SUPREME COURT OF THE UNITED STATES

No. 91–767

REPUBLIC NATIONAL BANK OF MIAMI, PETITIONER *v.* UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

[December 14, 1992]

JUSTICE WHITE, concurring.

I agree with Parts I, II, and IV of the Court's opinion but would prefer not to address the Appropriations Clause issue.

As JUSTICE BLACKMUN indicates, *ante*, at 9, the Government argues that because the Appropriations Clause bars reaching the funds transferred to the Treasury's Assets Forfeiture Fund, the case is either moot or falls into the useless judgment exception to appellate *in rem* jurisdiction. I am surprised that the Government would take such a transparently fallacious position. The case is not moot and a ruling by the Court of Appeals would not be a useless judgment. Had the funds not been transferred to Washington, the Court of Appeals, if it thought the District Court had erred in rejecting the Bank's innocent owner defense, would have been free to reverse the lower court, direct that the Bank be paid out of the res, and to that extent rule against the United States' forfeiture claim. The United States does not question this, for when the property was sold, the Government agreed to hold the proceeds pending resolution of the claims against the res.

The funds are of course no longer in Florida, but that fact, as the Court now holds, did not deprive the Court of Appeals of jurisdiction to reverse the District Court and direct entry of judgment against the United States for the amount of the Bank's lien, nor did it prevent the Court of Appeals from declaring that the Bank was entitled to have its lien satisfied from the res and, therefore, that the Government had no legal

entitlement to the proceeds from the sale of the house. The case is obviously not moot. Nor should the Government suggest that a final judgment against the United States by a court with jurisdiction to enter such a judgment is useless because the United States may refuse to pay it. Rather, it would be reasonable to assume that the United States obeys the law and pays its debts and that in most people's minds a valid judgment against the Government for a certain sum of money would be worth that very amount. This is such a reasonable expectation that there is no need in this case to attempt to extract the transferred res from whatever fund in which it now is held.

There is nothing new about expecting governments to satisfy their obligations. Thus, in *Steffel* v. *Thompson*, 415 U. S. 452, 468–471 (1974), the Court discussed the comparative propriety of entering a declaratory judgment as opposed to an injunction. Describing the cases of *Roe* and *Bolton*, the Court explained:

> "In those two cases, we declined to decide whether the District Courts had properly denied to the federal plaintiffs, against whom no prosecutions were pending, injunctive relief restraining enforcement of the Texas and Georgia criminal abortion statutes; instead, we affirmed the issuance of declaratory judgments of unconstitutionality, anticipating that these would be given effect by state authorities." 415 U. S. at 469.

See also *Roe* v. *Wade*, 410 U. S. 113, 166 (1973): "[w]e find it unnecessary to decide whether the District Court erred in withholding injunctive relief, for we assume the Texas prosecutorial authorities will give full credence to this decision that the present criminal abortion statutes of that State are unconstitutional"; *Doe* v. *Bolton*, 410 U. S. 179, 201 (1973) (same). More generally, it goes without saying that a creditor must first have judgment before he is entitled to collect from one who has disputed the debt, and it frequently happens that the losing debtor pays up without more. Perhaps, however, the judgment creditor will have collection problems, but that does not render his judgment a meaningless event.

For the same reasons, it is unnecessary for the Court at this point to construe the Appropriations Clause, either narrowly or broadly. Normally, we avoid deciding constitutional questions when it is reasonable to avoid or postpone them. *Three Affiliated Tribes of Fort Berthold Reservation* v. *Wold Engineering, P.C.*, 467 U. S. 138, 157 (1984);

Liverpool, New York and Philadelphia S.S. Co. v. *Commissioners of Emigration*, 113 U. S. 33, 39 (1885). It is apparent, moreover, that the Court has struggled to reach a satisfactory resolution of the Appropriations Clause issue. I would not anticipate that the United States would default and that the Bank would require the help of the judiciary to collect the debt. I would leave it to the Executive Branch to determine in the first instance, when and if it suffers an adverse judgment, whether it would have authority under existing statutes to liquidate the judgment that might be rendered against it. It will be time enough to rule on the Appropriations Clause when and if the position taken by the Government requires it.

I bow, however, to the will of the Court to rule prematurely on the Appropriations Clause, and on that issue I agree with THE CHIEF JUSTICE and join his opinion.