1996 WL 600910 (U.S.) (Appellate Brief)
Supreme Court of the United States.

Linda J. BLESSING, Director, Arizona Department of Economic Security, in her official capacity, Petitioner, v. Cathy FREESTONE, et al., Respondents.

No. 95-1441.
October Term, 1996.
Oct. 17, 1996.

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

BRIEF FOR RESPONDENTS

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West Headnotes (3)

Civil Rights Child custody, support, and protection; parental rights

Do provisions of Social Security Act relating to states' adoption of plan for child support enforcement create in eligible children and families a federal right to specific child support services enforceable in action under federal civil rights statute? Social Security Act, § 451 et seq., as amended, 42 U.S.C.A. § 651 et seq.; 42 U.S.C.A. § 1983.

Civil Rights Rights Protected

Should federal civil rights statute be construed in accord with its plain language to reach violations of rights created by federal statutes? 42 U.S.C.A. § 1983.

Federal Courts Suits for injunctive or other prospective or equitable relief; Ex parte Young doctrine

Did Eleventh Amendment not bar civil rights suit to compel state official's future compliance with provisions of Social Security Act relating to states' adoption of plan for child support enforcement? U.S.C.A. Const.Amend. 11;

Social Security Act, § 451 et seq., as amended, 42 U.S.C.A. § 651 et seq.; 42 U.S.C.A. § 1983.

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CASES

MISCELLANEOUS

*1 STATUTES AND REGULATIONS INVOLVED

Additional relevant provisions of Title IV of the Social Security Act, 42 U.S.C. § 601 et seq., and of Title 45, Code of Federal Regulations, are set forth in the Appendix to this brief.

STATEMENT OF THE CASE

1. Statutory Scheme: (A) Overview: Title IV-D of the Social Security Act ("SSA") establishes a comprehensive federal program that provides federal funds to states to enable them to furnish child support enforcement services and sets criteria for how states must provide Title IV-D services. The program, established in 1975 and refined through increasingly specific provisions in numerous amendments since then, assures every child the "right to support, inheritance, and to know who his father is." S. Rep. No. 1356, 93d Cong., 2d Sess. 51 (1974).[1]

Congress mandates for participating states an obligation to "provide services relating to ... the establishment, ***2** modification, or enforcement of child support obligations ... to ... each child" receiving certain forms of federally-funded assistance and to "any other child" for whom an application for services is filed. § 654(4)(A), as amended by 110 Stat. 2199; see also §

654(4)(B), as amended by 110 Stat. 2199. Families receiving welfare benefits are required to assign to the state any rights to child support from an absent parent, and to cooperate with the state in establishing paternity and obtaining support payments. § 602(a)(26).[2] Any family may obtain child support services, however, by applying and paying the requisite fees. § 654, as amended by 110 Stat. 2199. The federal government funds at least two-thirds of the cost of child support and related services provided by the states for "operation of the plan approved under ... this title." § 655(a), as amended by 110 Stat. 2236. Title IV-D also allows states to retain most of the support collected for children who receive welfare benefits. §§ 657 & 658, as amended by 110 Stat. 2200-04.

(B) Substantive Standards: Title IV-D provides in many respects precisely how child support enforcement services funded by the federal government are to be delivered. For example, Title IV-D requires that participating states: allow paternity actions until a child's 18th birthday, § 666(a)(5), as amended by 110 Stat. 2227; intercept state income tax refunds to satisfy support orders, § 666(a)(3); determine whether persons receiving unemployment benefits owe child support and, if so, collect amounts due from the benefits, § 654(19); use a system detailed by the statute for treating voluntary acknowledgments of paternity as of the same effect as a judgment determining paternity, § 666(a)(5), as amended by 110 Stat. 2227-30;[3] provide for income ***3** withholding in all support orders in accord with detailed requirements, § 666(a)(1) & (b), as amended by 110 Stat. 2212-14; prohibit retroactive reductions in past-due support, § 666(a)(9); and provide for review of support orders at least every three years, § 666(a)(10)(B).

Additionally, the most recent amendments to IV-D, inter alia: add requirements, with specified timeliness mandates, for notices to individuals of events affecting their rights to child support and enforcement services, § 654(12), as amended by 110 Stat. 2205; see also § 654(25), as amended by 110 Stat. 2200; regulate in great detail the disbursement of child support collected, by mandating automated procedures, requiring disbursement "within 2 business days after receipt," and specifying that orders for withholding income must be transmitted "within 2 business days after receipt of notice of" the income source, § 657, as amended by 110 Stat. 2200-04, § 654b, as added by 110 Stat. 2207-09;[4] specify that states "shall respond within 5 business days to a request made by another State to enforce a support order," § 666(a)(14), as added by 110 Stat. 2222-23; and spell out mandatory expedited state procedures, without need for adjudication, for genetic testing, obtaining financial information, accessing information in state records, withholding income, securing assets, and increasing monthly support payments, § 666, as amended by 110 Stat. 2224-27.

In addition to spelling out in all these respects the precise nature of the child support enforcement program for which federal funding is available, Title IV-D also directs the Secretary of Health & Human Services ("the Secretary") to "establish ... standards for State programs for locating absent parents, establishing paternity, and obtaining child support and [spousal] support" (§ 652(a)(1)), and specifically to include in those standards "time limits governing the period ... within which a State must accept and respond to ... requests to locate absent parents, ***4** establish paternity, and initiate proceedings to establish and collect child support awards." § 652(h). Participating states must "comply with such ... requirements and standards." § 654(13).

In response to the Congress' directive, the Secretary promulgated 45 C.F.R. Part 303, titled "Standards for Program Operations," which sets "[t]he standards for program operation which the IV-D agency must meet." 45 C.F.R. § 303.0 (emphasis added). To "ensure States provide necessary services on a timely basis" (54 Fed. Reg. 32,290 (August 4, 1989)), the regulations describe, for every IV-D required service, precisely how to accomplish the tasks at hand, in what order and within what time frames, usually in mandatory language and with respect to every case at the requisite stage of development.[5]

(C) Funding and Enforcement: Because the federal government pays most of the cost of the child support services ***5** program, it is of course concerned that the program operate as Congress has in such great detail directed. Consequently, as a "condition for Federal financial participation" in each state's child support services program, the federal government reserves the right, if the state "fails to comply with the terms and conditions ... stated in [the] ... statute or regulation[s], ... assurance [or] application", to withhold payment of the federal IV-D funds temporarily or permanently, wholly or partially, and to "[w]ithhold further awards for the ... program." 45 C.F.R. § 304.10, § 74.62. See also 57 Fed. Reg. 11,743 (March 22, 1996).

The SSA also requires that, to be eligible for federal financial grants for family assistance under Title IV-A of the SSA, 42 U.S.C. § 601 et seq. (formerly the Aid to Families with Dependent Children program), a state must submit "[a] certification by the chief executive officer of the State that, during the fiscal year, the State will operate a child support enforcement program under the State plan approved under part D."[6] States found "not to have complied substantially" with the requirements of Title IV-D may be penalized by the Secretary through a graduated reduction of one to five percent of the part IV-A grant, thereby decreasing the amount of money available to the State for financially supporting needy families. § 603(h). The term "substantial compliance" is defined by § 603(h):

[A] State which is not in full compliance with the requirements of this part shall be determined to be in substantial compliance ... only if the Secretary determines that any noncompliance ... is of a technical ***6** nature which does not adversely affect the performance of the child support enforcement program.[7]

Additionally, with respect to paternity determinations, to be in "substantial compliance" for purposes of the Title IV-A penalty, a state must not only meet the various task requirements of the statute relating to paternity determination, but must also succeed in establishing paternity in a specified percentage of all cases.[8]

The statute also provides for federal reviews and audits of each state's child support services program. As presently in effect, the statute both directs the Secretary to conduct audits as "necessary to assure [states'] conformity with the requirements of [Title IV-D]" and mandates an audit every three years for the distinct purpose of determining for purposes of the IV-A penalty provisions "whether the actual operation ... conforms to the requirements of this part." § 652(a)(4).[9]

2. Proceedings: This action was filed under 42 U.S.C. § 1983 by five Arizona mothers whose children are eligible for Title IV-D child support services. The plaintiffs brought their action on behalf of themselves, their children, and all others similarly situated. Jt. App. 5-6, 9, 12, 14, 15, 18. The defendant is director of the state agency ***7** charged by Title IV-D with providing child support enforcement services.

The complaint alleges that plaintiffs properly applied for child support services and cooperated in full with the IV-D agency, but either never received the help in seeking child support they sought and were entitled to receive, or encountered lengthy, unexplained delays in taking steps such as locating the absent parent or instituting wage garnishment procedures, with the result that support due and collectible was not collected because the noncustodial parents left employment or disappeared in the meantime. Jt. App. 8, 10, 14-15, 17. The complaint further alleges that petitioner "regularly and consistently failed to" comply with 13 specifically enumerated provisions of the federal regulations that govern the order, timeliness, and methodology of the federal child support enforcement program. Jt. App. 37-38. According to the complaint, a report by the Arizona Auditor General supports these allegations, concluding that "[u]nless significant changes are made, literally hundreds of millions of dollars will continue to go uncollected and hundreds of thousands of Arizona parents and children will suffer the consequences." Jr. App. 30. Plaintiffs sought under § 1983 a declaratory judgment that petitioner had violated "substantive rights secured them by [Title IV-D]" and "corresponding equitable relief." Jt. App. 42.

The district court dismissed the complaint before petitioner filed an answer, on the ground that no relief under § 1983 is available to enforce the rights secured by Title IV-D. The Ninth Circuit reversed, "solely on the basis of our legal conclusion that a § 1 983 action is available to class plaintiffs" but "express[ed] no opinion as to the appropriateness or inappropriateness of [any relief]." Pet. App. 36a. Judge Kleinfeld dissented. Pet. App. 36a.

***8** SUMMARY OF ARGUMENT

I. Under this Court's cases, a federal statute creates "rights" within the meaning of § 1983 if it creates binding obligations, is not vague or amorphous, and is intended to benefit the plaintiffs. Petitioner concedes that SSA Title IV-D was intended to provide child support enforcement services for the benefit of eligible children and their families. As we show at pp. 9-27, infra, Title IV-D establishes unusually concrete, specific, and mandatory standards for states, creating binding obligations on the states regarding the use of federal Title IV-D matching and incentive funds. While petitioner suggests that the statute does not create § 1983 "rights" because it permits states to operate only in "substantial compliance" with the statutory requirements, that reading of the statute is simply wrong. And the argument that plaintiffs lack standing to bring this suit disregards the fact that the rights plaintiffs seek to enforce is a right to child support enforcement services, not a right to obtain child support payments. Finally, since Title IV-D does not provide for private enforcement at all, there is certainly no basis for concluding that Congress in enacting Title IV-D intended to replace the otherwise applicable remedy under § 1983 with a remedy under Title IV-D itself.

II. Petitioner suggests that this Court reconsider and overturn Maine v. Thiboutot, 448 U.S. 1 (1980) and hold that individuals no longer can enforce federal statutory rights under § 1983. As we show at pp. 28-44, infra, this issue is not properly before the Court; principles of stare decisis preclude reconsidering Thiboutot; Thiboutot in any event simply read § 1983 as written, as this Court's cases direct; and the legislative history of § 1983 upon which petitioner relies is much too ambiguous to justify disregarding the statutory language. Petitioner's alternative suggestion that § 1983 be limited to the protection of "rights" for which there is already a private enforcement mechanism would make the statute, heretofore thought of great important, essentially meaningless.

***9** III. Finally, as we show at pp. 44-50, infra, petitioner's contention that this case is precluded by the Eleventh Amendment seeks the overruling, sub silentio, of this Court's cases squarely holding that cases for prospective relief against state officers for violation of federal statutory rights are not precluded by the Eleventh Amendment. And, although petitioner contends otherwise, Seminole Tribe of Florida v. Florida, 116 U.S. 1114 (1996) reaffirms rather than precludes the availability of such relief in federal court where, as here, there is a statute (here, § 1983) that expressly provides for actions against state officers.

ARGUMENT

I. TITLE IV-D CREATES IN ELIGIBLE CHILDREN AND FAMILIES A FEDERAL RIGHT TO SPECIFIC CHILD SUPPORT SERVICES ENFORCEABLE IN AN ACTION UNDER 42 U.S.C. § 1983.

Congress has painstakingly developed a nationwide, federal-state cooperative system—set out in Title IV-D of the Social Security Act—"[f]or the purpose of enforcing the support obligations owed by noncustodial parents to their children." 42 U.S.C. § 651. To assure this goal, Congress has committed large sums of federal funds and devoted careful attention to fine-tuning the system so that the child support enforcement services promised are actually delivered to each eligible child.[10] This suit, brought under 42 U.S.C. § 1983 on behalf of children eligible for Title IV-D child support enforcement services, alleges that petitioner, the state official in charge of the state's Title IV-D agency, is not abiding by certain of the federal requirements regarding the provision of Title IV-D services and, on that basis, seeks prospective relief mandating petitioner to conform to those legal requirements.

***10** This Court has reiterated many times that 42 U.S.C. § 1983 "provides a federal remedy for 'the deprivation of any rights, privileges, or immunities secured by the Constitution and laws' " and thus "provides a remedy 'against all forms of official violation of federally protected rights' " Golden State Transit Corp. v. Los Angeles, 493 U.S. 103, 106 (1989), quoting Monell v. Dep't of Social Services, 436 U.S. 658, 700-01 (1978) (emphasis supplied). And, this Court has also consistently recognized that, as a general matter, "[r]equiring States to honor the obligations voluntarily assumed as a condition of federal funding ... simply does not intrude on their sovereignty.... [T]he State ha[s] no sovereign right to retain funds without complying with those conditions." Bell v. New Jersey, 461 U.S. 773, 790-91 (1983). Indeed, with regard to the Social Security Act and other cooperative federalism programs in particular, since King v. Smith, 392 U.S. 309 (1968) and Rosado v. Wyman, 397 U.S. 397 (1970), this Court has regarded it as "peculiarly part of the duty of this tribunal ... to resolve disputes as to whether federal funds allocated to the States are being expended in consonance with the conditions that Congress has attached to their use," id. at 422-23, and has done so often in cases brought under § 1983, e.g. Wright v. Roanoke Redev. & Housing Auth., 479 U.S. 418 (1987).

At the same time, while broadly applicable, § 1983 does not apply to any "violation[ ] of federal law," but only to violations of federal "rights." Golden State, 493 U.S. at 106. And, as the Golden State Court summarized the law:

In deciding whether a federal right has been violated, we have considered whether the provision ... creates obligations binding on the governmental unit or rather "does no more than express a congressional preference for certain kinds of treatment." Pennhurst State School and Hospital v. Halderman, [451 U.S. 1, 19 (1981)]. The interest the plaintiff asserts must not be "too vague and amorphous" to be "beyond ***11** the competence of the judiciary to enforce." Wright v. Roanoke Redevelopment and Housing Authority, [479 U.S. 418, 431-32 (1987)]. We have also asked whether the provision in question was "intend[ed] to benefit" the putative plaintiff. Id., at 430.... [493 U.S. at 106.]

See also Wilder v. Virginia Hospital Ass'n, 496 U.S. 498, 509 (1990).

1. Petitioner does not disagree that "[u]nder the existing framework" the factors listed in Golden State are the relevant factors for determining the existence of a "right" within the meaning of § 1983. Pet. Br. at 12. Yet, the subtext of petitioner's argument rests on two factors not listed in the Golden State summary: (1) that Congress did not expressly provide in Title IV-D itself for suits against state officials by the children protected by the statute if the services due are not provided; and (2) that this case concerns a statute enacted pursuant to Congress' powers under the Spending Clause. Pet. Br. at 10, 12.

Whether the statute giving rise to the "rights" in question itself provides for individuals to bring suit in federal court is not one of the factors listed in Golden State with good reason: Section 1983 is written in general terms, so as to be generally applicable to the enforcement of federal rights. Petitioner's suggestion that § 1983 applies only if Congress in the rights-creating statute states that a private enforcement action is available renders § 1983 nugatory. For the obvious point of writing a statute of general applicability is so that Congress will not have to restate the provisions of that statute again and again, but can legislate in the future on the understanding that the statute is in place and will apply.[11]

***12** The National Labor Relations Act, for example, the statute enforced under § 1983 in Golden State, provides no cause of action against state officials for protection of the right to free collective bargaining rights created by the statute (or, for that matter, for protection of any other NLRA right). It is § 1983 that creates that cause of action, as Golden State held. The absence of a private enforcement action in Title IV-D itself, then, can be of more aid to petitioner here than such an absence was to respondent in Golden State.

Nor is there any basis for supposing that different principles for determining the availability of §1983 actions pertain to cases such as Golden State, involving a federal statute enacted under the Commerce Clause, and cases such as this, involving a statute enacted pursuant to the Spending Clause. This Court has applied precisely the factors outlined in Golden State in both Spending Clause and non-Spending Clause cases in determining whether a federal constitutional or statutory provision gives rise to "rights" enforceable under § 1983. See, e.g., Golden State, 493 U.S. at 106 (a Commerce Clause statutory case relying on Spending Clause cases such as Pennhurst State School & Hospital v. Halderman, 451 U.S. 1 (1981)); Dennis v. Higgins, 498 U.S. 439, 448-49 (1991).[12]

***13** 2. (a) Applying the Golden State criteria as the Court did enunciate them, petitioner concedes, as she must, that Title IV-D's child support services provisions were enacted and repeatedly strengthened primarily to benefit all the children and parents needing those services. Pet. Br. at 13. And, the present Congress, while overhauling the federal financial assistance programs so as to eliminate any entitlement to receive certain cash benefits, retained the explicit Title IV-D commitment to provide child support services to "each child" receiving Title IV-A financial assistance and to "any other child" on whose behalf such services are affirmatively sought, § 654(4), as amended by 110 Stat. 2199, as well as the federal commitment to pay, on a matching, uncapped basis, for the costs of doing so, § 655(a), as amended by 110 Stat. 2236.[13]

***14** (b) What petitioner does contend is that Title IV-D creates no " 'binding obligation' on the States that gives rise to [§ 1983] enforceable rights," Wilder, 496 U.S. at 510, on the theory that Title IV-D is similar to the statute held to create no § 1983 "rights" in Suter v. Artist M., 503 U.S. 347 (1992). Pet. Br. at 13.

There is no resemblance between Title IV-D and the statutory provision involved in Suter, the Adoption Assistance and Child Welfare Act of 1980, 94 Stat. 500, 42 U.S.C. §§ 620-28, 670-79a. In Suter, the Court rejected plaintiffs' effort to enforce the requirement that a state make " 'reasonable efforts' to maintain an abused or neglected child in his home," 503 U.S. at 359, on the ground that this requirement was insufficiently clear to create a binding obligation in light of the heightened notice of substantive obligations necessary in Spending Clause statutes.[14] The Court held that:

No ... statutory guidance is found as to how "reasonable efforts" are to be measured, ... How the State ***15** was to comply with this directive ... was, within broad limits, left up to the State.... The regulations promulgated by the Secretary do not evidence a view that § 671(a) places any [operational] requirement.... What is significant is that the regulations are not specific and do not provide notice to the States that failure to do anything other than submit a plan ... is a further condition on the receipt of funds. [503 U.S. at 360-62.]

Title IV-D's basic provisions put at issue here, and the implementing regulations, by contrast, are cast in mandatory terms and set forth in exacting, concrete detail precisely who petitioner must provide with child support enforcement services, what services petitioner must provide, and when and how she must provide them. See pp. 4-6, supra & Appendices A and B.[15]

Congress has, over the years, added to the specificity of the Title IV-D requirements and expressly directed the Secretary to do so as well, precisely to assure that the states are quite clear about their obligations and how to meet them. Pp. 4-6, supra.[16] In enacting Title IV-D and strengthening it ***16** repeatedly, Congress was not merely making suggestions to, or nudging, or encouraging the states to provide the services specified in the manner described. Compare Pennhurst, 451 U.S. at 19; Wilder, 496 U.S. at 512. Rather, Congress delineated the states' obligations with unusual clarity in order to assure eligible children and families an effective, responsive program.[17]

(c) Despite these critical features of Title IV-D, petitioner maintains that this case is analogous to Suter, on the ground that Title IV-D "requires only 'substantial compliance' with its requirements," allows states to comply by serving not all eligible children but only 75 percent of those children, and therefore does not create "binding, individually enforceable obligations." Pet. Br. at 14, 15. This construction of the statute is premised in part upon a statutory provision with little current significance, and primarily upon a complete disregard of the quite ancillary role in the statutory scheme as a whole played by the special penalty for failure of "substantial compliance."

In support of her "substantial compliance" contention petitioner primarily invokes 42 U.S.C. § 602(a)(27), requiring that, as a condition of obtaining funds under Title IV-A, states must "provide that the State has in effect a plan approved under part D ... and operates a child support program in substantial compliance with such ***17** plan." This section has been superseded, as of July 1, 1997 or earlier for any states that submit new state Title IV-A plans before then. The replacement provision does not refer to "substantial compliance" or any similar concept. P. 6, supra.

That leaves exactly two continuing statutory references to "substantial compliance."

(i) The first of these "substantial compliance" references is in § 603(h) (carried over in the 1996 amendments to § 609(a)(8)), which, significantly, appears in Title IV-A, not in Title IV-D. That section provides that states found "not to have complied substantially" with the requirements of Title IV-D may incur a penalty through a graduated reduction of the state's Title IV-A grant.[18]

Cutting off Title IV-A funds used to provide subsistence support for needy children is an extreme measure, not lightly invoked. It therefore is not surprising that Congress imposed that special, draconian penalty only when a state's performance slips significantly below that expected, and used the term "compl[y] substantially" for the purpose—and only for the purpose of describing the point at which those special penalties apply.

At the same time, the very wording of § 603(h) recognizes that Title IV-D does itself, quite independently of the linkage to Title IV-A, establish "requirements." It is those "requirements" themselves—and not mere substantial compliance therewith—that govern the states in the use of the quite separate federal funds appropriated under Title IV-D (as opposed to the funds appropriated to finance the related Title IV-A program). And, it is those requirements that provide perfectly clear notice to states of their "binding obligation", separately enforceable, in ***18** expending those Title IV-D funds. §§ 654(4), (6), (12), (19), & (25), as amended by 110 Stat. 2199, 2200, 2205 (state plan must provide that the State will provide specified services to each qualified individual); § 655 (federal funds are paid "for the operation of the plan approved under section 654"); 45 C.F.R. § 304.10 (notifying states that "[a]s a condition for Federal financial participation," the provisions of 45 C.F.R. part 74 apply); 45 C.F.R. § 74.62 (providing the Secretary with remedies for material violations of the "terms and conditions" of any grant); 45 C.F.R. § 74.1 (45 C.F.R. part 74 applies to grants under specified "entitlement programs," including title IV-D); see also 45 C.F.R. § 74.1(a)(3), as amended Mar. 22, 1996; 45 C.F.R. § 304.20 (federal financial participation is available "for the support enforcement services ... made pursuant to the approved title IV-D State plan"); see also Richard Cappalli, Federal Grants and Cooperative Agreements, § 1:13 at 26 (1982).

The Secretary's regulations relied upon by petitioner (Pet. Br. at 14) are fully consistent with this analysis of the relationship between the Title IV-D funding and operational requirements, on one hand, and the separate, additional Title IV-A penalty provisions on the other. There are distinct sets of regulations governing "Standards for Program Operations," 45 C.F.R. Part 303, and "Audit and Penalty," 45 C.F.R. Part 305. The former are mandatory and universal, requiring that prescribed steps be taken in "all cases." 45 C.F.R. § 303.3, 303.4, 303.5, 303.6. The latter trigger the special part IV-A penalty only if the audit sample shows noncompliance at a given level (75 percent for some title IV-D requirements and 90 percent for others). 45 C.F.R. § 305.20.

In promulgating and amending the audit and penalty regulations, the Secretary has been careful to explain the limited applicability of those regulations, and to remind the states that notwithstanding that substantial compliance on that special penalty limitation, they continue to have an obligation to provide the services prescribed in all cases, ***19** not only in some of them. See 59 Fed. Reg. 66212 (Dec. 23, 1994) ("while the program regulations specify how States must operate IV-D programs ... audit regulations specify those requirements which must be met in order for a State to ... avoid fiscal penalties."); see also, e.g., 49 Fed. Reg. 36773 (Sept. 19, 1984) (regulations should not be "construed to imply that it would be permissible for States to neglect or exclude certain cases or classes of cases"); id. at 36774 ("States are required to undertake to secure support and establish paternity in all cases").[19]

This Court addressed Spending Clause statutory scheme closely parallel to Title IV-D in Bennett v. Kentucky Dept. of Education, 470 U.S. 658 (1985), and concluded that the presence of a "substantial compliance" limitation only in a particular remedial part of a statute is not to be read into the definition of the statute's substantive obligation. Bennett involved state violation of a statute that provided federal funds as a supplement to, and not to "supplant", local educational funds. 470 U.S. at 660. Relying on Pennhurst, Kentucky argued that it did not accept Title I funds with "knowing acceptance" of the "supplanting" prohibition, because the statute only provided for prospective withholding of federal funds where ***20** there was a failure to "comply substantially." 470 U.S. at 663, 665.

The Bennett Court rejected the Pennhurst argument, holding that references to "substantial compliance" in certain remedial provisions does not affect the separate question whether there was a misuse of the federal funds such that the misspent funds could be recovered by the government. 470 U.S. at 663-64; see also King v. Smith, 392 U.S. at 317 (enforcing fully provisions of former Title IV-A while noting that the statute provided for termination of funding for failure to "comply substantially" with the statute in administering the state plan).

So here: That Congress limited one, special penalty for Title IV-D violations to instances of "substantial" noncompliance can not be read as an across-the-board permission to the states to violate the IV-D requirements some percentage of the time.

(ii) Section 652(g), the second reference to "substantial compliance," which does appear in Title IV-D, provides that states must attain a paternity establishment percentage of 90 percent (up from 75 percent in the pre-1996 statute), or must increase their paternity establishment percentage each year, in order to meet the § 603(h) substantial compliance standard. That provision cuts against petitioner, not for her.

The binding obligations under Title IV-D generally, and the § 1983 right plaintiffs seek to enforce, arise from the duty to provide child support services, not from any obligation in fact to establish paternity for any particular individual or in fact to obtain a child suport order or in fact to secure enforcement of such an order. In this respect, the obligation is similar to an obligation to provide legal or medical services; such an obligation obviously can be binding (on a doctor or lawyer who promises to provide the services in exchange for a fee) even though there is no assurance that any particular result will be obtained through the services.

***21** The paternity determination "substantial compliance" provisions, however, go further than the remainder of Title IV-D and the regulations thereunder and turn on the achievement of results, not only on the provision of services. That results are measured, and at an "A-" level, simply shows how serious Congress is about assuring that the underlying services are actually provided at the intensity prescribed by the statute and regulations.[20]

(d) In an effort to put the § 1983 enforceable rights analysis outlined in Golden State to double duty, petitioner also contends that the interests respondents assert are " 'too vague and amorphous' to be judicially enforceable," Pet. Br. at 16, quoting Wilder, 496 U.S. at 509, and that respondents therefore do not have—or may not have—Article III standing to bring this suit.

In the first place, as we have shown, this case, in contrast with Wilder and Suter, does not involve obligations that are arguably "vague or amorphous" in the sense used in those cases—viz, in the sense that determining whether the obligation has been satisfied is beyond judicial competence. Title IV-D and its implementing regulations set forth a state's obligations in exacting detail. And, while petitioner makes a quasi-"vagueness" argument in contending that a state's obligation under Title IV-D is limited to "substantial compliance" with federal requirements, Pet. Br. at 16, we already have demonstrated that petitioner is mistaken in that regard. See pp. 14-20, supra.

In an apparent recognition of the weakness of her "vagueness" arguments, petitioner bridges from Wilder and Suter to the case law concerning a plaintiff's standing to sue under Article III. Pet. Br. at 16-19. But petitioner's ***22** hint of an Article III standing argument is in reality quite independent of her argument that Title IV-D obligations are "vague" under the Wilder/Suter standard. And, to the extent petitioner is making such an independent claim about standing—viz. that Congress cannot, consistent with Article III, provide the custodial parents and their minor children with a cause of action to enforce title IV-D rights—her argument is meritless.

To satisfy Article III, a plaintiff in federal court need allege as an "irreducible minimum" that "there be (1) an injury in fact, (2) a causal relationship between the injury and the challenged conduct, and (3) a likelihood that the injury will be redressed by a favorable decision." United Food & Commercial Workers v. Brown Group, 517 U.S. 544, 116 S. Ct. 1529, 1533 (1996). Petitioner contends that respondents do not meet these minima because (1) their "true injury" is the "absent parents' failure (or inability) to take responsibility for their children," (2) she did not cause that "true injury, and (3) requiring that she provide the respondents with the child support services to which they are entitled will not necessarily result in the collection of child support and thereby redress that "true injury." Pet. Br. at 16.

But, as their complaint makes clear, respondents are not seeking in this lawsuit to compel petitioner to support their children. They are seeking the child support enforcement services to which they and their minor children are entitled. And "[t]he actual or threatened injury required by Art. III may exist solely by virtue of 'statutes creating legal rights, the invasion of which creates standing.' " Warth v. Seldin, 422 U.S. 490, 500 (1975), quoting Linda R.S. v. Richard D., 410 U.S. 614, 617 n. 3 (1973); see also Havens Realty Corp. v. Coleman, 455 U.S. 363, 373 (1982); Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205, 208-212 (1972). "[T]he existence of such a [legal] right is, on the basis of our common-law traditions, entirely clear ... when a statutory provision requires an agent of the executive to provide a particular benefit directly to a particular individual." ***23** A. Scalia, The Doctrine of Standing as an Essential Element of the Separation of Powers, 27 Suffolk L. Rev. 881, 885-86 (1983). Since the point of the complaint here is that Title IV-D requires petitioner to provide child support services directly to respondents, respondents have standing to complain that petitioner has not done so.

We acknowledge the possibility (greatly exaggerated by petitioner) that even if petitioner followed the designated procedures to the letter, child support still might not be collected. But that does not mean respondents suffer "no injury in fact" when the services are withheld.

In the first place, the services have real-world monetary value: People regularly hire and pay private attorneys to attempt (and sometimes fail) to collect child support. A custodial parent who seeks but does not obtain such services from the Title IV-D agency is therefore injured in a concrete, quantifiable way in the amount of the cost of obtaining those same services on the private market.

Second, many of the individual steps petitioner must take pursuant to Title IV-D, such as locating the absent parent, establishing paternity, and obtaining a support order, will benefit respondents' children even if support is not collected immediately. Congress sought in Title IV-D to protect a "child's right to ... inheritance, and to know who his father is." S. Rep. No. 1356, 93d Cong., 2d Sess. 51 (1974) (emphasis added). The injury caused by the denial of enforcement services to these children is "actual or imminent, not conjectural or hypothetical," and "concrete and particularized,"—"mean [ing] that the injury ... affect[s] the plaintiff in a personal or individual way." Lujan v. Defenders of Wildlife, 504 U.S. 555, 112 S. Ct. 2130, 2136 & n. 1 (1992) (citations, internal quotation marks omitted).

Finally, even if the right to child support services were viewed as a purely "procedural" right—viz. of value only in advancing the concrete right to receive support—a plaintiff complaining about the denial of those services still would not have to demonstrate that child support ***24** would have been collected to show an Article III "injury-in-fact." As this Court explained in Lujan, 112 S. Ct. at 2142 n. 7 & 2143 n. 8, procedural rights are "special" for purposes of Article III standing in that the plaintiff need show, for standing purposes, only that "the procedural violation endangers a concrete interest of the plaintiff (apart from his interest in having the procedure observed)." Id. Thus, "one living adjacent to the site for proposed construction of a federally licensed dam has standing to challenge the licensing agency's failure to prepare an Environmental Impact Statement, even though he cannot establish with any certainty that the Statement will cause the license to be withheld or altered." Id. (emphasis supplied). See also Northeastern Florida Contractors v. Jacksonville, 113 S. Ct. 2297, 2301-05 (1993).

To be sure, petitioner would analogize this case to Linda R.S. v. Richard D., supra, in which the plaintiff sought to compel a state to criminally prosecute the father of her child for failing to pay support, and to Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26 (1976), in which the plaintiffs sought to compel the head of the Internal Revenue Service to rescind a tax ruling regarding someone else.

But, as petitioner herself points out, in those cases the “plaintiff’s asserted injury [arose] from the government’s allegedly unlawful regulation (or lack of regulation) of someone else” and in such cases “standing ... is ordinarily substantially more difficult to establish.” Pet. Br. at 18 (emphasis removed), quoting Lujan, supra, 112 S. Ct. at 2137. That is so because in such cases the plaintiff is seeking government action in the general public interest of a kind that is peculiarly subject to prosecutorial discretion or public policy determination. The asserted injuries in Linda R.S. and Simon, moreover, were indirect—the plaintiffs claimed that, by acting unlawfully in regulating third parties, the government was causing the third parties to change their behavior, which in turn was causing injury to the plaintiffs—thereby creating a ***25** question as to whether these injuries could be redressed in a suit against the government alone.

By contrast, the respondents here have alleged a direct “injury-in-fact” for which they seek redress. The statute requires that petitioner provide respondents with the very services that petitioner is not providing; respondents are entitled to those services; they are injured by the deprivation of those services, without regard to the ultimate impact on the non-custodial parent’s actions; and ordering petitioner to provide the services as required would fully redress the injury alleged.

3. Once it is determined that a particular statutory scheme creates federal “rights,” § 1983, by its terms, creates a cause of action that provides “an independent safeguard against deprivations of [such] federal ... statutory rights.” Smith v. Robinson, 468 U.S. 992, 1012 (1984). Congress does, however, with respect to any particular statutory right “retain[ ] the authority to repeal it or replace it with an alternative remedy.” Id. Petitioner maintains that Title IV-D implicitly works such a repeal by providing for enforcement of its requirements by the Secretary through its audit and penalty provisions. Pet. Br. at 20.

It has long been a “cardinal rule” of statutory construction that “repeals by implication are not favored,” and that implicit repeals are therefore found only if “the intention of the legislature [is] ... clear and manifest.” Posadas v. National City Bank, 296 U.S. 497, 503 (1936). And, in the absence of any direct evidence of Congressional intent, an implied repeal will ordinarily be found only where “the provisions of the two acts are in irreconcilable conflict.” Radzanower v. Touche Ross & Co., 426 U.S. 148, 154 (1976); see also United States v. Hansen, 772 F.2d 940, 944 (D.C.Cir.1985) (Scalia, J.).

Consistent with these implied repeal principles, this Court has repeatedly made clear that it will “ ‘not lightly conclude that Congress intended to preclude reliance on ***26** § 1983 as a remedy’ for the deprivation of a federally secured right.” Golden State, 493 U.S. at 107, quoting Wright, 479 U.S. at 423-24, quoting Smith, 468 U.S. at 1012. Rather, where, as here, there is neither an express repeal of § 1983 remedies in particular nor a general statement that the remedies included in the statute are exclusive, compare Adickes v. S.H. Kress Co., 398 U.S. 44 (1970), “[t]he burden is on the State to show ‘by ... specific evidence from the statute itself that Congress intended to foreclose’ a § 1983 action,” Wilder, 496 U.S. at 520 (emphasis supplied).[21] An implied repeal of § 1983 will be found only where “ ‘[a]llowing a plaintiff’ to bring a § 1983 action ‘would be inconsistent with Congress’ carefully tailored scheme.’ ” Golden State, 493 U.S. at 107, quoting Smith, 468 U.S. at 1012.

In particular, this Court has never found such inherent inconsistency where, as here, the rights-creating statute provides no means of private enforcement whatever, administrative or judicial. Rather, from the time of Rosado v. Wyman, the Court has consistently been “reluctant to assume Congress has closed the avenue of ... review to those individuals most directly affected.” 397 U.S. at 420. See Wright, 479 U.S. at 427-28; Wilder, 496 U.S. at 522.

In the very few instances in which an implicit repeal of § 1983 has been found, the rights-creating statute did provide for private enforcement but with particular limitations, and the Court’s conclusion was simply that the private enforcement scheme was sufficiently comprehensive that Congres could not have intended to permit evasion of the limitations through a suit under § 1983. Middlesex County Sewerage Authority v. National Sea Clammers Ass’n., 453 U.S. 1 (1981) (“Sea Clammers”) ***27** (no cause of action for damages under § 1983 where the rights-creating statute provides for individual judicial actions for injunctive relief only); Smith v. Robinson, supra (no § 1983 action with concomitant attorneys fees for prevailing plaintiffs where the rights-creating statute provides for private administrative and judicial enforcement but has no provision for collection of attorneys fees); Preiser v. Rodriguez, 411 U.S. 475 (1973) (no § 1983 action without exhaustion of administrative remedies where habeas corpus, requiring such exhaustion, is available).

Petitioner cannot begin to demonstrate any fundamental inconsistency between private judicial actions under § 1983 and the enforcement scheme provided under Title IV-D. The auditing and penalty schemes provided under Title IV-D are essentially identical to those in Wright and Wilder. And both precedents hold such schemes to be insufficient to evidence a congressional intention to preclude all individual remedies. Petitioner attempts, it is true, to distinguish Wright and Wilder on the basis of minor differences between the details of the audit and penalty provisions in those cases and the one in Title IV-D. Pet. Br. at 20-21. Those cases do not, however, turn on small differences between one audit and penalty provision and another, but instead reject the conclusion, as the implied repeal principle required them to do, that audit and penalty provisions, standing alone, can be in "irreconcilable conflict," Radzanower v. Touche Ross & Co., 426 U.S. at 154, with a private action for prospective relief under § 1983, at least where "the statute did not require, nor did [the auditing agency] provide, any mechanism for individuals to bring problems to the attention of [the agency]." Wilder, 496 U.S. at 522.[22]

***28 II. THERE IS NO BASIS FOR ABANDONING THIS COURT'S WELL-CONSIDERED CONCLUSION IN MAINE v. THIBOUTOT THAT 42 U.S.C. § 1983 SHOULD BE CONSTRUED IN ACCORD WITH ITS PLAIN LANGUAGE TO REACH VIOLATIONS OF RIGHTS CREATED BY FEDERAL STATUTES.**

Seeing an imminent checkmate, petitioner seeks to sweep all the chessmen off the table by calling for the overruling of Maine v. Thiboutot, 484 U.S. 1 (1980), in terms or in substance. Petitioner's maneuver is wanting in three regards: Thiboutot correctly interprets 42 U.S.C. § 1983; to the extent Thiboutot's correctness is open to question, petitioner cannot come close to overcoming the stare decisis principles which weigh in favor of maintaining the Thiboutot interpretation of § 1983; and petitioner did not present any question going to Thiboutot's correctness in her petition. After setting out the essence of the Thiboutot decision, we turn to these three points, taking the ones at the threshold first.

(a) The proposition that § 1983 provides a cause of action against persons violating under color of state law a plaintiff's federal statutory rights did not, as petitioner would have it, first emerge in Thiboutot as a creative judicial gloss on a one hundred year old statute, to "extend[ ] § 1983's reach." Pet. Br. at 30. Rather, Thiboutot simply read § 1983 as meaning precisely what the statute has always said. As the Thiboutot Court stated:

The question before us is whether the phrase "and laws," as used in § 1983, means what it says, or whether it should be limited to some subset of laws. Given that Congress attached no modifiers to the phrase, the plain language of the statute undoubtedly embraces respondents' claim that petitioners violated the Social Security Act. [Thiboutot, 448 U.S. at 4.]

And, as Thiboutot also recognized, long before 1980 "any doubt as to [§ 1983's] meaning [was] resolved by our several cases suggesting, explicitly or implicitly, that the § 1983 remedy broadly encompasses violations of federal statutory as well as constitutional law." Id. (citing numerous ***29** cases). As Thiboutot emphasized as well, there were by 1980 numerous cases decided in this Court under the Social Security Act, the same statute underlying this case and Thiboutot, that necessarily "relied on the availability of a § 1983 cause of action for statutory claims." Id. at 5 (citing cases).

To be sure, in 1979 this Court's longstanding literal interpretation of § 1983 was disputed in a case on a related jurisdictional issue, with concurring opinions taking opposing views on the reach of § 1983. Chapman v. Houston Welfare Rights Organization, 441 U.S. 600, 623 (1979) (Powell, J., concurring); id. at 646 (White, J., concurring). A few months thereafter, this Court granted certiorari in Thiboutot on the question that divided the Chapman concurrences. Thiboutot Pet. Writ of Cert. at 2. The parties and amici thereupon provided the Court with extensive commentary on the legal analyses and historical exegeses contained in the Chapman concurring opinions. See Thiboutot Briefs.

The upshot of this exceedingly careful two-stage consideration was a 6-3 decision in which the Thiboutot Court determined that the "[o]ne conclusion which emerges clearly is that the legislative history does not permit a definitive answer." 448 U.S. at 7. Finding no basis, let alone any compelling basis, for disregarding the statute's plain terms, the Court declined to go behind the statutory language, and regarded the argument for doing so as fundamentally one for the legislature:

Petitioners' arguments amount to the claim that had Congress been more careful ... it might have acted differently. That argument, however, can best be addressed to Congress, which, it is important to note, has remained quiet in the face of our many pronouncements on the scope of § 1983. [448 U.S. at 8.]

(b) The precedent-shattering question "whether Maine v. Thiboutot ... should be reconsidered," Pet. Br. (i), discussed in petitioner's merits brief is not properly before the Court. The certiorari petition presented only a single, ***30** considerably more modest issue, limited to the Title IV-D child support context and invoking rather than attacking "this Court's precedents."[23]

Whether to overrule a sixteen-year old decision, cited and applied in the very cases on which the petition relied, is not a question "fairly included" in the narrow question petitioner chose to raise. See Supreme Court Rules, Rule 14.1(a); Yee v. City of Escondido, 503 U.S. 519, 536-37 (1992). Nor does the petition in its body request the overruling of established law. Instead, both the petition and petitioner's reply concentrate exclusively upon why this particular statute—Title IV-D of the Social Security Act—should not be considered enforceable under § 1983. Neither document cites Maine v. Thiboutot, the foundation case petitioner now seeks to have "reconsidered," at all.

One carefully worded sentence in the petition can, in the fullness of hindsight, be seen as an attempt to protect petitioner's right to seek the overruling of Thiboutot. See Pet. at 7 ("The time has come for the Court to decide the general availability of § 1983 to enforce federal nonconstitutional rights."). But since, as a general matter, this Court's certiorari procedures are intended to allow this Court intelligently to choose which issues it will entertain, a reference to an issue in the text of the petition, like any attempt to "smuggl[e] additional issues into a case ... [on] certiorari," is not sufficient to bring before the Court a question not fairly included in the question presented. Izumi Seimitsu v. U.S. Philips Corp., 510 U.S. 27, 114 S. Ct. 425, 427 n. 5, 428 (1993); Yee v. City of Escondido, 503 U.S. at 536.

***31** (c) If petitioner's merits brief question on Thiboutot is entertained, the considerations underlying stare decisis militate overwhelmingly against overruling or modifying Thiboutot's reading of § 1983.

The last time this Court considered whether to abandon a long-established interpretation of the post-Civil War civil rights statutes, the Court's unanimous conclusion was that principles of stare decisis should prevail:
[S]tare decisis is a basic self-governing principle within the Judicial Branch, which is entrusted with the sensitive and difficult task of fashioning and preserving a jurisprudential system that is not based upon "an arbitrary discretion." The Federalist, No. 78, p. 490 (H.Lodge, ed. 1888) (A.Hamilton). ... [W]e have held that "any departure from the doctrine of stare decisis demands special justification." Arizona v. Rumsey, [467 U.S. 203, 212 (1984)]. Considerations of stare decisis have special force in the area of statutory interpretation, for here, unlike in the context of constitutional interpretation, the legislative power is implicated, and Congress remains free to alter what we have done. [Patterson v. McLean Credit Union, 491 U.S. 164, 172-73 (1989).]

(i) It is very much to the point—indeed, we believe it to be independently decisive—that the argument that Thiboutot should be overruled has been, repeatedly, "addressed to Congress," Thiboutot, 448 U.S. at 8, and that Congress has not only declined to "alter what [this Court had] done" but has taken actions that reaffirm the decision.

Hearings were held on the impact of Thiboutot in 1981, and bills were introduced to overturn the Court's interpretation of § 1983 on many occasions. H.R. 7686, 96th Cong., 2d Sess. (1980); S. 3114, 96th Cong., 2d Sess. (1980); S. 584, 97th Cong., 1st Sess. (1981); 127 Cong. Rec. 3209 (Feb. 26, 1981) (remarks of Sen. Hatch); Hearings before the Subcommittee on the Constitution of the Committee on the Judiciary, United States Senate, 97th Cong., 1st Sess. (1981); S. 81, 98th Cong., ***32** 1st Sess. (1983); S. 436, 99th Cong., 1st Sess. (1985); S. 325, 100th Cong., 1st Sess. (1987).[24] That no statute limiting the application of § 1983 generally was enacted reflects "continued acceptance of [the] earlier holding" in Thiboutot and is entitled to "weight." Hilton v. South Carolina Public Railways Comm'n, 502 U.S. 197, 202 (1981).

Even more significantly, since Thiboutot, Congress has enacted statutes specifically intended to assure that a cause of action generally lies under § 1983 for violations of rights created by federal statutes, including, in particular, the rights created by the Social Security Act.

First, a few months after Thiboutot was decided, Congress amended 28 U.S.C. § 1331 to provide for federal question jurisdiction without regard to the amount in controversy. Pub. L. No. 96-486, 94 Stat. 2369 (1980). In doing so, Congress specifically intended to provide federal jurisdiction over "challenges to state and local action violative of federal statutes and regulations" such as "Chapman v. Houston Welfare Rights Organization...." S. Rep. No. 827, 96th Cong., 2d Sess. 5 & n. 5 (1980); see also H.R. Rep. No. 1461, 96th Cong., 2d Sess. (1980).[25]

***33** Second, more recently, Pub. L. No. 103-382, § 555(a), 108 Stat. 4057-58 (1994) (codified at 42 U.S.C. § 1320a-2) was enacted to "assure that individuals who have been injured by a State's failure to comply with the Federal mandates of the State plan titles of the Social Security Act are able to seek redress in the federal courts to the extent they were able to prior to the decision in Suter v. Artist M." 129 Cong. Rec. S.15942 (daily ed. Nov. 17, 1993); H.R. Rep. No. 761, 103d Cong., 2d Sess. 926 (1994) (same explanation); id. at 923 (mentioning Title IV-D specifically); 140 Cong. Rec. S.15024 (daily ed. Oct. 8, 1994) (remarks of Sen. Rockefeller) (Suter "causes real concern" because it appeared to "eliminate[ ] an individual's right to sue to enforce provisions of ... the Social Security Act"). See n. 14, supra. Because the pre-Suter cases against states alleging violations of the Social Security Act (including Thiboutot itself) were brought under § 1983, Congress in enacting Pub. L. No. 103-382 was necessarily reaffirming Thiboutot at least with respect to cases enforcing the Social Security Act. This Congressional reaction to Thiboutot is alone sufficient to preclude the repudiation of that decision petitioners seek. Hilton, 502 U.S. at 202.

(ii) Putting Congress' reaction to Thiboutot to one side, none of the "compelling justification[s]" for a "depart[ure] from the doctrine of stare decisis" in the statutory context, Hilton, 502 U.S. at 202, are present here.

• Thiboutot was decided after an unusually "full airing of all the relevant considerations." Monell v. Dep't of Social Services, 436 U.S. 658, 710 n. 6 (1978) (Powell, J., concurring).

• There is no tension among this Court's precedents concerning whether § 1983 provides a cause of action for enforcement of "rights" protected by federal statutes generally, absent a specific congressional determination otherwise with respect to a particular statutory right. No case of this Court either before or after Thiboutot has held that § 1983 does not so provide or is in any way inconsistent ***34** with the basic holding of Thiboutot. Compare Monell v. Dep't of Social Services, 436 U.S. at 695-96 (overruling Monroe v. Pape, 365 U.S. 167 (1961) in part because cases holding school boards liable under § 1983 could not be squared with the rule of Monroe that governmental instrumentalities are not "persons" for purposes of § 1983); id. at 708 (Powell, J., concurring) ("[h]ere considerations of stare decisis cut in both directions"); see also Director, OWCP v. Greenwich Collieries, 512 U.S. 267, 114 S.Ct. 2251, 2258 (1994).

• There is no basis, either for regarding Thiboutot as a "seriously flawed decision," Hubbard v. United States, 514 U.S. 695, 115 S.Ct. 1754, 1758 (1995), or for invoking the "primary reason" relied upon in those few cases in which "statutory precedents have been overruled"—"intervening development[s] of the law.... [which] have removed or weakened the conceptual underpinnings from the prior decision," Patterson v. McLean Credit Union, 491 U.S. at 173. The key "conceptual underpinning" of Thiboutot is that a statute should be read as written. Since Thiboutot was decided, this Court has ever more emphatically reasserted the same principle, reiterating, in particular, that legislative history may not be used to override unambiguous statutory language, e.g., West Virginia Univ. Hospitals, Inc. v. Casey, 499 U.S. 83, 98-99 (1991), and that it is improper because of the limited concerns expressed during the statute's enactment to read words of limitation into a statute that contains none, Sedima, S.P.R.L. v. Imrex Co., Inc., 473 U.S. 479, 499 (1985) (citation omitted) (" '[T]he fact that [a statute] has been applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth.' "). See also Dennis v. Higgins, 498 U.S. 439, 444 n. 4 (1991) (specifically reaffirming Thiboutot's refusal to ignore the language of § 1983 in favor of inconclusive legislative history).

• Finally, "[s]tare decisis has added force" here because overturning Thiboutot would "require an extensive legislative response." Hilton, 502 U.S. at 202. Congress has ***35** heretofore necessarily enacted federal statutes against a background understanding that § 1983 provides for private actions for violations by state officials of federal statutory rights. Pp. 11-12, supra. If Thiboutot were overruled, Congress would have to revisit every rights-creating federal statute to consider whether specifically to provide anew for a cause of action to replace § 1983.

(iii) Ignoring all of these compelling considerations, petitioner's only submission in favor of abandoning Thiboutot is the assertion that the opinion has "spawned excessive litigation and ... its standards have been utterly unworkable." Pet. Br. at 45. The evidence is to the contrary.

Thiboutot has generated less than ten cases raising questions concerning the application of that decision to particular statutory rights. During that same period, the Court has decided at least as many cases concerning the application of other federal statutory provisions with much narrower reach, including, for example, the preemption provisions of the Employees' Retirement Income Security Act ("ERISA"), 29 U.S.C. § 514(a). See New York State Con. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 514 U.S. 645, 115 S. Ct. 1671 (1995) (citing some but not all of the ERISA preemption cases decided in this Court since 1980). And, the issues that arise in applying § 1983 to statutory rights have not proved any more complex than those that arise in applying § 1983 to cases that even petitioner concedes are within the statute—those that involve constitutional rights.[26]

In reality, petitioner's complaint is with § 1983 as written, not with Thiboutot or its progeny—which, after all, neither add to nor detract from the statutory text. Complaints ***36** that a statute is difficult to apply to particular situations because of thorny interpretive issues inherent in its language or the need to reconcile one statute and a related one have never been thought a basis for judicially invalidating statutes' plain words by simply declaring the offending statutes "puzzles," Pet. Br. at 46, and refusing to enforce them.

(d) The final stare decisis consideration is whether the case sought to be overruled "beyond doubt ... misapprehended the meaning of [§ 1983.]" Monell, 436 U.S. at 700 (citation omitted). Given the complete surveys of the legislative materials in Chapman and Thiboutot, we do not propose in addressing that question to burden the Court by revisiting yet again all the materials that pertain to the question whether there is, as petitioner maintains once more, some basis for converting the word "laws" in § 1983 to "laws providing for equal rights." Pet. Br. at 37-43. Rather, we suggest that stepping back from the details of the historical materials to consider their implications confirms that Thiboutot was, in light of the ambiguity of the historical record, not wrong at all, but quite correct in declining to engraft words onto the statute that do not appear in it.

First, petitioner's argument against Thiboutot begins from the premise that "[w]hen a statute's text is ambiguous, courts should construe the statute in light of its manifest purposes." Pet. Br. at 42. That this statute's text is not ambiguous was the central basis for the holding in Thiboutot. "Laws" are "laws," not some laws or certain laws. And the terms "Constitution" and "laws," used together and conjunctively in § 1983, also appeared together and conjunctively—long before they appeared in the Revised Statutes in 1874—in the Constitution, in statutes, in commentary on the Constitution, and in this Court's early cases.[27] In all of these uses, there was no ***37** implied limitation on the word "laws," and none has since been implied into Article III, the Supremacy Clause, or the federal jurisdictional provisions since enacted using the same phraseology, e.g., 28 U.S.C. § 1331.

Second, a central prong of petitioner's historical analysis (and of the concurring opinion's analysis in Chapman, 441 U.S. at 638, and the dissenting opinion's analysis in Thiboutot, 448 U.S. at 117-19) is that Congress in 1874 could not have meant to alter the meaning of the predecessor statute from which present § 1983 was drawn, which provided only for causes of action for rights secured by the Constitution, because the 1874 revision was not intended to make any changes in the law. Pet. Br. at 40-41.

The short—but complete—answer is that on any theory, the 1874 revision amended the 1871 Civil Rights Act by adding, at a minimum, rights "secured by [some] laws," (those providing for "equal rights") to the constitutional rights actionable under the 1871 provision. More generally, this Court has recognized that the 1874 revision did not always meet its expressed goal of simply reenacting the prior law. Rather, as United States v. Price, 383 U.S. 787, 803 (1966) notes, the revision did, with some frequency, "broaden [ ]" prior law, yet in doing so linked the "substantial change ... effected ... with the customary stout assertions of the codifiers that they had merely clarified and reorganized without changing substance." So recognizing, the Court from the first declined to go behind the 1874 revision where the revision in itself is quite clear, since to do otherwise would undermine the goal of the revision. Hamilton v. Rathbone, 175 U.S. 414, 421 (1899) ("If the language of the revision be plain upon its face, the person examining it ought to be ***38** able to rely upon it. If it [the revision] be but another volume added to the prior Statutes at Large, the main object of the revision is lost, and no one can be certain of the law without an examination of all previous statutes upon the same subject."); see also id. (citing cases), see particularly United States v. Hirsch, 100 U.S. 33 (1879) (revised statute punishing conspiracies to defraud generally is not restricted by the pre-revision statute which was limited to revenue law conspiracies).

Third, petitioner's argument is based on a hypothesis about what Congress must have intended in 1874, viz., that § 1983 was intended to parallel present 28 U.S.C. § 1343(a)(3), which provides jurisdiction only over causes of action for rights secured by the Constitution or "any Act of Congress providing for equal rights." Pet. Br. 42-43. But the legislative materials generate at least two other, equally likely hypotheses.

(i) The term "and laws" could have been included in an effort to conform a number of related statutes with varying coverage.

Section 1343(a)(3) derives from two different 1874 jurisdictional provisions, one of which—covering the circuit courts, then trial courts—had the equal rights limitations, and the other of which—covering the district courts—did not. Pet. Br. App. 9-10. The failure in 1874 to provide full access to the circuit courts for all cases within present § 1983, at a time when all such cases were otherwise adjudicable in the federal courts, is certainly not particularly noteworthy, let alone such an oddity as would justify departure from the plain language of § 1983. United States v. Ran Pair Enterprises, Inc., 489 U.S. 235, 242 (1989).[28]

***39** At the same time, the substantive coverage of the civil rights laws was, by 1874, in some disarray. Present 18 U.S.C. § 242 began life, as did § 1983, as part of the Civil Rights Act of 1866, Pet. Br. App. 2-3; see United States v. Price, 383 U.S. at 302. Present 18 U.S.C. § 241 was added in the Enforcement Act of 1870, 16 Stat. 140. The revisers were faced with three different substantive statements of the reach of the protections accorded by the civil rights acts: The pre-1874 version of § 242 provided criminal sanctions for deprivation of equality by persons acting under color of state law, but only as to the rights secured by the civil rights statute itself (16 Stat. 144); the pre-1874 version of § 241 provided criminal penalties for any criminal conspiracy to interfere with rights protected by both the "Constitution" and "laws" (16 Stat. 141); and the civil "under color of state law" section added in 1871, present § 1983, reached rights protected by the Constitution, but said nothing about any laws. The revisers could well have viewed this diversity in coverage as precisely the sort of " 'contradition' ", Pet. Br. at 40, they were supposed to eliminate, and, acting on that view, conformed all three sections to the broadest of the three statutes, present 18 U.S.C. § 241. And, since the two criminal sections, one of the two jurisdictional sections, and the civil section all, as revised in 1874, applied to rights protected by "laws" without limitation, "if there was a slip of the pen [in 1874], it is more arguable that the mistake occurred" in the circuit court jurisdictional provision than in § 1983. Chapman, 441 U.S. at 669 (White, J., concurring). One mistake is surely more likely than four.

***40** (ii) The term "and laws" could have been added to clarify that § 1983 protects federal rights "secured by" the Supremacy Clause.

This Court has noted that, considered independently, the phrase "fights ... secured by the Constitution" "can be fairly read to describe rights secured by the Supremacy Clause," since "that Clause ... does 'secure' federal rights by according them priority whenever they come in conflict with state law." Chapman, 441 U.S. at 612-13; see also Golden State, 493 U.S. at 107. The reference to the Constitution also can be read as excluding Supremacy Clause claims, even where federal statutory rights are involved. Chapman, 441 U.S. at 614-15.

It appears that the 1874 revisers were aware of that ambiguity. See Revision of the United States Statutes as Drafted by the Commissioners Appointed for that Purpose 362 (1872), quoted in Chapman, 441 U.S. at 631-32 (Powell, J., concurring) (noting that while Congress may have intended to include rights protected by statute in § I of the 1871 Civil Rights Act, courts might determine that "only such rights as are specifically secured by the Constitution, and not every right secured by a law authorized by the Constitution, were ... intended"). Consequently, in adding "and laws" to present § 1983 at the time of the revision, the revisers, and Congress, could well have concluded that they were only clarifying the intention of the original civil rights act Congresses to include rights "secured by" the Supremacy Clause in the sense discussed in Chapman, and were not adding to the 1871 Act at all.[29]

***41** The foregoing foray into competing historical hypotheses, we submit, amply supports Thiboutot's determination that the "[o]ne conclusion that emerges clearly is that the legislative history does not permit a definitive answer." 448 U.S. at 7. Because that is the case, there would be absolutely no basis for upsetting Thiboutot's plain words construction of § 1983 even if the other stare decisis considerations were less formidable.

(e) In addition to rearguing the very issues covered in Thiboutot, petitioner proposes a second theory for overruling its holding—viz. that a right is "secured" by a federal law within the meaning of § 1983 only if that other law expressly provides some private cause of action. Pet. Br. at 36. This suggestion is trebly flawed.

First, the premise of petitioner's "secured by ... law" argument—that determining the application of § 1983 is analogous to deciding when to permit enforcement of an implied private cause of action, Pet. Br. at 31—is simply wrong. Section 1983 quite explicitly provides a "source of express congressional authorization of private suits," Sea Clammers, 453 U.S. at 19, presumptively applicable, for all the reasons just canvassed, to all suits against state actors alleging violation of rights secured by federal law.[30] For the judiciary to create by implication causes of action for which Congress did not explicitly provide raises a separation of powers question. E.g., Virginia Bankshares, Inc. v. Sandberg, 501 U.S. 1083, 1102-05 (1991); Wilder, 496 U.S. at 508 n. 9. Where, however, Congress does, as in § 1983, explicitly provide in a delimited class of cases for a generic cause of action enforcing federal rights, the separation of powers concerns cut in the opposite direction. It is the courts' responsibility to enforce any statute providing a cause of action, including a generic one, rather than to insist that having created the cause of action once Congress ***42** must do so twice or the courts will not abide by Congress' announced intention. See Wilder, 496 U.S. at 508 n. 9; see also, e.g., United States v. Locke, 471 U.S. 84, 95 (1985).

Second, petitioner proposes, nonetheless, that Congress intended in enacting § 1983 to provide a cause of action only where Congress also provides for individual private suits specifically with regard to the particular right enforced, on the supposition that "[a] statute can hardly be said to 'secure' a 'right' to a 'person' if that person cannot sue under the statute." Pet. Br. at 35.

This Court, however, has consistently interpreted "secured" as used in § 1983 as a substantive rather than a procedural, litigation-oriented term. As the Chapman Court noted, 441 U.S. at 613 n. 29: "The preamble of the Constitution, proclaiming the establishment of the Constitution in order to 'secure the Blessings of Liberty', uses the word 'secure' in the sense of 'protect' or 'make certain'." This Court has routinely used the word in that substantive sense when referring to § 1983. See, e.g., Golden State, 493 U.S. at 111. And the statutory context and history confirm that § 1983 uses the word "secured" with precisely that meaning.

The Civil Rights Act of 1866, for example, from which § 1983 was derived, provided first, in § 1, that all citizens have "the same [specified] right [s] ... as ... enjoyed by white citizens" and then separately, in § 2, for criminal penalties for "any right secured ... by [the first section of] this act." Pet. Br. App. 3.

Similarly, the direct predecessor of § 1983, § 1 of the 1871 Ku Klux Klan Act, 17 Stat. 13, provided a civil cause of action for deprivation of "any rights, privileges, or immunities secured by the Constitution of the United States." No section of the Constitution, including the Fourteenth Amendment, makes any express provision for private enforcement or otherwise "secures" rights in the litigation-centered sense petitioner posits. Yet, "the 'prime ***43** focus' of § 1983 and related provisions was to ensure 'a right of action to enforce the protections of the Fourteenth Amendment and the federal laws enacted pursuant thereto...." Dennis v. Higgins, 498 U.S. at 444-45; see also, e.g., Cong. Globe, 39th Cong., 1st Sess. 474 (1866) (remarks of Sen. Trumbull); id. at 1151 (remarks of Rep. Thayer); Cong. Globe, 42nd Cong., 1st Sess. App. 68 (1871) (remarks of Rep. Shellabarger) (all making clear that the drafters of both the 1866 and 1871 Acts saw the key role of both the 1866 and 1871 civil rights act to be to provide a means, first criminal and then civil, of enforcing those rights secured by independent substantive provisions). The 1874 revision followed this same basic structure and usage.

Finally, § 1983 has always been recognized as "an important part of the basic alteration in our federal system wrought in the Reconstruction era." Mitchum v. Foster, 407 U.S. 225, 238 (1972). Yet, under petitioner's thesis, § 1983 would not reach constitutional rights, much less its present range of statutory rights.[31] Petitioner's recast § 1983 would be a "derelict on the waters of the law," Lambert v. California, 355 U.S. 225, 232 (1957) (Frankfurter, J., dissenting), no longer fulfilling its "very purpose ... to interpose the federal courts between the States and the people, as guardians of the people's federal rights—to protect the people from ***44** unconstitutional action under color of state law," id. at 242.[32]

III. THE ELEVENTH AMENDMENT DOES NOT BAR THIS SUIT TO COMPEL A STATE OFFICIAL'S FUTURE COMPLIANCE WITH TITLE IV-D.

Petitioner's final argument asserts that the Eleventh Amendment bars this suit, even though it is a suit not against the state but against a state officer for purely prospective relief. Pet. Br. 23.[33] While petitioner does not so acknowledge, her Eleventh Amendment argument just as squarely calls for the overruling of Edelman v. Jordan, 415 U.S. 651 (1974), and its progeny as her § 1983 argument does of the Thiboutot line of cases.

1. As a case against the petitioner, the Director of Arizona's Title IV-D agency, not against Arizona, seeking ***45** to require

the petitioner to administer Arizona's IV-D child support services program in the future in conformity with federal law, this case fits comfortably within this Court's venerable line of cases beginning with Ex parte Young, 209 U.S. 123 (1908), holding suits against state officers for violations of federal law not barred by the Eleventh Amendment.[34]

The Ex parte Young doctrine was "the culmination of efforts by this Court to harmonize the principles of the Eleventh Amendment with the effective supremacy of rights and powers secured elsewhere in the Constitution." Pennhurst State School & Hosp. v. Halderman ("Pennhurst II"), 465 U.S. 89, 105 (1984) (citation omitted). The doctrine has been repeatedly reaffirmed in recent years as a "reconcil[iation] of competing interests" that is "necessary to permit the federal courts to vindicate federal rights and hold state officials responsible to the 'supreme authority of the United States.' " Pennhurst II, 456 U.S. at 106, 105, quoting Young, 209 U.S. at 106; see also Green v. Mansour, 474 U.S. 64, 68 (1985) ("Remedies designed to end a continuing violation of federal law are necessary to vindicate the federal interest in assuring the supremacy of that law.").

Most recently, this Court in Seminole Tribe of Florida v. Florida, 517 U.S. 44, 116 S. Ct. 1114 (1996), twice emphasized that in those instances in which the Eleventh Amendment would bar suit against the state itself, to "ensur[e] the States' compliance with federal law ... an individual can bring suit against a state official to ensure that the officer's conduct is in compliance with federal law, see, e.g., Ex parte Young...." 116 S. Ct. at 1131 n. 14; see also id. at n. 16 (same).

Equally to the point, Edelman v. Jordan, Quern v. Jordan, 440 U.S. 332 (1979) and Green v. Mansour ***46** were all "Thiboutot-type" cases (Pet.Br.23), brought, like this case, under § 1983 to enforce individual rights under the Social Security Act. All three cases emphasized that suits against state officers under § 1983 to compel their future compliance with federal laws are not barred by the Eleventh Amendment:

In Edelman .... we ... pointed out that under the landmark decision in Ex Parte Young, 209 U.S. 123 (1908), a federal court, consistent with the Eleventh Amendment, may enjoin state officials to conform their future conduct to the requirements of federal law, even though such an injunction may have an ancillary effect on the state treasury.... The distinction between that relief permissible under ... Ex Parte Young and that found barred in Edelman was the difference between prospective relief on the one hand and retrospective relief on the other. [Quern, 440 U.S. at 337.]

See also Green, 474 U.S. at 68. And, this Court has repeatedly recognized that as long as any impact on the state is "the necessary result of compliance with decrees which by their terms [are] prospective in nature", the fact that "[s]tate officials, in order to shape their official conduct to the mandate of the Court's decrees, would more likely have to spend money from the state treasury than if they had been left free to pursue their previous course of conduct" does not affect the courts' jurisdiction over those state officers in cases brought under § 1983 for violations of federal law. Edelman v. Jordan, 415 U.S. at 668; see also Papasan v. Allain, 478 U.S. 265, 278 (1986), citing Milliken v. Bradley, 433 U.S. 267, 289-90 (1977); Pennhurst 11, 465 U.S. at 105.

2. There is no basis for distinguishing Edelman from this case. As the executive official with overall responsibility for the relevant state agency—like the defendants in Edelman and Quern—petitioner is properly sued in her official capacity for the violations alleged in the complaint here. See Papasan v. Allain, 478 U.S. at 282 n. 14.

***47** The conclusory statement that "the state is the real, substantial party in interest" here, Pet. Br. at 25, quoting Ford Motor Co. v. Dept. of Treasury of Indiana, 323 U.S. 459, 463-64 (1945), is certainly not a basis for distinction. Ford Motor Co. was an action "in essence ... for the recovery of money from the state." 323 U.S. at 464. As Edelman makes clear, it was only because Ford was on the other side of the line between retrospective and prospective relief that governs in Ex Parte Young cases that the state in that case was the "real, substantial party in interest." 415 U.S. at 668.[35]

2. Petitioner adds to her constitutional Eleventh Amendment argument the statutory argument that even if a state officer Ex Parte Young action would be constitutionally proper here, under Seminole Title IV-D must be construed as not permitting such an action. Pet. Br. at 26-30, relying on Seminole, 116 S. Ct. at 1132-33. Seminole was not a § 1983 action, however, and the discussion in that case of the limitations on implying the availability of an Ex Parte Young suit have no application here.

***48** The plaintiff in Seminole attempted to sue Florida and its governor under the civil suit provision of the Indian Gaming Regulatory Act (IGRA). The IGRA provides that a tribe may sue a state in federal court to require the State to "negotiate with the ... Tribe in good faith" on a "compact" governing how the tribe may administer certain types of gaming (slot machines, casino gambling, etc.). As here pertinent, this Court held in Seminole that while Congress certainly can authorize suits against state officers for violation of federal law, the IGRA provided no such express authorization and, in light of the detailed remedy that statute did provide, that no cause of action against state officers should be implied. 116 S. Ct. at 1132-1133 & n. 17.

This case, however, in contrast to Seminole, was brought under § 1983.[36] And, unlike the IGRA, § 1983 provides an express cause of action against persons acting "under color of [state law]", a phrase always understood as applying principally to cases against state officers for violations of federal law. Jett v. Dallas Ind. School Dist., 491 U.S. 701, 723 (1989) (the 1871 statute from which § 1983 was derived "was designed to expose state and local officials to a new form of liability" (citation omitted) and to provide federal jurisdiction over such cases). The question addressed in Seminole concerning whether to imply a state officer action simply does not arise in suits that, like this one, are properly brought under § 1983.

***49** Moreover, if the Seminole standard for deciding when detailed Congressional remedies preclude the availability of Ex parte Young actions is intended to apply to §1983 cases, then it serves exactly the same purpose as—and, by a parity of reasoning, must be identical in its content to—the standard established in Sea Clammers for deciding when Congress has decided to supersede § 1983 with respect to a particular statutory right. And, we have already shown that on the Sea Clammers' approach and particularly because the SSA provides eligible individuals with no private means whatever for enforcing their right to child support services, § 1983 remains in force with respect to Title IV-D. Pp. 25-27, supra.

Finally, petitioner maintains that Seminole held Ex Parte Young suits precluded where the statute violated imposes obligations on the state, not on state officers. Pet. Br. 28, relying on 116 S. Ct. at 1133 n. 17. Seminole, however, discussed the IGRA's emphasis on state obligations simply as yet one more reason for refusing to imply a cause of action against state officers that was not expressly provided by the IGRA. If applied to actions, like this one, brought under the express provision for state officer suits in § 1983, a similar analysis would lead to the conclusion that § 1983 provides no cause of action for violations of the Fourteenth Amendment by state officers, since that Amendment, and the Constitution generally, precludes state action only. That conclusion is obviously absurd, as it would preclude most of the actions heretofore thought without doubt to lie under the Ex Parte Young doctrine, including Ex Parte Young itself.[42]

*50 CONCLUSION

For the reasons stated above, the judgment below should be affirmed and the case should be remanded for further proceedings.

APPENDICES

*1a APPENDIX A

Selected provisions of the Social Security Act, 42 U.S.C. § 301 et seq., as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (Aug. 22, 1996).

Title IV-A

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42 U.S.C. § 601. Purpose.

(b) NO INDIVIDUAL ENTITLEMENT.—This part shall not be interpreted to entitle any individual or family to assistance under any State program funded under this part.

(Amended by Reconciliation Act, § 103, 110 Stat. 2113.)
42 U.S.C. § 602. Eligible States; State Plan.

(a) IN GENERAL.—As used in this part, the term “eligible State” means, with respect to a fiscal year, a State that, during the 2-year period immediately preceding the fiscal year, has submitted to the Secretary a plan that the Secretary has found includes the following:

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(2) CERTIFICATION THAT THE STATE WILL OPERATE A CHILD SUPPORT ENFORCEMENT PROGRAM.—A certification by the chief executive officer of the State that, during the fiscal year, the State will operate a child support enforcement program under the State plan approved under part D.

(Amended by Reconciliation Act, § 103, 110 Stat. 2113-14.)
***2a** 42 U.S.C. § 608. Prohibitions; Requirements.

(a) IN GENERAL.—

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(3) NO ASSISTANCE FOR FAMILIES NOT ASSIGNING CERTAIN SUPPORT RIGHTS TO THE STATE.—

(A) IN GENERAL.—A State to which a grant is made under section 603 shall require, as a condition of providing assistance to a family under the State program funded under this part, that a member of the family assign to the State any rights the family member may have (on behalf of the family member or of any other person for whom the family member has applied for or is receiving such assistance) to support from any other person ...

(Amended by Reconciliation Act § 103, 110 Stat. 2135.)

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42 U.S.C. § 609. Penalties.

(a) IN GENERAL.—Subject to this section:

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(8) SUBSTANTIAL NONCOMPLIANCE OF STATE CHILD SUPPORT ENFORCEMENT PROGRAM WITH REQUIREMENTS OF PART D.—

(A) IN GENERAL.—If a State program operated under part D is found as a result of a review conducted under section 652(a)(4) not to have complied substantially with the requirements of such part for any quarter, and the Secretary determines that the program is not complying substantially with such requirements at the time the finding is made, the Secretary shall reduce the ***3a** grant payable to the State under section 603(a)(1) for the quarter and each subsequent quarter that ends before the I st quarter throughout which the program is found to be in substantial compliance with such requirements by—

(i) not less than 1 nor more than 2 percent;

(ii) not less than 2 nor more than 3 percent, if the finding is the 2nd consecutive such finding made as a result of such a review; or

(iii) not less than 3 nor more than 5 percent if the finding is the 3rd or a subsequent consecutive such finding made as a result of such a review.

(B) DISREGARD OF NONCOMPLIANCE WHICH IS OF A TECHNICAL NATURE.—For purposes of subparagraph (A) and section 652(a)(4), a State which is not in full compliance with the requirements of this part shall be determined to be in substantial compliance with such requirements only if the Secretary determines that any noncompliance with such requirements is of a technical nature which does not adversely affect the performance of the State's program operated under part D.

(Amended by Reconciliation Act, § 103, 110 Stat. 2142-46.)

***4a Title IV-D**

42 U.S.C. § 651. Authorization of Appropriations.

For the purpose of enforcing the support obligations owed by noncustodial parents to their children and the spouse (or former spouse) with whom such children are living, locating noncustodial parents, establishing paternity, obtaining child and spousal support, and assuring that assistance in obtaining support will be available under this part to all children (whether or not eligible for aid under part A of this subchapter) for whom such assistance is requested, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part.

(Amended by Reconciliation Act, § 395(d)(1)(A), 110 Stat. 2259.)
42 U.S.C. § 652. Duties of Secretary.

(a) Establishment of separate organizational unit; duties

The Secretary shall establish, within the Department of Health and Human Services a separate organizational unit, under the direction of a designee of the Secretary, who shall report directly to the Secretary and who shall—
(1) establish such standards for State programs for locating noncustodial parents, establishing paternity, and obtaining child support and support for the spouse (or former spouse) with whom the noncustodial parent's child is living as he determines to be necessary to assure that such programs will be effective;

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(3) review and approve State plans for such programs;

(4) ...

***5a** (C) conduct audits, in accordance with the Government auditing standards of the Comptroller General of the United States—

(i) at least once every 3 years (or more frequently, in the case of a State which fails to meet the requirements of this part concerning performance standards and reliability of program data) to assess the completeness, reliability, and security of the data and the accuracy of the reporting systems used in calculating performance indicators under subsection (g) of this section and section 658;

(ii) of the adequacy of financial management of the State program operated under the State plan approved under this part, including assessments of—

(I) whether Federal and other funds made available to carry out the State program are being appropriately expended, and are properly and fully accounted for; and

(II) whether collections and disbursements of support payments are carried out correctly and are fully accounted for; and

(iii) for such other purposes as the Secretary may find necessary.

(g) Performance standards for State paternity establishment programs

(1) A State's program under this part shall be found, for purposes of section 603(h) of this title, not to have complied substantially with the requirements of this part unless, for any fiscal year beginning on or after October ***6a** 1, 1994, its paternity establishment percentage for such fiscal year is based on reliable data and (rounded to the nearest whole percentage point) equals or exceeds—

(A) 90 percent;

(B) for a State with a paternity establishment percentage of not less than 75 percent but less than 90 percent for such fiscal year, the paternity establishment percentage of the State for the immediately preceding fiscal year plus 2 percentage points;

(C) for a State with a paternity establishment percentage of not less than 50 percent but less than 75 percent for such fiscal year, the paternity establishment percentage of the State for the immediately preceding fiscal year plus 3 percentage points;

(D) for a State with a paternity establishment percentage of not less than 45 percent but less than 50 percent for such fiscal year, the paternity establishment percentage of the State for the immediately preceding year plus 4 percentage points;

(E) for a State with a paternity establishment percentage of not less than 40 percent but less than 45 percent for such fiscal year, the paternity establishment percentage of the State for the immediately preceding fiscal year plus 5 perecntage points; or

(F) for a State with a paternity establishment percentage of less than 40 percent for such fiscal year, the paternity establishment percentage of the State for the immediately preceding fiscal year plus 6 percentage points.

(h) Prompt State response to requests for child support assistance

The standards required by subsection (a)(1) of this section shall include standards establishing time limits governing the period or periods within which a State must ***7a** accept and respond to requests (from States, jurisdictions thereof, or individuals who apply for services furnished by the State agency under this part or with respect to whom an assignment under section 602(a)(26) of this title is in effect) for assistance in establishing and enforcing support orders, including requests to locate noncustodial parents, establish paternity, and initiate proceedings to establish and collect child support awards.

(i) Prompt State distribution of amounts collected as child support

The standards required by subsection (a)(1) of this section shall include standards establishing time limits governing the period or periods within which a State must distribute, in accordance with section 657 of this title, amounts collected as child support pursuant to the State's plan approved under this part.

(Amended by Reconciliation Act, § 342(b), 110 Stat. 2233-34; Reconciliation Act § 395(d)(1)(B), 110 Stat. 2259.)
42 U.S.C. 654. State Plan for Child and Spousal Support

A State plan for child and spousal support must—

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(4) provide that the State will—

(A) provide services relating to the establishment of paternity or the establishment, modification, or enforcement of child support obligations, as appropriate, under the plan with respect to—

(i) each child for whom (I) assistance is provided under the State program funded under part A of this title, (II) benefits or services for foster care maintenance are provided under the State program funded under part E of this title, or (III) medical assistance is provided under the State plan approved ***8a** under title XIX, unless, in accordance with paragraph (29), good cause or other exceptions exist;

(ii) any other child, if an individual applies for such services with respect to the child; and

(B) enforce any support obligation established with respect to-

(i) a child with respect to whom the State provides services under the plan; or

(ii) the custodial parent of such a child;

(5) provide that (A) in any case in which support payments are collected for an individual with respect to whom an assignment under section 602(a)(26) of this title is effective, such payments shall be made to the State for distribution pursuant to section 657 of this title and shall not be paid directly to the family, and the individual will be notified on a monthly basis (or on a quarterly basis for so long as the Secretary determines with respect to a State that requiring such notice on a monthly basis would impose an unreasonable administrative burden) of the amount of the support payments collected ...

(6) provide that ... (A) services under the plan shall be made available to residents of other States on the same terms as to residents of the State submitting the plan;

(B) an application fee for furnishing such services shall be imposed on individuals not receiving assistance under any State program funded under part A, which shall be paid by the individual applying for such services, or recovered from the absent parent, or paid by the State out of its own funds ...

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(8) provide that the agency administering the plan will establish a service to locate noncustodial parents utilizing—

***9a** (A) all sources of information and available records, and

(B) the Federal Parent Locator Service established under section 653;

(9) provide that the State will, in accordance with standards prescribed by the Secretary, cooperate with any other State—

(A) in establishing paternity, if necessary,

(B) in locating a noncustodial parent residing in the State (whether or not permanently) against whom any action is being taken under a program established under a plan approved under this part in another State,

(C) in securing compliance by a noncustodial parent residing in such State (whether or not permanently) with an order issued by a court of competent jurisdiction against such parent for the support and maintenance of the child or children or the parent of such child or children with respect to whom aid is being provided under the plan of such other State,

(D) in carrying out other functions required under a plan approved under this part; and

(E) not later than March 1, 1997, in using the forms promulgated pursuant to section 652(a) (11) for income withholding, imposition of liens, and issuance of administrative subpoenas in interstate child support cases;

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(11)(A) provide that amounts collected as support shall be distributed as provided in section 657 of this title.

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(12) provide for the establishment of procedures to require the State to provide individuals who are ***10a** applying for or receiving services under the State plan, or who are parties to cases in which services are being provided under the State plan—

(A) with notice of all proceedings in which support obligations might be established or modified; and

(B) with a copy of any order establishing or modifying a child support obligation, or (in the case of a petition for modification) a notice of determination that there should be no change in the amount of the child support award, within 14 days after issuance of such order or determination;

(13) provide that the State will comply with such other requirements and standards as the Secretary determines to be necessary to the establishment of an effective program for locating noncustodial parents, establishing paternity, obtaining support orders, and collecting support payments and provide that information requests by parents who are residents of other States be treated with the same priority as requests by parents who are residents of the State submitting the plan;

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(18) provide that the State has in effect procedures necessary to obtain payment of past-due support from overpayments made to the Secretary of the Treasury as set forth in section 664 of this title, and take all steps necessary to implement and utilize such procedures;

(19) provide that the agency administering the plan—

(A) shall determine on a periodic basis, from information supplied pursuant to section 508 of the Unemployment Compensation Amendments of 1976, whether any individuals receiving compensation under the State's unemployment ***11a** compensation law (including amounts payable pursuant to any agreement under any Federal unemployment compensation law) owe child support obligations which are being enforced by such agency, and

(B) shall enforce any such child support obligations which are owed by such an individual but are not being met—

(i) through an agreement with such individual to have specified amounts withheld from compensation otherwise payable to such individual and by submitting a copy of any such agreement to the State agency administering the unemployment compensation law, or

(ii) in the abence of such an agreement, by bringing legal process (as defined in section 662(e) of this title) to require the withholding of amounts from such compensation;

(20) provide, to the extent required by section 666 of this title, that the State (A) shall have in effect all of the laws to improve child support enforcement effectiveness which are referred to in that section, and (B) shall implement the procedures which are prescribed in or pursuant to such laws;

(25) provide that if a family with respect to which services are provided under the plan ceases to receive assistance under the State program funded under part A, the State shall provide appropriate notice to the family and continue to provide such services, subject to the same conditions and on the same basis as in the case of other individuals to whom services are furnished under the plan, except that an application or other request to continue services shall not be required of such a family ...

***12a** (Amended by Reconciliation Act, § 301, 110 Stat. 2199-200; Reconciliation Act § 303, 110 Stat. 2204-2205; Reconciliation Act § 304, 110 Stat. 2205; Reconciliation Act § 312, 110 Stat. 2207; Reconciliation Act, § 313, 110 Stat. 2209, Reconciliation Act, § 316(g), 110 Stat. 2218.)
42 U.S.C. § 654B. Collection and Disbursement of Support Payments.

(c) TIMING OF DISBURSEMENTS.

(1) IN GENERAL.—Except as provided in paragraph (2), the State disbursement unit shall distribute all amounts payable under section 657(a) within 2 business days after receipt from the employer or other source of periodic income, if sufficient information identifying the payee is provided.

(2) PERMISSIVE RETENTION OF ARREARAGES.—The State disbursement unit may delay the distribution of collections toward arrearages until the resolution of any timely appeal with respect to such arrearages.

(d) BUSINESS DAY DEFINED.—As used in this section, the term 'business day' means a day on which State offices are open for regular business.

(Added by Reconciliation Act, §312, 110 Stat. 2208.)
42 U.S.C. § 655. Payments to States.

(a) Amounts payable each quarter

(1) From the sums appropriated therefor, the Secretary shall pay to each State for each quarter an amount—

(A) equal to the percent specified in paragraph (2) of the total amounts expended by ***13a** such State during such quarter for the operation of the plan approved under section 654 of this title ...

(C) equal to 90 percent (rather than the percentage specified in subparagraph (A)) of so much of the sums expended during such quarter as are attributable to laboratory costs incurred in determining paternity; except that no amount shall be paid to any State on account of amounts expended to carry out an agreement which it has entered into pursuant to section 663 of this title. In determining the total amounts expended by any State during a quarter, for purposes of this subsection, there shall be excluded an amount equal to the total of any fees collected or other income resulting from services provided under the plan approved under this part.

(2) The percent applicable to quarters in a fiscal year for purposes of paragraph (1)(A) is—

(C) 66 percent for fiscal year 1990 and each fiscal year thereafter.

(Amended by Reconciliation Act, § 344, 110 Star 2236.)
42 U.S.C. § 658. Incentive payments to States.

(a) Purpose; requirement; quarterly payments

In order to encourage and reward State child support enforcement programs which perform in a cost-effective and efficient manner to secure support for all children who have sought assistance in securing support, whether such children reside within the State or elsewhere and whether or not they are eligible for assistance under a program funded under part A, and regardless of the economic ***14a** circumstances of their parents, the Secretary shall, from support collected which would otherwise represent the Federal share of assistance to families of noncustodial parents, pay to each State for each fiscal year, on a quarterly basis (as described in subsection (e) of this section) beginning with the quarter commencing October 1, 1985, an incentive payment in an amount determined under subsection (b) of this section.

(Amended by Reconciliation Act, § 341, 110 Stat. 2231-33.)
42 U.S.C. § 666. Requirement of statutorily prescribed procedures to improve effectiveness of child support enforcement.

(a) Types of procedures required

In order to satisfy section 654(20)(A) of this title, each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary, to increase the effectiveness of the program which the State administers under this part:
(1)(A) Procedures described in subsection (b) for the withholding from income of amounts payable as support in cases subject to enforcement under the State plan.

(B) Procedures under which the income of a person with a support obligation imposed by a support order issued (or modified) in the State before October 1, 1996, if not otherwise subject to withholding under subsection (b), shall become subject to withholding as provided in subsection (b) if arrearages occur, without the need for a judicial or administrative hearing.

***15a** (2) Expedited administrative and judicial procedures (including the procedures specified in subsection (c)) for establishing paternity and for establishing, modifying, and enforcing support obligations ...

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(4) LIENS.—Procedures under which—

(A) liens arise by operation of law against real and personal property for amounts of overdue support owed by a noncustodial parent who resides or owns property in the State; and

(B) the State accords full faith and credit to liens described in subparagraph (A) arising in another State, when the State agency, party, or other entity seeking to enforce such a lien complies with the procedural rules relating to recording or serving liens that arise within the State, except that such rules may not require judicial notice or hearing prior to the enforcement of such a lien.

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(5) PROCEDURES CONCERNING PATERNITY ESTABLISHMENT.—

(A) ESTABLISHMENT PROCESS AVAILABLE FROM BIRTH UNTIL AGE 18.—

(i) Procedures which permit the establishment of the paternity of a child at any time before the child attains 18 years of age.

(ii) As of August 16, 1984, clause (i) shall also apply to a child for whom paternity has not been established or for whom a paternity action was brought but dismissed because a statute of limitations of less than 18 years was then in effect in the State.

(B) PROCEDURES CONCERNING GENETIC TESTING.—

(i) GENETIC TESTING REQUIRED IN CERTAIN CONTESTED CASES.—Procedures under ***16a** which the State is required, in a contested paternity case (unless otherwise barred by State law) to require the child and all other parties (other than individuals found under section 654(29) to have good cause and other exceptions for refusing to cooperate) to submit to genetic tests upon the request of any such party, if the request is supported by a sworn statement by the party—

(I) alleging paternity, and setting forth facts establishing a reasonable possibility of the requisite sexual contact between the parties; or

(II) denying paternity, and setting forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties.

(ii) OTHER REQUIREMENTS.—Procedures which require the State agency, in any case in which the agency orders genetic testing—

(I) to pay costs of such tests, subject to recoupment (if the State so elects) from the alleged father if paternity is established; and

(II) to obtain additional testing in any case if an original test result is contested, upon request and advance payment by the contestant.

(C) VOLUNTARY PATERNITY ACKNOWLEDGMENT.—

(i) SIMPLE CIVIL PROCESS.—Procedures for a simple civil process for voluntarily acknowledging paternity under which the State must provide that, before a mother and a putative father can sign an acknoweldgment of paternity, the mother and the putative father must be given notice, orally and in writing, of the alternatives to, the legal consequences of, and the rights (including, if 1 parent is a minor, any rights afforded due to minority status) and responsibilities ***17a** that arise from, signing the acknowledgment.

(D) STATUS OF SIGNED PATERNITY ACKNOWLEDGMENT.—

(i) INCLUSION IN BIRTH RECORDS.—Procedures under which the name of the father shall be included on the record of birth of the child of unmarried parents only if—

(I) the father and mother have signed a voluntary acknowledgment of paternity; or

(II) a court or an administrative agency of competent jurisdiction has issued an adjudication of paternity.

Nothing in this clause shall preclude a State agency from obtaining an admission of paternity from the father for submission in a judicial or administrative proceeding, or prohibit the issuance of an order in a judicial or administrative proceeding which bases a legal finding of paternity on an admission of paternity by the father and any other additional showing required by

State law.

(ii) LEGAL FINDING OF PATERNITY.—Procedures under which a signed voluntary acknowledgment of paternity is considered a legal finding of paternity, subject to the right of any signatory to rescind the acknowledgment within the earlier of—

(I) 60 days; or

(II) the date of an administrative or judicial proceeding relating to the child (including a proceeding to establish a support order) in which the signatory is a party.

(iii) CONTEST.—Procedures under which, after the 60-day period referred to in clause (ii), a signed ***18a** voluntary acknowledgment of paternity may be challenged in court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the challenger, and under which the legal responsibilities (including child support obligations) of any signatory arising from the acknowledgment may not be suspended during the challenge, except for good cause shown.

(E) BAR ON ACKNOWLEDGMENT RATIFICATION PROCEEDINGS.—Procedures under which judicial or administrative proceedings are not required or permitted to ratify an unchallenged acknowledgment of paternity.

(F) ADMISSIBILITY OF GENETIC TESTING RESULTS.—Procedures—

(i) requiring the admission into evidence, for purposes of establishing paternity, of the results of any genetic test that is—

(I) of a type generally acknowledged as reliable by accreditation bodies designated by the Secretary; and

(II) performed by a laboratory approved by such an accreditation body;

(ii) requiring an objection to genetic testing results to be made in writing not later than a specified number of days before any hearing at which the results may be introduced into evidence (or, at State option, not later than a specified number of days after receipt of the results); and

(iii) making the test results admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy, unless objection is made.

(G) PRESUMPTION OF PATERNITY IN CERTAIN CASES.—Procedures which create a rebuttable ***19a** or, at the option of the State, conclusive presumption of paternity upon genetic testing results indicating a threshold probability that the alleged father is the father of the child.

(K) PROOF OF CERTAIN SUPPORT AND PATERNITY ESTABLISHMENT COSTS.—Procedures under which bills for pregnancy, childbirth, and genetic testing are admissible as evidence without requiring third-party foundation testimony, and shall constitute prima facie evidence of amounts incurred for such services or for testing on behalf of the child.

(M) FILING OF ACKNOWLEDGMENTS AND ADJUDICATIONS IN STATE REGISTRY OF BIRTH RECORDS.—Procedures under which voluntary acknowledgments and adjudications of paternity by judicial or administrative processes are filed with the State registry of birth records for comparison with information in the State case registry.

(7) REPORTING ARREARAGES TO CREDIT BUREAUS.—

(A) IN GENERAL.—Procedures (subject to safeguards pursuant to subparagraph (B)) requiring the State to report periodically to consumer reporting agencies (as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) the name of any noncustodial parent who is delinquent in the payment of support, and the amount of overdue support owed by such parent.

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(8) (A) Procedures under which all child support orders not described in subparagraph (B) will include provision for withholding from income, in ***20a** order to assure that withholding as a means of collecting child support is available if arrearages occur without the necessity of filing application for services under this part.

(B) Procedures under which all child support orders which are initially issued in the State on or after January 1, 1994, and are not being enforced under this part will include the following requirements:

(i) The income of a noncustodial parent shall be subject to withholding, regardless of whether support payments by such parent are in arrears, on the effective date of the order; except that such income shall not be subject to withholding under this clause in any case where (I) one of the parties demonstrates, and the court (or administrative process) finds, that there is good cause not to require immediate income withholding, or (II) a written agreement is reached between both parties which provides for an alternative arrangement.

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(9) Procedures which require that any payment or installment of support under any child support order, whether ordered through the State judicial system or through the expedited processes required by paragraph (2), is (on and after the date it is due)—

(A) a judgment by operation of law, with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced.

(B) entitled as a judgment to full faith and credit in such State and in any other State, and

(C) not subject to retroactive modification by such State or by any other State; except that such procedures may permit modification with respect to any period during which there is pending a petition for modification, but only from the date that notice ***21a** of such petition has been given, either directly or through the appropriate agent, to the obligee or (where the obligee is the petitioner) to the obligor.

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(10) REVIEW AND ADJUSTMENT OF SUPPORT ORDERS UPON REQUEST.—

(A) 3-YEAR CYCLE.—

(i) IN GENERAL.—Procedures under which every 3 years (or such shorter cycle as the State may determine), upon the request of either parent, or, if there is an assignment under part A, upon the request of the State agency under the State plan or of either parent, the State shall with respect to a support order being enforced under this part, taking into account the best interests of the child involved—

(I) review and, if appropriate, adjust the order in accordance with the guidelines established pursuant to section 667(a) if the amount of the child support award under the order differs from the amount that would be awarded in accordance with the guidelines;

(II) apply a cost-of-living adjustment to the order in accordance with a formula developed by the State;

(C) NOTICE OF RIGHT TO REVIEW.—Procedures which require the State to provide notice not less than once every 3 years to the parents subject to the order informing the parents of their right to request the State to review and, if appropriate, adjust the order pursuant to this paragraph. The notice may be included in the order.

(11) Procedures under which a State must give full faith and credit to a determination of paternity made by any other State, whether established through ***22a** voluntary acknowledgment or through administrative or judicial processes.
(12) LOCATOR INFORMATION FROM INTERSTATE NETWORKS.—Procedures to ensure that all Federal and State agencies conducting activities under this part have access to any system used by the State to locate an individual for purposes relating to motor vehicles or law enforcement.

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(14) ADMINISTRATIVE ENFORCEMENT IN INTERSTATE CASES.—Procedures under which—

(A)(i) the State shall respond within 5 business days to a request made by another State to enforce a support order....

(c) EXPEDITED PROCEDURES.—The procedures specified in this subsection are the following:
(1) ADMINISTRATIVE ACTION BY STATE AGENCY.—Procedures which give the State agency the authority to take the following actions relating to establishment of paternity or to establishment, modification, or enforcement of support orders, without the necessity of obtaining an order from any other judicial or administrative tribunal, and to recognize and enforce the authority of State agencies of other States to take the following actions:

(A) GENETIC TESTING.—To order genetic testing for the purpose of paternity establishment as provided in section 666(a)(5).

(B) FINANCIAL OR OTHER INFORMATION.—To subpoena any financial or other information needed to establish, modify, or enforce a support order, and to impose penalties for failure to respond to such a subpoena.

***23a** (C) RESPONSE TO STATE AGENCY REQUEST.—To require all entities in the State (including for-profit, nonprofit, and governmental employers) to provide promptly, in response to a request by the State agency of that or any other State administering a program under this part, information on the employment, compensation, and benefits of any individual employed by such entity as an employee or contractor, and to sanction failure to respond to any such request.

(D) ACCESS TO INFORMATION CONTAINED IN CERTAIN RECORDS.—To obtain access, subject to safeguards on privacy and information security, and subject to the nonliability of entities that afford such access under this subparagraph, to information contained in the following records (including automated access, in the case of records maintained in automated databases).

(F) INCOME WITHHOLDING.—To order income withholding in accordance with subsections (a)(1)(A) and (b) of section 666.

(G) SECURING ASSETS.—In cases in which there is a suport arrearage, to recure assets to satisfy the arrearage by—

(i) intercepting or seizing periodic or lump-sum payments from—

(I) a State or local agency, including unemployment compensation, workers' compensation, and other benefits; and

(II) judgments, settlements, and lotteries;

(ii) attaching and seizing assets of the obligor held in financial institutions;

***24a** (iii) attaching public and private retirement funds; and

(iv) imposing liens in accordance with subsection (a)(4) and, in appropriate cases, to force sale of property and distribution of proceeds.

(H) INCREASE MONTHLY PAYMENTS.—For the purpose of securing overdue support, to increase the amount of monthly support payments to include amounts of arrearages, subject to such conditions or limitations as the State may provide.

*25a APPENDIX B

Selected Regulations of the Department of Health and Human Services, Title 45, Code of Federal Regulations.

45 CFR Part 303

Standards for Program Operations

§ 303.0 Scope and applicability of this part.

This part prescribes:—

(b) The standards for program operation which the IV-D agency must meet.

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§ 303.2 Establishment of cases and maintenance of case records.

(a) The IV-D agency must:

(1) Make applications for child support services readily accessible to the public;

(2) When an individual requests an application or IV-D services, provide an application to the individual on the day the individual makes a request in person or send an application to the individual within no more than 5 working days of a written or telephone request. Information describing available services, the individual's rights and responsibilities, and the State's fees, cost recovery and distribution policies must accompany all applications for services and must be provided to AFDC, Medicaid and title IV-E foster care applicants or recipients within no more than 5 working days of referral to the IV-D

agency; and

(3) Accept an application as filed on the day it and the application fee are received. An application is a written document provided by the State which indicates that ***26a** the individual is applying for child support enforcement services under the State's title IV-D program and is signed by the individual applying for IV-D services.

(b) For all cases referred to the IV-D agency or applying for services under § 302.33 of this chapter, the IV-D agency must, within no more than 20 calendar days of receipt of referral of a case or filing of an application for services under § 302.33, open a case by establishing a case record and, based on an assessment of the case to determine necessary action:

(1) Solicit necessary and relevant information from the custodial parent and other relevant sources and initiate verification of information, if appropriate; and

(2) If there is inadequate location information to proceed with the case, request additional information or refer the case for further location attempts, as specified in § 303.3.

(c) The case record must be supplemented with all information and documents pertaining to the case, as well as all relevant facts, dates, actions taken, contacts made and results in a case.
§ 303.3 Location of absent parents.

(a) Definition. Location means information concerning the physical whereabouts of the absent parent, or the absent parent's employer(s), other sources of income or assets, as appropriate, which is sufficient and necessary to take the next appropriate action in a case.

(b) For all cases referred to the IV-D agency or applying for services under § 302.33 of this chapter, the IV-D agency must attempt to locate all absent parents or sources of income and/or assets when location is necessary to take necessary action. Under this standard, the IV-D agency must:

(1) Use appropriate location sources such as the Federal PLS; interstate location networks; local officials and ***27a** employees administering public assistance, general assistance, medical assistance, food stamps and social services (whether such individuals are employed by the State or a political subdivision); relatives and friends of the absent parent; curent or past employers; the local telephone company; the U.S. Postal Service; financial references; unions; fraternal organizations; and police, parole, and probation records if appropriate; and State agencies and departments, as authorized by State law, including those departments which maintain records of public assistance, wages and employment, unemployment insurance, income taxation, driver's licenses, vehicle registration, and criminal records;

(3) Within no more than 75 calendar days of determining that location is necessary, access all appropriate location sources, including transmitting appropriate cases to the Federal [Parent Location Service], and ensure that location information is sufficient to take the next appropriate action in a case;

(4) Refer appropriate cases to the IV-D agency of any other State, in accordance with the requirements of § 303.7 of the Part. The I-D agency of such other State shall follow the procedures in paragraphs (b)(1) through (b)(3) of this section for such cases, as necessary, except that the responding State is not required to access the Federal PLS under paragraph (b)(3) of this section;

(5) Repeat location attempts in cases in which previous attempts to locate absent parents or sources of income and/or assets have failed, but adequate identifying and other information exists to meet requirements for submittal for location, either quarterly or immediately upon receipt of new information which may aid in location, whichever occurs sooner. Quarterly attempts may be limited to automated sources but must include accessing State employment security files. Repeated attempts because of new information which may aid in location must meet the requirements of paragraph (b)(3) of this section; and

***28a** (c) The State must establish guidelines defining diligent efforts to serve process. These guidelines must include periodically repeating service of process attempts in cases in which previous attempts to serve process have failed, but

adequate identifying and other information exists to attempt service of process.
§ 303.4 Establishment of support obligations.

For all cases referred to the IV-D agency or applying under § 302.33 of this chapter, the IV-D Agency must:

(a) When necessary, establish paternity pursuant to the standards of § 303.5;

(b) Utilize appropriate State statutes and legal processes in establishing the support obligation pursuant to § 302.50 of this chapter.

(c) Periodically review and adjust child support orders, as appropriate, in accordance with § 303.8.

(d) Within 90 calendar days of locating the alleged father or noncustodial parent, regardless of whether paternity has been established, establish an order for support or complete service of process necessary to commence proceedings to establish a support order and, if necessary, paternity (or document unsuccessful attempts to serve process, in accordance with the State's guidelines defining diligent efforts under § 303.3(c)).
§ 303.5 Establishment of paternity.

(a) For all cases referred to the IV-D agency or applying for services under § 302.33 of this chapter in which paternity has not been established, the IV-D agency must, as appropriate;

(1) Provide an alleged father the opportunity to voluntarily acknowledge paternity in accordance with § 302.70(a)(5)(iii); and

***29a** (2) Attempt to establish paternity by legal process established under State law.

(d)(1) Upon the request of any party in a contested paternity case, the IV-D agency, if the agency lacks the authority to order such tests, shall petition the court or administrative authority to require all parties to submit to genetic tests unless ...

(f) The IV-D agency must seek entry of a default order by the court or administrative authority in a paternity case by showing that process has been served on the defendant in accordance with State law, that the defendant has failed to respond to service in accordance with State procedures, and any additional showing required by State law, in accordance with § 302.70(a)(5)(viii).

(g) Hospital-based program.

(1) The State must establish, in cooperation with hospitals, a hospital-based program in every public and private birthing hospital....

(2) During the period immediately before or after the birth of a child to an unmarried woman in the hospital, a hospital-based program must, at a minimum:

(i) Provide to both the mother and alleged father, if he is present in the hospital:

(A) Written materials about paternity establishment,

(B) the forms necessary to voluntarily acknowledge paternity,

(C) a written description of the rights and responsibilities of acknowledging paternity, and

(D) the opportunity to speak with staff, either by telephone or in person, who are trained to clarify information and answer questions about paternity establishment;

***30a** (ii) Provide the mother and alleged father, if he is present, the opportunity to voluntarily acknowledge paternity in the hospital;

(iii) Afford due process safeguards;

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§ 303.6 Enforcement of support obligations.

For all cases referred to the IV-D agency or applying for services under § 302.33 in which the obligation to support and the amount of the obligation have been established, the IV-D agency must maintain and use an effective system for:

(a) Monitoring compliance with the support obligation;

(b) Identifying on the date the parent fails to make payments in an amount equal to the support payable for one month, or on an earlier date in accordance with State law, those cases in which there is a failure to comply with the support obligation; and

(c) Enforcing the obligation by:

(1) Initiating income withholding ...

(2) Taking any appropriate enforcement action (except income withholding and Federal and State income tax refund offset) unless service of process is necessary, within no more than 30 calendar days of identifying a delinquency or other support-related non-compliance with the order or the location of the absent parent, whichever occurs later. If service of process is necessary prior to taking an enforcement action, service must be completed (or unsuccessful attempts to serve process must be documented in accordance with the State's guidelines defining diligent efforts ..., and enforcement action taken if process is served, within no later than 60 calendar days of identifying a delinquency or other supportrelated ***31a** non-compliance with the order, or the location of the absent parent, whichever occurs later....

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§ 303.7 Provision of services in interstate IV-D cases.

(b) Initiating State IV-D agency responsibilities. The IV-D agency must:

(1) If the State has a long-arm statute which allows paternity establishment, use the authority to establish paternity whenever appropriate.

(2) Except as provided in paragraph (b)(1) of this section, within 20 calendar days of determining that the absent parent is in another State, and, if appropriate, receipt of any necessary information needed to process the case, refer any interstate IV-D case to the responding State's interstate central registry for action, including URESA petitions and requests for location, document verification, administrative reviews in Federal Income tax refund offset cases, wage withholding, and State income tax refund offset in IV-D cases.

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§ 303.8 Review and adjustment of child support orders.

(c) Review of child support orders.... [T]he State must, when providing services under this chapter:

(1) Have in effect and use a process for review and adjustment of child support orders in effect in the State, including a

process for challenging a proposed adjustment or determination.

(2) Notify each parent subject to a child support order in the State of the right to request a review of the order, and the appropriate place and manner in which the request should be made.

***32a** (4) Review child support orders at 36-month intervals after establishment of the order or the most recent review, unless [exceptions apply.]

(6) Notify or serve process upon each parent subject to a child support order ...
§ 303.100 Procedures for wage or income withholding.

(a) General withholding requirements. (1) The State must ensure that in the case of each absent parent against whom a support order is or has been issued or modified in the State, and is being enforced under the State plan, so much of his or her wages must be withheld, in accordance with this section, as is necessary to comply with the order.

(2) In addition to the amount to be withheld to pay the current month's obligation, the amount to be withheld must include an amount to be applied toward liquidation of overdue support.

PART 304—FEDERAL FINANCIAL PARTICIPATION

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§ 304.10 General administrative requirements.

As a condition for Federal financial participation, the provisions of Part 74 of this title (with the exception of Subpart G, Matching and Cost Sharing and Subpart 1, Financial Reporting Requirements) establishing uniform administrative requirements and cost principles shall apply to all grants made to States under this part.

***33a 45 CFR Part 74**

Termination and Enforcement

§ 74.60 Purpose of termination and enforcement.

Sections 74.61 and 74.62 set forth uniform suspension, termination and enforcement procedures.
§ 74.61 Termination.

(a) Awards may be terminated in whole or in part only if paragraph (a)(1), (2), or (3) of this section applies.

(1) By the HHS awarding agency, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By the HHS awarding agency with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the recipient upon sending to the HHS awarding agency written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the HHS awarding agency determines in the case of partial termination that the reduced or modified portion of the award will not accomplish the purposes for which the award was made, it may terminate the award in its entirety.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in § 74.71(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.
***34a** § 74.62 Enforcement.

(a) If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute or regulation, an assurance, an application, or a notice of award, the HHS awarding agency may, in addition to imposing any of the special conditions outlined in § 74.14, take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by the HHS awarding agency.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

Footnotes

FN
* Counsel of Record

1 The Title IV-D program was most recently refined and expanded by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (Aug. 22, 1996) ("Reconciliation Act"). Because this case involves purely prospective relief, the statutory provisions relevant to whether there is a cause of action under 42 U.S.C. § 1983 are those presently in effect. Tully v. Mobil Oil Corp., 455 U.S. 245, 247 (1982) (per curiam); see also Landgraf v. USI Film Products, 511 U.S. 244, 114 S.Ct. 1483, 1499 n. 23, 1501 (1994). And, any trial of this action is likely to focus on whether the IV-D program at that time complies with the federal requirements as then in effect.

Petitioner's Brief was filed before enactment of the Reconciliation Act and therefore relies upon statutory provisions that have been changed. Where that is the case, we point out the change. There are provisions in the Reconciliation Act that will become effective in the future. Where that is the case, we so note; otherwise, the Social Security Act provisions cited in the text are currently effective. Citations to the provisions of the Social Security Act, as amended by the Reconciliation Act, are to the United States Code section "as amended by 110 Stat. ----"; all sections cited appear in 42 U.S.C. unless otherwise noted.

2 The Reconciliation Act contains similar provisions, to become effective July 1, 1997 or in some instances earlier. 42 U.S.C. § 608, as amended by 110 Stat. 2135.

3 The Reconciliation Act Amendments to this provision become effective on various dates. See Reconciliation Act § 396, 110 Stat. 2259.

4 The effective date of new 42 U.S.C. § 654b is October 1, 1998. Reconciliation Act, § 312(d), 110 Stat. 2209.

5 For example, the Secretary's regulations prescribe that: "For all cases ... the IV-D agency must attempt to locate all absent parents or sources of income and/or assets when location is necessary to take necessary action." 45 C.F.R. § 303.3(b) (emphasis added). If location efforts are unsuccessful, the agency "must ... [r]epeat location attempts ... either quarterly or immediately upon receipt of new information." Id. (emphasis added). If paternity has not been established, the agency "for all cases ... must" provide an opportunity to voluntarily acknowledge paternity and, if necessary, establish paternity by legal process. 45 C.F.R. § 303.5(a) (emphasis added). "For all cases", the agency then "must ... [w]ithin 90 days of locating an absent parent or of establishing paternity, establish an order for support or complete service of process necessary to commence proceedings to establish a support order" and, if necessary, paternity. 45 C.F.R. § 303.4 (emphasis added), and "shall" petition courts to include medical support provisions in all orders for child support where the child does not have adequate private health insurance. 45 C.F.R. § 303.31 (emphasis added). For all IV-D cases in which a support order has been established, the child support agency then "must maintain and use" one of several available systems for enforcing the obligation. 45 C.F.R. § 303.6 (emphasis added).

These regulations are illustrative. There are many other regulations providing mandatory standards at a similar level of specificity, including similar, multiple time limits. See Appendix B.

6 42 U.S.C. § 602(a)(2), as added by 110 Stat. 2114. This provision is effective July 1, 1997, or earlier if the state submits a new state plan under Title IV-A before July 1, 1997. The predecessor provision required that each State plan for part IV-A aid to needy families with children must "provide that the State has in effect a plan approved under Title D ... and operates a child support program in substantial compliance with such plan." 42 U.S.C. § 602(a)(27).

7 The 1996 Reconciliation Act contains substantially identical provisions in a section headed "Penalties." 42 U.S.C. § 609(a)(8), as amended by 110 Stat. 2145.

8 42 U.S.C. § 652(g), as amended by 110 Stat. 2232-33. The Reconciliation Act increased the final paternity establishment percentage from 75 percent to 90 percent, effective for calendar quarters beginning after August 22, 1996. 110 Stat. 2233.

9 The Reconciliation Act revises the audit provisions, effective "with respect to calendar quarters beginning 12 months or more" after August 22, 1996. 110 Stat. 2234. The new audit provisions emphasize audits to review state accomplishments with respect to performance indicators, for financial purposes, for calculating incentive payments, and "for such other purposes as the Secretary may find necessary." §§ 652(a)(4) and 654(15), as amended by 110 Stat. 2233-34.

10 For the history of the Title IV-D program, see generally Brief Amici Curiae of National Women's Law Center, et al.

11 There are many examples of generally applicable federal statutes which by their terms serve as a backdrop against which Congress legislates, and which it would therefore be redundant to repeat each time Congress acts in an area affected by such statutes. See, e.g., 1 U.S.C. §§ 1-6 (the Dictionary Act); 28 U.S.C. §§ 1251-59, 1291-95, 1330-67, 1391-1412, 1441-52, 1491-1509, 1581-85, 1602- 11, 1631 (federal jurisdiction and venue provisions); 5 U.S.C. 500 et seq. (the Administrative Procedure Act); 5 U.S.C. § 552 (the Freedom of Information Act). The same is true of established common law rules. See, e.g., Fogerty v. Fantasy, Inc., 510 U.S. 517, 533 (1994).

12 We recognize, of course, that a special standard does apply with regard to Spending Clause statutes, applicable both in § 1983 cases and where the federal government enforces the states' obligations under such statutes itself—viz. that Congress must inform the states of their obligations under Spending Clause statutes "unambiguously." Pennhurst, 451 U.S. at 17. But this Court has made it clear that the Pennhurst clear statement principle applies only "in the context of imposing an unexpected condition for compliance—a new obligation for participating States," not where the concern is "with the remedies available against a noncomplying State." Bell v. New Jersey, 461 U.S. at 790 n. 17, see also Bennett v. Kentucky Delft of Education, 470 U.S. 656, 666 (1985). In the latter context, states, like other contracting parties, are necessarily on notice that traditional, generally applicable

means of enforcing freely-assumed obligations will be available, and there is no need for special, additional notification in the particular Spending Clause statute at issue that a § 1983 action is available. United States v. Texas, 507 U.S. 529, 536, 538 n. 6 (1993) (states which owe money to the United States pursuant to a Spending Clause statute must pay common-law prejudgment interest whether or not the statute being enforced so provides); Franklin v. Gwinnett County Public Schools, 503 U.S. 60, 74-75 (1992).

13 The Reconciliation Act contains four sections declaring that other parts of the Social Security Act create no entitlement to benefits or services. § 601(b), as added by 110 Stat. 2113; 608(a)(7)(E), as added by 110 Stat. 2138; Reconciliation Act § 116(b)(1)(C), 110 Stat. 2183; Reconciliation Act § 116(c), 110 Stat. 2184-85. An earlier version of the welfare reform bills considered by the 103rd Congress provided that "all entitlement of individuals to benefits established under the following programs ... is terminated" including "the child support enforcement program under part D ..." H.R. 4, § 302, 104th Cong., 1st Sess. (January 4, 1995). The final bill, however, contained no such provision with regard to the child support enforcement program. And, the 1996 Congress did revise and reenact § 654(4), the basic provision re- quiring that states provide the various child support services to the children who need them. Pp. 4-6, supra. This sequence confirms that the 1996 Congress regarded access to child support services as an "entitlement to ... services."

14 In addition to its "reasonable efforts" holding, Suter can also be read as ruling that requirements for assurances contained in state plan documents, common in Social Security Act provisions, do not carry with them any requirement that the assurances be fulfilled, and therefore are not enforceable. 503 U.S. at 358, 361. Wilder had held squarely to the contrary a few years earlier. 496 U.S. at 514 (declining to so read requirements of state assurances because doing so would "render the statutory requirements ... meaningless").

Petitioner does not rely on the state plan aspect of Suter, and with good reason: Congress in 1994 specifically "overturned" Suter insofar as that case relied on grounds for denying the enforceability of requirements contained in state plan provisions "not applied in prior Supreme Court decisions respecting such enforceability," 42 U.S.C. § 1320a-2, and Wilder is obviously such a case. see also p. 33, infra; Pet. Br. at 14 n. 4.

15 These regulations are specifically mandated by statute (see 42 U.S.C. § 652) and adopted in accordance with the Administrative Procedure Act; accordingly, they have the "force and effect of law." See Chrysler Corp. v. Brown, 441 U.S. 281, 295-316 & nn. 18 & 19 (1979). These regulations, moreover, do not create additional obligations for tates, but instead make specific the obligations imposed by statute by providing additional detail. They are therefore the type of regulations the Court always has considered in determining whether a State chose to take federal funds with "knowing acceptance," Pennhurst v. Halderman, supra, 451 U.S. 1, 17, of the terms of the funding. See, e.g. Bennett v. Kentucky Dep't of Education, 470 U.S. at 659-63, 665-66.

16 We note that at this juncture this case does not raise any issue concerning the appropriate remedy should the numerous IV-D violations alleged be found to exist. P. 7, supra. It is worth noting, nonetheless, that, because of the very specificity of the statute and the implementing regulations, Judge Kleinfeld's fear (Pet.App.37a) that the judiciary would have to develop standards for running Arizona's IV-D program if plaintiffs prevailed is unfounded. Rather, an appropriate remedy could simply incorporate the statu- tory and regulatory standards and require that Arizona meet those standards as long as the state receives IV-D funds. Rosado v. Wyman, 397 U.S. at 420.

17 In Pennhurst, this Court relied upon the meager, spotty federal funding under the statute there at issue in concluding that Congress could not have intended to impose mandatory standards across-the-board. Title IV-D, in contrast, not only provides the majority of the funding for every service it requires the states to provide, but also establishes a reimbursement and incentive system under which many states come out with a net financial gain. See U.S. Department of Health & Human Services, Administration for Children and Families, Child Support Enforcement: 19th Annual Report (1994), Table 13 at 70, Table 23 at 80, Table 24 at 82, Table 32 at 89, & Table 34 at 91.

18 Under the statutory scheme, the federal government is reimbursed for financial assistance payments from child support collected.

By docking states not meeting the IV-D obligations contained in their IV-A grants, Congress is in effect recouping liquidated damages for welfare costs that could have been avoided.

19 It is worth noting as well that the term "substantial compliance" as used in § 603(h) (and in its successor statute) is specifically defined in the statute:

[A] State which is not in full compliance with the requirements of this part shall be determined to be in substantial compliance ... only if the Secretary determines that any noncompliance ... is of a technical nature which does not adversely affect the performance of the State's program operated under part D.

Entirely ignoring twenty-five percent of the eligible children certainly would "adversely affect the performance of the State's program." The Audit and Penalty regulations therefore, even if they were relevant here, cannot be understood as sanctioning the generic failure to provide services to such a large percentage of the case load. Rather, those regulations simply recognize that with respect to twenty-five percent of the sampled cases, technical defects—a few days delay in seeking a child support order, for example—will not result in invocation of the Title IV-A penalty.

20 Similarly off base, and for similar reasons, is petitioner's argument that the financial incentives provided in the statute demonstrate that "Congress did not intend Title IV-D to impose binding, individually enforceable obligations." Pet. Br. at 15. The statutory incentive provision, 42 U.S.C. § 658, as amended by 110 Stat. 2231-33, again turns on the results obtained—the amount of child support actually collected—rather than on the services provided.

21 Adickes concerned in part whether the public accommodations title of the 1964 Civil Rights Act could be enforced under § 1983. 398 U.S. at 150 n. 5. That title contained an express provision that its injunctive remedy was the "exclusive means of enforcing the rights based on this title." Id.

22 If small differences between one audit and penalty scheme and another were relevant, then the changes in the Title IV-D audit provisions made in the 1996 amendments (pp. 3-4, supra) would be pertinent, since they may eliminate the differences between the Title IV-D audit mechanism and those in Wright and Wilder on which petitioner relies.

23 "Whether custodial parents seeking child support from noncustodial parents can sue state officials under 42 U.S.C. § 1983 for alleged violations of Title IV-D child support program agreements between the States and the federal government when such suits will contravene this Court's precedents, not necessarily remedy a custodial parent's grievances, and violate core principles of federalism and separation of powers?" Pet. (i).

24 All of the Senate bills introduced in the 1980's would have amended § 1983 by striking "and laws" and substituting "and by any law providing for equal rights of citizens or of all persons within the jurisdiction of the United States." In introducing the 1981 bill, Senator Hatch discussed Thiboutot in detail, and asked Congress to act to overrule it. 127 Cong. Rec. 3209, 3212 (Feb. 26, 1981). At the Hearings in 1981, several witnesses noted the complexity of the issues raised by the proposal to overrule Thiboutot, objecting in particular to excluding cases brought to enforce rights under the Social Security Act, like Thiboutot and like this case, from the reach of § 1983. Hearings at 25 (remarks of Prof. Abernathy); id. at 38; id. at 48 (remarks of Prof. Steinglass); id. at 346 (remarks of Mr. Madden); id. at 405, 407, 408 (remarks of Prof. Friedman).

25 Chapman was a case, like Thiboutot and this case, brought by individual beneficiaries claiming that the state was violating the Social Security Act in its administration of a program funded in part by the federal government under the Act.

26 E.g., Anderson v. Creighton, 483 U.S. 685 (1987) (immunity from damages; Pembaur v. Cincinnati, 475 U.S. 469 (1986) (whether activity rises to the level of custom or policy); Sandin v. Conner, 515 U.S. 472, 115 S.Ct. 2293 (1995) (prisoner access to courts).

27 See Const. art. III, § 2 (delineating the federal judicial power); art. VI, cl. 2 (the Supremacy Clause); Act of Feb. 13, 1801, § 11, 2 Stat. 89, 92 (providing for federal question jurisdiction by using the phrase "constitution and laws"), repealed by Act of March 8, 1802, § 1, 2 Stat. 132; The Federalist No. 80 at p. 539 (J. Cooke ed. 1961); see also The Federalist No. 78 at p. 529 (J. Cooke ed. 1961); McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 426 (1819) ("the constitution and the laws made in pursuance thereof are supreme"); Cohens v. Virginia, 19 U.S. (6 Wheat.) 264, 891-92 (1821).

28 It was the 1911 Congress, not the 1874 Congress, that, in eliminating the trial jurisdiction of the circuit courts, transposed the limitation on "laws" to the district court jurisdictional provision in § 1343(a)(3). Thus, from 1874 to 1911, there was jurisdiction in the district courts over every case within the literal terms of present § 1983; if the divergence between the substantive and jurisdictional provisions makes less than perfect sense, that is a divergence caused by the 1911 Congress, not by the 1874 Congress that enacted § 1983. And, what the 1911 Congress did in § 1343(a)(3) has no bearing on the intent of the 1874 Congress in drafting the entirely separate provision at issue here, § 1983. West Virginia Univ. Hospitals, Inc. v. Casey, 499 U.S. 83, 101 (1991); United States v. X-Citement Video, Inc., 513 U.S. 64, 115 S.Ct. 464, 471 n. 6 (1994).

29 That Chapman and Golden State later concluded that the term "Constitution" as used in the 1874 revision of the civil rights acts did not include Supremacy Clause claims is fully consistent with this hypothesis: Precisely because the revisers determined for clarity to spell out whether and to what degree Supremacy Clause-secured statutory rights were included in each of the civil rights statutes, after 1874 the civil rights statutes must be read as including Supremacy Clause cases only to the degree specified by the reference to "laws" in the particular statutory provision.

30 There is no such generic federal cause of action where the violation of federal rights does not occur "under color of state law."

31 While petitioner suggests that implied actions under Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971) could fill the void with respect to constitutional actions, this Court has never had to address the question whether there is an implied private constitutional action against state officers similar to the one created in Bivens against federal officers. Rather the Court has always understood that § 1983 expressly provides a cause of action for such situations. See Mt. Healthy City School Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 278 (1977); Monell, 436 U.S. at 712-13 (Powell, J., concurring). Indeed, if an express enactment providing a cause of action is not sufficiently clear to provide a private cause of action against state actors, it is difficult to see how an implied cause of action under Bivens could lie.

32 The Court should also reject the contention of amici Council of State Governments, et al., at 6-7, that the 1871 Congress would not have understood programs like Title IV-D to create enforceable rights in their beneficiaries because third party beneficiaries generally could not enforce contracts at the time. Aside from the question whether speculation about what the 1871 Congress would have thought about modern federal-state entitlement programs like Title IV-D has utility, amici misstate legal history. The modern trend to allow a third-party beneficiary to recover under law on a contract began in this country well before the 1870's, as exemplified by the New York Court of Appeal's landmark decision in Lawrence v. Fox, 20 N.Y. 268 (1859); see also W.W. Story, A Treatise on the Law of Contracts 550 (1854) (amici cite the 1844 Story treatise; Thredgill v. Pintard, 53 U.S. (12 How.) 24 (1851); Second Nat'l Bank v. Grand Lodge, 98 U.S. 75 (1878); see generally Anthony Jon Waters, The Property in the Promise: A Study of the Third Party Beneficiary Rule, 98 Harv. L. Rev. 1111 (1985). The most that can be said about the state of the law on this point in 1871 is that it was in flux.

33 Petitioner correctly points out that an Eleventh Amendment argument was raised in Sea Clammers but because the argument was "not 'within the scope of the question on which review was granted' ... the Court did not consider" the argument. Pet. Br. at 23, quoting Sea Clammers, 453 U.S. at 8 n. 12. The Eleventh Amendment issue is equally outside the question presented by the

petition in this case. See pp. 29-30, supra.

34 The doctrine that suits against state officers do not necessarily raise the same sovereign immunity concerns as suits directly against the state has roots that go back long before Ex Parte Young. See generally Jaffe, Suits Against Governments and Officers: Sovereign Immunity, 77 Harv. L. Rev. 1, 3-4 (1963).

35 If anything, this suit implicates the state's governmental interests less than do most suits against state officers for prospective relief under Ex Parte Young. Plaintiffs are not challenging any of the state legislative or administrative rules that pertain to the Arizona Title IV-D child support program. Rather, plaintiffs contend only that petitioner has not enforced those laws in a manner complying with Title IV-D and its implementing regulations. Compliance with the federally-imposed requirements for what services must be provided, when, and to whom, can often be achieved through more effective, rather than more expensive, means of delivering Title IV-D child support enforcement services. And the experience of other states is that the Title IV-D financing scheme can result, with effective management, in a net financial surplus for the state.

We note once again that this case was dismissed at the pleading stage and raises no relief issues. Concerns about what relief might be granted if the case goes forward (Pet. Br. at 25) are not an appropriate basis for dismissing an otherwise proper lawsuit; there will be time to litigate the propriety of the relief should the excesses petitioner fears occur.

36 No cause of action under § 1983 was, as far as we can determine, asserted in Seminole, none was mentioned in the Seminole opinion, and it is far from clear given the particular statute and parties that such an action was available. Further, in discussing the reasons for limiting Ex Parte Young actions where Congress has not provided for one and does provide a detailed remedial scheme, Seminole relied on Schweiker v. Chilicky, 487 U.S. 413, 423 (1988), a case concerning the limitations on implying Bivens causes of action under the Constitution where Congress has provided a limited enforcement scheme, not on Sea Clammers or any other § 1983 case.

42 In any event, here the rights-creating statute now provides that, as a condition of receiving federal funds under Title IV-A, a state must submit a plan that includes "certification by the chief executive officer of the State that, during the fiscal year, the State will operate a child support enforcement program under the State plan approved under [Title IV-D]." 42 U.S.C. § 602(a)(2), as amended by 110 Stat. 2114 (emphasis supplied). The statute therefore does impose responsibilities directly on the chief state officer, who appointed and directs petitioner, and not only the state itself.

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