

In the  
Supreme Court of the United States

October Term, 1957-1958

No. 11  
12, ORIGINAL

COMMONWEALTH OF VIRGINIA

*Complainant*

v.

STATE OF MARYLAND

*Defendant*

MOTION FOR TEMPORARY RESTRAINING ORDER  
AND AFFIDAVIT

J. LINDSAY ALMOND, JR.  
*Attorney General of Virginia*

✓ KENNETH C. PATTY  
*Asst. Atty. General of Virginia*

C. F. HICKS  
*Asst. Atty. General of Virginia*

MCC. G. FINNIGAN  
*Of Counsel*



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**MOTION FOR TEMPORARY RESTRAINING ORDER**

*To the Honorable Earl F. Warren, Chief Justice and Justice  
for the Fourth Judicial Circuit:*

Now comes the Complainant in the above entitled matter and respectfully moves the Court and the single Justice to whom this motion is presented that a temporary restraining order be issued to restrain the State of Maryland, its officers, agents and employees from enforcing Chapter 770 of the Acts of Assembly of Maryland of 1957, and from enforcing any other acts or statutes of the State of Maryland concerning or regulating fishing, oystering and crabbing on and in the Potomac River which have not been concurred in by the Commonwealth of Virginia until the motion now on file with this Honorable Court for leave to file a Bill of Complaint against the State of Maryland has been passed upon by this Honorable Court and the matters set forth in the Bill of

Complaint determined. In the alternative, Complainant prays for such additional decree or orders as may be just and proper to preserve the status quo of the rights of the Commonwealth of Virginia and its citizens to fish, oyster, crab and enjoy other beneficial property rights in and on the Potomac River as they existed unimpaired by the State of Maryland prior to June 1, 1957, until such time as this Honorable Court can pass upon the Motion for leave to file the Bill of Complaint and, should such Motion be granted, until such time as the controversies set forth in said Bill of Complaint are decided and the rights of the parties adjudicated. This motion is based upon the verified Bill of Complaint attached to the Motion for Leave to File said Bill and the affidavit hereto attached of Charles M. Lankford, Jr., Commissioner of Fisheries of the Commonwealth of Virginia.

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J. LINDSAY ALMOND, JR.

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C. F. HICKS

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McC. G. FINNIGAN

*Attorneys for Complainant*

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\_\_\_\_\_  
AFFIDAVIT

Commonwealth of Virginia  
City of Richmond: to-wit:

Charles M. Lankford, Jr., being first duly sworn, doth depose and say that he is the Commissioner of Fisheries of the Commonwealth of Virginia and as such is charged with the duty to faithfully, impartially and efficiently enforce all of the laws of the Commonwealth of Virginia relative to the fish and shellfish industry in the tidewaters of the Commonwealth, or under the jurisdiction of Virginia or under the joint jurisdiction of the Commonwealth and the State of Maryland and to see that all laws relating to fish and shellfish are enforced and observed.

That there are approximately eight hundred (800) Virginia fishermen and five hundred fifty-four (554) Virginia

boats operating on the Potomac River. Of the total of 800 fishermen, four hundred fifty-nine (459) fishermen fish primarily for finfish, one hundred eighty (180) for crabs and one hundred sixty-one (161) for oysters. Of the total of four hundred and fifty-nine (459) boats, two hundred fifty-four (254) engage primarily in fishing for finfish, one hundred eighty (180) in crabbing, and one hundred twenty (120) in oystering.

That the year 1950 is the latest year for which there are reasonably accurate figures available for the quantity and value of finfish, oysters and crabs taken by Virginia fishermen from the Potomac River. In 1950 Virginia fishermen caught approximately twenty-five million, six hundred eighty-five thousand (25,685,000) pounds of finfish in the Potomac River, worth approximately one million, two hundred forty thousand dollars (\$1,240,000). In that year Virginia fishermen tonged approximately one million four hundred twenty-six thousand (1,426,000) pounds of oysters in the Potomac River — worth approximately five hundred thirteen thousand four hundred sixty dollars (\$513,460.00). In 1950 Virginia fishermen caught approximately eight million one hundred and fifty-one thousand (8,151,000) pounds of crab in the Potomac River — worth three hundred and sixty-two thousand dollars (\$362,000). The poundage of finfish, oysters, and crabs taken by Virginia fishermen in the Potomac River in the seven years since 1950 has only slightly increased; however, the value of the fish, oysters and crabs taken has increased to a much greater degree.

That in the license year ending June 30, 1957, the Commonwealth of Virginia issued two hundred sixteen crab pot licenses for the Potomac River, each license covering at least fifty crab pots and in some instances many more; therefore, over ten thousand (10,000) crab pots belonging to

Virginia fishermen were utilized in the Potomac River during the preceding license year.

That the Commission of Fisheries of the Commonwealth of Virginia maintains at least two patrol boats, with five enforcement officers, on the Potomac River at all times. During the oyster season Virginia maintains at least four, and frequently more, patrol boats, with ten enforcement officers, on the Potomac River. During the past four years these Virginia enforcement officers have arrested or had warrants issued for one hundred (100) residents of Virginia for violations of the concurrent laws regulating the taking of fish, oysters and crabs in the Potomac River.

That the Commonwealth of Virginia since the year 1952 has kept patrol boats and crafts, the value of which is over sixty thousand dollars (\$60,000.) on the Potomac River. That each year the Commonwealth of Virginia, from its public treasury, expends a sum in excess of sixty thousand dollars (\$60,000) for the maintenance of these patrol boats and law enforcement officers on the Potomac River.

That the annual oyster season on and in the Potomac River commences on the fifteenth day of September, 1957, and that to permit the State of Maryland to enforce or attempt to enforce Chapter 770 of the Acts of Assembly of Maryland of 1957 would result in untold hardship on approximately two hundred citizens of Virginia who annually engage in tonging for oysters in the Potomac River as a means of livelihood. Moreover that the enforcement of said enactment of the State of Maryland would interfere with and prohibit officials of the Commonwealth of Virginia from carrying out the duties imposed upon them to enforce the concurrent laws relating to the fish and shellfish industry on the Potomac River so as to preserve and protect the rights and interests of the citizens of both Virginia and Maryland

in the Potomac River as secured for them by the Compact of 1785 between the states in question.

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 CHARLES M. LANKFORD, JR.  
*Commissioner of Fisheries*

Taken, sworn to and subscribed before me this ..... day of September, 1957, in the Commonwealth and city aforesaid.

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 NERHEA S. EVANS  
*Notary Public*

My commission expires July 19, 1959.

I, Theodore R. McKeldin, Governor of the State of Maryland, hereby acknowledge service of the foregoing Motion for Temporary Restraining Order and Affidavit which have been served on me this ..... day of September, 1957.

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*Governor, State of Maryland*

I, C. Ferdinand Sybert, Attorney General of the State of Maryland, hereby acknowledge service of the foregoing Motion for Temporary Restraining Order and Affidavit which have been served on me this ..... day of September, 1957.

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*Attorney General*  
*State of Maryland*





