

No. 164, Original

IN THE
Supreme Court of the United States

STATE OF IOWA AND STATE OF MONTANA,
Plaintiffs,

v.

STATE OF ARIZONA; STATE OF CALIFORNIA; STATE OF
COLORADO; STATE OF CONNECTICUT; COMMONWEALTH
OF MASSACHUSETTS; STATE OF MINNESOTA; STATE OF
NEVADA; STATE OF NEW JERSEY; STATE OF NEW
MEXICO; STATE OF NEW YORK; STATE OF OREGON; AND
STATE OF WASHINGTON,
Defendants.

**REPLY IN SUPPORT OF MOTION FOR
LEAVE TO FILE BILL OF COMPLAINT**

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REPLY

The Court has original and exclusive jurisdiction over this action between states, and, if the settlement is not consummated, the Court should hear the case. The Brief in Opposition provides scarcely any response to the textual and constitutional arguments for mandatory jurisdiction in state v. state cases. It instead argues that the Court's discretionary standard is compelled by precedent, but that is not true, as the opening brief already explained. Respondent States also argue that, despite the caption, this is not *really* a controversy between states, but that argument ignores the relief sought in the complaint, which is a declaratory judgment and injunction *against* Respondent States. Respondent States also make various merits arguments, but these are incorrect and need not be considered in deciding whether to take the case.

Plaintiff States agree with Respondent States that the settlement they entered with Paramount would moot these claims if and when the district court enters a consent decree *and* the merger closes. But the district court has not yet entered such a decree, and has allowed filings opposing it. Neither the parties nor this Court can assume the consent decree will be entered. The case remains alive.

ARGUMENT

I. The Court Should Hold That Its Exclusive Jurisdiction Is Mandatory.

Respondent States say not a word about the text of Article III of the Constitution or of section 1251 in their single paragraph arguing against a mandatory standard for state v. state cases. *See* BIO at 6. That

retreat is well-advised, since no defense on textual or originalist grounds is possible. On first principles, the argument for mandatory jurisdiction over cases like this is overwhelming. Instead, Respondent States argue only that the Court has previously *held* that the standard is discretionary, and so *stare decisis* compels adherence to that standard.

Even on this limited defense, Respondent States are wrong, because they muster no cases that actually so hold. A holding is a “court’s determination of a matter of law pivotal to its decision.” Black’s Law Dictionary (12th ed. 2024). As Justice Gorsuch explained, “[a]n opinion’s holding and the reasoning essential to it (the *ratio decidendi*) meri[t] careful attention. Dicta, stray remarks, and digressions warran[t] less weight.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 419 (2024) (Gorsuch, J., concurring).

Here, Respondent States claim that *Wyoming v. Oklahoma* “held that ‘this Court applies discretion when accepting original cases,’” BIO at 6, but this statement is plainly not the *holding* of the case, since it was the opposite of “pivotal”—nothing whatsoever turned on it. In *Wyoming*, the Court heard the case (applying a discretionary standard) and resolved the merits, *see Wyoming v. Oklahoma*, 502 U.S. 437, 454 (1992). Had the Court applied the rule advocated here, it likewise would have heard the case (applying a mandatory standard) and resolved the merits. The other cases Respondent States cite were already addressed in the initial brief. *See* Br. at 11, n.4 (addressing *Mississippi v. Louisiana* and *Texas v. New Mexico*); Br. at 10 (addressing *Illinois v. City of Milwaukee*).

It is true, as Respondent States argue (at 6) that Justices Thomas and Alito called these cases “precedent” in their dissenting opinions, but that cannot transmute dicta into holding. The briefing in those cases never argued that the discretionary standard is *not* precedent, and so it is hardly surprising that Justices Thomas and Alito assumed it was. In all events, Respondent States surely cannot argue that *dissenting* opinions announce holdings about what count as holdings.

Next, Respondent States argue that this actually is not a controversy between states, but it is. *See* BIO at 6-7. The case is between Iowa and Montana on the one hand and Respondent States on the other. Iowa and Montana are seeking declaratory and injunctive relief that would bind Respondent States. *See* Compl. ¶ 92. This is unlike *South Dakota v. Ubbelohde*, in which “each state would be seeking relief from the Court against the [Army] Corps [of Engineers].” 330 F.3d 1014, 1026 (8th Cir. 2003). It is also unlike the intervention in *Texas v. United States*, 945 F.3d 355, 374 n.12 (5th Cir. 2019), *as revised* (Dec. 20, 2019), *as revised* (Jan. 9, 2020), *rev’d sub nom. California v. Texas*, 593 U.S. 659 (2021) since again, there the state litigants sought relief against the United States, not another state, fitting squarely within 28 U.S.C. § 1251(b)(2).

To the extent the Court considers the question close, it should schedule oral argument to carefully consider this important and recurring issue in a precedential ruling.

II. Respondent States' Merits Arguments Should Not Preclude Review.

Respondent States do not dispute the importance of the issues in this case. Rather, they chiefly attack the merits. But if Plaintiff States are right in their jurisdictional argument, then the merits should not matter. If, as Respondent States argue, the merits are weak, then the Court will be able to resolve the case easily. That is no reason to deny mandatory, exclusive review.

In any event, it is not true that Plaintiff States lack a cause of action. See BIO at 13–14. As *Georgia v. Pennsylvania Railroad Co.*, explained, states have a cause of action when they allege injuries to “quasi-sovereign interests.” 324 U.S. 439, 447, 462 (1945). Such injuries were alleged here. See Compl. ¶¶ 60–69. This Court has always treated quasi-sovereign injury as sufficient to state a cause of action, noting that “to maintain such an action, the State must . . . express a quasi-sovereign interest. . . . These characteristics fall into two general categories. First, a State has a quasi-sovereign interest in the health and well-being—both physical and economic—of its residents in general.” *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 607 (1982). There is no reason to depart from that longstanding rule here. Either way, the existence (or not) of a cause of action is a merits issue that *cannot* be decided without first wielding jurisdiction. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 89 (1998).

CONCLUSION

The Court should grant the Motion for Leave to File the Bill of Complaint or, at minimum, should set the motion for argument.

Respectfully submitted,

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