No. 13, Original

In the Supreme Court of the United States

OCTOBER TERM, 1949

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF TEXAS

MOTION FOR JUDGMENT

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Comes now the United States, by its Attorney General and its Solicitor General, and moves the Court for judgment as prayed in the Complaint. The United States suggests that the case be set for argument at an early date on the issues raised by the Complaint.

J. HOWARD MCGRATH,
Attorney General.

PHILIP B. PERLMAN,
Solicitor General.

SEPTEMBER 1949.

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STATEMENT WITH RESPECT TO MOTION

On December 21, 1948, the United States filed motions for leave to file complaints in this case and in *United States* v. *Louisiana,* No. 12, Original, this Term. Ordinarily, such leave would be granted as of course, as was done in *United States* v. *California,* 326 U. S. 688. Texas and Louisiana, however, asked for permission to oppose the motions, and this Court, by order of January 3, 1949 (335 U. S. 901), allowed the States two weeks within which to present their objections. Thereafter, on January 17, 1949, Texas filed objections based upon the alleged lack of authority of the Attorney General of the United States to bring this suit, and upon the ground that the interests of convenience, efficiency and justice would be better served if the United States were required to bring suit in a federal district court instead of in this Court. On May 4, 1949, it filed a Supplemental Statement and Brief, in which it discussed these two objections further. At the oral arguments on May 9, 1949, on the objections filed by Louisiana and Texas, the Attorney General of Texas made it clear that although Texas had not separately developed the jurisdictional objection which Louisiana pressed, it nevertheless stood on that objection as well, for whatever it was worth.

On May 16, 1949, this Court entered a single order for both cases. It rejected the objections presented by both States by granting the motions of the United States for leave to file and ordering that process issue, returnable September 1, 1949. 337 U. S. 902. Louisiana thereafter filed a petition for rehearing, continuing to insist that the Court was without jurisdiction. In denying that petition, this Court ordered Louisiana to "answer the allegations of the complaint" within the time specified, and added that "otherwise the plaintiff may proceed *ex parte.*" 337 U. S. 928.

Surely, Texas was aware of the Court's order in the companion case. Yet, instead of filing an answer to the Complaint on the return date, it has filed two documents which appear to be merely dilatory maneuvers.

The first document is a motion to dismiss on the ground that the Court is without jurisdiction. This is the very point that Louisiana repeatedly pressed, that Texas had adopted for its own benefit, and that was adversely disposed of by a single order covering both cases. 337 U. S. 902. This is the very point that Louisiana sought to raise again in its petition for rehearing, which induced this Court to order that the plaintiff might proceed *ex parte,* if Louisiana did not answer the allegations of the Complaint. Plainly, Texas is on notice of these facts. And although it may not be technically in default, since the order of June 13, 1949, was entered only in the *Loui-*

siana case, there can be no serious question that this motion has been filed for purposes of delay.

The other document filed by the State asks for a more definite statement or a bill of particulars. This point is equally insubstantial and frivolous. Its only purpose appears to be to achieve further delay, since none of the matters called for by the State is essential to the adjudication of the basic issues in this case on the merits. The Complaint filed in this case is sufficient to apprise Texas of the nature and extent of the rights asserted by the United States. It is patterned closely after the Complaint filed in *United States* v. *California,* 332 U. S. 19. In the *California* case itself many of the same objections to the language of the Complaint and the alleged generality thereof were raised by the State (Answer of California, par. II), but these considerations did not prevent the adjudication of the controversy. Indeed, the Court specifically declared in its opinion (332 U. S. 19, 26): "California's contention concerning the indefiniteness of the claim presents no insuperable obstacle to the exercise of the highly important jurisdiction conferred on us by Article III of the Constitution."

In addition, the second document filed by the State contains a request for an extension of time within which to answer. We submit that such delaying tactics should not prevail. The Court has given the United States the right to proceed *ex parte* in the *Louisiana* case. It is plain that

Texas has done precisely what was found so objectionable in the *Louisiana* case. While Texas may not be technically in default, we think there can be no doubt that it has in substance again endeavored to prevent or unduly postpone an adjudication on the merits. In these circumstances, we respectfully suggest that the case be set down for argument on the merits of the issues raised by Complaint.

Respectfully submitted.

J. HOWARD MCGRATH,
Attorney General.

PHILIP B. PERLMAN,
Solicitor General.

SEPTEMBER 1949.

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