

No. _____

IN THE
Supreme Court of the United States

HEALTH AND HOSPITAL CORPORATION OF MARION
COUNTY, *ET AL.*,

Petitioners,

v.

GORGI TALEVSKI, BY HIS NEXT FRIEND IVANKA TALEVSKI,

Respondent.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Seventh Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS 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.

(i)

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

PARTIES TO THE PROCEEDING

Petitioners, defendants-appellees below, are Health and Hospital Corporation of Marion County, Indiana (“HHC”), Valparaiso Care and Rehabilitation (“VCR”), and American Senior Communities LLC (“ASC”).

Respondent is Gorgi Talevski, through his wife and next friend Ivanka Talevski, plaintiff-appellant below.

CORPORATE DISCLOSURE STATEMENT

HHC is a municipal corporation/subdivision of the state of Indiana. VCR is one of the names under which HHC does business.

ASC is a privately-held nursing home management company. No publicly traded corporation owns 10% or more of ASC.

RELATED PROCEEDINGS

Pursuant to this Court’s Rule 14.1(b)(iii), the following proceedings are related to this case:

United States District Court for the Northern District of Indiana:

Talevski v. Health and Hospital Corp. of Marion Cnty., Ind., et al., No. 2:19-cv-0013-JTM-APR (Mar. 26, 2020) (judgment)

United States Court of Appeals for the Seventh Circuit:

Talevski v. Health and Hospital Corp. of Marion Cnty., Ind., et al., No. 20-1664 (July 27, 2021) (judgment); (Aug. 25, 2021) (order denying petition for panel and en banc rehearing).

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