

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANCHISE TAB BOARD OF THE
STATE OF CALIFORNIA,

Appellant/Cross-Respondent

v.

GILBERT P. HAYTT,

Respondent/Cross-Appellant.

FILED

Case No. 53264

JUN 01 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

**MOTION FOR PERMISSION TO FILE REPLY BRIEF
IN EXCESS OF 30 PAGES**

Pursuant to NRAP 28(g), appellant moves for permission to file a brief in excess of 30 pages, to-wit, 158 pages.

Factual Background

This is an appeal from a judgment in the amount of approximately \$490 million against appellant, a state agency responsible for administering and enforcing California's personal income tax laws. The judgment includes damages of \$52 million for invasion of privacy, \$85 million for emotional distress, \$250 million for punitive damages, more than \$1 million for attorneys fees as special damages, and approximately \$102 million in prejudgment interest.

This case was litigated for ten years before trial, with three writ petitions in this court (Docket Numbers 35549, 36390 and 47141) and an appeal to the United States Supreme Court. *Franchise Tax Board v. Hyatt*, 538 U.S. 488 (2003).

The district court docket sheet contains more than 2,300 docket entries. The trial lasted four months, with more than 50 witnesses and thousands of pages of trial exhibits. The trial transcript is approximately 13,000 pages in length.

There are numerous appellate issues in this case, many of which have nationwide importance, as demonstrated by the numerous amicus curiae entities that participated in the United States Supreme Court case in 2003 and in the present appeal. The issues in this appeal implicate the important relationship between Nevada and California, with

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1 far-reaching potential economic and political consequences. Many of the appellate
2 issues are unique, complicated and intricate, requiring extensive analysis of facts and
3 legal authorities. The appendix filed with the opening brief was approximately 23,000
4 pages; the respondent's appendix filed with the answering brief was approximately
5 25,000 pages; and the reply appendix is nearly 12,000 pages.

6 Opening and Answering Briefs

7 Appellants' opening brief consisted of 118 pages. The brief was filed pursuant to
8 this court's order of August 7, 2009. After appellant filed the opening brief, respondent
9 filed a motion seeking permission to file a brief 30 pages longer than the 118 page
10 opening brief. In an order entered on August 21, 2009, this court ruled that the
11 answering brief would be limited to 20 pages longer than the opening brief (i.e., 138
12 pages).

13 After having received multiple extensions of time, respondent eventually
14 submitted a 198-page answering brief, which included his briefing on the cross-appeal.
15 At the same time, respondent filed a motion requesting permission to file the brief with
16 excess pages. Respondent argued that an answering brief less than 198 pages would
17 adversely affect his ability to present his appellate position.

18 Appellant opposed respondent's motion, and respondent filed a reply. On
19 January 26, 2010, this court granted respondent's motion and allowed the 198-page
20 brief to be filed. Respondent's brief contains approximately 140 separate parts and
21 subparts, with 720 footnotes. The brief cites to nearly 250 cases, statutes and other legal
22 authorities.

23 Argument

24 Pursuant to NRAP 28(g), briefs in excess of 30 pages may be filed with
25 permission from the court. Appellant respectfully contends that good cause exists for
26 permission to file the 158-page reply brief.

27 The 198-page answering brief in this half-billion dollar case contains hundreds of
28 factual and legal references. Appellant contends that many of these references are

1 incorrect, and many need to be addressed in the reply brief. Additionally, the reply brief
2 needs to provide this court with a full, adequate evaluation of the numerous legal
3 arguments contained in the answering brief.

4 When respondent filed his reply in support of his motion to file a 198-page
5 answering brief, respondent argued:

6 Great care and effort was taken to edit and re-edit the drafts, reducing them
7 by many pages and removing every non-essential word, while still fully
8 addressing all of the necessary issues. This matter has been in litigation for
9 well over a decade. . . . The trial in this case lasted four months, the
10 verdicts are substantial and the issues many and complex, and the record
11 consists of tens of thousands of documents. Full and fair briefing should be
12 allowed.

13 Respondent's reply, January 26, 2010, at page 2.

14 Based upon respondent's argument, this court granted permission for the 198-
15 page answering brief. The same argument holds true regarding the reply brief.
16 Appellant's attorneys have spent countless hours editing the reply brief and attempting
17 to reduce its size, while still attempting to provide the court with full, adequate
18 responses to factual and legal contentions in the answering brief. Moreover, the brief
19 needs to deal with respondent's cross-appeal, in which respondent is seeking even more
20 money than the half-billion dollar judgment he has already obtained. Thus, appellant's
21 proposed reply brief contains a separate section dealing with the cross-appeal.

22 Under these circumstances, appellant contends that further cutting of the reply
23 brief will affect its quality, thereby reducing its ability to assist the court in deciding

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1 this case correctly. Accordingly, appellant requests permission to file the reply brief
2 being submitted concurrently with this motion.

3 DATED: June 1, 2010
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRAP 25, I hereby certify that I am an employee of McDonald
3 Carano Wilson LLP and that on this date I served true copies of the foregoing
4 Appellant's Reply Brief and Cross-Respondent's Answering Brief by depositing said
5 copies with Federal Express for overnight delivery upon the following:

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