No. 10, Original

In the Supreme Court of the United States

OCTOBER TERM, 1956 - 1958

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION TO THE MOTION OF THE PARISHES OF ST. BERNARD, PLAQUEMINES, JEFFERSON, IBERIA AND ST. MARY FOR LEAVE TO FILE INTERVENTION

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On February 27, 1957, the Parishes of St. Bernard, Plaquemines, Jefferson, Iberia and St. Mary, five of the nine coastal parishes of Louisiana,[1] filed their joint motion for leave to intervene as defendants, together with their supporting brief and proposed answer. The brief asserts that the applicants are entitled to intervene as of right, under Rule 24 (a) (2) and (3), F. R. C. P., as made applicable by Rule 9 (2) of this Court. Brief in Support of Motion, 4, 8. We submit that the applicants have no such right, and that the motion should be denied.

Louisiana parishes are political subdivisions of the State like counties in other States. *National Liberty*

[1] The coastal parishes not joining in the motion are Lafourche, Terrebonne, Vermillion and Cameron.

Ins. Co. of America v. *Police Jury,* 96 F. 2d 261, 262 (C. A. 5). Their status has been clearly described by the Supreme Court of Louisiana in *State* v. *City of Baton Rouge,* 215 La. 315, 330–331, 40 So. 2d 477:

> It is the settled jurisprudence that counties and municipalities are creatures of the State, established for the purpose of providing effective government with functions, powers, duties and obligations delegated or imposed by the State and that there is nothing in the Fourteenth Amendment of the Federal Constitution or any other provision of the Constitution of the United States which would prohibit the State from making any change of such functions, powers and obligations. In this field, *the State of Louisiana is supreme and may do as it wills, unrestrained by the Federal Constitution.*
>
> In the case of *Laramie County Com'rs* v. *Albany County,* 92 U. S. 307, 23 L. Ed. 552, the United States Supreme Court held:
>
> "Political subdivisions of the kind are always subject to the general laws of the State; * * *.
>
> "Such corporations are the mere creatures of the legislative will; and, inasmuch as all their powers are derived from that source, it follows that those powers may be enlarged, modified or diminished at any time, without their consent, or even without notice. They are but subdivisions of the State, deriving even their existence from the Legislature. * * *" [Emphasis by the court.]

This Court has recently considered whether such a political subdivision of a State should be allowed to

intervene in an original suit to which the State is a party. *New Jersey* v. *New York,* 345 U. S. 369. That was a suit by New Jersey against the State of New York and the city of New York, to enjoin diversion of water from the Delaware river. Pennsylvania was allowed to intervene, and the city of Philadelphia sought to do likewise, on the ground that it had an interest in the waters of the river and was responsible for its own water supply under its home rule charter. The Court denied permission for Philadelphia to intervene, saying (345 U. S. at 372–373):

> The *"parens patriae"* doctrine * * * is a recognition of the principle that the state, when a party to a suit involving a matter of sovereign interest, "must be deemed to represent all its citizens." *Kentucky* v. *Indiana,* 281 U. S. 163, 173–174 (1930). The principle is a necessary recognition of sovereign dignity, as well as a working rule for good judicial administration. Otherwise, a state might be judicially impeached on matters of policy by its own subjects, and there would be no practical limitation on the number of citizens, as such, who would be entitled to be made parties.
>
> * * * If we undertook to evaluate all the separate interests within Pennsylvania, we could, in effect, be drawn into an intramural dispute over the distribution of water within the Commonwealth. * * *
>
> Our original jurisdiction should not be thus expanded to the dimensions of ordinary class actions. An intervenor whose state is already a party should have the burden of showing some compelling interest in his own right,

> apart from his interest in a class with all other citizens and creatures of the state, which interest is not p r o p e r l y represented by the state. * * *

Those principles should dispose of the present motion. The coastal parishes have not and could not have any independent interest in the submerged lands. They merely participate in the exercise of the State's rights therein, to such extent as the State may from time to time permit. The applicants' assertion that their interest may be inadequately represented rests not on any divergence between their interest and the State's, but solely on their dissatisfaction with the State's manner of defending its own interest. The conduct of this case should not be encumbered by permitting various State agencies[2] to intervene merely because they hold divergent views as to the extent of the State's rights or the manner in which they should be presented. The State's right is single, through whatever agencies it may be administered; it should be defended by the State alone.

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[2] If the present applicants were allowed to intervene, it would seem that the four remaining coastal parishes should have the same privilege, jointly or severally, if they wish it; and at least as strong a case for intervention could be made out by the State's numerous mineral lessees. Their claims, although derived from the State, have become independently vested and could conceivably involve interests at variance with the State's, as the parishes' claims cannot. Precisely this sort of situation was envisioned by the Court in *New Jersey* v. *New York*, 345 U. S. 369, 373, as a highly undesirable consequence of permitting such intervention as is now sought.

CONCLUSION

The motion for leave to intervene should be denied.

Respectfully submitted,

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