NO. 93, ORIGINAL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

STATE OF OKLAHOMA,
Plaintiff,

versus

STATE OF ARKANSAS, et al.,
Defendants.

On Motion For Leave To File Complaint

MOTION BY THE PEOPLE OF THE STATE OF ILLINOIS AND THE PEOPLE OF THE STATE OF TENNESSEE FOR LEAVE TO FILE BRIEF AS AMICI CURIAE

Of Counsel:

PHILIP C. PARENTI
JOHN VAN VRANKEN*
STEPHEN GROSSMARK
Assistant Attorneys General
188 West Randolph Street
Suite 2315
Chicago, Illinois 60601
(312) 793-2491

NEIL F. HARTIGAN
Attorney General of the
State of Illinois

MICHAEL D. PEARIGEN
Assistant Attorney General
450 James Robertson Parkway
Nashville, Tennessee 37219
(615) 741-3491

WILLIAM M. LEECH, JR.
Attorney General of the
State of Tennessee

* Counsel of Record

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Pursuant to Supreme Court Rules 29 and 36, the People of the State of Illinois ("Illinois") and the People of the State of Tennessee ("Tennessee") respectfully move the Court (1) for leave to file a brief as amici curiae in the present case on behalf of the State of Oklahoma ("Oklahoma"), (2) for waiver of the requirement that this motion be filed within the period sought to be extended and (3) for waiver of the requirement that the brief accompany this motion. In support of this motion, Illinois and Tennessee state as follows:

1. The issues raised by the complaint and motion filed by Oklahoma relate to issues now before the Seventh Circuit Court of Appeals on the remand of *City of Milwaukee v. Illinois and Michigan*, 451 U.S. 304, 101 S.Ct. 1784, 68 L.Ed. 2d 114 (1981). Oklahoma's action also bears directly on a similarly-existing situation in which Tennessee waters are polluted by an out-of-state source. This situation may be the subject of future legal proceedings.

2. In the brief submitted to the Court by the Solicitor General on behalf of the United States which urges dismissal of Oklahoma's complaint and motion, the federal government suggests that the Court elucidate on the grounds for its decision on Oklahoma's motion.

3. Important constitutional questions are raised in this case and include whether there is a body of federal common law on which relief could be granted, whether relief could be granted under state law in the absence of a preemptive body of governing federal common law and what choice-of-law rules might be applied if state law governs. These questions raise important issues regarding the separation of powers among the branches of our federal government and the division of power between the federal government and the sovereign states. If the Court adopts the suggestion of the Solicitor General and decides these issues on Oklahoma's Motion For Leave To File Complaint, the Court's decision could have far-reaching constitutional consequences.

4. Illinois and Tennessee respectfully request that they be given an opportunity to express their views prior to the Court issuing a decision, as suggested by the Solicitor General, on the merits of Oklahoma's motion.

5. If the Court schedules further briefing and oral argument, also as suggested by the Solicitor General and warranted by the importance of the issues raised, this motion would then become moot.

Wherefore Illinois and Tennessee respectfully move the Court (1) for leave to file a brief as amici curiae in the present case, (2) for waiver of the requirement that this motion be filed within the period sought to be extended, and (3) for waiver of the requirement that the brief accompany this motion. If the Court grants this motion, Illinois and Tennessee respectfully request that they be given 30 days to submit the brief.

Respectfully submitted,

NEIL F. HARTIGAN
Attorney General of Illinois

By _____
JOHN VAN VRANKEN
Assistant Attorney General

Of Counsel:
PHILIP C. PARENTI
STEPHEN GROSSMARK
Assistant Attorneys General

WILLIAM M. LEECH, JR.
Attorney General of Tennessee

Of Counsel:
MICHAEL D. PEARIGEN
Assistant Attorney General