NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

HARPER ET AL. *v.* VIRGINIA DEPARTMENT OF TAXATION

CERTIORARI TO THE SUPREME COURT OF VIRGINIA

No. 91–794. Argued December 2, 1992—Decided June 18, 1993

In *Davis* v. *Michigan Dept. of Treasury*, 489 U. S. 803, this Court invalidated Michigan's practice of taxing retirement benefits paid by the federal government while exempting retirement benefits paid by the State or its political subdivisions. Because Michigan conceded that a refund to federal retirees was the appropriate remedy, the Court remanded for entry of judgment against the State. Virginia subsequently amended a similar statute that taxed federal retirees while exempting state and local retirees. Petitioners, federal civil service and military retirees, sought a refund of taxes assessed by Virginia before the revision of this statute. Applying the factors set forth in *Chevron Oil Co.* v. *Huson*, 407 U. S. 97, 106–107, a state trial court denied relief to petitioners as to all taxable events occurring before *Davis* was decided. In affirming, the Virginia Supreme Court concluded that *Davis* should not be applied retroactively under *Chevron Oil* and *American Trucking Assns., Inc.* v. *Smith*, 496 U. S. 167 (plurality opinion). It also held, as matters of state law, that the assessments were neither erroneous nor improper and that a decision declaring a tax scheme unconstitutional has solely prospective effect. In *James B. Beam Distilling Co.* v. *Georgia,* 501 U. S. ___, however, six Members of this Court required the retroactive application of *Bacchus Imports, Ltd.* v. *Dias*, 468 U. S. 263— which prohibited States from imposing higher excise taxes on imported alcoholic beverages than on locally produced beverages— to claims arising from facts predating that decision. Those Justices disagreed with the Georgia Supreme Court's use of *Chevron Oil*'s retroactivity analysis. After this Court ordered re-evaluation of petitioners' suit in light of *Beam,* the Virginia Supreme Court reaffirmed its decision in all respects. It held that *Beam* did not foreclose the use of *Chevron Oil*'s analysis because *Davis* did not decide whether its rule applied retroactively.

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Held:

1. 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 the announcement of the rule. Pp. 6–12.

(a) This rule fairly reflects the position of a majority of Justices in *Beam* and extends to civil cases the ban against ``selective application of new rules'' in criminal cases. *Griffith* v. *Kentucky*, 479 U. S. 314, 323. Mindful of the ``basic norms of constitutional adjudication'' animating the Court's view of retroactivity in criminal cases, *id.,* at 322—that the nature of judicial review strips the Court of the quintessentially legislative prerogative to make rules of law retroactive or prospective as it sees fit and that selective application of new rules violates the principle of treating similarly situated parties the same, *id.,* at 322, 323—the Court prohibits the erection of selective temporal barriers to the application of federal law in noncriminal cases. When the Court does not reserve the question whether its holding should be applied to the parties before it, the opinion is properly understood to have followed the normal rule of retroactive application, *Beam,* 501 U. S., at ___ (opinion of SOUTER, J.), and the legal imperative to apply such a rule prevails ``over
any claim based on a *Chevron Oil* analysis,'' *id.,* at ___ (opinion of SOUTER, J.). Pp. 6–10.

(b) This Court applied the rule of law announced in *Davis* to the parties before the Court. The Court's response to Michigan's concession that a refund would be appropriate in *Davis,* far from reserving the retroactivity question, constituted a retroactive application of the rule. A decision to accord solely prospective effect to *Davis* would have foreclosed any discussion of remedial issues. Pp. 10–11.

2. The decision below does not rest on independent and adequate state-law grounds. In holding that state-law retroactivity doctrine permitted the solely prospective application of the ruling, the State Supreme Court simply incorporated into state law the analysis of *Chevron Oil* and criminal retroactivity cases overruled by *Griffith.* The Supremacy Clause, however, does not allow federal retroactivity doctrine to be supplanted by the invocation of a contrary approach to retroactivity under state law. Similarly, the state court's conclusion that the challenged assessments were not erroneous or improper under state law rested solely on its determination that *Davis* did not apply retroactively.

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Pp. 11–12.

3. Virginia is free to choose the form of relief it will provide, so long as that relief is consistent with federal due process principles. A State retains flexibility in responding to the determination that it has imposed an impermissibly discriminatory tax. The availability of a predeprivation hearing constitutes a procedural safeguard sufficient to satisfy due process, but if no such relief exists, the State must provide meaningful backward-looking relief either by awarding full refunds or by issuing some other order that creates in hindsight a nondiscriminatory scheme. Since any remedy's constitutional sufficiency turns (at least initially) on whether Virginia law provides an adequate form of predeprivation process, and since that issue has not been properly presented, this question and the performance of other tasks pertaining to the crafting of an appropriate remedy are left to the Virginia courts. Pp. 12–14.

242 Va. 322, 410 S. E. 2d 629, reversed and remanded.

THOMAS, J., delivered the opinion of the Court, in which BLACKMUN, STEVENS, SCALIA, and SOUTER, JJ., joined, and in Parts I and III of which WHITE and KENNEDY, JJ., joined. SCALIA, J., filed a concurring opinion. KENNEDY, J., filed an opinion concurring in part and concurring in the judgment, in which WHITE, J., joined. O'CONNOR, J., filed a dissenting opinion, in which REHNQUIST, C. J., joined.