42 U.S.C. § 1983 — Spending Clause — Health & Hospital Corp. of Marion County v. Talevski

When states receive funds from the federal government, strings are often attached. For instance, if states wish to receive Medicaid and Medicare funds, the Federal Nursing Home Reform Act[1] (FNHRA) requires states to respect the rights of residents in state-licensed nursing homes.[2] Under long-standing precedent, Spending Clause statutes like FNHRA can confer rights enforceable via suits under 42 U.S.C. § 1983.[3] This past Term, in *Health & Hospital Corp. of Marion County v. Talevski*,[4] the Supreme Court rejected an invitation to "reexamine" that doctrine.[5] The petitioner urged the Court to adopt a contract law analogy that would have eliminated plaintiffs' ability to invoke § 1983 to vindicate Spending Clause statute rights.[6] The majority responded to that gambit by briskly brushing the theory aside.[7] In the process, *Talevski* provided vital clarity on key issues that have been lingering for years, preserving a pathway for future plaintiffs to assert claims under § 1983 based on Spending Clause legislation. But *Talevski* also left some critical questions open, particularly one prompted by an emerging circuit split over the standard courts should use to determine if a statute confers § 1983–enforceable rights.

In January 2016, Gorgi Talevski's family placed Gorgi in a government-run nursing home, Valparaiso Care and Rehabilitation (VCR).[8] Soon after, his family noticed his faculties had drastically diminished.[9] He stopped being able to feed himself or speak English, his second language.[10] But the family soon realized that VCR, not Gorgi's dementia, was to blame. They learned VCR had used drugs to "chemically restrain[]" Gorgi.[11] After the Talevski family filed a complaint with the Indiana State Department of Health, VCR thrice temporarily transferred Gorgi to a hospital ninety minutes away.[12] It did so without notifying his family.[13] After the third transfer, VCR refused to accept Gorgi back.[14] Instead, it involuntarily discharged him to a memory-care

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[1] 42 U.S.C. §§ 1395i-3, 1396r.

[2] *See id.* § 1396r(a), (c).

[3] Maine v. Thiboutot, 448 U.S. 1, 4–5 (1980).

[4] 143 S. Ct. 1444 (2023).

[5] Brief for the Petitioners at i, *Talevski*, 143 S. Ct. 1444 (No. 21-806).

[6] *See id.* at 12–13.

[7] *Talevski*, 143 S. Ct. at 1452–55.

[8] Brief for Respondent at 16, *Talevski*, 143 S. Ct. 1444 (No. 21-806). Health & Hospital Corporation of Marion County (HHC) does business under the name VCR. Brief for the Petitioners, *supra* note 5, at ii. VCR and HHC are thus used interchangeably in this comment.

[9] Brief for Respondent, *supra* note 8, at 16.

[10] *Id.*

[11] *Talevski*, 143 S. Ct. at 1451.

[12] *Id.*

[13] *Id.*

[14] *Id.*

facility almost three hours away.[15] The family filed a second complaint with the State Department of Health.[16] When an administrative law judge ruled in the family's favor, VCR refused to recognize the decision and readmit Gorgi.[17]

Through his wife, Ivanka,[18] Gorgi Talevski sued the home under § 1983 in the United States District Court for the Northern District of Indiana.[19] Talevski argued that VCR violated his rights under FNHRA by not "attain[ing] or maintain[ing] [his] highest practicable . . . well-being" as the statute required.[20] Health & Hospital Corporation of Marion County (HHC) filed a motion to dismiss, arguing FNHRA did not create rights that could be vindicated via § 1983.[21]

The district court granted HHC's motion to dismiss.[22] The court relied on the factors the Supreme Court outlined in *Blessing v. Freestone*[23] and "clarified" in *Gonzaga University v. Doe*.[24] The court held that the statute focused on what *nursing homes* must do, and thus did not clearly confer an unambiguous right on their residents.[25] And it found the rights asserted — which related to "quality of life" and "well-being" — were too vague and amorphous for the court to enforce.[26]

A unanimous panel of the Seventh Circuit reversed.[27] Talevski on appeal had located more specific language in the statute that he argued gave him a right against "chemical restraints" and involuntary discharge absent notice and justification.[28] Judge Wood[29] relied on *Blessing*, which instructed courts to consider three factors: (1) whether Congress "intended that the provision in question benefit the plaintiff"; (2) whether the plaintiff could "demonstrate that the right assertedly protected . . . is not so 'vague and amorphous'"; and (3) whether the provision conferring the right is "couched in mandatory . . . terms."[30] Each factor favored Talevski. Applying the first prong, Judge Wood argued "Congress could [not] have been any clearer": it intended to benefit nursing home residents because the statute "explicitly use[d] the

[15] Brief for Respondent, *supra* note 8, at 17.
[16] *Talevski*, 143 S. Ct. at 1451.
[17] *Id.*
[18] *Id.*
[19] Talevski *ex rel.* Talevski v. Health & Hosp. Corp. of Marion Cnty., No. 19-CV-13, 2020 WL 1472132, at *1 (N.D. Ind. Mar. 26, 2020).
[20] *Id.*; *see also* 42 U.S.C. § 1396r(b)(2).
[21] *Talevski*, 2020 WL 1472132, at *1.
[22] *Id.*
[23] 520 U.S. 329 (1997).
[24] 536 U.S. 273 (2002); *Talevski*, 2020 WL 1472132, at *1–2.
[25] *Talevski*, 2020 WL 1472132, at *2 (citing *Gonzaga*, 536 U.S. at 283).
[26] *Id.* at *3.
[27] Talevski *ex rel.* Talevski v. Health & Hosp. Corp. of Marion Cnty., 6 F.4th 713, 715 (7th Cir. 2021).
[28] *See id.* (citing 42 U.S.C. § 1395i-3(c)(1)(A)(ii), (c)(2)(A); *id.* § 1396r(c)(1)(A)(ii), (c)(2)(A)).
[29] Judge Wood was joined by Judges Kanne and Scudder.
[30] *Talevski*, 6 F.4th at 717 (quoting and citing Blessing v. Freestone, 520 U.S. 329, 340–41 (1997)).

language of rights."[31] Second, the rights were sufficiently concrete because "[i]t does not take a medical review board to determine whether" a nursing home subjected residents to chemical restraints or involuntary discharges.[32] Finally, the statute's use of "must" made the rights phrased in mandatory terms.[33]

Judge Wood then addressed whether Congress "specifically foreclosed a remedy under § 1983."[34] The court found nothing in the statute, such as a private right of action, that suggested Congress did so.[35] Finally, the court considered and rejected HHC's "last-ditch effort to circumvent *Blessing*."[36] HHC posited that Spending Clause statutes cannot create § 1983–enforceable rights because they merely establish conditions on a state's participation in a federal program.[37] Judge Wood rejected this, arguing that the Supreme Court had never endorsed that reasoning.[38]

The Supreme Court, via Justice Jackson, affirmed.[39] The majority first addressed HHC's argument that the Court should overturn its precedent recognizing that Spending Clause statutes can "secure[] rights for § 1983 purposes."[40] Since *Maine v. Thiboutot*,[41] the Court has held that § 1983 provides a cause of action for individuals to enforce rights secured by federal law, including Spending Clause laws.[42] HHC urged the Court to find that "§ 1983 contains an implicit carveout" for Spending Clause laws.[43] It argued the Court has already characterized Spending Clause legislation as "much in the nature of a contract" between the federal government and states.[44] Under that analogy, then, HHC argued that individuals who benefit from Spending Clause statutes are like third-party beneficiaries to a contract, who could not sue to enforce contracts at common law when § 1983 became law.[45] By HHC's logic, Talevski, FNHRA's "third-party beneficiary," could not sue to force HHC to comply with its statutory obligations.[46]

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[31] *Id.* at 718.
[32] *See id.* at 719.
[33] *Id.* at 719–20.
[34] *Id.* at 720 (quoting Gonzaga Univ. v. Doe, 536 U.S. 273, 284 n.4 (2002)).
[35] *Id.* at 720–21.
[36] *Id.* at 723.
[37] *See id.* at 723–24.
[38] *See id.* at 723–25 (citing Wilder v. Va. Hosp. Ass'n, 496 U.S. 498 (1990); Astra USA, Inc. v. Santa Clara County, 563 U.S. 110 (2011); Sossamon v. Texas, 563 U.S. 277 (2011); Armstrong v. Exceptional Child Ctr., Inc., 575 U.S. 320 (2015)).
[39] *Talevski*, 143 S. Ct. at 1450, 1458. Justice Jackson was joined by Chief Justice Roberts and Justices Sotomayor, Kagan, Gorsuch, Kavanaugh, and Barrett.
[40] *See id.* at 1452.
[41] 448 U.S. 1 (1980).
[42] *See Talevski*, 143 S. Ct. at 1452.
[43] *Id.* at 1450.
[44] *Id.* at 1453–54 (quoting Pennhurst State Sch. & Hosp. v. Halderman, 451 U.S. 1, 17 (1981)).
[45] *Id.* at 1454.
[46] *Id.*

But the majority "reject[ed] HHC's invitation to reimagine Congress's handiwork."[47] Under the Court's precedents, § 1983 is interpreted against the backdrop of common law principles, but only "firmly rooted" ones.[48] Petitioner's third-party beneficiary theory — based in debatable history — was not firmly rooted.[49] Moreover, the majority found contract law inapposite because, under the Court's precedents, § 1983's cause of action is a "species of tort liability."[50] The Court thus reaffirmed that the "laws" referenced in § 1983 do, in fact, mean all laws.[51]

Having established that the FNHRA provisions at issue *could* confer § 1983–enforceable rights, the majority then decided that they *did*.[52] The Court also held that *Gonzaga* controlled the outcome of the case.[53] To confer individual rights under *Gonzaga*, a provision must be "'phrased in terms of the persons benefited' and contain[] 'rights-creating' . . . language with an 'unmistakable focus on the benefited class.'"[54] The Court found this "demanding bar" met.[55] First, the provisions "reside in" a section of FNHRA enumerating "[r]equirements *relating to residents' rights*."[56] Second, they "require[] nursing homes to 'protect and promote . . . [*t*]*he right* to be free from . . . chemical restraints'" and ban the "transfer or discharge [of a] *resident*" absent certain conditions.[57] HHC argued that language in FNHRA focused on the *regulated parties* materially diluted this language focused on the *beneficiaries*.[58] But the Court dismissed this as an "[im]material diversion" from the statute's clear focus on nursing home residents' rights.[59]

Finally, the majority rejected HHC's contention that, regardless, Congress foreclosed relief under § 1983.[60] Congress can overcome the "presumption" that a right is enforceable via § 1983 by implementing a "comprehensive enforcement scheme that is incompatible with individual enforcement under § 1983."[61] Though the statute contained administrative processes governing inspection and "accountability for noncompliant facilities," it did not contain an "express private judicial right of action or any other provision that might signify that intent."[62]

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[47] *Id.*
[48] *Id.* (quoting Wyatt v. Cole, 504 U.S. 158, 164 (1992)).
[49] *See id.* at 1454–55.
[50] *Id.* at 1455 (quoting Heck v. Humphrey, 512 U.S. 477, 483 (1994)).
[51] *Id.* (citing Maine v. Thiboutot, 448 U.S. 1, 4 (1980)).
[52] *Id.*
[53] *Id.* at 1457.
[54] *Id.* (quoting Gonzaga Univ. v. Doe, 536 U.S. 273, 284, 287 (2002)).
[55] *Id.* at 1455.
[56] *Id.* at 1457 (quoting 42 U.S.C. § 1396r(c)).
[57] *Id.* at 1458 (first alteration in original) (quoting 42 U.S.C. § 1396r(c)(1)(A)(ii), (c)(2)(A)–(B)).
[58] Brief for the Petitioners, *supra* note 5, at 42–44.
[59] *Talevski*, 143 S. Ct. at 1458.
[60] *Id.* at 1459–62.
[61] *Id.* at 1459 (quoting City of Rancho Palos Verdes v. Abrams, 544 U.S. 113, 120 (2005)).
[62] *Id.* at 1460.

The majority thus reasoned that allowing plaintiffs to seek relief under § 1983 would complement, rather than undermine, FNHRA's existing remedial scheme.[63]

Justice Gorsuch briskly concurred alone to draw out "lurking" anticommandeering issues that were "questions for another day."[64]

Justice Barrett also concurred, underscoring the limited reach of the Court's opinion.[65] Like Justice Jackson, Justice Barrett began by hastily dispensing with "petitioners' novel contract-law theory."[66] She found no reason to abandon *Thiboutot*'s reading of § 1983's plain text.[67] Nonetheless, she urged courts to "tread carefully before concluding that Spending Clause statutes may be enforced through § 1983."[68] *Gonzaga* set a high bar that "many federal statutes will not [clear]."[69]

Writing alone, Justice Thomas dissented.[70] He claimed the majority perpetuated a "constitutional quandary"[71] by "unquestioningly follow[ing] *Thiboutot*'s logic."[72] The Court has long recognized that Spending Clause laws do not violate the anticommandeering doctrine only because they confer obligations on states via their acceptance of a contract with the federal government.[73] By holding that Spending Clause laws could secure rights by *law*, the majority violated that doctrine in Justice Thomas's eyes.[74]

Justice Alito also dissented, taking issue with the majority's foreclosure analysis.[75] He argued that because the statute "empowers" states to provide remedies for noncompliance, allowing plaintiffs to sue under § 1983 would circumvent the states' authority to implement their own remedial regimes.[76]

Talevski could have been yet another in a consistent spate of decisions where the Court relied on the contract law analogy to limit plaintiffs' ability to vindicate rights found in Spending Clause legislation.[77]

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[63] *Id.* at 1461.

[64] *Id.* at 1462–63 (Gorsuch, J., concurring) (citing Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519, 575–78 (2012) (opinion of Roberts, C.J.); Murphy v. Nat'l Collegiate Athletic Ass'n, 138 S. Ct. 1461, 1475–78 (2018)).

[65] *See id.* at 1463 (Barrett, J., concurring). Justice Barrett was joined by Chief Justice Roberts.

[66] *Id.*

[67] *Id.*

[68] *Id.* at 1464.

[69] *Id.* at 1463.

[70] *Id.* at 1464 (Thomas, J., dissenting).

[71] *Id.* at 1465.

[72] *Id.* at 1467.

[73] *Id.* at 1467–68.

[74] *See id.* at 1484.

[75] *Id.* (Alito, J., dissenting). Justice Alito was joined by Justice Thomas.

[76] *Id.* at 1486.

[77] *See, e.g.*, Cummings v. Premier Rehab Keller, P.L.L.C., 142 S. Ct. 1562, 1570–72 (2022); Barnes v. Gorman, 536 U.S. 181, 186–87 (2002) (collecting cases); *see also The Supreme Court, 2021 Term — Leading Cases*, 136 HARV. L. REV. 320, 440 (2022) (describing how "the Court further limited the scope of damages available under Spending Clause statutes" in *Cummings*).

When plaintiffs have asserted an implied right of action to sue directly *under* these laws, the Supreme Court has embraced the contract analogy to limit the damages available for relief.[78] But the majority dismissed out of hand the notion that the theory applied equally to § 1983.[79] It devoted a mere six paragraphs to an idea that has been championed by scholars and advocates for more than twenty-five years.[80] Instead, the majority reaffirmed prior cases recognizing a pathway for plaintiffs to establish that a law has granted them § 1983–enforceable rights. The result is a decision that provided needed answers to some vexing questions while deferring other critical ones. The decision clarified the stringency of *Gonzaga*'s "unmistakable focus" requirement, ensuring future plaintiffs seeking to assert § 1983–enforceable rights will still have a path to do so, even if that path is marked by rugged terrain. But the Court noticeably failed to rely on *Blessing*'s three-part test, perpetuating burgeoning confusion over whether *Blessing* remains good law.

The Supreme Court has long struggled to articulate a precise and comprehensible standard for lower courts to use in discerning whether a federal statute has endowed plaintiffs with rights enforceable via § 1983. It wasn't until 1980 — over one hundred years after § 1983 was enacted — that the Court first held § 1983 provided a remedy for state violations of federal statutes.[81] Almost immediately thereafter, doctrinal confusion ensued.[82] The Court handed down a series of inconsistent decisions appearing to embrace different standards for determining when statutes conferred rights within § 1983's ambit.[83] This befuddled the lower courts, which struggled to decipher the applicable standard.[84] In 1997, the Court took up the issue again in *Blessing*.[85] *Blessing* derived from prior decisions a three-part test — which asked courts to balance whether (1) Congress intended to benefit the plaintiff, (2) the right is not vague or amorphous, and (3) the right is phrased in mandatory terms[86] — finally producing ostensible doctrinal coherence.

But only five years later, in response to more circuit splits, the Court took up the issue yet again in *Gonzaga*.[87] There, the respondent argued

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[78] *See generally The Supreme Court, 2021 Term — Leading Cases*, *supra* note 77, at 440–49.

[79] *Talevski*, 143 S. Ct. at 1452–55.

[80] *Id.* at 1452–53; *see, e.g.*, David E. Engdahl, *The Spending Power*, 44 DUKE L.J. 1, 104 (1994); Blessing v. Freestone, 520 U.S. 329, 350 (1997) (Scalia, J., concurring) (raising the theory and suggesting it warranted "further consideration").

[81] Sasha Samberg-Champion, Note, *How to Read* Gonzaga*: Laying the Seeds of a Coherent Section 1983 Jurisprudence*, 103 COLUM. L. REV. 1838, 1841, 1843 (2003) (citing Maine v. Thiboutot, 448 U.S. 1, 4 (1980)).

[82] *See id.* at 1846–50.

[83] *Id.* at 1849–50.

[84] *Id.* at 1850.

[85] *Blessing*, 520 U.S. 329.

[86] *See id.* at 340–41 (citing Wright v. City of Roanoke Redevelopment & Hous. Auth., 479 U.S. 418, 430–32 (1987); Wilder v. Va. Hosp. Ass'n, 496 U.S. 498, 510–11 (1990); Pennhurst State Sch. & Hosp. v. Halderman, 451 U.S. 1, 17 (1981)).

[87] Gonzaga Univ. v. Doe, 536 U.S. 273, 278 (2002).

that *Blessing* stood for the proposition that "a federal statute confers [§ 1983–enforceable] rights so long as Congress intended that the statute 'benefit' putative plaintiffs."[88] The Court disagreed. It held that "it is *rights*, not the broader or vaguer 'benefits' or 'interests,' that may be enforced" under § 1983.[89] Moreover, the Court emphasized that "[s]tatutes that focus on the person regulated rather than the individuals protected create 'no implication of an intent to confer rights on a particular class of persons.'"[90] Applying this more stringent standard, the Court argued that the statute at issue contained fatal wording: it lacked any "rights-creating language" and focused on the regulated party, rather than the beneficiaries, indicating Congress had no intent to confer an individual entitlement.[91]

But, in certain ways, *Gonzaga* muddled, rather than clarified, the doctrine. Following *Gonzaga*, it was an open question whether a statute that included "rights-creating language" *and* a directive to funding recipients to comply with that language was focused on the benefited class or the funding recipient.[92] This confusion has contributed to a circuit split over whether § 672 of the Adoption Assistance and Child Welfare Act of 1980[93] gives foster care providers a right to assistance payments enforceable through § 1983.[94] It specifies: "Each State with a plan approved under this part shall make foster care maintenance payments on behalf of each child."[95] The Ninth Circuit held that the provision "focuses squarely on the individuals protected, rather than the entities regulated" because it is "about payments 'on behalf of each child.'"[96] It ultimately concluded the statute confers a § 1983–enforceable right.[97] So did the Sixth Circuit.[98] It rejected the argument that when Congress "mak[es] the state the subject" of a Spending Clause statute mandate, "its focus is on . . . the regulated entity."[99] The Second Circuit reached the same conclusion as the Ninth and Sixth,[100] declining to even entertain the notion that the statute was too focused on the states.[101] But the Eighth Circuit concluded the opposite.[102] Instead, it held that the

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[88] *Id.* at 282 (quoting Brief for Respondent at 40–46, *Gonzaga*, 536 U.S. 273 (No. 01-679)).

[89] *Id.* at 283.

[90] *Id.* at 287 (quoting Alexander v. Sandoval, 532 U.S. 275, 289 (2001)).

[91] *Id.*

[92] *See infra* p. 388.

[93] Pub. L. No. 96-272, 94 Stat. 500 (codified as amended in scattered sections of 42 U.S.C.).

[94] *See* N.Y. State Citizens' Coal. for Child. v. Poole, 922 F.3d 69, 74 (2d Cir. 2019) (describing the circuit split over 42 U.S.C. § 672(a)(1)).

[95] 42 U.S.C. § 672(a)(1).

[96] Cal. State Foster Parent Ass'n v. Wagner, 624 F.3d 974, 980 (9th Cir. 2010) (quoting 42 U.S.C. § 672(a)(1)).

[97] *Id.* at 977.

[98] D.O. v. Glisson, 847 F.3d 374, 378 (6th Cir. 2017).

[99] *Id.* at 379.

[100] N.Y. State Citizens' Coal. for Child. v. Poole, 922 F.3d 69, 74 (2d Cir. 2019).

[101] *Id.* at 78–83.

[102] Midwest Foster Care & Adoption Ass'n v. Kincade, 712 F.3d 1190, 1197–98 (8th Cir. 2013).

language "speak[s] to the states as regulated participants" and is thus too "removed" from the interests of the providers.[103]

But post-*Talevski*, it could not be clearer: a statute can still have an "unmistakable focus" on the intended beneficiaries even if it also includes language directed at the regulated parties. The petitioners in *Talevski* urged the Court to hold that FNHRA was not sufficiently focused on the individuals protected by the statute — despite its repeated reference to nursing home residents' "rights"[104] — because it "direct[ed] . . . nursing facilities" to recognize those rights.[105] This position would have made it virtually impossible for plaintiffs to assert rights under any Spending Clause legislation. As HHC pointed out, by its very nature, Spending Clause legislation typically contains language that directs funding recipients to comply with the statutory obligations.[106]

The majority cogently dispensed with the notion that any reference to the regulated party diluted the statute's otherwise unmistakable focus on the intended beneficiary.[107] Rather, it argued that the reference to funding recipients merely "establish[ed] who it is that must respect and honor" the beneficiaries' rights.[108] The Court took its criticisms a step further, arguing it would be "strange" to decide the statute "fail[ed] to secure rights" merely because the provisions also "consider[ed] . . . the actors that might threaten those rights."[109] It analogized the syntax and language of FNHRA to those of the Fourteenth Amendment, pointing out that the amendment "hardly fails to secure § 1983–enforceable rights because it directs state actors not to deny equal protection."[110] While much of the Supreme Court's doctrine in this space has provoked confusion, the majority's refreshingly clear assertion on this score will hopefully leave little room for ambiguity going forward.

Though *Talevski* crucially clarified ambiguities in *Gonzaga*'s "unmistakable focus" test, *Talevski*'s treatment of *Blessing*'s three-part test will likely perpetuate confusion concerning the standard courts should use in determining whether a statute creates § 1983–enforceable rights. This confusion has vexed lower courts since at least *Gonzaga*, where the Court left the validity of *Blessing* in question. There, the Court disavowed any language in *Blessing* that "might be read to suggest that something less than an unambiguously conferred right is enforceable by § 1983."[111] And it did not apply the three *Blessing* factors during its

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[103] *Id.* at 1197.
[104] *See supra* notes 56–59 and accompanying text.
[105] Brief for the Petitioners, *supra* note 5, at 43.
[106] *See id.*
[107] *Talevski*, 143 S. Ct. at 1458.
[108] *Id.*
[109] *Id.*
[110] *Id.* at 1458 n.12.
[111] Gonzaga Univ. v. Doe, 536 U.S. 273, 282–83 (2002).

analysis.[112] But *Gonzaga* stopped short of overturning *Blessing* altogether. The *Blessing-Gonzaga* muddle was thus born. Virtually all the circuits refused to read *Gonzaga* as repudiating *Blessing.*[113] Many interpreted *Gonzaga* as merely glossing *Blessing*'s first prong[114] and began applying this "*Blessing-Gonzaga* test" as controlling law.[115] Others issued opinions that read *Gonzaga* as providing merely "principles" courts should keep "firmly in mind" as they apply the "*Blessing* test."[116]

Despite two decades of this lower court *Blessing-Gonzaga* mélange, the Supreme Court in *Talevski* never once referenced *Blessing*'s three-part test. Applying what it called the "*Gonzaga* test,"[117] the majority affirmed the Seventh Circuit while silently abandoning the very test the Seventh Circuit believed governed.[118] Not once did the majority search the statute for lack of vagueness, like *Blessing*'s step two required, or mandatory language, as *Blessing*'s step three required. But only Justice Alito, in dissent, characterized the majority and *Gonzaga* as "rejecting" *Blessing*'s three-part test.[119] Even Justice Barrett — who took great pains in her concurrence to reiterate the majority's "three important points," including that "*Gonzaga* establishes the standard for analyzing whether Spending Clause statutes give rise to individual rights" — failed to reject *Blessing* outright.[120] It is thus likely that *Talevski*'s forceful embrace of *Gonzaga* will only confuse the doctrine more.[121]

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[112] *See id.*

[113] *See, e.g.*, Bertrand *ex rel.* Bertrand v. Maram, 495 F.3d 452, 456–57 (7th Cir. 2007) ("*Gonzaga* . . . may have taken a new analytical approach, [but] courts of appeals must follow the Supreme Court's earlier holdings until the Court itself overrules them."); Planned Parenthood S. Atl. v. Kerr, 27 F.4th 945, 957 (4th Cir. 2022) ("*Gonzaga* never indicated that *Blessing* is no longer good law . . . ."); N.Y. State Citizens' Coal. for Child. v. Poole, 922 F.3d 69, 79 (2d Cir. 2019) ("*Gonzaga* . . . did not overrule *Blessing* . . . .").

[114] *See, e.g.*, Colón-Marrero v. Vélez, 813 F.3d 1, 17 (1st Cir. 2016); Waskul v. Washtenaw Cnty. Cmty. Mental Health, 979 F.3d 426, 447 (6th Cir. 2020); Midwest Foster Care & Adoption Ass'n v. Kincade, 712 F.3d 1190, 1196 (8th Cir. 2013); Price v. City of Stockton, 390 F.3d 1105, 1109 (9th Cir. 2004); 31 Foster Child. v. Bush, 329 F.3d 1255, 1269 (11th Cir. 2003).

[115] *See, e.g.*, Planned Parenthood Ariz. Inc. v. Betlach, 727 F.3d 960, 967 (9th Cir. 2013) (referring to the doctrine as the "*Blessing/Gonzaga* framework"); Planned Parenthood of Kan. v. Andersen, 882 F.3d 1205, 1225 (10th Cir. 2018) (similar).

[116] *N.Y. State Citizens' Coal. for Child.*, 922 F.3d at 79.

[117] *Talevski*, 143 S. Ct. at 1457.

[118] Talevski *ex rel.* Talevski v. Health & Hosp. Corp. of Marion Cnty., 6 F.4th 713, 718 (7th Cir. 2021) ("[We] apply[] *Blessing*'s three factors in light of *Gonzaga* . . . .").

[119] *See Talevski*, 143 S. Ct. at 1484 (Alito, J., dissenting).

[120] *Id.* at 1463 (Barrett, J., concurring).

[121] And if *Talevski* does mean that *Blessing*'s test is irrelevant and the proper test comes from *Gonzaga* alone, then it's not yet clear how precisely this will impact a plaintiff's ability to prove that a statute gives rise to a § 1983–enforceable right. If *Gonzaga* displaces all of *Blessing*, plaintiffs will no longer need to contend with *Blessing*'s two other hurdles focused on whether the language at issue is mandatory and not vague or amorphous. At the same time, however, the "*Gonzaga* test" clearly creates a distinct hurdle that is more burdensome for plaintiffs to meet; while *Blessing*'s first prong requires only congressional intent to benefit the plaintiff, *Gonzaga* requires a far more intensive inquiry about whether Congress unambiguously conferred a right.

Today a circuit split has emerged that squarely forces the question: What standard should courts use when determining if a statute vests plaintiffs with § 1983–enforceable rights? The split[122] has emerged as circuits consider whether the Medicaid Act[123] grants Medicaid patients a § 1983–enforceable right to a provider of their choice.[124] Two circuits, the Fifth and the Eighth, concluded it does not in cases that failed to ever apply *Blessing*.[125] These circuits relied in part on a 2015 case in which the Supreme Court claimed *Gonzaga* "repudiate[d] the ready implication of a § 1983 action" exemplified by *Wilder v. Virginia Hospital Ass'n*[126] — the case upon which the *Blessing* test stood.[127] Yet five other circuits found the Act confers a § 1983–enforceable right, applying some variant of *Blessing*-*Gonzaga*.[128] Following *Talevski*, the Supreme Court granted a petition for a writ of certiorari presenting the question: What is "the proper framework for deciding when" a Spending Clause statute "give[s] rise to privately enforceable rights under § 1983[?]"[129] And it remanded the case to the Fourth Circuit for reconsideration in light of *Talevski*.[130] It remains to be seen whether that court and others will continue entertaining some *Blessing*-*Gonzaga* gloss — or if they will interpret *Talevski*'s silence toward *Blessing* as a repudiation of it once and for all.

The Court's test for determining if a statute confers § 1983–enforceable rights has long lacked clarity. Presented with the opportunity to jettison the doctrine, the *Talevski* majority opted to preserve it. But the result is a mixed bag: *Talevski* clarified that *Gonzaga*'s "unmistakable focus" requirement won't shut every door to relief, but the decision left the status of *Blessing*'s test noticeably unclear. While questions concerning *Blessing* are likely now the key issues plaguing this long-muddled area of the law, *Talevski* offered impactful doctrinal clarifications that ensure the path to establishing § 1983–enforceable rights remains open to future plaintiffs who are capable of surmounting the doctrine's considerable hurdles along the way.

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[122] *See* Planned Parenthood S. Atl. v. Kerr, 27 F.4th 945, 953 & n.2 (4th Cir. 2022).

[123] 42 U.S.C. §§ 1396–1396v.

[124] *See, e.g.*, *Kerr*, 27 F.4th at 948–50.

[125] *See* Does v. Gillespie, 867 F.3d 1034, 1037, 1040 (8th Cir. 2017); Planned Parenthood of Greater Tex. Fam. Plan. & Preventative Health Servs., Inc. v. Kauffman, 981 F.3d 347, 359 (5th Cir. 2020) (en banc); *see also id.* at 371 (Elrod, J., concurring) ("In *Gonzaga*, the Court abandoned . . . *Wilder/Blessing* . . . .").

[126] 496 U.S. 498 (1990); *see Gillespie*, 867 F.3d at 1040 (quoting Armstrong v. Exceptional Child Ctr., Inc., 575 U.S. 320, 330 n.* (2015)); *Kauffman*, 981 F.3d at 359 (same).

[127] *See* Samberg-Champion, *supra* note 81, at 1851.

[128] *See Kerr*, 27 F.4th at 957; Planned Parenthood of Kan. v. Andersen, 882 F.3d 1205, 1224–25 (10th Cir. 2018); Planned Parenthood Ariz. Inc. v. Betlach, 727 F.3d 960, 965–67 (9th Cir. 2013); Planned Parenthood of Ind., Inc. v. Comm'r of Ind. State Dep't of Health, 699 F.3d 962, 968 (7th Cir. 2012); Harris v. Olszewski, 442 F.3d 456, 461 (6th Cir. 2006).

[129] Kerr v. Planned Parenthood S. Atl., 143 S. Ct. 2633, 2634 (2023) (mem.) (granting certiorari); Petition for a Writ of Certiorari at i, *Kerr*, 143 S. Ct. 2633 (No. 21-1431).

[130] *Kerr*, 143 S. Ct. at 2634.