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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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JEFFERSON COUNTY, ALABAMA *v.* ACKER, SENIOR JUDGE, UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ALABAMA, ET AL.

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

No. 98–10. Argued March 29, 1999– Decided June 21, 1999

Alabama has not authorized its counties to levy an income tax, but it has authorized them to impose a "license or privilege tax" upon persons who are not otherwise required to pay a license fee under state law. Pursuant to this authorization, Jefferson County enacted Ordinance No. 1120 (Ordinance), which imposes such an occupational tax. The Ordinance declares it "unlawful . . . to engage in" a covered occupation without paying the tax; includes among those subject to the tax, federal, state, and county officeholders; measures the fee as a percentage of the taxpayer's "gross receipts"; and defines "gross receipts" as, *inter alia*, "compensation." Respondents, two United States District Judges who maintain their principal offices in Jefferson County, resist payment of the tax on the ground that it violates the intergovernmental tax immunity doctrine. The county instituted collection suits in Alabama small claims court against the judges, who removed the suits to the Federal District Court under the federal officer removal statute, 28 U. S. C. §1442. The federal court denied the county's motions to remand and granted summary judgment for respondents, holding the county tax unconstitutional under the intergovernmental tax immunity doctrine to the extent that it reached federal judges' compensation. The en banc Eleventh Circuit affirmed. This Court granted certiorari and remanded for further consideration of whether the Tax Injunction Act, §1341, deprived the District Court of jurisdiction to adjudicate the matter. On remand, the Eleventh Circuit adhered to its prior en banc decision.

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Held:

1. The case was properly removed under the federal officer removal statute. That provision permits a federal-court officer to remove to federal district court any state-court civil action commenced against the officer "for any act under color of office." 28 U. S. C. §1442(a)(3). To qualify for removal, the officer must both raise a colorable federal defense, see *Mesa* v. *California,* 489 U. S. 121, 139, and establish that the suit is "*for* a[n] act under color of office," 28 U. S. C. §1442(a)(3) (emphasis added). Here, the judges argued, and the Eleventh Circuit held, that the county tax falls on the performance of federal judicial duties in the county and risks interfering with the Federal Judiciary's operation in violation of the intergovernmental tax immunity doctrine. That argument, although the Court ultimately rejects it, presents a colorable federal defense. To establish that the suit is "for" an act under color of office, the court officer must show a nexus, a "causal connection" between the charged conduct and asserted official authority. *Id.*, at 409. The judges' colorable federal defense rests on a statement in the Ordinance declaring it "unlawful" for them to "engage in [their] occupation" without paying the tax. Correspondingly, the judges see the county's enforcement actions as suits "for" their having "engage[d] in [their] occupation." The Court credits the judges' theory of the case for purposes of the jurisdictional inquiry and concludes that they have made an adequate threshold showing that the suit is "for a[n] act under color of office." Pp. 4–7.

2. The Tax Injunction Act does not bar federal-court adjudication of this case. That Act prohibits federal district courts from "enjoin[ing], suspend[ing] or restrain[ing]" the imposition or collection of any state tax where a plain, speedy, and efficient remedy may be had in the State's courts. 28 U. S. C. §1341. By its terms, the Act bars anticipatory relief. Recognizing that there is little practical difference between an injunction and anticipatory relief in the form of a declaratory judgment, the Court has held that declaratory relief falls within the Act's compass. *California* v. *Grace Brethren Church,* 457 U. S. 393, 408. But a suit to collect a tax is surely not brought to restrain state action, and therefore does not fit the Act's description of suits barred from federal district court adjudication. The Act was modeled on state and federal provisions prohibiting anticipatory actions by taxpayers to stop the initiation of collection proceedings. See, *e.g.,* 26 U. S. C. §7421(a). These provisions were not designed to prevent taxpayers from defending government collection suits. Pp. 7–10.

3. Jefferson County's tax operates as a nondiscriminatory tax on the judges' compensation, to which the Public Salary Tax Act of 1939, 4 U. S. C. §111, consents when it allows States to tax the pay federal employees receive "if the taxation does not discriminate against

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[that] employee because of the source of the pay or compensation." Pp. 10–18.

(a) The Eleventh Circuit's holding that the tax violates the intergovernmental tax immunity doctrine as applied to federal judges extends that doctrine beyond the tight limits this Court has set. Until 1938, the doctrine was expansively applied to prohibit Federal and State Governments from taxing the salaries of another sovereign's employees. See, *e.g.*, *Dobbins* v. *Commissioners of Erie Cty.*, 16 Pet. 435, 450. In *Graves* v. *New York ex rel. O'Keefe*, 306 U. S. 466, 486–487, the Court expressly overruled prior decisions and held that a State's taxation of federal employees' salaries lays no unconstitutional burden upon the Federal Government. Since *Graves*, the Court has reaffirmed a narrow approach to governmental tax immunity, *United States* v. *New Mexico*, 455 U. S. 720, 735, closely confining the doctrine to bar only those taxes that are imposed directly on one sovereign by the other or that discriminate against a sovereign or those with whom it deals, *Davis* v. *Michigan Dept. of Treasury*, 489 U. S. 803, 811. In contracting the doctrine, the Court has recognized that the area is one over which Congress is the principal superintendent. See *New Mexico*, 455 U. S., at 737–738. Indeed, congressional action coincided with the *Graves* turnaround: The Public Salary Tax Act was enacted shortly after release of the Court's decision in *Graves*. In *Howard* v. *Commissioners of Sinking Fund of Louisville*, 344 U. S. 624, 625, n. 2, 629, the Court concluded that a "license fee" similar in relevant respects to Jefferson County's was an "income tax" for purposes of a federal statute authorizing state taxation of federal employees' incomes, even though the fee was styled as a tax upon the privilege of working in a municipality, was not an "income tax" under state law, and deviated from textbook income tax characteristics. *Id.*, at 628–629. As *Howard* indicates, whether Jefferson County's license tax fits within the Public Salary Tax Act's allowance of nondiscriminatory state taxation of federal employees' pay is a question of federal law. The practical impact, not the State's name tag, determines the answer to that question. Pp. 11–14.

(b) The Court rejects the judges' contention that two features of the Ordinance remove the tax from the Public Salary Tax Act shelter and render it an unconstitutional licensing scheme. The Court finds unpersuasive the judges' first argument that the Ordinance, by declaring it "unlawful . . . to engage in" a covered occupation, falls under *Johnson* v. *Maryland*, 254 U. S. 51, 57, which held that a State could not require a federal postal employee to obtain a state driver's license before performing his federal duties. The incautious "unlawful . . . to engage in" words likely were written with nonfederal employees, the vast majority of the occupational taxpayers, in front

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view. The Ordinance's actual operation is the decisive factor. See *Detroit* v. *Murray Corp. of America*, 355 U. S. 489, 492. In practice, the county's license tax serves a revenue-raising, not a regulatory, purpose. The county neither issues licenses to taxpayers, nor in any way regulates them in the performance of their duties based on their status as license taxpayers. Cf., *e.g.*, *Johnson*, 254 U. S., at 57. In response to the judges' refusal to pay the tax, the county simply instituted collection suits. Alabama has not endeavored to make it unlawful to carry out the duties of a federal office without local permission. Also unavailing is the judges' argument that the Ordinance's exemption for those holding another state or county license reveals its true character as a licensing scheme, not an income tax. The dispositive measure is the Public Salary Tax Act, which does not require the state tax to be a typical "income tax," but consents to any tax on "pay or compensation," which Jefferson County's surely is. Cf. *Howard*, 344 U. S., at 629. Pp. 14–17.

(c) The Public Salary Tax Act's sole caveat is that the tax must "not discriminate . . . because of the [federal] source of the pay or compensation." 4 U. S. C. §111. In *Davis*, the Court held the nondiscrimination requirement violated by a state tax exempting retirement benefits paid by the State but not those paid by the Federal Government. See 489 U. S., at 817–818. Jefferson County's tax, by contrast, does not discriminate against federal judges in particular, or federal officeholders in general, based on the federal *source* of their pay or compensation. The tax is paid by all state judges in Jefferson County. This Court rejects respondents' contention that, as federal judges can never fit within the county's exemption for those who hold licenses under other state or county laws, that exemption unlawfully disfavors them. The record shows no discrimination between similarly situated federal and state employees. Cf. *id.*, at 814. There is no sound reason to deny Alabama counties the right to tax with an even hand the compensation of federal, state, and local officeholders whose services are rendered within the county. See *United States* v. *County of Fresno*, 429 U. S. 452, 462. Pp. 17–18.

137 F. 3d 1314, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, Parts I and III of which were unanimous, Part II of which was joined by STEVENS, O'CONNOR, KENNEDY, and BREYER, JJ., and Part IV of which was joined by REHNQUIST, C. J., and STEVENS, SCALIA, KENNEDY, SOUTER, and THOMAS, JJ. SCALIA, J., filed an opinion concurring in part and dissenting in part, in which REHNQUIST, C. J., and SOUTER and THOMAS, JJ., joined. BREYER, J., filed an opinion concurring in part and dissenting in part, in which O'CONNOR, J., joined.