

No. 153, Original

In the Supreme Court of the United States

STATE OF TEXAS, PLAINTIFF

v.

STATE OF CALIFORNIA

**SUPPLEMENTAL BRIEF IN RESPONSE TO
BRIEF FOR THE UNITED STATES**

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SUPPLEMENTAL BRIEF

The United States is correct: Texas's claims are serious and dignified; this Court is the only forum that can adequately redress California's affront to Texas's sovereignty; and A.B. 1887 is unconstitutional for multiple reasons. The Court thus should grant Texas leave to file its bill of complaint.

The United States' brief further confirms that this case is ready for the Court's plenary review. Neither the United States nor California has pointed to any material factual disagreement that would require the Court to appoint a special master. *See, e.g., United States v. Texas*, 339 U.S. 707, 720 (1950). No one disputes that A.B. 1887 causes Texas at least some ongoing economic injury; because Texas seeks only prospective relief, the specific dollar amount of that injury is immaterial. Nor has anyone disputed that Texas's injuries are traceable to California and its travel ban and would be properly redressed by the relief Texas seeks.

Accordingly, the only unresolved question is one of law: whether A.B. 1887 violates the Constitution. The United States agrees with Texas's arguments that A.B. 1887 violates the Commerce Clause and runs contrary to the Constitution's structure and purpose without adequate justification. U.S. Br. 15-18, 20-22. The United States is further correct to suggest that A.B. 1887 violates the Full Faith and Credit Clause. *Id.* 18-20. While Texas's proposed bill of complaint does not explicitly identify that provision among the many reasons A.B. 1887 is unconstitutional, Texas agrees with the United

States and will argue going forward that A.B. 1887 violates the Full Faith and Credit Clause.*

Texas should not be required to suffer the sovereign and economic harms caused by A.B. 1887 any longer. The Court should grant Texas's motion for leave to file a bill of complaint and take this case under its plenary review for resolution this Term. The Court should order merits briefing and oral argument on the question whether A.B. 1887 violates the Constitution. *See* Sup. Ct. R. 17.5.

* Because the essence of pleading sufficiency is fair notice, Texas should not be required to amend its bill of complaint to address this argument supporting its claim that A.B. 1887 violates the Constitution. *See Johnson v. City of Shelby*, 574 U.S. 10, 12 (2014) (per curiam); Sup. Ct. R. 17.2 (the Court follows the Federal Rules of Civil Procedure in original-jurisdiction cases). Indeed, this Court can and does order parties to address issues they had not previously raised. *See, e.g., Order, Texas v. United States*, No. 15-674 (U.S. Jan. 19, 2016) (granting certiorari and ordering: "In addition to the questions presented by the petition, the parties are directed to brief and argue the following question: Whether the Guidance violates the Take Care Clause of the Constitution, Art. II, Sec. 3."). California cannot claim surprise, as this alleged violation rests on the same factual predicate as Texas's other allegations. And California is now on notice, well before any merits briefing, that Texas intends to argue that A.B. 1887 violates the Full Faith and Credit Clause. In any event, if the Court would prefer Texas to amend its bill of complaint to explicitly identify the Full Faith and Credit Clause, Texas requests leave to do so. *See Johnson*, 574 U.S. at 12 (citing Fed. R. Civ. P. 15(a)(2)).

CONCLUSION

The Court should grant the motion for leave to file a bill of complaint. In addition, the Court should order merits briefing and set this case for oral argument.

Respectfully submitted.

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