




10-1981

## California v. Grace Brethren Church

Lewis F. Powell Jr

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jsw 10/10/81

Postpone

PRELIMINARY MEMORANDUM

October 30, 1981 Conference  
List 1, Sheet 1  
No. 81-228-ADX  
UNITED STATES, et al.

Appeal from DC  
(CDCal Pfaelzer)

V.

GRACE BRETHERN CHURCH, et al.

Federal/Civil

Timely

Please see memo in No. 81-31-ADX.

There is a response.

10/10/81      Wiley      Opinions in Jur Stmt







jsw 10/16/81

Hold for  
U.S. v. Lee 80-767  
to be argued 11/2

SUPPLEMENTAL MEMORANDUM

October 30, 1981 Conference  
List 1, Sheet 1

Appeal from DC  
(CDCal Pfaelzer)

No. 81-31-ADX

CALIFORNIA et al.

v.

GRACE BRETHERN CHURCH, et al.

Federal/Civil

Timely

No. 81-228-ADX

UNITED STATES, et al.

v.

GRACE BRETHERN CHURCH, et al.

Federal/Civil

Timely

80-  
Recommendation: Hold for U.S. v. Lee (to be argued 11/2/81) in all three cases.

David Levi has been working on the bench memo in Lee. His view is that Lee is of possible relevance here. This changes my view of Lee, and hence my recommendation here. jw



No. 81-455-ADX

GRACE BRETHERN CHURCH, et al.

v. <sup>OK</sup>

UNITED STATES, et al.

Federal/Civil

Timely

My initial recommendation in this cases was to postpone and to call for the record in each case. Upon reflection, I have become convinced that the disposition of United States v. Lee, No. 80-767 (to be argued 11/2/81) could affect the Court's treatment of these cases. Although Lee primarily concerns a <sup>✓</sup>Free Exercise challenge to the FUTA, that case also implicates a potential Establishment issue. These appeals present the opposite situation: a primary concern with an alleged FUTA Establishment violation with a lurking Free Exercise problem. I now think the potential overlap is sufficiently significant to warrant a hold in all three cases for Lee.

RECOMMENDATION: I recommend a hold for Lee.

There is a response.

10/16/81      Wiley      Opn in jur stmt



jsw 10/16/81

SUPPLEMENTAL MEMORANDUM

October 30, 1981 Conference  
List 1, Sheet 1

Appeal from DC  
(CDCal Pfaelzer)

No. 81-228-ADX

UNITED STATES, et al.

V.

GRACE BRETHERN CHURCH, et al.

Federal/Civil

Timely

Please see supplemental memo in No. 81-31-ADX.

RECOMMENDATION: I now recommend a hold for Lee.

There is a response.

10/16/81

Wiley

Opn in jur stmt



jsw 10/16/81

SUPPLEMENTAL MEMORANDUM

October 30, 1981 Conference  
List 1, Sheet 1

Appeal from DC  
(CDCal Pfaelzer)

No. 81-455-ADX

GRACE BRETHERN CHURCH, et al.

V.

UNITED STATES, et al.

Federal/Civil

Timely

Please see supplemental memo in No. 81-31-ADX.

RECOMMENDATION: I recommend a hold for Lee.

There is a response.

10/16/81      Wiley      Opn in jur stmt



Call for Record

Postpone  
(see above)

jsw 10/10/81

Fed DC invalidated FUTA as  
applied to ~~pre~~ elementary & secondary  
schools on Establishment Clause  
grounds  
Presents question not decided by  
St Martin (p 4)

PRELIMINARY MEMORANDUM

October 30, 1981 Conference  
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Appeal from DC  
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No. 81-31-ADX

CALIFORNIA et al.

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Federal/Civil

Timely

No. 81-228-ADX

UNITED STATES, et al.

V.

GRACE BRETHERN CHURCH, et al.

Federal/Civil

Timely

Postpone in all three cases. Call for record to ensure pleadings  
get here. jsw (This case is not sufficiently related to No 80-767, US v. Lee  
(to be argued 11/2/81) for a hold on that case.)



No. 81-455-ADX

GRACE BRETHERN CHURCH, et al.

V.

UNITED STATES, et al.

Federal/Civil

Timely

SUMMARY: Church groups challenged the constitutionality of the Federal Unemployment Tax Act (FUTA) and its California state counterpart. The DC found the laws violate the Establishment Clause but are in accord with the Free Exercise Clause. In No. 81-31, the State of California appeals the DC's finding of an Establishment violation. The SG argues a similar appeal in No. 81-228, but he also asserts the DC lacked jurisdiction under the Tax Injunction Act (TIA). In No. 81-455, the churches contend the FUTA contravenes the Free Exercise Clause.

FACTS AND PROCEEDINGS BELOW: The FUTA, 26 U.S.C. §§3301-11, is a tax levied on employers and calculated as a percentage of wages paid. Employers are given a credit against this federal liability for up to 90% of contributions to federally approved state unemployment compensation funds. All states have enacted such parallel coverage laws.

The FUTA excludes from coverage services performed "in the employ of (A) a church or convention or association of churches, or (B) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention



or association of churches . . . ." 26 U.S.C. 3309(b)(1). Cal.'s law contains a similar exclusion.

The Lutheran and the Grace Brethern Churches operate private elementary and secondary schools. They sought injunctive and declaratory relief against collection of the federal and state taxes levied on wages paid in these schools. The suits were consolidated and the DC determined the TIA, 28 U.S.C. §1341, (DC shall not enjoin state tax if plain, speedy, and efficient remedy available in state court) did not remove its jurisdiction. Under Cal. law, said the DC, the availability of tax injunctive relief was, "at best, uncertain" in Cal. courts. In a footnote, the DC conceded there was "some" Cal. authority making injunctions available when constitutional challenges were mounted to state tax laws. The DC said, however, this authority was "neither compelling nor recent." S.G.'s Jur. Stmt. at 18a n.12. Alternative state remedies--which might require that the churches pay the tax and later sue for refund--were inadequate, decided the D.C., because the churches claimed the very process of determining whether the tax was due violated the First Amendment.

On the merits, the court held private schools that were either part of the "corporate structure of a church" (Category I schools) or "directly affiliated with a church" (Category II schools) were excluded from the FUTA under §3309(b)(1)'s language. This decided the Lutheran suit in the church's favor. The Grace Brethren suit, however, required the

*Tax  
inj.  
Act*



DC to consider religiously oriented schools not controlled by a church (Category III schools), which the DC decided were included within the FUTA. The court ruled this inclusion caused excessive church/state entanglement. It consequently held 26 U.S.C. §3309(b)(1) and its Cal. state counterpart to be unconstitutional as applied under the Establishment Clause.

After the DC had rendered its opinions, this Court decided St. Martin Evangelical Lutheran Church v. South Dakota, 101 S.Ct. 2142 (1981). This case held schools do not have a legal identity separate from a FUTA-exempt church--a holding that is similar to the DC's conclusion regarding Category I schools. St. Martin did not decide the issue of coverage for Category II and III schools. See id. at 2148 n.12. Neither did it reach First Amendment issues. Id. at 2151.

No. 81-31

CALIFORNIA'S CONTENTIONS: The unemployment compensation process occurs in two steps: determination whether an employer must pay the tax and determination whether a discharged employee is eligible for benefits. We appeal only from the portion of the judgment finding entanglement in the benefit eligibility process regarding employees of religious schools. Any entanglement that might occur in this process would be de minimis, as the issue would be whether an employee knowingly violated an established work rule. Although employers can establish work rules incorporating religious belief, the question to be answered in the state's benefit



eligibility inquiry would not be whether the work rule conformed to church doctrine. The state could be interested only in the existence of an individual's religious belief or doctrinal understanding, not in the truth of that belief or understanding. Consequently the state's inquiry would be purely secular and inoffensive to the Establishment Clause.

CHURCHES' CONTENTIONS: California underestimates the complexity of religious faith. For instance, religious ideals like "fervor" cannot be defined precisely. Benefit inquiries would also embroil hearing examiners in credibility issues resolvable only by religious examination. The DC's sound decision requires no further review.

No. 81-228

SG'S CONTENTIONS: (1) The DC lacked jurisdiction because of the TIA. The FUTA sets no federal tax on non-profit institutions but requires that participating states levy a state tax. The TIA bars the DC's declaration and injunction against such a state tax so long as the churches have an adequate remedy in state courts--as they do here. Nonetheless, the Secretary of the Treasury needs a definitive interpretation of §3309(b) and urges this Court to reach the merits. Cf. McLucas v. DeChamplain, 421 U.S. 21, 31-32 (1975). (2) The DC erred in fearing that unconstitutional entanglement would result from worker benefits determinations. Federal and state unemployment compensation laws in no way limit an employer's ability to establish whatever work rules it wishes and to

*because  
of  
FUTA*

*There  
is  
adequate  
state  
remedy?*

*No  
entanglement*



require adherence to them as a condition of employment. Religious colleges have been covered by similar laws since 1970, and the churches here have not found a single actual claim for unemployment benefits that required inquiry into religious doctrines.

CHURCHES' CONTENTIONS: (1) The DC had jurisdiction under the TIA because the state remedy is inadequate. Cal. requires exhaustion of administrative remedies, but its administrative agencies cannot, under the Cal. constitution, declare statutes unconstitutional. The administrative review itself would have been religiously entangling and unduly expensive. The churches here protest an unconstitutional taxing procedure, and denial of federal relief will result in denial of their federal rights. (2) The churches reiterate their arguments on the merits made in No. 81-31.

No. 81-455

CHURCHES' CONTENTIONS: The DC incorrectly said the tax on the ministry was indirect and insufficiently burdensome to violate the Free Exercise Clause.

SG'S CONTENTIONS: Because the churches do not seek to expand upon the relief awarded in the judgment below, it is unnecessary for them to file a cross-appeal to preserve their argument that FUTA violates the Free Exercise Clause. See Rule 10.5. In any event, the Free Exercise claims are without merit.

T



DISCUSSION: The question of FUTA's constitutionality under the Religion Clauses is an important issue left unresolved in St. Martin. If the route <sup>is</sup> clear to the merits, notes of probable jurisdiction would be in order in Nos. 31 and 228. I agree with the SG that the churches' appeal in No. 455 is unnecessary as it seeks no relief beyond that granted below. See United States v. Raines, 362 U.S. 17, 27 n.7 (1960).

The DC's treatment of the TIA seems erroneous.<sup>1</sup> Although this probably removes the DC's power to adjudicate the propriety of the state tax, it does not necessarily impair its ability to invalidate §3309(b)(1) of the federal tax statute;

<sup>1</sup>The DC reasoned state court relief was not adequate to protect federal constitutional rights because state law barred all injunctive relief in tax suits. Even making the implausible assumption that this is an accurate reading of state law, but see DC opn at n.12 (cited at page 3 of this memo), state courts must enforce federal rights. A state law limitation on a proper remedy for a federal constitutional injury would be void under the Supremacy Clause because state court must be capable of granting adequate constitutional relief. State courts consequently do indeed afford the taxpayer a "full hearing and judicial determination," Rosewell v. LaSalle Nat'l Bank, 101 S.Ct. 1221, 1230 (1981), demonstrating that the TIA bars federal injunctive intervention in this suit.

As the SG points out, S.G. Jur. Stmt. at 7 n.7, the fact the DC also was asked to provide declaratory relief adds little to its power. Although this Court apparently has not held the TIA proscribes federal tax declaratory judgments, comments in this area reveal the TIA's policy that "federal courts stay completely out of the field of anticipatory adjudication of tax cases . . . ." Perez v. Ledesma, 401 U.S. 82, 127 (1971) (opinion of JUSTICE BRENNAN) (emphasis added). See Rosewell, 101 S.Ct. at 1233-34, 1235 (1981); Great Lakes Dredge & Dock Co., 319 U.S. 293, 301 (1943). Since satisfactory state relief is available, the TIA bars the DC action here.

*State  
relief  
adequate*



it appears (although the papers before the Court do not include copies of their complaints) that the churches sought separate declaratory relief as to the validity of this federal provision. Neither does the federal equivalent, 26 U.S.C. §7241(a), of the TIA obviously remove this action from the DC's jurisdiction. The DC analyzed this question, see S.G. Jur. Stmt. at 78a-86a, in a manner sufficiently sound as to render summary reversal definitely inappropriate.

This suggests the Court may have a clear shot at the First Amendment merits of §3309(b)(1) in No. 228. Because the potential jurisdictional shoals now are not adequately briefed by any of the parties, however, I recommend the Court's action be limited to postponing a note. I further recommend the Court take this action in all three appeals, to ensure all parties understand they are to brief all of their arguments. Unnecessary appeals can be dealt with in the full opinion.

RECOMMENDATION: I recommend postpones in all three appeals. The Court should also call for the record so the pleadings can be examined.

There is a response.

10/10/81      Wiley      Opinions in Jur Stmt







*Postpone*

jsw 10/10/81

PRELIMINARY MEMORANDUM

October 30, 1981 Conference  
List 1, Sheet 1  
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GRACE BRETHERN CHURCH, et al.

Appeal from DC  
(CDCal Pfaelzer)

V.

UNITED STATES, et al.

Federal/Civil

Timely

Please see memo in No. 81-31-ADX.

There is a response.

10/10/81

Wiley

No Opinions in Cross Jur Stmt



jsw 03/30/82

BOBTAIL BENCH MEMORANDUM FOR JUSTICE POWELL

Nos. 81-31, 81-228, & 81-455:

California v. Grace Brethern Church

From John

March 30, 1982

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Questions Presented

1. Does the Court have 28 U.S.C. §1252 jurisdiction to hear this direct appeal?
2. Did the DC incorrectly interpret the Tax Injunction Act (TIA) as permitting relief against the state?



3. If so, can this Court nevertheless reach the merits of the first amendment issue?

4. If so, does the Federal Unemployment Tax Act unconstitutionally establish or impair the free exercise of religion?

#### Discussion

As I mentioned to you earlier, this memo concerns only the jurisdictional issues in this case and omits discussion of the first amendment merits. I organize the jurisdictional discussion around three separate questions.

##### 1. Section 1252 Jurisdiction

The District Court's order by <sup>ds</sup> terms declared invalid only the state, and not the federal, statute. See JS 89a ¶4. Therefore there is a question whether the Court properly has jurisdiction over this appeal, since §1252 permits direct appeals only when "an Act of Congress" has been declared unconstitutional. In my view, however, the SG is correct in arguing that the DC's judgment properly is interpreted as invalidating §3309 of the federal FUTA, based on the language in the DC's memos. See JS 21a, 86a & n.39. Consequently I believe the Court does have jurisdiction to hear this direct appeal.

##### 2. Tax Injunction Act

The TIA prohibits the federal injunction of state taxes if "plain, speedy, and efficient remedies" are available in state court. The DC here held that the TIA was not a bar because no such state remedy was available -- for two reasons. First, ac-



according to the DC, the California Constitution and California statutes bar state tax injunctions. Second, the legal remedies in state court were inadequate because the very process of paying the FUTA tax infringed the church schools' religious freedom.

On the first reason, the DC did observe that older California cases make exceptions to California's constitutional and statutory bar in cases of constitutional challenges. These cases make it appear that state injunctive relief is available. However, the DC rejected the authority of these state cases because they were "neither compelling nor recent." SG J.S. at 18a n.12. This reason alone is inadequate, it seems to me. The TIA is intended "to limit drastically federal district court jurisdiction to interfere with so important a local concern as the collection of taxes." Rosewell v. LaSalle Nat'l Bank, 450 U.S. 503, 522 (1981). I think the TIA demands more deference to state cases suggesting that state remedies are adequate. But I am willing to concede that the availability of state equitable relief is doubtful as a matter of state law, because I think the TIA remains a barrier to the DC's relief against the state in any event.

Assuming that state injunctive relief is not available, I think California does offer adequate legal relief against unconstitutional state taxes. The SG describes the California procedure in footnote 10 of his brief. The California process requires the taxpayer to pay the tax and then sue for a refund. The SG adds the good point that the California process is essentially similar to the South Dakota procedure that brought St.



Martins Evangelical Lutheran Church v. South Dakota to the Court last Term. (The pay-and-sue-for-refund technique also was used in federal court in United States v. Lee (free exercise of Amish religion not impaired by FUTA and FICA) (decided 2/23/82)). According to the TIA's legislative history (the very brief Senate report is appended to this memo), it appears that such procedures are precisely the type of adequate state remedies envisioned by the TIA. The presence of such an adequate state legal remedy means the TIA blocks the DC use of injunctive relief against California.

The religious schools claim that legal relief is inadequate. They demand an injunction. Their story is that the very payment of the tax offends their first amendment religious freedom.

I do not think the schools have made their case on this point. Their entanglement claims (on the merits of the first amendment point) focus on the state/church interaction occurring when a church school fires an employee. This process is distinct from the schools' initial payment of the FUTA tax. I do not see how this initial payment creates an irreparable first amendment injury. This is especially true in light of the heightened federal deference owed to the state taxation mechanism after the Court's opinion in Fair Assessment in Real Estate Ass'n v. McNary (decided 12/1/81). yes

I therefore conclude that the TIA indeed should have barred the DC's award on injunctive relief against the California



taxing authorities. This raises the issue of whether the TIA also bars the DC's award of declaratory relief. The Court has never squarely held that the TIA encompasses declaratory relief. But its decisions -- most recently in Fair Assessment -- certainly have suggested as much. See Fair Assessment in Real Estate Ass'n v. McNary, No. 80-427, slip op. at 10-11. These suggestions can be criticized because declaratory relief does not cause one evil that the TIA aimed to eliminate: physical interference with vital state revenue requirements. But Fair Assessment suggests that this objection conceives the purpose of the TIA too narrowly. Indeed, Fair Assessment avoided a holding on the basis of the TIA by relying on parallel concerns of comity, which sufficed to keep the federal courts out of interfering with state tax matters entirely apart from the TIA statutory question. Under this logic, I think there is ample reason to believe that the DC in this case also lacked authority to subject California's tax mechanism to declaratory attack.

In sum, the TIA barred the DC's award of both injunctive and declaratory relief against the state of California.

3. Can the Court reach the merits in spite of the TIA?

I don't think so. But my reasoning is complicated due to the intricate nature of the FUTA. Let me begin with some background.

The FUTA is a federal program that enlists the aid of the states. FUTA imposes a wage tax on all employers, subject to certain exceptions. One exception is charitable organizations



qualifying for §501(c)(3) treatment. See FUTA, 26 U.S.C. §3306(c)(8). As a result of this exception, none of the church schools in this suit pay or are threatened with any federal FUTA tax.

The FUTA enlists the aid of the states by making it attractive for them to set up parallel state unemployment insurance programs. Employers are permitted to deduct from their federal FUTA 90% of sums paid to qualifying state programs. Moreover, the federal government offers grants to states to pay for their state FUTA administration costs. These incentives are sufficiently attractive to have induced all the states to establish state-level unemployment insurance programs designed to meet federal standards. See 26 U.S.C. §§3304(a)(6) & 3309(b).

Oddly, one federal requirement for the states' programs is that the states' programs must cover employers who escape the direct coverage of the federal FUTA tax. For instance, the church schools in this suit are not subject to the federal FUTA tax, as noted earlier on this page. But they are subject to the state programs, if the state programs are adapted (as all in fact are) to meet the minimum federal requirements.

This situation initially led to a standing question in the DC. The government charged that the church schools had no standing to attack the federal program because the schools paid only state FUTA taxes. The DC rejected this argument, properly I think, on the basis that the federal government was causing California to levy its state tax as it does. See JS 5a-7a; 77a-78a.



For standing purposes, then, the DC lumped together the state and federal FUTA programs as part of one causal chain.

On page 2 of this memo, I have concluded that the DC's judgment should be read to invalidate portions of the federal FUTA statute. On pages 2-5 of this memo, I have concluded that the TIA should have barred the DC's relief against the California FUTA tax program. The question now is whether the DC relief against the federal government provides a sufficiently independent basis for this Court to rule on the merits of the first amendment FUTA challenge. Put otherwise, should the federal courts treat the federal and state tax programs as a single unit for purposes of standing analysis, but as two distinct bundles of statutes for purposes of a remedy analysis?

My reaction is that the characterization of the statutes for remedy purposes should parallel the characterization for standing purposes. That is, if the church schools are to gain standing by virtue of the fact that the federal and state programs are casually linked, then I think that the two programs must be viewed as similarly linked for purposes of judging whether the relief against the federal government is distinct from the relief against the state government. In my view, the DC's declaration that the federal program is unconstitutional cannot -- as a matter of causality -- be separated from the DC's attack on the state tax program. I consequently believe that the TIA bars the DC's entire remedy, and that none survives to provide a bridge to the merits.



\* \* \* \*

The SG offers an entirely different justification for reaching the first amendment merits. He does not attempt to argue that any portion of the DC's remedy survived the TIA. Rather, his view is that the Court should reach the constitutional merits notwithstanding the lack of DC jurisdiction "[i]n light of the public interest in, and the Secretary's need for, a definitive interpretation of 26 U.S.C. §3309(b)." SG brief at 21.

This position strikes me as remarkable. It is hard for me to believe that the SG believes the Court is entirely free to decide constitutional matters upon which a DC has ventured an opinion if this Court first determines that the DC lacked subject matter jurisdiction. For instance, suppose a DC found standing where no standing properly existed. Suppose further it then declared a statute unconstitutional on controversial grounds. Suppose finally that this Court confronts the standing issue and decides that the DC erred. Is the Court really entirely free to go on to agree the statute is invalid, even though no party to the litigation in fact had standing to bring the challenge in the first place?

I have considerable doubt as to the Court's power to deliver such a constitutional judgment. The cases on which the SG relies are plainly distinguishable in this regard. In your opinion in McLucas v. DeChamplain, 421 U.S. 21, 31-32 (1975), the jurisdictional issue was whether a federal DC or a federal three-judge court should have entertained the issue in the first in-



stance. A similar dispute about the propriety of a three-judge court was at issue in Weinberger v. Salfi, 422 U.S. 749, 763 n.8 (1975). In neither case was there a question (as there is in this case) whether the suit should have been in federal court at all. Despite the expansive language in McLucas stating "that this Court's jurisdiction under §1252 in no way depends on whether the district court had jurisdiction," 421 U.S. at 31, I would not expand the holdings in these cases to an instance in which there is no basis for any federal jurisdiction.

I may be wrong about this Court's power to render constitutional pronouncements on matters that originally could not have been within the domain of the federal courts. If so, I nonetheless believe that the Court still must possess some discretionary prudential power to decide when it is appropriate to reach such issues. Although I am sure that the SG indeed would find it more convenient to have an immediate ruling on the constitutionality of FUTA's §3309, the need does not seem so compelling as to overcome the very sizable TIA jurisdictional defect in the case. As the St. Martin decision from last term illustrates, the FUTA issue is a much-litigated one. I doubt the SG will have long to wait for a definitive ruling. Therefore, at least as a matter of discretion, I urge you to decline the SG's invitation to review a constitutional holding that the federal courts of original jurisdiction lacked the power to deliver.

#### Conclusion



The Court has §1252 jurisdiction to hear this direct appeal. But the DC lacked jurisdiction under the TIA to award the relief that it did. Consequently the Court should reverse on this basis. The Court should not engage in further constitutional discussion because it is unnecessary to the resolution of this case.







Mr Shapiro (SG)

No statutory issue before this court - only the "entanglement" issue, & the presumption <sup>issue</sup> ~~was~~ argued by cross-appellant.

Free Exercise claim was rejected by DC, & is subject of cross-appeal

This Ct's power does not depend on DC's juris. Under § 1252 our Ct has power on direct appeal. Salpi

WTR asked if Tax Mgt Act applies to our Ct? Shapiro said "No". She agrees that Act have an injunction & decl. judg by DC - but thinks the Act speaks only to a DC. (But WJB & BRU asked how we can decide case & ~~remained to~~ remanded to DC if it has no juris.)

On Merits, relies on recent decision in Lee.



Vesely (Deputy AG Calif) (able lawyer)

Tax Imp. Act is not satisfied  
by Calif law as it is not adequate  
Thus T9A simply is not applicable.

Interest of State is DC's holding  
that State FUTA is invalid ("Entanglement")  
Fed Govt is essential to this case

These are "independent" religiously  
oriented schools - unlike "religious"  
or "religious controlled" schools.

Courts should "stay out" of evaluating  
each school.



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Courts should "stay out" of evaluating  
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81-31 Grace Brethren  
Reverse

1. § 1252 juris - altho.  
only state statute was declared  
invalid, effect was also to  
invalidate Fed. Act (FUTA).

Thus, ~~we~~<sup>we</sup> have juris of  
this appeal.

2. Tax Inj. Act barred

~~the~~ both ~~to~~ the DC's  
injunction + declaratory  
relief.

In Fair Assessment v.  
McNary (St Louis), we  
suggested Act ~~to~~ applied  
to declaratory relief.

Calif state adm.  
remedies are adequate  
- even tho no injunctive power.  
They are full adm. relief.

3. DC therefore had no  
juris. Don't reach Const.  
issue.



The Chief Justice

*8 Decm. 8. 1*  
*Vacate & Dismiss*

*No bar for Fed injunction.  
We have juror to determine  
whether DC had juror.*

*Tax Inv. Act barred juror*

*This requires*

Justice Brennan

*Vacate & Dismiss*

Justice White

*Vacate & Dismiss*



Justice Marshall

*Vacate & Deny*

Justice Blackmun

*Vacate & Deny*

Justice Powell

*Vacate & Deny (if this is right  
"bottom line")*

*See my notes*



Justice Rehnquist

*Vacate & Deny*

Justice Stevens

*Rev.  
Case should be reversed but on  
a dif. analysis.*

*Once Fed Govt became a party,  
the state remedy was inadequate  
Would ~~reach~~ reach merits, & Rev.*

Justice O'Connor

*Vacate & Deny*



*to hear this appeal*  
*We have given - 16-18*

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens

*LFW*

From: Justice O'Connor

Circulated: JUN 1 1982

Re-circulated: \_\_\_\_\_

ATEX Draft

*State remedy is plain,  
adequate & speedy. Thus  
DC had no jurisdiction to  
divorce the state from pursuing  
its  
own procedure.*

Nos. 81-31, 81-228 & 81-455 California v. Grace Brethren Church

JUSTICE O'CONNOR delivered the opinion of the Court.

*For*

The principal question presented by the parties to this appeal is whether certain state and federal statutes violate the Establishment and Free Exercise Clauses of the First Amendment<sup>1</sup> by requiring religious schools unaffiliated with any church to pay unemployment insurance taxes. We do not reach this substantive question, however, holding instead that the Tax Injunction Act, 28 U.S.C. §1341, deprived the District Court of jurisdiction to hear these challenges. Accordingly, we vacate the judgment below and dismiss the appeal.

I

Last Term, in St. Martin Evangelical Lutheran Church v. South Dakota, 451 U.S. 772 (1981), this Court considered statutory and constitutional challenges to provisions of the Federal Unemployment Tax Act (FUTA), 26 U.S.C. §§3301-

<sup>1</sup>The First Amendment provides in pertinent part that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The Free Exercise and Establishment Clauses apply to the States through the Due Process Clause of the Fourteenth Amendment. See Cantwell v. Connecticut, 310 U.S. 296, 303 (1940); Everson v. Board of Education, 330 U.S. 1, 15 (1947).



3311 (1976 ed. & Supp. IV). Because the present claims involve the same provisions that we interpreted in St. Martin, we recount only briefly the substance and legislative history of the relevant statutes before turning to the facts in the present case.

A

In FUTA,<sup>2</sup> Congress has authorized a cooperative federal-state scheme to provide benefits to unemployed workers. The Act requires employers to pay an excise tax on wages paid to employees in "covered" employment,<sup>3</sup> but entitles them to a credit of up to 90% of the federal tax for contributions they have paid into federally approved state unemployment compensation programs.<sup>4</sup> One of the requirements for federal approval is that state programs "cover"

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<sup>2</sup>FUTA was enacted originally as Title IX of the Social Security Act of 1935, ch. 531, 49 Stat. 639 (1935).

<sup>3</sup>See 26 U.S.C. §3301.

<sup>4</sup>See 26 U.S.C. §3302. Each state program receives annual approval after the Secretary of Labor finds that it complies with federal statutory standards. See 26 U.S.C. §§3304(a), (c). The federal standards for the state programs are contained in §§3304 and 3309. If a state plan complies with federal standards, the State is authorized to receive a federal grant to administer the state plan. See 29 U.S.C. §49d(b); 42 U.S.C. §501.



certain broad categories of employment.

Until 1970, §3306(c)(8) of FUTA excluded from the definition of covered employment "service performed in the employ of a religious, charitable, educational, or other [tax exempt] organization." Pub. L. No. 86-778, §533, 74 Stat. 984. As a consequence, such organizations were not required to pay either federal excise taxes or state unemployment compensation taxes. In 1970, Congress amended FUTA to require state plans to cover employees of nonprofit organizations, state hospitals, and state institutions of higher education, thus eliminating the broad exemption available to nonprofit organizations.<sup>5</sup> See §3309(a)(1). At the same time, Congress enacted §3309(b) to exempt from

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<sup>5</sup>See Employment Security Amendments of 1970, Pub. L. No. 91-373, §104(b)(1), 84 Stat. 697. Under §§3309(a)(2) and 3304(a)(6)(B), such nonprofit organizations were given the option of either making the same contribution to the state unemployment compensation fund required of other employers, or reimbursing the fund for unemployment compensation payments actually made to the nonprofit organizations' former employees.

Although nonprofit organizations were covered by federally approved state unemployment compensation laws, they continued to be exempt from the federal excise tax on wages because the definition of "employment" in §3306(c)(8), excluding services performed for such organizations, remained unchanged.



mandatory state coverage a narrow class of religious and educational employees, i.e., those serving

"(1) in the employ of (A) a church or convention or association of churches, or (B) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

"(2) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

"(3) in the employ of a school which is not an institution of higher education... ." 84 Stat. 698.

In 1976, Congress again amended FUTA, this time eliminating the substance of §3309(b)(3), thereby removing the blanket exemption for school employees. See Unemployment Compensation Amendments of 1976, Pub. L. No. 94-566, §115(b)(1), 90 Stat. 2670.<sup>6</sup> In order to maintain compliance with FUTA, the States promptly amended their corresponding state programs. See, e.g., Cal. Un. Ins. Code §634.5(a), (b) (West Supp. 1981).

B

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<sup>6</sup>In its place, Congress substituted an unrelated provision.



The plaintiffs in this case, a number of California churches and religious schools, sought to enjoin the Secretary of Labor from conditioning his approval of the California unemployment insurance program on its coverage of the plaintiffs' employees, and to enjoin the State from collecting both tax information and the state tax.<sup>7</sup> For the purposes of evaluating their statutory and constitutional claims, the District Court divided the plaintiffs into three classes of employers: Category I represents those schools that are part of the corporate structure of a church or association of churches; Category II includes schools that are separate corporations formed by a church or association of churches; and Category III includes schools that are "operated primarily for religious purposes, but which [are] not operated, supervised, controlled or principally supported by a church or convention or association of churches, i.e., an independent, non-

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<sup>7</sup>This litigation grew out of two suits, one filed in the District Court by Grace Brethren Church, et al. (Case No. CV 79-93 MRP), and the other filed in state court by the Lutheran Church Missouri Synod. The Secretary of Labor successfully removed the Lutheran Church case (Case No. CV 79-162 MRP) to the District Court, which consolidated the cases for trial.



church affiliated religious school." Supplemental Opinion, reprinted in Jurisdictional Statement of the State of California, et al., Appendix (J.S. App.) at 71.<sup>8</sup>

On September 21, 1979, the District Court granted a preliminary injunction against the State restraining it from collecting the state unemployment tax from the Category I plaintiffs. See J.S. App. 51. The basis for the court's order was its conclusion that the plaintiffs were exempt from mandatory state coverage under §3309(b)(1), and alternatively, that if they were not exempt under the terms of FUTA, collection of the tax from the plaintiffs would involve excessive governmental entanglement with religion, in violation of the Establishment Clause of the First Amendment. See J.S. App. 58-65.

In the same opinion, the District Court rejected the Federal Government's argument that, because the state remedy was "plain, speedy and efficient," the Tax Injunction

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<sup>8</sup>Category I and II schools comprise schools from the Lutheran Church case, see Order (filed April 3, 1981), reprinted in J.S. App. 49, as well as some of the schools from the Grace Brethren case. See Order (filed April 3, 1981), reprinted in J.S. App. 46. Category III schools include only schools from the Grace Brethren case. See ibid.



Act, 28 U.S.C. §1341,<sup>9</sup> barred the court from granting injunctive relief. Considering first the availability of injunctive relief from the state courts, the court concluded that state statutory and constitutional provisions<sup>10</sup> made such relief "at best, uncertain." J.S.

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<sup>9</sup>The 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."

<sup>10</sup>Cal. Un. Ins. Code §1851 (West 1972) provides:

"No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding, in any court against this State or against any officer thereof to prevent or enjoin the collection of any contribution sought to be collected under this division."

Cal. Const., Art. XIII, §32 (West Supp. 1981) provides:

"No legal or equitable process shall issue in any proceeding in any court against this State or any officer thereof to prevent or enjoin the collection of any tax. After payment of a tax claimed to be illegal, an action may be maintained to recover the tax paid, with interest, in such manner as may be provided by the Legislature."

Despite the apparently unambiguous language of these  
Footnote continued on next page.



App. 66. The court then concluded that a state suit for a

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provisions, the District Court considered the availability of injunctive relief only "uncertain" because of state decisions indicating that injunctive relief may be available when the plaintiff challenges the state tax law as being unconstitutional. See Las Animas & San Joaquin Land Co. v. Preciado, 167 Cal. 580, 587 (1914) (injunction available to restrain a school district from assessing property taxes on land over which it has no authority); Bueneman v. City of Santa Barbara, 8 Cal. 2d 405, 407 (1937) (statutory provision precluding courts from enjoining execution of public laws for public benefit does not apply to claims that a taxing statute is unconstitutional).

More recent decisions, however, have held injunctive relief to be precluded. See Modern Barber Colleges, Inc. v. California Employment Stabilization Commission, 31 Cal. 2d 720, 723 (1948) (holding that a provision in the Unemployment Insurance Act, similar to §1851, prohibited injunctive relief, leaving the taxpayer only with the option to pay the tax and seek a refund); Aronoff v. Franchise Tax Board, 60 Cal. 2d 177, 180 (1963) (holding Cal. Const. Art. XIII, §15 and Cal. Rev. & Tax Code §19081 preclude issuance of an injunction to prevent collection of additional income taxes). Relying on Aronoff, a district court of appeal held that Cal. Const. Art. XIII, §32 (which, in 1974, became the successor to §15) and the corresponding statutory provision, Cal. Un. Ins. Code §1851, prohibit the courts from enjoining the collection of unemployment insurance taxes. Lorco Properties, Inc. v. Department of Benefit Payments, 57 Cal. App. 3d 809, 815 (1976). Recently, in Pacific Gas & Electric Co. v. State Board of Equalization, 27 Cal. 3d 277, 279 (1980), the California Supreme Court held that under Cal. Const. Art. XIII, §32 a taxpayer was barred from seeking relief compelling the state tax board to adjust the taxpayer's real property assessments. The court expressly held that there were no equitable exceptions to this rule, *id.*, at 282, and reaffirmed the importance of the state policy to permit the uninterrupted collection of taxes. Cf. Pacific

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refund was an inadequate remedy because the plaintiffs claimed not only that their property had been taken unlawfully, but that the "very process of determining whether any tax is due at all results in a violation of their First Amendment rights." J.S. App. 67. Because this First Amendment injury was "irreparable" once the taxes had been collected, only an injunction against collection of the tax could remedy the plaintiffs' claims. Accordingly, because there existed no "plain, speedy and efficient" remedy in the state courts, the District Court concluded that it had jurisdiction to grant injunctive relief.

In a Supplemental Opinion filed June 2, 1980, the court clarified its earlier opinion, stating expressly that the preliminary injunction covered only Category I plaintiffs. See J.S. App. 71. For the same reasons that it had grant-

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Motor Transport Co. v. State Board of Equalization, 28 Cal. App. 3d 230, 236 (1972) (noted without approval in Pacific Gas & Electric Co. v. State Board of Equalization, *supra*, and holding that a taxpayer could seek declaratory relief to challenge the validity of a tax regulation, but that such relief could not "'prevent or enjoin' or otherwise hamper present or future tax assessment or collection effort").



ed the initial preliminary injunction, however, the court extended the preliminary injunction to Category II plaintiffs. The court continued to deny relief to the Category III plaintiffs after concluding that they were not covered by the statutory exemptions in §3309(b) and that the risk of excessive governmental entanglement with religion was too small to violate the Establishment Clause. J.S. App. 77-79.<sup>11</sup>

Finally, on April 3, 1981, the court filed a Second Supplemental Opinion ruling on all of the plaintiffs' motions for permanent injunctions enjoining the State from collecting unemployment compensation taxes and the Federal Government from conditioning approval of the state unemployment compensation programs on their inclusion of the plaintiffs' employees. See J.S. App. 1. Considering first the statutory claims, the court concluded that Category I and Category II schools, but not Category III schools, are exempt from coverage under §3309(b) of FUTA

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<sup>11</sup>The court also rejected the arguments offered by the Category III plaintiffs that imposition of the tax violates the Free Exercise Clause, and that the unique statutory treatment of Category III plaintiffs violates equal protection. J.S. 78.



and the corresponding state provision, Cal. Un. Ins. Code §634.5(a). J.S. App. 3-15.<sup>12</sup> The court also found that the benefit entitlement decisions for employees of Category III schools risk excessive governmental entanglement with religion in violation of the Establishment Clause of the First Amendment. J.S. App. 25-33.<sup>13</sup> Consequently, the court held that "constitutional considerations bar application of the scheme" to the Category III plaintiffs. Id., at 33.

Based on these findings, the court issued orders perma-

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<sup>12</sup>The court held alternatively that if the Secretary of Labor's interpretation of §3309(b) were correct (i.e., Category I and II schools were not exempt from coverage), then that provision violated the First Amendment because it caused excessive governmental entanglement with religion by requiring "[i]ntrusive monitoring of the activities of employees of religious schools in order to determine whether or not those employees are exempt from unemployment insurance ... taxes" and by requiring "[i]nvolvement of state officials in the resolution of questions of religious doctrine in the course of determining the benefit eligibility of discharged employees of religious schools." Order (filed April 3, 1982), reprinted in J.S. App. 45, 46; Order (filed April 3, 1982), reprinted in J.S. App. 49, 50.

<sup>13</sup>The court again rejected the plaintiffs' argument that statutory coverage of Category III schools violates the Free Exercise Clause of the First Amendment, J.S. App. 16-25, and found it unnecessary to reach the Category III plaintiffs' equal protection claim. J.S. App. 35.



nently enjoining the federal defendants from requiring state unemployment insurance programs to cover Category I and Category II schools as a precondition for federal approval of the state programs, J.S. App. 47, 51, and permanently enjoining the state defendants from "collecting, or attempting to collect, unemployment compensation ... taxes" from the Category I, II, or III schools. J.S. App. 47, 50. The court did not issue an injunction against the federal defendants as to Category III schools because it

"has no information indicating what response, if any, the Secretary will make to the Court's conclusion that the state defendants may not constitutionally impose the state unemployment compensation tax scheme on the Category 3 employees of non-church affiliated schools. ... If the Secretary, in response to failure by the state defendants to collect unemployment compensation taxes on behalf of Category 3 employees, institutes decertification proceedings against the State of California, the parties may apply to this Court for further relief." Second Supplemental Opinion reprinted in J.S. App. 44 n. 39.

Following issuance of the court's injunction, this Court decided St. Martin Evangelical Lutheran Church v. South Dakota, supra, holding that §3309(b)(1)(A) exempts Category I schools from mandatory coverage under the state unemployment insurance programs. Although no Category II schools were before the Court in St. Martin, the Court



noted in a footnote that

"To establish exemption from FUTA, a separately incorporated church school (or other organization) must satisfy the requirements of 3309(b)(1)(B): (1) that the organization 'is operated primarily for religious purposes,' and (2) that it is 'operated, supervised, controlled, or principally supported by a church or convention or association of churches.'" 451 U.S., at 782 n.12.

As a result of this opinion, the Secretary of Labor reconsidered his position and decided that both Category I and Category II schools are statutorily exempt from mandatory coverage under FUTA. Consequently, the federal defendants, as well as the state defendants, have not appealed the District Court's injunction involving Category I and Category II schools, but only that part of the District Court order involving the Category III schools.<sup>14</sup>

<sup>14</sup>See J.S. 11-12 (No. 81-31); Jurisdictional Statement for the United States, et al., at 4 n.2, 6 n.5 (No. 81-228). The Category III schools are parties only in the Grace Brethren case, the suit originally filed in federal court. See n. 7 *supra*.

The Grace Brethren appellees filed a cross appeal (No. 81-455) claiming that the District Court erred in holding that FUTA and the corresponding California statutory provisions do not violate the Free Exercise Clause of the First Amendment. The cross appeal, however, is unnecessary to preserve this argument since under this Court's Rule 10.5 "an appellee, without filing a cross-appeal, Footnote continued on next page.



## II

An initial matter requiring our attention is whether this Court has jurisdiction to hear these appeals.<sup>15</sup> Congress has provided that

"Any party may appeal to the Supreme Court from an interlocutory or final judgment, decree or order of any court of the United States ... holding an Act of Congress unconstitutional in any civil action, suit, or proceeding to which the United States or any of its agencies, or any officer or employee thereof, as such officer or employee, is a party." 28 U.S.C. §1252.

The only possible doubt regarding our appellate jurisdiction under this provision is the requirement that the District Court hold "an Act of Congress unconstitutional."

In McLucas v. DeChamplain, 421 U.S. 21 (1975), we stated that §1252 was an unambiguous exception to the policy of

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[may] defend a judgment on any ground that the law and record permit and that would not expand the relief he has been granted."

The plaintiffs in the Lutheran Church case have filed an brief in support of the judgment below. Because, however, neither the State nor the Federal Government appealed from that part of the judgment involving the Lutheran Church plaintiffs, we do not address their claims.

<sup>15</sup>In our order setting these cases for oral argument, we postponed the question of jurisdiction until consideration of the merits. See 454 U.S. \_\_\_\_ (1981).



minimizing the mandatory docket of this Court. Indeed, the "language of the statute sufficiently demonstrates its purpose: to afford immediate review in this Court in civil actions to which the United States or its officers are parties and thus will be bound by a holding of unconstitutionality." Id., at 31. Moreover, this Court has appellate jurisdiction under §1252 "when the ruling of unconstitutionality is made in the application of the statute to a particular circumstance, ... rather than upon the challenged statute as a whole." Fleming v. Rhodes, 331 U.S. 100, 102-103 (1947) (discussing the predecessor to §1252, Act of Aug. 24, 1937, 50 Stat. 751). See United States v. Christian Echoes National Ministry, Inc., 404 U.S. 561, 563 (1972) (per curiam); United States v. Darusmont, 449 U.S. 292, 293 (1981). Finally, §1252 provides jurisdiction even though the lower court did not expressly declare a federal statute unconstitutional, so long as a determination that a statutory provision was unconstitutional "was a necessary predicate to the relief" that the lower court granted. United States v. Clark, 445 U.S. 23, 26 n. 2 (1980).<sup>16</sup>

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Footnote(s) 16 will appear on following pages.



In the present case, the District Court did not expressly hold §3309(b) of FUTA unconstitutional as applied to the Category III appellees,<sup>17</sup> but the effect of its several opinions and orders was to make "the United States or its officers ... bound by a holding of unconstitutionality." McLucas v. DeChamplain, supra, at 31. For example, while discussing the Establishment Clause claim of the Category III schools, the District Court held:

"Since such entanglement [involving the resolution of questions of faith and doctrine by secular tribunals] is inevitable during the benefit eligibility determination process if religious schools are brought within the scope of the unemployment compensation tax scheme, constitutional considerations bar the application of the scheme to them." Second Supplemental Opinion, reprinted in J.S. App. 33 (emphasis added).

Examination of other portions of the court's opinion makes clear that the court's use of the word "scheme" refers to

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<sup>16</sup>In Clark, the Court of Claims simply ordered relief based on its earlier decision in another case. In that earlier decision, the court had declared the challenged statutory provision unconstitutional. See Gentry v. United States, 212 Ct. Cl. 1, 546 F.2d 343 (1976), rehearing denied, 212 Ct. Cl. 27, 551 F.2d 852 (1977).

<sup>17</sup>See Order (filed April 3, 1981), reprinted in J.S. App. 45, 46 (holding Cal. Un. Ins. Code §634.5(a) unconstitutional, but making no direct reference to §3309(b)).



the combined federal and state provisions. See e.g., J.S. App. 26 (expressly referring to both federal and state statutory provisions in discussing the "unemployment compensation scheme"); J.S. App. 25 (referring to the intent of Congress and the California legislature in discussing the "unemployment tax scheme"). Moreover, the District Court's analysis leading to its order holding the California provision unconstitutional is based solely on its understanding of the operation and effect of FUTA, which of course prompted the passage of the corresponding state statute in the first place.<sup>18</sup> Cf. St. Martin Evangelical Lutheran Church v. South Dakota, supra, at 780 n. 9 (holding that the Court could review the South Dakota Supreme

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<sup>18</sup>The court's analysis of Category I and II schools also demonstrates that it believed FUTA, as applied to Category III schools, to be unconstitutional. In its discussion of Category I and II schools, the court held that if it were to follow the Secretary's interpretation of §3309, i.e., if no exemption existed, then FUTA would be unconstitutional as applied to those schools in part because of the excessive governmental entanglement in the benefit eligibility hearing. See n. 12 supra. Since the court also found an entanglement problem with respect to benefit eligibility hearings for Category III schools, and since there is no statutory exemption for those schools, it follows that the District Court must have believed that FUTA was unconstitutional as applied to the Category III plaintiffs.



Court's interpretation of its unemployment compensation tax statute because its "analysis depended entirely on its understanding of the meaning of FUTA and the First Amendment"). Finally, in its Second Supplemental Opinion, the court made clear that if the Secretary "institutes decertification proceedings against the State of California" for failing to collect unemployment compensation taxes on behalf of Category III employees, "the parties may apply to this Court for further relief," which can only mean injunctive relief against the Secretary. J.S. App. 44 n. 39. Under these circumstances, it is clear that the Secretary is "bound by a holding of unconstitutionality," and that this Court has jurisdiction under §1252 to hear this appeal.

### III

As we noted above, the District Court enjoined the state defendants from collecting state unemployment compensation taxes from the Category III schools.<sup>19</sup> In the course of

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<sup>19</sup>No federal tax is involved in this case, for the services performed for Category III schools are exempted by §3306(c)(8) from the definition of employment for which the federal excise tax must be paid.



granting this injunctive relief, the court expressly rejected the Federal Government's argument that the Tax Injunction Act, 28 U.S.C. §1341, deprived the court of jurisdiction. See J.S. App. 65-69. Consequently, before reaching the merits of the appellees' claim, we must decide whether the District Court correctly ruled that it had jurisdiction under the Tax Injunction Act.

A

The Tax Injunction Act states simply that the district courts "shall not enjoin ... the ... collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State." Accordingly, the District Court was without jurisdiction to issue its injunction in this case unless the appellees had no "plain, speedy and efficient remedy" in the state courts.

Last Term, in Rosewell v. LaSalle National Bank, 450 U.S. 503 (1981), this Court had occasion to consider the meaning of the "plain, speedy and efficient" exception in the Tax Injunction Act. After reviewing previous decisions<sup>20</sup> and the legislative history of the Act,<sup>21</sup> the

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<sup>20</sup>See Tully v. Griffin, Inc., 429 U.S. 68, 74 (1976);  
Footnote continued on next page.

Footnote(s) 21 will appear on following pages.



Court concluded that the "plain, speedy and efficient" exception requires the "state-court remedy [to meet] certain minimal procedural criteria." Id., at 512 (emphasis in original). In particular, a state court remedy is "plain, speedy and efficient" only if it "provides the taxpayer with a 'full hearing and judicial determination' at which she may raise any and all constitutional objections to the tax." Id., at 514 (quoting LaSalle National Bank v. County of Cook, 57 Ill. 2d 318, 324, 312 N.E. 2d 252, 255-256 (1974)).<sup>22</sup> Applying these considerations, the Rosewell Court held that an Illinois tax scheme, re-

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Hillsborough v. Cromwell, 326 U.S. 620, 625 (1946); Great Lakes Dredge & Dock Co. v. Huffman, 319 U.S. 293, 300-301 (1943).

<sup>21</sup>See 81 Cong. Rec. 1416 (1937) (remarks of Sen. Bone); S. Rep. No. 1035, 75th Cong., 1st Sess., 2 (1937). The Court also relied on the legislative history of the Johnson Act of 1934, 28 U.S.C. §1342 (prohibiting federal court interference with orders issued by state administrative agencies to public utilities), on which the Tax Injunction Act was modeled.

<sup>22</sup>See also 450 U.S., at 515 & n. 19; 517 (making clear that some opportunity to raise constitutional objections is the most important consideration); S. Rep. No. 1035, 75th Cong., 1st Sess., 2 (1937) (under the Tax Injunction Act, a "full hearing and judicial determination of the controversy is assured. An appeal to the Supreme Court of the United States is available as in other cases").



quiring the taxpayer to pay an allegedly unconstitutional tax<sup>23</sup> and seek a refund through state administrative and judicial procedures, was a "plain, speedy and efficient remedy" within the meaning of the Tax Injunction Act. In reaching this holding, the Court specifically relied on legislative history demonstrating congressional awareness that refunds were the exclusive remedy in many state tax systems.<sup>24</sup> The Court believed that its holding would advance the principal purpose of the Act: "to limit drastically federal district court jurisdiction to interfere with so important a local concern as the collection of taxes." 450 U.S., at 522.

The holding in Rosewell reflects not only Congress' express command in the Tax Injunction Act, but also the historical reluctance of the federal courts to interfere with the operation of state tax systems. As this Court stated

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<sup>23</sup>The plaintiff in Rosewell had claimed that requiring payment of the county property tax violated her equal protection and due process rights.

<sup>24</sup>See S. Rep. 1035, 75th Cong., 1st Sess., 1 (1937) (state "statutes generally provide that taxpayers may contest their taxes only in refund actions after payment under protest"); H.R. Rep. No. 1503, 75th Cong., 1st Sess., 2 (1937).



in Dows v. City of Chicago, 11 Wall. 108, 110 (1870), long before enactment of the Tax Injunction Act:

"It is upon taxation that the several States chiefly rely to obtain the means to carry on their respective governments, and it is of the utmost importance to all of them that the modes adopted to enforce the taxes levied should be interfered with as little as possible. Any delay in the proceedings of the officers, upon whom the duty is devolved of collecting the taxes, may derange the operations of government, and thereby cause serious detriment to the public.

"No court of equity will, therefore, allow its injunction to issue to restrain their action, except where it may be necessary to protect the rights of the citizen whose property is taxed, and he has no adequate remedy by the ordinary processes of the law. It must appear that the enforcement of the tax would lead to a multiplicity of suits, or produce irreparable injury, ... before the aid of a court of equity can be invoked."<sup>25</sup>

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<sup>25</sup>See also Boise Artesian Hot and Cold Water Co. v. Boise City, 213 U.S. 276, 282 (1909) (holding that "the illegality or unconstitutionality of a state or municipal tax or imposition is not of itself a ground for equitable relief in the courts of the United States. In such a case the aggrieved party is left to his remedy at law, when that remedy is as complete, practicable and efficient as the remedy in equity"); Singer Sewing Machine Co. v. Benedict, 229 U.S. 481, 488 (1913) (holding that federal courts will not enjoin the collection of unconstitutional state taxes where the taxpayer "ha[s] a plain, adequate and complete remedy" at law); Great Lakes Dredge & Dock Co. v. Huffman, 319 U.S. 293, 299 (1943) (holding that the same "considerations which have led federal courts of equity to refuse to enjoin the collection of state taxes, save in exceptional cases, require a like restraint in the

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Similarly, JUSTICE BRENNAN set forth the policies underlying federal judicial restraint in his concurring and dissenting opinion in Perez v. Ledesma, 401 U.S. 82, 128 n. 17 (1971), quoted by Court with approval earlier this Term :

"If federal declaratory relief were available to test state tax assessments, state tax administration might be thrown into disarray, and taxpayers might escape the ordinary procedural requirements imposed by state law. During the pendency of the federal suit the collection of revenue under the challenged law might be obstructed, with consequent damage to the State's budget, and perhaps a shift to the State of the risk of taxpayer insolvency. Moreover, federal constitutional issues are likely to turn on questions of state tax law, which, like issues of state regulatory law, are more properly heard in the state courts." Fair Assessment in Real Estate Ass'n., Inc. v. McNary, 445 U.S. 100, \_\_\_ n. 6 (1981).

With these cases and principles in mind, we turn to the

use of the declaratory judgment procedure"); Fair Assessment in Real Estate Ass'n, Inc. v. McNary, 454 U.S. 100, \_\_\_ (1981) (holding that comity bars a taxpayer's damages action brought in federal court under 42 U.S.C. §1983 to redress allegedly unconstitutional tax assessments, in part because the federal suit "would be no less disruptive of [the State's] tax system than would the historic equitable efforts to enjoin the collection of taxes, efforts which were early held barred by considerations of comity").



California provisions to determine whether there exists a "plain, speedy and efficient" state remedy for the appellees' claim.

B

There is no dispute that appellees in the present case can seek a refund of the California unemployment tax through state administrative and judicial procedures. Once a taxpayer has sought and been denied a refund from the appropriate state agency, see Cal. Un. Ins. Code §§1176-1185 (West 1972 & Supp. 1981),<sup>26</sup> he may file an action in Superior Court for a refund of the taxes paid, raising all arguments against the validity of the tax. Cal. Un. Ins. Code §1241 (West Supp. 1981). If the tax-

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<sup>26</sup>Apparently, California taxpayers cannot raise their constitutional challenges in the administrative tax refund proceeding unless an appellate court already has sustained such a challenge. See Cal. Const. Art. III, §3.5 (West Supp. 1981), which provides in part that

"An administrative agency ... has no power:

"(a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;

"(b) To declare a statute unconstitutional."



payer is unsuccessful at trial, he may appeal the decision to higher state courts and ultimately seek review in this Court. Nothing in this scheme prevents the taxpayer from "rais[ing] any and all constitutional objections to the tax" in the state courts. Rosewell v. LaSalle National Bank, supra, at 514.<sup>27</sup> Moreover, assuming that the appellees' constitutional claims are meritorious, an issue on which we express no view, there is every reason to believe that once a state appellate court has declared the tax unconstitutional the appropriate state agencies will re-

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<sup>27</sup>Significantly, the California administrative and judicial scheme for challenging a tax assessment is remarkably similar to the Illinois scheme that we upheld in Rosewell as "plain, speedy and efficient." See 450 U.S., at 508-509 & nn. 6-7. In fact, the California tax scheme is more favorable to the taxpayer than the Illinois scheme in that it requires the State to pay interest on improperly collected taxes. See Cal. Un. Ins. Code §1242 (West Supp. 1981)

This Court has not hesitated to declare a state refund provision inadequate to bar federal relief if the taxpayer's opportunity to raise his constitutional claims in the state proceedings is uncertain. In Hillsborough v. Cromwell, 326 U.S. 620 (1946), the taxpayer could not raise his constitutional challenge in the administrative proceedings, and appeal to the state courts was discretionary with those courts. Consequently, because "there [was] such uncertainty concerning the New Jersey remedy as to make it speculative," id., at 625, the Court held that the taxpayer could seek declaratory relief in federal court.



spect that declaration. See Pacific Motor Transport Co. v. State Bd. of Equalization, 28 Cal. App. 3d 230, 236 (1972) (noting that while the "relief afforded may not 'prevent or enjoin' or otherwise hamper present or future tax assessment or collection effort ... [i]t will be presumed that the governmental agency will respect a judicial declaration concerning a regulation's validity"). Accordingly, it appears that Rosewell is directly applicable to the present case, and that the District Court had no jurisdiction to hear the appellees' claims.

The appellees contend, however, that the California refund procedures do not constitute a "plain, speedy and efficient remedy" because their claims can be remedied only by injunctive relief, and that such relief is unavailable in California courts to restrain the collection of state taxes. See n. 10 supra. Injunctive relief is necessary, the appellees claim, because prior to state judicial review, the employer must meet certain recordkeeping, registration, and reporting requirements, see Cal. Un. Ins. Code §§1085, 1086, 1088, 1092, and potentially is subject to administrative benefit eligibility hearings<sup>28</sup> in violation of the appellees' First Amendment

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Footnote(s) 28 will appear on following pages.



rights. The appellees thus fear that their constitutional rights will be violated before they have an opportunity to challenge the constitutionality of the unemployment tax scheme in state court.

This argument is unpersuasive. First, nothing in the California scheme precludes the appellees from challenging the unemployment tax before a benefit eligibility hearing is held for one of their former employees. As soon as an employer makes its first payment to the state unemployment insurance fund, it may file for a refund and, after exhausting state administrative remedies, seek a judicial determination of the constitutionality of the tax.<sup>29</sup> If

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<sup>28</sup>Under Cal. Un. Ins. Code §1256, a former employee can collect unemployment benefits only if he has not been dismissed for "misconduct" or "left his most recent work voluntarily without good cause."

<sup>29</sup>Part of the appellees' argument for the necessity of injunctive relief rests on the premise that payments to the state fund are made only after a benefit eligibility hearing has been held. Under 26 U.S.C. §§3309(a)(2) and 3304(a)(6)(B), however, the States are required to give nonprofit organizations, including the appellees, the option either of making regular contributions to the state unemployment insurance fund or of reimbursing the fund for payments actually made to the employers' former employees. The nonprofit organizations are not required to choose the reimbursement method, however, and can make regular payments to the fund in advance of any employee being dis-

Footnote continued on next page.



the employer ultimately prevails on his constitutional argument, the state taxing authorities can be expected to respect that court's holding in future administrative proceedings. See Pacific Motor Transport Co. v. State Board of Equalization, supra, at 236. Thus, before any entanglement from the benefit eligibility hearings occurs, the appellees should be able to challenge the constitutionality of the state unemployment insurance taxes.

Second, while an employer may be subject to some recordkeeping and reporting requirements, or even a benefit eligibility hearing, pending the resolution of its constitutional claims in state court, it will be subject to the same burdens even if it seeks relief from the federal courts. Thus, whatever harm the appellees may suffer pending resolution of their constitutional claims, that harm is not reduced by seeking relief in federal court. Stated differently, there are no apparent advantages to federal court relief that make state court remedies less than "plain, speedy and efficient."<sup>30</sup>

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charged.

Footnote(s) 30 will appear on following pages.



Finally, we must keep in mind that at the time that it passed the Tax Injunction Act, Congress was well aware that refund procedures were the sole remedy in many States for unlawfully collected taxes. See S. Rep. No. 1035, 75th Cong., 1st Sess., 1 (1937); H.R. Rep. No. 1053, 75th Cong., 1st Sess., 2 (1937). Carving out a special exception for taxpayers raising First Amendment claims would undermine significantly Congress' primary purpose "to limit drastically federal district court jurisdiction to interfere with so important a local concern as the collection of taxes." Rosewell v. LaSalle National Bank, supra, at 522.<sup>31</sup> Because we do not believe that Congress intended federal injunctions to disrupt state tax administration when state refund procedures are available, we decline to

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<sup>30</sup>Our conclusion that the state court remedy is plain, speedy and efficient is reenforced by our observation that it took the appellees in this case over two years to obtain injunctive relief.

<sup>31</sup>In addition, there seems to be no principled basis for limiting the appellees' argument to First Amendment claims. Any employer required to pay state taxes in a manner allegedly violating the Equal Protection Clause, for example, might argue that the absence of state injunctive relief permitted the infliction of an irreparable injury that could be remedied only by a federal injunction.



find an exception in the Tax Injunction Act for the appellees' claims.<sup>32</sup> Accordingly, because the appellees could seek a refund of their state unemployment insurance taxes, and thereby obtain state judicial review of their constitutional claims, we hold that their remedy under state law was "plain, speedy and efficient" within the meaning of the Tax Injunction Act, and consequently, that the District Court had no jurisdiction to issue injunctive or declaratory relief.<sup>33</sup>

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<sup>32</sup>We also reject the appellees' argument to the extent that it assumes that the state courts will not protect their constitutional rights. As we stated in another context, "we are unwilling to assume that there now exists a general lack of appropriate sensitivity to constitutional rights in the trial and appellate courts of the several States. State courts, like federal courts, have a constitutional obligation to safeguard personal liberties and to uphold federal law." Stone v. Powell, 428 U.S. 465, 494 n. 35 (1976).

<sup>33</sup>The state defendants also argue that because the Federal Government is an indispensable party to this action, and could not be compelled to submit to state court jurisdiction, the state courts could not afford the appellees complete relief. Consequently, the state defendants reason, the Tax Injunction Act does not deprive the District Court of jurisdiction. See Brief for State of California, at 35. The error in this argument is its premise; as St. Martin Evangelical Lutheran Church v. South Dakota, *supra*, demonstrates, the Federal Government need not be a party in order for the appellees to litigate their statutory and constitutional claims.



## C

Despite the absence of jurisdiction in the District Court, the federal defendants urge us to consider the merits of the appellees' First Amendment claims because of the "public interest in, and the Secretary's need for, a definitive interpretation of 26 U.S.C. §3309(b)." Brief for the United States, at 21. The Government bases this argument on our decision in McLucas v. DeChamplain, 421 U.S. 21, 32 (1975), in which we held that "whether the District Court did or did not have jurisdiction to act, this case is properly here under §1252." See also Weinberger v. Salfi, 422 U.S. 749, 763 n. 8 (1975).

The Government's argument is unavailing, however, for in McLucas and Salfi, some federal trial court had jurisdiction,<sup>34</sup> whereas in the present case, no federal district court had jurisdiction. If this Court were nonetheless to reach the First Amendment issues presented in this appeal, the litigants would have sidestepped neatly Congress' in-

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<sup>34</sup>In both of those cases, the question was whether a single district judge or a three-judge district court had jurisdiction. In the present case, by contrast, the issue is whether the federal courts or the state courts have jurisdiction.



tent and our longstanding policy "to limit drastically" federal interference in the administration of state taxes when a "plain, speedy and efficient" state remedy is available.<sup>35</sup> Accordingly, we do not reach the appellees' First Amendment claims.

The judgment of the District Court is vacated, and the case remanded for further proceedings consistent with this opinion.

So ordered.

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<sup>35</sup>Similarly, the state defendants' reliance on Williams v. Zbaraz, 448 U.S. 358 (1980), is misplaced. In that case, the District Court had held unconstitutional a federal statute that the parties had not challenged. We held that because there was no case or controversy on that issue, the District Court had exceeded its jurisdiction for that issue. Id., at 367. Nevertheless, because of the holding of unconstitutionality we concluded that we had jurisdiction under §1252 to "review the 'whole case.'" Id., at 368. That review, however, was restricted to those issues over which the District Court had had jurisdiction, and we vacated that portion of the judgment holding the federal statute unconstitutional. Ibid.



June 2, 1982

81-31, 81-228, 81-455 California v. Grace Brethren

Dear Sandra:

Please join me.

Sincerely,

Justice O'Connor

lfp/ss

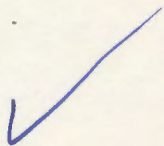
cc: The Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 2, 1982

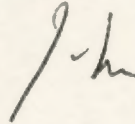


Re: 81-31; 228; 455 - California v.  
Grace Brethren Church

Dear Sandra:

As soon as I can get to it, I will be  
circulating a dissent.

Respectfully,



Justice O'Connor

Copies to the Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

June 2, 1982

Nos. 81-31, 81-228, 81-455 California v. Grace Brethren

Dear Sandra:

I am generally in agreement with your circulation of June 1 in this case. However, as I noted at conference, this case clearly presented the question, long left undecided in our cases, whether the Tax Injunction Act itself bars federal district court actions for declaratory relief. As recently reaffirmed earlier this term in both the Court's opinion and the concurring opinion in FAIR Assessment, Great Lakes v. Huffman rested not on the view that declaratory relief was barred by the Tax Injunction Act itself, but on the view that such relief was barred by those principles of comity which were encapsulated in the TIA.

Here, declaratory relief was clearly sought in the district court; indeed, it appears to have been granted below. And the issue whether the Tax Injunction Act itself bars declaratory relief, or whether the bar is simply one of comity, is necessarily reached on the facts of this case. The TIA is jurisdictional; its bar cannot be waived. But if the bar to declaratory relief in federal court is purely one of comity, it of course can be waived by the State; indeed, as I read the record it was consciously waived here by the State which had very strong reasons for wishing to have the litigation proceed in federal court where the United States would be a party.

Of course, as I said at conference, I have little difficulty concluding that the Tax Injunction Act, reasonably construed, does in fact bar all forms of anticipatory equitable relief--including declaratory judgment suits. Do you think you might accomodate such a holding in your opinion for the Court?

Sincerely,

*Bill*  
W.J.B., Jr.

Justice O'Connor

Copies to the Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

June 2, 1982

Re: Nos. 81-31, 81-228, 81-455 California v. Grace Brethren

Dear Bill,

I agree with you that declaratory relief was sought in the district court and was granted below. I have no objection to addressing directly the issue of whether the Tax Injunction Act itself bars declaratory relief or whether the bar is one of comity, provided that there is no objection by the majority who voted at Conference to vacate and remand. My notes do not reflect that others expressed a view on this point at Conference.

Sincerely,

*Sandra*

Justice Brennan

Copies to the Conference

An express holding would be better. I think you should write to SOC expressing your agreement with this course. *ju*



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

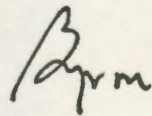
June 3, 1982 ✓

Re: 81-31, 81-228 & 81-455 - California v.  
Grace Brethren Church

Dear Sandra,

Bill Brennan's point is well taken, I  
think. With that change, I would join your  
opinion.

Sincerely yours,



Justice O'Connor

Copies to the Conference

cpm



June 3, 1982

81-31, 81-228, 81-455 California v. Grace Brethren

Dear Sandra:

I agree with Bill Brennan that it would be constructive to hold that the Tax Injunction Act also bars declaratory relief.

Sincerely,

Justice O'Connor

lfp/ss

cc: The Conference



CHAMBERS OF  
THE CHIEF JUSTICE

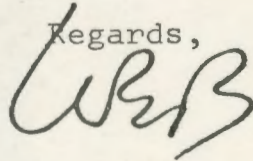
June 7, 1982

(81-31 -- California, et al. v. Grace Brethren Church  
(  
Re: (81-288 - U.S. v. Grace Brethren Church  
(  
(81-455 - Grace Brethren Church v. U.S.

Dear Sandra:

I join and I have no problems with Bill  
Brennan's suggestion.

Regards,



Justice O'Connor

Copies to the Conference



June 8, 1982

81-31 California v. Grace Brethren Church

Dear Sandra:

I am still with you.

Sincerely,

Justice O'Connor

lfp/ss

cc: The Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 9, 1982

✓

RE: No. 81-31 California v. Grace Brethren Church

Dear Sandra:

I agree with your recirculation of June 8.

Sincerely,

Bill

Justice O'Connor

Copies to the Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST



June 9, 1982

Re: Nos. 81-31, 81-228, 81-455 California v.  
Grace Bretheran Church

Dear Sandra:

Please join me.

Sincerely,

Justice O'Connor

Copies to the Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 9, 1982

Re: Nos. 81-150 and 81-546-Northern Pipeline v.  
Marathon Pipe Line and U.S. v. Marathon Pipe Line

Dear Bill:

Please join me.

Sincerely,

T.M.  
T.M.

Justice Brennan

cc: The Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

✓

June 9, 1982 June 9 1982

Re: No. 81-31-California v. Grace Brethren Church

Dear Sandra:

Please join me.

Sincerely,

T.M.  
T.M.

Justice O'Connor

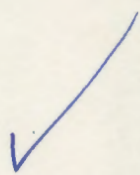
cc: The Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 15, 1982



Re: 81-31, 81-228 and 81-455 -  
California v. Grace Brethren Church

Dear Sandra,

Please join me.

Sincerely yours,

*Byron*

Justice O'Connor

Copies to the Conference

cpm



# Calendar No. 1074

75TH CONGRESS }  
1st Session }

SENATE

{ REPORT  
No. 1035 }

## AMENDING THE JUDICIAL CODE

JULY 22 (calendar day, AUG. 2), 1937.—Ordered to be printed.

Mr. CONNALLY, from the Committee on the Judiciary, submitted the following

### REPORT

[To accompany S. 1551]

The Committee on the Judiciary, to whom was referred the bill (S. 1551) to amend section 24 of the Judicial Code, after consideration thereof, report the bill favorably to the Senate with the recommendation that it do pass.

S. 1551 amends section 24 of the Judicial Code, as amended, with respect to the jurisdiction of the district courts of the United States over suits relating to the collection of State taxes. The bill reads as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the first paragraph of section 24 of the Judicial Code, as amended, is amended by adding at the end thereof the following: "Notwithstanding the foregoing provisions of this paragraph, no district court shall have jurisdiction of any suit to enjoin, suspend, or restrain the assessment, levy, or collection of any tax imposed by or pursuant to the laws of any State where a plain, speedy, and efficient remedy may be had at law or in equity in the courts of such State."

SEC. 2. The provisions of this Act shall not affect suits commenced in the district courts, either originally or by removal, prior to its passage; and all such suits shall be continued, proceedings therein had, appeals therein taken, and judgments therein rendered, in the same manner and with the same effect as if this Act had not been passed.

This legislation does not introduce a new principle, since the Congress has passed statutes of similar import. It is the common practice for statutes of the various States to forbid actions in State courts to enjoin the collection of State and county taxes unless the tax law is invalid or the property is exempt from taxation, and these statutes generally provide that taxpayers may contest their taxes only in refund actions after payment under protest. This type of State legislation makes it possible for the States and their various agencies to survive while long-drawn-out tax litigation is in progress. If those to whom the Federal courts are open may secure injunctive relief



against the collection of taxes, the highly unfair picture is presented of the citizen of the State being required to pay first and then litigate, while those privileged to sue in the Federal courts need only pay what they choose and withhold the balance during the period of litigation.

\* The existing practice of the Federal courts in entertaining tax-injunction suits against State officers makes it possible for foreign corporations doing business in such States to withhold from them and their governmental subdivisions, taxes in such vast amounts and for such long periods of time as to seriously disrupt State and county finances. The pressing needs of these States for this tax money is so great that in many instances they have been compelled to compromise these suits, as a result of which substantial portions of the tax have been lost to the States without a judicial examination into the real merits of the controversy. y

The attorney general of each of the following States has seen fit to urge passage of this bill: Alabama, California, Florida, Idaho, Illinois, Louisiana, Minnesota, Missouri, Montana, New Jersey, Oklahoma, South Dakota, Vermont, Virginia, Washington, West Virginia, and Wyoming.

It should be emphasized that the bill does not take away any equitable right of the taxpayer or deprive him of his day in court. Specific provision is made that the suit will not be withdrawn from the jurisdiction of the Federal district court except where there is a plain, speedy, and efficient remedy at law or in equity in the courts of the State. A full hearing and judicial determination of the controversy is assured. An appeal to the Supreme Court of the United States is available as in other cases.

The propriety of this kind of legislation was fully discussed by the Senate Judiciary Committee when the so-called Johnson Act of May 14, 1934, S. 752, Public, No. 222, was favorably reported and subsequently passed by the Congress.

The report on the Johnson bill pointed out that the continuance of the unjust discrimination between citizens of the State and foreign corporations doing business in such State has been the cause of much controversy. The controversies arising out of the use of the injunctive process in State tax cases would be eliminated by the passage of this bill.

The question of the constitutionality of this type of legislation was also discussed in the report on the Johnson bill, which pointed out decisions of the Supreme Court which removed any question of the right of Congress to limit jurisdiction of Federal district courts in matters of this kind. There being no question of the constitutional right of the Congress to enact such legislation, the only remaining question is that of the propriety and wisdom of such legislation. The district courts of the United States derive their jurisdiction wholly from the authority of Congress, as was clearly pointed out in *Kline v. Burke Construction Company* (260 U. S. 226 (1922)). In that case the Supreme Court held that Congress might give, withhold or restrict such jurisdiction at its discretion, provided it be not extended beyond the boundaries fixed by the Constitution. As far back as 1799 the case of *Turner v. Bank of America*, Mr. Justice Chase, speaking for the Supreme Court, laid at rest any question of the right of Congress to enact this sort of legislation.

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Since the Johnson Act was passed its constitutionality has been upheld in an opinion in the United States District Court of Mississippi, which reviewed at length the constitutional basis for such legislation in the case of *Mississippi Power & Light Company v. City of Jackson* (9 Fed. Supp. 564).

A contemplation of the wisdom and desirability of this sort of legislation rising out of the compelling needs of many States for a more prompt disposition of tax controversies of the character referred to, impels us to recommend the prompt passage of S. 1551.

○



Since the Johnson Act was passed its constitutionality has been upheld in an opinion in the United States District Court of Mississippi, which reviewed at length the constitutional basis for such legislation in the case of *Mississippi Power & Light Company v. City of Jackson* (9 Fed. Supp. 564).

A contemplation of the wisdom and desirability of this sort of legislation rising out of the compelling needs of many States for a more prompt disposition of tax controversies of the character referred to, impels us to recommend the prompt passage of S. 1551.

○



THE C. J.	W. J. B.	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.	J. P. S.	S. D. O'C.
								4/2/82
Join SOC 6/7/82	agree 6/9/82	would join with charge 6/3/82	Join SOC 6/9/82	Join GPS 6/14/82	Join SOC 6/2/82	Join SOC 6/9/82	will dissent 6/2/82	typed draft 6/1/82
		Join SOC 6/15/82					1st Draft 6/7/82	1st draft 6/8/82
							2nd Draft 6/8/82	2nd draft 6/17/82
							3rd draft 6/15/82	

81-31 California v. Grace Brethren