No. 21-806

IN THE

Supreme Court of the United States

HEALTH AND HOSPITAL CORPORATION 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 AMICUS CURIAE OF STATUTORY INTERPRETATION LAW SCHOLARS IN SUPPORT OF RESPONDENT

KARLA GILBRIDE
Counsel of Record
SHELBY LEIGHTON
PUBLIC JUSTICE
1620 L Street NW, Ste. 630
Washington, DC 20036
(202) 797-8600
kgilbride@publicjustice.net

Counsel for Amici Curiae

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INTERESTS OF AMICI CURIAE[1]

Amici are experts in statutory interpretation, including in the areas of statutory *stare decisis*, legislation, and the history and interpretation of Spending Clause statutes. *Amici* are well-versed in this Court's precedents regarding statutory *stare decisis* and are deeply engaged in the issues discussed in the brief. Although *amici* have otherwise diverse views, they all agree on the important role that *stare decisis* plays in our legal system, and that *stare decisis* applies with particular force when there is a long-settled interpretation of a statute that Congress has both relied on and repeatedly ratified.

A full list of *amici* appears in the Appendix.

SUMMARY OF ARGUMENT

For over 50 years, this Court has allowed injured parties to bring suits under 42 U.S.C. § 1983 for violations of their rights under federal statutes enacted pursuant to Congress's Spending Clause power. Indeed, in 1980, it squarely held in *Maine v. Thiboutot* that § 1983 included Spending Clause statutes within its scope. 448 U.S. 1, 4 (1980). And in a series of cases decided after *Thiboutot*, the Court expanded on and clarified the circumstances in which

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[1] The parties have consented to the filing of this brief, and their letters of consent have been filed with the Clerk. Under Rule 37.6 of the Rules of this Court, amici state that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amici or their counsel made a monetary contribution to its preparation or submission.

a Spending Clause statute can confer rights that are enforceable under § 1983.

Stare decisis should compel this Court to continue to adhere to that longstanding interpretation of § 1983. **First,** *stare decisis* applies with special force to statutory interpretation because it is Congress, not the courts, that is tasked with remedying any potentially erroneous interpretation of a statute. The only possible exception to that rule applies to so-called "common law" statutes, which must be interpreted flexibly and allowed to change as circumstances change. But § 1983 is far from a common law statute. Indeed, its meaning today is largely the same as it was in 1871 when it was enacted.

Second, *stare decisis* is especially important where—as here—Congress has relied on the settled interpretation of the law for decades. Because this Court made the § 1983 mechanism available to enforce Spending Clause statutes, Congress relied on that mechanism when enacting new Spending Clause legislation and amending existing laws. In a broad range of statutory provisions, including the Federal Nursing Home Reform Act (FNHRA) at issue in this case, Congress opted to use the language that this Court had directed it to use to make statutory rights enforceable under § 1983, rather than expressly providing for a statutory cause of action. And doing so allowed it to incorporate a ready-made body of law and avoid the pitfalls of creating new statutory causes of action in complex and ever-changing statutes.

Third, not only did Congress rely on the settled interpretation of § 1983, but it repeatedly ratified it. After the decision in *Thiboutot*, Congress considered and rejected efforts to change the scope of § 1983. And

when this Court and lower courts found particular rights in Spending Clause statutes to be enforceable under § 1983, Congress did not amend those statutes to foreclose a cause of action. To the contrary, it continued to pass more statutes using rights-conferring language.

Fourth, because Congress has both ratified and relied on this Court's settled interpretation of § 1983 for decades, overruling that interpretation now would improperly encroach on Congress's legislative prerogative. Indeed, because Congress has intentionally availed itself of the § 1983 mechanism to enforce dozens of provisions in Spending Clause statutes, suddenly making that mechanism unavailable would have the effect of amending those statutes to remove the method of enforcement that Congress intended. And this is not a case where a change in the intervening law or circumstances have made an existing precedent untenable. To the contrary, the arguments Petitioners make were available each time the Court decided that § 1983 applied to Spending Clause statutes, and they are not the first to suggest that the scope of § 1983 should be narrowed. This Court has repeatedly rejected those arguments before, and it should reject them now.

ARGUMENT

I. This Court's Consistent Construction of § 1983 as Applied to Spending Clause Statutes is Entitled to The Highest Level of *Stare decisis* Protection

"*Stare decisis*," this Court has repeatedly instructed, "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the

actual and perceived integrity of the judicial process." *Gamble v. United States*, 139 S. Ct. 1960, 1969 (2019). And this principle has "special force" in the statutory context, where Congress is "free to alter" constructions of its laws with which it does not agree. *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 274 (2014). Section 1983 has been interpreted consistently by this Court for decades as providing a private cause of action to remedy violations of rights created by federal statutes, including Spending Clause statutes. That consistent interpretation warrants the authoritative treatment that statutory *stare decisis* affords.

A. This Court has held for over fifty years that § 1983's cause of action extends to Spending Clause statutes that confer federal rights.

As early as 1966, this Court held, in the context of a dispute over removal, that § 1983 provides remedies for violations of statutory as well as constitutional rights. *City of Greenwood, Miss. v. Peacock*, 384 U.S. 808, 829-30 (1966). And in a line of cases dating back to 1968, this Court allowed § 1983 to provide the cause of action for numerous challenges to state actions under the Social Security Act, a statute passed pursuant to Congress's Spending Clause power. *See, e.g.*, *King v. Smith*, 392 U.S. 309, 311 (1968) (challenge to Alabama regulation denying welfare benefits to mothers cohabiting with someone to whom they are not married).

Then, in *Maine v. Thiboutot* in 1980, this Court took on the question of § 1983's scope directly. The question presented in that case—which also involved the Social Security Act—was whether the words "and

laws" in 42 U.S.C. § 1983 encompass all federal statutes, or only those involving civil rights and equal protection.[2] *Thiboutot*, 448 U.S. at 4. Noting that Congress "attached no modifiers" to the phrase "and laws," this Court relied on the plain language of § 1983 to determine that the statute "means what it says" and authorizes judicial remedies for violations of rights secured by all federal laws, not just "some subset of laws." *Id.*

This Court repeatedly invoked § 1983's plain language throughout its opinion in *Thiboutot*, mentioning the statute's legislative history only to observe that it did not contradict the text. *Id.* at 8 ("the legislative history does not demonstrate that the plain language was not intended"). The Court also noted that it had consistently interpreted § 1983 as extending to statutory as well as constitutional violations in opinions dating back to 1939. *Id.* at 5. In light of this long-standing interpretation spanning decades, the Court found it "important to note" that Congress "has remained quiet in the face of our many pronouncements on the scope of § 1983." *Id.* at 8.

After *Thiboutot*, the Court decided a series of cases explaining when § 1983's cause of action will attach to a federal statute, and when it will not. This guidance was necessary because "§ 1983 speaks in

[2] Section 1983 provides, "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution *and laws* shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . ." 42 U.S.C. § 1983 (emphasis added).

terms of 'rights, privileges, or immunities,' not violations of federal law." *Golden State Transit Corp. v. City of Los Angeles*, 493 U.S. 103, 106 (1989). A federal law creates a federal right when the statute in question manifests an "undeniable intent to benefit" the person asserting the right, and when the benefits the statute confers are "specific and definite," placing them within "the competence of the judiciary to enforce." *Wright v. City of Roanoke Redev. and Housing Auth.*, 479 U.S. 418, 430, 432 (1987); *see also Gonzaga Univ. v. Doe*, 536 U.S. 273, 284 (2002) (to create private rights, statute must be phrased "in terms of the persons benefitted") (internal quotation marks omitted). Rights-conferring statutes must also "unambiguously impose a binding obligation on the states." *Blessing v. Freestone*, 520 U.S. 329, 341 (1997) (adding that the "provision giving rise to the asserted right must be couched in mandatory, rather than precatory, terms").

When a statute confers a federal right, it is "presumptively enforceable by § 1983." *Gonzaga,* 536 U.S. at 284 & n.4. But, as this Court has further instructed, Congress may bar the use of § 1983 remedies to enforce that right either through an explicit prohibition in the right-conferring statute or by "creating a comprehensive enforcement scheme that is incompatible with individual enforcement under § 1983." *Blessing*, 520 U.S. at 342; *see also City of Rancho Palos Verdes, Cal. v. Abrams*, 544 U.S. 113, 121 (2005) ("The provision of an express, private means of redress in the statute itself is ordinarily an indication that Congress did not intend to leave open a more expansive remedy under § 1983.").

Importantly, the Court's decision in *Gonzaga* reaffirming that § 1983 can be used to enforce federal rights in Spending Clause statutes came at a time when the Court was otherwise substantially limiting the circumstances in which private causes of action or remedies could be implied in Spending Clause statutes. *See, e.g.*, *Barnes v. Gorman*, 536 U.S. 181, 188 (2002); *Alexander v. Sandoval*, 532 U.S. 275, 293 (2001). Despite the general view against implied causes of action in those cases, the Court in *Gonzaga* made clear that, if Congress followed the Court's instructions for creating a right enforceable under § 1983, it would still be "presumptively enforceable." *See Gonzaga*, 536 U.S. at 284. In other words, Congress's use of § 1983 as an enforcement mechanism was so well-established in this Court's precedents that it could not be overturned in favor of a more limited view of implied causes of action. If anything, the use of § 1983 has only become more established in the intervening decades.

B. Section 1983 has none of the hallmarks of a common-law statute, and this Court's construction of its text remains unaltered.

Although *stare decisis* generally applies more strictly to statutory precedents, *Patterson v. McLean Credit Union*, 491 U.S. 164, 172 (1989), the Court's respect for precedent is reduced somewhat when so-called common-law statutes are at issue. *Ramos v. Louisiana*, 140 S. Ct. 1390, 1413 n.2 (2020) (Kavanaugh, J., concurring). The principal example of such a common-law statute is the Sherman Act, which this Court has described as "evolv[ing] to meet the dynamics of present economic conditions" just as "the

common law adapts to modern understanding and greater experience." *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 551 U.S. 877, 900 (2007).

But none of this Court's opinions interpreting § 1983 have ever described it as a common-law statute. And while Petitioners repeatedly use the phrase "common law" in close proximity to § 1983 throughout their brief, the only common-law concepts that actually appear in Petitioners' analysis involve the analogy between contract law and Spending Clause statutes, an analogy that may bear on the proper interpretation of a particular Spending Clause statute but has no bearing on the interpretation of § 1983 itself.[3]

Rather than a frequently evolving, flexible standard like the rule of reason under the Sherman Act, this Court's interpretation of § 1983 as authorizing a private right of action when a state actor violates a federal statutory right has been stable and consistent over time. Such a consistent interpretation of statutory text "is simply beyond peradventure." *Herman & MacLean v. Huddleston*, 459 U.S. 375, 380 (1983). Indeed, "after a statute has been construed, either by this Court or by a consistent course of decision by other federal judges and agencies, it acquires a meaning that should be as clear as if the judicial gloss had been drafted by Congress itself." *Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220, 268 (1987) (Stevens, J.,

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[3] Two members of this Court have recently expressed skepticism for this contract analogy as applied to the Rehabilitation Act of 1973, a Spending Clause statute. *Cummings v. Premier Rehab Keller, P.L.L.C.*, 142 S. Ct. 1562, 1576-77 (2022) (Kavanaugh, J., concurring).

concurring in part and dissenting in part). This Court's construction of § 1983, and the rights-conferring statutory language that triggers its enforcement remedies, have acquired such an authoritative judicial gloss.

II. Congress Has Relied on the Settled Interpretation of § 1983

Stare decisis also applies with "special force when legislators or citizens have acted in reliance on a previous decision." *Hubbard v. United States*, 514 U.S. 695, 714 (1995) (quoting *Hilton v. S. Carolina Pub. Rys. Comm'n*, 502 U.S. 197, 202 (1991)). That is particularly so here, where the interpretation of § 1983 has been settled for more than a half century, and during that time Congress has repeatedly relied on § 1983 as a mechanism for the enforcement of a broad range of Spending Clause statutes. *See also Victorian v. Miller*, 813 F.2d 718, 721 (5th Cir. 1987) (en banc) ("Congress is presumed to legislate against the background of § 1983 and thus to contemplate private enforcement of the relevant statute against state actors . . . .").

Because this Court's case law interpreting § 1983 provided a ready-made enforcement mechanism, Congress did not need to include an express private cause of action in each statutory provision that it intended to be enforced by private litigants, and it often chose not to do so. As a result, overruling the settled interpretation of § 1983 now would frustrate Congress's expectations when it enacted those statutes and require "an extensive legislative response" to return the law to the way Congress intended. *Hubbard*, 514 U.S. at 714. "It is the rare overruling that introduces so much instability into so

many areas of law, all in one blow." *Kisor v. Wilkie*, 139 S. Ct. 2400, 2422 (2019).

For decades, Congress has relied on § 1983 as a private enforcement mechanism for Spending Clause statutes. Take the Food Stamp Act of 1977, for example, which was enacted against the backdrop of decisions by this Court and lower courts upholding enforcement of Spending Clause statutes through § 1983.[4] *See* P.L. 95–113, 91 Stat. 913 (1977). Given that precedent, Congress chose not to explicitly provide a private cause of action against state officials who violated the Act, instead allowing for enforcement under § 1983. *See* H.R. Rep. 95-464 (1977) (noting that the administrative remedies in the statute "should not be construed as abrogating in any way private causes of action against states for failure to comply with Federal statutory or regulatory requirements"). And despite amending the Food Stamp Act on many occasions since then, Congress has continued to rely on enforcement through § 1983.

Likewise, the Medicaid Act is exclusively enforced through § 1983 and "does not provide for other

[4] *See, e.g.*, *King*, 392 U.S. at 311; *Rosado v. Wyman*, 397 U.S. 397, 422-23 (1970) (holding that court could adjudicate claim for violation of Social Security Act under section 1983, and explaining that it is "peculiarly part of the duty of this tribunal, no less in the welfare field than in other areas of the law, to resolve disputes as to whether federal funds allocated to the States are being expended in consonance with the conditions that Congress has attached to their use"); *Edelman v. Jordan*, 415 U.S. 651, 675 (1974) (acknowledging that "a § 1983 action may be instituted by public aid recipients" for violations of the Social Security Act, but holding suit barred by Eleventh Amendment).

methods for private enforcement of the Act in federal court." *Harris v. Olszewski*, 442 F.3d 456, 463 (6th Cir. 2006). That is so even after this Court and the courts of appeals have consistently held for more than forty years that many different rights-conferring provisions of that Act can be enforced through § 1983. *See, e.g.*, *Wilder v. Va. Hosp. Ass'n*, 496 U.S. 498, 510, 524 (1990) (provider payment provision); *Davis v. Shah*, 821 F.3d 231, 246 n.6 (2d Cir. 2016) (home health services provision); *Ctr. for Special Needs Trust Admin., Inc. v. Olson*, 676 F.3d 688, 699 (8th Cir. 2012) ("pooled trust" provisions); *Shakhnes v. Berlin*, 689 F.3d 244, 254 (2d Cir. 2012) (fair hearing provision); *Harris*, 442 F.3d at 463 (freedom-of-choice provision); *Doe ex rel. Doe v. Chiles*, 136 F.3d 709, 714 (11th Cir. 1998) ("reasonable promptness" provision); *Wood v. Tompkins*, 33 F.3d 600 (6th Cir. 1994) (waiver provisions); *Alacare, Inc.-North v. Baggiano*, 785 F.2d 963, 967 (11th Cir. 1986) (denial of contract); *Curtis v. Taylor*, 625 F.2d 645, 649 (5th Cir. 1980), *modified on other grounds*, 648 F.2d 946 (5th Cir.1980) (provision of medical services to "reasonably achieve" their purpose).

In particular, Congress enacted FNHRA—the Medicaid Act provision at issue in this case—in 1987 against the backdrop of this Court's decisions in *Thiboutot* and *Wright*, as well as lower court cases applying § 1983 to enforce other provisions of the Medicaid Act. *See, e.g., Alacare, Inc.-North*, 785 F.2d at 967; *Curtis*, 625 F.2d at 649. The drafters of FNHRA recognized the importance of a private cause of action for damages to enforce the rights created by the statute. *See, e.g.*, 132 Cong. Rec. 3180-81 (1986); *see also* Respondent's Br. at 15. But Congress chose not to provide for an express private right of action,

which had been a feature of earlier versions of the bill drafted before *Thiboutot* and *Wright*.[5] Instead, it included only a clause providing that the administrative remedies in the statute were "in addition to those otherwise available under State or Federal law . . . ." 42 U.S.C. § 1396r(h)(8). And that provision remained in place even after the Court held in *Blessing* that a comprehensive administrative enforcement scheme could foreclose enforcement under § 1983. In other words, Congress expressly intended for the statute to be enforceable by private parties, but it opted for enforcement through existing federal law—including § 1983—rather than creating a new private right of action in the statute. *See also Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 378-79 (1982) (explaining that when an implied remedy has already been recognized by this Court, the question is not whether Congress "intended to create a new remedy," but "whether Congress intended to preserve the pre-existing remedy").

Congress's choice to use § 1983 instead of specifically providing for a private cause of action in these statutes is not surprising. Because of its long history and frequent application, § 1983 comes with a robust package of rules that allow for its ready importation into diverse contexts without Congress needing to start from a blank slate as to issues like who is subject to suit or what remedies are available. Indeed, § 1983 is particularly well-suited for enforcement of Spending Clause statutes like the Medicaid Act or the Food Stamp Act that largely place

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[5] *See* H.R. 9720, 95th Cong. (1978), §§ 2-3; S. 1546, 96th Cong. (1979), §§ 7(a)-(b); S. 2119, 99th Cong. (1985), §§ 7(a)-(c).

obligations on state officials because it was designed precisely to provide a federal remedy when state officials violate individual rights. *See Mitchum v. Foster*, 407 U.S. 225, 242 (1972) (stating that "[t]he very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights . . . .").

Moreover, it simplifies the legislative drafting process for Congress to use § 1983 to enforce complex statutes with only some provisions that Congress intends to be privately enforceable against state officials. If Congress were to include a statutory private cause of action in the Medicaid Act, for example, it would be a nearly impossible task to successfully draft an enforcement provision that both covers each specific right that Congress wishes to be privately enforceable and is narrowly tailored to exclude any provisions that Congress did not intend to be enforced privately. It is likely that such a drafting exercise would result in a complex web of statutory cross-references and spawn new litigation about the scope of the enforcement provisions. Instead, under the Court's longstanding interpretation of § 1983, when Congress wants to create a new right in a statute like the Medicaid Act, it simply uses the rights-creating language this Court has instructed it to use in the particular provision to which it wants to attach a private enforcement mechanism, and the right is automatically enforceable under § 1983.

In short, § 1983 is an important tool in Congress's toolbox that it has repeatedly drawn on when it wanted to make a Spending Clause right privately

enforceable against state officials.[6] Taking away that tool now after decades of its use would not only frustrate Congress's past reliance but would make it more difficult for Congress to draft clear and uniform statutes in the future.

III. Congress Has Ratified the Settled Interpretation of § 1983

Not only has Congress relied on the Court's interpretation of § 1983 as applying to Spending Clause statutes, but it has also repeatedly ratified it. Congress's decades of continued acquiescence in the application of § 1983 to rights in Spending Clause statutes is further evidence that it has intentionally adopted § 1983 as an enforcement mechanism for those statutes. *See Monessen Southwestern Ry. Co. v. Morgan*, 486 U.S. 330, 338 (1988) ("[W]e have recognized that Congress' failure to disturb a consistent judicial interpretation of a statute may provide some indication that Congress at least acquiesces in, and apparently affirms, that interpretation." (cleaned up)).

Indeed, Congress has not just "remained quiet in the face of [this Court's] many pronouncements on the

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[6] Another similar tool is the Civil Rights of Institutionalized Persons Act (CRIPA), which was patterned after § 1983 but provides for Attorney General enforcement instead of private enforcement. S. Rep. No. 96-416 (1979) (describing CRIPA's standards as "parallel" to those "applied to actions brought under 42 U.S.C. 1983 and similar rights enforcement statutes"). Like § 1983, CRIPA applies to violations of the Constitution "or laws" of the United States. 42 U.S.C. § 1997b(a). And, as with § 1983, that language in CRIPA has been interpreted to apply to Spending Clause statutes, further supporting the interpretation of § 1983 advocated by Respondents. *See also* Respondents' Br. at 6-7 (describing legislative history of CRIPA).

scope of § 1983," *Thiboutot*, 448 U.S. at 8, it has also rejected contrary interpretations. For example, after the decision in *Thiboutot*, Congress considered and rejected an amendment to § 1983 that would have limited its scope to only civil rights claims and excluded claims under "federal grant statutes." S.584, 97th Cong. (1981); 126 Cong. Rec. 25293-94; *see also* Respondent's Br. at 23-24. And after this Court held in *Suter v. Artist M.*, 503 U.S. 347, 352 (1992) that a provision of the Social Security Act was not enforceable under § 1983, Congress responded by adding language repudiating the reasoning in *Suter* in order to restore the cause of action under § 1983. *See* 42 U.S.C. §§ 1320a-2, 1320a-10. Congress's "action strongly militates against a judgment that Congress intended a result that it expressly declined to enact." *Gulf Oil Corp. v. Copp Paving Co., Inc.*, 419 U.S. 186, 200 (1974).

Moreover, despite repeatedly amending the Medicaid Act after courts had found rights in the Act enforceable under § 1983, Congress never sought to amend it to foreclose the use of the § 1983 mechanism. *See Maislin Indus., U.S., Inc. v. Primary Steel, Inc.*, 497 U.S. 116, 135 (1990) ("Congress must be presumed to have been fully cognizant of this interpretation of the statutory scheme, which had been a significant part of our settled law for over half a century, and . . . Congress did not see fit to change it when Congress carefully reexamined this area of the law . . . ."). To the contrary, it continued to add rights-creating language, including the provisions of FNHRA at issue here. Likewise, in the decades since the courts of appeals applied *Thiboutot* and *Wright* to hold that individual rights under the Food Stamp Act were enforceable under § 1983, *see, e.g.*, *Gonzalez v.*

Pingree, 821 F.2d 1526, 1530 (11th Cir. 1987); *Victorian*, 813 F.2d at 724, Congress has amended the statute dozens of times without foreclosing an action under § 1983 or providing for actions against state officials through other means. *See, e.g.*, P.L. 104-193, 110 Stat. 2105 (1996) (overhauling Food Stamp program).

To take another example, in 1980, Congress enacted the Adoption Assistance and Child Welfare Act (CWA), which, among other things, required states to make maintenance payments to foster families for each foster child under their care. *See* P.L. 96-272, 94 Stat. 500 (1980). After *Thiboutot* and its progeny confirmed that the § 1983 cause of action could be used to enforce rights in federal spending clause statutes like the CWA, Congress repeatedly adopted amendments to the CWA that kept the rights-conferring language about maintenance payments the same and did not foreclose a cause of action under § 1983. *See, e.g.*, P.L. 105-89, 111 Stat. 2115 (1996); P.L. 106-169, 113 Stat. 1822 (1999). Indeed, even after courts expressly held that the maintenance payments provision conferred an enforceable right under § 1983, *see Cal. St. Foster Parent Ass'n v. Wagner*, 624 F.3d 974, 982 (9th Cir. 2010); *D.O. v. Glisson*, 847 F.3d 374, 381 (6th Cir. 2017), Congress declined to foreclose a cause of action when it again amended the statute. *See* P.L. 115-123, § 50712, 132 Stat. 64 (2018).

On the other hand, when Congress does *not* want to use the § 1983 mechanism for a particular right in a Spending Clause statute, it knows how to achieve that objective too: by providing "an express, private means of redress in the statute itself," *City of Rancho*

Palos Verdos, 544 U.S. at 121. For example, in the anti-discrimination provision of the Patient Protection and Affordable Care Act (ACA), Congress expressly incorporated the enforcement provisions from other Spending Clause statutes. *See* 42 U.S.C. § 18116(a). And in the Religious Land Use and Institutionalized Persons Act (RLUIPA), Congress expressly provided that "a person may assert a violation of this chapter as a claim or defense in a judicial proceeding and obtain appropriate relief against a government." 42 U.S.C. § 2000cc-2(a). Likewise, in the Individuals with Disabilities Education Act (IDEA), Congress provided both a comprehensive administrative scheme for adjudication of complaints and a mechanism for appealing from administrative decisions to federal court. *See* 20 U.S.C. § 1415; *see also A.W. v. Jersey City Public Schs.*, 486 F.3d 791, 802 (3d Cir. 2007) (concluding that those provisions "create an express, private means of redress" and foreclose § 1983 enforcement).

Congress has also responded when it disagrees with this Court's interpretation of the availability of § 1983 enforcement for a particular right in a Spending Clause statute. For example, after the decision in *Wilder*, Congress repealed the provision of the Medicaid Act at issue in that case to stem private litigation. *See Alaska Dept. of Health and Social Servs. v. Ctrs. For Medicare and Medicaid Servs.*, 424 F.3d 931, 941 (9th Cir. 2005) (explaining that *Wilder* prompted "a great deal of litigation over the reasonableness of state rate setting," and so, "[i]n response to this unintended consequence, in 1997 Congress repealed the Boren Amendment," to "specifically foreclose that cause of action"). Tellingly,

though, Congress did not foreclose § 1983 enforcement for other provisions of the Medicaid Act despite those provisions also prompting litigation under § 1983.

Although this Court has recently observed that the ratification canon "does not apply to dicta," *Oklahoma v. Castro-Huerta*, 142 S. Ct. 2486, 2498 (2022), the extensive discussion of § 1983 and its application to Spending Clause statutes in *Thiboutot*, *Wright*, *Wilder*, *Blessing*, *Gonzaga* and the earlier cases they cite are far from dicta. Indeed, they provide a detailed roadmap for exactly what Congress should do to make statutory rights enforceable under § 1983. And Congress has followed that roadmap again and again. In doing so, it has both relied on and ratified this Court's case law.

IV. Withdrawing § 1983's Private Right of Action from Spending Clause Statutes Would Be a Radical Judicial Amendment at Odds with the Separation of Powers

Our Constitutional system lays out a "single, finely wrought and exhaustively considered, procedure" for amending statutes, and that procedure is the province of the legislative branch, not the judiciary. *New Prime Inc. v. Oliveira*, 139 S. Ct. 532, 539 (2019) (quoting *INS. v. Chadha*, 462 U.S. 919, 951 (1987)). Out of respect for these separation-of-powers concerns, the principle of *stare decisis* "carries enhanced force when a decision" involves statutory construction, for "critics of [the Court's] ruling can take their objections across the street, and Congress

can correct any mistake it sees." *Kimble v. Marvel Entertainment, LLC*, 576 U.S. 446, 456 (2015).[7]

Recognizing statutory *stare decisis* as rooted in separation-of-powers concerns, then-Professor Amy Coney Barrett found it "compelling" to describe the principle as "a simple restraint on judicial policymaking" and deference to Congress's role as the branch of government best equipped to set legislative policy. Barrett, *Statutory Stare Decisis in the Courts of Appeals*, 73 GEO. WASH. L. REV. 317, 340, 348-49 (2005). Here, Congress is not only best suited under the Framers' design to set legislative policy, but it has been doing so for decades—in a wide swath of policy areas from food stamps to foster care—in reliance on the settled meaning of § 1983 announced by this Court. "Pulling out the rug beneath Congress" at this late date "shows disrespect for a coequal branch." *Citizens United v. Fed. Elec. Comm'n*, 558 U.S. 310, 412 (2010) (Stevens, J., dissenting in part).

Finally, even statutory *stare decisis*, despite its force, must give way when intervening developments in the law "have removed or weakened the conceptual underpinnings from the prior decision" or "rendered the decision irreconcilable with competing legal doctrines or policies." *Patterson*, 491 U.S. at 173. But Petitioners cite to no intervening developments in the

[7] Justice Alito's dissent in *Kimble* draws a distinction between precedents based on the Court's construction of statutory text, which this Court is "especially reluctant" to overturn, and "judge-made rule[s]" that are "not based in anything Congress has enacted," which are not entitled to such heightened protection. *Kimble*, 576 U.S. at 470-71 (Alito, J., dissenting). The textualist analysis in *Maine v. Thiboutot*, 448 U.S. at 4-8, falls squarely into the first of these categories.

law, or new competing legal doctrines or policies, to justify their request for a wholesale abandonment of long-established precedent. Instead, they point to common law contract principles from the 19th century, principles that this Court was free to consider in any of the cases in which it has held that § 1983 applies to Spending Clause statutes.

Regardless of the power these arguments might have to persuade if considered on a clean slate, when weighed against the reliance interests of Congress and of the millions of people for whose benefit it has legislated, as well as the separation-of-powers concerns that underlie statutory *stare decisis*, Petitioners' arguments must fail. This Court should exercise restraint, stand by its long line of statutory precedents, and reject the invitation to limit § 1983's reach to only "a subset of [non-Spending-Clause] laws," *Thiboutot*, 448 U.S. at 4, instead of all federal rights-conferring laws as its text commands.

CONCLUSION

The Court should affirm the judgment of the Court of Appeals for the Seventh Circuit.

Respectfully submitted,

Karla Gilbride
Shelby Leighton
PUBLIC JUSTICE, P.C.
1620 L Street NW, Suite 630
Washington, DC 20036
(202) 797-8600
kgilbride@publicjustice.net

Counsel for Amici Curiae

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APPENDIX: LIST OF *AMICI*

Peter L. Strauss,
Betts Professor of Law Emeritus
Columbia Law School

Alan Morrison,
Associate Dean
George Washington University Law School

James J. Brudney,
Joseph Crowley Chair in Labor and Employment Law
Fordham University School of Law

James Tozzi,
Director
Center for Regulatory Effectiveness