GONZAGA UNIVERSITY v. DOE
536 U.S. 273 (2002)

Chief Justice Rehnquist delivered the opinion of the Court.

The question presented is whether a student may sue a private university for damages to enforce provisions of the Family Educational Rights and Privacy Act of 1974 (FERPA or Act), 88 Stat. 571, 20 U.S.C. § 1232g which prohibit the federal funding of educational institutions that have a policy or practice of releasing education records to unauthorized persons. We hold such an action foreclosed because the relevant provisions of FERPA create no personal rights to enforce under 42 U.S.C. § 1983.

Respondent John Doe is a former undergraduate in the School of Education at Gonzaga University, a private university in Spokane, Washington. He planned to graduate and teach at a Washington public elementary school. Washington at the time required all of its new teachers to obtain an affidavit of good moral character from a dean of their graduating college or university. In October 1993, Roberta League, Gonzaga's "teacher certification specialist," overheard one student tell another that respondent engaged in acts of sexual misconduct against Jane Doe, a female undergraduate. League launched an investigation and contacted the state agency responsible for teacher certification, identifying respondent by name and discussing the allegations against him. Respondent did not learn of the investigation, or that information about him had been disclosed, until March 1994, when he was told by League and others that he would not receive the affidavit required for certification as a Washington schoolteacher.

Respondent then sued Gonzaga and League (petitioners) in state court. He alleged violations of Washington tort and contract law, as well as a pendent violation of §1983 for the release of personal information to an "unauthorized person" in violation of FERPA. A jury found for respondent on all counts, awarding him $1,155,000, including $150,000 in compensatory damages and $300,000 in punitive damages on the FERPA claim. The Washington Court of Appeals reversed in relevant part, concluding that FERPA does not create individual rights. The Washington Supreme Court reversed that decision, and ordered the FERPA damages reinstated.

Like the Washington Supreme Court and the state court of appeals below, other state and federal courts have divided on the question of FERPA's enforceability under § 1983. The fact that all of these courts have relied on the same set of opinions from this Court suggests that our opinions in this area may not be models of clarity. We therefore granted certiorari, 534 U.S. 1103 (2002), to resolve the conflict among the lower courts and in the process resolve any ambiguity in our own opinions.

Congress enacted FERPA under its spending power to condition the receipt of federal funds on certain requirements relating to the access and disclosure of student educational records. The Act directs the Secretary of Education to withhold federal funds from any public or private "educational agency or institution" that fails to comply with these conditions.

The Act directs the Secretary of Education to enforce this and other of the Act's spending conditions. § 1232g(f). The Secretary is required to establish an office and review board within the Department of Education for "investigating, processing, reviewing, and adjudicating violations of

[the Act]." § 1232g(g). Funds may be terminated only if the Secretary determines that a recipient institution "is failing to comply substantially with any requirement of [the Act]" and that such compliance "cannot be secured by voluntary means." §§ 1234c(a), 1232g(f).

Respondent contends that this statutory regime confers upon any student enrolled at a covered school or institution a federal right, enforceable in suits for damages under § 1983, not to have "education records" disclosed to unauthorized persons without the student's express written consent. But we have never before held, and decline to do so here, that spending legislation drafted in terms resembling those of FERPA can confer enforceable rights.

Our more recent decisions… have rejected attempts to infer enforceable rights from Spending Clause statutes. In *Suter v. Artist M.*, 503 U.S. 347 (1992), the Adoption Assistance and Child Welfare Act of 1980 required States receiving funds for adoption assistance to have a "plan" to make "reasonable efforts" to keep children out of foster homes. A class of parents and children sought to enforce this requirement against state officials under § 1983, claiming that no such efforts had been made. We read the Act and found no basis for the suit, saying:

> Careful examination of the language . . . does not unambiguously confer an enforceable right upon the Act's beneficiaries. The term 'reasonable efforts' in this context is at least as plausibly read to impose only a rather generalized duty on the State, to be enforced not by private individuals, but by the Secretary in the manner [of reducing or eliminating payments]. *Id.*, at 363.

Since the Act conferred no specific, individually enforceable rights, there was no basis for private enforcement, even by a class of the statute's principal beneficiaries. *Id.* at 357.

Similarly, in *Blessing v. Freestone*, 520 U.S. 329 (1997), Title IV—D of the Social Security Act required States receiving federal child-welfare funds to "substantially comply" with requirements designed to ensure timely payment of child support. Five Arizona mothers invoked §1983 against state officials on grounds that state child-welfare agencies consistently failed to meet these requirements. We found no basis for the suit, saying,

> Far from creating an individual entitlement to services, the standard is simply a yardstick for the Secretary to measure the system wide performance of a State's Title IV—D program. Thus, the Secretary must look to the aggregate services provided by the State, not to whether the needs of any particular person have been satisfied. *Id.* at 343 (emphases in original).

Because the provision focused on "the aggregate services provided by the State," rather than "the needs of any particular person," it conferred no individual rights and thus could not be enforced by §1983. We emphasized: "[T]o seek redress through §1983 … a plaintiff must assert the violation of a federal right, not merely a violation of federal law." *Id*. at 340 (emphases in original).

Section 1983 provides a remedy only for the deprivation of "rights, privileges, or immunities secured by the Constitution and laws" of the United States. Accordingly, it is rights, not the broader or vaguer "benefits" or "interests," that may be enforced under the authority of that section. [O]ur implied right of action cases should guide the determination of whether a statute confers rights

enforceable under § 1983.

With this principle in mind, there is no question that FERPA's nondisclosure provisions fail to confer enforceable rights. To begin with, the provisions entirely lack the sort of "rights-creating" language critical to showing the requisite congressional intent to create new rights. Unlike the individually focused terminology of Titles VI and IX ("no person shall be subjected to discrimination"), FERPA's provisions speak only to the Secretary of Education, directing that "[n]o funds shall be made available" to any "educational agency or institution" which has a prohibited "policy or practice." 20 U.S.C. § 1232g(b)(1). This focus is two steps removed from the interests of individual students and parents and clearly does not confer the sort of "individual entitlement" that is enforceable under § 1983.

FERPA's nondisclosure provisions further speak only in terms of institutional policy and practice, not individual instances of disclosure. Recipient institutions can further avoid termination of funding so long as they "comply substantially" with the Act's requirements. § 1234c(a). For reasons expressed repeatedly in our prior cases, however, such provisions cannot make out the requisite congressional intent to confer individual rights enforceable by § 1983.7

Our conclusion that FERPA's nondisclosure provisions fail to confer enforceable rights is buttressed by the mechanism that Congress chose to provide for enforcing those provisions. Congress expressly authorized the Secretary of Education to "deal with violations" of the Act, § 1232g(f) (emphasis added), and required the Secretary to "establish or designate [a] review board" for investigating and adjudicating such violations, § 1232g(g). Pursuant to these provisions, the Secretary created the Family Policy Compliance Office (FPCO) "to act as the Review Board required under the Act and to enforce the Act with respect to all applicable programs." 34 CFR §§ 99.60(a) and (b) (2001). The FPCO permits students and parents who suspect a violation of the Act to file individual written complaints. § 99.63. If a complaint is timely and contains required information, the FPCO will initiate an investigation, §§ 99.64(a)—(b), notify the educational institution of the charge, § 99.65(a), and request a written response, § 99.65. If a violation is found, the FPCO distributes a notice of factual findings and a "statement of the specific steps that the agency or institution must take to comply" with FERPA. §§ 99.66(b) and (c)(1). These administrative procedures squarely distinguish this case from Wright and Wilder, where an aggrieved individual lacked any federal review mechanism, and further counsel against our finding a congressional intent to create individually enforceable private rights.

Congress finally provided that "[e]xcept for the conduct of hearings, none of the functions of the Secretary under this section shall be carried out in any of the regional offices" of the Department of Education. 20 U.S.C. § 1232g(g). This centralized review provision was added just four months after FERPA's enactment due to "concern that regionalizing the enforcement of [FERPA] may lead to multiple interpretations of it, and possibly work a hardship on parents, students, and institutions." 120 Cong. Rec. 39863 (1974) (joint statement). It is implausible to presume that the same Congress nonetheless intended private suits to be brought before thousands of federal- and state-court judges, which could only result in the sort of "multiple interpretations" the Act explicitly sought to avoid.

In sum, if Congress wishes to create new rights enforceable under § 1983, it must do so in clear and unambiguous terms–no less and no more than what is required for Congress to create new

rights enforceable under an implied private right of action. FERPA's nondisclosure provisions contain no rights-creating language, they have an aggregate, not individual, focus, and they serve primarily to direct the Secretary of Education's distribution of public funds to educational institutions. They therefore create no rights enforceable under § 1983. Accordingly, the judgment of the Supreme Court of Washington is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

JUSTICE BREYER, with whom JUSTICE SOUTER joins, concurring in the judgment.

I would not, in effect, pre-determine an outcome through the use of a presumption—such as the majority's presumption that a right is conferred only if set forth "unambiguously" in the statute's "text and structure.".

At the same time, I do not believe that Congress intended private judicial enforcement of this statute's "school record privacy" provisions. The Court mentions most of the considerations I find persuasive… I would add one further reason. Much of the statute's key language is broad and nonspecific. The statute, for example, defines its key term, "education records," as (with certain enumerated exceptions) "those records, files, documents, and other materials which (i) contain information directly related to a student; and (ii) are maintained by an educational . . . institution." 20 U.S.C. § 1232g(a)(4)(A). This kind of language leaves schools uncertain as to just when they can, or cannot, reveal various kinds of information. It has led, or could lead, to legal claims that would limit, or forbid, such practices as peer grading, *see Owasso Independent School Dist. No. I-011 v. Falvo*, 534 U.S. 426 (2002), teacher evaluations, *see Moore v. Hyche*, 761 F. Supp. 112 (ND Ala. 1991), school "honor society" recommendations, *see Price v. Young*, 580 F. Supp. 1 (ED Ark. 1983), or even roll call responses and "bad conduct" marks written down in class, *see Tr. of Oral Arg. in Falvo, supra*, O.T. 2001, No. 00-1073, pp. 37-38. And it is open to interpretations that invariably favor confidentiality almost irrespective of conflicting educational needs or the importance, or common sense, of limited disclosures in certain circumstances, say, where individuals are being considered for work with young children or other positions of trust.

Under these circumstances, Congress may well have wanted to make the agency remedy that it provided exclusive—both to achieve the expertise, uniformity, wide-spread consultation, and resulting administrative guidance that can accompany agency decision making and to avoid the comparative risk of inconsistent interpretations and misincentives that can arise out of an occasional inappropriate application of the statute in a private action for damages.