

(ORDER LIST: 586 U.S.)

MONDAY, DECEMBER 10, 2018

APPEAL -- SUMMARY DISPOSITION

18-433 LARRY, JULIUS J. V. ARKANSAS, ET AL.

The appeal is dismissed for want of jurisdiction.

ORDERS IN PENDING CASES

18M70 PEREZ SOTO, HIRAM I. V. SUPREME COURT OF PR

The motion to direct the Clerk to file a petition for a writ of certiorari out of time is denied.

18M71 IN RE RENE CHAFE

The motion for leave to proceed as a veteran is denied.

18M72 WOODS, MARK V. WARDEN, FDC PHILADELPHIA

18M73 ROSE, JESSE R. V. DAVIS, DIR., TX DCJ

18M74 VILUTIS, GINTARAS V. NRG SOLAR ALPINE LLC

18M75 JAMES, TERRY L. V. ELDORADO CASINO, ET AL.

The motions to direct the Clerk to file petitions for writs of certiorari out of time are denied.

17-1594 RETURN MAIL, INC. V. USPS, ET AL.

The motion to dispense with printing the joint appendix is granted.

18-5856 JEEP, DAVID G. V. UNITED STATES

The motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* is denied.

CERTIORARI GRANTED

18-15 KISOR, JAMES L. V. WILKIE, SEC. OF VA

The petition for a writ of certiorari is granted limited to

Question 1 presented by the petition.

CERTIORARI DENIED

17-1641 THOMAS, BARBARA A., ET VIR V. WILLIAMS, J. J.
17-9169 ROBINSON, FREDERICK L. V. UNITED STATES
17-9238 STREETER, JAMAL V. ILLINOIS
18-7 CHOCTAW COUNTY, MS, ET AL. V. JAUCH, JESSICA
18-39 BOYD, JASON L. V. WASHINGTON
18-93 ZIMMERMAN, DONALD V. AUSTIN, TX
18-304 KIMBERLY-CLARK CORP., ET AL. V. DAVIDSON, JENNIFER
18-395 CORNING OPTICAL COMMUNICATIONS V. PPC BROADBAND, INC.
18-412 WATTS, JAEL V. ALLEN, MICHAEL, ET AL.
18-432 PINEDA, WILFREDO V. NIELSON, SEC. OF HOMELAND
18-437 MEDVEDEV, DMITRI I. V. HENRICO COUNTY
18-438 PLACIDE, CARLLENE M. V. SUPREME COURT OF WA, ET AL.
18-448 ESTATE OF WEST V. DEPT. OF VETERANS AFFAIRS
18-471 COOPER, JAY S. V. BANK OF NEW YORK MELLON, ET AL.
18-574 RACHAL, JOSEPH V. UNITED STATES
18-585 FRANCESCHI, ERNEST J. V. YEE, BETTY T., ET AL.
18-5313 STEELE, JOSEPH V. UNITED STATES
18-5509 MAKELL, RANDY D. V. UNITED STATES
18-5670 CAMPISE, MARGARET V. NEW YORK COMMISSIONER OF LABOR
18-5843 CHANTHUNYA, ALEXANDER M. V. MARYLAND ATT'Y GRIEVANCE COMM'N
18-5876 SANFORD, STEVEN V. UNITED STATES
18-6128 DIAMOND, NORMAN D. V. CIR
18-6175 JONES, VICTOR T. V. FLORIDA
18-6192 RODRIGUEZ, PEDRO V. GORE, SHERIFF
18-6211 RODRIGUEZ, PEDRO V. SAN DIEGO COUNTY, CA, ET AL.
18-6218 LINDEN, DESREL R. V. DAVIS, DIR., TX DCJ

18-6220 KELLY, ANTHONY Q. V. BISHOP, WARDEN, ET AL.
18-6224 LATNEY, LAMOND V. PARKER, ANTHONY
18-6227 WESTER, DeWAYNE L. V. ILLINOIS
18-6230 SHOATE, HARVEY L. V. LEWIS, WARDEN
18-6231 RAHIM, DAWUD V. SC DEPT. OF PROBATION
18-6234 BARRETT, SCOTT D. V. ARIZONA
18-6250 NAIRN, CURTIS V. JONES, SEC., FL DOC, ET AL.
18-6252 WESSON, HERSIE V. OHIO
18-6262 PENUNURI, RICHARD V. CALIFORNIA
18-6288 COOLEY, JESSE V. DIR., OWCP, ET AL.
18-6295 WALCOTT, STEVEN A. V. LOUISIANA
18-6312 MASON, TYRONE V. LINDSEY, WARDEN
18-6316 WILKS, WILLIE G. V. OHIO
18-6320 MCGHEE, TIMOTHY J. V. DAVIS, WARDEN
18-6325 CONTRERAS-REBOLLAR, ADRIAN V. OBENLAND, SUPT., MONROE
18-6326 COXE, TERRY A. V. WHITE, SUPT., WA
18-6331 ROBINSON, VERNON V. FLORIDA
18-6345 BRUETTE, FELIX J. V. ZINKE, SEC. OF INTERIOR
18-6353 BIEN, MICHAEL J. V. TEXAS
18-6381 CROCKETT, WILLIAM B. V. BROWN, SUPT., WABASH VALLEY
18-6386 ADKINS, DORA L. V. WHOLE FOODS MARKET GROUP, INC.
18-6400 WATSON, TARVARES J. V. JONES, SEC., FL DOC, ET AL.
18-6406 TAPPEN, DANIEL V. FLORIDA
18-6414 LOCKE, MARVIN K. V. PARAMO, WARDEN
18-6416 WILLIAMS, BRIAND V. CALIFORNIA
18-6453 THOMPSON, CELESTINE G. V. NIELSON, SEC. OF HOMELAND
18-6464 LaPENA, FRANK R. V. GRIGAS, GEORGE, ET AL.
18-6480 HILL, GREGORY V. GAMMON, SUPT., MOBERLY

18-6499 JOHNSON, DOMINIQUE V. UNITED STATES
18-6536 WATERS, LEWIS V. LOCKETT, WARDEN
18-6542 LICEA, MAURICIO V. UNITED STATES
18-6552 WOODS, THOMAS A. V. MASSACHUSETTS
18-6553 DIXON, MICHAEL F. V. TEXAS
18-6554 COLLINS, WALTER V. TENNESSEE
18-6557 O'DELL, CASEY V. UNITED STATES
18-6560 WEAVER, WENDELL V. NICHOLSON, WARDEN
18-6564 HOLLIS, CEPHUS V. UNITED STATES
18-6565 GORE, CHARLES C. V. ILLINOIS
18-6566 FLOWERS, JARA V. UNITED STATES
18-6567 DELPRADO, LUIS V. UNITED STATES
18-6570 KAPRELIAN, TIMOTHY J. V. TEGELS, WARDEN
18-6573 FARRAD, MALIK V. UNITED STATES
18-6574 HALL, CURTIS D. V. UNITED STATES
18-6576 KEVRA-SHINER, SUSAN V. UNITED STATES
18-6581 HAILEY, LARRY V. UNITED STATES
18-6582 GLASS, KAREEM V. HAINSWORTH, SUPT., SOMERSET
18-6583 FIUMANO, DIONYSIUS V. UNITED STATES
18-6584 FLENOID, LARRY V. UNITED STATES
18-6585 GAGNON, RAYMOND A. V. UNITED STATES
18-6586 WOOD, BRUCE V. DELAWARE
18-6587 MATTHEW, DAVID J. V. UNITED STATES
18-6589 YOUNG, LIDDON V. UNITED STATES
18-6591 CHIN, LESLIE V. UNITED STATES
18-6596 DURY, MATTHEW J. V. UNITED STATES
18-6597 JOSEPH, JAZSMINE A. V. UNITED STATES
18-6600 LABRADOR, RINGO R. V. UNITED STATES

18-6601 PALOMO, STEFONE D. V. UNITED STATES
18-6602 NOLLEY, DARNELL V. McLAUGHLIN, WARDEN, ET AL.
18-6604 JENKINS, JOSEPH V. UNITED STATES
18-6605 PERRONE, JOSEPH V. UNITED STATES
18-6606 MERRICK, ANTHONY J. V. RYAN, DIR., AZ DOC, ET AL.
18-6616 SANUTTI-SPENCER, MARIA I. V. PENNSYLVANIA
18-6618 MARQUEZ, JESSIE J. V. UNITED STATES
18-6622 WILLIAMS, KEELAND D. V. UNITED STATES
18-6625 BLAGMON, DARNELL B. V. VIRGINIA
18-6638 ISBELL, ISRAEL C. V. MERLAK, WARDEN
18-6698 ALUIISO, SHAWN V. UNITED STATES

The petitions for writs of certiorari are denied.

17-1340 ANDERSEN, JEFF V. PLANNED PARENTHOOD, ET AL.

The petition for a writ of certiorari is denied. Justice Thomas, with whom Justice Alito and Justice Gorsuch join, dissenting from the denial of certiorari: I dissent for the reasons set out in *Gee v. Planned Parenthood*, 586 U. S. ____ (2018) (Thomas, J., dissenting).

17-9038 BANKS, MICHAEL E. V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Gorsuch took no part in the consideration or decision of this petition.

18-138 HUFFMAN, BRIAN V. NIELSEN, SEC. OF HOMELAND

The petition for a writ of certiorari is denied. Justice Kavanaugh took no part in the consideration or decision of this petition.

18-408 KOHN LAW GROUP, INC. V. AUTO PARTS MANUFACTURING MS

The motion of Federal Bar Association SDNY Chapter, Network

of Bar Leaders, et al. for leave to file a brief as *amici curiae* is granted. The petition for a writ of certiorari is denied.

18-436 LIBERTY MUTUAL INS. CO., ET AL. V. CARRIZO OIL & GAS, INC.

The motion of American Institute of Marine Underwriters for leave to file a brief as *amicus curiae* is granted. The petition for a writ of certiorari is denied.

18-6221 VINNIE, RAYMOND P. V. HENRY, BRUCE R., ET AL.

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of certiorari is dismissed. See Rule 39.8.

18-6424 DEITER, WALTER L. V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Gorsuch took no part in the consideration or decision of this petition.

18-6559 ALEXANDER, TOMMY V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Kagan took no part in the consideration or decision of this petition.

18-6593 MOLINA-VARELA, SIGIFREDO V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Gorsuch took no part in the consideration or decision of this petition.

18-6599 JORDAN, HORACE V. V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Sotomayor, with whom Justice Ginsburg joins, dissenting from the denial of certiorari: I dissent for the reasons set out in *Brown v. United States*, 586 U. S. ____ (2018) (Sotomayor, J., dissenting).

HABEAS CORPUS DENIED

18-6731 IN RE JAMES D. SADBERRY

The petition for a writ of habeas corpus is denied.

MANDAMUS DENIED

18-6537 IN RE GERALD P. WOOTEN

18-6630 IN RE TAQUAN GULLETT

The petitions for writs of mandamus are denied.

18-6551 IN RE DAVID HOSKINS, ET AL.

The petition for a writ of mandamus and/or prohibition is denied.

PROHIBITION DENIED

18-6511 IN RE KEN E. EZEAH

18-6561 IN RE JESUS D. LOPEZ

The petitions for writs of prohibition are denied.

REHEARINGS DENIED

17-8780 CAINES, LUKE V. GASTELO, WARDEN

17-8847 SATTERWHITE, CRISTIAL V. FRISCH'S RESTAURANT, ET AL.

17-8956 BONNER, ANDREW K. V. CUMBERLAND HIGH SCHOOL DISTRICT

17-8970 BLAKENEY, STEVEN V. UNITED STATES

17-8971 BARTLETT, ALAN M. V. PINEDA, JUDGE, ETC., ET AL.

17-9351 TRIPLETT, DESMOND O. V. WYOMING

17-9488 BROWN, CALVETTE V. IL DEPARTMENT OF HUMAN SERVICES

17-9526 CRUZ, ELIZABETH V. BERRYHILL, NANCY A.

18-38 ERWIN, ILLYA V. DEPT. OF ARMY

18-5145 BENNETT, CHAUNCEY V. WOLFE, JOHN, ET AL.

18-5157 IN RE JOSE L. AREVALO

18-5382 FIEDLER, MURIEL V. BRINDLEY, MACE, ET AL.

18-5622 WALKER, SUSAN E. V. UNITED STATES

18-5808 RONDON, RAFAEL A. V. UNITED STATES

18-5933 WILKERSON, MARY V. UNITED STATES

The petitions for rehearing are denied.

17-9374 CARTER, HOWARD A. V. KANE, KATHLEEN G., ET AL.

The petition for rehearing is denied. Justice Alito took no part in the consideration or decision of this petition.

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SUPREME COURT OF THE UNITED STATES

REBEKAH GEE, SECRETARY, LOUISIANA
DEPARTMENT OF HEALTH AND HOSPITALS
v. PLANNED PARENTHOOD OF
GULF COAST, INC., ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 17–1492. Decided December 10, 2018

The petition for a writ of certiorari is denied.

JUSTICE THOMAS, with whom JUSTICE ALITO and JUSTICE GORSUCH join, dissenting from the denial of certiorari.

One of this Court’s primary functions is to resolve “important matter[s]” on which the courts of appeals are “in conflict.” Sup. Ct. Rule 10(a); *e.g.*, *Thompson v. Keohane*, 516 U. S. 99, 106 (1995). This case and *Andersen v. Planned Parenthood of Kan. and Mid-Missouri*, No. 17–1340, present a conflict on a federal question with significant implications: whether Medicaid recipients have a private right of action to challenge a State’s determination of “qualified” Medicaid providers under 42 U. S. C. §1396a(a)(23) and Rev. Stat. §1979, 42 U. S. C. §1983. Five Circuits have held that Medicaid recipients have such a right, and one Circuit has held that they do not.* The last three Circuits to consider the question have themselves been divided.

This question is important and recurring. Around 70

* Compare *Planned Parenthood of Kan. v. Andersen*, 882 F. 3d 1205, 1225–1229 (CA10 2018); 862 F. 3d 445, 457–462 (CA5 2017) (case below); *Planned Parenthood of Ariz., Inc. v. Betlach*, 727 F. 3d 960, 966–968 (CA9 2013); *Planned Parenthood of Ind., Inc. v. Commissioner of Ind. State Dept. of Health*, 699 F. 3d 962, 974–977 (CA7 2012); *Harris v. Olszewski*, 442 F. 3d 456, 461–465 (CA6 2006), with *Does v. Gillespie*, 867 F. 3d 1034, 1041–1046 (CA8 2017).

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million Americans are on Medicaid, and the question presented directly affects their rights. If the majority of the courts of appeals are correct, then Medicaid patients could sue when, for example, a State removes their doctor as a Medicaid provider or inadequately reimburses their provider. *E.g.*, *Bader v. Wernert*, 178 F. Supp. 3d 703 (ND Ind. 2016); *Women’s Hospital Foundation v. Townsend*, 2008 WL 2743284 (MD La., July 10, 2008). Because of this Court’s inaction, patients in different States—even patients with the same providers—have different rights to challenge their State’s provider decisions.

The question presented also affects the rights of the States, many of which are *amici* requesting our guidance. Under the current majority rule, a State faces the threat of a federal lawsuit—and its attendant costs and fees—whenever it changes providers of medical products or services for its Medicaid recipients. *E.g.*, *Harris v. Olszewski*, 442 F. 3d 456 (CA6 2006). Not only are the lawsuits themselves a financial burden on the States, but the looming potential for complex litigation inevitably will dissuade state officials from making decisions that they believe to be in the public interest. State officials are not even safe doing nothing, as the cause of action recognized by the majority rule may enable Medicaid recipients to challenge the *failure* to list particular providers, not just the removal of former providers. *E.g.*, *Kapable Kids Learning Center, Inc. v. Arkansas Dept. of Human Servs.*, 420 F. Supp. 2d 956 (ED Ark. 2005); *Martin v. Taft*, 222 F. Supp. 2d 940 (SD Ohio 2002). Moreover, allowing patients to bring these claims directly in federal court reduces the ability of States to manage Medicaid, as the suits give Medicaid providers “an end run around the administrative exhaustion requirements in [the] state’s statutory scheme.” 876 F. 3d 699, 702 (CA5 2017) (Elrod, J., dissenting from denial of rehearing en banc).

Finally, the disagreement over §1396a(a)(23) implicates

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fundamental questions about the appropriate framework for determining when a cause of action is available under §1983—an important legal issue independently worthy of this Court’s attention. The division in the lower courts stems, at least in part, from this Court’s own lack of clarity on the issue. As one court observed, the disagreement “can be explained in part by an evolution in the law,” *Does v. Gillespie*, 867 F. 3d 1034, 1043 (CA8 2017)—a tactful way of saying that this Court made a mess of the issue. We have acknowledged as much, explaining that language in our early opinions could be “read to suggest that something less than an unambiguously conferred right” can give rise to a cause of action under §1983, and that “[t]his confusion has led some courts” astray. *Gonzaga Univ. v. Doe*, 536 U. S. 273, 282–283 (2002). We have “[f]uel[ed] this uncertainty” by equivocating on whether the standards for implying private rights of action have any “bearing on the standards for discerning whether a statute creates rights enforceable by §1983.” *Id.*, at 283. Courts are not even able to identify which of our decisions are “binding”; in *Planned Parenthood of Kan. v. Andersen*, 882 F. 3d 1205 (CA10 2018), the Court of Appeals applied a decision that this Court recently said had been “plainly repudiate[d].” *Id.*, at 1229, and n. 16 (quoting *Armstrong v. Exceptional Child Center, Inc.*, 575 U. S. ____, ____, n. (2015) (slip op., at 9, n.), in turn citing *Wilder v. Virginia Hospital Assn.*, 496 U. S. 498 (1990)). One can hardly blame the Tenth Circuit for misunderstanding. We created this confusion. We should clear it up.

So what explains the Court’s refusal to do its job here? I suspect it has something to do with the fact that some respondents in these cases are named “Planned Parenthood.” That makes the Court’s decision particularly troubling, as the question presented has nothing to do with abortion. It is true that these particular cases arose after several States alleged that Planned Parenthood

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affiliates had, among other things, engaged in “the illegal sale of fetal organs” and “fraudulent billing practices,” and thus removed Planned Parenthood as a state Medicaid provider. *Andersen*, 882 F. 3d, at 1239, n. 2 (Bacharach, J., concurring in part and dissenting in part). But these cases are not about abortion rights. They are about private rights of action under the Medicaid Act. Resolving the question presented here would not even affect Planned Parenthood’s ability to challenge the States’ decisions; it concerns only the rights of individual Medicaid patients to bring their own suits.

Some tenuous connection to a politically fraught issue does not justify abdicating our judicial duty. If anything, neutrally applying the law is all the more important when political issues are in the background. The Framers gave us lifetime tenure to promote “that independent spirit in the judges which must be essential to the faithful performance” of the courts’ role as “bulwarks of a limited Constitution,” unaffected by fleeting “mischiefs.” *The Federalist* No. 78, pp. 469–470 (C. Rossiter ed. 1961) (A. Hamilton). We are not “to consult popularity,” but instead to rely on “nothing . . . but the Constitution and the laws.” *Id.*, at 471.

We are responsible for the confusion among the lower courts, and it is our job to fix it. I respectfully dissent from the Court’s decision to deny certiorari.