No. 90, Original

SUPREME COURT OF THE UNITED STATES

October Term, 1980

STATE OF CALIFORNIA,
Plaintiff,

vs.

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

ACTION IN ORIGINAL JURISDICTION

BRIEF OF DEFENDANT ALABAMA IN OPPOSITION TO PLAINTIFF'S MOTION TO FILE COMPLAINT, COMPLAINT AND APPLICATION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

CHARLES A. GRADDICK
ATTORNEY GENERAL OF THE
STATE OF ALABAMA

CHARLES H. BARNES
ASSISTANT ATTORNEY GENERAL
AND GENERAL COUNSEL
STATE DEPARTMENT OF AGRICULTURE
AND INDUSTRIES
P. O. BOX 3336
MONTGOMERY, ALABAMA 36193
TELEPHONE (205) 832-3711

ATTORNEYS FOR DEFENDANT
STATE OF ALABAMA

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QUESTIONS PRESENTED

(1) Is California's application one of original and exclusive jurisdiction or only of original jurisdiction?

(2) Has the past activity of California foreclosed equitable relief in their favor?

(3) Does a justiciable controversy still exist?

(4) Has the quarantine imposed by the United States Department of Agriculture preempted any action by Alabama?

(5) Is the United States Department of Agriculture an indispensible party?

PARTIES

The Plaintiff is the State of California. The Defendants are the States of Texas, Florida, Alabama, South Carolina and Georgia.

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STATEMENT OF THE CASE

This is an action brought by the State of California originally against the States of Texas, Florida, South Carolina, Alabama and Mississippi. Mississippi has apparently been dropped but the State of Georgia has been added.

California requested leave to file its complaint and also requested a Temporary Restraining Order and Preliminary Injunction against the above defendant states to restrain them from prohibiting or restricting the movement in interstate commerce of certain California fruits and vegetables grown in California beyond the boundaries of the quarantines established by the United States Department of Agriculture and California.

The original United States Department of Agriculture quarantine in effect at the time California filed this action covered portions of Santa Clara, Alameda and San Mateo Counties. On or around July 21, 1981, the USDA increased its quarantine to cover these entire counties and a surrounding buffer zone. As more medfly evidence was found, these quarantine areas continued to increase, until in August 1981 the infestation jumped over 300 miles into Los Angeles County.

Alabama's quarantine was amended on or around July 27, 1981 so that it conforms exactly to the present USDA quarantine. Under this quarantine, if the produce entering Alabama is from an infected area, it must reflect treatment in accordance with USDA guidelines. All other

produce must be certified as medfly free by tests generally recognized as effective for that purpose.

Alabama's original quarantine which was amended as above went into effect as a result of a meeting of the Southern Plant Board. It was determined at this meeting that California and the USDA were not taking the necessary all out steps to stop the infestation. All California had done for over a one year period prior to the filing of this suit to stop known medfly infestations was fruit stripping, ground spraying and releasing of sterile flies. This was done with the knowledge that aerial spraying was effective and had been so used by both Texas and Florida in years past to eradicate their known medfly infestations.

California producers and some high California Congressional officials were strongly advocating aerial spraying and other all out measures during the one year period between discovery and the time that aerial application was actually started. Some high California officials attempted to the last to prevent aerial application.

The continued spread of the infestation can be directly linked to the belated methods of California and the USDA. Apparently political considerations, and inadequate experimentation were of paramount concern. Since this infestation has already recently jumped over 300 miles in California and evidence of the fly has been found in Florida, it would appear that the situation is today completely out of control.

Mississippi has recently been dropped as a defendant due to, it is believed, evidence that their quarantine is very similar to that imposed by California and the USDA. Mississippi did not have to amend its quarantine as did Alabama and South Carolina to obtain this conformity.

Georgia, who was used as an example in the original petition as a state with an acceptable quarantine, amended its existing quarantine.

Upon receiving notice of this amendment, California then added Georgia as a party defendant.

SUMMARY OF ARGUMENT

I

Under 28 U.S.C. 1251, the United States Supreme Court shall have original and exclusive jurisdiction of controversies between two or more states but when a sovereign state is only representing the interests of a few of its citizens, the jurisdiction may then become only original and not also exclusive.

The present action is not an actual controversy between two sovereign states as is contemplated in Section 1251 above, for exclusive jurisdiction. The style of this case may attempt to show this, but in actuality this case is between a few agricultural producers in California against the sovereign State of Alabama and other southern states to protect the

purely private interests of the California producers. Therefore, California is not acting properly in a parens patriae capacity on behalf of all its citizens.

II

Action and lack of action on the part of California in handling the medfly problem have foreclosed relief from the Supreme Court under the "clean hands" doctrine.

For over one year California took only minimum action to handle its medfly problem. During this time, many California producers were begging their State to start making an all out effort. Texas and Florida even sent its experts out to California to assist in this problem and actually demonstrated how the problem could be solved. California

paid no attention until the southern states started imposing their own quarantines. Only then did California start these programs recommended one year earlier.

Also California, by its earlier action regarding other insect pests, have imposed quarantines that go far beyond existing USDA quarantines. This alone should foreclose the argument posed by California that the southern states' quarantines go beyond, and are more restrictive than the USDA quarantine.

Also the quarantine lines drawn by California are apparently decided on the basis of how they will least affect commercial agricultural producers. It is anticipated that the existing quarantine lines will change substantially as soon

as the major commercial produce is gathered and shipped.

III

The U. S. Supreme Court will not entertain moot questions. Even California has admitted in its brief that the present Alabama quarantine is in conformity with and parallel to the quarantine imposed by the USDA.

Since the entire issue in this case is that the southern states are imposing quarantines over and above that imposed by the USDA, then there is no longer a justiciable controversy.

Since Alabama is only requiring in its quarantine the same requirements imposed by the USDA, the argument of preemption no longer has any validity today and actually had no validity up until

the time the USDA amended its quarantine on or around July 21, 1981.

IV

The USDA is an indispensible third party to this lawsuit. Until they are directly under the control of this Court, they apparently are being dictated to by California. Instead of restraining orders issuing from this Court against the southern states, Orders requiring the USDA to immediately take all action, in disregard of the political situations in California, should be contemplated. The USDA must be forced to take into account the economic well being of the rest of the United States, and specifically the southern states, and not just certain producers in California.

Also if the issue of preemption is still before this Court, it should be argued by the USDA. They are the ones being preempted, not California. You presently have a situation where California is hiding behind USDA.

ARGUMENT

I

THIS CASE IS ONLY ONE OF ORIGINAL JURISDICTION AND NOT ORIGINAL AND EXCLUSIVE.

This is a case involving economic injury to possibly some agricultural producers in California. Even though it is styled as one sovereign state against other sovereign states, the facts demonstrate an altogether different situation.

This Honorable Court has always taken a very hard look at actions where the state is acting on behalf of some of its citizens as parens patriae in the interests of economics. See Commonwealth of Pennsylvania v. New Jersey, 426 U.S. 660, 665 (1976); Oklahoma ex rel Johnson v. Cook, 304 U.S. 388, 389 (1938); Oklahoma v. Atchison T. and S.F.R. Co., 220 U.S. 277 (1911); Louisiana v. Texas, 176 U.S.

1 (1900); Alabama v. Arizona, 291 U.S. 286 (1934); New Hampshire v. Louisiana, 108 U.S. 76 (1883); North Dakota v. Minnesota, 263 U.S. 365 (1923); Georgia v. Pennsylvania, 324 U.S. 439, 446 (1945).

Justice Rehnquist, in his dissent in Maryland v. Louisiana, ___ U.S. ___, 68 L.Ed. 2d 576 at 609 (1981), would appear to have generally stated the belief of this Court when he stated that just advancing the economic interests of a limited group of citizens is not sufficient to support a parens patriae original jurisdiction. That is exactly what California is attempting to do.

Since other forums are available and have actually been used, as in Texas and Florida, there is no need for this Court to become involved. As stated above, the

jurisdiction is not exclusive, but only original.

Also as this Honorable Court held in Utah v. U.S., 394 U.S. 89 (1969), original jurisdiction of the U. S. Supreme Court should be invoked sparingly.

II

CALIFORNIA HAS UNCLEAN HANDS.

Two specific types of action or lack of action on the part of California more than adequately demonstrate that the equitable relief requested should not be granted. A short review of California's lack of action would appear to be in order.

The current outbreak of medfly in California was first noticed in the summer of 1980. Only the minimum effort was taken at that time. This involved ground spraying, fruit stripping and the release of sterile male flies.

Within a very short time, California commercial producers were strongly advocating an all out effort to include aerial spraying. Also both Texas and Florida, who had, in the past, successfully solved their medfly problem, in working with California advocated a more stepped up program. This was to no avail. Apparently political considerations became paramount. California's Governor refused to allow aerial spraying until the USDA threatened to quarantine the entire State and California's quarantine lines were drawn to exclude the commercial areas of the State.

Today after the southern states started their program California is belatedly attempting to take immediate all out steps. Unfortunately, it is now

apparently too late. The latest jump of the medfly in California was over 300 miles. Also evidence of the fly has been found in Florida. Which other state will be next?

California is also guilty of the very thing of which they are accusing the other states. They presently have 29 nursery stock and plant quarantines. At least one of these quarantines goes far beyond an existing USDA quarantine. This is the Japanese Beetle quarantine which even California admits goes beyond the existing USDA quarantine. (Motion for Leave to File Complaint and Supporting Brief pp. 94-97.) Alabama's first Response to California's Application by exhibits shows that the USDA Japanese Beetle quarantine only covers airports while the California

quarantine covers the entire State of Alabama. (Alabama's first Response to Plaintiff's Application p. 3 and Exhibit No. A.) How can California request relief from acts for which they are themselves guilty?

Even as far back as 1852, this Honorable Court has held that equity shall not be used to remedy the consequence of laches, or neglect or the want of reasonable diligence. See Sample v. Barnes, 55 U.S. 70 (1852); Upton v. Tirbilcock, 91 U.S. 45 (1875); Holmbery v. Armbrecht, 327 U.S. 392 (1946).

Also the legal axiom of he who seeks equity must do equity has been held many times by this Honorable Court. See Clarke v. White, 37 U.S. 178 (1836); McQuiddy v. Ware, 87 U.S. 14 (1873); Neblett v. Mac-

Farland, 92 U.S. 101 (1875); Thomas v. Brownville Ft. K. and P.R. Co., 109 U.S. 522 (1883).

This Honorable Court even held in Precision Inst. Mfg. Co. v. Auto. Maintenance Machinery Co., 324 U.S. 806 (1945), that the misconduct which is the basis for refusing relief need only be a willful act which rightfully can be said to transgress equitable standards of conduct.

The failure of California to act until forced to do so and the existence of its own quarantines more stringent than existing USDA quarantines are willful acts that transgress equitable standards of conduct.

III

THERE IS NO JUSTICIABLE CONTROVERSY.

California on page 20 of its First Amended Complaint states as follows:

28. On or about July 22, 1981, the quarantines adopted by Alabama and South Carolina were modified in such a way that they are now in conformity with, and parallel to, the quarantine adopted by the USDA.

The pleading continues and states, in substance, that there is a possibility that these states may in the future, alter their quarantines and impose more stringent restrictions.

The above reflects that there is no longer any justiciable controversy and as this Court has held many times, its function is to decide actual controversies. See Local No. 8-6 Oil, Chemical and Atomic Workers Int. Union AFL-CIO v. Missouri, 361 U.S. 363 (1960); Amalgamated Assn. of Street Electric R. and Motor Coach Employees of America v. Wisconsin Employment Relations Board, 340 U.S. 416 (1951); Super Tire Engineering

Co. v. McCorkle, 416 U.S. 115 (1974).

This Honorable Court does not issue injunctions in the absence of an actual or threatened interference. See Connecticut v. Massachusetts, 282 U.S. 660 (1931); Nebraska v. Iowa, 406 U.S. 117 (1972).

The threat of future interference which is only substantiated by evidence that Alabama and South Carolina amended their quarantines to conform to the USDA quarantine is not nearly strong enough to be considered an actual or threatened interference. This Honorable Court should keep in mind that the Alabama amendment occurred after the USDA changed its quarantine.

IV

THE USDA IS AN INDISPENSIBLE PARTY.

Until the USDA is brought under the specific control of this Honorable Court, there is no guarantee that California, as it has done in the past, will not do as it wishes. The USDA, according to the media, has already had to threaten California with a complete statewide quarantine before aerial spraying started.

Since it is obvious that political considerations have become paramount in determining both the treatment and the area to be quarantined, only the High Court has the authority to force a continued, all out effort on the part of the USDA and California.

All Alabama and its sister states have ever wanted is to be assured that proper and adequate steps are being taken by either California or the USDA to see

that the medfly infestation does not continue to increase. As long as it is believed, and the evidence would appear to substantiate this belief, that USDA is being partially controlled by California, real and substantial fears will persist.

States such as Alabama are poor, and have far less population as compared to California, but the economic impact on Alabama would be even greater than that of California if the medfly is allowed to spread. The economic impact against a large California producer as opposed to an Alabama farmer whose entire livelihood is tied up in peaches cannot be measured. Since California did not see fit to do everything, as soon as possible, to protect its economy, must Alabama and its sister states also have to suffer? Ala-

bama has no voice in electing and appointing California's Governor and its agricultural officials and for this reason, Alabama's only recourse is to depend upon this High Court for protection. There will be no guarantee of this protection until this Court exercises proper jurisdiction over the USDA.

It is also obvious that California in this present action is attempting to use the doctrine of federal preemption to its fullest extent. It is believed that if the USDA felt that its power and authority were being usurped by the states, they would already be a party to this suit. Due to the above, it is hard to believe that the USDA has any concern in the matter of federal preemption.

Also the USDA has an obligation to

protect the plant industry of the entire Nation. This is not the case in California and all of the other states in this suit.

CONCLUSION

California is acting only in behalf of some of its citizens as parens patriae in the interests of economics. For this reason, jurisdiction is original but not exclusive.

California has largely brought this problem upon themselves by not taking the standard recommended action toward eradication until their hand was called.

Their hands are unclean due to the fact that they are guilty of the very practice which they allege against Alabama. They presently have the entire State of Alabama quarantined against the Japanese beetle in the teeth of an existing federal quarantine which they admit is much more restrictive than the federal quarantine. This is California's entire

case against Alabama. One who requests equity must do equity.

The economic interests of Alabama could be more seriously effected than those of California if the medfly is allowed entry. More Alabamians in proportion to the entire State's population will be affected than persons in California. Are the economic interests of one state more important than those of another state? Are the large farmers in California to be protected at the expense of those thousands of small Alabama truck farmers?

The medfly can be compared to the boll weevil in cotton. This weevil changed the economy of entire areas of the United States. The medfly is capable of doing the same thing. Considering the

impact this could have on the entire United States, can this Honorable Court do anything but support any and all measures that will stop this dangerous pest?

Most importantly, when California admitted that Alabama's present quarantine was the same as that imposed by the USDA, any justiciable controversy was removed. This Honorable Court does not respond to moot questions, or fears of what might or could happen in the distant future.

Also since it would appear that both California and the defendant states are depending heavily upon the USDA to protect the interests of the Nation, then this Federal agency needs to be under the direct supervision of this Honorable

Court. If this were the case, then there would no longer be any fears of political pressure.

Respectfully submitted,

THE STATE OF ALABAMA
DEFENDANT

BY CHARLES A. GRADDICK
ATTORNEY GENERAL OF THE
STATE OF ALABAMA

CHARLES H. BARNES
ASSISTANT ATTORNEY GENERAL
AND GENERAL COUNSEL
STATE DEPARTMENT OF AGRICULTURE
AND INDUSTRIES
P. O. BOX 3336
MONTGOMERY, ALABAMA 36193
TELEPHONE - 205-832-3711

AS ATTORNEYS FOR DEFENDANT,
THE STATE OF ALABAMA