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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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POLAR TANKERS, INC. *v.* CITY OF VALDEZ, ALASKA

CERTIORARI TO THE SUPREME COURT OF ALASKA

No. 08–310. Argued April 1, 2009—Decided June 15, 2009

A Valdez, Alaska, ordinance that imposes a personal property tax on certain boats and vessels contains exceptions which, in effect, largely limit its applicability to large oil tankers. Petitioner Polar Tankers, Inc., whose vessels transport crude oil from the Port of Valdez to refineries in other States, challenged the ordinance in state court, claiming (1) that the tax was unconstitutional under Art. I, §10, cl. 3, which forbids a “State . . . without the Consent of Congress, [to] lay any Duty of Tonnage,” and (2) that the tax’s value-allocation method violated the Commerce and Due Process Clauses. The court rejected the Tonnage Clause claim, but accepted the Commerce Clause and Due Process Clause claim. On appeal, the State Supreme Court upheld the tax, finding that because it was a value-based property tax, the tax was not a duty of tonnage. The State Supreme Court also held the allocation method was fair and thus valid under the Commerce and Due Process Clauses.

Held: The judgment is reversed, and the case is remanded.

182 P. 3d 614, reversed and remanded.

JUSTICE BREYER delivered the opinion of the Court with respect to Parts I, II–A, and II–B–1, concluding that Valdez’s tax violates the Tonnage Clause. Consequently, Polar Tankers’ alternative Commerce Clause and Due Process Clause arguments need not be considered. Pp. 3–8.

(a) This Court has consistently interpreted the language of the Tonnage Clause in light of its purpose, which mirrors the intent of other constitutional provisions that seek to restrain the States from exercising the taxing power in a way that is injurious to the interests of other States. The Clause seeks to prevent States from nullifying Art. I, §10, cl. 2’s prohibition against import and export duties by taxing “the vessels transporting the merchandise.” *Clyde Mallory Lines*

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v. *Alabama ex rel. State Docks Comm'n*, 296 U. S. 261, 265. It also reflects an effort to diminish a State's ability to obtain tax advantages based on its favorable geographic position. Because the Clause forbids a State to "do that indirectly which she is forbidden . . . to do directly," *Passenger Cases*, 7 How. 283, 458, the "prohibition against tonnage duties has been deemed to embrace all taxes and duties regardless of their name or form, and even though not measured by the tonnage of the vessel, which operate to impose a charge for the privilege of entering, trading in, or lying in a port," *Clyde Mallory Lines, supra*, at 265–266. Pp. 3–6.

(b) This case lies at the heart of what the Tonnage Clause forbids. The ordinance seems designed to impose "a charge for the privilege of entering, trading in, or lying in a port." The tax applies almost exclusively to oil tankers, but to no other form of personal property. An oil tanker can be subject to the tax based on a single entry into the port. Moreover, the tax is closely correlated with cargo capacity. Contrary to Valdez's argument, the fact that the tax is designed to raise revenue for general municipal services argues for, not against, application of the Clause. Pp. 6–8.

JUSTICE BREYER, joined by JUSTICE SCALIA, JUSTICE KENNEDY, and JUSTICE GINSBURG, rejected, in Part II–B–2, Valdez's claim that, under *State Tonnage Tax Cases*, 12 Wall. 204, its tax is "not within the prohibition of the Constitution," because it is "levied . . . upon ships . . . as property, based on a valuation of the same as property," *id.*, at 213 (emphasis deleted). This Court later made clear that the "prohibition" against tonnage duties "comes into play" where vessels "are not taxed in the *same manner* as the other property of the citizens," *Transportation Co. v. Wheeling*, 99 U. S. 273, 284. This qualification, important in light of the Clause's purpose, means that, in order to fund services by taxing ships, a State must also impose similar taxes upon other businesses. Valdez fails to satisfy this requirement. The Court can find little, if any, other personal property that Valdez taxes. Because its value-related property tax on mobile homes, trailers, and recreational vehicles applies only if they are "affixed" to a particular site, it taxes those vehicles as a form of real, not personal, property. Valdez also claims that its ship tax is simply another form of a value-based tax on oil-related property provided by state law. But Valdez's tax, a purely a municipal tax, differs from the tax on other oil-related property, which is primarily a state-level tax, in several ways. As a result of these differences, an ordinary oil-related business finding the tax on its movable property too burdensome must complain to the State, which is in charge of setting the manner of assessment and valuation. At the same time, an oil tanker finding its vessel tax too burdensome must complain to Valdez, for the State

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has nothing to do with that tax's rate, valuation, or assessment. There is also no effective electorate-related check on Valdez's vessel-taxing power comparable to the check available when a property tax is more broadly imposed. Valdez's property tax hits only ships; it is not constrained by any need to treat ships and other business property alike. Thus, Valdez's tax lacks the safeguards implied by this Court's statements that a property tax on ships escapes the Tonnage Clause's scope only when that tax is imposed upon ships "in the same manner" as it is imposed on other forms of property. Pp. 8–13.

THE CHIEF JUSTICE, joined by JUSTICE THOMAS, agreed that Valdez's tax is unconstitutional, but concluded that the city's argument that its tax may be sustained as a property tax similar to ones the city imposes on other property should be rejected because an unconstitutional tax on maritime commerce does not become permissible when bundled with taxes on other activities or property. Pp. 1–3.

JUSTICE ALITO agreed that Valdez's tax is unconstitutional, but concluded that the tax is an unconstitutional duty of tonnage even if the Tonnage Clause permits a true, evenhanded property tax to be applied to vessels. P. 1.

BREYER, J., announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II–A, and II–B–1, in which SCALIA, KENNEDY, GINSBURG, and ALITO, JJ., joined, and an opinion with respect to Part II–B–2, in which SCALIA, KENNEDY, and GINSBURG, JJ., joined. ROBERTS, C. J., filed an opinion concurring in part and concurring in the judgment, in which THOMAS, J., joined. ALITO, J., filed an opinion concurring in part and concurring in the judgment. STEVENS, J., filed a dissenting opinion, in which SOUTER, J., joined.