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No. 11-161

IN THE
Supreme Court of the United States

CHRISTINE ARMOUR, *ET AL.*,
Petitioners,

v.

CITY OF INDIANAPOLIS, *ET AL.*,
Respondents.

On Writ Of Certiorari
To The Indiana Supreme Court

BRIEF OF NATIONAL TAXPAYERS UNION AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS CURIAE

The National Taxpayers Union ("NTU") is a nonprofit, nonpartisan membership organization founded by concerned taxpayers in 1969.[1] NTU's mission is to protect the interests of federal, state, and local taxpayers through public education, lobbying, and litigation on tax, spending, regulatory, and economic issues. NTU represents over 362,000 members in all fifty states, and it has frequently participated in matters in this Court. *See Nordlinger v. Hahn*, 505 U.S. 1 (1992); *Allegheny Pittsburgh Coal Co. v. Cnty. Comm'n*, 488 U.S. 336 (1989); *see also, e.g.*, *Kelo v. City of New London*, 545 U.S. 469 (2005); *San Remo Hotel, L.P. v. City & Cnty. of San Francisco*, 545 U.S. 323 (2005); *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913 (2005); *DIRECTV, Inc. v. Levin*, No. 10-1322 (petition for certiorari pending).

A fundamental purpose of NTU is challenging improper or illegal taxation on behalf of taxpayers who might otherwise face insurmountable hurdles to vindicating their rights. NTU has opposed efforts by state and local officials to erode restraints on their taxing authority, including both restraints imposed by citizens through ballot measures and the constitutional limitations imposed by the Equal

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[1] Pursuant to Supreme Court Rule 37.6, counsel for amicus states that no counsel for a party authored this brief in whole or in part, and that no person other than amicus, its members, or its counsel made a monetary contribution to the preparation or submission of this brief. Letters of consent to the filing of this brief have been lodged with the Clerk of the Court pursuant to Rule 37.3.

Protection Clause. Based on NTU's experience in this area, it believes that this Court should reverse the Indiana Supreme Court's erroneous decision to permit a local taxing authority to withhold tax refunds from those who paid their tax assessments in full while forgiving the tax obligations of otherwise identically situated taxpayers who chose to pay in installments.

SUMMARY OF ARGUMENT

The decision of the Indiana Supreme Court is irreconcilable with *Allegheny Pittsburgh Coal Co. v. County Commission*, 488 U.S. 336 (1989), which reaffirmed that the Equal Protection Clause "'protects the individual from state action which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the same class.'" *Id.* at 345 (quoting *Hillsborough v. Cromwell*, 326 U.S. 620, 623 (1946)). As this Court explained in *Allegheny Pittsburgh*, the Constitution requires "the seasonable attainment of a rough equality in tax treatment of similarly situated property owners," and disparate tax burdens must be "reasonable" and related to a legitimate government interest. *Id.* at 343.

Contrary to the suggestion of the Indiana Supreme Court, *Nordlinger v. Hahn*, 505 U.S. 1 (1992), did not change the constitutional requirement that there be a rational basis for unequal tax treatment. In *Nordlinger*, this Court held that California had a rational basis for assessing real property based on the value at the time of acquisition instead of current market value. Unlike in *Allegheny Pittsburgh*, where state law conflicted with the purpose underlying an acquisition-value taxation

scheme, state law did not pose any such conflict in *Nordlinger*. *See id.* at 14-16. This distinction in background state law is crucial. The reasonableness of a tax imposed by a taxing authority is particularly suspect if it conflicts with a policy embodied in the governing state law.

Here, the City of Indianapolis imposed enormously unequal tax burdens—by a factor of 10 to 30 times—on taxpayers who are identically situated in every way but one: The City forgave the outstanding tax liability of taxpayers who paid in installments, while refusing to refund any taxes paid by those who had already paid in full. Such irrational and discriminatory treatment is not reasonably related to any legitimate government interest that the City has articulated and cannot be squared with *Allegheny Pittsburgh*. Moreover, the rationales for differential taxation accepted by the court—preservation of the City's resources, purported administrative convenience, and the supposition that those who paid in full were in a better financial position than those who paid in installments—are unfounded. This Court has rejected the notion that an interest in maximizing government resources excuses unconstitutional treatment; there is no serious administrative inconvenience involved in refunding tax payments made by those who paid in full; and there is no evidence that the City actually considered the financial status of those who paid in full other than as a *post hoc* rationale developed in litigation. Moreover, the latter purpose would conflict with Indiana law, just as a purpose of tax inequality conflicted with state law in *Allegheny Pittsburgh*.

Finally, the unequal taxation here creates a clear injustice based on its retroactive undermining of the legitimate expectations of taxpayers. Specifically, the City's approach disfavors taxpayers who relied on the state law requiring equal taxation and who acted in a manner they believed to be responsible by paying their taxes immediately. As this Court has long recognized, such retroactive effects raise serious constitutional concerns on due process, takings, and equal protection grounds. Regardless of the particular doctrinal category, this Court has viewed such retroactive efforts skeptically because of their potential for extreme injustice and for harm to the rule of law. Moreover, if taxpayers know that the government can retroactively favor those who pay in installments over those who paid in full, informed taxpayers will virtually always choose the former—and governments across the country will lose the ability to provide this option without sacrificing virtually all up-front tax payments.

In sum, this Court should reverse the judgment of the court below and reaffirm the validity of *Allegheny Pittsburgh*'s requirement of a rational basis for unequal taxation. NTU believes the proper course is for all affected taxpayers to receive refunds of past payments and forgiveness of future payments, regardless of whether their overpayment was made in a single lump sum or in installments.

ARGUMENT

I. THE EQUAL PROTECTION CLAUSE PROHIBITS UNEQUAL TAX TREATMENT NOT SUPPORTED BY A RATIONAL BASIS.

A. *Allegheny Pittsburgh* requires a rational basis for unequal tax treatment, and *Nordlinger* did not lessen this requirement.

This Court's unanimous decision in *Allegheny Pittsburgh* reaffirmed that disparate tax treatment of similarly situated taxpayers must have a rational basis—a requirement that is exceptionally difficult to satisfy if the purported basis for unequal treatment is inconsistent with policies embodied in state law. The court below concluded that *Nordlinger* limited *Allegheny Pittsburgh* to its precise facts, making the latter essentially worthless as precedent. This approach—which conflicts with this Court's own explanation of its decisions in *Nordlinger*—is wrong.

In *Allegheny Pittsburgh*, this Court held that a county's practice that "resulted in gross disparities in the assessed value of generally comparable property," and thus in the tax imposed on comparable property, violated the Equal Protection Clause. 488 U.S. at 338. The county tax assessor valued property based on its purchase price, while making only minor modifications in the assessments of land that had not been sold recently. *See id.* As a result, the petitioner "was assessed and taxed at approximately 35 times the rate applied to owners of comparable properties." *Id.* at 341. This Court recognized that a "State may divide different kinds of property into classes and assign to each class a different tax burden so long as those divisions and burdens are reasonable," but held that "West Virginia has not drawn such a distinction."

Id. at 344-45. Indeed, this Court stressed that West Virginia's differential tax burden was even inconsistent with the State's constitution, which "provide[d] that all property of the kind held by petitioners shall be taxed at a rate uniform throughout the State according to its estimated market value." *Id.* at 345.

Three years later, in *Nordlinger*, 505 U.S. 1, this Court rejected an equal protection challenge to an amendment to the California Constitution whereby "[r]eal property is assessed at values related to the value of the property at the time it is acquired by the taxpayer rather than to the value it has in the current real estate market." *Id.* at 5.[2] The effect of this "acquisition-value" system of taxation was that "longer term property owners pay lower property taxes reflecting historic property values, while newer owners pay higher property taxes reflecting more recent values." *Id.* at 6. This Court held that "[t]he appropriate standard of review is whether the difference in treatment between newer and older owners rationally furthers a legitimate state interest." *Id.* at 11. Specifically, "the Equal Protection Clause is satisfied so long as there is a plausible policy reason for the classification, the legislative facts on which the classification is apparently based rationally may have been considered to be true by the governmental decisionmaker, and the relationship of the classification to its goal is not so attenuated as to render the distinction arbitrary or irrational." *Id.* (internal citations omitted). The Court held that

[2] NTU actively supported enactment of the California constitutional amendment (Article XIIIA) at issue in *Nordlinger*.

there were "at least two rational or reasonable considerations" justifying the differential treatment: (1) "the State has a legitimate interest in local neighborhood preservation, continuity, and stability"; and (2) "the State legitimately can conclude that a new owner at the time of acquiring his property does not have the same reliance interest warranting protection against higher taxes as does an existing owner." *Id.* at 12.

This Court explained that the "obvious and critical factual difference between [*Nordlinger*] and *Allegheny Pittsburgh* is the absence of any indication in *Allegheny Pittsburgh* that the policies underlying an acquisition-value taxation scheme could *conceivably* have been the purpose for the Webster County tax assessor's unequal assessment scheme," since the terms of the state constitution required market-value assessments. *Id.* at 14-15 (emphasis added). In short, rational basis review "require[s] that a purpose may conceivably or may reasonably have been the purpose and policy of the relevant governmental decisionmaker"; and, in *Allegheny Pittsburgh*, "the facts precluded any plausible inference that the reason for the unequal assessment practice was," in fact, "to achieve the [purported] benefits of an acquisition-value tax scheme." *Id.* at 15-16 (internal quotation marks omitted); *see also Fitzgerald v. Racing Ass'n of Central Iowa*, 539 U.S. 103, 109-10 (2003).

B. A taxing authority's justification for differential taxation that is at odds with a policy embodied in state law is necessarily suspect.

As noted, *Allegheny Pittsburgh* and *Nordlinger* reaffirm the significance of background state-law principles in assessing the constitutionality of differential taxation. When—as in *Allegheny Pittsburgh* and in this case—the purported purpose underlying differential taxation is at odds with the policy embodied in state law, it is highly suspect whether the taxing authority's articulated objective is, in fact, a legitimate ground for unequal treatment. *Allegheny Pittsburgh*, 488 U.S. at 345. This conclusion, which gives meaning to both *Allegheny Pittsburgh* and *Nordlinger*, also draws support, by analogy, from other areas of law.

First, policy choices embodied in state law are made through the democratic process and, if unpopular, can be changed through that process. However, a particular instance of taxation does not reflect the democratic process if the only rationale proffered for it conflicts with state law governing tax policy. For instance, in *Allegheny Pittsburgh*, the "welcome stranger" approach allowed local tax assessors to curry favor with long-time residents, while heavily taxing new property owners who would have no idea that they would bear the extra tax burden—and no way of knowing since state law said otherwise. Thus, the tax in *Allegheny Pittsburgh* was particularly suspect because it allowed officials to achieve wealth transfers "with relative invisibility and thus relative immunity from normal democratic processes." *Pennell v. City of San Jose*, 485 U.S. 1, 22

(1988) (Scalia, J., concurring in part and dissenting in part). On the other hand, the "welcome stranger" approach at issue in *Nordlinger* was a consequence of Article XIIIA of the California Constitution, which was proposed by citizen initiative and enacted by voters after due consideration.

Second, the significance of background state-law principles here draws support from administrative law. This Court recently reaffirmed that "the requirement that an agency provide reasoned explanation for its action would ordinarily demand that it display awareness that it *is* changing position." *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 129 S. Ct. 1800, 1811 (2009). "An agency may not, for example, depart from a prior policy *sub silentio* or simply disregard rules that are still on the books." *Id.* While an agency "need not always provide a more detailed justification than what would suffice for a new policy created on a blank slate," it must do so "when its prior policy has engendered serious reliance interests that must be taken into account." *Id.* Similar logic applies to the "rational basis" standard for equal protection purposes: While the government can change its position, an unexplained inconsistency raises doubts about the rationality of government action.

C. The Indiana Supreme Court's explanations for discarding the principles of *Allegheny Pittsburgh* are meritless.

Instead of accepting this Court's own explanation of why *Allegheny Pittsburgh* remained good law after *Nordlinger*, and continues to require a rational basis for the unequal taxation of similarly situated taxpayers, the court below discarded *Allegheny*

Pittsburgh altogether. It provided three grounds for doing so, none of which withstands scrutiny.

First, the court below held that "*Allegheny Pittsburgh* has essentially been narrowed to its facts." *City of Indianapolis v. Armour*, 946 N.E.2d 553, 568 (Ind. 2011). However, nothing in *Nordlinger* or any other decision by this Court suggests that *Allegheny Pittsburgh* should be read so narrowly. Indeed, *Nordlinger* accepted the principles of *Allegheny Pittsburgh*, and held simply that a rational basis was present in one case but not in the other.

Second, the court below reasoned that *Allegheny Pittsburgh* was inapposite because it was purportedly "a class-of-one case—a tax policy directed at a particular taxpayer." *Id.* The court cited no language in *Allegheny Pittsburgh* or *Nordlinger* supporting the idea that *Allegheny Pittsburgh* applies only to a "class-of-one" case. In any event, as this Court has explained, the designation as a "class-of-one" case "is of no consequence because . . . the number of individuals in a class is immaterial for equal protection analysis." *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 n.* (2000) (per curiam). Likewise, the suggestion by the court below that "animus or ill-will toward the plaintiffs" is a *de facto* requirement for a class-of-one equal protection violation, *see City of Indianapolis*, 946 N.E.2d at 565, has no basis in precedent. Indeed, if *Allegheny Pittsburgh* were a class-of-one case, it would belie any such suggestion, because no such finding of animus existed there.

Third, the court below observed that *Allegheny Pittsburgh* "has been criticized by at least one Justice on the Supreme Court and by scholars." *City of Indianapolis*, 946 N.E.2d at 568 (citing *Nordlinger*,

505 U.S. at 18-28 (Thomas, J., concurring in part and concurring in the judgment); William C. Cohen, *State Law in Equality Clothing: A Comment on* Allegheny Pittsburgh Coal Company v. County Commission, 38 UCLA L. REV. 87, 104 (1990); Robert Jerome Glennon, *Taxation and Equal Protection*, 58 GEO. WASH. L. REV. 261, 263 (1990)). Justice Thomas's separate opinion in *Nordlinger* stated that this Court's discussion of *Allegheny Pittsburgh* was incorrect because "[a] violation of state law does not by itself constitute a violation of the Federal Constitution." 505 U.S. at 26 (Thomas, J., concurring in part and concurring in the judgment). Of course, the seven Justices in the *Nordlinger* majority were well aware of, but not persuaded by, Justice Thomas's criticism. In any event, the question for purposes of equal protection, to be sure, is not simply whether the tax violates state law. But a taxing authority's defense of differential tax treatment still must be assessed against the tax policy that the State itself has enacted. Indeed, the legitimacy and rationality of any supposed rationale for differential taxation are, at a minimum, suspect if state law forecloses the tax authority's proffered purpose.

II. THE UNEQUAL TAX AT ISSUE HERE IS PLAINLY IRRATIONAL AND CONFLICTS WITH STATE LAW.

A. The City's purported justifications for the tax do not withstand even the barest scrutiny and conflict with state law.

The City has offered no rational or legally sufficient justification for its disparate treatment of similarly situated taxpayers. Under the City's approach, those taxpayers who paid in a lump sum

(and from whom the City withheld a refund) paid between 10 and 30 times more than their next-door neighbors who had chosen to pay over time. Pet. App. 69a. The imposition of such "gross[ly] disparat[e]" taxes on similarly situated taxpayers violates the Equal Protection Clause. *See Allegheny Pittsburgh*, 488 U.S. at 338, 341 (invalidating tax that imposed a burden on petitioner of "approximately 35 times the rate applied to owners of comparable properties").

The court below reasoned that administrative convenience and preservation of resources are legitimate bases for this gross inequity in taxing otherwise similar taxpayers. *See City of Indianapolis*, 946 N.E.2d at 560, 563-64. Moreover, it held that an unsupported supposition of different income levels could support different taxes, even absent any evidence that the City actually considered this possibility before litigation, and even in the face of state law to the contrary. *Id.* at 562. The City has made the same income-based argument in litigation, and has put forward in an affidavit "[t]he administrative costs to service and process remaining balances on Barrett Law accounts" as a basis for its decision. JA76. [3] If accepted, these *post hoc* justifications would signify that *Allegheny Pittsburgh* provides virtually no limit on tax decisions.

First, the preservation of resources might explain the total amount by which the City reduced the tax burden on its residents, but not the unequal

[3] The City's other explanations in the affidavit concern the City's choice to forego the Barrett Law funding system, but not the decision to favor those who decided to pay in installments over those who paid in full. *See* JA75-76.

approach used by the City, *i.e.*, the choice to draw the line between those who paid fully and those who did not. Indeed, as this Court has made clear, "a concern for the preservation of resources standing alone can hardly justify the classification used in allocating those resources." *Plyler v. Doe*, 457 U.S. 202, 227 (1982); *see also Williams v. Vermont*, 472 U.S. 14, 25 (1985) (rejecting the argument that "the simple desire to raise funds" justifies differential tax treatment).

Second, administrative convenience is even more nonsensical a justification, because refunding taxes to those who paid in full would involve only basic arithmetic. Furthermore, in the long run, the City's approach might well produce greater administrative costs because more taxpayers—now knowing that the government can disfavor those who pay in full—will pay in installments if that option is offered in the future.

Third, the only other explanation offered by the court below is that "it was reasonable for the City to believe that property owners who had already paid their assessments were in better financial positions than those who chose installment plans." 946 N.E.2d at 562. But there is no evidence that the City actually considered this possibility prior to litigation. *See id.* at 572 (Rucker, J., dissenting). As *Nordlinger* explained, "the Equal Protection Clause is satisfied so long as . . . the legislative facts on which the classification is apparently based rationally may have been considered to be true by the governmental decisionmaker." *Nordlinger*, 505 U.S. at 11. In other words, for purposes of the rational basis test, courts must accept the government's explanation only if the

government actually considered some facts in the first place. *See, e.g.*, *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 464 (1981) ("*Where there was evidence* before the legislature reasonably supporting the classification, litigants may not procure invalidation of the legislation merely by tendering evidence in court that the legislature was mistaken.") (emphasis added). Particularly absent *any* record evidence put forth by the City regarding *any* of the taxpayers who delayed payment or those who paid in full, *see Cox v. City of Indianapolis*, No. 1:09–cv–435–WTL–DML, 2010 WL 2484620, at *4 (S.D. Ind. June 14, 2010), there is nothing to show that this rationale was reasonably or conceivably the City's purpose.

In any event, as in *Allegheny Pittsburgh*, the rationale offered by the City in litigation is contrary to state law. The tax was imposed pursuant to Indiana's Barrett Law, which required taxes to be "apportioned equally among all abutting lands or lots." Ind. Code § 36-9-39-15. The City simply reduced the taxes imposed under this law. However, this reduction was given only to the taxpayers who had chosen to pay by installment. As a result, the taxes were not apportioned equally, as required by law. Indeed, even the new tax scheme that replaced the Barrett Law system—and provided the reason for the tax reduction—does not purport to take income or "financial position" into account in the amount of taxation. *City of Indianapolis*, 946 N.E.2d at 557 n.5. Rather, it mandates a flat $2,500 fee (along with a monthly sewer bill) for all property owners adjacent to new sewer construction projects. *Id.* Furthermore, the Indiana Constitution requires equal taxation based on the value of the property. *See* Ind. Const.

Art. 10, § 1 ("The General Assembly shall provide, by law, for a uniform and equal rate of property assessment and taxation and shall prescribe regulations to secure a just valuation for taxation of all property, both real and personal."). Thus, the supposed purpose of taxing based on financial position was contrary to state law, just as a purpose of unequal taxation in *Allegheny Pittsburgh* was contrary to state law mandating uniform rates. 488 U.S. at 345.

B. The City's differential treatment based on whether a taxpayer has chosen to pay in full or over time is manifestly unjust and raises serious retroactivity concerns.

The taxpayers who paid their assessments in full did so on the basis of a law stating that they would have to pay just as much (plus interest, *see* Ind. Code § 36-9-37-8.5(e)) if they paid in installments. The City then changed the rules of the game retroactively. And it did so in a manner that imposed a burden on the taxpayers who took the most responsibility—by paying their tax bill as soon as possible—of 10 to 30 times that imposed on their neighbors who chose to pay in installments. Pet. App. 69a. The retroactive nature of the City's actions raises additional constitutional concerns.

This Court has been skeptical of retroactive laws that cause clearly unfair results. "Retroactivity is generally disfavored in the law, in accordance with fundamental notions of justice that have been recognized throughout history." *E. Enters. v. Apfel*, 524 U.S. 498, 532 (1998) (plurality opinion; internal quotation marks and citation omitted); *see also id.* at 547 (Kennedy, J., concurring in part, dissenting in

part) ("As today's plurality opinion notes, for centuries our law has harbored a singular distrust of retroactive statutes."); *id.* at 558 (Breyer, J., dissenting) ("[A]n unfair retroactive assessment of liability upsets settled expectations, and it thereby undermines a basic objective of law itself."). Moreover, the unfairness that can accompany retroactivity is particularly problematic: "Retroactive legislation presents problems of unfairness that are more serious than those posed by prospective legislation, because it can deprive citizens of legitimate expectations and upset settled transactions." *Gen. Motors Corp. v. Romein*, 503 U. S. 181, 191 (1992).

This Court directly addressed retroactivity in the tax context in *United States v. Carlton*, 512 U.S. 26 (1994). There, the Court held that a retroactive change to the rules for certain tax deductions did not violate due process, but recognized that retroactive tax changes receive significant scrutiny. Specifically, "the validity of a retroactive tax provision under the Due Process Clause depends upon whether retroactive application is so harsh and oppressive as to transgress the constitutional limitation." *Id.* at 30; *see also id.* at 31 ("retroactive legislation does have to meet a burden not faced by legislation that has only future effects . . . by showing that the retroactive application of the legislation is itself justified by a rational legislative purpose" (internal quotation marks omitted)). In *Carlton*, "Congress' purpose in enacting the amendment was neither illegitimate nor arbitrary" because the amendment "was adopted as a curative measure," the change affected "those who had made purely tax-motivated stock transfers," and

"Congress acted promptly and established only a modest period of retroactivity." *Id.* at 31, 32.

Applying similar principles in *Eastern Enterprises*, this Court invalidated a statute requiring a company that formerly participated in the coal industry to fund health benefits for retired miners who had worked for the company decades earlier. The plurality reasoned that the statute effected an unconstitutional taking: Because the statute "singles out certain employers to bear a burden that is substantial in amount, based on the employers' conduct far in the past, and unrelated to any commitment that the employers made or to any injury they caused, the governmental action implicates fundamental principles of fairness underlying the Takings Clause." 524 U.S. at 537. Justice Kennedy reached the same conclusion on due process grounds. *See id.* at 548-49 ("If retroactive laws change the legal consequences of transactions long closed, the change can destroy the reasonable certainty and security which are the very objects of property ownership. As a consequence, due process protection for property must be understood to incorporate our settled tradition against retroactive laws of great severity."); *see also Penn Central Transp. Co. v. N.Y. City*, 438 U.S. 104, 124 (1978) (In deciding whether the Takings Clause "require[s] that economic injuries caused by public action be compensated by the government, rather than remain disproportionately concentrated on a few persons," one relevant factor is "[t]he economic impact of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations . . . .").

This recognition of the dangers of retroactivity for takings and due process purposes likewise applies to the guarantee of equal protection. *Hooper v. Bernalillo County Assessor*, 472 U.S. 612 (1985), invalidated on equal protection grounds a state law providing a tax exemption for Vietnam veterans who had been state residents before 1976, but not to more recent arrivals. The Court reasoned that "[t]his discrimination on the basis of residence is not supported by any identifiable state interest," and that "[n]either the Equal Protection Clause, nor this Court's precedents, permit the State to prefer established resident veterans over newcomers in the retroactive apportionment of an economic benefit." *Id.* at 623. In short, it is one thing for the government to change the rules under clear, limited circumstances; it is quite another for the government to do so with no legitimate justification for how it separates the retroactive winners and losers. Here, the choice of winners and losers is plainly unjust, and, as discussed above, the City presents no rational justification for it.

Finally, if this Court were to accept the government's ability to retroactively disfavor those taxpayers who paid in full, it would not only unfairly harm those taxpayers, but it would also effectively limit the flexibility of state and local governments across the country. Prior to the instant case, every state supreme court to address the issue had held that differential tax refunds or tax forgiveness could not be based on whether the tax payment was made in full. *See, e.g.*, *State ex rel. Stephan v. Parrish*, 891 P.2d 445, 457 (Kan. 1995); *Armco Steel Corp. v. Dep't of Treasury*, 358 N.W.2d 839 (Mich. 1984); *Perk v. City of Euclid*, 244 N.E.2d 475, 477 (Ohio 1969);

Richey v. Wells, 166 So. 817, 819 (Fla. 1936). The Indiana Supreme Court's decision now calls that principle into doubt. If upheld, the government's ability to provide the option of paying up front or in full would be severely hampered. Most people would be aware of the possibility of government changing the rules to favor those paying in installments, and, understandably, very few would pay up front.

The consequences of this change would affect governments across the country, which in numerous situations give taxpayers the option to pay in installments or in a lump sum. *See, e.g.*, S.C. Code § 12-45-75 ("The governing body of a county may by ordinance allow each taxpayer owning a parcel of taxable real property within the county the option to pay property taxes in installments . . . ."); Ky. Rev. Stat. § 141.305 ("Installment payments of estimated tax."); St. Louis County Revenue, Property Tax Installment Payment Program, *available at* http://revenue.stlouisco.com/collection/PropertyTaxInstallmentPaymentProgram.pdf ("To be eligible for the prepayment installment program, . . . [t]he total tax billed amount, based on last year's taxes, must be a minimum of $100 . . . ."); Lee County, Fla., Installment Payment Plan, *available at* http://www.leetc.com/taxes.asp?page_id=txinstallplan ("Property taxes can be paid by the installment method if the prior year's real estate or tangible tax bill is more than $100."). The benefit of such a system is that the government receives some money quickly, but does so without forcing people to pay their entire tax bill at once. But if almost no one pays up front, then the government may only be able to obtain certain resources by forcing everyone to pay

right away, which may be politically infeasible for the government or practically infeasible for the taxpayers.

CONCLUSION

For the foregoing reasons, the judgment of the Indiana Supreme Court should be reversed.

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