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In the

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Supreme Court of the United States

DORIS PHILPOTT and
WILLIAM WILKES,

Petitioners,

vs.

ESSEX COUNTY WELFARE BOARD,

Respondent.

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No. 71-5656

Washington, D. C.
December 4, 1972

Pages 1 thru 27

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 WILLIAM WILKES, :
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 Petitioners, :
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 v. : No. 71-5656
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 ESSEX COUNTY WELFARE BOARD, :
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 Respondent. :
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Washington, D. C.
Monday, December 4, 1972

The above-entitled matter came on for argument
at 1:21 o'clock p.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
 WILLIAM O. DOUGLAS, Associate Justice
 WILLIAM J. BRENNAN, JR., Associate Justice
 POTTER STEWART, Associate Justice
 BYRON R. WHITE, Associate Justice
 THURGOOD MARSHALL, Associate Justice
 HARRY A. BLACKMUN, Associate Justice
 LEWIS F. POWELL, JR., Associate Justice
 WILLIAM H. REHNQUIST, Associate Justice

APPEARANCES:

GEORGE CHARLES BRUNO, ESQ., New Hampshire Legal
Assistance, 38 Hanover Street, Manchester, New
Hampshire 03101; for the Petitioners.

RONALD REICHSTEIN, ESQ., Hall of Records, Newark,
New Jersey 07102; for the Respondent.

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Ronald Reichstein, Esq., On behalf of the Respondent.	13

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in No. 71-5656, Philpott and Wilkes against Essex County.

Mr. Bruno, you may proceed whenever you are ready.

ORAL ARGUMENT OF GEORGE CHARLES BRUNO, ESQ.,

ON BEHALF OF THE PETITIONERS

MR. BRUNO: Mr. Chief Justice, may it please the Court:

This case arises as a result of writ of certiorari to the New Jersey Supreme Court granted by this Court on May 15, 1972. The issue presented is whether a county welfare board, pursuant to an agreement to reimburse, as authorized by state law, may attach Social Security benefits, thereby overriding the immunity of Section 407 of Title 42 of the U. S. Code.

On August 2, 1966, petitioner applied to the Essex County Welfare Board for financial assistance under the state program for total disability insurance assistance. This program is one of the categorical assistance programs in which New Jersey participates. In all there are four: Old Age Assistance, AFDC, Aid to the Blind, and APTD, Aid to those with Permanent and Total Disabilities, which this case involves.

Unlike the regular Social Security Program, which

is federally administered, the categorical assistance programs are administered at the state and local level, pursuant to certain federal standards. The financing arrangement of the APD program, which this case involves, requires New Jersey to pay 50 percent with the Federal Government providing the remaining 50 percent. APTD is provided on the basis of need to the recipient. Social Security is provided on the basis of earnings and premiums previously paid into Social Security by the wage earner.

As a condition to receiving APTD, petitioner executed an agreement in which he pledged "all and every part of the real or personal property wherever found," and further agreed to sign to the Welfare Board "all and any part of their personal property as the Board shall or may from time to time specify."

Petitioner was then referred by the Essex County Board to the Social Security Administration to apply for federal disability insurance. It is not clear from the record why it took two years for the first Social Security check to arrive. But on August 20, 1968, petitioner received a check from the Social Security Administration of \$1,864.20 as a retroactive award of Social Security benefits.

Q There are intimations in the record, are there not, as to why it took two years?

MR. BRUNO: There is an intimation that they did not

have a correct address of the recipient. I do not think the record is much more explicit than that.

Q Usually when one wants something of this kind, he lets himself be known as to his whereabouts.

MR. BRUNO: This Social Security check represented payments beginning May, 1966 through July, 1968, or approximately \$78 monthly. Petitioner received APTD from the county from January, 1967 through approximately June, 1970, or approximately \$108 per month.

Subsequent to June, 1970, Mr. Wilkes began receiving veterans' benefits of approximately \$92 a month. And the combined veterans' benefits and Social Security benefits surpassed his level of need, thereby eliminating him from the APTD program.

Upon receipt of the August Social Security check, it was deposited in a savings account by one Doris Philpott in trust for Mr. Wilkes. On the same day, the funds were attached by the Essex County Welfare Board. On an agreed statement of facts, the matter was heard before the Essex County Court which held for the petitioner, thereby upholding the immunity provision that Social Security benefits were immune from attachment by hostile claimants.

The trial court concluded by saying, "If a relative or a neighborhood grocer or a charitable institution who advanced funds or credit for maintenance and support of an

individual would be barred from recovery out of federal funds, why should a welfare board be in a better position? The mere coincidence that the claimant is a public body cannot dictate a contrary result. In the absence of any exception in the statute demonstrating such an intent, the will of Congress must be enforced."

The New Jersey Appellate Division affirmed, based upon the trial court's reasoning. The State Supreme Court reversed based upon its view of the equities. The court cited as support for its conclusion Section 404 of the Social Security Act, which authorized the Secretary of Health, Education, and Welfare to seek recovery of overpayments of Social Security benefits. As far as can be determined, no state court of last resort other than this case, has permitted the attachment of Social Security benefits.

I do not believe, Your Honors, that this is a difficult case. The petitioners are basically urging two contentions. And the first is that the meaning of Section 407 of Title 42 is clear--clear on its face. And that, secondly, the Essex County Welfare Board should be treated no differently than any other hostile claimant.

Q I gather the statute is so clear on its face that there is no room for equities.

MR. BRUNO: It is petitioner's position that the statute is unambiguous, is clear, is precise, unqualified

and absolute in every way and that there were no exceptions intended when Congress passed this legislation.

Q Therefore, the approach taken by the Supreme Court balancing the equities is not permissible?

MR. BRUNO: That is true, under the fair reading of the statute. And the immunity provision under 407 provides this twofold shield. It protects the recipient prior to receipt of those benefits, and it protects the recipient after he has received the benefits. So, either way, Congress--

Q I take it you are not arguing, Mr. Bruno, that if balancing the equities were permissible, that the equities are with the recipient, are you?

MR. BRUNO: I think there are equities on both sides, Your Honor.

Q What are on the side of the recipient? He has had the money twice.

MR. BRUNO: He has had the money twice. But that distinction alone does not make him any different than if he had received earlier monies from another creditor.

Q That his statutory argument.

MR. BRUNO: Right.

Q What I am suggesting is as a lawyer, any room for consideration of the equities, he would be hard put to it to it to find any supporting his claim to keep--to get the money twice, would he not?

MR. BRUNO: Yes, sir, except for the fact that his resources are limited and that the money he does receive would go for his support and maintenance. I mean, that would be the equities on his side.

Q The basic argument, I would suppose, is that the equities are irrelevant.

MR. BRUNO: That is true. That what we have is a statute that is very clear and absolute on its face, and that there is no reason to go behind it.

Q That you cannot go--not that there is no reason to go--but it is impermissible to go behind it; is not that your argument?

MR. BRUNO: Yes, sir. That to do so would be a violation here of--

Q Plain statutory language.

MR. BRUNO: Not only of plain statutory language but also the legislative prerogative in the policy decision.

Q What does Social Security do if you overpay?

MR. BRUNO: They secure a recovery under Section 404 of the act. But in order to secure that recovery, the action must be instituted under Section 404 by the Secretary of HEW and not by the state in question. There is no room under 404 for the state to institute an action for recovery.

Q Would the Secretary have authority to bring

any action here, a third-party beneficiary action on behalf of the state to prevent this windfall?

MR. BRUNO: They would not have to.

Q Could they?

MR. BRUNO: No, I do not think so, Your Honor, for the reason that 404 speaks only to an overpayment of Social Security benefits, and I don't think that the contention here is that there was an overpayment. In fact, the Social Security benefits were very explicitly computed, and there was no overage and no excess in this case.

Q Who is Doris Philpott?

MR. BRUNO: She is Mr. Wilkes' housekeeper. Mr. Wilkes is an infirm gentleman, and she helps him.

Q Is there any controversy in this case as to the basic applicability of the statute in that, as I understand, the money was deposited in the account of Doris Philpott and so on? Or is there an argument about that?

MR. BRUNO: No, I think that that argument was settled at the State Supreme Court level where the Supreme Court in its opinion said--

Q No question about the applicability of the statute.

MR. BRUNO: Recognized it as being held in trust. The point is that the money was at all times available for the maintenance and support of Mr. Wilkes, and that is the crucial

issue.

Q And there is no continuing controversy as to the facts as to the basic applicability of the terms of the statute, even though this deposit was made in the account of Doris Philpott, or is there? I am inquiring.

MR. BRUNO: There was not in any of the lower courts. I am not certain as to what--

Q It is too late to have one here.

MR. BRUNO: I would think so.

Q Mr. Bruno, Mr. Wilkes was hospitalized in a sanitarium for a time, was he not?

MR. BRUNO: That--yes, that is--

Q Was that at any of the time when these payments were not being made?

MR. BRUNO: No, sir.

Q At a different time?

MR. BRUNO: That was at a much earlier time, several years previously, and that fact is also outside the record in this case.

Q I just saw it in Justice Hall's opinion in the footnotes. I do not know whether it is outside of the record or not. In footnote four he says he had previously received state disability assistance which was terminated in 1965 because he was a patient in a county sanitarium.

MR. BRUNO: Yes.

Q Is that outside the record?

MR. BRUNO: Yes, Your Honor, it was.

Q Address that to Justice Hall.

Q Mr. Bruno, was Mr. Wilkes also receiving any VA benefits during this period?

MR. BRUNO: No. As soon as he began receiving veterans' benefits, he was terminated from APTD assistance.

Q One last question. If this case is reversed, is there any possibility that it opens the door to fraud by persons making their whereabouts unknown for a convenient time and then later collecting?

MR. BRUNO: I do not think fraud should be a serious problem in this case because, if it arises, the county has sufficient resources to prosecute those individuals that purposely intend to delay this process. What I do see happening, though, is that if an exception is created, that it might have the effect of undermining the security that many older people and disabled people now enjoy under Social Security benefits because it would create litigation in both state and federal courts. There--

Q This is security to which he is not entitled. All that you can say is that he needs the funds but other people need the same funds that otherwise would not have gone to him.

MR. BRUNO: Then we are back to our original

position that the Welfare Board in this instance is no different than any other creditor or hostile claimant. The language 407 is even broader than the word "creditor," and it is more encompassing, more embracing.

Q I suppose you would argue too, would you not, Mr. Bruno, that it is virtually impossible, given the language of the statute, to distinguish between someone who may have acquired too much and someone who has only acquired what they should have and that to protect the security of those who simply have what they should have was Congress's intent in forbidding attachment.

MR. BRUNO: I think Congress recognized that in the policy judgment that they made in 1935, that minor inequities would be created by this provision, and they recognized that some legitimate claimants might like to secure repayment for money that they had loaned. But as deciding between those claimants and the Social Security recipient, they came down on the latter in their favor.

I think, Your Honor, that I would like to reserve the remaining portion of my time.

MR. CHIEF JUSTICE BURGER: Very well, Mr. Bruno.

MR. BRUNO: Thank you.

MR. CHIEF JUSTICE BURGER: Mr. Reichstein.

[Continued on page following.]

ORAL ARGUMENT OF RONALD REICHSTEIN, ESQ.,

ON BEHALF OF THE RESPONDENT

MR. REICHSTEIN: Mr. Chief Justice, may it please the Court:

In the first sentence of the argument in my brief we made what I thought was a rather important confession, that if the statute in question were applied literally, without consideration of the particular factual situation, we would be barred from recovery. Such decision, construing the statute literally, would not be out of conformity with precedent, would be a safe and sound decision. The only criticism the Welfare Board would have would be that such a decision would not be fair, would not be equitable, and it would not furnish justice under the particular factual circumstances of this case.

We contend that the statute cannot be put in a glass jar and analyzed from afar in a vacuum. It has to be analyzed as it is applied to particular facts. And we respectfully submit that the facts in this case are important and justify the interpretation given to the statute by the New Jersey Supreme Court. In particular, the primary fact that Mr. Wilkes here received a double payment. If he had furnished his correct address to Social Security and received his payments, approximately \$70 per month, as they became due, the Welfare Board would have contributed

another \$38, I believe, to his income. But, in fact, for most of the period which the retroactive check covered, Mr. Wilkes received the full \$108 from the Welfare Board. So that when he subsequently received the lump sum check from Social Security, he in effect did receive double funds for a substantial portion of the period.

The fact about the lack of address by Social Security is set forth in the Appendix, page A28, a letter from the Social Security Department.

Q Would you tell us, whether the states have ever made any effort to have Congress modify the statute with a specific exception for dual payments to only--

MR. REICHSTEIN: No, sir. The statute is some 35 to 40 years old now, and so far as we have been able to find there has been no such indication. I think perhaps that the thinking was so clear that it is not subject to interpretation.

Q Has this situation, to your knowledge, reached trial?

MR. REICHSTEIN: In New Jersey we have had three cases since.

Q Since this one?

MR. REICHSTEIN: Yes, sir.

Q But before that?

MR. REICHSTEIN: There were two cases which we

cited in our brief to the New Jersey Supreme Court, both unreported decisions, one in the state courts and one in the federal courts.

Q And how did they go?

MR. REICHSTEIN: Both in our favor, basically on the theory that there was fraud involved.

Q Fraud?

MR. REICHSTEIN: Fraud. But also there was no--

Q They presumed or they found actual fraud?

MR. REICHSTEIN: In one case there was a finding of fraud; in the other I think it was merely a presumption. One case was the Essex County Welfare Board v. Hardy, which is a county court decision in 1966, where the recipient failed to notify welfare that he received a lump sum payment, and in that case the court held that lump sum payment was not exempt from the levy by the Welfare Board. And the second case was a federal court decision, district court, where the Welfare Board reached the proceeds from the National Service Life Insurance Policy.

Q I notice that the Solicitor General is supporting petitioner in this case.

MR. REICHSTEIN: Perhaps.

Q We know of no state court of last resort except this one that has permitted attachments of Social Security funds.

MR. REICHSTEIN: Yes, Mr. Justice. But in his brief the Solicitor General does apparently concede that a particular factual situation can arise which would give rise to an exception to the broad language of Section 207. He then reviews the particular facts of this case and says it is not justifiable in this particular case. But I would respectfully point out that the fact that the checks were withheld for newer address was not set forth in the record furnished at the time the Solicitor General's brief was filed and that particular fact is not mentioned in the Solicitor General's brief.

Q You said that fact is in the record?

MR. REICHSTEIN: The Appendix; not in the record itself but in the Appendix filed with this Court, page A28.

Q I mean, was this before the courts below?

MR. REICHSTEIN: No, it was not, sir.

Q How do we consider it?

MR. REICHSTEIN: Merely because the question was considered by the New Jersey Supreme Court in this decision, and I believe there was some wording in that report to the effect that the court did not know why the benefits were withheld such a long time. I believe it is an immaterial question, and the information was furnished by HEW to the attorneys for the petitioner in this case. And that is the reason that we ask that the letter be reproduced in the

Appendix.

Q Do you know whether your opposition is objecting to its inclusion in the Appendix?

MR. REICHSTEIN: I have heard no such opposition to this point, Your Honor.

Q Where is it in this Appendix?

MR. REICHSTEIN: Page A28.

Q A28?

MR. REICHSTEIN: In the Appendix. Page 28, sir.

Q 28?

MR. REICHSTEIN: Yes.

Q Then presumably your opposition itself has placed it in the Appendix.

MR. REICHSTEIN: No, I cannot say that, Mr. Justice. I requested it at one point. The last two sentences of the letter from HEW on page 28.

Q What is the significance of that?

MR. REICHSTEIN: That the benefits were withheld only because they did not have a current address for the petitioner, Mr. Wilkes.

Q It said pending a new address. What does that suggest, fraud? Is that your argument?

MR. REICHSTEIN: It could suggest it, sir, but I am not alleging fraud in this particular case. I do suggest that a literal reading of the statute would open the door to

a widespread fraudulent situation whereby, as Mr. Justice Blackmun indicated, I believe, recipients of Social Security could withhold Social Security benefits--

Q I am not suggesting that is not so. What I am asking you is, Are you suggesting any fraud in this case based on that statement--

MR. REICHSTEIN: Yes, sir. Fraud was alleged in the initial complaint that was filed.

Q That is not my question. Are you suggesting that this proves fraud in this case?

MR. REICHSTEIN: No, sir. No, sir, far from it.

Q Does the state have any elbow room in a situation like this by refusing to make the payments?

MR. REICHSTEIN: No, sir, that is--the distinction set forth in the so-called involuntary creditor cases, the Savoid case, the Lewis case, the Sepsick [?] case. The argument was made that the neighborhood grocer or the neighborhood baker is barred by the provisions of the Social Security Act. We contend that the Welfare Board here is in a different situation. The local baker, butcher or whatever he may be, is not under any compulsion to furnish any goods or services to the recipient. Here the Welfare Board is mandated by statute to furnish such assistance. As such, it is not a voluntary creditor but in the nature of an involuntary creditor. And we submit that the language of the

involuntary creditor cases, while not strictly applicable to this factual situation, does have a bearing. The reasoning is applicable. And for that reason we suggest that the involuntary creditor cases did offer the New Jersey Supreme Court a sufficient basis to create an exception in view--

Q The statute did not say voluntary or involuntary. It said what?--creditor.

MR. REICHSTEIN: As a matter of fact--

Q Has credit been proved involuntary?

MR. REICHSTEIN: I would think it does. I would think the interpretation given by the courts in the Savoid case, in the Lewis case, was very strained, very tortuous. Therefore, in this case what we are seeking is a head-on confrontation. We are asking the Court not to reverse on the basis of the involuntary creditor cases or the basis of the cases cited by HEW in its brief to the effect that the statute was not merely intended to apply to accrued benefits, past benefits. I think those interpretations fly in the face of the statute just as much as the interpretation we are seeking.

The Court could also, in this particular case, say that by depositing the monies in the account of a third person, Miss Philpott, that Mr. Wilkes exceeded the protection he was allowed by Porter case in that he was no longer, once the money was put in the account under the name of someone

else able to control the funds. We submit that such an interpretation would have the effect of allowing us to win this particular battle, but I think in effect we would lose more because in such situation the recipient hereafter would merely deposit the funds in his own name.

I think the issue has to be considered in light of the history of the Social Security Act itself and the fact that when Social Security was originally enacted and conceived, the scope of the present-day welfare program was nowhere near what it is today. I respectfully submit that the welfare program must be considered as a complement or a supplement to the Social Security program. This is the line of argument set forth in the brief filed by the state as *amicus curiae*. I think it is a valid one; that both programs have to be considered together. The funding for both programs basically comes out of HEW. The result of considering both programs together is the only result, we submit, which can result in anything approaching a fair or equitable situation. For these reasons, we respectfully submit that this Court affirm the decision of the New Jersey Supreme Court.

Q Did the United States get its money back?

MR. REICHSTEIN: The United States would get--

Q No; could it recover what it paid?

MR. REICHSTEIN: I do not see how. I think the

United States would be barred by the same statute which the petitioners bars us.

Q The United States is not entitled to anything back, is it? It paid only the Social Security benefits to which this man was entitled.

MR. REICHSTEIN: Except--

Q Were these for disabled people?

MR. REICHSTEIN: Yes, sir.

Q Do they pay money to disabled rich people?

MR. REICHSTEIN: Social Security?

Q Yes.

MR. REICHSTEIN: Yes, sir.

Q And so they were entitled to the money no matter what.

MR. REICHSTEIN: Yes, sir.

Q Could the United States have conditioned its payment upon the recipient repaying to the state?

MR. REICHSTEIN: I believe it could have, yes, sir, if that is considered a problem.

Q Then is there very much trouble in this whole picture?

MR. REICHSTEIN: Yes, sir. I believe that the statute--

Q I mean, if the United States simply asked, "Have you been receiving disability payments from someone

else," would the whole problem wash out or not?

MR. REICHSTEIN: No, sir, because whatever the answer to that question is, the Social Security benefits would still have to be paid, and the particular disability benefits would still have to be paid.

Q Your answer a while ago--perhaps you did not mean it--that the United States could have conditioned its payment upon repayment to the state--

MR. REICHSTEIN: By statute they could have done it, yes, sir.

Q Oh, by statute.

MR. REICHSTEIN: Yes.

Q But under the present statute they could not?

MR. REICHSTEIN: I do not believe so, sir. No, sir.

I am sorry, Mr. Justice Stewart asked me a question with reference to the applicability of Social Security benefits and whether the Government was entitled to any refund.

Q In this case I understand that the Government's payments were not in any way erroneous. They came late, but beyond that they were just exactly what this--

MR. REICHSTEIN: The Government is considered to be part of the welfare program also; it supplies half the funds for the welfare program.

Q Yes, but under this, this man did not receive

an overpayment.

MR. REICHSTEIN: No, sir.

Q Directly from the United States.

MR. REICHSTEIN: No, sir.

Q So, the United States had no ground to bring up any kind of an action to get any of it back, did it, directly?

MR. REICHSTEIN: Not directly, sir, just under the welfare program.

MR. CHIEF JUSTICE BURGER: Mr. Bruno, do you have anything further?

REUBTAL ARGUMENT OF GEORGE CHARLES BRUNO, ESQ.,

ON BEHALF OF THE PETITIONERS

Q Do you agree with your colleague there in terms of what the United States might be able to do and what it might not be able to do? Do you think this particular statute at issue in this case would bar the United States from recovering its payment? I am not suggesting that the United States could get it back, but if it could not would it be because of this statute?

MR. BRUNO: I cannot conceive of any circumstances how the United States could get the money back unless there has been a miscalculation.

Q But it would not be this statute which barred the United States?

MR. BRUNO: No.

Q It would be the fact that they were just carrying out the statutory program.

MR. BRUNO: Right.

Q Because they make payments to disabled people whether they are needy or not.

MR. BRUNO: Yes.

Q And if it were only the needy disabled that were paid Social Security, there might be a ground for recovery because somebody who is being paid elsewhere is not particularly needy.

MR. BRUNO: Right.

Q Is that right?

MR. BRUNO: I am not sure I am following you on that point. I would like to address myself, Mr. Justice Blackmun, to your question on the two-year delay. I do not know why it took two years. Mr. Wilkes does not know why it took two years. It did take that long. The letter from Mr. Hall at the Social Security Administration was completely new to the record at the appellate level of the case. I am not sure what his thinking is underlying the two sentences that opposing counsel refers to.

In any event, the question of the incorrect address was never part of the record below, and there is no intimation in this case of fraud.

Q I take it the letter was not a recently written one. It is dated back in December, '69 and just was not put into the record, I suppose. It is not anything that was manufactured, I take it.

MR. BRUNO: You are right.

Q But still it was not in the record.

MR. BRUNO: It was not in the record.

There is a point there that the Welfare Board at all times knew Mr. Wilkes' correct address. So, it was not a case of him not being available.

Briefly, as to this involuntary/voluntary creditor concept. This is an artificial distinction. There is no basis from which one could draw a conclusion that Congress intended a distinction of this sort. And, furthermore, all the cases to which my brother opposing counsel refers to are veterans' benefit cases.

I hasten also to point out that since we are talking about the equities, that the equities are always on the side of a creditor, and that it would be impossible to distinguish between higher and lower equities, which is what opposing counsel is asking this Court to do.

Q There is completely unjust enrichment, is there not?

MR. BRUNO: There is always an unjust enrichment whenever the statute is invoked, because there will always be

two payments, the payment that the creditor had extended--

Q What I had in mind was the difference between what counsel called the voluntary creditor who takes his chances and the involuntary creditor who had no options about it. At least there are fewer equities available here. Your position is that the statute does not have anything to do with equities?

MR. BRUNO: Yes, Your Honor.

I wonder also about another situation that poses an equitable problem, and that is where a municipality constructs maybe a waterpipe in front of a person's home for the purpose of erecting a fire hydrant and then makes a special assessment on the people living in the home and that the only money that those people have are Social Security benefits. Does the municipality then have a right to attach the Social Security benefits?

Q He does not need the Social Security money. He just puts a lien on the property, that is all.

MR. BRUNO: I was speaking about the municipality, in attempting to reach those benefits, to pay for the special assessment.

Q If he puts a pipe out in front of a house, he goes after the house.

MR. BRUNO: Okay. The question then boils down to, Does the statute mean what it says? And petitioners'

is that the statute does mean what it says; it is precise and it is absolute, unqualified in every way in both its wording and in the protection that it offers to Social Security benefits. Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, gentlemen.

The case is submitted.

[Whereupon, at 1:58 o'clock p.m. the case was submitted.]

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