

SEP 20 1979

IN THE

MICHAEL ROBAK, JR., CLERK

# Supreme Court of the United States

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OCTOBER TERM, 1978

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**No. 83, Original**

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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.*

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**ANSWER TO MOTION FOR APPOINTMENT  
OF A SPECIAL MASTER**

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STEPHEN H. SACHS  
Attorney General Of Maryland  
1400 One South Calvert Building  
Baltimore, Maryland 21202

WILLIAM J. SCOTT  
Attorney General of Illinois  
500 South Second  
Springfield, Illinois 62706

THEODORE L. SENDAK  
Attorney General of Indiana  
219 State House  
Indianapolis, Indiana 46204

FRANCIS X. BELLOTTI  
Attorney General of Massachusetts  
One Ashburton Place  
Boston, Massachusetts 02108

FRANK J. KELLEY  
Attorney General of Michigan  
525 West Ottawa Street  
Lansing, Michigan 48913

ROBERT ABRAMS  
Attorney General of New York  
#2 World Trade Center  
New York, New York 10047

DENNIS J. ROBERTS II  
Attorney General of Rhode Island  
Providence County Courthouse  
Providence, Rhode Island 02903

BRONSON C. LA FOLLETTE  
Attorney General of Wisconsin  
114E State Capitol  
Madison, Wisconsin 53702

September 20, 1979



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The State of Maryland, the State of Illinois, the State of Indiana, the Commonwealth of Massachusetts, the State of Michigan, the State of New York, the State of Rhode Island and Providence Plantations, and the State of Wisconsin ("the plaintiff states"), by their attorneys, in answer to the motion for the appointment of a special master, state that the motion is premature and should be denied for the following reasons:

1. The plaintiff states filed a motion for judgment on the pleadings and supporting brief on September 18, 1979.

2. The issues raised by the motion of the plaintiff states are purely legal and thus may be decided appropriately on the basis of the pleadings. *See, e.g., Douglas v. Seacoast Products*, 431 U.S. 265, 271-72 (1977); *Philadelphia v. New Jersey*, 430 U.S. 141 (1977); *United States v. Louisiana*, 363 U.S. 1 (1960) (all indicating that the determination of a supremacy clause issue presents a purely legal question); *Boston Stock Exchange v. State Tax Commission*, 429 U.S. 318 (1977) (commerce clause violation found even in the absence of a record).

3. The urgency of the issues raised by this case; the enormous burden that Louisiana's First Use Tax places on the plaintiff states and their citizens — in excess of one-quarter billion dollars annually — which is not adequately addressed by the possibility of refunds, *FPC v. Tennessee Gas Transmission Company*, 371 U.S. 145, 154-55 (1962); and the possible spectre of interim retaliatory state taxation in response to Louisiana's First Use Tax, all require that this Court expeditiously decide this case without the appointment of a special master. *See South Carolina v. Katzenbach*, 383 U.S. 301, 307 (1966) (dispensing with the appointment of a master in an original jurisdiction case to resolve important questions under the Voting Rights Act of 1965).

WHEREFORE, having fully answered the motion for the appointment of a special master, the plaintiff states urge that the motion is premature and should be denied

and that oral argument be set on the plaintiff states' motion for judgment on the pleadings.

Respectfully submitted,

STATE OF MARYLAND

STEPHEN H. SACHS  
Attorney General

DAVID H. FELDMAN  
Assistant Attorney General  
Chief of Litigation

DIANA GRIBBON MOTZ  
ROBERT A. Zarnoch  
Assistant Attorneys General  
1400 One South Calvert Building  
Baltimore, Maryland 21202

JOHN K. KEANE, JR.  
People's Counsel of Maryland  
State Office Building  
301 West Preston Street, #900  
Baltimore, Maryland 21201

STATE OF ILLINOIS

WILLIAM J. SCOTT  
Attorney General  
500 South Second  
Springfield, Illinois 62706

HERCULES F. BOLOS  
Special Assistant  
Attorney General

THOMAS J. SWABOWSKI  
Assistant Attorney General  
228 North LaSalle Street  
Chicago, Illinois 60601

STATE OF INDIANA

THEODORE L. SENDAK  
Attorney General

DONALD P. BOGARD  
Chief Counsel

ROBERT B. WENTE  
Deputy Attorney General  
219 State House  
Indianapolis, Indiana 46204

COMMONWEALTH OF  
MASSACHUSETTS

FRANCIS X. BELLOTTI  
Attorney General

GARRICK COLE  
ALAN D. MANDL  
Assistant Attorneys General  
One Ashburton Place  
Boston, Massachusetts 02108

STATE OF MICHIGAN

FRANK J. KELLEY  
Attorney General

ROBERT A. DERENGOSKI  
Solicitor General  
525 West Ottawa Street  
Lansing, Michigan 48913

ARTHUR E. D'HONDT  
DON L. KESKEY  
MARK S. MEADOWS  
Assistant Attorneys General  
1000 Long Boulevard  
Suite 11  
Lansing, Michigan 48910

STATE OF NEW YORK

ROBERT ABRAMS  
Attorney General  
2 World Trade Center  
New York, New York 10047

STATE OF RHODE ISLAND AND  
PROVIDENCE PLANTATIONS

DENNIS J. ROBERTS II  
Attorney General  
Providence County Courthouse  
Providence, Rhode Island 02903

WILLIAM GRANFIELD BRODY  
Assistant Attorney General  
250 Benefit Street  
Providence, Rhode Island 02903

STATE OF WISCONSIN

BRONSON C. LA FOLLETTE  
Attorney General

CHARLES A. BLECK  
Assistant Attorney General  
114E State Capitol  
Madison, Wisconsin 53702

STEVEN M. SCHUR  
Chief Counsel  
Wisconsin Public Service  
Commission  
4802 Sheboygan Avenue  
Madison, Wisconsin 53702







