SUPREME COURT OF THE UNITED STATES

No. 98–1109

DONNA E. SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL., PETITIONERS *v.* ILLINOIS COUNCIL ON LONG TERM CARE, INC.

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

[February 29, 2000]

JUSTICE STEVENS, dissenting.

While I join JUSTICE THOMAS' lucid dissent without qualification, I think it worthwhile to identify a significant distinction between cases like *Weinberger* v. *Salfi,* 442 U. S. 749 (1975) and *Heckler* v. *Ringer,* 466 U. S. 602 (1984), on the one hand, and cases like *Bowen* v. *Michigan Academy of Family Physicians,* 476 U. S. 667 (1986), and this case, on the other hand. In the former group, the issue concerned the plaintiffs' entitlement to benefits; in the latter two, the issue concerns providers' eligibility for reimbursement. The distinction between those two types of issues mirrors a critical distinction between the Social Security Act, 42 U. S. C. §405, and the Medicare Act, 42 U. S. C. §1395ii.

Disputed claims for Social Security benefits always present a simple two-party dispute in which the claimant is seeking a monetary benefit from the Government. A proceeding under §405 is correctly described as an action "to recover on any claim arising under this subchapter." 42 U. S. C. §405(h). Disputed claims under the Medicare Act, however, typically involve three parties– the patient, the provider, and the Secretary. When the issue involves a dispute over the patient's entitlement to benefits, it is fairly characterized as an action "to recover" on a claim

that is parallel to a claim for Social Security benefits. The language in §1395ii that makes §405(h) applicable to the Medicare Act "to the same extent as" it applies to the Social Security Act thus encompasses claims by patients, but does not necessarily encompass providers' challenges to the Secretary's regulations.

In *Ringer*, the Court, in effect (and, in my view, erroneously), treated the patients' claim as a premature action "to recover" benefits that was subject to the strictures in §405(h). See *Ringer*, 466 U. S., at 620. But in this case, as in *Michigan Academy,* the plaintiffs are providers, not patients. Their challenges to the Secretary's regulations simply do not fall within the "to recover" language of §405(h) that was obviously drafted to describe pecuniary claims. The incorporation of that language into the Medicare Act via §1395ii provides no textual support for the Court's decision today. Moreover, contrary to the Court's "Pandora's box" rhetoric, *ante*, at 14, adherence to the plain meaning of "to recover" would not make it necessary for the Court to revisit any of its earlier cases. For this reason, as well as the reasons set forth by JUSTICE THOMAS, I find nothing in the relevant statutory text that should be construed to bar this action.