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IN THE SUPREME COURT OF THE UNITED STATES

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JAMES LOCKHART, :
Petitioner, :
v. : No. 04-881
UNITED STATES, ET AL. :
- - - - - x

Washington, D.C.
Wednesday, November 2, 2005

The above-entitled matter came on for oral
argument before the Supreme Court of the United States at
11:04 a.m.

APPEARANCES:
BRIAN WOLFMAN, ESQ., Washington, D.C.; on behalf of the
Petitioner.
LISA S. BLATT, ESQ., Assistant to the Solicitor General,
Department of Justice, Washington, D.C.; on behalf
of the Respondent.

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1 Social Security benefits at all. The Government's claim
2 that there's no 10-year bar here relies entirely on a
3 provision of the Higher Education technical amendments
4 that overrode statutes of limitations for collecting
5 student debts. But that was passed in 1991, 5 years
6 before the -- before -- the Government had authority to
7 offset Social Security benefits at all. That authority,
8 as I've referred to, came only in 1996, in the Debt
9 Collection Improvement Act, which did expressly refer to
10 the Social Security Act's anti-attachment provision. But
11 --

12 JUSTICE SCALIA: Did -- are -- just as an
13 initial matter, are you sure that one Congress can bind a
14 future Congress that way, that Congress can pass a law
15 that says, you know, "In the future, no statute shall have
16 X effect unless it says" -- and then it writes in a phrase
17 that has to be said?

18 MR. WOLFMAN: Well --

19 JUSTICE SCALIA: And then you have a future
20 Congress that makes its intent entirely clear in a statute
21 that does not use the magic words. I thought our cases
22 held that, in such a situation, the will of the future
23 Congress prevails --

24 MR. WOLFMAN: That --

25 JUSTICE SCALIA: -- so long as it's clearly

1 expressed.

2 MR. WOLFMAN: I will say that that is something
3 that we've considered. It's not briefed here, but I think
4 the issue is not presented here. And here's why: because
5 in -- what occurred in 1996 comported with the express-
6 reference requirement. The problem here is that -- so, it
7 said that they can offset Social Security benefits. But
8 it is contained in a statute that includes the 10-year
9 bar. So, even if the anti-attachment provision did not
10 exclude the express-reference provision, it still --
11 whatever allowed the attachment has to be, in our view,
12 coincident with the statute in which the express reference
13 --

14 JUSTICE BREYER: It didn't contain the bar at
15 the time that they said, "You can collect it." In the
16 later statute, which said, "You now can collect out of
17 Social Security," when they passed that, did it contain a
18 10-year bar?

19 MR. WOLFMAN: Yes, it did.

20 JUSTICE BREYER: I thought the Higher Education
21 Act said -- as of what year did the Higher Education Act
22 say, "No statute of limitations applies to us"?

23 MR. WOLFMAN: That was 1991.

24 JUSTICE BREYER: Fine. In --

25 MR. WOLFMAN: Yes.

1 JUSTICE BREYER: -- 1991, it said, "No statute
2 of limitations applies to us." Then, in what year did the
3 statute -- was passed which said, "And you can collect
4 money out of Social Security payments for higher
5 education"?

6 MR. WOLFMAN: That occurred in 1996. But, as I
7 --

8 JUSTICE BREYER: All right. Why isn't that the
9 end of it? So --

10 MR. WOLFMAN: The reason that's --

11 JUSTICE BREYER: -- so there was no -- there was
12 no statute of limitations applying to the Social Security
13 Act; and then, in 1996, they say, "And now go get them."

14 MR. WOLFMAN: Because --

15 JUSTICE BREYER: What can we do about that?

16 MR. WOLFMAN: Because, with respect, that's not
17 what Congress said in 1996.

18 JUSTICE BREYER: What did they say?

19 MR. WOLFMAN: They didn't say, "Go get them."
20 What they did is, as an amendment to the Debt Collection
21 Act, in the Debt Collection Improvement Act, they inserted
22 permission to go -- to offset Social Security benefits in
23 a statute that has a 10-year bar. So --

24 JUSTICE BREYER: It has a 10-year bar. But the
25 earlier 1991 Act says, "That doesn't apply to us."

1 MR. WOLFMAN: Yes, but -- but, again, getting
2 back -- and I think this takes us back to Justice Scalia's
3 question -- that -- the -- there is a broad anti-
4 attachment provision. There is an express-reference
5 requirement. Our view is that the -- that -- those
6 requirements can go no -- the abrogation of the -- of the
7 bar to offset Social Security benefits, or to attach
8 Social Security benefits in any way, can go no further
9 than the statute in which that abrogation occurs. And
10 this statute has a 10-year bar.

11 So, if I can explain further, the Debt
12 Collection Improvement Act, and the Debt Collection Act
13 before it, has a 10-year bar. It's not merely a statute
14 of limitations. It says that the Government has no
15 authority to offset after the 10-year period, after the
16 claim has been outstanding for more than 10 years. That's
17 the statute that includes the abrogation of the offset of
18 Social Security benefits.

19 JUSTICE BREYER: So, in other words, you're
20 saying that that provision of the later statute that says,
21 "Go get them on Social Security," implicitly reads into it
22 the 10-year bar that's in a different part of the statute.

23 MR. WOLFMAN: Well, I --

24 JUSTICE BREYER: So, it's as if it said, "Go get
25 them on Social Security, under 407, which is gone now, but

1 only for 10 years."

2 MR. WOLFMAN: Well --

3 JUSTICE BREYER: Is that what your -- I'm trying
4 to understand this.

5 MR. WOLFMAN: That is our argument.

6 JUSTICE BREYER: Yes.

7 MR. WOLFMAN: That is our argument.

8 JUSTICE BREYER: Okay.

9 MR. WOLFMAN: But I would only qualify it --

10 JUSTICE BREYER: The only problem is, it
11 doesn't say that.

12 MR. WOLFMAN: No, I would disagree, Your Honor.

13 I would say that my only quarrel with your question is
14 that it's not implicit, it is explicit. The statute --
15 the Debt Collection Improvement Act, as the Debt
16 Collection Act before it, contains a 10-year bar on the
17 authority of the Government to offset. This is not a mere
18 statute-of-limitations defense that can be waived. This
19 is a complete lack of authority to the -- in the
20 Government to offset. That's --

21 JUSTICE KENNEDY: Are --

22 MR. WOLFMAN: -- the statute --

23 JUSTICE KENNEDY: Are you saying that this has a
24 purpose other than barring stale -- stale claims? It's
25 simply designed to limit the offset provisions in order to

1 allow other Federal programs to proceed and -- I'm looking
2 for some way for you to describe (e) as being something
3 other than a limitations provision.

4 MR. WOLFMAN: Well, what it says --

5 JUSTICE KENNEDY: Because I think that would help
6 you.

7 MR. WOLFMAN: Yes, and I think -- that's exactly
8 my point. What (e) says is that this Act does not apply
9 -- and I'm quoting now -- "This Act does not apply when
10 the claim has been outstanding for more than 10 years."
11 That strikes us -- you can call it "limitations" if you
12 want, but it strikes us as a very powerful one. Because
13 it restricts the Government's ability to bring such a case
14 --

15 JUSTICE KENNEDY: Well, if --

16 MR. WOLFMAN: -- for offset.

17 JUSTICE KENNEDY: -- if we call it
18 "limitations," you have a much harder case, because of the
19 1991 Act.

20 MR. WOLFMAN: Well, I -- with respect, I don't
21 think that the actual nomenclature matters that much, but
22 I will distinguish it from what the law normally calls a
23 limitations period, because a limitations period is one
24 that is raised as an affirmative defense and may be
25 waived. This provision, where it says, "This Act does not

1 apply" --

2 JUSTICE KENNEDY: Well --

3 MR. WOLFMAN: -- does not apply.

4 JUSTICE KENNEDY: -- can you give me a reason
5 for the Government's adopting (e), the 10-year -- the 10-
6 year bar, other than for stale claims or --

7 MR. WOLFMAN: Oh, I don't know that there is
8 one, but my point, again, is simply that the Government
9 has no authority to proceed. So, then we look -- we look
10 at that statute, and we say, "What did the -- what did the
11 Congress do in 1996?" What the Congress did in 1996 was
12 amend that very statute by saying, "Within the confines of
13 this statute, you may now offset."

14 JUSTICE BREYER: All right, but that's --

15 JUSTICE KENNEDY: I understand that, but I'm
16 just -- I'm just saying, if you could give me an
17 explanation, a characterization, a description, a
18 statement of purpose that's other than the bar on stale
19 claims, I think you'd have a stronger case. But it seems
20 to me just like a stale-claims statute, so I go back and
21 look for other limitations period, and I find it in
22 1091(a).

23 MR. WOLFMAN: You know, again, if -- it is not
24 -- the purposes of the bar are not stated in any of the
25 legislative materials, and we can assume that at least one

1 of the principal purposes was to not allow the litigation,
2 the contesting of stale claims, or to give the individuals
3 repose, which is a purpose of time bars.

4 JUSTICE BREYER: You can call it any purpose you
5 want, but there is an earlier word in 9- -- 1091(a), just
6 what Justice Kennedy said. The earlier word says
7 limitations don't apply to the higher-education debt. And
8 so, if this later statute, the words you're talking about,
9 the words of "10 years," the words that limit when you can
10 do it, if those words, which are in subsection (e), are a
11 "limitation," then I guess the earlier statute says they
12 don't apply to the higher-education debt. And so, I don't
13 see how you get out of that. I mean -- I mean, this is a
14 rather harsh result. I understand why you'd like to get
15 out of it. But I don't understand how we do get out of
16 it.

17 MR. WOLFMAN: Well, I think there are -- there
18 are -- I -- there are several answers. And, if I might,
19 first of all, if you must characterize what -- and we are
20 happy to do so -- was in the 1996 Act as either a time
21 bar or a limitations period, this is clearly the former,
22 because this -- because the limitations periods in the law
23 are ones which have to be raised by affirmative defense.
24 For instance, the Rules of Civil Procedure say limitations
25 periods are raised by affirmative defense, and the case

1 law is unanimous that they can be waived. That is not
2 what this provision does. This provision restricts the
3 authority, in the first instance, for the Government to
4 bring the case.

5 The second thing I would say, though, Your Honor
6 -- and I think it does not matter, ultimately -- that can
7 be our principal submission here, and it is, but it does
8 not matter -- I think, ultimately, the nomenclature
9 doesn't matter, because -- again, because the Act
10 restricts the authority of the Government to bring a case
11 that is beyond the 10-year period. And that is the
12 statute that contains the express reference. That is the
13 --

14 JUSTICE KENNEDY: Of course, part of the problem
15 is that 1091(a)(2), the "notwithstanding" clause, talks
16 also specifically about offsets, which is what this is, I
17 take it.

18 MR. WOLFMAN: No, I understand that, Your Honor.
19 I mean --

20 JUSTICE KENNEDY: I mean, if it had said "no" --

21 MR. WOLFMAN: -- I understand that.

22 JUSTICE KENNEDY: -- "no limitations period,"
23 then I might -- this specifically talks about an offset.

24 MR. WOLFMAN: Well, that's right. The -- and I
25 -- I don't think that undercuts our argument at all,

1 because, after all, there's no question that, prior to
2 1996, there was offset authority in the Government to
3 offset -- to collect debt against other types of income,
4 other than Social Security. So, I don't think that
5 undercuts our argument at all.

6 But let me, if I might, go back to your question
7 one more time, because I think there's yet a third answer,
8 which is -- which is the chronological answer that -- made
9 in our briefs that, in 1991, the Congress could not have
10 had the intent to get at Social Security benefits at all,
11 because, of course, there -- and it's -- this point is
12 conceded -- the Government had no authority whatsoever to
13 offset Social Security benefits.

14 If I might, in the -- let me go --

15 JUSTICE SOUTER: May I pursue that point for a
16 second --

17 JUSTICE SOUTER: -- more? I -- it seems to me
18 that you would have a much stronger argument on that point
19 if, in 1996, the Act provided that, suddenly, Social
20 Security benefits -- some Social Security benefits would
21 be -- would be subject to administrative offset, but only
22 those when the Government -- imposed when the Government
23 is trying to collect educational loans. We would then
24 have what seems to -- would seem to me to be a really
25 head-to-head conflict between the two statutes. The

1 trouble is that, in 1996, the extension of the
2 administrative setoff authority covered Social Security
3 benefits to be -- for which there would be a setoff for
4 any purpose -- not just educational loans; for any
5 purpose. So that, in fact, it is possible for us to read
6 the 1996 Act as having an effect -- there's a 10-year
7 limit, generally -- at the same time that we read the
8 earlier -- I forget what the -- '91, I guess it is --

9 MR. WOLFMAN: The HETA law, yes.

10 JUSTICE SOUTER: -- which says, with respect to
11 educational loan collections, including by setoff, there's
12 no limitation at all. So, we can have both statutes
13 without rendering either one of them nugatory. And isn't
14 that the preferred way to read statutes?

15 MR. WOLFMAN: Well, but I -- but I -- with all
16 respect, I think our interpretation certainly does not
17 render HETA nugatory, because HETA would still override
18 limitations periods for other forms of collection with
19 respect to other types --

20 JUSTICE SOUTER: But with --

21 MR. WOLFMAN: of debts.

22 JUSTICE SOUTER: -- with respect to Social
23 Security setoffs, of course, it would.

24 MR. WOLFMAN: Well, it -- I'm not sure I
25 understand that question.

1 JUSTICE SOUTER: Social Security -- Social
2 Security said it would be -- it would be a -- it would --
3 a flat head-to-head contradiction, no matter how you read
4 it, on Social Security setoffs for educational loans.

5 MR. WOLFMAN: Well --

6 JUSTICE SOUTER: And if that's the only thing
7 that the 1996 Act covered, we would say, "Boy, there is
8 just an absolute conflict here. We can't have both
9 statutes." But, in fact, we can have both statutes most of
10 the time. We read the 1996 10-year limitation as covering
11 everything except setoffs against Social Security for
12 educational loans. And, with respect to the educational
13 loans, we give respect to the -- to the earlier decision
14 that there be no limitation at all. You just have a
15 weaker argument than you would have if the 1996 Act only
16 covered this case.

17 MR. WOLFMAN: Well, that may be, but let me,
18 again, if I -- if I might, respond to that -- to this --
19 to this point, because I think it is true that the
20 proportion of times under our argument that the 10-year
21 bar would apply would -- is greater under our position,
22 but it is, nevertheless, true that HETA still applies to
23 many situations, under our reading, and the 10-year bar
24 applies to somewhat more. But let me -- I think there's
25 another answer to your point, which is, it still does not

1 undercut our basic submission that the Congress could not
2 have formed this specific intent. And it's very unlike
3 the -- the intent being to get to the Government the --
4 the result it seeks here. And the reason for that is --
5 is, they could not have focused on this problem, because
6 in -- it wasn't for another 5 years that Social Security
7 was even on the radar screen at all. And this brings me
8 back, I think, to Justice Breyer's --

9 JUSTICE STEVENS: Yes, but --

10 MR. WOLFMAN: -- initial question.

11 JUSTICE STEVENS: -- may I ask this question?

12 That's a very -- that's a very interesting statutory
13 construction case, I must say, by the way. But the -- in
14 1996, when they made the offset available against Social
15 Security payments, they didn't enact a 10-year statute of
16 limitations; they changed subsection, I think, (b) to (d)
17 and said the 10-year provision is retained. And when the
18 10-year provision was first put in -- I mean, when the
19 exception for student loans was made, in 1991, you had a
20 statute that had a 10-year period for everything except
21 student loan recovery. And it seems to me that if you
22 look at the 1996 statute as saying, "We're going to allow
23 offsets against Social Security," under the same scheme
24 that was enacted in 1991, because we had just amended the
25 10-year provision to preserve it -- they preserved the 10-

1 year provision -- that they seem to me to be preserving it
2 in a statute that made this distinction between student
3 loans and all other offsets. Is --

4 MR. WOLFMAN: I --

5 JUSTICE STEVENS: It isn't as though they
6 enacted, for the first time, an authority to offset Social
7 Security and, in that statute, said, "And -- but, by the
8 way, there's a 10-year period of limitations here."

9 MR. WOLFMAN: Well, that --

10 JUSTICE STEVENS: Rather, they amended the 1991
11 Act.

12 MR. WOLFMAN: -- that is correct. And I think
13 that -- but with a caveat, which I'll get to -- but -- I
14 think that is correct, but it is a -- it is a consequence
15 of the situation that Congress found itself in, in 1996.
16 In other words, it already had a statute, the offset
17 statute, which had a 10-year bar. And so --

18 JUSTICE STEVENS: But it also had the exception
19 for student loans. It's -- it was --

20 MR. WOLFMAN: Well --

21 JUSTICE STEVENS: -- side by side with the rest
22 of the 10-year bar.

23 MR. WOLFMAN: I'm not sure what you mean in that
24 -- I'm not sure what you mean by the exception for student
25 loans. There --

1 JUSTICE STEVENS: Well, it's 1091(a).

2 MR. WOLFMAN: Well, 1091 was in a different
3 statutory provision, in a different part of the code. But
4 yes, what I'm saying is, they --

5 JUSTICE STEVENS: But it was in the 1991
6 statute.

7 MR. WOLFMAN: Right. It was in a 1991 statute
8 that was a freestanding statute that dealt with Social
9 Security benefits, generally. Then what you had in 1996
10 was a focus on offsets, specifically, and on Social
11 Security, specifically. And the only point --

12 CHIEF JUSTICE ROBERTS: But the '91 Act mentions
13 offsets, specifically, as well.

14 MR. WOLFMAN: That's right. And -- but it
15 mentions a lot of -- many meanings of "collection," that
16 is correct. And -- but I think it's not quite fair to say
17 that they merely reenacted the 10-year bar. We think
18 that's sufficient for us to prevail. But, you know, the
19 Congress, in 1996, did a pretty comprehensive overall --
20 overhaul of the Debt Collection Act. It appears to have
21 gone through every section. It strengthened some of the
22 notice provisions. It focused specifically on Social
23 Security and said that you can now offset them by making
24 the express reference. And then it turned to -- what had
25 been subsection (c) then became subsection (e). It

1 amended one of the paragraphs, but retained the paragraph
2 that has the 10-year bar. So, I think it's fair to say
3 that Congress looked at all the sections carefully. Now
4 --

5 JUSTICE STEVENS: If you say that -- let me just
6 throw this thought out, so you can comment on it.

7 JUSTICE STEVENS: It seems to me that there is a
8 reasonable basis for assuming Congress might have thought
9 that student loans should not have a 10-year bar if you're
10 going to collect from Social Security, because most Social
11 Security payments won't accrue until many, many years --
12 much more than 10 years after the student-loan default.

13 MR. WOLFMAN: Well, that -- the Government
14 certainly makes that submission in its brief, but, as we
15 note in our reply brief, the statistics the Government
16 cites don't really back that up. I -- but we do -- we do
17 acknowledge that, with respect to Social Security
18 retirement benefits, there will be many people who are
19 beyond the 10-year bar. With respect to people who get
20 other sorts of Social Security benefits, that's not clear
21 at all, actually. There are survivors --

22 JUSTICE STEVENS: No, but there is a --

23 MR. WOLFMAN: -- and there are disability --

24 JUSTICE STEVENS: Retirement benefits are a
25 pretty big part --

1 MR. WOLFMAN: Are a --

2 JUSTICE STEVENS: -- of the whole package.

3 MR. WOLFMAN: -- larger number, that is true.

4 JUSTICE STEVENS: Yes.

5 MR. WOLFMAN: But, again, I don't think that --

6 there's no -- there's no suggestion in -- the problem --

7 the ultimate problem with that point for the Government,

8 Justice Stevens, is that it requires us to believe that

9 Congress formed that intent in 1991, which is an

10 impossibility, because --

11 JUSTICE STEVENS: No, I understand that.

12 MR. WOLFMAN: -- in 1991, Social Security

13 benefits were just, sort of, off the table. They weren't

14 on the radar screen at all. And that's the ultimate

15 problem with the Government's --

16 JUSTICE O'CONNOR: Mr. --

17 MR. WOLFMAN: -- theory there.

18 JUSTICE O'CONNOR: -- Wolfman, are there

19 provisions by regulation in the Department of Education

20 for discharge of debts like this on a showing of total and

21 permanent disability?

22 MR. WOLFMAN: There are, Your Honor.

23 JUSTICE O'CONNOR: And your client doesn't

24 qualify, or --

25 MR. WOLFMAN: Well, the record is completely

1 silent on that question. I don't know the answer to that.
2 He was certainly disabled. I will only point out that
3 the standards for total and permanent disability under the
4 Department of Education regs are much more stringent than
5 those for Social Security, because that only requires a
6 12-month period of disability. But I don't know the
7 answer as to him.

8 I do want to get to one other point
9 before I sit down, and -- which is to address one of the
10 Government's arguments -- is that to -- to get around a --
11 the problem that the DCIA reenacted the 10-year bar, the
12 Government relies on the "notwithstanding" clause of the
13 1991 Education Act, arguing that it wipes away any time
14 bar, regardless of when the time bar was enacted, and no
15 matter what type of collection is at issue. But, as we
16 note in our reply brief extensively, those
17 "notwithstanding" clauses are not as all-powerful as the
18 Government suggests they are. And what the case law --
19 the lower-court case law suggests is that you need to
20 look, as we have done in our submission, at the
21 legislative history and the legislative motive surrounding
22 both Acts, the previous Act and the subsequent Act. And,
23 here, what you have -- and I don't want to beat a dead
24 horse, but I will repeat once again that the problem here
25 is -- for the Government -- is that we have this very

1 powerful anti-attachment provision with its express-
2 reference requirement. And the only place in these
3 statutory materials where the express reference occurs is
4 in a -- the very Act that includes the 10-year bar. And
5 to accept the Government's argument, you would have to
6 accept the notion that the -- an express reference in an
7 act can go beyond the authority that's granted by that
8 very act.

9 JUSTICE BREYER: No, it -- I mean, you -- it's
10 -- it probably comes up a lot. You have -- you have the
11 earlier act that imposes -- suppose you have some --
12 Endangered Species Act and -- at an earlier time -- and it
13 says all provisions of a certain kind will have this
14 effect in respect to endangered species. And then you
15 have some later act -- later acts. And, in those later
16 acts, there are certain things about how to treat certain
17 animals and so forth. And the question would be, "Well,
18 does that earlier thing, telling you how to treat an
19 endangered species, apply now to the animals in this later
20 act insofar as they're endangered?" And the answer would
21 be, "Of course it does" --

22 MR. WOLFMAN: Yes.

23 JUSTICE BREYER: -- unless there's some special
24 reason --

25 MR. WOLFMAN: Right.

1 JUSTICE BREYER: -- for thinking that it
2 doesn't. And so, what's the special reason --
3 MR. WOLFMAN: Well --
4 JUSTICE BREYER: -- here? You have an earlier
5 act that says, when you see those words, "10-year
6 limitations," forget them where student loans in effect.
7 Now we have a later act, and it has the word "10-year
8 limitations," and you're giving some reasons why --
9 MR. WOLFMAN: Right.
10 JUSTICE BREYER: -- it is special and --
11 MR. WOLFMAN: Right.
12 JUSTICE BREYER: -- so forth. And --
13 MR. WOLFMAN: And I --
14 JUSTICE BREYER: -- I don't know --
15 MR. WOLFMAN: -- but I --
16 JUSTICE BREYER: -- if they're --
17 MR. WOLFMAN: -- but I think that that's --
18 JUSTICE BREYER: -- strong enough --
19 MR. WOLFMAN: -- that's the nub of the case --
20 JUSTICE BREYER: Uh-huh. Yes, that is the nub.
21 MR. WOLFMAN: -- the special reasons. But --
22 but I -- but I -- let me -- let me -- let me answer your
23 question --
24 JUSTICE BREYER: But, I mean, they don't have
25 that big burden to show. They have to just --

1 MR. WOLFMAN: I --

2 JUSTICE BREYER: -- show it's normal.

3 MR. WOLFMAN: That's where I --

4 JUSTICE BREYER: And you have to show it's
5 special.

6 MR. WOLFMAN: I think, on these legislative
7 materials, they have quite a burden. And let me explain
8 why. Your -- the -- Justice Breyer, the hypothetical you
9 posit is one with which I can agree. We are not saying --
10 I don't want to be mistaken -- that -- we are not saying
11 that previous legislation can't have effect on future
12 events, or even future legislation. We're not saying that
13 all. But the nub of our argument is this express-
14 reference requirement, and I think it's -- it seems very,
15 very odd to us that when you have a statute that has an --
16 where the express reference appears, and that has a 10-
17 year bar on the authority --

18 JUSTICE STEVENS: But, Mr. --

19 MR. WOLFMAN: -- to collect --

20 JUSTICE STEVENS: -- Wolfman, couldn't you say
21 the question could be phrased in this way? Do we view the
22 notwithstanding language in 1091(a) as enacted in 1091 and
23 governing the future, or do we view the 1996 amendment as,
24 in effect, an amendment to that stat which -- which
25 reenacted the provisions that were already there? And if

1 it's a reenactment in 1996, then it's just an exception
2 from the 10-year bar.

3 MR. WOLFMAN: Right. I think that -- that is a
4 fair characterization of one our arguments here --

5 JUSTICE STEVENS: Yes.

6 MR. WOLFMAN: -- which -- one of our arguments
7 here is, given the various indicia of intent, both in '91
8 and '96, that the '96 Act, with respect to a small sliver
9 of collections, is effectively an amendment of the '91
10 Act. However, that is not our only, or even our principal
11 submission. Our principal submission has to do with the
12 powerful anti-attachment --

13 JUSTICE STEVENS: Right.

14 MR. WOLFMAN: -- provision.

15 JUSTICE STEVENS: I understand.

16 MR. WOLFMAN: Okay? And, again, the
17 Government's position -- and I will rest after this,
18 because I've repeated this already -- but the -- the
19 Government's position is, in effect, that you can use the
20 anti-attachment position in the express-reference
21 requirement in a statute to allow authority beyond that
22 very statute. And we submit that that is -- that is not
23 permissible under section 407.

24 Unless the Court has further questions, I'll
25 reserve the rest of my time.

1 CHIEF JUSTICE ROBERTS: Thank you, Mr. Wolfman.
2 Ms. Blatt.

3 ORAL ARGUMENT OF LISA S. BLATT
4 ON BEHALF OF RESPONDENT

5 MS. BLATT: Thank you, Mr. Chief Justice, and
6 may it please the Court:

7 In sweeping and unqualified language, the Higher
8 Education Act provides that, notwithstanding any other
9 provision of law, no limitations as to time shall apply to
10 the collection of student-loan debt by offset. Therefore,
11 notwithstanding the general 10-year limit that applies to
12 the offset of all Federal payments, including Social
13 Security payments, no time limit applies.

14 JUSTICE STEVENS: But it didn't include Social
15 Security payments when it was enacted.

16 MS. BLATT: That's right. In 1982, Congress
17 authorized --

18 JUSTICE STEVENS: Or 1991. Either one.

19 MS. BLATT: Right. In 1982, Federal payments
20 were subject to offsets such as Federal grants or
21 contracts or pension. And, in 1991, Congress passed a law
22 that said there's no -- going to be no time limit for the
23 Government to collect student-loan debt by offset.
24 Therefore, there has always been a student-loan exception
25 to the Government's ability to offset for only up to 10

1 years. So, we can't offset Federal pension payments or
2 contract payments beyond 10 years unless it's for student
3 loans.

4 JUSTICE KENNEDY: Well, but then -- but then, in
5 -- you know, you know what's coming. You -- the provision
6 you rely on is 3116, and it's stuck into the middle of
7 this -- of a provision which requires written notice,
8 opportunity to inspect records, and so forth. All those
9 apply. But you have to say that (e) doesn't apply.

10 MS. BLATT: Well, (e) is a limitations period,
11 and it is a provision of law, and the Higher Education Act
12 says, notwithstanding any other provision of law, there's
13 no time limit for offsetting -- for collection by offset
14 when it's to collect student-loan debt. What happened in
15 1996 is, Congress authorized Social Security benefits as
16 another source of Federal payment. But it's critical to
17 understand that Congress left completely undisturbed and
18 intact that pre-existing 10-year limit and the pre-
19 existing student-loan exception --

20 JUSTICE GINSBURG: But Mr. Wolfman tells us, Ms.
21 Blatt, that this clause is not quite as sweeping as you
22 suggest, the clause in the 1991 Act, and points
23 specifically to provisions that say, "no other provision
24 of law enacted before, on, or after." The picture we're
25 given of the 1991 Act is that up until 1991, whatever

1 exists up until 1991, there's no time limitation, but that
2 this 1991 statute does not speak to subsequently enacted
3 statutes.

4 MS. BLATT: Yes, well, it is unqualified, on its
5 face, Justice Ginsburg. It doesn't say "notwithstanding
6 any other provision of existing law." It says "any law."

7 And it would be a rather bizarre and novel statute if
8 Congress had to keep amending every time Congress
9 redesignated a limitation provision, which is all that's
10 happened here. Every time Congress had a limitation
11 provision that changed from subsection (e) to (a), or was
12 given a different section number, Congress would have to
13 go back and say -- I guess, reenact the Higher Education
14 Act every time it amended the statute of limitations.

15 But, even if you think that it only applied to pre-
16 existing limitations period, this 10-year limit predated
17 the Higher Education Act. It was passed in 1982, and had
18 -- and has appeared in identical language since 1983.

19 Nothing happened in 1996 to statutes of limitations. All
20 that happened was that Congress, in essence, put Social
21 Security benefits on par, equal footing, with all other
22 Federal payments.

23 And let me just say, imposing a 10-year limit
24 would largely nullify Social Security offsets to collect
25 student-loan debt.

1 JUSTICE GINSBURG: The point that Justice
2 Stevens made --

3 MS. BLATT: Yes.

4 JUSTICE GINSBURG: -- before.

5 MS. BLATT: Ninety percent of all student-loan
6 debtors who default do so before age 55. And, therefore,
7 a 10-year time limit will have expired before the debtor
8 reaches full retirement age, at age 65. And it's relevant
9 not so much what Congress what was thinking in '91, but
10 it's relevant for what Congress was thinking in 1996. In
11 1996, Congress made Social Security benefits subject to
12 offset. And it's completely rational to think that
13 Congress of course understood there would be a general 10-
14 year limit that's always been applied to offsets of all
15 Federal payments, including the Federal contract payments
16 or pension payments, and now Social Security payments,
17 but, yes, there's another provision of the U.S. code that
18 contains an express and, we think, extraordinary
19 exception. It says time limits are intolerable when it
20 comes to the collection of student-loan debt.

21 Now, at the same time, Social Security
22 recipients are protected from any undue burden. The -- if
23 you are disabled under the Department's regulations, you
24 can obtain a complete discharge, a total walk-away-from-
25 the-debt-forever, if you have a disability that prevents

1 you from earning income. You also -- the amount of the
2 Social Security offset is limited to the lesser of 15
3 percent of the benefit payment or the amount by which the
4 benefit payment exceeds \$750. And any debtor can enter
5 into a repayment agreement that will take their total --

6 CHIEF JUSTICE ROBERTS: Those are -- those are
7 regulatory provisions, right?

8 MS. BLATT: The caps, Mr. Chief Justice, are in
9 the statute, and further limited by the regulations. But,
10 actually, the repayment agreements are mandated provisions
11 under the Higher Education Act. It mandates the Secretary
12 of Education to allow debtors to enter in repayment
13 agreements that are contingent on their income, and that
14 will allow them to repay their debt under reasonable and
15 affordable terms. That's also in the statute.

16 JUSTICE BREYER: So, is the statute -- I saw
17 something here, that a person who's going to get this
18 offset, and he has Social Security, you exempt \$9,000 of
19 the Social Security, and then you limit it to 15 percent
20 of the remainder or whatever is reasonable, whichever is
21 less.

22 MS. BLATT: It's the lesser of -- it's the
23 lesser of the 15 percent or the amount by which the
24 benefit payment exceeds 750. So, in this case, when the
25 original Social Security check was, I think, like, \$874,

1 15 percent would have been a higher number. You have to
2 leave the recipient with 750, so I think only \$94 was
3 taken out. And I may have my math a little off. But you
4 -- the -- you give the recipient the benefit.

5 Now, the only thing that's in the regulations,
6 Mr. Chief Justice, are the disability, that that is just a
7 -- it's a walkaway on the loan. Even if you win the
8 lottery the next day, if you can show that you can't work
9 because of a disability, the Secretary of Education will
10 discharge your loan.

11 Now, the principal argument on the other side is
12 section 207 of the Social Security Act. Now, that statute
13 requires an explicit reference before Social Security
14 benefits can be subject to a legal process. But it
15 doesn't require an explicit reference when the only
16 question is the statute of limitations that are applicable
17 to a legal process that is already otherwise expressly
18 authorized. The Debt Collection Act is the actual statute
19 that authorizes the offset of Social Security benefits.
20 The Higher Education Act just lifts limitations periods
21 when there's another statute that establishes a collection
22 mechanism. And the Debt Collection Act contains the
23 express reference. It provides, in 3716, that, "We're
24 making our clear statement, we want Social Security
25 benefits to be subject to offset." And, like I said, it

1 just -- it plugged the Social Security system into this
2 pre-existing --

3 JUSTICE STEVENS: But it is -- it is true that
4 the 1996 statute, which is the first time the express
5 reference appears, does contain the 10-year statute by the
6 indirect reference, and does not expressly refer to the --
7 cite the 1091(a).

8 MS. BLATT: That's right. It makes the express
9 reference to 207, and it has this general limitations
10 period that applies to all offsets. But, Justice Stevens,
11 just --

12 JUSTICE KENNEDY: And it says -- and it says
13 "offsets under this section."

14 MS. BLATT: That's right. And that takes you
15 down to the subsection (e), which imposes a 10-year limit.
16 But just as today Congress certainly is free to say,
17 "From now on, Social Security benefits and all offsets
18 will be subject to an 11-year limitations period," it
19 doesn't have to expressly reference 207 to amend the Debt
20 Collection Act. The Debt Collection Act is what's being,
21 in effect, amended or an exception. And the Debt
22 Collection Act doesn't contain its own express-reference
23 requirement before it can be amended. Congress didn't
24 say, "We're forever binding ourselves," or, "We want some
25 different canon of interpretation here." And so, you have

1 a very extraordinary provision in the Higher Education Act
2 that says, "Notwithstanding any other provision of law,
3 there's not going to be a time limit to offset in order to
4 collect student loan" --

5 JUSTICE BREYER: But -- yeah, I think he's --
6 one argument that they're emphasizing, anyway, is that --
7 you look at the Debt Collection Act, and suppose it had
8 said the following, "Section 207 is amended, or changed,
9 as follows. We refer specially now -- we can collect,
10 through offset, but only for 10 years. I mean, only to
11 claims that are more than 10 years old. So, we are
12 changing what 207 says for debts over 10 year -- under 10
13 years old, and we can offset those." Now, suppose it had
14 said that.

15 MS. BLATT: It would still -- the express
16 reference would be completely overtaken, because it says
17 the "notwithstanding section 207." It would authorize
18 offset for --

19 JUSTICE BREYER: And you'd say it's the same.

20 MS. BLATT: For up to 10 years.

21 JUSTICE BREYER: All right. If that's the same,
22 let's imagine this statute. The statute says, "We bestow
23 upon the Social Security agency a very limited power."
24 And it says, "This is the limited power. The Social
25 Security Agency may, despite 207, levy offsets on under-

1 10-year-old debts." That's what they say, right in the
2 Act.

3 MS. BLATT: Right. It would -- the --

4 JUSTICE BREYER: And then, indeed, the whole
5 point of it -- it's entitled "Limited Offset Ability,"
6 parenthesis -- "Limited Offset Ability (Extending Only to
7 Debts of Less than Ten Years)," end parenthesis. That's
8 the title of the Act, and then it says just what I say,
9 repeating that.

10 MS. BLATT: Yes. Well, our position is that the
11 Social Security Act only requires an express reference to
12 create authorization to offset.

13 JUSTICE BREYER: But you're not going to treat
14 that --

15 MS. BLATT: And --

16 JUSTICE BREYER: -- one the same. You see, what
17 they're saying here is -- they want to say that what I've
18 just said is what Congress wrote in this Act. And --

19 MS. BLATT: Right.

20 JUSTICE BREYER: -- I'm making it harder and
21 harder for you to accept that saying --

22 MS. BLATT: Yes. Well, our --

23 JUSTICE BREYER: -- automatically.

24 MS. BLATT: -- fundamental position --

25 -- I'll be clear on this -- is that

1 the Higher Education Act applies unless it's been
2 repealed. And there's just nothing in the Higher
3 Education Act that comes close to repealing -- in, excuse
4 me, the Debt Collection Act -- that comes close to
5 repealing the Higher Education Act, because it doesn't
6 address the subject of student loans. It just speaks to
7 the ability to offset Social Security benefits, as well as
8 all other Federal payments that have been subject to
9 offset.

10 JUSTICE STEVENS: Ms. Blatt, can I ask --
11 there's no discussion -- legislative history in the briefs
12 that I -- because I -- that I recall. Is it true that the
13 people voting on the bill in 1996 had nothing but the
14 amendment before them? Did they have a committee report
15 on it explaining that it still applied to the -- that the
16 -- that the "notwithstanding" clause in 1091(a) would
17 still be in effect?

18 MS. BLATT: No, I know of no statement to that
19 effect. But I know of no statement -- any discussion
20 about limitations period. There's no discussion of the
21 10-year limit either.

22 JUSTICE STEVENS: Because it seems to me that,
23 conceivably, a legislator looking at the bill all by
24 itself, not getting out the earlier provisions of the
25 code, might well think, "Well, this includes a 10-year

1 limit."

2 MS. BLATT: Maybe they did, maybe they didn't.
3 Maybe they knew that a court would actually apply the U.S.
4 code, as written --

5 JUSTICE STEVENS: Yes.

6 MS. BLATT: -- and just because it -- the
7 limitation period was in one section -- but, now, here's
8 where I think the policy does come into play. A
9 legislature would think that a 10-year limit would never
10 come in to offset Social Security benefits on student
11 loan, except in a rare case of an old debtor who -- and
12 also defaults close in time to age 65. And, like I said,
13 90 percent of all the student-loan defaults are by debtors
14 who are under age 55, and over -- about 83 or 84 percent
15 of all Social Security payments are under the retirement
16 system, not the disability system. And if a person is
17 disabled, there's no reason to think that they can't get a
18 discharge of that loan.

19 So, all we're talking about is basically
20 rendering a dead letter Social Security offsets to collect
21 student-loan debt, if Petitioner's position were to
22 prevail.

23 JUSTICE SCALIA: Why can he get a discharge if
24 he's disabled?

25 MS. BLATT: You can get a discharge of your loan

1 if you have a disability of indefinite duration that
2 prevents you from working. The rationale is, sort of, a
3 changed-circumstances rationale. If you took out a loan,
4 you signed a promissory note, you intend to pay it back.
5 But if you later become disabled, and that disability is
6 going to prevent you from ever working, they'll discharge
7 it. Now, about 30 percent of all people who do apply for
8 this disability discharge do get it, and about 80 percent
9 get a conditional discharge, what gives them -- it gives
10 them a 3-year grace period. And the only difference
11 between -- I mean, there are some small differences, but
12 the main difference between a Social Security disability
13 determination and an Education Department disability
14 determination is the Department of Education wants you to
15 be disabled of an indefinite duration, and not just 12
16 months, because it's a complete and total walkaway from
17 the loan. And Social Security will actually do a lookback
18 after 12 months. But Education will never go back and ask
19 for the money. Once they've discharged it, it's a
20 permanent discharge.

21 JUSTICE STEVENS: Ms. Blatt, it -- was this
22 statute -- I'm just really kind of curious that something
23 this important, we're first putting this burden on Social
24 Security -- it's a fairly important change. Was this part
25 of one of these omnibus bills that covered 99 different

1 subjects at once?

2 MS. BLATT: Yes. I --

3 JUSTICE STEVENS: That --

4 MS. BLATT: -- I remember trying to find it on
5 Westlaw. It's, like, 3,000 pages. It's --

6 JUSTICE STEVENS: Yes.

7 MS. BLATT: -- huge. And it covers many, many
8 different subjects.

9 JUSTICE STEVENS: And they did not have a
10 separate committee proceeding on each separate part of
11 that monster bill --

12 MS. BLATT: That --

13 JUSTICE STEVENS: -- as I remember.

14 MS. BLATT: That, I don't recall. But I can say
15 the overall thrust -- and it's in their statement of
16 purpose -- was to improve the Government's debt-collection
17 --

18 JUSTICE STEVENS: Yes.

19 MS. BLATT: -- efforts. And what it did was,
20 for the first time -- and this was a very significant
21 development -- establish a centralized offset. Before
22 1996, there was no ability to cross-check a debt from one
23 agency to a payment to --

24 JUSTICE STEVENS: Right.

25 MS. BLATT: -- another agency, such that one

1 Department had no idea what another Department was doing.
2 And now it is a massive program involving over \$1
3 trillion of Federal payables, \$255 billion of certified
4 debt, and 33 billion of that is education loan debt. And
5 so, that -- this was to -- an enormous undertaking to
6 start that, in 1996. And one of the things that Congress
7 did in setting up this massive program was, made Social
8 Security benefits part of the offset program. There's
9 about \$480 or \$490 billion in Social Security benefits,
10 so -- which -- it was a huge source of revenue, although
11 Congress obviously limited it substantially with the caveat.

12 And if there are no further questions, we would
13 ask that the Court of Appeals judgment be affirmed.

14 CHIEF JUSTICE ROBERTS: Thank you, Ms. Blatt.

15 Mr. Wolfman, you have three and a half minutes
16 remaining.

17 REBUTTAL ARGUMENT OF BRIAN WOLFMAN

18 ON BEHALF OF PETITIONER

19 MR. WOLFMAN: Thank you, Mr. Chief Justice.

20 I want to address, first, a point that the
21 Government makes, that -- and it's about Section 207 of
22 the Social Security Act, the anti-attachment provision.
23 Opposing counsel says that it doesn't really matter that
24 the 10-year bar was not addressed in 1996, because all
25 that's necessary under the express-reference provision is

1 to refer to the law, in general, that it doesn't apply to
2 limitations periods. But that simply cannot be the case
3 here, because, again, this statute that we are talking
4 about, the Debt Collection Improvement Act, and the Debt
5 Collection Act before, is a bar on the authority of the
6 Government to collect after 10 years.

7 And let me pick up on the language that Justice
8 Kennedy pointed to from the Debt Collection Act. It says,
9 in the very subsection in which Social Security first was
10 put on the radar screen, was first dealt with,
11 (c)(3)(a)(i) -- it says that you can now go after Social
12 Security benefits, because they are subject to offset
13 under this section, meaning 3716. Then, if you turn to
14 another subsection of that section, it says -- and this is
15 the 10-year bar -- this section, quote, "does not apply,"
16 end quote, to a claim under this subchapter that has been
17 outstanding for more than 10 years.

18 Now, I don't see any reason to say that 207, the
19 requirement of an express reference, is, sort of, a
20 halfway requirement. In other words, "You only have to
21 refer to Social Security benefits. We don't care what the
22 extent of that authority is in the very section that you
23 use that express reference." Here, the entire authority
24 is circumscribed by the 10-year bar. That is our
25 essential submission.

1 I have one other point, which is that the --
2 because there was a number of questions on it. We think
3 it doesn't go to the congressional intent here, but I do
4 want to clarify. There is a substantial difference
5 between being disabled and being eligible to get the
6 discharge. Discharge requires permanent disability --
7 forever, you cannot -- you are not capable of working. In
8 Social Security law, you have to be incapable of working
9 for a period of 12 months.

10 Thank you.

11 CHIEF JUSTICE ROBERTS: Thank you, Counsel.

12 The case is submitted.

13 [Whereupon, at 11:49 a.m., the case in the
14 above-entitled matter was submitted.]

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