No. 02-42

IN THE
Supreme Court of the United States

FRANCHISE TAX BOARD OF CALIFORNIA,
Petitioner,
v.
GILBERT P. HYATT, *et al.*,
Respondents.

On Writ of Certiorari to the Supreme Court of Nevada

BRIEF OF THE NATIONAL GOVERNORS ASSOCIATION, NATIONAL CONFERENCE OF STATE LEGISLATURES, NATIONAL LEAGUE OF CITIES, U.S. CONFERENCE OF MAYORS, NATIONAL ASSOCIATION OF COUNTIES, AND INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION AS *AMICI CURIAE* SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether a taxpayer who moves from one State to another can collaterally attack a tax assessment by his former State in the courts of his new State of residence.

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INTEREST OF THE *AMICI CURIAE*

Amici are organizations whose members include state, county, and municipal governments and officials throughout the United States.[1] *Amici* and their members have a compelling interest in legal issues that affect state and local governments.

The Court has long recognized that "'[i]t is upon taxation that the several States chiefly rely to obtain the means to carry on their respective governments, and it is of the utmost importance to all of them that the modes adopted to enforce the taxes levied should be interfered with as little as possible.'" *National Private Truck Council v. Oklahoma Tax Comm'n*, 515 U.S. 582, 586 (1995) (quoting *Dows v. City of Chicago*, 78 U.S. (11 Wall.) 108, 110 (1871)). The Court has also noted that "[t]he procedures for mass assessment and collection of state taxes and for administration and adjudication of taxpayers' disputes with tax officials are generally complex and necessarily designed to operate according to established rules." *Fair Assessment In Real Estate Ass'n v. McNary*, 454 U.S. 100, 108 n.6 (1981) (citation and internal quotation omitted).

Respondent's Nevada civil action against the California Franchise Tax Board—a collateral attack on California's tax collection scheme—violates these vital principles. Respondent alleges that he "is and was at all times pertinent . . . a bona fide resident of Nevada [who] should not be forced into a California forum to seek relief from the unjust and tortious attempts by the FTB to extort unlawful taxes from" him. Pet. App. 57a (Complaint ¶ 17). California provides taxpayers a

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[1] The parties have consented to the filing of this *amicus* brief and their letters of consent have been filed with the Clerk. This brief was not authored in whole or in part by counsel for a party, and no person or entity other than *amici* or their members made a monetary contribution toward its preparation or submission.

remedy, which respondent has invoked, Pet. 3, 10, to challenge the FTB's residency audit and proposed assessments. The Nevada Supreme Court has nonetheless ruled that Nevada's courts have jurisdiction over respondent's intentional tort claims against the Board and that respondent can proceed with further discovery and a trial. This holding poses a substantial threat to the effective administration of state tax laws and the system of cooperative federalism, which is the foundation of the Constitution.

Because of the importance of this issue to *amici* and their members, this brief is submitted to assist the Court in its resolution of the case.

STATEMENT

1. Following a residency audit of respondent Hyatt, petitioner California Franchise Tax Board made the preliminary determination that Hyatt had remained a California resident until April 1992 and thus owed tax on an additional $ 40 million in income that he had earned while a California resident but had failed to report on his last California tax return. *See* Pet. 3. The Board thus issued respondent Notices of Proposed Assessment for tax years 1991 and 1992. *See id*. In addition to back taxes, the Notices sought to impose a civil fraud penalty. *See id*. Respondent Hyatt filed an administrative protest against the assessments with the Franchise Tax Board, which remains pending in California. *See id*.

Under California law, the protest proceeding is a de novo review and the taxpayer is entitled to a hearing. *See* Cal. Rev. & Tax Code § 19044. In the event of an adverse decision, the taxpayer is entitled to a further de novo hearing before the State Board of Equalization. *See id*. §§ 19045, 19046. Thereafter, the taxpayer can seek judicial review, which in the case of a challenge to a residency determination can be commenced without payment of the assessment. *See id*. § 19381; Cal. Civ. Code § 1060.5.

2. Although his California administrative protest "could result in modification or withdrawal of the FTB's proposed assessments," Pet. 10, Hyatt filed this lawsuit against the FTB in Nevada state court. *Id*. at 3. In the suit, respondent alleged that he "is and was at all times pertinent . . . a bona fide resident of Nevada [who] should not be forced into a California forum to seek relief from the unjust and tortious attempts by the FTB to extort unlawful taxes from this Nevada resident." Pet. App. 57a (Complaint ¶ 17). Respondent further alleged that the "manufactured issue of his residency in Nevada for the period of September 26 through December 31 of 1991 should be determined in Nevada, the state of plaintiff's residence." *Id*. Respondent thus sought a declaratory judgment that he was a Nevada resident "commencing on September 26, 1991" through the present and that "the FTB has no jurisdiction to impose a tax obligation on plaintiff during the contested periods." *Id*. at 64a-65a (Complaint ¶ 31).

Respondent's complaint's further alleged that the FTB had committed six different intentional torts in the course of its residency audit. Each of these claims re-alleges respondent's assertions regarding his residency in Nevada, *see id.* at 52a-54a, the FTB's investigation of his residency, *see id*. at 54a-56a, the FTB's proposed assessment for 1991, *see id*. at 56a-57a, the FTB's proposed assessment for 1992, *see id*. at 58a, and the FTB's motive. *See id*. at 60a-61a; *see also id.* at 65a; 67a-68a; 69a; 70a; 72a; 78a. Each claim also asserts that the FTB's conduct was "malicious" and "oppressive," thus entitling respondent to an award of punitive damages. Pet. App. 67a, 68a, 70a, 71a, 77a, 84a.

Hyatt's complaint asserts three claims of the common law tort of invasion of privacy. Two of these claims allege that 1) the FTB unreasonably intruded on respondent's seclusion, and 2) that the FTB gave unreasonable publicity to private facts by disclosing "personal and confidential information" to

third parties during the course of the residency audit. *Id*. at 66a, 68a. The third invasion of privacy claim alleges that the FTB cast respondent "in a false light" by "insinuating to . . . Nevada residents" in the course of interviewing witnesses "that [Hyatt] was under investigation in California, thereby falsely portraying [him] as having engaged in illegal and immoral conduct." *Id*. at 69a.

Hyatt's complaint also included common law claims of outrage, abuse of process, and fraud. The outrage claim alleges that "the true purpose of [the FTB's investigation] was to . . . harass, annoy, embarrass, and intimidate plaintiff, and to cause him such severe emotional distress and worry as to coerce him into paying significant sums to the FTB irrespective of his demonstrably bona fide residence in Nevada throughout the disputed periods." *Id*. at 71a.

The abuse of process claim likewise alleges that the FTB's agents issued unlawful administrative subpoenas to Nevada residents and businesses "for the ulterior purpose of coercing plaintiff into paying extortionate sums of money to the FTB without factual or constitutional justification, and without the intent or prospect of resolving any legal dispute." *Id*. at 73a. This claim further alleges that the FTB abused its powers "by assessing . . . huge penalties based on patently false and frivolous accusations" that Hyatt concealed assets and "fraudulently claim[ed] Nevada residency." *Id*. at 75a.

Hyatt's final intentional tort claim alleged that the FTB committed fraud by disclosing his address in subpoenas issued to several Las Vegas utility companies in violation of assurances given by the Board to his representatives. *See id.* at 78a-79a. Hyatt further alleged that the FTB committed fraud by making false assurances "that the audit was to be an objective inquiry into the status of his 1991 tax obligation," *id.* at 82a, which induced him to provide the FTB with confidential information. *See id.* at 84a. As part of the fraud count, Hyatt furthers alleges "that the FTB has no credible

evidence, and can . . . provide none, that would indicate that [he] continued to own or occupy his former home in . . . California," *id*. at 82a-83a, that the FTB ignored evidence that he had reported the sale of his California home on his 1991 tax return (to his self-described business associate) and instead declared the sale of his California home "a 'sham.'" *Id*. The complaint further alleges that the FTB committed these acts with the "intent of defrauding plaintiff into believing that he would owe an enormous tax obligation to the State of California." *Id*. at 83a.

3. The FTB moved for judgment on the pleadings on the ground that the Nevada courts lacked subject matter jurisdiction. *See* Pet. 4. The trial court dismissed the declaratory relief claim but denied the FTB's motion with respect to the tort claims. *See id*. The FTB filed a subsequent motion for summary judgment on the tort claims and also moved again to dismiss for lack of jurisdiction. The trial court, however, denied the motions.

The FTB then filed a petition for a writ of mandamus ordering dismissal in the Nevada Supreme Court. The court granted the petition, notwithstanding the "extraordinary" nature of the writ, Pet. App. 40a, on the ground that its review of the record "revealed that there is no probative evidence to support Hyatt's claims." *Id*. at 41a. The court explained that "[t]he myriad depositions and documents submitted to this court are undisputed and indicate that Franchise Tax Board's investigative acts were in line with a standard investigation to determine residency status for taxation pursuant to its statutory authority." *Id*. at 42a-43a. The court reasoned that "[m]erely because a state agency is performing an investigation in the course of its duties does not automatically render its acts an invasion of privacy or otherwise intentionally tortious absent evidence of unreasonableness or

falsity of statements." *Id*. at 43a. The court therefore ordered the trial court to grant the FTB's motion for summary judgment. *See id.* at 43a.

Thereafter, respondent petitioned for rehearing. *See* Pet. App. 6a. Nine months later, and without oral argument, the Nevada Supreme Court granted the petition, vacated its previous order, and reinstated respondent's intentional tort claims. *See id*. at 6a-7a. Other than to state that it had "considered the parties' documents and the entire record before us," *id*. at 6a, the court provided no explanation for the reversal of its earlier order dismissing the case for lack of evidence. *See generally id*. at 6a-16a.

The court then rejected the FTB's arguments that the Nevada courts lack subject matter jurisdiction over Hyatt's suit. *See id*. at 10a-11a. The court perfunctorily rejected the FTB's contentions that the doctrines of administrative exhaustion and sovereign immunity barred the suit. *See id*. at 10a. The court further held that the Full Faith and Credit Clause did not require Nevada's courts to apply California's law of sovereign immunity on the ground that "Nevada does not allow its agencies to claim immunity for discretionary acts taken in bad faith, or for intentional torts committed in the course and scope of employment." *Id*. at 12a. Because "Hyatt's complaint alleges that [FTB] employees conducted the audit in bad faith, and committed intentional torts during their investigation," the court concluded that the Nevada courts have jurisdiction over the intentional tort claims. *Id*. at 12a-13a.

4. The case has already generated an immense amount of discovery as the Nevada trial court ruled that "the entire process of the FTB audits of Hyatt, including the FTB assessments of taxes and the protests, is at issue in this case and a proper subject of discovery." Discovery Commissioner's Report and Recommendation, *Hyatt v. Franchise Tax Board* 3 (Nev. Dist. Ct., Dec. 7, 1999) (No. A382999)

(quoted in FTB Petition For Writ of Mandamus 20, *Franchise Tax Board v. Eighth Judicial Dist. Ct., et al.* (Nev. 2001) (No. 36390)). The trial court further ruled that "Hyatt's claim of fraud against the FTB entitles him to discovery on the entire audit and assessment process performed by the FTB that was and is directed at him as part of the FTB's attempt to collect taxes from Hyatt." *Id.*[2]

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[2] The broad scope of Hyatt's discovery requests is best demonstrated by the remarks of the Nevada discovery commissioner, in response to the State's attempt to limit discovery to those acts occurring within Nevada. During the discovery hearing (Nov. 9, 1999), the commissioner, after noting "the [trial] Court's failure to limit the issues in this case any more than the Court did, [so] that the plaintiff was entitled to press the case in all of the counts alleged in the complaint," explained that "the heart of the case is the process by which the FTB conducted this audit, including but not limited to those parts of the audit which intruded into the state of Nevada." Tr. 70-72, Nov. 9, 1999 (reprinted in FTB Mandamus Pet. 21) (No. 36390).

In this same hearing the discovery commissioner observed that "there is concern countrywide about the tax collecting services using methods that are not appropriate and, you know, we are all completely aware of that in regard to the IRS and methods like that, and I think that these processes should be explored." *Id.* at 55-56 (reprinted in FTB Mandamus Pet. 20). Responding to the FTB's point that Hyatt had ample remedies to challenge the tax in California, the commissioner added:

> You indicate that Mr. Hyatt has all of his rights and remedies in California to challenge the tax. I don't know if those rights and remedies include exploration of the process and availability to all the information that he could get by way of the claims that the Court has left intact here. If there is fraud to be discovered, I think it should be discovered on one side or the other.

Id. Later the commissioner reiterated that:

> [T]he process I think is still fair game, and if you think otherwise you will have to have the judge say that because obviously in my view if we are only concerned with acts that took place in the state of Nevada, then we would have a very small range of discovery in this case because I think everybody is in agreement [that] there were only some few certain acts done in Nevada, investigation by the

Taking full advantage of these rulings, respondent's lawyers have engaged in discovery on a vast scale. At the time the FTB moved for summary judgment in January 2000, respondent's lawyers had taken 315 hours of testimony from 24 witnesses, made 329 separate document demands from the FTB (which produced over 17,000 pages of documents), and propounded an additional 340 document requests to deposed witnesses. *See* FTB Motion for Summary Judgment 4, *Hyatt v. Franchise Tax Board* (Nev. Dist. Ct. 2000) (No. A382999).

SUMMARY OF ARGUMENT

A. Respondent's tort claims are an attempt to collaterally attack the FTB's residency audit and proposed assessments in the Nevada courts. While cast in the lexicon of intentional torts, each of his claims is a variation on the theme that he became a bona fide resident of Nevada before he received $40 million in licensing fees, and that the FTB is unjustly attempting to extort taxes from him because it disputes his assertions as to the commencement of his Nevada residency. Indeed, the Nevada trial court has acknowledged this, as evidenced by the discovery commissioner's statement that while "there were only some few certain acts done in Nevada" by the FTB, these acts were "only a part of the process of collecting the tax from Mr. Hyatt, and the process is what is under attack here." FTB Mandamus Pet. 22 (quoting Tr. 72-74 (Nov. 9, 1999)).

> FTB on premises, so to speak, here as well as inquiring with various Nevada companies and other things, but that in my view is only a part of the process of collecting the tax from Mr. Hyatt, *and the process is what is under attack here*, and I think in my view, particularly a state agency should feel that its process should be open to exploration in a case such as this so that we have an open form of government.

Id. at 72-74 (reprinted in FTB Mandamus Pet. 22) (emphasis added).

B. This Court has long recognized the importance of state tax systems and the need to avoid illegitimate and abusive interference with a State's authority to collect taxes. The Court has applied this principle regardless of the nature of the relief sought. *See Fair Assessment In Real Estate Ass'n v. McNary*, 454 U.S. 100 (1981). While the rule has its origin in the need to avoid federal court interference with state tax administration and is based on the Court's longstanding and "scrupulous regard for the rightful independence of state governments," *id*. at 111, this reasoning powerfully demonstrates that respondent's suit poses a "substantial threat to our constitutional system of cooperative federalism." *Nevada v. Hall*, 440 U.S. 410, 424 n.24 (1979).

Tort suits for punitive damages against a taxing authority would manifestly interfere with a State's "capacity to fulfill its own sovereign responsibilities." *Id*. If the courts of the national sovereign must yield to state tax procedures even when federal constitutional rights are implicated, then surely a State cannot exercise jurisdiction over tort claims brought to collaterally attack another State's tax proceeding. The Nevada courts' exercise of jurisdiction over respondent's suit is without justification as California law provides respondent with adequate and complete remedies for contesting the FTB's proposed assessments, including two levels of administrative review and the right to judicial review without having to first pay the final assessment.

C. While Nevada is a sovereign co-equal in status to California, its courts' exercise of jurisdiction over this suit is not within their discretion. Rather, structural principles of the Constitution preclude Nevada jurisdiction over this case.

The first of these is the principle that commands the various sovereigns in the federal system to avoid unwarranted interference with the governmental operations of other sovereigns. *See*, *e.g.*, *Metcalf & Eddy v. Mitchell*, 269 U.S. 514 (1926); *Ambrosini v. United States*, 187 U.S. 1 (1902). For

example, this Court has derived from the Constitution the intergovernmental tax immunity, which "rests on the law of self-preservation, for any government, whose means employed in conducting its strictly governmental operations are subject to the control of another and distinct government, exists only at the mercy of the latter." *Ambrosini*, 187 U.S. at 7. Few suits involve a greater interference with a State's administration of its sovereign functions than a collateral attack on its tax proceeding, especially where, as here, that attack summons the taxing State to answer in another State's courts and seeks punitive damages as well.

The second principle is found in the Court's cases interpreting the Extradition Clause, which is the Constitution's other provision (besides the Full Faith and Credit Clause) expressly mandating interstate comity on a government to government basis. The Court's cases interpreting the Extradition Clause have repeatedly rejected fugitives' attempts to collaterally attack the charging State's criminal proceedings. The Court has rejected challenges to the legal merit of a charge and to the fairness of criminal proceedings in the courts of the charging State. *See California v. Superior Court of California*, 482 U.S. 400 (1987); *Puerto Rico v. Branstad*, 483 U.S. 219 (1987).

As these cases recognize, the preservation of interstate harmony is best achieved by mandating jurisdictional limitations that prohibit the use of the asylum State's judicial processes to interfere with the charging State's proceeding. The respect which the States owe each other as co-sovereigns in the federal system precludes a State from questioning the integrity and fairness of another State's administrative and judicial processes.

Preventing tax evasion by those who cross state lines is as important to interstate harmony as ensuring that fugitives are returned for trial or incarceration. Moreover, respondent's tort suit involves a far greater interference with California's

sovereignty than is typically implicated in extradition, as a charging State is not summoned into another State's courts without its consent. Likewise, the charging State is not threatened with the possibility of an award of punitive damages. Indeed, if California had charged respondent with criminal tax fraud, there would be little doubt that this Court's precedents would prevent him from bringing a tort suit in Nevada challenging the process that led to the charge.

ARGUMENT

ONE STATE'S COURTS CANNOT ADJUDICATE A TAXPAYER'S COLLATERAL ATTACK ON ANOTHER STATE'S TAX PROCEEDING

The Supreme Court of Nevada erred in failing to dismiss respondent's intentional tort claims against the California Franchise Tax Board. While the Nevada courts correctly recognized the impropriety of adjudicating respondent's claim seeking a declaratory judgment that he was a Nevada resident at the times material to the FTB's proposed assessments, the state supreme court's judgment reinstating the intentional tort claims opens a Pandora's box for state tax administration and poses a grave threat to the federal system.

As explained below, respondent's intentional tort claims are simply an attempt to collaterally attack the Franchise Tax Board's residency audit and its proposed imposition of back taxes and a civil fraud penalty. Affirmance of the Nevada court's exercise of jurisdiction in this dispute—which seeks both compensatory and punitive damages from the California Franchise Tax Board—would be especially problematic in light of the highly mobile nature of modern economic activity.

Under our federal system, both workers and businesses are free to move to any State in the Union. Moreover, workers can choose to reside in one State and work or operate a business in another. *See*, *e.g.*, *Lunding v. New York Tax*

Appeals Tribunal, 522 U.S. 287 (1998). Similarly, firms can set up their headquarters in one State and conduct business in any other State. Given the large volume of economic activity that involves the crossing of state boundaries, it is obvious that States must be able to conduct audits of non-resident taxpayers without being subjected to tort suits and potentially massive punitive damages liability in the courts of the taxpayer's asserted State of residence.

While *amici* agree with California that the Full Faith and Credit Clause requires the Nevada courts to apply California law and dismiss respondent's suit, this case does not simply involve a matter of whether California or Nevada law applies. To illustrate, California provides a remedy to a taxpayer "aggrieved" if a Board employee "recklessly disregards board published procedures." Cal. Rev. & Tax Code § 21021(a). If the Nevada courts had decided to apply this provision to respondent's suit, it would nonetheless be improper for them to exercise jurisdiction over the claim. Rather, the structure of the Constitution prohibits a State from allowing its citizens to use its courts to adjudicate a taxpayer dispute against another State even when the claim is based on the remedial provisions of the taxing authority.

This is not to deny a State's legitimate interest in protecting its citizens from tortious conduct committed by the employees of another State occurring within its borders. But where, as here, a claim is simply a collateral attack on the taxing State's assessment, the forum State is not entitled to recognize that interest over the structural limitation on adjudicating another State's tax proceeding. The judgment of the Supreme Court of Nevada should therefore be reversed.

A. Respondent's Nevada Suit Is A Collateral Attack On California's Residency Audit And Proposed Assessments

Respondent's tort claims are an attempt to collaterally attack the FTB's residency audit and proposed assessments. As explained above, each of respondent's tort claims is simply a variation on the same theme: that Hyatt became a bona fide Nevada resident before he received $ 40 million in licensing fees, and that the FTB is unjustly and tortiously attempting to extort taxes from him because it disputes his assertions as to the commencement of his Nevada residency. *See* discussion *supra* at 3-5. This is made clear by Hyatt's complaint, which states no claim of injury that is independent of the FTB's auditing process and assessments, and which in its most candid moment asserts that he "should not be forced into a California forum to seek relief" from the FTB's assessments. Pet. App. 57a.[3]

That respondent's claims are nothing more than a collateral attack on the FTB's assessments is confirmed by the discovery commissioner's understanding of the case. As the commissioner stated, "the heart of the case is the process by which the FTB conducted this audit, including but not limited to those parts of the audit which intruded into the state of Nevada." Tr. 70-72 (Nov. 9, 1999, discovery hearing) (reprinted in FTB Mandamus Pet. 21). *See also id*. at 72-74 (FTB Mandamus Pet. 22). Any contention to the contrary is put to rest by the commissioner's acknowledgment that "there were only some few certain acts done in Nevada" by the FTB, but these were "only a part of the process of collecting the

[3] It bears emphasis that Hyatt filed his collateral attack in the Nevada courts *after* he invoked the administrative remedies provided by California law for challenging the FTB's Notices of Proposed Assessment. *See* Pet. 3. Hyatt's California protest is still pending and may afford him complete relief from the proposed assessments and civil fraud penalties that he is collaterally attacking in his Nevada suit. *See id.* at 3, 10.

tax from Mr. Hyatt, *and the process is what is under attack here*." *Id*. at 72-74 (FTB Mandamus Pet. 22) (emphasis added).

B. Taxation Is A Core Sovereign Function

No function of government is more essential to sovereignty than the administration and collection of taxes. *See Providence Bank v. Billings*, 29 U.S. (4 Pet.) 514, 561 (1830). "[T]axes are the lifeblood of government, and their prompt and certain availability an imperious need." *Bull v. United States*, 295 U.S. 247, 259 (1935). As the Court recognized more than 130 years ago, "[i]t is upon taxation that the several States chiefly rely to obtain the means to carry on their respective governments, and it is of the utmost importance to all of them that the modes adopted to enforce the taxes levied should be interfered with as little as possible." *Dows v. City of Chicago*, 78 U.S. (11 Wall.) 108, 110 (1871); *see also National Private Truck Council v. Oklahoma Tax Comm'n*, 515 U.S. 582, 586 (1995) (quoting same). Illegitimate and abusive interference with a State's enforcement of its tax laws threatens the very foundation of state government.

More recently, the Court has explained that "'[t]he procedures for mass assessment and collection of state taxes and for administration and adjudication of taxpayers' disputes with tax officials are generally complex and necessarily designed to operate according to established rules.'" *Fair Assessment In Real Estate Ass'n v. McNary*, 454 U.S. 100, 108 n.6 (1981) (quoting *Perez v. Ledesma*, 401 U.S. 82, 128 n.17 (1971) (Brennan, J., concurring in part and dissenting in part)). In *Fair Assessment*, the Court held that taxpayers could not bring a collateral attack under section 1983 seeking compensatory and punitive damages from various state and local government tax officials for their allegedly unconstitutional property assessment. *See* 454 U.S. at

105-07. The Court instead directed the taxpayers to "seek protection of their federal rights by state remedies." *Id.* at 116.[4]

The Court has long prescribed a policy of federal court non-interference with state tax administration, which applies regardless of the nature of the relief sought. *See*, *e.g.*, *Fair Assessment*, 454 U.S. at 116 (money damages); *California v. Grace Brethren Church*, 457 U.S. 393, 411 (1982) (declaratory relief); *Matthews v. Rodgers*, 284 U.S. 521, 529-30 (1932) (injunctive relief); *see also* 28 U.S.C. § 1341 (Tax Injunction Act). To be sure, these holdings relied on principles of comity, which between the federal and state sovereigns are not constitutionally imposed but derive from the Court's longstanding and """scrupulous regard for the rightful independence of state governments."""" *Fair Assessment*, 454 U.S. at 111 (quoting *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293, 298 (1943) (quoting *Matthews*,

[4] The prohibition against collateral attacks on state tax assessments is of longstanding vintage. *See*, *e.g.*, *Stanley v. Supervisors of Albany*, 121 U.S. 535, 549-50 (1887). A corollary is the requirement that a taxpayer exhaust administrative remedies before bringing a judicial challenge to the tax. *See*, *e.g.*, *First Nat'l Bank v. Board of Commissioners*, 264 U.S. 450, 455 (1924) (noting "the requirement, broadly recognized, that administrative remedies must be exhausted as a necessary prerequisite to a judicial challenge of the tax"). While common law causes of action such as fraud were once used to challenge tax assessments, the emergence of statutory remedies has supplanted these claims. *Cf.* Jerome R. Hellerstein & Walter Hellerstein, *State And Local Taxation* 987-88 (6th ed. 1997) ("Where statutory procedures exist for obtaining administrative review of the action of a taxing authority, courts typically hold that remedy to be exclusive[.]"). Moreover, the common law cause of action for fraud was used to obtain equitable relief for certain improper types of tax assessments, not for obtaining compensatory and punitive damages from the taxing authority. *See* Thomas M. Cooley, *A Treatise On The Law Of Taxation* 539 (1876).

284 U.S. at 525)).[5] That recognition, however, itself demonstrates that this case is what *Nevada v. Hall* called a "substantial threat to our constitutional system of cooperative federalism." 440 U.S. at 424 n.24.

Tort suits for punitive damages against a taxing authority would manifestly interfere with California's "capacity to fulfill its own sovereign responsibilities." *Id*. If the courts of the national sovereign must yield to state tax procedures even when federal constitutional rights—which are the supreme law of the land, U.S. Const. art. VI, cl. 2—are implicated, then surely a State cannot exercise jurisdiction over tort claims brought to collaterally attack another State's tax proceeding.[6]

Indeed, the Nevada Supreme Court's holding is all the more remarkable in light of its own previous ruling concerning Nevada's administrative remedies for taxpayers: "if a statutory procedure exists either for recovery of taxes collected erroneously or for disputing an excessive assessment, *that procedure must be followed*." *County of Washoe, Nevada Tax Comm'n, et al., v. Golden Road Motor Inn, Inc.*, 777 P.2d 358, 359 (Nev. 1989) (per curiam) (quoting *Lovelace Center for Health Sciences v. Beach*, 606 P.2d 203, 206 (N.M. Ct. App. 1980)). The Nevada Supreme Court's failure to follow this holding suggests that it has one rule for the Nevada Tax Commission, and another for other States' taxing authorities.

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[5] *See also Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 435-37 (1982) (barring federal court interference with state administrative proceedings); *Younger v. Harris*, 401 U.S. 37, 54 (1971) (barring federal court interference with state criminal proceedings).

[6] Indeed, for years courts refused to enforce the tax laws of other sovereigns, deeming them to be penal. *See, e.g.*, *Wisconsin v. Pelican Ins. Co.*, 127 U.S. 265 (1888); Robert A. Leflar, *Extrastate Enforcement Of Penal And Governmental Claims*, 46 Harv. L. Rev. 193, 215 n.63 (1932) (collecting cases).

Under California law, Hyatt has adequate and complete remedies for contesting the FTB's proposed assessments including two levels of administrative review and the right to judicial review without having to first pay the final assessment. *See* discussion *supra*, at 2. California also provides a remedy to a taxpayer "aggrieved" if a Board employee "recklessly disregards board published procedures." Cal. Rev. & Tax Code § 21021(a).[7] Thus, there is no legitimate reason for the Nevada courts to exercise jurisdiction over respondent's suit. And as explained below, while Nevada is a sovereign co-equal in status to California, its courts' exercise of jurisdiction over respondent's suit is not within their discretion. To the contrary, structural principals of the Constitution preclude Nevada's exercise of jurisdiction in this case.

C. The Structure Of The Constitution Prohibits A State's Exercise of Jurisdiction Over A Citizen's Challenge To Another State's Tax Proceeding

In *Nevada v. Hall*, the Court upheld California's exercise of jurisdiction over a tort suit brought under California law against Nevada for injuries resulting from an auto accident involving a Nevada state employee while travelling in California. The Court held that the commerce, extradition, and privileges and immunities clauses "do not imply that any one State's immunity from suit in the courts of another State is anything other than a matter of comity." 440 U.S. at 425. The Court accordingly ruled that the Full Faith and Credit Clause did not require California's courts to apply a Nevada statute limiting to $ 25,000 any tort award against that State and affirmed a damages award of $ 1,150,000. *See id*. at 413, 427.

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[7] The FTB's procedures are accessible through its website. *See http://www.ftb.ca.gov/.*

It is true enough that nothing in the Constitution indicates why one State's policy of limiting monetary recovery should defeat another State's policy of providing full compensation for auto accident injuries. *See id*. at 426. There are, however, constitutional principles that demonstrate that this case falls within the class denominated in *Hall* as a "substantial threat to our constitutional system of cooperative federalism." *Id*. at 424 n. 24.

The first of these is the background principle, found in several lines of authority, which commands the various sovereigns in the federal system to avoid unwarranted interference with the governmental operations of other sovereigns. *See*, *e.g.*, *Metcalf & Eddy v. Mitchell*, 269 U.S. 514, 523-24 (1926); *Ambrosini v. United States*, 187 U.S. 1, 7 (1902); *cf. Keely v. Sanders*, 99 U.S. 441, 443 (1878); *Ableman v. Booth*, 62 U.S. 506, 516 (1858). For example, in *Ambrosini*, the Court observed that the intergovernmental tax immunity "rests on the law of self-preservation, for any government whose means employed in conducting its strictly governmental operations are subject to the control of another and distinct government exists only at the mercy of the latter." 187 U.S. at 7 (citing *The Collector v. Day*, 78 U.S. (11 Wall.) 113 (1870)).

In *Metcalf & Eddy*, the Court explained that "each government in order that it may administer its affairs within its own sphere, must be left free from undue interference by the other." 269 U.S. at 523 (citations omitted). The Court further stated that "neither government may destroy the other nor curtail in any substantial manner the exercise of its powers." *Id*. *Cf. Keely*, 99 U.S. at 443 ("no State court could, by injunction or otherwise, prevent Federal officers from collecting Federal taxes. The government of the United States, within its sphere, is independent of State action; and certainly it would be a strange thing if a State court by its action could relieve property [subject] to Federal taxation

from liability to pay the taxes when they are due."); *Ableman*, 62 U.S. at 515-16 ("no State can authorize one of its judges or courts to exercise judicial power . . . within the jurisdiction of another and independent Government").

If these background principles prohibit the federal and state sovereigns from undue interference with the governmental operations of the other, then surely they must guide the relationship between co-sovereign States as well. Few suits involve a greater interference with a State's administration of its sovereign functions than a collateral attack on its tax proceeding, especially where, as here, that attack summons the taxing State to answer in another State's courts and seeks punitive damages as well. Indeed, allowing taxpayers to subvert the remedial scheme of the taxing State and bring punitive damages claims against it in another State's courts would clearly have a chilling effect on a taxing State's attempt to collect entirely legitimate tax obligations. The extensive and highly burdensome discovery allowed here, *see* discussion *supra* at 6-8, which, in the words of the discovery commissioner's report, subjects "the entire audit and assessment process performed by the FTB" to discovery, *see* FTB Mandamus Pet. 20 (quoting Discovery Commissioner's Report and Recommendation, at 3), further demonstrates that respondent's lawsuit is a novel, unwarranted and constitutionally impermissible intrusion on California's sovereignty.

The second principle is found in the Court's cases interpreting the Extradition Clause, which is the Constitution's other provision expressly mandating interstate comity on a government to government basis. "The purpose of the Clause was to preclude any state from becoming a sanctuary for fugitives from justice of another state and thus 'balkanize' the administration of criminal justice among the several states." *Michigan v. Doran*, 439 U.S. 282, 287 (1978). The Clause recognizes that interference with another State's efforts to

bring a person charged with a crime to justice "would create a serious impediment to national unity." *Puerto Rico v. Branstad*, 483 U.S. 219, 227 (1987).[8]

The Court's cases interpreting the Clause have repeatedly rejected fugitives' attempts to collaterally attack the charging State's criminal proceedings. The Court has invariably done so, whether the attack was brought in state court, federal court or in a state executive branch proceeding. *See Branstad*, 483 U.S. at 230; *Doran*, 439 U.S. at 290; *Sweeney v. Woodall*, 344 U.S. 86, 90 (1952) (per curiam); *Marbles v. Creecy*, 215 U.S. 63 (1909); *Appleyard v. Massachusetts*, 203 U.S. 222 (1906). It has applied this principle to challenges alleging that the charge was without legal merit and an abuse of the criminal process, *see California v. Superior Court*, 482 U.S. at 412; that the charge was barred by the charging State's statute of limitations, *see Biddinger v. Commissioner of Police*, 245 U.S. 128, 135 (1917); that the fugitive could not receive a fair trial in the courts of the charging State, *see Branstad*, 483 U.S. at 222; and that the charging State subjected the fugitive to unconstitutional conditions of confinement, *see Sweeney*, 344 U.S. at 88-90.

For example, in *Sweeney* the Court rejected an escaped fugitive's attempt to challenge the constitutionality of his imprisonment in the charging State. *See id*. The Court reasoned that "[t]he scheme of interstate rendition . . . do[es] not

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[8] As the Court long ago explained:

> "[T]he statesmen who framed the Constitution were fully sensible, that from the complex character of the Government, it must fail unless the States mutually supported each other and the General Government; and that nothing would be more likely to disturb its peace, and end in discord, than permitting an offender against the laws of a State, by passing over a mathematical line which divides it from another, to defy its process . . . ."

California v. Superior Court of California, 482 U.S. 400, 406 (1987) (quoting *Kentucky v. Dennison*, 65 U.S. (24 How.) 66, 100 (1861)).

contemplate an appearance by [the charging State] in respondent's asylum to defend against claimed abuses of its prison system. Considerations fundamental to our federal system require that the prisoner test the claimed unconstitutionality of his treatment by [the charging State] in the courts of that State." *Id*. at 90 (footnote omitted). Concurring in the judgment, Justice Frankfurter explained that "due regard for the relation of the States, one to another, in our federal system . . . requires that claims even as serious as those here urged first be raised in the courts of the demanding State." *Id*. at 90-91.

While *Sweeney* involved a federal habeas corpus proceeding, the Court in *Michigan v. Doran* rejected a state court challenge to an extradition request. *See* 439 U.S. at 290. There the Michigan Supreme Court had essentially held that "the courts of an asylum state may review the action of the governor and in that process re-examine the factual basis for the finding of probable cause which accompanies the requisition from the demanding state." *Id*. at 286. This Court reversed, holding that "when a neutral judicial officer of the demanding state has determined that probable cause exists, the courts of the asylum state are without power to review that determination." *Id*. at 290.

The Court reasoned that the Extradition Clause, "its companion clause in § 1 [the Full Faith and Credit Clause], and established principles of comity merge to support this conclusion. To allow plenary review in the asylum state of issues that can be fully litigated in the charging state would defeat the plain purposes of " the Extradition Clause. *Id*. (citations omitted). *See also Branstad*, 483 U.S. at 229-30 (rejecting governor's assertion of discretion to refuse extradition request on grounds that fugitive would not receive a fair trial in charging jurisdiction).

As these cases recognize, the preservation of interstate harmony is best achieved by mandating jurisdictional limi-

tations which prohibit the use of the asylum State's judicial process to interfere with the charging State's proceeding. The respect which the States owe each other as co-sovereigns in the federal system precludes a State from questioning the integrity and fairness of another State's administrative and judicial processes.

Preventing tax evasion by those who cross state lines is as important to interstate harmony as ensuring that fugitives are returned for trial or incarceration. Furthermore, a State's exercise of jurisdiction over a lawsuit such as respondent's involves a far greater interference with another State's sovereignty than is typically implicated in an extradition matter. In extradition, the charging State is not hauled into another State's courts without its consent, it is not subjected to wide ranging and potentially abusive discovery, and it is not threatened with the possibility of an award of punitive damages. Indeed, if California had criminally charged respondent with tax fraud (instead of charging him civilly), there would be little doubt that this Court's precedents would prevent him from bringing a tort suit in Nevada challenging the process that led to the charge. *See* discussion *supra* at 20-21.

That the framers of the Constitution did not expressly contemplate the possibility of taxpayers crossing state lines and using the courts of another State to challenge tax proceedings brought in their former State of residence does not render the structural principles which guide the application of the Extradition Clause inapplicable in this context. The framers can hardly be faulted for failing to anticipate the novel intrusion on another State's sovereignty which respondent's suit involves. *See*, *e.g.*, *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 407 (1819). If they had, they undoubtedly would have recognized that such suits would balkanize tax administration and "create a serious impediment to national unity." *Branstad*, 483 U.S. at 227.

* * *

Throughout this country, millions of citizens cross state lines to work, thereby incurring tax obligations to the State where they are employed. Many citizens own property in, and owe property taxes to, States other than that of their primary residence. And, of course, large numbers of citizens relocate each year from one State to another.

Obviously, whenever a state taxing authority has reason to believe that a citizen of another State has improperly failed to pay taxes due, by necessity its investigation will require some contact with the taxpayer's State of residence. That a taxing authority engages in such contacts does not remotely justify the courts of the taxpayer's State of residence entertaining a collateral attack on the taxing State's processes. Indeed, affirmance of the Nevada Supreme Court's holding would encourage tax evasion as state tax administrators will be wary of pursuing cases if their agencies can be subjected to tort suits for punitive damages. Moreover, as this case—with its 315 hours of depositions, not to mention the time taken to prepare for them; its 329 document requests of the FTB, and countless motions—demonstrates, the costs of defending such actions will frequently make them too costly to pursue. While tax evaders might well prefer that result, the Constitution denies Nevada's courts the power to frustrate a co-sovereign's enforcement of its tax laws.

CONCLUSION

The judgment of the Supreme Court of Nevada should be reversed.

Respectfully submitted,

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