SUPREME COURT OF THE UNITED STATES

No. 90–1912

STEPHANIE NORDLINGER, PETITIONER *v.*
KENNETH HAHN, IN HIS CAPACITY AS TAX ASSESSOR FOR LOS ANGELES COUNTY, ET AL.
ON WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT
[June 18, 1992]

JUSTICE THOMAS, concurring in part and concurring in the judgment.

In *Allegheny Pittsburgh Coal Co.* v. *County Commission of Webster County,* 488 U. S. 336 (1989), this Court struck down an assessment method used in Webster County, West Virginia, that operated precisely the same way as the California scheme being challenged today. I agree with the Court that Proposition 13 is constitutional. But I also agree with JUSTICE STEVENS that *Allegheny Pittsburgh* cannot be distinguished, see *post*, at 5. To me *Allegheny Pittsburgh* represents a "needlessly intrusive judicial infringement on the State's legislative powers," *New Orleans* v. *Dukes*, 427 U. S. 297, 306 (1976) *(per curiam),* and I write separately because I see no benefit, and much risk, in refusing to confront it directly.

Allegheny Pittsburgh involved a county assessment scheme indistinguishable in relevant respects from Proposition 13. As the Court explains, California taxes real property at 1% of "full cash value," which means the "assessed value" as of 1975 (under the previous method) and after 1975–1976 the "appraised value of real property when purchased, newly constructed, or a change in value has occurred after the 1975 assessment." The assessed value may be increased for inflation, but only at a maximum rate of 2% each year. See California Const., Art. XIIIA, §§1(a), 2(a); *ante*, at 2. The property tax system worked much the

same way in Webster County, West Virginia. The tax assessor assigned real property an “appraised value,” set the “assessed value” at half of the appraised value, then collected taxes by multiplying the assessed value by the relevant tax rate. For property that had been sold recently, the assessor set the appraised value at the most recent price of purchase. For property that had not been sold recently, she increased the appraised price by 10%, first in 1976, then again in 1981 and 1983.

The assessor's methods resulted in "dramatic differences in valuation between . . . recently transferred property and otherwise comparable surrounding land." 488 U. S., at 341; cf. Glennon, Taxation and Equal Protection, 58 Geo. Wash. L. Rev. 261, 269–270 (1990) (discussing the effects of Proposition 13); Cohen, State Law in Equality Clothing: A Comment on *Allegheny Pittsburgh Coal Company* v. *County Commission*, 38 UCLA L. Rev. 87, 91, and n. 29 (1990); Hellerstein & Peters, Recent Supreme Court Decisions Have Far-Reaching Implications, 70 J. Taxation 306, 308–310 (1989). Several coal companies that owned property in Webster County sued the county assessor, alleging violations of both the West Virginia and the United States Constitutions. The Supreme Court of Appeals of West Virginia upheld the assessment against the companies, but this Court reversed.

The *Allegheny Pittsburgh* Court asserted that with respect to taxation, the Equal Protection Clause constrains the States as follows. Although "[t]he use of a general adjustment as a transitional substitute for an individual reappraisal violates no constitutional command," the Clause requires that "general adjustments [be] accurate enough over a short period of time to equalize the differences in proportion between the assessments of a class of property holders." 488 U. S., at 343. "[T]he constitutional requirement is the seasonable attainment of a rough equality in tax treatment of similarly situated property owners." *Ibid.* (citing *Allied Stores of Ohio, Inc.* v. *Bowers*, 358 U. S. 522, 526–527 (1959)). Moreover, the Court stated, the Constitution and laws of West Virginia "provide that all property of the kind held by petitioners shall be taxed at a rate uniform throughout the State according to its estimated market value," and "[t]here [was] no suggestion . . . that the State may have adopted a different system in practice from that specified by statute." 488 U. S.,

at 345. "Indeed, [the assessor's] practice seems contrary to that of the guide published by the West Virginia Tax Commission as an aid to local assessors in the assessment of real property." *Ibid.;* see also *ibid.* ("We are not advised of any West Virginia statute or practice which authorizes individual counties of the State to fashion their own substantive assessment policies independently of state statute"). The Court refused to decide "whether the Webster County assessment method would stand on a different footing if it were the law of a State, generally applied, instead of the aberrational enforcement policy it appears to be." *Id.*, at 344, n. 4. Finally, the Court declared, "`[I]ntentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property.'" *Id.,* at 345 (quoting *Sunday Lake Iron Co.* v. *Wakefield*, 247 U. S. 350, 352–353 (1918), and citing *Sioux City Bridge Co.* v. *Dakota County*, 260 U. S. 441 (1923), and *Cumberland Coal Co.* v. *Board of Revision of Tax Assessments in Green County, Pa.*, 284 U. S. 23 (1931)). The Court concluded that the assessments for the coal companies' properties had failed these requisites of the Equal Protection Clause.

As the Court accurately states today, "this Court's cases" —*Allegheny Pittsburgh* aside—"are clear that, unless a classification warrants some form of heightened review because it jeopardizes [the] exercise of a fundamental right or categorizes on the basis of an inherently suspect characteristic, the Equal Protection Clause requires only that the classification rationally further a legitimate state interest." *Ante*, at 7; see also *Burlington N. R. Co.* v. *Ford*, 504 U. S. ___, ___ (1992); *Lehnhausen* v. *Lake Shore Auto Parts Co.*, 410 U. S. 356, 359 (1973). The California tax system, like most, does not involve either suspect classes or fundamental rights, and the

Court properly reviews California's classification for a rational basis. Today's review, however, differs from the review in *Allegheny Pittsburgh*.

The Court's analysis in *Allegheny Pittsburgh* is susceptible, I think, to at least three interpretations. The first is the one offered by petitioner. Under her reading of the case, properties are "similarly situated" or within the same "class" for the purposes of the Equal Protection Clause when they are located in roughly the same types of neighborhoods, for example, are roughly the same size, and are roughly the same in other, unspecified ways. According to petitioner, the Webster County assessor's plan violated the Equal Protection Clause because she had failed to achieve a "seasonable attainment of a rough equality in tax treatment" of all the objectively comparable properties in Webster County, presumably those with about the same acreage and about the same amount of coal. Petitioner contends that Proposition 13 suffers from similar flaws. In 1989, she points out, "the long-time owner of a stately 7,800–square-foot, seven-bedroom mansion on a huge lot in Beverly Hills (among the most luxurious homes in one of the most expensive neighborhoods in Los Angeles County) . . . paid *less* property tax annually than the new homeowner of a tiny 980–square-foot home on a small lot in an extremely modest Venice neighborhood." Brief for Petitioner 5; see also *id.*, at 7 (Petitioner's "1988 property tax assessment on her unpretentious Baldwin Hills tract home is almost identical to that of a pre-1976 owner of a fabulous beach-front Malibu residential property worth $2.1 million, even though her property is worth only 1/12th as much as his"). Because California not only has not tried to repair this systematic, intentional, and gross disparity in taxation, but has enacted it into positive law, petitioner argues, Proposition 13 violates the Equal Protection Clause.

This argument rests, in my view, on a basic misunderstanding of *Allegheny Pittsburgh*. The Court there proceeded on the assumption of law (assumed because the parties did not contest it) that the initial classification, by the State, was constitutional, and the assumption of fact (assumed because the parties had so stipulated) that the properties were comparable under the State's classification. But cf. Glennon, 58 Geo. Wash. L. Rev., at 271–272 (noting that some of the properties contained coal and others did not). In referring to the tax treatment of a "class of property holders," or "similarly situated property owners," 488 U. S., at 343, the Court did not purport to review the constitutionality of the initial classification, by market value, drawn by the State, as opposed to the further subclassification within the initial class, by acquisition value, drawn by the assessor. Instead, *Allegheny Pittsburgh* assumed that whether properties or persons are similarly situated depended on state law, and not, as petitioner argues, on some neutral criteria such as size or location that serve as proxies for market value. Under that theory, market value would be the *only* rational basis for classifying property. But the Equal Protection Clause does not prescribe a single method of taxation. We have consistently rejected petitioner's theory, see, *e. g.*, *Ohio Oil Co.* v. *Conway*, 281 U. S. 146 (1930); *Bell's Gap R. Co.* v. *Pennsylvania*, 134 U. S. 232 (1890), and the Court properly rejects it today.

Allegheny Pittsburgh, then, does not prevent the State of California from classifying properties on the basis of their value at acquisition, so long as the classification is supported by a rational basis. I agree with the Court that it is, both for the reasons given by this Court, see *ante*, at 9–12, and for the reasons given by the Supreme Court of California in *Amador Valley Joint Union High School District* v. *State Board of Equalization*, 22 Cal. 3d 208, 583 P. 2d 1281 (1978). But the classification employed by the

Webster County assessor, indistinguishable from California's, was rational for all those reasons as well. In answering petitioner's argument that *Allegheny Pittsburgh* controls here, respondents offer a second explanation for that case. JUSTICE STEVENS gives much the same explanation, see *post*, at 4–5, though he concludes in the end that Proposition 13, after *Allegheny Pittsburgh*, is unconstitutional.

According to respondents, the Equal Protection Clause permits a State itself to determine which properties are similarly situated, as the State of California did here (classifying properties by acquisition value) and as the State of West Virginia did in *Allegheny Pittsburgh* (classifying properties by market value). But once a state does so, respondents suggest, the Equal Protection Clause requires after *Allegheny Pittsburgh* that properties in the same class be accorded seasonably equal treatment and not be intentionally and systematically undervalued. Proposition 13 provides for the assessment of properties in the same state-determined class regularly and at roughly full value; this contrasts with the tax scheme in Webster County, where by dividing property in the same class (by market value) into a subclass (by acquisition value), the assessor regularly undervalued the property similarly situated. This, according to respondents, made the Webster County scheme unconstitutional, and distinguishes Proposition 13.

Respondents' reading of *Allegheny Pittsburgh* is, in my view, as misplaced as petitioner's; their test, for starters, comes with a dubious pedigree. In one of the cases cited in *Allegheny Pittsburgh*, *Allied Stores*, we upheld against an equal protection challenge a statute that exempted some corporations from ad valorem taxes imposed on others. Not only does *Allied Stores* not even hint that the Constitution "require[s] . . . the seasonable attainment of a rough equality in tax treatment of similarly situated

property owners," 488 U. S., at 343, we took pains there to stress a very different proposition:

> "The States have very wide discretion in the laying of their taxes. . . . Of course, the States, in the exercise of their taxing power, are subject to the requirements of the Equal Protection Clause of the Fourteenth Amendment. But that clause imposes no iron rule of equality, prohibiting the flexibility and variety that are appropriate to reasonable schemes of state taxation. The State . . . is not required to resort to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value." *Allied Stores,* 358 U. S., at 526–527.

Two of the other cases cited in *Allegheny Pittsburgh*, *Sunday Lake Iron* and *Sioux City Bridge*, also rejected equal protection challenges, see also *Charleston Fed. Savings & Loan Assn.* v. *Alderson*, 324 U. S. 182 (1945), and the case in which the words intentional, systematic, and undervaluation first appeared, *Coulter* v. *Louisville & Nashville R. Co.*, 196 U. S. 599, 609 (1905), did not explain where the test came from or why.

It is true that we applied the rule of *Coulter* to strike down a tax system in *Cumberland Coal*, also cited in *Allegheny Pittsburgh*. *Cumberland Coal*, however, reflects the most serious of the problems with respondents' reading of *Allegheny Pittsburgh*. As respondents understand these two cases, their rule is categorical: A tax scheme violates the Equal Protection Clause unless it provides for "the seasonable attainment of a rough equality in tax treatment" or if it results in ```intentional systematic undervaluation''' of properties similarly situated by state law, 488 U. S., at 343, 345. This would be so regardless of whether the inequality or the undervaluation, which may result (as in Webster County) from further classifications of properties within a class, is supported by a rational basis. But

not since the coming of modern equal protection jurisprudence has this Court supplanted the rational judgments of state representatives with its own notions of "rough equality," "undervaluation," or "fairness." *Cumberland Coal*, which fails even to mention rational-basis review, conflicts with our current caselaw. *Allegheny Pittsburgh* did not, in my view, mean to return us to the era when this Court sometimes second-guessed state tax officials. In rejecting today respondents' reading of *Allegheny Pittsburgh*, the Court, as I understand it, agrees.

This brings me to the third explanation for *Allegheny Pittsburgh*, the one offered today by the Court. The Court proceeds in what purports to be our standard equal protection framework, though it reapplies an old, and to my mind discredited, gloss to rational-basis review. The Court concedes that the "Equal Protection Clause does not demand for purposes of rational-basis review that a legislature or governing decisionmaker actually articulate at any time the purpose or rationale supporting its classification." *Ante*, at 13 (citing *United States Railroad Retirement Bd.* v. *Fritz*, 449 U. S. 166, 179 (1980)). This principle applies, the Court acknowledges, not only to an initial classification but to all further classifications within a class. "Nevertheless, this Court's review does require that a purpose may conceivably or `may reasonably have been the purpose and policy' of the relevant governmental decisionmaker," the Court says, *ante*, at 13 (quoting *Allied Stores*, *supra,* at 528–529), and "*Allegheny Pittsburgh* was the rare case where the facts precluded any plausible inference that the reason for the unequal assessment practice was to achieve the benefits of an acquisition-value tax scheme," *ante,* at 13. Rather than obeying the "law of a State, generally applied," the county assessor had administered an "aberrational enforcement policy," 488 U. S., at 344, n. 4. See *ante*, at 13. According to

the Court, therefore, the problem in *Allegheny Pittsburgh* was that the Webster County scheme, though otherwise rational, was irrational because it was contrary to state law. Any rational bases underlying the acquisition-value scheme were "implausible" (or "unreasonable") because they were made so by the Constitution and laws of the State of West Virginia.

That explanation, like petitioner's and respondents', is in tension with settled case law. Even if the assessor did violate West Virginia law (and that she did is open to question, see *In re 1975 Tax Assessments Against Oneida Coal Co.,* —— W. Va. ——, ——, 360 S. E. 2d 560, 564 (1987)), she would not have violated the Equal Protection Clause. A violation of state law does not by itself constitute a violation of the Federal Constitution. We made that clear in *Snowden* v. *Hughes*, 321 U. S. 1 (1944), for instance, where a candidate for state office complained that members of the local canvassing board had refused to certify his name as a nominee to the Secretary of State, thus violating an Illinois statute. Because the plaintiff had not alleged, say, that the defendants had meant to discriminate against him on racial grounds, but merely that they had failed to comply with a statute, we rejected the argument that the defendants had thereby violated the Equal Protection Clause.

> "[N]ot every denial of a right conferred by state law involves a denial of the equal protection of the laws, even though the denial of the right to one person may operate to confer it on another. . . . [W]here the official action purports to be in conformity to the statutory classification, an erroneous or mistaken performance of the statutory duty, although a violation of the statute, is not without more a denial of the equal protection of the laws." *Id.*, at 8.

See also *Nashville, C. & St. L. R. Co.* v. *Browning*, 310

U. S. 362 (1940).

The Court today promises not to have overruled *Snowden*, see *ante*, at 14, n. 8, but its disclaimer, I think, is in vain. For if, as the Court suggests, what made the assessor's method unreasonable was her supposed violation of state law, the Court's interpretation of *Allegheny Pittsburgh* recasts in this case the proposition that we had earlier rejected. See Glennon, 58 Geo. Wash. L. Rev., at 268–269; Cohen, 38 UCLA L. Rev., at 93–94; Ely, Another Spin on *Allegheny Pittsburgh*, 38 UCLA L. Rev. 107, 108–109 (1990). In repudiating *Snowden*, moreover, the Court threatens settled principles not only of the Fourteenth Amendment but of the Eleventh. We have held that the Eleventh Amendment bars federal courts from ordering state actors to conform to the dictates of state law. *Pennhurst State School and Hospital* v. *Halderman*, 465 U. S. 89 (1984). After today, however, a plaintiff might be able invoke federal jurisdiction to have state actors obey state law, for a claim that the state actor has violated state law appears to have become a claim that he has violated the Constitution. See Cohen, *supra*, at 103; Ely, *supra*, at 109–110 ("[B]y the Court's logic, all violations of state law—at least those violations that end (as most do) in the treatment of some people better than others—are theoretically convertible into violations of the Equal Protection Clause").

I understand that the Court prefers to distinguish *Allegheny Pittsburgh*, but in doing so, I think, the Court has left our equal protection jurisprudence in disarray. The analysis appropriate to this case is straightforward. Unless a classification involves suspect classes or fundamental rights, judicial scrutiny under the Equal Protection Clause demands only a conceivable rational basis for the challenged state distinction. See *Fritz*, *supra; Kassel* v. *Consolidated Freightways Corp. of Delaware,* 450 U. S. 662, 702–706, and n. 13 (1981) (REHNQUIST, J., dissenting).

This basis need not be one identified by the State itself; in fact, States need not articulate any reasons at all for their actions. See *ibid.* Proposition 13, I believe, satisfies this standard—but so, for the same reasons, did the scheme employed in Webster County. See Brief for Pacific Legal Foundation et al. as *Amici Curiae* 7, 9–10, Brief for National Association of Counties et al. as *Amici Curiae* 9–13, Brief for Respondent 31–32, in *Allegheny Pittsburgh Coal Co.* v. *County Comm'n of Webster County,* O. T. 1988, Nos. 87–1303, 87–1310; *ante*, at 9–12. *Allegheny Pittsburgh* appears to have survived today's decision. I wonder, though, about its legacy.

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I concur in the judgment of the Court and join Part II-A of its opinion.