No. 94, Original

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

STATE OF SOUTH CAROLINA,
Plaintiff,

v.

DONALD T. REGAN, SECRETARY OF THE TREASURY OF THE UNITED STATES OF AMERICA,
Defendant.

MOTION OF THE NATIONAL GOVERNORS' ASSOCIATION FOR LEAVE TO INTERVENE AS PLAINTIFF, COMPLAINT IN INTERVENTION, AND BRIEF IN SUPPORT OF MOTION TO INTERVENE AS PLAINTIFF

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MOTION OF THE NATIONAL GOVERNORS' ASSOCIATION FOR LEAVE TO INTERVENE AS PLAINTIFF

The National Governors' Association ("NGA") moves for leave to intervene as plaintiff in this action and to file the attached complaint in intervention. The NGA is directly affected by Section 310(b)(1) of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, 96 Stat. 596, which regulates the issuance of tax-exempt bonds by States, their political subdivisions, and other government entities. This suit challenges the constitutionality of Section 310(b)(1).

The National Governors' Association is an instrumentality of the fifty States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Is-

lands, and the Territories of the Virgin Islands, Guam, and American Samoa. In 1982, the governments and political subdivisions of these States, Commonwealths, and Territories issued more than $76 billion of tax-exempt bonds. Because of Section 310(b)(1), the States, Commonwealths, and Territories and their political subdivisions have been required to incur additional expenses and other burdens in order to continue to issue tax-exempt bonds to finance important state and local government services.

The NGA moves to intervene in this case because the States, Commonwealths, and Territories whose chief executives are members of the NGA will be bound by the judgment herein, have a substantial interest in the outcome of this suit, and have claims in common with those raised by South Carolina in its complaint.

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June 22, 1984

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

No. 94, Original

STATE OF SOUTH CAROLINA,
Plaintiff,

NATIONAL GOVERNORS' ASSOCIATION,
Plaintiff in Intervention,

v.

DONALD T. REGAN, SECRETARY OF THE TREASURY OF THE UNITED STATES OF AMERICA,
Defendant.

COMPLAINT IN INTERVENTION

Plaintiff in intervention National Governors' Association, by its attorney, brings this civil action to obtain declaratory and injunctive relief against the Secretary of the Treasury of the United States, and complains and alleges as follows:

I.

The original jurisdiction of this Court is invoked under Article III, Section 2 of the Constitution of the United States and Section 1251(b)(2) of Title 28 of the United States Code.

II.

This action seeks a declaratory judgment, pursuant to 28 U.S.C. 2201 and 2202, that Section 310(b)(1) of the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA"), Pub. L. No. 97-248, 96 Stat. 596, is unconstitutional and seeks an order permanently enjoining and prohibiting the Secretary of the Treasury from enforcing or attempting to enforce that Section.

III.

On February 22, 1984, this Court granted the motion of plaintiff South Carolina for leave to file a complaint (the "Complaint") invoking the original jurisdiction of the Court and challenging the constitutionality of Section 310(b)(1) of TEFRA. On April 23, 1984, the Court appointed the Honorable Samuel J. Roberts Special Master in this case with authority to fix the time and conditions for the filing of additional pleadings and to direct subsequent proceedings.

IV.

The plaintiff in intervention is the National Governors' Association ("NGA"), an incorporated instrumentality of the States, whose members include the chief executives of the fifty States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the Territories of the Virgin Islands, Guam, and American Samoa. The purpose of the NGA is to represent the interests of the States in the federal system. The States, Commonwealths, and Territories whose chief executives are members of the NGA are issuers of tax-exempt bonds that are subject to the provisions of Section 310(b)(1) of TEFRA and thereby are directly affected by the financial costs, legal constraints, and other burdens imposed by that Section.

V.

Paragraphs 1 and 2 of the Complaint, describing the other parties hereto, are adopted and incorporated herein by reference.

VI.

Paragraphs 5 through 8 of the Complaint, describing the operation and impact of Section 310(b)(1) of TEFRA, are adopted and incorporated herein by reference.

VII.

State governments, both directly and through state instrumentalities, borrow large sums of money each year to fund state services, operations, and programs and to finance the construction of public buildings, infrastructure, and other public improvements. States borrow money to fund general operations in anticipation of the receipt of taxes; to finance infrastructure construction, such as roads, bridges, dams, public transportation, airports, docks, wharves, and port facilities; to promote education; to finance health care; to meet environmental and community needs; to finance criminal justice facility construction; and to satisfy a variety of other public purposes. The States' principal means of borrowing has been the issue and sale to the public of bonds the interest on which is federal income tax exempt to the purchaser. The fact that States are able to issue tax-exempt bonds permits the States to borrow money at a significantly lower cost than private issuers. States consequently are able to conserve their scarce financial resources for other uses. Similarly, the lower cost of borrowing enables States to carry a greater debt burden than they otherwise could, and thereby finance essential improvements in services, programs, and public works.

VIII.

Matters of public finance traditionally have been among the most central of the States' sovereign functions. Decisions concerning the amount of debt a State should incur are made at the highest levels of state government and involve the evaluation of competing finan-

cial, legal, and political factors, as well as the allocation of scarce resources, that is the essence of State sovereignty and autonomy. The form in which a State issues its debt, similarly, traditionally has been determined by state officials as part of their implementation of public finance programs. The decision whether to issue bonds in bearer or in registered form involves not only the issuer's convenience, but also raises financial implications. Because the issuance of bonds in registered form requires States to incur both higher transaction costs and higher debt service, the net revenues that a State realizes from the sale of its debt are less for registered bonds than for bearer bonds.

IX.

The Tenth Amendment to the United States Constitution prohibits Congress from exercising power in a manner that impairs the integrity of State government processes or the States' ability to function in a federal system. Section 310(b)(1) of TEFRA violates the Constitution because it intrudes upon the prerogatives of States in choosing which form of debt to issue. In so doing, Section 310(b)(1) displaces State authority in an area of traditional State responsibilities and interferes with the decision-making processes of State government. The Section also violates the Tenth Amendment because it raises the States' costs of issuing public debt, thereby requiring the States either to sell more debt than they are prepared to service or to reduce State spending on services, programs, and public works. The interests of the federal government that are served by Section 310(b)(1) are minor ones that do not outweigh the burdens and intrusions the Section imposes upon the States.

X.

Section 310(b)(1) violates principles of federalism articulated in the Constitution and evident in the structure of the federal system. The system of government

created by the Constitution allocates responsibilities and functions between the federal government and the States and reserves to the States those powers necessary to discharge the responsibilities and functions vested in them. Because the States bear the principal responsibility for the delivery of basic services and the construction of public works and other improvements for their citizens, States historically have had the responsibility for financing these programs and have exercised the authority to structure their public finances as they deem necessary. The autonomous exercise of control over public finance is a central attribute of the sovereignty assured the States by the Constitution. Section 310(b)(1) of TEFRA contravenes principles of federalism by interfering with the States' responsibilities for public finance and by intruding upon the States' traditional authority to issue public debt in the manner they choose. Further, taxation of the interest earned on state bonds issued in bearer form constitutes an improper use of the federal taxing power, penalizing the States for conduct which the federal government could not regulate otherwise.

XI.

The doctrine of intergovernmental tax immunity prevents the federal government from taxing the operations of the States. This tax immunity was specifically preserved by the Sixteenth Amendment and also is implicit in the Tenth Amendment. Section 310(b)(1) of TEFRA violates this doctrine by permitting the Secretary to impose income taxes upon the interest arising from state bonds unless the provisions of the Section requiring registration of bonds are met. While nominally imposed upon the holders of the bonds, the federal income tax in effect is one upon the States themselves. The operation of the public securities markets is such that the loss of tax-exempt status for state bonds will require States to raise the interest rate they pay on their debt in order to pay investors the same effective yield. Consequently, the

loss of tax-exempt status for state bonds operates to transfer the amount of the income tax liability from the bondholders to the States.

WHEREFORE, the National Governors' Association respectfully prays that the Court:

(a) declare and adjudge, pursuant to 28 U.S.C. 2201, that Section 310(b)(1) of TEFRA is unconstitutional;

(b) permanently enjoin and prohibit defendant and his agents and employees from enforcing or attempting to enforce Section 310(b)(1); and

(c) grant such other and further relief as the Court may deem just and proper.

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Defendant.

BRIEF IN SUPPORT OF MOTION OF THE NATIONAL GOVERNORS' ASSOCIATION FOR LEAVE TO INTERVENE AS PLAINTIFF

In 1982 alone, States and their political subdivisions issued over $76 billion in tax-exempt bonds, more than 95% of which were in bearer form. However, since its effective date last year, the Tax Equity and Fiscal Responsibility Act of 1982 has effectively prevented States and their political subdivisions from continuing to issue tax-exempt bonds in bearer form. This change in the law significantly raises costs of issuing tax-exempt bonds and interferes with the latitude States traditionally have exercised in implementing public finance programs.

The National Governors' Association is a principal representative of the States' interests in the federal system. The NGA moves to intervene in this action to represent the collective interests of the States and to assist in the

development of the complete factual record necessary for disposition of this case.

STATEMENT

Section 103(a)(1) of the Internal Revenue Code exempts from a taxpayer's gross income the interest earned on "the obligations of a State, a Territory, or a possession of the United States, or any political subdivision of the foregoing." Section 103(a)(1) operates to enhance the borrowing capacity and reduce the borrowing costs of state and local governments. *See, e.g., Helvering v. Stockholms Enskilda Bank*, 293 U.S. 84, 87 (1934). By freeing investors from the burdens of taxation on the interest on state bonds, Section 103(a)(1) significantly raises the effective yield on such bonds and permits them to be sold at a lower rate of interest.

The tax-exempt status of state bonds is a critical factor in the States' public finance planning. The lower interest rates States pay on tax-exempt bonds significantly reduce the burdens of debt service upon the States. This permits the States to conserve their fiscal resources for other uses and assume a greater burden of debt than they could otherwise.

In 1982, Congress amended Section 103 as part of the Tax Equity and Fiscal Responsibility Act ("TEFRA"), Pub. L. No. 97-248, 96 Stat. 596. Section 310(b)(1) of TEFRA added a new subsection (j) to Section 103 that required certain classes of bonds that qualified as "registration-required obligations" to be issued in registered form to qualify for the Section 103(a)(1) tax exemption.[1] If registration-required obligations are issued in

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[1] Under Section 310(b)(1) of TEFRA " 'registration-required obligation' means any obligation other than an obligation which—

(A) is not of a type offered to the public,

(B) has a maturity (at issue) of not more than one year, or

bearer, rather than registered form, the interest received by the purchaser will not be exempt from federal income tax. Consequently, if a State chooses to issue bonds in bearer form, it will be required to offer a significantly higher interest rate in order to offset these adverse tax effects. As a practical matter, therefore, the statute requires States and local governments to issue bonds in registered form.

However, the cost of issuing bonds also rises when States issue bonds in registered form. The documentation required in connection with issuing registered bonds is more complex than that needed for bearer bonds, increasing the transaction costs States must pay. In addition, in contrast to bearer bonds, registered bonds require the continuing involvement and expense of the transfer agent over the life of the issue. In view of the enormous volume of tax-exempt bonds issued each year (*see* Public Securities Association, *1982 Statistical Yearbook of Municipal Finance* 16), the aggregate additional cost is a substantial one.

The burdens of TEFRA fall with equal weight upon the instrumentalities and branches of state government, including counties, municipalities, school districts, public authorities, and other political subdivisons. A broad range of state and local government instrumentalities are frequent and large issuers of tax-exempt bonds. In 1982, counties, municipalities, school districts, special districts and statutory authorities issued over $68 billion in tax-exempt bonds. *See 1982 Statistical Yearbook of Municipal Finance, supra,* 16-17. These political subdivisions of

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(C) is described in section 163(f)(2)(B) [relating to State and local government bonds that are sold abroad]."

Unlike bearer bonds, registered bonds have their ownership recorded, typically by a transfer agent, and may not be sold or transferred without the action of the transfer agent. *See* IRS Temp. Reg. § 5f.103-1(c), 47 Fed. Reg. 51361-62 (Nov. 15, 1982).

the States are creatures of state law. Their borrowing activities are regulated closely by their state governments and, indeed, the States frequently assist their political subdivisions in raising money. The governors of the fifty States frequently have significant responsibilities for supervising the borrowing activities of state agencies and authorities.[2] Moreover, in many cases these political subdivisions issue bonds to finance programs or public works in which they are partners with the States themselves. Finally, the ability of a State's political subdivisions to raise money quickly and economically in the public markets may directly affect the State's own finances.

On February 9, 1983, the State of South Carolina filed a motion for leave to file a complaint invoking the original jurisdiction of the Court and challenging the constitutionality of Section 310(b)(1). South Carolina alleged in its complaint that the provisions of Section 310(b)(1) denying tax-exempt status to state-issued bearer bonds are an unconstitutional intrusion by Congress upon South Carolina's power to borrow money for public purposes. South Carolina also alleged that Section 310(b)(1) violated the doctrine of intergovernmental tax immunity and contravened the principles articulated by this Court in *National League of Cities v. Usery*, 426 U.S. 833 (1976).

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[2] For example, in New Jersey, the Governor must approve in writing the issuance of bonds by the New Jersey Turnpike Authority (N.J. Stat. Ann. § 27:23-3(F) (West Supp. 1983)), the New Jersey Expressway Authority (*id.*, § 27:12C-21(F) (West Supp. 1983)), and the South Jersey Port Authority (*id.*, § 12:11A-5(g) (West 1979)). In New York, the Governor has authority to veto decisions of the Port Authority of New York and New Jersey to issue bonds. N.Y. Unconsol. Laws § 7151 (McKinney 1979). In Ohio, the Governor is a member of the "board of commissioners of the sinking fund," which makes the decision whether to offer for sale "certificates of bonded debt of the state." Ohio Rev. Code Ann. §§ 129.18, 129.01 (Page 1978).

On February 22, 1984, the Court granted South Carolina's motion. On April 23, 1984, the Court appointed the Honorable Samuel J. Roberts Special Master in this case with authority to fix the time and conditions for the filing of additional pleadings and to direct subsequent proceedings. On June 5, 1984, the Secretary served his answer, denying the material allegations of South Carolina's complaint.

INTEREST OF THE INTERVENOR

The National Governors' Association ("NGA") is an incorporated instrumentality of the States whose members include the chief elected officials of the fifty States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the Territories of the Virgin Islands, Guam, and American Samoa. The purpose of the NGA is to represent the interests of the States in the federal system by expressing those interests wherever appropriate, including matters before the courts.[3] The States issued more than $7.8 billion of tax-exempt bonds in 1982. The States' political subdivisions, such as counties, municipalities, school districts, special districts, and statutory authorities, issued over $68 billion in tax-exempt bonds in 1982. *See 1982 Statistical Yearbook of Municipal Finance, supra,* 16-17. It is esti-

[3] Article III of the NGA's Articles of Organization provides that the functions of the NGA

> "shall be to provide a medium for the exchange of views and experiences on subjects of general importance to the people of the several States; to foster interstate cooperation; to promote greater uniformity of state laws; to attain greater efficiency in state administration through policy research and analysis of issues affecting all levels of government and the people, and a strong program of state services; to facilitate and improve state-local and state-federal relationships; to vigorously represent the interests of the States in the federal system, and the role of the Governors of the American States, Commonwealths and Territories in defining, formulating and expressing those interests."

mated that before the effective date of Section 310(b)(1) of TEFRA, more than 95% of these bonds were in bearer form. Therefore, Section 310(b)(1) will have an immediate and substantial impact upon the States.

The NGA is an appropriate party to represent the interests of the States in this action. Although it is an organization of governors, and not of States, the NGA's purpose is to promote the interests of the States. *See* n.3, *supra*. Indeed, the NGA is funded by the States and its broad range of activities indicates that it is much more than a simple association of governors.[4] Moreover, there is no organization of States *per se*, leaving the task of advocating State interests to organizations of elected officials such as the NGA. *See National League of Cities v. Usery*, 426 U.S. 833, 836 & n.7 (1976) (NGA (then known as the National Governors' Conference) was an original party to the constitutional challenge to the 1974 Fair Labor Standards Act amendments).

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[4] The NGA's dues are paid by the States out of public funds, and not by the governors themselves. Moreover, the dues are not assessed on the governors *per capita*, but rather are levied by the NGA on a State-by-State basis, taking into account each State's size and other factors. Finally, the NGA's articles of organization provide that, when assets of the NGA are returned to the States, they must be expended on public purposes.

ARGUMENT

Intervention is proper because the NGA has claims in common with those of South Carolina, has a direct and substantial interest in the outcome of this proceeding, and would not unduly delay or prejudice the adjudication of the original parties' rights by intervention.[5]

A. Federal Rule of Civil Procedure 24(b)(2) confers upon courts the discretion to permit a non-party to intervene in civil actions "when an applicant's claim or defense and the main action have a question of law or fact in common."[6] The claims of the NGA meet this standard. The NGA contests the constitutionality of the same federal statute as South Carolina, on the same constitu-

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[5] The NGA has standing to intervene and maintain this action as a plaintiff in intervention since it is clear that "an association may have standing solely as the representative of its members." *Warth v. Seldin*, 422 U.S. 490, 511 (1975). The NGA has standing to intervene in this case because the States whose governors are members would otherwise have standing to sue in their own right, the interests NGA seeks to protect are germane to its purpose, and neither the claims NGA asserts nor the relief it seeks require the participation of its individual members in the lawsuit. *See Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 343 (1977). It is equally clear that the Court has subject matter jurisdiction to entertain NGA's claims as intervenor in this action. The NGA is an instrumentality of the States and seeks here only to represent the interests of the States, who unquestionably would have the right to maintain this suit. *See* 28 U.S.C. 1251(b)(2). Moreover, even if the NGA were treated simply as a private party, the Court would have jurisdiction since "it is not unusual to permit intervention of private parties in original actions." *Maryland v. Louisiana*, 451 U.S. 725, 745 n.21 (1981); *see Arizona v. California*, No. 8, Orig., slip op. at 7-8 (March 30, 1983); *Oklahoma v. Texas*, 258 U.S. 574, 581 (1922).

[6] Rule 9.2 of the Court directs that the Federal Rules of Civil Procedure "where their application is appropriate, may be taken as a guide to procedure in original actions." Where a non-party seeks to intervene in an original action, the standards governing the propriety of intervention are those found in Fed. R. Civ. P. 24. *See Arizona v. California, supra*, slip op. at 8.

tional grounds, and the States whose governors are members of the NGA will suffer the same injury to their governmental interests as South Carolina if the challenged statute continues to stand. Intervention is appropriate in view of the substantial similarity of claims, injury, and requested relief between the NGA and South Carolina. *See Maryland v. Louisiana*, 451 U.S. 725, 745 n.21 (1981) ("[W]e agree that New Jersey, whose allegations of injury are identical to that of the original plaintiff States, clearly has standing and should be permitted to intervene."); *Dept. of Energy v. Louisiana*, 690 F.2d 180, 188 (Temp. Emer. Ct. App. 1982), *cert. denied*, No. 82-1076 (April 4, 1983).

To the extent that there would be a divergence between the positions of South Carolina and the NGA, the difference would be confined to the factual case each party would present. The papers already filed by South Carolina indicate that the focus of its factual case will be the adverse impact Section 310(b)(1) of TEFRA has had upon its own public finance activities and decision-making processes. The NGA, on the other hand, has a membership comprised of the chief executives of all fifty States, as well as five Commonwealths and Territories, and represents a wider range of interests than those of any one State. The factual case the NGA would make in proceedings before the Special Master, consequently, would be broader than that to be made by South Carolina. In addition, the NGA is in a position to present evidence relating to particular problems raised by Section 310(b)(1) which South Carolina itself may not have encountered.[7]

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[7] The Court need not address the question whether intervenor's interests will be adequately represented by South Carolina, since this is not among the standards to be weighed under Fed. R. Civ. P. 24(b). Nevertheless, even in the context of intervention of right, which does contain the requirement that an intervenor demonstrate that his interests are not adequately represented by

B. Unlike the standards governing intervention of right under Rule 24(a)(2), permissive intervention under Rule 24(b)(2) "plainly dispenses with any requirement that the intervenor shall have a direct personal or pecuniary interest in the subject of the litigation." *SEC v. United States Realty & Improvement Co.*, 310 U.S. 434, 459 (1940). But the NGA can demonstrate such a direct interest even though none may be required. The NGA's member States, Commonwealths, and Territories and their political subdivisions issued over $76 billion of tax-exempt bonds in 1982. *See 1982 Statistical Yearbook of Municipal Finance, supra*, 16. If the challenged federal statute is upheld, the members of the NGA will be foreclosed, as a practical matter, from issuing bearer bonds. Moreover, the members of the NGA will be required to incur the additional costs of issuing their tax-exempt bonds in registered form. Even if the NGA were not a party to this action the members of the NGA would still, as a practical matter, be bound by the decision in this case. Given their substantial interest in the outcome of the case, that result alone should justify intervention. *See Blake v. Pallan*, 554 F.2d 947, 954 (9th Cir. 1977); *Francis v. Chamber of Commerce*, 481 F.2d 192, 195 n.8 (4th Cir. 1973) ("in a proper case *stare decisis* by itself may furnish the practical disadvantage required under [Rule] 24(a)").

C.1. Permitting the NGA to intervene in this action would not unduly delay or prejudice the adjudication of the rights of the original parties. To date, the Special Master has held only one status conference and no evidentiary hearings. We are advised by the Special Master's chambers, moreover, that no evidentiary proceed-

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the original parties (*see* Fed. R. Civ. P. 24(a)(2)), "[t]he requirement of the Rule is satisfied if the applicant shows that representation of his interests 'may be' inadequate; and the burden of making the showing should be treated as minimal." *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972).

ings have been scheduled for the near future. Consequently, the intervention of the NGA into the case would not require the reopening of completed evidentiary hearings or necessitate supplementation of an already-existing record.

Nor would the addition of the NGA to the case delay its adjudication in any other respect. As noted above, the intervenor's legal claims closely parallel those of South Carolina and would not require the Special Master or the Court to adjudicate issues not already present in the case. The factual case to be offered by the NGA would complement the evidence South Carolina will present, and would not prolong proceedings before the Special Master.

2. Indeed, the intervention of the NGA would benefit the disposition of this case by permitting the Special Master to develop a more extensive record and by giving the Special Master and the Court a better foundation upon which to address the important constitutional issues this case raises. While there is no doubt that South Carolina will present convincing evidence of the adverse effects Section 310(b)(1) has had upon its own public finance activities, South Carolina is not in a position to represent to the Special Master or the Court the impact the Section has had upon the forty-nine other States. Similarly, however well South Carolina may articulate the degree of interference Section 310(b)(1) has had upon South Carolina's own decision-making processes, South Carolina is not able to speak for the collective interests of all the States.

The NGA, on the other hand, exists specifically for those purposes. Unlike South Carolina, the NGA would be in a position to speak for all of the States; the NGA is capable of providing a factual overview of the national effect of Section 310(b)(1); and the NGA would be aware of particular effects of Section 310(b)(1) that South Carolina may not have encountered. Moreover, since the NGA would appear as a single party, its in-

tervention in this action would not expand this case "to the dimensions of ordinary class actions." *New Jersey v. New York*, 345 U.S. 369, 373 (1953); *see Illinois v. City of Milwaukee*, 406 U.S. 91, 96-7 (1972).

D. In view of the short time remaining in the Term and the need for the original parties to respond to intervenor's motion, it is possible that the Court will not be in a position to decide this motion before it adjourns in the next few weeks. Although we are told that the Special Master has not yet scheduled evidentiary proceedings in this matter, it is possible that he may do so in the four months before the Court reconvenes in October. If this were to happen, the NGA could be deprived of an opportunity to participate in evidentiary proceedings before the Special Master, even if the Court were to grant the NGA's motion to intervene. Alternatively, it might become necessary to reopen the record, disrupting the orderly conduct of the proceedings before the Special Master. For these reasons, intervenors respectfully submit that the Court should refer this motion to the Special Master for disposition. This commonly has been the practice in other cases on the Court's Original Docket where a Special Master has been appointed and motions to intervene have been filed. *See United States v. Alaska*, 452 U.S. 913 (1981); *Texas v. Oklahoma*, 449 U.S. 990 (1980); *Maryland v. Louisiana*, 447 U.S. 902 (1980); *New Hampshire v. Maine*, 419 U.S. 814 (1974).

CONCLUSION

For the reasons stated, the motion for leave to intervene as plaintiff and to file the complaint in intervention should be granted.

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