

Supreme Court, U.S.

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JOSEPH F. SPANIOL, JR.
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No. 104, Original

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

STATE OF NEW JERSEY,

Plaintiff,

v.

STATE OF NEVADA,
THE NEVADA PUBLIC SERVICE COMMISSION,
and THE CITY OF LAS VEGAS, NEVADA,

Defendants.

ANSWER OF STATE OF NEVADA

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and THE CITY OF LAS VEGAS, NEVADA,

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ANSWER OF STATE OF NEVADA

COMES NOW, the defendant,
STATE OF NEVADA, by and through its
attorneys, Brian McKay, Attorney General
of Nevada, and William E. Isaef, Chief
Deputy Attorney General of Nevada, and
for answer for itself only to the

plaintiff's complaint on file herein admits, denies, and alleges as follows:

JURISDICTION

I.

Answering Paragraph I of the plaintiff's complaint, defendant admits each and every allegation contained therein, save and except the allegation that the State of New Jersey has suffered a wrong through the actions of the State of Nevada and a municipality of the State of Nevada.

PARTIES

II.

Answering Paragraphs II through V of the plaintiff's complaint, defendant admits each and every allegation contained therein, save and except the allegation that New Jersey has applied for and received all permits

equired under Nevada law to dispose of
ontaminated soil at Beatty, Nevada.

SUMMARY OF CLAIMS

III.

Answering Paragraph VI of the
laintiff's complaint, defendant is of
he belief that said paragraph contains
o factual allegations against the State
f Nevada and therefore no response is
equired nor is one offered, but in the
vent said paragraph VI is construed by
his Court to require a response there-
o, defendant denies each and every
llegation construed to be contained
herein.

IV.

Answering Paragraph VII of the
laintiff's complaint, defendant admits
ach and every allegation contained
herein.

V.

Answering Paragraph VIII of the plaintiff's complaint, defendant admits each and every allegation contained therein, save and except the allegation that under federal law low-level radioactive waste, such as that being excavated by New Jersey, may only be removed to and disposed of at one of three sites in the United States: Barnwell, South Carolina, Beatty, Nevada and Richland, Washington. As to that allegation, the same is denied.

VI.

Answering Paragraph IX of plaintiff's complaint, defendant admits each and every allegation contained therein.

VII.

Answering Paragraph X of plaintiff's complaint, defendant admits

each and every allegation contained therein, save and except the allegation that the Nevada State Board of Health issued an unconditional permit to New Jersey on May 1, 1985 to dispose of the contaminated soil at the Beatty site and those further allegations contained in said Paragraph X that Nevada officials have prevented the actual shipment of the contaminated soil by a recent assertion that New Jersey has not obtained an additional approval, which they characterized as an "authorization to transport." As to those allegations, the same are denied. Defendant also denies those allegations in Paragraph X that Nevada officials have publicly stated that Nevada will refuse to issue this newly required authorization to New Jersey, but at the same time have not identified any provisions of Nevada or

federal law with which New Jersey has not complied.

VIII.

Answering Paragraph XI of the plaintiff's complaint, defendant admits each and every allegation contained therein, save and except that allegation that the meeting of the Nevada Public Service Commission was "on short notice," and defendant alleges that said meeting was held in full conformity with the notice provisions of the Nevada Open Meeting Law. Nev. Rev. Stat. §§ 241.010 - 241.040.

IX.

Defendant is of the belief that Paragraph XII of the plaintiff's complaint contains no factual allegations against defendant and therefore no response is required nor is one offered, but in the event said paragraph

is construed by this Court as containing such allegations, the same are denied.

X.

Answering Paragraphs XIII and XIV of the plaintiff's complaint, defendant denies each and every allegation contained therein.

THE CONTAMINATED SOIL

XI.

Answering Paragraphs XV, XVI, XVII and XVIII of the plaintiff's complaint, defendant admits each and every allegation contained therein.

HISTORY OF NEW JERSEY'S CLEANUP
EFFORTS FOR THE CONTAMINATED
SOIL IN NORTHEAST NEW JERSEY

XII.

Answering Paragraphs XIX, XX and XXI of the plaintiff's complaint, defendant admits each and every allegation contained therein.

XIII.

Answering Paragraph XXII of the plaintiff's complaint, defendant admits each and every allegation contained therein, save and except those allegations which state or imply that acts by the State of Nevada have frustrated the cleanup efforts of the State of New Jersey or that any acts by the State of Nevada constitute belated opposition to the shipment of the soil.

XIV.

Answering Paragraph XXIII of the plaintiff's complaint, defendant admits each and every allegation contained therein.

XV.

Answering Paragraph XXIV of the plaintiff's complaint, defendant admits there are only three sites licensed in the United States for the

permanent disposal of low-level radioactive waste. Defendant denies the radioactive waste excavated by New Jersey must be removed only to one of these three sites. Defendant denies the Low-Level Radioactive Waste Policy Act currently has any application to the instant action.

XVI.

Answering Paragraph XXV of the plaintiff's complaint, defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore, on said ground, such allegations are denied.

THE NEVADA STATUTES, REGULATIONS
AND PSC ORDER AND THE LAS VEGAS
ORDINANCE

XVII.

Answering Paragraphs XXVI, XXVII, XXVIII, XXIX and XXX of the

plaintiff's complaint, defendant admits each and every allegation contained therein.

NEW JERSEY'S COMPLIANCE
WITH NEVADA LAW

XVIII.

Answering Paragraphs XXXI, XXXII, XXXIII, XXXIV, XXXV and XXXVI of the plaintiff's complaint, defendant admits each and every allegation contained therein.

XIX.

Answering Paragraph XXXVII of the plaintiff's complaint, defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore, on said ground, such allegations are denied. Defendant alleges that any decision to halt the cleanup project is due to voluntary acts and decisions of officials of the State

of New Jersey and its employees and agents.

XX.

Answering Paragraph XXXVIII of the plaintiff's complaint, defendant admits those allegations relating to the occurrence of a communication on August 22, 1985 between a representative of the State of New Jersey and Jerry Griepentrog, Director of the Nevada Department of Human Resources. Defendant denies each and every other allegation contained in Paragraph XXXVIII of the plaintiff's complaint.

XXI.

Answering Paragraph XXXIX of the plaintiff's complaint, defendant admits that Exhibits 11, 14 and 15 referenced in said paragraph are true and correct copies of the originals, and defendant alleges that the contents of

said documents speak for themselves. To the extent that Paragraph XXXIX contains allegations which are not based upon direct quotations attributed to Governor Richard Bryan or other Nevada officials, but are based only upon characterizations by news reporters, said allegations are denied.

THE LAS VEGAS CASE

XXII.

Defendant is of the belief that Paragraph XL of the plaintiff's complaint contains no factual allegations against defendant and therefore no response is required nor is one offered, but in the event said paragraph is construed by this Court to require a response by defendant, the allegations

of said paragraph are denied.

NEW JERSEY'S PENDING CASE
AGAINST NEVADA AND LAS VEGAS

XXIII.

Answering Paragraphs XLI and XLII of the plaintiff's complaint, defendant admits each and every allegation contained therein, save and except that allegation in Paragraph XLI that it was not proper for Nevada to consider the independent safety report obtained by the Union Pacific Railroad. As to that allegation, the same is denied.

EFFECT OF NEVADA'S NEW
REQUIREMENTS AND THE
LAS VEGAS ORDINANCE

XXIV.

Answering Paragraph XLIII of the plaintiff's complaint, defendant denies each and every allegation contained therein, save and except that allegation that there exists an actual controversy of a justiciable nature between the parties.

FIRST CLAIM FOR RELIEF

PREEMPTION: THE HAZARDOUS MATERIALS
TRANSPORTATION ACT

XXV.

Answering Paragraphs XLIV and XLV of the plaintiff's complaint, defendant admits each and every allegation contained therein.

XXVI.

Answering Paragraph XLVI of the plaintiff's complaint, defendant denies each and every allegation

contained therein, save and except that the statutory quotation from 49 U.S.C. § 1811 is admitted.

XXVII.

Answering Paragraph XLVII of the plaintiff's complaint, defendant admits each and every allegation contained therein.

XXVIII.

Answering Paragraph XLVIII of the plaintiff's complaint, defendant denies that the requirements of the State of Nevada unreasonably burden commerce in direct contravention of 49 U.S.C. § 1811(b)(2). Defendant admits the remaining allegations contained in said Paragraph XLVIII, but alleges that the requirements of the State of Nevada are not inconsistent or in conflict with any federal statute or regulation and

therefore no request for a determination of nonpreemption is required.

XXIX.

Answering Paragraph XLIX of the plaintiff's complaint, defendant admits each and every allegation contained therein.

XXX.

Answering Paragraph L of the plaintiff's complaint, defendant admits that Nevada now requires New Jersey's rail carrier obtain a transportation permit from the Public Service Commission under a duly enacted and lawful order of that commission and, upon information and belief, defendant admits the City of Las Vegas is also requiring a permit be obtained before shipments may begin. Defendant denies each and every other allegation contained in said Paragraph L.

XXXI.

Answering Paragraph LI of the plaintiff's complaint, defendant denies each and every allegation contained therein.

SECOND CLAIM FOR RELIEFPREEMPTION: THE LOW-LEVEL
RADIOACTIVE WASTE POLICY ACT

XXXII.

Answering Paragraphs LII and LIII of the plaintiff's complaint, defendant admits each and every allegation contained therein, but alleges that the Low-Level Radioactive Waste Policy Act, 42 U.S.C. § 2021b-d, has no current application to any facts in this case.

XXXIII.

Answering Paragraph LIV of the plaintiff's complaint, defendant denies each and every allegation contained therein.

THIRD CLAIM FOR RELIEFUNREASONABLE INTERFERENCE
WITH INTERSTATE COMMERCE

XXXIV.

Answering Paragraph LV of the plaintiff's complaint, defendant admits the quoted portions of article I, section 8 of the United States Constitution, and of 49 U.S.C. § 1811(a). Defendant denies each and every other allegation in said paragraph.

XXXV.

Answering Paragraphs LVI and LVII of the plaintiff's complaint, defendant denies each and every allegation contained therein.

FIRST AFFIRMATIVE DEFENSE

Plaintiff has failed to state a cause of action upon which relief can be obtained against defendant STATE OF NEVADA.

SECOND AFFIRMATIVE DEFENSE

Defendant's regulatory scheme and all action thereunder is in full compliance with all relevant provisions of the Constitution of the United States and federal and state laws and regulations relative to the issuance of a permit to dispose of low-level radioactive waste at the Beatty, Nevada repository.

THIRD AFFIRMATIVE DEFENSE

The Atomic Energy Act does not prohibit the challenged regulatory scheme in that its provisions do not have any application to the disposal of radium or radium-contaminated materials.

FOURTH AFFIRMATIVE DEFENSE

The Low-Level Radioactive Waste Policy Act does not preempt the challenged regulatory scheme in that such act is merely enabling legislation

encouraging the establishment of regional disposal facilities pursuant to state compacts. Further, Nevada's regulatory scheme does not seek to prevent the shipment of low-level radioactive waste to the Beatty, Nevada repository.

FIFTH AFFIRMATIVE DEFENSE

The challenged regulatory scheme is not preempted by the Hazardous Materials Transportation Act because it is not in conflict with the provisions of the HMTA nor any regulations issued thereunder, nor does such regulatory scheme obstruct the accomplishment of the objectives of Congress in enacting the HMTA.

SIXTH AFFIRMATIVE DEFENSE

The challenged regulatory scheme does not unduly burden or discriminate against interstate commerce,

nor does it erect an unlawful barrier to the free flow of interstate commerce.

SEVENTH AFFIRMATIVE DEFENSE

To date, the State of New Jersey has not complied with all the requirements of Nev. Admin. Code § 459.870, to-wit, subsection 6 thereof requiring compliance with all state regulations applicable to the proposed transportation and packaging of radioactive waste for permanent disposal at the Beatty, Nevada repository.

EIGHTH AFFIRMATIVE DEFENSE

Since temporary storage in New Jersey of the contaminated soil for substantial periods of time, which could even be years, is not precluded by federal law, there has been no frustration by Nevada of New Jersey's cleanup efforts and any cessation of the cleanup efforts has been, and continues

to be, a voluntary decision by the State of New Jersey.

WHEREFORE, defendant, the State of Nevada, prays as follows:

1. That this court declare the entire regulatory scheme of the State of Nevada challenged by New Jersey is constitutional, consistent with any applicable federal laws and regulations and fully enforceable.

2. That this Court deny the injunction requested by New Jersey.

3. That the Court grant to the State of Nevada such other and further relief as the Court may deem just and proper, including costs and

ttorney fees as appropriate.

ATED: December 19, 1985.

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