

**21-806 HEALTH AND HOSPITAL CORP. V. TALEVSKI**

DECISION BELOW: 6 F.4th 713

LOWER COURT CASE NUMBER: 20-1664

QUESTION PRESENTED:

Since the high-water mark in *Wilder v. Virginia Hospital Association*, 496 U.S. 498 (1990), this Court has consistently rebuffed efforts to find privately enforceable rights in Spending Clause statutes. Indeed, several Justices have suggested that the entire project of enforcing such rights under 42 U.S.C. § 1983 is mistaken: Spending Clause statutes are "much in the nature of a *contract*," *Barnes v. Gorman*, 536 U.S. 181, 185-86 (2002) (internal quotation marks omitted), and when Section 1983 was enacted, contracts in general-and contracts with governmental entities in particular-did not give rise to claims by third-party beneficiaries.

The Seventh Circuit's decision below illustrates just how flawed this project is. Notwithstanding the Court's instructions to the contrary, see *Pennhurst State Sch. and Hosp. v. Halderman*, 451 U.S. 1, 18 (1981), and *Gonzaga Univ. v. Doe*, 536 U.S. 273, 289 n.7 (2002), the court of appeals relied on the appearance of the word "right" several times in the Federal Nursing Home Amendments Act of 1987 ("FNHRA") to hold that patients may use Section 1983 to second-guess garden-variety transfer and medication decisions-thereby federalizing much medical-malpractice litigation and nullifying important state medical-malpractice rules.

This case presents the following questions:

1. Whether, in light of compelling historical evidence to the contrary, the Court should reexamine its holding that Spending Clause legislation gives rise to privately enforceable rights under Section 1983.

2. Whether, assuming Spending Clause statutes ever give rise to private rights enforceable via Section 1983, FNHRA's transfer and medication rules do so

CERT. GRANTED 5/2/2022