CARTER/LEDYARD

our resources

'Hall' No! Supreme Court Overturns 'Nevada v. Hall' and Holds States Are Immune From Suits in Courts of Sister States

June 19, 2019

New York Law Journal
June 19, 2019 by Leonardo Trivigno

On March 20, 2019, I published an article in these pages summarizing the issues raised in *Franchise Tax Board of California v. Hyatt*, 587 U.S. __ (2019)(*Hyatt III*), a case then pending before the Supreme Court. See "Immunity Boost? The Supreme Court Hears Argument (for the Third Time) Regarding Scope of State Sovereign Immunity." On May 13, 2019, the Supreme Court issued a decision in *Hyatt III* that overturned *Nevada v. Hall*, 440 U.S. 410 (1979), which held that the Constitution does not provide a state immunity from suits in another state's courts, and held that the California Franchise Tax Board (FTB) was immune from suit in Nevada.

Background

In the early 1990s, Gilbert Hyatt earned substantial income from a technology patent. Prior to receiving the patent, Hyatt was a California resident. When Hyatt filed his 1991 and 1992 state tax returns, he claimed to be a resident of Nevada, which collects no personal income tax. The FTB, the California agency responsible for assessing state income tax, suspected that Hyatt's move was a sham to avoid paying California income tax. Following an audit, the FTB determined that Hyatt owed millions of dollars in taxes, interest and penalties. Hyatt appealed the FTB's determination, which remains pending. See *Hyatt III*, slip op. at 1-2.

In 1998, Hyatt sued the FTB in Nevada state court for torts allegedly committed during the audit. After the trial court denied the FTB's motion for summary judgment, the FTB appealed to the Nevada Supreme Court arguing that the Full Faith and Credit Clause required Nevada to apply a California statute immunizing the FTB from liability. When the Nevada Supreme Court rejected that argument, the FTB sought Supreme Court review. Id. at 2.

Relying on its holding in *Hall*, the Supreme Court affirmed the decision of the Nevada Supreme Court, and remanded the case for further proceedings. *Franchise Tax Board of California v. Hyatt*, 538 U.S. 488 (2003). On remand, Hyatt obtained a verdict that, with prejudgment interest and costs, exceeded $490 million. On appeal, the Nevada Supreme Court rejected most of the damages award and remanded for a new damages trial on one of Hyatt's remaining claims. The FTB again appealed to the Supreme Court, this time expressly arguing that *Hall* should be overturned. *Hyatt III*, slip op. at 3.

In *Franchise Tax Bd. of Cal. v. Hyatt*, 578 U.S. ___ (2016), the Supreme Court deadlocked 4-4 on whether to overrule Hall. It found, however, that the Full Faith and Credit Clause required Nevada to apply its $50,000 damages cap applicable to claims against Nevada state agencies to Hyatt's claims against the FTB, and remanded the case for further proceedings. Hyatt III, slip op. at 3.

After the Nevada trial court entered a $100,000 damages award in favor of Hyatt on his two remaining claims, the Supreme Court granted certiorari for a third time solely to determine whether *Nevada v. Hall* should be overturned. Id.

Decision

In an opinion joined by Chief Justice John Roberts and Justices Samuel Alito, Neil Gorsuch and Brett Kavanaugh, Justice Clarence Thomas began by stating that the Supreme Court's holding in *Hall* "misread[ ] the historical record and misapprehend[ed] the implicit ordering of relationships within the federal system necessary to make the Constitution a workable governing charter." Id. at 5 (internal quotations omitted).The majority recognized that "the Founders did not state every postulate on which they formed our Republic" in the Constitution. Id.

The majority stated that after independence, the states considered themselves fully sovereign nations, an "integral component" of which was immunity from private suits. Citing to two pre-Constitution cases, *Nathan v. Virginia*, 1 Dall. 77 (C. P. Phila. Cty. 1781) (refusing to grant writ of attachment against property owned by Virginia) and *Moitez v. The South Carolina*, 17 F. Cas. 574 (No. 9697) (1781) (dismissing action against a South Carolina warship to recover unpaid wages), as well as statements by Federalists and Antifederalists regarding state immunity, the majority stated that "the founding generation … took as given that States could not be haled involuntarily before each other's courts." *Hyatt III*, slip op. at 6-9. In further support, the majority pointed to the "speedy" adoption of the Eleventh Amendment in response to the outrage over *Chisholm v. Georgia*, 2 Dall. 419 (1793), where the Supreme Court held that states may be sued in federal court. Id. at 11-12.

The majority rejected Hyatt's contention that, like independent sovereign nations, states were free to deny immunity to other states. The majority indicated that while the states originally had the status of fully sovereign nations, "the Constitution affirmatively altered the relationships between the States, so that they no longer relate to each other solely as foreign sovereigns," citing, for example, the fact that states lacked the traditional diplomatic and military tools to declare war or lay duties on imports that foreign sovereigns possess. Id. at 13-16.

The majority also rejected Hyatt's reliance on *Nevada v. Hall*. In the majority's view, *Hall* needed to be overturned because it misinterpreted the historical record and was inconsistent with recent Supreme Court precedent. Although Hyatt spent substantial time and money prosecuting his claims in reliance on *Hall*, these "case-specific costs" were an insufficient basis to adhere to "an incorrect resolution of an important constitutional question." Id. at 16-17.

Dissent

Justice Stephen Breyer, joined by Justices Ruth Bader Ginsburg, Sonia Sotomayor and Elena Kagan, would have found Hall to have been properly decided, and in any event, that stare decisis required the majority to adhere to its precedent.

The dissent noted that during colonial times, foreign nations granted immunity to sovereigns as a matter of choice, not legal obligation. Thus, absent some constitutional rule, under commonly understood notions of sovereign immunity, a state would not have immunity in another state's courts. *Hyatt III*, slip op. at 2-4 (Breyer, J., dissenting).

The dissent found that not only was there no constitutional provision mandating immunity, but also that the Tenth Amendment, which reserves for the states all powers not otherwise delegated to the federal government or the people, undermined any such notion. Compelling a state to grant immunity would interfere with sovereign rights protected by the Tenth Amendment, such as a state's right to define the jurisdiction of its courts or draft laws to protect its citizens. Id. at 4-5 (citing *Georgia v. Chattanooga*, 264 U.S. 472 (1924) (Tennessee could exercise sovereign power of eminent domain over land located in Tennessee sold to Georgia)).

The dissent then undermined the authorities cited in the majority opinion, noting for example that the statements by Federalists and Antifederalists cited by the majority concerned questions of *federal court jurisdiction*, a matter "entirely distinct from the question of state immunity at issue here." *Hyatt III*, slip op. at 6 (Breyer, J., dissenting). The dissent also pointed out that the dismissal in *Nathan v. Virginia* (referenced above) was not based on Virginia's sovereign immunity, but instead was issued after the Pennsylvania executive requested it as a matter of comity. Id. at 7.

The dissent was similarly unpersuaded by the majority's reliance on implicit constitutional protections for state dignity, noting that when a citizen brings suit against one state in the courts of another "sovereignty interests … lie on both sides of the constitutional equation." Id. at 8-9. Moreover, "where the Constitution alters the authority of States vis-à-vis other States, it tends to do so explicitly." Id. at 9; see also id. at 10 (there is nothing to suggest that "the Framers, silently and without any evident reason … transformed sovereign immunity from a permissive immunity … into an absolute immunity").

For the dissent, the majority's belief that *Hall* was wrongly decided was insufficient to justify "scrapping settled precedent." Id. at 10 (quoting *Kimbrel v. Marvel Entertainment, LLC*, 576 U.S. __ (2014), slip op. at 8. The dissent believed there was no reason to overturn *Hall* because the law had not so significantly changed as to render *Hall* a relic of an abandoned doctrine. Id. at 11. Nor did *Hall* prove unworkable—the dissent identified only 14 cases in 40 years in which a state had entertained a private citizen's suit against another state. As a result, the dissent stated that the doctrine of stare decisis mandated adherence to *Hall*. Id. at 12-13.

In what many commentators read as an allusion to the continuing viability of *Roe v. Wade*, the dissent ends with a warning to judges who "may be tempted to seize every opportunity to overrule cases they believe to have been wrongly decided … [T]he law can retain the necessary stability only if this Court resists that temptation, overruling prior precedent only when the circumstances demand it." Id. at 13.

* * *

Leonardo Trivigno is counsel and a member of Carter Ledyard's Litigation and Disputes practice group.

---

related professionals

Leonardo Trivigno / Partner
D 212-238-8724
trivigno@clm.com