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No. _____, Original

Supreme Court, U.S.

FILED

SEP 29 1988

JOSEPH F. SPANIO, JR.

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In the
Supreme Court of the United States

October Term, 1988

STATE OF ARKANSAS,

Plaintiff,

v.

STATE OF OKLAHOMA,

Defendant,

MOTION FOR LEAVE TO FILE
COMPLAINT WITH COMPLAINT AND
WITH BRIEF IN SUPPORT OF MOTION

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**In the
Supreme Court of the United States**

October Term, 1988

STATE OF ARKANSAS,

Plaintiff,

v.

STATE OF OKLAHOMA,

Defendant,

MOTION FOR LEAVE TO FILE COMPLAINT

The State of Arkansas, appearing by and through its Attorney General, John Steven Clark, acting pursuant to the authority vested in him by Arkansas Code Annotated §25-16-703, asks leave of the Court to file its complaint against the State of Oklahoma submitted herewith for the reasons stated in his brief in support of this motion.

Respectfully submitted,

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In the
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STATE OF ARKANSAS, *Plaintiff*,

v.

STATE OF OKLAHOMA, *Defendant*,

COMPLAINT

The State of Arkansas, appearing by and through its Attorney General John Steven Clark, acting pursuant to the authority and power vested in him by Arkansas Code Annotated §25-16-703, brings this action against the defendant, The State of Oklahoma, and for its cause of action states:

I.

This Court has jurisdiction of an original action under Article III, Section 2, Clause 1 of the Constitution of the United States, and 28 U.S.C. section 1251(a)(1).

II.

This is an action for declaratory judgment pursuant to 28 U.S.C. section 2201, for the purposes of determining questions of actual, justiciable controversy between the parties as hereinafter more fully appears.

III.

The plaintiff seeks a declaratory judgment on behalf of itself as a sovereign State, and on behalf of its citizens,

municipalities and industries under its interest as *parens patriae*, declaring the following: (1) The defendant's Water Quality Standards, enacted pursuant to authority granted to the states under the Clean Water Act (33 U.S.C. section 1251 et. seq.) cannot be applicable to point source dischargers in the State of Arkansas; (2) The defendant's Water Quality Standards, as applied to point source dischargers within the State of Arkansas, are unconstitutional and constitute a discriminatory burden on interstate commerce under the Commerce Clause of the Constitution, Article I, Section 8, Clause 3; (3) The defendant's Water Quality Standards, as applied to point source dischargers within the State of Arkansas, are unconstitutional and deny citizens of the State of Arkansas due process and equal protection of the laws under the Fourteenth Amendment.

IV.

The defendant has promulgated Water Quality Standards pursuant to authority granted it under the Clean Water Act (33 U.S.C. section 1251 et. seq.), which the defendant seeks to apply to current and future point source dischargers of pollutants in the State of Arkansas. A copy of the 1982 and 1985 Water Quality Standards for the defendant State have been lodged with the Supreme Court Clerk's office. While there are many streams in the plaintiff State that flow into the defendant State, the defendant has specifically contended that municipal discharges from the cities of Springdale, Rogers, and Siloam Springs, Arkansas, and a proposed discharge from the City of Fayetteville, Arkansas, must comply with the defendant's Water Quality Standards because discharges from these four Arkansas cities are into tributaries in Arkansas that eventually converge with the Illinois River which flows through the defendant State. The defendant has classified the Illinois River in Oklahoma as a "scenic river area" or (a) stream. The defendant contends that these Arkansas municipal dischargers must comply not only with the defendant's

narrative and numerical Water Quality Standards on the Illinois River in Oklahoma, but are prohibited from increasing pollutant loading to the Illinois River under the defendant's "Beneficial Use Limitation" and from any "degradation" of the Illinois River under the defendant's "Anti-Degradation Clause". In addition, the defendant contends that any future new point source dischargers in Arkansas which eventually flow into the Illinois River are prohibited under the defendant's "Beneficial Use Limitation".

V.

The defendant contends that its Water Quality Standards apply to Arkansas dischargers although the Water Quality Standards facially only apply to waters which are within the defendant State, and the defendant has no authority under the Federal Clean Water Act to promulgate Water Quality Standards applicable to point source dischargers in other States. The defendant's threatened enforcement of its Water Quality Standards should be declared illegal, null and void.

VI.

Although the defendant has threatened enforcement of its Water Quality Standards against point source dischargers in the plaintiff State, the defendant does not enforce the same Water Quality Standards equally between dischargers located within the defendant State and dischargers located within the plaintiff State. The defendant allows point source dischargers in the defendant State to violate the same Water Quality Standards it threatens to enforce against point source discharges that originate in the plaintiff State. The defendant's Water Quality Standards, as they are applied to point source discharges within the plaintiff State, should be declared a discriminatory, unconstitutional burden on interstate

commerce in violation of the Commerce Clause of the Constitution, Article I, Section 8, Clause 3.

VII.

The defendant contends that its Water Quality Standards apply to Arkansas dischargers although the plaintiff and its point source dischargers did not participate, and had no right to participate in the promulgation of the defendant's Water Quality Standards. The defendant's actions in enforcing and threatening to enforce its Water Quality Standards on point source dischargers within the State of Arkansas should be declared unconstitutional as denying the cities and citizens of the State of Arkansas due process and equal protection of the laws under the Fourteenth Amendment.

VIII.

This Court should exercise original jurisdiction in this case because the plaintiff's claim has the requisite seriousness and dignity, and because there are no other forums available where there is jurisdiction over the parties, where the issues tendered may be litigated, and where appropriate relief may be had.

WHEREFORE, PREMISES CONSIDERED, THE PLAINTIFF PRAYS:

For a declaratory judgment of the following:

(1) The defendant's Water Quality Standards, enacted pursuant to authority granted to the states under the Clean Water Act (33 U.S.C. section 1251 et. seq.), cannot be applicable to point source dischargers in the State of Arkansas;

(2) The defendant's Water Quality Standards, as applied to point source dischargers within the State of

Arkansas, are unconstitutional and constitute a discriminatory burden on interstate commerce under the Commerce Clause of the Constitution, Article I, Section 8, Clause 3;

(3) The defendant's Water Quality Standards, as applied to point source dischargers within the State of Arkansas, are unconstitutional and deny citizens of the State of Arkansas due process and equal protection of the laws under the Fourteenth Amendment.

Respectfully submitted,

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BRIEF IN SUPPORT OF MOTION

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**In the
Supreme Court of the United States**

October Term, 1988

STATE OF ARKANSAS,

Plaintiff,

v.

STATE OF OKLAHOMA,

Defendant,

BRIEF IN SUPPORT OF MOTION

I. Jurisdiction

This is an action by the State of Arkansas against the State of Oklahoma proposed to be instituted in this Court under the authority of Article III, Section 2, Clause 1, of the Constitution of the United States and 28 U.S.C. 1251(a).

II. Purpose of Proposed Action

The purpose of the proposed action is to obtain a declaratory judgment that (1) Oklahoma's Water Quality Standards, enacted pursuant to authority granted to the States under the Clean Water Act (33 U.S.C. section 1251 et. seq.), cannot be applicable to point source dischargers in the State of Arkansas; (2) Oklahoma's Water Quality Standards, as applied to point source dischargers within the State of Arkansas, are unconstitutional and constitute a discriminatory burden on interstate commerce under the Commerce Clause of the Constitution, Article I, Section 8,

Clause 3; (3) Oklahoma's Water Quality Standards, as applied to point source dischargers within the State of Arkansas, are unconstitutional and deny citizens of the State of Arkansas due process and equal protection of the laws under the Fourteenth Amendment.

III. The Facts Which Give Rise to a Case and Controversy Between Arkansas and Oklahoma

The dispute between the States of Arkansas and Oklahoma in this action is essentially as follows.

The States of Oklahoma and Arkansas share many interstate waterways, which flow from Arkansas into the State of Oklahoma, and from Oklahoma into the State of Arkansas. Municipalities and industries in both states have obtained National Pollutant Discharge Elimination system (NPDES) permits issued under the Federal Clean Water Act (33 U.S.C. section 1251 et. seq.) for the discharge of treated wastewater into the interstate receiving streams that originate in or flow through both states.

In the State of Arkansas, the NPDES permit system has been delegated to the Arkansas Department of Pollution Control and Ecology (ADPC & E) pursuant to 33 U.S.C. section 1342(b). The Environmental Protection Agency remains the permitting authority for the State of Oklahoma, and for many municipalities and industrial dischargers in the State of Arkansas who obtained NPDES permits before the permitting process was delegated to the State of Arkansas.

Although there are many other interstate waterways that the two States in this proposed action share, the interstate waterway from which this dispute arose is the Illinois River.

The Illinois River originates in the State of Arkansas, and after flowing approximately 40 river miles in Arkansas, flows into the State of Oklahoma.

Within the State of Arkansas, the cities of Springdale, Rogers, and Siloam Springs, Arkansas, all operate NPDES permitted municipal wastewater treatment plants that ultimately discharge treated wastewater into the Illinois River in Arkansas via tributaries of that river in Arkansas. The cities of Springdale and Rogers, Arkansas, have just completed advanced wastewater treatment plants that began operation in June, 1988, at an estimated cost of \$16,000,000.00, and \$12,000,000.00, respectively.

A fourth Arkansas city, Fayetteville, is currently involved in the EPA administrative process to obtain a NPDES permit to split approximately one-half of its treated wastewater into tributaries of the Illinois River in Arkansas. The new Fayetteville wastewater treatment plant has an estimated cost of \$40,000,000.00, or approximately \$10,000.00 per person for each citizen of the City of Fayetteville.

The City of Fayetteville's permit is currently being challenged (1) by the Oklahoma Attorney General on behalf of the Oklahoma Scenic River Commission and the Pollution Control Coordinating Board, (2) by Save the Illinois River (STIR) and (3) by the Oklahoma Wildlife Federation (OWF), in the Matter of National Pollutant Discharge Elimination System Permit for the City of Fayetteville, Arkansas, NPDES Permit No. AR0020010, pending before the Environmental Protection Agency. The Oklahoma parties in the Fayetteville proceeding requested and were granted a stay of the operation of the City of Fayetteville's proposed permit in December, 1985.

The NPDES permits for these Arkansas cities, and all other municipal and industrial dischargers in Arkansas that discharge into streams that ultimately flow through the State of Oklahoma, have been issued in compliance with the Water Quality Standards of the State of Arkansas and all applicable EPA requirements. Each NPDES permit for an Arkansas discharger must be renewed every five years.

The permits for the cities of Rogers and Springdale, Arkansas, will be reviewed by ADPC & E, the permitting authority for those two plants, in 1990.

A "controversy" exists in this case to support this Court's exercise of original and exclusive jurisdiction for two reasons. First, the State of Arkansas asserts that it has the sovereign right in a partnership with the Environmental Protection Agency to regulate, control and eliminate water pollution that originates within its borders. The State of Oklahoma's actions in applying and threatening to enforce its Water Quality Standards on discharges within the State of Arkansas interfere with and impede these sovereign rights of the State of Arkansas, because the State of Oklahoma has no authority under the Clean Water Act to impose its Water Quality Standards on dischargers within the State of Arkansas.

IV. The Clean Water Act Does Not Mandate or Allow An Affected State to Impose Its Water Quality Standards on a Source State

Under section 301 of the Clean Water Act (33 U.S.C. section 1311(b)(1)(C)) all States have been required to establish water quality standards under the authority preserved to the States in section 510 (33 U.S.C. section 1370) of the Clean Water Act. Section 303 (33 U.S.C. section 1313), provides that all States must adopt water quality standards for each State, and review those standards every three years to modify and adopt standards as appropriate. Under section 510 (33 U.S.C. section 1370), nothing in the Clean Water Act " . . . shall preclude or deny the right of any State . . . to adopt or enforce (A) any standard or limitation respecting discharges of pollutants, or (B) any requirement respecting control or abatement of pollution"

Pursuant to this authority under the Clean Water Act, the State of Oklahoma and the State of Arkansas have

established water quality standards and State water quality management plans for all waters within their respective States. See 82 O.S. Supp. 1976, section 926.1(6). Ark. Code Ann. §8-4-201. The State of Oklahoma adopted Water Quality Standards which were modified in 1982, and again in 1985. Oklahoma has adopted both narrative and numerical standards which the Environmental Protection Agency has approved. The 1982 and 1985 Oklahoma Water Quality Standards have been lodged in the Supreme Court Clerk's office for the convenience of this Court.

In addition to narrative and numerical standards that cover such water quality parameters as dissolved oxygen, turbidity, solids, metals and aesthetic conditions, Oklahoma has adopted two water quality standards of particular importance to this case. The Oklahoma Water Quality Standards contain both a "Beneficial Use Limitation" and an "Anti-Degradation Clause". The "Beneficial Use Limitation" prohibits all new point source discharges or increased loads from existing point source discharges into streams designated as (a) or "scenic river areas" in the State of Oklahoma. The Oklahoma Legislature has determined that certain streams in that State should be designated Scenic Rivers by statute. Those streams are designated "a" and will be referred to as such in the remainder of this Brief. Oklahoma contends that this "Beneficial Use Limitation" applies both to the scenic river itself, and to tributaries of scenic rivers. The "Anti-Degradation Clause" in the Oklahoma Water Quality Standards does not permit any degradation of a "scenic river area" or (a) stream that would interfere with or injure existing instream uses of the scenic river area. The Illinois River in Oklahoma has been designated as an (a) or "scenic river area".

The State of Oklahoma asserts that its Water Quality Standards, including the "Beneficial Use Limitation" and the "Anti-Degradation Clause", are or should be applicable to point source discharges that originate in the State of Arkansas and flow into the State of Oklahoma via the inter-

state waterways the two States share. In particular, the State of Oklahoma contends that its Water Quality Standards are applicable to the NPDES permitted municipal wastewater treatment plants in Northwest Arkansas which ultimately discharge into the Illinois River in Arkansas before that river flows into the State of Oklahoma. The State of Oklahoma contends that under its Water Quality Standards, neither current nor future dischargers in the State of Arkansas can have new point source discharges or increased loads from existing point source discharges on (a) streams such as the Illinois River, or into tributaries in Arkansas that eventually flow into (a) streams in Oklahoma such as the Illinois River. The State of Oklahoma contends that neither current nor future dischargers in the State of Arkansas can discharge into streams in Arkansas that flow into the State of Oklahoma if the discharges degrade the streams in Oklahoma in any way. Imposition of Oklahoma's "no degradation" rule will have the practical effect of banning new industries from building in the Illinois River watershed.

Oklahoma seeks to impose these Water Quality Standards on current and future dischargers in the State of Arkansas despite the fact that Arkansas dischargers do not have to obtain NPDES permits from Oklahoma, that Oklahoma has enacted these water quality standards without any notice or hearing to the Arkansas dischargers, which raises the spectre of a due process violation and that the State of Oklahoma does not apply the same standards to point source discharges within Oklahoma. Oklahoma has no statutory or constitutional authority to apply its standards outside the borders of that State.

V. Arkansas Citizens, Municipalities and Industries Have a Substantial Interest in This Matter

Jurisdiction over this case and controversy is asserted under the State of Arkansas' interest as *parens patriae*. A state is not permitted to enter a controversy as a nominal

party in order to forward the claims of individual citizens. See, *Maryland v. Louisiana*, 451 U.S. 736 (1981); *Oklahoma ex rel. Johnson v. Cook*, 304 U.S. 387 (1938); *New Hampshire v. Louisiana*, 108 U.S. 76 (1883). However, a State, such as Arkansas, may act as the representative of its citizens in original actions where the injury alleged affects the general population of the State in a substantial way. See *Missouri v. Illinois*, 180 U.S. 208 (1901); *Kansas v. Colorado*, 185 U.S. 125 (1902). The actions of Oklahoma affect materially the citizens of Arkansas now and will continue to do so in the future as set out below.

The State of Arkansas in this action represents the interests of its citizens, municipalities and its industries from the actions of Oklahoma in attempting to impose that State's Water Quality Standards upon Arkansas interests.

The citizens of the State of Arkansas—in particular—those citizens who reside in Northwest Arkansas municipalities that discharge or are attempting to obtain NPDES permits to discharge into streams in Arkansas that ultimately reach the Illinois River in Oklahoma, are being substantially injured and are threatened with future injury by Oklahoma's attempts to control the NPDES permitting process in Arkansas. Tremendous expenditures of tax dollars and increased water and sewer rates have already been committed to ensure compliance with the Clean Water Act. The citizens in these Northwest Arkansas cities will pay increased water and sewer rates for many years to come for wastewater treatment plants that have been built and permitted by Arkansas or EPA upon the premise that a discharger in Arkansas must only comply with national and Arkansas Water Quality Standards. The expenditures to which these Arkansas citizens have committed themselves are seriously threatened because the State of Oklahoma seeks to apply its stringent Water Quality Standards outside the State of Oklahoma and to bar or condition

Arkansas discharges into tributaries of streams that eventually flow into Oklahoma.

All municipalities and industries in Arkansas that currently discharge into interstate waterways that flow through the State of Oklahoma are similarly injured in a substantial way by Oklahoma's imposition of its Water Quality Standards on current and future Arkansas dischargers. Arkansas' cities and industries risk the huge investments they have made in wastewater treatment facilities because of the immediate threat that their permits may be modified or revoked on renewal if they must comply with Arkansas, national, *and* Oklahoma Water Quality Standards. The wastewater treatment plants for these cities and industries were built to comply with Arkansas Water Quality Standards, and not the standards of some other State through which a discharge may eventually flow. In addition, for these same dischargers and for ADPC & E, as the delegated permitting authority in Arkansas, there is inherent uncertainty and confusion over which Oklahoma Standards, if any, will be applicable to Arkansas dischargers during any given permit renewal period.

In short, the State of Arkansas alleges a substantial and serious injury to the proprietary interests of its citizens, municipalities and its industries that are the direct result of Oklahoma's invalid and unconstitutional actions in applying its Water Quality Standards outside the borders of Oklahoma. The actions Oklahoma has taken thus far in opposing the City of Fayetteville's discharge as violating Oklahoma's Water Quality Standards, and the threatened actions of Oklahoma in regard to other municipal and industrial dischargers in Arkansas that Oklahoma contends must comply with its Water Quality Standards, are actions which have a direct and immediate impact on resources allocated by Arkansas' citizens, cities and industries to fight pollution, as well as a direct and immediate impact on decision-making and planning for all areas of the State of Arkansas which have point source discharges into streams that flow into the State of Oklahoma.

New permits for any entity wishing to discharge into a receiving stream that happens to flow through Oklahoma and the existing permits which must be periodically renewed, are all subject to certain challenge from the State of Oklahoma because that State has vowed to contest all Arkansas NPDES permits on the basis that Oklahoma Water Quality Standards may be violated. In particular, Oklahoma has enforced and has threatened to enforce its Water Quality Standards on the Northwest Arkansas cities of Springdale, Rogers, Siloam Springs, and Fayetteville, which all discharge or are attempting to discharge into Arkansas streams which converge with the Illinois River in Oklahoma. These Arkansas cities are all immediately and directly threatened by Oklahoma's actions, and of necessity must know whether they will be forced to comply with the water quality standards of Oklahoma as well as Arkansas.

This Court should entertain this original action by the State of Arkansas against the State of Oklahoma. The State of Arkansas' claim in this litigation possesses the seriousness and dignity which this Court must find in order to exercise its discretion to hear this case. See *Illinois v. City of Milwaukee*, 406 U.S. 91 (1972).

At issue in this case is the contention of the State of Oklahoma that it can enact excessively strict water quality standards on a stream that flows through more than one State, and can then enforce those standards on all upstream States regardless of the permit requirements and policy decisions that the source State and the EPA made in relation to the issuance of the permit.

At issue in this case is the sovereign right of one State, as the source of a point source of pollution, to regulate that source, and to make policy decisions fundamental to that State's orderly growth and development.

At issue in this case is the regulatory structure of the Clean Water Act, which creates a partnership between

source States and the EPA to make difficult decisions concerning water pollution and its elimination, pitted against the truly chaotic regulatory structure that would result if all downstream States of a point source of pollution could unilaterally defeat permit decisions of source States through the imposition of stricter water quality standards than those of the source State.

The seriousness of the issues raised in this case cannot be doubted.

IV. There Are No Other Adequate Forums In Which To Address This Dispute

In addition to the seriousness and dignity of the claim, however, this Court should exercise original jurisdiction in this case because there are no other forums available "... where there is jurisdiction over the parties, where the issues tendered may be litigated, and where appropriate relief may be had." *Illinois v. City of Milwaukee*, 406 U.S. at 93.

There is no other forum except this Court where the State of Arkansas can adequately protect its sovereign interest in water quality and water pollution control within Arkansas and the interests of its people when those interests are threatened by a sister State.

The only pending action related to the issues in this action concerns the NPDES permit for the City of Fayetteville, Arkansas. Fayetteville's permit action is currently pending before the Environmental Protection Agency. The background of this case is provided for the information of this Court. The parties to the Fayetteville administrative proceeding are as follows:

- (1) The City of Fayetteville;

- (2) The Arkansas Department of Pollution Control and Ecology, represented by staff counsel and the Attorney General of the State of Arkansas;
- (3) Beaver Water District;
- (4) EPA Region VI;
- (5) Pollution Control Coordinating Board and Oklahoma Scenic River Commission, represented by the Oklahoma Attorney General;
- (6) Save the Illinois River (STIR);
- (7) The Oklahoma Wildlife Federation.

These parties do not include the states of Oklahoma or Arkansas.

Following an evidentiary hearing held at the request of the Oklahoma parties to that administrative proceeding, Administrative Law Judge Thomas Yost issued an initial decision on January 12, 1987. In that decision, ALJ Yost upheld the validity of the Fayetteville permit, holding that the proper legal standards to be applied in such an interstate dispute were those suggested by this Court in *International Paper Co. v. Ouellette*, 107 S.Ct. 805 (1987), by the court in *Champion International Co. v. United States Environmental Protection Agency (Champion II)*, 652 F.Supp. 1398 (W.D. N.C. 1987), and in cases decided under the Clean Air Act. Based upon this authority, Judge Yost adopted a legal standard whereby the City of Fayetteville's permit would be valid unless the discharge caused an "undue impact" upon an interstate waterway. Using the analysis contained in *Champion II*, Judge Yost ruled that although the water quality standards of the State of Oklahoma may be one relevant factor in determining whether an undue impact exists, nothing in the Clean Water Act would require a source State to comply with the water quality standards of every downstream State.

The Oklahoma parties appealed this ALJ decision to the Administrator of the Environmental Protection Agency, who delegated his decision making authority to his Chief Judicial Officer, Ronald McCallum. On June 28, 1988, Chief Judicial Officer McCallum ordered the City of Fayetteville's case remanded to ALJ Yost because the CJO found that Judge Yost had applied an improper legal standard. The CJO, citing 33 U.S.C. sections 1311(b)(1)(C) and 1341(a)(2), adopted the legal standard espoused by the Oklahoma parties and concluded that these sections require unequivocal compliance by an Arkansas discharger with the Water Quality Standards of the State of Oklahoma. The CJO then remanded the City of Fayetteville's case to ALJ Yost for additional findings of fact based upon this new legal standard. All parties to the Fayetteville administrative proceeding have supplied ALJ Yost with briefs addressing the factual question on remand of whether the City of Fayetteville's discharge would cause measureable, detectable violations of any of Oklahoma's Water Quality Standards. In addition, the Arkansas parties to that proceeding have filed motions with the EPA Administrator to reconsider his CJO's decision remanding the City's case. The Arkansas parties' motion for reconsideration of the CJO's decision was denied on September 12, 1988.

The action currently pending before the EPA concerning the City of Fayetteville, Arkansas' NPDES permit is not a bar to this original action by the State of Arkansas against the State of Oklahoma. First, neither the plaintiff State nor the defendant State in this action are named parties to the City of Fayetteville's administrative proceeding. The City of Fayetteville's case, and the parties to that case, are only litigating the validity of a single municipal permit, and do not and cannot adequately represent the broader interests the State of Arkansas seeks to represent in this action. Regardless of the outcome of the City of Fayetteville's case, and regardless of the length of time that the Fayetteville's permit will be tied up in EPA administrative proceedings, the State of Arkansas has a

vital interest in adjudicating the issues raised in this lawsuit for the benefit of the State, its environmental agencies, the other cities and industries of the State who must obtain permits or renewals of permits challenged by the State of Oklahoma under its Water Quality Standards. The State of Arkansas has a vital interest in adjudicating the issues raised in this lawsuit for the benefit of the State's citizens who are shouldering a heavy rate burden to comply with the requirements of the Clean Water Act, only to learn that the plants they pay for must be conditioned or modified to comply with another State's Water Quality Standards. Piecemeal litigation over each individual NPDES permit issued for an Arkansas discharger which the State of Oklahoma challenges as violative of its Water Quality Standards cannot afford the State of Arkansas an adequate forum and appropriate relief.

Second, the constitutional challenges to Oklahoma's insistence that its Water Quality Standards be applied outside Oklahoma have not been raised and adjudicated in the Fayetteville administrative proceeding. Because the only pending action involving the application of Oklahoma's Water Quality Standards to a discharger in another State is before an administrative agency that will not adjudicate the important constitutional issues raised in this case, this Court should exercise its original jurisdiction to hear this case.

Finally, Arkansas contends that the actions of Oklahoma inhibit and impermissibly burden interstate commerce by the immediate threat of restriction of use of interstate waterways. This issue is of constitutional significance worthy of this Court's review.

Respectfully submitted,

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