No. 18-283

In The
Supreme Court of the United States

CHARLIE COLEMAN, *et al.*,

Petitioners,

v.

CAMPBELL COUNTY LIBRARY
BOARD OF TRUSTEES,

Respondent.

**On Petition For Writ Of Certiorari
To The Court Of Appeals Of Kentucky**

**RESPONSE TO
PETITION FOR WRIT OF CERTIORARI**

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COUNTERSTATEMENT OF THE QUESTIONS PRESENTED

(1) Whether Petitioners have established a compelling reason to grant a writ of certiorari.

(2) Whether *McKesson* applies outside of the context of a state tax that is invalidated on federal constitutional grounds.

(3) Whether the Kentucky Court of Appeals correctly considered equity in determining that the Due Process Clause does not require a refund of taxes Petitioners have paid since 1999 to support the Library.

(4) Whether *Chevron Oil* establishes a presumption that judicial decisions that announce substantive changes in the law are to be applied retroactively.

(5) Whether the Kentucky Court of Appeals' January 5, 2018 ruling that *Coleman I* only applied prospectively effectively decided Petitioners' statutory and common-law claims.

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COUNTERSTATEMENT OF THE FACTS

A perceived conflict between two provisions of the Kentucky Revised Statutes gave rise to this action.

In 1964, the Kentucky General Assembly enacted a series of statutory provisions – Ky. Rev. Stat. §§ 173.710 *et seq.* – pertaining to the formation of local library districts. Under that series of statutory provisions, 51% or more of a county's voters[1] can form a local library district by signing a petition calling for the formation of such a district. *Id.* These library districts enjoy taxing authority; the petition forming a library district must identify an *ad valorem* tax rate to be assessed on the properties within the district's territorial reach. *Id.* Ky. Rev. Stat. § 173.790 provides that a library district must secure another petition signed by 51% of the voters in the library district's territorial reach to increase or decrease its original *ad valorem* tax rate.

In 1965, the Kentucky General Assembly enacted Chapter 132 of the Kentucky Revised Statutes. The enactment of Chapter 132 was a response to Kentucky's highest court's decision in *Russman v. Luckett*, 391 S.W.2d 1964 (Ky. 1965). In *Russman*, concerned taxpayers and parents of school children brought suit against the Commissioner and Department of Revenue claiming that taxing districts, such as schools, were unable to increase their revenue and provide the

[1] For purposes of Ky. Rev. Stat. §§ 173.710 *et seq*, the number of a county's voters is determined with reference to the most recent general election held in that county.

necessary services because property values were being under assessed. *Id*. The Court observed that the median statewide property value assessment was only 27% of fair cash value. *Id*. The Court ruled that the practice of under assessing property violated Section 172 of the Kentucky Constitution and declared that all property in the Commonwealth had to be assessed at 100% of its fair cash value. *Id*.

As a result of this decision, Kentucky taxpayers faced huge tax increases as property assessments were expected to increase by as much as 300%. The "ink was barely dry" on the *Russman* decision when then-Governor Breathitt called a special session and the General Assembly enacted House Bill 1, commonly known as the "rollback law." *See Rose v. Council for Better Educ*., 790 S.W.2d 186, 195 (Ky. 1989). The law forced a reduction in property tax rates by requiring all taxing districts to adopt a "compensating tax rate." 1965 Ky. Acts Ch. 2, sec. 13. By adopting the compensating tax rate, all local taxing districts had to roll back their rates to the point that they would not generate any more revenue than they had received in the preceding year. *Id*. at sec. 11.

In 1979, the Kentucky General Assembly adopted House Bill 44, which amended Ky. Rev. Stat. Chapter 132 to allow taxing districts to increase their tax rates by up to 4% above the compensating tax rate (hereinafter referred to as the "4% increase rate"). *See* Ky. Rev. Stat. § 132.023; 1979 Ky. Acts Ch. 25, sec. 4. If a taxing district set its tax rate above the 4% increase rate, it would be subject to a voter recall petition pursuant to

Ky. Rev. Stat. §§ 132.017 and 132.023(3). Under these provisions, taxing districts are not required to obtain a petition signed by 51% of the voters. Rather, a taxing district is only required to advertise its proposed rate. In the event that five or more voters oppose the rate, they can initiate a recall petition and, if they secure the signatures of 10% of the voters[2] within the taxing district's territorial reach, the portion of the tax rate that exceeds the 4% increase rate will be placed on the ballot for approval by the voters at the next regularly scheduled election. *Id*.

As a result, library districts that wished to increase their tax rates were faced with a legal dilemma: Were they required to follow the procedure in Ky. Rev. Stat. § 173.790 and secure a petition signed by 51% of voters or were they simply required to advertise the increased tax rate and put the proverbial "ball" in the voters' "court" to initiate a recall if they so desired, as provided in Ky. Rev. Stat. §§ 132.017 and 132.023(3)?

Agencies of Kentucky's Executive Branch directed library districts to exclusively follow the provisions of Chapter 132 of the Kentucky Revised Statutes in setting their tax rates. Historically, shortly after the passage of the rollback law in 1965, the Attorney General opined that all library districts were required to set their tax rates based upon the compensating rate as established under the rollback law. *See, e.g.*, Ky. OAG

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[2] For purposes of Ky. Rev. Stat. §§ 132.017 and 132.023(3), the number of voters in the taxing district's territorial reach is determined with reference to the most recent general election.

66-513; Ky. OAG 68-606; Ky. OAG 69-330. The Attorney General issued the same opinion following the passage of House Bill 44 in 1979. *See* Ky. OAG 79-479, reported at 1979 Ky. AG LEXIS 177.

In addition, the Kentucky Department of Libraries and Archives ("KDLA") consistently instructed libraries to comply with Chapter 132 of the Kentucky Revised Statutes in setting their tax rates. For example, on July 18, 1979, KDLA issued a memorandum directing all libraries in the Commonwealth to levy their *ad valorem* tax rates pursuant to Chapter 132 of the Kentucky Revised Statutes. Indeed, since that time, KDLA directed all public libraries that levy an *ad valorem* tax to follow the provisions of Ky. Rev. Stat. Chapter 132. *See Campbell County Library Bd. of Trs. v. Coleman*, 475 S.W.3d 40, 45 (Ky. App. 2015). KDLA also calculates the compensating tax rate and 4% increase rate for all libraries. *Id*.

Pursuant to Ky. Rev. Stat. §§ 173.710 *et seq*, the Campbell County Library ("the Library") was created in 1978 via petition signed by 51% of the voters who voted in Campbell County's most recent general election. *Id*. at 41. The petition forming the Library set its *ad valorem* tax rate at $0.03 per $100 of assessed property valuation. *Id*.

After the Kentucky General Assembly passed House Bill 44 in 1979, and in accordance with the directives from the KDLA and the Attorney General's office, the Library set its tax rate according to the provisions of KRS Chapter 132. *Id*. Utilizing this process, the Library's *ad valorem* tax rates necessarily decreased following the passage of House Bill 44 and continued to decrease for many years. However, with the fluctuations in property assessments, the Library's tax rate eventually exceeded its 1978 rate of $0.03 per $100 of assessed property valuation beginning in 1994. *Id*.

In 1999, KDLA determined that the Library's compensating tax rate would be $0.04 per $100 of assessed property value. It further determined that its 4% increase rate would be $0.0416 per $100 of assessed property value. That year, the Library exceeded the 4% increase rate, setting its tax rate at $0.0516 per $100 of assessed property value. Relying on the directives of the Executive Branch, the Library advertised its proposed rate pursuant to Ky. Rev. Stat. § 132.023(3) as the rate was subject to a recall petition. Voters did not present a recall petition, and the rate went into effect.

PROCEEDINGS BELOW

On January 19, 2012, Charlie Coleman, John P. Roth, and Erik Hermes ("Petitioners") filed a Class Action Complaint against the Library challenging the *ad valorem* tax rates it has imposed since 1994[3] and seeking refunds on behalf of all property owners in Campbell County. Petitioners sought a Declaratory

[3] Although Petitioners' Complaint challenged the Library's tax rate dating back to 1994, Ky. Rev. Stat. § 134.590 limits recovery for an allegedly unconstitutional *ad valorem* tax to two years.

Judgment that the Library could only raise or lower its tax rate via petition as described in Ky. Rev. Stat. § 173.790 and that the provisions of Chapter 132 of the Kentucky Revised Statutes did not apply to library districts. Petitioners also asserted claims against the Library for conversion, unjust enrichment, and unlawful taking under the Fifth and Fourteenth Amendments to the United States Constitution.

The Campbell Circuit Court entered an Order directing the parties to brief the central question of whether the Library's *ad valorem* tax rates were governed by Chapter 132 of the Kentucky Revised Statutes or by Ky. Rev. Stat. § 173.790 and held all other issues in abeyance. After the parties briefed the issue, the Campbell Circuit Court issued an Order declaring that Ky. Rev. Stat. § 173.790 governed the manner in which the Library had to set its *ad valorem* tax rate.

The Library appealed the ruling to the Kentucky Court of Appeals, which issued an Opinion on March 20, 2015 reversing and remanding the Campbell Circuit Court's Order. *See Campbell County Library Bd. of Trs. v. Coleman*, 475 S.W.3d 40 (Ky. App. 2015) (hereinafter "*Coleman I*"). The Kentucky Court of Appeals' ruling was based upon traditional principles of statutory construction that incorporated relevant case law and the plain language of the applicable statutes. *Id*. In addition, the Kentucky Court of Appeals harmonized the apparent conflict between Ky. Rev. Stat. § 173.790 and Chapter 132 of the Kentucky Revised Statutes by holding that a petition of the voters is only required if a library created via petition seeks to increase its *ad valorem* tax rate by more than 4% above the compensating rate. *Id*. at 47-48. In other words, and in the context of the Library's decision to increase its tax rate in 1999, the Library could have raised its tax rate to $0.0416 per $100 of assessed property value (i.e., 4% over the compensating rate) without incurring any obligation to secure a petition signed by 51% of the voters. The increase to $.0516 per $100.00 of assessed property value – a difference of .01 per $100.00 of assessed property value[4] – required the Library to secure a petition signed by 51% of the number of voters in the previous general election.

However, the Kentucky Court of Appeals recognized that the Library and 79 other similarly-situated library districts created via petition across the Commonwealth of Kentucky had acted in good faith and in reliance on Kentucky's Executive Branch which ordered them to follow Chapter 132 of the Kentucky Revised Statutes in setting their *ad valorem* tax rates. *Id*. at 48. Relying on *Wayne Public Library Board of Trustees v. Wayne Co. Fiscal Court*, 572 S.W.2d 858 (Ky. 1978), the Kentucky Court of Appeals concluded that the library districts should not be adversely affected by such reliance when "many important and valuable

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[4] Assuming *arguendo* that Petitioners are entitled to any retrospective relief, this – $.01 per $100 of assessed property value – is what they would recover. Where only a portion of a tax is ruled illegal, the taxing entity "retains flexibility in responding to this determination" and "may retain the tax appropriately levied upon" a taxpayer. *McKesson Corp. v. Div. of Alcoholic Beverages & Tobacco*, 496 U.S. 18, 39-40 (1990).

rights" had vested as a result of this reliance. *Coleman I* at 47-48. The Kentucky Court of Appeals held that this "logical common sense approach" applied "notwithstanding that this Court has harmonized the statutes at issue." *Id*.

The Kentucky Supreme Court denied Petitioners' motion for discretionary review on December 10, 2015.

On remand, the Library filed a renewed Motion for Summary Judgment in the Campbell Circuit Court seeking dismissal of Petitioners' claims for conversion, unjust enrichment, and unlawful taking of their property. Petitioners filed a Cross-Motion for Summary Judgment arguing that the harmonization of Ky. Rev. Stat. §§ 173.790 and 132.023 espoused by the Kentucky Court of Appeals in *Coleman I* applied retroactively to 1999, when the Library set its *ad valorem* tax rate above the 4% increase rate. Based on this theory, Petitioners contended that they were entitled to a refund of the taxes assessed by the Library since that time. Of course, in setting its tax rate in 1999, the Library relied on opinions of the Attorney General and directives from KDLA. The Library was unaware that the Kentucky Court of Appeals would ultimately decide 16 years in the future that tax rate increases of more than 4% would require a voter petition. Therefore, the Library did not secure a voter petition to set the 1999 rate above the 4% increase rate, instead following the voter recall provisions of Ky. Rev. Stat. § 132.023(3).

The parties briefed the issue of whether or not *Coleman I* applied retroactively as asserted by Petitioner or only prospectively as advocated by the Library. The Campbell Circuit Court ruled that the decision applied prospectively, analyzing the retroactive/prospective question under the three-pronged test in *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971), which has been similarly utilized by Kentucky courts. *Id.*, *citing Yount v. Calvert*, 826 S.W.2d 833 (Ky. App. 1991). Petitioners appealed the Campbell Circuit Court's ruling to the Kentucky Court of Appeals.

The Kentucky Court of Appeals affirmed the prospective application of the ruling and the Kentucky Supreme Court denied discretionary review.

This Petition followed.

REASONS FOR DENYING THE PETITION

I. THERE IS NO COMPELLING REASON TO GRANT A WRIT OF CERTIORARI

Supreme Court Rule 10 provides that a "petition for writ of certiorari will be granted only for compelling reasons." For example, the Court might grant a writ of certiorari when "a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals" or when "a state court . . . has decided an important question of federal law that has not been, but should be, settled by this

Court." *See* Supreme Court Rule 10. In general, though, a "petition for a writ of certiorari is rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law." *Id.*

Petitioners premise their petition exclusively on an alleged misapplication of a properly stated rule of law. This is not a case in which the decision of Kentucky's *court of last resort* conflicts with a decision of *another state court of last resort* or with a decision of a federal court of appeals *on an important federal question*. Indeed, the decision at issue here is not a Kentucky Supreme Court Opinion, but a decision of the Kentucky Court of Appeals. Moreover, Petitioners do not allege, must less establish that the Kentucky Court of Appeals' decision conflicts with the decision of any other state court of last resort or a federal court of appeals. And, rather than raising an important federal question, the issue Petitioners identify centers primarily on state law – whether a state court's decision interpreting state law is to be applied prospectively which, in turn, determines whether or not Petitioners can recover refunds of local property taxes they paid to support a local library.

Likewise, this is not a case in which a state court has decided an important question of federal law that has yet to be addressed by this Court. The Kentucky Court of Appeals decided that its interpretation of Ky. Rev. Stat. 173.790 and Chapter 132 should be applied prospectively. To the extent Petitioners allege that prospective relief violates the Due Process Clause of the Fourteenth Amendment, this Court has previously addressed that issue on multiple occasions in the context of taxes. *See, e.g., American Trucking Assn. v. Smith*, 496 U.S. 167 (1990) ("*ATA*"); *McKesson*, *supra*; *Reich v. Collins*, 513 U.S. 106 (1994); *Newsweek, Inc. v. Fla. Dept. of Revenue*, 522 U.S. 442 (1998). Petitioners do not pose a novel issue of law and ask this Court to decide it; rather, they ask the Court to "confirm" what they believe to be an existing legal principle. (Petition, p. 11)

The Petition is premised on an alleged misapplication of a properly stated rule of law. In rendering its decision, the Kentucky Court of Appeals quoted *McKesson Corp. v. Div. of Alcoholic Beverages & Tobacco*, 496 U.S. 18, 36 (1990), and cited other federal authorities relied upon by Petitioners, including *Reich*, *supra*, and *Newsweek*, *supra*. (Ky. App. Opinion dated January 5, 2018, p. 9-10) Petitioners do not rely on any misstatement of any principle in any of those cases in seeking a writ of certiorari. Instead, they question the manner in which the Kentucky Court of Appeals applied those cases. Petitioners' chief complaint is: "The Kentucky Court of Appeals paid lip service to *McKesson*'s mandate but then denied these minimum constitutional safeguards through the artifice of a prospective-only decision." (Petition, p. 10)[5] In other words, Petitioners acknowledge that the Kentucky Court of Appeals cited the correct precedents; they merely take issue with the way the Court applied those

[5] *See also* Petition, p. 16, wherein Petitioners complain about the lower state courts' "flawed application of Kentucky's retroactivity doctrine."

precedents. That is not a compelling reason to grant a writ of certiorari.

Finally, this matter involves the retroactivity of a state court's decision concerning the interpretation of state statutes. This Court should not involve itself in such a matter. "When questions of state law are at issue, state courts generally have the authority to determine the retroactivity of their own decisions." *ATA*, *supra*, citing *Great Northern R. Co. v. Sunburst Oil & Refining Co.*, 287 U.S. 358 (1932).

Because there is no compelling reason to grant a writ of certiorari, the Campbell County Library Board of Trustees respectfully requests that the Court deny the Petition.

II. THE KENTUCKY COURT OF APPEALS CORRECTLY RULED THAT *COLEMAN I* SHOULD BE APPLIED PROSPECTIVELY, AND ITS RULING DOES NOT VIOLATE PETITIONERS' DUE PROCESS RIGHTS

The Kentucky Court of Appeals ruled that *Coleman I* should be applied prospectively. In arguing that the Court erred, Petitioners rely heavily on *McKesson*, which they repeatedly cite for the proposition that due process demands "meaningful backward-looking relief" – which Petitioners equate with a refund of the taxes they have paid to support the Library – regardless of equitable principles. (Petition, p. 11-21) Petitioners' reliance on *McKesson* is misplaced. The Kentucky Court of Appeals wisely and appropriately considered equity in concluding that *Coleman I* should be applied prospectively.

A. *MCKESSON* ONLY APPLIES WHERE THE TAX WAS RULED UNLAWFUL ON FEDERAL CONSTITUTIONAL GROUNDS

Petitioners' reliance on *McKesson* is misplaced because that ruling only governs where the tax at issue was ruled unlawful on federal constitutional grounds.

McKesson does not demand a refund of taxes in every case in which a taxing authority has collected taxes in a manner that is subsequently determined to be unlawful, as this Court ruled in *ATA*, *supra*. It only demands a refund when the tax has been ruled unlawfully collected *on federal constitutional grounds*. As the *ATA* Court observed about *McKesson*: "Our decision today in *McKesson* makes clear that once a State's tax statute is held invalid *under the Commerce Clause*, the State is obligated to provide relief consistent with federal due process principles. When the State comes under such a *constitutional* obligation, *McKesson* establishes that equitable considerations play only the most limited role in delineating the scope of that relief. . . . In light of *McKesson*'s holding that a ruling that a tax is *unconstitutionally discriminatory* under the Commerce Clause places substantial obligations on the States to provide relief, the threshold determination whether a new decision should apply retroactively is a crucial one, requiring a hard look at whether retroactive application would be unjust. **At this initial stage, the question is not whether equitable considerations outweigh the obligation to provide relief for a constitutional violation, but whether there is a constitutional violation in the first place.**" *ATA*, *supra* at 181-182. *Accord Newsweek, Inc. v. Fla. Dept. of Revenue*, 522 U.S. 442 (1998) (refund may be required under Florida post-deprivation statute where the tax in question violated the First Amendment); *Reich v. Collins*, 513 U.S. 106 (1994) ("due process requires a 'clear and certain' remedy for taxes collected *in violation of federal law*," where the tax at issue violated the federal constitutional intergovernmental tax immunity doctrine).

Here, there was no violation of any federal constitutional provision. Rather, in *Coleman I*, the Kentucky Court of Appeals clarified the appropriate procedure a library district must follow to raise its *ad valorem* taxes, and its clarification of that issue depended entirely on the construction of state statutes. Since *McKesson* only pertains to situations in which the tax at issue has been ruled unlawful on federal constitutional grounds, and this case does not present such a situation, considerations of due process as expressed in *McKesson* do not demand a refund of the Library's tax.

B. THE KENTUCKY COURT OF APPEALS CORRECTLY CONSIDERED EQUITY IN DETERMINING THAT DUE PROCESS DOES NOT REQUIRE A REFUND OF THE TAXES PAID BY PETITIONERS SINCE 1999

In any event, the Kentucky Court of Appeals was correct in considering the equities of the situation when it determined that *Coleman I* applied prospectively.

In fact, equity is one of the three factors at play in the seminal case on prospective/retroactive analysis of court rulings. Under the *Chevron Oil* test: "First, the decision to be applied nonretroactively must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied, or by deciding an issue of first impression whose resolution was not clearly foreshadowed. Second, . . . we must . . . weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation. **Finally, we [must] weigh the inequity imposed by retroactive application, for where a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the injustice or hardship by a holding of nonretroactivity.**" *ATA*, quoting *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971).

Moreover, a plurality of this Court has endorsed considering equity in determining whether a judicial opinion pertaining to the legality of a tax should apply retroactively, such that taxpayers were entitled to a refund, or prospectively, such that they were not. In *ATA*, the petitioners challenged the flat tax portion of Arkansas' Highway Use Equalization (HUE) tax, alleging that it violated the Commerce Clause. The Arkansas Supreme Court, relying on Supreme Court precedent, rejected this claim. This Court subsequently held that flat highway use taxes were unconstitutional, establishing a new rule of law. *American Trucking Assn., Inc. v. Scheiner*, 483 U.S. 266 (1987). On rehearing, the Arkansas Supreme Court held that the HUE tax was unconstitutional, and that *Scheiner* did not apply retroactively. The petitioners appealed that decision to this Court, and this Court ruled that *Scheiner* did not apply retroactively. As a result, the petitioners were not entitled to a refund of the taxes paid before the date of the *Scheiner* decision.[6]

In rendering its decision, the *ATA* Court acknowledged *McKesson*, but distinguished it: "Our decision today in *McKesson* makes clear that once a State's tax statute is held invalid under the Commerce Clause, the State is obligated to provide relief consistent with federal due process principles. . . . When the State comes under such a constitutional obligation, *McKesson* establishes that equitable considerations play only the

[6] This Court, however, ruled that the petitioners were entitled to a refund of taxes that had been paid into escrow for the tax year beginning July 1, 1987.

most limited role in delineating the scope of that relief. . . . Of course, *we had no occasion to consider the equities of retroactive application of new law in McKesson because that case involved only the application of settled Commerce Clause precedent*." *ATA*, *supra* at 181. The *ATA* Court observed that the law at issue in *McKesson* was one that, based on a United States Supreme Court case directly on point, the state should have known would be invalidated if challenged. *Id.* at 182. The Court also observed that Arkansas "promulgated and implemented its tax scheme in reliance on the . . . precedents of this Court. In light of these precedents, legislators would have good reason to suppose that enactment of the HUE tax would not violate their oath to uphold the United States Constitution, and a state supreme court would have every reason to consider itself bound by those precedents to uphold the tax against a constitutional challenge. Similarly, state tax collection authorities would have been justified in relying on state enactments valid under then-current precedents of this Court, particularly where, as here, the enactments were upheld by the State's highest court." *Id.*

In other words, *McKesson* only requires refunds to taxpayers regardless of equitable considerations where the taxing entity has collected a tax even though it should have predicted, based on settled law, that the tax was illegal. In contrast, where the taxing entity could not have predicted the tax would be ruled illegal, the court must take equitable considerations into account in determining whether the decision invalidating the tax is retroactive, such that taxpayers are entitled to a refund, or prospective, such that they are not. To that point, the Court in *ATA* stated: "Where a State can easily foresee the invalidation of its tax statutes, its reliance interests may merit little concern. . . . By contrast, because the State cannot be expected to foresee that a decision of this Court would overturn established precedents, the inequity of unsettling actions taken in reliance on those precedents is apparent." *Id.*

Having considered the equities involved, including the potential impact a tax refund would have on the state treasury and on the citizens of Arkansas, the *ATA* Court ruled it was "unjust to impose this burden when the State relied on valid existing precedent in enacting and implementing its tax." *Id.* at 183, 185-186.

Applying that common sense reasoning to the present case, it was entirely appropriate for the Kentucky Court of Appeals to consider the equities in determining whether *Coleman I* should be applied retroactively, such that Petitioners are entitled to a refund, or prospectively, such that they are not. There was no way for the Library to foresee that the Kentucky Court of Appeals would interpret Chapter 132 of the Kentucky Revised Statutes and Ky. Rev. Stat. § 173.790 as it did and, thus, no way for the Library to anticipate in 1999 that the manner in which it raised taxes in 1999 would, in 2015, be ruled improper. Rather, in 1999, the Library was told by state officials that Chapter 132 of the Kentucky Revised Statutes governed their *ad valorem* tax rate. Thus, the Kentucky Court of Appeals correctly considered the equities – including the Library's good-faith reliance on state agencies – in its retroactive/prospective analysis. Having done so, it concluded that *Coleman I* applies prospectively, and that determination should not be disturbed. *ATA*, *supra* at 177, citing *Great Northern R. Co.*, *supra* (holding that states should decide the retroactivity of their own decisions).

III. THERE IS NO PRESUMPTION FAVORING RETROACTIVE APPLICATION OF *COLEMAN I*

Petitioners' analysis of *Chevron Oil* is flawed. After correctly quoting the three factors established by the *Chevron Oil* Court for assessing whether an opinion should be applied retroactively or prospectively, Petitioners erroneously state that those "three factors are balanced to determine whether the presumption favoring retroactive application is overcome." (Petition, p. 17) They refer again to such a presumption later, and assert that "retroactive application of federal judicial decisions is the general rule and prospective-only application under *Chevron Oil* is the extreme exception." (Petition, p. 17)

Petitioners cite no legal authority to support that proposition, and with good reason: There is none. No Kentucky or federal precedent provides that judicial decisions that change substantive law are presumptively retroactive; rather, they may or may not be retroactive, depending on the outcome of the analysis under the three-factor test enunciated by *Chevron Oil*.

First, there is no support for Petitioners' allegation that a presumption is necessary because courts otherwise "overwhelmingly find for the taxing authority by making their decisions prospective-only." (Petition, p. 18) In fact, Petitioners make no showing in support of that bold accusation.

Moreover, *Chevron Oil* already applies to a narrow category of scenarios, i.e., those in which a judicial decision establishes "a new principle of law, either by overruling clear past precedent on which litigants may have relied, or by deciding an issue of first impression whose resolution was not clearly foreshadowed." *Chevron Oil*, *supra* at 106. The fact that *Chevron Oil* only applies to that narrow category of scenarios – along with the consideration of equities called for by *Chevron Oil* – assuages any risk perceived by Petitioners that taxing entities will have "an incentive for reckless administration of taxes." (Petition, p. 17) Under *Chevron Oil*, a judicial decision invalidating a tax is not going to be considered for prospective-only application if the taxing entity that implemented that tax knew, or should have known, based on existing precedent, that the tax was illegal. A taxing entity therefore has *no* incentive to administer the tax in a manner it knows or should know is illegal, contrary to Petitioners' unsuccessful assertion. Since *Chevron Oil* does not give rise to any "incentive for reckless administration of taxes," there is no reason to deviate from the analysis it advocates. There simply is no reason to adopt a presumption that judicial opinions holding taxes invalid are retroactive, in lieu of analyzing retroactive/prospective application of the ruling in accordance with *Chevron Oil*.

In short, *Chevron Oil* – along with this Court's decisions in *McKesson*, *ATA*, *Reich*, *Newsweek*, and the authorities on which those cases rely – provides ample guidance for lower courts in determining whether or not a judicial decision that changes substantive law should be applied retroactively or prospectively. There is no reason to deviate from that jurisprudence.

IV. THE RULING THAT *COLEMAN I* APPLIED PROSPECTIVELY EFFECTIVELY DECIDED PETITIONERS' REMAINING CLAIMS

Petitioners complain that "the trial court did not resolve the issue of which statute or method of calculation governed the District's tax rate for periods prior to the decision of the Court of Appeals in 2015" and that the trial court did not rule on their common law causes of action or their statutory cause of action for a refund. (Petition, p. 21-24) But, the Court of Appeals' January 5, 2018 ruling that *Coleman I* applied prospectively effectively decided those claims.

In *Coleman I*, the Kentucky Court of Appeals clarified that the proper procedure for library districts that wish to raise their *ad valorem* tax rates depends on the amount of the desired increase. *Coleman I*, *supra*. It clarified that a library district may on its own volition raise its rate by up to 4% over the compensating rate per Chapter 132 of the Kentucky Revised Statutes, but that any increase over that amount requires a petition.

Id. In its later ruling, the Kentucky Court of Appeals held that *Coleman I* applied prospectively. (Ky. Ct. App. Opinion dated 01.05.18) Hence, the Kentucky Court of Appeals made clear that, going forward, library districts that wish to increase their *ad valorem* tax rates by more than 4% over the compensating rate must secure a petition to do so, pursuant to KRS 173.790. Having ruled that *Coleman I* did not have retroactive application, the Kentucky Court of Appeals reasonably determined that prior tax increases would not be deemed improper. Since prior tax increases were not deemed improper, those prior tax increases did not give rise to any causes of action, whether under common law or statutory refund provisions.

The Kentucky Court of Appeals' decision holding that *Coleman I* only applied prospectively was dispositive of Petitioners' other claims. Accordingly, there is no merit to the argument in Section III of the Petition.

CONCLUSION

For all these reasons, Respondent, Campbell County Library Board of Trustees, respectfully requests that the Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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