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

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING NEITHER PARTY

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QUESTIONS PRESENTED

1. Whether the Court should overrule its numerous prior decisions holding that the private cause of action under 42 U.S.C. 1983 against state actors who violate "any rights, privileges, or immunities secured by the Constitution and laws" applies to state actors who violate rights established by Spending Clause legislation.

2. Whether the particular Social Security Act provisions at issue here—which predominantly apply to privately owned nursing homes—are enforceable against municipally owned nursing homes under Section 1983.

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INTEREST OF THE UNITED STATES

Petitioners ask this Court to overrule a half-century of precedent allowing private parties to seek relief under 42 U.S.C. 1983 based on violations of rights that Congress established in the Social Security Act, 42 U.S.C. 301 *et seq.*, and other Spending Clause legislation. The United States has a strong interest in ensuring that rights established by Congress are appropriately and effectively protected.

STATEMENT

1. a. The Medicare program, enacted in 1965 as Title XVIII of the Social Security Act, 42 U.S.C. 1395 *et seq.*, is a federally funded program, administered by the Secretary of Health and Human Services (Secretary),

that pays health care providers for services rendered to individuals who are age 65 or older or are disabled.

The Medicaid program, enacted in 1965 as Title XIX of the Social Security Act, 42 U.S.C. 1396 *et seq.*, provides federal financial assistance to States to help them pay providers for health care for low-income individuals. To participate in Medicaid, a State must submit and have approved by the Secretary a plan that meets various statutory requirements. 42 U.S.C. 1396a(a) and (b). The central requirement is that the state plan provide medical assistance (*i.e.*, payment) for a defined set of benefits for "all individuals" who are eligible for Medicaid. 42 U.S.C. 1396a(a)(10)(A); see 42 U.S.C. 1396d(a). The state plan must designate "a single State agency to administer or to supervise the administration of the plan." 42 U.S.C. 1396a(a)(5). If a State fails to comply substantially with the requirements of the Medicaid statute, the Secretary may withhold federal funding in part or in full. 42 U.S.C. 1396c.

b. Medicare and Medicaid beneficiaries receive care at a variety of medical facilities, including skilled nursing facilities (also known as nursing homes). See *Biden* v. *Missouri*, 142 S. Ct. 647, 650 (2022) (per curiam). Most of the providers that operate such facilities and participate in Medicare and Medicaid are private entities. See, *e.g.*, 86 Fed. Reg. 42,424, 42,520 (Aug. 4, 2021) (more than 93% of nursing homes that participate in Medicare are privately owned). A small number of such providers, however, are owned by state or municipal governments. See, *e.g.*, *ibid.* (approximately 6.5% of nursing homes participating in Medicare are owned by governmental entities). Regardless of whether they are privately or publicly owned, participating nursing homes are subject to comprehensive requirements set

by statute and regulation to protect the health and safety of residents. See *Missouri*, 142 S. Ct. at 650-653.

In amendments enacted in the Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-203, 101 Stat. 1330, Congress adopted a broad array of requirements that apply directly to nursing homes participating in Medicare or Medicaid. See Tit. IV, §§ 4201(a)(3), 4211(a)(3), 101 Stat. 1330-160, 1330-182 (42 U.S.C. 1395i-3 (Medicare) and 1396r (Medicaid)); see 42 C.F.R. 483.1. The relevant provisions, known as the Federal Nursing Home Reform Act (FNHRA), contain a detailed list of "[r]equirements relating to residents' rights," 42 U.S.C. 1395i-3(c), 1396r(c), and provide that nursing homes "must protect and promote the rights of each resident." 42 U.S.C. 1395i-3(c)(1)(A), 1396r(c)(1)(A). The specified rights include "[t]he right to be free from physical or mental abuse, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms." 42 U.S.C. 1395i-3(c)(1)(A)(ii), 1396r(c)(1)(A)(ii). The "[r]equirements relating to residents' rights" also cover certain "[t]ransfer and discharge rights," which provide that a nursing home "must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility" except for specified reasons, such as to protect the resident's welfare or to protect the safety of other residents. 42 U.S.C. 1395i-3(c)(2)(A), 1396r(c)(2)(A).

c. Each nursing home is required to adopt a grievance process through which residents can raise objections concerning their rights under FNHRA or other issues at the facility, 42 U.S.C. 1395i-3(c)(1)(A)(vi), 1396r(c)(1)(A)(vi), and the State must make an

administrative procedure available to challenge transfer and discharge decisions, 42 U.S.C. 1395i-3(e)(3), 1396r(e)(3).

Other FNHRA provisions establish reticulated mechanisms for overseeing nursing homes' compliance with the statutory requirements. Those provisions generally make each State responsible for certifying compliance by nursing homes located in the State; the Secretary has that responsibility for state-run facilities. 42 U.S.C. 1395i-3(g)(1)(A), 1396r(g)(1)(A) and (h)(3)(A).

To ascertain compliance with FNHRA's requirements, a State uses protocols developed by the Secretary to conduct annual surveys of each covered nursing home. 42 U.S.C. 1395i-3(g)(1)(A), 1396r(g)(1)(A) and (g)(2). The surveys must include a review of the nursing home's compliance with the requirements relating to residents' rights. 42 U.S.C. 1395i-3(g)(2)(A)(ii)(III), 1396r(g)(2)(A)(ii)(III). If a State finds substandard care at a facility, the State conducts an immediate extended survey. 42 U.S.C. 1395i-3(g)(2)(B), 1396r(g)(2)(B). A State also must investigate complaints of violations and perform on-site compliance monitoring at facilities that previously have been found noncompliant or whose compliance the State has reason to question. 42 U.S.C. 1395i-3(g)(4), 1396r(g)(4).

The Secretary in turn conducts onsite surveys of a representative sample of nursing homes to validate the results of state surveys. 42 U.S.C. 1395i-3(g)(3), 1396r(g)(3). Survey results are made publicly available and findings of noncompliance are reported to (among others) the State's long-term-care ombudsman and the state licensing board for the facility administrator. 42 U.S.C. 1395i-3(g)(5), 1396r(g)(5).

FNHRA authorizes the Secretary and States to take a range of enforcement actions against noncompliant nursing homes. 42 U.S.C. 1395i-3(h), 1396r(h). A State may impose civil monetary penalties, 42 U.S.C. 1396r(h)(2)(A)(ii); deny payments, 42 U.S.C. 1396r(h)(2)(A)(i); appoint temporary management, 42 U.S.C. 1396r(h)(2)(A)(iii); and, in an emergency, close the facility and transfer its residents to other facilities, 42 U.S.C. 1396r(h)(2)(A)(iv). The Secretary has authority to take many of the same enforcement actions and has additional authority with respect to civil penalties. 42 U.S.C. 1395i-3(h), 1396r(h).

2. Petitioner Valparaiso Care and Rehabilitation (Valparaiso Care) is a nursing home in Indiana. Pet. App. 76a ¶ 3. Valparaiso Care is owned by petitioner Health and Hospital Corporation of Marion County, Indiana, a municipal corporation owned by Marion County. *Id.* at 77a ¶ 4. Petitioner American Senior Communities is a privately held nursing-home management company contracted to operate Valparaiso Care and other county-owned nursing homes in Indiana. *Id.* at 77a ¶ 5.

Respondent Gorgi Talevski, now deceased, was a resident at Valparaiso Care. Pet. App. 77a-81a ¶¶ 9-33; Br. in Opp. 2 & n.1. In this action (filed by his wife as next friend) under 42 U.S.C. 1983, respondent alleged that petitioners violated his rights under FNHRA by (as relevant here) "allowing the use [of] illegal chemical restraints on Mr. Talevski and other [Valparaiso Care] patients" and "depriv[ing] Mr. Talevski and other [Valparaiso Care] residents" of the right "to remain at the nursing facility and not to be transferred or discharged

without due process." Pet. App. 82a-83a ¶ 40.[1] The complaint sought damages and a jury trial. *Id.* at 85a-86a.

The district court granted petitioners' motion to dismiss, holding that the requirements imposed by FNHRA are not privately enforceable in a Section 1983 action. Pet. App. 28a–36a.

3. The court of appeals reversed. Pet. App. 2a-26a.

The court of appeals observed that in *Blessing* v. *Freestone*, 520 U.S. 329 (1997), and *Gonzaga University* v. *Doe*, 536 U.S. 273 (2002), this Court prescribed a three-part test to determine whether a federal statute establishes a "right" that is presumptively redressable through a Section 1983 suit. Pet. App. 8a-9a; see *id.* at 13a. Under that test, a plaintiff must show that: (1) Congress "intended that the provision in question benefit the plaintiff"; (2) "the right assertedly protected by the statute is not so 'vague and amorphous' that its enforcement would strain judicial competence"; and (3) "the provision giving rise to the asserted right [is] couched in mandatory, rather than precatory, terms." *Blessing*, 520 U.S. at 340-341 (citation omitted). Moreover, "*Gonzaga* clarified that * * * nothing 'short of an unambiguously conferred right . . . phrased in terms of the persons benefited' can support a [S]ection 1983 action." Pet. App. 9a (quoting *Gonzaga*, 536 U.S. at 283-284).

The court of appeals determined that respondent's statutory claims regarding chemical restraints and transfer satisfied all three of those requirements. On whether the relevant provisions were intended to benefit the plaintiff, the court stated that it did "not know

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[1] The complaint alleged violations of other rights as well, but respondent abandoned those claims on appeal, see Pet. App. 5a-6a, and they are not at issue here.

how Congress could have been any clearer," given that the provisions "use[] the language of rights" and make "nursing-home residents * * * the expressly identified beneficiaries." Pet. App. 9a. On whether the rights are suitable for judicial enforcement, the court stated that the chemical restraint and transfer provisions call for "focused, straightforward inquiries that agencies and courts are well equipped to resolve." *Id.* at 12a. And finally, the court noted that "there is no dispute that" respondent's claims "meet *Blessing*'s third factor" because those provisions are "couched in mandatory rather than precatory terms." *Id.* at 13a.

The court of appeals recognized that even where *Blessing*'s three-part test is satisfied, a defendant can overcome the presumption that Section 1983 applies by "showing that Congress specifically foreclosed a remedy under § 1983 . . . expressly, through specific evidence from the statute itself, or impliedly, by creating a comprehensive enforcement scheme that is in[]compatible with individual enforcement under § 1983." Pet. App. 13a (quoting *Gonzaga*, 536 U.S. at 284 n.4). The court determined that petitioners had not carried that burden here, however. *Id.* at 13a-16a.

SUMMARY OF ARGUMENT

I. In Section 1983, Congress established an express private cause of action against state actors who violate "rights * * * secured by the Constitution and laws" of the United States. 42 U.S.C. 1983. As this Court squarely held decades ago, that text "means what it says," covering rights secured by *all* laws, including "the Social Security Act." *Maine* v. *Thibotout*, 448 U.S. 1, 4 (1980). And Congress ratified that understanding in 1994, when it twice endorsed decisions of this Court

holding that rights-conferring provisions of the Social Security Act may be enforced through Section 1983.

Petitioners identify no persuasive reason to overrule *Thiboutot* and the numerous decisions before and after it recognizing that rights secured by Spending Clause legislation may be enforced under Section 1983. Petitioners fail to meaningfully grapple with the text of Section 1983 or this Court's interpretation of that text in *Thiboutot*, and they entirely ignore Congress's 1994 ratification of the Court's precedent.

Petitioners focus instead on 19th-Century principles of contract law. They contend that Congress would have equated the rights created by Spending Clause legislation with the contractual interests of third-party beneficiaries under a contract and assumed that such rights could not be asserted by the rights-holders themselves. That contention is mistaken in multiple respects. Petitioners offer no evidence that Congress would have expected common-law contract principles to inform the construction of Section 1983 when it enacted that provision in 1871 (and amended it in 1874). Even if contract law were relevant, it is not apparent why the Court should look to 19th-Century law rather than the law extant when the relevant Social Security Act provisions were adopted in 1987. And in any event, petitioners cannot show that their proposed understanding was well-settled when Section 1983 was enacted; if anything, the seemingly predominant view in the United States at that time was that third parties could sue on a contract made for their benefit.

Finally, even if petitioners could show that *Thibotout* and the other cases in its line were wrongly decided—and even if Congress had not explicitly ratified those decisions—petitioners have not demonstrated the sort

of special justification that this Court requires before overturning its statutory-interpretation precedents.

II. Although some rights-creating provisions of the Social Security Act are enforceable under Section 1983, the provisions at issue here are not.

The court of appeals correctly observed that the FNHRA provisions asserted here speak in mandatory, explicit, rights-creating language and make clear Congress's intent to vest those rights in nursing-home residents. Under *Gonzaga* and *Blessing*, that demonstrates that the provisions confer individual rights. And this Court has held that such rights are presumptively enforceable under Section 1983 unless the defendant shows that Congress has expressly or impliedly foreclosed Section 1983 suits—which is a demanding standard.

Here, however, the presumption is rebutted because the broader statutory context shows that enforcement under Section 1983 would be inconsistent with the scheme Congress created in FNHRA. The vast majority of nursing-home residents covered by FNHRA live in private nursing homes. As to those residents, who indisputably cannot rely on Section 1983, Congress provided a reticulated system of administrative oversight and enforcement mechanisms. The fact that Congress treated those administrative mechanisms as comprehensive with respect to the vast majority of nursing-home residents indicates that Congress did not intend an additional, and potentially conflicting, Section 1983 remedy to be available to the small percentage of nursing-home residents who happen to live in municipally operated facilities.

ARGUMENT

I. THERE IS NO BASIS FOR OVERRULING THIS COURT'S PRECEDENTS HOLDING THAT SUITS MAY BE BROUGHT UNDER SECTION 1983 BASED ON RIGHTS ESTABLISHED IN SPENDING CLAUSE LEGISLATION

A. This Court Has Correctly Rejected An Atextual Carveout Of Spending Clause Legislation From The "Laws" Giving Rise To Suits Under Section 1983

1. "[S]tatutory interpretation 'begins with the text.'" *Maine Community Health Options* v. *United States*, 140 S. Ct. 1308, 1320 (2020) (citation omitted). Here, the relevant statutory text provides that "[e]very person" acting under "color of" state law who "subjects, or causes to be subjected," another person "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.

As this Court has squarely held, that text "undoubtably embraces" claims against state actors who violate rights secured by the Social Security Act or other federal "laws" grounded in the Spending Clause power. *Maine* v. *Thiboutot*, 448 U.S. 1, 4 (1980). "Congress attached no modifiers to the phrase ['and laws']," and that phrase therefore "means what it says"—encompassing *all* federal laws, not just "some subset of laws" that Congress failed to specify in the statutory text. *Ibid.*

When a plaintiff sues under Section 1983 to enforce a right secured by Spending Clause legislation, therefore, she is not asking the court "to infer a private right of action under Section 1983." Pet. Br. 36. She is instead asking the court to apply the express cause of action that Congress has already provided. This Court

has emphasized the distinction, explaining that unlike "a plaintiff suing under an implied right of action," "[p]laintiffs suing under § 1983 do not have the burden of showing an intent to create a private remedy because § 1983 generally supplies a remedy for the vindication of rights secured by federal statutes." *Gonzaga University* v. *Doe*, 536 U.S. 273, 284 (2002).

2. The Court has followed that plain-meaning understanding of Section 1983's express cause of action for more than half a century. For example, "*Rosado* v. *Wyman*, 397 U.S. 397 (1970), held that suits in federal court under § 1983 are proper to secure compliance with the provisions of the Social Security Act on the part of participating States." *Edelman* v. *Jordan*, 415 U.S. 651, 675 (1974). And in *Thiboutot*, this Court held that "any doubt" about the application of Section 1983 had been resolved by a line of more than half-a-dozen decisions "involving Social Security Act (SSA) claims" that had "relied on the availability of a § 1983 cause of action." *Thiboutot*, 448 U.S. at 4-5; see *id.* at 6 (citing *Miller* v. *Youakim*, 440 U.S. 125 (1979); *Quern* v. *Mandley*, 436 U.S. 725 (1978); *Van Lare* v. *Hurley*, 421 U.S. 338 (1975); *Hagans* v. *Lavine*, 415 U.S. 528 (1974); *Carter* v. *Stanton*, 405 U.S. 669 (1972); *Townsend* v. *Swank*, 404 U.S. 282 (1971); and *King* v. *Smith*, 392 U.S. 309 (1968)).

The Court has continued to apply Section 1983 to claims based on Spending Clause legislation in the years following *Thiboutot*. In *Wilder* v. *Virginia Hospital Ass'n*, 496 U.S. 498 (1990), for instance, the Court held that a later-repealed provision of the Medicaid statute known as the Boren Amendment created a right that Medicaid providers could enforce against state officials in suits for prospective relief under Section 1983. In so holding, the Court explicitly rejected the state

officials' argument that the Secretary's authority to "curtail federal funds to States whose plans are not in compliance with the Act" was sufficient "to foreclose reliance on § 1983 to vindicate federal rights." *Id.* at 521-522; see also *Wright* v. *City of Roanoke Redevelopment & Housing Authority*, 479 U.S. 418 (1987).

3. In other cases, the Court has recognized that Section 1983 would provide a cause of action to enforce individual rights established by the Social Security Act or other Spending Clause legislation, but determined that the particular provisions at issue did not establish such rights. In *Suter* v. *Artist M.*, 503 U.S. 347 (1992), for example, the Court concluded that Section 1983 could not be invoked to enforce a provision of the Social Security Act directed to state foster-care programs. Like many Social Security Act programs, the provision made federal payments to States contingent on the Secretary's approval of a state plan meeting statutory requirements. See *id.* at 350-351. At issue in *Suter* was the requirement that the state plan "provide[] that, in each case, reasonable efforts will be made" before "the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home," and "to make it possible for the child to return to his home." *Id.* at 351 (quoting 42 U.S.C. 671(a)(15) (1988)).

This Court held that the provision did not establish individual rights enforceable under Section 1983. See *Suter*, 503 U.S. at 357-363. The Court observed that the "reasonable efforts" requirement "only goes so far as to ensure that the State have a plan approved by the Secretary which contains the * * * listed features." *Id.* at 358. And the Court determined that "[t]he term 'reasonable efforts'" imposed "only a rather generalized

duty on the State," rather than "confer[ring] an enforceable right upon the Act's beneficiaries." *Id.* at 363.

Other decisions have reached similar conclusions about other provisions in Spending Clause laws, even as they recognized the availability of Section 1983 to enforce individual rights expressly conferred by such enactments. See *Blessing* v. *Freestone*, 520 U.S. 329, 340, 346-348 (1997); *Gonzaga*, 536 U.S. at 284.

B. Congress Expressly Ratified The Application Of Section 1983 To Social Security Act Programs

In addition to being repeatedly recognized by this Court, Section 1983's applicability to rights created by Spending Clause laws has also been expressly ratified by Congress. That ratification was Congress's response to *Suter*, which had potentially far-reaching consequences because it attached significance to the fact that the "reasonable efforts" provision was a required element of a state plan to obtain federal funding. See *Suter*, 503 U.S. at 358-362. Many chapters of the Social Security Act are framed as requirements for state plans, so a rule that state-plan requirements are never enforceable in Section 1983 suits would have reached quite broadly.

In 1994, therefore, Congress enacted two identically worded provisions that expressly rejected such a rule while affirming this Court's holding about the specific provision at issue in *Suter*. Those enactments provide:

> In an action brought to enforce a provision of the Social Security Act, such provision is not to be deemed unenforceable because of its inclusion in a section of the Act requiring a State plan or specifying the required contents of a State plan. This section is not intended to limit or expand the grounds for

> determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in Suter v. Artist M., 112 S. Ct. 1360 (1992), but not applied in prior Supreme Court decisions respecting such enforceability; provided, however, that this section is not intended to alter the holding in Suter v. Artist M. that section 471(a)(15) of the Act is not enforceable in a private right of action.

Improving America's Schools Act of 1994 (Schools Act), Pub. L. No. 103-382, § 555(a), 108 Stat 4057-4058 (42 U.S.C. 1320a-2); Social Security Act Amendments of 1994, Pub. L. No. 103-432, § 211(a), 108 Stat. 4460 (42 U.S.C. 1320a-10).

The conference report accompanying the Schools Act confirmed that "[t]he intent of this provision is to assure that individuals who have been injured by a State's failure to comply with the Federal mandates of the State plan titles of the Social Security Act" would be "able to seek redress in the federal courts to the extent they were able to prior to the decision in *Suter* v. *Artist M.*" H.R. Conf. Rep. No. 761, 103d Cong., 2d Sess. 926 (1994).

That congressional ratification further eliminates any basis for treating Section 1983 as categorically inapplicable to rights created in Spending Clause legislation. Congress explicitly affirmed "prior Supreme Court decisions," such as *Thiboutot*, that involved invocation of Section 1983 to enforce "provision[s] of the Social Security Act." Schools Act § 555(a), 108 Stat. 4057-4058; see 42 U.S.C. 1320a-2. Overruling those decisions now would contradict that express statutory text. That is an independently sufficient reason to reject petitioners' position on the first question presented.

Petitioners' opening brief ignores the 1994 ratification entirely, notwithstanding respondent's reliance on those provisions at the certiorari stage. See Br. in Opp. 9-10 & n.2. Previously, petitioners asserted that the 1994 statutes did not ratify *Thiboutot* because Congress merely "add[ed] an *explicit* 'private action' to 'certain provisions of the Medicaid Act.'" Cert. Reply Br. 5 (citation omitted). But that is not what the statutes say. Congress did not create any *new* private right of action; instead, it expressly ratified this Court's pre-*Suter* decisions recognizing that provisions of the Act can be enforceable in private actions under Section 1983.

C. Petitioners Offer No Sound Reason To Overrule The Precedent At Issue Here

Even apart from Section 1983's plain text and Congress's express ratification of this Court's precedent, petitioners have wholly failed to show that *Thiboutot* and the other decisions discussed should be overruled. Although petitioners cite *Thiboutot* only once (Br. 2), their argument (Br. 10-38) necessarily rests on the proposition that it was wrongly decided. They contend (Br. 13-23) that, when Section 1983 was enacted in 1871 (and revised in 1874), the common law generally did not allow third-party beneficiaries to enforce a contract. They note (Br. 12-13) that, more than a century later, this Court described legislation that Congress enacts pursuant to the Spending Clause as "much in the nature of a contract." *Pennhurst State School & Hospital* v. *Halderman*, 451 U.S. 1, 17 (1981). And they argue (Br. 18) that, given the contract analogy used in *Pennhurst* and later cases, the Court should not have interpreted Section 1983 to encompass actions brought to enforce rights established by the Social Security Act or other

Spending Clause legislation. That argument fails for multiple reasons.

1. As an initial matter, the contract-law principles on which petitioners rely lack any meaningful connection to Section 1983's text. Even assuming that third-party beneficiaries were unable to bring breach-of-contract actions in the 19th Century, but see pp. 18-21, *infra*, nothing in Section 1983 suggests that Congress incorporated common-law principles governing actions for breach of contract.

Petitioners scarcely argue otherwise. Their only attempt to ground their position in Section 1983's text is their assertion that, given contract-law principles, the ability of an individual "to compel a [funding recipient] to make good on its promise to the Federal Government was not a 'right . . . secured by the . . . laws' under § 1983." Br. 10 (citation omitted); see Br. 22-23. But that asks the wrong question: Section 1983's requirement that the plaintiff identify a right "secured by the Constitution and laws" refers to the *substantive* entitlement guaranteed by the underlying constitutional or statutory provision. Section 1983 does not require the plaintiff to show that she independently has the right to "compel" compliance with that entitlement by bringing suit in court, Br. 10 (citation omitted); *that* right is supplied by Section 1983 itself.

2. In addition to lacking any grounding in the statutory text, petitioners' effort to import their view of 19th-Century contract law into Section 1983 is misplaced for three other reasons.

First, it is anachronistic. This Court first articulated the analogy between Spending Clause legislation and contracts in the 20th Century. See *Pennhurst*, 451 U.S. at 17 (citing *Steward Machine Co.* v. *Davis*, 301 U.S. 548

(1937), and *Harris* v. *McRae*, 448 U.S. 297 (1980)). Petitioners point to no indication that Congress would have equated Spending Clause laws with ordinary contracts when it adopted Section 1983 shortly after the Civil War, or treated rights created by such laws as unworthy of judicial enforcement.[2]

Second, the contract-law analogy is just that—an analogy. Whatever conceptual similarities exist between Spending Clause legislation and a contract for some purposes, the Social Security Act is clearly a federal "law" that can establish federal rights. 42 U.S.C. 1983. For example, while this Court has reserved the question whether a federal contract can itself preempt state law, see *Coventry Health Care of Missouri, Inc.* v. *Nevils*, 137 S. Ct. 1190, 1198 (2017), the Court has repeatedly held that Spending Clause legislation preempts conflicting state law, see, *e.g.*, *id.* at 1194. Similarly, the Court has recognized that such legislation binds not only the recipients of federal funds but also third parties. See, *e.g.*, *Lawrence County* v. *Lead-Deadwood School District*, 469 U.S. 256, 257-258 (1985) (holding that a State could not restrict the way local governments may spend funds received from the federal government under the Payments in Lieu of Taxes Act, 31 U.S.C. 6901 *et seq.*).

Third, to the extent a contract analogy has any force, it is not apparent why the proper reference is to the

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[2] By contrast, the analogy to contracts can make it appropriate to consider contract-law principles in deciding whether to recognize an implied cause of action in 20th-Century legislation and what remedies are available under such an action. See, *e.g.*, *Cummings* v. *Premier Rehab Keller, P.L.L.C.*, 142 S. Ct. 1562, 1569-1576 (2022); *Armstrong* v. *Exceptional Child Center, Inc.*, 575 U.S. 320, 332 (2015) (opinion of Scalia, J.).

common law at the time Section 1983 was enacted, rather than to the law when the rights-creating statute was enacted, since it is the rights-creating statute that is analogized to a contract. And even petitioners concede that third-party beneficiaries could sue on a contract by the early 1900s, well before the Social Security Act provisions here were enacted. See Pet. Br. 17-18.

3. In any event, petitioners have not shown that it was "well settled at the time of [Section 1983's] enactment" that third-party beneficiaries could not sue on a contract. *Kalina* v. *Fletcher*, 522 U.S. 118, 123 (1997).

Petitioners contend (Br. 13) only that their rule was "generally" followed in the United States when Congress enacted Section 1983. Even if that were correct, it would not establish the sort of "well settled" practice that this Court would assume Congress meant to incorporate silently into Section 1983. *Kalina*, 522 U.S. at 123. But petitioners' contention is not correct.

Although some courts and treatise authors did adopt the position that petitioners advance, see Br. 13-18 (collecting authorities), there was substantial, perhaps predominant, support for the contrary position. The most prominent and widely available contracts treatise of the period, for example, concluded that "[i]n this country the right of a third party to bring an action on a promise made to another for his benefit seems to be somewhat more positively asserted [than in English cases]; and perhaps it would be safe to consider this a prevailing rule with us." 1 Theophilus Parsons, *The Law of Contracts* 390 (1st ed. 1853) (footnote omitted); see Peter Karsten, *The "Discovery" of Law by English and American Jurists of the Seventeenth, Eighteenth, and Nineteenth Centuries: Third-Party Beneficiary Contracts as a Test Case*, 9 Law & Hist. Rev. 327, 353 &

n.150 (1991) (observing that "Parson's influential treatise" apparently "'sold more copies than any other treatise' of the nineteenth century") (citation omitted).

The 1873 edition of James Kent's influential treatise, by that point edited by Oliver Wendell Holmes, Jr., likewise reported that "it is understood to be now settled that, in a case of simple contract, if one person makes a promise to another for the benefit of a third party, the third party may maintain an action upon it." 2 James Kent, *Commentaries on American Law* 464 n.(e) (O. W. Holmes, Jr., ed., 12th ed. 1873).[3] And this Court appears to have agreed, stating in 1876 that "the right of a party to maintain assumpsit on a promise not under seal, made to another for his benefit, although much controverted, is now the prevailing rule in this country." *Hendrick* v. *Lindsay*, 93 U.S. 143, 149 (1876) (citing 1 Theophilus Parsons, *The Law of Contracts* 476 (6th ed. 1873)); see also, *e.g.*, 2 Francis Wharton, *A Commentary on the Law of Contracts* § 785, at 160-161 (1882) (stating that "the preponderance of authority" supports "third party" suits).

Petitioners' reliance on cases regarding government contracts (Br. 18-23) also fails. Notably, none of the cases on which petitioners rely was decided prior to Congress's 1874 amendment of the relevant text of Section 1983. To the contrary, the only relevant pre-1874 decision that petitioners identify is *City of Brooklyn* v. *Brooklyn City Railroad Co.*, 47 N.Y. 475 (1872), in which the Court of Appeals of New York recognized

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[3] Petitioners are mistaken in their reliance (Br. 14) on a passage from Holmes's *The Common Law*. That passage does not speak to suits by third-party beneficiaries, but instead refers to "the transfer of a contract" from one person to another. O. W. Holmes, Jr., *The Common Law* 354 (1881).

that one who "by his contract, assumed the duty of keeping in repair a public thoroughfare, * * * was therefore liable in a civil action to any one of the public sustaining special damage from his neglect to keep it in repair." *Id.* at 486 (discussing *Robinson* v. *Chamberlain*, 34 N.Y. 389 (1866)); see 13 Samuel Williston, *A Treatise on the Law of Contracts* § 37:35, at 257 (Richard A. Lord ed., 4th ed. 2013) (explaining that under the "traditional analysis," one accepted view was that members of the public, "'as third party beneficiaries, were proper parties to institute suit'" for a public contractor's violation of contractual duties undertaken for their benefit) (citation omitted). Moreover, many of the cases on which petitioners rely involved contracts to benefit the public generally, unlike Social Security Act provisions that confer rights on specific individuals who satisfy express eligibility criteria. See Pet. Br. 18-20, 21-22.[4]

At the very least, this evidence shows that the rules petitioners advance were not so widely accepted or categorical as to make it appropriate to incorporate them

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[4] Under more modern principles, an individual may be treated as a third-party beneficiary entitled to sue on a government contract where such an intention "is manifested" in the contract itself. Williston § 37:35, at 262 (citing Restatement (Second) of Contracts § 313, cmt. a. (1981)). Such a manifestation need not be "explicit," but instead "depend[s] on all the circumstances of the contract." Restatement (Second) of Contracts § 313, cmt. c. See, *e.g.*, *Fairholme Funds, Inc.* v. *United States*, 26 F.4th 1274, 1294 (Fed. Cir. 2022). Far from providing a basis for overturning this Court's Section 1983 precedents, that contractual inquiry closely resembles the focus on rights-creating language and concrete duties that those precedents require. See, *e.g.*, *Blessing*, 520 U.S. at 340-341.

into Section 1983, especially without some explicit hook in the statutory text.

4. Petitioners likewise have failed to show the sort of heightened "special justification" this Court demands before overruling statutory-interpretation precedents. *Kimble* v. *Marvel Entertainment, LLC*, 576 U.S. 446, 456 (2015). For half a century, Congress has legislated against the backdrop of this Court's "h[o]ld[ing] that suits in federal court under § 1983 are proper to secure compliance with the provisions of the Social Security Act." *Edelman*, 415 U.S. at 675. That rule made it unnecessary for Congress to create additional private rights of action every time it established new rights in Spending Clause legislation. To reverse course now, and hold that none of the rights that Congress established under Spending Clause legislation over the last 50 years are privately enforceable unless Congress also created a separate cause of action, would unsettle the statutory frameworks Congress has enacted based on this Court's decisions.

A decision overruling *Thiboutot* and the other precedents in its line would likewise frustrate the reliance interests of private parties who depend on Section 1983 to provide protection for important rights secured to them by the Social Security Act. For decades, the lower courts have adjudicated Section 1983 suits against state officials to enforce the Medicaid statute's central requirements, including the requirements to pay for specified care and services for "all individuals" who are Medicaid eligible, 42 U.S.C. 1396a(a)(10)(A), and to furnish that assistance with reasonable promptness to "all eligible individuals," 42 U.S.C. 1396a(a)(8). See, *e.g.*, *Romano* v. *Greenstein*, 721 F.3d 373, 377–379 (5th Cir. 2013); *Doe* v. *Kidd*, 501 F.3d 348, 355–357 (4th Cir.

2007), cert. denied, 552 U.S. 1243 (2008); *S.D. ex rel. Dickson* v. *Hood*, 391 F.3d 581, 603 (5th Cir. 2004); *Sabree* v. *Richman*, 367 F.3d 180, 189–193 (3d Cir. 2004); *Bryson* v. *Shumway*, 308 F.3d 79, 88–89 (1st Cir. 2002); *Doe* v. *Chiles*, 136 F.3d 709, 715–719 (11th Cir. 1998). Those private actions play a vital role in ensuring that States comply with the bedrock statutory requirement to pay promptly for medical care for needy persons.[5]

The fact that courts sometimes disagree about how to interpret particular provisions of Spending Clause legislation (see Pet. Br. 31-34) provides no reason to categorically refuse to apply Section 1983 to rights unambiguously created by such legislation. As a practical matter, occasional disagreements are unavoidable over what rights are secured by the "Constitution and laws," and therefore enforceable under Section 1983. Petitioners have not demonstrated that those disagreements are more widespread with respect to Spending Clause legislation than they are with respect to other laws.

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[5] The Medicaid statute's free-choice-of-provider requirement, 42 U.S.C. 1396a(a)(23), which "gives recipients the right to choose among a range of qualified providers, without government interference," *O'Bannon* v. *Town Court Nursing Center*, 447 U.S. 773, 785 (1980) (emphasis omitted), also confers rights enforceable under Section 1983 because it "uses the kind of 'individually focused terminology' that 'unambiguously confer[s]' an 'individual entitlement' under the law." *Harris* v. *Olszewski*, 442 F.3d 456, 461 (6th Cir. 2006) (Sutton, J.) (quoting *Gonzaga*, 536 U.S. at 283, 287) (brackets in original); see *Planned Parenthood South Atlantic* v. *Kerr*, 27 F.4th 945 (4th Cir. 2022) (Wilkinson, J.), petition for cert. pending, No. 21-1431 (filed May 6, 2022). Although there is some disagreement in the circuits on that question, the contrary rulings relied in part on the fact that this requirement is a mandatory element of a state plan, see, *e.g.*, *Does* v. *Gillespie*, 867 F.3d 1034, 1040-1041 (8th Cir. 2017), which does not preclude a Section 1983 action for the reasons discussed above, see pp. 10-15, *supra*.

Petitioners' proposed exclusion of Spending Clause legislation from the "laws" covered by Section 1983, moreover, would introduce substantial administrability problems of its own. The Constitution does not require Congress to specify at the time of enactment which of its enumerated powers it is relying on, nor is Congress required to rest each enactment on just one enumerated power. Reading Section 1983 to exempt provisions adopted pursuant to the Spending Clause rather than other enumerated powers would therefore often require courts to decide which powers Congress did or could have invoked. That determination could force courts to address otherwise unnecessary constitutional questions about the scope of Congress's enumerated powers. Compare, *e.g.*, *National Federation of Independent Business* v. *Sebelius*, 567 U.S. 519, 561-574 (2012), with *id.* at 661-669 (Scalia, Kennedy, Thomas, and Alito, JJ., dissenting).

Petitioners have assumed (Br. 5) that FNHRA rests solely on Congress's Spending Clause power. It is far from clear, however, that the Spending Clause is the only source of authority on which Congress could rely in enacting FNHRA's direct regulation of nursing homes. Indeed, in 1999, when Congress revised the transfer-related rights to address the scenario in which a nursing home stops participating in Medicaid, the accompanying House Report stated that "the Constitutional authority for th[at] legislation" was provided by the Commerce Clause. H.R. Rep. No. 44, 106th Cong., 1st Sess. 7 (1999); see 42 U.S.C. 1396r(c)(2)(F).

Accordingly, if the applicability of Section 1983 turned on which enumerated power a federal statute rests upon, it would be necessary for a court to determine whether FNHRA rests solely on a different source

of authority than the one invoked in support of the 1999 revisions. By contrast, the plain-meaning interpretation of Section 1983 to which this Court has adhered for decades requires no such inquiry. For that reason, too, this Court should decline to overrule decisions of this Court that have "effectively become part of the statutory scheme" set out in Section 1983. *Kimble*, 576 U.S. at 456.

II. THE STATUTORY CONTEXT REBUTS THE PRESUMPTION THAT THE INDIVIDUAL RIGHTS AT ISSUE ARE ENFORCEABLE UNDER SECTION 1983

Although there is no sound basis for the Court to overrule the long line of precedent recognizing that rights conferred by the Social Security Act may be enforced under Section 1983, that precedent does not encompass the provisions at issue here. The court of appeals correctly determined that the explicit rights-creating language in those provisions establishes individual rights, not merely aspirational standards or defendant-focused requirements. And under *Gonzaga* and *Blessing*, Congress's creation of individual rights gives rise to a presumption that those rights are enforceable against state actors under Section 1983. See *Gonzaga*, 536 U.S. at 284 & n.4; *Blessing*, 520 U.S. at 341. But that presumption is rebuttable, *ibid.*, and it is overcome here in light of the distinctive statutory context in which the rights at issue were created. Those rights operate primarily to protect residents of *private* nursing homes, who cannot rely on Section 1983, and Congress created a comprehensive scheme of administrative enforcement mechanisms that it deemed appropriate and sufficient to protect residents' FNHRA rights under federal law. That backdrop indicates that Congress likewise regarded those administrative

mechanisms as sufficient with respect to the small subset of nursing homes operated by state or municipal governments, and did not intend those nursing homes to be subject to additional and potentially conflicting federal judicial remedies under Section 1983.

A. The Provisions At Issue Here Create Individual Rights

Under *Gonzaga* and *Blessing*, the first step in determining whether a statutory requirement is enforceable under Section 1983 is to determine whether the statute creates individual rights vested in the plaintiff personally. See *Gonzaga*, 536 U.S. at 284; *Blessing*, 520 U.S. at 340-341. The court of appeals correctly determined that the provisions at issue here unambiguously establish such individual rights.

1. Most importantly, the relevant provisions use unambiguous rights-creating language that explicitly identifies nursing-home residents as the holders of the rights in question. The provisions exist within a statutory subsection specifically addressed to "residents' rights." 42 U.S.C. 1395i-3(c), 1396r(c). The chemical-restraint right, listed as one of the "Specified rights," is phrased as "the *right* to be free from * * * physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms." 42 U.S.C. 1395i-3(c)(1)(A)(ii), 1396r(c)(1)(A)(ii) (emphasis added). And Congress likewise referred explicitly to residents' "[t]ransfer and discharge rights." 42 U.S.C. 1395i-3(c)(2), 1396r(c)(2). As the court of appeals observed, it is difficult to see "how Congress could have been any clearer" that it was creating individual rights that belong to nursing-home residents. Pet. App. 9a.

Petitioners' contrary arguments (Br. 42-45) lack merit. They contend that because FNHRA directs

nursing homes to "protect and promote" the specified right to be free from restraint, 42 U.S.C. 1395i-3(c)(1)(A)(ii), 1396r(c)(1)(A)(ii), and to respect residents' transfer and discharge rights, see 42 U.S.C. 1395i-3(c)(2)(A), 1396r(c)(2)(A), the statute does not have an "'unmistakable focus'" on nursing-home residents. Pet. Br. 43. But that is a non sequitur. The unifying principle for this set of provisions is—as the statutory heading states—their "relati[on] to residents' rights." 42 U.S.C. 1395i-3(c), 1396r(c). That focus is not negated by Congress's further specification that nursing homes must protect and respect those rights, any more than the First Amendment's focus on individual rights is negated by the phrase "Congress shall make no law." U.S. Const. Amend. I. Indeed, the mandate that the nursing home "protect and promote" the specified rights underscores their centrality in an environment where the nursing home is pervasively responsible for its residents' care on a daily basis.

Petitioners are likewise wrong (Br. 44) to discount Congress's use of "the word 'right' * * * throughout the statute." To be sure, that word does not invariably demonstrate a congressional intent to affirmatively vest individuals with personal rights, such as where the "rights" language is merely "hortatory, not mandatory." *Pennhurst*, 451 U.S. at 24. But petitioners "concede[]" that the provisions at issue here "'unambiguously impose a binding obligation.'" Br. 45 & n.16 (quoting *Blessing*, 520 U.S. at 341). If Congress's repeated use of the word "right" to describe unambiguously binding obligations imposed for the benefit of individual nursing-home residents does not demonstrate congressional intent to establish individual rights, it is hard to see what would.

2. The rights at issue here are also "not so 'vague and amorphous' that [their] enforcement would strain judicial competence." *Blessing*, 520 U.S. at 340-341. Congress specifically enumerated the circumstances in which use of physical or chemical restraints, and discharge or transfer to another facility, will not violate a resident's rights. See 42 U.S.C. 1395i-3(c)(1)(A)(ii)(I)-(II), 1396r(c)(1)(A)(ii)(I)-(II); 42 U.S.C. 1395i-3(c)(2)(A)(i)-(vi), 1396r(c)(2)(A)(i)-(vi). Courts could accordingly carry out the "focused, straightforward inquiries" called for by those statutory criteria. Pet. App. 12a.

Petitioners correctly observe (Br. 46) that such inquiries will sometimes implicate "medical judgments." But as petitioners themselves emphasize (Br. 4), those same sorts of questions are already the subject of "much medical-malpractice litigation." There is no reason to believe courts would lack the judicial competence to address similar issues if Congress directed them to do so.

B. The Surrounding Statutory Context Overcomes The Presumption That The Rights FNHRA Establishes Are Enforceable Under Section 1983

The foregoing discussion demonstrates that Congress created individual rights in the two statutory provisions at issue here. And this Court has held, consistent with Section 1983's plain text, that "[o]nce a plaintiff demonstrates that a statute confers an individual right, the right is presumptively enforceable by § 1983." *Gonzaga*, 536 U.S. at 284. But that presumption is rebutted if Congress has expressly or impliedly precluded Section 1983 suits. And here, several features of FNHRA's unique statutory context combine to

demonstrate that Congress did not intend to permit enforcement under Section 1983.

1. As this Court has explained, there is a strong presumption that rights that satisfy the *Blessing*/*Gonzaga* standard are enforceable under Section 1983. The defendant's "burden is to demonstrate that Congress shut the door to private enforcement either expressly, through 'specific evidence from the statute itself,' or 'impliedly, by creating a comprehensive enforcement scheme that is incompatible with individual enforcement under § 1983.'" *Gonzaga*, 536 U.S. at 284 n.4 (citations omitted).

The Court has found that standard satisfied in just "three cases," each of which involved a statute that created its own judicial remedy requiring plaintiffs "to comply with particular procedures and/or to exhaust particular administrative remedies prior to filing suit." *Fitzgerald* v. *Barnstable School Committee*, 555 U.S. 246, 252, 254 (2009) (citing *City of Rancho Palos Verdes* v. *Abrams*, 544 U.S. 113 (2005); *Smith* v. *Robinson*, 468 U.S. 992 (1984); *Middlesex County Sewerage Authority* v. *National Sea Clammers Ass'n*, 453 U.S. 1 (1981)). Those statutes impliedly precluded Section 1983 suits because "[o]ffering plaintiffs a direct route to court via § 1983 would have circumvented [the statutory] procedures" in a manner "'inconsistent with Congress's carefully tailored scheme.'" *Id.* at 254-255 (citation omitted).

In contrast, the Court has held that "an administrative procedure resulting in the withdrawal of federal funding" is not sufficient to preclude Section 1983 suits. *Fitzgerald*, 555 U.S. at 255. And it has also stated that "the existence of a state administrative remedy does not

ordinarily foreclose resort to § 1983." *Wright*, 479 U.S. at 427-428.

Notably, in the cases in which this Court previously has approved of Section 1983 suits brought to enforce provisions of the Social Security Act, those provisions governed state entities operating in a distinctly governmental capacity. See pp. 11-12, *supra* (collecting cases). In *Thiboutot*, for example, the State was "depriving respondents of welfare benefits to which they were entitled under the federal Social Security Act." 448 U.S. at 2-3. And in *Miller*, *supra*, the State was refusing to make statutorily required payments on behalf of children who had been placed in registered foster homes. See 440 U.S. at 126-129, 145-146.

In that context, Congress's decision to provide administrative enforcement in the form of withholding of federal funds or a state administrative procedure ordinarily does not suggest any implied congressional intent to preclude resort to Section 1983, because Section 1983 is part of the backdrop against which Congress legislated. Because Section 1983 already creates a private cause of action that is applicable by default against persons acting under color of state law who violate federal statutory rights, see pp. 10-21, *supra*, Congress's silence on the subject of private suits when it creates new rights against governmental wrongs does not reflect any intent to preclude resort to Section 1983

2. The individual rights asserted in this case, however, arise in a materially different context. Unlike the Court's prior cases, this case involves rights that offer protection primarily against *private* parties, with only limited application to state and local entities—and then only when a state or local government is acting in a proprietary or commercial, not governmental, capacity.

And Congress provided a comprehensive system of enforcement mechanisms in FNHRA itself, which Congress deemed appropriate and sufficient to safeguard residents' rights under federal law. Taken together, these aspects of the statutory scheme demonstrate that Congress did not intend the rights that FNHRA creates to be judicially enforceable under Section 1983 against a government-operated nursing home.

As discussed, the vast majority of nursing homes that participate in Medicare and Medicaid are private facilities. See 86 Fed. Reg. at 42,520. The same was true when Congress enacted FNHRA. See *Institute of Medicine Study on Nursing Home Regulation: Joint Hearing Before the Subcomm. on Health and the Environment and the Subcomm. on Oversight and Investigations of the House Comm. on Energy and Commerce and the Subcomm. on Health and Long-term Care of the House Select Committee on Aging*, 99th Cong., 2d Sess. 54 (1986) (indicating that just eight percent of nursing homes were government-owned and -operated).

Section 1983, of course, does not authorize suits against private nursing homes. Nor did Congress provide any other form of private judicial enforcement for the rights created in FNHRA. Instead, Congress established highly specific and detailed administrative enforcement and oversight mechanisms. Each nursing home is required to have grievance procedures to address complaints about the violation of residents' rights. 42 U.S.C. 1395i-3(c)(1)(A)(vi), 1396r(c)(1)(A)(vi); see 42 C.F.R. 483.10(j) (specifying requirements for addressing grievances). States are required to have procedures for reviewing complaints filed by or on behalf of residents, see 42 U.S.C. 1396r(g)(4)(A), and a nursing home must inform residents of their right to file such a

complaint or seek the aid of the state nursing home ombudsman, see 42 C.F.R. 483.10(j)(4)(i). States must also have procedures for hearing appeals by nursing-home residents of their transfer or discharge. 42 U.S.C. 1396r(e)(3).

In addition, the statute and implementing regulations set forth detailed procedures by which nursing homes are surveyed (*i.e.*, inspected) for compliance with the requirements relating to residents' rights. See p. 4, *supra*. The statute authorizes a range of enforcement actions that can be taken against a noncompliant nursing home, including civil monetary penalties, denial of reimbursement under Medicare or Medicaid, appointment of temporary management, and closure of the facility and transfer of the residents to other facilities. See 42 U.S.C. 1395i-3(h), 1396r(h). That graduated system of remedies is tailored to the varying circumstances that may arise in the unique nursing-home setting: internal grievance procedures designed to swiftly address issues that may arise in a resident's daily interactions with nursing-home staff, complaints to one or more state agencies, hearings concerning transfers and discharges, and imposition of monetary penalties and other sanctions. And like the substantive provisions relating to residents' rights, those enforcement mechanisms are generally applicable regardless of whether a nursing home is public or private.

Because FNHRA applies overwhelmingly to *private* nursing homes, the statutory scheme necessarily reflects Congress's judgment that these administrative enforcement mechanisms appropriately protect the rights the statute confers. And in this distinct context, that congressional judgment shows that Congress intended FNHRA's "remedial scheme to 'be the exclusive

avenue'" for federal enforcement. *Fitzgerald*, 555 U.S. at 252 (citation omitted). Put differently, the fact that Congress provided no private judicial enforcement for the vast majority of rights-holders (residents of the 93% of nursing homes that are not government-owned) indicates that Congress intended the reticulated administrative mechanisms that it did provide to be "comprehensive" in protecting the rights of nursing-home residents generally. *Blessing*, 520 U.S. at 341. A federal cause of action only for government-operated nursing homes accordingly would be incompatible with the self-contained statutory scheme of rights and remedies Congress enacted.

Reviewing FNHRA as a whole confirms that Congress did not intend for the sliver of nursing-home residents who are in government facilities to be able to resort to Section 1983 while otherwise identically situated residents in private facilities cannot. Nothing in the statute suggests that Congress was uniquely concerned with judicial enforcement of FNHRA's requirements against government-owned facilities. To the contrary, FNHRA shows by its plain terms that Congress was equally concerned about the treatment of residents of nursing homes generally, without regard to who owns or operates them. See, *e.g.*, 42 U.S.C. 1395i-3(g)(1)(A), 1396r(g)(1)(A) (requiring that private and state-owned nursing homes be certified under the same substantive standards).

Further, while damages would be unavailable against a state-operated nursing home because a State is not a "person" for purposes of Section 1983, and only prospective relief would be available, see *Will* v. *Michigan Department of State Police*, 491 U.S. 58, 71 & n.10 (1989), damages presumably could be recovered in a

Section 1983 action against a municipally operated nursing home. But damages awards would be paid to a particular resident, in conflict with Congress's judgment in FNHRA that monetary penalties collected from noncompliant facilities should be used to benefit residents generally. Civil monetary penalties collected by a State, for example, "shall be applied to the protection of the health or property of residents of nursing facilities that the State or the Secretary finds deficient," such as "payment for the costs of relocation of residents to other facilities, maintenance of operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost." 42 U.S.C. 1396r(h)(2)(A)(ii). Similarly, FNHRA authorizes the Secretary to use a portion of the amounts collected "to support activities that benefit residents," including assistance for residents whose facility is closed or decertified and projects that support resident and family councils and other consumer involvement to assure quality care in facilities. 42 U.S.C. 1395i-3(h)(2)(B)(ii)(IV)(ff).

These detailed provisions—establishing grievance, complaint, and hearing rights for individual residents and extensive oversight and enforcement by state and federal agencies—demonstrate that Section 1983 is not available to enforce the asserted rights on behalf of the small minority of nursing-home residents who live in government-owned facilities. See *Blessing*, 520 U.S. at 341.[6]

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[6] FNHRA also creates other rights that protect against actions of the States in their governmental capacity as administrators of the state-wide Medicaid nursing home program as a whole, rather than in a proprietary capacity as operators of particular facilities. See,

3. In contending otherwise, respondent relies (Br. in Opp. 17) on a statutory proviso stating that "[t]he remedies provided" under FNHRA are "in addition to those otherwise available under State or Federal law and shall not be construed as limiting such other remedies, including any remedy available to an individual at common law." 42 U.S.C. 1395i-3(h)(5), 1396r(h)(8). That reliance is misplaced.

The proviso ensures that the remedies provided by FNHRA do not displace remedies available against nursing homes under other federal statutes—including the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.*; the Civil Rights of Institutionalized Persons Act, 42 U.S.C. 1997 *et seq.*; the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. 15001 *et seq.*, and the Protection and Advocacy for Individuals with Mental Illness Act, 42 U.S.C. 10801 *et seq.*—or remedies that States make available to individuals by statute or common law. But the proviso does not speak to whether FNHRA itself is uniquely enforceable against government-owned nursing homes in a federal cause of action. Cf. *Sea Clammers*, 453 U.S. at 20 n.31 (reading a similar statutory proviso to preserve only enforcement of standards "arising under *other* statutes or state common law," not a Section 1983 "suit for damages asserting a substantive violation of the" statute in which the proviso appeared). For the reasons discussed above, the FNHRA rights at issue here are not enforceable against government-owned nursing homes under Section 1983.

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e.g., 42 U.S.C. 1396r(e)(7). The enforceability of those rights under Section 1983 would turn on considerations substantially different from the rights here.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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