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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 Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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LEVIN, TAX COMMISSIONER OF OHIO *v.* COMMERCE ENERGY, INC., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 09–223. Argued March 22, 2010—Decided June 1, 2010

Historically, all Ohio natural gas consumers purchased gas from a local distribution company (LDC), the public utility serving their geographic area. Today, however, consumers in Ohio's major metropolitan areas can alternatively contract with independent marketers (IMs) that compete with LDCs for retail sales of natural gas. Respondents, mainly IMs offering to sell natural gas to Ohio consumers, sued petitioner Ohio Tax Commissioner (Commissioner) in federal court, alleging discriminatory taxation of IMs and their patrons in violation of the Commerce and Equal Protection Clauses. They sought declaratory and injunctive relief invalidating three tax exemptions Ohio grants exclusively to LDCs. The court initially held that respondents' suit was not blocked by the Tax Injunction Act (TIA), which prohibits lower federal courts from restraining "the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State," 28 U. S. C. §1341. Nevertheless, the court dismissed the suit based on the more embracive comity doctrine, which restrains federal courts from entertaining claims that risk disrupting state tax administration, see *Fair Assessment in Real Estate Assn., Inc.* v. *McNary*, 454 U. S. 100. The Sixth Circuit agreed with the District Court's TIA holding, but reversed the court's comity ruling, and remanded for adjudication of the merits. A footnote in *Hibbs* v. *Winn,* 542 U. S. 88, 107, n. 9, the Court of Appeals believed, foreclosed an expansive reading of this Court's comity precedents. The footnote stated that the Court "has relied upon 'principles of comity' to preclude original federal-court jurisdiction only when plaintiffs have sought district-court aid in order to arrest or countermand state tax

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collection." Respondents challenged only a few limited exemptions, the Sixth Circuit observed, therefore their success on the merits would not significantly intrude upon Ohio's administration of its tax system.

Held: Under the comity doctrine, a taxpayer's complaint of allegedly discriminatory state taxation, even when framed as a request to increase a competitor's tax burden, must proceed originally in state court. Pp. 5–17.

(a) The comity doctrine reflects a proper respect for the States and their institutions. *E.g., Fair Assessment*, 454 U. S., at 112. Comity's constraint has particular force when lower federal courts are asked to pass on the constitutionality of state taxation of commercial activity. States rely chiefly on taxation to fund their governments' operations, therefore their tax-enforcement methods should not be interfered with absent strong cause. See *Dows* v. *Chicago*, 11 Wall. 108, 110. The TIA was enacted specifically to constrain the issuance of federal injunctions in state-tax cases, see *Fair Assessment*, 454 U. S., at 129, and is best understood as but a partial codification of the federal reluctance to interfere with state taxation, *National Private Truck Council, Inc.* v. *Oklahoma Tax Comm'n*, 515 U. S. 582, 590. Pp. 5–8.

(b) *Hibbs* does not restrict comity's compass. Plaintiffs in *Hibbs* were Arizona taxpayers who challenged, as violative of the Establishment Clause, a tax credit that allegedly served to support parochial schools. Their federal-court suit for declaratory and injunctive relief did not implicate in any way their own tax liability, and the relief they sought would not deplete the State's treasury. Rejecting Arizona's plea that the TIA barred the suit, the Court found that the case was "not rationally distinguishable" from pathmarking civil-rights controversies in which federal courts had entertained challenges to state tax credits without conceiving of the TIA as a jurisdictional barrier. 542 U. S., at 93–94, 110–112. The Court also dispatched Arizona's comity argument in the footnote that moved the Sixth Circuit here to reverse the District Court's comity-based dismissal. *Id.,* at 107, n. 9. Neither *Hibbs* nor any other decision of this Court, however, has considered the comity doctrine's application to cases of the kind presented here. Pp. 8–10.

(c) Respondents contend that state action "selects [them] out for discriminatory treatment by subjecting [them] to taxes not imposed on others of the same class." *Hillsborough* v. *Cromwell*, 326 U. S. 620, 623. When economic legislation does not employ classifications subject to heightened scrutiny or impinge on fundamental rights, courts generally view constitutional challenges with the skepticism due respect for legislative choices demands. See, *e.g., Hodel* v. *Indiana*, 452 U. S. 314, 331–332. And "in taxation, even more than in

other fields, legislatures possess the greatest freedom in classification." *Madden* v. *Kentucky*, 309 U. S. 83, 88. Of key importance, when unlawful discrimination infects tax classifications or other legislative prescriptions, the Constitution simply calls for *equal treatment*. How equality is accomplished—by extension or invalidation of the unequally distributed benefit or burden, or some other measure—is a matter on which the Constitution is silent. See, *e.g., Heckler* v. *Mathews*, 465 U. S. 728, 740. On finding unlawful discrimination, courts may attempt, within the bounds of their institutional competence, to implement what the legislature would have willed had it been apprised of the constitutional infirmity. *E.g., id.,* at 739, n. 5. With the State's legislative prerogative firmly in mind, this Court, upon finding impermissible discrimination in a State's tax measure, generally remands the case, leaving the interim remedial choice to state courts. See, *e.g., McKesson Corp.* v. *Division of Alcoholic Beverages and Tobacco, Fla. Dept. of Business Regulation*, 496 U. S. 18, 39–40. If lower federal courts were to consider the merits of suits alleging uneven state tax burdens, however, recourse to state court for the interim remedial determination would be unavailable, for federal tribunals lack authority to remand to state court an action initiated in federal court. Federal judges, moreover, are bound by the TIA, which generally precludes relief that would diminish state revenues, even if such relief is the remedy least disruptive of the state legislature's design. These limitations on the remedial competence of lower federal courts counsel that they refrain from taking up cases of this genre, so long as state courts are equipped fairly to adjudicate them. Pp. 10–13.

(d) Comity considerations warrant dismissal of respondents' suit. If Ohio's scheme is unconstitutional, the Ohio courts are better positioned to determine—unless and until the Ohio Legislature weighs in—how to comply with the mandate of equal treatment. See *Davis* v. *Michigan Dept. of Treasury*, 489 U. S. 803, 817–818. The unelaborated comity footnote in *Hibbs* does not counsel otherwise. Hardly a run-of-the-mine tax case, *Hibbs* was essentially an attack on the allocation of state resources for allegedly unconstitutional purposes. Plaintiffs there were third parties whose own tax liability was not a relevant factor. Here, by contrast, the very premise of respondents' suit is that they are taxed differently from LDCs. The *Hibbs* footnote is most sensibly read to affirm that, just as that case was a poor fit under the TIA, so it was a poor fit for comity. Respondents' argument that this case is fit for federal-court adjudication because of the simplicity of the relief sought is unavailing. Even if their claims had merit, respondents would not be entitled to their preferred remedy. In *Hibbs*, however, if the District Court found the Arizona tax credit

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impermissible under the Establishment Clause, only one remedy would redress the plaintiffs' grievance: invalidation of the tax credit at issue. Pp. 13–15.

(e) In sum, a confluence of factors in this case, absent in *Hibbs*, leads to the conclusion that the comity doctrine controls here. First, respondents seek federal-court review of commercial matters over which Ohio enjoys wide regulatory latitude; their suit does not involve any fundamental right or classification that attracts heightened judicial scrutiny. Second, while respondents portray themselves as third-party challengers to an allegedly unconstitutional tax scheme, they are in fact seeking federal-court aid in an endeavor to improve their competitive position. Third, the Ohio courts are better positioned than their federal counterparts to correct any violation because they are more familiar with state legislative preferences and because the TIA does not constrain their remedial options. Individually, these considerations may not compel forbearance by federal district courts; in combination, however, they demand deference to the state adjudicative process. Pp. 15–16.

(f) The Sixth Circuit's concern that application of the comity doctrine here would render the TIA effectively superfluous overlooks Congress' aim, in enacting the TIA, to secure the comity doctrine against diminishment. Comity, moreover, is a prudential doctrine. "If the State voluntarily chooses to submit to a federal forum, principles of comity do not demand that the federal court force the case back into the State's own system." *Ohio Bureau of Employment Servs.* v. *Hodory*, 431 U. S. 471, 480. P. 16.

(g) In light of the foregoing, the Court need not decide whether the TIA would itself block this suit. Pp. 16–17.

554 F. 3d 1094, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, KENNEDY, BREYER, and SOTOMAYOR, JJ., joined. KENNEDY, J., filed a concurring opinion. THOMAS, J., filed an opinion concurring in the judgment, in which SCALIA, J., joined. ALITO, J., filed an opinion concurring in the judgment.