Petition for writ of certiorari granted, December 18, 2024

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1043

PLANNED PARENTHOOD SOUTH ATLANTIC; JULIE EDWARDS, on her behalf and on behalf of all others similarly situated,

Plaintiffs – Appellees,

v.

ROBERT M. KERR, in his official capacity as Director, South Carolina Department of Health and Human Services,

Defendant – Appellant.

REPRODUCTIVE RIGHTS AND JUSTICE ORGANIZATIONS AND ALLIED ORGANIZATIONS; NATIONAL HEALTH LAW PROGRAM; SOUTH CAROLINA APPLESEED LEGAL JUSTICE CENTER; VIRGINIA POVERTY LAW CENTER; NORTH CAROLINA JUSTICE CENTER; CHARLOTTE CENTER FOR LEGAL ADVOCACY; IPAS; SEXUALITY INFORMATION AND EDUCATION COUNCIL OF THE UNITED STATES; AMERICAN ACADEMY OF FAMILY PHYSICIANS; AMERICAN ACADEMY OF PEDIATRICS; AMERICAN COLLEGE OF NURSE-MIDWIVES; AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS; AMERICAN COLLEGE OF PHYSICIANS; AMERICAN MEDICAL ASSOCIATION; AMERICAN PSYCHIATRIC ASSOCIATION; NURSE PRACTITIONERS IN WOMENS HEALTH; SOCIETY FOR MATERNAL-FETAL MEDICINE; SOCIETY OF GYNECOLOGIC ONCOLOGY; SOCIETY OF OB/GYN HOSPITALISTS,

Amici Supporting Appellee.

Appeal from the United States District Court for the District of South Carolina, at Columbia. Mary G. Lewis, District Judge. (3:18−cv−02078−MGL)

Argued: December 8, 2023 Decided: March 5, 2024

Before WILKINSON, WYNN, and RICHARDSON, Circuit Judges.

Affirmed by published opinion. Judge Wilkinson wrote the opinion in which Judge Wynn joined. Judge Richardson wrote an opinion concurring in the judgment.

ARGUED: John J. Bursch, ALLIANCE DEFENDING FREEDOM, Washington, D.C., for Appellant. Avi Kupfer, MAYER BROWN LLP, Chicago, Illinois, for Appellees. **ON BRIEF:** Kelly M. Jolley, Ariail B. Kirk, JOLLEY LAW GROUP, LLC, Columbia, South Carolina; Christopher P. Schandevel, ALLIANCE DEFENDING FREEDOM, Lansdowne, Virginia, for Appellant. Nicole A. Saharsky, MAYER BROWN LLP, Washington, D.C.; Alice Clapman, Jennifer Sandman, PLANNED PARENTHOOD FEDERATION OF AMERICA, Washington, D.C.; M. Malissa Burnette, Kathleen McDaniel, BURNETTE, SHUTT & MCDANIEL, PA, Columbia, South Carolina, for Appellees. Julie Rikelman, Pilar Herrero, Joel Dodge, CENTER FOR REPRODUCTIVE RIGHTS, New York, New York; Da Hae Kim, NATIONAL ASIAN PACIFIC AMERICAN WOMEN'S FORUM, Washington, D.C., for Amici Reproductive Rights and Justice Organizations and Allied Organizations. Martha Jane Perkins, Catherine McKee, Sarah Jane Somers, Sarah Grusin, NATIONAL HEALTH LAW PROGRAM, Chapel Hill, North Carolina, for Amici National Health Law Program, South Carolina Appleseed Legal Justice Center, Virginia Poverty Law Center, North Carolina Justice Center, Charlotte Center for Legal Advocacy, IPAS, and Sexuality Information and Education Council of the United States. Janice M. Mac Avoy, Alexis R. Casamassima, Danielle M. Stefanucci, FRIED, FRANK, HARRIS, SHRIVER & JACOBSON LLP, New York, New York, for Amici American Academy of Family Physicians; American Academy of Pediatrics; American College of Nurse-Midwives; American College of Obstetricians and Gynecologists; American College of Physicians; American Medical Association; American Psychiatric Association; Nurse Practitioners in Women's Health; Society for Maternal-Fetal Medicine; Society of Gynecologic Oncology; and Society of OB/GYN Hospitalists.

WILKINSON, Circuit Judge:

This case marks the third time that we have been called upon to resolve the same legal issue: whether the free-choice-of-provider provision of the Medicaid Act, 42 U.S.C. § 1396a(a)(23), creates individual rights enforceable via 42 U.S.C. § 1983. *See Planned Parenthood S. Atl. v. Baker*, 941 F.3d 687, 696 (4th Cir. 2019); *Planned Parenthood S. Atl. v. Kerr*, 27 F.4th 945, 953 (4th Cir. 2022), cert. granted, judgment vacated, 143 S. Ct. 2633 (2023). After another round of briefing and oral argument, we respectfully conclude that the answer is again yes.

South Carolina insists that we ought to abandon our prior position in light of the Supreme Court's recent opinion in *Health and Hospital Corp. of Marion County v. Talevski*, 599 U.S. 166 (2023). It argues that *Talevski* compels the conclusion that the free-choice-of-provider provision cannot be enforced by individual Medicaid beneficiaries.

We agree that enforceable rights under § 1983 are dependent on congressional authorization, which under no circumstances may be casually implied. While *Talevski* offered an illuminating analysis of the issue before us and a useful new example of provisions enforceable via § 1983, we do not read it as toppling the existing doctrinal regime. And even if *Talevski* could be read as embracing a wholly new test, we hold that the free-choice-of-provider provision passes it. Accordingly, we remain in the good company of four of our sister circuits[1] and reaffirm that a Medicaid beneficiary may use

[1] *See Planned Parenthood of Kan. v. Andersen*, 882 F.3d 1205 (10th Cir. 2018); *Planned Parenthood Ariz. Inc. v. Betlach*, 727 F.3d 960 (9th Cir. 2013); *Planned* (Continued)

§ 1983 to vindicate her right under the Medicaid Act to freely choose among qualified healthcare providers, of which Planned Parenthood is one.

I.

A.

Medicaid was established in 1965 to provide "medical assistance on behalf of families with dependent children and of aged, blind, or disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services." 42 U.S.C. § 1396-1. It does so via a partnership with the states, offering "federal financial assistance to States that choose to reimburse certain costs of medical treatment for needy persons." *Harris v. McRae*, 448 U.S. 297, 301 (1980). In short, it "is a cooperative federal-state program that provides medical care to needy individuals." *Douglas v. Indep. Living Ctr. of S. Cal., Inc.*, 565 U.S. 606, 610 (2012).

Medicaid was enacted through Congress's Spending Clause authority, and, characteristically, "offers the States a bargain: Congress provides federal funds in exchange for the States' agreement to spend them in accordance with congressionally imposed conditions." *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 323 (2015). States draft "plans for medical assistance" and submit them for approval to the Secretary of Health and Human Services, who reviews the plans for compliance with federal statutory and regulatory requirements. 42 U.S.C. § 1396-1.

Parenthood of Ind., Inc. v. Comm'r of Ind. State Dep't of Health, 699 F.3d 962 (7th Cir. 2012); *Harris v. Olszewski*, 442 F.3d 456 (6th Cir. 2006).

The statute also tasks the Secretary with ensuring that states keep their end of the bargain. If the Secretary later discovers "that in the administration of the plan there [has been] a failure to comply substantially" with federal requirements, the Secretary may withhold funds until "satisfied that there will no longer be any such failure to comply." 42 U.S.C. § 1396c.

Two years following the enactment of the Medicaid Act, Congress grew concerned that states were restricting beneficiaries to certain providers. Accordingly, Congress amended the Act to add the free-choice-of-provider provision to the list of requirements with which states must comply to be eligible for federal funds. That provision, which is at issue here, states:

> A state plan for medical assistance must . . . provide that . . . any individual eligible for medical assistance . . . may obtain such assistance from any institution, agency, community pharmacy, or person, qualified to perform the service or services required . . . who undertakes to provide him such services.

42 U.S.C. § 1396a(a)(23).

B.

Plaintiff Planned Parenthood South Atlantic serves both Medicaid and non-Medicaid patients at two South Carolina health centers in Charleston and Columbia. It offers a wide range of specialized services, including contraception and contraceptive counseling, cancer screenings, sexually transmitted infection screenings and treatment, pregnancy testing, and physical exams. Planned Parenthood also performs abortions, but pursuant to federal law, South Carolina Medicaid funds cannot be used to cover abortions except in life-threatening circumstances or in the case of rape or incest. *See* Consolidated

Appropriations Act, 2021, Pub. L. No. 116-260, div. H, tit. V, §§ 506–07, 134 Stat. 1182, 1622 ("the Hyde Amendment").

Planned Parenthood has crafted its care to provide greater access to low-income patients, many of whom are covered by Medicaid. For instance, Planned Parenthood clinics offer short wait times, same-day appointments, and extended clinic hours. These policies provide flexibility to individuals with rigid or unpredictable working hours. Planned Parenthood clinics also offer translation services for patients who request them. Thousands of South Carolinians have visited Planned Parenthood in connection with their healthcare. *See* Br. of the American Academy of Family Physicians as *Amicus Curiae* Supporting Plaintiff-Appellees 14.

Julie Edwards, the individual plaintiff in this case, is one of those South Carolinians. Edwards is insured through Medicaid and previously struggled to find a provider who could provide her with the contraceptive care she sought. Doctors at Planned Parenthood addressed her problem by inserting an intrauterine contraceptive device and advising her that follow-up care was needed for her high blood pressure. Edwards was pleased with her treatment at Planned Parenthood and planned to move "all [her] gynecological and reproductive health care there." J.A. 61. She noted, however, that she would "not be able to continue going there if the services [were] not covered" by Medicaid because she could not afford "to pay out of pocket." J.A. 61.

Edwards's concerns were real ones. In July 2018, the Governor of South Carolina issued an executive order directing South Carolina's Department of Health and Human Services (DHHS) "to deem abortion clinics . . . that are enrolled in the Medicaid program

as unqualified to provide family planning services and, therefore, to immediately terminate them upon due notice and deny any future such provider enrollment applications for the same." J.A. 54. Accordingly, DHHS informed Planned Parenthood that it was "no longer . . . qualified to provide services to Medicaid beneficiaries" and that its "enrollment agreements with the South Carolina Medicaid programs [were] terminated" effective immediately. J.A. 56.

C.

Planned Parenthood and Edwards sued the Director of DHHS under 42 U.S.C. § 1983 in federal district court, seeking to enjoin enforcement of the executive order as applied to Planned Parenthood. The suit alleged that the State had violated the free-choice-of-provider provision of the Medicaid Act.[2] Thus began this case's circuitous route through the federal courts.

The plaintiffs quickly moved for a preliminary injunction, which the district court granted. *Planned Parenthood S. Atl. v. Baker*, 326 F. Supp. 3d 39, 42 (D.S.C. 2018). The district court concluded that Edwards had demonstrated she was likely to succeed on her Medicaid Act claim, as the free-choice-of-provider provision conferred rights individually enforceable via § 1983 and the State had violated that provision in terminating Planned Parenthood's Medicaid enrollment agreement. *Id.* at 44–48. The court also found that the other equitable factors for preliminary injunctive relief favored Edwards. *Id.* at 48–50. It

[2] The parties stipulated to the dismissal of the plaintiffs' Fourteenth Amendment claim. J.A. 302–03.

thus enjoined South Carolina from terminating Planned Parenthood's enrollment agreement. *Id.* at 50.

South Carolina appealed, and this court affirmed. *Baker*, 941 F.3d at 691. We applied the three factors articulated by the Supreme Court in *Blessing v. Freestone*, 520 U.S. 329 (1997), as well as the guidance offered in *Gonzaga University v. Doe,* 536 U.S. 273 (2002), to conclude that the free-choice-of-provider provision indeed created an individually enforceable right for Medicaid beneficiaries. *Baker*, 941 F.3d at 696–98. We also concluded that the Medicaid Act did not evince a congressional intent to foreclose resort to § 1983 to enforce the free-choice-of-provider provision. *Id.* at 698–99.

We then turned to the scope of the right created by the provision to see whether it had in fact been violated by the termination of Planned Parenthood's enrollment agreement. *Id.* at 701. The statute instructs that a Medicaid-eligible patient must be allowed to seek care from any provider "qualified to perform the service or services required." 42 U.S.C. § 1396a(a)(23). We held that a provider was "qualified to perform the service or services required" so long as that provider was professionally competent to do so. *Baker*, 941 F.3d at 702. We recognized that states maintained discretionary authority under the statute to "disqualify providers as professionally incompetent" for legitimate medical and nonmedical reasons. *Id.* at 705. However, because "South Carolina's exclusion of [Planned Parenthood] from its Medicaid network ha[d] nothing to do with professional misconduct or . . . with [Planned Parenthood's] ability to safely and professionally perform plaintiff's required family-planning services," we agreed that Edwards had demonstrated a likelihood of success on the merits. *Id.* After considering the remaining equitable factors, we held that

the district court had not abused its discretion in enjoining the State from terminating Planned Parenthood's enrollment agreement. *Id.* at 706–07.

South Carolina petitioned for a writ of certiorari, which the Supreme Court denied. *Baker v. Planned Parenthood S. Atl.*, 141 S. Ct. 550 (2020). Upon the case's return, the district court granted summary judgment to the plaintiffs and "issue[d] a permanent injunction" forbidding the State "from terminating [Planned Parenthood] from Medicaid as a result of its provision of lawful abortion-related services." *Planned Parenthood S. Atl. v. Baker*, 487 F. Supp. 3d 443, 448–49 (D.S.C. 2020).

Once again, South Carolina appealed to this court, urging us to "reconsider our previous panel decision and hold that Edwards cannot sue under § 1983 to enforce the free-choice-of-provider provision." *Kerr*, 27 F.4th at 953. We declined to do so. We started by noting that this was a "striking request" that could not "be reconciled with the nature of precedent in our judicial system." *Id.* Nonetheless, we took the "opportunity to reaffirm our prior decision." *Id.* Again, we relied both on *Blessing* and *Gonzaga* to conclude that the provision conferred an individual right. As for the first *Blessing* factor, which had been clarified by *Gonzaga*, we stressed that "nothing 'short of an unambiguously conferred right,' rather than the 'broader or vaguer' notion of 'benefits or interests' may support a cause of action under § 1983." *Id.* at 955 (quoting *Gonzaga*, 536 U.S. at 283). We found that the free-choice-of-provider provision met this high bar, as it "'unambiguously g[ave] Medicaid-eligible patients an individual right' to their choice of qualified provider." *Id.* (quoting *Planned Parenthood of Ind., Inc. v. Comm'r of Ind. State Dep't of Health*, 699

F.3d 962, 974 (7th Cir. 2012)). We then turned to the remaining *Blessing* factors and concluded they were satisfied as well. *Id.* at 956.

We then turned to the next stage of the analysis: whether the Medicaid Act "evinces Congress's intent to 'specifically foreclose[] a remedy under § 1983.'" *Id.* at 957 (quoting *Blessing*, 520 U.S. at 341) (alteration in original). For the second time, we explained why the statute did "no such thing." *Id.* We stressed that "the Supreme Court has instructed us to focus on whether 'an aggrieved individual lack[s] any federal review mechanism,'" and noted that the Act lacked a remedy for "individual Medicaid recipients . . . to contest the disqualification of their preferred provider." *Id.* (quoting *Gonzaga*, 536 U.S. at 290) (alteration in original). Further, there was "nothing in the statute to suggest" that Congress intended to preclude enforcement of the free-choice-of-provider provision by beneficiaries. *Id.* at 958. Thus, we affirmed the district court and upheld the right of individual beneficiaries to bring suit via § 1983 to enforce the free-choice-of-provider provision. *Id.* at 959.

Judge Richardson concurred in the judgment. He wrote that he "continue[d] to believe that applying existing Supreme Court precedents requires that we find § 1396a(a)(23) to unambiguously create a right privately enforceable under § 1983 to challenge a State's determination of whether a Medicaid provider is qualified." *Id.* (internal citations omitted) (internal quotation marks omitted). Yet he stressed that "the caselaw on implied private rights of action remains plagued by confusion and uncertainty," as "recent Supreme Court cases . . . cast doubt on—but fail to explicitly overrule—earlier precedent."

Id. As such, he recognized that "this Court remains bound by *Blessing* and *Wilder*" and therefore "reach[ed] the same result" as the majority. *Id.*

South Carolina once more petitioned for a writ of certiorari. While that petition was pending, the Supreme Court decided *Talevski*, which held that nursing home residents could use § 1983 to enforce two provisions of the Federal Nursing Home Reform Act (FNHRA), 42 U.S.C. §§ 1396a(a)(28), 1396r, because those two provisions unambiguously conferred individual rights. 599 U.S. at 172. The Supreme Court thereafter granted South Carolina's petition in this case, vacated the judgment, and remanded the case to this court "for further consideration in light of [*Talevski*]." *Kerr v. Planned Parenthood S. Atl.*, 143 S. Ct. 2633, 2634 (2023). We directed the parties to file supplemental briefs addressing the impact of *Talevski* on this case and heard oral arguments on the issue.

Upon careful review of those briefs and the parties' arguments, we conclude that *Talevski* did not change the law to an extent that would call our previous determinations into question. And now, with the benefit of *Talevski*'s guidance, we again hold that the free-choice-of-provider provision in the Medicaid Act confers an individual right enforceable via § 1983.

II.

Section 1983 provides a private federal remedy against any person who, acting "under color of" state law, has deprived the plaintiff of "any rights, privileges, or immunities secured by the Constitution and laws" of the United States. 42 U.S.C. § 1983. This provision was enacted in 1871 as a response to "postbellum state actors . . . continuing

to deprive American citizens of federally protected rights." *Talevski*, 599 U.S. at 176. While certainly a seminal piece of legislation, the statute "does not provide an avenue for relief every time a state actor violates a federal law." *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 119 (2005). Instead, a plaintiff "must assert the violation of a federal *right*, not merely a violation of federal *law*." *Blessing*, 520 U.S. at 340. Therefore, "[a]lthough federal statutes have the potential to create § 1983-enforceable rights, they do not do so as a matter of course." *Talevski*, 599 U.S. at 183. And "[f]or Spending Clause legislation in particular," like the Medicaid Act, "the typical remedy for state noncompliance with federally imposed conditions is not a private cause of action for noncompliance but rather action by the Federal Government to terminate funds to the State." *Id.* (quoting *Gonzaga*, 536 U.S. at 280).

That is not to say, however, that Spending Clause legislation can never create rights enforceable under § 1983. The Supreme Court has counseled that Spending Clause legislation is subject to the same test as other legislative acts. *See Talevski*, 599 U.S. at 180. Thus, even Spending Clause legislation is enforceable under § 1983 so long as it unambiguously confers individual rights, absent evidence of congressional intent to foreclose such relief. *Id.*

III.

Twice we have found that the free-choice-of-provider provision satisfies both requirements: it explicitly gives individual Medicaid beneficiaries the right to the provider of their choice, and there is no indication that Congress wanted to foreclose such

individuals from seeking relief under § 1983. *Baker*, 941 F.3d at 690, 699; *Kerr*, 27 F.4th at 957–58. South Carolina insists that we revisit our previous deliberations. In light of *Talevski*, the State posits, our prior position is "'no longer tenable' and this court should 'decline to follow [it].'" Appellant's Suppl. Br. 16 (quoting *United States v. Banks*, 29 F.4th 168, 178 (4th Cir. 2022)).

We are unconvinced that *Talevski* effected such a clear doctrinal transformation. Instead, the decision emphasized a well-known point: that the key inquiry in discerning whether a federal statute creates individually enforceable rights is "whether Congress has 'unambiguously conferred' 'individual rights upon a class of beneficiaries' to which the plaintiff belongs." *Talevski*, 599 U.S. at 183 (quoting *Gonzaga*, 536 U.S. at 283, 285–86). Our previous decisions relied on the same textual probe.

Nonetheless, the State here contends that *Talevski* requires a do-over. We disagree. We shall carefully trace the Court's decisions on statutory grants of private rights actionable under § 1983, in order to demonstrate why *Talevski* was not such a dramatic departure from precedents past. We thus begin with a discussion of that evolution before turning to its implications for the case at hand.

A.

We start with *Wilder v. Virginia Hospital Ass'n*., where the Supreme Court considered whether the Boren Amendment to the Medicaid Act was enforceable by health care providers via § 1983. 496 U.S. 498, 501–02 (1990). That provision (which is codified in the same section as the free-choice-of-provider provision) required states to reimburse health care providers according to rates that were "reasonable and adequate to meet the

costs which must be incurred by efficiently and economically operated facilities." *Id.* at 503 (quoting 42 U.S.C. § 1396a(a)(13)(A)). To the Court, it was clear that "health care providers [were] the intended beneficiaries of the Boren Amendment" and significant that the Amendment was "cast in mandatory rather than precatory terms." *Id.* at 510, 512. The Court rejected the argument that the obligation was too "vague and amorphous" to be judicially enforceable, finding that determining reasonable and adequate rates was "well within the competence of the judiciary." *Id.* at 519–20. The Court then addressed the contention that "Congress has foreclosed enforcement of the Medicaid Act under § 1983," and noted that it found "little merit in this argument," as the Act's remedial scheme was not "sufficiently comprehensive to demonstrate a congressional intent to withdraw the private remedy of § 1983." *Id.* at 520–22. It thus held that health care providers could resort to § 1983 to enforce the Boren Amendment. *Id.* at 524.

A bit later came *Blessing v. Freestone*, where the Court sought to synthesize the preexisting doctrine into a multifactor test. 520 U.S. at 340–41. The Court noted that it had "traditionally looked at three factors when determining whether a particular statutory provision gives rise to a federal right." *Id.* at 340. First, there had to be evidence that "Congress . . . intended that the provision in question benefit the plaintiff." *Id.* Second, "the right assertedly protected by the statute" must not be "so vague and amorphous that its enforcement would strain judicial competence." *Id.* at 340–41 (internal quotation marks omitted). Finally, "the statute must unambiguously impose a binding obligation on the States" in that it "must be couched in mandatory, rather than precatory, terms." *Id.* at 341.

Despite the *Blessing* Court's attempt to cohere the doctrine, confusion among the lower courts remained. *See Gonzaga*, 536 U.S. at 278 ("[S]tate and federal courts have divided on the question of . . . enforceability under § 1983."). The Court thus saw fit to take up the question of § 1983-enforceable rights again to resolve any confusion. *Id.* ("We therefore granted certiorari to resolve the conflict among the lower courts and in the process resolve any ambiguity in our own opinions."). In *Gonzaga*, the Court concluded that a nondisclosure provision of the Family Educational Rights and Privacy Act (FERPA) was not enforceable by individual students via § 1983. *Id.* FERPA directed the Secretary of Education to withhold federal funds from educational institutions if they failed to abide by certain conditions. *Id.* at 279. The pertinent condition in *Gonzaga* required that funds be withheld from "any educational agency or institution which has a policy or practice of permitting the release of education records . . . of students without . . . written consent." *Id.* at 279 (quoting 20 U.S.C. § 1232g(b)(1)).

Before analyzing the provision, though, the Court acknowledged that "[s]ome language in our opinions might be read to suggest that something less than an unambiguously conferred right is enforceable by § 1983," leading "some courts to interpret *Blessing* as allowing plaintiffs to enforce a statute under § 1983 so long as the plaintiff falls within the general zone of interest that the statute is intended to protect." *Id.* at 282–83. The Court corrected this misunderstanding, explicitly "reject[ing] the notion that our cases permit anything short of an unambiguously conferred right to support a cause of action brought under § 1983." *Id.* at 283. The Court emphasized that *Blessing* itself had taken pains to assert "that it is only violations of *rights*, not *laws*, which give rise to § 1983

actions." *Id.* at 282–83 (citing *Blessing*, 520 U.S. at 340). Far from repudiating *Blessing*, then, the *Gonzaga* Court merely repudiated an inaccurate but persistent understanding of that case. What the Court had written in *Blessing* endured; what lower courts had stretched the case to mean did not.

With that clarification put forth, the *Gonzaga* Court turned to whether FERPA's nondisclosure provision created an individually enforceable right. "For a statute to create such private rights," it noted, "its text must be 'phrased in terms of the persons benefited.'" *Id.* at 284 (quoting *Cannon v. Univ. of Chi.*, 441 U.S. 677, 692 n.13 (1979)). The Court concluded that "there is no question that FERPA's nondisclosure provision[] fail[s] to confer enforceable rights." *Id.* at 287. The provision lacked "the sort of 'rights-creating' language critical to showing the requisite congressional intent to create new rights." *Id.* (quoting *Alexander v. Sandoval*, 532 U.S. 275, 288 (2001)). The provision spoke "only to the Secretary of Education, directing that '[n]o funds shall be made available' to any 'educational agency or institution' which has a prohibited 'policy or practice.'" *Id.* (quoting 20 U.S.C. § 1232g(b)(1)). "This focus," the Court stressed, "is two steps removed from the interests of individual students and parents and clearly does not confer the sort of '*individual* entitlement' that is enforceable under § 1983." *Id.* (quoting *Blessing*, 520 U.S. at 343). Plus, the nondisclosure provision spoke "only in terms of institutional policy and practice, not individual instances of disclosure" and thus had "an 'aggregate' focus." *Id.* at 288 (quoting *Blessing*, 520 U.S. at 343). Because the provision was "not concerned with 'whether the needs of any particular person ha[d] been satisfied,'" it could not "give rise to individual rights." *Id.* (quoting *Blessing*, 520 U.S. at 343, 344). With the first *Blessing*

factor unmet, the Court concluded that that the plaintiff could not invoke § 1983 to force institutional compliance with FERPA. *Id.* at 290.

That brings us to *Talevski*. There, family members of a nursing home resident filed suit via § 1983 against the nursing home, claiming it had violated the resident's rights under the Federal Nursing Home Reform Act (FNHRA). 599 U.S. at 174. In particular, the family claimed that the nursing home had improperly used chemical restraints on the resident and transferred him without advance notice, in violation of 42 U.S.C. §§ 1396r(c)(1)(A)(ii) and (2)(A)–(B). *Talevski*, at 181–82. The Court held that the relevant FNHRA provisions "unambiguously confer individually enforceable rights on nursing-home residents" and were thus actionable via § 1983. *Id.* at 174.

As a preliminary matter, the Court rejected the claim that any legislation passed pursuant to Congress's spending power could not create individual rights enforceable under § 1983. *Id.* at 177–80. It then turned to the question of whether the relevant FNHRA provisions created such rights. *Id.* at 180. To determine whether the provisions at issue could be enforced via § 1983, the Court emphasized that "*Gonzaga* sets forth [the] established method for ascertaining unambiguous conferral" of individual rights. *Id.* at 183. The *Gonzaga* test is satisfied "where the provision in question is 'phrased in terms of the persons benefited' and contains 'rights-creating,' individual-centric language with an 'unmistakable focus on the benefited class.'" *Id.* (quoting *Gonzaga*, 536 U.S. at 284, 287). On the other hand, a provision would fail the test if it "'contain[ed] no rights-creating language,' had 'an aggregate, not individual focus,' and 'serve[d] primarily to direct the

[Federal Government's] distribution of public funds.'" *Id.* at 183–84 (quoting *Gonzaga*, 536 U.S. at 290) (alteration in original).

The relevant provisions met the *Gonzaga* criteria. *Id.* at 184. Both were found in a section of the FNHRA that expressly concerned "[r]equirements *relating to residents' rights*." *Id.* (quoting 42 U.S.C. § 1396r(c)). And both contained explicit rights-creating language. As for the first provision, deemed the "unnecessary-restraint provision," it required nursing homes to "protect and promote . . . *[t]he right* to be free from . . . any physical or chemical restraints . . . not required to treat *the resident's* medical symptoms." *Id.* (quoting 42 U.S.C. § 1396r(c)(1)(A)(ii)). Likewise, the second provision, deemed the "predischarge-notice provision," was "[n]estled in a paragraph concerning 'transfer and discharge *rights*,'" and specified that nursing homes "must not transfer or discharge [a] *resident*" until certain conditions were met, including advance notice of the transfer or discharge. *Id.* at 184–85 (quoting 42 U.S.C. §§ 1396r(c)(2)(A)–(B)). These provisions thus "satisf[ied] *Gonzaga*'s stringent standard." *Id.* at 186.

Having concluded that the provision unambiguously conferred a presumptively enforceable right, the Court reiterated that "a defendant 'may defeat [that] presumption by demonstrating that Congress did not intend' that § 1983 be available to enforce those rights." *Id.* (quoting *Rancho Palos Verdes*, 544 U.S. at 120). But the Court concluded that the statute at issue in *Talevski* "lack[ed] any indicia of congressional intent to preclude § 1983 enforcement, such as an express private judicial right of action." *Id.* at 188. The Court thus held that "the test that our precedents establish leads inexorably to the conclusion that the FNHRA secures the particular rights that Talevski invokes, without

otherwise signaling that enforcement of those rights via § 1983 is precluded as incompatible with the FNHRA's remedial scheme." *Id.* at 192.

One can see from this long preceding line of Supreme Court precedents that there are somewhat varying formulations and somewhat different emphases on the matter of statutory creation of privately enforceable rights under § 1983. But any inconsistency should not be exaggerated, because one central inquiry eclipses all the rest. Throughout, the Court's decisions have asked whether Congress conferred a clear and unambiguous right upon a discrete class of beneficiaries. Absent that crucial grant, the federal statute has not made available a private right actionable under § 1983.

B.

The State, however, would divert the inquiry. South Carolina contends that "*Talevski* 'clearly undermined' and thus superseded this Court's prior decisions applying the three factors listed in *Blessing*," because *Talevski* "declin[ed] to apply the *Blessing* factors and instead confirm[ed] that *Gonzaga*—not *Blessing*—sets out the correct test that lower courts are to apply to decide whether Spending Clause statutes create § 1983-enforceable rights." Appellant's Suppl. Br. 15 (quoting *United States v. Williams*, 155 F.3d 418, 421 (4th Cir. 1998)).

It is certainly true that *Gonzaga* remains a crucial precedent. It is also true that *Talevski* shed some new light on *Blessing* that was theretofore unknown to us. Importantly, by declining to apply all three factors, the *Talevski* Court indicated that no one of them is strictly mandatory for finding a private right had been created. Instead, the analysis employed by the *Talevski* Court indicated that the *Blessing* factors are just that:

considerations to be taken into account by courts, rather than rigid conditions to be checked off before a private right could be discerned. Nevertheless, it is ultimately true that, for Spending Clause legislation at least, a privately enforceable right constitutes "the atypical case," and the Court's precedent sets for such actions "a demanding bar." *Talevski*, 599 U.S. at 180, 183. At bottom, we are still required to rigorously examine the provision at hand to determine whether it evinces an unmistakable congressional intent to confer individually enforceable rights. *Id.* at 180.

The State, moreover, mistakes our place in the hierarchy of the judicial system. Our role in a system of vertical *stare decisis* is subordinate. It is not our prerogative to proclaim a Supreme Court precedent overthrown. The Supreme Court has been clear that its "decisions remain binding precedent until [the Court] see[s] fit to reconsider them, regardless of whether subsequent cases have raised doubts about their continuing vitality." *Hohn v. United States*, 524 U.S. 236, 252–53 (1998). We therefore remain bound by *Blessing* until given explicit instructions to the contrary—instructions that have yet to come. The *Talevski* Court did not reckon with the fate of *Blessing*. It did not examine whether the "traditional justifications" to overturn the precedent had been met. *See Kimble v. Marvel Ent., LLC*, 576 U.S. 446, 458–59 (2015). It did not inquire into "the quality of [*Blessing*'s] reasoning, the workability of the rule it established, its consistency with other related decisions, developments since the decision was handed down, [or] reliance on the decision." *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2478–79 (2018). We would certainly expect *some* discussion of *Blessing* had it been jettisoned. *See Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 266–67 (2022)

("[O]verruling a precedent is a serious matter. It is not a step that should be taken lightly."). Our job is not to read between the lines, but rather to adhere faithfully to the lines as written. Perhaps we will someday be told to abandon *Blessing* once and for all, but it takes more than a whisper to supplant the force of Supreme Court precedent.

It is thus not up to us to assess the degree to which *Blessing* has or has not fallen into disfavor with the Court. Moreover, with or without *Blessing*, the central analysis remains the same. *Talevski* recognized that courts are to look primarily to *Gonzaga* to ascertain "whether Congress has 'unambiguously conferred' 'individual rights upon a class of beneficiaries' to which the plaintiff belongs." *Talevski*, 599 U.S. at 183 (quoting *Gonzaga*, 536 U.S. at 283, 285–86). That is the nub of it. That is what our earlier decisions turned upon. Our previous decisions relied heavily on *Gonzaga* to conclude that the free-choice-of-provider provision had an "'unmistakable focus' on its intended class of beneficiaries: 'any individual eligible for medical assistance' under the Medicaid Act." *Baker*, 941 F.3d at 697 (quoting *Gonzaga*, 536 U.S. at 284; 42 U.S.C. § 1396a(a)(23)(A)); *see also Kerr*, 27 F.4th at 956. We are unconvinced that *Talevski* calls that analysis into question. In fact, *Talevski* supports it.

Our confidence in this conclusion is not shaken by the fact that the Supreme Court issued a grant, vacate, and remand ("GVR") order in this case. As several courts have recognized, the issuance of a GVR does not speak to the underlying merits of the case and does not necessitate an automatic reversal. *See In re Whirlpool Corp. Front-Loading Washer Prod. Liab. Litig.*, 722 F.3d 838, 845 (6th Cir. 2013) ("[A] GVR order does not necessarily imply that the Supreme Court has in mind a different result in the case, nor

does it suggest that our prior decision was erroneous.") (citing *Tyler v. Cain*, 533 U.S. 656, 666 n.6 (2001); *Henry v. City of Rock Hill*, 376 U.S. 776, 777 (1964)); *Gonzalez v. Justices of Mun. Court of Bos.*, 420 F.3d 5, 7 (1st Cir. 2005) ("[A] GVR order is neither an outright reversal nor an invitation to reverse; it is merely a device that allows a lower court that had rendered its decision without the benefit of an intervening clarification to have an opportunity to reconsider that decision and, if warranted, to revise or correct it."); *Texas v. United States*, 798 F.3d 1108, 1116 (D.C. Cir. 2015) ("[I]t is well-settled that a GVR has no precedential weight and does not dictate how the lower court should rule on remand.").

IV.

We now reconfirm that Medicaid recipients like Edwards can enforce the free-choice-of-provider provision by bringing suit under § 1983. And we respectfully repeat that *Talevski* itself supports our analysis. *Talevski* mapped out an inquiry that largely conformed to the one we undertook at previous stages of the case. As before, we first look to the provision at issue to determine whether it "unambiguously create[s] § 1983-enforceable rights." *Talevski*, 599 U.S. at 172. We then consider whether the Medicaid Act forecloses recourse to 1983 to vindicate that right. *Id.*

A.

We continue to read the free-choice-of-provider provision as creating an individual right. *Talevski* does not alter that conclusion, even to the extent that it cast doubt upon the *Blessing* test. As noted, our earlier analysis relied heavily on *Gonzaga* to determine that the free-choice-of-provider provision creates an individually enforceable right. *See Baker*,

941 F.3d 696–97; *Kerr*, 27 F.4th at 955–56. If anything, *Talevski* bolstered our previous conclusion by providing additional examples of rights-creating language similar to the language at issue here.

Recall the text of the Medicaid free-choice-of-provider provision. It requires that state plans under the Medicaid Act "must . . . provide that . . . *any individual* . . . eligible for medical assistance . . . *may obtain* such assistance from *any* institution, agency, community pharmacy, or person, qualified to perform the services required . . . who undertakes to provide *him* such services." 42 U.S.C. § 1396a(a)(23) (emphasis added). This text "unambiguously confers rights upon" individual Medicaid recipients. *Talevski*, 599 U.S. at 184. Like the text at issue in *Talevski*, the "necessary focus" of the provision is the "rights bearer[]"—specifically, "any individual . . . eligible for medical assistance" under the program. *Id.* at 185; 42 U.S.C. § 1396a(a)(23). By focusing on discrete beneficiaries and guaranteeing them a choice free from state interference, the provision "speak[s] 'in terms of the persons benefited,' and ha[s] an 'unmistakable focus on the benefited class.'" *Talevski*, 599 U.S. at 186 (quoting *Gonzaga*, 536 U.S. at 284, 287, 290). Indeed, "Congress's use of the phrase 'any individual' is a prime example of the kind of 'rights-creating' language required to confer a personal right on a discrete class of persons—here, Medicaid beneficiaries." *Baker*, 941 F.3d at 697; *see also Gonzaga*, 536 U.S. at 284 n.3 (describing the instruction that "*[n]o person . . . shall* . . . be subjected to discrimination" as "explicit" rights-creating language); *Ball v. Rodgers*, 492 F.3d 1094, 1108 (9th Cir.2007) ("While express use of the term 'individuals' (or 'persons' or similar terms) is not essential to finding a right for § 1983 purposes, usually such use is sufficient for that purpose."). In

sum, the language of the free-choice-of-provider provision clearly evinces Congress's intent to bestow upon Medicaid beneficiaries the right to freely choose their qualified health care providers.

South Carolina presents three arguments that seek to undermine the force of the statutory language. Its contentions focus on three aspects of the free-choice-of-provider provision: Congress's chosen words; the target of Congress's instructions; and Congress's mandated threshold for compliance. We take each in turn.

1.

The State first complains that the word "right" cannot be found in the free-choice-of-provider provision, in contrast to the FNHRA provisions at issue in *Talevski*. Thus, according to the State, the free-choice-of-provider provision lacks the requisite rights-creating language to satisfy *Gonzaga*. We reject the invitation, however, to strip Congress of its prerogative to use synonyms. To hold otherwise would be to limit Congress to a thin thesaurus of our own design, something we neither have the desire nor the power to do. *Cf. FAA v. Cooper*, 566 U.S. 284, 291 (2012) ("We have never required that Congress use magic words.").

2.

The State next posits that the free-choice-of-provider provision has an "aggregate focus" because it speaks to the government official overseeing the funding of state Medicaid plans. The State points out that the Medicaid Act directs the Secretary of Health and Human Services to "approve any [state Medicaid] plan which fulfills" eighty-seven separate conditions, including the free-choice-of-provider provision. 42 U.S.C.

§§ 1396a(a), (b). According to the State, because this provision gives a direction to a government official, its focus cannot possibly be on individual Medicaid beneficiaries.

We disagree. With individual Medicaid recipients as the provision's focus, one can scarcely describe it as having only the "aggregate" purpose of "direct[ing] the [government's] distribution of public funds." *Gonzaga*, 536 U.S. at 290. Moreover, the Supreme Court has already held that a different funding condition enumerated in § 1396a(a) confers individual rights enforceable via 42 U.S.C. § 1983. *Wilder*, 496 U.S. at 509–10 (holding that the Boren Amendment to the Medicaid Act, 42 U.S.C. § 1396a(a)(13)(A), is privately enforceable via 42 U.S.C. § 1983). This would appear to doom the State's argument at the starting gate.

The State, however, urges us to hold that the Supreme Court *sub silentio* overruled *Wilder* in *Armstrong*. There, the Court noted in a footnote that "our later opinions plainly repudiate the ready implication of a § 1983 action that *Wilder* exemplified" and cited *Gonzaga* as "expressly 'reject[ing] the notion,' implicit in *Wilder*, 'that our cases permit anything short of an unambiguously conferred right to support a cause of action brought under § 1983.'" *Armstrong*, 575 U.S. at 330 n.*. We fail to see how this would allow us to conclude *Wilder* has been overturned. The serious business of spurning a precedent cannot be precipitated by winks and nods.

But even if we were to take the *Armstrong* footnote to mean what the State says it does—that *Gonzaga* abrogated *Wilder*—the State's argument remains unpersuasive. The provisions specified in § 1396a(a) tell the federal government and the states what must be included in a Medicaid plan before funds can be distributed. South Carolina posits that

directions aimed at government officials cannot bestow private rights because they necessarily lack an individual focus. But *Talevski* rejected the argument that provisions that speak to and place obligations on third parties cannot create individual rights. When a provision "establish[es] who it is that must respect and honor the[] statutory rights" there is no "material diversion from the necessary focus" on the beneficiaries. *Talevski*, 599 U.S. at 185. "Indeed, 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." *Id.* Alerting the federal government and the state that beneficiaries must have unfettered access to qualified providers for funds to be distributed does not distract from the individual focus of the free-choice-of-provider provision. Again, the touchstone is whether "the provision in question is 'phrased in terms of the persons benefited' and contains 'rights-creating,' individual-centric language with an 'unmistakable focus on the benefited class.'" *Id.* at 183. The free-choice-of-provider provision readily passes this test.

Congress, too, has rejected the view that its inclusion of an individual right in a list of requirements for a state plan subject to federal supervision necessarily implies an intent to render that right unenforceable via § 1983. The Social Security Act states that "[i]n an action brought to enforce a provision of this chapter, such provision is not to be deemed unenforceable because of its inclusion in a section of this chapter requiring a State plan or specifying the required contents of a State plan." 42 U.S.C. § 1320a-2. *See L.J. v. Wilbon*, 633 F.3d 297, 309 (4th Cir. 2011) ("Congress . . . made clear that the inclusion of a requirement as part of a state plan was not sufficient to render that requirement unenforceable by private action.") The import of this is clear: statutory provisions that

direct the federal government to approve state plans with certain features *can* create individual rights, so long as they speak in clear and unambiguous terms. That is precisely what the Medicaid Act did here.

3.

Finally, the State argues that a funding condition in a substantial compliance statute, like the free-choice-of-provider provision in the Medicaid Act, cannot form the basis for an individual entitlement. A "substantial compliance" regime promises federal funds to a state so long as the state substantially complies with a list of agreed-upon conditions; that is, perfect conformity with the conditions is not necessary, so long as the state gets it mostly right. The Medicaid Act is an example of a substantial compliance statute: A state needs only to substantially comply with the requirements in § 1396a to maintain its eligibility for federal Medicaid funds. 42 U.S.C. § 1396c(2). The free-choice-of-provider provision is one such § 1396a requirement. 42 U.S.C. § 1396a(a)(23).

Still relying on its theory that *Wilder* has been rendered obsolete, the State argues that the overlay of a substantial compliance regime indicates that the free-choice-of-provider provision, taken in context, has an aggregate rather than an individual focus. According to the State, because the Medicaid Act is does not require perfect compliance with each funding condition, the free-choice-of-provider provision is necessarily unconcerned with fulfilling a promise to any specific beneficiary.

But this cannot be right after *Talevski*, which considered two provisions of the FNHRA. The FNHRA itself operates via a substantial compliance regime, specifying that "[a] finding to deny payment . . . shall terminate when the State or Secretary . . . finds that

the facility is in substantial compliance with all of the requirements" of the relevant subsection. *Id.* § 1396r(h)(4). For us to hold that substantial compliance regimes cannot give rise to individually enforceable rights would thus directly contravene the result reached by the *Talevski* Court.

The State, however, points to *Gonzaga*, where the Court noted that FERPA was a substantial compliance regime in holding that the nondisclosure provision at issue had an aggregate focus. 536 U.S. at 288. To the *Gonzaga* Court, this made the case "not unlike *Blessing*, which found that Title IV-D failed to support a § 1983 suit in part because it only required 'substantial compliance' with federal regulations." *Id.* (quoting *Blessing*, 520 U.S. at 335, 343). But the FERPA nondisclosure provision, and its operation under a substantial compliance regime, is readily distinguishable from the free-choice-of-provider provision here. The nondisclosure provision itself "sp[oke] only in terms of institutional policy and practice, not individual instances of disclosure" and was therefore unconcerned "with 'whether the needs of any particular person ha[d] been satisfied.'" *Id.* (quoting *Blessing*, 520 U.S. at 343). In *Gonzaga*, then, the layering of a substantial compliance regime on top of a provision concerned only with institutional procedures rendered a nondisclosure right for individuals suspect. Here, of course, we lack such a layering, as the free-choice-of-provider provision does not speak to broad practices of the state in the aggregate, but rather sets as its benchmark whether "any individual" has access to the health care provider of her choice. 42 U.S.C. § 1396a(a)(23). The light of the individual focus of the free-choice-of-provider provision has not been dimmed, in spite of its existence within a substantial compliance regime.

* * *

In sum, we conclude that the free-choice-of-provider provision speaks "in terms that could not be clearer" in "unambiguously conferr[ing] rights." *Gonzaga*, 536 U.S. at 280 (internal quotation marks omitted); *Talevski*, 599 U.S. at 184. The language specifies an entitlement given to each Medicaid beneficiary: to choose one's preferred qualified provider without state interference.

B.

The final stage in our analysis is to determine whether the Medicaid Act demonstrates a congressional intent to "preclude a private right of action under § 1983." *Talevski*, 599 U.S. at 187. The Supreme Court has "ma[de] clear that the *sine qua non* of 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." *Id.* There are three possible avenues for enforcement in the Act: the Secretary of Health and Human Service may curtail Medicaid funds to the state, 42 U.S.C. §§ 1316(a), 1396c; 42 C.F.R. § 430.12; providers may challenge their termination via state administrative processes, 42 U.S.C. § 1396a(a)(4); 42 C.F.R. § 1002.213; and Medicaid beneficiaries may challenge claim denials via the same processes, 42 U.S.C. § 1396a(a)(3). Note, however, that there is no way for Medicaid beneficiaries to challenge disqualifications of their preferred providers through the administrative scheme.

We have held previously that "the Medicaid Act provides no comprehensive enforcement scheme sufficient to overcome the presumption that the free-choice-of-provider provision is enforceable under § 1983." *Baker*, 941 F.3d at 699; *see also Kidd*,

501 F.3d at 356–57. Most significant to this conclusion was the fact that beneficiaries lack the ability to challenge provider disqualifications, such as through a judicial or administrative right of action. *Baker*, 941 F.3d at 698. We also emphasized that the Supreme Court has held that the Medicaid Act does not displace § 1983 actions. *Id.* at 698–99 (citing *Wilder*, 496 U.S. at 521–22); *see also Rancho Palos Verdes*, 544 U.S. at 122. South Carolina does not ask us to revisit this question on this appeal. We therefore continue to affirm that the Medicaid Act and § 1983 can work together in harmony for beneficiaries to enforce the free-choice-of-provider provision.

V.

The Medicaid Act limits the right of a beneficiary's choice to *qualified* medical providers. There has never been any question during the long path of this litigation that Planned Parenthood is professionally qualified to provide the care that the plaintiff seeks. The State has not contested this.

We are satisfied that we have remained faithful to the text of the statute and the guidance offered by the *Talevski* Court. In doing so, we have respected Congress's desire to safeguard a right that could not be more personal, nor more precious. The ability to decide who treats us at our most vulnerable is a right that should not be lightly disregarded in the face of Congress's obvious and express desire to confer it. Perhaps it is no accident that both this case and *Talevski* deal with the provision of medical services, a field in which Congress's adoption of explicit rights-conferring language seems both natural and an

unlikely springboard for implied private rights of action under § 1983 across a broader range of contexts.

The State concludes its brief by noting that "[i]t has now been more than five years since South Carolina's governor issued his executive order diverting taxpayer funds away from abortion providers to make them more available to providers offering life-affirming women's health and family-planning services." Appellant's Suppl. Br. 17. But this decision is not about funding or providing abortions. On the contrary, our analysis would be the same regardless of whether South Carolina wanted to divert the funds because Planned Parenthood provided cancer screening, pregnancy testing, or any other medical care it is qualified to provide. This case is, and always has been, about whether Congress conferred an individually enforceable right for Medicaid beneficiaries to freely choose their healthcare provider. Preserving access to Planned Parenthood and other providers means preserving an affordable choice and quality care for an untold number of mothers and infants in South Carolina. Indeed, we are told that, if Planned Parenthood clinics in South Carolina were to be shuttered, other Medicaid-funded clinics in the state would be more hard-pressed to meet the demand in family planning care. Br. of the American Academy of Family Physicians as *Amicus Curiae* Supporting Plaintiff-Appellees 19–20. This is precisely the prospect Congress wished to avoid. It did not wish to leave the right it so explicitly granted solely to the cumbersome machinery of agency appeals that permit patients only to challenge the denial of individual claims.

The language of the qualified medical provider provision cannot be stressed too often. It dictates that "*any individual*" eligible for Medicaid "*may obtain*" services from

"any" provider "who undertakes to provide *him* such services." 42 U.S.C. § 1396a(a)(23) (emphasis added). The State and members of the Court have expressed the real and genuine concern that private rights under § 1983 will migrate from vindications of rights to the redress of innumerable violations of federal law. *See Talevski*, 599 U.S. at 193–94 (Barrett, J., concurring) ("[Section] 1983 actions are the exception—not the rule—for violations of Spending Clause statutes."). There is the undoubted danger of opening private rights of action floodgates, but there is the concomitant danger of drying up the rights that Congress wished to safeguard. If the language of this medical provider provision does not suffice to provide a right of action, then it is hard to conceive of any text, short of magic words beyond the usual practice of courts to dictate, that would permit one. It all comes down to a straightforward matter of congressional intent, and in this particular case, we think that intention clear.

For the foregoing reasons, the judgment of the district court enjoining the disqualification of the plaintiff provider in this action is hereby

AFFIRMED.

RICHARDSON, Circuit Judge, concurring in the judgment:

Twice, I have written separately in this case to ask for clarity on the precedential status of *Wilder v. Virginia Hospital Ass'n*, 496 U.S. 498 (1990)—and, to a lesser extent, *Blessing v. Freestone*, 520 U.S. 329 (1997).[1] Now I do so for a third time, because even after *Health and Hospital Corp. of Marion County v. Talevski*, 599 U.S. 166 (2023), we continue to lack the guidance inferior judges need. Though *Talevski* suggests a different path, it did not repudiate the holding of *Wilder*.[2] The latter remains in limbo. So I agree with the majority that we are bound to stand by our previous holding that 42 U.S.C. § 1396(a)(23)(A) creates an individual right enforceable under 42 U.S.C. § 1983. *Baker*, 941 F.3d 687.

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[1] *Planned Parenthood S. Atl. v. Baker*, 941 F.3d 687 (4th Cir. 2019) (Richardson, J., concurring); *Planned Parenthood S. Atl. v. Kerr*, 27 F.4th 945 (4th Cir. 2022) (Richardson, J., concurring), *cert. granted, judgment vacated*, 143 S. Ct. 2633 (2023).

[2] The Supreme Court recently suggested that a case need not be expressly overruled when the Court has given every indication that the case has been abandoned. *Kennedy v. Bremerton School Dist.*, 597 U.S. 507, 534–36 (2022) ("[T]his Court long ago abandoned *Lemon* and its endorsement test offshoot."); *see Firewalker-Fields v. Lee*, 58 F.4th 104, 121 n.5 (4th Cir. 2023) ("*Kennedy* did not explicitly say that it was overruling *Lemon*. And the cases that it claimed had previously 'abandoned' *Lemon—Town of Greece* and *American Legion*—did not explicitly say this either. But it is now clear that *Lemon* and its ilk are not good law."). But it remains unclear whether recognizing abandonment remains solely within the prerogative of the Supreme Court. *See Mallory v. Norfolk S. Ry. Co*., 600 U.S. 122, 136 (2023). So even though the Court has admonished *Wilder*'s reasoning (and *Blessing*'s), *see Baker*, 941 F.3d at 709–10 (Richardson, J., concurring), and even though the Court didn't rely on *Wilder* (or *Blessing*'s factors) in *Talevski*, we lack sufficiently clear signals to be sure the Court has discarded *Wilder*'s holding (or *Blessing*'s test).