

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

M.J., <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 1:18-cv-01901 (ACR)
)	
THE DISTRICT OF COLUMBIA, <i>et al.</i> ,)	ORAL HEARING REQUESTED
)	
)	
Defendants.)	

**PLAINTIFFS’ SUR-REPLY IN FURTHER OPPOSITION TO DEFENDANTS’ MOTION
FOR PARTIAL JUDGMENT ON THE PLEADINGS**

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Yardstick, CAMBRIDGE DICTIONARY,
<https://dictionary.cambridge.org/us/dictionary/english/yardstick> (last visited
Feb. 5, 2026)4

Plaintiffs L.R., B.T., M.W., I.C. (“Named Plaintiffs”), and University Legal Services, Inc. (doing business as “Disability Rights D.C.”) (collectively, “Plaintiffs”), by and through their attorneys, respectfully submit this Sur-Reply in Further Opposition to Defendants’ Motion for Partial Judgment on the Pleadings on Count II of Plaintiffs’ Second Amended Complaint (“Defendants’ Motion,” ECF 150; “Defendants’ Reply” or “Defs.’ Reply,” ECF 157).

ARGUMENT

Defendants’ Reply asks this Court to find there is no private right of action to enforce the Medicaid Act’s Early and Periodic, Screening, Diagnostic, and Treatment (“EPSDT”) provisions because they do not contain the specific word “right.” In doing so, Defendants dismiss out of hand the detailed textual analysis in *Medina v. Planned Parenthood South Atlantic*, 606 U.S. 357 (2025), the U.S. Supreme Court’s instruction to apply traditional tools of statutory construction on a provision-by-provision basis, and the decades of uniform case law finding that the EPSDT provisions contain clear rights-creating language. Defendants’ arguments are not supported by *Medina*, the case law they cite, nor the plain statutory language of the EPSDT provisions. Defendants’ Motion should be denied.

I. DEFENDANTS REJECT *MEDINA*’S ANALYSIS IN FAVOR OF THEIR OWN UNSUPPORTED TEST

Defendants ask this Court to disregard nearly every aspect of the *Medina* Court’s analysis as “immaterial” and to instead create a brand new test that appears nowhere in the Supreme Court’s decision, insisting that only a provision that says “right” or “rights” confers a private right of action. (*See* Defs.’ Reply 6 n.2.) Had the *Medina* Court intended that to be the test, it would have said so. Rather, *Medina* noted that mandatory obligations on the State contained in the “any qualified provider” provision could reflect that “Congress sought to convey a right against the states,” but concluded, based on several concrete and specific factors in the text of that provision,

that Congress did not ultimately intend that provision to be rights-creating. *Medina*, 606 U.S. at 379. All of those factors compel a different result for the EPSDT provisions of the Medicaid Act.

First, Medina reasoned that the “any qualified provider” provision of the Medicaid Act at issue in that case gave States considerable discretion to circumvent the provision’s effect and, thus, to circumvent any rights owed to Medicaid-eligible beneficiaries. *See id.* at 378-79 (“After announcing that state Medicaid plans must allow individuals to obtain care from any qualified provider, the provision proceeds to carve out various exceptions to that rule.”). As the State argued in *Medina*, to find this provision rights-creating “would allow the regulated entity, [] a state, to define the scope of the alleged right it is not allowed to violate by deciding which providers are qualified.” Transcript of Oral Argument at 5, *Medina v. Planned Parenthood S. Atl.*, 606 U.S. 357 (2025) (No. 23-1275) (the “*Medina* Transcript”). This is plainly not the case with the EPSDT provisions because they allow States *no discretion* to deny any medically necessary service and must, instead, provide such services “*whether or not*” they have included any of these services in their Medicaid state plan. 42 U.S.C. § 1396d(r)(5) (emphasis added).

Second, Medina emphasized that the “any qualified provider” provision it analyzed contained a dual focus that “seeks to benefit both providers and patients.” *Medina*, 606 U.S. at 377. In contrast, the Federal Nursing Home Reform Act (“FNHRA”) provisions found to be “rights creating” in *Talevski* spoke solely to a “resident’s urgent medical needs” and transfers “necessary to meet the resident’s welfare.” *Health & Hosp. Corp. v. Talevski*, 599 U.S. 166, 185 (2023) (emphasis omitted). With their focus solely on the provision of “medically necessary” services for Medicaid-eligible children, the EPSDT provisions are comparable to *Talevski*’s FNHRA provisions and unlike *Medina*’s “any qualified provider” provision. *See* 42 U.S.C. §§ 1396a(a)(43)(A)-(C), 1396d(r).

Third, Medina analyzed at length the placement of the “any qualified provider” provision within the broader statutory scheme. The *Medina* Court pointed out that Congress “set [the FNHRA] rights-creating provisions apart from others” to “help[] alert grantees that accepting federal funds comes with a duty to answer private suits.” *Medina*, 606 U.S. at 380. Like those FNHRA provisions, the EPSDT provisions are set apart in *five* separate provisions, all of which individually and collectively reinforce that States *must* make EPSDT services available to Medicaid-eligible children who need them and thus put the States on alert that accepting Medicaid funds comes with a duty to answer private suits if States fail to meet this mandatory requirement.¹ Defendants provide no support for their claim that Congress’s inclusion of additional EPSDT provisions in a separate section is meaningless because one of those separate sections is a definitional section, (Defs.’ Reply 6-7), nor is there any support for this claim in *Medina*. See *Medina*, 606 U.S. at 380. To the contrary, the statutory text and legislative history are clear that the EPSDT provisions were specifically defined in a separate provision so as to require States to provide EPSDT services “*whether or not*” they are covered in the State’s plan and to put States on notice of this privately enforceable right. 42 U.S.C. § 1396d(r)(5) (emphasis added); (see also

¹ See 42 U.S.C. § 1396a(a)(43)(A-C) (requiring States to “inform[] all persons in the State who are under the age of 21 and who have been determined to be eligible for medical assistance . . . of the availability of [EPSDT] services” and “arrang[e] for” their provision); *id.* § 1396d(a)(4)(B) (listing EPSDT services together with other mandatory Medicaid services and requiring that they be provided in a State plan to “individuals who are eligible under the plan and are under the age of 21”); *id.* § 1396d(r) (defining EPSDT provisions as “medically necessary” and requiring States to provide them “whether or not such services are covered under the State plan”); *id.* § 1396a(a)(10)(A) (requiring that state plans must provide for EPSDT services to “all individuals” under the age of 21); *id.* § 1396a(a)(84) (requiring EPSDT for youth exiting carceral settings).

Pls.’ Opp. 12-13 (noting Congress amended the EPSDT provisions “to mandate that a state agency *must* provide EPSDT-eligible children . . . [with EPSDT] services”).)²

Contrary to Defendants’ attempts to dismiss all of these factors as immaterial, (*see* Defs.’ Reply 6-10), these various criteria together led the *Medina* Court to find that the “any qualified provider” provision as a whole undercut any rights-creating language the provision may have had. Here, analysis of these same criteria establishes that the EPSDT provisions have rights-creating language without the countervailing factors that doomed the “any qualified provider” provision. Indeed, Defendants’ entire argument boils down to a misreading of a single sentence in the opinion referencing the FNHRA provisions at issue in *Talevski* as the “only reliable yardstick” to mean that all statutory provisions must be materially identical to those in *Talevski* and contain the exact same terms. (Defs.’ Reply 6.) But that is not what *Medina* said. A “yardstick” is just another term for comparing similar things, which is exactly what Plaintiffs did in their Opposition Brief.³ (*See* Pls.’ Mem. & Points of Authorities Opp’n to Defs.’ Mot. Partial J. on the Pleadings 11-12, ECF 155 (“Pls.’ Opp.”).) Plaintiffs’ explanation of the FNHRA provisions and comparison to similar EPSDT provisions was not “misleading,” as Defendants assert, (Defs. Reply 6-10); it was supported by *Medina*’s own review of the FNHRA statutory text and provides further support for why the EPSDT provisions are privately enforceable. (*See* Pls.’ Opp. 11-12).

² Defendants summarily dismiss any use of legislative history, but Plaintiffs do not assert that the legislative history of the EPSDT provisions provides the basis for this Court to find them privately enforceable. (*See* Defs.’ Reply 4-5.) Plaintiffs merely note that the unambiguous rights-creating text of the EPSDT provisions exists the way it does because Congress explicitly amended these provisions for that express purpose and did so clearly.

³ By definition, a yardstick is simply “a standard used to compare similar things in order to measure their value or success.” *Yardstick*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/us/dictionary/english/yardstick> (last visited Feb. 5, 2026).

By contrast, Defendants’ own reductive analysis of the FNHRA provisions is unsupported by *Medina*. If Defendants were correct, *Medina*, *Talevski*, and *Gonzaga* would all have been far shorter and there would have been no requirement that “[c]ourts *must* employ traditional tools of statutory construction” to identify “rights-creating language.” *Talevski*, 599 U.S. at 183 (citing *Gonzaga Univ. v. Doe*, 536 U.S. 273, 283 (2002)) (emphasis added). *Medina* declined to apply the test Defendants now ask this Court to apply, even despite specific acknowledgment by justices at oral argument that Defendants were proposing a “magic words” test. *See Medina* Transcript 28 (Kavanaugh, J.) (recognizing Petitioner’s arguments regarding a “magic words” test); *see also id.* at 7-8 (same) (Sotomayor, J.).⁴

II. THE EPSDT PROVISIONS CONTAIN CLEAR RIGHTS-CREATING LANGUAGE UNDER *GONZAGA* AND *MEDINA*

Under the prevailing *Gonzaga* test repeated in *Medina*, the parties agree that a statute must “clear[ly] and unambiguous[ly]” use “rights-creating terms” with “an unmistakable focus” on the benefited class. *Medina*, 606 U.S. at 368 (citing *Gonzaga*, 536 U.S. at 284) (internal citations and quotations omitted); (*see also* Defs.’ Reply 4; Pls.’ Opp. 15.) Contrary to Defendants’ claims otherwise, Plaintiffs identified such “rights-creating language” in the EPSDT provisions of the Medicaid Act. (*See* Pls.’ Opp. 9-10.) Plaintiffs, like every federal court to review these same provisions, specifically pointed to the fact that States “*must* . . . provide for . . . informing all

⁴ Even counsel for *Medina* did not go as far as Defendants urge here, acknowledging at oral argument that another Medicaid provision that does not contain the words “right” or “rights,” 42 U.S.C. § 1396a(a)(84), has rights-creating language. *See Medina* Transcript at 7. That provision bears notable similarities to, and incorporates, the EPSDT provisions. 42 U.S.C. § 1396a(a)(84) (requiring that, “in the case of an individual who is an eligible juvenile . . . scheduled to be released from a public institution following adjudication, the State shall have in place a plan, and in accordance with such plan, provide for . . . any screening or diagnostic service . . . indicated as medically necessary, in accordance with [the EPSDT provisions], including a behavioral health screening or diagnostic service”).

persons in the State who are under the age of 21 and who have been determined to be eligible for medical assistance . . . of the availability of [EPSDT] services” and “arrang[e] for” the provision of these medically “necessary” EPSDT services to “correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, *whether or not* such services are covered under the State plan.” 42 U.S.C. §§ 1396a(a)(43)(A)-(C), 1396d(r)(5) (emphasis added); *see also id.* § 1396d(a)(4)(B) (requiring States provide and cover the cost of “[EPSDT] services (as defined in subsection (r)) for individuals who are eligible under the plan and are under the age of 21”); *id.* § 1396a(a)(10)(A) (requiring that States “*must* . . . mak[e] medical assistance available” to “all individuals”).

In a classic strawman, Defendants mischaracterize Plaintiffs’ argument as contending that these provisions are rights-creating solely because they have mandatory language and are individually focused on the benefited class. (Defs.’ Reply 4.) While those things are true of the EPSDT provisions, those are not the sole bases for Plaintiffs’ argument. Rather, as discussed above and at length in Plaintiffs’ opposition, the EPSDT provisions are rights-creating in that they focus on the delivery of medically necessary EPSDT services to Medicaid-eligible children as a matter of right and are comparable to the FNHRA provisions in that they (1) entirely remove States’ discretion to deny services, (2) focus solely on beneficiary rights, (3) are set forth in multiple places including in places set apart from other state plan provisions, and (4) speak to the provision of medically necessary services. (*See* Pls.’ Opp. 9-12.) Defendants do not otherwise point this Court to a statute that satisfies all these components and is still privately unenforceable.

Defendants’ remaining counterarguments are not compelling. *First*, Defendants claim that definitional provisions cannot create enforceable rights. (*See* Defs.’ Reply 7.) Defendants misread Plaintiffs’ argument. Plaintiffs are not solely relying on the definitional provisions to assert an

enforceable right. Rather, the operative EPSDT provisions within 42 U.S.C. §§ 1396a(a)(43)(A)-(C), as well as a(a)(10), each contain rights-creating language, and the definitional and other sections are cross-referenced to prevent any ambiguity as to the contents of the EPSDT services. *See, e.g., Isaac A. v. Carlson*, 775 F. Supp. 3d 1296, 1335 (N.D. Ga. 2025) (noting the provisions in Section 1396d “flesh out” the EPSDT rights when taking “these provisions together”).

Second, Defendants incorrectly assert that Plaintiffs ignore the word “right” in the titles of provisions at issue in *Talevski*. (*See* Defs.’ Reply 8.) It is evident that FNHRA statutory headers included the term “rights.” Plaintiffs acknowledged that, but noted the *Talevski* decision did not *end* its analysis because statutory headers or substantive provisions mentioned “rights,” and, instead, that *Talevski* did a fulsome provision-by-provision review of the statutory language before it. (*See* Pls.’ Opp. 24 n.13); *see also Talevski*, 599 U.S. at 185-86 (holding the rights privately enforceable because the “provisions use clear ‘rights-creating language,’ speak ‘in terms of the persons benefited,’ and have an ‘unmistakable focus on the benefited class’”) (quoting *Gonzaga*, 536 U.S. at 284, 287, 290). Plaintiffs further pointed out that *Medina* expressly noted the headings of provisions themselves were not dispositive. (*See* Pls.’ Opp. 24 n.13.) *Medina*’s holding on statutory headers is consistent with the idea that a title’s language warrants consideration but is not itself dispositive. *See City & Cnty. of San Francisco v. Env’t Prot. Agency*, 604 U.S. 334, 345 (2025) (“The title of a statutory provision can inform its interpretation, but it is not conclusive.”); *Dubin v. United States*, 599 U.S. 110, 124 (2023) (“The title is, by definition, just the beginning. A title does not supplant the actual text of the provision”). Thus, a comparison to the text of the FNHRA provisions themselves—not just the headings—remains critical to the rights-creating test.

III. DEFENDANTS ARE UNABLE TO DISTINGUISH UNANIMOUS FEDERAL COURT APPROVAL OF THE EPSDT PROVISIONS AS RIGHTS-CREATING

This Court should not entertain Defendants’ attempt to broadly sweep away two decades of Section 1983 case law on the EPSDT provisions. (Defs.’ Reply 10-14.) Defendants do not cite a single case denying the private enforceability of the EPSDT provisions because no such case exists. Instead, Defendants claim that any reference to the *Blessing* factors within a case invalidates any reasoning made by the opinion under *Gonzaga*. That is unwarranted. As a matter of fact, *Medina* did not abrogate all preceding decisions that cited both the *Gonzaga* test and the Court’s prior *Wilder*, *Wright*, and *Blessing* decisions. Indeed, *Medina* specifically chose not to limit nor alter cases that made determinations based on *Gonzaga*. See *Medina*, 606 U.S. at 385 n.9 (“[O]ur decision simply applies the same test this Court applied in *Gonzaga*.”). Accordingly, *Medina* did not invalidate any prior decisions which made determinations under the *Gonzaga* test. Tellingly, Defendants failed to address any of Plaintiffs’ *sub silentio* cases in support of this proposition.

Naturally, post-*Gonzaga* decisions would, and did, cite the *Blessing* factors as part of their extended reasoning because *Blessing* was still good law at the time. But critically, the EPSDT cases relied on by Plaintiffs, and contested by Defendants, made *express findings* of rights-creating language under the *Gonzaga* test and are thus relevant and persuasive authority for this Court. (See Pls.’ Opp. 15-19.); see, e.g., *S.D. ex rel. Dickson v. Hood*, 391 F.3d 581, 603 (5th Cir. 2004) (holding, under *Gonzaga*, that the “EPSDT treatment provisions of the Medicaid Act contain[] the rights-creating language critical to showing the requisite congressional intent to confer a new right”)⁵; *Salazar v. District of Columbia*, 729 F. Supp. 2d 257, 268-69 (D.D.C. 2010)

⁵ Defendants’ lengthy argument about the *S.D.* decision allegedly revolving around dicta is irrelevant. (Defs.’ Reply 11-12.) Plaintiffs cite *S.D.* as yet another persuasive decision with clear

(making explicit as a threshold issue that *Gonzaga* required the court to first “examine whether Congress used ‘rights-creating’ language” in order to “find a federal right enforceable under § 1983,” and, thereafter, finding that the EPSDT provisions did “‘unambiguously’ confer a private right of action as required by *Gonzaga*”); *Isaac A.*, 775 F. Supp. 3d at 1334, 1336 n.17 (declining to make a finding under the *Blessing* factors, and determining instead that the EPSDT provisions contained “explicit rights-creating language” after analyzing whether the “‘text and structure’ of the statute[s] unambiguously confer[red] federal rights” under *Gonzaga*).

IV. DEFENDANTS’ UNPRECEDENTED TEST WOULD HAVE SWEEPING IMPLICATIONS FOR CHILDREN’S WELL-ESTABLISHED RIGHTS TO ACCESS NEEDED MEDICAL CARE

Ultimately, Defendants gloss over the significant stakes of the relief they seek. As Plaintiffs explained in their opposition, the new magic words test that Defendants urge—which the Supreme Court declined to adopt in *Medina*—would impact the ability of millions of children to access a wide array of critical physical and mental health services by removing the threat of private enforcement. (*See* Pls.’ Opp. 28-29.) These issues are not just theoretical; they have real world implications about whether vulnerable children can access medically necessary services that Congress has already determined they must be provided. Moreover, a finding that statutes must explicitly mention “right” or “rights” (or a synonym) could foreclose federal relief for a significant number of federal rights that simply did not use those specific terms because there was no such requirement at the time they were written, nor is there now. (*See id.*)

discussion of the *Gonzaga* test to come out of decades of opinions uniformly finding the EPSDT provisions privately enforceable.

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that the Court deny Defendants' Motion for Partial Judgment on the Pleadings in its entirety.

Respectfully submitted this 6th day of February, 2026.

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