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In the

Supreme Court of the United States

JOSEPH A. CALIFANO, JR., SECRETARY OF HEALTH, EDUCATION AND WELFARE,

APPELLANT,

V.

No. 76-860

JOHN A. JOBST,

APPELLEE.

Washington, D. C.
October 4, 1977

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JOSEPH A. CALIFANO, JR., SECRETARY OF HEALTH, EDUCATION AND WELFARE, Appellant, v. JOHN A. JOBST, Appellee.	No. 76-860

Washington, D.C.
Tuesday, October 4, 1977

The above-entitled matter came on for argument at 10:04 o'clock a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice
JOHN PAUL STEVENS, Associate Justice

APPEARANCES:

STEPHEN L. URBANCZYK, Assistant to the Solicitor General, Department of Justice, Washington, D.C. 20530; for the Appellant.

JEROME D. RIFFEL, Esq., 1103 Grand, Third Floor, Kansas City, Missouri 64106; for the Appellee.

C O N T E N T S

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear first this morning No. 76-860, Califano against Jobst.

Mr. Urbanczyk, you may proceed whenever you are ready.

ORAL ARGUMENT OF STEPHEN L. URBANCZYK, ESQ.,

ON BEHALF OF THE APPELLANT

MR. URBANCZYK: Mr. Chief Justice, and may it please the Court:

This case is here on appeal by the Secretary of Health, Education and Welfare from a judgment of the United States District Court in the Western District of Missouri. The case generally involves entitlement provisions of Section 202(d) of the Social Security Act. Under Section 202(d), as the Court may recall from its consideration of the same statute two terms ago in Mathews v. Lucas, insurance benefits are provided to the children of a wage earner who himself is receiving old age or disability insurance benefits or who has died fully or currently insured under the act.

This is the second time this case has come to this Court. As I will explain in a minute, the insurance provisions that are at issue in this case caused a termination in appellee's child's insurance benefits in 1970 when he married. Appellee instituted this law suit to challenge the discontinuance of his benefits on the grounds that the provisions created classifications that violated the Due Process Clause of

the Fifth Amendment. Originally the District Court agreed with appellee and declared the statute's classifications unconstitutional as applied.

At the time of that initial judgment in early 1974 the record did not reflect that although appellee's benefits were terminated--social insurance benefits were terminated--he and his wife nevertheless were receiving benefits under another title of the Social Security program, Title XVI, the new supplemental security income program, and that those benefits were only marginally less than the amount of benefits he and his wife would have received had his child insurance benefits not been discontinued.

Because of the deficiency in the record when the Secretary first appealed to this Court, the Court vacated and remanded for reconsideration of the case in light of these new circumstances. On remand the record was supplemented by stipulation, but the District Court reinstated its original judgment, holding that the supplemental security income program was irrelevant to appellee's claim.

The Secretary appealed a second time, and that is the present posture of this case as the Court considers it.

Let me describe briefly the provisions of Section 202(d) that are at issue in this case and their effect on appellee. Among other entitlement provisions of Section 202(d) the applicant for child's insurance benefits--that is, the son or

daughter of a wage earner--must be unmarried. Appellee was unmarried in 1957 when he originally applied for benefits upon the death of his father. The other eligibility requirements of Section 202(d) include the requirement that the child be, at the time of his application, dependent upon the wage earner. That was the requirement that the Court considered in Lucas. And also that at the time of the application the child be either under 18 or a full-time student under age 22 or that the child be disabled, the disability having begun before the child became age 22.

Regarding the benefits of the disabled child, so long as the disability began before age 22, benefits were continued without regard to age. Appellee, Jobst, for example, is a person who has been disabled since birth. And he was therefore eligible to receive insurance benefits even though he was 25 when his father died. In contrast, the benefits to non-disabled children are terminated when the child attains the age of 18 or 22, depending on whether or not he is a student.

Q Counselor, do you know whether there are many marriages each year between insured disabled persons and uninsured disabled persons?

MR. URBANCZYK: Mr. Justice Blackmun, the record does not show the numbers that are involved in this case, and I am not aware of the numbers. I suspect--and this is confirmed by the Social Security Administration--that the numbers are very,

very low. But I do not have exact figures.

The statute does provide that there are certain events that terminate child's insurance benefits. When the non-disabled child reaches a certain is age one we just mentioned. Death is another. The event we are concerned with here is marriage. The statute provides, with one narrow exception, that all child insurance beneficiaries, whether they are disabled or non-disabled, student or non-student, lose their entitlement to benefits when they marry. That is what happened here.

Q If that stopped there, would it be constitutional?

MR. URBANCZYK: Yes, Mr. Justice Blackmun. As I will go on to argue, the general termination rule is itself rational; and because Congress amended the statute in 1958 to provide a limited exception for certain disabled children does not change that analysis. It simply introduces a new element into the inquiry. And, as we have explained in our brief, the classification created by that narrow exception is rational. There was a reason for Congress to treat that special class of beneficiary under Title II of the act and not appellee's situation.

When child's insurance benefits were first provided, there was no narrow exception to the general termination rule. In 1958 Congress amended the statute to provide that benefits would not be discontinued when a disabled child's insurance beneficiary married an individual who also was entitled to

insurance benefits under the act. In those cases the amendment provided that marriage would not terminate benefits. I will explain Congress's reason for enacting that narrow exception later. But it is relevant here to know only that the rationale or the amendment does not cover appellee. Appellee is a disabled child's insurance beneficiary or was a disabled child's insurance beneficiary. But his wife was not an insurance beneficiary under the act. His benefits, therefore, like the marriage of most other child's insurance beneficiaries, were terminated because of his marriage.

Central to the District Court's reasoning in this case--

Q His wife was and is disabled?

MR. URBANCZYK: That is correct. That was central to the District Court's analysis in this case, that his wife is disabled.

Q And the reason that she is not a beneficiary is simply that her parent was not covered; is that it?

MR. URBANCZYK: That is right. Her parent was not an insured wage earner and therefore she was not entitled to benefits under Title II of the act by virtue of her mother or father. That was central to the District Court's analysis in this case--that is, that his wife was disabled and unable to provide support for him. The court suggested that termination is rational where the beneficiary marries someone who is able

to support him. But where the beneficiary marries someone who cannot support him the Court reasoned the need for support continues and so, as a constitutional matter, must benefits continue.

The record does reflect that Sandra Jobst, appellee's wife, is disabled and unable to provide support. I hasten to point out that it is because of that disability and because of their need for assistance that Sandra and John Jobst now receive a monthly benefit under the supplemental security income program. And, as I mentioned--

Q This is part of the same act, is it?

MR. URBANCZYK: Yes, it is part of Title XVI of the Social Security Act. And the benefit provisions at issue in this case are Title II. It is the same act. It is a form of federal relief.

Q What is the difference in amount?

MR. URBANCZYK: The difference in amount that the record reflects in the stipulation set forth in our appendix, Mr. Justice Brennan, is that at the time that stipulation was entered into there was approximately a $20 difference. That is, Sandra and John Jobst were receiving $20 less than they would have received.

Q Per month?

MR. URBANCZYK: Per month.

Q Does that condition obtain today?

MR. URBANCZYK: There has been some change in circumstances which is not reflected on the record. I understand from appellee's brief that Sandra and John Jobst are separated and now divorced. And I understand from the Social Security Administration that that has caused an increase in both of their individual rates for supplemental security income. That is, when they were married, they were receiving a couple rate which per person was less. Now that they are separated, the per person supplemental security income is increased.

Q Under the general rule of the statute that terminates benefits upon the marriage of the beneficiary, if there is a subsequent divorce within the period that the beneficiary would be eligible--i.e., under 22 or under 18, depending upon whether he is a student or a disabled person--does the statute provide that the former benefits resume?

MR. URBANCZYK: No, it does not, Mr. Justice Stewart. There is a limited reentitlement provision, which is Section 202(d)(vi), and I think the only circumstance in which a person who loses entitlement can then be reentitled is if he passes the age 18 and then becomes a full-time student. He can then receive benefits from the time he becomes a full-time student until age 22.

Q But there is no reentitlement after marriage and divorce?

MR. URBANCZYK: After marriage there is no reentitlement after marriage.

Q Or the death of the spouse?

MR. URBANCZYK: Or the death of the spouse; that is correct. That is correct. Only a very narrow reentitlement provision.

I will discuss the significance of SSI in a moment. But for now I would like to argue that even if SSI were not in existence, the statutory insurance provisions that issue in this case are constitutional. In holding to the contrary, the District Court reasoned that or drew significance from the fact that appellee remained needy after his marriage. But in so reasoning, I think the court fell victim to misunderstanding both the nature of Title II of the act and the requirements of the Due Process Clause.

Under Title II of the act an individual's actual need in a welfare sense has no part in the allocation of benefits. Benefits are not paid on the basis of an individual's need. Rather, Title II is a program of social insurance designed to protect the wage earner and his family from a loss of income occasioned by the wage earner's disability, retirement, or death. Benefits are paid to members of the wage earner's family because they are presumed to be dependent on the wage earner and they are the ones who are most likely to suffer from a loss of the wage earner's income.

Thus, it is this relationship of dependency with the wage earner that is the critical factor in determining an individual's entitlement to what we call secondary insurance benefits--that is, benefits payable to the individual member of the wage earner's family on the basis of the wage earner's account. These propositions are hardly new to this Court. Indeed, in stating them I have been paraphrasing from many of the Court's recent decisions, decisions in cases such as Weinberger v. Salfi, Mathews v. Lucas, Califano v. Goldfarb, Mathews v. de Castro. These cases all stress that Title II benefits are not paid on the basis of individual need but instead are paid on the basis of presumed need, of the family's presumed need, an individual's membership in that family, and his presumed dependency on the wage earner's income. That is why in de Castro, where the Court considered claims of the divorced wife for benefits under the act the Court said that arguments concerning the divorced wife's economic situation were, quote, "hardly in point," close quote. Divorce works a substantial change in the relationship of dependency between the wage earner and spouse. And that was sufficient, in the Court's view, to sustain a different treatment of divorced wives. The same analysis is appropriate here.

Wholly aside from a concept of economic need, upon marrying a child normally departs the wage earner's family, which Title II was designed to protect, and he or she starts

a new family. Like divorce for a wife, a child's marriage generally changes or reduces the relationship of dependency between a wage earner and his parent.

Q But it is not normal that the wife takes care of the husband, is it?

MR. URBANCZYK: Pardon me, Mr. Justice Marshall?

Q It is not normal that the wife takes care of the husband, is it--which would be required in this case, would it not?

MR. URBANCZYK: It is normal I think, no matter whether it is the--

Q When did it become normal, right now?

MR. URBANCZYK: Pardon me?

Q It is normal that a wife takes care of her husband?

MR. URBANCZYK: It is normal that when a person marries, the relationship of dependency between the child and his parents is reduced or ended altogether. And I think that is true without regard to whether or not the wage earner's child is a woman or a man.

Q The Court is prepared to emphasize the importance of not thinking in stereotypes in this area, is it not?

MR. URBANCZYK: That is correct. Especially--

Q The stereotypical picture is a husband supporting his wife.

MR. URBANCZYK: That is right.

Q What is the difference between that stereotype and the stereotype that when you get married, you leave home? I guess it is whichever one you want.

MR. URBANCZYK: I think in allocating benefits under Title II, Congress has designed an insurance program, not a welfare program or a general assistance program, and has allocated benefits on the basis of these broad presumptions, which this Court time and time again has sustained as constitutional and as a reasonable way of allocating insurance benefits.

Q To balance what the Court has said about stereotype, the Court has also said many times that Congress is entitled to legislate on the basis of the generality of human experience, has it not?

MR. URBANCZYK: That is correct. I think the term in Lucas was reasonable empirical judgments about the likelihood of dependency and the likelihood of an event's effect upon dependency. And that is what Title II is really all about in so far as secondary insurance benefits are concerned. That is, the likelihood of dependency upon the wage earner versus membership in the wage earner's family. And this Court time and time again has said that the Due Process Clause does not require case by case adjudication of that. Broad legislative classifications such as are at issue here are necessarily only

imperfect substitutes for case by case adjudication. This Court in cases such as Lucas and de Castro, however, has held that these broad legislative classifications are valid so long as they reasonably reflect the likelihood of dependency. And that is what the general termination rule here does. It reflects the common experience view that marriage normally ends or substantially reduces a child's special need for parental support. And that is sufficient to sustain the constitutionality of the general termination rule.

The District Court and the appellee argue that even if the general termination rule is rational, the narrow amendment for certain disabled children creates an unconstitutional distinction. Remember in 1958 Congress enacted a narrow exception to provide that benefits not be discontinued when a disabled child's insurance beneficiary marries someone who also is entitled to insurance benefits under the act. And the argument in essence is that having decided to extend benefits to that class of beneficiary, Congress is also constitutionally required to extend benefits to appellee.

Q The argument is that it is constitutionally under-inclusive; is that it? It is unconstitutional because it is under-inclusive?

MR. URBANCZYK: Yes, that is correct because there is no real distinction between appellee and the class of beneficiaries benefited by the amendment. And, therefore, it was

irrational to extend benefits to one and not the other.

Q Not to include the--

MR. URBANCZYK: That is correct.

As we explain in our brief, the narrow exception to the general termination rule was part of a broad set of amendments in 1958. Several other provisions of the Social Security Act providing benefits to members of the wage earner's family require that that beneficiary be unmarried or unremarried, the widow or the widower, for example, of the wage earner. The 1958 amendments added a savings clause to each of these provisions, providing generally that insurance beneficiary's benefits are not discontinued when they marry another ansurance beneficiary under the act.

The principal reason for these amendments is explained in the legislative history. Congress understood that a marriage between two insurance beneficiaries caused a simultaneous termination of benefits. If, for example, an aged widow married a disabled child's insurance beneficiary who, remember, is paid benefits without regard to age, both of their benefits would be terminated under the act as it stood prior to 1958. Congress recognized that this was a special form of hardship. And I say special because it was uniquely caused by the internal workings of the Social Security Act. So, Congress determined to remedy the problem or the perceived hardship by amending the act rather than establishing a new program. And it

was easy to remedy this problem within the existing benefit structure without added administrative cost or without alteration of the method of allocating benefits under Title II. Marriages between insurance beneficiaries was a readily identifiable situation. Both of these persons' status and situation was known to the Social Security Administration because they were already receiving benefits under the act.

Moreover, the problem presented by these marriages could be readily resolved by simply amending the statute to provide that benefits not be discontinued.

In short, these amendments were viewed as an easy cure to what was percaived as a flaw in the internal workings of the system.

Appellee did not marry another child's insurance beneficiary. Therefore, to the extent that he remained needy. his continued need was not occasioned by circumstances that Congress sought to remedy in 1958. It is of course a cardinal principle of constitutional adjudication that Congress may constitutionally spend money to solve one problem and not another so long as the spending decision is not arbitrary. Here there was a good reason for resolving the problem of marriage between two insurance beneficiaries under Title II of the act but not resolving the problem created by appellee's situation.

As I mentioned, it was easy to identify the marriage

of insurance beneficiaries. But appellee's need, which arises from his marriage to someone who is unknown to the Social Security Administration could not be identified without substantial alteration in the method of allocating benefits that is presently employed in Title II. Title II uses broad presumptions as to dependency, as we said, and that method would not identify appellee. I suppose it would also not be a sufficient indicator of need that appellee's wife is disabled since presumably disabled people may have resources or be able otherwise in some other way to provide support.

So, what would really be needed is a very close analysis of marriages of all insurance beneficiaries to determine who was needy and who was not. And presumably that inquiry would call for--that determination would call for a close detailed month-by-month inquiry into eligibility.

Moreover, Title II would have to be further altered to pay these persons on the basis of these individualized determinations of need. And, as I have explained today and as I have explained at length in our brief, Title II is simply not set up for that purpose, and the Constitution does not require that it be altered to accommodate that purpose.

Instead, without working such a drastic change in Title II, Congress instead has combined general assistance programs to work in tandem with the insurance provisions of the act by providing for the relief of need that is not covered

by insurance programs. Here in particular under the supplemental security income program provided for in Title XVI of the act, benefits are allocated on a basis of an individual's need. Appellee's case rests ultimately on the fact that he is a needy person. But the supplemental security income program has taken up where Title II has left off in providing appellee with a form of federal relief. I think when seen in this context there can be little doubt that appellee has been treated rationally by the Social Security program and that the Title II provisions at issue in this case are constitutional.

Q You are satisfied that that is all you need to indicate is rationality?

MR. URBANCZYK: Yes, Mr. Justice White. I think that so long as the purpose is permissible--and I do not think there is any issue about that here--if the means are rationally related to those end, the Court has said that the social welfare programs or classifications dealing with economic and social welfare issues can be sustained as constitutional.

Q It does deter marriage, I would suppose. I mean, a general marriage rule would deter marriage, would it not?

MR. URBANCZYK: It deters marriage I suppose in the same sense that other laws which affect an individual and whether or not he gets married--

Q So, you do not think he needs to pay much attention to the validity of your general marriage rule or

disqualification of marriage?

MR. URBANCZYK: No. I think the focus--appellee's and the District Court's focus--is on the distinction created by the narrow exception.

Q So, your answer is, "No, you do not need to pay any attention to that"?

MR. URBANCZYK: No, I do not need to pay any attention to that, although I do think that whether they like it or not, appellee's argument implicates that general termination rule. I think we necessarily had to address the issue in our brief and in this case.

Q Is it not sometimes true that two individuals who marry, each having an income, will pay a higher tax than they did unmarried, separately?

MR. URBANCZYK: The tax law was something I had in mind when I was trying to answer Mr. Justice White's question.

Q I suppose a state law that permits a minor to renounce his contract, so long as he is under the age of minority or not married, might be said to deter marriage too.

MR. URBANCZYK: Yes, I think that that is correct.

Q I was not suggesting that the rule would be invalid generally. I just suggested it might raise the level of scrutiny so that you have to make individual determinations of need rather than have either an over-inclusive or an under-inclusive classification.

MR. URBANCZYK: I do not think so, Mr. Justice White. I think de Castro, it could be said, implicated the same kind of personal decisions, the divorce or continued marriage of an individual; and certainly the unanimous Court there did not subject the classification to any higher form of scrutiny than that which I have identified today. This is not to say that the statute will not survive a higher form of scrutiny. But I think that we are talking here about the same--

Q But you might have some trouble?

MR. URBANCZYK: No, I do not think I would have trouble, but I have not really, frankly, thought about it.

Q You certainly have given enough attention in your brief to the validity of your underlying marriage rule.

MR. URBANCZYK: That is right, I think, because really what is at the bottom of the District Court's concern is the fact that the underlying assumptions of the general termination rule may not have worked in this case. Appellee may have married someone who was not able to provide support for him. And I think that portion of our brief and the portion of our argument today points out that that is largely an irrelevant consideration when we are caught talking about insurance benefits and Title II of the act.

Q What would happen if there is an annulment?

MR. URBANCZYK: That is a situation which the Social Security Act does not address. I do not know the legal effect

of an annulment. If the marriage were void--

Q From everything you have said up till now, if there was an annulment, he would be out of it.

MR. URBANCZYK: That is correct. Annulment is a special circumstance that I had not given explicit consideration.

Q But he would be out?

MR. URBANCZYK: I would think so, unless he had a good lawyer who can make an argument that annulment voided the statute ab initio so that in a sense, under the law, he was never really married.

Q That is what annulment means.

Q Mr. Urbanczyk, is the SSI program relevant to your constitutional argument at all? I do not understand it to be, but I just want to be sure.

MR. URBANCZYK: No. I certainly think the insurance provisions at issue can be sustained as constitutional, should be sustained, without reference to the SSI program. I think the existence of the SSI program, however, underscores the purpose of Title II and how the Social Security program interrelates, the different programs interrelate. And I certainly think that to the extent that appellee's claim is based on the fact that he is needy, SSI's benefits provide relief for that form of need.

Q But there was no constitutional requirement that the SSI program be adopted in order to save this particular

statute, if I understand you.

MR. URBANCZYK: No. I think the remand in the first instance was largely to supplement the record to bring that into the case, but our position is that the statute would be constitutional with or without the SSI program.

We therefore respectfully submit that the judgment of the District Court be reversed. Thank you.

MR. CHIEF JUSTICE BURGER: Mr. Riffel.

You may proceed.

ORAL ARGUMENT OF JEROME D. RIFFEL, ESQ.

ON BEHALF OF THE APPELLEE

MR. RIFFEL: Mr. Chief Justice, and may it please the Court:

I represent John Jobst. Mr. Jobst maintains that the decision of the District Court on remand should be affirmed. I think at the beginning there are certain things that we want to emphasize. Number one, the holding of the District Court is a very narrow one. It is to the effect that 202(d) puts child's insurance beneficiaries who are disabled into two classes. One class totally disabled recipients who marry other totally disabled recipients and continue to receive Social Security benefits, and a second class which marries totally disabled non-recipients--in this case a recipient of welfare benefits--and for this reason alone perpetually loses his right to life-time Social Security benefits. As was admitted by appellant,

this termination is perpetual. Mr. Jobst, therefore, by the statute is relegated to a lifetime of receipt of welfare benefits. This is the case regardless of whether you call it supplemental security income or whether it is federally assisted welfare disability benefits under statutes of the State of Missouri. It is still welfare. It is still need based.

Q Mr. Riffel, could I interrupt you? Is it really quite correct to say the statute makes the classification you describe? There is nothing in the statute that places people who married totally disabled, non-recipients in a special category. There is a broader category of which they are a part; is that not correct?

MR. RIFFEL: Yes, Your Honor. I think that the statute can be read to do specifically that, as was read by Judge Oliver in Section 202(d)(5)(B); it specifically speaks of disabled child recipients who do marry other disabled child recipients. So, under that specific provision I think the holding of the Court could be very narrowly limited to that Section B. And perhaps the constitutionality of Section A, which refers to general marriages--like someone receiving old age benefits--could be left alone. That would be one possibility.

Q It creates the B classification: Those who marry totally disabled dependents who are covered. But there is no classification in the statute of persons who marry totally

disabled spouses who are not receiving benefits. It is people who marry anyone who is not receiving benefits, is it not? Is that not the classification?

MR. RIFFEL: If you look at the broadest spectrum, I think it is, yes.

Q That is the line the statute draws. You are saying that within that broad category there is this smaller category.

MR. RIFFEL: Yes. The statutory scheme, as a whole generally provides anyone who marries another recipient who is eligible under that statute continues to receive benefit. All I am saying is that there is a narrower provision, which I think is what the District Court was looking at in a specific case.

Q Your submission is that the District Court's decision should not be understood to affect the validity of the general provision of the Social Security Act?

MR. RIFFEL: Yes, sir.

Q That would terminate benefits for a beneficiary of the category into which your client falls who marries a wage earner or anybody else who is just simply not disabled; is that right?

MR. RIFFEL: Yes, sir, that is my precise point.

Q It does make it rather narrow.

MR. RIFFEL: Another point we want to emphasize is that

there is a substantial difference in benefits. At the time of the remand of this case there was considerable disagreement between the government's position and our position as to just what effect SSI and Social Security benefits had as compared to one another on the level of benefits. The government chose to compare that as to the family. Mr. Jobst, the dependent of an insured wage earner, however, admittedly was receiving far less than he would have had he been a Social Security recipient. The reason for this is that SSI is based on need. That is, for every $2 earned above $80, the benefits are reduced by a total of $1. Under Social Security, Mr. Jobst's assets are unlimited. He could become a millionaire by windfall and still receive benefits. Under SSI, the most Mr. Jobst can have in assets is $2,250 and remain eligible.

Another important point is that Congress has in fact discriminated at the level of benefits between Social Security and supplemental security income from an historical perspective. This is clearly shown by the fact that at the time of remand in the entry of the stipulation which was the record on remand in this case, there was a difference of some $9,000 in the level of benefits received by Mr. Jobst as compared to what he would have received had he continued receiving Social Security benefits.

I also want to emphasize that even had Mr. Jobst remained married--which he did not, his marriage has now been

dissolved, he has no further relationship to Sandra Jobst, he is now living alone--that even had he remained married, an amount of $20, which it was at that time, per month for a person or family with an income so low can be a huge amount of money for that family.

Just what did the District Court do? I do not think it was a very strange holding. I do not think the court deviated in any way from any current standard established by this Court. Rather, I think that Court was looking to the central question under the Social Security Act, that question being, Was that person dependent? Did he remain dependent on the insured wage earner? Was that terminating event reasonable?

Q The District Court's constitutional decision was made in January of '74, was it not?

MR. RIFFEL: Yes, Your Honor.

Q That was before our decision in Weinberger, before our decision in Lucas, and before our decision in de Castro?

MR. RIFFEL: Yes, Your Honor, that is correct, and you would be a better judge than I of this. But my understanding of your current opinions are that you can still apply the standards established in Richardson v. Belcher and Flemming v. Nestor--that is, imposing the Equal Protection standards of the 14th Amendment on the 5th Amendment as to federal legislation and stating that an utterly irrational

discriminatory classification is barred by the 5th Amendment. I do not believe that those more recent cases change that standard. And the District Court specifically cited Richardson v. Belcher and Flemming v. Nestor. This was the standard that was applied and, under my understanding, this is still the proper standard applied by the Court.

This is also consistent in the view of Mr. Jobst with the case of Mathews v. Lucas and other more recent cases which have consistently stated that it must be judged against the standard of the actual purpose of Congress in enacting child's insurance benefits.

What was that standard? Why was it enacted? It is quite clear that at the time of the original enactment of that act in 1956 the Congress had two objectives in mind. The first objective was to assure that dependents of insured wage earners had a certain amount of security and income in the event of the death, disability, or retirement of the insured wage earner.

The second reason, which we submit is equally important and under which there is as much discrimination in this particular case, is to assure the American worker that in the event of his retirement, death, or disability, a disabled child who is unable to provide for himself will be taken care of under the child's insurance provision. That original act requires that the party establish dependency on that insured

wage earner in order to be eligible.

Q Is not the language of Congress one of the best evidences of the purpose that it had in mind?

MR. RIFFEL: Yes, Your Honor. I think that you have to go first to the statute itself and what it actually stated.

Q And here the statute itself clearly bars your client, does it not?

MR. RIFFEL: The statute itself--we argued at one point that under what we called I think a liberal reading of the statute that you could state the Congress never intended this party to lose his benefits upon marriage. I think that that could be read into the act and that anything that happened in this case in terms of discrimination I think may have been a non-intentional application of the act, something they never thought of. But, on the other hand, under a strict reading of that law, yes, it is clear that as it was originally enacted and as it exists, it does terminate benefits.

But, on the other hand, the legislative history of this law is quite clear. We are not talking about a statutory scheme which has been in effect for a certain period of time. Social Security benefits have existed since the 1930s.

Q Are you arguing that the legislative history is contrary to the statutory language that bars your client?

MR. RIFFEL: Yes, sir, I think it is.

Q Which do you take, the express legislative

language or legislative history in a case like that?

MR. RIFFEL: I think any time you have a situation, Your Honor, where a statute excludes a certain class that you have to look at the legislative history and the central purpose of that legislation. It is not a question of what the statute says. It is a question of whether that statute is constitutional and whether it is proscribed by the 5th Amendment.

Q The question is whether what the statute says is constitutional.

MR. RIFFEL: Yes, sir, it is clearly the question.

Q You go to the legislative history only if the statute is ambiguous; is that correct?

MR. RIFFEL: I think that is correct, yes. I think this Court has said time and again that you can look at the legislative history--

Q Only if the statute is ambiguous.

MR. RIFFEL: Sure, but it still has some weight.

Q What about the statute is unconstitutional, the wording of the statute?

MR. RIFFEL: The wording of the statute? Your Honor, in my view, if you look at the purpose of the statute--

Q If you look at the wording--what about the wording is unconstitutional?

MR. RIFFEL: The wording simply states that unless the

party marries someone who also received disability benefits under Section B, that they are to be terminated. And I think that fails to recognize the fact that there are many recipients who are suffering the same hardship as a result of marriage who are disabled as are covered by the statute.

Q Does that make it unconstitutional because it is under-inclusive?

MR. RIFFEL: I do not think it makes it unconstitutional, no, sir, if it is under-inclusive. I think under Weinberger--

Q Are you not really trying to get another exception in the statute, to write it in?

MR. RIFFEL: No, sir. I think this is no more an extension of the law than Jiminez v. Weinberger. What we are saying is--

Q In your case you want the statute to say that when a person marries and is divorced, he comes back to the original status; is that not what you want us to write into the statute?

MR. RIFFEL: No, Your Honor.

Q How else can we cover your man?

MR. RIFFEL: You could just say that that statutory scheme as applied is unconstitutional as to Mr. Jobst.

Q To him because of his peculiar circumstances.

MR. RIFFEL: Because of his peculiar circumstances

and because of the peculiar circumstances of a very small class of persons just like him whose benefits are terminated, who have the same continuing need for insurance benefits as the other subclass and who are invidiously discriminated against by effect of the statutory scheme. I think that is just fundamental constitutional law applied by this Court.

Q You and I could agree that there might be many such people who, after they are 18 years old, still have the same needs of dependency. Non-disabled children of a deceased wage earner lose their benefits, secondary benefits, when they reach the age of 18, unless they are students. But I suppose you and I could agree that many people over 18 are in the same economic position after their 18th birthday, one day, as they were one day before their 18th birthday.

MR. RIFFEL: Yes, Your Honor, but I think that is a completely different situation. Marriage is terminating an event--

Q A birthday terminates an event too.

MR. RIFFEL: There is no question about it, yes, sir. Numerous things can terminate. But as to this class of disabled persons I think as a reasonable empirical judgment Congress could say that as to a disabled person they very often do not marry people capable of supporting them. In fact, general experience would indicate that they very often marry people like themselves. Most child's insurance beneficiaries,

under the legislative history as stated by Congress, it was anticipated that they would have been disabled from birth, birth defects in this case--

Q The statute provides they must have been disabled before the death or disability of the wage earner, does it not?

MR. RIFFEL: Before age 18, yes, sir.

Q Any time before age 18.

MR. RIFFEL: It could be something like a car accident or something like that. But they were speaking of what they anticipated to be the usual case. For example, both of these recipients suffer from cerebral palsey. They have the identical disease. I have seen both of them with almost the identical disability.

Q Mr. Riffel, you started out by emphasizing the narrowness of the District Court holding. Why would not the District Court's reasoning apply equally to the widower situation? Assume your client were a widower who was drawing benefits and married in one case a person who was getting benefits--then his benefits would continue--in the other case married someone who had cerebral palsey and was not receiving benefits and not able to support the widower. The benefit would terminate. Would it not be equally invalid under your reasoning? That termination would be equally subject to challenge?

MR. RIFFEL: I do not think so because I think you have just an accidental application in the case of--it is not very likely that the widower is going to marry another disabled person. And, under the statute, if a widower does marry another--

Q Maybe not a disabled person, maybe just an older person who is too old to get a job and support him. We are talking about a man losing his benefits. He could very often marry a person of his own age who is unable to get a job to support him, but yet this is not covered by the act.

MR. RIFFEL: I understand that very often old people do not marry, that they just live together because of that in Florida and so forth. But I think there is no such exception as--

Q What is the constitutional difference between that situation and the one before us? I do not quite follow why you would not apply the same reasoning in both cases, whichever way you come out, that is.

MR. RIFFEL: I think if you look at the purposes of the legislation, a disabled child, it is reasonable to assume, is never going to accumulate enough work credits to receive Social Security on his own. He is always going to be disabled. It is not for a short period of time or a relatively short of period of time such as with an older person. We are talking about--

Q By hypothesis. My other example is one where the person is just getting the secondary benefit. By hypothesis it is not a person who has got the Social Security benefit on the basis of his own earnings. Where is the difference?

MR. RIFFEL: I think the difference is that Congress has not recognized marriage as an exception in the cases to which you speak, Your Honor. In the case of child's insurance benefits, Congress has actually said, "Look, we can see that marriage of a person like this does not affect his dependency on the insured wage earner." For example, Mr. Jobst's marriage and his divorce were really unrelated, totally unrelated. Congress recognized that. They saw that hardship. They recognized the hardship of recipients, but there was a sub-class of recipients they left out. By koing so, by taking this specific affirmative action, in my view under a proper application of the 5th Amendment, you have a different situation. You have an actual decision, an actual recognition stated in the statute, actually written in words, as to those specific persons.

Q But is there not the same statement in the statute as to widowers who married covered spouses? Is that not exactly the same--

MR. RIFFEL: I do not know. I did not think it was. I do not think it is. As to a disabled child who marries a widower, his benefits would continue, if that is what you mean.

But I do not think that a widower receiving benefits, who marries a disabled child, necessarily continues to receive his benefits.

Q I thought that in all these secondary benefit situations, if the person who is covered marries another person who is covered, the benefits of both continue, that that is the overall effect.

MR. RIFFEL: My mistake.

Q That is why I suggest that the two cases really are quite parallel. It does not mean you are necessarily wrong. The only thing I question is whether the holding is quite as narrow as you describe it.

MR. RIFFEL: In that event it obviously could be applied under other situations. But I do think that the situation is such that it could be a narrow holding. I think someone else is going to come along and say, "It applies to my situation." I do not think there is any question about that.

The child's insurance provisions then are a mere restatement of the general purpose of the Social Security benefits, and that is to provide a continuing income to the insured worker and his dependents in the event of disability, retirement or death. In this case, the Secretary has placed great reliance on the premise that to promote administrative ease in the administration of Social Security benefits this Court should not look at this provision, should not question

its constitutionality, because this provision is necessary to ease of administration of the act. Under our view, when compared with recent decisions of this case, this is not the case. There are, I am sure, certain presumptions which could be established properly under this act to determine whether Mr. Jobst in fact does still need Social Security benefits as a dependent of an insured worker. But this is not a proper classification.

For example, in the case of Weinberger v. Salfi this Court examined a ninth month duration limitation statute which in effect provided that a survivor and the children of that person of an insured worker must wait nine months following the date of the marriage in order to be eligible for secondary benefits as the survivors of a beneficiary. The Court looked at that duration requirement and compared it to the purposes of the Social Security Act. What the Court stated was that those purposes were related to the dependency of the insured wage earner, that the classifications established must be measured against the dependency of the insured wage earner established, which was reflected by the classifications.

In that case, in the Salfi case, it was clear, one, that Congress had stated a real concern over false claims for benefits where individuals would marry sick insured workers simply because they knew that person soon would be disabled, die or retire, and therefore enable themselves to lifetime

Social Security benefits. This is not the case with child's insurance benefits. Congress had specifically examined this question. It is stated in the legislative history that, one, they need not be concerned with terminations of disability as they were in the case of the other disability provisions for insured workers, the reason being, one, this is a small class of people. There are not just very many disabled children entitled to benefits. Secondly, because of congenital problems and so forth, in most cases the disability will be very apparent. When we compare this with the Salfi case, this is a quite different situation which the Court is faced with than in that case.

There is also the further consideration that the standards of disability must have been very similar. Disability benefits under welfare statutes have been controlled by federal regulations under the Social Security Act for a long time, a long time before the enactment of supplemental security income. Under the supplemental security income program now again the Social Security Administration has access to information on those disability benefits.

And there is a further reason--that under the narrow holding of this Court as to other disabled children, under Section B, in most cases that disability is going to be readily apparent. For example, in this case she was a victim of cerebral palsey. She has been disabled from birth as the

record reflects and as the Social Security Administration admitted. Under an old line of reasoning, going back to Dandridge, this classification simply is not rationally based. On examination of more recent cases of this Court--Jiminez v. Weinberger and Mathews v. Lucas--this discrimination becomes apparent. This discrimination under Jiminez v. Weinberger is clear. In the Jiminez case this Court examined a presumption in the Social Security legislation which denied illegitimate children, some illegitimate children, benefits under the Social Security Act while other illegitimate children and legitimate children under that act were entitled to a presumption of eligibility. I think this case was the origin of the over-inclusive, under-inclusive language which has sometimes been referred to by this Court.

At any rate, under the Jiminez opinion this Court reversed a lower court decision which had stated that this presumption was all right since it was intended to avoid spurious claims, and this Court clearly said it is not subscribed by the 5th Amendment. Why? Because it is irrational, because it is invidious, because the 5th Amendment has teeth, because sometimes the government--maybe not intentionally, I am sure not with an intent. No one sat down and said, "We are going to nail John Jobst. This guy ought to receive welfare." But nevertheless, by effect, that discrimination is invidious. It is not rationally related.

Q Mr. Riffel, could I ask you one question about the Court's relief?

MR. RIFFEL: Yes, sir.

Q As I understand the Court's order, the test of entitlement of your client is whether his spouse was disabled. So that even if your spouse was disabled but not needy--say, she was a wealthy person, had independent means--nevertheless he would recover; is that correct?

MR. RIFFEL: Yes. He would be precisely in the same position as any other Social Security recipient who marries another recipient.

Q So that even under the Court's holding, the test is not one of need?

MR. RIFFEL: No, sir. It is the identical test applied in any Social Security case, Your Honor.

Under the later case of Mathews v. Lucas, this Court sustained a similar administrative aid. Why? Because it gave some chance for those illegitimate children to come in and prove they were still dependent. Therefore, it was reasonably related to the legislative purpose and could be sustained. In this case, we submit this case should be affirmed.

MR. CHIEF JUSTICE BURGER: Do you have anything further?

[Continued on page following.]

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REBUTTAL ARGUMENT OF STEPHEN L. URBANCZYK, ESQ.,

ON BEHALF OF THE APPELLANT

MR. URBANCZYK: If I may, Mr. Chief Justice, two very short points.

First, I would like to confirm, Mr. Justice Stevens, that your understanding of the act with regard to other secondary insurance beneficiaries is correct. For example, take a widower. Those provisions provide in Section 202(f) that if the widower marries, the secondary insurance benefits are terminated. But then there is a savings provision in 202(f)(4) for when the insurance beneficiary marries someone else who is entitled to insurance benefits under the act.

So, contrary to appellee's protestation about how narrow this case is, I think a principle of broad application is involved in this case. Indeed, I think it is broader than that because the District Court's rationale, carried to its logical extreme, as I mentioned in my argument, I think would require Congress to tack a needs test onto all terminating events such as non-disabled children reaching age 18, for example. It is true that there is not a congruence between the District Court's judgment and its rationale.

Q Let me just be sure I understand what you are saying because it is of some importance to me. You are saying that prior to 1958 there was a flat termination when there was a marriage; and after 1958 there are two broad categories. One

is persons who marry other persons who are covered, and the other classification is persons--that is, secondary beneficiaries--who marry persons who are not covered.

MR. URBANCZYK: That is correct, Mr. Justice Stevens.

Q And you should test the statute on the broad classification. I notice, in that event, actually when you have a marriage between two covered persons, if you did not have the 1958 amendments, two people would be affected by the rule.

MR. URBANCZYK: That is correct. As I said, it would cause a simultaneous termination of both of their benefits, and that was the hardship to Congressmen concerned with it.

Also to clarify, appellee mentioned that there was a $9,000 difference in the payments. That is covered in the stipulation at page 15 of our appendix. The $9,000 reflects the amount of secondary child's insurance benefits that would have been paid had these benefits not been discontinued. The Secretary maintains that if that money had been paid, he would be entitled to recoup as overpayment the amount of SSI benefits that have been paid. That is approximately $3,000. The reason it is so low is that from 1970, when appellee married, till 1974 there were no SSI benefits. Appellee was receiving state welfare insurance but not SSI.

For the reasons stated in our brief then, we respectfully urge that the judgment of the District Court be reversed. Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, gentlemen. The case is submitted.

[Whereupon, at 11:03 a.m. the case was submitted.]

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