

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

REICH v. COLLINS, REVENUE COMMISSIONER OF
GEORGIA, ET AL.

CERTIORARI TO THE SUPREME COURT OF GEORGIA
No. 93-908. Argued October 11, 1994—Decided December 6,
1994

Georgia taxed retirement benefits paid by the Federal Government, but exempted those paid by the State, until this Court held, in 1989, that such a scheme violates the Federal Constitution. Georgia then repealed its state retiree tax exemption, but did not offer federal retirees refunds for the unconstitutional taxes they had paid before the Court's 1989 decision. Petitioner Reich, a federal retiree, sought redress under a Georgia statute requiring refunds of "illegally assessed" taxes. In affirming the state trial court's denial of such relief, the State Supreme Court held that the refund statute does not apply where the law under which the taxes were assessed and collected was itself subsequently declared to be invalid. It then denied Reich's petition seeking reconsideration under *McKesson Corp. v. Division of Alcoholic Beverages and Tobacco, Fla. Dept. of Business Regulation*, 496 U. S. 18, and similar cases, which establish that due process requires a "clear and certain" remedy for taxes collected in violation of federal law, and that a State may provide that remedy before the disputed taxes are paid (predeprivation), after they are paid (postdeprivation), or both. Reich petitioned for certiorari, and this Court remanded for further consideration in light of *Harper v. Virginia Dept. of Taxation*, 509 U. S. ___, which had relied on *McKesson* in circumstances similar to this case. In again denying Reich's refund claim, the State Supreme Court reviewed Georgia's predeprivation remedies and found those remedies to be "ample."

Held: The Georgia Supreme Court erred in relying on Georgia's predeprivation remedies to deny relief. Although due process, under *McKesson*, allows a State to maintain a remedial scheme

that is exclusively predeprivation, exclusively postdeprivation, or a hybrid, and to reconfigure its scheme over time to fit changing needs, it may *not* do what Georgia did here: “bait and switch” by reconfiguring, unfairly, in *midcourse*. Specifically, Georgia held out what plainly appeared to be a “clear and certain” postdeprivation remedy, its tax refund statute, and then declared, only after Reich and others had paid the disputed taxes, that no such remedy exists. In this regard, the State Supreme Court’s reliance on predeprivation procedures was entirely beside the point (and thus error), because even assuming the constitutional adequacy of those procedures—an issue not here addressed—no reasonable taxpayer would have thought that they represented, in light of the apparent applicability of the refund statute, the *exclusive* remedy for unlawful taxes. Cf. *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449. The case is remanded for the provision of meaningful backward-looking relief consistent with due process and the *McKesson* line of cases. Pp. 4–7.

REICH v. COLLINS

Syllabus

263 Ga. 602, 437 S. E. 2d 320, reversed and remanded.

O'CONNOR, J., delivered the opinion for a unanimous Court.