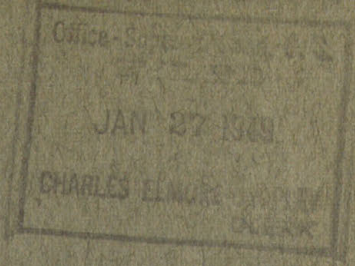

No. 8, 14 — Original

In the Supreme Court of the United States

OCTOBER TERM, 1948

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF TEXAS

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 TEXAS

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT

The State of Texas has raised two objections to the granting of the motion of the United States for leave to file its complaint herein. These objections suggest (1) that the Attorney General has no authoriy to bring this suit and (2) that the interests of convenience, efficiency and justice would be better served by the bringing of the suit in an appropriate district court rather than as an original proceeding in this Court.

1. Any doubt which may have existed as to the authority of the Attorney General to institute a suit of this character was disposed of by the Court in *United States* v. *California,* 332 U. S. 19, 26–29. The statement of the State of Texas in regard to this matter presents no consideration which

822348—49

was not before the Court in the *California* case and no ground for reaching a different conclusion in respect to the Attorney General's "statutorily granted power to invoke * * * [the Court's] jurisdiction in this federal-state controversy." 332 U. S. at 28–29.

2. There is also no basis for the suggestion that it would be more convenient and efficient to bring this suit in a district court rather than in this Court. Certainly, the fact that the district courts now have concurrent original jurisdiction with this Court in respect to suits brought by the United States against a State (28 U. S. C. 1251 (b) and 1345), does not, in itself, support such a conclusion.

The amendment to the Judicial Code which gives the district courts concurrent original jurisdiction with this Court serves a useful purpose. There may be controversies of very limited importance between the United States and a State that could be satisfactorily resolved in the lower courts without burdening this Court. On the other hand, there may be controversies of the first magnitude in importance, such as the present suit, in which it is appropriate for this Court to exercise its original jurisdiction, and in which it would be highly inappropriate to proceed before a district judge. Where, as here, the United States seeks the adjudication of issues of far reaching importance, both to the State and to

the Nation as a whole, all considerations of public policy, as well as of convenience and efficiency, make it desirable for this Court to exercise the original jurisdiction conferred by Article III of the Constitution. There is no apparent reason why the basic issues in this case cannot be determined by this Court as they were in the comparable case of *United States* v. *California*. We know of no matters of relevant fact that call for the taking of testimony or presentation of evidence in this case any more than in the decision of the basic issues in the *California* case. If, contrary to our expectations, any such issues should arise, they can be resolved in the manner usually employed by this Court in original proceedings. There is no sound reason for departing from the procedure followed in the *California* case.

In view of the foregoing, the motion for leave to file the complaint herein should be granted.

TOM C. CLARK,
Attorney General.

PHILIP B. PERLMAN,
Solicitor General.

JANUARY, 1949.

U. S. GOVERNMENT PRINTING OFFICE: 1949