No. 62 Orig.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1972

No.------

THE STATE OF NEVADA, *Plaintiff*,

vs.

THE STATE OF CALIFORNIA, *Defendant*.

Opposition to Motion for Leave to File Complaint, Complaint, and Brief

EVELLE J. YOUNGER
Attorney General of the State of California
IVER E. SKJEIE
Assistant Attorney General
JAMES M. SANDERSON
Deputy Attorney General
Room 500
Wells Fargo Bank Building
Fifth Street and Capitol Mall
Sacramento, California 95814
Telephone: (916) 445-3095
Attorneys for Defendant

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PRELIMINARY STATEMENT

This motion for leave to file a complaint arises out of the decision of the California Supreme Court, *Hall* v. *University of Nevada,* 8 Cal.3d 522 (1972), reversing an order quashing service of summons and complaint upon the State of Nevada. The opinion of the California Supreme Court is set forth in the appendix of the motion for leave to file complaint filed by the State of Nevada. Plaintiff has sought certiorari from this Court to review the California Supreme Court's decision.

This action seeks an injunction to prohibit the courts of the State of California from proceeding to

try an action in which the State of Nevada is a named defendant.

The action which the State of Nevada seeks to have the California courts enjoined from trying is one stemming from an automobile accident in California.

Plaintiff's position generally is that as a sovereign State it cannot be subjected to the jurisdiction of the California state courts without its consent which it allegedly has not given. Plaintiff seeks to have this Court exercise its original jurisdiction in equity to enjoin the California courts from any further proceedings.

ARGUMENT

This Case Is Not a Proper One for the Supreme Court to Exercise Its Original Jurisdiction

Plaintiff Has an Adequate Remedy at Law and Its Request for Equitable Relief Should Be Denied

This matter is presently before this Court following an interim decision of the California Supreme Court which held that the State of Nevada was subject to suit in a California state case. The order of the California Supreme Court only overturns a trial court ruling quashing the service of summons and complaint. As noted in the motion for leave to file the complaint in this matter, plaintiff has petitioned for certiorari to this Court to review the decision of the California Supreme Court.

The California Supreme Court has, by order of April 26, 1973, stayed the effective date of its order until this Court rules upon the petition for certiorari

filed by the State of Nevada. A copy of that order is appended hereto.

Certiorari is certainly an adequate remedy at law. There is, therefore, no reason for this Court to exercise its original jurisdiction in equity. This Court has held that the absence of an adequate remedy at law was a prerequisite to its exercise of original jurisdiction in equity.

> "The defendants moved to dismiss the bill, assigning therefor nine grounds. We need consider only the objection that the bill is without equity. For we are of opinion that there was adequate opportunity to test at law the applicability and constitutionality of the Acts of Congress; and that no danger is shown of irreparable injury if that course is pursued."

California v. *Latimer,* 305 U.S. 255, 258–259 (1938); see also, *Alabama* v. *Arizona,* 291 U.S. 286 (1934).

Thus, in this case where the plaintiff has an adequate remedy at law, and is in fact pursuing that remedy, and where all other proceedings have been stayed until plaintiff's legal action is completed, no basis for equitable relief exists.

The Supreme Court Should Exercise Its Original Jurisdiction Only in Cases Where There Is No Other Reasonable Remedy and Where Irreparable Damage Will Result Were That Jurisdiction Not Exercised

The original jurisdiction of the Supreme Court, provided for in the Constitution, Article III, Section 2, was intended to be and should be used sparingly.

See *California* v. *Southern Pacific Co.*, 157 U.S. 229, 261 (1895); *Utah* v. *United States*, 394 U.S. 89, 95 (1969). There is certainly no occasion to exercise that jurisdiction in equity where the plaintiff cannot show great and immediate irreparable injury.

There is no showing in this case that the plaintiff will suffer irreparable damage if this Court denies its motion to file a complaint.

As the matter presently stands the State of Nevada has been held subject to the jurisdiction of the California state courts. There has not yet been any trial or hearing on the merits as to whether the State of Nevada is indeed liable for any damages. The only possible damages that the State of Nevada can suffer without a review of the matter in the normal appellate process by this Court is the cost of defending itself in the trial court in the State of California. Simply being required to defend oneself does not constitute irreparable damage. As stated in *Younger* v. *Harris*, 401 U.S. 37, 46 (1971):

> "In all of these cases the Court stressed the importance of showing irreparable injury, the traditional prerequisite to obtaining an injunction. In addition, however, the Court also made clear that in view of the fundamental policy against federal interference with state criminal prosecutions, even irreparable injury is insufficient unless it is 'both great and immediate.' *Fenner, supra.* Certain types of injury, in particular, the cost, anxiety, and inconvenience of having to defend against a single criminal prosecution, could not by themselves be

considered 'irreparable' in the special legal sense of that term. Instead, the threat to the plaintiff's federally protected rights must be one that cannot be eliminated by his defense against a single criminal prosecution . . . ."

Plaintiff's proposed complaint raises grave and complex constitutional questions. There is, however, no necessity that these questions be resolved at this time. Plaintiff presently has only a potential liability which may very well not become actual. What plaintiff seeks is akin to an advisory opinion which may not be given by this Court. As stated in *Alabama* v. *Arizona,* 291 U.S. 286, 291–292 (1934):

"This court may not be called on to give advisory opinions or to pronounce declaratory judgments. *Muskrat* v. *United States,* 219 U.S. 346. *Willing* v. *Chicago Auditorium Assn.,* 277 U.S. 274, 288, and cases cited. *Nashville, C. & St. L. Ry.* v. *Wallace,* 288 U.S. 249, 261–262. Its jurisdiction in respect of controversies between States will not be exerted in the absence of absolute necessity. *Louisiana* v. *Texas,* 176 U.S. 1, 15. A State asking leave to sue another to prevent the enforcement of laws must allege, in the complaint offered for filing, facts that are clearly sufficient to call for a decree in its favor.

"Our decisions definitely establish that not every matter of sufficient moment to warrant resort to equity by one person against another would justify an interference by this court with the action of a State. *Missouri* v. *Illinois,* 200 U.S. 496, 520–521. *New York* v. *New Jersey,* 256 U.S. 296, 309. *North*

> *Dakota* v. *Minnesota,* 263 U.S. 365, 374. Leave will not be granted unless the threatened injury is clearly shown to be of serious magnitude and imminent. *Missouri* v. *Illinois, supra,* 521 . . . ."

Even if it is later determined by the California courts that plaintiff is indeed liable, that determination is subject to review by this Court through the normal appellate processes. Although *Younger* v. *Harris, supra,* 401 U.S. 37 (1971) involved a criminal statute the language of that opinion is appropriate here.

> "For these reasons, fundamental not only to our federal system but also to the basic functions of the Judicial Branch of the National Government under our Constitution, we hold that the *Dombrowski* decision should not be regarded as having upset the settled doctrines that have always confined very narrowly the availability of injunctive relief against state criminal prosecutions. We do not think that opinion stands for the proposition that a federal court can properly enjoin enforcement of a statute solely on the basis of a showing that the statute 'on its face' abridges First Amendment rights. There may, of course, be extraordinary circumstances in which the necessary irreparable injury can be shown even in the absence of the usual prerequisites of bad faith and harassment. For example as long ago as the *Buck* case, *supra,* we indicated:
>
> > " 'It is of course conceivable that a statute might be flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever

manner and against whomever an effort might be made to apply it.' 313 U.S., at 402.

"Other unusual situations calling for federal intervention might also arise, but there is no point in our attempting now to specify what they might be. It is sufficient for purposes of the present case to hold, as we do, that the possible unconstitutionality of a statute 'on its face' does not in itself justify an injunction against good-faith attempts to enforce it, and that appellee Harris has failed to make any showing of bad faith, harassment, or any other unusual circumstance that would call for equitable relief . . . ." *Younger* v. *Harris, supra*, pp. 53–54.

CONCLUSION

For the reasons heretofore expressed it is respectfully submitted that the motion for leave to file complaint made on behalf of the State of Nevada should be denied.

Respectfully submitted,

EVELLE J. YOUNGER
Attorney General of the State of California

IVER E. SKJEIE
Assistant Attorney General

JAMES M. SANDERSON
Deputy Attorney General

Attorneys for Defendant

APPENDIX

[Filed—April 26, 1973
G. E. Bishel, Clerk]

S. F. No. 22942

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA IN BANK

DIANE HALL, A Minor, etc., et al., *Plaintiffs and Appellants,*

v.

UNIVERSITY OF NEVADA, et al., *Defendants and Respondents.*

A petition for writ of certiorari having been filed on April 24, 1973 in the Supreme Court of the United States, the judgment by this court of December 21, 1972 (Hall v. University of Nevada, 8 Cal.3d 522) and any further proceedings in the Superior Court of the City and County of San Francisco in No. 603599 are stayed until final determination of the certiorari proceeding.

/s/ WRIGHT
Chief Justice

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