In the Supreme Court of the United States

NO. 5 ORIGINAL.

STATE OF WISCONSIN, STATE OF MINNESOTA, STATE OF OHIO AND STATE OF PENNSYLVANIA,

vs. *Complainants,*

STATE OF ILLINOIS and the SANITARY DISTRICT OF CHICAGO,

Defendants,

STATE OF MISSOURI, STATE OF KENTUCKY, STATE OF TENNESSEE, STATE OF LOUISIANA, STATE OF MISSISSIPPI, and STATE OF ARKANSAS,

Intervening Defendants.

NO. 8 ORIGINAL.

STATE OF MICHIGAN,

vs. *Complainant,*

STATE OF ILLINOIS AND THE SANITARY DISTRICT OF CHICAGO, et al.,

Defendants.

NO. 9 ORIGINAL.

STATE OF NEW YORK,

vs. *Complainant,*

STATE OF ILLINOIS and the SANITARY DISTRICT OF CHICAGO, et al.,

Defendants.

STATEMENT OF OBJECTIONS AND MOTION TO DISMISS THE APPLICATION OF MISSOURI, KENTUCKY, TENNESSEE, LOUISIANA, MISSISSIPPI AND ARKANSAS FOR A MODIFICATION OF THE DECREE OF APRIL 21, 1930, AND AN ENLARGEMENT OF THE PENDING REFERENCE FILED BY WISCONSIN, MINNESOTA, OHIO AND MICHIGAN.

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The Complainants, Wisconsin, Minnesota, Ohio and Michigan file objections to and move the dismissal of the application of Missouri, Kentucky, Tennessee, Louisiana, Mississippi and Arkansas for a modification of the decree of April 21, 1930 (281 U. S. 696), and an enlargement of the pending reference for the following reasons:

First: The defendants are not parties to the pending litigation or to the decree of April 21, 1930 (281 U. S. 696) and, as strangers to such decree, are wholly without right to apply at the foot of said decree under the provisions of Paragraphs 6 and 7 thereof, or otherwise, for any modification of said decree for the following reasons:

(a) Said applicants have no standing as intervening parties or otherwise in this litigation. Their lack of any justiciable interest was adjudicated and they were dismissed from the case by the decision of this Court in *Wisconsin, et al. v. Illinois, et al.*, rendered January 14, 1929 and reported in 278 U. S. 367.

(b) Said applicants, having been dismissed from the litigation by the decision of January 14, 1929 (278 U. S. 367), were and are not parties to the decree of April 21, 1930 (281 U. S. 696).

(c) Since said applicants are not parties to the decree of April 21, 1930, they are not comprehended by and have no rights under Paragraphs 6 and 7 of the decree of April 21, 1930 (281 U. S. 179, 696). Those paragraphs of the decree granted the right to apply for modification or other relief to parties, "complainants or defendants." The applicants had long before been dismissed from the litigation for lack of justiciable interest. None of them were parties to the decree of April 21, 1930. They can not, as they seek to do, apply as a matter of right for a modification of the decree under the provisions of Paragraphs 6 and 7 of said decree.

(d) Even if, contrary to the fact, the applicants were parties to the decree of April 21, 1930, the pend-

ing application for modification of such decree and enlargement of the pending reference should be dismissed because the application on its face discloses no Federal action subsequent to the decree contrary to its terms and the facts alleged do not even suggest the possibility of such action, if Congress had the constitutional power (although such a suggestion of *possibility* would be legally immaterial), because the application discloses that the applicants are without legal or justiciable interest in the matters sought to be raised in the application, and because the matters sought to be raised in the application have heretofore been twice determined by this Court in this litigation, and because the matters sought to be raised in the pending application were suggested by the defendants, State of Illinois and the Sanitary District of Chicago, in their Return to the Order to Show Cause filed November 14, 1932, and were excluded from the order of reference made and entered by this Court on December 19, 1932, all of which is more particularly set forth in the Objections to the Application could it be considered as a petition for leave to intervene.

Second: Could the application be treated as a petition to be allowed to intervene, it would have to be denied for many reasons:

(a) It is far too late.

(b) There has been no change in circumstances in the particulars sought to be made the basis of the application by reason of any action of the Federal Government subsequent to the decree of April 21, 1930, as is more particularly shown by the reference to and discussion of the pertinent official documents in the brief filed by these objecting complainants on December 5, 1932, at pages 37 to 47, inclusive.

(c) The application seeks to reopen and relitigate the same matters which were the basis of the original intervention of the present applicants, which mat-

ters were settled and determined by the decision of this Court rendered on January 14, 1929 (278 U. S. 367) and which matters are *res judicata* as to these defendants.

(d) The application discloses on its face that the applicant States have no legal or justiciable interest in the pending controversy, as has already been determined by the decision of this Court. The instant reference relates only to the performance of the decree already rendered. The most that could be said for the matters set up in the application is that the applicants suggest the possibility that the Congress, if it has the power, might at some future date attempt to take some action which would provide a diversion different than that fixed by the decree of this Court. While these objecting complainants deny that such action, if ever taken, would create any justiciable interest in the applicant States, it is manifest that unless and until such action is taken no justiciable interest can arise in favor of the applicant States. No facts alleged in the application even suggest the possibility of future congressional action contrary to the terms of the decree of April 21, 1930. See Brief of Wisconsin, Minnesota, Ohio and Michigan after Return of the Sanitary District of Chicago and the State of Illinois to the Rule to Show Cause, filed December 5, 1932, pages 37-47. However, it is obvious that a suggestion of the possibility of future congressional action, even if Congress possessed constitutional power in the premises, could constitute no defense against the performance of the decree or basis for its modification. That such a defense is untenable and raises no issue for this Court has been previously determined in both of the decisions had in this litigation.

(e) The matters set up in the pending application are irrelevant and immaterial.

(f) The pending application seeks to introduce a multitude of issues of fact and law which have been already decided and which are foreign to and would

complicate and confuse the simple issues of the pending reference. The matters set up in the application were suggested in the return filed by the Sanitary District of Chicago and the State of Illinois on November 14, 1932. Had such matters raised any issue for present consideration and determination, it must be obvious that the court would have made such issues a part of the reference.

CONCLUSION.

The obvious fact is that this application is part of the studied effort of the defendants to obstruct and delay the performance of the Supreme Court decree, while a constant campaign of guerrilla warfare is carried on against the decree in the hopes that some complacent Congress may be induced to attempt to take some action which the defendants hope will circumvent the performance of the Supreme Court decree. While these complainants now insist, as they have at all times insisted, that any such action would be beyond the constitutional power of the Congress and wholly void, they vigorously protest any attempt to the sabotage of the decree by indirect methods.

The attention of this Court is further directed to the fact that the statements made by applicants in the third paragraph on page three of their application are wholly inaccurate; and so far as these matters have any standing in this case or raise any issue which is material herein, were fully decided by this Court in its opinion dated January 14, 1929 (278 U. S. 367).

The States of Wisconsin, Minnesota, Ohio and Michigan therefore respectfully request that the application of the States of Missouri, Kentucky, Tennessee, Louisiana, Mississippi and Arkansas for a modification of the decree

of April 21, 1930 and for an enlargement of the pending reference be denied and disallowed.

Respectfully submitted,

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