

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE
THE SUPREME COURT
OF THE
UNITED STATES

CAPTION: THOMAS F. CONROY, Petitioner v. WALTER
ANISKOFF, JR., ET AL.

CASE NO: 91-1353

PLACE: Washington, D.C.

DATE: Monday, January 11, 1993

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IN THE SUPREME COURT OF THE UNITED STATES

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THOMAS F. CONROY :
Petitioner :
v. : No. 91-1353
WALTER ANISKOFF, JR., ET AL. :
- - - - -X

Washington, D.C.
Monday, January 11, 1993

The above-entitled matter came on for oral
argument before the Supreme Court of the United States at
1:52 p.m.

APPEARANCES:

ROBERT H. KLONOFF, ESQ., Washington, D.C.; on behalf of
the Petitioner.
JOHN F. MANNING, ESQ., Assistant to the Solicitor
General, Department of Justice, Washington, D.C.; on
behalf of the United States as amicus curiae
supporting the Petitioner.
KEVIN M. CUDDY, ESQ., Bangor, Maine; on behalf of the
Respondents.

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1 PROCEEDINGS

2 (1: 52 p.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument
4 next in Number 91-1353, Thomas F. Conroy v. Walter
5 Aniskoff.

6 The spectators are admonished to remain silent
7 until you get out of the courtroom. The Court remains in
8 session.

9 Mr. Klonoff, you may proceed.

10 ORAL ARGUMENT OF ROBERT H. KLONOFF

11 ON BEHALF OF THE PETITIONER

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

14 Section 525 of The Soldiers' and Sailors' Civil
15 Relief Act excludes a service member's period of military
16 service from any period provided by law for the redemption
17 of real property forfeited for nonpayment of real estate
18 taxes.

19 The issue here is whether a service member must
20 show hardship in order to invoke section 525. We submit
21 that the courts below, in imposing such a requirement,
22 violated this Court's case law and statutory
23 interpretation for three reasons.

24 First, section 525 by its plain language imposes
25 no hardship requirement.

1 Second, several other sections of the statute do
2 impose a hardship requirement, while other sections, like
3 section 525, do not. This confirms that Congress acted
4 deliberately when it did not impose a hardship requirement
5 under section 525.

6 Third, this Court has made clear that statutes
7 providing benefits to service members should be liberally
8 construed.

9 For these reasons, we submit that this Court
10 should enforce the statute as written and decline
11 respondent's invitation to rewrite the statute on policy
12 grounds.

13 The facts in this case are simple, and I will
14 spend just a moment on them. At the time of trial,
15 Colonel Conroy had been on continuous active duty in the
16 U.S. Army since 1966. He purchased the property at issue
17 in May 1973, and paid all real estate taxes between 1973
18 and 1983. He did not pay his taxes in '84 through '86,
19 having received no tax notices from the town.

20 The Town of Danforth seized his land under Maine
21 law and sold it in two parcels to respondents Aniskoff and
22 H. C. Haynes in December 1986.

23 Upon learning of the sale, Colonel Conroy acted
24 promptly in asserting his rights. When Aniskoff and
25 Haynes refused to give up the land, Colonel Conroy brought

1 quiet title actions based on section 525.

2 The trial court held that despite section 525's
3 clear language, a service member had to show hardship from
4 military service, which Colonel Conroy did not do.

5 The Supreme Judicial Court of Maine affirmed the
6 Superior Court by an equally divided vote and did not
7 express any reasoning.

8 We submit that this case should be controlled by
9 this Court's decision last term in King v. St. Vincent's
10 Hospital. At issue in King was a National Guard member
11 who sought a 3-year leave of absence from his hospital
12 employer to join the Active Guard Reserve program as a
13 command sergeant major.

14 He claimed that under the plain language of the
15 Veteran Reemployment Rights Act he was allowed to return
16 to his job with the same seniority, pay, and vacation as
17 if he had not left. The hospital denied the leave request
18 on the ground that the period requested was unreasonable.

19 Although the statutory language contained no
20 limits for leave requests, the lower courts -- both the
21 Eleventh Circuit and the district court -- imposed a
22 reasonableness requirement because of their concern about
23 the burdens placed on employers of allowing employees to
24 return after long leaves of absences.

25 This Court unanimously reversed -- Justice

1 Thomas did not participate -- because, really for the same
2 reasons that I am urging here: 1) the language of the
3 section at issue was clear, 2) other parts of the statute,
4 by contrast, explicitly imposed time limits, and 3) the
5 statute provided benefits to members of the armed
6 services.

7 The Court acknowledged that the statute was
8 harsh, but refused to rewrite the law and noted that that
9 was Congress' job.

10 Here, we have an identical situation. The
11 language of section 525 is absolutely clear, and there has
12 been no claim as far as I know on any case that there is
13 an ambiguity in section 525.

14 Under this Court's case law, we submit that the
15 clear language of the statute should be the end of the
16 matter. However, it is even clearer than just the
17 language of section 525 alone, since a review of the
18 statute indicates that several other sections, unlike
19 section 525, impose a hardship requirement explicitly, and
20 we cited numerous examples on page 12, footnotes 11 and
21 12, of our opening brief.

22 We have also cited a number of examples of other
23 parts of the statute that, like section 525, contain no
24 prejudice requirement, so it seems to me quite clear that
25 the statute was very carefully drafted and that when

1 Congress wanted to impose a hardship requirement, it did
2 so explicitly, and we point for example, section 560,
3 which is of particular interest, since right within the
4 same section you've got juxtaposition of a hardship and
5 no-hardship standard.

6 QUESTION: Mr. Klonoff, the statute really
7 doesn't say that any property sold in violation of the
8 Federal prohibition is not effectively sold, does it? Is
9 that a matter of State law? I mean, could Maine law say
10 that if this statute is violated and we goof and make the
11 sale within the 18-month period, a good faith purchaser
12 nonetheless has title, and maybe you have a cause of
13 action against Maine but not against the BFP?

14 MR. KLONOFF: I don't think that the State could
15 do that, they could override the statute. There are a
16 variety of causes of action --

17 QUESTION: Well, they're not overriding the
18 statute. The statute doesn't really say that the transfer
19 shall be ineffective, does it?

20 MR. KLONOFF: Well, it has that effect.

21 QUESTION: If you say so, but I mean, that's
22 what I'm asking. Why does it have that effect? It
23 doesn't say that it has that effect. It just says, you
24 know, that you have to give him more time.

25 Okay, I have, and you got me, I broke the law --

1 so sue me. I mean, maybe he has a cause of action against
2 the State of Maine, if that's what Maine says.

3 MR. KLONOFF: But the whole concept of a
4 redemption is the right to actually -- if title is passed,
5 the right to take back title. In Maine, the way the law
6 is constructed is title doesn't even pass until the end of
7 the redemption period.

8 QUESTION: You're saying that Maine does not
9 have the authority to give title until that period is
10 passed, and because it is tolled Maine therefore can never
11 give even -- cannot even give a good title subject to
12 defeasance later.

13 MR. KLONOFF: Not inconsistent with the statute.
14 We read the statute as allowing the serviceman, if title
15 is transferred and there's a period of redemption, to take
16 the title back.

17 I suppose what could be done, since it talks
18 about any period of redemption provided by law, is, I
19 suppose, to not have any redemption period in this
20 situation.

21 QUESTION: No, but I just wanted to make sure
22 that I understood what you were saying to Justice Scalia,
23 and I thought the theory that you were espousing was that
24 because the period of service is not included -- cannot be
25 included in computing the redemption period, that the

1 redemption period never runs. Because it never runs,
2 Maine, or the town, whatever it is, never acquires the
3 authority to give any title at all. Isn't that your
4 theory?

5 MR. KLONOFF: Well, that's right, but in some
6 States the title actually will pass, subject to the
7 redemption. If there's a redemption statute, the way it
8 works is that the title would be returned.

9 QUESTION: But that's not the way it works, on
10 your view, in Maine, is it?

11 MR. KLONOFF: No, that's right. In Maine it
12 doesn't work that way.

13 So as we indicated, these sections and the
14 juxtaposition in 560 makes clear that Congress new how to
15 pose a hardship requirement when it wanted to do so.

16 And finally, as I indicated, this Court has made
17 clear in a number of cases that statutes of this sort must
18 be liberally construed in favor of the serviceman.

19 The court below -- the trial court -- did not
20 make a textual argument, but instead expressed concerns
21 about the possible impact of purchasers of property if
22 service members are allowed to come in years later to
23 redeem their property, but as in King, we submit that any
24 such concerns are for Congress and not for the court.

25 We think that in this case the lower court

1 misunderstood its role, believing that if a statute was
2 harsh, a court could ignore the plain language, but under
3 this Court's case law a court is almost never permitted to
4 ignore the plain language on policy grounds, and certainly
5 not for the reasons offered below.

6 This Court has made clear that the statute
7 literally read must be patently absurd, with consequences
8 so bizarre that Congress could not have intended them, and
9 it's been phrased in a number of different ways.

10 In the Crooks case from 1930, which has been
11 cited in Griffin and TVA v. Hill, it was made clear that
12 it's not enough that it's merely absurd, and that
13 oftentimes laws have effects that weren't contemplated,
14 but it's for Congress to decide the issue.

15 And this Court in a number of cases -- Griffin,
16 has said that harsh consequences are not enough, a
17 situation where a seaman was entitled to receive over
18 \$300,000 from an employer because of a \$412 withholding of
19 wages.

20 The TVA v. Hill, which involved a multimillion
21 dollar dam project which was stopped near completion, the
22 Court said that the result was curious, but not enough to
23 override -- and numerous other cases that this Court --
24 and this Court has made clear in Estate of Cowart that
25 even if a statute could be characterized as stark or

1 troubling, it is the duty of the court to enforce
2 Congress' language even if the court questions its wisdom.

3 Now, looking at section 525 and actually
4 juxtaposing 525 with the situation in King, we would
5 submit that there's not even an absurdity, let alone a
6 situation that's so patently absurd that Congress could
7 not have intended it.

8 In King, for example, it's interesting to note
9 that the 3-year period was not the end of the possibility
10 in that situation. There was a question asked at page 6
11 of the oral argument in that case, in the transcript,
12 about whether or not the period could be renewed four
13 times for, say, 12 years, and the answer that the
14 Assistant to the Solicitor General gave was that
15 theoretically that's possible.

16 She didn't know of a case, but theoretically it
17 was possible, and the situation, then, you have in King,
18 was somebody coming back 12 years and basically -- and in
19 King, for example, the individuals reflected in the
20 Eleventh Circuit opinion was the manager of security could
21 come in 12 years later and just walk in and demand his job
22 back after somebody had been hired and so forth.

23 And so really, that is or could be a harsh and
24 troubling situation, but it was not enough, and in fact
25 the Court -- although the Eleventh Circuit resolved the

1 case as a matter of absurd consequences, this Court in
2 King didn't even address the absurd consequences at all,
3 and just said that the matter was for Congress to
4 consider.

5 QUESTION: May I ask you a question about this
6 case just to get it fixed in my mind?

7 If you win, what it means is the period of
8 redemption has not yet expired --

9 MR. KLONOFF: That's right.

10 QUESTION: And therefore your client has a right
11 to redeem, and I gather your position is he will retain
12 that right to redeem as long as he remains on active duty.

13 MR. KLONOFF: Well, he's actually now retired,
14 although that's not reflected --

15 QUESTION: Well, then he just has the right to
16 redeem as of now, so he could be compelled to exercise it
17 within a fixed period of time, could he?

18 MR. KLONOFF: That's correct. I think pursuant
19 to the stipulation that we set out in our brief and that's
20 set out in the opinion, I don't believe there's any issue
21 in terms of either side complying with State law, but
22 formally in this situation you would make a tender.

23 QUESTION: He would have to make a tender of the
24 back taxes plus interest, whatever the statute provides
25 for redemption.

1 MR. KLONOFF: That's exactly right.

2 QUESTION: If you had a person -- you don't, as
3 I understand it -- who was still on active duty and he's
4 perhaps going to serve another 15, 20 years, would he have
5 the right under the statute, under your view, to say to
6 the property owner, I haven't decided what I want to do.
7 I just want to make it clear that the period of redemption
8 hasn't run yet, and I'll make up my mind just before I get
9 out of service.

10 MR. KLONOFF: He would have that right, and I
11 think then the property owner would have civil causes of
12 action available, and that would be true, by the way, to
13 the taxing authority. They could sue for damages, they
14 could levy against --

15 QUESTION: They could sue for the back taxes.

16 MR. KLONOFF: Exactly, levy taxes.

17 Let me just say, though, you're positing, I
18 think, a situation in which somebody would really have an
19 incentive to want to stretch the period of redemption out,
20 and that's what the lower court was talking about, posing
21 the situation of somebody waiting 30 years and simply
22 not --

23 QUESTION: Well, I suppose the practical matter
24 is he might well be willing to sell the property for a
25 sum. He might well be willing to sell his right in the

1 redemption period for a cash sum. These things often
2 settle for a cash basis --

3 MR. KLONOFF: That's correct.

4 QUESTION: And the longer the period, the more
5 of a nuisance rights he has, the better bargaining
6 position he is in in that negotiation.

7 MR. KLONOFF: Well, that's correct, but let me
8 provide, if I could, some perspective on that, because
9 really what we're talking about and the assumption, I
10 think, of the so-called absurd consequences is the idea of
11 a service member who has a valid and just debt just really
12 out of reasons for dishonesty not paying off the debt and
13 trying to abuse, if you will, the rights that are
14 provided.

15 We don't think as a practical matter this is
16 going to arise. There are a whole array of remedies
17 available that the military has. For example, Article 134
18 of the Uniform Code of Military Justice, the Army has
19 regulations --

20 QUESTION: What does Article 134 provide that's
21 relevant to this case?

22 MR. KLONOFF: Well, what it provides is that an
23 individual can be court-martialled for conduct of a nature
24 that would bring discredit on the Armed Forces, and there
25 are a number of cases, such as United States v.

1 Sivinovich, the U.S. Army Court of Military Review of
2 1988, applying that precisely to the bad debt situation.

3 QUESTION: Does it bring discredit on the Armed
4 Forces to exercise rights granted by Congress to an
5 officer of the United States Army?

6 MR. KLONOFF: That's what the Court has held, if
7 there is a just debt. Let me go further, though, than
8 just the Article 134. The U.S. Army has specific
9 regulations at part 513 of 32 C.F.R., which says that if a
10 soldier is not trying to resolve unpaid debts promptly, or
11 complaints of the sort are received, punitive measures can
12 be provided such as a denial of reenlistment,
13 administrative separation from the service or other sorts
14 of punishments.

15 QUESTION: Those may well deal with individual
16 cases, Mr. Klonoff, but if we're now turning to the bad
17 consequences of adopting the position you say the statute
18 requires, I think perhaps from the point of view of the
19 State or the town, it's simply an inability to sell at a
20 tax sale. The titles simply are too uncertain.

21 MR. KLONOFF: Well, we would respectfully
22 disagree that that's the outcome. Even if there were a
23 prejudice requirement, you'd still have an issue about
24 military service.

25 There are all kinds of reasons why there might

1 later be a cloud on title, such as a fraudulent deed,
2 ineffective notice, or failure to comply with the
3 requirements of a tax sale. Many States have requirements
4 that -- there's a redemption period for a period of mental
5 incompetence, and what is done in these tax sales,
6 traditionally what was done in this case, is the execution
7 of a quit claim deed, which means, in effect, that the
8 purchase gets whatever, any title there is, and so the
9 State could go forward, if it can't ascertain the
10 situation, and actually sell the property, and the risk --

11 QUESTION: Yes, but a quit claim deed is a good
12 deal different than -- you can't get title insurance on
13 the basis of a quit claim deed.

14 MR. KLONOFF: Well, that's correct, and that's
15 why a person purchasing the property takes all kinds of
16 risks, and this is something, along with many other
17 things, that can be looked into.

18 I would note that, for example, the statute,
19 section 581 has a certification procedure, and in Maine,
20 for example, it's very common for lawyers to write to the
21 Armed Forces and actually get a determination whether
22 someone is in military service. In many of these
23 situations, the people in question are there locally and
24 so the issue can be resolved.

25 QUESTION: Did I understand you to say that

1 Maine can proceed in personam for the amount of the
2 delinquent taxes against the property owner?

3 MR. KLONOFF: Yes, that is right. That is a
4 remedy that's available. It's by statute, and it's
5 absolutely clear that they can pursue a civil remedy.

6 Now, of course, you're going to have the array
7 of other Soldiers' and Sailors' Act provisions kicking in,
8 such as the default provisions and so on, but there are
9 these alternative remedies.

10 I would like to, if I could, reserve the balance
11 of my time for rebuttal.

12 QUESTION: Very well, Mr. Klonoff.

13 Mr. Manning, we'll hear from you.

14 ORAL ARGUMENT OF JOHN F. MANNING

15 ON BEHALF OF THE UNITED STATES

16 AS AMICUS CURIAE SUPPORTING THE PETITIONER

17 MR. MANNING: Thank you, Mr. Chief Justice, and
18 may it please the Court:

19 I would like to begin by addressing Justice
20 Scalia's question about the bona fide purchaser. The
21 statute contains one provision which explicitly addresses
22 when a bona fide purchaser of land can obtain relief when
23 a transaction is affected by the Soldiers' and Sailors'
24 Civil Relief Act. That is provided in section 520 of the
25 Appendix, which deals with default judgments.

1 If a default judgment is entered against a
2 service member, and the service member can show within a
3 specified period subsequent to his military service that
4 he was prejudiced in his ability to defend the suit
5 because of his military service, he can have that judgment
6 vacated.

7 The provision explicitly provides that any
8 property obtained by a bona fide purchaser for value
9 pursuant to that judgment will be protected against the
10 vacation of that default judgment by the service member.

11 Now, this illustrates one important point -- two
12 important points. First, under section 525, there is no
13 similar protection, so the right to redeem is tolled
14 irrespective of any State law that would protect a bona
15 fide purchaser.

16 Second, it shows that the statute is a very
17 carefully drafted provision for the protection of service
18 members.

19 Mr. Justice Brandeis stated, writing for the
20 Court in --

21 QUESTION: The Federal Government might have
22 wanted to protect by Federal law a BFP in the one
23 situation, and decided not to protect him by Federal law
24 in the other, but left it open to the State to protect
25 him. Isn't that a conceivable explanation?

1 MR. MANNING: It is conceivable, Justice Scalia,
2 that that is the case, but it seems to me more likely,
3 given the comprehensiveness of the statutory scheme and
4 the extent to which Congress was careful in specifying
5 which remedies would and would not be available and the
6 desire of Congress to protect the service member from
7 various State law judgments and liabilities during the
8 period of service, that it's much more likely that the
9 force of section 525, which is broad and absolute in its
10 terms, must be taken as preemptive of any State law right
11 to vest the title in a bona fide purchaser.

12 Otherwise, a State could simply, by a variety of
13 State rules, eliminate a protection that is broad, that is
14 mandatory, and that is unqualified in its application.

15 Along the lines of the implications of the
16 statute, I'd like to point out that as Justice Brandeis
17 said in Ebert v. Poston, this statute was so carefully
18 drafted that very little is left to conjecture, and given
19 the act's disparate inclusion and omission of a prejudice
20 requirement in its various sections, the failure to
21 include a prejudice requirement in section 525 must be
22 understood as a deliberate policy choice.

23 Congress carefully considered when prejudice
24 should, and more importantly should not, be a factor in
25 awarding relief under the act, and it obviously decided

1 that in section 525 it should not be awarded -- it should
2 not be a factor in the relief granted.

3 Now, to highlight a point that Mr. Klonoff made,
4 I'd like to direct the Court's attention to section 560 of
5 the Appendix. Section 560 specifically addresses --

6 QUESTION: When you say, of the Appendix, are
7 you referring to the Appendix to your brief?

8 MR. MANNING: No, I apologize, Chief Justice
9 Rehnquist, it's the Appendix to title 50, where the act is
10 codified. Section 560 of the Appendix to title --

11 QUESTION: Is that cited anywhere in your brief?

12 MR. MANNING: It is cited. It's cited and
13 discussed in the text, Your Honor.

14 The Appendix to title 50 provides relief from
15 tax sales of certain kinds of property. Now, the property
16 at issue here is not among the classes of property that's
17 covered by that provision. It relates to -- in terms of
18 real property, it relates to residential, business,
19 professional, and agricultural property owned by the
20 service member at the commencement of service and still
21 owned at the time of the tax sale.

22 If a tax sale is to occur under that --

23 QUESTION: Owned and occupied, now.

24 MR. MANNING: Owned and occupied by the service
25 member or his dependents or employees.

1 If -- before a tax sale can occur, a court order
2 must be obtained for that type of property, and the
3 service member or his dependents may get a stay of the tax
4 sale during the period of military service unless the
5 service member's ability to pay or his dependents' ability
6 to pay the taxes is not materially affected by the
7 military service. So there is an explicit prejudice
8 requirement contained in that provision which supplies
9 relief from the tax sale itself.

10 In the very next provision of section 560, the
11 act provides that the period of redemption, the right of
12 redemption or the right to bring an action for redemption,
13 shall extend throughout the period of the act and for
14 6 months thereafter.

15 It has no mention of material effect of military
16 service. It has no prejudice requirement in the text of
17 the statute, and that provision, which dates back in its
18 original form to the 1918 legislation, shows that Congress
19 intentionally distinguished between the kinds of relief it
20 would be providing for tax forfeitures, and when it got to
21 the point of redemption, it decided to provide an absolute
22 protection that extended without regard to prejudice
23 throughout the period of military service.

24 Now, respondents don't claim that the similarly
25 worded language of section 525 is ambiguous. What they

1 claim is that the Court should not apply the statute as
2 written because of the practical consequences of allowing
3 a career service member to redeem his property throughout
4 the period of military service without a showing of
5 prejudice.

6 Now, apart from the fact that the practical
7 consequences argument is foreclosed by this Court's
8 decision in King v. St. Vincent's Hospital, the statute as
9 written is far from absurd. Respondents don't claim that
10 it's absurd to redeem the tolling provision -- to toll the
11 redemption provision for service members in general. What
12 they claim is that it is absurd to do so without a
13 particularized inquiry in each case into whether there has
14 been prejudice. Now, that is simply not absurd.

15 Congress, because the period of redemption is
16 the last safety valve before property is lost irrevocably,
17 it is perfectly rational for Congress to have decided that
18 it would provide service members with the assurance that
19 their property would not be lost forever during their
20 period of military service.

21 Because of its self-executing nature, section
22 525 provides service members with the peace of mind that
23 they will not have to rely on a court's determination in
24 hindsight that this or that tour of duty was or was not
25 prejudicial to their ability to redeem their property, and

1 so what it does is, in effect, it gives the service
2 members an effective right to wait their period of
3 military service before exercising their right of
4 redemption, otherwise we doubt that many service members
5 would take the risk that a court would, in hindsight, find
6 that they had not been prejudiced by their tour of
7 military duty.

8 QUESTION: I take it the provision which allows
9 for the collection of taxes on real property does not
10 apply to him, though, because he was not occupying it for
11 a dwelling.

12 MR. MANNING: That's right. It was vacant land
13 that he was holding to have as a vacation spot.

14 Finally, I would like to point out that the
15 uncertainties that respondents note, and the cloud on tax
16 title that they assert as the absurdity in this case,
17 would exist even if there were a prejudice requirement
18 under the statute.

19 If a service member were entitled to toll his
20 redemption period upon a showing of prejudice, it would be
21 equally difficult, indeed, impossible to tell from the
22 chain of title whether there was a service member in the
23 chain of title, and whether the service member's
24 particular tour of duty was prejudicial to his ability to
25 redeem.

1 Because the statute is clear, because the
2 structure confirms the statute, and because of the canon
3 requiring liberal construction of a statute for the
4 benefit of service members, the judgment of the Supreme
5 Judicial Court of Maine should be reversed.

6 If there are no further questions --

7 QUESTION: Thank you, Mr. Manning.

8 Mr. Cuddy, we'll hear from you.

9 ORAL ARGUMENT OF KEVIN M. CUDDY

10 ON BEHALF OF THE RESPONDENT

11 MR. CUDDY: Mr. Chief Justice, may it please the
12 Court:

13 At issue here today, as has been discussed, is
14 the statutory foreclosure by the Town of Danforth on 170
15 acres of open land in Maine for unpaid taxes, and the
16 subsequent sale of these lots to respondents Aniskoff and
17 Haynes.

18 As has been stated, the former owner,
19 Mr. Conroy, was in the military service at all pertinent
20 times here, and he had residences in South Portland,
21 Maine, and also in Wisconsin.

22 The petitioner here contends that the status --
23 the uniformed status that he enjoyed as a serviceman
24 shields him from his responsibilities to pay taxes because
25 of section 525.

1 QUESTION: In a timely fashion.

2 MR. CUDDY: In a timely fashion, Your Honor,
3 yes. Thank you.

4 We contend that he uses that status as a sword,
5 really, to unfairly inhibit the Town of Danforth from
6 collecting its tax revenue and to unreasonably deprive
7 good faith purchasers of title in the real estate.

8 We -- I think counsel collectively has done the
9 Court a disservice, apparently, because we have not
10 included for you section 560, as far as I am concerned, in
11 any readily available form so that you can look at it
12 right now, because I agree with these gentlemen, section
13 560 is important.

14 Not having any expertise in this when this case
15 was brought to me, I looked at 560, because it's the
16 particular section that seems to apply here, and I read it
17 through, and I checked to see, did this fit within the
18 area of someone who owned real property that was occupied
19 for dwelling purposes or professional purposes or business
20 or agriculture? No. It's open land. It doesn't apply.

21 But as these gentlemen called it to my
22 attention, I looked at that subsection (2). That
23 subsection (2) of section 560 indicates that the court
24 must be asked to approve a tax sale if a tax sale takes
25 place under 560 when the court feels that the military

1 service did not materially affect the ability of the
2 military person to pay tax. The court will approve the
3 sale if it feels that the military person's ability to pay
4 tax was not materially affected by his military service.

5 QUESTION: Did you set forth section 560 in your
6 brief, Mr. Cuddy?

7 MR. CUDDY: I make reference to it, Your Honor.
8 None of us, unfortunately, have reprinted the statute in
9 its entirety in any of our briefs or any of our
10 appendices.

11 QUESTION: I would suggest to each of you that
12 if you plan to do that in the future you should not -- you
13 should very definitely set forth the statute in your
14 brief.

15 MR. CUDDY: I fully appreciate that, Your Honor,
16 and I apologize on my behalf --

17 QUESTION: So what's your conclusion on what
18 you've just said?

19 MR. CUDDY: My conclusion, Your Honor, moving
20 forward from that point, is that this Court in the
21 LeMaistre case back in 1948, which in the last 46 years is
22 the only case which dealt with this section -- back in
23 1948, this Court said, with respect to section 560, 560
24 and 525 supplement each other, and 560 gives greater
25 protection -- greater protection than 525.

1 What the petitioner is suggesting is in fact
2 because of his military status as a service person 525
3 gives him absolute protection. This Court has already
4 gone on record indicating in LeMaistre that it is 560, the
5 particular section, that gives the preferred position, the
6 greater protection, to the serviceman.

7 QUESTION: Help me with just one thing, though.
8 I don't know whether it's greater or less, but 560 deals
9 with approval of the sale, whereas 525 deals with
10 redemption.

11 MR. CUDDY: 525 deals with redemption periods.
12 560 --

13 QUESTION: After a sale has taken place.

14 MR. CUDDY: Right. 560 deals with a sale if
15 there is in fact a tax deficiency and the mechanics for
16 doing it, and in 560 there's a reference to the remedies
17 from section 501 to section 590, which includes 525.

18 QUESTION: But he doesn't challenge the -- he
19 doesn't say there's any defect in the sale.

20 MR. CUDDY: No. No, he doesn't say there's any
21 defect in the sale. He says that 525 gives him a
22 preferred position because of his status as a serviceman.

23 QUESTION: It gives him an unlimited period, a
24 period -- a time to redeem as long as he's in service.

25 MR. CUDDY: Yes, Your Honor, that's correct, and

1 section 510 of the act -- and this is troublesome to me,
2 and maybe I'm missing this. This was enacted in 1918,
3 initially, during a time of war. It's reenacted, this
4 statute, in 1940 during a time of war. It's interpreted
5 in 1948, just after the war, by this Court in LeMaistre.

6 We're now looking at it 48 years later, and it
7 seems to me that the petitioner is saying we should look
8 at it with blinders on, that we should not look at section
9 510, which is a statement of general purposes, that we
10 should not look at the exigent circumstances referred to
11 in section 510, that we should not look to the prejudice
12 that section 510 suggests has to exist. We shouldn't look
13 at any of those things.

14 It seems to me that the courts -- the lower
15 courts, the courts in Florida, the courts in New Mexico
16 that we cited in our brief --

17 QUESTION: Well, what if this had happened back
18 in 1942 or '43? You wouldn't be making this argument, I
19 don't suppose.

20 MR. CUDDY: You're right.

21 QUESTION: So we should say, just because
22 Congress has -- that even though Congress has not changed
23 the law, we should apply it differently.

24 MR. CUDDY: No. I think what you have to say,
25 Your Honor, is, in 1942 and '43 and '44 and '45, there was

1 a war.

2 QUESTION: Yes.

3 MR. CUDDY: That's -- that's the significant
4 fact. In 1948, in its wisdom, Congress --

5 QUESTION: But that isn't what the law says, in
6 time of war.

7 MR. CUDDY: It says, exigent circumstances, and
8 one has to infer historically what those exigent
9 circumstances were. You're right, that's not what it
10 says.

11 QUESTION: Well, that's just a recital at the
12 beginning, isn't it, about exigent circumstances? It
13 doesn't say, the statute shall be enforced only so long as
14 the exigent circumstances exist.

15 MR. CUDDY: No, it doesn't say that. Clearly,
16 historically, back in 1940, they had a precedent in 1918
17 that it was only enforced as long as the exigent
18 circumstances existed.

19 Here, in 1948, Congress elected to continue it
20 without providing any sort of transition to answer or
21 address any of these questions. There is no transition
22 for it.

23 QUESTION: Do you want us to do that?

24 MR. CUDDY: I want -- I'm requesting
25 respectfully that you interpret this statute in the

1 context in which it exists.

2 QUESTION: So the protection that seemingly is
3 given to the right to redeem just has expired by now.

4 MR. CUDDY: It has expired unless there is
5 prejudice or hardship, and where does one find the
6 prejudice and hardship requirement --

7 QUESTION: Well, where do you find the
8 requirement for the hardship? That's the real problem.
9 Congress couldn't specify it in this section.

10 MR. CUDDY: I agree with that, your Honor. You
11 find that requirement in two places. Number 1, you find
12 it in the general provisions, section 510, and the second
13 place that you find that is, you find that looking back at
14 what this Court did in the LeMaistre v. Leffers case,
15 looking at -- I beg your pardon.

16 QUESTION: Go ahead and finish your answer.

17 MR. CUDDY: Looking at the juxtaposition of
18 section 560 and 525, looking at the fact that this Court
19 indicated back in 1948, 560 is what provides the better
20 protection for people, not 525, and from that,
21 inferring -- because 560 has a hardship requirement in it.

22 QUESTION: Well, on that basis you shouldn't
23 have answered that if this had happened in 1943 you
24 wouldn't be making this argument. You would say well, gee
25 whiz, that other section gives the most protection, and

1 so --

2 MR. CUDDY: You wouldn't have decided the case
3 in LeMaistre in 1943, Your Honor, unfortunately, but the
4 reason I answered your question that way was because what
5 I understood you to ask me, that was the exigent
6 circumstance issue, and the exigent circumstances in that
7 context was war. I did not mean to deal with the
8 hardship.

9 QUESTION: Let me just be sure I understand your
10 position. Assume we were in a wartime situation, would
11 your reliance on 560 -- would you make the same argument
12 based on 560?

13 MR. CUDDY: I would today make the same argument
14 in terms of a hardship requirement having to be there.

15 QUESTION: No, I understand that today. I'm
16 saying, would you make the 560 argument in 1943, or during
17 the Korean conflict, or during the Vietnam conflict?
18 Would you make that argument at those times?

19 MR. CUDDY: I would make the argument, but I
20 wouldn't have the support that subsequently --

21 QUESTION: You wouldn't get our support for 510,
22 but I don't see -- it seems to me they are totally
23 separate arguments, that's my problem with you.

24 The 510 argument, it seems to me, is one -- we
25 have special rules during wartime.

1 Your 560 argument is, we have a special --
2 that's the statute we should look at rather than 525.

3 QUESTION: What if we were really at all-out war
4 right now, would you -- I would think your 560 would still
5 trump this right to redeem -- on your argument.

6 MR. CUDDY: In terms of hardship, that is my
7 position, Your Honor, but I don't want to leave Justice
8 Stevens' point, if I may.

9 The 510, in the last part of it -- again, this
10 is the general provisions -- talks about that these
11 provisions are made for the temporary suspension of legal
12 proceedings in transactions which may prejudice the civil
13 rights of persons in such services -- prejudice the civil
14 rights of such person in the services.

15 Not alone does 510 talk about exigent
16 circumstances, but it has an overview of the concept of
17 prejudice --

18 QUESTION: Well, it doesn't say temporary
19 suspension of such legal proceedings as will prejudice
20 their rights, it just says a certain category that might
21 prejudice their rights, and this might. I mean, this is a
22 category of temporary suspensions, and this category is a
23 category which may prejudice the people who get the
24 benefit of the statute.

25 MR. CUDDY: Right, and --

1 QUESTION: But it doesn't say he has to prove
2 the prejudice.

3 MR. CUDDY: If -- in order to ask the question,
4 I respectfully suggest -- in order to say, might it
5 prejudice, might it not prejudice it, in the litigation
6 setting, you have to then say, how are we going to
7 determine this, and somebody's going to have to
8 question --

9 QUESTION: But this section doesn't define
10 litigation rights. It just explains why they enacted the
11 statute, and the statute was to provide temporary
12 suspensions in a category of cases where servicemen might
13 be prejudiced.

14 MR. CUDDY: Right.

15 QUESTION: And in this category, they might be.
16 But it doesn't say they have to prove prejudice to win in
17 the particular case.

18 MR. CUDDY: That's -- that's --

19 QUESTION: That's how you fit 510 with 525.

20 MR. CUDDY: Okay. That's literally true, but I
21 think the next logical step is, if one concedes that the
22 issue of the possible existence, the may be of prejudice
23 exists. Either the question's got to be asked
24 affirmatively by the people seeking to get this quiet
25 title action, or it has to be asked by the other side, but

1 somebody's got to ask the question.

2 QUESTION: Well, no, I don't think so at all.
3 You could say that some people might be prejudiced by not
4 being able to hire a lawyer in time to do this and that
5 and therefore they can't file a lawsuit right away,
6 therefore we'll give them 5 years to avoid the danger of
7 that prejudice. They get the 5 years whether they can
8 prove prejudice or not.

9 MR. CUDDY: Okay. In making the transition,
10 then, to the redemption issue, whether or not one gets the
11 benefit of redemption or doesn't get the benefit of
12 redemption, you have to make a finding of, is this going
13 to provide a hardship, or in the alternative, is it
14 sufficient that someone has the status of a military
15 person?

16 What I'm suggesting to you is that section 510
17 and section 560 both -- both have a implicit concept of
18 hardship or prejudice.

19 QUESTION: Yes, but it seems to me the fact that
20 it's present in 560 demonstrates that it's presence in 510
21 is irrelevant, because if it's presence in 510 justifies
22 reading it into 525, you wouldn't have had to have it in
23 560.

24 MR. CUDDY: Not necessarily. In 5 --

25 QUESTION: Your argument is, we don't need an

1 explicit hardship requirement in 525 because it's in 510,
2 which is up at the beginning of the act, and that hardship
3 requirement spills over into all of the act, but if that
4 were true, there wouldn't be any hardship requirement in
5 560. You wouldn't need it, because it would be supplied
6 by 510. But we have it in 560.

7 MR. CUDDY: You have it in 560 because 560
8 subsection (2) specifically provides for a hearing for a
9 determination of a question.

10 QUESTION: You have it because you have it.

11 MR. CUDDY: Yes.

12 QUESTION: Right.

13 MR. CUDDY: That's true.

14 Moving on from where I just was in terms of the
15 requirements of the statute, King v. St. Vincent's
16 Hospital, decided by this Court a year ago, has some
17 pertinent language in it, but I would respectfully suggest
18 that the issues in the Veterans' Reemployment Rights Act
19 and the issues before this Court in the Soldiers' and
20 Sailors' Civil Relief Act are disparate, different
21 matters.

22 It is true that they relate to servicemen, and
23 it is true that they relate to interpretation. After you
24 get beyond that, I think that the petitioner's comfort in
25 citing this case is just misplaced.

1 This act that we're dealing with here, the
2 Soldiers' and Sailors' Civil Relief Act, is an act that is
3 germane to itself in terms of its history, its enactment,
4 then its reenactment. It has -- the Veteran's
5 Reemployment Rights Act has nothing to do, directly or
6 indirectly, with the Soldiers' & Sailors' Civil Relief
7 Act.

8 The references, however, in that act to
9 interpreting the statute in the context of the full
10 statute I think are very germane, and they apply here very
11 strongly because we're not talking about one section in
12 isolation, again with judicial blinders. We're talking
13 about one section in the context of an entire statute, and
14 how it affects and interacts with the entire statute.

15 And again, I reference this Court's decision in
16 LeMaistre because this Court -- although it didn't
17 anticipate where we are today, this Court back in 1948 did
18 anticipate the tension and dynamic and interrelationship
19 of those two sections and found them to be supportive of
20 one another, not inconsistent or mutually exclusive.

21 I would also suggest, and I think I may have
22 mentioned it but I want to be sure I mentioned it, the
23 courts that deal with the issue of real estate taking, of
24 seizing for taxes, they -- and the cases we've cited in
25 our brief, cases from Florida, cases from New Mexico --

1 they support the proposition that the legitimacy of
2 deeding property, the whole concept of the title, the
3 chain of title in property, demands for that process that
4 there be some showing of hardship or prejudice.

5 They talk about career servicemen and noncareer
6 servicemen, and I think that that's another way of saying
7 prejudice, or hardship. That's really what they're
8 talking about, because implicitly if one is a career
9 person, one has a regular income, one is under reasonably
10 situations, unless one can demonstrate that there's a
11 hardship and I think that's where the language career
12 comes into play, and it really has its foundation in the
13 concept of hardship.

14 QUESTION: Mr. Cuddy, can I ask you to address
15 the point the Government makes about where the burden of
16 this uncertainty should lie, and whether it's so absurd to
17 place the burden where they say it's been placed. It
18 doesn't seem to me absurd to say, as they claim the
19 statute provides, in 560, the -- which stays the whole
20 sale. You want to come in and stay the whole sale.

21 MR. CUDDY: Right.

22 QUESTION: Well, the statute says, if you want
23 to stay the whole sale, you have to prove the hardship,
24 but if the sale goes forward and all you want to do is
25 have a later right to redeem, you don't have to prove the

1 hardship, because, says the Government -- what does
2 hardship mean?

3 I mean, this fellow's in military service, he's
4 fighting a war somewhere, or giving out food somewhere, or
5 doing something, and can't get home, and his advisor tells
6 him, don't worry, if you can prove hardship, you can
7 always redeem that property, and he asks him, well, what
8 does proving hardship consist of?

9 He says, oh, it's a very nice question. Proving
10 hardship. Maybe you don't have enough money because
11 you've been shipped overseas and have -- you know, have to
12 make all -- I wouldn't want to have to gamble on the fact
13 that I could prove hardship.

14 So why isn't it perfectly sensible to say, you
15 know, at least for purposes of the redemption provision,
16 we're going to give the serviceman a free ride -- he
17 doesn't have to prove the hardship?

18 MR. CUDDY: Because if you were living in
19 Danforth or for that matter by Pease Air Force Base or
20 Loring Air Force Base in Maine, where a lot of people --
21 military people have property, and for whatever reason
22 they elect not to continue to pay taxes on their property,
23 and the municipalities, which derive their revenue and
24 support from that property, seize that property and sell
25 it, and you are on their mailing list, and you happen to

1 get a solicitation, come by some great property in Maine,
2 150 acres, or 30, or 40, or 50 acres, and you check the
3 title, all you're going to know is that there was a tax
4 sale, and you hire a very competent lawyer, and he or she
5 checks that tax sale and is satisfied that the
6 requirements have been complied with in terms of effecting
7 a tax sale, what you have done to the conveyancing is, you
8 have raised a significant cloud because of this status.

9 What you have done to the Town of Danforth or
10 the Town of Limestone or Caribou, Maine, is you have
11 deflated the values of that property, because now, based
12 upon -- potentially, this Court's interpretation -- there
13 is a great risk here.

14 QUESTION: Well, there -- but there's a risk
15 anyway. I mean, you'd still buy the property -- well,
16 you're advising the person who wants to buy the property
17 from the tax sale.

18 MR. CUDDY: Right.

19 QUESTION: What you're saying is, you can give
20 him the great comfort of saying, don't worry -- don't
21 worry, no soldier is going to be able to come back and
22 snatch this out from under your nose unless he can prove
23 hardship, right?

24 Even under your theory, you don't have sure
25 ownership.

1 MR. CUDDY: That's true, and I don't mean to
2 retreat from your implicit question of, what is hardship?
3 It is not a clearly defined term, there's no question
4 about that, but then a lot of what you deal with and what
5 I deal with in lesser terms -- due process --

6 QUESTION: No, I'm not talking about its
7 certainty or uncertainty now --

8 MR. CUDDY: Well --

9 QUESTION: I'm talking about the fact that even
10 under your theory there is no sure conveyancing in a tax
11 sale. You can never be sure that there isn't a
12 substantial likelihood that some Armed Forces member can
13 redeem.

14 MR. CUDDY: That's true, but not simply because
15 they come in and they have a uniform on. If there is a
16 hardship --

17 QUESTION: All right.

18 MR. CUDDY: Then you have a risk.

19 QUESTION: All right. Right.

20 MR. CUDDY: And I guess --

21 QUESTION: It's a lesser risk, but it's still a
22 pretty substantial one, it seems.

23 MR. CUDDY: That's true, and I don't mean to put
24 rosy glasses on this. A tax sale, by definition, is a
25 risky business. I'm just saying that we are eliminating a

1 risk.

2 QUESTION: What is the interest rate the
3 redeeming party has to pay on a judgment in Maine?

4 MR. CUDDY: I cannot tell you, Your Honor, right
5 off the top of my head. I just cannot tell you, and it --
6 being our State and with our economy, it changes.

7 QUESTION: But the purchaser with the quit claim
8 deed at least gets his money back plus interest --

9 MR. CUDDY: Yes.

10 QUESTION: At whatever the rate might be.

11 MR. CUDDY: Yes, and I would -- and I appreciate
12 your mentioning that, because you bring one more point
13 that I want to make sure I state to you, ladies and
14 gentlemen.

15 This is a quiet title action, but one aspect of
16 this case is also a trespass action. Now, that is not
17 before you, but I simply want to highlight that, because
18 depending on what you do -- and I'm hopeful that you
19 simply affirm what happened below, but should you not, and
20 should you decide to go in a different direction, there is
21 another loose end to this case that the issue that we're
22 dealing with today will not finally dispose of.

23 I have concluded those points that I wish to
24 make, and unless you have any further questions --

25 QUESTION: Do you agree that Maine could sue the

1 petitioner personally for the amount?

2 MR. CUDDY: I believe the town could, Your
3 Honor. I'm not sure that the State could.

4 QUESTION: That the town could.

5 MR. CUDDY: I believe the town could in a civil
6 action. It assumes a lot, but yes, I believe the town
7 could.

8 QUESTION: Thank you, Mr. Cuddy.

9 MR. CUDDY: Thank you.

10 QUESTION: Mr. Klonoff, you have 3 minutes
11 remaining.

12 MR. KLONOFF: Unless this Court has any
13 questions, I would simply submit that the judgment of the
14 Supreme Judicial Court of Maine should be reversed.

15 CHIEF JUSTICE REHNQUIST: Very well. The case
16 is submitted.

17 (Whereupon, at 2:42 p.m., the above-entitled
18 case was submitted.)

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CERTIFICATION

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

Thomas F. Conroy, Petitioner v. Walter Aniskoff, Jr., et al

Case # 91-1353

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BY Ann Mari Federico

(REPORTER)