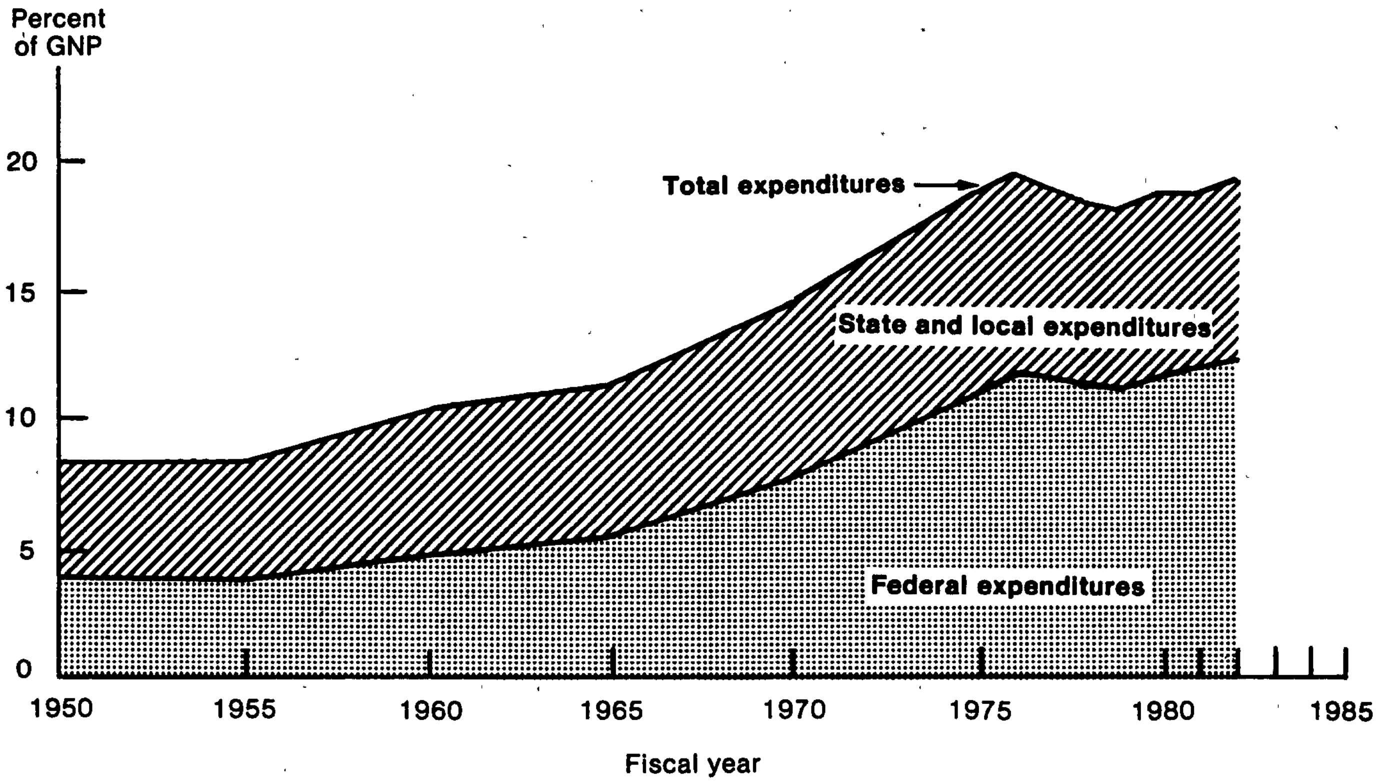
Chart 2.—Social welfare expenditures under public programs as a percent of GNP, selected fiscal years, 1950-82



amount—97 percent of private funds and 93 percent of public funds—was spent for health and medical services. The public sector spent 4 percent on medical research and the private sector less than 1 percent. Each spent 2-3 percent of their funds on the construction of medical facilities.

Health care spending as a proportion of the Nation's output continued to increase and reached 10 percent of GNP in 1982. The ratio was 8 percent in 1975 and 9 percent in 1980. The increase reflected the continued rise of health care costs and the slow growth in the real value of GNP. The constant dollar value of health and medical costs increased 52 percent from 1975 to 1982, while the real value of GNP rose only 21 percent.

Goldfarb and *Mathews*: Legal Challenges to the Dependency Test for Spouse's Benefits*

In 1977, the U.S. Supreme Court struck down provisions of the Social Security Act that required a man—but not a woman—to prove economic dependence on his insured spouse to establish eligibility for spousal benefits.[1] Congress responded by enacting the government pension offset provision as part of the Social Security Amendments of 1977 (Public Law 95-216). That provision required a dollar-for-dollar reduction in the spouse's monthly benefit if the individual also received a government pension based on his or her own work in noncovered public employment.[2] The offset provision

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[1] See *Califano* v. *Goldfarb*, 430 U.S. 199 (1977); *Califano* v. *Silbowitz*, 430 U.S. 924 (1977); and *Califano* v. *Jablon*, 430 U.S. 924 (1977). Spousal benefits (or spouse's benefits) refer to Social Security auxiliary benefits for spouses, surviving spouses, divorced spouses, and surviving divorced spouses.

[2] In December 1982, Congress enacted Public Law 97-455, which modified the exception to the offset provision and extended it until July 1983. Under the modified exception (which does not affect those who qualified for the earlier exception), both men and women are exempted from the government pension offset if they become eligible for a public pension based on their own noncovered work before July 1983 and if they can meet the one-half support test previously applicable only to men. In the Social Security Amendments of 1983 (Public Law 98-21), Congress amended the government pension offset provision for recipients of spousal benefits who become eligible for a public pension based on noncovered work after June 1983: only two-thirds of the amount of the public pension will be used to offset the spouse's benefit. On October 11, 1984, Congress passed H.R. 5386, which extends the two-thirds limit on the amount of the public pension used for offset purposes to those eligible for government pensions before July 1983. The President signed the legislation into law on November 8, 1984 (Public Law 98-617).

applies to benefits payable for months after November 1977, if such benefits are based on applications effectively filed in or after December 1977. However, Congress included an exception clause that exempted from the offset persons who became eligible to receive a public pension during the 5-year period December 1977–November 1982 if they could meet all the eligibility criteria for a spouse's benefit that were in effect in January 1977. Thus Congress, in effect, temporarily reenacted, for purposes of the government pension offset exception, provisions that subjected only men to the economic dependence test.

On March 5, 1984, the Supreme Court unanimously decided to uphold the constitutionality of the 1977 exception clause in the case of *Heckler* v. *Mathews*.[3] This note describes the events leading up to the case, the legal issues presented, and the judicial standard applied by the Court in reaching these decisions.

Dependency Test for Husband and Widower Benefits

The Social Security Act authorizes the payment of monthly cash benefits to workers who retire or become disabled and to their children and spouses (or divorced spouses if they had been married at least 10 years).[4] In addition, monthly cash benefits are provided for the surviving children and spouses (or divorced spouses) of workers who die. Before enactment of the 1950 Amendments to the Social Security Act (Public Law 81-734), spouse's benefits were available only to women. The 1950 legislation expanded the categories of spouse's benefits to include widowers and husbands aged 65 and older. Until 1977, a spouse's benefit was payable to a husband or widower only if he could demonstrate that he had been dependent on his wage-earning wife for at least one-half his support at the time of her retirement or death. In contrast, wives and widows were entitled to spousal benefits without proof of economic dependence. Although the dependency test made it more difficult for men than for women to qualify for benefits as spouses, it also meant that female workers were not able to earn the same degree of protection for their spouses as men were, even when both the male and female workers had identical earnings from employment covered under Social Security.

Rules governing benefit payments to persons with dual entitlement caused the gender-based dependency test to have little effect on men who spent most or all of their careers in jobs covered under the Social Security system. Usually the benefit based on a male worker's own earnings was higher than his potential benefit as a dependent spouse.

The dual-entitlement rules apply to all beneficiaries entitled to benefits based on more than one worker's earnings record. In cases where a person qualifies for benefits both as a worker and as a spouse (or surviving spouse), the dual-entitlement rules limit the amount of the spousal benefit actually paid to the difference, if any, between the person's own benefit as a retired or disabled worker and the amount of the spousal benefit. In effect, a dually entitled spouse receives either his or her own benefit as an insured worker or the spouse's benefit, whichever is the greater amount. A person who works in a noncovered job is not affected by the dual-entitlement provision because he or she receives only one Social Security benefit—a spouse's benefit; the "worker's benefit" comes from a system other than Social Security. Until 1977, the dependency test prevented a man who worked in noncovered employment from receiving both a pension from noncovered work and a full Social Security spouse's benefit, while a woman who worked in a noncovered job, and who did not have to demonstrate economic dependence, could receive both a pension from noncovered work and a full spouse's benefit from Social Security.

Constitutional Issues: *Califano* v. *Goldfarb*

Leon Goldfarb's application for a widower's benefit was the first step in the proceedings that led to the 1977 Supreme Court decision that invalidated the dependency test for such benefits. Goldfarb—a retired Federal employee—based his claim on the earnings record of his deceased wife, who, by the time of her death, had 25 years of employment in work covered by the Social Security program. Goldfarb's claim was denied because he had not been dependent on his wife for at least one-half his support at the time she died. He, in turn, took his claim directly to Federal District Court, where he challenged the constitutionality of the gender-based distinction in the eligibility criteria for survivor's benefits,[5] and in 1975, a three-judge District Court for the Eastern District of New York held the dependency test unconstitutional.[6] The Federal Government appealed this deci-

[3] 104 S. Ct. 1387 (1984).

[4] The 1950 Social Security Amendments provided benefits for dependent divorced mothers caring for the deceased worker's child. Benefits for dependent divorced wives (and dependent surviving divorced wives) were first made available by the 1965 Social Security Amendments, if the marriage lasted 20 years. The dependency requirements were eliminated by the 1972 amendments, and the duration-of-marriage requirement was reduced to 10 years by the 1977 amendments. Benefits for divorced fathers, divorced husbands, and surviving divorced husbands were provided under the 1983 Social Security Amendments, although such benefits had been payable for a number of years based on earlier court decisions.

[5] It was not necessary for Goldfarb to pursue an administrative appeal of the denial because the denial was based on a clear statutory requirement and the initial denial was therefore "final" for purposes of the district court's jurisdiction to review it under 42 U.S.C. 405(g).

[6] *Goldfarb* v. *Secretary of Health, Education, and Welfare*, 396 F. Supp. 308 (E.D.N.Y. 1975).

sion directly to the Supreme Court,[7] and in March 1977, the Supreme Court ruled, in *Califano* v. *Goldfarb*,[8] that an eligibility standard that required men but not women to prove past economic dependence on a deceased spouse in order to be eligible for a surviving spouse's benefit violated the equal protection guarantees of the fifth amendment's due process clause.[9]

No majority opinion was issued by the Court in the *Goldfarb* case. Justice Brennan, writing for a plurality of four Justices, found the dependency test unconstitutional because it discriminated against female wage earners, whose Social Security contributions produced less protection for their spouses than was produced by identical contributions from men. Justice Stevens' concurring opinion (the swing vote in the 5–4 decision) found the impermissible discrimination to be against men, whose eligibility for the survivor's benefit was burdened by the gender-based distinction in the dependency test. In dissent, Justice Rehnquist, writing for four Justices, stated the dependency test discriminated against men, but found such discrimination permissible. Thus, five Justices agreed only on the narrow holding that the gender-based classification in the dependency test violated equal protection guarantees.

Underlying the Court's divided opinion about the direction of the discrimination was a doctrinal distinction between viewing the Old-Age, Survivors, and Disability Insurance (OASDI) program as a social welfare program and viewing it as a social insurance program. Traditionally, the Court has viewed Social Security as a social welfare program for purposes of constitutional analysis. The historical reason is that the drafters of the original Social Security Act thought the Act would be found unconstitutional if it appeared to be a straightforward public pension program, since the Constitution does not expressly delegate to Congress the authority to establish pension contracts between the Federal Government and its citizens. As a result, the scheme was carefully crafted as a bifurcated plan involving, on the one hand, the levy of a tax, which Congress clearly had the power to impose under its taxing authority, and, on the other hand, the payment of income-security benefits to the elderly, which Congress had the authority to legislate under its power to spend for the general welfare. Accepting this view, the Supreme Court upheld the Social Security Act when its constitutionality was tested in *Helvering* v. *Davis*,[10] and this formalistically separated view of the taxing and spending aspects of Social Security has prevailed in Supreme Court analyses of the program ever since. In *Flemming* v. *Nestor*,[11] for example, the Court held that the interest of an eligible OASDI claimant in receiving benefits is not an accrued property right for due process purposes because workers neither earn benefits nor establish entitlement to them through contributions. Rather, workers pay taxes and those who meet eligibility criteria receive benefits, and no contractual nexus exists between the two events.[12]

To reach the conclusion that the gender-based distinction involved in the *Goldfarb* case discriminated against female wage earners, Justice Brennan had to part from the traditional constitutional analysis of Social Security and assume that workers make contributions that buy insurance protection. Thus, he could argue that equal contributions from men and women bought less protection for women than for men. Justice Stevens, along with four dissenters, adopted the historical analysis and argued that Social Security taxes do not buy future protection for workers but only fund benefits for those who are currently eligible. This approach led to rejection of the Brennan analysis and to the view that the discrimination was against male survivors.

Judicial Principles for Evaluating Claims of Gender Discrimination

In reaching its decision in the *Goldfarb* case, a majority of the Court applied a judicial standard of review known as heightened scrutiny. The Court had developed the standard 1 year earlier, specifically for determining the constitutionality of gender-based classifications in an equal protection context. Under the test, a statutory gender-based classification will be found constitutional only if the government can satisfactorily respond to both parts of a two-step inquiry. First, the government has the burden of establishing that the gender-based classification serves an important governmental objective. If the government successfully fulfills this requirement, it must then show a direct and substantial relationship between the gender-based classification and that objective.

The heightened scrutiny test is one of three standards of review the Court uses to determine the constitutionality of governmental action in an equal protection con-

[7] Under 28 U.S.C. 1252, any party may appeal directly to the Supreme Court a judgment in a Federal District Court that holds an act of Congress unconstitutional if the judgment is in a civil action and if the United States (or one of its agencies or officers) is a party to the action.

[8] 430 U.S. 199 (1977).

[9] The Court subsequently summarily affirmed two district court decisions invalidating the dependency requirement for husband's benefits: *Califano* v. *Silbowitz*, 430 U.S. 924 (1977) and *Califano* v. *Jablon*, 430 U.S. 924 (1977).

[10] 301 U.S. 619 (1937).

[11] 363 U.S. 603 (1960).

[12] More recent cases have established, however, that the interest of an OASDI beneficiary in continued receipt of monthly benefits is a property interest protected by the due process clause of the fifth amendment. See, for example, *Mathews* v. *Eldridge*, 424 U.S. 319 (1976). But these cases reflect a change in the Court's due process doctrine and not a departure from its traditional view of Social Security.

text. The tests are applied to different categories of legislative classifications to which the Court attaches different presumptions of invalidity. The basic standard is the rational basis test, which requires only that the statutory classification in question serve a legitimate governmental objective and be rationally related to the achievement of the objective. This test is the most deferential to legislative discretion and is used when the Court attaches little or no presumption of invalidity to the classification at issue. Consequently, legislative schemes reviewed under the rational basis test are generally upheld.

The least deferential, or strictest, standard of review is the strict scrutiny test, which the Court originally developed for dealing with legislation that includes racial classifications. This test requires that the statutory classification must serve a compelling governmental objective and that no less burdensome means be available to achieve the objective. The strictness of the test reflects the fact that the Court views racial classifications with a very strong presumption of invalidity, and hence legislative schemes subjected to this test are generally struck down. For gender-based classifications, the Court for a long time applied the rational basis test. In 1973, it switched to the strict scrutiny test.[13] In 1976, however, the Court decided that strict scrutiny was not appropriate for sex discrimination cases and it developed the intermediate heightened scrutiny test for reviewing the validity of gender-based classifications.[14]

Only five Justices applied the heightened scrutiny test in the *Goldfarb* case. The four dissenters applied the rational basis test, which led them to view the discrimination as permissible. Underlying this lack of consensus on the appropriate standard of review was a general disagreement among the Justices about the kinds of sex discrimination cases to which the heightened scrutiny test should apply. The four dissenters believed the heightened scrutiny test should be applied only in sex discrimination cases where the discrimination is against women. Since they viewed the discrimination in the *Goldfarb* case as being against men, they applied the lowest standard of review, believing that sex discrimination against men carries a lower presumption of unconstitutionality than does sex discrimination against women. Justice Stevens found the heightened scrutiny test appropriate for all sex discrimination cases without regard to the direction of the discrimination. Thus, even though he agreed that the discrimination was against men, application of the heightened scrutiny test in this case led him to find that the discrimination was unconstitutional. The four Justices in the Brennan plurality viewed the discrimination as being against women and applied the heightened scrutiny test to find the classification impermissible. A footnote to their plurality opinion suggests that these Justices would have applied the heightened scrutiny test even had they thought the discrimination was against men.[15]

The majority found that the gender-based classification not only failed to serve an important governmental objective, but seemingly served no governmental objective at all. The Court reviewed the legislative history of the eligibility provisions for entitlement to a survivor's benefit and found that Congress had evidenced an intention to aid the dependent spouses of deceased wage earners, and that this purpose had been coupled with a presumption that wives are usually dependent.[16] The Court characterized this presumption, and the gender-based classification based on it, as an accidental byproduct of a traditional way of thinking about women [17] that reflected archaic and overbroad generalizations about the roles and relative abilities of men and women.[18] It concluded that the Federal Government had failed to carry its burden of showing that an important objective was served by classifying survivors of deceased workers on the basis of gender and struck down the gender-based dependency test as unconstitutional.

Congressional Response

Following the *Goldfarb* decision, the general consensus in Congress and the Executive Branch was that a serious fiscal drain on the Old-Age and Survivors Insurance Trust Fund would result from the increase in the number of individuals who now would be eligible for a spouse's benefit. Estimates suggested the cost for benefits to newly eligible husbands and widowers would increase annual trust fund outlays by as much as $500 million.[19] The Social Security Administration estimated that 520,000 men would become newly entitled or entitled to higher benefits when the decision was implemented.[20]

To avoid such cost increases, in May 1977 the Executive Branch recommended to Congress that both men and women be required to meet a test of economic dependence to be eligible for a spouse's benefit. Congress rejected the proposal. To prevent the projected drain on the trust fund, however, Congress included in the 1977

13 *Frontiero* v. *Richardson*, 411 U.S. 677 (1973).
14 *Craig* v. *Boren*, 429 U.S. 190 (1976).

15 *Califano* v. *Goldfarb*, 430 U.S. 199, 209, n.8 (1977) (plurality opinion of Brennan, J.).
16 *Califano* v. *Goldfarb*, 430 U.S. 199, 217 (1977) (plurality opinion of Brennan, J.). See also 430 U.S. at 221-222 (Stevens, J., concurring).
17 430 U.S. at 223 (Stevens, J., concurring).
18 430 U.S. at 217 (plurality opinion of Brennan, J.).
19 Congressional Research Service, **The Government Pension Offset in Social Security**, Report No. 81-81 EPW, March 24, 1981, page 19.
20 **Ibid.**

Amendments to the Social Security Act a provision for taking into account government pensions earned outside the Social Security system. Under this government pension offset provision, the amount of the spouse's benefit was reduced by one dollar for each dollar payable to the spouse from a government pension based on his or her own work in noncovered government employment.

Recognizing the problems the offset would cause for individuals nearing retirement in 1977, who had made retirement plans based on the benefit eligibility criteria in effect prior to the *Goldfarb* decision, Congress enacted an exception to the offset provision. The exception exempted individuals eligible to receive a government pension before December 1982 if they would have qualified for a spouse's benefit under the eligibility criteria in effect and being administered by the Social Security Administration in January 1977. Thus, for this 5-year transition group, Congress effectively exempted most women from the offset provision—because they had not been required to prove financial dependence to qualify for the spouse's benefit—and retained the one-half support requirement for men, recreating the situation that existed before the *Goldfarb* decision.

In the same subsection in which it established the exception to the offset, Congress included a severability clause for the exception. The clause provided that if the exception clause was successfully challenged in court, only the exception would be invalid; the pension offset would continue to be in effect and would apply to all applicants for spousal benefits without exception.

Challenge to Exception Clause: *Heckler* v. *Mathews*

In December 1977, Robert Mathews, a retired U.S. postal worker, applied for a husband's benefit based on his wife's earnings record. Although Mathews was found to be entitled to a spouse's benefit, the amount was entirely offset by his postal service pension because he had not been dependent on his wife for at least one-half his support and thus did not qualify for the exception to the government pension offset. After unsuccessfully appealing this determination within the Social Security Administration—first to an administrative law judge and then to the Appeals Council—Mathews brought a class action suit in the Federal District Court for the Northern District of Alabama. Mathews challenged the constitutionality of both the exception to the pension offset provision and the severability clause, asserting that the exception provision was merely a temporary reenactment of the discriminatory scheme struck down in *Goldfarb*, and that the severability clause worked to deny him standing in violation of the separation of powers spelled out in Articles I and III of the Constitution. Mathews prevailed on both arguments in the district court[21] and the Government appealed directly to the Supreme Court. On March 5, 1984, the Supreme Court, in *Heckler* v. *Mathews*,[22] reversed the district court decision and upheld both the sex-based exception to the offset provision and the severability clause.

Justice Brennan wrote for a unanimous Court. He dealt first with the constitutionality of the severability clause, noting that this issue could affect the Court's jurisdiction. For a Federal court to consider the merits of a claim, the party seeking review must have "standing"—that is, the party must allege a threatened or actual injury resulting from the putatively illegal action in order to present the court with a case or controversy in the constitutional sense and demonstrate that he or she is the proper plaintiff to raise the issues for litigation.[23] Mathews asserted that the severability clause denied him standing because even if he succeeded in having the sex-based classification stricken, he would derive no personal benefit from the Court's decision because the severability clause would prevent him from receiving any more benefits than he was currently allowed. The severability clause, Mathews contended, amounted to an unconstitutional attempt by Congress to thwart the jurisdiction and remedial power of the Federal courts. Justice Brennan, however, found that the severability clause did not affect Mathews' standing because that standing did not depend on his ability to obtain increased Social Security benefits. Rather, the Court found that Mathews' right was to receipt of benefits "distributed according to classifications which do not without sufficient justification differentiate among covered (applicants) solely on the basis of sex,"[24] and not a substantive right to any particular amount of benefits. Therefore, the Court concluded, the severability clause denied Mathews neither standing nor an effective remedy.

Turning to the constitutionality of the exception to the offset provision, the Court noted first that the offset exception was, indeed, a temporary reenactment of the gender-based scheme invalidated by the *Goldfarb* decision. In reviewing the legislative history of the provision, however, the Court found that Congress' purpose for adopting the offset provision was not to reassert the sexist assumptions rejected in *Goldfarb*, but rather was to protect the expectations of individuals who had planned for retirement in reasonable reliance on the law in effect before the *Goldfarb* decision. Applying the heightened scrutiny test, the Court found (1) that this

[21] *Mathews* v. *Schweiker*, Civil Action No. 79-G-5251-NE (N.D. Alabama, 1982) (unreported). The Social Security Administration estimated that if this decision had been affirmed it would have cost the Social Security trust funds about $80 million to pay additional husband's benefits through calendar year 1982.

[22] 104 S. Ct. 1387 (1984).

[23] *Linda R.S.* v. *Richard D.*, 410 U.S. 614, 616 (1973).

[24] *Heckler* v. *Mathews*, 104 S. Ct. 1387, 1394 (1984).

protection of reliance interests constituted an important governmental objective, and (2) that the 5-year limitation on the extension of the unconstitutional law made the scheme directly and substantially related to achieving the objective since it served to limit protection to those who had in fact relied on prior law. The Court concluded that the Government had thus satisfied both parts of the two-step constitutional standard and therefore upheld as constitutionally acceptable the temporary reenactment of the scheme it had struck down in *Goldfarb.* The Court went on to note, however, that an unconstitutional scheme could not be retained for an unduly prolonged period in the name of protecting reliance interests, or even for a brief period if the expectations to be protected were themselves unreasonable.

Summary

Changes in the eligibility criteria for a survivor's benefit under the Social Security program resulted from a 1977 Supreme Court decision in the case of *Califano* v. *Goldfarb.* The Court ruled that legislation that required only men to prove past financial dependence on a deceased spouse in order to establish eligibility to a survivor's benefit violated equal protection guarantees in the Constitution. In a 5–4 decision, the majority of the Supreme Court Justices determined the constitutionality of the gender-based distinction by applying the heightened scrutiny test.

For a statutory gender-based classification to be found constitutional under the test, the government must show that (1) use of a gender-based classification serves an important governmental purpose and (2) a direct and substantial relationship exists between the gender-based classification and the purported objective. The majority of the Court found the sex-based distinction was based on sexist assumptions about women, was not formulated to serve an important governmental objective, and, thus, was unconstitutional.

Amid projections that elimination of the dependency test for men would increase annual Social Security benefit expenditures by as much as $500 million, Congress enacted a government pension offset provision to help minimize the cost increase. It required that any spouse or survivor who received or was eligible to receive a pension for his or her own work in noncovered public employment would have his or her Social Security surviving spouse's or dependent's benefit reduced dollar-for-dollar by the amount of the work-related pension.

An exception clause was included in that legislation. It exempted from the offset those persons who became eligible for public pensions before December 1982 and who would have qualified for a Social Security spouse's or survivor's benefit under the eligibility criteria in effect in January 1977.

In March 1984, the Supreme Court upheld the constitutionality of the exception clause against a sex discrimination challenge in the case of *Heckler* v. *Mathews.* Acknowledging that the exception was essentially a temporary reenactment of the provisions struck down in the *Goldfarb* case, the Court found that Congress' purpose—protecting those women near retirement in 1977, who had relied on current law when they made their retirement plans—constituted an important governmental objective. The Court also found that the 5-year limitation imposed on the exception directly and substantially related the gender-based classification to the objective, as it served to limit protection to those who had in fact relied on prior law. The Court thus concluded that the Federal Government had satisfied both elements of the heightened scrutiny test and the gender-based distinction in the exception clause was constitutional.