

## COURTS: U.S. SUPREME COURT UPHOLDS RULING THAT FTB DEFRAUDED NEVADA INVENTOR GILBERT HYATT

In the latest decision in the long-running litigation between the Franchise Tax Board and Nevada inventor Gilbert Hyatt, the U.S. Supreme Court on April 19 affirmed a Nevada Supreme Court ruling in favor of Mr. Hyatt, except with respect to the amount of damages.

As a result of the decision, it continues to be the rule that states do not have sovereign immunity in the courts of other states, and may be held liable for unlawful actions against citizens of those states. The decision also means that the specific findings of liability against the FTB – that the agency committed fraud and engaged in intentional infliction of emotional distress upon Mr. Hyatt during a residency audit – stay in place without change.

The decision also allows the Nevada courts to award damages for those violations of Nevada law, but with the same \$50,000 limit that would be applied if the FTB were a Nevada state agency. Nevada's high court had ordered the FTB to pay a \$1 million award, after significantly reducing the award a jury had ordered after hearing evidence in a lengthy trial in Las Vegas. The matter now goes back to lower courts to be resolved.

The Supreme Court, which heard oral arguments in [\*Franchise Tax Board of California v. Hyatt\*](#) in December, prior to the death of Justice Antonin Scalia, announced that it is "equally divided" on the question of whether to overturn a precedent on states' sovereign immunity, and thus the precedent will be left in place. The court did not provide details on which justices were opposed and which were in favor of the FTB's request to overturn *Nevada v. Hall* (1979) 440 U.S. 410, which permits a sovereign state to be haled into the courts of another state without its consent.

On the issue of damages, the court's majority held: "The Constitution does not permit Nevada to apply a rule of Nevada law that awards damages against California that are greater than it could award against Nevada in similar circumstances." The maximum award for the damages in question should be \$50,000, according to the majority opinion written by Justice Stephen Breyer. Justices Anthony Kennedy, Ruth Bader Ginsburg, Sonia Sotomayor and Elena Kagan joined in the opinion, and Justice Samuel Alito concurred in the judgment.

Chief Justice John Roberts wrote a dissenting opinion, in which Justice Clarence Thomas joined, arguing that the majority's decision "is contrary to our precedent holding that the [Full Faith and Credit] Clause does not block a State from applying its own law to redress an injury within its own borders."

"In the course of the audit, employees of the [Franchise Tax] Board traveled to Nevada and allegedly peered through Hyatt's windows, rummaged around in his garbage, contacted his estranged family members, and shared his personal information not only with newspapers but also with his business contacts and even his place of worship," the

dissenting justices wrote. “Hyatt claims that one employee in particular had it in for him, referring to him in antisemitic terms and taking ‘trophy-like pictures’ in front of his home after the audit.”

The court’s majority ruled that Nevada had failed to state a sufficient purpose for applying the \$50,000 limit only to awards paid by Nevada agencies. The dissenting opinion argued that Nevada had stated a sufficient policy interest, and added that Nevada showed “more than a ‘healthy regard’ for California’s sovereign status” by throwing out a \$250 million punitive damages award that a jury had ordered the FTB to pay Mr. Hyatt.

In a written statement, the FTB did not discuss the court’s rejection of its request to overturn *Nevada v. Hall*, nor the finding that it committed fraud, but instead focused on other issues:

“Today the United States Supreme Court took the reasonable position that all government agencies be treated equitably in the courts of other states. Specifically, the court ruled that if a California agency is haled into Nevada Court, it should be treated the same as Nevada government agencies. We believe today’s decision shows an ‘end in sight’ to this 17-year-old litigation which has crossed state lines multiple times and gone before the United States Supreme Court twice.”

The FTB did not comment on the Nevada Supreme Court’s finding that the FTB was guilty of intentional infliction of emotional distress (the Nevada court remanded the case to the lower court for a trial on damages on that issue). The FTB also did not comment on a \$2.5 million award of attorney fees to Mr. Hyatt, which is outside of the limit on damages.

The Supreme Court’s ruling could have a lasting impact for taxpayers. Forty-four states had filed court briefs supporting the FTB’s failed effort to claim immunity from suits in other states.

Neither California taxpayers nor out-of-state taxpayers will have the ability to sue the FTB or agencies of other states in California, as the U.S. Supreme Court’s decision requires California to treat other states the same as it treats itself, and California agencies have immunity in the Golden State.