

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

**Case No. 53264**

FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA

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Tracie K. Lindeman  
Clerk of Supreme Court

Appellant/Cross-Respondent,

v.

GILBERT P. HYATT,

Respondent/Cross-Appellant

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APPEAL FROM JUDGMENT – EIGHTH JUDICIAL DISTRICT COURT  
STATE OF NEVADA, CLARK COUNTY  
HONORABLE JESSIE WALSH, DISTRICT JUDGE

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**APPELLANT’S REPLY IN SUPPORT OF  
MOTION FOR PERMISSION TO FILE  
MOTION IN EXCESS OF 10 PAGES**

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The United States Supreme Court held that this Court's hostility towards a sister state was unconstitutional. For that reason, the Supreme Court vacated this Court's entire 2014 Opinion, not just the monetary amount of damages. By arguing that this Court can enter a new judgment that continues to discriminate against a sister state, Hyatt underscores precisely why this Court should grant FTB's Motion for Permission to File Motion in Excess of 10 Pages ("the Motion") and allow supplemental briefing.

Contrary to Hyatt's representation, the remedy ordered by the Supreme Court was not limited to Nevada's statutory damages cap. Rather, the Supreme Court's remand instructions implicated the entirety of this Court's 2014 Opinion:

[I]n so far as the Nevada Supreme Court has declined to apply California law in favor of a special rule of Nevada law that is hostile to its sister States, we find its decision unconstitutional. We vacate its judgment and remand the case for further proceedings not inconsistent with this opinion. *Franchise Tax Bd. of Calif. v. Hyatt* ("Hyatt II"), 136 S.Ct. 1277, 1283 (U.S. 2016).

In other words, the Supreme Court's broad direction to this Court on remand was to enter a new judgment that complies with the Full Faith and Credit mandate of the United States Constitution **in every respect**. *See id.*

FTB has identified just one other instance in which the Supreme Court vacated a judgment of this Court as unconstitutional and remanded for further proceedings. *See Powell v. Nevada*, 511 U.S. 79 (1994). Unlike in *Hyatt II*, *Powell*'s remand instructions identified specified "questions [that] remain open for

decision on remand.” *Id.* at 84-85. *Hyatt II* contains no such specifics. *Compare id.* to *Hyatt II*, 136 S.Ct. at 1283. Rather, *Hyatt II* directed this Court more generally to enter a new judgment that was free from all discrimination against a sister state. *Hyatt II*, 136 S.Ct. at 1283.

Notwithstanding this expansive directive, Hyatt takes the position that on remand, this Court may discriminate against its sister state in some respects but not others. Although the focus of *Hyatt II* was this Court’s unconstitutional creation of a special rule of law for FTB in lieu of Nevada’s damages cap, no reading of the Supreme Court’s opinion could justify any manner of disparate treatment. *See id.* By advocating for a new judgment that incorporates the same anti-California hostility that plagued the 2014 Opinion, Hyatt’s opposition invites this Court to repeat the identical legal errors that the Supreme Court just struck down as unconstitutional.

As Hyatt’s arguments highlight, this case is sufficiently compelling to justify consideration of all 28 pages of FTB’s Motion for Supplemental Briefing. It is a rare instance that the United States Supreme Court vacates a judgment of this Court as unconstitutional and remands for further proceedings. *See, e.g., Powell*, 511 U.S. at 84-85 (finding this Court violated the Fourth Amendment). For that reason, the position in which this Court now finds itself is truly extraordinary and requires the Court’s careful deliberation. FTB posits that the additional pages it

seeks in its Motion for Supplemental Briefing would assist the Court to comply with its constitutional command.

Accordingly, FTB respectfully requests that the Court grant permission for FTB to file the Motion in excess of NRAP 27's ten-page limit.

Dated this 6th day of June, 2016.

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By: /s/  
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**CERTIFICATE OF SERVICE**

Pursuant to NRC 5(b), I certify that I am an employee of McDonald Carano Wilson LLP and on the 6th day of June, 2016, I certify that I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

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