

# The Burger Court Opinion Writing Database

## *Heckler v. Ringer*

466 U.S. 602 (1984)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University





Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

April 3, 1984

Re: 82-1772 - Heckler v. Ringer, Et al.

Dear Bill:

I join.

Regards,

Justice Rehnquist

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

March 5, 1984  
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SUPREME COURT  
JUSTICE

'84 MAR -5 P2:04

No. 82-1772

Heckler v. Ringer

Dear Thurgood and John,

We three were in dissent as to Ringer in the above case. I appreciate that the Court is still somewhat unsettled as to him. But, if a dissent is necessary, would you mind undertaking it John?

Sincerely,



Justice Marshall

Justice Stevens

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

April 19, 1984

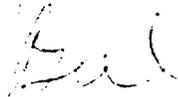
No. 82-1772

Heckler v. Ringer, et al.

Dear John,

Please join me.

Sincerely,



Justice Stevens

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

March 30, 1984

Re: 82-1772 - Heckler v. Ringer

Dear Bill,

Please join me.

Sincerely yours,

Justice Rehnquist

Copies to the Conference

cpm

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 23, 1984

Re: No. 82-1772-Heckler v. Ringer

Dear John:

Please join me.

Sincerely,

*JM.*

T.M.

Justice Stevens

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 30, 1984

Re: No. 82-1772 - Heckler v. Ringer

Dear Bill:

Please join me.

Sincerely,



Justice Rehnquist

cc: The Conference

19

Supreme Court of the United States  
Washington, D. C. 20543

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JUSTICE LEWIS F. POWELL, JR.

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

'84 MAR 30 A9:27

March 30, 1984

82-1772 Heckler v. Ringer

Dear Bill:

Please join me.

Sincerely,



Justice Rehnquist

lfp/ss

cc: The Conference

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To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Stevens  
Justice O'Connor

From: **Justice Rehnquist**

Circulated: MAR 28 1984

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 82-1772

MARGARET M. HECKLER, SECRETARY OF HEALTH  
AND HUMAN SERVICES, PETITIONER *v.*  
FREEMAN H. RINGER ET AL.

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

[March —, 1984]

JUSTICE REHNQUIST delivered the opinion of the Court.

Respondents are individual Medicare claimants who raise various challenges to the policy of the Secretary of Health and Human Services (the Secretary) as to the payment of Medicare benefits for a surgical procedure known as bilateral carotid body resection (BCBR). The United States District Court for the Central District of California dismissed the action for lack of jurisdiction, finding that in essence respondents are claiming entitlement to benefits for the BCBR procedure and therefore must exhaust their administrative remedies pursuant to 42 U. S. C. § 405(g) (1976 ed. and Supp. V), before pursuing their action in federal court. The Court of Appeals for the Ninth Circuit reversed and remanded for consideration on the merits. 684 F. 2d 643 (1982). We granted certiorari to sort out the thorny jurisdictional problems which respondents' claims present, — U. S. —, and we now reverse as to all respondents.

### I

Title XVIII of the Social Security Act, 79 Stat. 291, as amended, 42 U. S. C. § 1395 *et seq.* (1976 ed. and Supp. V), commonly known as the Medicare Act (Act), establishes a federally subsidized health insurance program to be administered by the Secretary. Part A of the Act, 42 U. S. C.

Rp 18-23

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Stevens  
Justice O'Connor

From: Justice Rehnquist

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2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-1772

MARGARET M. HECKLER, SECRETARY OF HEALTH  
AND HUMAN SERVICES, PETITIONER v.  
FREEMAN H. RINGER ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
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[April —, 1984]

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I

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 30, 1984

MEMORANDUM TO THE CONFERENCE

Re: Case held for No. 82-1772 Heckler v. Ringer

The one case held for Heckler v. Ringer, No. 82-1172 is Heckler v. Starnes, No. 83-1149. Starnes involves the Secretary's administration of the Part B Medicare Program, a voluntary medical insurance program which supplements the general coverage provided by Part A. Determinations of Part B benefits are made by private insurance carriers employed by the Secretary in accordance with regulations and policy guidelines issued by the Secretary. Once a carrier makes a determination, the claimant may seek reconsideration by the carrier, and if the claim involves more than \$100, the claimant may seek an oral hearing before an officer appointed by the carrier. As this Court explicitly held in United States v. Erika, Inc., 456 U.S. 201 (1982), there is no further judicial or administrative review of Part B claim determinations. See Schweiker v. McClure, 456 U.S. 188 (1982).

Starnes involves a challenge to the Secretary's establishment and implementation of nationwide and regional ceilings or caps on Part B reimbursements for a procedure called computerized tomography (CT) scans (and you thought the bilateral carotid body resection procedure was weird?). The Secretary had issued letters to carriers in one particular region and later to all her carriers giving them instructions as to the range of reimbursement for CT scans that would be "reasonable" under the Medicare Act. Resps are a class of Medicare Part B beneficiaries and the physicians and clinics which provide CT scans to the class of Medicare beneficiaries which resps represent. They challenge the caps on numerous grounds: that the Secretary failed to follow APA notice and comment procedures in setting the caps; that the caps violate the equal protection and due process clauses; that the caps are inconsistent with

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Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

March 2, 1984

Re: 82-1772 - Heckler v. Ringer

Dear Chief:

After giving this case further study, I have decided to vote to affirm as to Ringer but to reverse as to all the others.

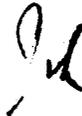
As I said at conference, the Solicitor General has persuaded me that there is no jurisdiction over the claims of the three respondents who have had the operation in question, since the regulation does not apply to them and there is some chance they may prevail in the administrative process. As to respondent Ringer, who has not had the operation but who is covered by the regulation, I have not resolved my doubts about whether he has filed the type of application for benefits sufficient to satisfy §405(g). However, if we assume that he has not, it then follows, I believe, that he does not have a "claim" within the meaning of §405(h), and therefore is not barred from bringing this action under 28 U.S.C. §1331.

Section 405(h) only bars "claims arising under this subchapter," which must be filed under §405(g). Since Ringer has not had the operation and hence has not incurred any reimbursable expense, he has no "claim" which he can pursue under §405(g). I have studied Weinberger v. Salfi, 422 U.S. 749 (1975), and Judge Friendly's opinion in Ellis v. Blum, 643 F.2d 68 (2d Cir. 1981). They persuade me that §405(h) was designed to channel claims into the administrative process for exhaustion purposes, rather than bar them altogether. Salfi itself says that §405(h) can be construed to preclude §1331 jurisdiction precisely because judicial review (after exhaustion is complete) is available under §405(g). Mathews v. Eldridge, 424 U.S. 319, 327 (1976) described Salfi as having "held that 42 U.S.C. §405(h) precludes federal-question jurisdiction in an action

challenging denial of claimed benefits." Ringer is not challenging a denial of benefits, since he cannot afford the operation and the Secretary refuses to act on his application. Ringer has no process available to exhaust. The Secretary cannot have it both ways. If Ringer has not filed a "claim" sufficient to exhaust under §405(g), then he also does not have a "claim" within the meaning of §405(h). This result follows from the rule endorsed by Salfi that §405(h) should not be construed to bar judicial review altogether. Since Ringer has no claim he can exhaust, he would never be able to obtain judicial review if §405(h) were construed to apply to this claim.

My conclusion is that Congress intended §405(h) to operate when there is some process available for the applicant to exhaust. The essence of Ringer's claim is that the Secretary has violated the law by refusing to give him any process to exhaust, while at the same time effectively preventing him from having the operation through her rule which states the operation is not reimbursable. It obviously makes no sense to say that Congress would have intended Ringer to exhaust when his injury is by its very nature not subject to exhaustion. My vote therefore with respect to Ringer's claim is to affirm but, as I indicated, I agree that the rest of the case should be reversed.

Respectfully,



The Chief Justice

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JUSTICE JOHN PAUL STEVENS

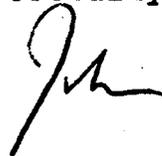
March 5, 1984 '84 MAR -5 P2:04

Re: 82-1772 - Heckler v. Ringer

Dear Bill:

If necessary, I will be happy to prepare a dissent as to Ringer.

Respectfully,



Justice Brennan

cc: Justice Marshall

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

March 29, 1984

Re: 82-1772 - Heckler v. Ringer

Dear Bill:

Although I agree with the analysis in part II of your opinion and specifically with your conclusion that there is no jurisdiction over the claims of the three respondents who had BCBR surgery before October 28, 1980, I find the analysis in part III of your opinion concerning respondent Ringer unpersuasive. Your analysis may well be correct with respect to possible requests for advisory opinions concerning possible operations that are not the subject of a specific formal ruling promulgated by the Secretary. But when the Secretary herself issues the kind of formal administrative ruling that she did on October 28, 1980, she has already volunteered the kind of "advisory opinion" that would normally be subject to judicial review. An attack on that ruling by a person who has not had the BCBR operation cannot conceivably be regarded as a "claim" for benefits under the Act. Moreover, there doesn't seem to be any doubt about the fact that Ringer has adequate standing to mount a challenge in federal court to the Secretary's ruling. Ringer is unable to obtain a potentially life-saving operation because of the ruling; surely he is sufficiently aggrieved by it to have standing to bring this case. I therefore presently intend to join parts I and II of your opinion but to write a dissent from part III.

Respectfully,



Justice Rehnquist

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To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor

From: Justice Stevens

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1772

MARGARET M. HECKLER, SECRETARY OF HEALTH  
AND HUMAN SERVICES, PETITIONER *v.*  
FREEMAN H. RINGER ET AL.

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

[April —, 1984]

JUSTICE STEVENS, concurring in the judgment in part and  
dissenting in part.

The Medicare Act is designed to insure the elderly against the often crushing costs of medical care.<sup>1</sup> To that end, § 1862(a)(1) of the Act guarantees payment of all expenses "reasonable and necessary for the diagnosis or treatment of illness or injury."<sup>2</sup> The Secretary has issued a formal ruling stating that she will not pay the costs of bilateral carotid body resection (BCBR) surgery performed after October 28, 1980 in order to treat pulmonary distress because for that purpose BCBR is neither medically reasonable nor necessary. 45 Fed. Reg. 71426-71427 (1980). Respondents contend that the rule was not adopted in accord with the relevant statutory limitations on the Secretary's authority.

The three respondents who have undergone the BCBR procedure all did so prior to October 28, 1980. The Secre-

<sup>1</sup>See, *e. g.*, H. R. Rep. No. 213, 89th Cong., 1st Sess., 20-22, 63-64 (1965); S. Rep. No. 404, 89th Cong., 1st Sess., 73-74 (1965).

<sup>2</sup>"Notwithstanding any other provision of this subchapter, no payment may be made under part A or part B for any expenses incurred for items or services

(1) which are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member," 42 U. S. C. § 1395y(a)(1).

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

April 23, 1984

Re: 82-1772 - Heckler v. Ringer

Dear Bill:

Your five-page response to my dissent--the burden of which is that § 405(h) bars § 1331 jurisdiction--contains one omission. As is true of your entire circulating opinion, you fail to quote the language of § 405(h) itself. That language is quoted in full in footnote 8 on page 3 of my partial dissent. It seems to me inescapable that when one reads the paragraph in its entirety, one must conclude that the reference in the final sentence to an action "to recover on any claim arising under this subchapter" unquestionably refers to the claims referred to earlier in that paragraph, namely those covered by §§ 405(b) and 405(g).

You are, I must confess, quite correct in saying that it is of no great moment to the dissent "that after adjudicating his claim in federal court, [Ringer] may simply abandon his musings about having surgery." (Page 21). I think we have a duty to accept the allegations of the complaint as truthful when their sufficiency is challenged by a motion to dismiss, and if we do so we cannot treat Ringer's claim that his life is threatened by the inability to have the operation as nothing more than "musings about having surgery."

Finally, your suggestion that this case does not merely involve the validity of the Secretary's rulings, but rather raises the possibility of a flood of suits raising hypothetical questions is belied by the fact that no such suit was ever filed before the Secretary took it upon herself to attempt to create a

barrier to the processing of these claims in the normal manner.

As soon as I can, I will get around a revised version of my dissent.

Respectfully,

A handwritten signature in dark ink, appearing to be 'jrh', written in a cursive style.

Justice Rehnquist

Copies to the Conference

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES: 4, 5, 6, 16, 17

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor

From: Justice Stevens

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2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-1772

MARGARET M. HECKLER, SECRETARY OF HEALTH  
AND HUMAN SERVICES, PETITIONER *v.*  
FREEMAN H. RINGER ET AL.

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

[April —, 1984]

JUSTICE STEVENS, with whom JUSTICE BRENNAN and  
JUSTICE MARSHALL join, concurring in the judgment in part  
and dissenting in part.

The Medicare Act is designed to insure the elderly against the often crushing costs of medical care.<sup>1</sup> To that end, § 1862(a)(1) of the Act guarantees payment of all expenses "reasonable and necessary for the diagnosis or treatment of illness or injury."<sup>2</sup> The Secretary has issued a formal ruling stating that she will not pay the costs of bilateral carotid body resection (BCBR) surgery performed after October 28, 1980 in order to treat pulmonary distress because for that purpose BCBR is neither medically reasonable nor necessary. 45 Fed. Reg. 71426-71427 (1980). Respondents contend that the rule was not adopted in accord with the relevant limitations on the Secretary's authority.

<sup>1</sup> See, *e. g.*, H. R. Rep. No. 213, 89th Cong., 1st Sess., 20-22, 63-64 (1965); S. Rep. No. 404, 89th Cong., 1st Sess., 73-74 (1965).

<sup>2</sup> "Notwithstanding any other provision of this subchapter, no payment may be made under part A or part B for any expenses incurred for items or services

(1) which are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member," 42 U. S. C. § 1395y(a)(1).

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Justice Powell  
Justice Rehnquist  
Justice O'Connor

From: Justice Stevens

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Recirculated: APR 27 1984

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-1772

MARGARET M. HECKLER, SECRETARY OF HEALTH  
AND HUMAN SERVICES, PETITIONER *v.*  
FREEMAN H. RINGER ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
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<sup>1</sup>See, *e. g.*, H. R. Rep. No. 213, 89th Cong., 1st Sess., 20-22, 63-64  
(1965); S. Rep. No. 404, 89th Cong., 1st Sess., 73-74 (1965).

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services

(1) which are not reasonable and necessary for the diagnosis or treat-  
ment of illness or injury or to improve the functioning of a malformed body  
member,” 42 U. S. C. § 1395y(a)(1).

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Justice Powell  
Justice Rehnquist  
Justice O'Connor

3, 15, 14, 17

From: Justice Stevens

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4th DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 82-1772

MARGARET M. HECKLER, SECRETARY OF HEALTH  
AND HUMAN SERVICES, PETITIONER *v.*  
FREEMAN H. RINGER ET AL.

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

[May —, 1984]

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<sup>1</sup> See, e. g., H. R. Rep. No. 213, 89th Cong., 1st Sess., 20-22, 63-64 (1965); S. Rep. No. 404, 89th Cong., 1st Sess., 73-74 (1965).

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Washington, D. C. 20543

REC-11  
PREP  
JUSTICE

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

'84 MAR 30 A9:28

March 29, 1984

Re: No. 82-1772 Heckler v. Ringer

Dear Bill,

I will wait to see what else is written concerning Respondent Ringer's claim before casting my final vote in this case. Like John, I agree with all but Part III and may ultimately join that as well.

Sincerely,



Justice Rehnquist

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Supreme Court of the United States  
Washington, D. C. 20543

84 APR 27 P2:44

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

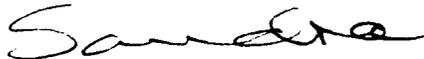
April 27, 1984

No. 82-1772 Heckler v. Ringer

Dear Bill,

Please join me.

Sincerely,



Justice Rehnquist

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