KeyCite Yellow Flag - Negative Treatment
Distinguished by Johnson v. Williams, D.D.C., March 30, 2010

13 F.3d 515
United States Court of Appeals,
Second Circuit.

Derry **SYKES**, Plaintiff–Appellant,
v.
John **JAMES**, New York State Parole Officer, Defendant–Appellee.

No. 187, Docket 92–7949.
|
Argued Sept. 8, **1993**.
|
Decided Dec. 30, **1993**.

Synopsis

Parolee brought § 1983 action against parole officer alleging that officer submitted perjurious affidavit in opposition to parolee's petition for state habeas relief and that officer conspired to present false testimony at parole revocation hearing. The United States District Court for the Eastern District of New York, Thomas C. Platt, Jr., Chief Judge, dismissed action, and parolee appealed. The Court of Appeals, Miner, Circuit Judge, held that: (1) officer was entitled to absolute immunity as witness in state habeas proceeding; (2) parolee failed to state claim for civil rights conspiracy; and (3) parolee was collaterally estopped from pursuing conspiracy claim by unchallenged finding in previous § 1983 action that findings of hearing officer in revocation proceeding were binding on district court.

Affirmed.

Procedural Posture(s): On Appeal; Motion to Dismiss; Motion to Dismiss for Failure to State a Claim.

West Headnotes (10)

[1] **Federal Courts** Pleading

Grant of motion to dismiss for failure to state claim is ruling of law which Court of Appeals reviews de novo. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.

36 Cases that cite this headnote

[2] **Civil Rights** Complaint in general

Federal Civil Procedure Pro Se or Lay Pleadings

Federal Civil Procedure Insufficiency in general

Federal Civil Procedure Construction of pleadings

In deciding motion to dismiss for failure to state claim, district court must construe any well-pleaded factual allegations in complaint in favor of plaintiff and may dismiss only where it appears beyond doubt that plaintiff can prove no set of facts in support of claim which would entitle him to relief; that caution applies with greater force where complaint is submitted pro se or plaintiff alleges civil rights violations. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.

44 Cases that cite this headnote

[3] **Civil Rights** Substantive or procedural rights

No substantive rights are created by § 1983 itself; it provides only procedure for redress for deprivation of rights established elsewhere. 42 U.S.C.A. § 1983.

764 Cases that cite this headnote

[4] **Civil Rights** Rights Protected

In order to prevail on § 1983 claim, plaintiff must show that defendant's conduct deprived him of federal right. 42 U.S.C.A. § 1983.

24 Cases that cite this headnote

[5] **Civil Rights** Privilege or Immunity; Good Faith and Probable Cause

Plaintiff may allege facts tending to establish deprivation of federal constitutional rights under color of state law and still fail to state § 1983

claim where defendant has absolute immunity from liability. 42 U.S.C.A. § 1983.

628 Cases that cite this headnote

[6] **Civil Rights** Attorneys, jurors, and witnesses; public defenders

Civil Rights Prisons, jails, and their officers; parole and probation officers

Parole officer was entitled to absolute immunity, as witness in state habeas corpus proceeding, in parolee's § 1983 action alleging that officer submitted perjurious affidavit in opposition to parolee's petition for habeas relief, which resulted in delay of that relief; officer was not complaining witness as his affidavit did not serve to institute proceeding, functions of parole officer witness are same as those of any other witness, and, even though cross-examination was not available as to affidavit, parolee was afforded all other protection of judicial process. 42 U.S.C.A. § 1983.

27 Cases that cite this headnote

[7] **Civil Rights** Privilege or Immunity; Good Faith and Probable Cause

Functional categories, rather than status of defendant, control immunity analysis in § 1983 action. 42 U.S.C.A. § 1983.

1 Cases that cite this headnote

[8] **Habeas Corpus** Discretion and necessity in general

Under New York law, evidentiary hearing is not always necessary on petition for habeas corpus; such petition may be decided on papers before court if no triable issues of fact are raised. N.Y.McKinney's CPLR 7009(c).

[9] **Conspiracy** Civil rights conspiracies

Parolee's conclusory allegations of civil rights conspiracy to obstruct justice by submitting false testimony at parole revocation hearing were insufficient to state claim against parole officer.

7 Cases that cite this headnote

[10] **Judgment** Finality of determination

To extent that parolee's civil rights conspiracy claim against parole officer rested on contention that false testimony was presented at parole revocation hearing, parolee was collaterally estopped from pursuing that claim by unchallenged finding in previous § 1983 action that findings of hearing officer in revocation proceeding were binding on district court. 42 U.S.C.A. § 1983.

3 Cases that cite this headnote

Attorneys and Law Firms

***516** Lisa H. Thurau, New York City (Douglas F. Broder, Coudert Brothers, of counsel), for plaintiff-appellant.

Marion R. Buchbinder, Asst. Atty. Gen., New York City (Robert Abrams, Atty. Gen. of the State of N.Y., of counsel), for defendant-appellee.

Before: NEWMAN, Chief Judge, MINER and McLAUGHLIN, Circuit Judges.

Opinion

MINER, Circuit Judge:

Plaintiff-appellant Derry **Sykes** appeals from a judgment entered in the United States District Court for the Eastern District of New York (Platt, *C.J.*), dismissing his complaint for failure to state a claim upon which relief can be granted. *See* Fed.R.Civ.P. 12(b)(6). The complaint presents a claim for deprivation of constitutional rights under the provisions of 42 U.S.C. § 1983. In the complaint, **Sykes** alleges that his parole officer, defendant-appellee John **James**, violated his "basic statutory due process rights accorded under the by laws of [New York] Executive Law–259" by submitting a perjured affidavit in opposition to his petition for a writ of habeas corpus in the New York Supreme Court. The complaint also includes allegations that **James** conspired with Irmatine

Marshall, Sykes' former common law wife, to obstruct justice by submitting false testimony at Sykes' final parole revocation *517 hearing. On appeal, Sykes principally contends that the district court erred in determining that James was entitled to absolute immunity.[1] We affirm the dismissal of the complaint on the ground that James is entitled to absolute immunity from civil liability for allegedly perjurious statements that he made in an affidavit submitted in opposition to Sykes' petition for state habeas relief and on the ground that no claim of conspiracy is stated.

BACKGROUND

In April of 1978, Sykes was convicted of second degree robbery in the New York Supreme Court, Kings County, and sentenced to a prison term of seven years. Sykes later was paroled, and James was assigned as Sykes' parole officer. On September 29, 1988, Sykes was arrested for disorderly conduct while attempting to take possession of his belongings at Marshall's apartment. Sykes failed to notify James of the arrest, and a parole violation warrant was issued by the New York State Division of Parole. When Sykes arrived for a scheduled parole meeting on October 31, 1988, he was arrested by James and later transported to the Rikers Island correctional facility for confinement.

At the time of his arrest, Sykes signed a New York State Division of Parole Notice of Violation form acknowledging that he had received notice of the alleged parole violations. According to the Notice, a preliminary parole revocation hearing was scheduled for November 7, 1988 and a final parole revocation hearing was set for December 14, 1988. Although the Notice provided two boxes for the parolee to check—one waiving the preliminary hearing and the other requesting a preliminary hearing—Sykes checked neither box.

No preliminary hearing took place on November 7, and, on November 21, 1988 Sykes filed a *pro se* petition for a writ of habeas corpus in the New York Supreme Court, Bronx County, challenging the lawfulness of the parole revocation proceedings. On November 23, 1988, Sykes was assigned counsel, and the habeas proceeding was adjourned until December 16, 1988 to allow for submission of an amended petition.

On December 14, 1988, the final parole revocation hearing proceeded as scheduled and apparently without objection before an administrative law judge ("ALJ"). The ALJ found, based on the testimony of James, that Sykes had failed to notify James of the September 29, 1988 arrest. The ALJ further found that Sykes entered Marshall's apartment on September 29, 1988 without her permission and destroyed certain electronic equipment there, and that he also harassed and threatened Marshall at her place of employment. The latter findings were based on the "credible testimony" of Marshall and on Sykes' own testimony. The Board of Parole adopted the ALJ's findings, revoked Sykes' parole and ordered that he be incarcerated for eighteen months.

On or about December 16, 1988, Sykes' attorney filed an amended petition for a writ of habeas corpus, in which it was alleged that Sykes was denied his right to a timely preliminary hearing. An affidavit signed by James was submitted by the New York Attorney General's office during the first week in January of 1989 as part of its papers in opposition to the amended petition. In the affidavit, James stated:

> On 10/31/88, Mr. Derry Sykes came into the Brooklyn Office ... at which time Mr. Derry Sykes was taken into custody. I then asked Mr. Sykes if he wanted a Preliminary Hearing. Mr. Sykes stated that he did not want a Preliminary Hearing, but wanted to go straight to the Final Hearing. Mr. Derry Sykes then signed the 9011 form, but neglected to check the appropriate box on the form.

Sykes denies waiving his right to a preliminary hearing.

In a decision dated January 13, 1989 and entered on January 17, 1989, the Supreme Court, Bronx County (Byrne, *J.*) granted the writ of habeas corpus. This decision included *518 the following findings: "No preliminary hearing was afforded this relator. The record is clear that one was scheduled but never occurred. No record of relator waiving his mandated preliminary parole revocation hearing." The court directed the parties to "submit [an] order" reflecting the court's decision. For some unknown reason, the order sustaining the petition, vacating the parole violation warrant, releasing Sykes from custody and restoring him to parole supervision was not filed until November 13, 1989.

Since no relief was forthcoming, **Sykes**, having been transferred to the Great Meadow Correctional Facility in Comstock, New York, filed a *pro se* petition for a writ of habeas corpus in the Supreme Court, Washington County, in February of 1989. It appears that in February of 1990 the court in Washington County dismissed the petition as moot, noting that the proceeding in Supreme Court, Bronx County, never was officially transferred and that **Sykes** had been released from custody. A third habeas corpus petition, filed with the Supreme Court, Appellate Division, Third Department, in the fall of 1989 was dismissed. That dismissal order, entered on December 4, 1989, recited that the application was moot in view of the order of the Supreme Court, Bronx County, releasing **Sykes** from custody.

On February 28, 1989, **Sykes** filed a complaint in the United States District Court for the Eastern District of New York in an action for damages brought under 42 U.S.C. § 1983 for various constitutional violations against New York Attorney General Robert Abrams, Justice Burton Hecht of the New York Supreme Court, Richard Pasternack, a Supervising Parole Officer, Assistant New York Attorney General Joseph Wagner, **James** and Marshall. In a March **13**, 1989 order, the district court dismissed *sua sponte* the complaint as to Attorney General Abrams because it failed to allege any facts implicating him in the parole proceedings and, as to Justice Hecht, because the claim against him was frivolous and malicious.

The district court, in a Memorandum and Order dated February 24, 1990, dismissed on collateral estoppel grounds claims against Pasternack and **James** for false accusations of parole violations. A claim against Wagner for submitting a frivolous affirmation in response to **Sykes**' habeas petition was dismissed on the ground that, as a government attorney defending litigation against the Government, Wagner was entitled to absolute immunity from civil liability. Claims against Marshall for libel and slander were dismissed on the ground that, as a witness in a judicial proceeding, Marshall was entitled to absolute immunity from civil liability. Finally, the district court dismissed, without prejudice, a claim against **James** for falsely alleging that **Sykes** waived his right to a preliminary parole revocation hearing. The district court found that this claim essentially challenged the validity of **Sykes**' incarceration, which he then was challenging in state court. The district court concluded that comity required dismissal until **Sykes** exhausted his state remedies.

On June 11, 1991, **Sykes**, acting *pro se,* filed the complaint in this action, naming **James** as the sole defendant. According to this complaint, the affidavit submitted by **James** in the habeas proceeding in the Supreme Court, Bronx County, included the false statement that **Sykes** had waived his right to a preliminary parole revocation hearing. **Sykes** also alleged in the complaint that the **James** affidavit included the false accusation that **Sykes** had failed to inform **James** of his September 29, 1988 arrest and that **James** sought to obstruct justice by conspiring with Marshall to present false testimony at the final parole revocation hearing.

James moved to dismiss the complaint on March 16, 1992, contending that, under *Briscoe v. LaHue,* 460 U.S. 325, 103 S.Ct. 1108, 75 L.Ed.2d 96 (1983), he was a government witness in a judicial proceeding and was therefore entitled to absolute immunity from civil liability on the claim of filing a false affidavit. The district court subsequently dismissed the complaint, without opinion. **Sykes** appealed and this Court thereafter assigned counsel to represent him on appeal.

DISCUSSION

[1] **[2]** The grant of a motion to dismiss pursuant to ***519** rule 12(b)(6) of the Federal Rules of Civil Procedure is a ruling of law which we review de novo. *Austern v. Chicago Bd. Options Exchange, Inc.,* 898 F.2d 882, 885 (**2d Cir.**), *cert. denied,* 498 U.S. 850, 111 S.Ct. 141, 112 L.Ed.2d 107 (1990). In deciding such a motion, a district court must construe any well-pleaded factual allegations in the complaint in favor of the plaintiff, and may dismiss the complaint only where " 'it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.' " *Allen v. Westpoint–Pepperell, Inc.,* 945 F.2d 40, 44 (**2d Cir.**1991) (quoting *Conley v. Gibson,* 355 U.S. 41, 45–46, 78 S.Ct. 99, 101–102, 2 L.Ed.2d 80 (1957)). This caution applies with greater force where the complaint is submitted *pro se* or the plaintiff alleges civil rights violations. *Easton v. Sundram,* 947 F.2d 1011, 1015 (**2d Cir.**1991), *cert. denied,* 504 U.S. 911, 112 S.Ct. 1943, 118 L.Ed.2d 548 (1992).

[3] **[4]** **[5]** Section 1983 provides a civil claim for damages against any person who, acting under color of state law, deprives another of a right, privilege or immunity secured by the Constitution or the laws of the United

States. 42 U.S.C. § 1983; *Day v. Morgenthau,* 909 F.2d 75, 77 (2d Cir.1990). Section 1983 itself creates no substantive rights; it provides only a procedure for redress for the deprivation of rights established elsewhere. *City of Oklahoma City v. Tuttle,* 471 U.S. 808, 816, 105 S.Ct. 2427, 2432, 85 L.Ed.2d 791 (1985). In order to prevail on a section 1983 claim, the plaintiff must show that the defendant's conduct deprived him of a federal right. *See Parratt v. Taylor,* 451 U.S. 527, 535, 101 S.Ct. 1908, 1912, 68 L.Ed.2d 420 (1981), *overruled on other grounds, Daniels v. Williams,* 474 U.S. 327, 106 S.Ct. 662, 88 L.Ed.2d 662 (1986); *Rand v. Perales,* 737 F.2d 257, 260 (2d Cir.1984). A plaintiff may allege facts tending to establish the deprivation of federal constitutional rights under color of state law and still fail to state a claim because the defendant has absolute immunity from liability. *See, e.g., Imbler v. Pachtman,* 424 U.S. 409, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976) (state prosecutors have absolute immunity for their actions in initiating prosecutions). Such is the case here.

[6] **Sykes** alleges in his complaint that his due process rights were violated by the submission of a false affidavit which "declar[ed] that ... plaintiff orally waived his constitutional right to a preliminary hearing." The gravamen of this claim is not that **Sykes** was illegally incarcerated; rather, it is that the submission of the affidavit by **James** frustrated or delayed the habeas relief sought by **Sykes**, resulting in his incarceration for **thirteen** months. This claim of deprivation of constitutional rights is barred because **James**, as a witness in the state habeas proceeding, is absolutely immune from liability for the evidence he furnished in the habeas proceeding. *See Briscoe v. LaHue,* 460 U.S. 325, 103 S.Ct. 1108, 75 L.Ed.2d 96 (1983).

In *Briscoe,* the Supreme Court answered in the negative the question "whether 42 U.S.C. § 1983 [42 U.S.C.S. § 1983] authorizes a convicted person to assert a claim for damages against a police officer for giving perjured testimony at his criminal trial." *Id.* at 326, 103 S.Ct. at 1110. In concluding that such officers were clothed with absolute immunity from liability for damages arising out of false testimony, the Court, referring to *Stump v. Sparkman,* 435 U.S. 349, 98 S.Ct. 1099, 55 L.Ed.2d 331 (1978) and *Pierson v. Ray,* 386 U.S. 547, 87 S.Ct. 1213, 18 L.Ed.2d 288 (1967) (absolute immunity of judges) as well as *Imbler v. Pachtman, supra,* emphasized the importance of protecting the judicial process. 460 U.S. at 335, 103 S.Ct. at 1115. The Court noted the concerns, expressed in common law cases, that a witness who was apprehensive about liability for damages might be reluctant to testify at all, or if the witness did testify, might give distorted testimony arising out of fear of liability. *Id.* at 333, 103 S.Ct. at 1114. It is in these concerns that absolute immunity for official testimony in section 1983 cases is rooted.

[7] Functional categories, rather than the status of the defendant, control immunity analysis, *id.* at 342, 103 S.Ct. at 1119, and we have concluded that the "[f]unctions most apt to be accorded absolute, rather than qualified, immunity are those integrally related to the judicial process." *Dorman v. Higgins,* 821 F.2d 133, 136 (2d Cir.1987) (United ***520** States Probation Officer entitled to absolute immunity in connection with preparation of presentence reports). We have observed that various safeguards are in place to minimize the risks that attend the improper performance of judicial process functions: "the apolitical nature of judicial decisions, the role of precedent ..., the adversary nature of the process, ... and the regularized availability of review." *Id.* at 136–37. The functions of a police officer witness in a judicial proceeding are the same as those of any other witness, *Briscoe v. LaHue,* 460 U.S. at 342, 103 S.Ct. at 1118, and the same safeguards for minimization of risks surround the testimony of official witnesses as surround the testimony of all witnesses. Moreover, considerations of public policy support absolute immunity for official witnesses in section 1983 cases: subjecting such witnesses to damage actions would invite frequent litigation, with concomitant distraction from official duties. *Id.* at 343, 103 S.Ct. at 1119.

Relying in large part on *White v. Frank,* 855 F.2d 956 (2d Cir.1988), **Sykes** contends that **James** was not a witness entitled to absolute immunity because he was a *complaining* witness. In *White,* the plaintiff sought damages in a civil rights suit for false arrest, false imprisonment and malicious prosecution arising out of perjured testimony allegedly given by police officers before a grand jury. The case was before us on an appeal from an interlocutory order denying a motion to dismiss the section 1983 claims pleaded in the action on the ground of absolute immunity. We

dismissed the appeal, concluding that the officers could not be immune from liability if they were complaining witnesses and that, "[b]ecause this status determination raises a disputed factual issue, the immunity defense cannot be determined on an interlocutory appeal." *Id.* at 957. Although we previously had recognized immunity from liability for testimony given at a pretrial suppression hearing, *Daloia v. Rose,* 849 F.2d 74, 75–76 (2d Cir.1988) (per curiam), and had indicated that immunity would be available to a grand jury witness, *San Filippo v. U.S. Trust Co.,* 737 F.2d 246, 254 (2d Cir.1984), *cert. denied,* 470 U.S. 1035, 105 S.Ct. 1408, 84 L.Ed.2d 797 (1985), we distinguished in *White* the role of a complaining witness:

> Where, however, the constitutional tort is the action of a police officer in initiating a baseless prosecution, his role as a "complaining witness" renders him liable to the victim under section 1983, just as it did at common law, and the fact that his testimony at a judicial proceeding may have been the means by which he initiated the prosecution does not permit him to transpose the immunity available for defamation as a defense to malicious prosecution.

855 F.2d at 961.

Sykes argues that the role of a parole officer in the revocation of parole is "remarkably similar" to that of a police officer as a complaining witness. However that may be, the sworn statement furnished by James in the habeas proceeding did not serve to institute that proceeding. While James may very well have functioned as the equivalent of a complaining witness in the parole revocation proceeding, what is the basis of the claim before us today is the affidavit sworn to by James on December 19, 1988 in opposition to the amended application for relief in the habeas proceeding instituted by Sykes. It will be remembered that the affidavit was submitted only for the purpose of notifying the habeas court that Sykes orally had waived a preliminary parole revocation hearing. Although Sykes denied that he waived the hearing, the state court made no finding one way or the other on the oral waiver issue, apparently preferring to rest its decision on a failure to comply with the New York regulatory provision requiring waiver of a preliminary parole revocation hearing to be in writing or made orally on the record at the hearing. *See* N.Y.Comp.Codes R. & Regs. tit. 9, § 8005.6(b) (1991).

[8] It cannot be denied that the state habeas proceeding was a judicial proceeding that very much implicated the judicial process. According to New York law, a habeas proceeding is begun by the filing of a petition addressed to the Supreme Court or County Court by one who illegally is imprisoned or otherwise restrained or by one acting in his or her behalf. N.Y.Civ.Prac.L. & R. § 7002 (McKinney 1980 & Supp.1994). After a writ ***521** of habeas corpus is issued on the petition, *id.* § 7003, a return "consist[ing] of an affidavit to be served in the same manner as an answer in a special proceeding," *id.* § 7008(a), may be filed in response to the petition. The affidavit must, among other things, fully explain the authority and cause for the detention. *Id.* § 7008(b). The New York statute specifically directs the court to "proceed in a summary manner to hear the evidence produced in support of and against detention and to dispose of the proceeding as justice requires." *Id.* § 7009(c). An evidentiary hearing is not always necessary, since New York allows for the disposition of habeas corpus proceedings on the papers before the court if no triable issues of fact are raised. *People ex rel. Robertson v. New York State Div. of Parole,* 67 N.Y.2d 197, 201–02, 501 N.Y.S.2d 634, 636–37, 492 N.E.2d 762, 764–65 (1986).

Sykes also argues that even if James was not a complaining witness and therefore had absolute immunity from a claim of testifying falsely, he is not absolutely immune from a claim that he submitted a false affidavit. A habeas corpus proceeding brought under the pertinent New York statute is surrounded by all the judicial process safeguards. That an affidavit may take the place of testimony does not weaken the safeguards. Although cross-examination is not available where, as here, an affidavit is used in place of testimony by a public official, all the other protections of the judicial process were afforded to Sykes: the proceeding was adversarial in nature; it was conducted by a judicial officer who rendered the final decision; and it was subject to judicial review. Moreover, the affidavit oath subjected James to the penalty of perjury if the affidavit were false; Sykes had the opportunity to present affidavits of his own; and testimony could have been taken if the judge considered it necessary.

This case is therefore distinguishable from *Malley v. Briggs,* 475 U.S. 335, 106 S.Ct. 1092, 89 L.Ed.2d 271 (1985), in which a police officer applied to a magistrate for an arrest warrant based on a false affidavit submitted at an *ex parte* hearing. In that case, the accused had none of the procedural safeguards available to the petitioner in this case. Under the circumstances, it is not a basis for denying absolute immunity to an official witness that the witness testified by affidavit and was not subject to cross-examination. *See Burns v. County of King,* 883 F.2d 819 (9th Cir.1989) (state social worker who submitted affidavit in bail revocation hearing entitled to absolute witness immunity in action based on claim that affidavit was false). Accordingly, **James** must be afforded absolute immunity from any claim that the affidavit he submitted in the habeas corpus proceeding brought by **Sykes** was perjured.

[9] **[10]** The complaint also fails to state a valid claim for conspiracy against **James**. The conclusory allegations of conspiracy pleaded here are insufficient to survive a motion to dismiss under Rule 12(b)(6). *See San Filippo v. U.S. Trust Co.,* 737 F.2d at 256. Moreover, to the extent that the conspiracy claim rests on the contention that false testimony was presented at **Sykes**' final parole revocation hearing, **Sykes** is collaterally estopped from pursuing that claim by reason of the unchallenged finding of Chief Judge Platt in the previous section 1983 action that the findings of the hearing officer in the revocation proceeding were binding on the district court. *Allen v. McCurry,* 449 U.S. 90, 94, 101 S.Ct. 411, 414, 66 L.Ed.2d 308 (1980). We have considered the other arguments advanced by **Sykes** and find them to be without merit.

CONCLUSION

For the foregoing reasons, we conclude that **James** is entitled to absolute immunity from section 1983 liability for perjurious statements allegedly made in opposition to **Sykes**' petition for state habeas relief; we conclude further that no claim for conspiracy is stated. The judgment of the district court is affirmed.

All Citations

13 F.3d 515

Footnotes

1 Although the district court did not explain the basis of its decision to grant **James**' motion to dismiss, the parties have assumed that dismissal was predicated on the doctrine of absolute immunity.

1995 WL 236245
Only the Westlaw citation is currently available.
United States District Court, N.D. New York.

James N. MYERS, Jr., Plaintiff,
v.
Heather WOLLOWITZ, Attorney, Defendant.

No. 95–CV–0272 (TJM) (RWS).
|
April 10, **1995**.

Attorneys and Law Firms

James N. Myers, Jr., Troy, NY, pro se.

DECISION AND ORDER

McAVOY, Chief Judge.

I. Background

***1** Presently before this Court is the above-captioned plaintiff's application to proceed in forma pauperis and civil rights complaint. Plaintiff has not paid the partial filing fee required to maintain this action.

For the reasons stated below, plaintiff's complaint is dismissed pursuant to 28 U.S.C. § 1915(d) and Local Rule 5.4(a) of the General Rules of this Court as without arguable basis in law.

In his *pro se* complaint, plaintiff seems to claim that plaintiff was represented by defendant Wollowitz, a public defender for the County of Rensselaer, in a County Court proceeding. Plaintiff alleges that after a criminal proceeding in that Court, plaintiff was "sentenced to a illegal sentence." *Id.* at 2. Plaintiff contends that due to the ineffective assistance of his counsel, defendant Wollowitz, his constitutional rights were violated. For a more complete statement of plaintiff's claims, reference is made to the entire complaint filed herein.

II. Discussion

Consideration of whether a *pro se* plaintiff should be permitted to proceed in forma pauperis is a two-step process. First, the court must determine whether the plaintiff's economic status warrants waiver of fees and costs under 28 U.S.C. § 1915(a). If the plaintiff qualifies by economic status, the court must then consider whether the cause of action stated in the complaint is frivolous or malicious. *Moreman v. Douglas,* 848 F.Supp. 332, 333 (N.D.N.Y.1994) (Scullin, J.); *Potnick v. Eastern State Hosp.,* 701 F.2d 243, 244 (**2d Cir**.1983) (per curiam).

In the present case, upon review of the plaintiff's inmate account statements, the Court has determined that plaintiff's financial status qualifies him to file or "commence" this action in forma pauperis. 28 U.S.C. § 1915(a). Turning to the second inquiry, a court may "dismiss the proceeding under 28 U.S.C. § 1915(d) if the court thereafter determines that ... the action is frivolous or malicious." *Moreman,* 848 F.Supp. at 333 (citation omitted).

In determining whether an action is frivolous, the court must look to see whether the complaint lacks an arguable basis either in law or in fact. *Neitzke v. Williams,* 490 U.S. 319, 325 (1989). Although the court has the duty to show liberality towards *pro se* litigants, *Nance v. Kelly,* 912 F.2d 605, 606 (**2d Cir**.1990) (per curiam), and extreme caution should be exercised in ordering sua sponte dismissal of a *pro se* complaint before the adverse party has been served and the parties have had an opportunity to respond, *Anderson v. Coughlin,* 700 F.2d 37, 41 (**2d Cir**.1983), there is a responsibility on the court to determine that a claim is not frivolous before permitting a plaintiff to proceed with an action in forma pauperis. Dismissal of frivolous actions pursuant to 28 U.S.C. § 1915(d) is appropriate to prevent abuses of the process of the court, *Harkins v. Eldredge,* 505 F.2d 802, 804 (8th Cir.1974), as well as to discourage the waste of judicial resources. *Neitzke,* 490 U.S. at 327. *See generally Moreman,* 848 F.Supp. at 334.

***2** 42 U.S.C. § 1983 is the vehicle by which individuals may seek redress for alleged violations of their constitutional rights. *See, e.g., Von Ritter v. Heald,* 91–CV–612, 1994 **WL** 688306, *3, 1994 U.S.Dist. LEXIS 17698, *8–9 (N.D.N.Y. Nov. 14, 1994) (McAvoy, C.J.). A party may not be held liable under this section unless it can be established that the defendant has acted under the color of state law. *See, e.g., Rounseville v. Zahl,* **13** F.3rd 625, 628 (**2d Cir**.1994) (noting state action requirement under § 1983); *Wise v. Battistoni,* 92–Civ–4288, 1992 **WL** 380914, *1, 1992

U.S.Dist. LEXIS 18864, *2–3 (S.D.N.Y. Dec. 10, 1992) (same) (citations omitted).

In the present case, the sole defendant named by plaintiff is the Rensselaer County public defender who apparently represented plaintiff in the criminal proceeding discussed in his complaint. *See* Complaint at 2. However, "[i]t is well settled that an attorney's representation of a party to a court proceeding does not satisfy the Section 1983 requirement that the defendant is alleged to have acted under color of state law...." *Wise,* 1992 WL 380914 at *1, 1992 U.S.Dist. LEXIS 18864 at *2–3; *see also D'Ottavio v. Depetris,* 91–Civ–6133, 1991 WL 206278, *1, 1991 U.S.Dist. LEXIS 13526, *1–2 (S.D.N.Y. Sept. 26, 1991).

Since the plaintiff has not alleged any state action with respect to the Section 1983 claim presently before the Court, plaintiff's complaint, as presented to this Court, cannot be supported by any arguable basis in law and must therefore be dismissed pursuant to 28 U.S.C. § 1915(d). *Neitzke,* 490 U.S. at 328.

Accordingly, it is hereby

ORDERED, that leave to proceed or prosecute this action in forma pauperis is denied, and it is further

ORDERED, that this action is dismissed pursuant to 28 U.S.C. § 1915(d) and Local Rule 5.4(a) of the General Rules of this Court as lacking any arguable basis in law, and it is further

ORDERED, that the Clerk serve a copy of this Order on the plaintiff by regular mail.

I further certify that any appeal from this matter would not be taken in good faith pursuant to 28 U.S.C. § 1915(a).

IT IS SO ORDERED.

All Citations

Not Reported in F.Supp., 1995 WL 236245

KeyCite Yellow Flag - Negative Treatment
Superseded by Statute as Stated in D.O. v. Glisson, 6th Cir.(Ky.), January 27, 2017

110 S.Ct. 2510
Supreme Court of the United States

L. Douglas WILDER, Governor
of Virginia, et al., Petitioners
v.
VIRGINIA HOSPITAL ASSOCIATION.

No. 88–2043.
|
Argued Jan. 9, 1990.
|
Decided June 14, 1990.

Synopsis
Nonprofit association of public and private hospitals brought action pursuant to § 1983 challenging administration of state's medicaid program. The United States District Court for the Eastern District of Virginia, Robert R. Merhige, Jr., Senior District Judge, entered summary judgment in favor of Commonwealth, and appeal was taken. The Court of Appeals, for the Fourth Circuit, 830 F.2d 1308, reversed and remanded. On remand, the District Court denied Commonwealth's motion for summary judgment, and appeal was again taken. The Court of Appeals, 868 F.2d 653, affirmed. On grant of certiorari, the United States Supreme Court, Justice Brennan, held that: (1) § 1983 is inapplicable if statute allegedly violated does not create enforceable rights or if Congress foreclosed such enforcement of statute in enactment itself; (2) Boren Amendment created substantive federal right enforceable by health care providers under § 1983; and (3) Congress did not foreclose private judicial remedy for enforcement of Medicaid Act under § 1983.

Affirmed.

Chief Justice Rehnquist filed dissenting opinion in which Justices O'Connor, Scalia and Kennedy joined.

Procedural Posture(s): On Appeal; Motion for Summary Judgment.

West Headnotes (4)

[1] **Civil Rights** Rights Protected

Section 1983 which provides cause of action for "the deprivation of any rights, privileges, or immunities secured by the Constitution and laws" of United States does not apply where federal statute allegedly violated does not create enforceable rights, privileges or immunities or where Congress has foreclosed such enforcement of statute in enactment itself. 42 U.S.C.A. § 1983.

1638 Cases that cite this headnote

[2] **Civil Rights** Contracts, trade, and commercial activity

Health Benefits and Services Covered

Medicaid Act creates right enforceable by health care providers under § 1983 to adoption of reimbursement rates that are reasonable and adequate to meet costs of efficiently and economically operated facility that provides care to Medicaid patients; right is not merely procedural one that rates be accompanied by findings and assurances of reasonableness and adequacy but rather Act provides substantive right to reasonable and adequate rates as well. Social Security Act, §§ 1901 et seq., 1902(a)(13)(A), as amended, 42 U.S.C.A. §§ 1396 et seq., 1396a(a)(13)(A); 42 U.S.C.A. § 1983.

516 Cases that cite this headnote

[3] **Civil Rights** Public Services, Programs, and Benefits

Congress did not foreclose enforcement of Medicaid Act under § 1983; Medicaid Act did not expressly preclude resort to § 1983, nor did it create remedial scheme that was sufficiently comprehensive to demonstrate congressional intent to preclude remedy of suits

under § 1983. Social Security Act, §§ 1901 et seq., 1902(a)(13)(A), as amended, 42 U.S.C.A. §§ 1396 et seq., 1396a(a)(13)(A); 42 U.S.C.A. § 1983.

469 Cases that cite this headnote

[4] Civil Rights Administrative remedies in general

Availability of state administrative procedures ordinarily does not foreclose resort to § 1983. 42 U.S.C.A. § 1983.

28 Cases that cite this headnote

***498 **2511** *Syllabus* *

To qualify for federal financial assistance to help defray the cost of furnishing medical care to the needy under the Medicaid Act, States must submit to the Secretary of Health and Human Services for approval a plan which, *inter alia,* establishes a scheme for reimbursing health care providers. In 1980, Congress passed the Boren Amendment to the Act, which requires provider reimbursement according to rates that the "State finds, and makes assurances satisfactory to the Secretary," are "reasonable and adequate" to meet the costs of "efficiently and economically operated facilities." The State must also assure the Secretary that individuals have "reasonable access" to facilities of "adequate quality." Virginia's plan, under which providers are reimbursed according to a prospective formula, was approved by the Secretary in 1982 and again in 1986 after an amendment. In 1986, respondent, a nonprofit corporation composed of public and private hospitals operating in Virginia, filed suit against petitioner state officials for declaratory and injunctive relief under 42 U.S.C. § 1983, alleging that the state plan violates the Act because its reimbursement rates are not "reasonable and adequate." The District Court denied petitioners' motion to dismiss or for summary judgment, which was based on the claim that § 1983 does not afford respondent a cause of action. The Court of Appeals affirmed, concluding ****2512** that providers may sue state officials for declaratory and injunctive relief under § 1983 to assure compliance with the Boren Amendment.

Held: The Boren Amendment is enforceable in a § 1983 action for declaratory and injunctive relief brought by health care providers. Pp. 2516–2525.

(a) Section 1983—which provides a cause of action for the "deprivation of any rights ... secured by [federal] laws"—is inapplicable if (1) the statute in question does not create enforceable "rights" within § 1983's meaning, or (2) Congress has foreclosed such enforcement of the statute in the enactment itself. *Wright v. Roanoke Redevelopment and Housing Authority,* 479 U.S. 418, 423, 107 S.Ct. 766, 770, 93 L.Ed.2d 781. Pp. 2516–2517.

(b) The Boren Amendment creates a substantive federal "right," enforceable by providers under § 1983, to the adoption of reasonable and adequate reimbursement rates. There can be little doubt that providers are the intended beneficiaries of the amendment, see *Golden State Transit* ***499** *Corp. v. Los Angeles,* 493 U.S. 103, 106, 110 S.Ct. 444, 448, 107 L.Ed.2d 420, since the amendment establishes a system for reimbursing such providers and is phrased in terms benefiting them. Moreover, the amendment imposes a "binding obligation" on the States that gives rise to enforceable rights, see *Pennhurst State School and Hospital v. Halderman,* 451 U.S. 1, 19, 101 S.Ct. 1531, 1541, 67 L.Ed.2d 694, since it is cast in mandatory rather than precatory terms, and since the provision of federal funds is expressly conditioned on compliance with the amendment. Petitioners' contention that Congress did not intend to require States to adopt rates that actually are reasonable and adequate is contrary to the statutory language, which requires the State to *find* that its rates satisfy these requirements and entitles the Secretary to reject a state plan upon concluding that the assurances given are unsatisfactory, and would render those requirements, and thus the entire reimbursement provision, essentially meaningless. Petitioners' contention is quickly dispelled by a review of the amendment's background and the legislative history, which demonstrate that the amendment was passed to free the States from restrictive reimbursement requirements previously imposed by the Secretary and not to relieve them of their fundamental obligation to pay reasonable rates, and that Congress intended to retain providers' pre-existing right to challenge rates as unreasonable in injunctive

suits under § 1983. Furthermore, a State's flexibility to adopt rates that it finds to be reasonable and adequate does not, as petitioners contend, render the obligation imposed by the amendment too "vague and amorphous" to be judicially enforceable. See *Golden State, supra,* 493 U.S., at 106, 110 S.Ct., at 448. The statute and the Secretary's regulations set out factors which a State must consider in adopting its rates, and the statute requires the State, in making its findings, to judge the rates' reasonableness against the objective benchmark of an "efficiently and economically operated facility" while ensuring "reasonable access" to eligible participants. Although some knowledge of the hospital industry might be required to evaluate a State's findings, such an inquiry is well within the competence of the Judiciary. Pp. 2517–2523.

(c) Congress has not foreclosed a private judicial remedy for enforcement of the Boren Amendment under § 1983, since there is no express provision to that effect in the Act, see *Wright, supra,* 479 U.S., at 423, 107 S.Ct., at 770, and since the statute does not create a remedial scheme that is sufficiently comprehensive to demonstrate an intent to preclude the remedy of § 1983 suits, see *Middlesex County Sewerage Authority v. National Sea Clammers Assn.,* 453 U.S. 1, 20, 101 S.Ct. 2615, 2626, 69 L.Ed.2d 435. Because a primary purpose of the amendment was to reduce the Secretary's role in determining rate payment calculation methods, the Secretary's limited oversight function under the Act, which authorizes him to withhold approval of plans or to curtail federal ****2513** funds in cases of noncompliance, is insufficient to demonstrate an intent ***500** to foreclose § 1983 relief. Cf. *Wright, supra,* 479 U.S., at 428, 107 S.Ct., at 773. Moreover, although a regulation requires States to adopt an appeals procedure by which individual providers may obtain administrative review of reimbursement rates, it also allows States to limit the issues that may be raised on review, and most States, including Virginia, do not allow providers to challenge the overall method by which rates are determined. Such limited state procedures cannot be considered a "comprehensive" scheme that precludes reliance on § 1983. See 479 U.S., at 429, 107 S.Ct., at 773. Pp. 2523–2525.

868 F.2d 653 (CA4 1989), affirmed.

BRENNAN, J., delivered the opinion of the Court, in which WHITE, MARSHALL, BLACKMUN, and STEVENS, JJ., joined. REHNQUIST, C.J., filed a dissenting opinion, in which O'CONNOR, SCALIA, and KENNEDY, JJ., joined, *post,* p. 2525.

Attorneys and Law Firms

R. Claire Guthrie, Deputy Attorney General of Virginia, argued the cause for petitioners. With her on the briefs were *Mary Sue Terry*, Attorney General, *Roger L. Chaffe*, Senior Assistant Attorney General, and *Pamela M. Reed* and *Virginia R. Manhard*, Assistant Attorneys General.

Deputy Solicitor GeneralRoberts urged the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Starr, Assistant Attorney General Gerson, Lawrence S. Robbins, Anthony J. Steinmeyer*, and *Irene M. Solet*.

Walter Dellinger argued the cause for respondent. With him on the brief were *Martin A. Donlan, Jr.*, and *Judith B. Henry*.*

* Briefs of *amici curiae* urging reversal were filed for the State of Connecticut et al. by *Clarine Nardi Riddle*, Attorney General of Connecticut, and *Richard J. Lynch, Arnold I. Menchel*, and *Kenneth A. Graham*, Assistant Attorneys General, and by the Attorneys General for their respective States as follows: *Don Siegelman* of Alabama, *Douglas B. Baily* of Alaska, *Robert K. Corbin* of Arizona, *John K. Van de Kamp* of California, *Duane Woodard* of Colorado, *Charles M. Oberly III* of Delaware, *Robert A. Butterworth* of Florida, *Michael J. Bowers* of Georgia, *Warren Price III* of Hawaii, *Jim Jones* of Idaho, *Neil F. Hartigan* of Illinois, *Linley E. Pearson* of Indiana, *Thomas J. Miller* of Iowa, *Robert T. Stephan* of Kansas, *Frederic J. Cowan* of Kentucky, *William J. Guste, Jr.*, of Louisiana, ***James*** *E. Tierney* of Maine, *J. Joseph Curran, Jr.*, of Maryland, ***James*** *M. Shannon* of Massachusetts, *Frank J. Kelley* of Michigan, *Hubert H. Humphrey III* of Minnesota, *Mike Moore* of Mississippi, *William L. Webster* of Missouri, *Marc Racicot* of Montana, *Brian McKay* of Nevada, *John P. Arnold* of New Hampshire, *Peter N. Perretti, Jr.*, of New Jersey, *Hal Stratton* of New Mexico, *Robert Abrams* of New York, *Lacy H. Thornburg* of North Carolina, *Nicholas J. Spaeth* of North Dakota, *Anthony J. Celebrezze, Jr.*, of Ohio, *Robert H. Henry* of Oklahoma, *David Frohnmayer* of Oregon, *Ernest D. Preate, Jr.*, of Pennsylvania, ***James*** *E. O'Neil* of Rhode Island, *T. Travis Medlock* of South Carolina, *Roger Tellinghuisen* of South Dakota, *Charles W. Burson* of Tennessee, *Jim Mattox* of

Texas, *Paul Van Dam* of Utah, *Jeffrey L. Amestoy* of Vermont, *Kenneth Eikenberry* of Washington, *Charles G. Brown* of West Virginia, and *Joseph B. Meyer* of Wyoming; and for the National Governors' Association et al. by *Benna Ruth Solomon*.

Briefs of *amici curiae* affirmance were filed for the American Health Care Association et al. by *Thomas C. Fox, Joel M. Hamme, Eugene Tillman, W. Thomas McGough, Jr., Rex E. Lee*, and *Carter G. Phillips*; for the California Association of Hospitals et al. by *Robert A. Klein, Mark S. Windisch*, and *C. Darryl Cordero*; and for Temple University by *Matthew M. Strickler*.

Robert D. Newman filed a brief for the Gray Panthers Advocacy Committee et al. as *amici curiae.*

Opinion

***501** Justice BRENNAN delivered the opinion of the Court.

This case requires us to determine whether a health care provider may bring an action under 42 U.S.C. § 1983 (1982 ed.)[1] to challenge the method by which a State reimburses health care providers under the Medicaid Act (Act), 79 Stat. 343, as amended, 42 U.S.C. § 1396 *et seq.* (1982 ed. and Supp. V). More specifically, the question presented is whether the Boren Amendment to the Act, which requires reimbursement according to rates that a "State finds, and makes assurances satisfactory to the Secretary, are reasonable ***502** and adequate to meet the costs which must be incurred by efficiently and economically operated facilities," 42 U.S.C. § 1396a(a)(13)(A) (1982 ed., Supp. V), is enforceable in an action pursuant to § 1983.

I

A

Medicaid is a cooperative federal-state program through which the Federal Government provides financial assistance to States so that they may furnish medical care to needy individuals. § 1396. Although participation in the program is voluntary, participating States must comply with certain requirements imposed by the Act and regulations promulgated by the Secretary of Health and Human Services (Secretary). To qualify for federal assistance, a State must submit to the Secretary and have approved a "plan for medical assistance," § 1396a(a), that contains a comprehensive statement describing the nature and scope of the State's Medicaid program. 42 CFR § 430.10 (1989). The state plan is required to establish, among other things, a scheme for reimbursing health care providers for the medical services provided to needy individuals.

Section 1902(a)(13) of the Act sets out the requirements for reimbursement of health care providers. As amended in 1980 (Boren Amendment),[2] the section provides that

****2514** "a State plan for medical assistance must—

. . . . .

"provide ... for payment ... of the hospital services, nursing facility services, and services in an intermediate ***503** care facility for the mentally retarded provided under the plan through the use of rates (determined in accordance with methods and standards developed by the State ...) *which the State finds, and makes assurances satisfactory to the Secretary, are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities* in order to provide care and services in conformity with applicable State and Federal laws, regulations, and quality and safety standards and to assure that individuals eligible for medical assistance have reasonable access ... to inpatient hospital services of adequate quality." 42 U.S.C. § 1396a(a)(13)(A) (1982 ed., Supp. V) (emphasis added).

The Commonwealth of Virginia's State Plan for Medical Assistance was approved by the Secretary in 1982 and again in 1986 after an amendment was made. Complaint, ¶ 11, App. 11. Under the plan, health care providers are reimbursed for services according to a prospective formula—that is, reimbursement rates for various types of medical services and procedures are fixed in advance. Specifically, providers are divided into "peer groups" based on their size and location and reimbursed according to a formula based on the median cost of medical care for that peer group.

In 1986, respondent Virginia Hospital Association (VHA), a nonprofit corporation composed of both public and private hospitals operating in Virginia, *id.,* at ¶ 3, App. 4–5, filed suit in the United States District Court for the Eastern District of Virginia against several state officials including the Governor, the Secretary of Human Resources, and the

members of the State Department of Medical Assistance Services (the state agency that administers the Virginia Medicaid system). Respondent contends that Virginia's plan for reimbursement violates the Act because the "rates are not reasonable and adequate to meet the economically and efficiently incurred cost of providing care to Medicaid patients in hospitals and do not assure access to inpatient care." *Id.,* at ¶ 1, App. 4; see also ***504** *id.,* at ¶ 17, App. 13 ("The per diem reimbursement rates ... have not reasonably nor adequately met the costs incurred by efficiently and economically operated hospitals in providing care and services in conformity with applicable state and federal laws, regulations, and quality and safety standards"). [3] Respondent seeks declaratory and injunctive relief including an order requiring petitioners to promulgate a new state plan providing new rates and, in the interim, ****2515** to reimburse Medicaid providers at rates commensurate with payments under the Medicare program. *Id.,* at ¶¶ 34–39, App. 20–22.

Petitioners filed a motion to dismiss or in the alternative a motion for summary judgment on the ground that 42 U.S.C. § 1983 (1982 ed.) does not afford respondent a cause of action to challenge the Commonwealth's compliance with the Medicaid Act. 2 Record, Exh. 36, p. 1. [4] The District ***505** Court denied the motion. App. to Pet. for Cert. D–4—D–6. The Court of Appeals for the Fourth Circuit affirmed, concluding that health care providers may sue state officials for declaratory and injunctive relief under § 1983 to ensure compliance with the Act. More specifically, the court held that the language and legislative history of the Boren Amendment demonstrate that it creates "enforceable rights" and that Congress did not intend to foreclose a private remedy for the enforcement of those rights. *Virginia Hospital Assn. v. Baliles,* 868 F.2d 653, 656–660 (1989). We granted certiorari. 493 U.S. 808, 110 S.Ct. 49, 107 L.Ed.2d 18 (1989). [5]

B

In order to determine whether the Boren Amendment is enforceable under § 1983, it is useful first to consider the history of the reimbursement provision. When enacted in 1965, the Act required States to provide reimbursement for the "reasonable cost" of hospital services actually provided, measured according to standards adopted by the Secretary. Pub.L. 89–97, § 1902(13)(B), 79 Stat. 346. Congress became concerned, however, that the Secretary wielded too much control over reimbursement rates. See H.R.Rep. No. 92–231, p. 100 (1971). Congress therefore amended the Act in 1972 to give States more flexibility to develop methods and standards for reimbursement, but Congress retained the ultimate requirement that the rates reimburse the "reasonable cost" of the services provided. The new law required States to pay "the reasonable cost of inpatient hospital services ... as determined in accordance with methods and standards ***506** which shall be developed by the State and reviewed and approved by the Secretary." Pub.L. 92–603, § 232(a), 86 Stat. 1410–1411.

In response to rapidly rising Medicaid costs, Congress in 1981 extended the Boren Amendment to hospitals as part of the Omnibus Budget Reconciliation Act of 1981, Pub.L. 97–35, 95 Stat. 808. [6] Congress blamed mounting Medicaid costs on the complexity and rigidity of the Secretary's reimbursement regulations. See H.R.Rep. No. 97–158, Vol. 2, pp. 292–293 (1981)H.R.Rep. No. 97–158, Vol. 2, pp. 292–293 (1981); S.Rep. No. 96–471, pp. 28–29 (1979)S.Rep. No. 96–471, pp. 28–29 (1979). Although the previous version of the Act in theory afforded States some degree of flexibility to adopt their own methods for determining reimbursement rates, Congress found that, in fact, the regulations promulgated by the Secretary had essentially forced States to adopt Medicaid rates based on Medicare "reasonable cost" principles. Congress "recognize[d] the inflationary nature of the [then] current cost reimbursement system and intend[ed] to give States greater latitude in developing and implementing alternative reimbursement methodologies that promote the ****2516** efficient and economical delivery of such services." H.R.Rep. No. 97–158, Vol. 2H.R.Rep. No. 97–158, Vol. 2, *supra,* at 293. The amendment "delete[d] the current provision requiring States to reimburse hospitals on a reasonable cost basis [and] substitute[d] a provision requiring States to reimburse hospitals at rates ... that are reasonable and adequate to meet the cost which must be incurred by efficiently and economically operated facilities in order to meet applicable laws and quality and safety standards." S.Rep. No. 97–139, p. 478 (1981), U.S.Code Cong. & Admin.News 1981, p. 744. Thus, while Congress affirmed its desire that state reimbursement rates be "reasonable," it afforded States greater flexibility in calculating those "reasonable rates." For example, Congress explained that States would be free to establish statewide or classwide rates, establish rates based on a prospective ***507** cost, [7] or include incentive provisions to encourage efficient operation. See H.R.Rep. No. 97–158, Vol. 2H.R.Rep. No. 97–158, Vol. 2, *supra,* at 292–293; S.Rep.

No. 96–471S.Rep. No. 96–471, *supra,* at 29. Flexibility was ensured by limiting the oversight role of the Secretary. See S.Rep. No. 97–139, *supra,* at 478, U.S.Code Cong. & Admin.News 1981, p. 744. Thus, the Boren Amendment provides that a State must reimburse providers according to rates that it "finds, and makes assurances satisfactory to the Secretary," are "reasonable and adequate" to meet the costs of "efficiently and economically operated facilities." The State must also assure the Secretary that individuals have "reasonable access" to facilities of "adequate quality."

The Act does not define these terms, and the Secretary has declined to adopt a national definition, concluding that States should determine the factors to be considered in determining what rates are "reasonable and adequate" to meet the costs of "efficiently and economically operated facilit [ies]." See 48 Fed.Reg. 56049 (1983). The regulations require a State to make a finding at least annually that its rates are "reasonable and adequate," see 42 CFR § 447.253(b)(1) (1989), though the State is required to submit assurances to that effect to the Secretary only when it makes a change in its reimbursement rates. See § 447.253(a); 48 Fed.Reg. 56047 (1983). According to the Secretary, the Boren Amendment "places the responsibility for the development of reasonable and adequate payment rates with the States." *Id.,* at 56050. Thus, he reviews only the reasonableness of the assurances provided by a State and not the State's findings themselves. ***508** See 42 CFR § 447.256(2) (1989). The Secretary's review focuses "on the assurances which attest to the fact that States' findings do indeed indicate that the payment rates are reasonable" and judges "whether the assurances are satisfactory." 48 Fed.Reg. 56051 (1983). Therefore the Secretary does not require States to submit the findings themselves or the underlying data. [8]

II

[1] Section 1983 provides a cause of action for "the deprivation of any rights, privileges, ****2517** or immunities secured by the Constitution and laws" of the United States. In *Maine v. Thiboutot,* 448 U.S. 1, 4, 100 S.Ct. 2502, 2504, 65 L.Ed.2d 555 (1980), we held that § 1983 provides a cause of action for violations of federal statutes as well as the Constitution. We have recognized two exceptions to this rule. A plaintiff alleging a violation of a federal statute will be permitted to sue under § 1983 unless (1) "the statute [does] not create enforceable rights, privileges, or immunities within the meaning of § 1983," or (2) "Congress has foreclosed such enforcement of the statute in the enactment itself." *Wright v. Roanoke Redevelopment and Housing Authority,* 479 U.S. 418, 423, 107 S.Ct. 766, 770, 93 L.Ed.2d 781 (1987). [9] Petitioners argue first that the ***509** Boren Amendment does not create any "enforceable rights" and second, that Congress has foreclosed enforcement of the Act under § 1983. We address these contentions in turn.

A

[2] "Section 1983 speaks in terms of '*rights,* privileges, or immunities,' not violations of federal law." *Golden State Transit Corp. v. Los Angeles,* 493 U.S. 103, 106, 110 S.Ct. 444, 448, 107 L.Ed.2d 420 (1989) (emphasis added). We must therefore determine whether the Boren Amendment creates a "federal right" that is enforceable under § 1983. Such an inquiry turns on whether "the provision in question was intend[ed] to benefit the putative plaintiff." *Ibid.* (citations and internal quotations omitted). If so, the provision creates an enforceable right unless it reflects merely a "congressional preference" for a certain kind of conduct rather than a binding obligation on the governmental unit, *Pennhurst State School and Hospital v. Halderman,* 451 U.S. 1, 19, 101 S.Ct. 1531, 1541, 67 L.Ed.2d 694 (1981), or unless the interest the plaintiff asserts is " 'too vague and amorphous' " such that it is " 'beyond the competence of the judiciary to enforce.' " *Golden State, supra,* 493 U.S., at 106, 110 S.Ct., at 448 (quoting *Wright, supra,* 479 U.S., at 431–432, 107 S.Ct., at 774). Under this test, we conclude that the Act creates a right enforceable by health care providers under § 1983 to ***510** the adoption of reimbursement rates that are reasonable and adequate to meet the costs of an efficiently and economically operated facility that provides care to Medicaid patients. The right is not merely a procedural one that rates be accompanied by findings and assurances (however perfunctory) of reasonableness and adequacy; rather the Act provides a substantive right to reasonable and adequate rates as well.

There can be little doubt that health care providers are the intended beneficiaries of the Boren Amendment. The provision establishes a system for reimbursement of providers

**2518 and is phrased in terms benefiting health care providers: It requires a state plan to provide for "payment ... of the *hospital* services, *nursing facility* services, and services in an *intermediate care facility* for the mentally retarded provided under the plan." 42 U.S.C. § 1396a(a)(13)(A) (1982 ed., Supp. V) (emphasis added). See *Wright, supra,* at 430, 107 S.Ct., at 774. The question in this case is whether the Boren Amendment imposes a "binding obligation" on the States that gives rise to enforceable rights.

In *Pennhurst, supra,* the Court held that § 111 of the Developmentally Disabled Assistance and Bill of Rights Act, 42 U.S.C. § 6010 (1976 ed. and Supp. III), did not create rights enforceable under § 1983. Section 6010, the "bill of rights" provision, declared that Congress had made certain "findings respecting the rights of persons with developmental disabilities," namely, that such persons have a right to "appropriate treatment' " in the least restrictive environment and that federal and state governments have an obligation to ensure that institutions failing to provide "appropriate treatment" do not receive federal funds. 451 U.S., at 13, 101 S.Ct., at 1538. The Court concluded that the context of the entire statute and its legislative history revealed that Congress intended neither to create new substantive rights nor to require States to recognize such rights; instead, Congress intended only to indicate a preference for "appropriate treatment." *Id.,* at 22–24, 101 S.Ct., at 1542–1543. The Court examined the language of the provision and determined *511 that a general statement of "findings" was "too thin a reed to support" a creation of rights and obligations. *Id.,* at 19, 101 S.Ct., at 1541. Moreover, since neither the statute nor the corresponding regulations made compliance with the provision a condition of receipt of federal funding, the Court reasoned that "the provisions of § 6010 were intended to be hortatory, not mandatory." *Id.,* at 24, 101 S.Ct., at 1543. The Court refused to infer congressional intent to condition federal funding on compliance because "Congress must express clearly its intent to impose conditions on the grant of federal funds so that the States can knowingly decide whether or not to accept those funds." *Ibid.* [10]

More recently, in *Wright,* however, we found that the Brooke Amendment to the Housing Act of 1937, 42 U.S.C. § 1437a (1982 ed. and Supp. III), and its implementing regulations did create rights enforceable under § 1983. The Brooke Amendment limits the amount of rent a public housing tenant can be charged, and the regulations adopted pursuant to the statute require inclusion of a "reasonable" allowance for utilities in the rent. 479 U.S., at 420, 107 S.Ct., at 769. We reasoned that both the statute and the regulations were "mandatory limitation[s] focusing on the individual family and its income." *Id.,* at 430, 107 S.Ct., at 773–774. In addition, we rejected the argument that the provision for a reasonable utility allotment was too vague to create an enforceable right. Because the regulations set out guidelines for the housing authorities to follow in determining the utility allowance, the right was "sufficiently specific and definite *512 to qualify as [an] enforceable righ[t] under *Pennhurst* and § 1983 [and was] not ... beyond the competence of the judiciary to enforce." *Id.,* at 432, 107 S.Ct., at 774–775.

In light of *Pennhurst* and *Wright,* we conclude that the Boren Amendment imposes a binding obligation on States participating **2519 in the Medicaid program to adopt reasonable and adequate rates and that this obligation is enforceable under § 1983 by health care providers. The Boren Amendment is cast in mandatory rather than precatory terms: The state plan "*must* " "provide for payment ... of hospital[s]" according to rates the State finds are reasonable and adequate. 42 U.S.C. § 1396a(a)(13)(A) (1982 ed., Supp. V) (emphasis added). Moreover, provision of federal funds is expressly conditioned on compliance with the amendment and the Secretary is authorized to withhold funds for noncompliance with this provision. 42 U.S.C. § 1396c (1982 ed.). The Secretary has expressed his intention to withhold funds if the state plan does not comply with the statute or if there is "noncompliance in practice." See 42 CFR § 430.35 (1989) ("A question of noncompliance in practice may arise from the State's failure to actually comply with a Federal requirement, regardless of whether the plan itself complies with that requirement"). "The [Boren Amendment's] language succinctly sets forth a congressional command, which is wholly uncharacteristic of a mere suggestion or 'nudge.' " *West Virginia University Hospitals, Inc. v. Casey,* 885 F.2d 11, 20 (CA3 1989) (quoting *Pennhurst,* 451 U.S., at 19, 101 S.Ct., at 1540), cert. granted, 494 U.S. 1003, 110 S.Ct. 1294, 108 L.Ed.2d 472 (1990).

Petitioners concede that the Boren Amendment requires a State to provide *some* level of reimbursement to health care providers and that a cause of action would lie under § 1983 if a State failed to adopt any reimbursement provision whatsoever. Tr. of Oral Arg. 12. Petitioners also concede, as they must, that a State is required to find that its rates are reasonable and adequate and to make assurances to that effect to ***513** the Secretary. Reply Brief for Petitioners 3. [11] The dissent, although acknowledging that the State has these obligations, apparently would hold that the only right enforceable under § 1983 is the right to compel compliance with these bare procedural requirements. See *post,* at 2527. We think the amendment cannot be so limited. Any argument that the requirements of findings and assurances are procedural requirements only and do not require the State to adopt rates that are actually reasonable and adequate is nothing more than an argument that the State's findings and assurances need not be correct.

***514** We reject that argument because it would render the statutory requirements of findings and assurances, and thus the entire reimbursement provision, essentially ****2520** meaningless. It would make little sense for Congress to require a State to make findings without requiring those findings to be correct. In addition, there would be no reason to require a State to submit assurances to the Secretary if the statute did not require the State's findings to be reviewable in some manner by the Secretary. We decline to adopt an interpretation of the Boren Amendment that would render it a dead letter. See *Rosado v. Wyman,* 397 U.S. 397, 412–415, 90 S.Ct. 1207, 1217–1219, 25 L.Ed.2d 442 (1970); see also 2A C. Sands, Sutherland on Statutory Construction § 45.12 (4th ed. 1984).

Petitioners acknowledge that a State may not make, or submit assurances based on, a patently false finding, see Tr. of Oral Arg. 7, but insist that Congress left it to the Secretary, and not the federal courts, to ensure that the State's rates are not based on such false findings. [12] To the extent that this argument bears on the question whether the Boren Amendment creates enforceable rights (as opposed to whether Congress intended to foreclose private enforcement of the statute pursuant to § 1983, see *infra,* at 2523–2525), it supports the conclusion that the provision does create enforceable rights. If the Secretary is entitled to reject a state plan upon concluding that a State's assurances of compliance are unsatisfactory, see *supra,* at 2519, a State is on notice that it cannot adopt any rates it chooses and that the requirement that it make "findings" is not a mere formality. Cf. *Pennhurst, supra,* 451 U.S., at 24, 101 S.Ct., at 1543. Rather, the only plausible interpretation ***515** of the amendment is that by requiring a State to *find* that its rates are reasonable and adequate, the statute imposes the concomitant obligation to adopt reasonable and adequate rates.

Any doubt that Congress intended to require States to adopt rates that actually are reasonable and adequate is quickly dispelled by a review of the legislative history of the Boren Amendment. The primary objective of the amendment was to free States from reimbursement according to Medicare "reasonable cost" principles as had been required by prior regulation. The amendment "delete[d] the ... provision requiring States to reimburse hospitals on a reasonable cost basis. It substitute[d] a provision *requiring States to reimburse hospitals at rates ... that are reasonable and adequate* to meet the cost which must be incurred by efficiently and economically operated facilities in order to meet applicable laws and quality and safety standards." S.Rep. No. 97–139, at 478, U.S.Code Cong. & Admin.News 1981, p. 744 (emphasis added). In passing the Boren Amendment, Congress sought to decentralize the method for determining rates, but not to eliminate a State's fundamental obligation to pay reasonable rates. See S.Rep. No. 96–471S.Rep. No. 96–471, at 29 (flexibility given to States "not intended to encourage arbitrary reductions in payment that would adversely affect the quality of care"). In other words, while Congress gave States leeway in adopting a method of computing rates—they can choose between retrospective and prospective ratesetting methodologies, for example—Congress retained the underlying requirement of "reasonable and adequate" rates. [13]

****2521** ***516** By reducing the Secretary's role in establishing the rates, Congress intended only that the primary responsibility for developing rates be transferred to the States; the Secretary was still to ensure compliance with the provision. See S.Rep. No. 97–139, at 478, U.S.Code Cong. & Admin.News 1981, p. 744 ("The committee expects that the Secretary will keep regulatory and other requirements to the *minimum necessary to assure proper accountability,* and not to overburden the States and facilities with unnecessary and burdensome paperwork requirements") (emphasis added); H.R.Conf.Rep. No. 96–1479, p. 154 (1980) ("[T]he Secretary retains final authority to review the rates and to disapprove [them] if they do not meet the requirements of the statute"). If petitioners were right that state findings were not required

to be correct, there would be little point in requiring the Secretary to review the State's assurances.

Moreover, it is clear that prior to the passage of the Boren Amendment, Congress intended that health care providers be able to sue in federal court for injunctive relief to ensure that they were reimbursed according to reasonable rates. During the 1970's, provider suits in the federal courts were commonplace.[14] In addition, in response to several States ***517** freezing their Medicaid payments to health care providers, Congress amended the Act in 1975 to require States to waive any Eleventh Amendment immunity from suit for violations of the Act. See H.R.Rep. No. 94–1122, p. 4 (1976)H.R.Rep. No. 94–1122, p. 4 (1976); see also 121 Cong.Rec. 42259 (1975) (remarks of Sen. Taft). Congress believed the waiver necessary because the existing means of enforcement—noncompliance procedures instituted by the Secretary or suits for injunctive relief by health care providers—were insufficient to deal with the problem of outright noncompliance because they included no compensation for past underpayments. See H.R.Rep. No. 94–1112H.R.Rep. No. 94–1112, *supra,* at 4. The amendment required the Secretary to withhold 10% of federal Medicaid funds from any State that had not executed a waiver of its immunity by March 31, 1976. Pub.L. 94–182, § 111, 89 Stat. 1054. The provision generated a great deal of opposition from the States and was repealed in the next session of Congress. Pub.L. 94–552, 90 Stat. 2540; see H.R.Rep. No. 94–1122H.R.Rep. No. 94–1122, *supra,* at 4; ****2522** S.Rep. No. 94–1240, pp. 3–4 (1976) U.S.Code Cong. & Admin.News 1976, pp. 5649–5651; 122 Cong.Rec. 13492 (1976) (remarks of Rep. Rogers). But Congress explained that it did not intend the repeal to "be construed as in any way contravening or constraining the rights of the providers of Medicaid services, the State Medicaid agencies, or the Department to seek prospective, injunctive relief in a federal or state judicial forum. Neither should the repeal of [the waiver section] be interpreted as placing constraints on the rights of the parties ***518** involved to seek such prospective, injunctive relief." S.Rep. No. 94–1240, at 4, U.S.Code Cong. & Admin.News 1976, p. 5651.[15]

This experience demonstrates clearly that Congress and the States both understood the Act to grant health care providers enforceable rights both before and after repeal of the ill-fated waiver requirement.[16] Given this background, it is implausible to conclude that by substituting the requirements ***519** of "findings" and "assurances," Congress intended to deprive health care providers of their right to challenge rates under § 1983. Instead, as the legislative history shows, the requirements of "findings" and "assurances" prescribe the respective roles of a State and the Secretary and do not, as petitioners suggest, eliminate a State's obligation to adopt reasonable rates.

Nevertheless, petitioners argue that because the Boren Amendment gives a State flexibility to adopt any rates it finds are reasonable and adequate, the obligation imposed by the amendment is too "vague and amorphous" to be judicially enforceable. We reject this argument. As in *Wright,* the statute and regulation set out factors which a State must consider in adopting its rates.[17] In addition, the statute requires the State, in ****2523** making its findings, to judge the reasonableness of its rates against the objective benchmark of an "efficiently and economically operated facilit [y]" providing care in compliance with federal and state standards while at the same time ensuring "reasonable access" to eligible participants. That the amendment gives the States substantial discretion in choosing among reasonable methods of calculating rates may affect the standard under which a court reviews whether the rates comply with the amendment, but it does not render the amendment unenforceable by a court. While ***520** there may be a range of reasonable rates, there certainly are *some* rates outside that range that no State could ever find to be reasonable and adequate under the Act.[18] Although some knowledge of the hospital industry might be required to evaluate a State's findings with respect to the reasonableness of its rates, such an inquiry is well within the competence of the Judiciary.

B

[3] Petitioners also argue that Congress has foreclosed enforcement of the Medicaid Act under § 1983. We find little merit in this argument. " 'We do not lightly conclude that Congress intended to preclude reliance on § 1983 as a remedy' for the deprivation of a federally secured right." *Wright,* 479 U.S., at 423–424, 107 S.Ct., at 770 (quoting *Smith v. Robinson,* 468 U.S. 992, 1012, 104 S.Ct. 3457, 3468, 82 L.Ed.2d 746 (1984)). The burden is on the State to show "by express provision or other specific evidence from the statute ***521** itself that Congress intended to foreclose such private enforcement." *Wright, supra,* 479 U.S., at 423, 107 S.Ct., at 770. Petitioners concede that the Act does

not expressly preclude resort to § 1983. In the absence of such an express provision, we have found private enforcement foreclosed only when the statute itself creates a remedial scheme that is "sufficiently comprehensive ... to demonstrate congressional intent to preclude the remedy of suits under § 1983." *Middlesex County Sewerage Authority v. National Sea Clammers Assn.,* 453 U.S. 1, 20, 101 S.Ct. 2615, 2626, 69 L.Ed.2d 435 (1981).

On only two occasions have we found a remedial scheme established by Congress sufficient to displace the remedy provided in § 1983. In *Sea Clammers, supra,* we held that the comprehensive enforcement scheme found in the the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*—which granted the Environmental Protection Agency considerable enforcement power through the use of noncompliance orders, civil suits, and criminal penalties, and which included two citizen-suit provisions—evidenced a congressional intent to foreclose reliance on § 1983. See 453 U.S., at **13**, 101 S.Ct. at 2622. Similarly in ****2524** *Smith v. Robinson, supra,* 468 U.S., at 1010–1011, 104 S.Ct., at 3467–3468, we held that the elaborate administrative scheme set forth in the Education of the Handicapped Act (EHA), 20 U.S.C. § 1400 *et seq.,* manifested Congress' desire to foreclose private reliance on § 1983 as a remedy. The EHA contained a "carefully tailored administrative and judicial mechanism," 468 U.S., at 1009, 104 S.Ct., at 3467, that included local administrative review and culminated in a right to judicial review. *Id.,* at 1011, 104 S.Ct., at 3468, (citing 20 U.S.C. §§ 1412(4), 1414(a)(5), 1415).

The Medicaid Act contains no comparable provision for private judicial or administrative enforcement. Instead, the Act authorizes the Secretary to withhold approval of plans, 42 U.S.C. § 1316(a) (1982 ed. and Supp. V), or to curtail federal funds to States whose plans are not in compliance with the Act. 42 U.S.C. § 1396c (1982 ed.). In addition, the ***522** Act requires States to adopt a procedure for postpayment claims review to "ensure the proper and efficient payment of claims and management of the program." 42 U.S.C. § 1396a(a)(37) (1982 ed.). By regulation, the States are required to adopt an appeals procedure by which individual providers may obtain administrative review of reimbursement rates. 42 CFR § 447.253(c) (1989). The Commonwealth of Virginia has adopted a three-tiered administrative scheme within the state Medicaid agency to comply with these regulations. App. 32–43.

This administrative scheme cannot be considered sufficiently comprehensive to demonstrate a congressional intent to withdraw the private remedy of § 1983. In *Wright,* we concluded that the "generalized powers" of the Department of Housing and Urban Development (HUD) to audit and cut off federal funds were insufficient to foreclose reliance on § 1983 to vindicate federal rights. 479 U.S., at 428, 107 S.Ct., at 773. We noted that HUD did not exercise its auditing power frequently, and the statute did not require, nor did HUD provide, any mechanism for individuals to bring problems to the attention of HUD. *Ibid.;* see also *Rosado,* 397 U.S., at 420–423, 90 S.Ct., at 1221–1224. Such a conclusion is even more appropriate in the context of the Medicaid Act, since as explained above, see *supra,* at 2520–2522, a primary purpose of the Boren Amendment was to reduce the role of the Secretary in determining methods for calculating payment rates. It follows that the Secretary's limited oversight is insufficient to demonstrate an intent to foreclose relief altogether in the courts under § 1983. [19]

***523** **[4]** We also reject petitioners' argument that the existence of administrative procedures whereby health care providers can obtain review of individual claims for payment evidences an intent to foreclose a private remedy in the federal courts. The availability of state administrative procedures ordinarily does not foreclose resort to § 1983. See *Patsy v. Board of Regents of Fla.,* 457 U.S. 496, 516, 102 S.Ct. 2557, 2568, 73 L.Ed.2d 172 (1982). Nor do we find any indication that Congress specifically intended that this administrative procedure replace private remedies available under § 1983. The regulations allow States to limit the issues that may be raised in the administrative proceeding. 42 CFR § 447.253(c) (1989). Most States, including Virginia, do not allow ****2525** health care providers to challenge the overall method by which rates are determined. [20] See Brief for American Health Care Association et al. as *Amici Curiae* 20–24, and App. A and B. Such limited state administrative procedures cannot be considered a "comprehensive" scheme that manifests a congressional intent to foreclose reliance on § 1983. See *Wright,* 479 U.S., at 429, 107 S.Ct.,

at 773 (availability of grievance procedure did not prevent resort to § 1983). Thus, we conclude that Congress did not foreclose a private judicial remedy under § 1983.

***524** III

The Boren Amendment to the Act creates a right, enforceable in a private cause of action pursuant to § 1983, to have the State adopt rates that it finds are reasonable and adequate rates to meet the costs of an efficient and economical health care provider. The judgment of the Court of Appeals is accordingly

Affirmed.

Chief Justice REHNQUIST, with whom Justice O'CONNOR, Justice SCALIA, and Justice KENNEDY join, dissenting.

The relevant portion of the Boren Amendment requires States to reimburse Medicaid services providers using

> "rates (determined in accordance with methods and standards developed by the State ...) which the State finds, and makes assurances satisfactory to the Secretary, are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities...." 42 U.S.C. § 1396a(a)(13)(A) (1982 ed., Supp. V).

The Court notes in its opinion, *ante,* at 2515, that respondent seeks permanent relief under § 1983 in the form of court-ordered reimbursement at new rates. Respondent also seeks, as interim relief, reimbursement at rates commensurate with payments under the Medicare program. Complaint ¶¶ 34–39; see App. 22. And though respondent's prayer for relief is only one example of a good claim for relief under today's decision, every § 1983 action hereafter brought by providers to enforce § 1396a(a)(13)(A) will inevitably seek the substitution of a rate system preferred by the provider for the rate system chosen by the State. Thus, whenever a provider prevails in such an action, the defendant State will be enjoined to implement a system of rates other than the rates "determined in accordance with methods and standards ***525** developed by the State," which the "State finds ... are reasonable and adequate," and with respect to which the State made assurances to the Secretary that the Secretary found "satisfactory." See § 1396a(a)(13)(A). The court orders entered in such actions therefore will require the States to adopt reimbursement rate systems different from those Congress expressly required them to adopt by the above-quoted language.

The Court reasons that the policy underlying the Boren Amendment would be thwarted if judicial review under § 1983 were unavailable to challenge the reasonableness and adequacy of rates established by States for reimbursing Medicaid services providers. This sort of reasoning, however, has not hitherto been thought an adequate basis for deciding that Congress conferred an enforceable right on a party.

Before *Maine v. Thiboutot,* 448 U.S. 1, 100 S.Ct. 2502, 65 L.Ed.2d 555 (1980), a plaintiff seeking to judicially enforce a provision in a federal statute was required to demonstrate ****2526** that the statute contained an implied cause of action. Satisfaction of the now familiar standards from, *e.g.,* *Cort v. Ash,* 422 U.S. 66, 95 S.Ct. 2080, 45 L.Ed.2d 26 (1975), was the means for making the requisite showing. The Court's general practice was "to imply a cause of action where the language of the statute explicitly conferred a right directly on a class of persons that included the plaintiff in the case." *Cannon v. University of Chicago,* 441 U.S. 677, 690, n. 13, 99 S.Ct. 1946, 1954, n. 13, 60 L.Ed.2d 560 (1979). It was thus crucial to a demonstration of the existence of an implied action for the statute to contain a right "in favor of" the particular plaintiff. See, *Cort,* 422 U.S., at 78, 95 S.Ct., at 2088 ("First, ... does the statute create a federal right in favor of the plaintiff?"). The plaintiff then would have to satisfy three additional standards to establish that the statute contained an implied judicial remedy for vindicating that right. See *ibid.* In *Maine v. Thiboutot,* the Court essentially removed the burden of making the latter three showings by holding that § 1983 generally (with an exception subsequently ***526** developed in *Middlesex County Sewerage Authority v. National Sea Clammers Assn.,* 453 U.S. 1, 101 S.Ct. 2615, 69 L.Ed.2d 435 (1981)) supplies the remedy for vindication of rights arising from federal statutes.

But while the Court's holding in *Thiboutot* rendered obsolete some of the case law pertaining to implied rights of action, a significant area of overlap remained. For relief to be had

either under § 1983 or by implication under *Cort v. Ash, supra,* the language used by Congress must confer identifiable enforceable rights. See *Wright v. Roanoke Redevelopment and Housing Authority,* 479 U.S. 418, 432–433, 107 S.Ct. 766, 775–776, 93 L.Ed.2d 781 (1987) (O'CONNOR, J., dissenting) ("Whether a federal statute confers substantive rights is not an issue unique to § 1983 actions. In implied right of action cases, the Court also has asked, since *Cort v. Ash,* 422 U.S. 66, 78, 95 S.Ct. 2080, 2087, 45 L.Ed.2d 26 (1975), whether 'the statute create[s] a federal right in favor of the plaintiff' "). In this regard, the Court in *Wright* said that a § 1983 action does not lie where Congress did not intend for the statutory provision "to rise to the level of an enforceable right." *Id.,* at 423, 107 S.Ct., at 770 (citing *Pennhurst State School and Hospital v. Halderman,* 451 U.S. 1, 19, 101 S.Ct. 1531, 1540, 67 L.Ed.2d 694 (1981)).

In *Cannon, supra,* the Court said that "the right- or duty-creating language of the statute has generally been the most accurate indicator of the propriety of implication of a cause of action." *Id.,* 441 U.S., at 690, n. **13**, 99 S.Ct., at 1954, n. **13**. This statement is suggestive of the traditional rule that the first step in our exposition of a statute always is to look to the statute's text and to stop there if the text fully reveals its meaning. See, *e.g., American Tobacco Co. v. Patterson,* 456 U.S. 63, 68, 102 S.Ct. 1534, 1537, 71 L.Ed.2d 748 (1982) (" '[O]ur starting point must be the language employed by Congress,' and we assume 'that the legislative purpose is expressed by the ordinary meaning of the words used' ") (internal citations omitted). There is no apparent reason to deviate from this sound rule when the question is whether a federal statute confers substantive rights on a § 1983 plaintiff. ***527** Yet the Court virtually ignores the relevant text of the Medicaid statute in this case.

The Medicaid statute provides for appropriations of federal funds to States that submit, and have approved by the Secretary of Health and Human Services, "State plans for medical assistance." 42 U.S.C. § 1396 (1982 ed., Supp. V). The next provision in the statute specifies requirements for the contents of state medical assistance plans. § 1396a(a). The provision at issue here, § 1396a(a)(13)(A), is simply a part of the thirteenth listed requirement for such plans. In light of the placement of § 1396a(a)(13)(A) within the structure of the statute, see *Pennhurst, supra,* 451 U.S., at 19, 101 S.Ct., at 1540 (emphasizing the statutory "context" of ***2527** the provision under review), one most reasonably would conclude that § 1396a(a)(13)(A) is addressed to the States and merely establishes one of many conditions for receiving federal Medicaid funds; the text does not clearly confer any substantive rights on Medicaid services providers. This structural evidence is buttressed by the absence in the statute of any express "focus" on providers as a beneficiary class of the provision. See *Wright, supra,* 479 U.S., at 430, 107 S.Ct., at 774 (finding a provision in the statute "focusing" on the plaintiff class dispositive evidence of Congress' intent in the Brooke Amendment to create rights in favor of the plaintiff class).

Even if one were to assume that the terms of § 1396a(a)(13)(A) confer a substantive right on providers in the nature of a guarantee of "reasonable and adequate" rates, the statute places its own limitation on that right in very plain language. Section 1396a(a)(13)(A) establishes a procedure for establishing such rates of reimbursement. The first step requires the States to make certain findings. The second and only other step requires the States to make certain assurances to the Secretary and the Secretary—not the courts—to review those assurances. Under the logic of our case law, respondent arguably may bring a § 1983 action to require that rates be set according to that process. Indeed, establishment ***528** of rates in accordance with that process is the only discernible right accruing to anyone under § 1396a(a)(13)(A). But as this case illustrates, Medicaid providers bring § 1983 actions to *avoid* the process rather than to seek its implementation. The Court approves such challenges despite the fact that a plaintiff's success in such a suit results in the displacement of rates created in accordance with the statutory process by rates established pursuant to court order. To support its decision, the Court looks beyond the unambiguous terms of the statute and relies on policy considerations purportedly derived from legislative history and superseded versions of the statute. See *ante,* at 2520–2523.

The Court concludes, *ante,* at 19, that the contrary position equates with the proposition that the States are not obligated to adopt reasonable rates. Indeed, the theme of much of the Court's argument is that without judicial enforceability, the

States cannot be trusted to implement § 1396a(a)(13)(A)'s command of creating rate systems that are reasonable and adequate. The Court states at one point that "[i]t would make little sense for Congress to require a State to make findings without requiring those findings to be correct.... We decline to adopt an interpretation of the Boren Amendment that would render it a dead letter." *Ante,* at 2519–2520.

The interpretation to which the Court refers, however, would scarcely render the Boren Amendment a "dead letter." It is, instead, the Court's own reading that nullifies the "letter" of the amendment. Apart from its displacement of the statutory ratesetting process noted previously, the Court's suggestion that the States would deliberately disregard the requirements of the statute ignores the Secretary's oversight incorporated into the statute and does less than justice to the States. The Court itself recognizes that the basic purpose of the Boren Amendment was to allow the States more latitude in establishing Medicaid reimbursement rates. In light of that fact, the Court's interpretation takes far more liberties ***529** with the statutory language than does the position advanced by petitioners. I would reverse the judgment of the Court of Appeals.

All Citations

496 U.S. 498, 110 S.Ct. 2510, 110 L.Ed.2d 455, 58 USLW 4795, 30 Soc.Sec.Rep.Serv. 100, Med & Med GD (CCH) P 38,541

Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.,* 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

1 Section 1983 provides in relevant part:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities, secured by the Constitution and laws shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

2 In 1980, Congress enacted the Boren Amendment which changed the standard for reimbursement of nursing and intermediate care facilities. Pub.L. 96–499, § 962(a), 94 Stat. 2650. The following year Congress extended the Boren Amendment's standard for reimbursement to hospitals. Pub.L. 97–35, § 2173, 95 Stat. 808. Since then the reimbursement standard has been applied to payments made to intermediate care facilities for the mentally retarded. Pub.L. 100–203, § 4211(h)(2)(A), 101 Stat. 1330–205.

3 Virginia's current formula for reimbursement rates takes the median cost of care for each peer group as computed for 1982 and adjusts the costs annually to account for inflation. The figures for the median cost of care in 1982 were calculated by determining the per diem median cost of care for a Medicaid patient in the year 1981 and then adjusting for inflation through the use of the Consumer Price Index (CPI). Until 1986, to determine the annual reimbursement rates, the 1982 baseline figures were adjusted by the CPI. In 1986, however, the plan was amended so that these baseline figures are adjusted by an inflation index that is tied to medical care costs. App. 24–26.

Respondent argues that this method of calculating the payment rates is not tied to the costs incurred by an efficient and economical hospital. More specifically, respondent challenges: (1) the method of computing the baseline median costs for 1982; (2) the use of the CPI rather than an index tied to medical care costs to adjust

the rates in the years 1982–1986; and (3) the way in which the medical care cost index was used after 1986. Complaint, ¶¶ 20–26, App. 14–16. In addition, respondent contends that the appeals procedure established by the state plan is inadequate under the Act in part because it excludes challenges to the principles of reimbursement. *Id.,* at ¶ 32, App. 19.

4 The District Court initially granted petitioners' motion to dismiss on grounds of collateral estoppel. 1 Record, Exhs. 20 and 21. The Court of Appeals reversed. *Virginia Hospital Assn. v. Baliles,* 830 F.2d 1308 (CA4 1987). On remand petitioners raised numerous challenges to the justiciability of the lawsuit, including an argument based on the Eleventh Amendment. The Court of Appeals rejected this argument on the ground that the suit seeks only prospective injunctive relief against state officials. *Virginia Hospital Assn. v. Baliles,* 868 F.2d 653, 662 (CA4 1989).

5 We previously granted certiorari to decide this issue in *Coos Bay Care Center v. Oregon Dept. of Human Resources,* 803 F.2d 1060 (CA9 1986), vacated as moot, 484 U.S. 806, 108 S.Ct. 52, 98 L.Ed.2d 17 (1987).

6 See n. 2, *supra.*

7 Before the passage of the Boren Amendment, state plans provided for reimbursement on a retrospective basis; that is, health care providers were reimbursed according to the reasonable cost of the services *actually* provided. Since the passage of the Boren Amendment in 1981, however, most States have adopted plans that are prospective in nature, whereby providers are paid in advance and payments are calculated according to the State's formula for what such care *should* cost. The Virginia plan is a typical prospective plan.

8 The state Medicaid agency must submit the following information with the assurances: (1) the amount of the estimated average proposed payment rate for each type of provider, (2) the amount by which the rate is increased or decreased in relation to the preceding year, and (3) an estimate of the short-term, and to the extent feasible, long-term, effect the new rate will have on the availability of services, the type of care furnished, the extent of provider participation, and the degree to which costs are covered in hospitals that serve a disproportionate number of low-income patients. 42 CFR § 447.255 (1989). The Secretary may, however, request a State to provide additional background information if he believes it is necessary for a complete review of the State's assurances. 48 Fed.Reg. 56050 (1983).

9 This is a different inquiry than that involved in determining whether a private right of action can be implied from a particular statute. See *Cort v. Ash,* 422 U.S. 66, 95 S.Ct. 2080, 45 L.Ed.2d 26 (1975). In implied right of action cases, we employ the four-factor *Cort* test to determine "whether Congress intended to create the private remedy asserted" for the violation of statutory rights. See *Transamerica Mortgage Advisors, Inc. v. Lewis,* 444 U.S. 11, 15–16, 100 S.Ct. 242, 245–246, 62 L.Ed.2d 146 (1979); *Touche Ross & Co. v. Redington,* 442 U.S. 560, 575–576, 99 S.Ct. 2479, 2488–2489, 61 L.Ed.2d 82 (1979). The test reflects a concern, grounded in separation of powers, that Congress rather than the courts controls the availability of remedies for violations of statutes. See *e.g., Thompson v. Thompson,* 484 U.S. 174, 191–192, 108 S.Ct. 513, 522–523, 98 L.Ed.2d 512 (1988) (SCALIA, J., concurring in judgment); *Cannon v. University of Chicago,* 441 U.S. 677, 742–749, 99 S.Ct. 1946, 1981–1985, 60 L.Ed.2d 560 (1979) (Powell, J., dissenting). Because § 1983 provides an "alternative source of *express* congressional authorization of private suits," *Middlesex County Sewerage Authority v. National Sea Clammers Assn.,* 453 U.S. 1, 19, 101 S.Ct. 2615, 2625, 69 L.Ed.2d 435 (1981), these separation-of-powers concerns are not present in a § 1983 case. Consistent with this view, we recognize an exception to the general rule that § 1983 provides a remedy for violation of federal statutory rights only when Congress has affirmatively withdrawn the remedy. See *Golden State Transit Corp. v. Los Angeles,* 493 U.S. 103, 106–107, 110 S.Ct. 444, 448–449, 107 L.Ed.2d 420 (1989); *Wright v. Roanoke Redevelopment and Housing Authority,* 479 U.S. 418, 423–424, 107 S.Ct. 766, 770–771, 93 L.Ed.2d 781 (1987).

10 That Congress granted the States only $1.6 million, "a sum woefully inadequate to meet the enormous financial burden of providing 'appropriate' treatment in the 'least restrictive' " alternative also supported the Court's conclusion that Congress had a limited purpose in mind when it enacted § 6010. 451 U.S., at 24, 101 S.Ct., at 1543. By contrast, under the Medicaid program, the Federal Government provides funds to cover between 50% and 83% of the cost of patient care. See 42 U.S.C. § 1396d(b) (1982 ed., Supp. V). In 1988, the federal contribution to the Medicaid program totaled approximately $29 billion. Brief for United States as *Amicus Curiae* 2.

11 The United States, as *amicus curiae,* argues that the statute requires only that a State provide assurances to the Secretary that its rates comply with the statute and that assurances do not give rise to enforceable rights. Brief for United States as *Amicus Curiae* 16 ("By its terms, therefore, [the Boren Amendment] vests ratemaking discretion in the States, subject only to the condition that they make 'assurances' satisfactory to the Secretary"). This interpretation ignores the language of the statute that requires a State to *find* that its rates are "reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities" and to assure that eligible individuals have "reasonable access" to services. See also 42 CFR § 447.253(b) (1989); 48 Fed.Reg. 56051 (1983) ("The statute requires that the States make a finding that their payment rates are reasonable and adequate to meet the costs of efficiently and economically operated facilities"). The requirement that a State make such a finding is a necessary prerequisite to the subsequent requirement that the State provide "assurances" to the Secretary. That the requirements are separate obligations is apparent from the Secretary's regulations. A State must make findings at least annually, but does not need to make assurances unless the state plan is amended. 42 CFR §§ 447.253(a), (b) (1989). Moreover, the Secretary's interpretation of his role under the statute—that he will review the reasonableness of the assurances presented by a State rather than the findings themselves—is based entirely on his understanding that a State has the responsibility to *find* that its rates are adequate before making assurances to the Secretary. See 48 Fed.Reg. 56050 (1983) ("Because of the explicit statutory responsibility of the State agency to make its findings that the method and standards result in reasonable and adequate payment rates, we doubt that requiring further detailed reporting would add substantially to our evaluation of States' assurances").

12 Petitioners suggest that health care providers might be able to bring a challenge against the Secretary's decision to approve a plan under the judicial review provisions of the Administrative Procedure Act (APA), 5 U.S.C. §§ 701–706. The United States, however, argues that there would be no remedy under the APA because the decision to accept a States' assurances is entrusted to the agency's discretion. See Tr. of Oral Arg. 18–19. We need not address this dispute, however, because it is irrelevant to the question whether the Boren Amendment creates rights enforceable against States under § 1983.

13 The House and Senate Reports are replete with indications that Congress intended that States actually adopt rates that are "reasonable and adequate." The Conference Committee Report explains that "the conferees intend that State hospital reimbursement policies should meet the costs that must be incurred by efficiently-administered hospitals in providing covered care and services to medicaid eligibles as well as the costs required to provide care in conformity with State and Federal requirements." H.R.Conf.Rep. No. 97–208, p. 962 (1981), U.S.Code Cong. & Admin.News 1981, p. 1324; see S.Rep. No. 97–139, p. 478 (1981), U.S.Code Cong. & Admin.News 1981, p. 744 (amendment requires "States to reimburse hospitals at rates ... that are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities"); H.R.Rep. No. 97–158, Vol. 2, pp. 293–294 (1981)H.R.Rep. No. 97–158, Vol. 2, pp. 293–294 (1981) ("In permitting States greater flexibility in reimbursement system design, the Committee intends the States to ensure that such alternative systems provide fair and adequate compensation for services to Medicaid beneficiaries.... The Committee believes that hospitals should be paid for the cost of their care to Medicaid patients in the most economical manner"); see also Medicaid and Medicare Amendments: Hearings on H.R. 4000 before the Subcommittee on Health and the Environment of the House Committee on Interstate and Foreign Commerce, 96th Cong., 1st Sess., 845 (1979) (statement of Sen. Boren) (amendment "places

responsibility squarely on the States to establish adequate payments"); 126 Cong.Rec. 17885 (1980) (the "amendment ... achieves the present law's objective of assuring high-quality care" and "differs from the present law with respect to the methods States may employ in determining reasonable and adequate rates") (colloquy between Sen. Pryor and Sen. Boren).

14 See, *e.g.,* *Alabama Nursing Home Assn. v. Harris,* 617 F.2d 388, 395–396 (CA5 1980); *California Hospital Assn. v. Obledo,* 602 F.2d 1357, 1363 (CA9 1979); *Minnesota Assn. of Health Care Facilities v. Minnesota Dept. of Public Welfare,* 602 F.2d 150, 154 (CA8 1979); *Hospital Assn. of New York State, Inc. v. Toia,* 577 F.2d 790 (CA2 1978); *Massachusetts General Hospital v. Weiner,* 569 F.2d 1156, 1157–1158 (CA1 1978); *St. Mary's Hospital of East St. Louis, Inc. v. Ogilvie,* 496 F.2d 1324, 1326–1328 (CA7 1974); *Catholic Medical Center of Brooklyn and Queens, Inc., Div. of St. Mary's Hospital v. Rockefeller,* 430 F.2d 1297, 1298 (CA2), app. dism'd, 400 U.S. 931, 91 S.Ct. 246, 27 L.Ed.2d 262 (1970). Cf. *National Union of Hospital and Health Care Employees, RWDSU, AFL–CIO v. Carey,* 557 F.2d 278, 280–281 (CA2 1977) (although providers may sue, union representing employees of provider may not sue).

15 See, *e.g.,* H.R.Rep. No. 94–1122, p. 7 (1976)H.R.Rep. No. 94–1122, p. 7 (1976) ("[P]roviders can continue, of course, to institute suit for injunctive relief in State or Federal courts, as necessary") (letter from Department of Health, Education and Welfare); State Compliance with Federal Medicaid Requirements: Hearings before the Subcommittee on Health of the Senate Committee on Finance, 94th Cong., 2d Sess., 3 (1976) (providers' recourse, without amendment, includes "injunctive relief against State officials") (remarks of Assistant Secretary Kurzman); 122 Cong.Rec. 13492 (1976) ("Although the provider can sue the State to enjoin action, they [*sic*] cannot sue to recover 'lost funds' because of the immunity to suit afforded States by the 11th Amendment") (remarks of Rep. Rogers).

16 Indeed, federal courts have continued to entertain such challenges since the passage of the Boren Amendment. All the Circuits that have explicitly addressed the issue have concluded that the amendment is enforceable under § 1983 by health care providers. See *AMISUB (PSL), Inc. v. Colorado Dept. of Social Services,* 879 F.2d 789, 793 (CA10 1989); *West Virginia University Hospitals, Inc. v. Casey,* 885 F.2d 11, 17–22 (CA3 1989), cert. granted, 494 U.S. 1003, 110 S.Ct. 1294, 108 L.Ed.2d 472 (1990); *Coos Bay Care Center,* 803 F.2d, at 1061–1063; *Nebraska Health Care Assn., Inc. v. Dunning,* 778 F.2d 1291, 1295–1297 (CA8 1985), cert. denied, 479 U.S. 1063, 107 S.Ct. 947, 93 L.Ed.2d 996 (1987). Other courts have entertained such claims without separately considering whether the providers had a cause of action under § 1983. See *Hoodkroft Convalescent Center, Inc. v. New Hampshire Division of Human Services,* 879 F.2d 968, 972–975 (CA1 1989), cert. denied, 493 U.S. 1020, 110 S.Ct. 720, 107 L.Ed.2d 740 (1990); *Colorado Health Care Assn. v. Colorado Dept. of Social Services,* 842 F.2d 1158, 1165 (CA10 1988); *Hillhaven Corp. v. Wisconsin Dept. of Health and Social Services,* 733 F.2d 1224, 1225–1226 (CA7 1984); *Alabama Hospital Assn. v. Beasley,* 702 F.2d 955, 955–962 (CA11 1983); *Mississippi Hospital Assn., Inc. v. Heckler,* 701 F.2d 511, 517–520 (CA5 1983); *Charleston Memorial Hospital v. Conrad,* 693 F.2d 324, 326 (CA4 1982); *Washington Health Facilities Assn. v. Washington Dept. of Social and Health Services,* 698 F.2d 964, 965 (CA9 1982).

17 For example, when determining methods for calculating rates that are reasonably related to the costs of an efficient hospital, a State must consider: (1) the unique situation (financial and otherwise) of a hospital that serves a disproportionate number of low income patients, (2) the statutory requirements for adequate care in a nursing home, and (3) the special situation of hospitals providing inpatient care when long-term care at a nursing home would be sufficient but is unavailable. 42 U.S.C. § 1396a(a)(13)(A) (1982 ed., Supp. V). The Boren Amendment provides, if anything, more guidance than the provision at issue in *Wright,*

which vested in the housing authority substantial discretion for setting utility allowances. See *Wright v. Roanoke Redevelopment and Housing Authority,* 479 U.S. 418, 437, 107 S.Ct. 766, 777, 93 L.Ed.2d 781 (1987) (O'CONNOR, J., dissenting) (citing 24 CFR § 965.476(d) (1986)).

18 For example, in *AMISUB, supra,* at 796, the court invalidated the Colorado plan because the State had not made any findings that its rates were "reasonable and adequate" and because the State conceded that the adoption of its "Budget Adjustment Factor" which divided the median cost of care in half had absolutely no relevance to the costs of an efficient hospital. See also *Casey, supra,* at 22–23 (invalidating Pennsylvania plan because it provided no justification for treating out-of-state hospitals differently than in-state hospitals), cert. granted, 494 U.S. 1003, 110 S.Ct. 1294, 108 L.Ed.2d 472 (1990). If a State errs in finding that its rates are reasonable and adequate, or in supplying assurances to that effect to the Secretary, then a provider is entitled to have the court invalidate the current state plan and order the State to promulgate a new plan that complies with the Act. We note that the Courts of Appeals generally agree that when the State has complied with the procedural requirements imposed by the amendment and regulations, a federal court employs a deferential standard of review to evaluate whether the rates comply with the substantive requirements of the amendment. See, *e.g., AMISUB, supra,* at 795–801; *Casey, supra,* at 23–24; *Dunning, supra,* at 1294; *Wisconsin Hospital Ass'n v. Reivitz,* 733 F.2d 1226 (CA7 1984); *Mississippi Hospital Assn., supra,* at 516. We express no opinion as to which of the cases contains the correct articulation of the appropriate standard of review.

19 Indeed, this conclusion is even more apt given that Congress believed that a private judicial remedy existed before the passage of the Boren Amendment, see *supra,* at 2521–2522, when the administrative oversight scheme was more elaborate than it is today.

For the same reasons, we reject the argument that the availability of an action against the Secretary under the APA forecloses § 1983 as a remedy. Putting aside the question whether an APA remedy is available, see n. 12, *supra,* there is absolutely no indication that Congress intended such an action to be the sole method for health care providers to enforce the reimbursement provision. Moreover, given that Congress believed that a private cause of action existed prior to the passage of the Boren Amendment and that the amendment reduced the Secretary's oversight role, it is implausible to infer that Congress intended to replace the private judicial remedy under § 1983 with a proceeding for judicial review under the APA.

20 The Virginia procedure allows providers to dispute individual payments. It excludes from appeal the following issues: (1) the organization of the peer groups; (2) the use of the reimbursement rates established in the plan; (3) the calculation of the initial group ceilings as of 1982; (4) the use of the consumer price index; and (5) the time limits set forth in the state plan. *Ibid.*

Finally, we reject petitioners' argument that the availability of judicial review under the Virginia Administrative Procedure Act is relevant to the question whether relief is available under § 1983. See *Wright,* 479 U.S., at 429, 107 S.Ct., at 773. See generally *Monroe v. Pape,* 365 U.S. 167, 183, 81 S.Ct. 473, 481, 5 L.Ed.2d 492 (1961).