Nos. 1, 2, and 3 Original

In the
Supreme Court of the United States

STATES OF WISCONSIN, MINNESOTA, OHIO, and PENNSYLVANIA,

and

STATE OF MICHIGAN,

and

STATE OF NEW YORK,
Plaintiffs,

v.

STATE OF ILLINOIS, METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO, and UNITED STATES OF AMERICA,
Defendants.

On Motion To Reopen And For A Supplemental Decree

BRIEF IN OPPOSITION

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BRIEF IN OPPOSITION

This Court should deny Michigan's Motion to Reopen and for a Supplemental Decree.[1] The decades-old Consent Decree that Michigan seeks to reopen reconciled States' competing claims to water diverted from Lake Michigan, and this Court's continuing jurisdiction to enforce that Decree does not embrace all future disputes related in any way to the Chicago waterway system, especially cases, like this one, where Michigan disavows any interest in revisiting the diversion rights that are the subject of the Decree.

Nor should this Court agree to adjudicate Michigan's claims in a new, original action, as Michigan urges in the alternative. Michigan has added Illinois as a defendant in an apparent effort to qualify for this Court's original jurisdiction, but Michigan seeks nothing specific from Illinois. Michigan aims to close the locks in the Chicago waterway, but there is no dispute that only the Army Corps of Engineers (Corps) can furnish that relief. And Michigan pursues limits on the operation of the waterway's sluice gates, but the Metropolitan Water Reclamation District of Greater Chicago (District) alone controls those gates. Each of these forms of relief (were Michigan somehow entitled to them) would be available in, for example, federal district court.

For Illinois' part, the State has used, and continues to use, its limited legal authority over a navigable waterway to stop Asian carp from reaching Lake

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[1] For convenience, the brief refers to Michigan and the States that have joined its motion collectively as "Michigan."

Michigan. And (until filing this suit) Michigan and other Great Lakes States had consistently applauded Illinois' efforts in this regard, as recently as last December, and Michigan does not identify any measure that Illinois is authorized, but failed, to undertake to combat this invasive species. Accordingly, Michigan's alternative jurisdictional theory fails for two, independent reasons: (1) it seeks no specific relief from Illinois, the only state defendant, and (2) Michigan may pursue its relief in another forum.

STATEMENT

The Chicago Area Waterway System

In 1827, the United States granted Illinois land to build a canal between the Illinois River and Lake Michigan and thereby unite the Mississippi River and the lake. See *Sanitary Dist. of Chicago v. United States*, 266 U.S. 405, 427-428 (1925) (describing federal act "in pursuance of which Illinois brought Chicago into the Mississippi Watershed"); *Missouri v. Illinois*, 200 U.S. 496, 526 (1906). Today, the Chicago Area Waterway System—composed of the Chicago Sanitary and Ship Canal (Sanitary Canal), the North Shore Channel, and the Calumet-Sag Channel—links the Mississippi River with the Chicago, Calumet, Grand Calumet, and Little Calumet Rivers, Ill. App. 1a, 31a, 50a-51a, 91a[2]; Libby Hill, The Chicago River: A Natural & Unnatural History xiii-xv (Lake Claremont

[2] "App." refers to an appendix submitted in the briefing on Michigan's first motion for a preliminary injunction. "App. II" refers to an appendix submitted in the briefing on Michigan's "renewed" motion for a preliminary injunction.

Press 2000), and enables ships to travel between the Great Lakes, the Mississippi River, and the Gulf of Mexico, see *Sanitary Dist. of Chicago*, 266 U.S. at 424. Construction of the waterway reversed the flow of the Chicago River, diluting and moving sewage away from Lake Michigan and preventing contamination of Chicago's drinking water supply. See *id*. at 424-425. From the outset, the waterway was operated by the Sanitary District of Chicago (as the District was then known, Mich. App. 85a-86a) and, pursuant to federal permits, the District was authorized to divert water from Lake Michigan to ensure the waterway's continued flow and navigability. See *Sanitary Dist. of Chicago*, 266 U.S. at 423, 429-430.

Three locks on the waterway allow for navigation: the Lockport Powerhouse and Lock, the O'Brien Lock and Dam, and the lock at the Chicago River Controlling Works (Controlling Works). Ill. App. 1a, 31a. The Corps operates these locks, and Illinois exercises no authority over their use. Ill. App. 11a, 31a, 106a-107a; Mich. App. 77a, 91a-92a.

The waterway also features sluice gates—large plates that open and close to control water levels and flow rates—at the O'Brien Lock and Dam, the Controlling Works, and the Wilmette Pumping Station. Ill. App. 11a, 31a. The District controls and operates these gates (as well as pumps located at the Controlling Works and the Wilmette Pumping Station). Ill. App. 12a, 106a-107a; Mich. App. 77a, 91a-92a. The District uses the gates to alleviate flooding and regulate the direct diversion of Lake Michigan water into the waterway to improve and maintain water quality and provide sufficient water levels for navigation. Ill. App. 12a, 95a; Mich. App. 89a, 94a-

95a, 107a. While Illinois, through the Illinois Department of Natural Resources (IDNR), sets the maximum quantity of water that the District may divert from the lake annually under the Lake Michigan Water Allocation program, IDNR has no authority over the District's operation of the sluice gates, so long as the District diverts the water for proper purposes and does not exceed the allocated amount in any year. Ill. App. 12a.

Background on Original Action Nos. 1, 2, and 3

In the 1920s, several Great Lakes States filed suit in this Court against Illinois and the District, claiming that the District was diverting too much water from Lake Michigan. See *Wisconsin v. Illinois*, 278 U.S. 367, 399 (1929). In this Court's words, "[t]he exact issue" presented in that case was

> whether the state of Illinois and the Sanitary District of Chicago by diverting 8,500 cubic feet [per second] from the waters of Lake Michigan have so injured the riparian and other rights of the complainant states bordering the Great Lakes and connecting streams by lowering their levels as to justify an injunction to stop this diversion and thus restore the normal levels.

Id. at 409-410. The Court held that, while the District could divert water to maintain the navigability of the Chicago River, any additional withdrawal for sanitation purposes was unlawful. See *id.* at 418, 420. The Court thus required "the district to devise proper methods for providing sufficient money and to construct and put in operation with all reasonable expedition adequate plants for the disposition of the

sewage through other means than the lake diversion." *Id.* at 420-421.

In 1930, after a remand to the Special Master "[t]o determine the practical measures needed to effect the object just stated and the period required for their completion," *id.* at 421, the Court entered its original Decree, see *Wisconsin v. Illinois*, 281 U.S. 179, 201-202 (1930). It provided that, although defendants would need to decrease their withdrawal of Lake Michigan water, they could continue to take water for domestic use, which (after treatment) would be pumped into the waterway to flow west to the Mississippi system. See *id.* at 199-200. The 1930 Decree thus ordered defendants to reduce the quantity of water withdrawn from Lake Michigan to specified levels, and it required the District to report periodically on "the progress made in the construction of the sewage treatment plants" and on "the extent and effects of the operation of * * * plants" already constructed. *Id.* at 201-202. Finally, the Court "retain[ed] jurisdiction" over the cases to enter "any order or direction, or modification of this decree, or any supplemental decree, which it may deem at any time to be proper in relation to the subject matter in controversy." *Id.* at 202.[3]

Decades later, the Court reopened the case to address new claims that defendants were taking too much water from Lake Michigan for domestic use and that defendants should be required either to return all treated domestic pumpage to the lake or to stop

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[3] The Court subsequently modified the 1930 Decree on three occasions to resolve water diversion contests. See *infra* pp. 14-15.

withdrawing lake water entirely. See U.S. Mem. in Opp. to Mich. PI Mot. 19. The Court entered a superceding Decree further limiting defendants' total withdrawals to 3,200 cubic feet per second. See *id.* at 19-20; *Wisconsin v. Illinois*, 388 U.S. 426, 427 (1967) (*per curiam*). This 1967 Decree allows Illinois to decide how to apportion its allocated share of water "among its municipalities, political subdivisions, agencies, and instrumentalities," and authorizes the State to apply for modification of the Decree, if necessary, "to permit the diversion of additional water." *Id.* at 427, 429. The Illinois General Assembly has delegated the responsibility for apportioning the diversion amount to IDNR. See 615 ILCS 50/1.2 (2008).

Lastly, as in 1930, the 1967 Decree provided that this Court would "retain[ ] jurisdiction" over the litigation "for the purpose of making any order or direction, or modification of this decree, or any supplemental decree, which it may deem at any time to be proper in relation to the subject matter in controversy." 388 U.S. at 430. The 1967 Decree was amended once (in 1980), again to resolve issues involving the quantity of water that Illinois diverts from the lake. See *Wisconsin v. Illinois*, 449 U.S. 48, 53 (1980) ("The goal of [the 1980 amendment was] to maintain the long-term average annual diversion of water from Lake Michigan at or below" the level set by the 1967 Decree.).

The Response to Asian Carp

In the 1970s, fish farmers in Arkansas and other southern States first brought silver and bighead Asian carp—native to eastern Siberia and China—to the United States to keep the farmers' aquaculture and

waste retention ponds clean. Flooding in the 1990s allowed the fish to escape into the Mississippi River, and they later migrated into the Missouri and Illinois Rivers. Ill. App. 4a; Mich. App. 18a, 44a, 49a.

The Corps, Illinois, the District and other stakeholders have worked to prevent Asian carp from entering the Great Lakes. The Corps built and operates an Electrical Dispersal Barrier System—located lakeward of the Lockport Powerhouse and Lock in the Sanitary Canal—to prevent the movement of invasive species. Ill. App. 11a, 73a-76a. The Corps has completed construction on two barriers, designated I and IIA, which operate continuously, and is in the process of constructing Barrier IIB, scheduled to be completed later this year. Ill. App. 74a-75a; U.S. App. II 19a; Mich. App. 30a. Illinois has contributed $1.8 million to this project—and the other Great Lakes States collectively contributed another $575,000, Ill. App. 114a-120a—though Illinois has no authority to direct the Corps' operation of the barrier system, Ill. App. 5a, 11a; Mich. App. 30a-33a. To date, no silver or bighead carp have been found lakeward of the electric dispersal barriers. Ill. App. 77a; Ill. App. II 14a.

The Corps is also working to control flooding along the Des Plaines River and elsewhere in the waterway to prevent the lakeward migration of Asian carp. Mich. App. 69a; U.S. App. II 2a, 19a. And the Corps contracted with the University of Notre Dame to take environmental DNA (eDNA) samples to determine whether genetic material from Asian carp was in the waterway. Ill. App. 6a. Samples collected in Spring 2009 were positive for the presence of Asian carp eDNA on the non-lake side of the electric barriers, *ibid.*, and in November 2009, the Corps reported positive eDNA

results for samples collected lakeward of the electric barriers, but still on the non-lake side of the O'Brien Lock and Dam. Ill. App. 7a. In January 2010, the Corps reported two additional, positive eDNA results, one in Calumet Harbor and the other lakeward of the O'Brien Lock. Mich. App. II 2a.

In February 2010, the U.S. Environmental Protection Agency issued and began implementing the multi-party Asian Carp Control Strategy Framework and released an action plan for the next four years that includes additional funding to address the Asian carp issue. See Ill. Resp. to Renewed PI Mot. 1-2 n.1; see also U.S. App. II 64a-71a (describing efforts of U.S. Fish and Wildlife Service). And the District is developing technology to prevent Asian carp from migrating through its sluice gates. See MWRD Resp. to Renewed PI Mot. 8-10.

Among its responses to the eDNA results, IDNR intensified its monitoring efforts and consulted with the Corps about increasing the barriers' voltage. Ill. App. 6a. And IDNR contracted with commercial fishermen to "electrofish" and deploy thousands of yards of fishing nets in areas where positive eDNA results were collected. Ill. App. 8a. From December 1 to 7, 2009, more than 1,000 fish were caught and identified using these methods, without finding a single Asian carp. Ill. App. 8a, 77a-78a; Mich. App. 65a-66a, 68a. That same month, as part of a 350-person operation by the Asian Carp Rapid Response Workgroup (Workgroup),[4] IDNR applied fish

[4] The Workgroup is now known as the Asian Carp Regional Coordinating Committee.

poison to nearly six miles of the Sanitary Canal south of the electric barriers. Michigan, Indiana, Wisconsin, and Canada contributed personnel and equipment to the effort, while Minnesota, New York, Ohio, and Pennsylvania made other contributions. Ill. App. 7a. Before this operation, Illinois could not confirm the eDNA results using any established fishing techniques, and no Asian carp had been found in the Sanitary Canal. *Ibid*. And even the poisoning, although it killed tens of thousands of fish, revealed just one bighead carp, and it was on the non-lake side of the electric barriers. *Ibid.*; Mich. App. 25a, 61a-63a.

With other Workgroup members, IDNR continues to evaluate and develop measures to control Asian carp migration. Ill. App. 8a; Ill. App. II 13a-16a; Mich. App. 69a. Since the mid-1990s, IDNR has taken significant steps to monitor for bighead and silver carp, and it continues to monitor and survey the waterway. Ill. App. 5a, 8a; Ill. App. II 13a-16a. Illinois also is a member of the Great Lakes Panel on Aquatic Nuisance Species, along with representatives from Michigan, Indiana, Minnesota, New York, Ohio, Pennsylvania, Wisconsin, Ontario, and Quebec. Ill. App. 4a. Many federal agencies, including the Corps, also participate on the Panel, *ibid.*, which provides guidance on nuisance species research, policies, and educational programs, Ill. App. 5a.

Nor have Illinois' efforts lessened during the pendency of this lawsuit. Ill. App. II 13a-16a, 18a-19a. Notwithstanding snow and ice in the waterway, Illinois' most recent steps include continued netting, electrofishing, and commercial fishing in locations that produced positive eDNA results (without yielding any Asian carp). Ill. App. II 13a-15a. IDNR officers and

fish biologists also have been working to ensure that Asian carp are not imported and sold as bait, and otherwise educating the public about Asian carp. Ill. App. II 14a. And IDNR is implementing a variety of proposals for continuing its Asian carp identification and removal program (including hiring additional employees to assist with netting and electrofishing), increasing its monitoring for carp, and preparing for future rapid response contingency operations if Asian carp are discovered (including purchasing reserves of fish poison and other supplies). Ill. App. II 15a-16a, 18a-19a.

The Great Lakes States have applauded Illinois' efforts in combating the Asian carp and, until Michigan commenced this litigation, acknowledged that any additional support must come from federal authorities. Thus, in 2006, when cost overruns and construction delays on the electric barriers precipitated the need for additional funding, Ill. App. 119a-120a, the Council of Great Lakes Governors (Council), through its Chair, Wisconsin Governor Jim Doyle, made clear its view that the States—particularly Illinois—had done more than their share to address the Asian carp threat. *Id.* at 119a ("Illinois and other Great Lakes States have already contributed substantial non-federal funds toward construction of the barrier."). The Council stated that "[i]t is the responsibility of Congress and the Administration to ensure that funds exist to finish barrier construction and to keep the barrier system operating." *Ibid.*; see also Ill. App. 121a-122a ("Because the Chicago Sanitary and Ship Canal is a Federal navigation water, it is the responsibility of Congress and the Federal government to ensure that

funds exist to protect" "the Lakes from all species of Asian carp").

Likewise, in its 2006 annual report, the Great Lakes Commission (Commission)—made up of executive and legislative officials from the Great Lakes States and Canadian Provinces and chaired by Michigan Lieutenant Governor John D. Cherry, Jr. between 2006 and 2008 (and subsequently by Illinois Governor Pat Quinn)—described obtaining federal funds to construct the barriers as "a top regional priority for most of this decade." Ill. App. 124a; see also Ill. App. 125a. The 2007 Report similarly stated that the Commission had "focused" its "[a]dvocacy efforts" that year on obtaining federal "authorization and funding for the [barriers] to prevent the Asian carp and other invasive species from entering the Great Lakes." Ill. App. 127a.

Indeed, as recently as December 2, 2009, the Commission offered its "full support" to Illinois Governor Quinn for Illinois' actions, including the poisoning and electrofishing operations, which the group described as "measured and grounded in the best available scientific information," "appropriate," and "in the best interest of the health of the ecosystem." See also November 13, 2009 letter of Council of Great Lakes Fishery Agencies (expressing support for poisoning); November 9, 2009 letter of Great Lakes Fishery Commission (same); November 6, 2009 letter of Council of Lake Committees (thanking Illinois for "leadership" in "effort to keep Asian carp from the

Great Lakes," including poisoning).[5] At the same time, the Commission "pledge[d] to work with" Illinois "to encourage the federal government to accelerate completion of Barrier IIB" and "to encourage the [Corps] to accelerate its study of permanent solutions to invasive species migration between the Great Lakes and the Mississippi River System."

ARGUMENT

This Court should deny Michigan's motion. First, this dispute does not fall within the ambit of the 1967 Decree, as Michigan now appears to acknowledge in its "renewed" motion for preliminary injunction, which makes scant reference to this claim. Second, Michigan fails in its alternative theory that this represents a new dispute subject to the Court's exclusive, original jurisdiction, for Michigan seeks nothing specific from Illinois, and Michigan may pursue its relief elsewhere.

I. This Dispute Does Not Fall Within The Court's Retained Jurisdiction Under The 1967 Decree.

In its motion to reopen, Michigan rests its claim to this Court's original jurisdiction chiefly on the "reopener" provision in the 1967 Decree in *Wisconsin v. Illinois*. See Br. in Supp. of Mot. to Reopen 3-9, 14-31; Pet. 1, 29. Specifically, Michigan seeks a supplemental decree declaring the century-old waterway project unlawful and requiring defendants to "take all

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[5] These documents are available at http://www.glc.organnounce09/12carp.html (December 2, 2009 letter) and http://www.asiancarp.org/rapidresponse/support.htm (November 6, November 9, and November 13, 2009 letters).

appropriate and necessary measures" to "permanently and physically separate" Lake Michigan from any "carp-infested waters" in the Illinois River basin, the Sanitary Canal, or other connected waterways. Pet. 29-30. Critically, however, Michigan does not seek to enforce or modify any provision of the 1967 Decree, which resolved solely a dispute over the amount of water that Illinois may withdraw from Lake Michigan. See Pet. 2 ("The Petition does not seek to alter the quantity of water being diverted from Lake Michigan under the existing Decree, as most recently amended."). Thus, as explained elsewhere, see Ill. Resp. to PI Mot. 17-24; U.S. Mem. in Opp. to PI Mot. 25-29, Michigan's request for relief is not "proper in relation to the subject matter in controversy" in the 1967 Decree and provides no basis for reopening that Decree. The Decree did not address defendants' duty to prevent invasive species from entering Lake Michigan, just as it did not purport to regulate any of the countless other issues that arguably relate in some way to the waterway. Michigan's motion therefore does not properly invoke this Court's retained jurisdiction.

Indeed, Michigan makes only passing reference to reopening the 1967 Decree in its renewed preliminary injunction motion, see Renewed PI Mot. 35-37—although Michigan recognized that establishing a basis for this Court's jurisdiction was critical to succeeding on that motion, see *id.* at 35. This omission reinforces the perception (initially noted in Illinois' preliminary injunction response, see Ill. Resp. to PI Mot. 37-41) that Michigan's request to proceed by reopening the prior cases is merely an effort to avoid the need to establish liability in nuisance against

defendants (something Michigan cannot do as to Illinois, see *ibid.*), and to specify what, if anything, Michigan seeks from Illinois—as well as to make an end-run around the Federal Administrative Procedure Act ("APA"), under which Michigan should proceed in district court if it wants the Corps to close the locks.

And a detailed look at both the 1967 Decree and its history, and this Court's decisions addressing reopener provisions like the one here, demonstrates that Michigan has no credible claim to retained jurisdiction under the 1967 Decree. This Court exercises its original jurisdiction "only sparingly," limiting its intervention to circumstances "when the necessity [is] absolute." *Mississippi v. Louisiana*, 506 U.S. 73, 76 (1992) (internal punctuation omitted). The Court will "scrutinize[ ] closely" a request to reopen an existing case, to ensure that reopening will not "take the litigation beyond what [the Court] reasonably anticipated when [it] granted leave to file the initial pleadings." *Nebraska v. Wyoming*, 515 U.S. 1, 8 (1995). Accordingly, "an understanding of the scope of this litigation as envisioned under the initial pleadings is the critical first step" in the Court's consideration of Michigan's motion to reopen. *Ibid.*

Undertaking that inquiry makes clear that Michigan's motion must be denied. Original Action Nos. 1, 2, and 3 contested Illinois' purportedly excessive *withdrawal* of water from Lake Michigan, the "exact issue" in the case being how much Illinois should be allowed to withdraw to maintain the waterway's navigability and for domestic use. See *supra* p. 4. And while the resulting 1930 Decree was modified a number of times over the years, these changes pertained solely to its exclusive subject

matter—the quantity of diverted water. See *Wisconsin v. Illinois*, 289 U.S. 395, 412 (1933) (District proved itself financially incapable of satisfying Court's order to build treatment plants needed to reduce quantity of water diverted for sanitation, and Court modified Decree to order Illinois to ensure funding for plant construction); *Wisconsin v. Illinois*, 311 U.S. 107, 108, 111 (1940) (Decree modified to increase amount of diverted water temporarily to remove sludge and sewage); *Wisconsin v. Illinois*, 352 U.S. 945, 947 (1956) (*per curiam*) (Decree modified to address low water levels in waterway). The same was true of the superceding Decree entered in 1967, which permanently decreased the allotted diversion amounts, and again with the modification in 1980, which resolved further issues involving the quantity of water that Illinois diverts from the lake. See *supra* pp. 5-6. Through all of these modifications, the Decree has never specified how or where Illinois must divert its allotted share; it has always left these matters to Illinois. See *supra* p. 6. The "subject matter in controversy" giving rise to the 1967 Decree, and all preceding and subsequent proceedings, is the *amount* of water Illinois may divert. It has nothing to do with Asian carp, invasive species, or water entering Lake Michigan.

Michigan disavows any effort to litigate over the Decree's subject matter when it disclaims a desire to change the amount of water Illinois may divert under the 1967 Decree. See Pet. 2. Indeed, Michigan has even abandoned its request to maintain the waterways at the lowest level possible. See Renewed PI Mot. 7. Instead, Michigan recharacterizes and expands the nature of the prior litigation by claiming that the

"Lake Michigan diversion project" as a whole was its true "subject." Br. in Supp. of Mot. to Reopen 1; see also *id.* at ii, 3, 7, 17, 25, 29. "But for" the waterway, the argument runs, Asian carp "would not threaten to invade Lake Michigan." *Id.* at 7; see also *id.* at 21, 29. But the 1967 Decree's requirement that any requested modification "be proper in relation to the subject matter in controversy," *Wisconsin v. Illinois*, 388 U.S. at 430, surely does not contemplate, as Michigan must argue, that any claim having anything to do with the waterway falls within the Court's retained jurisdiction. If that were true, then parties could ask the Court to exercise jurisdiction under the 1967 Decree any time the waterway is arguably linked, even tangentially, to the facts—flooding in a neighboring State, for example—of a future suit. (Tellingly, neither Michigan nor its *amici* propose any limits to the scope of the Court's retained jurisdiction.) This cannot have been the Court's intent in retaining jurisdiction.[6]

Amicus Michigan Shoreline Caucus (MSC) observes that this Court has described the phrase "'in relation to'" as "'expansive.'" MSC Br. 18 (quoting *Travelers Indemnity Co. v. Bailey*, 129 S. Ct. 2195, 2203 (2009)). But this does not favor reopening here. MSC ignores the word "proper" in the reopener provision, and the

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[6] Michigan also suggests in passing that this case is part and parcel of the diversion action because the Asian carp threaten "fishing and hunting grounds," just as the prior diversion of Lake Michigan water did. Br. in Supp. of Mot. to Reopen 30-31 (internal punctuation omitted). But if the nature of the threatened injury were sufficient to warrant this Court's retained jurisdiction, then, again, the scope of that jurisdiction would be limitless.

Court has made clear (as *amicus*' own citation acknowledges) that "in relation to" is not without limits. See *Travelers*, 129 S. Ct. at 2203-2204 ("[A]pplying the 'relate to' provision according to its terms was a project doomed to failure, since, as many a curbstone philosopher has observed, everything is related to everything else.") (internal quotations omitted) (alteration in original); *N.Y. State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 655 (1995) (limiting scope of "relate to" in statute because "really, universally, relations stop nowhere") (internal punctuation omitted). "There is, of course, a cutoff at some point, where the connection between" a new action and the existing litigation "would be thin to the point of absurd." *Travelers*, 129 S. Ct. at 2203. Wherever that point may lie here, Michigan's current action—complaining about an invasive species (introduced to the United States decades ago without Illinois' participation) entering Lake Michigan—far exceeds it.

Nor do Michigan's authorities support reopening. In *Arizona v. California*, this Court declined to reopen an existing decree because no "changed circumstances or unforeseen issues not previously litigated" warranted revisiting its prior factual determinations, as the movant had urged. 460 U.S. 605, 619 (1983). The Court did not doubt, however, that the movant also must show that its newly sought relief pertains to the same subject matter as the existing decree. To be sure, the Court did not address this latter requirement explicitly, but the movant easily satisfied it: the parties had previously adjudicated the very question sought to be resolved on reopening. See *id.* at 621-626. Indeed, that was the problem—because the movant

could not establish changed circumstances, it was unsuccessful in its effort to reopen an original action to retry "issues that were fully and fairly litigated 20 years ago." *Id.* at 621.

Michigan's reliance on *Nebraska v. Wyoming*, 507 U.S. 584 (1993), is equally misplaced. The reopener provision there specifically anticipated that the case would be reopened under the circumstances presented. In a 1945 decree apportioning water rights among several States, this Court had "retain[ed] jurisdiction" to make changes, specifying that the parties could seek modification based on "the effect of the construction or threatened construction of storage capacity" or "[a]ny change in conditions making modification of the decree or the granting of further relief necessary or appropriate." *Id.* at 588 (internal quotations omitted). And the Court had "noted in more than one place in its opinion [accompanying the decree] the need to retain jurisdiction to modify the decree in light of substantial changes in supply, threatened future development, or circumvention of the decree." *Id.* at 589. There thus was no doubt that Nebraska's subsequent request for relief, which challenged, *inter alia*, two new developments in Wyoming and that State's construction of a new storage reservoir, fell squarely within the scope of the Court's retained jurisdiction. See *id.* at 596-601.

The case that this one does resemble is *New Jersey v. Delaware*, wherein the Court declined New Jersey's invitation to reopen its 1935 decree. See 546 U.S. 1028 (2005) (mem.). Although the Court did not provide a reason for its denial, it is plain that, as Delaware had argued, see Del. Br. in Opp. to N.J.'s Mot. to Reopen, *New Jersey v. Delaware*, No. 134, 2005 WL 6140912, at

*2-3, 23-25 (Oct. 27, 2005), the cases did not concern the same subject: the earlier resolved a boundary dispute between the two States, see *New Jersey v. Delaware*, 295 U.S. 694 (1935), while the later one asked the Court to construe a 1905 Compact concerning the exercise of riparian rights, see *New Jersey v. Delaware*, 552 U.S. 597, 608-613 (2008). Yet these two actions (although not sufficiently connected to warrant reopening) were more closely related than the ones here: Delaware had blocked construction of waterfront improvements extending from the New Jersey shoreline onto the Delaware riverbed, and New Jersey was asking the Court to reopen the boundary-dispute case and apply the Compact to the decree (which included a reopener provision, see 295 U.S. at 698). See N.J. Br. in Supp. of Mot. to Reopen, *New Jersey v. Delaware*, No. 134, 2005 WL 3707901, at *1, 18 (Aug. 1, 2005).

Finally, *amicus* Alliance for the Great Lakes (AGL) is wrong to suggest that because the District cannot divert water from Lake Michigan without opening the sluice gates, "complete relief may * * * require a modification of the *Wisconsin* decree." AGL Br. 21 n.9. But the 1967 Decree dictates Illinois' diversion rights, not the District's, so even eliminating the District's entitlement altogether would not require changes to the Decree. See *supra* p. 6. AGL is equally wrong to attribute to the District an argument that closure of the sluice gates would be "contrary to the *Wisconsin* decree." AGL Br. 21 n.9 (citing MWRD Resp. to PI Mot. 24.). Although the District argued that the adverse social and economic effects associated with sluice-gate closure counsel against granting Michigan's requested relief, see MWRD Resp. to PI Mot. 24-26, the

District shares the other defendants' view that "[n]othing in the relief sought is remotely related to the subject matter of the 1967 Decree," *id.* at 29.

* * *

In short, this case does not fall within the scope of the Court's retained jurisdiction under the 1967 Decree.

II. This Court Should Not Exercise Jurisdiction Over This Suit As A New, Original Action.

Original actions "tax the limited resources of this Court" and divert the Court's attention from its primary role as an appellate tribunal. *South Carolina v. North Carolina*, 130 S. Ct. 854, 863 (2010). Again, therefore, the Court exercises its original jurisdiction "only sparingly," *Mississippi v. Louisiana*, 506 U.S. at 76, and 28 U.S.C. § 1251(a) provides "substantial discretion to make case-by-case judgments as to the practical necessity of an original forum in this Court," *Texas v. New Mexico*, 462 U.S. 554, 570 (1983); see also *South Carolina v. North Carolina*, 130 S. Ct. at 863. The Court's "original 'jurisdiction is of so delicate and grave a character that it was not contemplated that it would be exercised save when the necessity was absolute.'" *Mississippi v. Louisiana*, 506 U.S. at 76 (quoting *Louisiana v. Texas*, 176 U.S. 1, 15 (1900)). Thus, original jurisdiction is "obligatory only in" certain, "appropriate cases," even if the action involves a claim by one State against another. *Id.* at 76-77 (internal quotations omitted).

For this Court to exercise original jurisdiction, the plaintiff State "must first demonstrate that the injury for which it seeks redress was directly caused by the

actions of another State," *Pennsylvania v. New Jersey*, 426 U.S. 660, 663 (1976) (*per curiam*), with the corollary that the defendant State must be able to provide the relief sought by the plaintiff, see *Mississippi v. Louisiana*, 506 U.S. at 78 n.2. Nor is it merely the fact of injury by another State (and availability of redress from that State) that matters, but the magnitude of the injury. The Court assesses the "nature of the interest of the complaining State" with a "focus[ ] on the seriousness and dignity of the claim." *Id.* at 77 (internal quotations omitted); see also *South Carolina v. North Carolina*, 130 S. Ct. at 869 (Roberts, *C.J.*, concurring in part and dissenting in part). Emphasizing the extreme nature of a dispute qualifying for this Court's original jurisdiction, the Court has described the "model case" in this camp as "a dispute between States of such seriousness that it would amount to *casus belli* if the States were fully sovereign." *Mississippi v. Louisiana*, 506 U.S. at 77 (internal quotations omitted).

Moreover, even if the States are truly adverse over a matter of sufficient magnitude, the Court still must explore "the availability of an alternative forum in which the issue tendered can be resolved." *Ibid.* For the Court to exercise its original jurisdiction, even over a case that otherwise qualifies for the Court's mandatory, original docket, "recourse to that jurisdiction [must be] necessary for the State's protection." *Arizona v. New Mexico*, 425 U.S. 794, 797 (1976) (*per curiam*) (internal quotations omitted). There need not be another case pending in another forum, as two of Michigan's supporters erroneously imply. See N.Y. Br. in Supp. of Renewed PI Mot. 6-7; MSC Br. 13. Nor may a state plaintiff force this Court

into an exercise of its original jurisdiction by choosing to name a state defendant, even when the same relief is available elsewhere, as another suggests. See Ind. Br. 9. Quite simply, where, as here, the plaintiff State's claims can be resolved in another forum—if only the plaintiff State would later file its suit there—this Court has declined to exercise its original jurisdiction. See *Illinois v. Milwaukee*, 406 U.S. 91, 108 (1972) ("we exercise our discretion to remit the parties to an appropriate district court whose powers are adequate to resolve the issues") (footnote omitted); *Ohio v. Wyandotte Chemicals Corp.*, 401 U.S. 493, 505 (1971) (declining to exercise original jurisdiction and denying Ohio's motion for leave to file complaint "without prejudice to its right to commence other appropriate judicial proceedings").

Michigan's action does not meet any of these requirements: (1) it seeks specific relief only from the Corps and the District, not Illinois, and even if Michigan sought minor modifications to Illinois' existing efforts (and Michigan identifies none), such a complaint would fall well short of the *casus belli* required for an original action; and (2) other forums exist to address Michigan's claims.

A. Michigan Does Not Seek Any Specific, Much Less Substantial, Relief From Illinois.

Michigan's alternate jurisdictional theory fails at the threshold, for Michigan does not seek anything specific from Illinois, much less accuse Illinois of action (or inaction) rising to the level of a *casus belli*. The Court examines the substance of a putative original action to determine whether the state defendant is the

real party in interest. See *Arkansas v. Texas*, 346 U.S. 368, 371 (1953). And even if it is, and there is a true conflict between the States, the Court still must determine whether that inter-State conflict is sufficiently weighty. See *South Carolina v. North Carolina*, 130 S. Ct. at 863. But Michigan admits that the waterway "is primarily maintained and operated by the District," while "several structures in the system contain navigational locks and are jointly operated by the Corps." PI Mot. 2. Michigan thus concedes that Illinois does not control the very facilities that are the focus of its complaint.

This is obvious from the specific relief Michigan seeks.[7] It first asks the Court to enjoin use of the locks and sluice gates in the waterway. See PI Mot. 28; Renewed PI Mot. PI 6. But Illinois has no operational control over these facilities. The Corps oversees all of the waterway's locks, and Illinois has no authority to close them. See *supra* 3. (Only MSC misapprehends this fact. See MSC Br. 20 (assuming that Illinois "operates the O'Brien and Chicago Locks and accompanying sluice gates" and criticizing "Illinois's failure to close the locks")). And it is the District that operates the sluice gates at the Controlling Works, the O'Brien Lock and Dam, and the Wilmette Pumping

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[7] Michigan "refined" its requested relief in its "renewed" motion for a preliminary injunction, omitting several previous requests "because they are duplicative of actions already being implemented by the United States * * * or otherwise not now essential." Renewed PI Mot. 7. Thus, Michigan effectively acknowledges that defendants are already providing much of the relief it seeks without the need for judicial intervention.

Station. See *supra* pp. 3-4. The only control Illinois has over the gates is IDNR's authority to limit the maximum amount of water the District may divert from the lake annually, see *supra* p. 4, but Michigan is not asking IDNR to reduce that amount, much less reduce it to zero and thereby prohibit the District from operating the gates in its discretion, see Pet. 2.[8] (MSC misunderstands this fact, too, asserting, without authority, that "Illinois can * * * direct its agency, the [District], to close the sluice gates." See MSC Br. 8).

Next, Michigan asks the Court to direct the installation of a "new temporary barrier to fish passage" in the Little Calumet River. Renewed Mot. for PI 6. But it is unlawful for Illinois or any other State to erect structures in navigable waterways. See 33 U.S.C. § 403. Accordingly, MSC's argument that this action is properly against Illinois because the State controls navigation in the waterway, see MSC Br. 9, is meritless. See Ill. App. 121a-122a (explaining Sanitary Canal is federal navigation waterway).

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[8] *Amicus* AGL observes that the District disclaims responsibility for carrying out some of the actions Michigan requests. See AGL Br. 16-17. But those generally are actions that must be performed by the Corps, not Illinois. See MWRD Resp. to PI Mot. 31-33. Indeed, the only task over which the District disclaims authority that falls within Illinois' power is killing fish in the waterway. See *id.* at 32. But the Corps has that same authority. See Ill. Resp. to Renewed PI Mot. 17-20. And Michigan cannot claim that Illinois has failed to exercise its authority in this regard in any event, having led the December 2009 application of fish poison, and Illinois has explained that if the Workgroup determines that fish kills are required in the future, it will continue to assist in those operations. See Ill. App. II 15a.

Finally, Michigan seeks an order requiring defendants as a group to "comprehensively monitor" the waterway using "the best available methods and techniques" and to destroy any Asian carp that are discovered. PI Mot. 29; see also Renewed PI Mot. 6 (requesting "[m]easures to capture, kill, or otherwise curtail the movement of Asian carp in the waterway"). But Illinois is already undertaking these actions and more, with the blessing and cooperation of other Great Lakes States, including Michigan. See *supra* pp. 8-12. Until Michigan commenced this litigation in late December 2009, the Great Lakes States openly applauded Illinois' extensive efforts and acknowledged that any additional measures would have to be federal, not state, in nature. See *supra* pp. 10-12. It is only now, when Michigan needs to include Illinois to invoke this Court's original, mandatory jurisdiction, that Michigan implicitly asks for more from Illinois, though in light of Illinois' extraordinary measures to date, and commitment to additional work going forward, there is nothing additional for Michigan to seek from Illinois.

And even if Michigan could identify something else for Illinois to do within its legal authority, such as use different fishing methods and techniques, Michigan offers no specific suggestions on this front (as one would expect were it really seeking any relief from Illinois)—despite repeated opportunities to do so. See Ill. Resp. to Renewed PI Mot. 16. Indeed, Michigan acknowledges that it "does not care" whether Illinois uses "netting, electrocuting, poisoning or other means so long as they are effective" at eradicating carp. Renewed PI Mot. 37. Such a non-specific demand for "measures," "comprehensive[ ] monitor[ing]," and "the best available methods and techniques" is inadequate

even to satisfy the federal rules' requirement that an injunction "state its terms specifically" and set forth the actions required in "reasonable detail." FED. R. CIV. P. 65(d); see also *Int'l Longshoremen's Ass'n, Local 1291 v. Philadelphia Marine Trade Ass'n*, 389 U.S. 64, 74-76 (1967).

In any event, Michigan's non-specific requests merely identify measures that Illinois is already undertaking in any event. (Remarkably, Michigan elsewhere criticizes even these measures—the only ones that Illinois may lawfully undertake—as inherently inadequate, suggesting that there is nothing that Illinois can legally do to combat the carp. See Ill. Resp. to Renewed PI Mot. at 16-17 (noting that, while Michigan claims Illinois should be doing more to destroy carp through fishing, netting, and poisoning, Michigan also argues that these methods are ineffective at capturing and killing Asian carp)). In short, Illinois is comprehensively monitoring the waterway, using a range of techniques that have proved effective in detecting and catching Asian carp. See Ill. App. II 13a-19a. If any of these fish are found, the multi-party Workgroup (to which Illinois belongs) will determine the best rapid responses, and Illinois will take the actions within its authority to carry out those measures. See Ill. App. II 15a. Accordingly, even if Michigan were making a specific demand of Illinois, for some marginal improvement on the State's current efforts, that request would not be of the magnitude required to implicate the Court's exclusive, original jurisdiction.

It is immaterial that Illinois has the legal authority to take at least some measures to combat the carp's migration, contrary to one suggestion, see N.Y. Br. in

Supp. of Renewed PI Mot. 5 (suggesting that Illinois' proposed role in the recently-announced federal Control Strategy Framework for addressing carp threat means Illinois is proper party to this suit), that IDNR may have "responsibility for necessary actions such as fish poisonings," or that Illinois might somehow contribute in the future if "new infrastructure [is] required to finally remedy this new threat," AGL Br. 17. The point is that Illinois is *already* taking the steps within its legal authority to combat the carp's migration, and Michigan does not allege that Illinois has the legal capacity (much less the legal duty) to do more than it is already doing and has pledged to do. Like any federal lawsuit, an original action must allege a justiciable controversy, see, *e.g.*, *Massachusetts v. Mellon*, 262 U.S. 447, 480 (1923) (The Constitution does not "confer [original] jurisdiction upon the court merely because a state is a party, but only where it is a party to a proceeding of judicial cognizance. Proceedings not of a justiciable character are outside the contemplation of the constitutional grant."), and Michigan raises no justiciable claim against Illinois. See generally *Pennsylvania v. New Jersey*, 426 U.S. at 663 (original action must "furnish[ ] ground for judicial redress") (internal quotations omitted).

Michigan's complaint is thus on all fours with a string of decisions in which courts have recognized that the exercise of this Court's original jurisdiction is improper even if another State *is* named as a defendant, if what the plaintiff State actually seeks is relief from another party. See, *e.g.*, *Hood ex rel. Mississippi v. City of Memphis*, 570 F.3d 625, 631-632 (5th Cir. 2009), *cert. denied sub nom. Mississippi v. City of Memphis*, 130 S. Ct. 1319 (2010); *Alabama v.*

United States Army Corps of Eng's, 424 F.3d 1117, 1130 (11th Cir. 2005); *South Dakota v. Ubbelohde*, 330 F.3d 1014, 1025-1026 (8th Cir. 2003). Those decisions recognize that § 1251(a) requires one State to seek actual relief from another, not merely to have an interest adverse to the other's. See *Mississippi v. Louisiana*, 506 U.S. at 78 n.2. In *Ubbelohde*, for example, South Dakota and Nebraska disputed whether the Corps should release water from a South Dakota reservoir to maintain the navigability of a river in Nebraska. See 330 F.3d at 1021-1022. Notwithstanding that, unlike this case, there was a live dispute between two States, the court held that permitting Nebraska to intervene against South Dakota would not trigger the Supreme Court's exclusive, original jurisdiction, for it was the Corps whose actions were at issue—though adverse, the States were not asking for relief directly of each other. See *id.* at 1026. Likewise, the relief Michigan seeks here is not from Illinois, and Michigan's claim to this Court's exclusive, original jurisdiction fails on that ground.

B. Michigan May Seek Relief Elsewhere.

Michigan's motion also fails on a separate, independent ground, for Michigan may pursue its relief in another forum. See *Mississippi v. Louisiana*, 506 U.S. at 77; *United States v. Nevada*, 412 U.S. 534, 538 (1973) (*per curiam*). The District does not enjoy Eleventh Amendment or sovereign immunity from suit in a federal district or Illinois court. See *Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 47-51 (1994) (no Eleventh Amendment immunity because entity is not arm of State); *Williams v. Med. Ctr. Comm'n*, 328 N.E.2d 1, 3-4 (Ill. 1975) (Illinois sovereign immunity

statute applies only to arms of State). And a federal district court has jurisdiction to consider a proper Administrative Procedure Act claim against the Corps. See 5 U.S.C. §§ 702, 704. Because the relief Michigan seeks must come from the Corps or the District, alternate forums exist to adjudicate those claims, and this Court should decline to exercise its original jurisdiction on that basis, too. See *California v. Nevada*, 447 U.S. 125, 133 (1980).

* * *

In short, the Court should reject Michigan's request to exercise original jurisdiction over this suit as a new, original action for at least two, independent reasons: there is no ripe controversy between Michigan and Illinois, and even if there were, Michigan can obtain the relief it seeks in another forum.

C. Michigan Cannot Manufacture Mandatory Jurisdiction By Claiming That Illinois Is The Proper Defendant For Relief Against The District.

Perhaps recognizing that it seeks no cognizable relief from Illinois, Michigan contends that Illinois is a proper defendant insofar as it "is responsible for the activities of" the District. Br. in Supp. of Mot. to Reopen 9. But this argument fails for two reasons. First, it misapprehends the legal relationship between Illinois and the District. And second, it ignores the fact that—even if Illinois could control the District's day-to-day operation of the sluice gates (and it cannot)—Michigan can obtain that same relief, more directly, from the District itself.

1. Illinois Is Not The Proper Defendant For Relief Involving The Sluice Gates.

It would be absurd to claim that Illinois is a necessary party in every suit against the District simply because the latter was created by state law and effectuates an aspect of Illinois' water rights, especially where those rights are not at issue in the litigation. All Illinois municipalities are created by and operate pursuant to state statute. See 65 ILCS 5/1-5/11 (2008). The same goes for Illinois counties, see 55 ILCS 5/1-5/7 (2008), and corporations, see 805 ILCS 5/2.05-5/2.35 (2008). Yet no one would suggest that Illinois is the true defendant in suits against these entities, and in fact Illinois exerts no more operational control over the District than it does over the City of Chicago, for example.

For a political subdivision to be tantamount to the State itself, for purposes of original jurisdiction, the State must exercise substantial operational control over the body and consider it to be part of state government. See *Arkansas v. Texas*, 346 U.S. at 370-371 (state university was proxy for State itself because, *inter alia*, State owned all the school's property, school was governed by board appointed by Governor with senate consent, board was required to report all expenditures to legislature, State designated board a "public agency," state law described university as "an instrument of the state in the performance of a governmental work," and a suit against the university was considered a suit against the State). In sharp contrast to the state university in *Arkansas v. Texas*, the District's commissioners are independently elected, except in the extraordinary event of a vacancy filled temporarily by gubernatorial appointment, see 70

ILCS 2605/3, 2605/3.2 (2008), and Illinois law classifies the District as a separate "body corporate and politic," 70 ILCS 2605/3 (2008). And while the Governor or the Illinois legislature may inspect the District's expenditures, see 70 ILCS 2605/1 (2008), the District has the right to acquire and hold real estate in its own name, see 70 ILCS 2605/3, 2605/35 (2008), is financially self-sustaining and may levy taxes, issue bonds, and borrow money without state approval, see 70 ILCS 2605/5.3, 2605/9-2605/9.8, 2605/12-2605/15 (2008), and prepares its own budget and passes its own appropriations ordinances, see 70 ILCS 2605/5.7 (2008). Critically, moreover, it is the District, not the State, that is liable for any damages caused by District operations. See 70 ILCS 2605/19 (2008).

In short, the District operates independently of the State, and though it was created by Illinois law (like every Illinois county and municipality), it has an arm's length relationship with the State. To give the State authority to direct the District's operations (as Michigan suggests) would require a new statutory scheme, something that courts may not order state legislators to effect. See *Supreme Court of Virginia v. Consumers Union*, 446 U.S. 719, 732-734 (1980). Accordingly, Michigan may not manufacture mandatory original jurisdiction by naming Illinois as a defendant for relief against the District.

Michigan and *amici* attempt to avoid this obvious conclusion using two decisions, which, they contend, establish that Illinois is a proper defendant in any suit seeking relief from the District. See, *e.g.*, Br. in Supp. of Mot. To Reopen 33-35; AGL Br. 12-16. But their reliance on *Missouri v. Illinois*, 180 U.S. 208 (1901), and *Wisconsin v. Illinois*, 289 U.S. 395 (1933), is

misplaced. At the outset, these cases address Illinois' right to divert water from Lake Michigan, a right Michigan expressly declines to challenge here. And this Court has distinguished between a State's significant interest in water itself and mere "intramural disputes" related to the water in some other way. See *New Jersey v. New York*, 345 U.S. 369, 373 (1953) (*per curiam*); *South Carolina v. North Carolina*, 130 S. Ct. at 873 (Roberts, *C.J.*, concurring in part and dissenting in part). Thus, in *Missouri v. Illinois* and *Wisconsin v. Illinois*, the Court held that Illinois was a proper defendant even though the District—not Illinois—actually diverts the water. But here, diversion is not at issue.

Nor does Illinois play an essential role in obtaining relief from the District, as it did in *Missouri v. Illinois* and *Wisconsin v. Illinois*. In the former, which addressed Missouri's efforts to enjoin the District from discharging sewage into the Mississippi system, Missouri noted that under Illinois law the District could have initiated such discharges only with "the permit and authority of the governor of Illinois and of the state of Illinois." 180 U.S. at 215; see also *id.* at 210-211. Thus, the District's "operations [we]re wholly within the control of the state." *Id.* at 242. Likewise, in *Wisconsin v. Illinois* the District was "powerless" to afford the requested relief without Illinois' participation. 289 U.S. at 399. In that action to enforce the 1930 Decree (which required defendants to construct waste treatment facilities, see *supra* pp. 4-5), the Court found that because of "the unmarketability of [the District's] bonds and its inability to obtain the needed moneys through levy of taxes or assessments," Illinois alone among the defendants could raise funds

for the facilities, which themselves were essential "to carry out the decree of this court," 289 U.S. at 399; see also AGL Br. 13-14 (conceding that, in *Wisconsin v. Illinois*, "the District was unable to carry out the acts necessary to end the diversion from Lake Michigan, necessitating the Court to order the State itself to take the required steps"). In both cases, therefore, Illinois was inextricably intertwined with the District with regard to the requested relief. In contrast, the District here is fully capable, without making Illinois a party, of providing the requested relief regarding the sluice gates.

2. Even If Illinois Could Control The District, Michigan May Obtain The Same Relief Without Pursuing An Original Action In This Court.

Thus, even if Illinois could be ordered to direct the District to operate the sluice gates in a particular manner, that would not be the only (and certainly not the most efficient) method to achieve that end. Nor is the establishment of the District as an independent legal entity an effort to immunize the State from litigation, as one *amicus* suggests. See MSC Br. 9. If it is injunctive relief that Michigan seeks—and not merely the opportunity to litigate this matter on a national stage in the Supreme Court—then the fact that the District is an independent legal entity is to Michigan's advantage. Without Eleventh Amendment or sovereign immunity, see Ill. Resp. to PI Mot. 34, the District is subject to suit elsewhere, without the extraordinary act of proceeding directly in the Supreme Court. In short, even if Illinois could exercise control over the District's sluice gates, the fact that Michigan

can obtain the same relief elsewhere is alone fatal to Michigan's motion.

CONCLUSION

For the foregoing reasons, the State of Illinois respectfully requests that the Court deny Michigan's motion to reopen and alternative request for leave to file a new complaint.

Respectfully submitted.

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March 2010