

No. 220156, Original

IN THE
Supreme Court of the United States

STATE OF NEW YORK,

Plaintiff,

v.

STATE OF NEW JERSEY,

Defendant.

**JOINT MOTION FOR LEAVE TO FILE CROSS-MOTIONS
FOR JUDGMENT ON THE PLEADINGS**

Plaintiff New York and Defendant New Jersey jointly request that this Court grant New York's motion for leave to file a bill of complaint and allow the parties to file dispositive cross-motions without first appointing a special master. In particular, New York and New Jersey request that the Court grant the parties permission to file cross-motions for judgment on the pleadings, set a briefing schedule, and hear argument on the cross-motions, which will enable this Court to expeditiously resolve this case in full.

1. Where original actions turn on dispositive questions of law, this Court has repeatedly allowed one or both parties to file dispositive cross-motions before, or in lieu of, appointing a special master. See Stephen M. Shapiro et al., *Supreme Court Practice* ch. 10-12, at 10-37 to -40 (11th ed. 2019) (hereinafter Stern & Gressman) (collecting examples). Indeed, in a number of recent cases, this Court ordered the

parties to the original action to brief pure questions of law, including on the merits, at the outset. See *Texas v. New Mexico*, 571 U.S. 1173 (2014); *Montana v. Wyoming*, 552 U.S. 1175 (2008); *New Hampshire v. Maine*, 530 U.S. 1272 (2000); *Kansas v. Nebraska*, 527 U.S. 1020 (1999); see also *California v. United States*, 457 U.S. 273, 278 (1982); *South Carolina v. Katzenbach*, 383 U.S. 301, 307 (1966); *United States v. Louisiana*, 338 U.S. 806 (1949). As the United States has explained, this process allows the Court to then “resolve[] preliminary or potentially controlling legal issues before, or in lieu of, referring the case to a Special Master.” Br. for U.S. as Amicus Curiae at 21-22, *Texas v. New Mexico*, No. 141 (Dec. 10, 2013), 2013 WL 6917383.

2. New York and New Jersey submit that a similar course is warranted here for two independently sufficient reasons.

a. First, the parties agree that this case involves pure questions of law that are likely dispositive of the claims presented and would resolve the instant controversy. This Court is especially likely to allow the parties in an original action to file dispositive cross-motions at the outset when “the questions presented are legal rather than factual,” Stern & Gressman, *supra*, ch. 10-12, at 10-37, an approach that is consistent with the familiar domain of Rule 12 motions. That is the case here. The question presented is whether the Waterfront Commission Compact permits either member State to unilaterally withdraw. As the parties’ briefs to date confirm, the answer to that question turns on their competing interpretations of the Compact’s language. See, e.g., New York’s Brief in Support of its Motion for Leave to File, at 12 (noting “the exercise of this Court’s original and exclusive jurisdiction is necessary

to resolve two States' competing interpretations of their interstate compact"); New Jersey's Response to Motion, at 8-10 (same).

Compact construction, like any ordinary question of statutory construction, can be resolved without the need for any factual development. See, e.g., Br. for U.S. as Amicus Curiae at 13, *Kansas v. Nebraska*, No. 126 (Sept. 10, 1999), 1999 WL 35639273 (confirming that where a motion "places before this Court a discrete and controlling question of law" involving competing compact interpretations, that issue could be appropriately "resolved at th[e] preliminary stage of the litigation through the application of familiar principles of compact construction"); see also, e.g., *South Carolina v. Katzenbach*, 383 U.S., at 307 (same for statutory interpretation). In line with this Court's practice and Rule 12's longstanding operation in the lower courts, the resolution of competing statutory interpretations is particularly well-suited to a decision on the basis of the pleadings alone, and thus a special master is ultimately unnecessary to dispose of this case.

b. Second, allowing the parties to file dispositive cross-motions on their interpretations of the Compact—which would resolve the entirety of the case—would also serve the Court's general "object in original cases ... to have the parties, as promptly as possible, reach and argue the merits of the controversy presented." *Ohio v. Kentucky*, 410 U.S. 641, 644 (1973). That aim is particularly pertinent here. Pursuant to the Court's preliminary injunction, the parties remain joint participants in directing the Waterfront Commission, a bistate agency that has broad regulatory and law-enforcement authority that it exercises within the borders of both States.

New York and New Jersey share an interest in expeditiously resolving their dispute concerning the Commission, and their respective roles and authorities in overseeing one of the Nation's largest ports.

3. In light of the parties' agreement that this Court should grant New York's motion for leave to file a bill of complaint, and to facilitate prompt resolution of this dispute, the parties respectfully request the opportunity to file cross-motions for judgment on the pleadings, in the nature of motions under Rule 12(c) of the Federal Rules of Civil Procedure.¹ This Court has repeatedly entertained briefing on dispositive motions based upon Rule 12 of the Federal Rules of Civil Procedure at the outset of original actions, see *Texas v. New Mexico*, 571 U.S., at 1173; *Montana v. Wyoming*, 552 U.S., at 1175; *New Hampshire v. Maine*, 530 U.S., at 1272; *Kansas v. Nebraska*, 527 U.S., at 1020, including motions in the style of Rule 12(c) motions, see *California v. United States*, 457 U.S., at 278 (allowing the parties to file a motion for summary judgment and a cross-motion for judgment on the pleadings, and noting that because there were no "essential facts ... in dispute, a special master was not appointed and the case was briefed and argued").

If this Court grants leave to file cross-motions for judgment on the pleadings, the parties respectfully propose the following schedule for briefing. Most recently, in

¹ Supreme Court Rule 17.2 "provides that the Federal Rules of Civil Procedure will be taken as a guide to procedure," but the management of this Court's original actions is "not invariably governed by common-law precedent or by current rules of civil procedure." *Ohio v. Kentucky*, 410 U.S., at 644. This Court instead allows parties to file motions in the "nature" of a particular Rule, including Rule 12. See, e.g., *Texas v. New Mexico*, 571 U.S., at 1173; *Kansas v. Nebraska*, 527 U.S., at 1020.

Texas v. New Mexico, 571 U.S., at 1173, the Court allowed New Mexico 60 days to file a dispositive motion, 45 days for Texas to respond, and 15 days for New Mexico’s reply. Here, the parties submit that it would be appropriate to impose the following briefing schedule to accommodate their cross-motions: (i) New Jersey’s answer to New York’s Bill of Complaint, motion for judgment on the pleadings, and brief in support of the motion for judgment on the pleadings is due within 60 days of the Court’s order; (ii) New York’s combined opposition and cross-motion for judgment on the pleadings is due 60 days later; (iii) New Jersey’s combined response to New York’s cross-motion and reply in support of its motion is due 15 days later; and (iv) New York’s reply in support of its cross-motion is due 15 days later.

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For these reasons, the parties respectfully request that the Court grant leave to file cross-motions for judgment on the pleadings, set a corresponding briefing schedule, and hear argument on the cross-motions.

Respectfully Submitted,

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