SUPREME COURT OF THE UNITED STATES

Nos. 01–653 and 01–657

FEDERAL COMMUNICATIONS COMMISSION,
PETITIONER
01–653 *v.*
NEXTWAVE PERSONAL COMMUNICATIONS INC.
ET AL.

ARCTIC SLOPE REGIONAL CORPORATION, ET AL.,
PETITIONERS
01–657 *v.*
NEXTWAVE PERSONAL COMMUNICATIONS INC.
ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[January 27, 2003]

JUSTICE BREYER, dissenting.

The statute before us says that the Government may not revoke a license it has granted to a person who has entered bankruptcy "*solely because [the bankruptcy debtor] . . . has not paid a debt that is dischargeable in [bankruptcy].*" 11 U. S. C. §525(a) (emphasis added). The question is whether the italicized words apply when a government creditor, having taken a security interest in a license sold on an installment plan, revokes the license not because the debtor has gone bankrupt, but simply because the debtor has failed to pay an installment as promised. The majority answers this question in the affirmative. It says that the italicized words mean

"*nothing more or less* than that the failure to pay a

> dischargeable debt must alone be the proximate cause of the cancellation—the act or event that triggers the agency's decision to cancel, whatever the agency's ultimate motive . . . may be." *Ante,* at 8 (emphasis added).

Hence, if the debt is a dischargeable debt (as virtually all debts are), then once a debtor enters bankruptcy, the Government cannot revoke the license—irrespective of the Government's motive. That, the majority writes, is what the statute says. Just read it. End of the matter.

It is dangerous, however, in any actual case of interpretive difficulty to rely exclusively upon the literal meaning of a statute's words divorced from consideration of the statute's purpose. That is so for a linguistic reason. General terms as used on particular occasions often carry with them implied restrictions as to scope. "Tell all customers that . . ." does not refer to every customer of every business in the world. That is also so for a legal reason. Law as expressed in statutes seeks to regulate human activities in particular ways. Law is tied to life. And a failure to understand how a statutory rule is so tied can undermine the very human activity that the law seeks to benefit. "No vehicles in the park" does not refer to baby strollers or even to tanks used as part of a war memorial. See Fuller, Positivism and Fidelity to Law—A Reply to Professor Hart, 71 Harv. L. Rev. 630, 663 (1958).

I

In my view this statute's language is similarly restricted. A restriction implicitly limits its scope to instances in which a government's license revocation is related to the fact that the debt was dischargeable in bankruptcy. Where the fact of bankruptcy is totally irrelevant, where the government's action has no relation either through purpose or effect to bankruptcy or to dischargeability, where consequently the revocation cannot

threaten the bankruptcy-related concerns that underlie the statute, then the revocation falls outside the statute's scope. Congress intended this kind of exception to its general language in order to avoid consequences which, if not "absurd," are at least at odds with the statute's basic objectives. Cf. *United States* v. *Kirby,* 7 Wall. 482, 486 (1869) ("All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence").

The Court's literal interpretation of the statute threatens to create a serious anomaly. It seems to say that a government cannot *ever* enforce a lien on property that it has sold on the installment plan as long as (1) the property is a license, (2) the buyer has gone bankrupt, and (3) the government wants the license back solely because the buyer did not pay for it. After all, in such circumstances, it is virtually *always* the case that the buyer will not have paid a debt that is in fact "dischargeable," and that "event" alone will have "trigger[ed]" the government's "decision" to revoke the license. See *supra*, at 1–2.

Yet every private commercial seller, every car salesman, every residential home developer, every appliance company can threaten repossession of its product if a buyer does not pay—at least if the seller has taken a security interest in the product. *E.g.*, *Farrey* v. *Sanderfoot,* 500 U. S. 291, 297 (1991). Why should the government (state or federal), and the government alone, find it impossible to repossess a product, namely, a license, when the buyer fails to make installment payments?

The facts of this case illustrate the problem. NextWave bought broadcasting licenses from the Federal Communications Commission (FCC) for just under $5 billion. It promised to pay the money under an installment plan. It agreed that its possession of the licenses was "conditioned

upon full and timely payment," that failure to pay would result in the licenses' "automatic cancellation," that the Government would maintain a "fi[r]st lien on and continuing security interest" in the licenses, and that it would "not dispute" the Government's "rights as a secured party." App. to Pet. for Cert. 388a, 392a–393a, 402a–404a. NextWave never made its installment payments. It entered bankruptcy. And the FCC declared the licenses void for nonpayment. In a word, the FCC sought to repossess the licenses so that it could auction the related spectrum space to other users. As I have said, the law ordinarily permits a private creditor who has taken an appropriate security interest to repossess property for nonpayment—even after bankruptcy. See, *e.g.*, *Farrey, supra*, at 297. Would Congress want to say that the Government cannot *ever* do the same?

II

To read the statute in light of its purpose makes clear that Congress did not want *always* to prohibit the Government from enforcing a sales contract through repossession. Nor did it intend an interpretation so broad that it would threaten unnecessarily to deprive the American public of the full value of public assets that it owns. Cf. 47 U. S. C. §§309(j)(1)–(4) (authorization of spectrum auctions with restrictions "to protect the public interest"). Congress instead intended the statute's language to implement a less far-reaching, but more understandable, objective. It sought to forbid discrimination against those who are, or were, in bankruptcy and, more generally, to prohibit governmental action that would undercut the "fresh start" that is bankruptcy's promise, see *Grogan* v. *Garner,* 498 U. S. 279, 286 (1991). Where that kind of government activity is at issue, the statute forbids revocation. But where that kind of activity is not at issue, there is no reason to apply the statute's prohibition.

The statute's title, its language, and its history all support this description of its purpose. The title says, "Protection against discriminatory treatment." 11 U. S. C. §525(a). The statute's text, read as a whole, see Appendix, *infra,* strongly suggests that bankruptcy-related discrimination is the evil at which the statute aims. A phrase is sometimes best known by the statutory company it keeps. See, *e.g.*, *Gutierrez* v. *Ada,* 528 U. S. 250, 255 (2000). And here the relevant phrase is immersed within language that describes a host of acts, including discharges from employment and refusals to hire, and forbids them only where done solely for bankruptcy-related reasons, *i.e.*, a person's being a bankruptcy debtor, having been a bankruptcy debtor, or having become insolvent before or during a bankruptcy case. See Appendix, *infra*.

The statute's history demonstrates an antidiscriminatory objective. House and Senate Reports describe the relevant section, §525(a) as "the anti-discrimination provision." S. Rep. No. 95–989, p. 81 (1978) (hereinafter S. Rep.); H. R. Rep. No. 95–595, p. 367 (1977) (hereinafter H. R. Rep.). The House Report says that its "purpose . . . is to prevent an automatic reaction against an individual for availing himself of the protection of the bankruptcy laws." *Id.*, at 165. In describing related provisions, the House Report refers to an intent to prevent the Government from punishing "bankruptcy per se" by denying "a license, grant, or entitlement" on the premise "that bankruptcy itself is sufficiently repre[h]ensible behavior to warrant . . . a sanction." *Id.*, at 286. It adds that the overriding goal was "to eliminate any special treatment of bankruptcy" in laws of the United States. *Id.*, at 285.

In addition the House and Senate Reports describe §525(a) as an effort to codify this Court's holding in *Perez* v. *Campbell,* 402 U. S. 637 (1971). S. Rep., at 81; H. R. Rep., at 165, 366. The Court there held that the federal Bankruptcy Act pre-empted a state statute that suspended the

driver's license of any person who had not paid a motor accident judgment (explicitly including a judgment discharged by bankruptcy). 402 U. S., at 652. The Court rested its holding on the theory that the state statute's failure to exempt discharged debts "frustrate[d] the full effectiveness" of the Bankruptcy Act's promise of a "fresh start." *Ibid.*

Further, the House Report, along with House floor statements, assured the enacting Congress that the statute would allow "governmental units to pursue appropriate regulatory policies." *E.g.*, H. R. Rep., at 165. It was not meant "to interfere with legitimate regulatory objectives," 123 Cong. Rec. 35673 (1977) (remarks of Rep. Butler); see also H. R. Rep., at 286. It might seem fair to count as one such objective the receipt by the public of payment for a partially regulated public asset that the public, through the Government, has sold. Cf. 47 U. S. C. §309(j)(3)(C).

Finally, nothing in the statute's history suggests any congressional effort to prevent Government repossession where bankruptcy-related concerns, such as "fresh start" concerns, have no relevance. The statute does contain exemptions, but those exemptions, for agriculture-related licenses, are not to the contrary. 11 U. S. C. §525(a). As I read the statute, the exemptions simply excuse, say, meatpacking licensing agencies from a rule that would otherwise forbid taking negative account of, say, a prior bankruptcy (say, by providing that a license "shall terminate upon [the] licensee . . . being discharged as a bankrupt," 7 U. S. C. §499d(a); see *ante*, at 1–2, and n. 1 (STEVENS, J., concurring)). To read them as permitting consideration of former bankruptcies where food supply is at issue makes them understandable. To read them as support for the majority's view—as authorizing the Government to revoke meatpacking, but only meatpacking, licenses upon nonpayment—makes little sense to me.

The statute's purposes, then, are to stop bankruptcy-related discrimination and to prevent government licensors from interfering with the "fresh start" that bankruptcy promises, but not to prevent government debt-collection efforts where these concerns are not present. Unlike the majority, I believe it possible to interpret the statute's language in a manner consistent with these purposes.

III

The provision's congressional authors expected courts to look for interpretations that would conform the statute's language to its purposes. They conceded that the provision's "ultimate contours" were "not yet clear." H. R. Rep., at 165. But they said that the courts would determine "the extent of the discrimination that is contrary to bankruptcy policy." *Ibid.* And they thought the courts would do so "in pursuit of sound bankruptcy policy." S. Rep., at 81; H. R. Rep., at 367.

One obvious way to carry out this interpretive mandate is to interpret the relevant phrase, "solely because" of nonpayment of "a debt that is dischargeable," as requiring something more than a purely factual connection, *i.e.*, something more than a causal connection between a government's revocation of a license and nonpayment of a debt that is, merely *in fact*, dischargeable. The statute's words are open to the interpretation that they require a certain relationship between (1) the *dischargeability* of the debt and (2) the decision to revoke the license. That necessary relationship would exist if the debt's dischargeability played a role in the government's decisionmaking through motivation—if, for example, the fact that the debt was dischargeable (or the fact of bankruptcy, etc.) *mattered* to the FCC. The necessary relationship would also exist if the government's revocation interfered in some significant way with bankruptcy's effort to provide a "fresh

start." But otherwise, where the fact of dischargeability is irrelevant, where it has nothing to do with the government's decision either by way of purpose or effect, the government's license revocation would fall outside the scope of the provision.

This interpretation is consistent with the statute's language. It simply takes account not only of the statutory language's factual content—*i.e.*, its reference to a debt that is *in fact* dischargeable—but also its intended significance. A debt's dischargeability cannot simply be a coincidence but must bear a meaningful relation to the prohibited government action. Cf. *Staples* v. *United States,* 511 U. S. 600, 619–620 (1994) (statute forbidding possession of a machinegun requires not simply that the gun, *in fact*, discharge automatically, but also that the defendant know that the gun meets the statute's description).

This interpretation is consistent with several lower court efforts to interpret the statute. See, *e.g.*, *Toth* v. *Michigan State Housing Development Authority*, 136 F. 3d 477, 480 (CA6), cert. denied, 524 U. S. 954 (1998); *In re Exquisito*, 823 F. 2d 151, 153 (CA5 1987); *In re Smith*, 259 B. R. 901, 906 (Bkrtcy. App. Panel CA8 2001). But see *In re Stoltz*, No. 01–5048, — F. 3d —, 2002 WL 31845886 (CA2, Dec. 20, 2002). It would avoid handicapping government debt collection efforts in ways that Congress did not intend. It would further the statute's basic purpose—preventing discrimination and preserving bankruptcy's "fresh start." And it would avoid interfering with legitimate public debt collection efforts. An individual could not generally promise to pay for a public asset, go into bankruptcy, avoid the payment obligation, and keep the asset—even in the absence of the evils at which this statute is aimed.

This statutory approach is far from novel. Well over a century ago, the Court interpreted a statute that forbade knowing and willful obstruction of the mail as containing

an implicit exception permitting a local sheriff to arrest a mail carrier. *United States* v. *Kirby*, 7 Wall., at 485–487. Justice Field, writing for the Court, pointed out that centuries earlier the British courts had interpreted a statute making it a felony to break out of prison not to extend to a breakout when the prison is on fire. *Id.*, at 487. And, similarly, the courts of Bologna had interpreted a statute punishing severely "'whoever drew blood in the streets'" not to extend to a surgeon faced with an emergency. *Ibid.* "[C]ommon sense," wrote Justice Field, "accepts" these rulings. *Ibid.* So too does common sense suggest that we should interpret the present statute not to extend to revocation efforts that are no more closely related to the statute's objectives than are baby strollers to the "vehicles" forbidden entry into the park. See *supra*, at 2.

IV

The majority responds to my concerns in several ways. First, it characterizes the dissent in a slightly exaggerated manner, stating, for example, that I have "determine[d]" the statute's *"purpose"* in "splendid isolation from [its] language," that bankruptcy's "fresh start" objective "plays no real role in [my] analysis," and that that "criterion" is, in any event, "circular." *Ante*, at 11, and 12, n. 4. I would refer the reader to Parts II and III above (which contain considerable discussion of statutory language and statutory history) and, in particular, to the discussion of *Perez*, a decision that relied upon the "fresh start" objective in a way that the statute seeks to codify and that my own suggested interpretation of the statute incorporates. In my view, the language of the statute taken as a whole—including its "insolvency" language, *ante*, at 11–12—strongly suggests that Congress intended bankruptcy to have something to do with the forbidden government action. See Appendix, *infra*.

Second, the majority argues that my interpretation

makes the statute's "dischargeable debt" provision "superfluous," given language forbidding revocation because a person "'is . . . a [bankruptcy] debtor.'" *Ante*, at 13–14 (emphasis deleted). I do not see how that is so. A refusal to issue, say, a new dry cleaner's license "solely because" a bankruptcy debtor once failed to pay for other dry cleaner's licenses (now discharged debts) is not necessarily the same as a refusal to issue a new license "solely because" the debtor "has been . . . a bankrupt," 11 U. S. C. §525(a). And the statute's separate provisions simply cover this differentiated bankruptcy-related waterfront.

Third, the majority returns to the statutory language prohibiting a government from revoking a license "solely because [the bankrupt debtor] . . . has not paid a debt that is dischargeable," 11 U. S. C. §525(a). *Ante*, at 12–13. To my ear, this language suggests a possible connection between dischargeability and revocation. I have tried to test my linguistic sense through analogy, imagining, for example, a regulatory rule telling apartment owners that they cannot refuse to rent "solely because a family has children who are adopted" (which, notwithstanding the majority's complex discussion of "destructive children," *ante*, at 13, seems linguistically comparable). This language suggests the need for a connection between (1) the fact of adoption and (2) the refusal (thereby exempting an owner who accepts no children at all). Is it not, like the statute's language, at least *open* to such an interpretation? That is the linguistic point. It opens the door to a consideration of context and purpose—which, *in any event*, are relevant to determine whether the statute contains an implicit exemption, see *supra*, at 8–9.

Finally, the majority points out that, in the wake of a complicated procedural history, this case is now not about "enforcement of [a security] interest in" the Bankruptcy Court. *Ante*, at 14, and n. 5. But the majority's interpretation certainly seems to cover that circumstance, and

more. Under the majority's understanding, a government creditor who seeks to enforce a security interest in a broadcasting license (after the bankruptcy stay has been lifted or after bankruptcy proceedings terminate) would be seeking to repossess, and thereby to revoke, that license "solely because" of the debtor's failure to pay a "dischargeable" debt. After all, under such circumstances, "failure to pay" the debt that is *in fact* dischargeable would "alone be the proximate cause" of the government's action. *Ante*, at 8. It is "the act or event that triggers the agency's decision to cancel, whatever the agency's ultimate motive." *Ibid.*

If I am right about this, the majority's interpretation means that private creditors, say, car dealers, can enforce security interests in the goods that they sell, namely cars, but governments cannot enforce security interests in items that they sell, namely licenses. (Whether a private party can "take and enforce a security interest in an FCC license," *ante*, at 14, is beside this particular point.)

The matter is important. *In this very case*, the Government sought to retake its licenses through enforcement of its security interest. See, *e.g.*, *In re NextWave Personal Communications, Inc.*, 241 B. R. 311, 321 (SDNY) (affirming denial of the Government's motion for relief from the automatic stay under 11 U. S. C. §362(d)(1)), rev'd, 200 F. 3d 43, 45–46, 62, and n. 1 (CA2 1999) (reversing that affirmance). The Court of Appeals for the District of Columbia Circuit indicated that the FCC's revocation of the licenses, see *ante*, at 14, is properly characterized as foreclosure on collateral—*i.e.*, as an attempt to enforce liens. See 254 F. 3d 130, 151 (CADC 2001); cf. *In re Kingsport Ventures, L. P.*, 251 B. R. 841, 844 (ED Tenn. 2000) (private party's power to use "revocation" to enforce interest in a license). But because the Court of Appeals rested its decision on §525(a) grounds, it did not determine whether bankruptcy's automatic stay blocked such foreclosure. 254 F. 3d, at 148–149, 156. See generally 11 U. S. C.

§§362(a)(4)–(5) (staying enforcement of liens). Consequently, if the majority believes that §525(a) permits the Government to enforce security interests in its license collateral, it should remand this case, permitting the Court of Appeals to decide whether other bankruptcy provisions (such as §362) block the Government's efforts to do so.

I emphasize the point because the majority is right in thinking that lien-enforcement difficulties create much of the anomaly I fear—in effect divorcing the majority's reading from the statute's basic purpose. Is it not reasonable to ask for reassurance on this point, to ask what future interpretive corollary might rescue government lien-enforcement efforts from the difficulties the majority's statutory interpretation seems to create? Unless there is an answer to this question, the majority's opinion holds out no more than a slim *possibility* of ad hoc adjustment based upon future need. And such an adjustment, if it comes at all, may amount to mere judicial fiat—used to rescue an interpretation that rests too heavily upon linguistic deduction and too little upon human purpose.

V

Because the Government, asserting its security interest, may be able to show that revocation here bears no relationship to the debt's "dischargeability" and would not otherwise improperly interfere with the Code's "fresh start" objective, I would vacate the Court of Appeals' judgment and remand for further proceedings. I respectfully dissent.

APPENDIX TO OPINION OF BREYER, J.

The full text of 11 U. S. C. §525(a) states:

"Protection against discriminatory treatment

"(a) Except as provided in the Perishable Agricultural Commodities Act, 1930, the Packers and Stockyards Act, 1921, and section 1 of the Act entitled 'An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1944, and for other purposes,' approved July 12, 1943, a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act, or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act."