

9-25-1987

09-25-1987 Clerk's Memo

Unknown

Law clerk, US Supreme Court

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September 25, 1987

Mr. Justice:

Re: 86-6124, Bennet et al. v. Arkansas

Views of SG requested and received, 9/22/87....The SG concludes that the decision of the Ark. Supreme Court is clearly wrong. It violates the plain language of the statutes, and the facts of this case cannot properly be distinguished from Philpott v. Essex County Welfare Board, 409 U.S. 413 (1973), in which the Court unanimously held that the Social Security statute means what it says; the state may not seize Social Security benefits. In that case, the state tried to recoup payments to a welfare recipient.

Furthermore, several other courts have held that States may attach Social Security or VA benefits paid to prisoners or to patients confined to mental hospitals [cases cited at Br. 7 n.8]. Although Congress has amended federal law so that many prisoners will not receive these federal benefits or will receive them in lesser amounts, thus reducing the impact of this case, these state statutes, of which there are many, still have enough potential effect to warrant a further statement from the Court.

Since the statutory language is so clear, the Court might wish to summarily reverse.

Dis'n: I must respectfully disagree with Jim Fanto's recommendation. I think the conflict with Philpott is sufficient to justify review. A state's incentive to uphold its own statute, especially when other states have gotten away with it, counsels

against waiting for a conflict to decide this significant issue. I do not, however, think the outcome is clear enough to justify summary reversal. Therefore, I would grant cert.

Grant

AM

September 25, 1987