



# *Health & Hospital Corporation of Marion County v. Talevski*: Determining When A Statute Creates a Federal Right Actionable Under 42 U.S.C. § 1983

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Not every right under the Constitution or federal statute is [explicitly associated](#) with a private remedy. One federal law that provides a remedy when state or local governments violate rights protected by the Constitution or federal statute is found in [42 U.S.C. § 1983](#) (Section 1983). *Health & Hospital Corporation of Marion County v. Talevski*, before the Supreme Court this term, presents an opportunity for the Court to examine the scope of Section 1983 remedies, and possibly to provide insight into trends in this area of law.

Section 1983 potentially allows individuals to recover [compensatory, nominal, or punitive damages](#) for, among other things, the deprivation of “rights” secured by federal “laws.” [At issue in \*Talevski\*](#) is (1) whether Spending Clause legislation—which typically establish a cooperative federal-state program under which states accept federal funds and agree to spend them in accordance with congressionally-imposed conditions—generally gives rise to privately enforceable rights under Section 1983, and if so, (2) specifically whether provisions of the [Federal Nursing Home Reform Act](#) provide such a right. The first and more far-reaching question may require the Court to reexamine decades of precedent in which it has recognized Section 1983 actions in [Spending Clause](#) legislation. The second question, involving an examination of a specific statutory scheme, may give the Court the opportunity to clarify its test for evaluating when statutes create federal “rights” that are enforceable under Section 1983.

This Legal Sidebar provides an overview of the relevant legal background on Section 1983 and the facts and arguments presented in *Talevski*, as well as certain considerations for Congress.

## Legal Background

[Section 1983](#), enacted as part of the Civil Rights Act of 1871, provides a federal cause of action for “the deprivation of any rights, privileges, or immunities secured by the Constitution and laws” by any person acting “under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory.”

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Section 1983 is often used by individuals to recover for [violations of constitutional rights](#) by state and local government actors. In the 1980 case *Maine v. Thiboutot*, the Supreme Court also held that the Section 1983 remedy “broadly encompasses” violations not only of constitutional rights, but also rights established under federal statutes, because the plain language of Section 1983 provides relief for the violation of any “rights, privileges, or immunities secured by the Constitution and laws.” Rejecting the argument that the phrase “and laws” in Section 1983 should be limited to civil rights or equal protection laws, the Court noted that Congress attached no modifiers to the phrase. Therefore, Section 1983 “undoubtedly embrace[d]” claims for a state’s failure to pay benefits required under the Social Security Act. The Court later [clarified](#) this view, explaining that because Section 1983 “speaks in terms of ‘rights, privileges, or immunities,’” and not violations of federal law, the remedy is only available if a state actor violated a “federal right.”

Since *Thiboutot*, the Court has considered whether a Spending Clause statute confers a federal right actionable under Section 1983 on several occasions. In the 1981 case *Pennhurst State School & Hospital v. Halderman*, the Court rejected a claim that a Spending Clause statute, the Developmentally Disabled Assistance and Bill of Rights Act of 1975, conferred an enforceable right. Residents of a state institution for the developmentally disabled sought relief for violations of a “bill of rights” provision within the Act. Important to the Court was the special nature of laws passed pursuant to the Spending Clause, which the Court [described as](#) “much in the nature of a contract: in return for federal funds, the States agree to comply with federally imposed conditions.” Thus, any conditions on the grant of federal money must be [unambiguous](#) so that states can be “cognizant of the consequences of their participation” in the spending program. According to the Court, federal rights can only exist within Spending Clause statutes when Congress imposes obligations in mandatory, not precatory, terms. In this case, the Court concluded there was no evidence that the bill of rights provision imposed mandatory, binding obligations on the states.

In the 1990 case *Wilder v. Virginia Hospital Association*, the Court held that a reimbursement provision of the Medicaid Act created an enforceable right under Section 1983 because the provision conferred a binding obligation to provide specific monetary entitlements to an intended beneficiary. However, in the years since *Wilder*, the Court has rejected attempts to infer enforceable rights in Spending Clause legislation. In the 1992 case *Suter v. Artist M.*, the Court held that provisions of the Adoption Assistance and Child Welfare Act of 1980 did not “unambiguously confer an enforceable right upon the Act’s beneficiaries.” Instead, the Court explained that the language imposed a “generalized duty” on the State that could only be enforced by the Secretary by reducing or eliminating payments to a noncompliant state. Because the legal question in these cases turns on the interpretation of statutes, Congress was able to respond to the *Suter* decision through legislation. In 1994, Congress enacted [42 U.S.C. § 1320a-2](#) and [§ 1320a-10](#) to clarify that individuals should 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.*”

The Court rejected another attempt to infer an enforceable right in *Blessing v. Freestone*, in which it also formally articulated its three-prong test for determining the existence of individual rights enforceable under Section 1983. To determine whether a federal statute conferred a right actionable under Section 1983, a court must find: (1) Congress intended the statutory provision benefit the plaintiff; (2) the asserted right is not so “vague and amorphous” that its enforcement would strain judicial competence; and (3) the provision must unambiguously impose a binding obligation, meaning the provision giving rise to the asserted right must be couched in mandatory, rather than precatory, terms.

Five years later in *Gonzaga University v. Doe*, the Court clarified the first prong of the *Blessing* test. The Court rejected the notion that “anything short of an unambiguously conferred right” can support a Section 1983 cause of action, and suggested that past cases involving “[implied private rights of action](#)” may provide guidance in determining whether a statute confers individual rights enforceable under Section 1983. In both Section 1983 and implied private right of action cases, the important inquiry is determining whether Congress intended for the statute to “confer[] rights on a particular class of persons.” Thus, the

Court explained that rights-creating language must focus on the *individual* to be benefited and not on the aggregate, generalized, or systemwide policies or practices of a regulated entity. After *Gonzaga*, it was no longer enough that a plaintiff fall within “the general zone of interest” of the statute.

If a court determines that a statute confers an “individual right” under the *Blessing* three-factor test, there is a presumption that the right is enforceable under Section 1983. This presumption **may be rebutted**, however, if Congress expressly or impliedly foreclosed enforcement under Section 1983 “by creating a comprehensive enforcement scheme that is incompatible with individual enforcement under § 1983.” The Supreme Court has found that Congress implicitly foreclosed Section 1983 liability in only **three cases**, all of which involved a statute that required plaintiffs to “comply with particular procedures and/or to exhaust particular administrative remedies prior to filing suit.” **According to the Court**, “offering plaintiffs a direct route to court via § 1983 would have circumvented these procedures” in a way that would have been “inconsistent with Congress’s carefully tailored scheme.”

## Facts and Procedural History of *Talevski*

The *Talevski* case arises out of requirements that Congress adopted in 1987 for nursing homes participating in **Medicare or Medicaid**. The relevant provisions are known as the **Federal Nursing Home Reform Act** (FNHRA). The parties in *Talevski* do not dispute that FNHRA is a Spending Clause statute because it imposes conditions of participation on nursing homes that receive federal funds under those programs.

FNHRA contains a **detailed list** of “requirements relating to residents’ rights,” and provides that nursing homes “must protect and promote the rights of each resident.” These rights include “[t]he right to be free from . . . any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident’s medical symptoms.” The Act also includes 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 in certain circumstances. FNHRA also contains enforcement mechanisms designed to ensure compliance with its directives. For example, each nursing home is required to adopt a grievance process for its residents, states must make an administrative procedure available to challenge transfer and discharge decisions, and the federal government is authorized to take a range of enforcement actions against noncompliant nursing homes.

Respondent **Gorgi Talevski** was a resident at a state-run nursing home owned by Petitioner Health and Hospital Corporation of Marion County, Indiana. Talevski alleged that Petitioners violated his FNHRA rights by subjecting him to the use of illegal chemical restraints and depriving him of the right to receive due process before he was discharged or transferred from the nursing facility. The **district court** dismissed the claims, holding that FNHRA requirements are not privately enforceable under Section 1983.

In reversing the district court, the **Seventh Circuit Court of Appeals** applied the *Blessing* three-part test to determine that FNHRA created individual rights that were enforceable under Section 1983. According to the court, the FNHRA provisions at issue contained the exact type of “**rights-creating language**” described in *Gonzaga*, as the statutory language “spoke of resident *rights*, not merely steps that the facilities were required to take.” As to the second and third *Blessing* factors, the court concluded, respectively, that the rights created under FNHRA are “focused, straightforward inquiries that agencies and courts are well equipped to resolve,” and that there is “no dispute” that the asserted rights are couched in mandatory terms. The court further concluded that Congress did not “**specifically foreclose[]**” a Section 1983 remedy. In the Court’s view, FNHRA’s enforcement mechanisms, are not the “type of ‘unusually elaborate, carefully tailored, and restrictive enforcement schemes’ that section 1983 claims would frustrate.”

The court also rejected a **broader argument** that Spending Clause legislation cannot give rise to privately enforceable rights under Section 1983. While acknowledging that the Supreme Court had not recognized

a private right of action in Spending Clause legislation since *Wilder*, the court emphasized that the Supreme Court had since reviewed cases involving private rights in Spending Clause legislation and has not yet “disapproved *Wilder*.” Instead, according to the court, the Supreme Court merely determined that the parties had not cleared the “high bar for these private rights of action.”

## Arguments to the Supreme Court

The two [issues before the Court](#) are (1) whether Spending Clause legislation generally gives rise to privately enforceable rights under Section 1983, and if so, (2) whether provisions of FNHRA provide such a right. As to the first issue, Petitioners renew the argument that Spending Clause legislation does not give rise to Section 1983 enforceable rights, [asking the Court to revisit \*Wilder\*](#) and predecessor decisions allowing Section 1983 claims under Spending Clause statutes. Petitioners assert that, over the last 20 years, some Supreme Court justices have [expressed doubt](#) as to whether Section 1983 is available as a remedy in Spending Clause legislation. These justices have [suggested](#) that Spending Clause legislation is “much in the nature of a contract,” and this contract analogy “raises serious questions as to whether parties may sue to enforce Spending Clause legislation.”

In particular, Petitioners noted that in *Blessing*, Justice Antonin Scalia, in a concurring opinion, [questioned](#) whether third-party beneficiaries may use Section 1983 to enforce contracts between the state and federal government created in Spending Clause legislation. In his view, the *rights* secured by Section 1983 should [be determined](#) “according to the understanding of § 1983 when it was enacted,” and it was debatable whether third-party beneficiaries could sue to enforce contracts when Section 1983 was enacted in 1871. Based on this reasoning, Petitioners assert that at the time Section 1983 was enacted, the [law generally precluded](#) third-party beneficiaries from suing to enforce contracts, especially government contracts. Petitioners also argue that [“implying”](#) Section 1983 rights in Spending Clause legislation violates separation of powers and federalism principles. According to Petitioners, it is up to Congress to create private causes of action, and when it does, it must do so unambiguously so that States can make a knowing decision whether to participate in federal spending programs.

In response, Respondents rely on the principle from *Thiboutot* that the plain text of Section 1983, which permits suit against any person who deprives another of any “rights . . . secured by the Constitution and laws.” Respondents argue that [by its terms](#), Section 1983 “applies to any right protected by a federal law” and “there is no reason to treat Spending Clause legislation different from legislation enacted under any other power.” Respondents also emphasize that the Court has long maintained that rights conferred by Spending Clause statutes are enforceable under Section 1983, and that Congress has repeatedly ratified this interpretation. For example, Respondents point to Congress’s 1994 amendments enacted in response to the Court’s *Suter* decision. Respondents describe this as [“super ratification,”](#) in that Congress explicitly recognized that there *are* Spending Clause statutes enforceable under Section 1983 and that absent congressional action, *Suter* would have rendered these statutes unenforceable. Respondents also rebuff Petitioners’ contract-theory arguments, claiming that there is no evidence that [Congress intended](#) Section 1983 to be interpreted according to common law contract theories, and even if so, the prevailing rule at the time Section 1983 was enacted was that [third-party beneficiaries](#) could sue to enforce a contract.

If the Court concludes that Spending Clause legislation *can* create enforceable rights under Section 1983, Petitioners [argue](#) that FNHRA does not do so because it includes a comprehensive enforcement scheme, and the language of the statute fails the *Blessing* test. In response, Respondents again focus on the substance of FNHRA, contending that the FNHRA rights at issue are [individually enforceable rights](#) under the *Blessing* test, and that FNHRA’s remedial scheme is [“entirely compatible with § 1983.”](#)

## Considerations for Congress

The Court's decision in *Talevski* could have far-reaching implications for the availability of Section 1983 remedies for violations of Spending Clause statutes by state or local governments, as well as the treatment of implied causes of action in federal laws.

First, the Court may conclude that Section 1983 is not available as a remedy for state or local governmental violations of federal rights created within Spending Clause statutes. Should this occur, Congress may need to reexamine the broad array of existing Spending Clause laws and, if it chooses, enact legislation to create private causes of action for individual rights those laws create. According to amicus briefs filed by some [current](#) and [former](#) Members of Congress, Congress has long relied on the Court's interpretation that rights established within Spending Clause legislation can be actionable under Section 1983. The current Members of Congress expressed concern that any changes in this presumption would create significant burdens, [requiring Congress](#) to "revisit—and potentially renegotiate, rewrite, reenact, and reimplement—its past legislation addressing various programs . . . ."

Second, if the Court rejects the Spending Clause argument in *Talevski*, it is possible that the Court may still find that Section 1983 is unavailable as a remedy, reflecting broader trends in the Court's approach to judicially-implied private causes of action and the scope of available remedies. The Court has appeared increasingly skeptical of claims of constitutional and statutory implied causes of action, emphasizing that ["creating a cause of action is a legislative endeavor."](#) The Court has, for example, routinely declined to recognize new remedies under *Bivens v. Six Unknown Named Agent of Federal Bureau of Narcotics* for constitutional violations committed by federal government actors. The Court has also moved away from [implying causes of action](#) within statutes themselves, such as [the Medicaid Act](#). The Court has explained that it [historically followed](#) a "different approach to recognizing implied causes of action than it follows now," and it formerly "impl[ie]d causes of action not explicit in the statutory text itself." More recently, the [Court has adopted](#) a "far more cautious course before finding implied causes of action," and has advised that "where Congress 'intends private litigants to have a cause of action,' the 'far better course' is for Congress to confer that remedy in explicit terms."

The issue in *Talevski* differs slightly from those raised in the cases above in that Section 1983 is not an implied cause of action, but an explicit statutory cause of action available for violations of the Constitution and laws by state actors. In *Gonzaga*, however, the Court explained that implied rights of action cases and cases involving Section 1983 raise the same legal question in that both require the court to determine ["whether a statute confers any rights at all."](#) To the extent the Court's decision in *Talevski* follows the Court's approach in implied rights of action cases, Congress may wish to take such a decision into account when it considers the remedial scheme of future legislation—i.e., whether to expressly confer privately enforceable rights under Section 1983 or other private causes of action. *Talevski* may also provide important insight as to how courts might resolve future cases involving whether a statute creates individual rights enforceable under Section 1983. For example, there is currently a [circuit split](#) regarding whether the "free-choice-of-provider" provision of the Medicaid Act confers individual rights enforceable under Section 1983.

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