

IN THE
Supreme Court of the United States

OCTOBER TERM, ~~1957~~ 1958

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No. ~~12~~, ORIGINAL

COMMONWEALTH OF VIRGINIA,
Complainant,
v.

STATE OF MARYLAND,
Defendant,

**ANSWER TO MOTION FOR TEMPORARY
RESTRAINING ORDER AND
AFFIDAVITS**

(2) C. FERDINAND SYBERT,
Attorney General of Maryland,
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Asst. Attorney General
of Maryland,
EDWARD S. DIGGES,
Spec. Asst. Attorney General
of Maryland,
Counsel for Defendant.

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COMMONWEALTH OF VIRGINIA,
Complainant,

v.

STATE OF MARYLAND,
Defendant,

**ANSWER TO MOTION FOR TEMPORARY
RESTRAINING ORDER**

*To the Honorable, The Chief Justice, and Associate Justices
of the Supreme Court of the United States:*

Now comes the State of Maryland, Defendant in the above entitled matter, and in response to the Motion for a Temporary Restraining Order of the Complainant, Commonwealth of Virginia, and pursuant to the directions of this Honorable Court, however expressly reserving the right to file a response to the motion for leave to file a Bill of Complaint as provided in Rule 9 of the Rules of the Supreme Court, respectfully shows:

1. That this Honorable Court is without the necessary power and authority to issue the Temporary Restraining Order requested by the Complainant to enjoin the State

of Maryland, its officers, agents and employees from enforcing Chapter 770 of the Laws of Maryland of 1957, in that the Constitution of the United States and the laws of the United States do not authorize or permit this Court to issue orders temporarily restraining the enforcement of a validly enacted State statute.

2. That the Motion for Temporary Restraining Order and the affidavit of Charles M. Lankford, Jr., Commissioner of Fisheries of the Commonwealth of Virginia, in support of the Motion for a Temporary Restraining Order, are based upon the allegation that Chapter 770 of the Laws of Maryland of 1957 would result in "hardship to approximately 200 citizens of Virginia who engage in tonging for oysters in the Potomac River as a means of livelihood".

It is well established by the decisions of this Honorable Court that this Court will not entertain a proceeding on original Jurisdiction by a state on behalf of its citizens or group of citizens and not in the interest of the state itself. (*Massachusetts v. Missouri*, 308 U. S. 1, 84 L. ed. 3; *Arkansas v. Texas*, 346 U. S. 368, 98 L. ed. 80, 74 S. Ct. 109.)

3. That the Motion for Temporary Restraining Order and the affidavit in support thereof fail to allege or set forth any facts showing immediate and irreparable injury, loss or damage to the Commonwealth of Virginia, nor are there any facts or allegations to show that an emergency exists, and therefore there is no basis in fact or in law for the granting of the Motion prayed.

4. That by virtue of the provisions of Chapter 770 of the Laws of Maryland of 1957 residents of the Commonwealth of Virginia are given equal privileges with citizens of Maryland for the use and enjoyment of the Potomac River for the taking of fish, oysters or crabs from the

waters thereof, and therefore no resident of the Commonwealth of Virginia has been deprived of the privilege of fishery in the Potomac River; in fact, the residents of the Commonwealth of Virginia have, since the effective date of said Act, enjoyed the privileges granted by Chapter 770 aforementioned, as will more fully appear in the affidavit of John P. Tawes, Chairman of the Tidewater Fisheries Commission of the State of Maryland, attached hereto.

5. That it is conceded by the Commonwealth of Virginia, by Paragraph VI of its Bill of Complaint, that the State of Maryland is the sole owner of the Potomac River to the low water mark of the south or Virginia shore thereof, and, incidental to the ownership thereof, the State of Maryland has title to the bed of the said Potomac River and also ownership of all fish, oysters and crabs therein; and that as owner of the natural resources of the Potomac River, the State of Maryland has not only the right but the duty to enact legislation to protect and conserve these natural resources (*Smith v. Maryland*, 18 How. 71, 15 L. ed. 269), and that Chapter 770 of the Laws of Maryland of 1957 was validly enacted in the exercise of that duty.

6. That in the event this Honorable Court should grant the Motion as prayed by the Commonwealth of Virginia there would be no law governing conservation in the Potomac River on the statute books of Maryland and there would result chaos and confusion in the enforcement of law and order on the Potomac River, and the State of Maryland would be prevented from exercising its right and duty to protect its natural resources; and that to grant the Temporary Restraining Order would be such a detriment to the State of Maryland and to the public that it would far outweigh any benefit to the limited number of citizens of Virginia for whom this Motion is made.

7. That the State of Maryland now and for many years has regulated all parts of the Potomac River above tide-water, without the concurrence of the Commonwealth of Virginia or the State of West Virginia, to the mutual advantage and enjoyment of the citizens of the Commonwealth of Virginia, the State of West Virginia and the State of Maryland, and no citizen of any sister state has been deprived of the privilege of fishery by the State of Maryland, as is more fully stated in the affidavit of Ernest A. Vaughn, Director of the Department of Game and Inland Fish of the State of Maryland, attached hereto.

WHEREFORE, it is respectfully prayed that the Motion requesting such harsh, extraordinary and unnecessary relief be denied.

C. FERDINAND SYBERT,
Attorney General of Maryland,

JOSEPH S. KAUFMAN,
Asst. Attorney General
of Maryland,

EDWARD S. DIGGES,
Spec. Asst. Attorney General
of Maryland,
Counsel for Defendant.

AFFIDAVIT OF JOHN P. TAWES

STATE OF MARYLAND, ANNE ARUNDEL COUNTY, TO WIT:

I HEREBY CERTIFY That on this 4th day of October, 1957, before me, the subscriber, a Notary Public of the State of Maryland, in and for Anne Arundel County, personally appeared John P. Tawes, who being first duly sworn, doth depose and say that he is the Chairman of the Commission of Tidewater Fisheries of the State of Maryland, and in such capacity is charged with the duty of faithfully and efficiently enforcing all laws of the State of Maryland relating to the conservation, propagation and development of the natural resources of the State of Maryland within the bounds of tidewater, more particularly, fish, crabs, terrapin, oysters, clams and other shell fish.

That in enforcing the laws of the State of Maryland on the Potomac River, the State of Maryland, acting through the Department of Tidewater fisheries, has sought to effectuate a uniform system of preservation and conservation of natural resources of the said river to the mutual benefit of the citizens of both Maryland and Virginia. That the citizens and law enforcement personnel of the Commonwealth of Virginia have intentionally disregarded, disobeyed and interfered with the enforcement of laws regulating the acquisition, preservation and conservation of the natural resources aforementioned in the Potomac River. For example, on the morning of December 8, 1956, at Colonial Beach, Virginia, a Virginia patrol boat named "Dawn II", manned by Virginia enforcement officers, fled the scene of a violation by three Virginia citizens when Maryland enforcement boats and officers were trying to apprehend them.

That in its attempt to faithfully discharge the duties incumbent upon it, the Department of Tidewater Fisheries has on numerous occasions prior hereto, to and including the year 1957, been forced to oppose violence from Virginia citizens who were violating the conservation laws, by the use of armed boats on the Potomac River. That the Commonwealth of Virginia in the past has clearly demonstrated its unwillingness and open refusal to cooperate in the enforcement of previously existing laws and to enact new laws for the effective enforcement of the conservation of the valuable natural resources of the Potomac River below tidewater. That Chapters 766 and 770 of the General Assembly of Maryland of 1957 were enacted for the purpose of establishing uniform enforcement of the conservation laws, and were not intended and have not and will not deprive the citizens of Virginia of the privilege of fishery for either fin or shell fish in the tidewater portion of the Potomac River.

In fact, since Chapter 770 became effective on June 1, 1957, the Department of Tidewater Fisheries has licensed 159 crab fishermen and 29 commercial fin fishermen of Virginia, and since September 18, 1957, the first day oyster tonging licenses have been issued, 27 Virginia citizens have applied for and received Maryland oyster tonging licenses; and from my observation these Virginia fishermen have worked under and have complied with the Maryland law. Since the enactment of Chapter 770 aforementioned, no arrests of Virginia fishermen have been made for non-compliance with this law. In the event that the State of Maryland is not allowed to uniformly regulate the laws relating to the Potomac River, there will be chaos and there would be no law governing conservation of natural resources on the Potomac River on the statute books of Maryland.

That the affiant has read the affidavit of Charles M. Lankford, Jr., Commissioner of Fisheries of the Commonwealth of Virginia, annexed to the Motion for Temporary Restraining Order, and in respect thereto states that the Commonwealth of Virginia has not at all times maintained at least two patrol boats with five enforcement officers on the Potomac River, nor has it during oyster season at all times maintained four patrol boats with ten enforcement officers on the Potomac River.

AS WITNESS my hand and notarial seal the day and year last above written.

DOROTHY WELLS EATON,
Notary Public.

JOHN P. TAWES,
Affiant.

AFFIDAVIT OF ERNEST A. VAUGHN

STATE OF MARYLAND, BALTIMORE CITY, TO WIT:

I HEREBY CERTIFY That on this 4th day of October, 1957, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore County, personally appeared Ernest A. Vaughn, who being first duly sworn, doth depose and say that he is the Director of the Game and Inland Fish Commission of Maryland and in such capacity is charged with the duty of faithfully and efficiently enforcing the laws of the State of Maryland relating to the conservation, propagation and development of wild life resources, including inland water fishery, of the State of Maryland. Included in his duties as Director is the duty to enforce all laws of the State of Maryland pertaining to the Potomac River above tidewater (Little Falls, Montgomery County, Maryland) upon which the State of Maryland has always had and now maintains exclusive jurisdiction.

That in enforcing the laws of the State of Maryland in the Potomac River above tidewater, the said State, acting through the Game and Inland Fish Commission, has granted unto the citizens of Virginia, West Virginia and the District of Columbia equal privileges of fishing in the Potomac River with the citizens of Maryland without discrimination. The license fees for citizens of Virginia, West Virginia and the District of Columbia for fishing in the Potomac River above tidewater are the same as those required of Maryland citizens (See Article 66C, Section 215(d), Annotated Code of Maryland (1957 Supp.)).

During the fiscal year ended June 30, 1957, the Game and Inland Fish Commission of Maryland issued 6,202 angler's licenses to citizens of Virginia and West Virginia for fishing in the Potomac River, and 996 angler's licenses

to residents of the District of Columbia for fishing in the Potomac River.

That in addition to the issuance of fishing licenses, the Game and Inland Fish Commission of Maryland has, without any discrimination to the citizens of any state bordering on the Potomac River, issued duck blind licenses for all duck blinds in or on the Potomac River.

That the State of Maryland, acting through the Game and Inland Fish Commission, has ably and efficiently regulated the fisheries and other natural resources of the Potomac River above tidewater to the mutual benefit of the citizens of all states adjoining the Potomac River. There have been no incidents of violence in the enforcement of the laws of the State of Maryland regulating this section of the Potomac River.

That the State of Maryland has and continues to conserve and replenish fish in the Potomac River for the mutual privilege and pleasure of the citizens of all states adjoining the Potomac River without aid, assistance or concurrence of any adjoining state, including the Commonwealth of Virginia.

AS WITNESS my hand and notarial seal the day and year last above written.

AGNES C. CONROY,
Notary Public.

ERNEST A. VAUGHN,
Affiant.

