SUPREME COURT OF THE UNITED STATES

No. 96–1462

CHRISTOPHER H. LUNDING, ET UX., PETITIONERS *v.* NEW YORK TAX APPEALS TRIBUNAL ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF NEW YORK

[January 21, 1998]

JUSTICE GINSBURG, with whom THE CHIEF JUSTICE and JUSTICE KENNEDY join, dissenting.

New York and other States follow the Federal Government's lead[1] in according an income tax deduction for alimony to resident taxpayers only.[2] That tax practice, I conclude, does not offend the nondiscrimination principle embodied in the Privileges and Immunities Clause of Article IV, §2. I therefore dissent from the Court's opinion.

I

To put this case in proper perspective, it is helpful to recognize not only that alimony payments are "surely a

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[1] See 26 U. S. C. §§872–873; McIntyre & Pomp, State Income Tax Treatment of Residents and Nonresidents Under the Privileges and Immunities Clause, 13 State Tax Notes 245, 248–249 (1997).

[2] Four States in addition to New York– Alabama, California, West Virginia, and Wisconsin– expressly limit the alimony deduction to residents. See Ala. Code §40–18–15(18) (1993); Cal. Rev. and Tax. Code Ann. §17302 (West 1994); W. Va. Code §11–21–32(b)(4) (1995); Wis. Stat. §71.05(6)(a)(12) (1989). Two other States– Illinois and Ohio– restrict nonresidents to specified deductions and adjustments in calculating in-state income, and do not list the alimony deduction as one available to nonresidents. See Ill. Comp. Stat. Ann., ch. 35, §5/301(c)(2)(A) (1996); Ohio Rev. Code Ann. §5747.20(B)(6) (1994).

personal matter," *ante*, at 22; in addition, alimony payments are "unlike other . . . . personal obligation[s]," *ante*, at 26. Under federal tax law, mirrored in state tax regimes, alimony is included in the recipient's gross income, 26 U. S. C. §71(a), and the payer is allowed a corresponding deduction, §§215(a), 62(a)(10), for payments taxable to the recipient. This scheme "can best be seen as a determination with respect to choice of taxable person rather than as rules relating to the definition of income or expense. In effect, the [alimony payer] is treated as a conduit for gross income that legally belongs to the [alimony recipient] under the divorce decree." M. Chirelstein, Federal Income Taxation ¶9.05, p. 230 (8th ed. 1997) (hereinafter Chirelstein); see also B. Bittker & M. McMahon, Federal Income Taxation of Individuals ¶36.7, p. 36–18 (2d ed. 1995) ("Unlike most other personal deductions, [the deduction for alimony payments] is best viewed as a method of designating the proper taxpayer for a given amount of income, rather than a tax allowance for particular expenditures. In combination, §71 [allowing a deduction to the alimony payer] and §215 [requiring the alimony recipient to include the payment in gross income] treat part of the [payer]'s income as though it were received subject to an offsetting duty to pay it to the payee."). New York applies this scheme to resident alimony payers. But New York Tax Law §631(b)(6) (McKinney 1987) declares that, in the case of a nonresident with New York source income, the alimony deduction for which federal law provides "shall not constitute a deduction derived from New York sources."

Thus, if petitioner Christopher Lunding and his former spouse were New York residents, his alimony payments would be included in his former spouse's gross income for state as well as federal income tax purposes, and he would receive a deduction for the payments. In other words, New York would tax the income once, but not twice. In

fact, however, though Lunding derives a substantial part of his gross income from New York sources, he and his former spouse reside in Connecticut. That means, he urges, that New York may not tax the alimony payments at all. Compared to New York divorced spouses, in short, Lunding seeks a windfall, not an escape from double taxation, but a total exemption from New York's tax for the income in question. This beneficence to nonresidents earning income in New York, he insists, is what the Privileges and Immunities Clause of Article IV, §2 of the United States Constitution demands.

Explaining why New York must so favor Connecticut residents over New York residents, Lunding invites comparisons with other broken marriages– cases in which one of the former spouses resides in New York and the other resides elsewhere. First, had Lunding's former spouse moved from Connecticut to New York, New York would count the alimony payments as income to her, but would nonetheless deny him, because of his out-of-state residence, any deduction. In such a case, New York would effectively tax the same income twice, first to the payer by giving him no deduction, then to the recipient, by taxing the payments as gross income to her. Of course, that is not Lunding's situation, and one may question his standing to demand that New York take nothing from him in order to offset the State's arguably excessive taxation of others.

More engagingly, Lunding compares his situation to that of a New York resident who pays alimony to a former spouse living in another State. In such a case, New York would permit the New Yorker to deduct the alimony payments, even though the recipient pays no tax to New York on the income transferred to her. New York's choice, according to Lunding, is to deny the alimony deduction to the New Yorker whose former spouse resides out of state, or else extend the deduction to him. The Court apparently

agrees. At least, the Court holds, New York "has not adequately justified" the line it has drawn. *Ante*, at 1.

The Court's condemnation of New York's law seems to me unwarranted. As applied to a universe of former marital partners who, like Lunding and his former spouse, reside in the same State, New York's attribution of income to *someone* (either payer or recipient) is hardly unfair. True, an occasional New York resident will be afforded a deduction though his former spouse, because she resides elsewhere, will not be chased by New York's tax collector. And an occasional New York alimony recipient will be taxed despite the nonresidence of her former spouse. But New York could legitimately assume that in most cases, as in the Lundings' case, payer and recipient will reside in the same State. Moreover, in cases in which the State's system is overly generous (New York payer, nonresident recipient) or insufficiently generous (nonresident payer, New York recipient), there is no systematic discrimination discretely against nonresidents, for the pairs of former spouses in both cases include a resident and a nonresident.

In reviewing state tax classifications, we have previously held it sufficient under the Privileges and Immunities Clause that "the State has secured a reasonably fair distribution of burdens, and that no intentional discrimination has been made against non-residents." *Travellers' Ins. Co.* v. *Connecticut*, 185 U. S. 364, 371 (1902). In *Travellers*, the Court upheld a state tax that was facially discriminatory: Nonresidents who held stock in Connecticut corporations owed tax to the State on the full value of their holdings, while resident stockholders were entitled to a deduction for their proportionate share of the corporation's Connecticut real estate. But the State's tax system as a whole was not discriminatory, for although residents were entitled to deduct their share of the corporation's Connecticut real estate from their *state* taxes, they were required to

pay *municipal* taxes on that property; nonresidents owed no municipal taxes. See *id.*, at 367. Municipal taxes varied across the State, so residents in low-tax municipalities might end up paying lower taxes than nonresidents. Nonetheless, "the mere fact that in a given year the actual workings of the system may result in a larger burden on the non-resident was properly held not to vitiate the system, for a different result might obtain in a succeeding year, the results varying with the calls made in the different localities for local expenses." *Id.*, at 369.

Travellers held that tax classifications survive Privileges and Immunities scrutiny if they provide a rough parity of treatment between residents and nonresidents. See also *Austin* v. *New Hampshire*, 420 U. S. 656, 665 (1975) (Privileges and Immunities precedents "establis[h] a rule of substantial equality of treatment"). That holding accords with the Court's observation in *Baldwin* v. *Fish and Game Comm'n of Mont.*, 436 U. S. 371, 383 (1978), that "[s]ome distinctions between residents and nonresidents merely reflect the fact that this is a Nation composed of individual States, and are permitted; other distinctions are prohibited because they hinder the formation, the purpose, or the development of a single Union of those States." A tax classification that does not systematically discriminate against nonresidents cannot be said to "hinder the formation, the purpose, or the development of a single Union." See McIntyre & Pomp, Post-Marriage Income Splitting through the Deduction for Alimony Payments, 13 State Tax Notes 1631, 1635 (1997) (urging that the Privileges and Immunities Clause does not require New York to forgo the income-splitting objective served by its alimony rules when both payer and recipient are residents of the same State simply because "results may be less than ideal" "when one of the parties to the alimony transaction

is a resident and the other is a nonresident").[3]

I would affirm the judgment of the New York Court of Appeals as consistent with the Court's precedent, and would not cast doubt, as today's decision does, on state tax provisions long considered secure.

II

Viewing this case as one discretely about alimony, I would accept New York's law as a fair adaptation, at the state level, of the current United States system. The Court notes but shies away from this approach, see *ante*, at 23–24, expressing particular concern about double taxation in the "extreme" case not before us— the "New York resident [who] receives alimony payments from a nonresident taxpayer," *ante*, at 24.[4] Instead, the Court treats alimony as one among several personal expenses a State makes deductible.

Significantly, the Court's approach conforms to no historic pattern. "Historically, both alimony and child support were treated as personal expenses nondeductible [by

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[3] Nor does it appear that New York gains "an unfair share of tax revenue" by denying nonresident alimony payers a deduction even when the recipient is a resident. McIntyre & Pomp, Post-Marriage Income Splitting through the Deduction for Alimony Payments, 13 State Tax Notes, at 1635. Alimony payments into and out of a State, it seems reasonable to assume, are approximately in balance; if that is so, then the revenue New York receives under its current regime is roughly equivalent to the revenue it would generate by granting a deduction to nonresident alimony payers with resident recipients and denying the deduction to resident payers with nonresident recipients. See *ibid*.

[4] As already observed, Lunding, who seeks to escape any state tax on the income in question (Connecticut, his State of residence, had no income tax in the year in issue), is hardly a fit representative of the individuals who elicit the Court's concern. See *New York* v. *Ferber*, 458 U. S. 747, 767 (1982) ("[A] person to whom a statute may constitutionally be applied may not challenge that statute on the ground that it may conceivably be applied unconstitutionally to others in situations not before the Court.").

the payer] and not includable [in the recipient's income]. Successive [federal] statutory enactments beginning in 1942 allowed a deduction and corresponding inclusion for alimony payments while continuing the nondeductible-excludable treatment for child support payments." H. Ault, Comparative Income Taxation: A Structural Analysis 277 (1997).

Accepting, *arguendo*, the Court's "personal expense deduction" in lieu of "income attribution" categorization of alimony, however, I do not read our precedent to lead in the direction the Court takes. On Lunding's analysis, which the Court essentially embraces, the core principle is that "personal deductions, no matter what they are . . . must be allowed in the proportion that the New York State income bears to total income." Tr. of Oral Arg. 19. That has never been, nor should it be, what the Privileges and Immunities Clause teaches.

A

"[E]arly in this century, the Court enunciated the principle that a State may limit a nonresident's expenses, losses, and other deductions to those incurred in connection with the production of income within the taxing State." 2 J. Hellerstein & W. Hellerstein, State Taxation 20–47 (1992). In two companion cases– *Shaffer* v. *Carter*, 252 U. S. 37 (1920), and *Travis* v. *Yale & Towne Mfg. Co.*, 252 U. S. 60 (1920)– the Court considered, respectively, Oklahoma's and New York's schemes of nonresident income taxation. Both had been challenged as violating the Privileges and Immunities Clause.

Upholding the Oklahoma scheme and declaring the New York scheme impermissibly discriminatory, the Court established at least three principles. First, "just as a State may impose general income taxes upon its own citizens and residents whose persons are subject to its control, it may, as a necessary consequence, levy a duty of like char-

acter, and not more onerous in its effect, upon incomes accruing to non-residents from their property or business within the State, or their occupations carried on therein." *Shaffer*, 252 U. S., at 52; accord, *Travis*, 252 U. S., at 75.

Second, a State may not deny nonresidents personal *exemptions* when such exemptions are uniformly afforded to residents. See *id.*, at 79–81. Personal exemptions, which are typically granted in a set amount "to all taxpayers, regardless of their income," Hellerstein, Some Reflections on the State Taxation of a Nonresident's Personal Income, 72 Mich. L. Rev. 1309, 1343 (1974) (hereinafter Hellerstein), effectively create a zero tax bracket for the amount of the exemption. See Chirelstein, p. 3. Denial of those exemptions thus amounts to an across-the-board rate increase for nonresidents, a practice impermissible under longstanding constitutional interpretation. See, *e.g.*, *Chalker* v. *Birmingham & Northwestern R. Co.*, 249 U. S. 522, 526–527 (1919); *Ward* v. *Maryland*, 12 Wall. 418, 430 (1871); see also *Austin* v. *New Hampshire*, 420 U. S., at 659 (Privileges and Immunities Clause violated where "[i]n effect . . . the State taxe[d] only the incomes of nonresidents working in New Hampshire"). Because New York denied nonresidents the personal exemption provided to all residents, the *Travis* Court held the State's scheme an abridgement of the Privileges and Immunities Clause. 252 U. S., at 79–81.

Finally, *deductions* for specific expenses are treated differently from the blanket exemptions at issue in *Travis:* A State need not afford nonresidents the same deductions it extends to its residents. In *Shaffer*, the Court upheld Oklahoma's rules governing deduction of business losses. Oklahoma residents could deduct such losses wherever incurred, while nonresidents could deduct only losses incurred within the State. The Court explained that the disparate treatment was "only such as arises naturally from the extent of the jurisdiction of the State in the two

classes of cases, and cannot be regarded as an unfriendly or unreasonable discrimination." *Shaffer*, 252 U. S., at 57. A State may tax its residents on "their income from all sources, whether within or without the State," but it cannot tax nonresidents on their out-of-state activities. *Ibid.* "Hence there is no obligation to accord to [nonresidents] a deduction by reason of losses elsewhere incurred." *Ibid.* The Court stated the principle even more clearly in *Travis*, 252 U. S., at 75–76: "[T]here is no unconstitutional discrimination against citizens of other States in confining the deduction of expenses, losses, etc., in the case of nonresident taxpayers, to such as are connected with income arising from sources within the taxing State . . . ."

B

Shaffer and *Travis* plainly establish that States need not allow nonresidents to deduct out-of-state *business* expenses. The application of those cases to deductions for *personal* expenses, however, is less clear. On the one hand, *Travis*'s broad language could be read to suggest that in-state business expenses are the only deductions States must extend to nonresidents. On the other hand, neither *Shaffer* nor *Travis* upheld a scheme denying nonresidents deductions for personal expenses.[5] A leading

[5]The New York law before the Court in *Travis* allowed residents to deduct non-business-related property losses wherever incurred, but allowed nonresidents such deductions only for losses incurred in New York. See Tr. of Record in *Travis* v. *Yale & Towne Mfg. Co.*, O. T. 1919, No. 548 (State of New York, The A, B, C of the Personal Income Tax Law, pp. 12, 14, ¶¶42, 44). Although *Travis* held New York's law infirm, the Court rested its decision solely on the ground that denying personal exemptions to nonresidents violated the Privileges and Immunities Clause. See *Travis*, 252 U. S., at 79–82. The Court did not extend its ruling to New York's differential treatment of residents and nonresidents with regard to personal-loss deductions. See *id.*, at 75–76 ("no unconstitutional discrimination" in confining deductions for nonresidents' losses "to such as are connected with income arising from

commentator has concluded that "nothing in either the *Shaffer* or *Travis* opinions indicates whether the Court was addressing itself to personal as well as business deductions." Hellerstein 1347, n. 165.

With rare exception, however, lower courts have applied *Shaffer* and *Travis* with equal force to both personal and business deductions. The New York court's decision in *Goodwin* v. *State Tax Comm'n*, 286 App. Div. 694, 702, 146 N. Y. S. 2d 172, 180 (3d Dept. 1955), aff'd mem., 1 N. Y. 2d 680, 133 N. E. 2d 711, appeal dismissed for want of a substantial federal question, 352 U. S. 805 (1956), exemplifies this approach. *Goodwin* concerned a lawyer who resided in New Jersey and practiced law in New York City. In his New York income tax return, he claimed and was allowed deductions for bar association dues, subscriptions to legal periodicals, entertainment and car expenses, and certain charitable contributions. But he was disallowed deductions for real estate taxes and mortgage interest on his New Jersey home, medical expenses, and life insurance premiums. *Goodwin*, 286 App. Div., at 695, 146 N. Y. S. 2d, at 174. Upholding the disallowances, the appeals court explained that the non-income-producing personal expenses at issue were of a kind properly referred to the law and policy of the State of the taxpayer's residence. That State, if it had an income tax, might well have allowed the deductions, but the New York court did not think judgment in the matter should be shouldered by a sister State. *Id.*, at 701, 146 N. Y. S. 2d, at 180.

Goodwin further reasoned that a State may accord certain deductions "[i]n the exercise of its general governmental power to advance the welfare of its residents." *Ibid*. But it does not inevitably follow that the State must "extend similar aid or encouragement to the residents of

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sources within the taxing State").

other states." *Ibid.* A State need not, in short, underwrite the social policy of the Nation. Cf. *Martinez* v. *Bynum*, 461 U. S. 321, 328 (1983) (State may provide free primary and secondary education to residents without extending the same benefit to nonresidents).

Other lower courts, upholding a variety of personal expense deductions for residents only, have agreed with *Goodwin*'s analysis. Challenges to such rulings, like the appeal in *Goodwin*, have been disposed of summarily by this Court. See, *e.g.*, *Lung* v. *O'Chesky*, 94 N. M. 802, 617 P. 2d 1317 (1980) (upholding denial to nonresidents of grocery and medical tax rebates allowed residents where rebates served as relief for State's gross receipts and property taxes), appeal dismissed for want of a substantial federal question, 450 U. S. 961 (1981); *Anderson* v. *Tiemann*, 182 Neb. 393, 407–408, 155 N. W. 2d 322, 331–332 (1967) (upholding denial to nonresidents of a deduction allowed residents for sales taxes paid on food purchased for personal use), appeal dismissed for want of a substantial federal question, 390 U. S. 714 (1968); *Berry* v. *State Tax Comm'n*, 241 Ore. 580, 582, 397 P. 2d 780, 782 (1964) (upholding denial to nonresidents of deductions allowed residents for medical expenses, interest on home-state loans, and other personal items; court stated that the legislature could legitimately conclude that "personal deductions are so closely related to the state of residence that they should be allowed only by the state of residence and not by every other state in which some part of a taxpayer's income might be found and taxed"), appeal dismissed for want of a substantial federal question, 382 U. S. 16 (1965). But see *Wood* v. *Department of Revenue*, 305 Ore. 23, 32–33, 749 P. 2d 1169, 1173–1174 (1988) (State may not deny alimony deduction to nonresidents).

C

Goodwin's Privileges and Immunities analysis is a per-

suasive elaboration of *Shaffer* and *Travis*. Whether *Goodwin*'s exposition is read broadly (as supporting the view that a State need not accord nonresidents deductions for any personal expenses) or more precisely (as holding that a State may deny nonresidents deductions for personal expenditures that are "intimately connected with the state of [the taxpayer's] residence," *Goodwin*, 286 App. Div., at 701, 146 N. Y. S. 2d, at 180), Christopher Lunding is not entitled to the relief he seeks.

Alimony payments (if properly treated as an expense at all) are a personal expense, as the Court acknowledges, see *ante*, at 22. They "ste[m] entirely from the marital relationship," *United States* v. *Gilmore*, 372 U. S. 39, 51 (1963), and, like other incidents of marital and family life, are principally connected to the State of residence. Unlike donations to New York-based charities or mortgage and tax payments for second homes in the State, Lunding's alimony payments cannot be said to take place in New York, nor do they inure to New York's benefit. They are payments particularly personal in character, made by one Connecticut resident to another Connecticut resident pursuant to a decree issued by a Connecticut state court. Those payments "must be deemed to take place in" Connecticut, "the state of [Lunding's] residence, the state in which his life is centered." *Goodwin*, 286 A. D., at 701, 146 N. Y. S. 2d, at 180. New York is not constitutionally compelled to subsidize them.

The majority is therefore wrong to fault the Court of Appeals for insufficient articulation of a "policy basis for §631(b)(6)." *Ante*, at 15. The Court of Appeals recalled *Goodwin*, characterizing it as the decision that "definitively addressed" the disallowance of personal life expenses. See 89 N. Y. 2d 283, 289, 675 N. E. 2d 816, 820 (1996). The court concluded that alimony payments were no less referable to the law and policy of the taxpayer's residence than "the expenditures for life insurance, out-of-

State property taxes and medical treatment at issue in *Goodwin*." *Id.*, at 291, 675 N. E. 2d, at 821. That policy-based justification for §631(b)(6) needed no further elaboration.

III

Although Lunding's alimony payments to a Connecticut resident surely do not facilitate his production of income in New York or contribute to New York's riches, the Court relies on this connection: "[A]s a personal obligation that generally correlates with a taxpayer's total income or wealth, alimony bears some relationship to earnings regardless of their source." *Ante*, at 26; see also *ante*, at 22 (alimony payments "arguably bear some relationship to a taxpayer's overall earnings," and are "determined in large measure by an individual's income generally, wherever it is earned"). But all manner of spending similarly relates to an individual's income from all sources. Income generated anywhere will determine, for example, the quality of home one can afford and the character of medical care one can purchase. Under a "correlat[ion] with a taxpayer's total income" approach, *ante*, at 26, it appears, the nonresident must be allowed to deduct his medical expenses and home state real estate taxes, even school district taxes, plus mortgage interest payments, if the State allows residents to deduct such expenses. And as total income also determines eligibility for tax relief aimed at low-income taxpayers, notably earned income tax credits, a State would be required to make such credits available to nonresidents if it grants them to residents.[6]

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[6] New York currently allows low-income nonresident taxpayers to use the State's Earned Income Tax Credit to offset their income tax liability, but does not refund any excess credits to nonresidents as it does to residents. N. Y. Tax Law §§606(d)(1)–(d)(2) (McKinney Supp. 1997);

The Court does not suggest that alimony correlates with a taxpayer's total income more closely than does the run of personal life expenses. Indeed, alimony may be more significantly influenced by other considerations, for example, the length of the marriage, the recipient's earnings, child custody and support arrangements, an antenuptial agreement.[7] In short, the Court's "related-to-income" approach directly leads to what Christopher Lunding candidly argued: Any and every personal deduction allowed to residents must be allowed to nonresidents in the proportion that New York income bears to the taxpayer's total income. See Tr. of Oral Arg. 19–20. If that is the law of this case, long-settled provisions and decisions have been overturned, see *supra*, at 10–11, beyond the capacity of any legislature to repair. The Court's "notions of fairness," *ante*, at 26, in my judgment, do not justify today's extraordinary resort to a Privilege and Immunities Clause "the contours of which have [not] been precisely shaped by the process and wear of constant litigation and judicial interpretation." *Baldwin* v. *Fish and Game Comm'n of Mont.*, 436 U. S., at 379.

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For the reasons stated, I do not agree that the Privileges and Immunities Clause of Article IV, §2, mandates the

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see also §§606(c)(1)–(c)(2) (residents entitled to a refund of excess credit for certain household and dependent care services; nonresidents may use the credit only to offset tax liability).

[7] Connecticut, where Lunding was divorced, lists as factors relevant to alimony determinations

"the length of the marriage, the causes for the annulment, dissolution of the marriage or legal separation, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate and needs of each of the parties . . . and, in the case of a parent to whom the custody of minor children has been awarded, the desirability of such parent's securing employment." Conn. Gen. Stat. §46b–82 (1995).

result Lunding seeks– the insulation of his 1990 alimony payments from any State's tax. Accordingly, I would affirm the judgment of the New York Court of Appeals, and I dissent from this Court's judgment.