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## Your Money or Your Wife's?: Social Security Changes Considered

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# Your Money or Your Wife's?: Social Security Changes Considered

by Neal Devins

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**Heckler, Secretary of Health and Human Services**

v.

**Mathews**

(Docket No. 82-1050)

To be argued December 5, 1983

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## ISSUE

Congress's ability to solve the financial difficulties of the social security trust fund is one of several significant issues to be addressed by the Supreme Court in *Heckler v. Mathews*. The *Heckler* case also calls into question how Congress can respond to the judiciary's invalidation of legislation on the grounds that it is gender-based and thus violates the Fifth Amendment equal protection clause. Specifically, the *Heckler* case will determine: 1) whether Congress can protect the expectation interest of retirees by making use of an unconstitutional gender-based classification relied on by those retirees and 2) whether Congress can protect its fiduciary interest in the social security trust fund by way of a "grandfather" severability clause which has the practical effect of denying monetary relief to an individual who successfully challenges the constitutionality of the legislation.

Social security payments are central to the retirement plans of most Americans. According to one study: "For the great majority of Americans, the most important form of household wealth is the anticipated social security retirement benefits." Additionally, since social security is often viewed as a substitute for retirement savings, many people will reduce private savings during their lifetime in anticipation of these benefits. In ensuring the stability of the social security trust fund, Congress can enact legislation to ensure the equitable distribution from this fund. At the same time, Congress must protect the reasonable expectations of individuals affected by its amendment of social security laws. Whether Congress can seek to protect these expectation interests, while at the same time protecting the trust fund, by reenacting an unconstitutional gender-based classification is the subject of *Heckler*.

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## FACTS

The *Heckler* lawsuit involves a government appeal to a ruling that certain portions of the 1977 Social Security Act are unconstitutional — a ruling made by the United States District Court for the Northern District of Alabama.

The Social Security Act provides spousal benefits for the wives, husbands, widows and widowers of retired and disabled wage earners. Spousal benefits are based on the earnings of the retired or disabled wage earner. Prior to December of 1977, the Act demanded that men seeking spousal benefits demonstrate dependency on their wage-earner wives for one-half of their support. Women, on the other hand, could qualify for benefits without having to make a similar demonstration of dependency on their husbands.

In March of 1977, the Supreme Court, in *Califano v. Goldfarb*, (430 U.S. 199, 97 S.Ct 1021, 51 L.Ed. 2d 270 (1977)), held this gender-based dependency test unconstitutional under the equal protection clause of the Fifth Amendment. The Court concluded that the male-only dependency test resulted in the work of females (whose husbands had to prove dependency) providing less protection to their families in the form of benefits than the work of males (whose wives automatically received the government pension). To eliminate this inequity, the Court invalidated the male-only proof of dependency requirement.

In response to this decision, Congress, in December 1977, amended the Social Security Act. First, Congress eliminated the male-only dependency test. Second, Congress enacted a "pension offset" provision which required that spousal benefits be reduced by federal/state government pensions. This offset provision was designed to rectify the substantial increase in social security payments caused by the elimination of the dependency test. According to a Senate report: "[Elimination of the dependency test] result[ed] in 'windfall' benefits to some retired government employees which would [cost the government approximately \$190 million in 1979]." Third, apparently concerned about the effect of the new offset provisions on those persons (women and men who could provide dependency) who had planned their retirements on the assumption that they would receive full unreduced spousal benefits, Congress chose to exclude this group of individuals from the pension offset requirement for a five-year grace period. To effectuate this, Congress incorporated into the offset exception the

dependency test found unconstitutional in *Goldfarb*. Fourth, Congress, recognizing that the dependency test might be invalidated, included a severability clause in the December, 1977 legislation. This provision would have nullified the "pension offset" exception if the dependency test was found unconstitutional in this context.

Robert Mathews, who retired in November, 1977, from his job with the Post Office, challenged the constitutionality of the "pension offset" exception. Prior to retirement, Mathews inquired at the local social security office as to whether he would be eligible for spousal benefits. He was advised that as a result of *Goldfarb*, he was entitled to such benefits without proof of dependency on his wife. Yet, Mathews' December, 1977 application for spousal benefits was ultimately rejected since he did not establish dependency and thus was subject to the offset provision.

Mathews based his challenge to the exceptions clause of the offset provision on three distinct grounds. First, he alleged that the exceptions clause should be interpreted without incorporating the gender-based dependency test. Central to this argument was the fact that the exceptions clause was based on "requirements ... being administered in January, 1977." At that time, the Social Security Administration was delaying any decision on whether to grant benefits until the Supreme Court rendered a decision in *Goldfarb*. Consequently, applications made in January, 1977, ultimately did not require proof of dependency since *Goldfarb* effectively eliminated that requirement. In further support of this claim, Mathews argued that Congress should be presumed to act in accordance with *Goldfarb*. The government sought to counter this claim by introducing a substantial amount — evidence of Congressional reports and Congressional debate — which indicated that Congress sought only to protect the expectation interest of individuals who relied on the male-only proof of dependency statute, not those individuals who, like Mathews, relied on *Goldfarb*. The district court agreed with the government on this issue. Consequently, the Court had to rule on the constitutional equal protection challenge.

Governmental discrimination on the basis of sex is a significant evil protected against by the equal protection clauses (Fifth Amendment equal protection clause for federal action; Fourteenth Amendment equal protection clause for state/local action). Fearful of preventing "the mechanical application of traditional, often inaccurate assumptions about the proper roles of men and women," the Supreme Court demands that a gender-based distinction: 1) serve an important governmental objective, and 2) is substantially related to the achievement of that objective. If these two criteria are not met, the gender-based classification will be found unconstitutional.

Mathews' equal protection challenge to the excep-

tions provision is primarily based on the failure of the gender-based offset exception to serve an important governmental objective. Contrary to this position, the government stressed "the significance of social security benefits to people who had planned their retirements in accordance with pre-*Goldfarb* rules." The district court agreed with Mathews and invalidated the gender-based exception clause, noting that: "Congress, in requiring that men prove dependency, presumed that women would have relied upon the practices of the Social Security Administration, yet men would not have relied upon a decision of the Supreme Court."

Mathews' final argument was an attack against the constitutionality of the severability clause. There were two components to this argument. First, the severability clause, by requiring women to prove dependency, denies Mathews an adequate remedy for an unconstitutionally inflicted injury. In other words, "men can vindicate their constitutional right to equal protection only by causing others to forfeit benefits they have been previously entitled to." Second, the severability clause is an improper restriction on court jurisdiction since it prohibits a reviewing court from granting adequate relief with the concomitant result of destroying Mathews' standing to maintain the suit. The government's retort to its allegation was that "denial of benefits to correct the gender-based discrimination — is not part of the federal constitutional right of equal protection." The district court agreed with Mathews — labeling the severability provision an "a droit attempt to discourage the bringing of an action by destroying standing ... [and thus insulating] the legislative work product from judicial scrutiny."

#### BACKGROUND AND SIGNIFICANCE

*Heckler v. Mathews* raises fundamental questions about Congress's authority over spending programs, the manner in which Congress may restrict federal court remedies, and the centrality of gender-based discrimination in equal protection jurisprudence. Were the Supreme Court to affirm the district court ruling, *Heckler* would force the Congress either to: 1) forego protecting the reliance interest of women who based their retirement decisions on pre-*Goldfarb* law, or 2) grant men an exemption to the pension offset without proof of dependency and thereby expend approximately 190 million per year over the five-year offset exception period. By forcing Congress to make such a decision, this result would severely limit Congress's ability to respond pragmatically to a court ruling. However, if the Supreme Court were to overturn the district court ruling, the Court would be forced to either limit the government's burden of proof in a gender-based discrimination claim or recognize broad Congressional authority to limit federal court remedial authority without resort to the jurisdiction limiting provisions of the Constitution.

On the surface, Congress's reinstatement of the gen-

der-based distinction found unconstitutional in *Goldfarb* would appear *per se* unconstitutional. Yet, *Goldfarb* was decided when passage of the Equal Rights Amendment seemed imminent. Today, the Court might be somewhat more deferential to the legislature to its determination of what constitutes a "substantial government interest." As *amici*, American Federation of Government Employees noted: "[Congress properly] did not include nondependent husbands whose period of entitlement had lasted only the nine months between the *Goldfarb* decision and enactment of the public pension offset. To have given them a five-year window ... would have been to give them a windfall without a rational basis." Countering this view, *amici* American Civil Liberties Union urged the Court to abide by the *Goldfarb* view "that gender-based discrimination casts the weight of the government on the side of traditional noting about male/female behavior, shows artificial barriers to the attainment by women and men of full human potential and retards society's progress toward equal opportunity."

The separation of powers raised in *Heckler* is novel and significant. Dating back to the Supreme Court's seminal decision in *Marbury v. Madison* (5 U.S. 137, 2 L.Ed. 60 (1803)), judicial review implicates that courts will have authority to review Congress's actions. Yet, by necessarily denying Mathews' claim for relief vis-a-vis the severability provision, Congress's 1977 amendment to the Social Security Act, if upheld, could prevent Mathews from pursuing his claim. Additionally, Congressional restrictions on court remedial authority is properly based in the exceptions clause of Article III of the Constitution — not through a severability provision in some legislative enactment. Still, it is clear that Congress could have mandated that which the severability provision requires — namely, that women prove dependency. Cosequently, there is some merit to the government's reliance on a 1976 Supreme Court decision which held that: "Government decisions to spend money to improve the general public welfare in one way and not another are 'not confined to the courts.' The discretion belongs to Congress."

## ARGUMENTS

### *For Men Challenging Proof of Dependency Test*

1. The exception clause of the pension offset provision should be interpreted without incorporating reference to the gender-based dependency test since applications filed in January, 1977, were granted without regard to proof of dependency.
2. The protection of gender-based reliance interests is not the type of important governmental objective which can be used to justify a gender-based distinction.

3. Exclusion of individuals relying on the *Goldfarb* decision from the exceptions clause violates the equal protection guarantee and thus the exceptions clause is not substantially related to the legitimate government interest in the protection of reliance interest of retirees.
4. The severability clause, by requiring that women prove dependency and thereby denying monetary relief to men workers, denies men workers' right to an adequate remedy for an unconstitutionally inflicted injury.
5. By preventing the granting of adequate relief and thereby denying men workers' right to pursue a claim in court, the severability clause is an unconstitutional attempt to curtail the jurisdiction of the federal courts.

### *For the Government*

1. The pension offset exception was intended by Congress, as evidenced in Congressional testimony and protests, to incorporate the gender-based dependency standard.
2. The exception clause substantially serves the important governmental objective of protecting the reliance interests of individuals whose decision to retire was based on pre-*Goldfarb* law.
3. People who qualified for spousal benefits only as a result of *Goldfarb* had no reliance interest to be protected, and thus, the exceptions clause is specifically and precisely tailored to that group of individuals with legitimate reliance interests.
4. The severability clause is a legitimate exercise of Congress's power of the purse and thus does not improperly limit either men workers' remedial rights or court jurisdiction.

## AMICUS BRIEFS

### *Amicus Curiae in Support of Men Workers*

The American Civil Liberties Union, the National Women's Law Center, Older Women's League, Pension Rights Center, Women's Equity Action League, and Women's Legal Defense Fund filed a joint amicus brief arguing in favor of men workers.

### *Amicus Curiae in Support of the Government*

The American Federation of Government Employees (AFL-CIO) and Minnesota Congressman James Obepster filed a joint brief in support of the constitutionality of the pension offset exception. The brief did not address the statutory interpretation or severability clause issues.