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U.S. Supreme Court Update

U.S. SUPREME COURT UPDATE

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Three New Cert Petitions Filed in State and Local Tax Matters

***38** As the U.S. Supreme Court heads toward its 2018-2019 term at the time of this writing, news of Brett Kavanaugh's confirmation hearings have dominated the headlines. Judge Kavanaugh, who currently sits as a U.S. Circuit Court Judge on the Court of Appeals for the District of Columbia, would take the vacant spot created by the pending retirement of Justice Anthony Kennedy, for whom he clerked. While we await the resolution of Judge Kavanaugh's nomination, we have new updates to report.

Specifically, the U.S. Supreme Court has received three new petitions for certiorari in cases involving state and local taxes. First, in *Parmar v. Madigan* (Docket No. 18-241), the Court has been asked to review a decision by the Illinois Supreme Court upholding the judgment of a lower circuit court, which dismissed a complaint filed by the executor of an estate for lack of jurisdiction. Second, in *Northern Cal. Water Ass'n v. State Water Resources Control Bd.* (Docket No. 18-205), a group of plaintiffs look to the Supremacy Clause of the U.S. Constitution to challenge the California State Water Resources Control Board's imposition of a new annual fee on water right permit and license holders. Lastly, in *Rollyson v. O'Neal* (Docket No. 18-114), a state official asks the U.S. Supreme Court to review the application of qualified immunity in a case involving the issuance of a tax deed related to real property in West Virginia.

The Court also remains set to review three cases in which certiorari was granted in June—*Washington State Dep't of Licensing v. Cougar Den, Inc.* (Docket No. 16-1498) (oral argument is set for Tuesday October 30, 2018); *Dawson v. Steager* (Docket No. 17-419); and *FTB v. Hyatt* (Docket No. 17-1299)—and the Court continues its review of a dispute between Delaware and several other states concerning which states have priority rights to claim abandoned, uncashed MoneyGram ‘official checks.‘ The MoneyGram cases set for review are *Delaware v. Pennsylvania et. al.*, Case No. 220145, and *Arkansas et. al. v. Delaware*, Case No. 220146. We will continue to update readers as more details become available.

Son Challenges Ill.'s Retroactive Application of Estate Tax Act to Mother's Estate

****2** The U.S. Supreme Court received a new petition for certiorari in *Parmar v. Madigan*, Docket No. 18-241, ruling below at Ill. S. Ct., Dkt. No. 122265 (Ill. 2018). In this case, the Illinois Supreme Court reversed the judgment of the Illinois Appellate Court, Second District, and affirmed the judgment of a lower circuit court, which dismissed the Petitioner's complaint under the

jurisdictional bar of state sovereign immunity. The Petitioner had challenged Illinois' retroactive application of the state's estate tax and now argues in his petition for certiorari that Illinois failed to provide a clear and certain post-deprivation procedure for reviewing his claims, as required under the Due Process Clause of the U.S. Constitution.

Retroactive estate tax.

As explained in the case below, on January 9, 2011, Dr. Surinder Parmar died, leaving an estate valued at more than $5 million. Her son, the Petitioner in this matter, was appointed executor of the estate. At the time of Dr. Parmar's death, the estate was not subject to taxation under Illinois' Estate Tax Act because the Act expired on December 30, 2010. However, two days after Dr. Parmar's death, the Illinois General Assembly adopted a bill that created a new estate tax regime that covered those who, like Dr. Parmar, died after December 30, 2010. The bill—35 Ill. Comp. Stat. 405/2(b)—was signed by the Governor on January 13, 2011 (effective immediately), and by its terms was to be applied retroactively to the estates of all persons who died after December 30, 2010.

In September 2012, the Petitioner paid $400,000 to the Illinois Treasurer toward the estate's tax liability. One month later, the Petitioner filed the estate's Illinois estate tax return and paid an additional sum of almost $160,000 to the Treasurer for late filing and late payment penalties, as well as interest. Ultimately, the penalties were abated, and on July 24, 2015, the Petitioner received a ‘Certificate of Discharge and Determination of Tax, ‘ which provided that the estate's tax liability, including penalties and interest, had been paid.

Shortly after receiving the Certificate, the Petitioner filed an amended return claiming a refund, based on the newly formed belief that the amendment to the Estate Tax Act did not apply to his mother's estate. Among other claims, his complaint alleged that any retroactive application of the Estate Tax Act violated the Due Process and Takings Clauses of the Illinois and U.S. Constitutions.

Illinois lower courts ‘flip-flop‘ on sovereign immunity.

***39** An Illinois circuit court originally granted the defendants' motion to dismiss the Petitioner's complaint for lack of subject matter jurisdiction, based primarily on the argument that the lawsuit was barred by the doctrine of sovereign immunity. Specifically, the defendants argued that because the complaint sought a money judgment against Illinois officials, it was barred under the sovereign immunity principles embodied in the State Lawsuit Immunity Act and the complaint could therefore be filed only with the Illinois Court of Claims. The Petitioner argued that he was not seeking a payment from Illinois per se, because his claim was not against the State's General Revenue Fund, but rather against the special Estate Tax Refund Fund and, therefore, sovereign immunity was not implicated.

****3** A state appellate court reversed and remanded the circuit court's ruling, holding that the ‘officer-suit‘ exception to sovereign immunity applied and jurisdiction in the circuit court was therefore proper. Under the ‘officer-suit‘ exception, sovereign immunity affords no protection when agents of the state act in violation of statutory or constitutional laws. According to the appellate court, complaints alleging these types of wrongs are therefore entitled to proceed in the circuit court when they do not seek redress from a past wrong, but rather only to prohibit future conduct.

Illinois Supreme Court agrees with circuit court.

The Illinois Supreme Court reversed the appellate court and affirmed the decision of the circuit court. In doing so, the court determined that because the Petitioner's claim did not seek to enjoin future conduct by the defendants, but instead sought money damages, the ‘officer-suit‘ exception to the application of sovereign immunity did not apply.

The Petitioner argued that his complaint could proceed regardless of the ‘offer-suit‘ exception because Illinois had waived sovereign immunity when it enacted section 15 of the Estate Tax Act, which provides, in relevant part: ‘(a) Jurisdiction.

Jurisdiction to hear and determine all disputes in relation to a tax arising under this Act shall be in the circuit court for the county having venue as determined under subsection (b) of this Section, and the circuit court first acquiring jurisdiction shall retain jurisdiction to the exclusion of every other circuit court.'

The state high court disagreed, however, noting that 'section 15 does not constitute a clear and unequivocal waiver of sovereign immunity.' According to the Illinois Supreme Court, the State Lawsuit Immunity Act 'expressly states that except as provided in certain statutes identified therein—and the Estate Tax Act is not one of them—the 'State of Illinois shall not be made a defendant or party in any court.'' And although the General Assembly may, 'by statute, consent to liability of the State . . ., such consent must be clear and unequivocal.'

The absence of 'affirmative language' in section 15 waiving sovereign immunity led the court to conclude that 'the General Assembly only intended to fix jurisdiction and venue for all disputes that do *not* implicate sovereign immunity.' The court, therefore, rejected the Petitioner's argument that the General Assembly waived sovereign immunity in section 15 of the Estate Tax Act.

Instead, according to the Illinois Supreme Court, the Petitioner's sole and proper remedy would have been to avail himself of the Protest Moneys Act (30 Ill. Comp. Stat. 230/1) and to have paid the relevant taxes under protest and then litigated his claims in the circuit court under that provision. In his petition for certiorari, the Petitioner questions whether this exclusive remedy satisfies the requirements of the Due Process Clause of the U.S. Constitution.

Question presented.

****4** The Petitioner now asks the U.S. Supreme Court to consider, 'whether the State of Illinois failed to provide . . . a clear and certain post-deprivation procedure consistent with the ***40** Due Process Clause of the Fourteenth Amendment when it refused to give effect to the plain and unambiguous language of section 15(a) of the Estate Tax Act conferring jurisdiction upon Illinois' trial courts to 'hear and determine all disputes in relation to a tax arising under the Act,' including claims about the alleged unconstitutionality of the State's retroactive application of the Estate Tax Act.'

Supremacy Clause Challenge to Annual Calif. Fee on Water Right Permit and License Holders

On August 14, 2018, the Court received a new petition for certiorari in *Northern Cal. Water Ass'n v. State Water Resources Control Bd.,* Docket No. 18-205, ruling below at 230 Cal. Rptr. 3d 142 (Cal. 2018), in which the California Court of Appeals, Third Appellate District, held that: (1) California's fee on water right permit and license holders was a fee, not a tax, within the meaning of Article XIIIA, section 3 of the California Constitution; and (2) the implementing regulation, which sets forth the formula for allocating the U.S. Bureau of Reclamation ('USBR') fees to water supply contractors did not violate the Supremacy Clause of the U.S. Constitution.

The current petition for certiorari concerns the Supremacy Clause issue only.

California pass-through of water fees.

As explained in the case below, the Central Valley Project ('CVP') is the largest water reclamation project in the country, serving multiple purposes, including flood control, irrigation, municipal use, industrial use, power, recreation, water-quality control, and the protection of fish and wildlife. The United States owns and operates the CVP, while California administers the water rights necessary to divert water for the CVP. The State Water Board is the state agency responsible for administering those water rights.

In 2003, the California Legislature enacted Senate Bill (SB) 1049, which shifted the financial burden of supporting California's water rights program from the state's General Fund to a fee-based structure paid for by a subset of water users. The new statutory

scheme imposed annual fees on water rights holders with permits and licenses, including the United States. In addition, the statute expressly allowed the State Water Board to shift to federal contractors any fees that the United States refused to pay based on sovereign immunity. Over 200 entities (the ‘CVP Water Contractors‘) contracted with the United States in 2003 to deliver water stored by the CVP and held by permit by the United States.

For fiscal year 2003-2004, the State Water Board assessed almost $2.5 million, out of a total of $4.4 million, in annual water rights fees against the United States. The United States refused to pay the fees, invoking sovereign immunity, so the State Water Board allocated 100% of the United States' unpaid water rights fees to the CVP Water Contractors.

****5** The CVP Water Contractors' argued that (1) their contractual rights accounted for only 5% of the United States' water right permits supporting the CVP; (2) they had no guaranteed right of delivery for any amount of water under their contracts; and (3) they often received far less water than the face amount of their contracts (and in some years received no water at all); thus, a 100% fee transfer exceeded their beneficial interest in the CVP.

Courts debate the application of the Supremacy Clause and the holders' beneficial interests in the water rights.

After SB 1049 was enacted, several water rights fee payers and their membership organizations, many of whom now petition the U.S. Supreme Court for certiorari, brought suit against the State Water Board seeking a writ of mandate and declaratory and injunctive relief. In their suit, the fee payers argued that the new fee violated the ***41** California and U.S. Constitutions, both on its face and as applied.

In 2007, a California Court of Appeals held that the statutes imposing the fee were facially valid, but that the fees as applied violated the California and U.S. Constitutions because they passed 100% of the United States' fees to the CVP Water Contractors, despite the fact that the CVP Water Contractors did not receive 100% of the federal government's beneficial interest in the water rights. On appeal, the California Supreme Court held that the statutes were facially constitutional, as the United States could resist any charge on sovereign immunity grounds. Recognizing that federal law allows taxes on the United States to be passed through to federal contractors, the California Supreme Court expressly noted that ‘when conducting a supremacy clause analysis, federal courts do not distinguish between fees and taxes.‘

With respect to the CVP Water Contractors' as-applied challenge, the California Supreme Court recognized that in ‘a supremacy clause challenge to a tax on persons or entities that contract with the federal government,‘ federal case law establishes that ‘the taxing authority must segregate and tax only the beneficial or possessory interest in property.‘ Due, however, to an inadequate factual record, the court remanded the case back to the lower superior court, which then found that because only some water could be fairly attributable to the CVP Water Contractors' beneficial interest, there was no evidence presented to quantify or justify a 100% allocation of the fee to the CVP Water Contractors.

The State Water Board again appealed, arguing that it did consider the CVP Water Contractors' beneficial interest when enacting the fee regulations. On appeal, the California Court of Appeal determined that the CVP Water Contractors needed to show ‘that they were prejudiced by the [State Water] Board's actions‘ to invalidate the pass-through fees. Ultimately, the Court of Appeal determined that ‘because the CVP [Water Contractors] received all available water under the [United States'] CVP permits and licenses after meeting its legal obligations, the [State Water] Board reasonably valued the contractors' interest in those permits and licenses at 100 percent.‘ The CVP Water Contractors appealed this ruling to the California Supreme Court; however, the California Supreme Court denied review.

Question presented.

****6** The CVP Water Contractors now present the following question for review in their petition for certiorari: ‘Is a California statute imposing a direct tax on the United States' property interest in water constitutional if it is applied in a manner that passes

through 100 percent of the tax to the United States' contractors when those contractors' beneficial interest in the taxed water is, at most, 5 percent of the total water being taxed?‘

W.V. Deputy Commissioner Challenges Denial of Summary Judgment Claiming Qualified Immunity

The U.S. Supreme Court received a new petition for certiorari in *Rollyson v. O'Neal*, Docket No. 18-114, ruling below at *O'Neal v. Rollyson,* 729 Fed. Appx. 254 (4th Cir. 2018). In this case, the U.S. Court of Appeals for the Fourth Circuit affirmed, in an unpublished opinion, the district court's grant of partial summary judgment in favor of two property owners who brought suit against G. Russell Rollyson, Jr., the Deputy Commissioner of Delinquent and Nonentered Lands for Raleigh County, West Virginia (the ‘Deputy Commissioner ‘), and denied the Deputy Commissioner's motion for summary judgment, in which he argued for dismissal of the property owners' claims on the basis of qualified immunity.

A question of who owns—and who should pay the taxes on—the land.

A West Virginia property, which was owned by the Respondents, Jeffrey and Sherrie O'Neal, became delinquent in 2012 for a failure to pay property taxes. The O'Neals did not reside on the property, however. Instead, their daughter, Jennifer Reynolds, had resided at the property since 2002, when the O'Neals and Reynolds entered into an unwritten ‘land-purchase agreement.‘ The agreement required Reynolds to pay the remaining five years of mortgage payments and all property taxes. Reynolds made the remaining mortgage payments and, as far as her parents were concerned, the property was ‘owned‘ by Reynolds, making her responsible for the taxes.

Ultimately, the property was sold by the Deputy Commissioner to Richard Wisen. However, according to the circuit court, the Deputy Commissioner ‘never informed [Wisen] that the [sale] notices sent to the designated post office box were returned or that he failed to send notice addressed to ‘Occupant’ as required by the statute.‘ The Deputy Commissioner was required under W. Va. Code Ann. §§ 11A-3-52 to -55 to inform the O'Neals that the property had been sold and explain the steps needed to redeem the property in order to avoid transfer of the tax deed to the purchaser. When the O'Neals eventually learned of the sale, they brought suit in federal district court in which they attempted to void the transaction, contending that the Deputy Commissioner had violated their constitutional notice rights, as established in *Jones v. Flowers*, 547 U.S. 220 (2006) and *Plemons v. Gale*, 396 F.3d 569 (4th Cir. 2005).

The argument for qualified immunity.

In response to the O'Neals' claims, Wisen and the Deputy Commissioner each filed separate motions for summary judgment. The Deputy Commissioner's motion requested a judgment on the basis of qualified immunity, but the district court denied the motion, finding that qualified immunity did not bar the O'Neals' claims.

****7** The Fourth Circuit agreed, holding that the Deputy Commissioner failed to comply with the constitutional notice requirements laid out by the U.S. Supreme Court in *Jones.* To overcome the shield of qualified immunity, which the court noted is ‘an affirmative defense to liability under § 1983,‘ the Fourth Circuit held that a plaintiff must demonstrate that ‘(1) the defendant violated the plaintiff's constitutional rights, and (2) the right in question was clearly established at the time of the alleged violation.‘

Here, the court noted, the Deputy Commissioner ‘does not dispute that, knowing the attempted notices [regarding the sale] were unsuccessfully sent, he transferred the Property deed to the purchaser anyway.‘ Accordingly, the Deputy Commissioner ‘fails to demonstrate how his transfer of the deed to the purchaser, despite [his] knowledge that the attempted notices were returned, did not violate the O'Neals' constitutional rights, clearly established in *Jones.*‘ Because the Deputy Commissioner's ***42** ‘obligation, pursuant to the Fourteenth Amendment, to take such measures was established, at the latest, in 2006 by the Supreme

Court in *Jones*,' the Fourth Circuit concluded that 'the district court did not err in finding that [the Deputy Commissioner's] actions violated the O'Neals' clearly established Fourteenth Amendment due process rights.'

In his petition for certiorari, the Deputy Commissioner argues that, according to *Jones,* in order for a tax sale and issuance of a tax deed to not run afoul of the Constitution, actual notice of the impending sale is not required, but rather 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections' is all that is required. In addition, the Deputy Commissioner argues that the notice requirements, as set forth in *Jones*, are the responsibility of the tax lien purchaser, not the Deputy Commissioner's office.

Question presented.

The Deputy Commissioner asks the Supreme Court to consider, 'Whether a Deputy State Auditor is entitled to qualified immunity because no previous court had interpreted the State's statutory scheme as imposing the burden to perfect constitutional service of the notice to redeem upon the State?'

Petitions Previously Granted

On June 25, 2018, the U.S. Supreme Court granted certiorari in two previously reported petitions: *Washington State Dep't of Licensing v. Cougar Den, Inc.* (Docket No. 16-1498) and *Dawson v. Steager* (Docket No. 17-419), and on June 28, 2018, the Court granted certiorari in *FTB v. Hyatt* (Docket No. 17-1299).

Review granted of Yakama Nation 'right to travel' without taxation victory.

In *Washington State Dep't of Licensing v. Cougar Den, Inc.* (Docket No. 16-1498), ruling below at 188 Wash. 2d 55 (Wash. 2017), the Washington Supreme Court held that the Yakama Nation 'w[as] entitled under [the Yakama Nation] [T]reaty to import fuel without holding [an] importer's license and without paying state fuel taxes.'

****8** As explained by the court below, Article II of the Yakama Nation Treaty of 1855 states in relevant part: '[I]f necessary for the public convenience, roads may be run through the said reservation; and on the other hand, the right of way, with free access from the same to the nearest public highway, is secured them; as also the right, in common with citizens of the United States, to travel upon all public highways.' (Treaty with the Yakamas, 12 Stat. 951, 952-953 (1855)).

In 2013, Cougar Den, a Confederated Tribes and Bands of the Yakama Nation corporation, began transporting fuel from Oregon to the Yakama Indian Reservation. The company sold the fuel to businesses located on Tribal land and owned by Tribal members. The Washington Department of Licensing, however, issued tax assessments on the imported fuel ($3.6 million of taxes, penalties, and fees for hauling the fuel across state lines). Cougar Den refused to pay the assessment, arguing that the imposition of the tax violated its right to travel under the Yakama Nation Treaty of 1855.

In reviewing the assessment, and upholding the lower courts' ruling in Cougar Den's favor, the Washington Supreme Court noted that '[t]here is no dispute that the taxes and licensing requirements would apply if the treaty provision does not apply here.' The court further explained, however, that the U.S. Supreme Court's rule of treaty interpretation requires that 'Indian treaties must be interpreted as the Indians would have understood them.' And, the court concluded that '[t]he Department's interpretation of the treaty provision ignores the historical significance of travel to the Yakama Indians and the rule of treaty interpretation established by the United States Supreme Court. ' The court specifically noted that '[i]n ruling in Cougar Den's favor, both the ALJ and the Yakima County Superior Court based their decisions on the history of the right to travel provision of the treaty, relying on the ***43** findings of fact and conclusions of law from *Yakama Indian Nation v. Flores*, 955 F. Supp. 1229 (E.D. Wash. 1997),' in particular the depiction in the record of a 'tribal culture whose manner of existence was dependent on the Yakamas' ability to travel.'

The Supreme Court granted certiorari for the question posed by the Washington State Department of Licensing for review: 'Whether the Yakama Treaty of 1855 creates a right for tribal members to avoid state taxes on off-reservation commercial activities that make use of public highways.'

Many parties filed amicus curiae briefs in support of the Petitioner, including: the Washington Oil Marketers Association and the Washington Association of Neighborhood Stores; the Multistate Tax Commission and Federation of Tax Administrators; the states of Idaho, California, Kansas, Louisiana, Massachusetts, New York, Rhode Island, South Dakota, Tennessee, Texas, Wisconsin, Wyoming, and the City of New York; Public Health Organizations; and the United States.

****9** The Court has set the date for oral argument for Tuesday, October 30, 2018.

Court to consider W.V.'s differential treatment of retirement benefits and intergovernmental immunity.

In *Dawson v. Steager,* Docket No. 17-419, ruling below at *Steager v. Dawson*, 2017 WL 2172006 (W. Va. 2017), the Supreme Court of Appeals of West Virginia held that James Dawson, a retired U.S. Marshal, was not entitled to exempt his Federal Employee Retirement System ('FERS') income from state income tax.

According to the West Virginia court, Dawson worked as a deputy U.S. Marshal in West Virginia. He was enrolled in FERS, a federal retirement plan, and sought a West Virginia exemption for all of his FERS income. The court, however, noted that, under West Virginia law, unlike certain state law enforcement retirees who may exempt all of their state retirement benefits from taxable income, Dawson was entitled to exempt only a portion of his FERS income. The court held that this distinction did not violate the doctrine of 'intergovernmental tax immunity.' Instead, the court held the exemption at issue merely gives a benefit to 'a very narrow class of former state and local employees, and that benefit was not intended to discriminate against former federal marshals.'

In his petition, Dawson asked the U.S. Supreme Court to consider: 'Whether this Court's precedent and the doctrine of intergovernmental tax immunity bar states from exempting groups of state retirees from state income tax while discriminating against similarly situated federal retirees based on the source of their retirement income.' However, the Court did not grant certiorari with respect to Dawson's question, and instead granted certiorari limited to the issue presented by the U.S. Solicitor General in an amicus curiae brief filed on May 15, 2018.

The Solicitor General argued that '[t]he West Virginia Supreme Court of Appeals misapplied the doctrine of intergovernmental tax immunity' and that, '[u]nder the test articulated in *Davis v. Michigan Department of the Treasury*, 489 U.S. 803 (1989), the court should have asked whether the State's inconsistent tax treatment of former federal and state law-enforcement officers 'is directly related to, and justified by, significant differences between the two classes.' ' The West Virginia court's application of a 'totality of the circumstances' analysis, the Solicitor General argued, 'is inconsistent with *Davis* and with this Court's other intergovernmental tax immunity decisions.'

On August 28, 2018, Dawson filed his brief with the Court, arguing that West Virginia taxes federal law enforcement retirees more than state law enforcement retirees, despite the absence of significant differences. According to Dawson, '[i]t is undisputed. . . that there are no significant differences between [the] powers and duties [of a] US Marshal and the powers and duties of the state and local law enforcement officers.' Accordingly, Dawson maintains that West Virginia has misapplied the intergovernmental immunity ***44** test from *Davis*, and the judgment of the West Virginia Supreme Court of Appeals should be reversed.

****10** At the court's invitation, on September 4, 2018, the United States filed another brief as amicus curiae supporting the Petitioners, and recommending that the judgement of the West Virginia Supreme Court of Appeals should be vacated. In this

brief, the United States contends that 'West Virginia may not tax retirement benefits of federal law-enforcement officers more heavily than it taxes retirement benefits of comparable state law-enforcement officers.'

Court will review whether California FTB is immune from taxpayer tort claims.

In *Franchise Tax Bd. of Cal. v. Hyatt*, Docket No. 17-1299, ruling below at 407 P.3d 717 (Nev. 2017), the Nevada Supreme Court held that the California Franchise Tax Board (the 'FTB') was not entitled to immunity from intentional and bad-faith tort claims brought by a former California resident, Gilbert Hyatt.

The granting of certiorari marks the latest in a long-running saga between Hyatt and the FTB. Mr. Hyatt's dispute with the FTB stems from the agency's attempt to collect approximately $10 million in taxes on patent licensing fees earned by Hyatt in the 1990s. Following an audit, in which the FTB determined Hyatt to be a California resident, Hyatt sued the FTB in Nevada state court claiming that the FTB's abusive investigation techniques cost him business opportunities and inflicted emotional distress. The Nevada Supreme Court eventually largely reversed a jury award of tort damages and punitive damages awarded to Hyatt. Citing to *Nevada v. Hall*, 440 U.S. 410 (1979), however, which held that the U.S. Constitution does not grant states sovereign immunity from suit in the courts of other states, the Nevada Supreme Court rejected the FTB's claim of complete immunity. Ultimately, the U.S. Supreme Court affirmed Nevada's decision in *Franchise Tax Bd. of Cal. v. Hyatt (Hyatt I)*, 538 U.S. 488 (2003).

After another round at the Nevada Supreme Court, which held that the FTB was liable for fraud and intentional infliction of emotional distress, the FTB sought review once again in the U.S. Supreme Court. The Court granted certiorari for the second time, agreeing to consider two questions: (1) whether the Nevada Supreme Court erred by failing to apply to the FTB the statutory immunities available to Nevada agencies and (2) whether the U.S. Supreme Court's prior decision in *Nevada v. Hall*, 440 U.S. 410 (1979), should be overruled.

In its second decision, *Franchise Tax Bd. of Cal. v. Hyatt (Hyatt II)*, 136 S. Ct. 1277 (2016), the Court held that, with regard to California's first claim, the Full Faith and Credit Clause does not 'permit[] Nevada to award damages against California agencies under Nevada law that are greater than it could award against Nevada agencies in similar circumstances.' As to California's second question, however, the Court, in the wake of Justice Antonin Scalia's death, spilt 4-4 on whether *Hall* should be overruled.

On remand from *Hyatt II*, the Nevada Supreme Court followed the high court's instructions and held that the FTB was entitled to the benefit of Nevada's statutory damages cap and instructed the trial court to enter a damages award for fraud within the cap of $50,000. The FTB again requested the U.S. Supreme Court to grant certiorari, arguing that 'under our federal system, an agency of one State may not (absent its consent) be sued in the courts of another State. ' Specifically, the FTB asked the Court to answer the question it agreed to decide in *Hyatt II:* 'whether *Nevada v. Hall* should be overruled.' The Court granted the FTB's request for review.

****11** The Petitioner had challenged Illinois' retroactive application of the state's estate tax and now argues that Illinois failed to provide a clear and certain post-deprivation procedure for reviewing his claims.

The United States refused to pay the fees, invoking sovereign immunity, so the California Water Board allocated 100% of the unpaid water rights fees to the water contractors.

The Fourth Circuit held that the W.V. Deputy Commissioner failed to comply with the constitutional notice requirements laid out in *Jones v. Flowers.*

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