IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1928.

STATE OF WISCONSIN, STATE OF MINNESOTA, STATE OF OHIO, and STATE OF PENNSYLVANIA,
Complainants,

vs.

STATE OF ILLINOIS and SANITARY DISTRICT OF CHICAGO,
Defendants.

No. 7, Original.

STATE OF MISSOURI, STATE OF KENTUCKY, STATE OF TENNESSEE, STATE OF LOUISIANA, STATE OF MISSISSIPPI, and STATE OF ARKANSAS,
Intervening Defendants.

STATE OF MICHIGAN,
Complainant,

vs.

STATE OF ILLINOIS and SANITARY DISTRICT OF CHICAGO,
Defendants.

No. 11, Original.

STATE OF NEW YORK,
Complainant,

vs.

STATE OF ILLINOIS and SANITARY DISTRICT OF CHICAGO,
Defendants.

No. 12. Original.

SUGGESTIONS BY THE CITY OF CHICAGO IN REPLY TO BRIEF AND AFFIDAVIT IN OPPOSITION TO THE MOTION AND PETITION OF THE CITY OF CHICAGO FOR LEAVE TO INTERVENE AS A CO-DEFENDANT.

CITY OF CHICAGO,

By SAMUEL A. ETTELSON,
Corporation Counsel,
Solicitor and of Counsel for Petitioner.

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The City of Chicago submits these suggestions in reply to the affidavit and brief of complainants opposing the peti-

tion of the City to intervene because both the purpose and effect of the City's petition are misconceived and misstated.

1. In its petition the City expressly states (p. 17) that the City does not seek any delay in this proceeding.

The City by the very prayer of its petition clearly adopts all pertinent evidence that may affect its rights now in the record and by this request clearly denies the intention to seek to duplicate such evidence. Thus, the City does not seek to offer evidence as to any of the four points set out in detail in the brief in behalf of the complainants. On the ground thus suggested, therefore, no delay will result from the City's intervention; and these facts, which are obvious from a fair consideration of the City's petition, answer completely the principal ground of the complainants' objection.

2. Complainants state that they prayed in the original bill of the State of New York—but, it should be noted, *not* in the Wisconsin bill—for "the complete cessation of the diversion of water from Lake Michigan by the Sanitary District of Chicago for the purpose of disposing of the sewage of the district." (Affidavit in opposition, paragraph 5, page 3.)

The statement for the first time made by counsel for complainants at the hearing before the Special Master on March 29th last, less than three weeks ago, was that complainants would seek a decree which would require in its enforcement the discharge of artificially treated sewage as well as storm water drainage into Lake Michigan, from which the City of Chicago takes its drinking water.

In other words, the bill prays an injunction in the usual form against a certain diversion claimed to be illegal—against the continued performance of certain acts of the

Sanitary District. Complainants' counsel now propose a mandatory injunction which will require not only the cessation of illegal diversion by the Sanitary District, but also an affirmative act directly resulting in pollution of Chicago's drinking water. This mandatory injunction affects the interests of the City in a special and an entirely different way, and to an entirely different extent, than the prohibitive form of injunction sought for by the original bills.

In this connection the City desires to point out that the diversion may be entirely stopped without necessarily polluting the water supply of the City, if the Sanitary District erect a gate or dam at the mouth of the Chicago River, in accordance with the suggestion of the War Department. The Court will remember that the War Department required as one of the conditions of the permit of March 3, 1925, that plans for such gate or lock be submitted by the Sanitary District within a reasonable time, and that such gate or lock be thereafter constructed before the expiration of the permit. It has been testified on the present rereference hearing before the Special Master by the Chief of Engineers of the United States Army that such plans have been duly submitted, but that the Chief of Engineers has not yet decided which of several alternative plans will be selected, and for that reason, and that reason only, such gate or lock has not yet been constructed.

It follows, necessarily, that the relief complainants' counsel now announce they will seek would not only render impossible the use of any such gate or lock, but will, of course, necessarily deprive the City of the protection to be thus afforded it, a protection upon which the City has heretofore relied, and, it is respectfully submitted, has had a right so to rely.

3. Without regard to these matters, the City respectfully submits that it is an essential party, if the proper

scope and effect of the re-reference, as ordered by this Court in its opinion of January 14, 1929, be carried out. The Court says in the last paragraph of its opinion:

> "To determine the practical measures needed to effect the object just stated and the period required for their completion, there will be need for the examination of experts; and the appropriate provisions of the necessary decree will require careful consideration."

Throughout the concluding part of the opinion, the Court clearly manifests its purpose to obtain by the re-reference such information as will permit an equitable adjustment of the conflicting rights and interests of the parties concerned. The relief sought by complainants, as now defined by them, beyond question vitally affects the City of Chicago, and, as stated in the City's petition, the City is prepared to prove not only by evidence now in the record but by other evidence, if so required, that such relief will impose upon the City a financial burden which will exceed several hundred millions of dollars. The spirit of the re-reference —a composition in accordance with the well established principles of equity—requires that the Special Master be fully advised as to the financial capacity of the City of Chicago to meet and carry out this heavy burden. The Master should be informed as to Chicago's income, the extent of its unexpended bonding power, as to the revenue it may reasonably anticipate during the years to come to be derived from taxation and from other sources. In addition, the City could with propriety submit the other demands which the needs and the rights of its citizens require in connection with the expenditure of the City's revenue. All of this information is not only pertinent to the inquiry before the Special Master, but, we submit, is essential if the purpose and spirit of the Court's opinion be carried out. If the Special Master, as a result of the re-reference, sub-

mits a decree which, in accordance with equitable principles, will accord the relief to the complainants the Court has found they are entitled to, it seems to us that he will necessarily have to consider the City's rights in the premises, so as not to impose an undue or inequitable burden upon any of the people to be affected by it. Clearly, as to these matters solely affecting the City of Chicago, the Sanitary District has no right or authority or responsibility, and only the City, itself, may offer competent and conclusive evidence.

The papers submitted by complainants in opposition to this motion pay no attention to the nature of the re-reference hearing, which, as we submit, is conclusive upon our right to intervene. In a word, the City could with propriety assume that the Sanitary District in its own interests would present every legal contention in support of its claimed right to divert water from Lake Michigan for the purpose of disposing of sewage of the district, but since the Sanitary District has no authority or responsibility in reference to procuring for the citizens of Chicago a pure and unpolluted drinking water, the City must assume responsibility in this connection.

THE CITY OF CHICAGO,

By SAMUEL A. ETTELSON,
Corporation Counsel.

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Of Counsel.