SUPREME COURT OF THE UNITED STATES

No. 98–10

JEFFERSON COUNTY, ALABAMA, PETITIONER *v.* WILLIAM M. ACKER, JR., SENIOR JUDGE, UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ALABAMA, AND U. W. CLEMON, JUDGE, UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ALABAMA

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

[June 21, 1999]

JUSTICE GINSBURG delivered the opinion of the Court.*

Jefferson County, Alabama, imposes an occupational tax on persons working within the county who are not otherwise required to pay a license fee under state law. The controversy before us stems from proceedings the county commenced to collect the tax from two federal judges who hold court in the county. Preliminarily, the parties dispute whether, as the federal judges assert, the collection proceedings may be removed to, and adjudicated in, federal court. On the merits, the judges maintain that they are shielded from payment of the tax by the intergovern-

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*For the reasons stated in the opinion of JUSTICE SCALIA, the CHIEF JUSTICE, JUSTICE SCALIA, JUSTICE SOUTER, and JUSTICE THOMAS do not believe this case was properly removed from state court. The Court having concluded otherwise, they join Parts I, III, and IV of this opinion.

mental tax immunity doctrine, while the county urges that the doctrine does not apply unless the tax discriminates against an officeholder because of the source of his pay or compensation.

We hold that the case was properly removed under the federal officer removal statute, 28 U. S. C. §1442(a)(3), and that the Tax Injunction Act, §1341, does not bar federal-court adjudication. We further conclude that 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.

I

A

Alabama counties, as entities created by the State, can impose no tax absent state authorization. See *Estes* v. *Gadsden*, 266 Ala. 166, 170, 94 So. 2d 744, 747 (1957). Alabama, the parties to this litigation agree, has not authorized its counties to levy an income tax. See *Jefferson County* v. *Acker*, 850 F. Supp. 1536, 1537–1538, n. 2 (ND Ala. 1994); *McPheeter* v. *Auburn*, 288 Ala. 286, 292, 259 So. 2d 833, 837 (1972); *Estes*, 266 Ala., at 171–172, 94 So. 2d, at 748–750.[1] In 1967, Alabama authorized its counties to levy a "license or privilege tax" upon persons who do not pay any other license tax to either the State or county. 1967 Ala. Acts 406, §3. As stated in the authorization, a county may impose the tax "upon any person for engaging in any business" for which a license or privilege tax is not required by either the State of Alabama or the

[1] Most States, it appears, like Alabama, have not authorized local imposition of an "income tax." See J. Aronson & J. Hilley, Financing State and Local Governments 149 (4th ed. 1986) ("Eleven states have authorized their local governments to levy wage or income taxes."); cf. 1 CCH State Tax Guide ¶15–100, p. 3512 (1998) (listing cities in eleven States that impose personal income taxes).

county under the laws of the State of Alabama. §4.

Pursuant to Alabama's authorization, Jefferson County, in 1987, enacted Ordinance Number 1120, "establish[ing] a license or privilege tax on persons engaged in any vocation, occupation, calling or profession in [the] County who is not required by law to pay any license or privilege tax to either the State of Alabama or the County." Ordinance No. 1120, preamble (1987) (Ordinance or Ordinance No. 1120). The Ordinance declares it "unlawful . . . to engage in" a covered occupation without paying the tax. §2. Included among those subject to the tax are "hold[ers] of any kind of office or position either by election or appointment, by any federal, state, county or city officer or employee where the services of such official or employee are rendered within Jefferson County." §1(C). The fee is measured by one-half percent of the "gross receipts" of the person subject to the tax. §2. "[G]ross receipts" is defined as having "the same meaning" as "compensation," and includes "all salaries, wages, commissions, [and] bonuses." §1(F). Ordinance No. 1120 thus implements the taxing authority accorded counties by the Alabama Legislature. The State's permission left no room for a local tax on compensation of a different name or order.

B

Respondents William M. Acker, Jr., and U. W. Clemon are United States District Judges for the Northern District of Alabama. Both maintain their principal office in Jefferson County, and both resist payment of the county's "license or privilege tax" on the ground that it violates the intergovernmental tax immunity doctrine. The county instituted a collection suit in Alabama small claims court against each of the judges, which each removed to the Federal District Court under the federal officer removal statute, 28 U. S. C. §1442 (1994 ed. and Supp. III). After denying the county's motions to remand, the federal court

consolidated the cases, and eventually granted summary judgment for respondents; the court held Jefferson County's tax unconstitutional under the intergovernmental tax immunity doctrine to the extent that the tax reached the compensation of federal judges. See *Jefferson County*, 850 F. Supp., at 1537, 1545–1546.[2]

A panel of the United States Court of Appeals for the Eleventh Circuit initially reversed the District Court's judgment, *Jefferson County* v. *Acker*, 61 F. 3d 848 (1995), but the Circuit, sitting en banc, affirmed the District Court's disposition, *Jefferson County* v. *Acker*, 92 F. 3d 1561, 1576 (1996). We granted Jefferson County's initial petition for certiorari and remanded the case for further consideration of the question whether the Tax Injunction Act, 28 U. S. C. §1341, deprived the District Court of jurisdiction to adjudicate the matter. *Jefferson County* v. *Acker*, 520 U. S. 1261 (1997). On remand, the Eleventh Circuit adhered to its prior en banc decision. See 137 F. 3d 1314, 1324 (1997) (en banc). We again granted certiorari to consider both the threshold Tax Injunction Act issue and the merits of the case. 525 U. S. __ (1998). We take up as well an anterior question raised by the Solicitor General: Was removal from state court to federal court unauthorized by the federal officer removal statute?

II

The federal officer removal provision at issue states:

"(a) A civil action or criminal prosecution com-

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[2]The District Court also held that applying the tax to the judges diminished their pay and therefore violated the Compensation Clause of Article III of the Constitution. See *Jefferson County* v. *Acker*, 850 F. Supp., at 1548; U. S. Const., Art. III, §1 (federal judges "shall . . . receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office"). The Court of Appeals declined to address that question, and it is not before this Court. See *Jefferson County* v. *Acker*, 92 F. 3d 1561, 1566 (1996) (en banc).

> menced in a State court against any of the following may be removed by them to the district court of the United States for the district and division embracing the place wherein it is pending:
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> . . . . .
>
> "(3) Any officer of the courts of the United States, for any act under color of office or in the performance of his duties." 28 U. S. C. §1442 (1994 ed. and Supp. III).[3]

It is the general rule that an action may be removed from state court to federal court only if a federal district court would have original jurisdiction over the claim in suit. See 28 U. S. C. §1441(a). To remove a case as one falling within federal-question jurisdiction, the federal question ordinarily must appear on the face of a properly pleaded complaint; an anticipated or actual federal defense generally does not qualify a case for removal. See *Louisville & Nashville R. Co.* v. *Mottley,* 211 U. S. 149, 152 (1908). Suits against federal officers are exceptional in this regard. Under the federal officer removal statute, suits against federal officers may be removed despite the nonfederal cast of the complaint; the federal question element is met if the defense depends on federal law.

To qualify for removal, an officer of the federal courts must both raise a colorable federal defense, see *Mesa* v. *California,* 489 U. S. 121, 139 (1989), and establish that the suit is "*for* a[n] act under color of office," 28 U. S. C. §1442(a)(3) (emphasis added). To satisfy the latter requirement, the officer must show a nexus, a "'causal connection' between the charged conduct and asserted official authority." *Willingham* v. *Morgan,* 395 U. S. 402, 409 (1969) (quoting *Maryland* v. *Soper (No. 1),* 270 U. S. 9, 33

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[3] Other subsections of §1442 establish similar removal rights for other federal officers. See 28 U. S. C. §§1442(a), (b).

(1926)).

In construing the colorable federal defense requirement, we have rejected a "narrow, grudging interpretation" of the statute, recognizing that "one of the most important reasons for removal is to have the validity of the defense of official immunity tried in a federal court." 395 U. S., at 407. We therefore do not require the officer virtually to "win his case before he can have it removed." *Ibid.* Here, the judges argued, and the Eleventh Circuit held, that Jefferson County's tax falls on "the performance of federal judicial duties in Jefferson County" and "risk[s] interfering with the operation of the federal judiciary" in violation of the intergovernmental tax immunity doctrine; that argument, although we ultimately reject it, see *infra*, at 10–18, presents a colorable federal defense. *Jefferson County*, 92 F. 3d, at 1572. There is no dispute on this point. See *post*, at 5 (SCALIA, J., concurring in part and dissenting in part).

We next consider whether the judges have shown that the county's tax collection suits are *"for* a[n] act under color of office." 28 U. S. C. §1442(a)(3) (emphasis added). The essence of the judges' colorable defense is that Jefferson County's Ordinance expressly declares it "unlawful" for them to "engage in [their] occupation" without paying the tax, Ordinance No. 1120, §2, and thus subjects them to an impermissible licensing scheme. The judges accordingly see Jefferson County's enforcement actions as suits "for" their having "engage[d] in [their] occupation." The Solicitor General, in contrast, argues that there is no causal connection between the suits and the judges' official acts because "[t]he tax . . . was imposed only upon [the judges] personally and not upon the United States or upon any instrumentality of the United States." Brief for United States as *Amicus Curiae* 20. To choose between those readings of the Ordinance is to decide the merits of this case. Just as requiring a "clearly sustainable defense" rather than a colorable defense would defeat the purpose of the removal statute,

Willingham, 395 U. S., at 407, so would demanding an airtight case on the merits in order to show the required causal connection. Accordingly, we credit the judges' theory of the case for purposes of both elements of our jurisdictional inquiry and conclude that the judges have made an adequate threshold showing that the suit is "for a[n] act under color of office." 28 U. S. C. §1442(a)(3).

JUSTICE SCALIA maintains that the county's lawsuit was not grandly "for" the judges' performance of their official duties, but narrowly "for" their having refused to pay the tax. The judges' resistance to payment of the tax, he states, was neither required by the responsibilities of their offices nor undertaken in the course of job performance. See *post*, at 2. The county's lawsuit, however, was not simply "for" a refusal; it was "for" payment of a tax. The county asserted that the judges had failed to comply with the Ordinance; read literally, as the judges urge and as we accept solely for purposes of this jurisdictional inquiry, that measure required the judges to pay a license fee before "engag[ing] in [their] occupation." Ordinance No. 1120, §2. The circumstances that gave rise to the tax liability, not just the taxpayers' refusal to pay, "constitute the basis" for the tax collection lawsuits at issue. See *Willingham*, 395 U. S., at 409 ("It is enough that [petitioners'] acts or [their] presence at the place in performance of [their] official duty constitute the basis . . . of the state prosecution." (internal quotation marks omitted)). Here, those circumstances encompass holding court in the county and receiving income for that activity. In this light, we are satisfied that the judges have shown the essential nexus between their activity "under color of office" and the county's demand, in the collection suits, for payment of the local tax.

III

The Tax Injunction Act provides:

> "The district courts shall not enjoin, suspend or restrain 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.

This statutory text "is to be enforced according to its terms" and should be interpreted to advance "its purpose" of "confin[ing] federal-court intervention in state government." *Arkansas* v. *Farm Credit Servs. of Central Ark.*, 520 U. S. 821, 826–827 (1997). By its terms, the Act bars anticipatory relief, suits to stop ("enjoin, suspend or restrain") the collection of taxes. 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 (1982). 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. See *Louisiana Land & Exploration Co.* v. *Pilot Petroleum Corp.*, 900 F. 2d 816, 818 (CA5 1990) ("The Tax Injunction Act does not bar federal court jurisdiction [of a] suit . . . to collect a state tax.").

Nevertheless, in *Keleher* v. *New England Telephone & Telegraph Co.*, 947 F. 2d 547 (CA2 1991), the Court of Appeals concluded:

> "[I]n removing the federal courts' power to 'enjoin, suspend or restrain' state and local taxes, [Congress] necessarily intended for federal courts to abstain from hearing tax enforcement actions in which the validity of a state or local tax might reasonably be raised as a defense." *Id.*, at 551.[4]

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[4]The Second Circuit further stated that "[e]ven if Congress did not

We do not agree that the Act's purpose requires us to disregard the text formulation Congress adopted.

Congress modeled the Tax Injunction Act, which passed in 1937, upon previously enacted federal "statutes of similar import," measures that parallel state laws barring "actions in State courts to enjoin the collection of State and county taxes." S. Rep. No. 1035, 75th Cong., 1st Sess., 1 (1937). The federal statute Congress had in plain view was an 1867 measure depriving courts of jurisdiction over suits brought "for the purpose of restraining the assessment or collection" of any federal tax. Act of Mar. 2, 1867, ch. 169, §10, 14 Stat. 475, now codified at 26 U. S. C. §7421(a) (Supp. III). The 1867 provision, of course, does not bar federal-court adjudication of suits initiated by the United States to collect federal taxes; it precludes only suits brought by taxpayers to restrain the United States from assessing or collecting such taxes. Similarly, the state laws to which Congress referred surely do not preclude the States from enforcing their taxes in court.

The Tax Injunction Act was thus shaped by state and federal provisions barring anticipatory actions by taxpayers to stop the tax collector from initiating collection proceedings. It was not the design of these provisions to prohibit taxpayers from defending suits brought by a government to obtain collection of a tax. Congress, it appears, sought particularly to stop out-of-state corporations from using diversity jurisdiction to gain injunctive relief against a state tax in federal court, an advantage

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intend the Act's jurisdictional bar to reach so far, . . . we believe that general principles of federal court abstention would nonetheless requires us to stay our hand here." 947 F. 2d, at 551. *Keleher* was a diversity action raising "'difficult questions of state law bearing on policy problems of substantial public import.'" *Ibid.* (quoting *Colorado River Water Conservation Dist.* v. *United States*, 424 U. S. 800, 814 (1976)). See *infra*, n. 5.

unavailable to in-state taxpayers denied anticipatory relief under state law. See S. Rep. No. 1035, *supra*, at 2. In sum, we hold that the Tax Injunction Act, as indicated by its terms and purpose, does not bar collection suits, nor does it prevent taxpayers from urging defenses in such suits that the tax for which collection is sought is invalid.[5]

IV

The Eleventh Circuit held that Jefferson County's license tax, as applied to federal judges, amounts to "a direct tax on the federal government or its instrumentalities" in violation of the intergovernmental tax immunity doctrine. *Jefferson County*, 92 F. 3d, at 1576. That ruling extends the doctrine beyond the tight limits this Court has set and is inconsistent with the controlling federal statute. The county's Ordinance lays no "demands directly on the Federal Government," *United States* v. *New Mexico*, 455 U. S. 720, 735 (1982); it is, and operates as, a tax on employees' compensation. The Public Salary Tax Act allows a State and its taxing authorities to tax the pay federal employees receive "if the taxation does not discriminate against the [federal] employee because of the source of the pay or compensation." 4 U. S. C. §111. We hold that Jefferson County's tax falls within that allowance.

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[5] As noted in *Keleher* v. *New England Telephone & Telegraph Co.*, 947 F. 2d 547, 551 (CA2 1991), see *supra*, n. 4, abstention and stay doctrines may counsel federal courts to withhold adjudication, according priority to state courts on questions concerning the meaning and proper application of a state tax law. Cf. *Burford* v. *Sun Oil Co.*, 319 U. S. 315, 332–334 (1943); *Quackenbush* v. *Allstate Ins. Co.*, 517 U. S. 706, 719–721 (1996) (in a case seeking damages, rather than equitable relief, a federal court may not abstain, but can stay the action pending resolution of the state-law issue). No one has argued for the application of such doctrines here.

A

Until 1938, the intergovernmental tax immunity 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 (1842); *Collector* v. *Day*, 11 Wall. 113, 124 (1871). In *Graves* v. *New York ex rel. O'Keefe*, 306 U. S. 466, 486–487 (1939), the Court expressly overruled prior decisions and held that a State's imposition of a tax on federal employees' salaries "lays [no] unconstitutional burden upon [the Federal Government]."[6] Although taxes "upon the incomes of employees of a government, state or national, . . . may be passed on economically to that government," the Court reasoned, the federal design tolerates such "indirect [and] incidental" burdens. *Id.*, at 487. Since *Graves*, we have reaffirmed "a narrow approach to governmental tax immunity," *New Mexico*, 455 U. S., at 735;[7] we have closely confined the doctrine to "ba[r] only those taxes that [are] imposed directly on one sovereign by the other or that discriminat[e] against a sovereign or those with whom it deal[s]," *Davis* v. *Michigan Dept. of Treasury*, 489 U. S. 803, 811 (1989). In contracting the once expansive intergovernmental tax immunity doctrine, we have recognized that

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[6] *Graves* carried out the doctrinal contraction presaged in *Helvering* v. *Gerhardt*, 304 U. S. 405, 424 (1938), which held that the Federal Government could tax the salaries of employees of the Port of New York Authority. See also *James* v. *Dravo Contracting Co.*, 302 U. S. 134, 138, 149, 159–161 (1937) (in determining that a state "privilege ta[x]" on federal contractors did not violate the intergovernmental tax immunity doctrine, the Court rejected the theory that a tax on income is a tax on its source (internal quotation marks omitted)).

[7] *New Mexico* held that New Mexico transgressed no constitutional limit when it required federal contractors to pay the State's gross receipts tax for the "privilege" of doing business with the Federal Government in the State. 455 U. S., at 727, 744 (internal quotation marks omitted).

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. In the Public Salary Tax Act, under consideration before *Graves* was announced and enacted shortly thereafter, see *Davis*, 489 U. S., at 811–812, Congress consented to nondiscriminatory state and local taxation of federal employees' "pay or compensation for personal service," 4 U. S. C. §111.[8] Section 111 effectively "codified the result in *Graves*," and thereby "foreclosed the possibility that subsequent judicial reconsideration . . . might reestablish the broader interpretation of the immunity doctrine." *Davis*, 489 U. S., at 812; see also *id.*, at 813 (the immunity for which §111 provides is "coextensive with the prohibition against discriminatory taxes embodied in the modern constitutional doctrine of intergovernmental tax immunity").

In *Howard* v. *Commissioners of Sinking Fund of Louisville*, 344 U. S. 624 (1953), the Court held that a "license fee" similar in relevant respects to Jefferson County's was an "income tax" for purposes of a federal statute that defines "income tax" as "any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts," 4 U. S. C. §110(c). See 344 U. S., at 625, n. 2, 629.[9]

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[8] Section 111 provides:

"The United States consents to the taxation of pay or compensation for personal service as an officer or employee of the United States, a territory or possession or political subdivision thereof, the government of the District of Columbia, or an agency or instrumentality of one or more of the foregoing, by a duly constituted taxing authority having jurisdiction, if the taxation does not discriminate against the officer or employee because of the source of the pay or compensation."

[9] *Howard* construed the Buck Act, which authorizes state and local governments to collect "income tax[es]" from individuals who work in a "Federal area" "to the same extent . . . as though such area was not a Federal area." 4 U. S. C. §106(a). The Buck Act defines "Federal area"

The Court so concluded even though the local tax was styled as "a tax upon the privilege of working within [the municipality]," was not an "income tax" under state law, and deviated from textbook income tax characteristics. *Id.*, at 628–629; see also *id.*, at 629 (Douglas, J., dissenting) ("Many kinds of income are excluded, *e.g.*, dividends, interest, capital gains. The exclusions emphasize that the tax is on the *privilege* of working or doing business in [the municipality].").[10]

As *Howard* indicates, whether Jefferson County's license tax fits within the Public Salary Tax Act's allowance is a question of federal law. The practical impact, not the State's name tag, determines the answer to that question. See also *Detroit* v. *Murray Corp. of America*, 355 U. S. 489, 492 (1958) ("[I]n determining whether th[e] ta[x] violate[s] the Government's constitutional immunity we must look through form and behind labels to substance."); cf. *Ohio*

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to mean "any lands or premises held or acquired by or for the use of the United States." §110(e). The United States submits that "[t]his definition appears, by its terms, to encompass premises used by the United States for the purposes of operating a federal courthouse," but further notes that the "origin and purpose of the Buck Act . . . were . . . limited . . . to ensur[ing] that federal officers and employees who reside or work within exclusive federal enclaves would be treated equally with those who reside and work outside such areas." Brief for United States as *Amicus Curiae* 28, n. 8 (citing S. Rep. No. 1625, 76th Cong., 3d Sess., 3 (1940)). As we conclude that the Public Salary Tax Act consents to Jefferson County's tax, we need not decide whether the Buck Act applies to this case.

[10] JUSTICE BREYER both recapitulates the reasoning of Justice Douglas' dissenting opinion in *Howard* and endeavors to distinguish the Court's decision in that case as involving "only [a] jurisdictional issue." *Post*, at 10 (opinion concurring in part and dissenting in part). One of the two questions on which the Court granted certiorari in *Howard*, however, explicitly asked the Court to determine "[t]he validity of the Louisville occupational tax or license fee ordinance as applied to employees of the [Naval] Ordnance Plant." 344 U. S., at 625. The Court squarely held: "[T]he tax is valid." *Id.*, at 629.

Oil Co. v. *Conway*, 281 U. S. 146, 159 (1930) (compatibly with the Fourteenth Amendment, a State "may impose different specific taxes upon different trades and professions"; "[i]n levying such taxes, the State is not required to resort to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value"). This much is beyond genuine debate.

B

The judges acknowledge that Jefferson County's Ordinance is valid if it "impose[s] a true tax on . . . income," but argue that the Ordinance ranks instead as an impermissible licensing scheme. Brief for Respondents 13–14, 27–33. Two aspects of the Ordinance, they say, remove the tax from the Public Salary Tax Act shelter for "taxation of pay or compensation for personal service," 4 U. S. C. §111, and render the tax unconstitutional. First, the judges urge, the very words of the Ordinance make it unlawful for them and others to engage in their occupations without paying the license fee. Second, they maintain, the complete exclusion of persons who hold other Alabama licenses, however low the fee in comparison to Jefferson County's tax, is inconsistent with a true tax on income, but entirely consistent with a regulatory scheme requiring persons to have one and only one occupational license in a State. We are not persuaded.

Jefferson County's Ordinance declares it "unlawful . . . to engage in" a covered occupation (as pertinent here, to carry out the duties of a federal judge) without paying the license fee. Ordinance No. 1120, §2. Based on the quoted words, the respondent judges urge, as the Eleventh Circuit ruled, that the Ordinance is invalid under *Johnson* v. *Maryland*, 254 U. S. 51, 57 (1920), which held that a State could not require a federal postal employee to obtain a state driver's license before performing his federal duties. See *Jefferson County*, 92 F. 3d, at 1572–1573. In reading

the Ordinance to impose a license requirement resembling the driver's license at issue in *Johnson*, the judges stress the Ordinance's incautious "unlawful . . . to engage in" language. Those words, however, likely were written with nonfederal employees, the vast majority of the occupational taxpayers, in front view. As earlier observed, see *supra*, at 13, the actual operation of the Ordinance, *i.e.*, its practical impact, is critical. See *Murray Corp.*, 355 U. S., at 492.

In practice, Jefferson County's license tax serves a revenue-raising, not a regulatory, purpose. Jefferson 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. *Johnson*, 254 U. S., at 57 ("[The state license requirement] lays hold of [Federal Government employees] in their specific attempt to obey [federal] orders and requires qualifications in addition to those that the [Federal] Government has pronounced sufficient."); *Leslie Miller, Inc.* v. *Arkansas*, 352 U. S. 187, 189, 190 (1956) *(per curiam)* (holding that private contractors, seeking to bid on federal contracts, cannot be required first to submit to state licensing procedures that "determin[e]" a contractor's "qualifications"; such state regulation is inconsistent with the governing federal procurement statute and regulations, which provide standards for judging the "responsibility" of competitive bidders (internal quotation marks omitted)). In response to the judges' refusal to pay the tax, Jefferson County has done no more than institute a collection suit. See *Jefferson County*, 92 F. 3d, at 1565. Alabama, of course, cannot make it unlawful to carry out the duties of a federal office without local permission, and in fact does not endeavor to do so.[11]

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[11] The shortcomings JUSTICE BREYER identifies in his first three objec-

We consider next the judges' argument that the wholesale exemption for those who hold another state or county license reveals the Ordinance's true character as a licensing scheme, not an income tax. If the tax were genuinely an income tax, they urge, those license holders would not be excluded, although they might be allowed to claim their other license fees as credits or deductions against the county tax. Alabama's enabling Act does not allow its counties to so provide; those otherwise subject to license or privilege taxes under Alabama's laws may not be reached by a county's occupational tax. See 1967 Ala. Acts 406,

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tions, *post*, at 3–6, are of a sort this Court routinely rejects as cause for federal curtailment of the taxing power of state and local governments. See *Ohio Oil Co.* v. *Conway*, 281 U. S. 146, 159 (1930). His fourth objection, *post*, at 6, speaks of burdens Jefferson County imposes directly on the Federal Government– obligations to withhold the tax, to make complicated calculations, to keep detailed records. JUSTICE BREYER overlooks that it is the actual operation of the Ordinance– what is and not what might be– that counts in determining the merits of this case. See *Detroit* v. *Murray Corp. of America*, 355 U. S. 489, 492 (1958).

As a matter of undisputed fact, the burdens JUSTICE BREYER posits are hypothetical, not real. As the parties stipulated, "[a]ll active judges of the Northern District of Alabama except [respondents] have paid the County Occupational Tax on differing percentages of their judicial salaries," but "neither the Administrative Office of the United States Courts nor any Article III judge in the Northern District of Alabama . . . has ever made an oath certifying the alleged amounts of a federal judge's salary earned within and without Jefferson County," and "[t]he Administrative Office . . . has never withheld County Occupational Tax from any federal judge or court employee." *Jefferson County*, 850 F. Supp., at 1549; see also 5 U. S. C. §5520(a) (authorizing the Secretary of the Treasury to enter into tax withholding agreements with local taxing authorities). Should Jefferson County someday exceed constitutional limits in its enforcement endeavors, a federal court would no doubt conserve what is constitutional, in line with the severability clauses contained in the state law and county Ordinance. See 1967 Ala. Acts 406, §8; Jefferson County Ordinance No. 1120, §13 (1987).

§4.[12] The dispositive measure, however, is the Public Salary Tax Act, which does not require the local tax to be a typical "income tax." Just as the statute in *Howard* consented broadly to *"any tax* measured by net income, gross income, or gross receipts," 344 U. S., at 629, the Public Salary Tax Act consents to any tax on "pay or compensation," which Jefferson County's surely is. The sole caveat is that the tax "not discriminate . . . because of the [federal] source of the pay or compensation," 4 U. S. C. §111, and we next consider that matter.[13]

C

In *Davis*, the Court held that a state tax exempting retirement benefits paid by the State but not those paid by the Federal Government violated the Public Salary Tax Act's nondiscrimination requirement. See 489 U. S., at 817–818. Jefferson County's tax, by contrast, does not discriminate against federal judges in particular, or fed-

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[12] JUSTICE BREYER observes that these exemptions are various, numerous, and large. See *post*, at 4–5, 11–17. In this regard, we note the representation of counsel for Jefferson County at oral argument that "92 percent of the people who earn wages in [the] county pay [the] tax." Tr. of Oral Arg. 14. Counsel further stated that federal employees are at least proportionately represented among the eight percent exempt from the county's tax because they pay license fees to the State of Alabama. These figures are not in the record, counsel explained, "because this issue was never raised until we got to this Court." *Ibid.*; see also *id.*, at 14–15 (counsel for Jefferson County represented that of 12,000 federal employees in the county, 1,209 pay state license taxes and do not pay the county's occupational tax).

[13] The District Court ruled that the judges had failed to establish that the county's tax discriminates against federal officers or employees because of the source of their pay or compensation. See *Jefferson County*, 850 F. Supp., at 1539–1540. On appeal there was no contention that this determination was erroneous. See *Jefferson County*, 92 F. 3d, at 1566, n. 9. The judges nevertheless press the argument that the tax is discriminatory as an alternative ground for affirmance. See Brief for Respondents 34–37.

eral officeholders in general, based on the federal *source* of their pay or compensation. The tax is paid by all State District and Circuit Court judges in Jefferson County and the three State Supreme Court justices who have satellite offices in the county. See *Jefferson County*, 850 F. Supp., at 1549.

The judges urge 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. See Brief for Respondents 14–15. The record shows no discrimination, however, between similarly situated federal and state employees. Cf. *Davis*, 489 U. S., at 814 ("It is undisputed that Michigan's tax system discriminates in favor of retired state employees and against retired federal employees."). Should Alabama or Jefferson County authorities take to exempting state officials while leaving federal officials (or a subcategory of them) subject to the tax, that would indeed present a starkly different case. Here, however, 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 (1977) (upholding requirement that employees of U. S. Forest Service pay California property tax on homes located on federal land and provided to employees as part of their compensation; Court observed that state tax does not discriminate unconstitutionally against federal employees if the tax is "imposed equally on . . . similarly situated constituents of the State").

* * *

For the reasons stated, the judgment of the Court of Appeals is reversed, and the case is remanded for proceedings consistent with this opinion.

It is so ordered.