No. 90, Original

SUPREME COURT OF THE UNITED STATES

October Term, 1980

STATE OF CALIFORNIA,
Plaintiff,

vs.

STATES OF TEXAS, FLORIDA, ALABAMA, MISSISSIPPI, AND SOUTH CAROLINA,
Defendants.

ACTION IN ORIGINAL JURISDICTION

SUPPLEMENT TO MOTION FOR LEAVE TO FILE COMPLAINT

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UNITED STATES SUPREME COURT

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It is possible that the defendants will have modified or withdrawn their quarantines at the time that the Court

considers our motion for leave to file bill of complaint. It is anticipated that, if these circumstances occur, the defendants will argue that our motion should be dismissed on grounds of mootness. In this supplementary brief, we argue that, under these circumstances, the Court should nonetheless grant our motion and proceed to resolve the merits of the controversy as soon as possible.

This Court has held that a question is not moot if the challenged conduct is "capable of repetition, yet evading review." Moore v. Ogilvie, 394 U.S. 814, 816 (1969). See Dunn v. Blumstein, 405 U.S. 330, 333 n. 2 (1972); Sosna v. Iowa, 419 U.S. 393 (1975). It has also held that mootness does not occur if the questioned conduct is likely to recur or the "underlying question persists and is agitated by the continuing activities

and program of petitioners." Carroll v. President and Commissioners of Princess Anne, 393 U.S. 175, 179 (1968). In our view, these cases stand for the proposition that--because of the recurring nature of the problem which is the subject of this case--the Court should review the controversy notwithstanding any cession of the challenged activity at the time that the Court considers our motion for leave to file bill of complaint.

The defendants' quarantines were imposed because of the Mediterranean fruit fly ("Medfly") infestation in California. California, in cooperation with the U. S. Department of Agriculture ("USDA"), is attempting to eradicate the infestation by a variety of techniques, including aerial spraying of the pesticide Malathion. To date, the

infestation has not been eradicated. Therefore, the conditions that led to the adoption of the defendants' quarantines have not been removed. It is thus possible that the defendants may adopt similar, or even more restrictive, quarantines at a future time.

Moreover, since new larval discoveries have been made outside the core area of the infestation in the last few weeks, it is possible that other larval discoveries may be made in other areas in the future. In this event, the defendants will likely claim the right to adopt new quarantines in response to the new larval discoveries. Indeed, the defendants' existing quarantines were adopted because of the recent larval discoveries. There is no reason to believe that the defendants will not take similar action in the event of new finds

of larvae. Thus, for example, the defendants may adopt new quarantines if larvae are found in California's Central Valley, where most California fruits and vegetables are grown.

Notwithstanding the foregoing, it might fairly be argued that this case is moot--assuming that the defendants withdraw or modify their quarantines--if the challenged activity constituted a single, isolated episode. Such is not the case, however. As the Court knows, Texas adopted a quarantine against California fruits and vegetables earlier this year, and the quarantine was removed only after California brought an original jurisdiction action in this Court; the Court then dismissed our motion for leave to file bill of complaint on grounds of mootness. See California v. v. Texas, Original No. 87.

Thus, a distinct pattern has emerged in California's relations with states which grow fruits and vegetables that are in competition with like products grown in California. Under this pattern, as the core area of the infestation expands with new larval discoveries, the competing states adopt quarantines that impose restrictions on the importation of fruits and vegetables grown anywhere in California; California--after its legal officers have worked around the clock for several days preparing the necessary papers--files an original jurisdiction action in this Court; the competing states then withdraw their quarantines, and argue that the matter is now beyond judicial review; in the meantime, California's agricultural industry--which provides about half of the nation's supply of fruits and vegetables--is

unable to freely export its products to, or even through, the competing states; the nation's supply of fruits and vegetables is thus interrupted during this interim period, to the economic advantage of growers in the competing states. This recurring pattern could be repeated endlessly until well after the last Medfly is killed in California, unless the Court proceeds to resolve the controversy now.

It is thus clear that this controversy is not moot regardless of whether the defendants withdraw their quarantines forthwith. This is the second time that another state or states have adopted quarantines against California fruits and vegetables as a result of the Medfly crisis. The Medfly has not yet been eradicated from California, and there is a possibility of new larval discoveries

outside the current USDA quarantine area; thus, the conditions that led to the adoption of the defendants' quarantines have not yet abated. The Court should thus grant our motion for leave to file bill of complaint, and proceed to resolve the controversy as soon as possible.

In order to have the controversy resolved as soon as possible, we intend to file a motion for summary judgment and supporting brief at the earliest practicable date. Our motion will be limited to the preemption issue, since this issue involves purely legal questions that can be expeditiously resolved by this Court; we will not raise the interstate commerce issue in our motion, since this issue depends on an extensive factual analysis that could not properly be made by this Court. In our motion, we will ask that the Court set an

expedited schedule for filing of the defendants' briefs on the preemption issue, and that the Court set the matter for hearing as soon as possible. In this way, California and other states will be able to obtain a timely decision on the merits of the preemption issue, and thus know how to conduct themselves during the changing circumstances of the Medfly crisis. In this way, California's agricultural industry--and all who depend on it, which includes virtually everybody in America--will no longer be victimized by the defendants' recurring quarantine outbursts.

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CONCLUSION

For the foregoing reasons, it is respectfully urged that the Court grant our motion for leave to file complaint.

Dated: July 23, 1981

Respectfully submitted,

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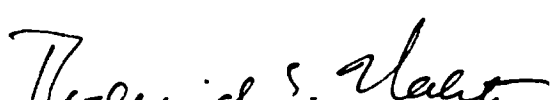
By 
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