

SUPREME COURT OF THE UNITED STATES

No. 91-611

KEYTON E. BARKER AND PAULINE BARKER, ET AL.,
PETITIONERS v. KANSAS ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF KANSAS
[April 21, 1992]

JUSTICE STEVENS, with whom JUSTICE THOMAS joins,
concurring.

While I agree with the Court's explanation of why this case is controlled by *Davis v. Michigan Dept. of Treasury*, 489 U. S. 803 (1989), I remain convinced that that case seriously misapplied the doctrine of intergovernmental tax immunity. A state tax burden that is shared equally by federal retirees and the vast majority of the State's citizens does not discriminate against those retirees. See *id.*, at 823-824 (STEVENS, J., dissenting). The Federal Government has a legitimate interest in protecting its employees from disparate treatment, but federal judges should not be able to claim a tax exemption simply because a State decides to give such a benefit to the members of its judiciary instead of raising their salaries. I write separately to make this point because what I regard as this Court's perverse application of the nondiscrimination principle is subject to review and correction by Congress. See *Prudential Insurance Co. v. Benjamin*, 328 U. S. 408 (1946).