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LEVIN V. COMMERCE ENERGY: ONE STEP FORWARD, ONE STEP BACK

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The foundation of the United States government is rooted in federalism, "[t]he legal relationship and distribution of power between the national and regional governments within a federal system of government."[1] That concept is expressed through comity, the principle that political entities will respect the acts of other political entities, whether those acts be legislative, executive, or judicial.[2] As applied to the relationship between federal and state courts, Justice Black penned the quintessential definition:

> '[C]omity' . . . is, a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways.[3]

In practice, comity means that federal courts will not interfere with state administration—including, but not limited to, criminal proceedings, interpretation of state law, and tax administration—as long as the "asserted federal right may be preserved without [such interference]."[4] From 1871 to 1939, federal courts exclusively relied on comity to decline jurisdiction over lawsuits challenging the constitutionality of state tax laws.[5] In 1939, the Congress codified the principle of comity as applied to state tax laws in the Tax Injunction Act ("TIA"), which forbids federal courts from interfering with the "assessment, levy, or

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[1] BLACK'S LAW DICTIONARY 687 (9th ed. 2009). In the United States, that power is divided between the federal government and the individual state governments.

[2] *Id.* at 303–04.

[3] Younger v. Harris, 401 U.S. 37, 44 (1971).

[4] Matthews v. Rodgers, 284 U.S. 521, 525 (1932).

[5] *See, e.g.*, Dows v. City of Chi., 78 U.S. 108 (1870).

collection" of a state tax as long as a "plain, speedy, and efficient remedy" is available in state court.[6] Nevertheless, the Supreme Court continued to use comity as a bar to lawsuits challenging state taxes alongside the TIA.[7] In 2004, however, the Supreme Court held in *Hibbs v. Winn* that a lawsuit by a third party challenging a state tax credit could proceed in federal court and that neither the TIA nor comity barred the action.[8] As a result, several circuit courts held that comity should only be applied to a lawsuit challenging a state tax if the relief requested would disrupt the state's tax revenue.[9] One circuit court held that comity had not been so constrained by *Hibbs*, reasoning that the *Hibbs* decision was limited to the unusual facts presented in that case.[10]

Recently, in *Levin v. Commerce Energy, Inc.*, the Supreme Court considered the scope of *Hibbs*'s limitation of comity in order to resolve the circuit split.[11] *Levin* dealt with tax exemptions offered by Ohio to natural gas providers. Ohio residents who wish to purchase natural gas may do so from one of two alternatives: a local distribution company ("LDC") or an independent marketer ("IM").[12] Under Ohio tax law, LDCs receive several tax exemptions that IMs do not.[13] In response to these tax exemptions, two IMs—plaintiffs Commerce Energy,

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[6] Tax Injunction Act, 28 U.S.C. § 1341 (2006).

[7] *See, e.g.*, Nat'l Private Truck Council, Inc. v. Okla. Tax Comm'n, 515 U.S. 582, 586, 592 (1995) (relying on principles of comity to hold that 42 U.S.C. § 1983 does not allow for injunctive or declaratory relief in suits challenging state taxes).

[8] 542 U.S. 88, 94 (2004).

[9] *See* Coors Brewing Co. v. Mendez-Torres, 562 F.3d 3, 17 (1st Cir. 2009); Commerce Energy, Inc. v. Levin, 554 F.3d 1094, 1099 (6th Cir. 2009); Levy v. Pappas, 510 F.3d 755, 761 (7th Cir. 2007); Wilbur v. Locke, 423 F.3d 1101, 1109–10 (9th Cir. 2005). Each of these cases cited to the same language, found in a single footnote, from *Hibbs*. *See, e.g.*, *Commerce Energy, Inc.*, 554 F.3d at 1099 (citing Hibbs v. Winn, 542 U.S. 88, 107 n.9 (2004)).

[10] DIRECTV v. Tolson, 513 F.3d 119, 127–28 (4th Cir. 2008).

[11] Levin v. Commerce Energy, Inc., 130 S. Ct. 2323 (2010).

[12] *Id.* at 2328. The primary difference between LDCs and IMs is that LDCs both sell and deliver natural gas to customers, since they own and operate the pipelines necessary to transport the gas. *Id.* IMs merely sell the gas and rely on the LDCs to deliver it for them. *Id.*

[13] *Id.* ("First, LDCs' natural gas sales are exempt from sales and use taxes. LDCs owe instead a gross receipts excise tax, which is lower than the sales and use taxes IMs must collect. Second, LDCs are not subject to the commercial activities tax imposed on IMs' taxable gross receipts. Finally, Ohio law excludes inter-LDC natural gas sales from the gross receipts tax, which IMs must pay when they purchase gas from LDCs." (citations omitted)).

Inc. and Interstate Gas Supply, Inc.—as well as a customer of Interstate Gas Supply—plaintiff Gregory Slone—brought suit in the U.S. District Court for the Southern District of Ohio against Richard A. Levin, Tax Commissioner of Ohio.[14] The plaintiffs alleged that the tax exemptions enjoyed by the LDCs were discriminatory in nature and violated both the Commerce and Equal Protection Clauses.[15] The plaintiffs requested declaratory and injunctive relief so that the LDCs could no longer take advantage of the exemptions.[16]

At trial, the defendant made a motion to dismiss on several grounds, including that both the TIA and comity barred the plaintiffs' suit.[17] The district court granted the motion to dismiss on comity grounds.[18] The district court first held that the TIA did not bar the suit, because the plaintiffs were challenging a third-party's tax benefit and the relief requested would not negatively affect state revenue.[19] The court reasoned, however, that comity *would* bar the suit, because the relief requested by the plaintiffs would force Ohio to collect more taxes than its legislature had desired and such interference with state taxation by federal courts would be inappropriate.[20] While a state court could either remove the exemptions or extend them to the plaintiffs, according to the district court, the Tax Injunction Act would only allow a federal court to do the former, and a federal court should not impose one remedy on a state when two possible remedies are available.[21]

The Sixth Circuit Court of Appeals reversed the district court.[22] The Sixth Circuit agreed that the TIA did not bar the suit but disagreed that comity would bar it.[23] Relying on a footnote from *Hibbs v. Winn*, the court held that comity could only be used to decline jurisdiction over a suit challenging a state tax law if the suit would disrupt state tax collection.[24] The court

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[14] *Id.* at 2328–29.
[15] *Id.*
[16] *Id.* at 2329.
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.* (quoting Hibbs v. Winn, 542 U.S. 88, 107 n.9 (2004)).

expressed concern that "[a] broad view of the comity cases . . . would render the TIA 'effectively superfluous.' "[25] It concluded that the suit would not intrude on state tax administration and remanded the case for trial.[26] In so holding, the Sixth Circuit aligned itself with the Seventh and Ninth Circuits, which had also held that footnote nine of the *Hibbs* decision had narrowed the scope of comity.[27]

Subsequently, the defendant petitioned for certiorari, which the Supreme Court granted in order to resolve the circuit split regarding the scope of the comity doctrine following *Hibbs v. Winn*.[28]

Justice Ginsburg, who wrote the decision in *Hibbs v. Winn*,[29] delivered the Court's decision. The Court first characterized the lawsuit as one challenging an uneven tax burden, thus distinguishing *Levin* from *Hibbs*, which concerned a state tax benefit enjoyed by a third party.[30] Thus, *Levin* did not fall under the exceptions to comity created by the TIA or by Court in *Hibbs*. Echoing the district court's reasoning, the Court then held that comity precluded the federal courts from hearing the plaintiff's' lawsuit.[31] The Court dismissed the argument of the Sixth Circuit regarding the relationship between comity and the TIA, noting that Congress passed the TIA to close two loopholes in the comity doctrine.[32] Finally, the Court declined to address the issue of "whether the TIA would itself block the suit," relying on the

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[25] *Id.* (quoting Levin v. Commerce Energy, Inc., 554 F.3d 1094, 1099 (6th Cir. 2009), *rev'd*, Levin v. Commerce Energy, Inc., 130 S. Ct. 2323 (2010)).

[26] *Id.* at 2330.

[27] *Id.* at 2329 (citing Levy v. Pappas, 510 F.3d 755 (7th Cir. 2007); Wilbur v. Locke, 423 F.3d 1101 (9th Cir. 2005)).

[28] *Id.* at 2330.

[29] 542 U.S. 88.

[30] *Levin*, 130 S. Ct. at 2335 ("The plaintiffs in *Hibbs* were outsiders to the tax expenditure, 'third parties' whose own tax liability was not a relevant factor. In this case, by contrast, the very premise of respondents' suit is that they are taxed differently from LDCs. Unlike the *Hibbs* plaintiffs, respondents do object to their own tax situation, measured by the allegedly more favorable treatment accorded LDCs.").

[31] *Id.* at 2334.

[32] *Id.* at 2336 ("By closing these loopholes, Congress secured the doctrine against diminishment.").

principle that, when a federal court is confronted with two different but equally valid grounds for dismissal, it may choose whichever grounds it wants to dismiss a case.[33]

Justice Kennedy, who wrote the dissenting opinion in *Hibbs v. Winn*,[34] filed a brief concurrence, which restated his objection to the rationale used by the Court in *Hibbs*, and expressed his understanding that the *Levin* opinion did not expand *Hibbs*'s holding.[35] Justice Alito also filed a brief concurrence, expressing "doubt[ ] about the Court's efforts to distinguish [*Hibbs*]," and declining to comment on "whether [the Court's] holding undermines *Hibbs*' foundations."[36]

Justice Thomas filed a more extensive opinion concurring in the judgment, in which Justice Scalia joined.[37] He began by echoing the skepticism of Justice Kennedy regarding the rationale of the *Hibbs* decision, noting that *Hibbs* did not preclude application of comity or the TIA to the present case.[38] Though Justice Thomas agreed with the Court that the case *could* be dismissed on comity grounds, he argued that the case *should* be dismissed on jurisdictional grounds under the TIA, arguing that the court had misinterpreted its holding in *Sinochem International Co. v. Malaysia International Shipping Corp*.[39] Rather than standing for the proposition that a federal court may choose between two equally valid grounds for dismissal, Justice Thomas argued that, under *Sinochem*, a federal court should dismiss on jurisdictional grounds as long as it would not require an "arduous inquiry."[40] Justice Thomas concluded by offering an explanation for the majority's decision to

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[33] *Id.* at 2336–37 (internal quotation marks omitted) (quoting Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp., 549 U.S. 422, 436 (2007)).

[34] *See Hibbs*, 542 U.S. at 112–28 (Kennedy, J., dissenting).

[35] *Levin*, 130 S. Ct. at 2337 (2010) (Kennedy, J., concurring).

[36] *Id.* at 2339 (Alito, J., concurring).

[37] *Id.* at 2337–39 (Thomas, J., concurring).

[38] *Id.* at 2337.

[39] *Id.*

[40] *Id.* at 2338 (quoting Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp., 549 U.S. 422, 436 (2007)) (stating that judicial economy is the primary concern when a federal court is confronted with two valid grounds for dismissal). Though various federal courts have referred to "declining jurisdiction" when applying the comity doctrine, comity is not a jurisdictional ground for dismissal. *Id.* at 2337. Rather, comity is a "prudential doctrine." *Id.* at 2336.

dismiss on comity grounds rather than jurisdictional grounds: a desire to "leave the door open" to hearing certain cases in federal court rather than state court.[41]

Part I of this Comment examines the Court's application of the comity doctrine. Specifically, Part I looks at the Court's attempts to distinguish its holding in *Hibbs* from its prior comity holdings. Part I then critiques the Court's application of comity in both *Hibbs* and *Levin* in light of its analysis in the latter and argues that its decision in *Levin* did not go far enough in limiting the holding of *Hibbs*. Part II analyzes the Court's decision not to address whether the TIA would apply to *Levin*. Part II concludes that the Court incorrectly exercised its discretion when it chose to not discuss the TIA and that its authority for doing so was misplaced.

I. THE OLD *HIBBS* RULE AND THE NEW *LEVIN* RULE

In footnote nine of the *Hibbs* decision, the Court wrote it has "relied upon 'principles of comity' . . . to preclude original federal-court jurisdiction only when plaintiffs have sought district-court aid in order to arrest or countermand state tax collection."[42] On its face, the language from *Hibbs* supports the First, Sixth, Seventh, and Ninth Circuits' conclusion that comity only applies when a plaintiff's requested relief would disrupt state tax collection. Despite this, some authorities understood the Court's statement with respect to comity to be a narrow one.[43] The latter view is more in line with the Court's comity precedent.

Clearly unhappy with how the circuit courts had interpreted the footnote, the Court sought to narrow the scope of the *Hibbs* exception by distinguishing *Hibbs* from *Levin*.[44] In *Hibbs*, an

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[41] *Id.* at 2338–39 (Thomas, J., concurring).

[42] Hibbs v. Winn, 542 U.S. 88, 107 n.9 (2004).

[43] *See* Levy v. Pappas, 510 F.3d 755, 760 (7th Cir. 2007) ("*Hibbs*, therefore, leaves the doors of the federal court open to a *narrow category of state tax challenges*." (emphasis added)); Henderson v. Stalder, 407 F.3d 351, 359 (5th Cir. 2005) ("*Hibbs* opened the federal courthouse doors *slightly notwithstanding the limits of the TIA*, but it did so only where (1) a third party (not the taxpayer) files suit, and (2) the suit's success will enrich, not deplete, the government entity's coffers." (emphasis added)); *see also* Paul V. McCord, *The Dormant Commerce Clause and the MBT Credit and Incentive Scheme: You Can't Get There from Here*, 53 WAYNE L. REV. 1431, 1485 (2007) (surmising that *Hibbs* "open[ed] the door, ever so slightly, to federal court").

[44] *Levin*, 130 S. Ct. at 2332 ("[*Hibbs* and *Levin*] differ markedly in ways bearing on the comity calculus.").

Arizona statute awarded tax credits to organizations that provided scholarship grants for students who attended private elementary and secondary schools.[45] The statute did not prevent an organization from giving scholarships solely to children who attended private, religious institutions.[46] A group of Arizona taxpayers sued the director of Arizona's Department of Revenue in federal court under 42 U.S.C. § 1983, alleging that the tax credits violated the Establishment Clause.[47] The plaintiffs asked for both injunctive and declaratory relief.[48] Because the plaintiffs did not and could never enjoy the tax credits at issue, they were "outsiders."[49] In *Levin*, the plaintiffs challenged a state tax exemption and sought similar injunctive relief. The plaintiffs were *not* "outsiders," according to the Court, because the entire point of their lawsuit was that they were taxed differently; they "object[ed] to their own tax situation, measured by the allegedly more favorable treatment accorded LDCs."[50]

This distinction, however, is not persuasive. The only appreciable difference between the plaintiffs in the two cases, a difference to which the Court gives great weight, is that the plaintiffs in *Levin* were direct competitors of the LDCs, whereas the plaintiffs in *Hibbs* had no relationship at all with the organizations receiving the tax benefit.[51] Justice Thomas made a similar point in his concurrence.[52] Such a distinction is ultimately irrelevant, though, because both sets of plaintiffs sought to improve their own position. The *Levin* plaintiffs sought to undermine their competitors, while the *Hibbs* plaintiffs sought to increase state tax revenue, which would, theoretically, benefit all Arizona taxpayers. Thus, both the majority and concurring opinions have fallen prey to one of the very concerns that Justice Thomas considered: The application of the comity doctrine is now "little more than a pleading game."[53] Furthermore, one of

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[45] *Hibbs*, 542 U.S. at 95.

[46] *Id.*

[47] *Id.* at 88.

[48] *Id.* at 96.

[49] *Levin*, 130 S. Ct. at 2335 ("The plaintiffs in *Hibbs* were outsiders to the tax expenditure, 'third parties' whose own tax liability was not a relevant factor.").

[50] *Id.*

[51] *Id.* at 2335–36.

[52] *Id.* at 2338 (Thomas, J., concurring).

[53] *Id.*

the plaintiffs in *Levin*, Gregory Slone, was not objecting to his tax burden at all.[54] The Court makes no attempt to distinguish his position from that of the *Hibbs* plaintiffs.

Even if the distinction between the two cases is a real one, it does not explain the language used in *Hibbs*. The Court plainly states in *Levin* that federal courts used comity to avoid interfering with state taxation generally, not state tax collection exclusively.[55] This statement is in accord with the precedent of the Court in its comity cases.[56] In an attempt to reconcile the rule in *Hibbs* with the Court's comity precedent, the *Levin* Court emphasized the status of the plaintiff—outsider or insider—as determinative of whether comity should apply. Yet the language of footnote nine in *Hibbs* makes it clear that the effect of the requested relief—specifically, whether the requested relief would disrupt state tax revenue—is the determinative factor.[57] These two statements are at odds and, if not for the Court's explicit statement that its decision in *Hibbs* "has a more modest reach" than the circuit courts had stated,[58] it would appear as if *Levin* created a whole new rule, separate and apart from the *Hibbs* rule.

Unfortunately, the way in which the Court used *Levin* to recast the rule in *Hibbs* has the result of making the rule less concrete. Though the original *Hibbs* rule was contrary to the Supreme Court's comity precedent, it at least had the benefit of being straightforward and relatively easy to apply. The new *Levin* rule makes the comity analysis much murkier. The facts of *Levin* itself demonstrate the difficulties that arise under the new rule. For example, the Court goes through great lengths to demonstrate how the plaintiffs are challenging their own tax liabilities. But the Court does not once mention plaintiff Gregory Slone, an IM customer. Unlike the other plaintiffs, he did *not*

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[54] *See infra* Part II.

[55] *Levin*, 130 S. Ct. at 2330 ("Comity's constraint has particular force when lower federal courts are asked to pass on the constitutionality of state taxation of commercial activity.").

[56] *See, e.g.*, Nat'l Private Truck Council, Inc. v. Okla. Tax Comm'n, 515 U.S. 582, 586 (1995) ("We have long recognized that principles of federalism and comity generally counsel that courts should adopt a hands-off approach with respect to state tax administration.").

[57] The decisions of the circuit courts in the wake of *Hibbs* indicate as much. *See* cases cited *supra* note 9.

[58] *Levin*, 130 S. Ct. at 2332.

object to his own tax situation; the tax provisions in question only affected the natural gas suppliers. On the other hand, he *does* stand to benefit from the relief requested, in the form of a lower gas bill. Under the new *Levin* analysis, it is unclear whether he is an insider or an outsider, and it is unclear whether a complaint brought by Slone alone could be heard in federal court.[59]

Perhaps, though, this was the intended result of the majority opinion. As Justice Thomas pointed out in his concurrence, the application of comity to the *Levin* case leaves the door open for federal courts to exercise jurisdiction over state taxation cases whenever they see fit, just as long as they can frame the plaintiff as an "insider."[60] As in the case of plaintiff Slone in *Levin*, it is possible to see him as either an insider or an outsider. The new rule created in *Levin* decreases certainty in litigation, allows for even more confusion among the circuit courts, and potentially opens the doors to federal court wider than even the *Hibbs* footnote had.

II. DOES A FEDERAL COURT HAVE DISCRETION TO CHOOSE BETWEEN TWO EQUALLY VALID GROUNDS FOR DISMISSAL?

In supporting its decision to dismiss the case on the basis of comity rather than the TIA, the Court cited to two cases which, according to the Court, stood for the proposition that a court may choose between two equally valid grounds for dismissal.[61] In

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[59] A recent district court decision demonstrates the potential difficulties of the *Levin* rule. In *Joseph v. Hyman*, the district court held that it could not hear a challenge made by commuters to a parking tax exemption given to residents of Manhattan. No. 09 Civ. 7555(RJS), 2010 WL 3528854, at *1 (S.D.N.Y. Aug. 30, 2010). The court likened the plaintiffs in *Joseph* to the plaintiffs in *Levin*, arguing that both were, in effect, challenging their own tax liability. *Id.* at *4. How the plaintiffs in *Levin* and *Joseph* "objected to an exemption awarded to *another* taxpayer," and the plaintiffs in *Hibbs* did not, is left unexplained. *Id.* Instead, the court focused on the plaintiffs' grounds for their lawsuit: that the "tax differential is unconstitutional." *Id.*

[60] *Levin*, 130 S. Ct. at 2338–39 (Thomas, J., concurring) ("I see only one explanation for the Court's decision to dismiss on a 'prudential' ground (comity) rather than a mandatory one (jurisdiction): The Court wishes to leave the door open to doing in future cases what it did in *Hibbs*, namely, retain federal jurisdiction over constitutional claims that the Court simply does not believe Congress should have entrusted to state judges under the Act." (citations omitted)).

[61] *Id.* at 2336–37 (majority opinion) (citing Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp., 549 U.S. 422, 431 (2007); Great Lakes Dredge & Dock Co. v. Huffman, 319 U.S. 293, 299, 301 (1943)).

Great Lakes Dredge & Dock Co. v. Huffman, the Court dismissed a claim challenging a state tax on comity grounds rather than on TIA grounds.[62] In *Sinochem International Co. v. Malaysia International Shipping Corp.*, the Court dismissed a case on forum non conveniens grounds rather than on jurisdictional grounds.[63]

The Court's reliance on both *Great Lakes* and *Sinochem* was misplaced; the former is distinguishable and the latter contradicts the Court's conclusion. The *Great Lakes* Court chose not to apply the TIA because the plaintiff had requested declaratory relief, and by its plain language the TIA applied only to claims seeking an injunction; had the Court dismissed the case under the TIA, it would have expanded the statute in a way theretofore unknown.[64] Rather than expand the TIA beyond its plain statutory language, the Court relied on comity, a doctrine already in force.[65] That is a situation very different from a court facing two equally valid grounds for dismissal. The *Sinochem* case presented a situation more analogous to the issue in *Levin*, since the Court had two equally valid grounds for dismissing the case. The Court's decision in *Sinochem*, however, is at odds with the *Levin* decision. In *Sinochem*, the Court wrote:

> If, however, a court can readily determine that it lacks jurisdiction over the cause or the defendant, the proper course would be to dismiss on that ground. . . . [W]here subject-matter or personal jurisdiction is difficult to determine, and *forum non conveniens* considerations weigh heavily in favor of dismissal, the court properly takes the less burdensome course.[66]

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[62] *Great Lakes*, 319 U.S. at 299, 301.

[63] *Sinochem*, 549 U.S. at 436.

[64] *Great Lakes*, 319 U.S. at 299 ("But we find it unnecessary to inquire whether the words of the statute may be so construed as to prohibit a declaration by federal courts concerning the invalidity of a state tax.").

[65] *Id.* ("[W]e are of the opinion that those considerations which have led federal courts of equity to refuse to enjoin the collection of state taxes, save in exceptional cases, require a like restraint in the use of the declaratory judgment procedure."). The Supreme Court would, eventually, expand the TIA to cover requests for declaratory judgment. *See* California v. Grace Brethren Church, 457 U.S. 393, 408 (1982).

[66] *Sinochem*, 548 U.S. at 436.

The plain language of the *Sinochem* decision indicates that a federal court should dismiss on jurisdictional grounds, unless it would be burdensome or difficult to do so.[67]

Other cases accord with the language from *Sinochem* and indicate that the Court's decision in *Levin* was incorrect. In *Ruhrgas AG v. Marathon Oil Co.*, upon which *Sinochem* relied, the Court noted that "[i]t is hardly novel for a federal court to choose among threshold grounds for denying audience to a case on the merits."[68] Though in that case, the federal court could have chosen between two jurisdictional grounds for dismissal, the *Ruhrgas* Court cited to several examples of cases where a federal court correctly dismissed on jurisdictional grounds before considering any nonjurisdictional grounds for dismissal.[69] For example, in *Ellis v. Dyson*, the district court dismissed a case based on *Younger* abstention, a jurisdictional ground for dismissal, before considering whether there was a case or in its place controversy.[70] Thus, the Court's decisions in *Sinochem* and *Ruhrgas* indicate that, though a federal court does have discretion to choose between equally valid grounds for dismissal, a court should dismiss on jurisdictional grounds if they are available. With that understanding of the Court's precedent, the *Levin* Court should have addressed whether the TIA applied and dismissed on those grounds if appropriate.

III. CONCLUSION

While the Supreme Court correctly limited the scope of the rule it created in footnote nine of *Hibbs v. Winn*, it did so in a way that is counterproductive. The new rule pronounced in *Levin* does not make clear which state tax claims a federal court may hear and only muddies the waters of the comity doctrine further. The *Levin* rule essentially allows federal courts to pick and choose which state tax claims they want to hear. Such a rule defeats the purpose of comity, which calls for federal judicial deference to the rights of the states to self-administration. To

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[67] *Levin*, 130 S. Ct. at 2338 (Thomas, J., concurring).

[68] Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 585 (1999); *see also Sinochem*, 548 U.S. at 485.

[69] *Id.* (citing Ellis v. Dyson, 421 U.S. 426, 433–34 (1975); Moor v. Cnty. of Alameda, 411 U.S. 693, 715–16 (1973); Younger v. Harris, 401 U.S. 37 (1971)).

[70] *Ellis*, 421 U.S. at 436 (Rehnquist, J., concurring). The Supreme Court reversed and remanded the case so that the district court could reconsider its decision in light of a recent Court holding. *Id.* at 435 (majority opinion).

arrive at this result, the Court ignored precedent that called for it to analyze the case under the Tax Injunction Act before proceeding to a comity analysis. Again, this serves to undermine the comity doctrine, by allowing federal courts to choose which state tax claims to hear. The principles of comity and federalism do not call for this result.