SUPREME COURT OF THE UNITED STATES

No. 01–679

GONZAGA UNIVERSITY AND ROBERTA S. LEAGUE, PETITIONERS *v.* JOHN DOE

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

[June 20, 2002]

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

The ultimate question, in respect to whether private individuals may bring a lawsuit to enforce a federal statute, through 42 U. S. C. §1983 or otherwise, is a question of congressional intent. In my view, the factors set forth in this Court's §1983 cases are helpful indications of that intent. See, e.g., *Blessing* v. *Freestone,* 520 U. S. 329, 340–341 (1997); *Suter* v. *Artist M.,* 503 U. S. 347, 357 (1992); *Wilder* v. *Virginia Hospital Assn.,* 496 U. S. 498, 509–511 (1990); *Wright* v. *Roanoke Redevelopment and Housing Authority,* 479 U. S. 418, 423–427 (1987). But the statute books are too many, the laws too diverse, and their purposes too complex, for any single legal formula to offer more than general guidance. I would not, in effect, predetermine 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." See *ante*, at 5, 13.

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: The phrasing of the relevant prohibition (stating that "[n]o funds shall

be made available" to institutions with a "policy or practice" of permitting the release of "education records"), see *ante*, at 13–14; the total absence (in the relevant statutory provision) of any reference to individual "rights" or the like, see *ante,* at 12–13; the related provisions that make clear, by creating administrative enforcement processes, that the Spending Clause was not simply a device to obtain federal jurisdiction, see *ante,* at 14–15; and later statutory insistence upon centralized federal enforcement at the national, not the regional, level, see *ante,* at 15–16.

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 exclu-

sive—both to achieve the expertise, uniformity, widespread consultation, and resulting administrative guidance that can accompany agency decisionmaking 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. This factor, together with the others to which the majority refers, convinces me that Congress did not intend private judicial enforcement actions here.