No. 97-1981

In the Supreme Court of the United States

OCTOBER TERM, 1997

WEST VIRGINIA BOARD OF PUBLIC WORKS, ET AL.,
PETITIONERS

v.

CSX TRANSPORTATION, INC., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether Section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. 11501 (1994 & Supp. I 1995), validly authorizes a federal court to enjoin state officials from collecting taxes that have been assessed in violation of the Act.

2. Whether the relief sought in this case is prospective.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A14) is reported at 138 F.3d 537. The opinion of the district court (Pet. App. B1-B17) is reported at 997 F. Supp. 749.

JURISDICTION

The judgment of the court of appeals (Pet. App. A15) was entered on March 10, 1998. The petition for a writ of certiorari was filed on June 8, 1998. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Railroad Revitalization and Regulatory Reform Act of 1976 (4-R Act) protects railroads from discriminatory tax assessments. Section 306(b)(1) of the Act provides in relevant part that "a State" or "authority acting for a State" may not "[a]ssess rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property." 49 U.S.C. 11501(b)(1) (1994 & Supp. I 1995). Relief may granted "only if the ratio of assessed value to true market value of rail transportation property exceeds by at least 5 percent the ratio of assessed value to true market value of other commercial and industrial property in the same assessment jurisdiction." 49 U.S.C. 11501(c) (1994 & Supp. I 1995). A State or authority acting for a State also may not "[l]evy or collect a tax on an [unlawful] assessment." 49 U.S.C. 11501(b)(2) (1994 & Supp. I 1995). As a general matter, the Tax Injunction Act, 28 U.S.C. 1341, prohibits a federal district court from enjoining the assessment or collection of state taxes when there is a "plain, speedy and efficient" state law remedy. "Notwithstanding section 1341 of title 28," however, a federal district court has jurisdiction "to prevent a violation of" the 4-R Act. 49 U.S.C. 11501(c) (1994 & Supp. I 1995).

In December 1995, the West Virginia Board of Public Works (Board) assessed taxes for the 1996 tax year on the property of two raiload companies—CSX Transportation, Inc. and Nicholas, Fayette and

Greenbrier Railroad Company (respondents). Pet. App. A3. In January 1996, those assessments became final. *Ibid.* After paying one-half of their assessed taxes, respondents filed suit against the Board and its individual members (petitioners) in the United States District Court for the Southern District of West Virginia. *Id.* at A3-A4. Respondents alleged that petitioners had assessed their property at a rate in excess of that of other commercial and industrial property, in violation of Section 306 of the 4-R Act, 49 U.S.C. 11501 (1994 & Supp. I 1995). Pet. App. A4. Respondents sought an injunction preventing petitioners from collecting that portion of the total annual tax that violates the Act. *Ibid.*

The district court dismissed the complaint on Eleventh Amendment grounds. Pet. App. B1-B18. The court held that Congress did not have authority under Section 5 of the Fourteenth Amendment to enact the 4-R Act's ban on discriminatory taxation of rail property. *Id.* at B3-B6. The court therefore concluded that "the attempted abrogation of Eleventh Amendment immunity in the 4-R Act was ineffective." *Id.* at B6.

The court also ruled that respondents could not sue state officials under *Ex parte Young*, 209 U.S. 123 (1908). Pet. App. B7-B17. The court reasoned that, because respondents' taxes had already been assessed, and because respondents sought a credit for their first-half payment, respondents were seeking retroactive relief that is barred by the Eleventh Amendment. *Id.* at B15-B16.

Respondents appealed and the United States intervened to defend the constitutionality of Section 306's authorization of prospective injunctive relief against individual officials acting on behalf of a State. The

United States also urged the court of appeals to refrain from deciding whether Congress had authority to subject a State to suit under Section 306 pursuant to Section 5 of the Fourteenth Amendment.

2. The court of appeals reversed and remanded. Pet. App. A1-A14. The court held that an injunction that seeks to prevent state officials from collecting taxes in the future is prospective and is therefore permissible under *Ex parte Young*. *Id.* at A7-A14. The court of appeals rejected petitioners' contention that such an order would be retroactive because the assessment had already been made. The court explained that "[r]egardless of when [petitioners] completed the tax assessment, the action that [respondents] seek to enjoin—the collection of illegal taxes—has not yet occurred." *Id.* at A13. The court concluded that the "injunction that [respondents] seek is thus precisely the type of relief contemplated by *Ex parte Young*." *Id.* at A13-A14.

The court of appeals held that "[t]he district court further erred in holding that the injunction was retrospective because it sought a refund or credit for 'a monetary loss.'" Pet. App. A11. The court explained that respondents "have not *lost* any money: the money allegedly illegally assessed is still safely in their pockets." *Id.* at A12. The court added that "no award of any money need be made from the state treasury. Instead, money which state officials would otherwise collect from [respondents], in violation of federal law, will be protected from collection." *Ibid.* Because an injunction prohibiting the individual Board members from collecting the contested taxes would provide respondents with full relief, the court of appeals did not reach the question whether Con-

gress could validly abrogate state immunity under Section 5 of the Fourteenth Amendment. *Id.* at A7.

ARGUMENT

1. Petitioners contend (Pet. 8) that the court of appeals' holding that respondents may sue to enjoin the collection of taxes that have been assessed in violation of the 4-R Act disregards the rule that federal courts may not enjoin the collection of taxes when there is an adequate state law remedy. That contention does not warrant review. As petitioners acknowledge (Pet. 8 n.3), they failed to raise that issue in the court of appeals. The court of appeals accordingly did not consider it. Because petitioners failed to raise the issue below, and the court of appeals did not address it, it is not properly presented here. See *Adickes* v. *S.H. Kress & Co.*, 398 U.S. 144, 147 n.2 (1970).

In any event, the decision below does not conflict with the rule upon which petitioners rely. The rule that a federal court may not enjoin the collection of taxes when there is an adequate state law remedy is based on judicially fashioned "principles of federalism and comity" (*National Private Truck Council* v. *Oklahoma Tax Comm'n*, 515 U.S. 582, 586 (1995)), and therefore applies only when there is no contrary congressional directive. That rule has no application here, because Congress has expressly authorized federal courts to enjoin the collection of taxes that have been assessed in violation of the 4-R Act, without regard to the adequacy of state law remedies. The 4-R Act specifically provides that "[n]otwithstanding section 1341 of title 28"—the Act of Congress that prevents a federal court from enjoining the collection of taxes when there is an adequate state

remedy—a federal court has jurisdiction "to prevent a violation of" the 4-R Act. 49 U.S.C. 11501(c) (1994 & Supp. I 1995). The effect of that special jurisdictional provision is to displace the federal statute—and the principles of comity and federalism to which it gave effect—that would otherwise prevent a federal court from enjoining the collection of state taxes that have been assessed in violation of the 4-R Act.

This Court's decision in *Burlington Northern Rail Road* v. *Oklahoma Tax Commission*, 481 U.S. 454 (1987), is instructive on that point. In that case, the Court held that the 4-R Act gives federal courts authority to review alleged overvaluation of federal railroad property by state taxation authorities. *Id.* at 460-464. The Court rejected the contentions that "injunctive relief against state taxation [under Section 306] offends the principles of comity" and that "restrictions on valuation actions * * * are necessary in order to avoid 'an inevitable clog of federal dockets' and 'unreasonable delay of the state tax collection process.'" *Id.* at 464. The Court held that it was not "free to reconsider" Congress's policy considerations in enacting Section 306. *Ibid.*

Petitioners contend (Pet. 9 n.4) that Congress's intent to permit suits in federal court to enjoin the collection of state taxes without regard to the availability of state remedies may be ignored because the court of appeals in this case did not reach the question whether Congress had validly abrogated the State's Eleventh Amendment immunity. That contention is without merit. Whether or not the 4-R Act validly abrogates a State's immunity from suit, it authorizes a suit against individual state officials "to prevent a violation of" the Act. 49 U.S.C. 11501(c) (1994 & Supp. I 1995). Under the doctrine of *Ex parte*

Young, 209 U.S. 123 (1908), such a suit for prospective injunctive relief does not implicate the Eleventh Amendment. And, under the express terms of the 4-R Act, such a suit may proceed without regard to the general rule that a federal court may not enjoin the collection of taxes when there is an adequate state remedy. 49 U.S.C. 11501(c) (1994 & Supp. I 1995). Thus, while principles of federalism and comity ordinarily preclude a federal court from enjoining the collection of taxes when there is an adequate state remedy, those principles are inapplicable here.

2. Petitioners also contend (Pet. 10-12) that the court of appeals' decision allows respondents to obtain retroactive monetary relief against the State in violation of the Eleventh Amendment. That contention is without merit and does not warrant review. As the court of appeals noted, respondents seek to enjoin the collection of money that "is still safely in their pockets" and that has not entered the state treasury. Pet. App. A12. Such relief is clearly prospective within the meaning of *Ex parte Young*.

Petitioners contend (Pet. 10-11) that such relief is retroactive here because the challenged assessment had already been made by the time respondents filed suit. The critical point, however, is that petitioners are continuing to use the assessment as the basis for collecting taxes. If, as respondents allege, the assessment violates the 4-R Act, petitioners' continuing use of that assessment as a basis for collecting taxes also violates federal law. 49 U.S.C. 11501(b)(2) (1994 & Supp. I 1994) (state authority may not collect a tax on an assessment that violates the Act). Respondents' suit to enjoin that alleged continuing violation of federal law fits squarely within the rationale of *Ex parte Young*. See *Green* v. *Mansour*, 474 U.S. 64, 68

(1985) (*Young* authorizes a federal court to grant prospective injunctive relief "to prevent a continuing violation of federal law"). As the court of appeals explained, "[r]egardless of when [petitioners] completed the tax assessment, the action that [respondents] seek to enjoin—the collection of illegal taxes—has not yet occurred," and the "injunction that [respondents] seek is thus precisely the type of relief contemplated by *Ex parte Young*." Pet. App. A13-A14.

Petitioners also contend (Pet. 11-12) that the relief sought by respondents is impermissibly retroactive because respondents not only seek to prevent an allegedly excessive second-half payment, but also seek a credit for their allegedly excessive first-half payment. When respondents made their first-half payment, however, petitioners had not yet released the information regarding assessments of other commercial and industrial property that was necessary to make out a claim of discrimination under the 4-R Act (Pet. App. A3-A4), and petitioners have not suggested that the issue arising from that feature of the case is one of recurring importance. In any event, the court of appeals in this case determined that respondents do not seek a credit for their first half payment, but instead seek an injunction against collection of that portion of the total annual tax that violates federal law. *Id.* at A11-A12. That portion remains unpaid by respondents, and accordingly no payment from the state treasury is necessary to afford respondents relief. So viewed, the relief sought by respondents is prospective within the meaning of *Ex parte Young*. See *Edelman* v. *Jordan*, 415 U.S. 651, 667 (1974) ("[T]he difference between the type of relief barred by the Eleventh Amendment and that permitted under

Ex parte Young will not in many instances be that between day and night.").

Finally, petitioners contend (Pet. 12) that the injunction sought by respondents would have a substantial adverse impact on the state treasury. As this Court has held, however, "relief that serves directly to bring an end to a present violation of federal law is not barred by the Eleventh Amendment even though accompanied by a substantial ancillary effect on the state treasury." *Papasan* v. *Allain*, 478 U.S. 265, 278 (1986). Such an effect "is a permissible and often an inevitable consequence of the principle announced in *Ex parte Young*." *Edelman*, 415 U.S. at 668.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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