

**In the
Supreme Court of the United States**

OCTOBER TERM, ~~1957~~ 1958

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI,
ALABAMA AND FLORIDA

**Motion for Pretrial Conference and
Statement in Support of Motion**

JACK P. F. GREMILLION

Attorney General
State of Louisiana

RICHARD W. ERVIN

Attorney General
State of Florida

JOHN M. PATTERSON

Attorney General
State of Alabama

JOE T. PATTERSON

Attorney General
State of Mississippi

WILL WILSON

Attorney General
State of Texas

**In the
Supreme Court of the United States**

OCTOBER TERM, 1957

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI,

ALABAMA AND FLORIDA

**Motion for Pretrial Conference and
Statement in Support of Motion**

Now come the States of Florida, Alabama, Mississippi, Louisiana and Texas, made defendants in this Original Action, appearing through their respective Attorneys General, and move that this Honorable Court order and hold a pre-trial conference herein.

STATEMENT IN SUPPORT OF MOTION

PART III, Rule 9 (2), of the Rules of this Honorable Court provides that "The form of pleadings and motions in original actions shall be governed, so far as may be, by the Federal Rules of Civil Procedure, and in other respects those rules, where their application is appropriate, may be taken as a guide to procedure in original actions in this court."

Rule 16 of the Federal Rules of Civil Procedure provides in part that, "In any action, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider

- "(1) The simplification of the issues;
- (2) The necessity or desirability of amendments to the pleadings;
- (3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
- (4) The limitation of the number of expert witnesses;
- (5) The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;
- (6) Such other matters as may aid in the disposition of the action."

It is, therefore, respectfully submitted:

(A) That not only does this Honorable Court have inherent powers to grant and order a pre-trial conference in cases wherein it assumes original jurisdiction under Article III, Section 2, Clause 2 of the Constitution of the United States, as in the instant case where the five States who are movants herein are parties defendant, but the authorities above cited constitute sufficient specific authority for the court to order a pre-trial conference in conformity with this motion;

(B) That this case, brought by the United States of America, plaintiff, originally docketed as Cause No. 7 Original, at the October term, 1954, of this Honor-

able Court, named the State of Louisiana as the sole party defendant. That subsequently, the State of Texas filed an *amicus curiae* brief, and on June 24, 1957, this Honorable Court entered an order granting leave to each of the States of Alabama, Florida, Mississippi and Texas to intervene in said suit originally filed against the State of Louisiana, and upon failure of said States, or any of them, to intervene within 60 days, the order granted leave to the United States, within 60 days thereafter, to file an amended or supplemental complaint adding as parties to said suit any of such States as shall not have so intervened. Whereupon, the United States of America amended its original complaint in said cause and named the States of Alabama, Florida, Mississippi, Texas and Louisiana as parties defendant. By order of this Honorable Court entered on November 18, 1957, movants herein were directed to answer said amended complaint within 45 days from that date;

(C) That prior to the adding and joining of the States of Texas, Mississippi, Alabama and Florida as parties defendant by the filing of said amended complaint by the United States, and while Louisiana was the sole and only defendant, said cause was argued by the then only parties thereto and was submitted for judicial determination. However, since the amended complaint also includes the State of Louisiana, it would now appear that said amended complaint forms the basis for and has the effect of a proceeding *de novo* insofar as the State of Louisiana is concerned as

well as the said other four States named as parties defendant;

(D) That due to the nature of this suit and the developments herein as aforesaid, procedural questions important to the proper consideration and determination of the issues in this cause have arisen which can best be resolved at a pre-trial conference attended by the attorneys for all interested parties. Among the matters which should be considered at such a conference and which, if resolved, would result in a simplification of the issues and generally aid in the disposition of this action, are the following:

- (1) The length of oral argument and the amount of time allotted to each particular State for its argument should be determined in the event the plaintiff should file a motion for judgment on the amended complaint and the answers thereto;
- (2) The order of argument among the respective States named as parties defendant;
- (3) The question of whether said amended complaint has the effect of a proceeding de novo against the State of Louisiana;
- (4) If at a conference the question of taking evidence and the referral of the action to an inferior tribunal or a Special Master for that purpose could be explored, argument might then be concentrated more on the principal issue;
- (5) After hearing from counsel for all of the parties at the conference, the court might then deem it appropriate to fix the time within which briefs shall be filed.

(E) That due to the unusual and complex character of this suit, it is necessary that the attorneys for the parties hereto, either individually or collectively, inquire of this Honorable Court as to procedural steps to be taken in this action; that should said attorneys individually approach the Court for procedural instruction then a lack of mutuality of understanding is likely to result and, in addition, the following of such a course would amount to an unnecessary and burdensome intrusion upon the valuable time of this Honorable Court, but that a pre-trial conference, in which the attorneys for all of the parties hereto are invited to participate, held as soon as convenient to the Court, would result not only in a saving of valuable time but would result in a clearer and more certain understanding of the issues involved and would settle the procedural questions posed; and that, therefore, the ends of justice and the interests of all parties concerned can best be served by the granting of a pre-trial conference for the purpose of considering these matters.

Respectfully submitted,

JACK P. F. GREMILLION

Attorney General
State of Louisiana

RICHARD W. ERVIN

Attorney General
State of Florida

JOHN M. PATTERSON

Attorney General
State of Alabama

JOE T. PATTERSON

Attorney General
State of Mississippi

WILL WILSON

Attorney General
State of Texas

PROOF OF SERVICE

The undersigned, of counsel of record for defendants, acting for and on behalf of the States of Louisiana, Texas, Mississippi, Alabama and Florida, and their respective Attorneys General, and a Member of the Bar of the Supreme Court of the United States, certify that I served copies of the foregoing motion by the defendant States herein for pre-trial conference and statement in support of motion, by leaving copies thereof at the Offices of the Attorney General and of the Solicitor General, respectively, of the United States, in the Department of Justice Building, Washington, D. C., on the_____ day of_____, 19_____.

Of Counsel

