No. 25-535

In the Supreme Court of the United States

HICKORY HEIGHTS HEALTH AND REHAB, LLC; CENTRAL ARKANSAS NURSING CENTERS, INC.; NURSING CONSULTANTS, INC.; AND MICHAEL MORTON,
Petitioners,

v.

YASHIKA WATSON, AS GUARDIAN OF THE PERSON AND ESTATE OF ZEOLA ELLIS III,
Respondent.

On Petition for a Writ of Certiorari to the Arkansas Court of Appeals, Divisions IV and I

BRIEF OF *AMICI CURIAE* STATE OF SOUTH CAROLINA AND 19 OTHER STATES IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae are the States of South Carolina, Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, and West Virginia (collectively, the *Amici* States).

An important feature of "our federalism" is that it requires Congress to "treat the States in a manner consistent with their status as residuary sovereigns and joint participants in the governance of the Nation." *Alden* v. *Maine*, 527 U.S. 706 (1999). *Amici* States jealously guard that status. So when Arkansas appellate courts sidelined it, *Amici* States took notice.

It all stems from those courts' interpretation of the reach of Federal Spending Clause legislation. Such legislation typically creates conditions for receipt of federal funds. Traditionally, courts have treated that conditions-for-funds arrangement as something like a contract. Recipients who fail to comply with the conditions simply lose their funding.

But the Arkansas Court of Appeals, and by extension the Arkansas Supreme Court that declined to grant review, took a different tack. They concluded that non-compliance with the conditions in Spending Clause legislation is actually *illegal*. And they invalidated a private arbitration agreement between a long-term care facility that received federal funds and a private individual because a federal regulation (the

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[1] Counsel of record for all parties timely received notice of *Amici* States' intention to file this brief.

CMS Rule) prohibited arbitration agreements as a condition for receipt of federal funds.

Amici States fear the lower courts' erroneous displacement of state police powers will have far reaching effects on state sovereignty and the balance of federalism. And it creates uncertainty about states' own conduct in the performance of conditions for receipt of federal funds. This Court should grant certiorari to correct the lower courts' errors and uphold basic principles of law.

SUMMARY OF ARGUMENT

Of the myriad errors with the lower courts' ruling, *Amici* States highlight those arising under the first question presented to this Court. That question, namely whether legislation enacted pursuant to the spending power makes private conduct illegal absent a clear statement that Congress intended to do more than place conditions on the receipt of federal funds, deserves a good answer.

The petition presents an important question for the states for at least two reasons. *First*, the lower court misapplied fundamental legal principles relating to Spending Clause legislation. And *second*, the lower court failed to consider the significant constitutional problems posed by its analysis. Those errors contravene the sovereignty of the states and the delicate balance of federalism. This Court should grant the petition to correct the errors of the lower courts and to halt the ripples of that decision from disturbing the placid harbor of our constitutional order.

REASONS FOR GRANTING THE PETITION

The first question presented to this Court is of the utmost importance to the States. The lower courts' answer to this question contravened fundamental legal principles related to the Spending Clause and poses significant constitutional problems for the States. Given the great legal and practically significant questions posed by these issues, this Court should grant certiorari.

I. The Arkansas Court of Appeals misapplied fundamental legal principles related to Spending Clause legislation.

In concluding that the arbitration agreement at issue in this case was unenforceable, the Arkansas Court of Appeals found that the agreement was illegal. *Hickory Heights Health & Rehab, LLC* v. *Watson*, 2025 Ark. App. 133, 9, 707 S.W.3d 499, 506, *reh'g denied* (Apr. 2, 2025), *review denied*, 2025 Ark. 111, 711 S.W.3d 793 (2025), *reh'g denied* (June 5, 2025). Although this finding of illegality was ostensibly rooted in a straightforward analysis of Arkansas contract law, the Arkansas Court of Appeals failed to consider the applicability of Arkansas law that strongly favors arbitration agreements. *See id.* at 511 (Thyer, J., dissenting) ("[O]ur General Assembly has made it clear that it encourages alternative dispute resolution as a matter of public policy."). Instead, the court's analysis hinged entirely on the presumption that the CMS Rule itself could render the agreement illegal and unenforceable. *Id.* at 502–03. Thus, this analysis necessarily presumed that the CMS Rule could directly

regulate the contractual relationship between private parties in this way.

In reaching this conclusion, the Arkansas Court of Appeals misapplied basic principles of constitutional law related to Spending Clause legislation. Making matters worse, it misapplied relevant caselaw from the Eighth Circuit directly on point.

Starting with these basic principles, Congress may generally raise and appropriate money to advance the "general welfare" under Article I, section eight, clause one of the Constitution, colloquially known as the Spending Clause. *Medina* v. *Planned Parenthood S. Atl.*, 606 U.S. 357, 371 (2025) (quoting 3 J. Story, Commentaries on the Constitution of the United States § 1269, p. 150 (1833)). As part of this power, Congress may grant money to the States and, subject to certain limitations, may require that certain conditions be met if the money is to be accepted. *See Pennhurst State Sch. & Hosp.* v. *Halderman*, 451 U.S. 1, 17 (1981) ("Turning to Congress' power to legislate pursuant to the spending power, our cases have long recognized that Congress may fix the terms on which it shall disburse federal money to the States.").

This power is categorically distinct from other enumerated powers. As this Court has explained, in other enumerated areas like the Commerce Clause or Piracies Clause, "the Constitution vests Congress with the power to regulate conduct." *Medina*, 606 U.S. at 369–70. In contrast, the Spending Clause does not endow Congress with the power to "regulate conduct" or "issue direct orders to the governments of the

States." *Id.* at 370 (quoting *Murphy* v. *National Collegiate Athletic Ass'n*, 584 U.S. 453, 471 (2018)). Stated differently, while the Spending Clause does not authorize Congress to issue "commands," it does authorize Congress to enter into "contracts" with federal grant recipients. *Id.* at 371.

Critically, these contractual obligations are between the federal government and grant recipients. While third parties may benefit from the contracts, typically only the federal government has power to enforce the conditions attached to grants. *Id.* at 372.

In the context of the CMS Rule, these principles suggest that the rule only imposes conditions on long term care facilities that accept federal funds. One such condition is that long term care facilities may not ask a resident to agree to binding arbitration as a condition of admission. 84 Fed. Reg. 34,718, 34,719. The rule does not—and cannot—purport to regulate arbitration agreements generally, and it certainly cannot render them illegal.

Tellingly, the CMS Rule itself admits as much. *See* 84 Fed. Reg. at 34,718 ("This final rule does not purport to regulate the enforcement of any arbitration agreement."); *id.* at 34,729 ("CMS does not have the power to annul valid contracts.").

In a challenge to the CMS Rule, the Eighth Circuit also recognized the scope of the rule, finding that it did not purport to address the validity of individual arbitration agreements. *See Northport Health Servs. of Arkansas, LLC* v. *U.S. Dep't of Health & Hum.*

Servs., 14 F.4th 856, 868 (8th Cir. 2021) ("The Revised Rule ... does not invalidate or render unenforceable any arbitration agreement.").

The Arkansas Court of Appeals departed from these principles and the Eighth Circuit authority. Although that court paid lip service to the idea that CMS "could not cancel a contract between a LTC facility and a resident by regulatory fiat," 707 S.W.3d at 506, its analysis of the illegality affirmative defense led precisely to that result. *See Hickory Heights Health & Rehab, LLC* v. *Watson*, 2025 Ark. 111, 3, 711 S.W.3d 793, 794 (2025), *reh'g denied* (June 5, 2025) ("Indeed, the court of appeals can't avoid that clear split by invoking the general proposition, repeated in *Northpoint*, that valid arbitration agreements under federal law could still be invalid under state law. On the contrary, the court of appeals' invocation of that general rule to buttress its erroneous reading of the regulation simply highlights that it has interpreted that regulation as a per se rule against arbitration agreements.") (cleaned up).

By concluding that the arbitration agreement was somehow illegal, the Arkansas Court of Appeals expanded the scope of the CMS Rule from a condition on funding to a statement of the law, or at a minimum, a statement of public policy. *See Hickory Heights*, 707 S.W.3d at 511 (Thyer, J., dissenting) ("[T]he majority seems to have embraced the notion that public policy––such as that expressed by CMS in promulgating the Revised Rule—alone can be utilized to render arbitration agreements illegal and unenforceable. Our

supreme court, however, has been resolute in holding that public policy is declared by the General Assembly, not by courts. And our General Assembly has made it clear that it encourages alternative dispute resolution as a matter of public policy.").

After all, under Arkansas law, the defense of illegality applies to conduct that is illegal, unlawful, or against significant public policy. *See* Illegal contracts; contracts in violation of public policy, 1 Arkansas Law of Damages § 17:19 ("Even though a contract is not illegal or unlawful, the courts may refuse to enforce a contract if it violates a significant public policy."). The Arkansas Court of Appeals necessarily considered the CMS Rule to establish general law or public policy.[2]

This erroneous conclusion contravenes well-established principles under the Spending Clause and warrants this Court's review.

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[2] In support of its conclusion that the CMS Rule rendered the agreement illegal, the Arkansas Court of Appeals cited 17A Am. Jur. 2d Contracts § 223 for the proposition that a contract that violates a regulation may be illegal, invalid, unenforceable, or void. *See Hickory Heights*, 707 S.W.2d at 506. However, that authority cites a state court decision from New York concluding that a contract that violates "municipal regulations which exist for the protection of public health or morals may be illegal and unenforceable." *Vill. Taxi Corp.* v. *Beltre*, N.Y.S.2d 694, 695 (2011). Such generally applicable health and safety regulations are plainly distinguishable from the CMS Rule at issue here. *See Hickory Heights*, 711 S.W. at 793 (Bronni, J., joined by Wood, J., dissenting) ("The relevant provision isn't a generally applicable rule governing the relationship between long-term care facilities and residents; it's a spending provision that outlines the requirements that long-term care facilities must follow" to participate in the relevant programs).

II. The Arkansas Court of Appeals failed to consider the significant constitutional problems posed by its analysis.

The Arkansas Court of Appeals' analysis poses several constitutional problems with major implications for the States. *First*, in holding that the arbitration agreement was unenforceable, the Arkansas Court of Appeals impermissibly expanded the scope of relief traditionally available under Spending Clause legislation. *Second*, that court appeared to embrace the notion that the CMS Rule could preempt Arkansas arbitration law.

With respect to the first problem, it is axiomatic that before a private party may sue to enforce the conditions associated with a federal appropriation under the Spending Clause, a State—or other party—must "voluntarily and knowingly" consent to answer private claims. *Medina*, 606 U.S. at 373 (quoting *Pennhurst*, 451 U.S. at 17). In the absence of such consent, as explained above, the traditional means of enforcement is through the withholding of the relevant federal grant money. *See Hickory Heights*, 711 S.W. at 793–94 (Bronni, J., joined by Wood, J., dissenting) ("[T]he regulation does not invalidate or render unenforceable any arbitration agreement but simply establishes the conditions for receipt of federal funding through the Medicare and Medicaid programs.") (cleaned up).

By allowing the affirmative defense in this case to proceed, the Arkansas Court of Appeals thus created a split with the Eighth Circuit that leaves it to this

Court to rectify "that clear error." *Id*. at 794. Such error, if uncorrected, could pose very serious "separation of powers and federalism concerns" down the road. *Medina*, 606 U.S. at 383, n.8.

With respect to the second problem, by finding the arbitration agreement to be illegal, the Arkansas Court of Appeals necessarily concluded that the CMS Rule preempts Arkansas law.

Members of this Court have already recognized the potential problems posed by a claim that Spending Clause legislation could somehow preempt the law of a non-consenting State. *See Moyle* v. *United States*, 603 U.S. 324, 357 (2024) (Alito, J., joined by Thomas and Gorsuch, JJ., dissenting) ("The potential implications of permitting preemption here are far-reaching."). Such an approach would threaten the very foundations of our system of federalism. Or as one court put it, "if a private citizens could bind unconsenting States to the terms of legislation enacted under the Spending Clause, then the concept of federalism would be a dead letter." *Citizens for Honesty & Integrity in Reg'l Plan.* v. *Cnty. of San Diego*, 258 F. Supp. 2d 1132, 1137 (S.D. Cal. 2003), *appeal dismissed and remanded*, 399 F.3d 1067 (9th Cir. 2005).

And preemption concerns are particularly acute in areas traditionally occupied by the States like contract law. *See Castro* v. *Collecto, Inc.*, 634 F.3d 779, 784–85 (5th Cir. 2011) ("[S]tates have traditionally governed matters regarding contracts.").

Perhaps recognizing these problems, even CMS sought to disavow the notion that it attempted to generally preempt state law. 84 Fed. Reg. at 34,721 ("This regulation is not intended in any way to preempt these state laws except to the extent any such laws are actually in conflict with this regulation.").

In short, by privileging the CMS Rule over Arkansas law, the Arkansas Court of Appeals unwittingly interjected itself into a complex and weighty debate regarding the nature of preemption in the context of Spending Clause legislation. Given this complexity and the significant state interests at stake, this Court should grant review.

CONCLUSION

Stating the obvious is seldom necessary. This is one of those rare cases. The Court should grant certiorari to confirm the long-understood scope of Spending Clause legislation and prevent a runaway train from wreaking havoc on our federalism.

Respectfully submitted,

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