

23-1275 KERR, DIRECTOR SC DEPT OF HEALTH V. PLANNED PARENTHOOD

DECISION BELOW: 95 F.4th 152

LOWER COURT CASE NUMBER: 21-1043

QUESTION PRESENTED:

More than 30 years ago, this Court first applied what would become known as the "Blessing factors," holding that a Medicaid Act provision created a privately enforceable right to certain reimbursement rates. *Wilder v. Va. Hosp. Ass'n*, 496 U.S. 498, 509-10 (1990). Later, the Court distilled from *Wilder* a multi-factor test for deciding whether a "statutory provision gives rise to a federal right" privately enforceable under Section 1983. *Blessing v. Freestone*, 520 U.S. 329, 340 (1997). Five years later, though, the Court disparaged *Blessing's* test while clarifying that only "an unambiguously conferred right is enforceable by § 1983." *Gonzaga University v. Doe*, 536 U.S. 273, 282 (2002). Then, in *Health & Hospital Corp. of Marion County v. Talevski*, 599 U.S. 166, 180 (2023), the Court doubled down on *Gonzaga's* "demanding bar."

The Court did not apply *Blessing* or *Wilder* in *Talevski*, but it did not overrule them either. After the Court GVR'd this case in light of *Talevski*, the Fourth Circuit applied *Wilder* and *Blessing* again and reaffirmed its prior opinions, maintaining a 5-2 circuit split over the first question presented and a 3-1 circuit split over the proper reading of *O'Bannon v. Town Court Nursing Center*, 447 U.S. 773 (1980), which frames the second question. Those questions are:

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

2. What is the scope of a Medicaid beneficiary's alleged right to choose a provider that a state has deemed disqualified?

THE PETITION FOR CERTIORARI IS GRANTED LIMITED TO QUESTION 1 PRESENTED BY THE PETITION.

CERT. GRANTED 12/18/2024