

No. 114 Original

Supreme Court, U.S.

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**In the
Supreme Court of the United States**

October Term, 1988

STATE OF LOUISIANA,

Plaintiff,

v.

STATE OF MISSISSIPPI, ET AL.,

Defendants.

**PETITION FOR REHEARING BY THE STATE OF
LOUISIANA OF ITS MOTION TO FILE
COMPLAINT; AND ALTERNATIVE MOTION TO
FILE SEPARATE COMPLAINT AND
BRIEF IN SUPPORT**

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STATE OF LOUISIANA,

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STATE OF MISSISSIPPI, ET AL.,

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**PETITION FOR REHEARING BY THE STATE OF
LOUISIANA OF ITS MOTION FOR LEAVE TO
FILE COMPLAINT; AND ALTERNATIVE
MOTION TO FILE SEPARATE COMPLAINT**

Pursuant to Supreme Court Rule 51, the State of Louisiana respectfully prays for a rehearing of its Motion For Leave To File Complaint in this matter, decided adversely on December 12, 1988, for the following reasons:

1.

The Supreme Court has historically exercised its exclusive original jurisdiction in boundary disputes of this type between sovereign states where there are significant legal issues.

Although admittedly not the largest land suit in the history of this Court, this is a case involving substantial property interests, considering the great value of the lands and waterbottoms which are at issue for naviga-

tional, hunting, fishing, timber and recreational purposes, as well as the potential for the production of oil, gas and other minerals.

2.

The property rights, the sovereign rights and the location of the boundary between the States of Louisiana and Mississippi, all important legal issues, are involved in the litigation which commenced this controversy in the United States District Court, and said Court is not the proper forum to make such determinations in matters between states. Parenthetically, a judgment by the District Court in this matter would not necessarily bind all parties at issue, particularly as concerns the boundary question and the validity of the original United States patent. The decision of the Supreme Court of the United States in this matter will be conclusively binding on all private parties, as well as the states, and it alone has the power to fix and determine the boundary lines herein described.

3.

A proper determination of the river boundary also involves an interpretation of the Acts of Congress setting forth the boundaries, as well as the Equal Footing Doctrine applicable to the states of the United States.

4.

The determination of the river boundary also involves an interpretation of the Treaty of Peace concluded between the United States and Great Britain, September 3, 1783, 8 Stat. 80, which can only be made pursuant to the Constitution of the United States and federal law. While it is possible for a district court to make such a determination, it is more within the province of the Su-

preme Court of the United States to determine the meaning and application of treaties as they affect two or more states.

THEREFORE, the State of Louisiana urges that a rehearing of its Motion To File Complaint should be granted before final disposition of this case. Alternatively, the State of Louisiana seeks authority herein to file a separate and independent complaint commencing a new original action solely against the State of Mississippi in order to have this Court hear and determine the issues between the two sovereign states.

In support of this Petition For Rehearing and alternative motion for a new original action, Louisiana makes a part hereof its Motion To File Complaint, Complaint And Application For Stay Order, And Brief In Support Of Motion, Complaint And Application For Stay Order, together with Appendix.

Respectfully submitted,

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**BRIEF OF THE STATE OF LOUISIANA IN
SUPPORT OF ITS PETITION FOR REHEARING
AND ALTERNATIVE MOTION TO FILE
SEPARATE COMPLAINT
PRELIMINARY STATEMENT**

In its order of December 12, 1988, the Court denied Louisiana's Motion For Leave To File A Bill Of Complaint.

It would appear from a review of the origin of this controversy that Louisiana's Intervention in the United States District Court suit, in order to protect its property rights, sovereign rights and to establish the boundary between the States of Louisiana and Mississippi, is taken by this Court as an indication of the willingness of Louisiana to be bound by the decision of the District Court. However, that action was taken in an effort to afford time for the parties in the action below to resolve the dispute and to reach agreement on the true location of the boundary. The Intervention by Louisiana was not meant to suggest that the United States District Court was the best possible forum or that this Court should not exercise its exclusive original jurisdiction. Unfortunately, there has been no agreement on the controlling legal principles, and, hence, no resolution of the dispute.

ARGUMENT

I.

**THE COMPLAINT REFLECTS A JUSTICIABLE
CASE AND CONTROVERSY OVER WHICH THIS
COURT HAS ORIGINAL AND EXCLUSIVE
JURISDICTION**

While it is understood that this Court often declines to exercise original jurisdiction when a case presents fac-

tual rather than significant legal questions, it is submitted that the real questions in dispute as between the State of Louisiana and the State of Mississippi are: (1) the true location of the boundary between the states; and, (2) the validity of the United States patent. The first issue is dependent upon a legal determination of the location of the live thalweg of the Mississippi River, both now and at the time of the admission of the states into the Union, as well as at the time when the United States patented Island No. 94 in the Mississippi River to a Mississippi domiciliary. Subsequently, the patent was recorded in Deed Books in Issaquena County, Mississippi, on the false presumption that the island was located in the State of Mississippi at that time. On this second issue, Louisiana would show that the United States patent issued on December 29, 1888 to the lands in question was erroneous and contrary to the law of the United States.

It would also appear that while original actions such as this are relatively few and constitute only a small portion of this Court's total business, there is nonetheless a momentum on the part of the Court to decline to exercise original jurisdiction because of the massive press of other litigation before the Court. It is submitted that this case will not take much of the Court's time, and that Louisiana's complaint against Mississippi is clearly within the exclusive original jurisdiction of the Court and the very kind of dispute that this Court has accepted and adjudicated under its original jurisdiction on many prior occasions. The case is proper for adjudication under the Court's exclusive jurisdiction over controversies between states, and should not be adjudicated by the District Court.

While this Court has stated that its original jurisdiction should be “invoked sparingly,” *Utah v. United States*, 394 U.S. 89, 95, 22 L Ed 2d 99, 89 S Ct 761 (1969) (per curiam), and when “justified only by the strictest necessity,” *Ohio v. Wyandotte Chemicals Corp.*, 401 U.S. 493, 505, 28 L Ed 2d 256, 91 S Ct 1005 (1971), it has also taken jurisdiction where exclusive jurisdiction was appropriate, as in *Maryland v. Louisiana*, 451 U.S. 725, 739, 68 L Ed 2d 576, 101 S Ct 2114 (1981); and *California v. Texas*, 457 U.S. 164, 168, 72 L Ed 2d 755, 102 S Ct 2335 (1982) (per curiam).

It is submitted that the instant case is one of sufficient “seriousness and dignity,” wherein the Court should consider that it “sufficiently implicates the unique concerns of federalism” which form the basis of its original jurisdiction. *Maryland v. Louisiana*, *supra*, at 743.

While it might be argued that the factual underpinnings of this case would involve serious and extensive fact finding and, thus, unreasonably consume the time of the Court in considering the matter, a Special Master may easily be appointed, as the Court has done on many prior occasions, particularly those cases involving boundaries, tidelands issues, taxation matters and the like.

As to whether Louisiana should be required to try its case in a court in the state of the adversary party, this Court stated in *Ohio v. Wyandotte Chemical Corp.*, *supra*, at 500:

[N]o State should be compelled to resort to the tribunals of other States for redress, since parochial factors might often lead to the appearance, if not reality, of partiality to one's own.

A trial of the case in Jackson, Mississippi, would no doubt give at least the appearance of partiality to some, which a case of this type does not justly deserve.

II.

THE STATES ARE THE REAL PARTIES AT INTEREST

While all of the parties whose presence is indispensable, necessary or proper for the determination of this case between the states are properly involved, the states are the real parties at interest as concerns the location of their common boundary and the ownership of the water-bottoms which adjoin it. They are not merely representing the interests of their citizens, who have related interests which can be determined at the same time.

A correct delineation of the boundary will allow application of the laws of Louisiana, which provide that the State of Louisiana owns the bed of the Mississippi River to the boundary line between the states; and of the laws of Mississippi, which hold that the riparian owner owns the bed of the Mississippi to the boundary line between the states.

While the private parties will ultimately benefit by such a determination, this would not detract from the invoking of this Court's original jurisdiction on the grounds that the states are the real parties at interest. *Arkansas v. Texas*, 346 U.S. 368, 98 L Ed 80, 74 S Ct 109 (1953). Again, it is submitted that this Court should determine that there exist sound reasons of policy for the exercise of its original jurisdiction, rather than remitting the parties to another available tribunal, the District Court.

III.

**IT IS ESSENTIAL THAT THE SUPREME COURT
ASSERT ITS JURISDICTION, AND SUCH IS IN
THE INTEREST OF JUDICIAL ECONOMY**

While it is possible for the District Court to reach some type of decision affording relief to some of the parties involved, a judgment by the District Court that Island No. 94 is in Louisiana would not bind Mississippi, nor necessarily the numerous private parties involved. Such a judgment would not necessarily deter dual assessment and taxation by the taxing bodies of the two states, nor dissuade both Mississippi and Louisiana claimants from asserting acts of ownership and possession.

A district court decision will, however wise, lead inevitably to an appeal of the case and, thence, certainly to this Court for final resort. Consequently, the time of the appellate court will also be consumed and, ultimately, the time of this Court as well.

It can hardly be imagined that the Supreme Court will not take jurisdiction in a case of this magnitude since it has, as a matter of record, already recognized the essential need for hearing matters of similar kind, while not taking jurisdiction of every possible case. See *State of Louisiana v. State of Texas*, 176 U.S. 1, 16, 44, 44 L Ed 347, 353, 20 S Ct 251 (1899); *Texas v. Louisiana*, 426 U.S. 465, 48 L Ed 2d 775, 96 S Ct 2155 (1976); *Commonwealth of Massachusetts v. State of Missouri*, 308 U.S. 1, 19-20, 84 L Ed 3, 60 S Ct 39 (1939); and *Oklahoma v. Texas*, 258 U.S. 574, 66 L Ed 771, 42 S Ct 406 (1922). Of course, this Court has entertained jurisdiction in river boundary controversies on numerous occasions between Louisiana and

Mississippi, as cited in Louisiana's Original Motion To File Complaint and Brief In Support, page 16.

CONCLUSION

It is submitted that this Petition For Rehearing should be granted and that this Court should take jurisdiction of this important case, not leaving it for action by the United States District Court in Jackson, Mississippi, where the sovereign State of Louisiana will thereby be forced to present its evidence and witnesses in a forum in another state. The complaint which Louisiana has filed presents questions of law which should be determined solely by this Court under the principles of international law, federal law, and pursuant to its exclusive original jurisdiction.

Therefore, in conformity with the high purpose of the powers conferred on this Court by Section 2, Clause 2, Article 3 of the Constitution and the traditional role of this Court as sole arbiter of such disputes which, but for the federal system, would be the subject of diplomatic adjustment between the states, this Court should exercise its authority to hear and determine the questions, which are of paramount interest to the states.

Alternatively, the State of Louisiana seeks authority herein to file a separate and independent complaint solely against the State of Mississippi in order to have this Court hear and determine the issues between the two sovereign states, without regard to the case below in the United States District Court in Jackson, Mississippi. In support of this Petition For Rehearing and alternative motion for a new original action, Louisiana makes a part

hereof its Motion To File Complaint, Complaint and Application For Stay Order, And Brief In Support Of Motion, Complaint And Application For Stay Order, together with Appendix.

Respectfully submitted,

WILLIAM J. GUSTE, JR.

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CERTIFICATE

I, Gary L. Keyser, Assistant Attorney General for the State of Louisiana, petitioner herein, and a member of the Bar of the Supreme Court of the United States, certify that the foregoing Petition For Rehearing is filed in good faith and not for delay.

Dated: _____ day of February, 1989.

GARY L. KEYSER
Assistant Attorney General
State of Louisiana

CERTIFICATE OF SERVICE

The undersigned, counsel for the State of Louisiana, and a member of the Bar of the Supreme Court of the United States, hereby certifies that copies of the foregoing Petition For Rehearing by the State of Louisiana of its Motion to File Complaint; And Alternative Motion to File Separate Complaint and Brief in Support have been served by depositing same in the United States mail with postage prepaid, addressed to:

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