



**FOR IMMEDIATE RELEASE**

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## **NCLA Asks Third Circuit to Rule Against HHS's Coercive Medicare Drug Price 'Negotiation' Program**

*Bristol Myers Squibb Company, et al. v. Xavier Becerra, et al.*

**Washington, DC (July 19, 2024)** – Today, the New Civil Liberties Alliance filed an *amicus curiae* [brief](#) with the U.S. Court of Appeals for the Third Circuit in *Bristol Myers Squibb Company v. Becerra*. NCLA urges the Third Circuit to rule it is unlawful for the Department of Health and Human Services (HHS) to hold a company's business hostage until it surrenders its constitutional property rights. NCLA's brief explains how the law at issue violates the "unconstitutional conditions" doctrine, which prevents the indirect trampling of constitutional rights.

Two years ago, Congress enacted the Inflation Reduction Act of 2022, part of which sought to lower Medicare drug costs. Instead of achieving this important goal lawfully, it chose an approach that cannot be reconciled with our Constitution. The Medicare cost reduction program's goal is to force pharmaceutical companies to sell their products at less than market value. It cannot do so directly without violating the Takings Clause of the Fifth Amendment. So, it tells companies: Either forfeit your constitutional right or pay excise taxes and penalties on your products that are so draconian they will destroy your business. In other words, as clichéd mafia movies might put it: "Nice business you got there; Be a shame if anything happened to it." The U.S. Supreme Court has already spoken to this type of quintessentially underworld behavior, choosing the descriptive word "extortion."

It may be politically popular, albeit short-sighted, to curtail the constitutional rights of big companies that lay golden eggs, but if Congress can do this to the pharmaceutical companies, then it can do it to mom-and-pop businesses, too. NCLA knows Americans deserve better than a Congress that engages in extortionate behavior. But more importantly, they have a *right* to be free of even sophisticated attempts to undermine our Constitution.

### **NCLA released the following statements:**

"Constitutional rights are not annoyances for Congress to evade through sophisticated indirection and manipulation. They are to be honored frankly and in full. Lowering health care costs is a laudable goal, but subverting the Constitution to get it done is a price too high to pay."

— **Daniel Kelly, Senior Litigation Counsel, NCLA**

"The unconstitutional conditions doctrine prohibits the government from using 'consent' to describe clearly lawful market participation as a fiction to mask this scheme of extortionate takings."

— **Peggy Little, Senior Litigation Counsel, NCLA**

"The Constitution does not permit Congress to use a form of extortion to do indirectly what the Constitution forbids it from doing directly. The Third Circuit should make that clear and rule against HHS."

— **Andrew Morris, Senior Litigation Counsel, NCLA**

**For more information visit the *amicus* page [here](#).**

## **ABOUT NCLA**

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA's public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans' fundamental rights.

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