SUPREME COURT OF THE UNITED STATES

No. 91–1729

UNITED STATES, ET AL., PETITIONERS *v.*
TEXAS ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[April 5, 1993]

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

In this case we decide the question left open in *West Virginia* v. *United States*, 479 U. S. 305, 312–313, n. 5 (1987): whether Congress intended the Debt Collection Act of 1982 (Act) to abrogate the United States' federal common law right to collect prejudgment interest on debts owed to it by the States. We hold that it did not.

Texas incurred the instant debts as a result of participation in the Food Stamp Program, 78 Stat. 703, as amended, 7 U. S. C. §2011 *et seq.* Under that program, the Food and Nutrition Service (FNS) of the United States Department of Agriculture provides food stamp coupons to participating States, and the States then distribute the coupons to qualified individuals and households. §§2013(a), 2014. Regulations implementing the Food Stamp Program permit participating States to distribute the coupons either over-the-counter or through the mail. 7 CFR §274.3(a) (1986); 7 CFR §274.3 (a)(3) (1992). While mail issuance generally is cheaper and more convenient, States that choose to use that distribution method must reimburse the Federal Government for a portion of the replacement cost for any lost or stolen coupons. 7 U. S. C. §2016(f). Specifically, a State must reimburse the Government for all such losses above a "tolerance level" set by

regulation.[1]

[1]The regulatory tolerance level in place for the mail issuance losses in this case was .5% of each reporting area's total mail issuances for each calendar quarter. 7 CFR §274.3(c)(4)(i) (1986).

Texas, through its Department of Human Services, contractually bound itself to comply with all federal regulations governing the program. See 7 CFR §§272.2(a)(2), 272.2(b)(1) (1986).[2] Texas incurred substantial mail issuance losses, in part because United States Postal employees stole food stamps that had been mailed by the Texas Department of Human Services to qualified households. Because

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[2]Title 7 CFR §272.2(a)(2) (1992) provides in pertinent part:

"The basic components of the State Plan of Operation are the Federal/ State Agreement, the Budget Projection Statement, and the Program Activity Statement. . . . The Federal/State Agreement is the legal agreement between the State and the Department of Agriculture. This Agreement is the means by which the State elects to operate the Food Stamp Program and to administer the program in accordance with the Food Stamp Act of 1977, as amended, regulations issued pursuant to the Act and the FNS-approved State Plan of Operations."

Subsection (b)(1) sets out the exact wording of the pre-printed Federal/ State Agreement. The provisions relevant to this dispute are as follows:

"The State of ___ and the Food and Nutrition Service (FNS), U. S. Department of Agriculture (USDA), hereby agree to act in accordance with the provisions of the Food Stamp Act of 1977, as amended, implementing regulations and the FNS-approved State Plan of Operation. The State and FNS (USDA) further agree to fully comply with any changes in Federal law and regulations. This agreement may be modified with the mutual written consent of both parties.

. . . . .

"The State agrees to: 1. Administer the program in accordance with the provisions contained in the Food Stamp Act of 1977, as amended, and in the manner prescribed by regulations issued pursuant to the Act;

those losses exceeded the applicable tolerance level, Texas was bound to reimburse the Federal Government for the excess losses. The FNS notified Texas of its debt in the amount of $412,385, and informed it that prejudgment interest would begin to accrue on the balance unless payment was made within 30 days.

Texas sought administrative relief in the form of a waiver of liability. After the Food Stamp Appeals Board denied the requested relief, Texas sued the United States in the United States District Court for the Western District of Texas. In addition to challenging the Appeals Board's refusal to grant a waiver of liability, Texas argued that the Debt Collection Act precluded the imposition of prejudgment interest on any amount it owed the Federal Government. The District Court granted summary judgment in favor of the United States on both issues. With respect to the prejudgment interest issue, the District Court adopted the approach taken by the Court of Appeals for the Tenth Circuit in *Gallegos* v. *Lyng*, 891 F. 2d 788 (1989), which held that the Government's common law right to prejudgment interest on debts owed to it by the States survived enactment of the Debt Collection Act. See Civ. Action Nos. A-87–CA-774, A-88–CA-820 (WD Tex., Nov. 13, 1990).

The Court of Appeals for the Fifth Circuit affirmed the District Court's decision concerning waiver, but reversed its decision concerning prejudgment interest. 951 F. 2d 645 (1992). Relying on the language of the Debt Collection Act, the Court held that the "Act is not silent concerning whether or not state obligations should be subject to prejudgment interest. The Act specifically excludes states from the payment of interest." *Id.*, at 651. Because Congress

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and to implement the FNS-approved State Plan of Operation." 7 CFR §272.2(b)(1) (1992).

did not impose interest through the specific provisions of the Food Stamp Act "during the time period relevant in this case, the Courts are not free to `supplement' Congress' enactment." *Ibid.* (quoting *Mobil Oil Corp.* v. *Higginbotham*, 436 U. S. 618, 625 (1978)). The Court rejected the argument that abrogation is inconsistent with the Act's purpose of enhancing the Government's ability to collect its debts. In the Court's view, the Federal Government could enforce its claims for unpaid mail issuance losses through the offset procedures built into the Food Stamp Act. Because of a split among the Courts of Appeals on this question, we granted certiorari, 506 U. S. ___ (1992), and now reverse.[3]

It is a "longstanding rule that parties owing debts to the Federal Government must pay prejudgment interest where the underlying claim is a contractual obligation to pay money." *West Virginia* v. *United States*, 479 U. S., at 310 (citing *Royal Indemnity Co.* v. *United States*, 313 U. S. 289, 295–297 (1941)). In *Board of Comm'rs of Jackson County* v. *United States*, 308 U. S. 343 (1939), we held that this common law right extends to debts owed by state and local governments, but cautioned that a federal court considering the question in an individual case should weigh the federal and state interests involved. We reaffirmed *Board of Comm'rs* in *West Virginia*, *supra*, and upheld the assessment of prejudgment interest

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[3]The Tenth Circuit holds that the Debt Collection Act of 1982 did not abrogate the Federal Government's common law right to collect prejudgment interest against the States. *Gallegos* v. *Lyng*, 891 F. 2d 788 (1989). The Second, Third and Eighth Circuits all hold to the contrary. See *Perales* v. *United States*, 751 F. 2d 95 (CA2 1984) *(per curiam); Pennsylvania Dept. of Public Welfare* v. *United States*, 781 F. 2d 334 (CA3 1986); *Arkansas by Scott* v. *Block*, 825 F. 2d 1254 (CA8 1987).

on a debt owed by West Virginia to the United States.

Just as longstanding is the principle that "[s]tatutes which invade the common law . . . are to be read with a presumption favoring the retention of long-established and familiar principles, except when a statutory purpose to the contrary is evident." *Isbrandtsen Co.* v. *Johnson*, 343 U. S. 779, 783 (1952); *Astoria Federal Savings & Loan Assn.* v. *Solimino*, 501 U. S. ___, ___ (1991) (slip op., at 3). In such cases, Congress does not write upon a clean slate. *Astoria*, *supra*, at ___ (slip op., at 2–3). In order to abrogate a common law principle, the statute must "speak directly" to the question addressed by the common law. *Mobil Oil Corp.* v. *Higginbotham*, *supra,* at 625; *Milwaukee* v. *Illinois*, 451 U. S. 304, 315 (1981).

Texas argues that this presumption favoring retention of existing law is appropriate only with respect to state common law or federal maritime law. Although a different standard applies when analyzing the effect of federal legislation on state law, *Milwaukee*, *supra*, at 316–317, there is no support in our cases for the proposition that the presumption has no application to federal common law, or for a distinction between general federal common law and federal maritime law in this regard. We agree with Texas that Congress need not "affirmatively proscribe" the common law doctrine at issue. Brief for Respondents 3–4; see *Milwaukee*, *supra*, at 315. But as we stated in *Astoria*, *supra*, "courts may take it as a given that Congress has legislated with an expectation that the [common law] principle will apply except `when a statutory purpose to the contrary is evident.'" 501 U. S., at ___ (slip op., at 3) (quoting *Isbrandtsen*, *supra*, at 783).

The Debt Collection Act does not speak directly to the Federal Government's right to collect prejudgment interest on debts owed to it by the States. The Act states that "[t]he head of an executive or legislative agency shall charge a

minimum annual rate of interest on an outstanding debt on a United States Government claim owed by a *person*. . . ." 31 U. S. C. §3717(a)(1) (emphasis added). Section 3701, in turn, provides that the term "`person' does not include an agency of the United States Government, of a State government, or of a unit of general local government." §3701(c). Texas argues that this exemption clearly establishes Congress' intent to relieve the States of their common law obligation to pay prejudgment interest. We disagree.

The only obligation from which §3701 exempts the States is the obligation to pay prejudgment interest in accordance with the mandatory provisions of the Act. These impose a stringent minimum interest requirement upon private persons owing money to the Federal Government. The statute is silent as to the obligation of the States to pay prejudgment interest on such debts. We agree with the Solicitor General that "Congress's mere refusal to legislate with respect to the prejudgment-interest obligations of state and local governments falls far short of an expression of legislative intent to supplant the existing common law in that area." Brief for Petitioners 16.[4]

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[4]Both Texas and the Court of Appeals rely on Congress' authority to impose interest obligations on the States through specific statutes, such as the Medicaid Act, 42 U. S. C. §1396b(d)(5), and the Social Security Act, 42 U. S. C. §418(j) (1982 ed.), to support the proposition that the Debt Collection Act extinguished the Federal Government's common law right to collect prejudgment interest. Both statutes, however, codified and made mandatory the common law right to collect prejudgment interest at a specified interest rate. Like the Debt Collection Act, these statutes changed the common law. Congress' obvious desire to enhance the common law in

Our conclusion that the States remain subject to common law prejudgment interest liability is supported by the fact that the Debt Collection Act is more onerous than the common law. Section 3717(a) *requires* federal agencies to collect prejudgment interest against persons and specifies the interest rate.[5] The duty to pay prejudgment interest under the common law, however, is by no means automatic. Before imposing prejudgment interest, the courts must weigh the competing federal and state interests. *West Virginia*, 479 U. S., at 309–311; *Board of Comm'rs*, 308 U. S., at 350. And instead of imposing a pre-established rate of interest, the district courts retain discretion to choose the appropriate rate in a given case. Unlike the common

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specific, well-defined situations does not signal its desire to extinguish the common law in other situations.

Texas also relies on the recent amendment to 7 U. S. C. §2022 adding a provision requiring prejudgment interest on specific obligations arising under the Food Stamp Act of 1977. Pub. L. 100–435, §602, 102 Stat. 1674 (1988). But "subsequent legislative history is a `hazardous basis for inferring the intent of an earlier' Congress." *Pension Benefit Guaranty Corp.* v. *LTV Corp.*, 496 U. S. 633, 650 (1990) (quoting *United States* v. *Price*, 361 U. S. 304, 313 (1960)). Texas' argument also fails because, like the Medicaid Act and the Social Security Act provisions, the Food Stamp Act of 1977 did not merely codify the common law without change. Rather, it contains a mandatory provision requiring prejudgment interest at a specified rate.

[5]The interest rate required under §3717 is "the average investment rate for the Treasury tax and loan accounts for the 12-month period ending on September 30 of each year, rounded to the nearest whole percentage point." 31 U. S. C. §3717(a)(1).

law, §3717 also imposes processing fees and penalty charges, 31 U. S. C. §§3717(e)(1), (e)(2). Given these differences, it is logical to conclude that the Act was intended to reach only one subset of potential debtors—persons—and to leave the other subset alone. It is reasonable to apply more stringent requirements to debts owed by private persons and to keep the more flexible common law in place for debts owed by state and local governments.

The evident purpose of the Debt Collection Act reinforces our reading of the plain language. The Act was designed "[t]o increase the efficiency of Government-wide efforts to collect debts owed the United States and to provide additional procedures for the collection of debts owed the United States." 96 Stat. 1749; S. Rep. No. 97–378, p. 2 (1982) (the Act responded to "increasing concern . . . expressed in Congress and elsewhere over the increasing backlog of unpaid debts owed the federal government"). This suggests that Congress passed the Act in order to strengthen the Government's hand in collecting its debts. Yet under the reading proposed by Texas and the Court of Appeals, the Act would have the anomalous effect of placing delinquent States in a position where

they had less incentive to pay their debts to the Federal Government than they had prior to its passage.

The Court of Appeals reasoned that the States would not have an incentive to delay payment of their debts because the Food Stamp Act makes state agencies liable for actual losses caused by coupon shortages or unauthorized issuances, and permits the Federal Government to recover these debts through an administrative off-set procedure. 951 F. 2d, at 650. But the Debt Collection Act applies to *all* federal agencies, not just the FNS. Thus, the existence of a mechanism in the Food Stamp Act allowing the FNS to collect its debts does nothing to encourage prompt payment of debts government-wide. That the FNS may have already possessed adequate sanctions to compel payment is not a reason to conclude that the generic language in the Debt Collection Act was meant to abrogate the existing common law obligation of the States generally.

Texas concedes that Congress intended to enhance the Government's debt collection efforts by passing the Act. It argues, however, that Congress was concerned primarily with debts owed by private persons. Accordingly, runs the argument, Congress meant to relieve the States of their duty to pay interest because the States were not the root of the debt collection problem.

Part of this argument persuades; Congress in the Act tightened the screws, so to speak, on the prejudgment interest obligations of private debtors to the Government, and not on the States. It may be inferred from this fact that the former were the root of the Government's debt collection problems which inspired the Act. But it does not at all follow that because Congress did not tighten the screws on the States, it therefore intended that the screws be entirely removed. The more logical conclusion is that it left the screws in place, untightened.

As a last-ditch argument, Texas contends that its liability for losses in the mail is not a contractual debt for which it owes prejudgment interest, but rather a penalty unilaterally imposed by Congress. See *Rodgers* v. *United States*, 332 U. S. 371, 374–376 (1947) (penalties are not normally subject to prejudgment interest). This argument fails because the obligation of Texas to reimburse the Government for a portion of the stamps lost in the mail is quite different from that involved in *Rodgers*. There the penalties in question were unilaterally imposed by the Agricultural Adjustment Act on farmers who exceeded their production quotas; there was no suggestion that
the farmers ever consented to such penalties. Here, on the other hand, Texas signed a Federal/State Agreement, the express terms of which bound the State to act in accordance with the implementing regulations. 7 CFR §272.2(a)(2) (1986); see also n. 2, *supra*. Thus, 7 CFR §274.3(c)(4) (1986), which imposed liability for mail issuance losses above a specified tolerance level, was incorporated into Texas' Federal/State Agreement. The requirement that the States reimburse the Federal Government for a certain portion of mail issuance losses is not a penalty, but a contractual obligation which the State assumed.[6]

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[6]Both Texas and the Court of Appeals rely upon our decision in *Pennhurst State School and Hospital* v. *Halderman*, 451 U. S. 1 (1981), for the proposition that the Federal Government may not collect prejudgment interest because neither the Debt Collection Act nor the Food Stamp Act expressly require prejudgment interest. This reliance is misplaced. In *Pennhurst*, we held that in order to impose conditions on the receipt of federal funds, Congress must speak unambiguously. *Id.*, at 17. This makes sense because the States cannot voluntarily and knowingly

For these reasons, we hold that the Debt Collection Act left in place the federal common law governing the obligation of the States to pay prejudgment interest on debts owed to the Federal Government.

The judgment of the Court of Appeals to the contrary is accordingly

Reversed.

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agree to a condition that is not clearly expressed. *Ibid.* Because the duty to pay prejudgment interest on debts owed to the United States existed long before either the Food Stamp Program or the Debt Collection Act was created, the rule in *Pennhurst* does not apply. See *Bell* v. *New Jersey*, 461 U. S. 773, 790, n. 17 (1983).