



## In *Dawson v. Steager*, U.S. Supreme Court Bars Discriminatory Taxation of Federal Employees

***West Virginia had exempted from taxation the state retirement benefits paid to certain state law enforcement retirees while not exempting similarly situated federal law enforcement retirees.***

The United States Supreme Court, in a 9-0 decision, ruled in favor of a retired federal employee and his wife in a case involving the intergovernmental tax immunity doctrine, the interpretation of which had divided state high courts.

The tax immunity doctrine has constitutional roots in the High Court's decision in *McCulloch v. Maryland*, which invalidated Maryland's taxation of the Bank of the United States. In the 1930s, Congress codified the evolution of the doctrine by barring income taxes that "discriminate against the [federal or state] officer or employee because of the source of the pay or compensation." Further, in *Davis v. Michigan Department of Treasury*, the Supreme Court explained that a state unlawfully "discriminate[s]" against a federal employee when it "impos[es] a heavier tax burden" on the federal employee than on comparable state workers and this disparate treatment is not "directly related to, and justified by, significant differences between the two classes."

The State of West Virginia, however, exempted the state retirement benefits paid to certain state law enforcement retirees while not exempting similarly situated federal law enforcement retirees, like Mr. James Dawson, a retired U.S. marshal. West Virginia's Supreme Court upheld this differential treatment because it viewed the tax exemption favoring state personnel as narrowly drawn.

On February 20, the U.S. Supreme Court unanimously ruled in favor of the Dawsons. The Court agreed that West Virginia singled out for preferential treatment state retirees based on the nature of their previous jobs, and not based on any other factor. Because the State expressly afforded state law enforcement retirees "a tax benefit that federal retirees cannot receive," and because it was undisputed that there were no "significant differences" between Mr. Dawson's former job responsibilities and those of the tax-exempt state law enforcement retirees, the Court had "little difficulty" coming to its decision.

The Court accordingly rejected West Virginia's argument that the narrow scope of the discriminatory tax exemption should save it. The Court similarly was not persuaded by the state's argument that the intent behind the statute—purportedly to benefit state law enforcement retirees, not to burden federal law enforcement retirees—controls. Instead, "treatment rather than intent is what matters."

The Court's decision reaffirms that states may not impose discriminatory taxes on federal employees. It particularly clarifies how courts must define the comparator class, explaining that "the relevant question isn't whether the federal retirees are similarly situated to state retirees who don't receive a state tax benefit; the relevant question is whether they are similarly

situated to those who do." The decision also emphasizes that the burden is on states to carefully draft their tax statutes to achieve their desired intent. Indeed, the Court explained, "[I]n this sensitive field it is not too much to ask that, if a State *wants* to draw a distinction based on [specific criteria], it enact a law that actually *does* that."

*Jones Day* partnered in representation in this case with the West Virginia University College of Law Supreme Court Clinic.



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