

LIBRARY  
SUPREME COURT, U.S.  
WASHINGTON, D.C. 20543

ORIGINAL

# SUPREME COURT OF THE UNITED STATES

In the Matter of: )  
 )  
GEORGE S. BENNETT, )  
 )  
 )  
PETITIONER, )  
 )  
V. )  
 )  
ARKANSAS. )

No. 86-6124

Pages: 1 through 30

Place: Washington, D.C.

Date: March 2, 1988

## HERITAGE REPORTING CORPORATION

*Official Reporters*

1220 L Street, N.W., Suite 600

Washington, D.C. 20005

(202) 628-4888

1  
2  
3 IN THE SUPREME COURT OF THE UNITED STATES

4 -----x

5 GEORGE S. BENNETT, :

6 Petitioner, :

7 v. : No. 86-6124

8 ARKANSAS :

9 -----x

10 Washington, D.C.

11 Wednesday, March 2, 1988

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

14 APPEARANCES:

15 THOMAS M. CARPENTER, ESQ., Little Rock, Arkansas; on behalf of  
16 the Petitioner.

17 RICHARD J. LAZARUS, ESQ., Assistant to the Solicitor General,  
18 Department of Justice, Washington, D.C.; as amicus curiae,  
19 supporting Petitioner.

20 J. STEVEN CLARK, ESQ., Attorney General of Arkansas, Little  
21 Rock, Arkansas; on behalf of the Respondent.

C O N T E N T S

1		
2	<u>ORAL ARGUMENT OF:</u>	<u>PAGE:</u>
3	THOMAS M. CARPENTER, ESQ.	
4	On behalf of the Petitioner	3
5	RICHARD J. LAZARUS, ESQ.	
6	As Amicus Curiae, supporting Petitioner	11
7	J. STEVEN CLARK, ESQ.	
8	On behalf of the Respondent	16
9	THOMAS M. CARPENTER, ESQ.	
10	On behalf of the Petitioner - Rebuttal	27
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 P R O C E E D I N G S

2 (12:59 p.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument now in  
4 Number 86-6124, George S. Bennett v. Arkansas.

5 Mr. Carpenter, you may proceed whenever you're ready.

6 ORAL ARGUMENT OF THOMAS M. CARPENTER, ESQ.

7 ON BEHALF OF THE PETITIONER

8 MR. CARPENTER: Thank you, Mr. Chief Justice, and may  
9 it please the Court:

10 The issue before the Court today is whether a federal  
11 statute that precludes attachment of social security benefits  
12 bars a state's attempt to attach those benefits in order to  
13 reimburse itself for providing care and maintaining a prisoner  
14 in custody.

15 Mr. Bennett, Petitioner, believes that pursuant to  
16 the Supremacy Clause in Article VI, Clause II of the  
17 Constitution, the federal statute prevails. To that end, Mr.  
18 Bennett urges this Court to reverse the decision of the  
19 Arkansas Supreme Court to the contrary.

20 The factual matter is that Mr. Bennett is a sixty-  
21 nine-year old social security pensioner. He received  
22 retirement benefits because he worked sufficient quarters to be  
23 eligible for those benefits. He was serving a term of twenty-  
24 one years in the Arkansas Department of Correction on a  
25 conviction in murder in the second degree.

1           While he was in the Department of Correction, he  
2 began drawing these benefits at approximately the rate of \$282  
3 per month.

4           In 1981, the State of Arkansas passed a state  
5 reimbursement statute which is Act 715. The Act became  
6 effective in June of 1981. In January of 1983, the state filed  
7 suit against Mr. Bennett and two other Petitioners asking that  
8 they be forced to reimburse the state for their cost of care.

9           In April of 1983, the Congress passed a statute that  
10 cut off benefits to prisoners entirely. In November of '83,  
11 there was a consolidated answer by the parties. Briefs were  
12 filed in 1984. In December of 1984, prior to the case finally  
13 being decided but after the Court had entered an order seizing  
14 these funds, Mr. Bennett was released from incarceration. A  
15 judgment came down in 1985 and then the judgement ordered that  
16 the monies continued to be held pending outcome of any  
17 litigation.

18           Specifically raised in the trial court was the  
19 question of whether under the Supremacy Clause, the federal  
20 exemption statute for social security benefits preempted the  
21 state reimbursement statute.

22           QUESTION: Mr. Carpenter, now, is there any money at  
23 issue here that would be governed by the passage of the 1983  
24 amendments?

25           MR. CARPENTER: Yes, Your Honor. There is

1 approximately some place between \$10 and \$1800 pre-1983 and  
2 there is approximately an equal amount after the 1983 statutes.

3           However, Mr. Bennett's monies were treated as an  
4 over-payment by the Social Security Department. Those monies  
5 have been returned to the Social Security through withholding  
6 of his future payments which began again upon his release in  
7 December of 1984.

8           QUESTION: So, if you prevail, he will get reimbursed  
9 eventually, is that what would happen?

10          MR. CARPENTER: Yes, Your Honor. He will.

11          QUESTION: And is Petitioner Shelton a party now?

12          MR. CARPENTER: No, Your Honor. Petitioner Shelton  
13 would never complete an affidavit of indigence during the  
14 course of litigation. He was released and I lost all contact  
15 with him afterwards.

16          QUESTION: So, he's not before us at all, and all we  
17 have is the case involving reimbursement to a prisoner with  
18 social security benefits, is that right?

19          MR. CARPENTER: Yes, Your Honor. That's the issue  
20 before the Court today.

21          QUESTION: I guess I still don't understand. Will he  
22 get money or are you challenging the post-1983 money as well?

23          MR. CARPENTER: I am at this time, Your Honor, for  
24 this reason: the money collected from May 1983 until his  
25 release in December of 1984 were social security benefits.

1 He was ineligible for them, but rather than treat  
2 them in any other way, Social Security treated it merely as an  
3 over-payment. When he became eligible again for social security  
4 payments in January of 1985, after his release, the Social  
5 Security Department attached his future payments.

6 So, all of the monies being held now really are  
7 social security monies that Mr. Bennett should have received  
8 personally at one time or another.

9 QUESTION: Well, post-May '83, he shouldn't have  
10 received it, and it seems to me your complaint is that the  
11 state should not have taken them. I mean, --

12 MR. CARPENTER: That's right.

13 QUESTION: And, therefore, there should be no over-  
14 payment charged against his future payments. Right? You're  
15 saying the state should return the over-payment rather than his  
16 returning the over-payment.

17 MR. CARPENTER: That's right.

18 QUESTION: But you're not saying he was entitled to  
19 any money after 1983, you're just saying he shouldn't be  
20 charged after he was released for payments which he never  
21 received post-1983.

22 MR. CARPENTER: Your Honor, I'm not sure that I've  
23 made myself clear. He continued to receive payments from May  
24 '83 to December of '84, because Social Security did not cut  
25 them off like they should have.

1 QUESTION: Right.

2 MR. CARPENTER: That was treated as an over-payment  
3 from Social Security to Mr. Bennett. Mr. Bennett was eligible  
4 again for benefits when he was released. Social Security  
5 recouped this over-payment from him by deducting the money from  
6 future payments.

7 I do not contend that the money should go from the  
8 prison to Social Security. I contend upon release they should  
9 go from the prison to Mr. Bennett because they are his monies  
10 now.

11 QUESTION: What should go to him is not the money  
12 between May of '83 and the time he was released. That's not  
13 what should go to him. What you're really asking for is the  
14 money that should have gone to him after his release. You're  
15 saying there shouldn't have been any charges against that  
16 money. You don't claim any entitlement on his part to money  
17 between May of '83 and the time he was released. You do not  
18 claim he was entitled to any money then, do you?

19 MR. CARPENTER: Not on the basis of the statute. No,  
20 Your Honor.

21 The --

22 QUESTION: What will happen if monetarily, if this  
23 Court reverses the judgment of the Supreme Court of Arkansas,  
24 what will Mr. Bennett get?

25 MR. CARPENTER: He will get \$3,600 which is currently



1 being held, and under the judgment, he will get the interest  
2 that's been accruing on that money since the date of the  
3 judgment.

4 QUESTION: And if we affirm the judgment of the  
5 Supreme Court by Arkansas, the State of Arkansas will get that  
6 \$3,600?

7 MR. CARPENTER: Plus the interest.

8 QUESTION: Okay.

9 MR. CARPENTER: The Supremacy Clause is called into  
10 question in this particular case because there's a clear  
11 conflict in the text of the state reimbursement statute with  
12 the federal pre-emption statute.

13 The federal pre-emption statute holds that the  
14 entitlement to payments at present or in the future are not  
15 subject to levy, attachment, garnishment or other legal  
16 process. Yet, the state reimbursement statute expressly  
17 defines the estate of a prisoner to include social security  
18 benefits.

19 Now, when you have a direct conflict between a  
20 federal statute and a state statute, as is present in this  
21 case, this Court has consistently held that the federal statute  
22 must fall under the Supremacy Clause argument.

23 The Arkansas Supreme Court has never recognized or  
24 has never articulated the fact that there is a direct conflict  
25 between the state statute and the federal statute. Instead,

1 the Arkansas Supreme Court suggested that it could ignore the  
2 plain textual conflict and move into a determination as to  
3 whether the purpose of the federal statute met the purpose of  
4 the state statute.

5           It's our contention, first, that that was an  
6 inappropriate thing to do and that the case should have stopped  
7 at the recognition of the clear conflict in the language.  
8 However, even if we go to the second step and get into the  
9 purpose of the particular statutes, it's clear that the  
10 Arkansas Supreme Court did not correctly decide this issue.

11           The purpose of social security statutes is to provide  
12 benefits to beneficiaries who have qualified for them. In the  
13 retirement sense, it is effectively an annuity-type contract.  
14 You make forced payments from your payroll and in exchange, you  
15 are guaranteed payments at the end.

16           But Congress recognized at the time that it passed  
17 this that it had the right to take these benefits away  
18 entirely. It could at any moment with the stroke of a pen say  
19 social security is no longer available to the citizens of the  
20 United States, and partly for that reason, as this Court  
21 recognized in Hisquierdo, in a different type of benefit but  
22 same type of statute, the vulnerability of these particular  
23 benefits is such that the Court is unwilling to let these  
24 benefits or the Congress is unwilling to let these benefits be  
25 subject to attachment by any type of creditor.

1           That's an important point here because it raises, I  
2 think, the mis-rationale of the Supreme Court of Arkansas. The  
3 purpose of social security is to provide for the benefit, the  
4 care and benefit and maintenance of the individual, but the  
5 purpose of the exemption statute is to assure that these  
6 benefits are not subjected to creditors, and that purpose is in  
7 conflict with the reimbursement statute that the state has  
8 passed because the state is merely a creditor trying to be  
9 repaid for providing care and maintenance to these individuals.

10           The cost of care is defined as food, clothing,  
11 medical care and normal living expenses. However, the  
12 reimbursement statute goes further. It permits costs of care  
13 to include other things because it discusses it in terms of per  
14 capita basis later on in the statute, which can mean the cost  
15 of providing guards, which is not a social security purpose.

16           It also provides in the statute that if there is some  
17 sort of contempt citation involved, then the cost of that can  
18 be taken from these monies, which is not a social security  
19 purpose.

20           It also provides that the cost of investigation to  
21 find out if the individual has these funds in the first place  
22 is the type of cost that can be reimbursed, and that is not a  
23 social security purpose.

24           The key to the matter is that neither on the face of  
25 the language or the purpose behind the particular statutes are

1 the Arkansas statutes and the federal exemption statutes  
2 reconcilable. They are in clear conflict.

3 Now, the reason we have our form of government is  
4 because we had to recognize at some point the Federal  
5 Government must prevail, and for that reason, we have a  
6 Supremacy Clause in our Constitution, and this is a prime  
7 example as to why the statute in Arkansas must fall to the  
8 extent that it permits attachment of these federal benefits.

9 We would like to conclude with this short note. If  
10 the case is reversed, this is merely another case in a long  
11 line of cases on Supremacy Clause litigation, and at most would  
12 be a case note in our constitutional law textbooks. But if the  
13 case is affirmed, it becomes a dagger with which to shred the  
14 fabric that has protected the federal-state relationship since  
15 our country was founded 200 years ago, and then it becomes a  
16 chapter in our common law textbooks and a very dangerous step  
17 towards ruining federalism.

18 If I may reserve the balance of my time for any  
19 rebuttal.

20 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Carpenter.

21 We'll hear now from you, Mr. Lazarus.

22 ORAL ARGUMENT OF RICHARD J. LAZARUS, ESQ.

23 AS AMICUS CURIAE - SUPPORTING THE PETITIONER

24 MR. LAZARUS: Thank you, Mr. Chief Justice, and may  
25 it please the Court:

1           What Arkansas seeks to accomplish here is the very  
2 thing barred by Section 207 of the Social Security Act. The  
3 attachment and seizure of social security benefits. The  
4 textual conflict in our view is head-on. There is no ambiguity  
5 in either the federal or the state law.

6           Section 207 provides that social security benefits  
7 shall not be subject to attachment or other legal process, but  
8 that is precisely what Arkansas sought in its complaint, what  
9 was ordered by the trial court, and what was held to be  
10 permissible by the Arkansas Supreme Court.

11           Contrary to Arkansas' claim, Section 207 contains no  
12 implied exemption for a state that is seeking reimbursement for  
13 costs it incurred in providing for another individual's basic  
14 needs. This Court's decision, we believe, in Philpott v. Essex  
15 County Welfare Board settled that issue.

16           The Court concluded there that it saw "no reason why  
17 a state performing its statutory duty to take care of the needy  
18 should be in a preferred position as compared to any other  
19 creditor."

20           The Court expressly or necessarily rejected  
21 practically all the limiting principles upon which Respondent  
22 relies in this case. No exception to Section 207 was found for  
23 state creditors, for creditors who provide basic needs,  
24 including those obliged by state law to do so, or for creditors  
25 whose debtors did not need the federal monies to meet their

1 basic needs.

2           No meaningful distinction exists between this case  
3 and Philpott. The only difference between the two cases is  
4 that here the state was performing its statutory duty to take  
5 care of the imprisoned, rather than a statutory duty to take  
6 care of the financially needy. It is a difference of no legal  
7 significance in the context of Section 207. There is no more  
8 reason to place the state outside the scope of the anti-  
9 attachment provision.

10           Indeed, the state's claim in Philpott to a certain  
11 extent was arguably stronger than this case because there,  
12 unlike here, the individual expressly agreed in advance to  
13 reimburse the state and at the state's behest had applied for  
14 social security benefits presumably to that end.

15           Respondent in certain lower courts suggests one other  
16 possible ground for distinction. They argue that Section 207  
17 does not apply to claims against the individual's estate when  
18 the claimant has legal custody of the individual. The  
19 statutory language, however, makes no such distinction. It  
20 does not deprive one of legal custody of its federal right  
21 under Section 207 to control the disbursement of a social  
22 security benefit.

23           We do not deny that certain equities favor the  
24 state's position in this case. Section 207, however, does not  
25 call for or allow for a balancing of the equities. To the

1 extent that any inequity exists, an application of 207, only  
2 Congress can revisit the issue.

3 In fact, Congress has done so to a limited extent,  
4 but Congress did not choose Arkansas' preferred solution.  
5 Congress determined instead that to the extent that an inequity  
6 is presented, when the individual is in a penal institution,  
7 the correct answer is that the Federal Government and not the  
8 states will get the money.

9 Congress did not lift the anti-assignment bar.  
10 Congress, instead, concluded that incarcerated felons should  
11 not receive their social security benefits in the first  
12 instance.

13 Finally, this Court's decision last term in Rose v.  
14 Rose does not suggest otherwise. Rose, unlike this case,  
15 involves a preemption challenge to state family law, did not  
16 purport to question at all the Court's decision in Philpott.  
17 The Court simply concluded that a similarly-worded anti-  
18 attachment provision regarding veterans' disability benefits  
19 was not implicated by a claim for child support because  
20 Congress had intended that the children of veterans, too,  
21 should receive those benefits.

22 There is no comparable expression of congressional  
23 intent that state penal institutions should receive the federal  
24 monies. The financial claims of the state penal institutions,  
25 therefore, are not comparable to the claims of the children

1 arose.

2 Arkansas, therefore, may charge a prisoner for the  
3 cost of his care. It may, of course, generally use legal  
4 process against the prisoner's estate to recover those charges,  
5 but federal social security benefits are simply out of bounds.  
6 They are not -- they are immune from such legal process.

7 Congress could have made an exception for state  
8 institutional care. Policy distinctions, we agree, do exist.  
9 In other contexts, Congress has chosen to make specific  
10 exceptions to the anti-assignment provision for this reason.  
11 But Congress has not done so here.

12 In our view, that is simply the end of the matter.

13 One other final point. In answer to a question posed  
14 by Justice O'Connor and Justice Scalia, with respect to the  
15 over-payment made here, it is the Government's view that Mr.  
16 Bennett is currently entitled to money in the bank account.

17 After he was released from prison in December '84,  
18 HHS discovered in January '85 that he had wrongly received  
19 benefits while in prison. HHS proceeded to recoup payments  
20 prospectively for payments he was then entitled to for  
21 retirement benefits up until, I think, June of 1986.

22 At that time, HHS concluded that he had paid back  
23 everything that he had been over-paid. HHS subsequently  
24 concluded in July of '86, about a year later, in June of '85,  
25 that he had not yet paid back all that he had been over-paid



1 before. HHS notified Mr. Bennett in September of '86 and  
2 proceeded to recoup again.

3 In October of '86, after receiving a protest and a  
4 request for a waiver from Mr. Bennett, under Section 404(b) of  
5 the Social Security Act, a waiver of over-payment, HHS decided  
6 to waive recoupment of the rest of the over-payment.

7 If there are no further questions.

8 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Lazarus.

9 We'll hear now from you, General Clark.

10 ORAL ARGUMENT OF J. STEVEN CLARK, ESQ.

11 ON BEHALF OF THE RESPONDENT

12 MR. CLARK: Mr. Chief Justice, and may it please the  
13 Court:

14 I submit to this Court that this case is a rather  
15 simple one in the sense that the Congress in enacting the  
16 Social Security Administration Act with retirement benefits  
17 said that its purpose was to provide for the food, clothing and  
18 necessary shelter for people who were approaching advancing age  
19 and not to have them experience the rigors of poverty.

20 The Arkansas statute adopted in 1981 really in a very  
21 direct respect had that same purpose. It was furtherance of a  
22 logical purpose and goal for our state that was to see that  
23 felons, those guilty of felonious conduct, could not get  
24 windfall benefits by virtue of the fact that while they were  
25 being taken care of, their total care and maintenance being

1 provided by the state, that, in fact, while that occurred, that  
2 they should not receive any windfall benefits and that those  
3 benefits should be applied in the nature and form of a  
4 reimbursement if, in fact, what Arkansas was doing was what the  
5 Congress intended to have done with those retirement benefits.

6 I submit to you that's what happened in this case  
7 with Petitioner Bennett. Petitioner Bennett, as you have been  
8 told, committed second degree murder and was sentenced to  
9 twenty-one years in our institution.

10 In 1982, he turned sixty-two. He voluntarily and  
11 without any compulsion from our state applied for retirement  
12 benefits. We adopted a statute in 1981 recognizing what we  
13 thought was a bad public policy of committing such windfalls.  
14 In 1983, Arkansas acting as, I submit to you, the state has the  
15 power to act, decided to try to recoup from Petitioner Bennett  
16 \$4,000 that he had in terms of assets in contrast to some  
17 \$27,000 that we had spent for his cost of incarceration.

18 Our statute specifically says this: reimbursement  
19 costs for food, clothing, shelter, medical and normal living  
20 expenses to the per capita amount that is to have been expended  
21 on that person incarcerated in just a correctional facility.  
22 It does not permit us to collect above that amount. In the  
23 instance of Petitioner Bennett, had he left our institution  
24 with \$35,000 and we had been able to collect \$27,000, he would  
25 have had an \$8,000 check presented to him at the time of his

1 departure.

2           It goes to exactly the amount that we, in fact,  
3 expend as a per capita cost, which I submit to this Court is  
4 consistent with what the Congress came back around to do in  
5 1983. When the Congress said in its amendments to the Social  
6 Security Act as to retirement benefits, that, in fact, that is  
7 a windfall, and that windfall should not occur.

8           Since that time, as you know, the Congress has made  
9 sure that those benefits do not flow. In the instance of  
10 Petitioner Bennett, there was a mistake made by the Social  
11 Security Administration and by the State of Arkansas. We stand  
12 ready here to tell this Court we will rectify that mistake if  
13 there has been any over-payment collected by us to which we owe  
14 the Social Security Administration.

15           In fact, until these briefs were filed with the  
16 Court, we simply were not aware of that. I should tell you the  
17 state was not, but we stand ready to say that if there's been  
18 an over-payment and we've gotten a windfall benefit, it's our  
19 responsibility then to make the Social Security Administration  
20 whole.

21           QUESTION: And since the 1983 amendments, you concede  
22 that the state can't get any recoupment or take any portion of  
23 the benefits?

24           MR. CLARK: For retirement benefits, yes, Your Honor.  
25 I concede we cannot recoup from social security retirement

1 benefits. In fact, there is a department memo that says any  
2 social security retirement checks that are received by the  
3 department are to be returned to the Social Security  
4 Administration.

5 We only have forty-five inmates in our system, Your  
6 Honor, who are over the age of sixty-two at this point. Our  
7 median age is about twenty-eight years in our correctional  
8 system.

9 QUESTION: I'm glad to hear what you've just said,  
10 General Clark, because I couldn't see why this amount should be  
11 in dispute at all. It seems to me pretty cut and dried.

12 MR. CLARK: Your Honor, I think it is very cut and  
13 dry.

14 QUESTION: Now, as to the rest of it, suppose I  
15 provide -- suppose my elderly parents live with me and I  
16 provide all their food and lodging, would I be able to obtain  
17 their -- a right to their social security payments?

18 MR. CLARK: No, Your Honor, I think not.

19 QUESTION: And why is that?

20 MR. CLARK: I think the difference in the  
21 hypothetical you have offered and what we have in this case is  
22 that you've done that by a matter of choice. On the Arkansas  
23 statutory scheme, we have an obligation to provide that food,  
24 care, shelter and normal living expenses and medical expenses  
25 to an inmate in our system.

1           But even if we chose as state policy to repeal that  
2 mandatory statutory scheme, we have a constitutional  
3 responsibility. The District Courts of these United States  
4 have repeatedly told us in a lot of litigation, some of which  
5 has come to this Court, called Huddell v. Finney, what that  
6 responsibility is constitutionally under the Eighth Amendment,  
7 the Fourteenth Amendment, and how it's applied in terms of that  
8 total care and maintenance.

9           So, I think you can distinguish and there's a  
10 distinction in the hypothetical in the sense that in yours,  
11 Your Honor, you have voluntarily accepted that responsibility.  
12 In ours, it is an obligation that's constitutionally mandated  
13 which we must live up to.

14           QUESTION: Suppose I have obligations under state law  
15 to support my spouse and my wife becomes old and unable to take  
16 care of herself and I fulfill that obligation, provide her  
17 room, lodging, food and everything, am I then entitled to get  
18 the social security payment because I have an obligation to  
19 support her?

20           MR. CLARK: No, Your Honor, I think not. I think  
21 again the distinction in this case is that in the instance of  
22 Petitioner Bennett, when he voluntarily committed a criminal  
23 act and became a part of our system, we had a constitutional  
24 responsibility. We stood in his place in the instance that  
25 what we did was fulfill the intent of Congress in a very narrow

1 window of time, from June of '81 to May of '83. In fact, there  
2 were only two cases of social security retirement benefits  
3 which the state attempted to attach in that period of time, and  
4 only in the instance of a person incarcerated in a penal  
5 facility in my state.

6 The statute does not go beyond that.

7 QUESTION: Really, all you have shown so far, it  
8 seems to me, General Clark, is that perhaps if Congress had  
9 thought about this, it would have said that Arkansas' situation  
10 would be an exception to the anti-assignment statute, but  
11 you've got the flat language of the anti-assignment statute.

12 MR. CLARK: I think, Your Honor, when you look at the  
13 plain language, you have to look at the test that I think is  
14 specifically identified in the Solicitor General's brief, which  
15 says that you look at -- that our case is not barred. Our  
16 statute is not deemed to be unconstitutional because you look  
17 at the language and the purpose to formulate the intent.

18 It's language plus that gets to what the intent was.  
19 Congress --

20 QUESTION: But, really, the spoken word, the  
21 language, if it's clear that that doesn't leave a whole lot of  
22 room for something else.

23 MR. CLARK: Well, Your Honor, this Court in Rose v.  
24 Rose could have taken that very same approach but did not.  
25 This Court could have said the plain language says no letting,

1 no attachment, you can't do that. This Court didn't say that.

2           This Court said, well, wait a minute, there's a  
3 legitimate purpose being advanced. That is, the state has the  
4 power and the duty to advance laws concerning domestic  
5 relations. I submit to you that that's the same in the area of  
6 corrections and criminal law. That the State of Arkansas in  
7 1981 had legitimate power and authority to advance a purpose,  
8 to say that it was wrong for a felon to be the windfall  
9 beneficiary of his criminal acts, and in that instance, we  
10 adopted a statute that in its application applied to the estate  
11 of those persons incarcerated for their tangible and intangible  
12 benefits or assets to include social security.

13           After those '83 amendments, we specifically said you  
14 cannot or you no longer can stand in the place of that  
15 recipient because what we had done prior to that was simply say  
16 we were doing what the congressional intent was from the  
17 beginning. We were giving the total care and maintenance for  
18 this individual. In fact, frankly, we did more than that, but  
19 that's not the test. The test is were we doing what the  
20 Congress wanted done, and I submit to you that we did, and we  
21 constitutionally could do that in terms of defining our own  
22 roles and purpose for criminal law and corrections.

23           This case is one in which I submit to you that it's  
24 nothing more than a traditional role of the state acting in an  
25 area where the state has the power to act. Because our state

1 formed this policy with this purpose, if you're going to commit  
2 a felonious act and you're going to, because of that, become a  
3 burden to the state and its taxpayers, they should not have to  
4 suffer that burden if, in fact, they fulfill what was in this  
5 small window of time the intent of Congress in providing for  
6 these total care and maintenance of these inmates.

7           This policy adopted by Arkansas was consistent with  
8 the later amendments. You might say to some degree, we're just  
9 twenty-four months ahead of our time, that Congress came back  
10 and said you're right, this is a windfall and it's wrong. So,  
11 in this small window, the --

12           QUESTION: Congress also said you're wrong in  
13 thinking you get it, we get it.

14           MR. CLARK: Yes, that's correct, Your Honor. That is  
15 correct, and the Congress said that's our and they did say the  
16 state should not receive it, that that should stay in the  
17 social security trust fund. I admit that readily.

18           But what I would also say to you is that the Congress  
19 didn't prohibit that prior to the '83 amendments. When they  
20 came back in '83, they got very specific. No longer will the  
21 retirement benefits flow, no longer. Disability. They will  
22 only flow if, in fact, the person who has received a disability  
23 benefit has these things which will occur: (1) the program was  
24 specifically approved by the Court, (2) that the person would  
25 get training that when they were released would give them



1 gainful employment. It was not the sixty-two-year old person  
2 we're talking about. Thirty-five year old person they were  
3 talking about. And (3) the Congress said that in the instance  
4 you have to have a reasonable opportunity to be released  
5 shortly so, in fact, this training will benefit you.

6 Congress was very explicit, but prior to those '83  
7 amendments, the congressional intent, I think, was not  
8 frustrated at all by the Arkansas statute at all. In fact, I  
9 would say to this Court that this case is distinguished from  
10 Philpott and in the instance that Philpott, there was a  
11 voluntary duty and one that was conditioned.

12 Our response is not conditioned. In the Philpott  
13 case, you found with that statute that the person who received  
14 the benefits at the time the benefits were granted were told  
15 upon this condition, you shall receive. That's not what our  
16 statute says. Statutory in terms of corrections or that's not  
17 what the courts of these United States have taught us about  
18 corrections in terms of care and maintenance of inmates.

19 It's not upon a condition that you happen to be under  
20 thirty-five, you'll get this sort of treatment, or over sixty-  
21 two, that sort of treatment. It is, in fact, you will get. It  
22 is an obligation constitutionally and statutorily founded.

23 And, so, I think this case is distinguished, can be  
24 distinguished from Philpott.

25 I also would simply say to the Court that in looking

1 at this case, that the Petitioner would have you believe that  
2 it should be disposed of very easily by just looking at that  
3 plain language and that really isn't a case at bar here today,  
4 and, yet, I submit that's not correct. That's not the test  
5 this Court articulated in Rose v. Rose. That's really not the  
6 test that the SG brief even says it is. It says, and I quote,  
7 "it's equally clear the validity of a challenged state law  
8 turns on (1) its consistency with congressional language but  
9 (2) its purpose.

10 The Arkansas state statute from 1981 to 1983 did not  
11 frustrate congressional purpose, and as in the case of Rose v.  
12 Rose, if you just stop and say, levy attached on so forth, we  
13 can't go any further, we would be precluded by the Supremacy  
14 Clause.

15 But this Court didn't do that in Rose v. Rose. This  
16 Court said, wait a minute. There is a legitimate state purpose  
17 advance, and I say again, I submit that that's what we were  
18 doing with that statute.

19 Our statute is broader than just social security  
20 retirement benefits. It has been applied in some thirty-five  
21 instances and in all those, only two in which social security  
22 retirement benefits were included. Many of the people, not  
23 many, thirty-five out of 3100, let's get the numbers very  
24 specific, thirty-five out of 3100 inmates have some value which  
25 we felt we could be reimbursed from.

1           Procedure is very simple in Arkansas. When you are  
2 sentenced to the Arkansas Department of Corrections, you spend  
3 fourteen days in processing. We hand you a sheet of paper. We  
4 ask you to fill out the information sheet. It says, do you  
5 have any assets. If you say none, that's the end of it. We  
6 don't have the staff or the manpower to go looking any further.

7           If, in the instance of while you are incarcerated, we  
8 seek reimbursement for \$4,000 and then you are released as  
9 Petitioner Bennett, we don't come back with a deficiency claim.  
10 We're not a judgment creditor. We don't do this by choice, we  
11 do it by obligation.

12           In the instance of Mr. Bennett, if he has a great  
13 aunt who dies and leaves him \$5 million, we don't come back  
14 again. We simply say during the period of the time that you  
15 were incarcerated in our institution, you should not be a  
16 burden to the taxpayer in the instance that you have resources  
17 which we have a right to be reimbursed to up to the per capita  
18 cost of what we expend keeping you there because of your  
19 conduct which mandated you be there.

20           I finally would simply say this to the Court, that  
21 the Arkansas reimbursement statute doesn't frustrate any  
22 purpose or intent of Congress, and that, in fact, we really  
23 fulfill that purpose and we have not created any sort of  
24 hardship, we have not created direct challenge to federal  
25 authority.

1           Our statute does not pose a serious threat to  
2 federalism. That's not our statute at all, and because of  
3 that, I would ask that the decision of the court below be  
4 affirmed.

5           CHIEF JUSTICE REHNQUIST: Thank you, General Clark.  
6           Mr. Carpenter, you have ten minutes remaining.

7           ORAL ARGUMENT OF THOMAS M. CARPENTER, ESQ.

8           ON BEHALF OF THE PETITIONER - REBUTTAL

9           MR. CARPENTER: Thank you, Mr. Chief Justice.

10          I don't know how General Clark can say he imposes no  
11 hardship. George Bennett is a sixty-nine year old man that  
12 can't get a job and had to leave the Department of Corrections  
13 without the \$1800 which would have been a great benefit to him  
14 in providing for his care and maintenance when he left, and had  
15 he not had family members to go and live with at that  
16 particular time, he would have been destitute.

17          So, I think it does pose a hardship. The fact that  
18 the State of Arkansas doesn't at this time seem to attach  
19 social security and has some memorandum out is no future  
20 guarantee that it's not going to make the effort again, and  
21 it's important for this Court to rule that that effort cannot  
22 be made.

23          The Respondent is suggesting essentially that there  
24 should be a new type of exemption under 42 USC 407 or Section  
25 207 of the Code and this is for those that are constitutionally

1 mandated to provide for care, yet the Congress has never said  
2 that those that are constitutionally mandated to provide care  
3 to individuals are exempt from our attachment statutes, and  
4 Congress certainly has the ability to do that.

5           When Congress posed the question, for example, in  
6 other types of retirement benefits as to whether people that  
7 committed certain types of crimes, mostly treason-type crimes,  
8 are entitled to these benefits anyway, Congress very quickly  
9 said no. When Congress was given opportunities to deal with  
10 different situations, they set up guidelines. When Congress  
11 needed to figure out a way to set up alternate payees, it did  
12 so and then it directed the Secretary through the regulations  
13 to do so and the Secretary did that.

14           Everything we've heard from the state is essentially  
15 a policy argument. The state is trying to say our policy meets  
16 your policy and, therefore, it's a good policy. But the  
17 relative importance of a state's own suggestion or own law is  
18 not material and this Court has so held when it conflicts with  
19 a federal law.

20           The Court said that first in 1962 in Free v. Bland  
21 and it has reiterated that several times, most recently in  
22 Hisquierdo.

23           We would note and I would like to paraphrase it, if  
24 I may, a very apt statement from the Louisiana Public Service  
25 Commission v. Federal Communications Commission, and this is a

1 paraphrase. A state may not confer power upon itself. To  
2 permit a state to expand its power in the face of congressional  
3 limitation would be to grant to the states the power to over-  
4 ride the Congress. This, the Court should be unwilling to do.

5 Rose v. Rose dealt with family law situations and  
6 followed a long line of cases that had looked closely to the  
7 family law situation. The Arkansas Department of Corrections  
8 can in no way be equated with George Bennett's family,  
9 particularly when it left him at the door with a departure  
10 allowance and said go home, we're going to hold your money.

11 The Arkansas legislature also passed an act and  
12 entitled it to take monies from the families of policemen  
13 killed in the line of duty because it met with a good state  
14 purpose and worker's comp, and this Court summarily reversed in  
15 Rose v. Arkansas State Police. We ask the Court to follow that  
16 rule and reverse and let it be known that the exemption statute  
17 means these funds cannot be attached and states cannot declare  
18 that there is a purpose that meets the congressional purpose.  
19 Only the Congress can decide that.

20 Thank you.

21 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Carpenter.

22 The case is submitted.

23 (Whereupon, at 1:32 o'clock p.m, the case in the  
24 above-entitled matter was submitted.)

25

REPORTERS' CERTIFICATE

1  
2  
3 DOCKET NUMBER: 86-6124  
4 CASE TITLE: George S. Bennett v. Arkansas  
5 HEARING DATE: March 2, 1988  
6 LOCATION: Washington, D.C.

7  
8 I hereby certify that the proceedings and evidence  
9 are contained fully and accurately on the tapes and notes  
10 reported by me at the hearing in the above case before the  
11 Supreme Court of the United States.

12  
13 Date: March 2, 1988

14  
15  
16 *Margaret Daly*  
17 \_\_\_\_\_  
Official Reporter

18 HERITAGE REPORTING CORPORATION  
19 1220 L Street, N.W.  
20 Washington, D. C. 20005  
21  
22  
23  
24  
25

RECEIVED  
SUPREME COURT, U.S.  
MARSHAL'S OFFICE

'88 MAR 11 A10:04