightly gave the court reason to doubt that a private right of action to contest a medical provider's qualifications under the Medicaid Act was intended. *Id.* at 1042; *Kauffman*, 981 F.3d at 363-64.

Allowing Medicaid beneficiaries a private right of action to enforce the qualification provision would also frustrate the administrative scheme Congress put in place. Planned Parenthood has a right to challenge its disqualification in state administrative proceedings. *Planned Parenthood of Gulf Coast, Inc. v. Gee*, 862 F.3d 445, 484 (5th Cir. 2017) (Owen, J., dissenting), *overruled*, *Kauffman*, 981 F.3d at 369-70. Planned Parenthood (and associated entities) often fails to pursue its administrative remedies, preferring to join with its clients in their private action in federal court. *Id.* At a minimum, the existence of an adequate administrative remedy for Planned Parenthood does not render Edwards' rights under the any-qualified-provider directive "a dead letter." *Suter*, 503 U.S. at 360-61.

As Judge Jones on the Fifth Circuit recently recognized in encouraging the Fifth Circuit to reconsider the questions presented here *en banc*, "it makes no practical sense to hold that a Medicaid provider . . . may simply bypass state procedures, which are required by the Medicaid statute, and use patients as stalking horses for federal court review of its status." *Planned Parenthood of Greater Tex. Family Planning and Preventive Health Servs., Inc. v. Smith*, 913 F.3d 551, 569 (5th Cir. 2019) (Jones, J., concurring). The federal-court proceeding can effectively second-guess and/or force the hand of both

HHS and the State Medicaid program administrator. Moreover, it imposes the high cost of litigation on top of an enormously expensive program. *Id.* at 571.

* * *

Congressional intent to confer a privately enforceable right from the any-qualified-provider statute is not clear. Congressional intent to allow Medicaid recipients to challenge state qualification determinations is not free from ambiguity. The courts below erred in finding the *Gonzaga* / *Talevski* "unambiguous conferral" standard was met in this case.

CONCLUSION

Amici respectfully request that this Court reverse the judgment of the court of appeals.

Respectfully submitted,

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APPENDIX

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APPENDIX — LIST OF *AMICI CURIAE*

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Larry Grooms	Senator
Richard Cash	Senator
Tom Young	Senator
Wes Climer	Senator
Danny Verdin	Senator
Joshua Kimbrell	Senator
Murrell Smith	Speaker
Thomas Beach	Representative
Mike Burns	Representative
Micajah P. Caskey, IV	Representative
Bobby Cox	Representative
Heather Ammons Crawford	Representative
April Cromer	Representative
Ronnie Cromer	Representative

Sarita Edgerton	Representative
Stephen Frank	Representative
Doug Gilliam	Representative
Val Guest	Representative
Brandon Guffey	Representative
Rob Harris	Representative
David Hiott	Majority Leader
Chris Huff	Representative
Jay Kilmartin	Representative
Kathy Landing	Representative
Steven Long	Representative
Josiah Magnuson	Representative
John R. McCravy	Representative
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Melissa Oremus	Representative
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