No. 83, Original

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

STATE OF MARYLAND,
STATE OF ILLINOIS,
STATE OF INDIANA,
COMMONWEALTH OF MASSACHUSETTS,
STATE OF MICHIGAN,
STATE OF NEW YORK,
STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS,
STATE OF WISCONSIN,

Plaintiffs,

v.

STATE OF LOUISIANA,

Defendant.

ON REPORT OF THE SPECIAL MASTER DATED SEPTEMBER 15, 1980

REPLY OF THE PLAINTIFF STATES TO LOUISIANA'S EXCEPTIONS

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December 5, 1980

The Daily Record Co., Baltimore, MD 21202

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INTRODUCTION

Rebuffed once when the Court granted the plaintiff states leave to file their complaint, ignored a second time by the pointed omission of its motion to dismiss from the list of matters referred to the Special Master by the Court for consideration,[1] and now rejected for a third time by the

[1] While the Special Master recognized that the Court had not specifically referred the motion to dismiss to him for consideration (as it had by name each and every other motion then pending), he believed that it came within the general thrust of the referral. Report at 10 n.9.

Report of the Special Master recommending denial of its motion to dismiss, Louisiana nevertheless persists in seeking to bar this exclusive original action. The defendant offers nothing in its exceptions to the Special Master's Report of September 15, 1980, that was not rejected by the Court more than eighteen months ago when it granted the request of the plaintff states to invoke the Court's exclusive original jurisdiction. To be sure, Louisiana has attempted to freshen its argument by reordering the issues and adding large doses of repetition, but nothing new or persuasive emerges.[2] All of the relevant facts and legal arguments were known by the Court in June 1979 when it granted leave to file the complaint in the face of the defendant's brief in opposition.[3] Even the tax refund suits filed by the pipeline companies in the Louisiana courts shortly after this Court exercised its exclusive original jurisdiction — now

[2] In recommending denial of the defendant's motion to dismiss, the Special Master noted:

> The grounds urged by the defendant for dismissal are substantially the same as the grounds on which the defendant opposed the plaintiffs' motion for leave to file their complaint.

Report at 10 n.9.

[3] The brief in opposition to a motion for leave to file has been aptly characterized as "the equivalent of a motion to dismiss" on jurisdictional grounds. R. Stern & E. Gressman, Supreme Court Practice 614 (5th ed. 1978). Thus:

> [E]ach complaint is first subjected to an initial examination for legal sufficiency (including matters of jurisdiction). The provision for a brief in opposition means that the Court wishes the defendant to present argument as to this. It is the equivalent of a motion to dismiss at the preliminary stage of the case.

Id.

Indeed, over the last few decades, the Court has consistently decided jurisdictional and prudential questions in original actions at the time it has acted on the motion for leave to file. *See, e.g.,* Arizona v. New Mexico, 425 U.S. 794 (1976); Pennsylvania v. New Jersey, 426 U.S. 660 (1976); Jones ex rel. Louisiana v. Bowles, 322 U.S. 707 (1944); Oklahoma ex rel. Johnson v. Cook, 304 U.S. 387 (1938).

heralded by the defendant as a "new" ground for dismissal — were known to the Court when it acted initially. *See* Brief for the United States and the Federal Energy Regulatory Commission as Amici Curiae at 7 (June 1979). Thus, the Court's decision that this case was appropriate for its consideration necessarily rejected the defendant's arguments.

In addition to offering essentially repetitive exceptions, Louisiana espouses an alarmingly narrow reading of the Court's exclusive original jurisdiction. Under the defendant's theories, few if any original cases could ever be brought. Contrary to Louisiana's approach, under which the Court would not entertain interstate tax disputes or Commerce Clause violations, the Court's exclusive original jurisdiction is intended to provide a remedy for real and substantial injuries inflicted by one state on a sister state. *California v. Texas,* 437 U.S. 601, 614 (1978) (Justice Stewart, with whom Justice Powell and Justice Stevens joined, concurring).[4] For this reason, claims of serious magnitude and real and substantial injuries by one state to others are cognizable by the Court regardless of subject matter. *See* 12 Moore's Federal Practice ¶ 352.01 (2d ed. 1980) ("Since . . . the Court's original jurisdiction depends on the character of the parties, rather than upon the subject matter of the litigation, the subject matter may indeed be as varied as the complexities . . . government and society can spawn."). *Cf. California v. Arizona,* 440 U.S. 59, 68 n.8 (1979) ("[f]actual complexity" is not a reason justifying declination of exclusive original jurisdic-

[4] While the Court has declined in some instances, for prudential reasons, to involve itself in minor controversies between two states over the constitutionality of a tax, *see, e.g.,* Arizona v. New Mexico, 425 U.S. 794 (1976); Pennsylvania v. New Jersey, 426 U.S. 660 (1976), the Court has never suggested that it would not entertain an interstate tax dispute in an appropriate case, particulary where, as here, there are compelling reasons for the Court to exercise its exclusive original jurisdiction. *See infra* at 8-15.

tion). Once the Court determines that a case between the states is "appropriate," exercise of its exclusive original jurisdiction is "obligatory." *Illinois v. City of Milwaukee*, 406 U.S. 91, 93 (1972).[5] *See California v. Texas*, 437 U.S. 601, 606 (1978) (Justice Stewart, with whom Justice Powell and Justice Stevens joined, concurring).

The Court's acceptance of jurisdiction in this case will not, as the defendant urges, open the Court's docket to a flood of minor tax controversies.[6] Louisiana's argument ignores the fact that the Court's docket is subject to its discretion to determine the appropriateness of cases brought to it, and thus the Court is free to distinguish between minor controversies and the instant case, which the Special Master found is unique:

> The nature of this case seems appropriate for this Court's attention. It is important both because of the huge sums involved and because of the number of states affected, thirty in all. The issues are important on their own account and because of their effect on the price of gas.

Report at 19-20. It is also unique in the callousness of Louisiana's attempt to profit — to the extent of "about 300 million dollars a year" — at the expense of its sister states. See the legislative history of the First Use Tax package

[5] In Illinois v. City of Milwaukee, 406 U.S. 91, 93 (1972), this Court said:

> [T]he question of what is appropriate concerns, of course, the seriousness and dignity of the claim; yet beyond that it necessarily involves the availability of another forum where there is jurisdiction over the named parties, where the issues tendered may be litigated, and where appropriate relief may be had.

The defendant's suggestion that this test has been converted into an issue-only analysis by the *per curiam* opinion in Arizona v. New Mexico, 425 U.S. 794 (1976), is without foundation. The *Arizona* case cites the quoted passage from *City of Milwaukee* with approval. *Id.* at 796-97.

[6] Significantly, there has been no appreciable increase in original actions over the last eighteen months as a result of the Court's acceptance of the plaintiffs' complaint.

described in the Brief in Support of the Exceptions of the Plaintiff States at 10-12, 13 n.5.

The defendant's repeated attempts to refer the plaintiffs to a state forum wholly inadequate in terms of relief and legal accessibility, *see infra* at 9-12, are simply a variation of its announced policy to delay resolution of this case as its gains continue. *See* Brief in Support of the Exceptions of Plaintiff States at 12. As the Court did in June 1979, and as the Special Master did in September, the Court, for the reasons stated below, should reject this policy of delay and instead reaffirm the Court's exercise of its exclusive original jurisdiction over this case.

ARGUMENT

I.

THE PLAINTIFF STATES ARE DIRECTLY AND GRIEVOUSLY HARMED BY THE FIRST USE TAX AND HAVE SUFFICIENT STANDING TO INVOKE THE EXCLUSIVE ORIGINAL JURISDICTION OF THE COURT.

Louisiana's attack upon the standing of the plaintiff states to maintain this case is based on the thesis that the defendant and its statutes have nothing to do with the high gas prices and attendant costs the plaintiffs' must absorb; that since the legal incidence of the tax falls on the pipelines, they are the real parties in interest; and hence that the plaintiff states are "volunteers" without a genuine interest at stake.

Contrary to Louisiana's argument, however, the plaintiffs' claim that the First Use Tax directly and immediately affects them and their citizens is in no way "spurious." *See* Louisiana's Brief in Support of Exceptions at 41. The text of the First Use Tax and its legislative history clearly and unequivocally disclose an intent on the part of the defendant that the cost of the tax be passed on to the plaintiff states and their citizens. *See* Brief in

Support of the Exceptions of Plaintiff States at 7-14. Recognizing this intended impact, the Special Master concluded that "although the tax is collected from the pipelines, it is really a burden on consumers," Report at 12, and that:

> It would be unfortunate if the parties who actually stand the loss were required to rely on an intermediary who had passed on the loss to them to press the claim of unconstitutionality. In this case the pipelines are in agreement with the plaintiffs, but their interest is different and the states [sh]ould be allowed to speak for themselves. I conclude they have standing to sue.

Id. at 13.

Thus, the states challenging the First Use Tax are not nominal plaintiffs. Cf. *Oklahoma v. Atchison, Topeka and Santa Fe Railroad,* 220 U.S. 277, 289 (1971). Nor are they bringing what amounts to a "collectivity of private suits." *Pennsylvania v. New Jersey,* 426 U.S. 660, 666 (1976). Rather, their challenge is justified by the fact that they are directly incurring higher costs "as consumers of natural gas forced to pay higher prices by reason of the first use tax." Report at 14. Moreover, as the Special Master noted:

> With respect to the injury done to the States by reason of the imposition of the additional costs on their citizens, the States do have a quasi-soverign interest in their economic welfare. The individuals affected are not a selected group but practically the entire population. Perhaps some large consumers and the public utilities have individual claims of sufficient size to justify suits; but by and large it would seem difficult if not impossible for individual consumers to establish sufficient damage to themselves and a class suit would seem to be unmanageable.

Id.

In sum, as the Special Master found, this case is "within the general class of cases in which the states have been recognized as proper parties." Report at 15. *See Pennsylvania v. West Virginia,* 262 U.S. 553 (1953); *Missouri v. Illinois,* 180 U.S. 208 (1901); *Kansas v. Colorado,* 206 U.S. 46 (1907); *New York v. New Jersey,* 256 U.S. 296 (1921); *North Dakota v. Minnesota,* 263 U.S. 365 (1923).

None of Louisiana's remaining contentions as to the standing of the plaintiff states merits extended discussion. The Eleventh Amendment is inapplicable. An action brought by one state against another violates the Eleventh Amendment *only* "if the plaintiff state is actually suing to recover for injuries to designated individuals." *Hawaii v. Standard Oil Co.,* 405 U.S. 251, 258 n.12 (1972). *See* R. Stern & E. Gressman, Supreme Court Practice 602 (5th ed. 1978). As just shown, that is not the case here.

Similarly, the Tax Injunction Act forbids injunctions only by district courts, not by the Supreme Court. 28 U.S.C. § 1341. Moreover, even the rule against injunctions is inapplicable if there is no "plain, adequate, and complete remedy" in state courts. *Matthews v. Rodgers,* 284 U.S. 521, 525 (1932). Clearly, the plaintiff states have no remedy, let alone a "complete and adequate" one in Louisiana's courts. *See* Report at 17-18. *See also infra* at 10-12.

Finally, there is no merit to Louisiana's renewed request for abstention in favor of her courts. The language and purpose of the First Use Tax, particularly as set forth in its graphic legislative history, is so clear that it is unnecessary to await construction by a state court. The sponsors of the First Use Tax package left no doubt about how the tax was intended to work and is, in fact, working. Accordingly, acceding to the defendant's request for abstention at this late hour, would serve only to advance

Louisiana's clearly articulated design to enrich itself by delaying the ultimate outcome of this litigation.[7]

II.

THE SUPREME COURT IS THE ONLY APPROPRIATE AND ADEQUATE FORUM IN WHICH THE CLAIMS OF THE PLAINTIFF STATES MAY BE LITIGATED.

The Special Master correctly found overwhelming reasons for the invocation of Supreme Court jurisdiction. Report at 15-20. Undeterred by detailed and explicit findings, Louisiana devotes the greater portion of its current brief[8] to contesting, once again,[9] the unassailable conclusion that the Supreme Court is the most — indeed only — appropriate and adequate forum in which the claims of the plaintiff states may be litigated and authoritatively resolved. The defendant's most recent brief offers no new showing that the Court erred when it rejected identical contentions and granted leave to file the complaint. For this reason, and because the Special Master's analysis of the motion to dismiss was careful and correct, the Court should overrule Louisiana's exceptions and deny the defendant's motion to dismiss.

Louisiana's claim that "the Special Master has misconceived both the philosophy and the values involved in the invocation and exercise of this Court's original jurisdic-

[7] Moreover, abstention is not appropriate where "there [is an] asserted conflict between what the state [statute seeks] to do and federal authority asserted by a federal agency." FPC v. Corporation Commission of Oklahoma, 362 F. Supp. 522, 546 (W.D. Okla. 1973) (three judge court), *aff'd*, 415 U.S. 961 (1974) (*mem.*). *Accord*, Public Utilities Commission of Ohio v. United Fuel Gas Co., 317 U.S. 456, 463 (1943).

[8] Louisiana Brief in Support of Exceptions at 11-29.

[9] *See, e.g.*, Louisiana Brief in Opposition to Motion for Leave to File Complaint at 10-18; Louisiana Brief in Support of Motion to Dismiss at 15-21; Louisiana Brief in Opposition to Motion of New Jersey for Leave to Intervene at 4-6.

tion," Louisiana Brief in Support of Exceptions at 13,[10] is particularly hollow. The Special Master specifically recognized those values at the start of his analysis where he painstakingly took note of the fact that the Court "can, and will, refuse to accept jurisdiction of a case where there are other and better ways of handling the dispute." Report at 15. The Special Master next carefully considered each of Louisiana's suggested alternatives and rejected each one as the Court has already done. *Id.* at 16-20.

Louisiana finally appears to recognize, albeit *sub silentio*, that two of the presently pending suits — the state court declaratory judgment proceeding instituted by Louisiana and the Federal Energy Regulatory Commission's federal district court case against state officials — are not appropriate alternatives to the present action. Nevertheless, the defendant continues to maintain that the Louisiana state court tax refund suits filed by various pipeline companies are appropriate alternatives to Supreme Court adjudication of this case. Louisiana Brief in Support of Exceptions at 11-12, 19-22.

There are, however, a number of reasons why the Court should hold, as the Special Master recommends, that the tax refund suits are not appropriate alternatives to the continued exercise of this Court's exclusive original jurisdiction. Report at 17-18. To begin with, while the tax refund suits were not filed until after the Court's decision, on June 18, 1979, to exercise its original jurisdiction, the Court was explicitly advised that tax refund litigation was in the offing before it granted leave to file the complaint. Brief for the United States and the Federal Energy Regulatory Commission as Amici Curiae at 7 (June 1979). And, of course, the tax refund suits were already pending

[10] The defendant's extended discussion of its concept of "[t]he rationale of original jurisdiction," Louisiana Brief in Support of Exceptions at 13-17, significantly fails to mention, let alone distinguish, between original *but not* exclusive jurisdiction cases and original *and* exclusive jurisdiction cases.

when Louisiana first filed its motion to dismiss, and the Court omitted any mention of this motion in referring all of the other motions to the Special Master. Thus, the defendant's continued reliance on the pipeline companies' tax refund litigation makes light of the Court's earlier decisions to exercise its exclusive original jurisdiction. *See supra* at 1-2.[11]

The defendant also ignores the patent deficiencies in the Louisiana tax refund suit mechanism that were called to the Court's attention by the United States before the Court's exercise of jurisdiction. Brief for the United States and the Federal Energy Regulatory Commission at 7 (June 1979) ("Neither injunctive nor declaratory relief against collection of the tax is available. La. Rev. Stat. Ann. § 47:1575, § 47:1576 (West)."). Without permanent injunctive relief, which would not be available in the refund litigation,[12] Louisiana could continue — even after the local courts had directed refunds — to collect millions

[11] The defendant's argument also ignores that whatever state court proceedings occur after the Court's exercise of its original jurisdiction are irrelevant to the conduct and disposition of this case. *Cf.* Steffel v. Thompson, 415 U.S. 452, 462 (1974) (abstention unnecessary in absence of pending state proceedings); Ex Parte Young, 109 U.S. 123, 161-62 (1908) ("when such indictment or proceeding is brought to enforce an alleged unconstitutional statute, which is the subject-matter of inquiry in a suit already pending in a Federal court, the latter court, *having first obtained jurisdiction over the subject matter*, has the right, in both civil and criminal cases, to hold and maintain such jurisdiction, to the exclusion of all other courts, until its duty is fully performed.") (emphasis added).

[12] Permanent injunctive relief is prayed for by the plaintiff states to put a stop to continued collection of the First Use Tax. Complaint at 27. On the other hand, the pipeline companies' tax refund suits, even if eventually successful, could at most provide for refunds of monies already collected, a remedy which this Court has deemed inadequate in the past. FPC v. Tennessee Gas Transmission Co., 371 U.S. 145, 154-55 (1962).

of dollars in tax payments[13] at the expense of the plaintiff states as consumers of natural gas and to the irreparable injury to their interests in protecting their economies from the enormous impact of the First Use Tax.

Moreover, should the Court divest itself of its original and exclusive jurisdiction over this matter, no other forum will be available to the plaintiff states to litigate these fundamental issues. Recognizing that even though by Louisiana's design the plaintiff states suffer the brunt of the First Use Tax, they are not "taxpayers" who may participate in the Louisiana refund litigation, the Special Master found:

> [T]he plaintiff States have no standing [in the refund litigation] and the [Louisiana] court apparently has no authority to grant injunctive relief pending the outcome of the cases. The refunds, if ordered, appear to be limited as to interest to 6% which would result in a substantial advantage to the State and damage to the plaintiffs in view of the quarter of a billion dollars which is being collected annually. But, in any event, the plaintiffs should not be required to depend on private parties to conduct their litigation and protect their interests; they should be permitted to speak for themselves.

Report at 17-18.

Nevertheless, the defendant blithely suggests that there is "[n]othing in Louisiana law or procedure preclud[ing] another sovereign state from intervening or otherwise participating in a Louisiana tax refund proceeding, *assuming that state can assert or allege an interest.*" Louisiana Brief in Support of Exceptions at 27 (emphasis added). Apart from the Special Master's conclusion and the

[13] *See* Brief in Support of the Exceptions of the Plaintiff States at 12, 14; Hargorder, *1st Use Tax Will Profit La. Even If Cash Is Returned*, The Times-Picayune, Oct. 7, 1980, § 1 at 17, *reprinted in* Brief in Support of the Exceptions of the Plaintiff States at 1a.

defendant's transparent position that the plaintiff states would not be able to allege a sufficient interest in the tax refund proceedings, there stands a more determinative point.

Louisiana has lost sight of the fact that Congress has mandated that the Supreme Court of the United States, not the court of any state, be the *exclusive* arbiter of disputes between sister states. 28 U.S.C. § 1251(a). *Cf. Plaquemines Tropical Fruit Co. v. Henderson,* 170 U.S. 511 (1898) (state courts may entertain controversies between a state and citizens of another state *because* such suits are *not* within the Supreme Court's exclusive jurisdiction); *State Water Control Board v. Washington Suburban Sanitary Commission,* 61 F.R.D. 588 (D.D.C. 1974) (intervention by Maryland would convert action to a suit between two states and thereby destroy federal district court's jurisdiction).

Finally, requiring resort to a Louisiana court would run counter to the rationale for the exclusive original jurisdiction of the Court over cases involving the states: "[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 the reality, of partiality to one's own." *Ohio v. Wyandotte Chemicals Corp.,* 401 U.S. 493, 500 (1971). As between the local courts of Louisiana and this Court, the latter is the only suitable forum for deciding the clear and fundamental issues raised in this case.

Louisiana's continued reliance upon *Arizona v. New Mexico,* 425 U.S. 794 (1976), is clearly misplaced. The Court's refusal to exercise its original jurisdiction there was premised on its finding that an appropriate alternative forum existed in which the case could be litigated. *Id.* at 797. Since, as is demonstrated above, there is no appropriate alternative forum here, *Arizona v. New Mexico*

is of no help to Louisiana. In addition, prudential considerations, not present in the *Arizona* case, support the exercise of the Court's exclusive original jurisdiction here.

A number of these were noted by the Special Master. Report at 19-20. Specifically, he concluded that:

> [T]he really significant difference is that, by reason of its relationship to one of the litigants, Arizona could be heard in its own behalf in the State court. The plaintiffs here cannot represent themselves in the State court proceedings . . . .
>
> [I]n the Arizona case the issue was decided on the motion for leave to file. This Court has granted that motion in this case, permitting the filing, and to dismiss it now *on grounds raised on consideration of the motion* would . . . penaliz[e] the plaintiffs both in time and money.
>
> The nature of this case seems to be appropriate for this Court's attention. It is important both because of the huge sums involved and because of the number of States affected, thirty in all. The issues are important on their own account and because of their effect on the price of gas.

Id. (emphasis added).

In addition to the differences noted by the Special Master, there are other significant grounds for distinguishing *Arizona v. New Mexico*. For example, the three Arizona utilities affected by the tax were able to protect their and the state's interests effectively by refusing to pay the tax and bringing a declaratory judgment action challenging its validity on the same constitutional grounds as those presented by Arizona in its original complaint. Thus, unlike the plaintiff states who have already suffered hundreds of millions of dollars lost to Louisiana's unconstitutional taxing scheme, Arizona did not allege, and did not face, any immediate harm from the challenged tax. Moreover, promptly after the litigation in the state courts, this Court held the New Mexico tax

invalid. *Arizona Public Service Co. v. Snead,* 441 U.S. 141 (1979). Thus, within three years of the imposition of the tax, the matter was definitively resolved without any substantial disruption of the rate structure to interstate consumers as a result of the tax.

This case stands in stark contrast. Resolution of the urgent issues in this case will clearly not be expeditions in the local courts of Louisiana. Well over two years have already passed since the first of the Louisiana proceedings was filed, and all of the state court cases remain stalled. For example, the tax refund litigation, so highly touted by the defendant, began almost eighteen months ago, after this Court assumed jurisdiction, and is less far advanced than the present case. *See* Reply of Pipeline Companies at 2-3 (Dec. 5, 1980). And even the first filed of the local cases — Louisiana's declaratory judgment action — has gone essentially nowhere. *Id.*

Moreover, during the prolonged period these cases could be expected to last, there would continue to be enormous disruptions of the rate structure applicable to interstate consumers. The population in some thirty gas consuming states has already been subjected to hundreds of millions of dollars in additional charges before the constitutionality of the First Use Tax is even determined. Interstate pipeline companies subject to the tax have no option but to pay it. Louisiana law, unlike the law of New Mexico, does not permit taxpayers to refuse payment and challenge the validity of taxes in declaratory judgment actions. Because the tax has been paid since May 31, 1979, La. Rev. Stat. Ann. § 47:1305B (West. Supp. 1980), the First Use Tax has since that time had an immediate and direct impact on the

rates paid for natural gas by the plaintiff states and their citizens.[14]

Finally, unlike *Arizona v. New Mexico,* this case raises issues of national significance and federal law. Not only is there a conflict between the First Use Tax and federal energy regulation that was not raised by Arizona's challenge to the New Mexico electrical energy generation tax, but this case involves a challenge (by a cross section of the states representing multiple regions of the country) to the use by a defendant (hundreds of miles away) of a facially discriminatory tax to collect hundreds of millions of dollars annually. If Louisiana is allowed to impose its First Use Tax upon natural gas in interstate commerce, other states could race to impose countervailing measures on comparable products and our national economy would regress into the precise interstate feudalism that our Constitution and our federal system were designed to prevent.

In these circumstances, the plaintiff states urge, the prudential considerations underlying the declination of original jurisdiction in *Arizona v. New Mexico* are inapplicable. On the contrary, this case presents "a matter of grave public concern in which the state[s], as the representative[s] of the public, [have] an interest apart from that of the individuals affected." *Pennsylvania v. West Virginia,* 262 U.S. 553, 592 (1923).

[14] The possibility that in the future refunds will reach those who bear the ultimate economic burden of the tax is dubious. Precisely because of these doubts, the Court has held that the refund remedy is an inadequate protection for consumers under the Natural Gas Act. *See, e.g.,* FPC v. Hunt, 376 U.S. 515, 524-525 (1964). *Accord,* FPC v. Tennessee Gas Transmission Co., 371 U.S. 145, 154-55 (1962).

CONCLUSION

"This Court has original and exclusive jurisdiction of disputes between two or more States, 28 U.S.C. § 1251(a)(1), and it has a responsibility to exercise that jurisdiction when it is properly invoked. See *Cohens v. Virginia,* 6 Wheat. 264, 404; *Massachusetts v. Missouri,* 308 U.S. 1, 19-20." *California v. Texas,* 437 U.S. 601, 606 (1978) (Justice Stewart, with whom Justice Powell and Justice Stevens joined, concurring).

For this reason, and for those appearing in the plaintiff states' Brief in Support of Motion for Leave to File Complaint (Mar. 29, 1979), their Brief in Opposition to Motion to Dismiss (Nov. 14, 1979), the Report of the Special Master (Sept. 15, 1980), and this brief, the plaintiff states urge that Louisiana's exceptions be overruled and accordingly that the motion to dismiss be denied.

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