

In California tax dispute, Supreme Court ponders when one state can be sued in another's courts.

Dan G. Savage, Los Angeles Times, 8 December 2015

The Supreme Court took up a bitter dispute Monday between the state of California and an inventor it says moved to Nevada in the early 1990s to avoid paying taxes.

But rather than focus on who is right or how much is owed, the justices debated a question that has been unsettled throughout American history: Can one state be sued in the courts of another state?

The case began when California tax collectors pursued inventor Gilbert Hyatt for millions in unpaid taxes from 1991 in the months before he resettled in Las Vegas. Hyatt was awarded a patent for a microchip that was seen as crucial to the first microprocessors, and he stood to gain huge amounts from royalties.

But Hyatt also said he had moved to Nevada in 1991, not 1992. He sued the California tax collectors who, he said, had a vendetta against him. He alleged he had been harassed and his privacy infringed, and his lawyers said a California tax auditor claimed she was going to "get that Jew bastard." A Nevada jury awarded Hyatt a nearly \$500-million verdict against the California Franchise Tax Board.

Though that amount has been greatly whittled down through appeals, the Nevada Supreme Court upheld a \$1.2 million-verdict against California last year, even though Nevada limits lawsuits against its state agencies to \$50,000.

When the California tax board appealed to the Supreme Court with the help of former U.S. Solicitor General Paul Clement, its appeal urged the justices to rule squarely that states are shielded from such claims in other states.

The 1991 tax dispute was barely mentioned in Monday's argument. Instead, the focus was on 1787 and what the understanding was when the states joined to form the new national government.

In California tax dispute, Supreme Court ponders when one state can be sued in another's courts.

Dan G. Savage, Los Angeles Times, 8 December 2015

Clement said the states had unpaid debts from the Revolutionary War and they feared being sued in other states. The principle of sovereign immunity was "something implicit in the Constitution....There is no way they would have sacrificed their sovereign immunity" to join the Union, he said.

Clement's argument won favor with several of the conservative justices. In the past, they have ruled states cannot be sued for monetary damages in federal court.

But in 1979, the court upheld a suit against Nevada for an automobile accident in California where several people were badly injured by a car owned and driven by Nevada state employee.

"There's a certain irony, isn't there?" Justice Ruth Bader Ginsburg asked Clement. "California then was saying, 'Yes, we can sue the sovereign Nevada in our courts if they come into our state and hurt our people.' So is California now saying they were wrong in the argument that they made?"

Yes, Clement replied. "I think it's fair to say there is some buyer's remorse," since the California tax board is urging the court to overrule the 1979 decision. But he noted that 45 states, including Nevada, have joined in filing briefs that urged the court to shield states from being sued.

Washington lawyer H. Bartow Farr, representing Hyatt, argued that the states can join in a "compact" and set rules for governing lawsuits. They did not need the high court to decide the issue, he said.

The justices sounded closely split in the case of California Franchise Tax Board vs. Hyatt, with a majority appearing to lean in favor of California.