SUPREME COURT OF THE UNITED STATES

No. 91–794

HENRY HARPER, ET AL., PETITIONERS *v.* VIRGINIA DEPARTMENT OF TAXATION

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

[June 18, 1993]

JUSTICE THOMAS delivered the opinion of the Court.

In *Davis* v. *Michigan Dept. of Treasury*, 489 U. S. 803 (1989), we held that a State violates the constitutional doctrine of intergovernmental tax immunity when it taxes retirement benefits paid by the Federal Government but exempts from taxation all retirement benefits paid by the State or its political subdivisions. Relying on the retroactivity analysis of *Chevron Oil Co.* v. *Huson*, 404 U. S. 97 (1971), the Supreme Court of Virginia twice refused to apply *Davis* to taxes imposed before *Davis* was decided. In accord with *Griffith* v. *Kentucky*, 479 U. S. 314 (1987), and *James B. Beam Distilling Co.* v. *Georgia*, 501 U. S. ___ (1991), we hold that this Court's application of a rule of federal law to the parties before the Court requires every court to give retroactive effect to that decision. We therefore reverse.

The Michigan tax scheme at issue in *Davis* "exempt[ed] from taxation all retirement benefits paid by the State or its political subdivisions, but levie[d] an income tax on retirement benefits paid by . . . the Federal Government." 489 U. S., at 805. We held that the United States had not consented under 4 U. S. C. §111[1] to this discriminatory

[1]"The United States consents to the taxation of pay or compensation for personal service as an officer or employee of the United States . . . by a duly

imposition of a heavier tax burden on federal benefits than on state and local benefits. *Id.*, at 808–817. Because Michigan "conceded that a refund [was] appropriate," we recognized that federal retirees were entitled to a refund of taxes "paid . . . pursuant to this invalid tax scheme." *Id.*, at 817.[2]

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constituted taxing authority having jurisdiction, if the taxation does not discriminate against the officer or employee because of the source of the pay or compensation." 4 U. S. C. §111.

[2]We have since followed *Davis* and held that a State violates intergovernmental tax immunity and 4 U. S. C. §111 when it "taxes the benefits received from the United States by military retirees but does not tax the benefits received by retired state and local government employees." *Barker* v. *Kansas*, 503 U. S. ___, ___ (1992) (slip op., at 1).

Like Michigan, Virginia exempted state and local employees' retirement benefits from state income taxation while taxing federal retirement benefits. Va. Code Ann. §58.1–322(c)(3) (Supp. 1988). In response to *Davis*, Virginia repealed its exemption for state and local government employees. 1989 Va. Acts, Special Sess. II, ch. 3. It also enacted a special statute of limitations for refund claims made in light of *Davis*. Under this statute, taxpayers may seek a refund of state taxes imposed on federal retirement benefits in 1985, 1986, 1987, and 1988 for up to one year from the date of the final judicial resolution of whether Virginia must refund these taxes. Va. Code Ann. §58.1–1823(b) (Supp. 1992).[3]

Petitioners, 421 federal civil service and military retirees, sought a refund of taxes "erroneously or improperly assessed" in violation of *Davis*' nondiscrimination principle. Va. Code Ann. §58.1–1826 (1991). The trial court denied relief. Law No. CL891080 (Va. Cir. Ct., Mar. 12, 1990). Applying the factors set forth in *Chevron Oil Co.* v. *Huson*, *supra*, at 106–107,[4] the court reasoned that "*Davis* decided an

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[3]Applications for tax refunds generally must be made within three years of the assessment. Va. Code Ann. §58.1–1825 (1991). As of the date we decided *Davis*, this statute of limitations would have barred all actions seeking refunds from taxes imposed before 1985.

[4]"First, the decision to be applied nonretroactively must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied, or by deciding an issue of first impression whose resolution was not clearly foreshadowed. Second, it has been stressed that `we must . . . weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation.' Finally,

issue of first impression whose resolution was not clearly foreshadowed," that "prospective application of *Davis* will not retard its operation," and that "retroactive application would result in inequity, injustice and hardship." App. to Pet. for Cert. 20a.

The Supreme Court of Virginia affirmed. 241 Va. 232, 401 S. E. 2d 868 (1991). It too concluded, after consulting *Chevron* and the plurality opinion in *American Trucking Assns., Inc.* v. *Smith*, 496 U. S. 167 (1990), that "the *Davis* decision is not to be applied retroactively." 241 Va., at 240, 401 S. E. 2d, at 873. The court also rejected petitioners' contention that "refunds [were] due as a matter of state law." *Ibid.* It concluded that "because the *Davis* decision is not to be applied retroactively, the pre-*Davis* assessments were neither erroneous nor improper" under Virginia's tax refund statute. *Id.*, at 241, 401 S. E. 2d, at 873. As a matter of Virginia law, the court held, a "ruling declaring a taxing scheme unconstitutional is to be applied prospectively only." *Ibid.* This rationale supplied "another reason" for refusing relief. *Ibid.*

Even as the Virginia courts were denying relief to petitioners, we were confronting a similar retroactivity problem in *James B. Beam Distilling Co.* v. *Georgia*, 501 U. S. ___ (1991). At issue was *Bacchus Imports, Ltd.* v. *Dias*, 468 U. S. 263 (1984), which prohibited States from imposing higher excise taxes on imported alcoholic beverages than on local products. The Supreme Court of Georgia had used the analysis described in *Chevron Oil Co.* v. *Huson* to deny retroactive effect to a decision of this Court. Six Members of this Court disagreed, concluding instead that *Bacchus* must be applied retroactively to claims arising from facts predating that decision. *Beam*, 501 U. S., at ___ (slip op., at 1) (opinion of SOUTER, J.); *id.*,

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we have weighed the inequity imposed by retroactive application . . . ." *Chevron Oil Co.* v. *Huson*, 404 U. S. 97, 106–107 (1971) (citations omitted).

at ___ (slip op., at 1) (WHITE, J., concurring in judgment); *id.*, at ___ (slip op., at 1–2) (BLACKMUN, J., concurring in judgment); *id.*, at ___ (slip op., at 1–2) (SCALIA, J., concurring in judgment). After deciding *Beam*, we vacated the judgment in *Harper* and remanded for further consideration. 501 U. S. ___ (1991).

On remand, the Supreme Court of Virginia again denied tax relief. 242 Va. 322, 410 S. E. 2d 629 (1991). It reasoned that because Michigan did not contest the *Davis* plaintiffs' entitlement to a refund, this Court "made no . . . ruling" regarding the retroactive application of its rule "to the litigants in that case." 242 Va., at 326, 410 S. E. 2d, at 631. Concluding that *Beam* did not foreclose application of *Chevron*'s retroactivity analysis because "the retroactivity issue was not decided in *Davis*," 242 Va., at 326, 410 S. E. 2d, at 631, the court "reaffirm[ed] [its] prior decision in all respects," *id.*, at 327, 410 S. E. 2d, at 632.

When we decided *Davis*, 23 States gave preferential tax treatment to benefits received by employees of state and local governments relative to the tax treatment of benefits received by federal employees.[5] Like the Supreme Court of Virginia, several other state courts have refused to accord full retroactive effect to *Davis* as a controlling statement

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[5]*E.g.*, Ala. Code §36–27–28 (1991), Ala. Code §40–18–19 (1985); Iowa Code §97A.12 (1984), repealed, 1989 Iowa Acts, ch. 228, §10 (repeal retroactive to Jan. 1, 1989); La. Rev. Stat. Ann. §47:44.1 (Supp. 1990); Miss. Code Ann. §25–11–129 (1972); Mo. Rev. Stat §86.190 (1971), Mo. Rev. Stat. §104.540 (1989); Mont. Code Ann. §15–30–111(2) (1987); N. Y. Tax Law §612(c)(3) (McKinney 1987); Utah Code Ann. §49–1–6-08 (1989). See generally 241 Va., at 237, n. 2, 401 S. E. 2d, at 871, n. 2.

of federal law.[6] Two of the courts refusing to apply *Davis* retroactively have done so after this Court remanded for reconsideration in light of *Beam*. See *Bass* v. *South Carolina*, 501 U. S. ___ (1991); *Harper* v. *Virginia Dept. of Taxation*, 501 U. S. ___ (1991); *Lewy* v. *Virginia Dept. of Taxation*, 501 U. S. ___ (1991). By contrast, the Supreme Court of Arkansas has concluded as a matter of federal law that *Davis* applies retroactively. *Pledger* v. *Bosnick*, 306 Ark. 45, 54–56, 811 S. W. 2d 286, 292–293 (1991), cert. pending, No. 91–375. Cf. *Reich* v. *Collins*, 262 Ga. 625, 422 S. E. 2d 846 (1992) (holding that *Davis* applies retroactively but reasoning that state law precluded a refund), cert. pending, Nos. 92–1276 and 92–1453.[7]

After the Supreme Court of Virginia reaffirmed its original decision, we granted certiorari a second time. 504 U. S. ___ (1992). We now reverse.

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[6]*Bohn* v. *Waddell*, 167 Ariz. 344, 349, 807 P. 2d 1, 6 (Tax Ct. 1991); *Sheehy* v. *State*, 250 Mont. 437, 820 P. 2d 1257 (1991), cert. pending, No. 91–1473; *Duffy* v. *Wetzler*, 174 App. Div. 2d 253, 265, 579 N. Y. S. 2d 684, 691, appeal denied, 80 N. Y. 2d 890, 600 N. E. 2d 627 (1992), cert. pending, No. 92–521; *Swanson* v. *State*, 329 N. C. 576, 581–584, 407 S. E. 2d 791, 793–795 (1991), aff'd on reh'g, 330 N. C. 390, 410 S. E. 2d 490 (1991), cert. pending, No. 91–1436; *Ragsdale* v. *Department of Revenue*, 11 Ore. Tax 440 (1990), aff'd on other grounds, 312 Ore. 529, 823 P. 2d 971 (1992); *Bass* v. *State*, ___ S. C. ___, ___, 414 S. E. 2d 110, 114–115 (1992), cert. pending, No. 91–1697.

[7]Several other state courts have ordered refunds as a matter of state law in claims based on *Davis*. See, *e.g.*, *Kuhn* v. *State*, 817 P. 2d 101, 109–110 (Colo. 1991); *Hackman* v. *Director of Revenue*, 771 S. W. 2d 77, 80–81 (Mo. 1989), cert. denied, 493 U. S. 1019 (1990).

"[B]oth the common law and our own decisions" have "recognized a general rule of retrospective effect for the constitutional decisions of this Court." *Robinson* v. *Neil*, 409 U. S. 505, 507 (1973). Nothing in the Constitution alters the fundamental rule of "retrospective operation" that has governed "[j]udicial decisions . . . for near a thousand years." *Kuhn* v. *Fairmont Coal Co.*, 215 U. S. 349, 372 (1910) (Holmes, J., dissenting). In *Linkletter* v. *Walker*, 381 U. S. 618 (1965), however, we developed a doctrine under which we could deny retroactive effect to a newly announced rule of criminal law. Under *Linkletter*, a decision to confine a new rule to prospective application rested on the purpose of the new rule, the reliance placed upon the previous view of the law, and "the effect on the administration of justice of a retrospective application" of the new rule. *Id.*, at 636 (limiting *Mapp* v. *Ohio*, 367 U. S. 643 (1961)).[8] In the civil context, we similarly permitted the denial of retroactive effect to "a new principle of law" if such a limitation would avoid "`injustice or hardship'" without unduly undermining the "purpose and effect" of the new rule. *Chevron Oil Co.* v. *Huson*, 404 U. S., at 106–107 (quoting *Cipriano* v. *City of Houma*, 395 U. S. 701, 706 (1969)).[9]

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[8]Accord, *e.g.*, *Tehan* v. *United States ex rel. Shott*, 382 U. S. 406 (1966) (limiting *Griffin* v. *California*, 380 U. S. 609 (1965)); *Johnson* v. *New Jersey*, 384 U. S. 719 (1966) (limiting *Escobedo* v. *Illinois*, 378 U. S. 478 (1964), and *Miranda* v. *Arizona*, 384 U. S. 436 (1966)); *Stovall* v. *Denno*, 388 U. S. 293 (1967) (limiting *United States* v. *Wade*, 388 U. S. 218 (1967), and *Gilbert* v. *California*, 388 U. S. 263 (1967)).

[9]We need not debate whether *Chevron Oil* represents a true "choice-of-law principle" or merely "a remedial principle for the exercise of equitable discretion by federal courts." *American Trucking Assns., Inc.* v.

We subsequently overruled *Linkletter* in *Griffith* v. *Kentucky*, 479 U. S. 314 (1987), and eliminated limits on retroactivity in the criminal context by holding that all "newly declared . . . rule[s]" must be applied retroactively to all "criminal cases pending on direct review." *Id.*, at 322. This holding rested on two "basic norms of constitutional adjudication." *Ibid.* First, we reasoned that "the nature of judicial review" strips us of the quintessentially "legislat[ive]" prerogative to make rules of law retroactive or prospective as we see fit. *Ibid.* Second, we concluded that "selective application of new rules violates the principle of treating similarly situated [parties] the same." *Id.*, at 323.

Dicta in *Griffith*, however, stated that "civil retroactivity . . . . continue[d] to be governed by the standard announced in *Chevron Oil*." *Id.*, at 322, n. 8. We divided over the meaning of this dicta in *American Trucking Assns., Inc.* v. *Smith*, 496 U. S. 167 (1990). The four Justices in the plurality used "the *Chevron Oil* test" to consider whether to confine "the application of [*American Trucking Assns., Inc.* v. *Scheiner*, 483 U. S. 266 (1987)] to taxation of

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Smith, 496 U. S. 167, 220 (1990) (STEVENS, J., dissenting). Compare *id.*, at 191–197 (plurality opinion) (treating *Chevron Oil* as a choice-of-law rule), with *id.*, at 218–224 (STEVENS, J., dissenting) (treating *Chevron Oil* as a remedial doctrine). Regardless of how *Chevron Oil* is characterized, our decision today makes it clear that "the *Chevron Oil* test cannot determine the choice of law by relying on the equities of the particular case" and that the federal law applicable to a particular case does not turn on "whether [litigants] actually relied on [an] old rule [or] how they would suffer from retroactive application" of a new one. *James B. Beam Distilling Co.* v. *Georgia*, 501 U. S. ___, ___ (1991) (slip op., at 12) (opinion of SOUTER, J.).

highway use prior to June 23, 1987, the date we decided *Scheiner*." *Id.*, at 179 (opinion of O'CONNOR, J., joined by REHNQUIST, C. J., and WHITE and KENNEDY, JJ.). Four other Justices rejected the plurality's "anomalous approach" to retroactivity and declined to hold that "the law applicable to a particular case is the law which the parties believe in good faith to be applicable to the case." *Id.*, at 219 (STEVENS, J., dissenting, joined by Brennan, Marshall, and BLACKMUN, JJ.). Finally, despite concurring in the judgment, JUSTICE SCALIA "share[d]" the dissent's "perception that prospective decisionmaking is incompatible with the judicial role." *Id.*, at 201 (SCALIA, J., concurring in judgment).

Griffith and *American Trucking* thus left unresolved the precise extent to which the presumptively retroactive effect of this Court's decisions may be altered in civil cases. But we have since adopted a rule requiring the retroactive application of a civil decision such as *Davis*. Although *James B. Beam Distilling Co.* v. *Georgia*, 501 U. S. ___ (1991), did not produce a unified opinion for the Court, a majority of Justices agreed that a rule of federal law, once announced and applied to the parties to the controversy, must be given full retroactive effect by all courts adjudicating federal law. In announcing the judgment of the Court, JUSTICE SOUTER laid down a rule for determining the retroactive effect of a civil decision: After the case announcing any rule of federal law has "appl[ied] that rule with respect to the litigants" before the court, no court may "refuse to apply [that] rule . . . retroactively." *Id.*, at ___ (slip op., at 9) (opinion of SOUTER, J., joined by STEVENS, J.). JUSTICE SOUTER's view of retroactivity superseded "any claim based on a *Chevron Oil* analysis." *Ibid.* JUSTICE WHITE likewise concluded that a decision "extending the benefit of the judgment" to the winning party "is to be applied to other litigants whose cases were not final at the time of the [first] decision." *Id.*, at ___

(slip op., at 1) (opinion concurring in judgment). Three other Justices agreed that "our judicial responsibility . . . requir[es] retroactive application of each . . . rule we announce." *Id.*, at ___ (slip op., at 2) (BLACKMUN, J., joined by Marshall and SCALIA, JJ., concurring in judgment). See also *id.*, at ___ (slip op., at 1–2) (SCALIA, J., joined by Marshall and BLACKMUN, JJ., concurring in judgment).

Beam controls this case, and we accordingly adopt a rule that fairly reflects the position of a majority of Justices in *Beam:* When this Court applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect in all cases still open on direct review and as to all events, regardless of whether such events predate or postdate our announcement of the rule. This rule extends *Griffith*'s ban against "selective application of new rules." 479 U. S., at 323. Mindful of the "basic norms of constitutional adjudication" that animated our view of retroactivity in the criminal context, *id.*, at 322, we now prohibit the erection of selective temporal barriers to the application of federal law in noncriminal cases. In both civil and criminal cases, we can scarcely permit "the substantive law [to] shift and spring" according to "the particular equities of [individual parties'] claims" of actual reliance on an old rule and of harm from a retroactive application of the new rule. *Beam*, *supra*, at ___ (slip op., at 12) (opinion of SOUTER, J.). Our approach to retroactivity heeds the admonition that "[t]he Court has no more constitutional authority in civil cases than in criminal cases to disregard current law or to treat similarly situated litigants differently." *American Trucking*, *supra*, at 214 (STEVENS, J., dissenting).

The Supreme Court of Virginia "appl[ied] the three-pronged *Chevron Oil* test in deciding the retroactivity issue" presented by this litigation. 242 Va., at 326, 410 S. E. 2d, at 631. When this Court does not

"reserve the question whether its holding should be applied to the parties before it," however, an opinion announcing a rule of federal law "is properly understood to have followed the normal rule of retroactive application" and must be "read to hold . . . that its rule should apply retroactively to the litigants then before the Court." *Beam*, 501 U. S., at ___ (slip op., at 8) (opinion of SOUTER, J.). Accord, *id.*, at ___ (slip op., at 1) (WHITE, J., concurring in judgment); *id.*, at ___ (slip op., at 2) (O'CONNOR, J., dissenting). Furthermore, the legal imperative "to apply a rule of federal law retroactively after the case announcing the rule has already done so" must "prevai[l] over any claim based on a *Chevron Oil* analysis." *Id.* at ___ (slip op., at 9) (opinion of SOUTER, J.).

In an effort to distinguish *Davis*, the Supreme Court of Virginia surmised that this Court had "made no . . . ruling" about the application of the rule announced in *Davis* "retroactively to the litigants in that case." 242 Va., at 326, 410 S. E. 2d, at 631. "[B]ecause the retroactivity issue was not decided in *Davis*," the court believed that it was "not foreclosed by precedent from applying the three-pronged *Chevron Oil* test in deciding the retroactivity issue in the present case." *Ibid.*

We disagree. *Davis* did not hold that preferential state tax treatment of state and local employee pensions, though constitutionally invalid in the future, should be upheld as to all events predating the announcement of *Davis*. The governmental appellee in *Davis* "conceded that a refund [would have been] appropriate" if we were to conclude that "the Michigan Income Tax Act violate[d] principles of intergovernmental tax immunity by favoring retired state and local governmental employees over retired federal employees." 489 U. S., at 817. We stated that "to the extent appellant has paid taxes pursuant to this invalid tax scheme, he is entitled to a refund." *Ibid.* Far from reserving the retroactivity question,

our response to the appellee's concession constituted a retroactive application of the rule announced in *Davis* to the parties before the Court. Because a decision to accord solely prospective effect to *Davis* would have foreclosed any discussion of remedial issues, our "consideration of remedial issues" meant "necessarily" that we retroactively applied the rule we announced in *Davis* to the litigants before us. *Beam*, *supra*, at ___ (slip op., at 8) (opinion of SOUTER, J.). Therefore, under *Griffith*, *Beam*, and the retroactivity approach we adopt today, the Supreme Court of Virginia must apply *Davis* in petitioners' refund action.

Respondent Virginia Department of Taxation defends the judgment below as resting on an independent and adequate state ground that relieved the Supreme Court of Virginia of any obligation to apply *Davis* to events occurring before our announcement of that decision. Petitioners had contended that "even if the *Davis* decision applie[d] prospectively only," they were entitled to relief under Virginia's tax refund statute, Va. Code. Ann. §58.1–1826 (1991). 241 Va., at 241, 401 S. E. 2d, at 873. The Virginia court rejected their argument. It first reasoned that because *Davis* did not apply retroactively, tax assessments predating *Davis* were "neither erroneous nor improper within the meaning" of Virginia's tax statute. *Ibid.* The court then offered "another reason" for rejecting petitioners' "state-law contention": "We previously have held that this Court's ruling declaring a taxing scheme unconstitutional is to be applied prospectively only." *Ibid.* (citing *Perkins* v. *Albemarle County*, 214 Va. 240, 198 S. E. 2d 626, aff'd and modified on reh'g, 214 Va. 416, 200 S. E. 2d 566 (1973); *Capehart* v. *City of Chesapeake*, No. 5459 (Va. Cir. Ct., Oct. 16, 1974), appeal denied, 215 Va. xlvii, cert. denied, 423 U. S.

875 (1975)). The formulation of this state-law retroactivity doctrine—that "consideration should be given to the purpose of the new rule, the extent of the reliance on the old rule, and the effect on the administration of justice of a retroactive application of the new rule," *Fountain* v. *Fountain*, 214 Va. 347, 348, 200 S. E. 2d 513, 514 (1973), cert. denied, 416 U. S. 939 (1974), quoted in 241 Va., at 241, 401 S. E. 2d, at 874— suggests that the Supreme Court of Virginia has simply incorporated into state law the three-pronged analysis of *Chevron Oil*, 404 U. S., at 106–107, and the criminal retroactivity cases overruled by *Griffith*, see, *e.g.*, *Stovall* v. *Denno*, 388 U. S. 293, 297 (1967).

We reject the Department's defense of the decision below. The Supremacy Clause, U. S. Const., Art. VI, cl. 2, does not allow federal retroactivity doctrine to be supplanted by the invocation of a contrary approach to retroactivity under state law. Whatever freedom state courts may enjoy to limit the retroactive operation of their own interpretations of state law, see *Great Northern R. Co.* v. *Sunburst Oil & Refining Co.*, 287 U. S. 358, 364–366 (1932), cannot extend to their interpretations of federal law. See *National Mines Corp.* v. *Caryl*, 497 U. S. 922, 923 (1990) *(per curiam); Ashland Oil, Inc.* v. *Caryl*, 497 U. S. 916, 917 (1990) *(per curiam)*.

We also decline the Department of Taxation's invitation to affirm the judgment as resting on the independent and adequate ground that Virginia's law of remedies offered no "retrospective refund remedy for taxable years concluded before *Davis*" was announced. Brief for Respondent 33. The Virginia Supreme Court's conclusion that the challenged tax assessments were "neither erroneous nor improper within the meaning" of the refund statute rested solely on the court's determination that *Davis* did not apply retroactively. 241 Va., at 241, 401 S. E. 2d, at 873.

Because we have decided that *Davis* applies retroactively to the tax years at issue in petitioners' refund action, we reverse the judgment below. We do not enter judgment for petitioners, however, because federal law does not necessarily entitle them to a refund. Rather, the Constitution requires Virginia "to provide relief consistent with federal due process principles." *American Trucking*, 496 U. S., at 181 (plurality opinion). Under the Due Process Clause, U. S. Const., Amdt. 14, §1, "a State found to have imposed an impermissibly discriminatory tax retains flexibility in responding to this determination." *McKesson Corp.* v. *Division of Alcoholic Beverages & Tobacco*, 496 U. S. 18, 39–40 (1990). If Virginia "offers a meaningful opportunity for taxpayers to withhold contested tax assessments and to challenge their validity in a predeprivation hearing," the "availability of a predeprivation hearing constitutes a procedural safeguard . . . sufficient by itself to satisfy the Due Process Clause." *Id.*, at 38, n. 21. On the other hand, if no such predeprivation remedy exists, "the Due Process Clause of the Fourteenth Amendment obligates the State to provide meaningful backward-looking relief to rectify any unconstitutional deprivation." *Id.*, at 31 (footnotes omitted).[10]

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[10]A State incurs this obligation when it "places a taxpayer under duress promptly to pay a tax when due and relegates him to a postpayment refund action in which he can challenge the tax's legality." *McKesson*, 496 U. S., at 31. A State that "establish[es] various sanctions and summary remedies designed" to prompt taxpayers to "tender . . . payments *before* their objections are entertained or resolved" does not provide taxpayers "a meaningful opportunity to withhold payment and to obtain a predeprivation determination of the tax assessment's validity." *Id.*, at 38 (emphasis in original). Such limitations impose constitutionally significant

In providing such relief, a State may either award full refunds to those burdened by an unlawful tax or issue some other order that "create[s] in hindsight a nondiscriminatory scheme." *Id.*, at 40. Cf. *Davis*, 489 U. S., at 818 (suggesting that a State's failure to respect intergovernmental tax immunity could be cured "either by extending [a discriminatory] tax exemption to retired federal employees . . . or by eliminating the exemption for retired state and local government employees").

The constitutional sufficiency of any remedy thus turns (at least initially) on whether Virginia law "provide[s] a[n] [adequate] form of `predeprivation process,' for example, by authorizing taxpayers to bring suit to enjoin imposition of a tax prior to its payment, or by allowing taxpayers to withhold payment and then interpose their objections as defenses in a tax enforcement proceeding." *McKesson*, 496 U. S., at 36–37. Because this issue has not been properly presented, we leave to Virginia courts this question of state law and the performance of other tasks pertaining to the crafting of any appropriate remedy. Virginia "is free to choose which form of relief it will provide, so long as that relief satisfies the minimum federal requirements we have outlined." *Id.*, at 51–52. State law may provide relief beyond the demands of federal due process, *id.*, at 52, n. 36, but under no circumstances may it confine petitioners to a lesser remedy, see *id.*, at 44–51.

We reverse the judgment of the Supreme Court of

"`duress'" because a tax payment rendered under these circumstances must be treated as an effort "to avoid financial sanctions or a seizure of real or personal property." *Id.*, at 38, n. 21. The State accordingly may not confine a taxpayer under duress to prospective relief.

Virginia, and we remand the case for further proceedings not inconsistent with this opinion.

So ordered.