

Medina v. Planned Parenthood South Atlantic: Spending Clause Legislation and the End of Thiboutot

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ABSTRACT

*Since 1980, the Supreme Court has held that 42 U.S.C. § 1983 is available to redress violations of all federal laws. However, in June 2025, the Court decided *Medina v. Planned Parenthood South Atlantic*, severely curtailing litigants’ ability to use Section 1983 as a vehicle for vindicating violations of federal “spending-power” statutes. This decision departed from the Court’s most recent precedent in *Health & Hospital Corp. of Marion County v. Talevski*, which was decided only two years prior. This Comment analyzes *Medina* and argues that it is both an incorrect and misleading application of precedent and that its core distinction between Spending and non-Spending Clause statutes is analytically unsound. In doing so, it argues for the first time that *Medina* has impliedly overruled *Maine v. Thiboutot*’s application to spending-power statutes.*

*By analyzing the Court’s Section 1983 “and laws” jurisprudence, beginning in the 1980s and ending in 2025 with *Medina*, this Comment explains how and why *Medina* is different and has shifted the landscape. The new aspects of its test—which use the language at issue in *Talevski* as a talisman and rely on doctrinally unclear distinctions between Spending and non-Spending Clause statutes—are unprecedented and will drastically impact litigants across the country. *Medina*’s scope can be best understood by its effect on previously enforceable provisions of “spending-power” statutes, particularly under the Medicaid Act. Using two illustrative provisions as examples, this Comment analyzes how *Medina* has effectively rendered these provisions dead letters and restricted individuals’ abilities to sue to enforce their rights.*

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INTRODUCTION

In *Medina v. Planned Parenthood South Atlantic*, the United States Supreme Court created a new presumption that spending-power statutes must be drafted in especially clear language to be enforceable by private parties under 42 U.S.C. § 1983.¹ The *Medina* decision departed from, and explicitly disclaimed, several prior Supreme Court precedents, leaving the status of many lower court opinions interpreting spending-power statutes uncertain. Crucially, the Supreme Court did so despite its seminal decision in *Maine v. Thiboutot* that Section 1983 is available for *all* federal statutes,² and without purporting to modify that holding. This Comment analyzes the Supreme Court’s changing jurisprudence on private rights of action under the Medicaid Act, arguing for the first time that *Medina* has effectively overturned *Thiboutot*. It details how the new standard, which allows for private enforcement only under “atypical” provisions that use explicit “rights-creating language,”³ nullifies private litigants’ ability to enforce a vast array of federal statutes. Using two key Medicaid Act provisions—the Reasonable Promptness and Freedom of Choice provisions—as examples, this Comment analyzes how *Medina* has upended Section 1983 “and laws” jurisprudence, rendering the rights conferred under these provisions effectively moot.

I. MEDINA AND THE EVOLUTION OF THE COURT’S IMPLIED RIGHT OF ACTION STANDARD

On June 6, 2025, the Supreme Court issued its ruling in *Medina v. Planned Parenthood South Atlantic*, holding that the “Any Qualified Provider” provision of the Medicaid Act does not create a private right of action enforceable under 42 U.S.C. § 1983.⁴ The provision, which requires states to ensure that individuals eligible for medical assistance may obtain it from any provider who is both “qualified” to perform the service and undertakes to provide it,⁵ plays a crucial role in allowing Medicaid recipients to retain autonomy over their medical decisions. The decision generated outrage among some for its practical effect, which allowed South Carolina to exclude abortion providers from its Medicaid program,⁶ but

¹ 606 U.S. 357 (2025).

² *Maine v. Thiboutot*, 448 U.S. 1, 4–5 (1980).

³ *Medina*, 606 U.S. at 359.

⁴ *Id.* at 385.

⁵ 42 U.S.C. § 1396a(a)(23).

⁶ Carter Sherman, *Supreme Court Paves Way for South Carolina and Other States to Defund Planned Parenthood*, THE GUARDIAN (June 26, 2025), <https://www.theguardian.com/us-news/2025/jun/26/supreme-court-planned-parenthood-decision>, [https://perma.cc/PVK5-PKKG]; Michele Goodwin, Comment, *Medina v. Planned Parenthood: The Supreme Court’s Making of the*

Medina's impacts go well beyond restricting access to reproductive healthcare. In its ruling, the Court not only rejected the existence of a private right of action in the case before it, but it also enumerated a new, stricter version of the test private litigants must meet before using Section 1983 to enforce rights conferred by federal statutes. Despite its seminal holding in *Maine v. Thiboutot* that Section 1983 was available to vindicate violations of *all* federal statutes,⁷ the *Medina* Court applied this new bar to “spending-power statutes”⁸ such as the Medicaid Act, the Rehabilitation Act,⁹ and the Federal Nursing Home Reform Act (“FNHRA”).¹⁰ Thus, *Medina* calls into question not only claims brought under the majority of the Medicaid Act’s wide-reaching provisions, but also those premised on disability-based retaliation,¹¹ medical neglect,¹² and more.

In establishing this new test, the *Medina* Court expressly repudiated three prior precedents—*Wright v. Roanoke Redevelopment & Housing Authority*, *Wilder v. Virginia Hospital Association*, and *Blessing v. Freestone*—in assessing the creation of enforceable rights under such statutes.¹³ The precise status of these holdings in other contexts remains uncertain, but the Court clearly rejected “any reading of our prior cases that would ‘permit anything short of an unambiguously conferred right to support a cause of action brought under § 1983.’”¹⁴ Instead, it identified two prior cases—*Gonzaga University v. Doe* and *Health & Hospital Corp. of Marion County v. Talevski*—as setting the proper framework for identifying private rights of action under Section 1983. While *Medina* purports to straightforwardly apply these precedents, it has instead created a stringent new test

New Jane Crow, 139 HARV. L. REV. 127, 164 (2025) (referring to *Medina* as “part of the ongoing attack on reproductive freedom that predates *Dobbs*”).

⁷ 448 U.S. at 4–5.

⁸ *Medina*, 606 U.S. at 385. Under Article I, Congress has the power to lay and collect taxes “to pay the debts and provide for the common defense and general welfare of the United States.” U.S. CONST. art. I, § 8, cl. 1. The Court has held that, through this power, Congress may impose conditions that states must meet to qualify for federal funds. *See* *South Dakota v. Dole*, 483 U.S. 203, 206–07 (1987). While Congress often does not specifically reference which power it is acting under when it legislates, the Court has referred to statutes such as the Medicaid Act—which condition federal funds on statutory compliance—as “spending-power statutes.” *Medina*, 606 U.S. at 365. References to Congress’ spending power are noticeably absent from some of the Court’s previous Section 1983 decisions, *see, e.g.*, *Wilder v. Virginia Hosp. Ass’n*, 496 U.S. 498 (1990), and it is an open question whether Congress may have passed various provisions of such “spending-power statutes” under its other enumerated powers. *See* *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012) (analyzing Congress’ power to enact the Affordable Care Act under both its Commerce and Taxing and Spending Powers).

⁹ *Jim C. v. United States*, 235 F.3d 1079, 1080 (8th Cir. 2000) (holding that Section 504 of the Rehabilitation Act is a valid exercise of Congress’ spending power).

¹⁰ *Health & Hosp. Corp. v. Talevski*, 599 U.S. 166, 177 (2023).

¹¹ *Smith v. Mich. Dep’t of Corr.*, 159 F.4th 1067, 1079 (6th Cir. 2025).

¹² *Washington v. Daviess Cnty. Hosp.*, No. 1:24-CV-01914-MPB-MJD, 2025 WL 2944258 (S.D. Ind. Oct. 14, 2025).

¹³ *Medina*, 606 U.S. at 376.

¹⁴ *Id.* (quoting *Gonzaga Univ. v. Doe*, 536 U.S. 273, 283 (2002)).

that will leave litigants unable to vindicate their rights under a multitude of previously enforceable federal statutes.

A. *Thiboutot and the Blessing-Wilder-Wright Approach*

Assessing *Medina*'s full scope requires understanding how the Supreme Court has shifted its approach to private rights of action. Statutorily created rights of action allow private litigants to sue to enforce provisions of the statute. While some statutes *expressly* grant this right to sue, many do not. For such statutes, Section 1983 instead provides an *implied* right to vindicate violations of federal statutes committed by officials "acting under color of state law."¹⁵ In its landmark decision in *Maine v. Thiboutot*, the Court recognized that Section 1983 actions are available to redress violations of all federal laws.¹⁶ The *Thiboutot* Court's assertion that Section 1983 "means what it says" has been the bedrock of modern Section 1983 "and laws" litigation,¹⁷ allowing for private litigants to vindicate their rights under a variety of federal statutes. Importantly, *Thiboutot* permitted a recipient of a program under the Social Security Act, a "spending-power statute," to maintain her Section 1983 suit alleging a state violation of a federal welfare policy.¹⁸ While *Thiboutot* has been controversial from the outset, and some believed that Section 1983's "and laws" clause should only apply to civil rights litigation,¹⁹ it has always clearly supported the vindication of Spending Clause legislation violations through Section 1983.²⁰

Still, the *Thiboutot* majority's failure to clarify many of its justifications or the nature of a state's obligations under federal funding programs left the decision's impact unsettled,²¹ and the Court quickly narrowed its test for determining the availability of Section 1983 "and laws" actions. First, in *Pennhurst State School & Hospital v. Halderman*, the Court clarified that a prospective Section 1983 plaintiff must establish that the relevant provision of the statute secures a privately

¹⁵ 42 U.S.C. § 1983.

¹⁶ 448 U.S. 1, 4–5 (1980).

¹⁷ *Id.* at 4. The statute creates liability for those who, acting under color of state law, deprive another of "any rights, privileges, or immunities secured by the Constitution and laws." 42 U.S.C. § 1983.

¹⁸ 448 U.S. at 3–4.

¹⁹ *Id.* at 15–16, 22–24 (Powell, J., dissenting) (criticizing the majority's reading of "and laws" and arguing that the decision will have "substantial" consequences, including increased litigation); see also George D. Brown, *Whither Thiboutot? Section 1983, Private Enforcement, and the Damages Dilemma*, 33 DEPAUL L. REV. 31, 33–34 (1983).

²⁰ See Archibald Cox, *The Supreme Court, 1979 Term—Foreword: Freedom of Expression in the Burger Court*, 94 HARV. L. REV. 1, 227 (1980) ("The paradigmatic statutory 1983 suit arises out of a jointly funded entitlements program in which federal officials formulate guidelines that state local administrators must implement.").

²¹ Paul Wartelle & Jeffrey Hadley Loudon, *Private Enforcement of Federal Statutes: The Role of the Section 1983 Remedy*, 9 HASTINGS CONST. L.Q. 487, 522–23 (1982).

enforceable right.²² Second, if the statute does secure a right, there must not be specific evidence in the statute that Congress intended to foreclose private enforcement, either expressly in the statute or by creating a “comprehensive remedial scheme” that is incompatible with private enforcement.²³ Both factors must be present for a litigant to enforce a statutory provision through Section 1983.

Since *Pennhurst*, the Supreme Court has twice recognized that spending-power statutes like the Medicaid Act can confer privately enforceable rights under Section 1983. In *Wright v. Roanoke Redevelopment & Housing Authority*, it found such a right in the rent ceiling provision of the Public Housing Act (“PHA”).²⁴ Distinguishing *Pennhurst*, the Court found that Congress spoke in terms that “could not be clearer” and that the benefits it “intended to confer on tenants [we]re sufficiently specific and definite to qualify as enforceable rights.”²⁵ Moreover, the Court was unpersuaded that the agency’s authority to cut off federal funds foreclosed an individually enforceable right, stating that “generalized powers are insufficient to indicate a congressional intent to foreclose § 1983 remedies.”²⁶ Three years later, in *Wilder v. Virginia Hospital Association*, the Court again found a privately enforceable right in the Boren Amendment to the Medicaid Act, which requires states to reimburse medical providers for services provided to Medicaid patients at rates that are “reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities.”²⁷ Looking to

²² 451 U.S. 1, 18 (1981) (finding that Section 1983 was unavailable because the Developmentally Disabled Assistance and Bill of Rights Act of 1975 conferred no privately enforceable right). The “bill of rights” provision of the Act states in relevant part:

Congress makes the following findings respecting the rights of persons with developmental disabilities:

- (1) Persons with developmental disabilities have a right to appropriate treatment, services, and habilitation for such disabilities.
- (2) The treatment, services, and habilitation for a person with developmental disabilities should be designed to maximize the developmental potential of the person and should be provided in the setting that is least restrictive of the person’s personal liberty.
- (3) The Federal Government and the States both have an obligation to assure that public funds are not provided to any [institution] . . . that -- (A) does not provide treatment, services, and habilitation which is appropriate to the needs of such person; or (B) does not meet the following minimum standards

42 U.S.C. § 6010. The Court’s decision was largely predicated on the fact that Section 6010 failed to explicitly condition federal funds on compliance with these provisions. *Pennhurst*, 451 U.S. at 18.

²³ *Middlesex Cnty. Sewerage Auth. v. Nat’l Sea Clammers Ass’n*, 453 U.S. 1, 21 (1981); *Smith v. Robinson*, 468 U.S. 992, 1004, 1012 (1984).

²⁴ 479 U.S. 418, 419 (1987).

²⁵ *Id.* at 430, 432.

²⁶ *Id.* at 427–28.

²⁷ 496 U.S. 498, 524 (1990); 42 U.S.C. § 1396a(a)(13)(A).

Pennhurst and *Wright*, the *Wilder* Court held that the Boren Amendment “succinctly set[] forth a congressional command” and imposed a binding obligation on participating states, which was enforceable under Section 1983 by health care providers.²⁸ Neither *Wilder* nor *Wright* set out a specific test or defined set of factors for determining whether a statute conferred a privately enforceable right, but both cases stood for the baseline proposition that the intended beneficiaries of spending-power statutes could bring Section 1983 suits to vindicate their rights, provided that Congress had defined their interests with the requisite specificity.²⁹

In 1997, the Court decided *Blessing v. Freestone*, which built on *Wilder* and *Wright* to create a tripartite test for determining whether a statute conferred a privately enforceable right.³⁰ First, Congress must have intended that the provision benefit the plaintiff.³¹ Second, the plaintiff’s protected interest must not be so “vague and amorphous that its enforcement would strain judicial competence.”³² Third, the provision must “unambiguously impose a binding obligation on the States” and be phrased in mandatory language.³³ Under this test, the Court found that Title IV-D of the Social Security Act did not confer a privately enforceable right to “substantial compliance” with the provisions of Title IV-D because the standard was meant to measure systemwide performance and thus did not create an individual entitlement to services.³⁴ However, the Court left open the possibility that some provisions of Title IV-D may create enforceable rights, and if they did, the limited administrative remedy provided in the statute would be insufficient to foreclose Section 1983 claims.³⁵ Despite the *Medina* Court’s characterization of this approach as a “brief[] experiment[],” use of the *Blessing* factors was, and continues to be, ubiquitous nearly three decades later.³⁶

B. *Gonzaga and the “Rights-Creating” Language Standard*

In 2002, the Court tightened its standard for determining whether federal statutes conferred enforceable rights. In *Gonzaga University v. Doe*, it cited to *Thiboutot* only in passing, focusing instead on *Pennhurst*’s limitation on Section 1983 suits for violations of federal funding provisions. The *Gonzaga* Court clarified that only “unambiguously conferred right[s]” could support a cause of action under Section 1983, requiring evidence that Congress intended those rights to be privately

²⁸ *Wilder*, 496 U.S. at 512.

²⁹ *See Wright*, 479 U.S. at 432 (deeming benefits enforceable under Section 1983 because they were “sufficiently specific and definite,” and thus not “beyond the competence of the judiciary to enforce”). The *Wilder* Court specifically cited this language in determining that the Boren Amendment was enforceable under Section 1983. 496 U.S. at 511–12.

³⁰ 520 U.S. 329, 340 (1997).

³¹ *Id.*

³² *Id.* at 340–41 (internal quotations omitted).

³³ *Id.* at 341.

³⁴ *Id.* at 342–44.

³⁵ *Id.* at 348.

³⁶ *Medina v. Planned Parenthood S. Atl.*, 606 U.S. 357, 375 (2025); *see infra* Part II.

enforceable.³⁷ To prove this congressional intent, a plaintiff must show that the statutory provision contains “rights-creating language” and that the right is stated in “clear and unambiguous terms.”³⁸ The relevant statutory provision in *Gonzaga*, the Family Educational Rights and Privacy Act (“FERPA”), failed to meet this bar.³⁹ The more stringent *Gonzaga* standard appeared to be at odds with *Blessing*, *Wilder*, and *Wright*, but the Court declined to overrule those precedents. Instead, it acknowledged that these decisions had led to some uncertainty and attempted to clarify its approach by noting that *Blessing-Wilder-Wright* required the conferral of “rights”—not mere “benefits” or “interests”—to support a Section 1983 action.⁴⁰ Consequently, there was significant confusion and a resulting circuit split regarding both the viability of *Thiboutot* and the applicability of the *Blessing-Wilder-Wright* cases to implied right of action claims.⁴¹

Despite the split in the lower courts, the Supreme Court continued to favor the *Gonzaga* test over *Blessing-Wilder-Wright* in implied right of action cases.⁴² Notably, in *Health & Hospital Corp. of Marion County v. Talevski*, it recently affirmed *Gonzaga*’s applicability in interpreting the unnecessary-restraint and pre-discharge-notice provisions of the Federal Nursing Home Reform Act (“FNHRA”), a spending-power statute.⁴³ The provisions at issue in *Talevski*, which fall under 42 U.S.C. § 1396r(c), read in relevant part:

(1)(A)(ii) Free from restraints. The 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. Restraints may only be imposed [in specified circumstances].

(2)(A) Transfer and discharge rights. In general, [a] nursing facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility unless [certain enumerated conditions are met].⁴⁴

³⁷ 536 U.S. 273, 283–84 (2002).

³⁸ *Id.* at 286, 290.

³⁹ *Id.*

⁴⁰ *Id.* at 283, 288, 290.

⁴¹ See Amanda B. Hurst, *Gonzaga’s Ghosts*, 86 TENN. L. REV. 289, 327–330 (2019) (discussing the circuits’ varied standards post-*Gonzaga*); see also Sasha Samberg-Champion, Note, *How to Read Gonzaga: Laying the Seeds of a Coherent Section 1983 Jurisprudence*, 103 COLUM. L. REV. 1838 (2003) (discussing the varying interpretations of *Gonzaga*). Some academics viewed *Gonzaga* as a definitive shift in the standard which effectively rendered *Blessing-Wilder-Wright* dead letters. See, e.g., Hurst, *supra*, at 294; Brian J. Dunne, *Enforcement of the Medicaid Act Under 42 USC § 1983 After Gonzaga v. Doe: The “Dispassionate Lens” Examined*, 74 U. CHI. L. REV. 991, 1001 (2007); Mark C. Bradford, *Suing Under § 1983: The Future After Gonzaga University v. Doe*, 39 HOUS. L. REV. 1417, 1445 (2003). However, many courts did not adopt this position—which would have viewed *Talevski* as a potential aberration—and instead continued to apply the *Blessing* line of reasoning. Hurst, *supra*, at 327–30.

⁴² See, e.g., *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 328 (2015) (applying *Gonzaga* to find no enforceable right in Section 1396a(a)(30)(A) of the Medicaid Act due to its “judicially unadministrable nature” and lack of specificity).

⁴³ 599 U.S. 166, 172 (2023).

⁴⁴ 42 U.S.C. §§ 1396r(c)(1)(A)(ii), (2)(A).

The *Talevski* Court applied *Gonzaga* to conclude that the provisions conferred a private right of action, in reliance on the provisions' focus on "residents' rights" and welfare.⁴⁵ It further found that FNHRA's remedial scheme, which did not provide for a judicial right of action, was intended to complement, not supplant, the Section 1983 remedy, and was insufficient to rebut the presumption of enforceability.⁴⁶ While Justice Jackson noted that the "typical remedy" for noncompliance with the terms of federal statutory funding requirements was a federal action to terminate federal funds rather than a private cause of action, she agreed that these provisions presented an "atypical case."⁴⁷ This opinion, a seemingly innocuous application of both *Gonzaga* and *Thiboutot*, was cited more for its discussion of the rebuttable presumption of enforceability than for any substantive changes it made to the meaning of "rights-creating language."⁴⁸

C. The Medina Decision

Medina expressly repudiated *Blessing*, *Wilder*, and *Wright* and cemented the *Gonzaga-Talevski* standard as the definitive test for analyzing whether a spending-power statute creates a privately enforceable right.⁴⁹ In declining to find a private right of action, the Court noted that the Medicaid Act's Any Qualified Provider provision, 42 U.S.C. § 1396a(a)(23)(A), benefitted patients and providers but failed to meet the *Gonzaga* "unambiguous rights-creating language" standard.⁵⁰ Looking more broadly, the Court also relied on the labeling of Section 1396a(a) as the "Contents" subsection and the requirement that a state need only substantially comply with the subsection's requirements to receive funding to reinforce its conclusion that Section 1396a(a)(23)(A) was not intended to confer a right.⁵¹ Depending heavily on the "atypical case" language from *Talevski*, Justice Gorsuch stated that allowing private enforcement under the Any Qualified Provider provision would open the door to similar enforcement of many other Medicaid plan requirements, making private suits the rule instead of the exception.⁵² Thus, on the view that Section 1983 suits are not the "typical remedy" for violations of federal spending-power statutes—a point that Justice Gorsuch underscored no less than five times—the Court could not allow this provision to create a private right and deemed it unenforceable.⁵³

⁴⁵ *Id.*; *Talevski*, 599 U.S. at 181–82.

⁴⁶ *Talevski*, 599 U.S. at 190 (citation modified).

⁴⁷ *Id.* at 183.

⁴⁸ *See, e.g.*, Fed. L. Enf't Officers Ass'n v. Att'y Gen. N.J., 93 F.4th 122, 128 (3d Cir. 2024) (citing *Talevski* only for the rebuttable presumption proposition); *Vote.org v. Callanen*, 89 F.4th 459, 474–76 (5th Cir. 2023) (applying both aspects of *Talevski*, but only as the "rights-creating language" had also been applied in previous cases).

⁴⁹ *Medina v. Planned Parenthood S. Atl.*, 606 U.S. 357, 376 (2025).

⁵⁰ *Id.* at 377–78 (citation modified).

⁵¹ *Id.* at 379.

⁵² *Id.* at 380.

⁵³ *Id.* at 368, 375, 380, 383, 385 (citing the "atypical" language from *Talevski*).

However, *Medina* went further than *Gonzaga* and *Talevski* in requiring more specific language to establish an implied right of action. While the Court has previously recognized that the word “right” is not required for a statute to be privately enforceable,⁵⁴ in *Medina* it instead analogized to FNHRA, stressing Congress’ use of the term in multiple provisions.⁵⁵ Rejecting the idea that “individual-centric” or “compulsory” language was sufficient to confer enforceable rights, Justice Gorsuch referred to the FNHRA provisions at issue in *Talevski* as “the only reliable yardstick” against which to determine whether a spending-power statute is privately enforceable.⁵⁶ As Justice Jackson noted in dissent, this focus lent FNHRA “talismanic status” and transformed the test from an “unambiguous intent to confer individual rights” to one that requires “Congress [to] manifest an unambiguous intent to imitate FNHRA.”⁵⁷ The *Talevski* majority did not purport to establish a new test, yet the *Medina* Court treated the FNHRA provisions from *Talevski* as the new standard for private rights of action arising under spending-power statutes.

In adopting this new test, the *Medina* Court appears to have stretched the *Pennhurst* and *Gonzaga* reasoning beyond its logical limits, effectively overturning *Thiboutot*. Writing for the majority, Justice Gorsuch cited *Thiboutot* only once for the well-settled proposition that private litigants may use Section 1983 as a vehicle for vindicating violations of federal statutory rights.⁵⁸ However, he quickly followed with the assertion that such actions are available in only “atypical case[s].”⁵⁹ This focus on “atypical[ity]” and “rar[ity]” is not only a far cry from *Thiboutot*’s central assertion that Section 1983 sweeps broadly, but it also conflicts with *Gonzaga*. The *Medina* Court’s contention that only a “rare statute” will satisfy the *Gonzaga* test applies to *all* statutes,⁶⁰ but the “no person shall be subjected to discrimination” language that *Gonzaga* upheld as “rights-creating” is neither rare nor atypical.⁶¹ Provisions requiring that “no person shall be prosecuted” or “punished” appear in a vast array of federal statutes governing everything from trafficking to criminal contempt and limitations on the export of steel, and many more provide that “no person shall be subject to” regulation, jurisdiction, or penalties.⁶² Thus, this language must either not be sufficiently “rights-creating” to

⁵⁴ See, e.g., *Gonzaga Univ. v. Doe*, 536 U.S. 273, 284 (2002) (recognizing that the “no person shall . . . be subjected to discrimination” language of Title VI of the Civil Rights Act of 1964 creates an individual right).

⁵⁵ *Medina*, 606 U.S. at 377–78.

⁵⁶ *Id.* at 377.

⁵⁷ *Id.* at 411–12 (Jackson, J., dissenting).

⁵⁸ *Id.* at 367–68.

⁵⁹ *Id.* at 368 (alteration in original).

⁶⁰ *Id.*

⁶¹ *Gonzaga*, 536 U.S. at 287 (first citing *Alexander v. Sandoval*, 532 U.S. 275, 288–89 (2001); and then citing *Cannon v. Univ. of Chi.*, 441 U.S. 677, 690 n.13 (1979)).

⁶² 18 U.S.C. § 3298 (stating that “[n]o person shall be prosecuted, tried, or punished for any non-capital [trafficking-related] offense or conspiracy to commit a non-capital [trafficking-related] offense” unless the indictment is brought within a certain time period); 29 U.S.C. § 528 (stating

maintain a Section 1983 action—and the Court is being dishonest about what is required to bring such a claim—or the Section 1983 remedy is not truly restricted to “rare statutes.”

Perhaps the Court means that language which is “rights-creating” in civil rights statutes is not similarly “rights-creating” for Spending Clause legislation, or that something more than mere “rights-creating language” is required, but Justice Gorsuch does not say.⁶³ He goes to lengths to explain *why* such language is less likely to be found in “spending-power statutes,” but not why the “rights-creating language” test itself is insufficient to address his concerns.⁶⁴ In his view, Spending Clause legislation is “in the nature of a contract,” and thus, in accepting federal funds, states are generally only on notice that their obligations are to the federal government.⁶⁵ However, even accepting that premise, all that does is explain why the Court is cautious about overreading language to ensure that states are on notice about their obligations to private parties, not why an already “stringent” and “demanding” test is insufficient to provide such notice.⁶⁶ Alternating between rationales, *Medina* ultimately fails to identify a principled distinction between Spending Clause and non-Spending Clause legislation. Despite claiming that the “rights-creating language” test is generally applicable,⁶⁷ Part II-C of the majority opinion only discusses the need for utmost clarity of language as applied to “spending-power legislation.”⁶⁸ In doing so, the Court explicitly disavows *Blessing-Wilder-Wright*, but only for determining whether *spending-power* statutes confer enforceable rights.⁶⁹ Ultimately, *Medina* is unclear on whether the *Blessing* line of cases are still viable in the non-spending-power context, whether “rights-creating language” has different meanings depending on the power under which Congress enacted the statute, and whether an unspecified something *more* is required for spending-power legislation.

Notwithstanding the Court’s muddled methodological approach, the practical impact is clear. Post-*Medina*, the Court has functionally created a two-tiered system in which *Thiboutot* simply does not apply to “spending-power legislation.” Section 1983 may be used to vindicate violations of *some* statutes—

that, for criminal contempt statute, “[n]o person shall be punished” unless certain conditions are met); 19 U.S.C. § 2485 (stating that “[n]o person shall be liable for damages, penalties, or other sanctions” regarding certain voluntary limitations on the export of steel); *see, e.g.*, 52 U.S.C. § 30107(c) (“No person shall be subject to civil liability to any person...for disclosing information at the request of the Commission.”); *see also* 15 U.S.C. § 3432 (“No person shall be subject to regulation as a common carrier under any provisions of Federal or State law by reason of any transportation...”).

⁶³ A major component of the original pushback to *Thiboutot* was the idea that Section 1983 should only be available to vindicate violations of civil rights statutes. *See, e.g.*, *Maine v. Thiboutot*, 448 U.S. 1, 15–16 (Powell, J., dissenting).

⁶⁴ *Medina*, 606 U.S. at 369–72.

⁶⁵ *Id.* at 373.

⁶⁶ *Id.* at 368.

⁶⁷ *Id.*

⁶⁸ *Id.* at 373–76.

⁶⁹ *Id.* at 376.

particularly civil rights legislation—but statutes which the Court deems to be enacted under the Spending Clause are relegated to second-class status. If the language looks “nothing like” the FNHRA provisions at issue in *Talevski*, it is likely unenforceable.⁷⁰ Seemingly, this requires the use of the word “right” or another synonym in the statutory text, a requirement which is at odds with both *Thiboutot* and the Court’s general approach to statutory language.⁷¹ The Court has repeatedly rejected “magic words” tests—most recently just two weeks before it decided *Medina*—yet it has ostensibly applied one in the Section 1983 “and laws” context.⁷² The import of this is clear on the face of Justice Jackson’s dissent, but what is missing entirely is the violence that *Medina* does to *Thiboutot*’s legacy. Despite purporting to merely apply *Gonzaga* and *Talevski*, *Medina* forecloses nearly all future private rights of action under spending-power legislation, seemingly creating a separate standard for finding a private right of action and posing a formidable barrier to individual enforcement of these statutes.

In creating this separate standard, *Medina* has effectively overruled *Thiboutot*. While not uncontroversial, *Thiboutot*’s holding has been clear from the outset: Section 1983 actions are available to vindicate violations of rights conferred by *all* federal statutes.⁷³ Subsequent cases confirmed *Thiboutot*’s limits—distinguishing between “rights” and “benefits” and requiring a sufficient degree of specificity to deem a right enforceable⁷⁴—but the baseline presumption was that its holding applied, regardless of the power under which Congress enacted the statute. In *Medina*, the Court inverted this approach for spending-power statutes, deeming them presumptively unenforceable absent “atypical” circumstances.⁷⁵ This distinction, which lacks a principled basis on the Court’s “and laws” jurisprudence, is the functional equivalent to overruling *Thiboutot*. Despite Justice Gorsuch’s nominal affirmation of *Thiboutot*’s holding, the import of the *Medina* test is that rights conferred under Spending Clause legislation are subject to a different, more stringent standard of review under which they will almost never be enforceable.

II. *MEDINA*’S EFFECT ON KEY PROVISIONS OF THE MEDICAID ACT

Medina unquestionably represents a stark shift in the Supreme Court’s Section 1983 jurisprudence, one which is best understood in terms of its impact on previously enforceable provisions of spending-power statutes such as the Medicaid Act. Disability advocates have historically used Section 1983 to enforce Medicaid recipients’ and beneficiaries’ right to fair hearing, medical assistance, Early and

⁷⁰ *Id.* at 377.

⁷¹ *Id.* at 378.

⁷² *Soto v. United States*, 605 U.S. 360, 371 (2025); *see also* *FAA v. Cooper*, 566 U.S. 284, 291 (2012) (“We have never required that Congress use magic words.”).

⁷³ *Maine v. Thiboutot*, 448 U.S. 1, 4–5 (1980).

⁷⁴ *Gonzaga Univ. v. Doe*, 536 U.S. 273, 283 (2002); *Blessing v. Freestone*, 520 U.S. 329, 340–41 (1997).

⁷⁵ *Medina*, 606 U.S. at 380.

Periodic Screening, Diagnostic, and Treatment (“EPSDT”) services, and more.⁷⁶ In particular, two provisions, the Reasonable Promptness and Freedom of Choice provisions, ensure that individuals both receive medical services to which they are entitled in a timely fashion and cannot be unnecessarily institutionalized or hospitalized to receive such services.⁷⁷ These provisions, among many others used to protect patients across the country, are likely unenforceable by private parties after *Medina*. As a result, some of the country’s poorest and most medically vulnerable will be left without an avenue to vindicate their rights.⁷⁸ This is true despite prior circuit cases deeming both provisions privately enforceable, as *Medina*’s stringent standard and rejection of the *Blessing-Wilder-Wright* cases make those decisions ripe for challenge. These provisions are not unique; rather, they are representative of the types of federal guarantees that are now unenforceable and exemplify the wide-reaching effects of the *Medina* decision.

A. Private Rights of Action Under the Reasonable Promptness Provision

Under *Medina*, disability rights advocates will face significant obstacles in enforcing the Reasonable Promptness provision, 42 U.S.C. § 1396a(a)(8), which requires that state plans give all interested individuals the opportunity to apply for medical assistance and that they provide such assistance “with reasonable promptness to all eligible individuals.”⁷⁹ This provision helps ensure that states do not effectively deny Medicaid recipients necessary care,⁸⁰ which can lead to hospitalization, medical complications, and death.⁸¹ Similarly to the Any Qualified Provider provision, every circuit that had considered this provision pre-*Medina* found it to be at least partially enforceable under Section 1983.⁸² Several district

⁷⁶ See *Shakhnes v. Berlin*, 689 F.3d 244 (2d Cir. 2012) (upholding the enforceability of 42 U.S.C. § 1396a(a)(3)); *Watson v. Weeks*, 436 F.3d 1152 (9th Cir. 2006) (same for 42 U.S.C. § 1396a(a)(10)(A)); *John B. v. Goetz*, 626 F.3d 356 (6th Cir. 2010) (same for 42 U.S.C. § 1396a(a)(43)).

⁷⁷ 42 U.S.C. §§ 1396a(a)(8), n(c)(2)(C).

⁷⁸ See Paul L. Garcia et al., *Supreme Court Imposes Formidable Barrier to Enforcing Medicaid Rights, Demanding New Strategic Approaches: Medina v. Planned Parenthood South Atlantic*, HOOPER LUNDY BOOKMAN (June 27, 2025), <https://hooperlundy.com/supreme-court-imposes-formidable-barrier-to-enforcing-medicare-rights-demanding-new-strategic-approaches-medina-v-planned-parenthood-south-atlantic/> [<https://perma.cc/T82Q-R894>].

⁷⁹ 42 U.S.C. § 1396a(a)(8).

⁸⁰ See *Westside Mothers v. Olszewski*, 454 F.3d 532 (6th Cir. 2006) (addressing a Section 1396a(a)(8) claim partially predicated on children not receiving care due to insufficient providers in the area).

⁸¹ See *Rosie D. v. Baker*, 362 F. Supp. 3d 46, 61 (D. Mass. 2019).

⁸² *Westside Mothers*, 454 F.3d at 541; *Bryson v. Shumway*, 308 F.3d 79 (1st Cir. 2002); *Sabree v. Richman*, 367 F.3d 180 (3d Cir. 2004); *Doe v. Kidd*, 501 F.3d 348 (4th Cir. 2007); *Romano v. Greenstein*, 721 F.3d 373 (5th Cir. 2013); *Saint Anthony Hosp. v. Eagleson*, 40 F.4th 492 (7th Cir. 2022) (vacated on other grounds). In *Eagleson*, the Seventh Circuit agreed with other courts that “individuals” were the intended beneficiaries of Section 1396a(a)(8) and thus entitled to sue under the provision; however, it declined to extend that right to medical providers. 40 F.4th at 516. The entire case was vacated and

courts had interpreted the provision similarly in light of *Talevski*;⁸³ however, no case had yet made it to a circuit court before *Medina*.

Notably, the Third Circuit interpreted the Reasonable Promptness provision twice, finding it enforceable both times. In 2004, the court decided *Sabree v. Richman*, applying both *Gonzaga* and *Blessing-Wilder-Wright* to hold that several provisions of Section 1396a, including 1396a(a)(8), conferred a private right of action.⁸⁴ In part, the court analogized to the “no person shall” language in Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972, which the Supreme Court reaffirmed as “rights-creating language” in *Gonzaga*.⁸⁵ While the *Sabree* court acknowledged that the structural language—such as the titling of the subsection noted in *Medina*—gave it “some pause,” it eventually concluded that these structural elements were insufficient to “neutralize the rights-creating language” of the provisions.⁸⁶ *Sabree*’s reasoning was influential, and courts across the country have relied on it in assessing the enforceability of numerous provisions of the Medicaid Act.⁸⁷ Moreover, it withstood numerous changes in the Supreme Court’s Section 1983 jurisprudence, finding support and reaffirmation even as other portions of Section 1396a(a) were deemed unenforceable.⁸⁸ Courts within the Third Circuit continued to reaffirm the Reasonable Promptness provision’s enforceability in part because it spoke to the benefits of covered individuals “in terms that could not be clearer.”⁸⁹

Despite its longevity and influence, *Sabree* appears poised for reconsideration after *Medina*.⁹⁰ This is in no small part because the *Sabree* court noted that its confidence in its ruling “rest[ed] securely on the fact that the Court has refrained from overruling *Wright* and *Wilder*.”⁹¹ *Medina* did not go as far as

remanded by the Supreme Court for reinterpretation in light of *Talevski*, and, on remand, the litigants dropped their claim under Section 1396a(a)(8). *Saint Anthony Hosp. v. Whitehorn*, 132 F.4th 962, 967 n.1, 967–68 (7th Cir. 2025). Accordingly, the Seventh Circuit did not issue a second opinion as to privately enforceable rights under Section 1396a(a)(8).

⁸³ See *Isaac A. v. Carlson*, 775 F. Supp. 3d 1296 (N.D. Ga. 2025) (finding a privately enforceable right); *Steward v. Young*, No. CV SA-10-CA-1025-OLG, 2025 WL 1836138 (W.D. Tex. June 17, 2025) (same).

⁸⁴ *Sabree*, 367 F.3d at 189–90.

⁸⁵ *Id.* at 190 (citing *Gonzaga Univ. v. Doe*, 536 U.S. 273, 287 (2002)).

⁸⁶ *Id.* at 192.

⁸⁷ See, e.g., *Watson v. Weeks*, 436 F.3d 1152, 1160 (9th Cir. 2006) (citing *Sabree* for support in finding a privately enforceable right in 42 U.S.C. § 1396a(a)(10)); *Romano*, 721 F.3d at 379 (citing *Sabree* for the proposition that 42 U.S.C. § 1396a(a)(8) meets the *Gonzaga* standard).

⁸⁸ *S.R. v. Pa. Dep’t of Human Servs.*, 309 F. Supp. 3d 250, 258 (M.D. Pa. 2018) (upholding *Sabree* in light of *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320 (2015), which found that 42 U.S.C. § 1396a(a)(30)(A) was unenforceable); *Fed. L. Enf’t Officers Ass’n*, 93 F.4th at 129 (pointing to *Sabree* and Section 1396a(a)(8) as an example of a provision that conferred enforceable rights on individuals).

⁸⁹ *S.R. v. Pa. Dep’t of Human Servs.*, 309 F. Supp. 3d at 259.

⁹⁰ See *infra* Part III. At least one circuit has declined to apply *Sabree* post-*Medina*. See *Lancaster v. Cartmell*, 162 F.4th 1063 (10th Cir. 2025).

⁹¹ *Sabree*, 367 F.3d at 192.

overturning these precedents, but it explicitly instructed lower courts to avoid applying them in implied right of action cases arising under spending-power statutes.⁹² Moreover, *Medina*'s requirement of "unambiguously conferred rights" is at odds with the *Sabree* court's more structural approach. Where the Third Circuit noted that the provision's location in the "Contents" subsection gave it "some pause,"⁹³ the Supreme Court instead pointed to the same statutory structure to "confirm [its] conclusion" that a similar provision was unenforceable.⁹⁴ The Court's focus on unambiguity instead suggests that such "pause" should be resolved in favor of *unenforceability* absent "explicit and unmistakable rights-creating language,"⁹⁵ a bar which the Reasonable Promptness provision does not meet. The provision's linguistic similarities to the Any Qualified Provider Provision—"any individual . . . may obtain" and "all individuals . . . shall have the opportunity to do so"—all but require that conclusion.⁹⁶ If the former is not "explicit and unmistakable," the latter is surely not either. And while the Reasonable Promptness provision has the benefit of using mandatory language, the Court has made clear that such phrasing is insufficient to confer a private right.⁹⁷

Interpretations from other circuits fare no better. Except for the First Circuit, every circuit that has considered the question has done so post-*Gonzaga*; however, they all rely on the *Blessing* factors in concluding that the Reasonable Promptness provision confers a privately enforceable right.⁹⁸ The Fifth Circuit noted that the *Gonzaga* Court "rel[ie]d in large part on *Blessing*" and concluded that the *Gonzaga* test was satisfied because Section 1396a(a)(8) is "unmistakably focused on the individual."⁹⁹ However, mere "individual-centric" language was held insufficient in *Medina*.¹⁰⁰ The Sixth Circuit, which reconsidered its Reasonable Promptness precedent in light of *Gonzaga*, held that *Gonzaga* merely clarified the first prong of the *Blessing* test and, applying *Blessing*, it found the provision enforceable.¹⁰¹ Notably, numerous aspects of the Sixth Circuit's reasoning, such as reliance on individual entitlements and the mandatory language of the provision, were explicitly repudiated in *Medina*.¹⁰² Given the conflicts between the Court's reasoning and lower court precedent, as well as *Medina*'s rejection of *Blessing*, it is unlikely that any lower court interpretations will hold water after *Medina*. More information is needed to fully understand how these precedents will fare in the age

⁹² *Medina v. Planned Parenthood* S. Atl., 606 U.S. 357, 376 (2025).

⁹³ *Sabree*, 367 F.3d at 192.

⁹⁴ *Medina*, 606 U.S. at 378.

⁹⁵ *Id.* at 379.

⁹⁶ 42 U.S.C. §§ 1396a(a)(8), (a)(23)(A).

⁹⁷ *Medina*, 606 U.S. at 382–83 (criticizing Justice Jackson's assertion that provisions that use "compulsory" and "individual-centric" terminology confer enforceable rights).

⁹⁸ *See, e.g., Doe v. Kidd*, 501 F.3d 348, 356 (4th Cir. 2007).

⁹⁹ *Romano v. Greenstein*, 721 F.3d 373, 378–79 (5th Cir. 2013).

¹⁰⁰ 606 U.S. at 383.

¹⁰¹ *Waskul v. Washtenaw Cnty. Cmty. Mental Health*, 979 F.3d 426, 447 (6th Cir. 2020).

¹⁰² *Id.* at 454–55; *Medina*, 606 U.S. at 377–78, 382–83.

of *Medina*,¹⁰³ but a test that upends the lower courts’ previously unanimous approach to the Reasonable Promptness provision, even post-*Gonzaga*, exemplifies how far the Court has strayed from *Thiboutot* and the precedents that *Medina* purported to reaffirm.

B. *Private Rights of Action Under the Freedom of Choice Provision*

Disability advocates will also struggle to bring claims under the Freedom of Choice provision,¹⁰⁴ 42 U.S.C. § 1396n(c)(2)(C), which requires that state plans assure the Secretary of Health and Human Services that individuals who are likely to require hospital, nursing facility, or intermediate-facility level care for the mentally disabled “are informed of feasible alternatives” and given a choice as to the provision of such services.¹⁰⁵ Unnecessary institutionalization is a rapidly growing national problem,¹⁰⁶ and this provision plays a crucial role in ensuring that states cannot unnecessarily institutionalize Medicaid recipients. Prior to *Medina*, at least two circuits determined that the provision creates a private right of action.¹⁰⁷ However, courts were far from unanimous, and some circuits declined to take a position on the enforceability of the provision, while others found it only partially enforceable.¹⁰⁸

In *Ball v. Rodgers*, the Ninth Circuit applied *Gonzaga* and *Blessing*, looking to both the text of the Freedom of Choice provision itself and the text of analogous, then-enforceable provisions to determine that it conferred a private right of action.¹⁰⁹ In part, the court relied on the use of the word “individual” twice in

¹⁰³ See *infra* Part III.

¹⁰⁴ This provision is also sometimes called the “Home & Community Waiver Informing provision” or the “free choice provision.”

¹⁰⁵ 42 U.S.C. § 1396n(c)(2)(C).

¹⁰⁶ Justin Sweitzer, *Pennsylvania Caregivers Sound the Alarm on a Worsening Workforce Crisis*, CITY & STATE PA. (May 27, 2025), <https://www.cityandstatepa.com/policy/2025/05/pennsylvania-caregivers-sound-alarm-worseningworkforce-crisis/405536/> [<https://perma.cc/7YDT-XZYD>]; U.S. DEP’T OF JUST., C.R. DIV., *Investigation of Oklahoma, Oklahoma City, and Oklahoma City Police Department* (Jan. 3, 2025), <https://www.justice.gov/crt/media/1382351/dl> [<https://perma.cc/U3PU-KCEM>]; Alberto Vásquez Encalada, *Involuntary Mental Health Treatment: A Human Rights Crisis in Authoritarian Times*, AM. BAR ASS’N MENTAL HEALTH MAG. (July 18, 2025), <https://www.americanbar.org/groups/crsj/resources/human-rights/2025-july/human-rights-crisis-authoritarian-times/> [<https://perma.cc/NL8J-S5PD>].

¹⁰⁷ *Waskul v. Washtenaw Cnty. Cmty. Mental Health*, 979 F.3d 426, 455 (6th Cir. 2020) (affirming *Wood v. Tompkins*, 33 F.3d 600, 612 (6th Cir. 1994)); *Ball v. Rodgers*, 492 F.3d 1094, 1117 (9th Cir. 2007).

¹⁰⁸ See *Bertrand ex rel. Bertrand v. Maram*, 495 F.3d 452, 459 (7th Cir. 2007) (finding that § 1396n(c)(2)(C) does not “make any particular option ‘available’ to anyone”); *Ill. League of Advocs. for the Developmentally Disabled v. Ill. Dep’t of Hum. Servs.*, 803 F.3d 872, 877 (7th Cir. 2015) (assuming that the provision is privately enforceable in the absence of arguments to the contrary); *Sherkat v. New England Vill., Inc.*, 691 F. App’x 644, 645 n.2 (1st Cir. 2016) (declining to take a position on the scope of rights conferred by the provision). In circuits that had not considered the enforceability of the provision, at least some district courts found it enforceable. See, e.g., *Zatuchni v. Richman*, No. 07-cv-4600, 2008 U.S. Dist. LEXIS 61574, at *25–26 (E.D. Pa. Aug. 12, 2008).

¹⁰⁹ *Rodgers*, 492 F.3d at 1107–09.

Section 1396n(c)(2)(C) to conclude that it was “phrased in terms of the persons benefitted.”¹¹⁰ The Ninth Circuit was further convinced by similarities between the phrasing of the Freedom of Choice provision and other Medicaid Act provisions, including the Any Qualified Provider provision, noting that it was similarly phrased in terms of “individuals” and had been recently held to confer a privately enforceable right.¹¹¹ However, this reasoning conflicts with *Medina*, which made clear that Section 1396a(a)(23) was *not* privately enforceable and that the phrasing to which the Ninth Circuit analogized was insufficient to confer such a right.¹¹² The validity of the Sixth Circuit’s precedent is similarly precarious, as it relied on *Blessing* and *Rodgers* to summarily conclude that the provision confers an enforceable right.¹¹³

These cases support the proposition that there was, at minimum, a colorable claim that the Freedom of Choice provision conferred a private right post-*Gonzaga*. However, if their reasoning cannot withstand *Medina*, there is no opinion by any circuit court supporting the private enforceability of Section 1396n(c)(2)(C). *Medina* has transformed the provision from one that was arguably enforceable to one that is unambiguously not, marking a drastic shift not contemplated by *Gonzaga* or *Talevski*. Very few courts considered *any* provision of the Medicaid Act in the two years between *Talevski* and *Medina*, but those that have did not read *Talevski* to significantly alter the Court’s implied right of action jurisprudence.¹¹⁴

Where *Thiboutot* would have previously provided the baseline for establishing a privately enforceable right, post-*Medina* courts must now compare the phrasing of the provision as “inform[ing]” individuals in need of medical care and giving them the “choice” as to provision of services to the “right to be free from” language in *Talevski*. These linguistic differences alone may be sufficient to deny a private right of action under *Medina*, as well as the fact that Section 1396(c) exists in part to define “habilitation services,” and the entirety of 1396(c)(2) is aimed at the state, not individuals receiving medical services.¹¹⁵ While the provision was likely meant to ensure that individuals receiving the care described in the subsection have the right to be informed about their options and choose between them, the wording is not sufficiently explicit to meet the “unambiguously

¹¹⁰ *Id.* at 1107 (quoting *Gonzaga Univ. v. Doe*, 536 U.S. 273, 284 (2002)).

¹¹¹ 492 F.3d at 1108–09 (citing *Harris v. Olszewski*, 442 F.3d 456 (6th Cir. 2006)).

¹¹² *Medina v. Planned Parenthood S. Atl.*, 606 U.S. 357, 378 (2025).

¹¹³ *Waskul v. Washtenaw Cnty. Cmty. Mental Health*, 979 F.3d 426, 454 (6th Cir. 2020).

¹¹⁴ In June 2025, a district court in Texas reaffirmed its prior conclusion that the Freedom of Choice provision was enforceable without further analysis, citing to *Talevski* for support. *Steward v. Young*, 787 F. Supp. 3d 476, 744–45 (W.D. Tex. 2025). In July 2023, a district court in New Jersey held that Section 1396n(c)(2)(A) conferred a private right, largely relying on *Blessing* and *Waskul*. *Jackson v. Seifried*, No. CV2017410GCJBD, 2023 WL 4627815, at *4 (D.N.J. July 19, 2023). The court did not engage in any analysis with respect to *Talevski*, signaling that it did not believe the decision would change or inform the outcome. *Id.*

¹¹⁵ 42 U.S.C. § 1396(c).

conferred right” bar as applied in *Medina*.¹¹⁶ *Medina* purported to merely apply prior precedents, but its talismanic approach to the statutory language in *Talevski* has transformed a colorably enforceable provision into one that is clearly unenforceable.

III. POST-MEDINA APPROACHES AND THE FUTURE OF IMPLIED RIGHTS OF ACTION

In the eleven months since *Medina*, few courts have had occasion to interpret its ruling. Thus far, courts are largely applying *Medina* for the proposition that statutes be (1) phrased in terms of the individuals benefitted, and (2) use unambiguously rights-creating language to confer private rights that are enforceable under Section 1983.¹¹⁷ These requirements are not new,¹¹⁸ and taken independently, they may indicate that *Medina* has not changed the landscape as much as some have feared. However, there is also a clear split emerging, as some courts have demonstrated a willingness to take *Medina* to its logical extremes,¹¹⁹ while others are reluctantly avoiding the uncomfortable questions that *Medina* poses for as long as possible.¹²⁰ While the inferences that can be drawn from this narrow set of decisions are limited, they provide crucial indications about how aggressively the lower courts will construe the new standard and the instability that *Medina* has wrought on the Section 1983 “and laws” doctrine.

Most importantly, the Tenth Circuit broke with all its sister circuits in *Lancaster v. Cartmell*, holding that the Reasonable Promptness provision was unenforceable in light of *Medina*.¹²¹ In doing so, the *Lancaster* court declined to follow *Sabree*, stating that its analysis “cannot withstand scrutiny” post-*Medina*, and that similarities between the Reasonable Promptness and Any Qualified Provider provisions meant that “*Medina* squarely control[led].”¹²²

At least one district court in the Ninth Circuit has since followed suit in *Ramirez v. Oregon Health & Science University*, finding that *Lancaster* “implicitly overruled” *Sabree*.¹²³ *Ramirez* declined to follow the Ninth Circuit’s own Medicaid Act precedent, focusing instead on the “only reliable yardstick” language for “spending-power legislation.”¹²⁴ In less than eight months, *Medina* disrupted more than twenty years of lower court unanimity on the Reasonable Promptness provision, an ominous harbinger of what is to come.

¹¹⁶ 606 U.S. at 376.

¹¹⁷ See, e.g., *RXEED, LLC v. Caremark LLC*, No. 25-1638, 2026 WL 281168, at *1 (3d Cir. Feb. 3, 2026).

¹¹⁸ See, e.g., *Gonzaga Univ. v. Doe*, 536 U.S. 273, 283, 288–89 (2002).

¹¹⁹ See, e.g., *Nansemond Indian Nation v. Virginia*, 795 F. Supp. 3d 733 (E.D. Va. 2025).

¹²⁰ See, e.g., *Ind. Prot. & Advocacy Servs. Comm’n v. Ind. Fam. & SSA*, 149 F.4th 917 (7th Cir. 2025).

¹²¹ 162 F.4th 1063, 1065 (10th Cir. 2025); see *supra* Part II-A.

¹²² 162 F.4th at 1068–69.

¹²³ No. 3:24-CV-01470-SB, 2026 WL 353204 at *18 (D. Or. Feb. 9, 2026).

¹²⁴ *Id.* at *19 (discussing *Ball v. Rodgers*, 492 F.3d 1094 (9th Cir. 2007)).

The few courts that have interpreted other spending-power statutes are split in their approaches. The Seventh Circuit has decided three such cases and diverged in its willingness to utilize the *Medina* test to its fullest extent. Most recently, *Wisconsin Voter Alliance v. Millis* cited *Medina* for the proposition that it had “restricted the implied rights doctrine” in noting that the Help America Vote Act (“HAVA”) was not enforceable through Section 1983.¹²⁵ While its decision was partially predicated on the stricter *Medina* test, the court also noted that HAVA was presumptively unenforceable even under the Supreme Court’s less restrictive, pre-*Medina* doctrine.¹²⁶ While *Wisconsin Voter Alliance* could be explained by either precedent or a new approach, *Northwest Illinois Area Agency on Aging v. Basta* instead applied *Medina* aggressively in finding that the Older Americans Act (“OAA”) creates no enforceable right.¹²⁷ In so holding, the Seventh Circuit contrasted the relevant provisions of the OAA with the provisions at issue in *Talevski*, specifically emphasizing the lack of the word “right” in the OAA.¹²⁸ It also adopted *Medina*’s talismanic approach in holding that *Talevski* “suppl[ies] the only reliable yardstick against which to measure” whether a spending-power statute confers a private right.¹²⁹ Conversely, in another case less than a month later, the Seventh Circuit dodged the *Medina* question entirely.¹³⁰ *Indiana Protection and Advocacy Services Commission (“IPAS”)* involved several provisions of the Medicaid Act, including the Reasonable Promptness provision, which the lower court had held was privately enforceable under existing Seventh Circuit precedent.¹³¹ In its holding, the Seventh Circuit acknowledged that *Medina* “may well have undermined the availability of Section 1983 relief to enforce these provisions of the Medicaid Act” but declined to reconsider its prior precedents because the Americans with Disabilities Act (“ADA”) provided sufficient justification for upholding the lower court’s action.¹³² All three provisions at issue fell under the same subsection as the Any Qualified Provider provision, and the Seventh Circuit easily could have overturned its prior precedent if it so desired. *IPAS* represents a reluctance to apply *Medina* wherever possible; however, this approach can only preserve pre-*Medina* precedent for so long.

¹²⁵ No. 25-1279, 2026 WL 370269 at *5 (7th Cir. Feb. 10, 2026).

¹²⁶ *Id.* (noting that HAVA did not use the word “rights” or “speak[] about a discrete class of protected individuals,” but also citing *Brunner v. Ohio Republican Party*, 555 U.S. 5 (2008)).

¹²⁷ 145 F.4th 695 (7th Cir. 2025).

¹²⁸ *Id.* at 704.

¹²⁹ *Id.*

¹³⁰ *Ind. Prot. & Advocacy Servs. Comm’n v. Ind. Fam. & SSA*, 149 F.4th 917, 927 (7th Cir. 2025).

¹³¹ *Id.* at 926.

¹³² *Id.*

At least one other court has similarly taken a temporary approach to preserving precedent,¹³³ but others display a willingness to read *Medina* to its fullest extent. In *Nansemond Indian Nation*, a judge in the Eastern District of Virginia held that none of eight different statutory provisions—including four provisions of the Medicaid Act—created an enforceable right under *Medina*.¹³⁴ The court went further than required, explicitly declining to find that the Reasonable Promptness provision conferred an enforceable right upon those seeking medical assistance when the case in question involved medical *providers*, and it read *Medina* in the broadest possible terms.¹³⁵ In declining to limit *Medina* to spending-power statutes, it noted that the Supreme Court “[a]id[ed] out a generally-applicable test” and “applies the same approach to [non-spending-power] statutes.”¹³⁶ Such an approach seizes on *Medina*’s lack of clarity and may mean that the decision’s effects are not restricted to the unenforceability of Spending Clause statutes. At minimum, if *Northwest Illinois Area Agency on Aging* is any indication, it is only a matter of time before decades of circuit court precedent are overturned and crucial provisions of the Medicaid Act are deemed unenforceable.

CONCLUSION

In 1980, the Court held in *Thiboutot* that Section 1983 is available to redress violations of *all* federal statutes.¹³⁷ *Medina* represents a shift away from that vision, adopting a new test which renders “spending-power” statutes almost universally unenforceable. While this may be consistent with the Court’s trend of general hostility toward implied rights of action,¹³⁸ it is inconsistent with *Thiboutot* and cannot be supported by the Court’s prior decisions.¹³⁹ *Talevski* did not contemplate the stringent nature of the *Medina* test, and such a shift in the standard is neither required by the precedents *Medina* purports to affirm nor clear from the face of Justice Gorsuch’s opinion. If the Supreme Court wishes to overturn *Thiboutot* and formally relegate “spending-power statutes” to second-class status, that is its prerogative, but until it does, irreconcilable tensions in the doctrine will persist. In the interim, advocates can seek remediation through other means, such as reframing Medicaid Act claims as *Olmstead* violations, but such approaches will not be

¹³³ *Gatlin v. Contra Costa Cnty.*, 796 F. Supp. 3d 622, 626 (N.D. Cal. 2025) (denying motion for reconsideration on the ground that prior precedent is not “clearly irreconcilable” with *Medina* because the court had applied both *Gonzaga* and *Blessing*).

¹³⁴ *Nansemond Indian Nation*, 795 F. Supp. 3d at 733.

¹³⁵ *Id.* at 769.

¹³⁶ *Id.* at 774.

¹³⁷ *Maine v. Thiboutot*, 448 U.S. 1, 4–5 (1980).

¹³⁸ Pauline Calande, *State Incorporation of Federal Law: A Response to the Demise of Implied Federal Rights of Action*, 94 *YALE L.J.* 1144, 1145 (1985).

¹³⁹ See *Health & Hosp. Corp. v. Talevski*, 599 U.S. 166, 172, 177 (2023) (emphasizing that “and laws” in Section 1983 means *all* laws, including those promulgated under Congress’ spending power); *Gonzaga Univ. v. Doe*, 536 U.S. 273, 287 (2002) (recognizing that the language of Titles VI and IX is sufficient to confer an enforceable right).

possible for every claim. As the Court continues to restrict implied rights of action, policy advocacy will be more necessary than ever to ensure that statutes are drafted with the requisite language that empowers advocates to seek redress for violations of their rights.