



## Medicare Case Challenges Bureaucratic Coercion

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Governmental coercion, without benefit of due legal process, is just as wrong when used against an individual as when used against a state.

A legal case about which I have **written** numerous times, regarding how the federal government is **wrongfully** conditioning earned Social Security benefits on the acceptance of unwanted Medicare benefits, has now received an extra jolt of juice from part

of the Supreme Court's decision on ObamaCare this summer. Last Friday, the plaintiffs petitioned the high court to issue a *writ of certiorari* to hear their case against this unlawful coercion, and the case could be a fun ride.

Briefly explained, the feds have used a rulemaking manual called a POMS to insist that anybody who voluntary turns down Medicare hospital benefits (even while still paying full Medicare taxes) must be denied the Social Security benefits which they have earned through a lifetime of work – and, worse, must pay back any SS payments they already have received. The POMS was issued without benefit of formal rulemaking, without public comment or review. It cites no specific legislative authority for tying the two sets of benefits together, nor does it offer a reasoned explanation for doing so.

The plaintiffs want to keep their private insurance, but will not be allowed to do so if they receive Medicare. The feds say they *cannot* refuse those public benefits: The government argues that a law saying a citizen shall be “entitled” to Medicare benefits effectively means that he should be “required” to accept them. This, of course, is nonsense. Hence the lawsuit.

Taxpayers should eagerly support this lawsuit. As their petition notes, the plaintiffs “concede that they must continue to pay Medicare taxes on all their earned and investment income even after retirement, for which they will receive in exchange nothing at all. Their opting out of Medicare Part A provides a windfall for the government and other Medicare participants, even if the Petitioners are allowed to keep all of their Social Security benefits.”

Interestingly, here is where this case intersects with part of the ObamaCare decision. While most of the ObamaCare focus was on the issue of the “individual mandate” to purchase health insurance, the court ruled 7-2 to strike down (and rewrite) another part of the law – namely, the requirement that states expand their Medicaid programs, or else lose existing Medicaid payments from the national government. The Supreme Court ruled that to condition an existing benefit on acceptance of a new benefit/obligation was, in effect, to coerce the states into something they otherwise would not want, “like putting a gun to the head” of the states.

Or, as the new petition puts it, if “a robber gives you a choice between your money and your life,” that's not *really* a choice – and neither are the sorts of coercion involved in both the states' Medicaid dilemma *and* the citizens' decision whether to forfeit potentially hundreds of thousands of dollars of SS benefits due to this moronic POMS rule.

The new petition makes a strong case that the same principles governing the decision to strike down the coercive parts of ObamaCare's Medicaid provisions also should apply to the government's attempt to force citizens to accept Medicare coverage they don't want. “In neither

case,” write the plaintiffs, “may the government constitutionally ask a party to sacrifice one entitlement for the refusal to accept a second.” The case may be even stronger here because the government must acknowledge that the plaintiffs’ desire to decline Medicare benefits denies no benefit to any *other* citizen, or to the government itself except for a weak claim of administrative convenience. To quote the petition, “Why then kick them in the teeth when the waiver they seek harms no other person or program?”

To help carry this new argument, the plaintiffs have added famed law professor **Richard Epstein** to their legal team. Epstein is an expert in the various legal areas that intersect in the argument that so adroitly (and convincingly) makes use of the ObamaCare decision; his writings on such topics have been cited favorably by the Supreme Court in several instances. In keeping with his academic writings, the plaintiffs make a key point about the dangers of unfettered government power.

There are, they write, “inherent dangers in the state’s undisputed ability to exert monopoly power against its citizens and all other persons subject to its control. That risk of the abuse of state power reaches its zenith when government officials have the combined powers of taxation and regulation at their disposal. The Petitioners have been subject to this double-barreled attack, when their sole supposed wrong has been to refuse to join in Medicare Part A on turning age 65.”

This is a petition the Supreme Court should grant – and a rule it ought to eviscerate.