No. 96 Original

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

COMMONWEALTH OF PUERTO RICO,

Plaintiff,

v.

STATE OF IOWA,

Defendant.

MOTION FOR LEAVE TO INTERVENE, JOINT OPPOSITION TO MOTION FOR LEAVE TO FILE COMPLAINT AND JOINT MOTION TO DISMISS

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MOTION FOR LEAVE TO INTERVENE

COMES NOW the Honorable Terry E. Branstad, Governor of the State of Iowa, and moves this Court for leave to intervene in the above captioned proceeding pursuant to Supreme Court Rule 9(2) and Fed. R. Civ. Proc. 24(b). In support of said motion, the Governor states:

I.

In this action the Commonwealth of Puerto Rico seeks a writ of mandamus or other appropriate relief directing Governor

Branstad to "deliver up" Ronald Calder, alleged to be a fugitive from justice, pursuant to Article IV, section 2 of the United States Constitution and 18 U.S.C. § 3182. See Complaint, Prayer for Relief, (a) and (c), at xi.

II.

Plaintiff alleges that Governor Branstad denied a request for extradition. See Complaint, ¶ XVI, at X.

III.

Plaintiff alleges that the Governor's denial of extradition constitutes a breach of ministerial duty mandated by Article IV, section 2, of the United States Constitution and 18 U.S.C. § 3182. See Complaint, ¶ XVIII, at X.

IV.

Plaintiff further alleges that the Governor improperly considered extraconstitutional and extrastatutory

matters in denying the extraditional request. See Complaint, ¶ XX at X.

V.

Because the plaintiff seeks an order directing the Governor to take specific acts which he, in the exercise of his discretion as chief executive, has declined to undertake, the Governor has substantial interest in the outcome of this litigation.

VI.

Intervention by the Governor in this proceeding will not unduly delay or prejudice adjudication of the rights of the original parties.

WHEREFORE, Governor Terry E. Branstad respectfully requests leave to intervene in the above captioned proceeding.

Respectfully submitted,

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ATTORNEYS FOR GOVERNOR
TERRY E. BRANSTAD

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

No. 96 Original

COMMONWEALTH OF PUERTO RICO,

Plaintiff,

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STATE OF IOWA,

Defendant.

JOINT OPPOSITION TO MOTION FOR LEAVE TO FILE COMPLAINT AND JOINT MOTION TO DISMISS

COMES NOW the named defendant, the State of Iowa, and the intervenor defendant, the Honorable Terry E. Branstad, Governor of the State of Iowa, by their attorneys and resist plaintiff's motion for leave to file the complaint in the above proceeding. In the alternative, the defendant and intervenor defendant move this Court to summarily dismiss the action for failure to state a

claim for which relief may be granted. In support of said opposition and motion, the defendant and the intervenor defendant state:

I.

This action has been brought by the Commonwealth of Puerto Rico and attempts to name the State of Iowa as a defendant.

II.

The action seeks a writ of mandamus or other appropriate relief directing the Governor of the State of Iowa, the Honorable Terry E. Branstad, to "deliver up" Ronald Calder, alleged to be a fugitive from the Commonwealth of Puerto Rico, pursuant to Article IV, section 2 of the United States Constitution and 18 U.S.C. § 3182. See Complaint, Prayer for Relief at xi.

III.

Plaintiff attempts to invoke this Court's original jurisdiction pursuant to Article III, section 2, clause 2 of the United States Constitution. See Complaint, ¶ I at v.

IV.

In order to invoke this Court's original jurisdiction under Article III, section 2, clause 2, at least one party must be a State. By statute, if the controversy is between two States, this Court has exclusive original jurisdiction. If only one party is a State, this Court has concurrent original jurisdiction along with state courts of general jurisdiction and the lower federal courts. 28 U.S.C. § 1251(a).

V.

The plaintiff in this action, the Commonwealth of Puerto Rico is not a State under Article III, section 2, clause 2 of the Constitution.

VI.

The proper defendant in this action is not the State of Iowa, as indicated by the plaintiff's caption in this proceeding. The proper defendant, Governor Branstad, is not a State under Article III, section 2, clause 2.

VII.

Because neither parties to this action are States, this Court lacks original jurisdiction in this case.

VIII.

Even if one party is a State, this Court should decline to exercise its concurrent original jurisdiction because of the availability of other fora for litigating this controversy.

IX.

In addition to its jurisdictional defects, plaintiff's complaint also fails to state a claim for which relief can be granted. A federal court is without power to force a governor to comply with the extradition provision of Article IV, clause 2.

WHEREFORE, the defendant State of Iowa and intervenor defendant Governor Terry E. Branstad respectfully pray that the motion to file the complaint be denied either for lack

of original subject matter jurisdiction, or be denied through exercise of this Court's discretion. In the alternative, the defendant and intervenor defendant pray that the motion for leave to file be granted and the cause summarily dismissed for failure to state a claim for which relief may be granted.

Respectfully submitted,

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ATTORNEYS FOR THE NAMED DEFENDANT, THE STATE OF IOWA, AND INTERVENOR DEFENDANT GOVERNOR TERRY E. BRANSTAD

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

No. 96 Original

COMMONWEALTH OF PUERTO RICO,

Plaintiff,

v.

STATE OF IOWA,

Defendant.

BRIEF IN SUPPORT OF JOINT OPPOSITION TO MOTION FOR LEAVE TO FILE COMPLAINT AND JOINT MOTION TO DISMISS

In this action, the Commonwealth of Puerto Rico seeks to force Governor Terry E. Branstad to extradite Ronald Calder. The Commonwealth seeks leave to file a complaint invoking this Court's original jurisdiction pursuant to Article III, section 2 of the United States Constitution as implemented by 28 U.S.C. § 1251(a)(1). The defendant State of Iowa and defendant intervenor Governor

Terry E. Branstad now resist plaintiff's motion for leave to file the complaint and, in the alternative, move this Court to dismiss the cause for failure to state a claim upon which relief may be granted.

STATEMENT OF THE CASE

On January 25, 1981, Army Villalba died of injuries suffered when she was struck by a car driven by Ronald Calder. Notwithstanding protestations by Calder and his companion that the tragedy was accidental, Puerto Rico officials charged Calder with first degree murder. Calder left Puerto Rico and currently resides in Iowa.

The Commonwealth demanded that former Governor Robert Ray extradite Calder to Puerto Rico. After a hearing, Governor Ray, exercising his discretion as Chief Executive, declined the request. When Governor Ray left office, Puerto Rico renewed its extradition demand with newly elected Governor Terry E. Branstad. Governor Branstad, however, also declined to extradite Calder. The

Commonwealth then filed the instant complaint seeking an order from this Court in the exercise of its original jurisdiction commanding Governor Branstad to "deliver up" Calder to Puerto Rican authorities.

SUMMARY OF ARGUMENT

Under Article III, section 2, clause 2 of the United States Constitution, this Court has original jurisdiction over cases "to which a State shall be a party." By statute, Congress has divided this Court's original jurisdiction into two categories: cases where both parties are States and cases where only one party is a State. In cases where both parties are States, such as boundary disputes, the statute provides that this Court has exclusive original jurisdiction. In cases where only one State is a party, Congress has provided this Court with concurrent original jurisdiction that is shared with lower state and federal courts. See 28 U.S.C. § 1251(a).

The State of Iowa and the proper defendant in this action, intervenor Governor Terry E. Branstad, urge this Court to deny plaintiff Commonwealth's motion to file the complaint on the ground that no States are parties to this controversy. The Commonwealth of Puerto Rico cannot be considered a State under Article III, section 2, clause 2 because it has not been admitted to the Union pursuant to the express provisions of Article IV, section 3. Moreover, in this mandamus action, the State of Iowa is not a proper party. The proper defendant in a mandamus action is not the sovereign State but the individual official against whom the writ is sought, namely, Governor Branstad.

Since neither the plaintiff nor the proper defendant in this controversy is a State, this Court lacks original jurisdiction under Article III, section 2, clause 2 and the motion for leave to file the complaint should be denied. Even assuming, however,

that one of the parties to this controversy is a State, thus exciting this Court's concurrent original jurisdiction, 28 U.S.C. § 1251(a), the Court, in its discretion, should deny leave to file the complaint and allow the plaintiff to pursue his cause of action in either state courts of general jurisdiction or in the lower federal courts.

In the alternative, this Court may grant leave to file the complaint (or reserve the issue) and summarily dismiss the action for failure to state a claim upon which relief may be granted. In Kentucky v. Dennison, 66 U.S. (24 How.) 65 (1861), this Court expressly held that a federal court is without the power to issue a writ of mandamus or provide any other remedy in an attempt to force a State's chief executive to "deliver up" a fugitive under the extradition clause of Article IV, section 2. Because of the settled character of the rule of law challenged here, the cause may be summarily dismissed even if the Court has reservations on the jurisdictional question.

ARGUMENT

I. Since No State is a Party to this Action, this Court Has Neither Exclusive nor Concurrent Original Jurisdiction Over This Controversy.

In order to have either exclusive or original concurrent jurisdiction over this controversy, at least one of the parties must be a State. Because neither party to this action is a State, Plaintiff's motion for leave to file the complaint should be denied.

A. Puerto Rico is Not a State.

Article III, section 2 explicitly requires that a State must be a party in order to involve this Court's original jurisdiction. Puerto Rico, however, is not a State but is a territory of the United States, subject to broad plenary congressional regulatory power that is unfettered by constitutional notions of state sovereignty, Article IV, section 3. See Balzac v. Porto Rico, 258 U.S. 298, 306 (1922) (Foraker Act does not confer Statehood

on Puerto Rico). See also 48 U.S.C. §§ 731-916 (extensive Congressional regulation of internal affairs of Puerto Rico).

It simply cannot be maintained that the Framers of the Constitution intended the phrase "to which a State shall be a Party" to mean "to which a State or Territory shall be a Party." Throughout its text, the Constitution precisely delineates the rights and responsibilities of the United States, the States, Territories, and foreign Nations. Whatever the faults of the Framers, they cannot be fairly charged with imprecise use of language, particularly where questions of distribution of power are involved.

Plaintiff attempts to override the express language of the Framers through court decisions that are far off the mark. For instance, plaintiff cites Kopel v. Bingham, 211 U.S. 463 (1909) for the proposition that Puerto Rico should be considered a State under Article III, section 2. In Kopel,

however, Plaintiff sought a writ of habeas corpus, arguing that Puerto Rico lacked the power to request extradition and that the Governor of New York was without authority to honor the request. Exercising appellate jurisdiction over federal questions, the Court held that Congress, through its plenary power to regulate territories, had by statute authorized Puerto Rico to seek extradition and empowered the chief executives of the states to honor such requests. Id. at 474. Nowhere in this nonoriginal action did this Court decide or even consider the question of whether Puerto Rico is a State for Article III, section 2, clause 2.

Similarly, the lower federal court cases cited by the plaintiff Territory as "analogous" are in fact irrelevant. Questions concerning the applicability of the sovereign immunity doctrine to Puerto Rico or Puerto Rico's statutory standing as an entity under anti-trust laws may be intriguing to lawyers and are no doubt of substantial importance to

many Puerto Ricans. See e.g., Comancho v. Public Service Commission, 450 F. Supp. 231 (D.P.R. 1978), Alfred L. Snapp & Son v. Puerto Rico, ___ U.S. ___, 102 S. Ct. 3260 (1982) and other cases cited in Plaintiff's Brief at 11-12. These statutory and common law precedents, however, are totally without constitutional dimension.

Plaintiff's attempt to invoke this Court's exclusive original jurisdiction is also without policy foundation. Commentators have observed that the evident philosophy of the Framers in providing original jurisdiction was "to insure that basic adjustments within the federal structure are heard by a tribunal whose prestige is commensurate with that of the parties before it." See Note, The Original Jurisdiction of the United States Supreme Court, 11 Stan. L. Rev. 665, 665 (1959). See also Wagner, W., The Original and Exclusive Jurisdiction of the United States Supreme Court, 2 St. Louis L.J. 111, 111-12 (1952) (noting close

connection between original jurisdiction and international law). Obviously, however, Puerto Rico, a Territory subject to broad Congressional regulation under Art. IV, § 2, lacks standing to invoke the extraordinary federalism adjusting process inherent in exercise of this Court's exclusive original jurisdiction.

Given the precision of the Framers and the clear lack of policy justification, the unavoidable conclusion is that Puerto Rico is not a State under Article IV, section 2, clause 2. As a result, there is no basis for invoking this Court's exclusive original jurisdiction which requires that both parties be sovereign states of the Union.

B. Governor Terry Branstad, and Not the State of Iowa, is the Proper Defendant in this Action.

Even if Puerto Rico is not a State, plaintiff appears to assert that this Court still has concurrent original jurisdiction since the State of Iowa is named as a party

defendant. The proper defendant in this controversy, however, is not the sovereign State of Iowa, but Governor Terry E. Branstad. As a result, this Court lacks even concurrent original jurisdiction.

Plaintiff's own pleading reveals that the State of Iowa is not the proper defendant. Plaintiff seeks a writ of mandamus to compel a state official, the Governor, to perform what plaintiff claims is a mandatory, judicially enforceable duty. See Complaint, p. ix. A writ of mandamus, however, does not lie against a sovereign State, but only against individual state officers. See Miguel v. McCool, 291 U.S. 442, 456 (1934) (United States not a necessary party in mandamus action against Chief of Finance of War Department); United States ex rel. Lewis v. Boutwell, 17 Wall 604, 607 (1873) (writ of mandamus lies to enforce personal obligations of officials). Indeed, the key precedent of this Court in the extradition area is styled Kentucky v. (Gov.) Dennison, not Kentucky v.

Ohio. Similarly, the celebrated mandamus case which establishes the contours of this Court's power of judicial review is Marbury v. Madison, 1 Branch 137 (1803) not Marbury v. United States.

The plaintiff has been forced to seek a personal remedy because the sovereign interests of the State of Iowa are simply not implicated in this action. The ability of the sovereign State to control the conduct of persons within Iowa's boundaries through its legislatively enacted criminal justice system is not affected.[1] Nor is the power of the State to exercise sovereign authority over various lands at issue here. Puerto Rico has

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[1] In an action where the governor of a State requests extradition as required by Art. IV, § 3 of the Constitution, the requesting State in its sovereign capacity is a real party since the Governor is seeking to vindicate the sovereign police power of the State. See Kentucky v. Dennison, 66 U.S. (24 How.) 65 (1861). The sovereign interests of the receiving state, however, are not involved. Thus, if Puerto Rico were a State, this Court would have concurrent original jurisdiction under 28 U.S.C. § 1251(a), as it did in Kentucky v. Dennison.

no quarrel with the sovereign State of Iowa, but only with an individual state officer, the Governor, for his alleged failure to perform properly his duties.

II. Even if a State Were a Party to this Action, this Court Should Decline to Exercise its Concurrent Jurisdiction.

Assuming that one of the parties to this action were a State (which is incorrect), this Court would have concurrent original jurisdiction pursuant to 28 U.S.C. § 1251(a). This Court, however, has recognized an obligation to exercise concurrent original jurisdiction "only in appropriate cases." Illinois v. City of Milwaukee, 406 U.S. 91, 93 (1972). In City of Milwaukee, the Court emphasized "the availability of another forum where there is jurisdiction over the named parties, where the issue tendered may be litigated and where appropriate relief may be had." Id.

Puerto Rico concedes, as it must, the generally determinative point that both state

and federal courts are readily available to hear the plaintiff's claim. Seeking to overcome this Court's clearly expressed reluctance to exercise concurrent original jurisdiction, the plaintiff observes that "Concurrent jurisdiction of state and federal district courts notwithstanding, the matters at issue could not be fairly litigated in any alternate forum." Plaintiff's Brief at 10.

The plaintiff's complaint does not present any well pleaded facts to support this naked assertion in its brief. In any case, any allegations that might be contrived would be insubstantial. First, because this cause would be tried to the bench in lower courts, Puerto Rico cannot maintain that fair adjudication of its claim would be impaired by a run away jury infected with local prejudice. Second, the published reports clearly show that Iowa state court judges will rule against the Governor even in the direct exercise of executive powers if the court is convinced that the Governor has

erred as a matter of law. See Redmond v. Ray, 268 N.W.2d 849 (Iowa 1978) (Governor's veto untimely under Iowa Constitution). Welden v. Ray, 229 N.W.2d 706 (Iowa 1975) (gubernatorial vetoes on appropriation bills held invalid). Third, even if state courts were hostile to challenges to the Governor, the doors of the federal courthouse in Iowa are open to plaintiff. Appointed for life by the President of the United States, federal judges have historically demonstrated ability to withstand parochial pressures in their host states. See e.g., Alabama NAACP State Conference v. Wallace, 269 F.Supp. 346 (M.D. Ala. 1967) (Alabama anti-guideline statute unconstitutional), Barthe v. City of New Orleans, 219 F.Supp. 788 (E.D. La. 1963) (Louisiana Anti-Mixing Statute unconstitutional), Bailey v. Patterson, 206 F.Supp. 67 (S.D. Miss. 1962) (Mississippi and local segregation statutes unconstitutional). Finally, this Court retains the power of judicial review of either state or federal

lower court judgments in its appellate capacity even if it declines to exercise its concurrent original jurisdiction.

Under the circumstances, departure from this Court's established rule of restraint would be unwise. The Court's workload has changed dramatically since the days of the Founders when oral argument could last for several days in one case, or even from the Civil War era when this Court last heard an extradition case on the merits, Kentucky v. Dennison, 66 U.S. (24 How.) 110 (1861). Modern exercise of concurrent original jurisdiction in an extradition case would create a precedent that would threaten to increase substantially the Court's burdens each term.

III. In the Alternative, this Court Should Dismiss the Complaint for Failure to State a Claim upon which Relief may be Granted.

If this Court decides that it properly has original jurisdiction over this action, or if it wishes to reserve judgment on the

question, the complaint may nonetheless be summarily dismissed for failure to state a claim upon which relief may be granted. Over a hundred years ago this Court considered the question of whether a federal court has the power to issue a writ of mandamus to force the chief executive of a state to extradite a fugitive pursuant to Article IV, section 3, and accompanying statutes in Kentucky v. Dennison, 66 U.S. (24 How.) 65 (1861). In Dennison, the Court clearly and expressly held "there is no power delegated to the general government, either through the judicial department or any other department, to use any coercive means to compel him" to honor a rendition request of a sister state. See 66 U.S. (How.) at 110. This unambiguous precedent is now enjoying its second century of undisturbed tranquility.

Of course, the interests which underlie stare decesis are not always controlling. But in the extradition setting, there is no pressing policy reason to overturn the

established precedent. An iconoclastic rule of law contrary to the traditional approach would engulf the federal courts, including this Court, with a flood of cases involving the most intimate of conflicts between chief executives of sister states. This untoward result may be avoided by summary dismissal of plaintiff's complaint on the unmistakable authority of Kentucky v. Dennison.

CONCLUSION

For all the above reasons, the complaint in the above captioned matter should be dismissed.

Respectfully submitted,

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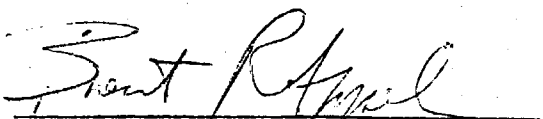

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