AMERICAN CONSTITUTIONALISM

VOLUME I: STRUCTURES OF GOVERNMENT

Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 11: The Contemporary Era – Federalism/Intergovernmental Immunity

**Dawson v. Steager**, \_\_\_ U.S. \_\_\_ (2019)

*James Dawson was a West Virginia resident who spend his career working for the federal government in the U.S. Marshall Service. When he retired, he discovered that West Virginia taxed his pension benefits even though West Virginia could not tax the pension benefits of retired state law enforcement agents. Dawson filed a suit against Dale Steager, the West Virginia State Tax Commissioner, claiming that West Virginia tax policy violated* [*4 U.S.C. § 111*](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=4USCAS111&originatingDoc=I215b0bc634f411e9bc5c825c4b9add2e&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search))*. That provision of the federal code permits state federal employees, but only if federal employees are treated no differently that state employees. The local state court declared the state tax policy unconstitutional, but that decision was reversed by the Supreme Court of Appeals of West Virginia. Dawson appealed to the Supreme Court of the United States.*

 *The Supreme Court unanimously found the West Virginia law illegal. Justice Neil Gorsuch’s majority opinion declared that states could not tax federal law enforcement agents differently than state law enforcement agents. Both the brevity of Gorsuch’s opinion and the Court’s unanimity suggest this was an easy case. Was West Virginia trying to get away with something, or is the case more complex that the Gorsuch opinion suggests? Although Gorsuch interprets federal law, he indicates that* [*4 U.S.C. § 111*](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=4USCAS111&originatingDoc=I215b0bc634f411e9bc5c825c4b9add2e&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) *has roots in* McCulloch v. Maryland (*1819). Suppose Congress repealed* [*4 U.S.C. § 111*](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=4USCAS111&originatingDoc=I215b0bc634f411e9bc5c825c4b9add2e&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search))*, and Dawson had to make a constitutional argument. Would the result had been any different?*

Justice [GORSUCH](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0183411701&originatingDoc=I215b0bc634f411e9bc5c825c4b9add2e&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)&analyticGuid=I215b0bc634f411e9bc5c825c4b9add2e) delivered the opinion of the Court.

. . . .

In *McCulloch v. Maryland* (1819), this Court invoked the Constitution’s Supremacy Clause to invalidate Maryland’s effort to levy a tax on the Bank of the United States. Chief Justice Marshall explained that “the power to tax involves the power to destroy,” and he reasoned that if States could tax the Bank they could “defeat” the federal legislative policy establishing it.” For the next few decades, this Court interpreted [*McCulloch*](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1800123335&pubNum=0000780&originatingDoc=I215b0bc634f411e9bc5c825c4b9add2e&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) “to bar most taxation by one sovereign of the employees of another.” In time, though, the Court softened its stance and upheld neutral income taxes—those that treated federal and state employees with an even hand. So eventually the intergovernmental tax immunity doctrine came to be understood to bar only *discriminatory* taxes. It was this understanding that Congress “consciously ... drew upon” when adopting [§ 111](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=4USCAS111&originatingDoc=I215b0bc634f411e9bc5c825c4b9add2e&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) in 1939..

. . . .

. . . . A State violates [§ 111](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=4USCAS111&originatingDoc=I215b0bc634f411e9bc5c825c4b9add2e&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) when it treats retired state employees more favorably than retired federal employees and no “significant differences between the two classes” justify the differential treatment.. Here, West Virginia expressly affords state law enforcement retirees a tax benefit that federal retirees cannot receive. And before us everyone accepts the trial court’s factual finding that there ****aren’t any “significant differences” between Mr. Dawson’s former job responsibilities and those of the tax-exempt state law enforcement retirees. Given all this, we have little difficulty concluding that West Virginia’s law unlawfully “discriminate[s]” against Mr. Dawson “because of the source of [his] pay or compensation,” just as [§ 111](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=4USCAS111&originatingDoc=I215b0bc634f411e9bc5c825c4b9add2e&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) forbids.

. . . .

. . . . [Section 111](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=4USCAS111&originatingDoc=I215b0bc634f411e9bc5c825c4b9add2e&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) disallows *any* state tax that discriminates against a federal officer or employee—not just those that seem to us especially cumbersome. . . . That’s not to say the breadth or narrowness of a state tax exemption is irrelevant. Under [§ 111](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=4USCAS111&originatingDoc=I215b0bc634f411e9bc5c825c4b9add2e&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)), the scope of a State’s tax exemption may affect the scope of its resulting duties. So if a State exempts from taxation all state employees, it must likewise exempt all federal employees. Conversely, if the State decides to exempt only a narrow subset of state retirees, the State can comply with [§ 111](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=4USCAS111&originatingDoc=I215b0bc634f411e9bc5c825c4b9add2e&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) by exempting only the comparable class of federal retirees. But the narrowness of a discriminatory state tax law has never been enough to render it necessarily lawful.

. . . . Echoing the West Virginia Supreme Court of Appeals, the State argues that we should uphold its statute because it isn’t intended to harm federal retirees, only to help certain state retirees. But under the terms of [§ 111](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=4USCAS111&originatingDoc=I215b0bc634f411e9bc5c825c4b9add2e&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)), the “State’s interest in adopting the discriminatory tax, no matter how substantial, is simply irrelevant.”

. . . .

. . . . Whether a State treats similarly situated state and federal employees differently depends on how the State has defined the favored class. So if the State defines the favored class by reference to job responsibilities, a similarly situated federal worker will be one who performs comparable duties. But if the State defines the class by reference to some other criteria, our attention should naturally turn there. If a State gives a tax benefit to all retirees over a certain age, for example, the comparable federal retiree would be someone who is also over that age.

So how has West Virginia chosen to define the favored class in this case? The state statute singles out for preferential treatment retirement plans associated with West Virginia police, firefighters, and deputy sheriffs. The distinguishing characteristic of these plans is the nature of the jobs previously held by retirees who may participate in them; thus, a similarly situated federal retiree is someone who had similar job responsibilities to a state police officer, firefighter, or deputy sheriff. The state trial court correctly focused on this point of comparison and found no “significant differences” between Mr. Dawson’s former job responsibilities as a U. S. Marshal and those of the state law enforcement retirees who qualify for the tax exemption. . . .

. . . . Under [§ 111](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=4USCAS111&originatingDoc=I215b0bc634f411e9bc5c825c4b9add2e&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)), the relevant question isn’t whether federal retirees are similarly situated to state retirees who *don’t* receive a tax benefit; the relevant question is whether they are similarly situated to those who *do.* . . . .While the State was free to draw whatever classifications it wished, the statute it enacted does not classify persons or groups based on the relative generosity of their pension benefits. Instead, it extends a special tax benefit to retirees who served as West Virginia police officers, firefighters, or deputy sheriffs—and it categorically denies that same benefit to retirees who served in similar federal law enforcement positions. Even if Mr. Dawson’s pension turned out to be *identical* to a state law enforcement officer’s pension, the law as written would deny him a tax exemption. West Virginia’s law thus discriminates “because of the source of ... compensation or pay” in violation of [§ 111](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=4USCAS111&originatingDoc=I215b0bc634f411e9bc5c825c4b9add2e&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)). . . .