

Department of Justice sticks up for federal retirees against West Virginia tax at US Supreme Court



David M. Kall | Thursday, September 13, 2018

[Last week](#) the Trump administration filed a [friend-of-the-court brief](#) in support of federal retirees in [Dawson v. Steager](#) before the U.S. Supreme Court. As [we reported](#) when the court accepted the case for review, the case addresses the intergovernmental tax immunity doctrine as applied to the West Virginia income tax and state and federal law-enforcement officers.

West Virginia [law](#) fully exempts from taxable income retirement benefits that state law enforcement retirees receive. Federal law enforcement retirees in West Virginia, however, benefit only from a smaller exemption for up to \$2,000 of retirement benefits. This latter exemption is available to federal retirees under age 65 and to state retirees under age 65 who receive benefits from the Public Employees Retirement System and the Teachers' Retirement System. In addition, all taxpayers over age 65 may exempt up to \$8,000 from their taxable income, regardless of their retiree status.

The intergovernmental tax immunity doctrine and [federal law](#) allow states to tax the pay of federal employees, but only if the tax does not “discriminate” against them because the federal government is the source of their pay. The question presented in *Dawson v. Steager*, then, is whether West Virginia’s tax law discriminates between state and federal employees because of the source of their income. If discriminatory, West Virginia must show “significant differences” between how state and federal law enforcement officers are situated relative to one another.

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We are following the developments as the parties brief the case and present oral argument to the court.



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