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No. — Original

In the Supreme Court of the United States

OCTOBER TERM, 1948

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION
FOR LEAVE TO FILE COMPLAINT

In the Supreme Court of the United States

OCTOBER TERM, 1948

No. —, ORIGINAL

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT

The State of Louisiana has filed with the Court its objections to the granting of the motion of the United States for leave to file its complaint herein. In support of its objections the State urges, in substance, that this Court is without jurisdiction to entertain a suit brought by the United States against a State without the consent of the State and that the rulings of this Court to the contrary, as announced in *United States v. Texas*, 143 U. S. 621, and subsequent decisions, are erroneous and should be overruled.

The decision in *United States v. Texas* was based upon a most comprehensive analysis of the problem; the decision is correct; it has been re-

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peatedly followed;¹ and there is no reason for overruling it. It is unthinkable that under our constitutional system a State may not be sued by the United States without its consent. As the Court appropriately observed in the *Texas* case (143 U. S. at 644-645):

We cannot assume that the framers of the Constitution, while extending the judicial power of the United States to controversies between two or more States of the Union, and between a State of the Union and foreign States, intended to exempt a State altogether from suit by the General Government. They could not have overlooked the possibility that controversies, capable of judicial solution, might arise between the United States and some of the States, and that the permanence of the Union might be endangered if to some tribunal was not entrusted the power to determine them according to the recognized principles of law. And to what tribunal could a trust so momentous be more appropriately committed than to that which the people of the United

¹ *United States v. Michigan*, 190 U. S. 379; *United States v. Oklahoma*, 261 U. S. 253; *United States v. Minnesota*, 270 U. S. 181; *United States v. Utah*, 283 U. S. 64; *United States v. Oregon*, 295 U. S. 1; *United States v. Arizona*, 295 U. S. 174; *United States v. West Virginia*, 295 U. S. 463; *United States v. Alabama*, 313 U. S. 274; *United States v. Louisiana*, 318 U. S. 743; *United States v. Wyoming*, 331 U. S. 440; *United States v. California*, 332 U. S. 19. See also *Oklahoma v. Texas*, 252 U. S. 372, 258 U. S. 574; *Nebraska v. Wyoming*, 325 U. S. 589.

States, in order to form a more perfect Union, establish justice and insure domestic tranquillity, have constituted with authority to speak for all the people and all the States, upon questions before it to which the judicial power of the nation extends?

The suit which the United States here seeks to file against the State of Louisiana is one which clearly calls for the exercise by this Court of the original jurisdiction conferred by Article III, Section 2, Clause 2, of the Constitution. * As set forth in the statement in support of the Motion for Leave to File Complaint (p. 3), the State is proceeding with the exploitation of lands underlying the open waters of the Gulf of Mexico and is refusing to recognize the rights of the United States in such lands. There is here presented, therefore, "a clash of interests which between sovereign powers could be traditionally settled only by diplomacy or war. The original jurisdiction of this Court is one of the alternative methods provided by the Framers of our Constitution." *Nebraska v. Wyoming*, 325 U. S. 589, 608 (in which the United States intervened).

Of particular significance in connection with this question is the case of *United States v. California*, No. 12, Original, now before this Court for certain supplemental determinations. The jurisdiction under which the Court heard and rendered its decision in the *California* case (332 U. S. 19) is the same as that now invoked by the United

States in respect to its controversy with the State of Louisiana.

The motion for leave to file the complaint should be granted.

TOM C. CLARK,
Attorney General.

PHILIP B. PERLMAN,
Solicitor General.

JANUARY, 1949.