

ORIGINAL

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PROCEEDINGS BEFORE

THE SUPREME COURT

OF THE

UNITED STATES

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WASHINGTON, D.C. 20543

CAPTION: LOUIS W. SULLIVAN, SECRETARY OF
HEALTH AND HUMAN SERVICES, Petitioner v.
ELIZABETH STROOP, ET AL.

CASE NO: 89-535

PLACE: Washington, D.C.

DATE: March 26, 1990

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IN THE SUPREME COURT OF THE UNITED STATES

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LOUIS W. SULLIVAN, SECRETARY :
OF HEALTH AND HUMAN SERVICES, :
Petitioner :
v. : No. 89-535
ELIZABETH STROOP, ET AL. :
-----x

Washington, D.C.
Monday, March 26, 1990

The above-entitled matter came on for oral
argument before the Supreme Court of the United States at
12:59 p.m.

APPEARANCES:

CLIFFORD M. SLOAN, ESQ., Assistant to the Solicitor
General,
Department of Justice, Washington, D.C.; on behalf of
the Petitioner.
JAMIE B. ALIPERTI, ESQ., Culpeper, Virginia; on behalf of
the
Respondents.

C O N T E N T S

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25

<u>ORAL ARGUMENT OF</u>	<u>PAGE</u>
CLIFFORD M. SLOAN, ESQ.	
On behalf of the Petitioner	3
JAMIE B. ALIPERTI, ESQ.	
On behalf of the Respondents	18
<u>REBUTTAL ARGUMENT OF</u>	
CLIFFORD M. SLOAN, ESQ.	
On behalf of the Petitioner	37

1 should be upheld for three reasons. First, the term child
2 support is used repeatedly in the Social Security Act to
3 refer to payments from absent parents. Indeed, the
4 current version of the disregard, as it was amended in
5 1988, explicitly refers to payments by the absent parent.

6 Second, the legislative history and background of
7 the AFDC program reveal a consistent emphasis on the
8 problem of obtaining payments from absent parents and the
9 only prior instance of a child support disregard as part
10 of that emphasis. It is reasonable to view this disregard
11 in light of that long standing emphasis.

12 Third, to the extent that the statute is ambiguous,
13 the Secretary's interpretation is entitled to deference.

14 Now, a few words of background.

15 QUESTION: The statute does say any child support
16 payments.

17 MR. SLOAN: Yes, it does, Justice White.

18 QUESTION: And these are payments to a child or for
19 the child's benefit.

20 MR. SLOAN: That is true.

21 QUESTION: So, what do you do? You say child
22 support is a term of art, or --

23 MR. SLOAN: It -- it is a term of art within the
24 statute. If you look at Title IV of the Social Security
25 Act, and the AFDC program is IV-A of the Social Security

1 Act, there is an entire part of the Social Security Act,
2 Title IV-D, that is addressed to child support. And
3 throughout both Title IV-A, which has a close relationship
4 to Title IV-D, and Title IV-D, child support refers to
5 payments from absent parents.

6 Now, the linchpin of the relationship between Title
7 IV-A and Title IV-D is the requirement that has been in
8 the AFDC program since 1975, that an AFDC recipient assign
9 rights to child support to the state, and the state then
10 collects them. The entire IV-D system, as it relates to
11 the four -- as it relates to AFDC recipients, hinges on
12 that assignment of rights. And so it is reasonable to
13 view the term child support payments, even though it says
14 any child support payments, in view of its repeated
15 meaning throughout the Act.

16 That -- it's important to understand why this
17 assignment of rights developed in 1975, and why the Title
18 IV-D program, insofar as it applies to AFDC recipients,
19 was developed. And that is because repeatedly Congress
20 has identified the problem of obtaining payments from
21 absent parents as one of the chief reasons that people are
22 on AFDC, and that problem is one of the chief obstacles to
23 getting people off of AFDC and on the road to self-
24 sufficiency.

25 And it -- it's a very particular defined problem.

1 And Congress has tried a number of different ways, it has
2 been a frustrating problem to get at that problem. And
3 that is why child support is in Title IV to begin with.
4 And so -- and in no other context in Title IV of the
5 Social Security Act is it applied to Social Security
6 benefits. Let me give you some examples.

7 QUESTION: Mr. Sloan, essentially your response to
8 Justice White's question, the statute does say any child
9 support payments, and your response is yes, it says any
10 child support payments. I mean, that's really the
11 argument that is going on, isn't it? I mean --

12 MR. SLOAN: Well, the word any modifies the term
13 child support, and we believe that the --

14 QUESTION: So you either italicize the "any" or you
15 italicize the "child support payments" --

16 MR. SLOAN: Well, I think even if you italicize the
17 "any," you still have the word "child support," and you
18 have to interpret what that means. And I would suggest
19 that the place to look for that is the meaning that it has
20 elsewhere in the statute.

21 Now, it's not an unusual phenomenon for two words
22 to have a different meaning if you separate them than they
23 have together. Child support: does it support children?
24 Yes, it does.

25 But there was a recent decision in the D.C. Circuit

1 of Judge Ginsberg addressing the Freedom of Information
2 Act that talked about this problem. And in that opinion
3 Judge Ginsberg discussed the fact that the term parking
4 ticket, for example, has a particular meaning. But if you
5 separate it as a ticket for parking it could mean the
6 ticket that you get to go into a garage that allows you to
7 park your car there.

8 And it's a similar situation here, that the term
9 child support has a particular meaning in the statute,
10 that to just ask well, does this support children does
11 damage to that meaning that it has in the other provisions
12 of the Social Security Act.

13 QUESTION: Mr. Sloan, what does the Secretary do if
14 the payments come in as spousal maintenance? Is there a
15 disregard applied?

16 MR. SLOAN: There is a disregard in certain limited
17 circumstances, Justice O'Connor. And let me back up and
18 explain the Secretary's interpretation. Within weeks of
19 the amendments that passed this disregard initially in
20 1984, the Secretary determined that they should apply to
21 payments from absent parents, and enumerated the payments
22 that go to the state that are also passed through to the
23 family, also direct support payments which still go to the
24 family and voluntary support payments.

25 Subsequently, the Secretary has determined that in

1 addition to those categories of payments from absent
2 parents, spousal support payments in limited circumstances
3 get the disregard. And those circumstances are basically
4 when the spousal support payments are from an absent
5 parent and are linked to child support payments. Three
6 conditions have to be met for those spousal support
7 payments to be collected and to get the disregard.

8 First, there has to have been established support
9 obligations from the absent parent to both the spouse and
10 the child. Second, the spouse and the child have to be
11 living in the same house. And third, the state has to be
12 collecting the spouse's support along with the child
13 support.

14 Now, in the Secretary's determination that those
15 spousal support payments were entitled to the disregard,
16 he cited Section 12 of the Child Support Enforcement
17 Amendments of 1984. That was the provision that said that
18 the states should collect spousal support payments in
19 those circumstances. And the legislative history of that
20 provision is clear that the reason for that is because in
21 those limited circumstances the spousal support can be
22 seen as having a child support purpose.

23 QUESTION: Although there they are not, strictly
24 speaking, child support payments, I guess.

25 MR. SLOAN: That is true, although they are linked

1 so closely to child support that Congress has determined
2 that they serve a child support purpose.

3 QUESTION: Well, I guess that is the argument being
4 made for the Title II benefit payments.

5 MR. SLOAN: That is true, with this important
6 difference, Justice O'Connor. Those spousal support
7 payments are coming from the absent parent. The absent
8 parent has repeatedly been identified in the AFDC program
9 as the reason people are on AFDC. There is no similar
10 history with Title II benefits, and it comes as part of a
11 sustained congressional effort to get that absent parent
12 to fulfil his obligations.

13 QUESTION: Do any of the Secretary's regulations
14 expressly exclude the Title II payments?

15 MR. SLOAN: No, they don't, Justice O'Connor. What
16 they do is they expressly include payments from absent
17 parents. Now, Title II benefits would be included as
18 unearned income, and there would be no authority to
19 exclude -- to give them the disregard. So, by the fact
20 that the Secretary carefully limited the payments that
21 were entitled to the disregard and didn't suggest that any
22 other payments might be entitled to them, they are
23 excluded from the disregard.

24 And in some ways it is not surprising that the
25 Secretary didn't, because in no other context has Social

1 Security benefits ever been treated as child support, in
2 the Secretary's administration of the AFDC program, of the
3 child support program under Title IV-D and of the Title II
4 child's insurance benefits programs. The Secretary is the
5 official who has been charged by Congress with
6 implementing all three of those programs, and this issue
7 of treating Title II benefits as child support had simply
8 not come up, because it was so different from the way that
9 child support is treated in other provisions.

10 QUESTION: I -- I take it the term that you give to
11 these payments are child insurance benefits?

12 MR. SLOAN: That is the term the statute gives to
13 them, Justice Kennedy.

14 QUESTION: Well, is that the term that you give as
15 well?

16 MR. SLOAN: Yes, that is correct.

17 Now, a few examples of the use of child support in
18 other context --

19 QUESTION: Where are these -- where are these
20 payments -- particular payments identified as child
21 insurance payments?

22 MR. SLOAN: In Title II, in 42 U.S.C., let me --

23 QUESTION: Section 402, is it not?

24 MR. SLOAN: Pardon?

25 QUESTION: Section 42 U.S.C., Section 402?

1 MR. SLOAN: Yes.

2 QUESTION: And what does it say? Does it, is it
3 just a heading, or what?

4 MR. SLOAN: Well, yes, I believe it is the heading,
5 Justice White.

6 QUESTION: Thanks a lot. But it's also in the
7 text, is it not? I think you'll find that it is.

8 MR. SLOAN: Okay. I will accept that.

9 (Laughter.)

10 MR. SLOAN: But I don't think that the critical
11 question in any case is whether they are called child's
12 insurance benefits. The critical point is that they are
13 not called child support, and they are not called that in
14 Title II, and they are not called that in Title IV.

15 And in Title IV, in the AFDC program since 1975, it
16 has been a requirement for the state's participation in
17 the AFDC program that the state administer a child support
18 program in conformity with the directions of, at that
19 time, the Secretary of Health, Education, and Welfare, and
20 now the Secretary of Health and Human Services. And it
21 has never been part of the state's obligation, under that
22 child support program, to include Title II benefits. They
23 are not treated as that under the state's program.

24 And if you look at Title IV-D, under Section 651,
25 for example, where it talks about the purposes of the

1 section for which Federal funds are authorized, it refers
2 to obtaining child support, and it refers to payments from
3 absent parents.

4 And similarly in Section 652, which talks about the
5 requirements of state plans, it talks about child support
6 and it talks about obtaining payments from absent parents.

7
8 And in Section 658, which provides Federal
9 incentive payments to the states based on the
10 effectiveness of their child support program, it has never
11 been the case that a state would receive incentives based
12 on the payment of these Title II benefits. Instead, the
13 state receives it on payments collected under the plan,
14 under the child support plan.

15 Now, Congress clearly knew the difference between
16 Title II benefits and child support payments when it
17 passed this disregard. In the legislative history when
18 the family income requirement was proposed by the Senate,
19 and that requirement required including siblings of an
20 AFDC child in the household for the first time in the AFDC
21 unit, the Senate report explicitly refers to Social
22 Security or child support as the types, as among the types
23 of income that would now be included that had been
24 excluded in the past. And in the family income
25 requirement itself, it talks about benefits provided under

1 Title II.

2 In contrast, in the disregard provision the
3 language explicitly refers to child support payments. And
4 so Congress clearly was drawing a distinction between the
5 two, at least in its -- at least in its usage.

6 I would also suggest that the 1988 amendment is
7 particularly helpful. The judgment here is prospective,
8 and so the 1988 amendment is directly relevant to the
9 judgment under review. In the 1988 amendment, first, the
10 text of the provision explicitly refers to payments by the
11 absent parent, and contains no indication that it is
12 intended to refer to child support payments of any other
13 kind.

14 Now, the 1988 amendment is helpful not only in
15 terms of the text of the provision, but it is also helpful
16 in terms of the purpose of the provision, because there
17 has been a discussion as to whether the purpose of the
18 provision, of the disregard provision, should be viewed as
19 having the same incentive purpose of obtaining payments
20 from absent parents and trying to get families off of
21 AFDC, or whether it should be viewed as having a purpose,
22 either solely or principally, of mitigating the hardship
23 of the family income requirement and the inclusion of
24 siblings who had previously been excluded.

25 Now what the amendment does in 1988 is it says that

1 a payment will only get a disregard if it is paid when it
2 is due by the absent parent, if it is paid in a timely
3 fashion by the absent parent. Now that, the operation of
4 that, the credit only to timely payments, doesn't make
5 sense if the purpose of the provision is to mitigate the
6 hardship of the family income requirement, because if the
7 sibling had been excluded before the family income
8 requirement and the payments came late, that sibling would
9 still get the payments. But if the purpose is to add
10 incentives to try to get the absent parent in the position
11 of making regular, timely payments, then the timeliness
12 requirement makes perfect sense.

13 QUESTION: Timeliness requirement in the '88
14 amendments?

15 MR. SLOAN: Yes.

16 QUESTION: That also?

17 MR. SLOAN: Yes, that is. And again, it is
18 perfectly consistent with this problem that has been
19 identified since 1950 by Congress, of trying somehow to
20 get absent parents to fulfil their obligations.

21 Now, there has been a suggestion that it is unfair
22 to exclude Title II benefits when these other child
23 support payments are getting the payment -- are getting
24 the disregard. And I think it's important --

25 QUESTION: These other -- these other child support

1 payments?

2 MR. SLOAN: These child support payments.

3 (Laughter.)

4 MR. SLOAN: Yes. And when these, now the emphasis
5 is on "these" child support payments, when these child
6 support payments get the disregard, it is not just that
7 the Title II child's insurance benefits are somehow
8 arbitrarily being excluded. It is a relatively small
9 percentage of people on AFDC who get any disregard, and
10 the disregard does mitigate hardship. It is very
11 important to these needy families. But the great majority
12 of families on AFDC don't get a disregard, and they don't
13 have any hope of developing a stream of outside income at
14 all.

15 I mean, the question really is do people who are
16 getting the Title II benefits, do they get the disregard
17 that goes to people when their parents make a payment,
18 when their absent parents make a payment, or not. And in
19 that situation they are much more like the great majority
20 of people who are on AFDC who do not get the disregard.

21 Now, there is another point which Respondents have
22 raised which is that the plain meaning of the term -- of
23 the statute is inconsistent with the view that the
24 payments only refer to payments from absent parents,
25 because the statute refers to any child support payments,

1 including those passed-through by the state under the
2 pass-through provision. And Respondents contend that if
3 the provision only refers to payments from absent parents,
4 then it is only referring to those passed-through by the
5 state under the pass-through provision, and it is not
6 giving any meaning to the "any child support payment" part
7 of the provision.

8 And that simply isn't so. As early as 1981 the
9 Secretary of Health and Human Services informed Congress
10 that there was a kind of payment known as direct support
11 payments that were going directly to the family, despite
12 the assignment of child support rights to the state. And
13 the Secretary has issued three regulations to deal with
14 the treatment of those direct payments. And those are
15 payments that are not passed-through by the state under
16 the pass-through provision. So it is perfectly consistent
17 with the plain meaning to interpret child support payments
18 as referring to payments from absent parents. It refers
19 to any child support payments, including those passed-
20 through by the state.

21 Now, as we discussed, the Secretary within weeks of
22 the DEFRA amendment determined that payments from absent
23 parents of various kinds were entitled to the disregard.
24 And the Secretary at that time noted that payments that
25 were passed-through, direct payments, and voluntary

1 payments were entitled to the disregard.

2 Now, Respondents have raised a number of objections
3 to that interpretation as being unreasonable, because if
4 the statute is susceptible to more than one reading, then
5 the Secretary's interpretation should prevail.

6 One of the objections that Respondents have raised
7 is to the spousal -- the inclusion of spousal support
8 payments, the point that Justice O'Connor raised. We have
9 discussed that the Secretary applied it to those in the
10 limited circumstances in which they served a child support
11 purpose.

12 Respondents have also objected to the inclusion of
13 voluntary support payments. It is important to
14 distinguish between voluntary support payments and direct
15 support payments. Voluntary support payments are those
16 payments that are made in the absence of a legal order to
17 do so by the court. They can either be made directly to
18 the family and be a direct payment, or they can be made to
19 the state and be a part of the payment that goes through
20 the state system.

21 Now, it is perfectly reasonable for the Secretary
22 to apply the disregard to voluntary payments, because
23 those payments are from absent parents. So there is
24 nothing inconsistent with that. It is consistent with the
25 Secretary's interpretation, and it is also consistent with

1 the Secretary's general interpretation that the term child
2 support in this provision should be construed first in
3 light of the meaning that it is given in other provisions
4 of Title IV-A and Title IV-D, which he is charged with
5 administering, and second that it should be interpreted in
6 light of the long-standing emphasis in the AFDC program
7 and the problem of obtaining payments from absent parents.

8 Now, there was one prior instance of a child
9 support disregard, and that was in 1975 amendments as part
10 of Congress' overhaul of the AFDC system. Congress did a
11 number of very significant things in 1975 with respect to
12 child support. First, the requirements that we discussed
13 earlier that an AFDC recipient assign rights to child
14 support to the state was passed in 1975. Second, the
15 requirement that a state which participates in the AFDC
16 program have a child support program was passed in 1975.
17 And the entire creation of the child support system under
18 Title IV-D was passed in 1975.

19 And as one aspect of that systematic attempt to get
20 at this problem of payments from absent parents, Congress
21 passed for a 15-month period a child support pass-through
22 and disregard provision. Under that provision, the first
23 40 percent of the first \$50 per month of support payments
24 collected from the absent parent were passed through to
25 the family on whose behalf they were collected. The

1 legislative history of that provision makes clear that the
2 purpose of that pass-through and disregard was an
3 incentive purpose. It was an incentive for the non-, for
4 the custodial parent to cooperate in obtaining child
5 support payments from the absent parent, and it was an
6 incentive also to ensure that the family would always be
7 better off if the absent parent made a payment.

8 The Secretary, in interpreting the disregard, has
9 specifically referred to this prior example of the
10 disregard, and just as it was reasonable for the Secretary
11 to interpret the language and the emphasis in terms of the
12 general long-standing emphasis, it was also reasonable for
13 the Secretary to interpret this specific device in light
14 of the history of the only prior example as well.

15 Once again, I would just point out that the
16 Secretary is the official charged by Congress with
17 administering the Title IV-A AFDC program, the Title IV-D
18 child support program, and the Title II child's insurance
19 benefits program. His interpretation that child support
20 payments mean payments from absent parents, not Social
21 Security benefits, is reasonable and is consistent with
22 the statute, and should be upheld.

23 QUESTION: Thank you, Mr. Sloan. Mr. Aliperti.

24 ORAL ARGUMENT OF JAMIE B. ALIPERTI

25 ON BEHALF OF THE RESPONDENTS

1 MR. ALIPERTI: Mr. Chief Justice, and may it please
2 the Court:

3 We have heard how the Secretary wants to carefully
4 limit the application of the disregard and narrowly
5 construe its meaning. He has tried very hard to read the
6 word "any" out of this statute. Congress intended the \$50
7 disregard provision to broadly apply to any child support
8 payments.

9 QUESTION: Well, Mr. Aliperti, as one who practiced
10 law for 16 years and practiced some domestic relations
11 law, child support payments, to me, speaking only for
12 myself, is almost a word of art. It means the payment
13 coming from an absent parent for the support -- it is used
14 for the support of a child.

15 MR. ALIPERTI: But that is exactly what Title II
16 benefits are. They are payments for the support of one's
17 child.

18 QUESTION: But it's not coming from an absent
19 parent, it's coming from an insurance program.

20 MR. ALIPERTI: Well, Your Honor, I would submit
21 that -- that the Title II parents are absent. As the
22 Solicitor General pointed out in his brief, two thirds of
23 the parents of these children, of all the payments that
24 are made under Title II, are from deceased parents. I
25 would submit that you can't get much more absent than

1 that.

2 (Laughter.)

3 QUESTION: But the government is paying --

4 QUESTION: The government is paying.

5 QUESTION: The government writes the checks.

6 MR. ALIPERTI: Well, the government may write the
7 checks, but the checks are drawn from wages which the
8 parents, which working parents have paid into the trust
9 fund.

10 QUESTION: Well, that's the same as if you had a
11 private insurance policy. You could say in a very
12 theoretical sense that the insurance company's benefits
13 are drawn from the premiums that were paid it, but it's
14 not true in any literal sense.

15 MR. ALIPERTI: Well, the fact of the matter is that
16 the parent paid into the fund, and that by virtue of the
17 work credits and the payments which the parent had made -
18 - paid into the fund, the amount of the payments that is
19 made to the child is calculated. It is a more indirect
20 means of support than a living parent sending support
21 payments to their child, but it's child support
22 nonetheless. Congress, by the language it chose to enact,
23 wanted all forms of child support to be afforded the
24 disregard.

25 QUESTION: But if -- what if an aunt of one of the

1 families that is on AFDC gives, gives some money to the
2 mother and says this -- this is to support your child.

3 MR. ALIPERTI: That would not be child support,
4 Your Honor.

5 QUESTION: Why not?

6 MR. ALIPERTI: Because it would not --

7 QUESTION: Your definition is anything that
8 supports the child.

9 MR. ALIPERTI: It would not be coming from the
10 parent. I think that's a key part of the ordinary
11 understanding of child support, is that it generate from
12 the parent.

13 QUESTION: Well, it seems to me you are either
14 appealing to ordinary understanding, in which case I think
15 the Chief Justice's description is -- is what the ordinary
16 understanding is, or you're appealing to the literal
17 meaning of child support, in which case your answer to my
18 question would be -- would be the opposite. But you're
19 trying to straddle the two, you're saying it isn't really
20 ordinary understanding, but on the other hand we don't
21 mean child support means any child support, not really.
22 It's only child support coming from the parent.

23 MR. ALIPERTI: Well, Your Honor, that's part of the
24 ordinary understanding of the term child support, is
25 support by a parent to support one's child.

1 QUESTION: If you're appealing to ordinary
2 understanding, I think it means --

3 MR. ALIPERTI: That's what it says in the Random
4 House Dictionary, Your Honor. It is money paid for the
5 care of one's minor child, and that is exactly what Title
6 II payments are. They are nothing less than that.

7 QUESTION: Certainly the intonation from that
8 definition is that it is paid by the person who is
9 responsible for the minor child.

10 MR. ALIPERTI: Well, whether or not the payment
11 comes indirectly through Title II or directly through
12 payments out of a parent's wages does not lessen the
13 support character of the Title II payment. They are all
14 forms of child support. And Congress made it clear that
15 they wanted all forms of child support, any child support
16 payments, to --

17 QUESTION: (Inaudible) it seems to me, then, that
18 you have to really meet the argument that we should defer
19 to the Secretary's construction. Because if you say it
20 really doesn't mean any --

21 MR. ALIPERTI: We're saying it does mean any.

22 QUESTION: Well --

23 MR. ALIPERTI: We're saying that Congress intended
24 the disregard --

25 QUESTION: But you have to define child support in

1 order to say it means any.

2 MR. ALIPERTI: It is our position, Your Honor, that
3 child support --

4 QUESTION: And I would think if you say it has to
5 be coming from a parent, I would think that would be
6 proper, or at least within the ballpark to say well, that
7 really means child support from a parent who is paying it,
8 right now, that writes the checks.

9 MR. ALIPERTI: We're -- we are contending that the
10 parent does pay it, it is just indirectly through the
11 insurance fund. And we would also contend that, that
12 under the broad meaning of child support, which Congress
13 intended when it enacted this statutory language, that
14 payments of that type, which are set up by a parent to pay
15 for the support and maintenance of a child, are child
16 support.

17 This Court has always recognized the support
18 character of Title II. It has no other purpose but to
19 support children. That is the whole purpose in which the
20 program was first set up in 1939. And in 50 years of
21 legislative history, it made clear that Congress'
22 intention in setting up these funds was to support
23 children.

24 QUESTION: Suppose I am a parent that has no legal
25 obligation to support the child; there has been a divorce

1 and the wife hasn't gotten any child support payment as
2 part of the decree. And the family falls on hard times
3 and I give the wife some money, and I say this is for the
4 support of my minor child. Would that be a child support
5 payment?

6 MR. ALIPERTI: Well, under the Secretary's
7 scenario, yes, it would be, because it would be a
8 voluntary payment. The Secretary would allow voluntary
9 payments to receive the disregard, even though no
10 obligation has been established, even if paternity hasn't
11 been established.

12 QUESTION: What about you?

13 MR. ALIPERTI: We would say that there is no
14 question under Title II, because in order for a child to
15 be eligible for Title II, that child must apply for the
16 benefits and show that he was dependent upon the parent at
17 the time the parent died, became disabled or retired. And
18 the dependency tests which are set out in the statute all
19 hark back either to a past legal obligation or to an
20 obligation which could have been confirmed legally and was
21 observed in fact.

22 QUESTION: And they are all labeled in the statute
23 as child insurance payments, I take it? Or insurance
24 payments under 402.

25 MR. ALIPERTI: There is some discrimination between

1 child insurance payments and other forms of child support,
2 both in the Social Security Act --

3 QUESTION: Well, but all of -- all of these
4 payments that you have just described are called child
5 insurance payments under the statute, are they not?

6 MR. ALIPERTI: Voluntary payments aren't referred
7 to as child insurance payments, Your Honor. They are just
8 referred to as voluntary payments by the Secretary's
9 regulations.

10 QUESTION: But all of the disability payments,
11 payments based on disability, or payments because of the
12 death of a parent upon whom the child was dependent, are
13 called child insurance payments, are they not?

14 MR. ALIPERTI: That is the term that's -- that's
15 used, Your Honor. Your Honor, we would submit, of course
16 there are differences between Title II payments and other
17 forms of child support. An apple is much different from a
18 pear, but they are all fruit. And when you talk about a
19 statute in which a disregard applies to any child support
20 payments, all forms of child support were intended to be
21 included in that.

22 Also, if one looks at the legislative history of
23 the sibling deeming enactment, which we contend that the
24 Congress enacted the \$50 disregard for the purpose of
25 mitigating the very harsh effects of sibling deeming,

1 which affected ADC families with Title II children every
2 bit as much as families with children receiving other
3 forms of child support. In looking at the legislative
4 history, it is clear that Congress was concerned about the
5 effects of sibling deeming on two specific classes of
6 payments: Social Security Title II payments and child
7 support paid by absent parents. And the language which
8 Congress enacted, that the disregard applied to any child
9 support payments, was to encompass both of those types of
10 payments that they were most concerned about in enacting
11 sibling deeming.

12 Now, \$50 may seem like an insignificant sum, but
13 for a Virginia ADC family of three, receiving a maximum
14 allotment of \$265 a month, the additional \$50 from the
15 disregard represents a 20 percent increase in monthly
16 income. And that can make the difference between a parent
17 paying or not paying a utility bill, or being able to buy
18 shoes for their children or not. The -- which is exactly
19 in the same situation as ADC parents whose only form of
20 support coming in is payments from a living, absent
21 parent.

22 The Fourth Circuit, in -- in affirming the position
23 of the respondents, noted that it was irrational to -- to
24 apply the mitigating benefits of the disregard statute
25 only to payments from living absent parents, and not to

1 apply that to Title II recipients who suffered just as
2 much.

3 QUESTION: But what about the government's argument
4 that the reason for the distinction is to encourage the
5 absent living parents to keep making the payments?

6 MR. ALIPERTI: Well, that is what the government is
7 saying now, Your Honor. That is not what the government -
8 -

9 QUESTION: Well, what about it?

10 MR. ALIPERTI: We contend that that is not the
11 purpose behind the statute. In the Gilliard case --

12 QUESTION: Well, what -- what if it were the
13 purpose behind the statute? Would you then feel it
14 satisfied the rational basis test?

15 MR. ALIPERTI: No, Your Honor, because an incentive
16 rationale could also apply to Title II payments. Title II
17 payments do not fall on a child automatically. The child
18 must apply for the benefits. The child must qualify under
19 the dependency test. Many times paternity must be
20 established as a threshold before the parent can apply on
21 behalf of the child for the Title II. If there is an
22 incentive element lurking in this disregard, it would also
23 encourage parents to establish paternity and to establish
24 support obligations so that they can get the Title II
25 benefits.

1 linked The government told this Court three years ago, in
2 the Gilliard case, that the reason for the enactment of
3 the disregard was to mitigate the harmful effects of
4 sibling deeming. Significantly, that case didn't even
5 involve Title II. That case involved payments by living
6 absent parents, yet the government did not even mention
7 this incentive argument. Only after the disregard's
8 applicability to Title II became an issue did the
9 Secretary come forward with this incentive rationale. And
10 we contend it is simply an ad hoc response to litigation.
11 It is not why the disregard was enacted in the first
12 place. path of enactment of the two statutes. But it's a
13 strong And if one looks at the path of enactment of the
14 disregard, and -- it is clear that it was enacted as a
15 compromise so that sibling deeming could pass. It was
16 defeated in -- in the House twice before it was finally
17 enacted in 1984. And the conference report in 1984 was
18 added by the Senate a third time as an amendment to the
19 DEFRA statute which had been passed by the House. And the
20 conference report stated, "The conference agreement
21 follows the Senate amendment with the following
22 modification, a monthly disregard of \$50 of child support
23 received by the family is established." didn't really think
24 about II-- the sibling deeming provision and the
25 disregard provision are chronologically and conceptually

1 linked.

2 QUESTION: Is there any, Mr. Aliperti, is there any
3 discussion in the legislative history in connection with
4 the conference report of the fact, the specific fact that
5 the sibling deeming provision would encompass children who
6 were receiving Social Security benefits?

7 MR. ALIPERTI: No, Your Honor. The language that I
8 just quoted to the Court is the only language that talks
9 about the disregard at all.

10 QUESTION: It is really subject to --

11 MR. ALIPERTI: We have to make an inference based
12 on the path of enactment of the two statutes. But it's a
13 strong -- we contend it's a strong inference, and there is
14 no inference that can be drawn whatsoever from the path of
15 enactment that incentive was the rationale. Congress has
16 addressed the question of incentive in other legislation.
17 Just 40 days after it enacted DEFRA, Congress enacted the
18 Child Support Act Amendments in which a large number of
19 provisions relating to the collection of child support
20 were enacted. It's -- it --

21 QUESTION: What I am wondering is, is it possible,
22 is it consistent with your understanding of the
23 legislative history that Congress just didn't really think
24 about this problem? And I don't know which way that cuts,
25 but that they thought -- of course the inevitable

1 consequence of the statute was that it would require
2 inclusion of the sibling who was getting Social Security
3 benefits, but did anybody talk about that being one of the
4 things that would happen under this amendment?

5 MR. ALIPERTI: In conference reports in prior
6 years, in '82 and '83, when the sibling deeming was passed
7 by the Senate but defeated by the House, there was much
8 discussion about sibling deeming being especially harsh on
9 Social Security recipients --

10 QUESTION: Oh, there was.

11 MR. ALIPERTI: -- these Title II payments and child
12 support by living non-custodial parents.

13 QUESTION: So your argument is that that indicates
14 that the opposition in '84 was partially based on the
15 effect on families that would the Social Security -- have
16 Social Security beneficiaries in them.

17 MR. ALIPERTI: Yes, Your Honor. It would appear
18 from a fair reading of the legislative history that those
19 were the two groups that Congress was most concerned
20 about, and why sibling deeming did not pass the House in
21 '82 and '83. And then there were no -- there was no
22 mention of the disregard in any prior bill before
23 Congress. It appeared for the first time in the '84
24 House-Senate conference committee. And it is clear that
25 it was a compromise in order to get sibling deeming

1 passed.

2 QUESTION: Are there any other kinds of Social
3 Security payments, other than those that can be
4 characterized perhaps as child support, that would also
5 have been covered by their concern?

6 MR. ALIPERTI: They were referring specifically to
7 the child dependent payments, payments for dependent
8 children. And by the language of the enactment, any child
9 support payments -- Congress wasn't looking to disregard
10 any other kind of payments. Certainly Congress wasn't
11 intending, from the plain language of the statute, to
12 apply disregard to spousal support payments, which the
13 Secretary does.

14 We contend that it is highly irrational to deny the
15 disregard to a payment that clearly has as its only
16 purpose the support of children, and then apply the
17 disregard to spousal support payments, which are not meant
18 to support children at all. They are meant to support the
19 spouse.

20 And the Secretary misstates when he contends that
21 the, that spousal support is granted the disregard only if
22 it is inseparable from child support. In practice, if
23 spousal support payments are received, and no child
24 support payments are received, even if they are clearly
25 differentiated, that spousal support payment will be

1 granted the disregard. And that clearly is not what the
2 statute plainly says. And it certainly doesn't comport
3 with a professed narrow reading of the statute.

4 This Court has always interpreted the word "any" to
5 signal that a broad construction of -- of a provision was
6 intended. As this Court noted in the United States v.
7 James, given the broad sweep of such language, it requires
8 some ingenuity to create ambiguity. Yet, as shown by the
9 Georgia Department of Social Services' administrative
10 decision which the Secretary lodged along with his brief,
11 he excludes Title II by a professed narrow reading of the
12 statute.

13 Now I would like to quote one sentence out of that
14 administrative decision, because I think it gets to the
15 nub of the problem. It says that while these benefits
16 might be viewed generally as child support, the Family
17 Support Administration reasonably determined that they did
18 not fall within the narrower concept of the Act.

19 One thing is, we contend, is quite clear. And that
20 is that Congress intended a broad interpretation of this
21 statute. They could not have used clearer language for
22 that.

23 QUESTION: Well, they could have used clearer
24 language.

25 (Laughter.)

1 MR. ALIPERTI: Well, Congress could have said --

2 QUESTION: They could have said including Social
3 Security benefits.

4 MR. ALIPERTI: Congress could have said we intend
5 this to apply to Social Security benefits as well as other
6 forms of child support.

7 QUESTION: Or they might have said payments in lieu
8 of child support.

9 MR. ALIPERTI: But they said any child support
10 payments. The Secretary's interpretation can only be
11 found to be plausible and reasonable if this Court
12 determines that Title II payments are not payments to
13 support children at all. And that runs counter to the
14 entire 50-year history of the disregard, of the Title II
15 statutory scheme, and what this Court has said on numerous
16 occasions in prior cases. Whether or not the payment came
17 from a deceased parent or from a retired parent or from a
18 disabled parent, in all three of those instances this
19 Court has always recognized the support character of those
20 payments.

21 QUESTION: But you yourself don't -- don't argue
22 that any payment to support children is a child support
23 payment. I mean, you give some ordinary meaning to it.
24 You are willing to acknowledge that the payment has to
25 come from a parent, but I -- why not go all the way and

1 say that, as the Secretary does, and say that we usually
2 mean by a child support payment is -- is a payment that is
3 imposed on the parent, a legal obligation.

4 MR. ALIPERTI: The reason for that, Your Honor, is
5 that we contend that the ordinary meaning of child support
6 does not include payments by someone other than the parent
7 of the child, not from an uncle or from a friend or some
8 other relative. And it --

9 QUESTION: (Inaudible) include insurance payments,
10 the ordinary meaning?

11 MR. ALIPERTI: It includes insurance payments
12 because we contend, Your Honor, that that is emanating
13 from the parent. The parent either set up the insurance
14 fund or the parent paid their wages into the fund. The
15 government has made, has stated on numerous occasions in -
16 - in its brief that the government is paying these
17 benefits, but the government is not paying these benefits.
18 The central feature of Title II is that the parent pays
19 into the trust fund, and that is a condition precedent for
20 the payments to go out to the children.

21 QUESTION: That may be, but I still find it hard to
22 believe that the ordinary meaning of child support payment
23 is a payment from an insurance company. And that's --
24 that's the argument that you are making, right? That
25 that's the ordinary meaning.

1 MR. ALIPERTI: All it is is one step removed. The
2 ordinary meaning doesn't focus on the source of the
3 payment, Your Honor. The ordinary meaning focuses on the
4 function of the payment and its purpose. And the only
5 purpose of the Title II payments is to provide support to
6 children. It has no other purpose. There is no secondary
7 purpose or secondary function.

8 QUESTION: The ordinary meaning certainly does
9 focus on the source, I think, the source being the parent.

10 MR. ALIPERTI: The source being the parent, again
11 the payment wouldn't exist if the parent hadn't been
12 making payments into the trust fund, and if that child had
13 not been dependent upon that parent at the time that the
14 parent either became deceased or retired or disabled. If
15 those two conditions don't exist, that child does not
16 qualify for Title II.

17 QUESTION: Yes, but let me, may I just ask this.
18 To the extent that you rely on the legislative compromise
19 and the legislative history in 1984, wouldn't the purpose
20 of mitigating the hardship of the, of including the income
21 of the sibling and making him join the family group also
22 apply to people who are receiving money from a grandparent
23 or people -- children -- or even children who are working
24 at some job where they earn a few dollars a week, or
25 something like that? Wouldn't the purpose still apply to

1 that whole category?

2 MR. ALIPERTI: Yes, Your Honor, and we can only
3 speculate as to why Congress chose to apply the disregard
4 to child support payments rather than to simply any income
5 of the child. Again, the legislative history does show
6 that there were two specific kinds of payments that
7 Congress was most concerned about.

8 Also, it would have been an administrative
9 nightmare, I believe, if Department of Health and Human
10 Services had been required to figure out which families
11 had previously excluded children from the ADC assistance
12 unit, and were therefore affected by sibling deeming and
13 should receive the benefits of the disregard. Many
14 families excluded children and then added them back, and
15 then excluded them again, depending upon who had income
16 coming in at the time. It was just a lot easier to apply
17 a blanket disregard to any child support payments, which
18 would encompass the two groups that Congress was most
19 concerned about.

20 Now, again, the Secretary, in his 1987 brief in the
21 Gilliard case, offered as the reason for the disregard's
22 enactment one reason: mitigation. And it is only after a
23 challenge to that came up that he began talking about
24 incentives.

25 Also, the Secretary refers to other references to

1 the term child support in other sections of the Social
2 Security Act. In each case he takes that term out of
3 context. Many times the reference is neutral; it doesn't
4 give us any insight as to what they are referring to. And
5 the other times, when it is referring to payments --
6 specific payments from living, absent parents, it is in
7 the context of the IV-D system. And clearly, if you are
8 talking about IV-D payments, you can only be talking about
9 living, absent parent payments, because that is the only
10 kind of payments that can be funneled through the IV-D
11 system.

12 Again, in our own complaint in district court, we
13 offered -- we differentiated between Social Security Title
14 II payments and other forms of child support. But that
15 was in the context of talking about the effects of sibling
16 deeming, and it would be natural to differentiate in that
17 regard.

18 Congress did not create classes of child support,
19 some of which would get the mitigating effects of the
20 disregard and others which would not. All child support
21 payments, any child support payments are entitled to the
22 disregard under the language which congress itself chose
23 to enact. And we contend that the language means what it
24 says, that if there is a payment for the support of
25 children, coming from a parent, whatever the nature of

1 that payment, that payment is entitled to the disregard.

2 I would want to close by talking briefly about how
3 sibling deeming operates vis-a-vis the disregard, and the
4 best example for that is the family of Geneva Powers,
5 which is one of the named plaintiffs. Ms. Powers had a
6 family of four. She was receiving SSI payments of \$336 a
7 month for panic attacks. She in addition was receiving
8 \$207 a month in ADC for her daughters Nancy and Loretta
9 Powers, who she had by her ex-husband Roy Powers. And for
10 her third child, Crystal McClanahan, who was by her
11 deceased husband Ralph McClanahan, she was receiving \$254
12 a month in Title II.

13 Now, after sibling deeming went into effect, the -
14 - and Crystal McClanahan was forced into the assistance
15 unit, the \$207 ADC check was reduced to \$11. Now, if that
16 \$254 check had been from a living Ralph McClanahan who was
17 making payments pursuant to a court order, the Powers
18 family would have received an additional \$50 a month to
19 work with. But simply because Mr. McClanahan was deceased
20 and the payments were coming through Title II, even though
21 the function and the purpose of the payments were not
22 merely similar in the two situations, they are absolutely
23 identical, but no disregard for Ms. Powers.

24 We contend that that is contrary to the plain
25 language that Congress chose to enact. It is contrary to

1 the purpose of the disregard statute. And it is contrary
2 to 50 years of legislative history and opinions of this
3 Court construing what is the nature of Title II.

4 Thank you, Your Honor.

5 QUESTION: Thank you, Mr. Aliperti.

6 Mr. Sloan, do you have rebuttal?

7 REBUTTAL ARGUMENT OF CLIFFORD M. SLOAN

8 ON BEHALF OF THE PETITIONER

9 MR. SLOAN: Just a few brief points, Your Honor.

10 First, in view of the question about whether the
11 term child's insurance benefits is in the statute, at 37a
12 and 38a of the petition you will see that the term is in
13 the statute.

14 Second, Respondents mentioned that there would be
15 an incentive rationale with Title II benefits as well, in
16 terms of trying to get somebody to apply for Title II
17 benefits, and so forth. And I would just point that,
18 unlike the problem of payments from absent parents, there
19 is no long-standing emphasis of this problem, this
20 incentive problem in the AFDC program, there is no
21 sustained congressional effort to get at that problem.

22 And third, just to clarify one point in Justice
23 Stevens' questions, earned income does get its own
24 disregard in many circumstances. It can be lost if
25 somebody doesn't comply with certain requirements, but it

1 does get its own disregard. However, there are many
2 categories of unearned income that do not get any
3 disregard at all.

4 QUESTION: May I ask you this question, Mr. Sloan,
5 about his argument that if you look at the legislative
6 history from '82 through '84, that you find in '82 and '83
7 there was concern about the sibling deeming program's
8 effect on Title II recipients as well as support payments,
9 and therefore if you read the whole legislative history as
10 a package, it is fair to assume this mitigation purpose
11 motivated his clients as well as the support people.

12 What do you say about that argument?

13 MR. SLOAN: Well, if you look at the legislative
14 history you find Social Security payments and child
15 support payments being identified, including in 1984, by
16 the Senate as categories of income -- principal categories
17 of income, that they do want to include that had been
18 excluded. It's -- they are given as examples of those.
19 Now -- and it is true that the Senate had been pushing for
20 it, the House had been resisting it, and it does come in
21 conference without any explanation of the disregard
22 provision.

23 Now, Respondents suggest that that means, because
24 it came as part of this compromise in conference, it must
25 have a mitigation purpose. There is no conference report

1 explanation to that effect, and it is possible to
2 hypothesize other reasons. To give one example, it might
3 be that the House thought that a child support disregard
4 was a very good idea because of the incentive purpose and
5 so on, but it is costly. It is turning out to be very
6 costly to the program. And so it could only get into the
7 program as part of horse trading when they were also doing
8 a major cost-saving initiative that the Senate had wanted
9 to do, and it was part of a kind of legislative compromise
10 that comes out of conferences all the time.

11 Whether the reason for that compromise was the
12 reason that Respondents suggest, or this reason, there is
13 nothing in the legislative history to --

14 QUESTION: Of course, the disregard would add costs
15 to the program.

16 MR. SLOAN: That's right. That is my point, is
17 that the Senate, with the family income requirement, was
18 going to be saving costs, and so then the House had been
19 resisting that, and so it is perfectly plausible to think
20 that the House said okay, if we are going to give you this
21 savings, which is estimated to be \$455 million over the
22 next few years, we think this program is a good idea. It
23 won't eat up all of that, and here is a way to fund it in
24 part. And so you won't get your \$455 million savings, but
25 you'll still get savings, and we'll further this worthy

1 purpose.

2 There is no explanation in the reports one way or
3 the other, but what there is is the statutory term "child
4 support payments," which had a resonance throughout Title
5 IV and had a particular history in Congress' attention to
6 that problem.

7 QUESTION: Mr. Sloan, why does the government --
8 why does the government include voluntary payments, which
9 I would not normally consider child support payments. I
10 mean, if I am divorced and I am visiting and I say, you
11 know, here is some money for the kid, that would be --
12 that would come under the exclusion?

13 MR. SLOAN: Yes, it would, Justice Scalia, and it
14 would if it was acknowledged by one of the parents to be
15 support payments. The reason for that is because the
16 Secretary's interpretation has been tied to the assignment
17 provision in 402(a)(26), which requires the assignment of
18 rights to support from other persons. The legislative
19 history in 1975 makes it clear that that is addressed to
20 child support.

21 The Secretary's interpretation really focuses on
22 child support as that which can be assigned the right to
23 support. And the Secretary has interpreted when somebody
24 goes on AFDC and they assign any rights to support from
25 their payment, from -- excuse me, from their parent, when

1 the parent then makes a payment, that is part of what has
2 been assigned to the state. And actually the person, the
3 recipient is under an obligation to turn that over to the
4 state and get it into the IV-D system.

5 That's where, the point that I was trying to make
6 before, about there are two kinds of payments from absent
7 parents. There is direct payments and there are those
8 that go to the state. Voluntary payments can be either
9 one, and if they are direct payments then they should
10 either be returned to the state or there is another
11 procedure to deal with it. But the reason that the
12 Secretary has treated voluntary payments in that way is
13 because they would be within the assignment of rights to
14 the state under 602(a)(26).

15 Thank you.

16 QUESTION: Suppose a -- suppose an insured divorced
17 person during his lifetime makes payments pursuant to a
18 court order, but he has set up a trust fund, and he has
19 gotten rid of it entirely. And he says upon my death, pay
20 X dollars a month to my children.

21 MR. SLOAN: The payments from that trust fund would
22 not get the disregard.

23 QUESTION: Right.

24 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Sloan.

25 The case is submitted.

1 (Whereupon, at 1:54 p.m., the case in the above-
2 entitled matter was submitted.)
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CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

NO.
'89-535

LOUIS W. SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES,

PETITIONER V. ELIZABETH STROOP, ET AL.

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY Lona M. May

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