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,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF CONSTITUTIONAL ACCOUNTABILITY CENTER, AMERICAN CIVIL LIBERTIES UNION FOUNDATION, AND ACLU OF INDIANA AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICI CURIAE*[1]

Constitutional Accountability Center (CAC) is a think tank and public interest law firm dedicated to fulfilling the progressive promise of the Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and preserve the rights and freedoms it guarantees. CAC has a strong interest in protecting meaningful access to the courts and ensuring adherence to the text and history of important federal statutes, and therefore has an interest in this case.

The American Civil Liberties Union (ACLU) is a nationwide, nonprofit, nonpartisan organization with nearly two million members and supporters dedicated to the principles of liberty and equality embodied in the Constitution. Since its founding more than 100 years ago, the ACLU has appeared before this Court in numerous cases, both as direct counsel and as *amicus curiae*. The ACLU of Indiana is a statewide affiliate of the national ACLU.

INTRODUCTION AND SUMMARY OF ARGUMENT

Section 1983, a landmark statute dating to the Reconstruction era, provides a right to sue "[e]very person" who under color of state law or custom deprives another person of "any rights, privileges, or

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[1] The parties have consented to the filing of this brief. Under Rule 37.6 of the Rules of this Court, *amici* state that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici* or their counsel made a monetary contribution to its preparation or submission.

immunities secured by the Constitution and laws" of the United States. 42 U.S.C. § 1983. Despite this clear text authorizing suits pursuant to all rights secured by either the Constitution or other federal law, Petitioners urge this Court to create a sweeping exception for suits bringing claims under one particular category of federal statutes—those enacted pursuant to the Constitution's Spending Clause. This Court should not do so.

As this Court has explained, "[a] broad construction of § 1983 is compelled by the statutory language, which speaks of deprivations of '*any* rights, privileges, or immunities secured by the Constitution and laws.'" *Dennis v. Higgins*, 498 U.S. 439, 443 (1991); *see also* Cong. Globe, 42d Cong., 1st Sess. App. 68 (1871) (Rep. Shellabarger) ("As has been again and again decided by your own Supreme Court of the United States, and everywhere else where there is wise judicial interpretation, the largest latitude consistent with the words employed is uniformly given in construing such statutes."). Because Section 1983's text "attach[es] no modifiers to the phrase ['and laws'], the plain language of the statute undoubtedly embraces" Respondent's claim under the Federal Nursing Home Reform Act (FNHRA). *Maine v. Thiboutot*, 448 U.S. 1, 4 (1980). This Court could end its analysis there, just as it has done repeatedly in the face of previous attempts to limit the scope of Section 1983 and other Reconstruction-era statutes containing the same broad language. *See, e.g.*, *id.*; *Dennis*, 498 U.S. at 451; *Lynch v. Household Fin. Corp.*, 405 U.S. 538, 542 (1972); *United States v. Price*, 383 U.S. 787, 800-01 (1966).

The history of Section 1983 further undermines Petitioners' argument that this Court should create an atextual carve-out from that statute, precluding the enforcement of certain rights based solely on the

constitutional provision authorizing the particular law that created those rights. Congress enacted Section 1983 in the wake of the Civil War to "enforce the provisions of the Fourteenth Amendment against State action." *Mitchum v. Foster*, 407 U.S. 225, 240 (1972) (quotation marks omitted). Crafted against the backdrop of the suppression of rights in the South, the Fourteenth Amendment was designed to protect the full range of substantive rights inherent in personal liberty and to "restrain the power of the States and compel them at all times to respect these great fundamental guarantees," Cong. Globe, 39th Cong., 1st Sess. 2766 (1866). Given Section 1983's drafters' paramount concern with protecting personal liberty, it would be especially problematic to deny the statute's protections to individuals who claim violations of rights that implicate personal liberty, including the right to be free from chemical restraints imposed for discipline or convenience rather than treatment, 42 U.S.C. §§ 1395i-3(c)(1)(A)(ii), 1396r(c)(1)(A)(ii), and the right not to be transferred or discharged unless certain criteria are met, *id.* §§ 1395i-3(c)(2)(A), 1396r(c)(2)(A).[2] Moreover, an atextual and categorical exemption from Section 1983's reach for a large class of rights would vitiate the statute's objective of protecting the supremacy of federal law by "offering a uniquely federal remedy against incursions under the claimed authority of state law upon rights secured by the Constitution and laws of the Nation." *Mitchum*, 407 U.S. at 239.

Faced with this overwhelming text, history, and precedent supporting enforcement of *all* federal rights through Section 1983, Petitioners argue that Spending Clause statutes like FNHRA are somehow different

[2] Section 1395i-3 and 1396r are identical. Hereinafter, this brief will cite only Section 1396r.

because they are inherently incapable of creating privately enforceable rights. That argument suffers from at least two fatal flaws.

First, to the extent that it is premised on the principle that Spending Clause legislation creates a contract-like relationship between the federal government and the states—one to which private individuals are third-party beneficiaries who therefore should not be permitted to bring enforcement suits—the argument fails to account for the fact that this contract law analogy is merely an interpretive tool to aid in the process of statutory interpretation in cases where the plain text of the statute does not answer the relevant question. Indeed, all of this Court's cases invoking that analogy have done so in the face of statutory ambiguity, *see, e.g.*, *Barnes v. Gorman*, 536 U.S. 181, 186 (2002) (where text of statute was silent on availability of punitive damages, analogy to contract law invoked to ascertain congressional intent); *Cummings v. Premier Rehab Keller, P.L.L.C.*, 142 S. Ct. 1562, 1571 (2022) (same for emotional distress damages), and this Court has been "careful not to imply that all contract-law rules apply to Spending Clause legislation," *Barnes*, 536 U.S. at 186. In short, while useful in certain cases, the contract law analogy cannot be used to circumvent the plain text of a statute.

Second, and relatedly, FNHRA itself exemplifies why a categorical bar on enforcement of Spending Clause statutes pursuant to Section 1983, without regard to the text of a particular statute, cannot possibly be squared with Section 1983's objective of protecting federal rights. Unlike other Spending Clause statutes where this Court has found only ambiguous rights-creating language, *see, e.g.*, *Gonzaga Univ. v. Doe*, 536 U.S. 273, 279 (2002) (discussing the Family Educational Rights and Privacy Act of 1974), FNHRA could

not possibly be more explicit in its textual commitment to ensuring that a "nursing facility *must* protect and promote the rights of each resident" enumerated in the statute, 42 U.S.C. § 1396r(c)(1)(A) (emphasis added). Moreover, Congress passed FNHRA years after this Court established in *Pennhurst State School & Hospital v. Halderman* the requirement that Congress "speak with a clear voice" and manifest an "unambiguous" intent to confer individual rights in Spending Clause statutes, 451 U.S. 1, 17 (1981). Congress plainly wrote FNHRA to comply with that mandate, and this Court should not nullify its plan.

In sum, Petitioners' argument that Section 1983 cannot be used to vindicate federal rights created by Spending Clause statutes does violence to the text and history of Section 1983 and would force this Court to ignore the plain text of explicit rights-creating Spending Clause statutes like FNHRA. This Court should affirm the judgment of the court below.

ARGUMENT

I. Petitioners' Argument that Spending Clause Statutes Categorically Cannot Give Rise to a Section 1983 Action Cannot Be Reconciled with the Text and History of Section 1983.

A. "Statutory interpretation, as we always say, begins with the text," *Ross v. Blake*, 578 U.S. 632, 638 (2016), and "[w]hen the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'" *Conn. Nat. Bank v. Germain*, 503 U.S. 249, 254 (1992) (quoting *Rubin v. United States*, 449 U.S. 424, 430 (1981)). The text of Section 1983 provides a right to sue "[e]very person" who, under color of state law or custom, deprives another person of "any rights, privileges, or immunities secured by the Constitution and laws" of the United States. 42

U.S.C. § 1983. Based on that plain text alone, which "embrace[s] 'all of the Constitution and laws of the United States,'" *Lynch*, 405 U.S. at 549 n.16 (quoting *Price*, 383 U.S. at 797), this Court should reject Petitioners' invitation to impose an atextual limitation on the *types* of federal laws that can give rise to a Section 1983 action.

This straightforward interpretation of Section 1983 has been espoused by this Court before. Over forty years ago, in *Maine v. Thiboutot*, this Court rejected an argument similar to Petitioners'—one that sought to limit the scope of Section 1983 actions to the enforcement of "civil rights or equal protection laws," thus excluding the Social Security Act from Section 1983's reach. 448 U.S. at 6. This Court, however, declared that "'and laws,' as used in § 1983, means what it says, ... [g]iven that Congress attached no modifiers to the phrase," *id.* at 4, and it explicitly held "for the first time that § 1983 actions may be brought against state actors to enforce rights created by federal statutes as well as by the Constitution," *Gonzaga*, 536 U.S. at 279 (describing *Thiboutot*).

Petitioners do not ask this Court to overrule *Thiboutot*, yet their argument—that as a categorical matter, statutes enacted pursuant to the Constitution's Spending Clause can never give rise to rights enforceable in a Section 1983 action—is nearly impossible to square with the straightforward textual reading of Section 1983 in that case. If the words "and laws," as used in Section 1983, meant "all laws except those enacted pursuant to the Spending Clause," there should be at least some textual clues in the statutory scheme. There are none.

In fact, this Court has searched for these sorts of textual limitations many times before and repeatedly come up empty-handed. Instead, in those opinions—

issued both before and after *Thiboutot*—this Court has emphasized the importance of adhering to the unambiguous and expansive text of Section 1983 in the face of arguments seeking to limit that statute's scope. It should do the same here.

Take the famous case of *United States v. Price*, decided just over a decade before *Thiboutot* and resulting in the indictments of several local police officers who murdered three civil rights workers in Mississippi during 1964's Freedom Summer. Several of the men were indicted under a Reconstruction statute enacted the year before Section 1983, which barred "conspir[ing] to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of *any right or privilege secured to him by the Constitution or laws of the United States*." 18 U.S.C. § 241 (emphasis added). The court below had held that Section 241 was "confined to rights that are conferred by or 'flow from' the Federal Government, as distinguished from those secured or confirmed or guaranteed by the Constitution," and thus had dismissed all the indictments resting on the deprivation of rights in the latter category. *Price*, 383 U.S. at 800. This Court resurrected the dismissed indictments, explaining that "[t]he language of § 241 is plain and unlimited . . . embrac[ing] all of the rights and privileges secured to citizens by all of the Constitution and all of the laws of the United States." *Id.* Thus, Section 241 "should not be construed so as to deprive citizens of the United States of the general protection which on its face [it] most reasonably affords." *Id.* at 801 (quoting *United States v. Mosley*, 238 U.S. 383, 388 (1915)).

A few years later, in *Lynch v. Household Finance Corp.*, a case involving Section 1983's jurisdictional counterpart which contains the same "rights,

privileges, or immunities" phrase, *see* 28 U.S.C. § 1343(3), this Court refused to limit that language to "personal liberties," as opposed to "proprietary rights," in a suit challenging a Connecticut law that allowed for pre-judgment garnishment of bank accounts. 405 U.S. at 538. That conclusion rested primarily on the plain text of the statutory provision, which failed to "distinguish[] between personal and property rights." *Id.* at 543.

A decade after *Thiboutot*, in *Dennis v. Higgins*, this Court again looked to the plain text of Section 1983 to reject an attempt to exclude rights created by the Commerce Clause from the scope of rights protected by the statute. This Court started from the premise that although "the 'prime focus' of § 1983 . . . was to ensure 'a right of action to enforce the protections of the Fourteenth Amendment and the federal laws enacted pursuant thereto,' . . . the Court has never restricted the section's scope to the effectuation of that goal." *Dennis*, 498 U.S. at 444-45 (quoting *Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 611 (1979)); *cf. Bostock v. Clayton County*, 140 S. Ct. 1731, 1737 (2020) ("[T]he limits of the drafters' imagination supply no reason to ignore the law's demands."). Rather, this Court has "given full effect to [Section 1983's] broad language, recognizing that § 1983 'provide[s] a remedy, to be broadly construed, against all forms of official violation of federally protected rights.'" *Dennis*, 498 U.S. at 445 (quoting *Monell v. NYC Dep't of Soc. Servs.*, 436 U.S. 658, 700-01 (1978)).

This Court then rejected an argument much like the one that Petitioners advance here with respect to Spending Clause statutes: "that the Commerce Clause merely allocates power between the Federal and State Governments and does not confer 'rights.'" *Id.* at 447. Although there was "no doubt that the Commerce

Clause is a power-allocating provision," this Court noted that the Clause can operate in other fashions as well, at times acting as "a substantive 'restriction on permissible state regulation' of interstate commerce," *id.* at 447 (quoting *Hughes v. Oklahoma*, 441 U.S. 322, 326 (1979)), and "conferring a 'right' to engage in interstate trade free from restrictive state regulation," *id.* at 448. Accordingly, this Court refused to adopt a categorical rule excluding all Commerce Clause claims from enforcement via Section 1983.

And this Court has even relied on the plain text of Section 1983 to reject arguments that other statutes that, like FNHRA, were enacted pursuant to the Constitution's Spending Clause, cannot be enforced in Section 1983 actions. In *Wright v. City of Roanoke Redevelopment & Housing Authority*, this Court concluded that the Brooke Amendment to the Housing Act of 1937, 42 U.S.C. § 1437a (1982 ed. & Supp. III), could be enforced by a tenant in a Section 1983 action because the Brooke Amendment created "enforceable rights, privileges, or immunities within the meaning of § 1983," the text of which imposes no substantive limits on the nature of those "rights, privileges, or immunities." 479 U.S. 418, 423 (1987).

So too in *Wilder v. Virginia Hospital Ass'n*. In that case, this Court permitted a Section 1983 lawsuit brought by healthcare providers to enforce a reimbursement provision of the Medicaid Act that explicitly conferred concrete entitlements upon the plaintiffs. 496 U.S. 498, 522-23 (1990). Certainly, if there were any indication in the text or history of Section 1983 that Congress did not intend the statute's remedy to extend to laws enacted pursuant to the Spending Clause, this Court would have at least mentioned it in *Wright* or *Wilder*. It did not.

Indeed, even in cases decided since *Wilder* that have *rejected* the applicability of Section 1983 to certain Spending Clause statutes, this Court has never countenanced an argument that there is a categorical exemption to the enforcement of such statutes pursuant to Section 1983. *Compare, e.g.*, Brief for Petitioner, *Gonzaga Univ. v. Doe*, 536 U.S. 279 (2002) (No. 01-679), 2002 WL 332055, at *40 (arguing that "[t]he Congress that enacted § 1983 . . . would not have regarded Spending Clause legislation as conferring the right to sue upon the third-party beneficiaries of the promises made by the recipients of federal funds"), *with Gonzaga*, 536 U.S. at 287-91 (ruling for Petitioner that the particular statute at issue did not authorize a Section 1983 action *without* categorically barring Section 1983 suits brought pursuant to Spending Clause laws); *see also id.* at 280-86 (distinguishing without overruling *Wright* and *Wilder*). To do so would directly undermine Section 1983's plain text, which provides a right to sue "[e]very person" who, under color of state law or custom, deprives another person of "*any* rights, privileges, or immunities secured by the Constitution and laws" of the United States. 42 U.S.C. § 1983 (emphasis added).

B. While the plain text of Section 1983 alone is sufficient for this Court to reject Petitioners' argument that the statute cannot be used to enforce rights created by Spending Clause laws, the history of Section 1983 further reinforces this conclusion, particularly when considered in the context of this case brought to remedy deprivations of rights implicating personal liberty.

Perhaps the chief concern of the drafters of Section 1983 was the protection of personal liberty, as is evidenced by both Section 1983's own history and the history of the Reconstruction Amendments that

immediately preceded the law's enactment. The first step taken by those Amendments was to erase the stain of slavery—the ultimate violation of personal liberty and bodily integrity—from the Constitution. In doing so, the Framers affirmed that "there are some inherent and inalienable rights, pertaining to every citizen, which cannot be abolished or abridged by State constitutions or laws," including the "right to live, the right of personal security, personal liberty, and the right to acquire and enjoy property." Cong. Globe, 39th Cong., 1st Sess. 1832-33 (1866); *see id.* at 1757 (explaining that "these are declared to be inalienable rights, belonging to every citizen of the United States, as such, no matter where he may be" (quoting Chancellor Kent)). Both personal liberty and control over one's person and body—a basic aspect of personal security—were understood by the Framers to be inalienable rights. *See id.* at 1118 (defining "personal security" to include "'a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation'" (citation omitted)).

Yet the abolition of slavery did not end the oppression and deprivation of liberties of African Americans and their allies in the South. "Following the Civil War, Southern States enacted Black Codes to subjugate newly freed slaves and maintain the prewar racial hierarchy." *Timbs v. Indiana*, 139 S. Ct. 682, 688 (2019). The Black Codes criminalized Black freedom by restricting physical movement through strict anti-loitering laws and subjected those newly free from bondage to brutal whippings and other invasions of personal liberty. *See* Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877*, at 198-202 (Henry Steele Commager & Richard B. Morris eds., updated ed. 2014). Southern sheriffs "engaged in a campaign of unending violence against Black people, killing,

raping and brutalizing those newly freed from enslavement." *Id.* "What kind of freedom," Senator Lyman Trumbull asked during debates on the Fourteenth Amendment, "is that which the Constitution of the United States guaranties to a man that does not protect him from the lash if he is caught away from home without a pass?" Cong. Globe, 39th Cong., 1st Sess. 941-42 (1866).

In light of this brutal state of affairs, the Reconstruction Framers recognized that ensuring true freedom and preventing the subjugation of formerly enslaved people required, at a minimum, safeguarding control over one's person as a basic right. And when the Fourteenth Amendment on its own proved insufficient in providing that safeguard, *see* Cong. Globe, 42d Cong. 1st Sess. 459 (Rep. Coburn) ("men [continued to] be banished or whipped or burned out or murdered"), the Forty-Second Congress enacted Section 1983 to provide further safeguards for "the preservation of human liberty," *id.* at App. 68 (Rep. Shellabarger).

Section 1983, originally Section 1 of the Civil Rights Act of 1871, was thus designed to create "a private right of action to vindicate violations of rights, privileges, or immunities secured by the Constitution and laws of the United States." *Rehberg v. Paulk*, 566 U.S. 356, 361 (2012) (quotation marks omitted). This Act, and "the Fourteenth Amendment it was enacted to enforce, were crucial ingredients in the basic alteration of our federal system accomplished during the Reconstruction Era," *Patsy v. Bd. of Regents*, 457 U.S. 496, 503 (1982), which established "the role of the Federal Government as a guarantor of basic federal rights against state power," *Mitchum*, 407 U.S. at 239; *see* Cong. Globe, 42d Cong., 1st Sess. 577 (Sen. Carpenter) ("one of the fundamental . . . revolutions effected in our Government" by the Fourteenth Amendment was to

"give[] Congress affirmative power . . . to save the citizen from the violation of any of his rights by State[s]"). Section 1983, therefore, established the federal courts as the chief protectors of personal liberty, "stand[ing] with open doors, ready to receive and hear with impartial attention" the complaints of those deprived of fundamental liberties by intransigent southern authorities. *Id.* at 459 (Rep. Coburn); *see also id.* at 449 (Rep. Butler) ("every citizen . . . should have a remedy against the locality whose duty it was to protect him and which had failed on its part").

Given Section 1983's drafters' focus on protecting deeply personal liberties like the right to be free from unwarranted intrusions on one's person and body, it would be especially problematic to exempt from that statute's enforcement a broad class of laws that in many cases—as here—explicitly create analogous rights. FNHRA added to the Medicaid Act a nursing home residents' bill of rights that requires states to "protect and promote the rights of each resident, including" 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," 42 U.S.C. § 1396r(c)(1)(A)(ii), "[t]he right to privacy with regard to" various aspects of personal life and medical treatments, *id.* § 1396r(c)(1)(A)(iii), and the right "not [to be] transfer[ed] or discharge[d] . . . from the facility" unless certain conditions are met, *id.* § 1396r(c)(2)(A).

The degree to which these rights implicate the sort of personal liberty at issue when Section 1983 was enacted—freedom of physical movement, the right not to have one's body unjustly restrained, the right to be free from whippings and physical abuse—could not be more self-evident from their text. The facts of this case

only reinforce that point: Mr. Talevski alleges that he was chemically restrained with a high dose of psychotropic medications without justification and against his will, rendering him unable to feed himself or speak English, and then transferred to a facility far from his family—again, against his will—without providing him even the basic decency of his dentures. Pet. App. 78a-80a. Where rights of this nature are blatantly violated, Section 1983 provides a remedy for those violations in direct alignment with its drafters' plan.

Equally at odds with Section 1983's history is Petitioners' argument that because Mr. Talevski filed a grievance with the Indiana State Department of Health, no remedy should be available to him to enforce FNHRA via Section 1983. As discussed above, Congress enacted Section 1983 to create a "uniquely federal remedy against incursions under the claimed authority of state law upon rights secured by the Constitution and laws of the Nation." *Mitchum*, 407 U.S. at 239. The remedy created in Section 1983 was designed to be "supplementary to any remedy any State might have," *McNeese v. Bd. of Educ.*, 373 U.S. 668, 672 (1963), in light of the Forty-Second Congress's distrust of state courts as protectors of federal rights. *See, e.g.*, Cong. Globe, 42d Cong., 1st Sess. App. 252 (Sen. Morton) ("the States do not protect the rights of the people"); *id.* at 653 (Sen. Osborn) ("[i]f the state courts had proven themselves competent to suppress the local disorders, or to maintain law and order, we should not have been called upon to legislate upon this subject at all"). Accordingly, this Court has repeatedly held that "the existence of a state administrative remedy does not ordinarily foreclose resort to § 1983." *Wright*, 479 U.S. at 427-28 (citing *Patsy*, 457 U.S. at 516); *see Blessing v. Freestone*, 520 U.S. 329, 347-48 (1997) ("a plaintiff's ability to invoke § 1983 cannot be defeated simply

by 'the availability of administrative mechanisms to protect the plaintiff's interests'" (alterations adopted) (quoting *Golden State Transit Corp. v. City of Los Angeles*, 493 U.S. 103, 106 (1989))); *Wilder*, 496 U.S. at 523 ("the availability of state administrative procedures ordinarily does not foreclose resort to § 1983").

And just as the Congress that enacted Section 1983 plainly expected federal courts to provide additional remedies to plaintiffs who suffered deprivations of their personal liberties, the Congress that enacted FNHRA echoed that point for this statute in particular by including a savings clause. That savings clause provides that "[t]he remedies provided under this subsection are *in addition* to those otherwise available under state or federal law." 42 U.S.C. § 1396r(h)(8) (emphasis added). This language leaves no doubt that Congress did not expressly or impliedly "rebut the presumption of enforcement under § 1983" for FNHRA. *Gonzaga*, 536 U.S. at 297.

Thus, the text and history of Section 1983 demonstrate that Congress, in enacting a broad remedy for the vindication of federal rights, did not eliminate Spending Clause statutes from the scope of its enforcement, and the text of FNHRA only reinforces that principle.

II. There Is No Support for Petitioners' Argument that Spending Clause Statutes Cannot Create Judicially Enforceable Private Rights.

In light of this overwhelming text, history, and precedent supporting enforcement of *all* federal rights through Section 1983, Petitioners assert that Spending Clause statutes like FNHRA are somehow inherently incapable of creating privately enforceable rights, attempting to tie that argument to the

uncontroversial principle that "it is only violations of *rights,* not *laws,* which give rise to § 1983 actions," *Gonzaga*, 536 U.S. at 283. But this well-established principle does not require this Court to adopt Petitioners' argument. To the contrary, this Court's repeated commitment to following the plain text of the law means that it can—and should—adhere to its long-established practice of evaluating on a case-by-case basis whether a federal statute creates privately enforceable rights.

A. Petitioners' only support for their argument that Spending Clause statutes cannot create private rights is a general theory of contract law that this Court has never relied upon to set aside the plain text of a statute. Essentially, Petitioners assert that because Spending Clause legislation creates a contract-like relationship between the federal government and the states, private individuals should be treated as third-party beneficiaries to such contracts. And because third-party beneficiaries were not typically permitted to sue on such contracts in the 1870s, when Section 1983's text as it reads today (in relevant part) was written, Congress could not have possibly intended that Section 1983 "means what it says," *Thiboutot*, 448 U.S. at 4, *i.e.*, that *any* federal right is enforceable in a Section 1983 action.

To state that argument is to refute it. As this Court has explained, "[t]he people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extra-textual consideration." *Bostock*, 140 S. Ct. at 1749. The phrase "any right" in Section 1983 was as broad and unambiguous in the 1870s as it is today. And "'the fact that a statute has been applied in situations not expressly anticipated by Congress' does not demonstrate ambiguity; instead, it simply 'demonstrates the

breadth' of a legislative command." *Id.* (alterations adopted) (quoting *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 499 (1985)). That principle is especially salient here. After all, while the concept of third-party-beneficiary enforcement of contracts might have been somewhat foreign to Section 1983's drafters, the principle that Section 1983 would be used to enforce rights sounding in deeply personal liberties plainly was not. *See generally* Section I.B. Indeed, enforcement of those sorts of rights was the chief reason Section 1983 was enacted.

Notably, in prior cases in which this Court has invoked the contract law analogy to guide interpretation of Spending Clause statutes, it has exclusively done so in the face of statutory ambiguity. For instance, in *Barnes v. Gorman*, this Court evaluated whether punitive damages were available in an action to enforce Section 202 of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act by invoking the contract law analogy. 536 U.S. at 184-85. It did so, however, only after noting that both statutes, as well as analogous laws like Title IX, were silent on the availability of such damages. *Id.* at 185-88. Only *after* making that finding did this Court proceed to conclude that because punitive damages are "generally not available for breach of contract," *id.* at 187, it would not freely imply the availability of such damages for the particular Spending Clause statutes at issue, *id.* at 188-89.

This Court took a similar approach last Term in *Cummings v. Premier Rehab Keller, P.L.L.C.* Presented with the question of whether emotional distress damages are available in an action brought pursuant to Section 504 and the Affordable Care Act (ACA), this Court turned first to the text of the statutes at issue, finding the text "silent as to available remedies." 142

S. Ct. at 1571. Only then did this Court turn to principles of contract law, concluding that because, in its view, "emotional distress [was] generally not compensable in contract," *id.* (quoting Douglas Laycock & Richard L. Hasen, *Modern American Remedies* 216 (5th ed. 2019)), and both Section 504 and the ACA are Spending Clause statutes in the nature of a contract, emotional distress damages were not recoverable, *id.* at 1570-72. The dissent applied that same methodology, even though it disagreed with the majority's conclusion about whether emotional distress damages in fact *were* traditionally available for breach of contract. *See id.* at 1578 (Breyer, J., dissenting). And the concurrence went one step further, questioning the wisdom altogether of invoking the contract-law analogy rather than focusing exclusively on statutory text. *See id.* at 1576 (Kavanaugh, J., concurring) ("[T]he contract-law analogy is an imperfect way to determine the remedies for this implied cause of action.").

In sum, all members of this Court agreed that the contract analogy is useful only in the face of statutory ambiguity. Any extension of that analogy beyond those circumstances "risks arrogating the legislative power." *Id.* at 1574 (majority op.) (quoting *Hernández v. Mesa*, 140 S. Ct. 735, 741 (2020)); *see also* Terry Jean Seligmann, *Muddy Waters: The Supreme Court and the Clear Statement Rule for Spending Clause Legislation*, 84 Tul. L. Rev. 1067, 1120 (2010) (emphasizing that Spending Clause statutes are "legislation, in the end, not a buy-sell transaction"); Abbe R. Gluck, *Our [National] Federalism*, 123 Yale L.J. 1996, 2031-32 (2014) (arguing against the idea that the "contract metaphor" renders Spending Clause statutes "not 'law' on the same level as other pieces of legislation," or not subject to "the principles of statutory interpretation that courts apply to federal legislation").

These cases merely reinforce the well-established premise that the contract-law analogy, like any substantive and atextual canon of construction, is only a useful interpretive tool when the text of a statute leaves questions unanswered. Petitioners cite no ambiguity in Section 1983's express conferral of a cause of action for deprivations of "any rights, privileges, or immunities secured by the Constitution and laws"—nor could they—so this Court should reject their invitation to supplant the statute's plain text with an interpretive theory that has never been treated as binding. *See Cummings*, 142 S. Ct. at 1574 (rejecting incorporation of "the law of contract remedies wholesale"); *Barnes*, 536 U.S. at 186 ("[W]e have been careful not to imply that *all* contract-law rules apply to Spending Clause legislation."); *see also* Seligmann, *supra*, at 1120 ("Although the voluntary aspect of federal-state engagement in spending clause programs makes the analogy useful, as members of the Court have pointed out, the analogy has its limits.").

B. Petitioners' argument that Spending Clause statutes can never create judicially enforceable private rights is also belied by the plain text of FNHRA, a Spending Clause statute whose text unambiguously manifests Congress's intent to create mandatory private rights for nursing home residents.

Spending Clause statutes, like any broad category of laws grouped together only by the constitutional authority invoked by Congress in passing them, come in a wide variety of forms. This Court's disparate decisions as to whether distinct Spending Clause statutes create private rights illustrates the point. As discussed above, at times this Court has held that the text of certain Spending Clause statutes did not "manifest[] an unambiguous intent to confer individual rights," *Gonzaga*, 536 U.S. at 280 (quotation marks omitted)

(no enforceable private right created by Family Educational Rights and Privacy Act of 1974), whereas at other times, it has explicitly held otherwise, *e.g.*, *Wilder*, 496 U.S. at 522-23 (enforceable private right created by reimbursement provision of Medicaid Act).

Discerning the presence or absence of congressional intent to create enforceable rights necessarily entails examination of the text of the particular statute at issue—here, FNHRA. And examination of FNHRA's text leaves no doubt that Congress created an enforceable private right through FNHRA's nursing home residents' bill of rights. For one, the statute is written in mandatory terms, giving courts a clear framework through which to assess whether a state has deprived a resident of the enumerated protections. *See* 42 U.S.C. § 1396r(c)(1)(A) ("A nursing facility *must* protect and promote the rights of each resident, including each of the following rights . . . ." (emphasis added)). And the terms of the particular rights at issue here—"[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," *id.* § 1396r(c)(1)(A)(ii), and the right "to remain in the facility" and not be "transfer[ed] or discharge[ed] . . . from the facility unless" certain conditions are met, *id.* § 1396r(c)(2)(A)—focus not on the state-federal relationship that Petitioners seek to elevate, but on individual nursing home residents and the states' express obligations to those private individuals. In short, as Respondent describes in detail, *see* Resp. Br. 33-38, this Court has perhaps never before encountered a Spending Clause statute that so clearly and explicitly confers concrete, judicially enforceable rights on private individuals. It certainly, therefore, would be odd to use this case to hold that as a

categorical matter, Spending Clause statutes can *never* confer rights of that nature.

And though the plain text of FNHRA alone should put to rest any doubt that Congress can confer rights enforceable through Section 1983 in Spending Clause statutes, it is also noteworthy that Congress enacted FNHRA *after* this Court established, most prominently in *Pennhurst State School & Hospital v. Halderman*, the requirement that Congress "speak with a clear voice" and manifest an "unambiguous[]" intent to confer such rights in Spending Clause statutes. 451 U.S. at 17. This Court has often noted that "when Congress enacts statutes, it is aware of relevant judicial precedent," *Merck & Co. v. Reynolds*, 559 U.S. 633, 648 (2010), and thus tailors its legislation to prerequisites espoused by this Court like the particular constructions of statutory terms or clear-statement rules, *e.g.*, *Guerrero-Lasprilla v. Barr*, 140 S. Ct. 1062, 1072 (2020) ("Congress, aware of this precedent [so holding], would have intended the phrase 'questions of law' to include the application of a legal standard to established or undisputed facts."). Given the explicit and mandatory rights-creating language in FNHRA, there is every indication that Congress wrote the statute to comply with this Court's heightened standard for enforceability of Spending Clause statutes via Section 1983. For this Court to then say that Spending Clause statutes are *never* enforceable via Section 1983 would pull the rug out from under Congress, effectively nullifying that branch's plan for a statute in a case that is, at the end of the day, one of statutory interpretation.

* * *

In sum, the plain text of Section 1983, considered along with that statute's history and this Court's precedents, plainly refutes Petitioners' argument that

deprivations of rights created by the Spending Clause are not actionable via Section 1983. The particulars of this case—including the explicit rights-creating language of FNHRA—only reinforce that conclusion.

CONCLUSION

For the foregoing reasons, this Court should affirm the judgment of the court below.

Respectfully submitted,

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