SUPREME COURT OF THE UNITED STATES

No. 90–1488

SUE SUTER, ET AL., PETITIONERS *v.*
ARTIST M. ET AL.

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

[March 25, 1992]

THE CHIEF JUSTICE delivered the opinion of the Court.

This case raises the question whether private individuals have the right to enforce by suit a provision of the Adoption Assistance and Child Welfare Act of 1980 (Adoption Act or Act), 94 Stat. 500, 42 U. S. C. §§620–628, 670–679a, either under the Act itself or through an action under 42 U.S.C. §1983.[1] The Court of Appeals for the Seventh Circuit held that 42 U. S. C. §671(a)(15) contained an implied right of action, and that respondents could enforce this section of the Act through an action brought under §1983 as well. We hold that the Act does not create an enforceable right on behalf of the respondents.

The Adoption Act establishes a federal reimbursement program for certain expenses incurred by the States in

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[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.''

administering foster care and adoption services. The Act provides that States will be reimbursed for a percentage of foster care and adoption assistance payments when the State satisfies the requirements of the Act. 42 U. S. C. §§672–674, 675(4)(A) (1988 ed. and Supp. I).

To participate in the program, States must submit a plan to the Secretary of Health and Human Services for approval by the Secretary. 42 U. S. C. §§670, 671. Section 671 lists 16 qualifications which state plans must contain in order to gain the Secretary's approval. As relevant here, the Act provides:

> ``(a) Requisite features of State plan
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> ``In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which—
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> . . . . .
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> ``(3) provides that the plan shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;
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> . . . . .
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> ``(15) effective October 1, 1983, provides that, in each case, reasonable efforts will be made (A) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home, and (B) to make it possible for the child to return to his home . . . .'' 42 U. S. C. §671(a)(3), (15).

Petitioners in this action are Sue Suter and Gary T. Morgan, the Director and the Guardianship Administrator, respectively, of the Illinois Department of Children and Family Services (DCFS). DCFS is the state agency responsible for, among other things, investigating charges of child abuse and neglect and providing services to abused and neglected children and their families. DCFS is authorized under Illinois law, see Ill. Rev. Stat., ch. 37, ¶802–1, *et. seq.* (1989), to gain temporary custody of an abused or neglected child after a hearing and order by the

Juvenile

Court. Alternatively, the court may order that a child remain in his home under a protective supervisory order entered against his parents. See *Artist M.* v. *Johnson*, 917 F. 2d 980, 982–983 (CA7 1990). Once DCFS has jurisdiction over a child either in its temporary custody, or in the child's home under a protective order, all services are provided to the child and his family by means of an individual caseworker at DCFS to whom the child's case is assigned. App. 35–39.

Respondents filed this class-action suit seeking declaratory and injunctive relief under the Adoption Act.[2] They alleged that petitioners, in contravention of 42 U. S. C. §671(a)(15) failed to make reasonable efforts to prevent removal of children from their homes and to facilitate reunification of families where removal had occurred.[3] This failure occurred, as alleged by respondents, because DCFS failed promptly to assign caseworkers to children placed in DCFS custody and promptly to reassign cases when caseworkers were on leave from DCFS. App. 6–8. The District Court, without objection from petitioners, certified two separate classes seeking relief, including all children who are or will be wards of DCFS and are placed in foster care or remain in their homes under a judicial protective order.[4] *Artist M.* v. *Johnson*, 726 F.

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[2]Count III of the complaint alleged that petitioners violated the Due Process Clause of the Constitution. App. 26. This count was dismissed by the District Court and was not appealed. *Artist M.* v. *Johnson*, 917 F. 2d 980, 982, n. 3 (CA7 1990).

[3]Although DCFS administers the child welfare program for the entire State of Illinois, respondents only alleged violations of the Adoption Act as to Cook County. App. 6.

[4]Specifically, the following classes were certified by the District Court:

``Class A: Children who are or will be the subjects of

Supp. 690, 691 (ND Ill. 1989). The District Court denied a motion to dismiss filed by petitioners, holding, as relevant here, that the Adoption Act contained an implied cause of action and that suit could also be brought to enforce the Act under 42 U. S. C. §1983. 726 F. Supp., at 696, 697.

The District Court then entered an injunction requiring petitioners to assign a caseworker to each child placed in DCFS custody within three working days of the time the case is first heard in Juvenile Court, and to reassign a caseworker within three working days of the date any caseworker relinquishes responsibility for a particular case. App. to Pet. for Cert. 56a. The three working day deadline was found by the District Court to ``realistically reflec[t] the institutional capabilities of DCFS,'' *id.*, at 55a, based in part on petitioners' assertion that assigning caseworkers within that time frame ``would not be overly burdensome.'' *Id.*, at 54a. The District Court, on partial remand from the Court of Appeals, made additional factual findings regarding the nature of the delays in assigning caseworkers and the progress of

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neglect, dependency or abuse petitions filed in the Circuit Court of Cook County, Juvenile Division (`Juvenile Court'), who are or will be in the custody of [DCFS] or in a home under DCFS supervision by an order of Juvenile Court and who are now or will be without a DCFS caseworker for a significant period of time.

``Class B: Children who are or will be the subjects of neglect, dependency or abuse petitions filed in Juvenile Court who are or will be placed in DCFS' custody and who are or will be without a DCFS caseworker for a significant period of time.'' *Artist M.* v. *Johnson*, 726 F. Supp. 690, 691 (ND Ill. 1989).

The ``Class B'' plaintiffs only raised a constitutional due process claim, which was dismissed by the District Court. See n. 2, *supra*.

DCFS reforms at the time the preliminary injunction was entered. App. 28–50.

The Court of Appeals affirmed. *Artist M.* v. *Johnson*, 917 F. 2d 980 (CA7 1990). Relying heavily on this Court's decision in *Wilder* v. *Virginia Hospital Assn.*, 496 U. S. 498 (1990), the Court of Appeals held that the ``reasonable efforts'' clause of the Adoption Act could be enforced through an action under §1983. 917 F. 2d, at 987–989.[5] That court, applying the standard established in *Cort* v. *Ash*, 422 U.S. 66 (1975), also found that the Adop-tion Act created an implied right of action such that private individuals could bring suit directly under the Act to enforce the provisions relied upon by respondents. 917 F. 2d, at 989–991. We granted certiorari, and now reverse.[6]

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[5] The Court of Appeals also noted that the Fourth Circuit, in *L. J. ex rel. Darr* v. *Massinga*, 838 F. 2d 118 (1988), cert. denied, 488 U. S. 1018 (1989), had found the substantive requirements listed in §671(a) to be enforceable under §1983. 917 F. 2d, at 988.

Several cases have addressed the enforceability of various sections of the Adoption Act. See, *e. g.*, *Massinga*, *supra*, at 123 (finding case plan requirements enforceable under §1983); *Lynch* v. *Dukakis*, 719 F. 2d 504 (CA1 1983) (same); *Norman* v. *Johnson*, 739 F. Supp. 1182 (ND Ill. 1990) (finding ``reasonable efforts'' clause enforceable under §1983); *B. H.* v. *Johnson*, 715 F. Supp. 1387, 1401 (ND Ill. 1989) (finding ``reasonable efforts'' clause not enforceable under §1983).

[6] Subsequent to oral argument, respondents notified the Court of the entry of a consent decree in the case of *B. H.* v. *Suter*, No. 88-C 5599 (ND Ill.), which they suggest may affect our decision on the merits, or indeed may make the instant action moot. We find no merit to respondents' contentions, and conclude that the *B. H.* consent decree has no bearing on the issue the Court decides today. Sue

500 U. S. ___ (1991).

In *Maine* v. *Thiboutot*, 448 U. S. 1 (1980), we first established that §1983 is available as a remedy for violations of federal statutes as well as for constitutional violations. We have subsequently recognized that §1983 is not available to enforce a violation of a federal statute ``where Congress has foreclosed such enforcement of the statute in the

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Suter, petitioner in this case, is the defendant in the *B. H.* suit, which alleges statewide deficiencies in the operations of DCFS. See *B. H.* v. *Johnson*, *supra.* The class approved in *B. H.* contains ``all persons who are or will be in the custody of [DCFS] and who have been or will be placed somewhere other than with their parents.'' 715 F. Supp., at 1389.

Respondents suggest that because petitioner has agreed in the *B. H.* consent decree to provide ``reasonable efforts'' to maintain and reunify families, she is somehow precluded from arguing in this case that §671(a)(15) does not grant a right for individual plaintiffs to enforce that section by suit. As we have recognized previously this Term however, parties may agree to provisions in a consent decree which exceed the requirements of federal law. *Rufo* v. *Inmates of Suffolk County Jail*, 502 U. S. —, — (1992) (slip op. 18). Paragraph two of the *B. H.* decree itself provides that the decree is not an admission of any factual or legal issue. In addition, the *B. H.* consent decree does not require ``reasonable efforts'' with no further definition, but rather defines the standard against which those efforts are to be measured. See *B. H.* Consent Decree ¶¶8, 16(a), pp. 12, 20. Thus, the agreement embodied in the consent decree is not inconsistent with the position petitioner asserts here, namely that §671(a)(15) requiring ``reasonable efforts,'' without further definition, does not create an enforceable right on behalf of respondents to enforce the clause by suit.

enactment itself and where the statute did not create enforceable rights, privileges, or immunities within the meaning of §1983.'' *Wright* v. *Roanoke Redevelopment and Housing Authority*, 479 U.S. 418, 423 (1987).

In *Pennhurst State School and Hospital* v. *Halderman*, 451 U. S. 1 (1981), we held that §6010 of the Developmentally Disabled Assistance and Bill of

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Respondents next contend that the *B. H.* decree ``may also render much of this case moot.'' Supp. Brief for Respondents 8. Although petitioner here is the defendant in *B. H.*, the class certified in *B. H.* does not include children living at home under a protective order, and therefore is more narrow than the class certified in the instant suit. In addition, while DCFS agrees in the *B. H.* consent decree to certain obligations, for example a ceiling on the number of cases handled by each caseworker, none of these obligations subsumes the injunction entered by the District Court and affirmed by the Court of Appeals below, requiring petitioners to provide a caseworker within three days of when a child is first removed from his home. Cf. *Johnson* v. *Chicago Board of Education*, 457 U. S. 52 (1982) *(per curiam).*

In short, the situation in this case is quite different from that in the cases cited by respondents in which this Court remanded for further proceedings after events subsequent to the filing of the petition for certiorari or the grant of certiorari affected the case before the Court. Unlike the parties in *J. Aron & Co.* v. *Mississippi Shipping Co.*, 361 U. S. 115 (1959) *(per curiam)* the parties in the case before the Court have not entered a consent decree. Unlike *Kremens* v. *Bartley*, 431 U. S. 119 (1977), the *B. H.* decree does nothing to change the class at issue or the claims of the named class members. And unlike *American Foreign Service Assn.* v. *Garfinkel*, 490 U. S. 153 (1989) *(per curiam)* where we noted that ``[e]vents

Rights Act of 1975, 42 U. S. C. §6000 *et. seq.*, (1976 ed. and Supp. III) did not confer an implied cause of action. That statute, as well as the statute before us today, was enacted by Congress pursuant to its spending power.[7] In *Pennhurst*, we noted that it was well established that Congress has the power to fix the terms under which it disburses federal money to the States. 451 U. S., at 17, citing *Oklahoma* v. *CSC*, 330 U.S. 127 (1947); *Rosado* v. *Wyman*, 397 U. S. 397 (1970). As stated in *Pennhurst*:

> ``The legitimacy of Congress' power to legislate under the spending power thus rests on whether the State voluntarily and knowingly accepts the terms of the `contract.' There can, of course, be no knowing acceptance if a State is unaware of the conditions or is unable to ascertain what is expected of it. Accordingly, if Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously.'' *Pennhurst*, *supra*, at 17 (citations and footnote omitted).

We concluded that the statutory section sought to be enforced by the *Pennhurst* respondents did not provide such unambiguous notice to the States because it spoke in terms ``intended to be hortatory, not mandatory.'' 451 U. S., at 24.

In *Wright*, the Brooke Amendment to existing

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occurring since the District Court issued its ruling place this case in a light far different from the one in which that court considered it,'' *id.*, at 158, the issue of whether the reasonable efforts clause creates an enforceable right on behalf of respondents is the same now as it was when decided by the District Court below.

[7]Article I, §8, cl. 1, of the Constitution contains the spending power, which provides, ``Congress shall have Power to . . . provide for the . . . general Welfare of the United States.''

housing legislation imposed a ceiling on the rent which might be charged low-income tenants living in public housing projects. The regulations issued by the Department of Housing and Urban Development in turn defined rent to include ```a reasonable amount for [use of] utilities,''' and further defined how that term would be measured. *Wright*, *supra*, at 420–421, n. 3. We held that tenants had an enforceable right to sue the Housing Authority for utility charges claimed to be in violation of these provisions. In *Wilder*, 496 U. S., at 503, the Boren Amendment to the Medicaid Act required that Medicaid providers be reimbursed 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.''' Again, we held that this language created an enforceable right, on the part of providers seeking reimbursement, to challenge the rates set by the State as failing to meet the standards specified in the Boren Amendment.

In both *Wright* and *Wilder* the word ``reasonable'' occupied a prominent place in the critical language of the statute or regulation, and the word ``reasonable'' is similarly involved here. But this, obviously, is not the end of the matter. The opinions in both *Wright* and *Wilder* took pains to analyze the statutory provisions in detail, in light of the entire legislative enactment, to determine whether the language in question created ``enforceable rights, privileges, or immunities within the meaning of §1983.'' *Wright*, *supra*, at 423. And in *Wilder*, we caution that ```[s]ection 1983 speaks in terms of ``rights, privileges, or immunities,'' not violations of federal law.''' *Wilder*, *supra* at 509 quoting *Golden State Transit Corp*. v. *Los Angeles*, 493 U. S. 103 (1989).

Did Congress, in enacting the Adoption Act, unambiguously confer upon the child beneficiaries of the Act a right to enforce the requirement that the

State make ``reasonable efforts'' to prevent a child from being removed from his home, and once removed to reunify the child with his family? We turn now to that inquiry.

As quoted above, 42 U. S. C. §671(a)(15) requires that to obtain federal reimbursement, a State have a plan which ``provides that, in each case, reasonable efforts will be made . . . to prevent or eliminate the need for removal of the child from his home, and . . . to make it possible for the child to return to his home . . . .'' As recognized by petitioners, respondents, and the courts below, the Act is mandatory in its terms. However, in the light shed by *Pennhurst*, we must examine exactly what is required of States by the Act. Here, the terms of §671(a) are clear; ``In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary.'' Therefore the Act does place a requirement on the States, but that requirement only goes so far as to ensure that the State have a plan approved by the Secretary which contains the 16 listed features.[8]

Respondents do not dispute that Illinois in fact has a plan approved by the Secretary which provides that reasonable efforts at prevention and reunification will be made. Tr. of Oral Arg. 29–30.[9] Respondents argue,

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[8]Contrary to respondents' assertion that finding 42 U. S. C. §671(a) to require only the filing of a plan for approval by the Secretary would add a new ``prerequisite for the existence of a right under §1983'', Brief for Respondents 22, n. 6, our holding today imposes no new ``prerequisites'' but merely counsels that each statue must be interpreted by its own terms.

[9]The state plan filed by Illinois relies on a state statute and DCFS internal rules to meet the reasonable efforts requirement. Department of Health and Human Services, Office of Human

however, that §1983 allows them to sue in federal court to obtain enforcement of this particular provision of the state plan. This argument is based, at least in part, on the assertion that 42 U. S. C. §671(a)(3) requires that the State has a plan which is ``in effect.'' This section states that the state plan shall ``provid[e] that the plan shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them.'' But we think that ``in effect'' is directed to the requirement that the plan apply to all political subdivisions of the State, and is not intended to otherwise modify the word ``plan.''[10]

Development Services Administration for Children, Youth and Families, Children's Bureau, State Plan for Title IV-E of the Social Security Act Foster Care and Adoption Assistance, State Illinois 2–13 (1988).

The Illinois statute to which the plan refers imposes a requirement that before temporary custody may be ordered, the court must find that reasonable efforts have been made or good cause has been shown why ``reasonable efforts cannot prevent or eliminate the necessity of removal of the minor from his or her home.'' Ill. Rev. Stat., ch. 37, ¶802–10(2) (1989). The statute further provides that: ``The Court shall require documentation by representatives of [DCFS] or the probation department as to the reasonable efforts that were made to prevent or eliminate the necessity of removal of the minor from his or her home, and shall consider the testimony of any person as to those reasonable efforts.'' *Ibid.*

[10]Respondents also based their claim for relief on 42 U. S. C. §671(a)(9) which states that the state plan shall: ``provide[] that where any agency of the State has reason to believe that the home or institution in which a child resides whose care is being paid for in whole or in part with funds provided under this part or part B of this subchapter is unsuitable for the child

In *Wilder*, the underlying Medicaid legislation similarly required participating States to submit to the Secretary of Health and Human Services a plan for medical assistance describing the State's Medicaid program. But in that case we held that the Boren Amendment actually required the States to adopt reasonable and adequate rates, and that this obligation was enforceable by the providers. We relied in part on the fact that the statute and regulations set forth in some detail the factors to be considered in determining the methods for calculating rates. *Wilder*, *supra*, at 519, n. 17.

In the present case, however, the term ``reasonable efforts'' to maintain an abused or neglected child in his home, or return the child to his home from foster care, appears in quite a different context. No further statutory guidance is found as to how ``reasonable efforts'' are to be measured. This directive is not the only one which Congress has given to the States, and it is a directive whose meaning will obviously vary with the circumstances of each individual case. How the State was to comply with this directive, and with the other provisions of the Act, was, within broad limits, left up to the State.

Other sections of the Act provide enforcement mechanisms for the reasonable efforts clause of 42 U. S. C. §671(a)(15). The Secretary has the authority to reduce or eliminate payments to a State on finding that the State's plan no longer complies with §671(a)

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because of the neglect, abuse, or exploitation of such child, it shall bring such condition to the attention of the appropriate court or law enforcement agency . . . .''

As this subsection is merely another feature which the state plan must include to be approved by the Secretary, it does not afford a cause of action to the respondents anymore than does the ``reasonable efforts'' clause of §671(a)(15).

or that ``there is a substantial failure'' in the administration of a plan such that the State is not complying with its own plan. §671(b). The Act also requires that in order to secure federal reimbursement for foster care payments made with respect to a child involuntarily removed from his home the removal must be ``the result of a judicial determination to the effect that continuation [in the child's home] would be contrary to the welfare of such child and (effective October 1, 1983) that reasonable efforts of the type described in section 671(a)(15) of this title have been made.'' §672(a)(1). While these statutory provisions may not provide a comprehensive enforcement mechanism so as to manifest Congress' intent to foreclose remedies under §1983,[11] they do show that the absence of a remedy to private plaintiffs under §1983 does not make the reasonable efforts clause a dead letter.[12]

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[11]We have found an intent by Congress to foreclose remedies under §1983 where the statute itself provides a comprehensive remedial scheme which leaves no room for additional private remedies under §1983. *Smith* v. *Robinson*, 468 U. S. 992 (1984); *Middlesex County Sewerage Authority* v. *National Sea Clammers Association*, 453 U. S. 1 (1981). We need not consider this question today due to our conclusion that the Adoption Act does not create the federally enforceable right asserted by respondents.

[12]The language of other sections of the Act also shows that Congress knew how to impose precise requirements on the States aside from the submission of a plan to be approved by the Secretary when it intended to. For example, 42 U. S. C. §672(e) provides that ``[n]o Federal payment may be made under this part'' for a child voluntarily placed in foster care for more than 180 days unless within that period there is a judicial determination that the placement is in the best interest of the child. That the

The regulations promulgated by the Secretary to enforce the Adoption Act do not evidence a view that §671(a) places any requirement for state receipt of federal funds other than the requirement that the State submit a plan to be approved by the Secretary.[13] The regulations provide that to meet the requirements of §671(a)(15) the case plan for each child must ``include a description of the services offered and the services provided to prevent removal of the child from the home and to reunify the family.'' 45 CFR §1356.21(d)(4) (1991). Another regulation, entitled ``requirements and submittal'', provides that a state plan must specify ``which preplacement preventive and reunification services are available to children and families in need.'' 1357.15(e)(1).[14] What

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``reasonable efforts'' clause is not similarly worded buttresses a conclusion that Congress had a different intent with respect to it.

[13]Compare *Wright* v. *Roanoke Redevelopment and Housing Authority*, 479 U.S. 418, 430–432 (1987) (statute providing that tenants in low-income housing could only be charged 30% of their income as rent, in conjunction with regulations providing that ``reasonable utilities'' costs were included in the rental figure, created right under §1983 to not be charged more than a ``reasonable'' amount for utilities).

[14]The regulation, 45 CFR §1357.15(e)(2) (1990), goes on to provide a list of which services may be included in the State's proposal:

``Twenty-four hour emergency caretaker, and homemaker services; day care; crisis counseling; individual and family counseling; emergency shelters; procedures and arrangements for access to available emergency financial assistance; arrangements for the provision of temporary child care to provide respite to the family for a brief period, as part of a plan for preventing children's removal from home; other

is significant is that the regulations are not specific, and do not provide notice to the States that failure to do anything other than submit a plan with the requisite features, to be approved by the Secretary, is a further condition on the receipt of funds from the Federal Government. Respondents contend that ``[n]either [petitioners] nor amici supporting them present any legislative history to refute the evidence that Congress intended 42 U. S. C. §671(a)(15) to be enforceable.'' Brief for Respondents 33. To the extent such history may be relevant, our examination of it leads us to conclude that Congress was concerned that the required reasonable efforts be made by the States, but also indicated that the Act left a great deal of discretion to them.[15]

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services which the agency identifies as necessary and appropriate such as home-based family services, self-help groups, services to unmarried parents, provision of, or arrangements for, mental health, drug and alcohol abuse counseling, vocational counseling or vocational rehabilitation; and post adoption services.''

[15]The Report of the Senate Committee on Finance describes how under the system before the Adoption Act States only received reimbursement for payments made with respect to children who were removed from their homes, and how the Act contains a number of provisions in order to ``deemphasize the use of foster care,'' including reimbursing States for developing and administering adoption assistance programs and programs for ``tracking'' children in foster care, placing a cap on the amount of federal reimbursements a State may receive for foster care maintenance payments, and ``specifically permitting expenditures for State . . . services to reunite families.'' S. Rep. No. 96–336 p. 12 (1979). This Senate Report shows that Congress had confidence in the ability and competency of State courts to discharge their duties under what is now §672(a) of

Careful examination of the language relied upon by respondents, in the context of the entire Act, leads us to conclude that the ``reasonable efforts'' 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

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the Act. *Id.*, at 16 (``The committee is aware of allegations that the judicial determination requirement can become a mere *pro forma* exercise in paper shuffling to obtain Federal funding. While this could occur in some instances, the committee is unwilling to accept as a general proposition that the judiciaries of the States would so lightly treat a responsibility placed upon them by Federal statute for the protection of children.'').

The House Ways and Means Committee Report on the Adoption Act similarly recognizes that ``the entire array of possible preventive services are not appropriate in all situations. The decision as to the appropriateness of specific services in specific situations will have to be made by the administering agency having immediate responsibility for the care of the child.'' H. R. Rep. No. 96–136, p. 47 (1979).

Remarks on the floor of both the House and the Senate further support these general intentions. See, *e. g.*, 125 Cong. Rec. 22113 (1979) (remarks of Rep. Brodhead) (``What the bill attempts to do is to get the States to enact a series of reforms of their foster care laws, because in the past there has been too much of a tendency to use the foster care program. The reason there has been that tendency is because . . . it becomes a little more expensive for the State to use the protective services than foster care. Through this bill, we want to free up a little bit of money . . . so you will have an incentive to keep a family together''); *id.,* at 29939 (remarks of Sen.

Secretary in the manner previously discussed.

Having concluded that §671(a)(15) does not create a federally enforceable right to ``reasonable efforts'' under §1983, the conclusion of the Court of Appeals that the Adoption Act contains an implied right of action for private enforcement, 917 F. 2d, at 989, may be disposed of quickly. Under the familiar test of *Cort* v. *Ash*, 422 U. S. 66 (1975), the burden is on respondents to demonstrate that Congress intended to make a private remedy available to enforce the reasonable efforts clause of the Adoption Act.[16] The

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Cranston, sponsor of the Adoption Act) (``This requirement in the State plan under [§671(a)(15)] would be reinforced by the new requirement under [§672] that each State with a plan approved . . . may make foster care maintenance payments only for a child who has been removed from a home as a result of an explicit judicial determination that reasonable efforts to prevent the removal have been made, in addition to the judicial determination required by existing law that continuation in the home would be contrary to the welfare of the child'').

[16]As established in *Cort* v. *Ash*, 422 U. S. 66 (1975), these factors are:

``First, is the plaintiff one of the class for whose *especial* benefit the statute was enacted, that is, does the statute create a federal right in favor of the plaintiff? Second, is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one? Third, is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff? And finally, is the cause of action one traditionally relegated to state law, in an area basically the concern of the States, so that it would be inappropriate to infer a cause of action based solely on federal law?'' *Id.*, at 78 (internal quotation marks omitted; emphasis in original).

most important inquiry here as well is whether Congress intended to create the private remedy sought by the plaintiffs. *Transamerica Mortgage Advisors, Inc.* v. *Lewis*, 444 U. S. 11, 15–16 (1979) (``[W]hat must ultimately be determined is whether Congress intended to create the private remedy asserted''). As discussed above, we think that Congress did not intend to create a private remedy for enforcement of the ``reasonable efforts'' clause.

We conclude that 42 U. S. C. §671(a)(15) neither confers an enforceable private right on its beneficiaries nor creates an implied cause of action on their behalf.

The judgment of the Court of Appeals is therefore

Reversed.