

No. 11-161

IN THE
Supreme Court of the United States

CHRISTINE ARMOUR, ET AL.,

Petitioners,

v.

CITY OF INDIANAPOLIS, INDIANA, ET AL.,

Respondents.

**On Petition for Writ of Certiorari
to the Indiana Supreme Court**

**BRIEF OF THE TAX FOUNDATION
AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONERS**

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QUESTION PRESENTED

Does a city government violate the Equal Protection Clause when it forgives outstanding payments owed by taxpayers who have been paying a particular tax in installments but refuses to refund taxpayers who have paid the same tax in full?

TABLE OF CONTENTS

QUESTION PRESENTED i

TABLE OF CONTENTS..... ii

TABLE OF AUTHORITIES iii

INTEREST OF THE *AMICUS CURIAE* 1

SUMMARY OF ARGUMENT 2

ARGUMENT 3

 I. THIS COURT SHOULD TAKE THE
 OPPORTUNITY TO RESTRICT ARBITRARY
 AND IRRATIONAL STATE REFUND
 PRACTICES. 3

 A. The City’s Actions in This Case are Arbitrary
 and Irrational..... 3

 B. If Allowed to Stand, the Decision of the Court
 Below Will Undermine Business Certainty,
 Tax Compliance, and Respect for the Law. ... 6

CONCLUSION..... 9

TABLE OF AUTHORITIES

Constitutional Provisions

U.S. Const. amend. XIV.....	6
Ohio Const. art. I, § 2	6

Cases

<i>Allied Stores of Ohio, Inc. v. Bowers</i> , 358 U.S. 522 (1959).	3, 5
<i>Armco Steel Corp. v. Dep't of the Treasury</i> , 358 N.W.2d 839 (Mich. 1984).....	5
<i>Beauty Built Construction Co. v. City of Warren</i> , 134 N.W. 2d 214 (Mich. 1965).....	6
<i>City of Indianapolis v. Armour</i> , 946 N.E.2d 553 (Ind. 2011)	4
<i>F.S. Royster Guano Co. v. Commonwealth of Virginia</i> , 253 U.S. 412 (1920)	3
<i>FCC. v. Beach Communications, Inc.</i> , 508 U.S. 307 (1993)	5
<i>Gosnell Development Corp. v. Arizona Dep't of Revenue</i> , 744 P.2d 451 (Ariz. Ct. App. 1987).....	5

<i>Nordlinger v. Hahn</i> , 505 U.S. 1 (1992)	5
<i>Perk v. City of Euclid</i> , 244 N.E.2d 475 (Ohio 1969)	6
<i>Washington Theatre Club, Inc., v. District of Columbia</i> , 311 A.2d 492 (D.C. 1973).....	6
<i>Zoeller v. Aisin USA Manufacturing, Inc.</i> , 946 N.E.2d 1148 (Ind. 2011)	8

Other Authorities

Paul Frankel, <i>Retroactivity and Retained Refunds</i> , TAX FOUNDATION TAX POLICY PODCAST (Jul. 7, 2010), http://www.taxfoundation.org/research/ show/26493.html	8
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INTEREST OF THE *AMICUS CURIAE*

The Tax Foundation submits this brief as *amicus curiae* in support of Petitioners in the above-captioned matter.¹

¹ No counsel for a party authored this brief in whole or in part, nor made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission. Counsel for Petitioners and Respondents were timely notified of *amicus curiae*'s intent to file and their written consent have been obtained and filed with the Clerk of the Court.

The Tax Foundation is a non-partisan, non-profit research organization founded in 1937 to educate taxpayers on tax policy. Based in Washington, D.C., we seek to make information about government finance more understandable and accessible to the general public. Our analysis is guided by the principles of sound tax policy: simplicity, neutrality, transparency, and stability. The Tax Foundation's Center for Legal Reform furthers these goals by educating the legal community about economics and principled tax policy.

This Court's decision will provide guidance on the line between states' power to shape their tax systems and discriminatory taxation forbidden by the Commerce Clause. Because this Court's decision may be looked to as authority by other courts analyzing whether specific state tax practices violate the Commerce Clause, the Tax Foundation has an institutional interest in this Court's ruling.

SUMMARY OF ARGUMENT

The divided decision of the court below sustained an arbitrary tax policy that is problematic both for constitutional practical ones reasons. Unless reversed, taxpayers across the United States will have less certainty with which to make effective financial decisions. This Court should take the opportunity to forestall future otherwise-inevitable disputes on the basic standard of equal treatment of similarly situated taxpayers and provide guidance to government officials on constitutional refund procedures. By doing so, this Court will promote an

efficient and beneficial legal climate for individual and business taxpayers alike.

ARGUMENT

I. THIS COURT SHOULD TAKE THE OPPORTUNITY TO RESTRICT ARBITRARY AND IRRATIONAL STATE REFUND PRACTICES.

A. The City's Actions in This Case are Arbitrary and Irrational.

The conflict in this case arose when the Indianapolis city government changed its sewer tax, under which taxpayers had to pay \$9,000 either (1) in full or (2) in installments. The 2005 change reduced the tax going forward and forgave the outstanding payments of all taxpayers who were paying the tax in installments. Taxpayers who had paid in full, including Petitioners, received no *pro rata* refund of any kind, and allege a violation of the Equal Protection Clause.

The Equal Protection Clause of the Fourteenth Amendment does not require states to “maintain a precise, scientific uniformity with reference to composition, use, or value.” *Allied Stores of Ohio, Inc. v. Bowers*, 358 U.S. 522, 527 (1959). State sovereignty allows state governments to impose various taxes at different rates on certain entities to raise revenue. *See id.* at 526-27. States, however, cannot treat taxpayers unequally *carte blanche*. *See, e.g., id.* at 527, *citing F.S. Royster Guano Co. v. Commonwealth of Virginia*, 253 U.S. 412, 415 (1920). (“The State must proceed upon a rational basis and may not resort to a classification that is palpably arbitrary. The rule has often been stated to be that

the classification ‘must upon some ground of difference having a fair and substantial relation to the object of the legislation.’).

The City justifies its unequal refund policy by pointing to its interest in administrative convenience and relief for the poor, see *City of Indianapolis v. Armour*, 946 N.E.2d 553, 560 (Ind. 2011), notwithstanding the high cost associated with engaging in refund processing at all as well as the cost associated with dividing otherwise identical taxpayers into disparate groups. Further, the policy does not benefit poor taxpayers exclusively or even primarily; if poor taxpayers do benefit disproportionately, it is only by chance.

The decision of the court below failed to evaluate the City’s stated justifications adequately. Rather than finding a rational link between (1) the social goal of providing the less fortunate with tax relief to (2) the act of denying refunds to certain taxpayers, the court below only merely discussed the legitimacy of helping the poor as a governmental interest and assumed that this justifies the City’s policy of treating pay-in-full taxpayers disparately than pay-in-installments taxpayers. See *id.* at 562-63. The two dissenting judges in the decision below correctly noted that there was “nothing to explain why the City treated differently residents who elected to pay their assessments in a lump sum versus those who elected to pay in installments” and that “[t]he stated purpose in Resolution 101 simply fails to express any connection to the” denial of relief to petitioners.” *Id.* at 570-71 (Rucker, J., dissenting).

More distressingly, the decision of the court below fails to acknowledge any due process or equal

protection boundaries on governmental interests. In doing so, the court selectively cited this Court's precedents to suggest that the "rational basis" test is no limit on arbitrary governmental actions. *See, e.g., id.* at 561, *citing FCC. v. Beach Communications, Inc.*, 508 U.S. 307, 15 (1993) ("[I]t does not matter what the actual policy reason was, so long as a legitimate reason can be conceived."); *id.* at 561, *citing Nordlinger v. Hahn*, 505 U.S. 1, 15-16 (1992) (quoting *Allied Stores of Ohio, Inc. v. Bowers*, 358 U.S. 522, 528-29 (1959) ("[A] policy reason is sufficiently plausible if it 'may reasonably have been the purpose and policy' of the relevant government decisionmaker."). This reasoning by the court below is disconcerting because it could conceivably uphold any governmental action justified by administrative cost concerns. The scope of discretion that the court below gave the City government signals that any violation of the Equal Protection Clause is permissible if the authorities claim there is a governmental interest.

Courts in other states have determined that selective tax treatment such as at issue in this case violates equal protection guarantees. *See, e.g., Gosnell Development Corp. v. Arizona Dep't of Revenue*, 744 P.2d 451, 453 (Ariz. Ct. App. 1987) ("Under well-settled Arizona and federal law, taxing authorities treating taxpayers in the same class differently, as Gosnell has been treated, violate their rights to equal protection under the law."); *Armco Steel Corp. v. Dep't of the Treasury*, 358 N.W.2d 839, 243 (Mich. 1984) (citing *Beauty Built Construction Co. v. City of Warren*, 134 N.W. 2d 214, 236 (Mich. 1965)) ("Where an ordinance fails to include and affect alike all persons of the same class, and extends

immunities or privileges to one part and denies them to others of like kind by unreasonable or arbitrary classification, the same is contrary to the equal protection guarantees of the State and Federal Constitutions.”); *Washington Theatre Club, Inc., v. District of Columbia*, 311 A.2d 492, 495 (D.C. 1973) (“[I]f there is no substantial difference between the operation of these two organizations, [granting only one organization a tax exemption] would amount to an unfair denial of equal tax treatment to appellant.”); *Perk v. City of Euclid*, 244 N.E.2d 475, 477 (Ohio 1969) (“A statute which confers special benefits upon delinquent taxpayers not equally available to nondelinquent taxpayers violates Section 2 of Article I of the constitution of Ohio [promising equal protection to its citizens] and is therefore void and of no effect.”). These cases conclude that arbitrary tax classifications resulting in unequal treatment violate constitutional protections. This Court should look to these cases as persuasive in interpreting the applicability of the Fourteenth Amendment to the City’s action in this case.

B. If Allowed to Stand, the Decision of the Court Below Will Undermine Business Certainty, Tax Compliance, and Respect for the Law.

The Indiana Supreme Court’s decision below has negative implications for not only the petitioners in the instant case, but also unforeseen numbers of other taxpayers. Individual taxpayers must use scarce resources and time educating themselves about applicable tax laws and complying, and business taxpayers face even greater compliance costs because tax laws, especially at the local level,

change often. This holds true especially for individuals and companies with a tax obligation in multiple states: they have many local, state, and federal tax laws to obey. When governments act arbitrarily in their tax procedures, these scarce resources must be allocated to cumbersome compliance procedures. Without the ability to make reasonable predictions about tax climates and resource allocation, making important business decisions becomes more difficult and reducing business activity.

While the taxpayers in the instant case were all individual taxpayers, the decision of the court below effectively encourages unpredictable and arbitrarily targeted tax policy. Taxpayers are effectively taught that they should pay their taxes in installments whenever possible because they may “lose” less money than those who pay in full. Moreover, taxpayers who can afford to pay in full have even greater incentive to pay in installments, a decision made not for economic freedom but due to an uncertain legal climate.

The decision below emphasized that tax authorities can use taxpayers’ probable economic statuses as a justification for arbitrary tax policy, a dangerous precedent. State revenue officials already often claim that their constitutionally questionable actions are justified by budget concerns. If the decision of the court below stands, they will be encouraged to push the limits even further. *See, e.g.,* Paul Frankel, *Retroactivity and Retained Refunds*, TAX FOUNDATION TAX POLICY PODCAST (Jul. 7, 2010), <http://www.taxfoundation.org/research/show/26493.h>

tml (explaining government proclivities towards citing governmental interests in questionable ways).

The instant case is not an aberration in showing little regard for business certainty and scarce resources. In *Zoeller v. Aisin USA Manufacturing, Inc.*, 946 N.E.2d 1148 (Ind. 2011), the Indiana Supreme Court upheld outrageous state tax refund policy. In that case, the Indiana Department of Revenue sent a taxpayer an overpayment but later determined that their issuance of the refund was a clerical error. The Department proceeded to send out a series of notifications that cancelled the assessment, re-issued it, and altered the amount due, all after the statute of limitations had already passed. The Indiana Supreme Court determined that the Department of Revenue had been acting within the statute of limitations because the case did not technically concern taxation but instead refunds. Decisions such as *Zoeller* and the instant case suggest that some state officials are concerned neither with protecting taxpayers' rights nor with encouraging taxpayers to engage in productive economic activities. This in turn makes it less likely that taxpayers will feel that they are represented faithfully by their government.

For many citizens, paying taxes is one of the few ways that they interact with the government. Tax policy widely perceived as unusual and unfair threatens to foster a general disenchantment with the government, creating tensions between the law and citizens. By reiterating basic standards of equal refund treatment of a canceled tax, this Court will reduce the prevalence of a rising problem of arbitrary taxation practices.

CONCLUSION

For the foregoing reasons, *Amicus Curiae* Tax Foundation respectfully requests that this Court grant the petition for certiorari.

Respectfully submitted,

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