3-18-1988

03-18-1988 Justice Rehnquist, Per Curiam

William H. Rehnquist
US Supreme Court Justice

To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Stevens
Justice O'Connor
Justice Scalia
Justice Kennedy

From: **The Chief Justice**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 86-6124

GEORGE S. BENNETT, PETITIONER *v.* ARKANSAS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

[March ——, 1988]

PER CURIAM.

This case involves an attempt by the State of Arkansas to attach certain federal benefits paid to individuals who are incarcerated in Arkansas prisons. In 1981, Arkansas adopted the State Prison Inmate Care and Custody Reimbursement Act, Ark. Stat. Ann. §§ 46-1701 *et seq.*, a statute that authorizes the State to seize a prisoner's property or "estate" in order to help defray the cost of maintaining its prison system. The Act specifically defines "estate" to include a prisoner's federal Social Security benefits, as well as other types of pension or retirement benefits. *Id.* § 46-1702(d).* The State filed separate actions in state court seeking to attach Social Security benefits that had been paid to petitioner Bennett and another inmate, Johnson, and Veteran's Administration disability pension benefits that were paid to a third inmate, Shelton. In relevant part, the inmates responded by argu-

*Ark. Stat. Ann. § 46-1704(a) provides that the estate of a person incarcerated in the Arkansas Department of Correction "may be subjected to the payment to the State of the expenses paid and to be paid by it on behalf of said person as a prisoner." Ark. Stat. Ann. § 46-1702(b) defines "estate" as

> any properties, tangible or intangible, real or personal, belonging to or due an inmate confined to an institution of the Department of Correction, including income or payments to such inmate from Social Security, previously earned salary or wages, bonuses, annuities, pensions or retirement benefits, or from any source whatsoever.

ing that the Arkansas statute violates the Supremacy Clause of the Federal Constitution because it permits the State to attach funds that federal law exempts from legal process. In particular, petitioner and Johnson pointed to 42 U. S. C. § 407(a), which provides that "none of the moneys paid or payable . . . under the [Social Security Act] shall be subject to execution, levy, attachment, garnishment, or other legal process." Similarly, Shelton contended that attachment of his VA benefits is inconsistent with 38 U. S. C. § 3101(a), which provides that such benefits "shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary."

The state trial court rejected the inmates' arguments and directed that a portion of each of their benefits be seized. The Supreme Court of Arkansas affirmed, with one justice dissenting. 260 Ark. 47, 716 S. W. 2d 755 (1986). Briefly stated, the court found that there is no conflict between the federal and state statutes because "the federal statutes contain an implied exception to the exemption from legal process when the State provides for the care and maintenance of a beneficiary of social security or veterans' funds." *Id.*, at 49, 716 S. W. 2d, at 756. We granted certiorari. —— U. S. —— (1987).

We think—contrary to the conclusion of the Supreme Court of Arkansas—that there is a clear inconsistency between the Arkansas statute and the federal statutes at issue here. Both 42 U. S. C. § 407(a) and 38 U. S. C. § 3101(a) unambiguously rule out any attempt to attach Social Security or VA benefits. The Arkansas statute just as unambiguously allows the State to attach those benefits. As we see it, this amounts to a "conflict" under the Supremacy Clause—a conflict that the State cannot win. See *Rose* v. *Arkansas State Police*, —— U. S. ——, 107 S. Ct. 334 (1986). We reject the State's attempt to avoid this conclusion by arguing that the federal statutes contain "implied exceptions" that would

allow attachment of otherwise exempted federal payments simply because the State has provided the recipient with "care and maintenance." We declined to find such an exception in *Philpott* v. *Essex County Welfare Board*, 409 U. S. 413 (1973), where we held that § 407 bars a State from attempting to attach Social Security benefits as reimbursement for state welfare assistance payments. *Philpott* may be factually distinguishable on the ground that there the State provided for only *part* of the needs of the Social Security recipient while here the State provides for *all* of the prisoners' needs, see *Department of Health* v. *Davis*, 616 F. 2d 828, 830 (CA5 1980) (relying on such a distinction). But we do not think that such a distinction carries the day given the express language of § 407 and § 3101 and the clear intent of Congress that Social Security and VA benefits not be attachable.

Nor do we think that the State's "implied exception" argument is supported by our decision last term in *Rose* v. *Rose*, —— U. S. —— (1987). There we held that § 3101 did not bar a state court from holding a disabled veteran in contempt for failing to pay child support, even though the veteran's only means of paying his obligation was to use his VA disability benefits. But in that case we held that the benefits in question were designed by Congress to support not only the recipient of the benefits, but also his dependents. Accordingly, allowing the state court in that case to enforce a valid child support order was fully consistent with the underlying intent of § 3101, which was in part to "'prevent the deprivation and depletion of the means of subsistence'" of the beneficiaries of the federal payments. *Id.*, at —— (quoting S. Rep. No. 94-1243, pp. 147-148 (1976)). Here, in contrast, the State cannot be said to be a "beneficiary" of petitioners' Social Security or VA benefits, so allowing the State to attach those benefits is plainly inconsistent with Congress' intent.

The judgment of the Supreme Court of Arkansas is

Reversed.