No. 15, Original.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958.

STATE OF ILLINOIS,

Complainant,

vs.

STATES OF MICHIGAN, OHIO, PENNSYLVANIA, MINNESOTA, NEW YORK AND WISCONSIN,

Defendants.

BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTION.

LATHAM CASTLE,
Attorney General of the State of Illinois,

WILLIAM C. WINES,
Assistant Attorney General,

GEORGE E. BILLETT,
CHARLES A. BANE,
CALVIN D. TROWBRIDGE,
Special Assistant Attorneys General,

Counsel for Complainant.

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THE JURISDICTION OF THE COURT.

This is an original action by the State of Illinois against the States of Michigan, Ohio, Pennsylvania, Minnesota, New York and Wisconsin, and therefore this Court has jurisdiction of the proceedings by virtue of Article III, Section 2 of the Constitution of the United States and Title 28 of the United States Code, Section 1251.

QUESTION PRESENTED.

Does the State of Illinois have the right to authorize the taking of water from Lake Michigan for domestic

purposes (in addition to the amounts taken by the City of Chicago and others for domestic purposes) by a Commission formed by three municipalities intending to withdraw an insignificant amount of water per second, as against the threats of Defendants that such withdrawal will not be permitted, at least unless arrangements are made to restore to the Great Lakes Basin the amounts so withdrawn?

(a) Has not Illinois' right to withdraw water from Lake Michigan for domestic uses been established in prior litigation between these parties and in an opinion and decree of this Court in the case of *Wisconsin* v. *Illinois*, 281 U. S. 179, 696 (1930)?

(b) In the absence of any showing by Defendants of excessive taking, or damage to them from such taking, does not the principle of equitable apportionment between states require that Illinois' rights to such withdrawal be recognized?

(c) Is not the taking so minimal and insignificant in its effect on Lake levels as to require that the objections of the other States be denied and the rights of the State of Illinois affirmed?

(d) Does not the urgent need of the communities involved for water for domestic purposes require that the rights of the State of Illinois be recognized without imposing, or considering the demand for imposing, any obligation of the State of Illinois or any of its municipalities to restore to the Lake the sewage effluent from the use of the water taken from the Lake?

(e) Do not the Defendants' threats, and the assertion of the State of Illinois of its rights, present a genuine controversy justifying a declaration by this Court of the rights of the State of Illinois in the premises?

STATEMENT OF THE CASE.

This is a matter of immediate urgency. The 90,000 people whose needs for water for drinking and other domestic purposes are proposed to be supplied by the Commission are now dependent upon wells the ultimate capacity of which has been reached. The capacity of these wells is in fact inadequate to meet present needs, as illustrated by the circumstance that rationing of water use has been placed in effect in the recent past in certain of the areas proposed to be served by the Commission. It is anticipated that during the two-year period in which the Commission would be constructing its facilities for the withdrawal of water from Lake Michigan, even more severe water rationing measures will be required. During this two-year period there is the ever-present hazard of the disappearance of a substantial portion of even the presently available well water, an event which would require drastic measures in order to preserve the health, safety and welfare of these affected communities.

The State of Illinois, by an Act of its Legislature (Ill. Rev. Statutes 1957, Chapter 24, Article 81, Vol. 1, pp. 734-736), authorizes any two or more municipalities in the State of Illinois to organize a commission for the purpose of providing a common source of water supply. By virtue of this authorization, The Elmhurst - Villa Park - Lombard Water Commission was organized by the City of Elmhurst, the Village of Villa Park and the Village of Lombard, all municipal corporations of the State of Illinois. The Commission has made plans to withdraw water from Lake Michigan for the domestic uses of these municipalities and other customers along the line of its main, all of which are a part of the Chicago metropolitan area in the State of Illinois. None of the organizing municipalities is located within The Metropolitan Sanitary District of Greater Chicago.

The Commission has no power with respect to the disposal of sewage effluent, its only power and authority being that of supplying water, for which there is an immediate need in the communities proposed to be served by the Commission. As the allegations in the sworn complaint filed in this proceeding show, there is no adequate source of water supply in this area now available to the Commission for service to the communities which it proposes to serve except Lake Michigan. The needs of the population have exceeded the water supply available from underground sources, and although many new wells have been drilled, the total water supply has not been increased sufficiently and the water level in the existing wells has been dropping at an average rate of from 7 to 10 feet per year. During the year 1958 there was a recession of water levels to the extent of 20 to 30 feet. It has been necessary to drill wells deeper and deeper and to set pumps lower and lower until at the present time the pumps have been placed at approximately 650 to 700 feet below ground level, the lowest practicable setting. Water in the existing wells in the communities to be served is derived from sandstone substrata, the wells running to a depth of approximately 1,800 feet. At 2,000 feet below the surface salt water has been encountered so that it is now impossible to obtain more water by drilling existing wells deeper. Nor is there an alternative of drilling additional wells, since such drilling has proved not to produce an appreciable amount of additional water. For some time it has been obvious that even with severe restrictions on domestic use, wells cannot continue to serve the existing population.

The average amount of water proposed to be withdrawn by the Commission for the municipalities and other customers with which it has contracted to supply water (during the first 20 years of operation) is approximately 30 cubic feet per second and projected to an estimated average

daily withdrawal of 50 cubic feet per second by the year 2000, all for domestic purposes. These proposed amounts contrast with the amount of 1,700 cubic feet per second being taken for the metropolitan area of Chicago in 1930 at the time of the entry of the decree in the case of *Wisconsin* v. *Illinois,* 281 U. S. 696, and with approximately the same amount now being taken for the metropolitan area of Chicago for such purposes.

In the period between its formation and November, 1958, the Commission had made great strides in preparing for the supply of water to the municipalities responsible for its formation and its other customers. The detailed steps that have been taken, set forth in paragraph 9 of the complaint in this proceeding, included the completion of engineering studies; negotiation of contracts for the purchase of property as a site for a water intake and pumping station, for a site for a filter plant and for easements for a water main over 14 miles of railroad right-of-way; the procuring of permits for construction from the United States Corps of Engineers and the relevant state and municipal agencies having jurisdiction, so that all permits required by law have been obtained. The Commission had entered into a contract with investment bankers for the issuance and sale of $18,750,000 principal amount of water revenue bonds to finance the construction of its system. All progress in the matter came to a halt, including any progress in the sale of the revenue bonds, by reason of the assertion by the Defendants of threats to prevent the withdrawal of water from Lake Michigan by the Commission except upon the Defendants' condition that the sewage effluent therefrom be returned to Lake Michigan. By letters sent to the Governor and Attorney General of the State of Illinois, to the Commission and to its customers, the defendant States of Michigan, Ohio and Pennsylvania have threatened to institute proceedings to be joined in, according to the At-

torney General of Michigan, by the defendant States of New York, Wisconsin and Minnesota to prevent the proposed abstraction of water from Lake Michigan. Despite negotiations conducted on behalf of the State of Illinois with representatives of the Defendants to ascertain whether an appropriate solution could be found, the Defendants continue to threaten to institute such proceedings and so to interfere with the withdrawal of water from Lake Michigan by the Commission.

The issues in this proceeding involve the right of the Commission to withdraw water from Lake Michigan and do not require consideration of any question respecting the disposition of the sewage effluent. It need not be pointed out to the Court that the Court has had occasion to consider and reject a requirement for the return of sewage effluent as a condition of withdrawal of water from Lake Michigan for domestic purposes; *Wisconsin* v. *Illinois,* 281 U. S. 179 (1930). The complainants in *Wisconsin* v. *Illinois* applied to this Court in 1957 to reopen the 1930 decree and to require The Metropolitan Sanitary District of Greater Chicago to return to Lake Michigan the sewage effluent resulting from domestic pumpage within the District. No showing was made by the complainants of facts sufficient to justify a modification of the 1930 decree and the application was dismissed by this Court; *Wisconsin* v. *Illinois,* 355 U. S. 944. In October, 1958 those complainants renewed their application and motion, now pending in this Court, with the objective of seeking like relief as was sought in 1957. That application raises the question of the obligations of the Sanitary District to restore to Lake Michigan sewage effluent resulting from domestic pumpage but does not question the right of the State of Illinois or any of its municipal corporations to withdraw water from the Lake for domestic pumpage purposes.

SUMMARY OF THE ARGUMENT.

The State of Illinois is entitled to use Lake Michigan water for the domestic purposes of the communities to be served by The Elmhurst - Villa Park - Lombard Water Commission. Indeed, this right of the State has been established by this Court, for in its decree in *Wisconsin* v. *Illinois,* 281 U. S. 696 (opinion at p. 179), this Court authorized the taking, without question, of the amounts of water that would result from domestic pumpage in determining the amounts of water which could be diverted apart from domestic pumpage from Lake Michigan by the Sanitary District of Chicago. Furthermore, the Defendants herein, basing their threats to interfere with the taking of water by the Commission, as they do, upon the condition that the water so taken shall be restored to the Lake, recognized the right of the Commission to take and use the water for domestic purposes. The matter of what should be required in the way of return of sewage effluent to Lake Michigan is not involved in this proceeding, the Commission having no powers and no program with respect thereto. The question of whether The Metropolitan Sanitary District of Greater Chicago shall be required to restore the effluent from domestic pumpage received by it is in issue in another proceeding pending in this Court.

Unquestionably, the reason for the recognition by this Court in its 1930 decree in *Wisconsin* v. *Illinois* of the right to take water for domestic purposes and the reason that even the defendants have not controverted such right on the part of the Commission is attributable to the clear and definitive rulings of this Court that the use of water for domestic purposes is the highest possible use: *Connecticut* v. *Massachusetts,* 282 U. S. 660, 673; *New Jersey* v. *New York,* 283 U. S. 336, 342.

In any event, the withdrawal proposed by the Commis-

sion is minimal and so lacking in significance in relation to the total volume of water in Lake Michigan that the right of the Commission with respect to withdrawal ought to be affirmed without question. Even in the event that the Court is now of the opinion that the return of sewage effluent to the Lake must be considered in connection with withdrawal for domestic purposes, the insignificant amounts here involved make it inappropriate to consider any such question in this proceeding. In view of the urgent need of the communities involved for water, a decision affirming their right to the water ought not to be delayed pending any determination of the necessity for any return of sewage effluent by the agencies which are charged with responsibilities for waste and sewage.

ARGUMENT.

I.

THE PRIOR LITIGATION BETWEEN THESE STATES HAS ESTABLISHED, AND HAS NEVER LIMITED, THE RIGHT OF ILLINOIS TO WITHDRAW WATER FROM LAKE MICHIGAN FOR DOMESTIC USES.

The right of the State of Illinois, through its instrumentality, The Elmhurst - Villa Park - Lombard Water Commission, to withdraw water from Lake Michigan to supply the domestic needs of some of its communities in the metropolitan area of Chicago is hardly debatable in the light of the principles uniformly applied by this Court. The right was established in the case of *Wisconsin* v. *Illinois,* 281 U. S. 179. In that case, the States of Wisconsin, New York, Michigan, Minnesota, Ohio and Pennsylvania sought to enjoin or limit the direct diversion of water from Lake Michigan through the Chicago River, and the Court did by its decree limit such direct diversion ultimately to 1500 cubic feet per second. In considering the amount of water necessary to be directly diverted through the Chicago River for navigation purposes, the Court considered the volume of water flowing into the River as a result of domestic pumpage, but the right to withdrawal for domestic use was recognized. The complainants had asked that the sewage effluent produced by the defendant, Sanitary District of Chicago, be returned to Lake Michigan instead of being drained into the Mississippi River Basin. This the Court refused. The right to use the water for domestic purposes was conceded. The Court said in its opinion:

> "The withdrawal of water for domestic purposes is not assailed by the complainants and we are of the opinion that the course recommended by the master

[that sewage effluent should not be returned to the Lake] is more reasonable than the opposite demand. If the amount withdrawn should be excessive it will be open to complaint. Whether the right for domestic use extends to great industrial plants within the District has not been argued but may be open to consideration at some future time." 281 U. S. at p. 200.

Paragraphs 1, 2, 3 and 4 of the decree read as follows:

"1. On and after July 1, 1930, the defendants, the State of Illinois and the Sanitary District of Chicago, their employees and agents, and all persons assuming to act under the authority of either of them, be and they hereby are enjoined from diverting any of the waters of the Great Lakes-St. Lawrence system or watershed through the Chicago Drainage Canal and its auxiliary channels or otherwise in excess of an annual average of 6,500 cubic feet per second in addition to domestic pumpage.

"2. That on and after December 31, 1935, unless good cause be shown to the contrary, the defendants, the State of Illinois and the Sanitary District of Chicago, their employees and agents, and all persons assuming to act under the authority of either of them, be and they hereby are enjoined from diverting any of the waters of the Great Lakes-St. Lawrence system or watershed through the Chicago Drainage Canal and its auxiliary channels or otherwise in excess of an annual average of 5,000 cubic feet per second in addition to domestic pumpage.

"3. That on and after December 31, 1938, unless good cause be shown to the contrary, the defendants, the State of Illinois and the Sanitary District of Chicago, their employees and agents, and all persons assuming to act under the authority of either of them, be and they hereby are enjoined from diverting any of the waters of the Great Lakes-St. Lawrence system or watershed through the Chicago Drainage Canal and its auxiliary channels or otherwise in excess of the annual average of 1,500 cubic feet per second in addition to domestic pumpage.

> "4. That the provisions of this decree as to the diverting of the waters of the Great Lakes-St. Lawrence system or watershed relate to the flow diverted by the defendants exclusive of the water drawn by the City of Chicago for domestic water supply purposes and entering the Chicago River and its branches or the Calumet River or the Chicago Drainage Canal as sewage. The amount so diverted is to be determined by deducting from the total flow at Lockport the amount of water pumped by the City of Chicago into its water mains and as so computed will include the run-off of the Chicago and Calumet drainage area." 281 U. S. at pp. 696-697.

A proper interpretation of the decree, requiring that all of its language be read together and, as well, with reference to the particular issues before the Court, is that domestic pumpage of the State of Illinois may be withdrawn from the Lake and need not be returned.

Consistently with its expression of opinion, the Court in the decree entered in *Wisconsin* v. *Illinois,* when it came to express its order as to allowable diversion, in paragraphs 1, 2 and 3, excluded domestic pumpage from the limitation. Similarly, in paragraph 4 of the decree, where the Court provided for the manner of computing the diversion to be permitted through Lockport, an express exception was made for water drawn by the City of Chicago for domestic water supply purposes.

In the event that an attempt is made to argue that paragraph 4 of the decree, in its recognition of Chicago's right to draw water for domestic purposes, was thereby excluding or denying any right in any other body in the State of Illinois to draw water for domestic purposes, a simple answer to the argument would be that paragraphs 1, 2 and 3, dealing with the general subject of diversion, exclude domestic pumpage without specific limitation to the City of Chicago or any other particular body. Paragraph 4 was

intended simply to prescribe the method of measurement, by taking the total flow at Lockport and then making certain deductions or exclusions therefrom, of the amount which was in fact being diverted directly from Lake Michigan through the River. Any such argument would fly in the face of the recognition in the Court's opinion of the rights of the State of Illinois and its authorized bodies with respect to the removal of water for domestic purposes.

It is significant that, although the Court was considering primarily the direct diversion through the Chicago River and only incidentally the amount of domestic pumpage, and only the domestic pumpage within the Sanitary District—because only such pumpage would flow through the locks to be measured at Lockport—the right of Illinois to withdraw water for domestic purposes is established.

II.

ILLINOIS, AS A QUASI-SOVEREIGN, IS ENTITLED TO WITHDRAW WATER FROM LAKE MICHIGAN FOR DOMESTIC USES. INTERFERENCE WITH THE PROPOSED MINIMAL WITHDRAWAL CANNOT BE JUSTIFIED.

Mr. Justice Butler, in *Connecticut* v. *Massachusetts,* 282 U. S. 660, 673, characterized "Drinking and other domestic purposes [as] the highest uses of water." In affirming Massachusetts' right to divert water from the Ware and Swift Rivers for use in Boston, a distance of approximately forty miles, the Court performed its traditional role as arbiter between the States, reconciling legitimate claims of both to interstate waters. This role is based on the recognition that States act for their citizens as quasi-sovereigns; within limits, they act in these matters as independent nations. The division of available water within a state is a matter for that state to decide—and this is true even for water obtained from interstate streams.

Wyoming v. *Colorado,* 298 U. S. 573, 584; *Ibid,* 309 U. S. 572, 579-581; see *Nebraska* v. *Wyoming,* 325 U. S. 589, 627.

Considerable freedom from interference is allowed even in the allocation of interstate water. This Court in *Colorado* v. *Kansas,* 320 U. S. 383, in denying for the second time Kansas' petition to limit Colorado's use, for irrigation, of the Arkansas River, stated:

> "Such a controversy as is here presented is not to be here determined as if it were one between two private riparian proprietors or appropriators.
>
> "The lower State is not entitled to have the stream flow as it would in nature regardless of need or use. If, then, the upper State is devoting the water to a beneficial use, the question to be decided, in the light of existing conditions in both States, is whether, and to what extent, her action injures the lower State and her citizens by depriving them of a *like, or an equally valuable,* beneficial use.
>
> "* * *
>
> "In such disputes as this, the court is conscious of the great and serious caution with which it is necessary to approach the inquiry whether a case is proved. Not every matter which would warrant resort to equity by one citizen against another would justify our interference with the action of a State, for the burden on the complaining State is much greater than that generally required to be borne by private parties. Before the court will intervene the case must be of serious magnitude and fully and clearly proved." 320 U. S. at p. 393. (Emphasis added.)

Attack on a particular use imposes an obligation on the complaining state to demonstrate the damage done by the use complained of. *Connecticut* v. *Massachusetts,* 282 U. S. 660, 669; *Washington* v. *Oregon,* 297 U. S. 517, 522.

In *New Jersey* v. *New York,* 283 U. S. 336, allowing New York's diversion for domestic uses of water from the Delaware River to New York City, a distance of over fifty miles, Justice Holmes recognized the conflicting claims of

both States, and in adjusting their claims permitted New York's diversion to a different watershed:

> "* * * A river is more than an amenity, it is a treasure. It offers a necessity of life that must be rationed among those who have power over it. New York has the physical power to cut off all the water within its jurisdiction. But clearly the exercise of such a power to the destruction of the interest of lower States could not be tolerated. And on the other hand equally little could New Jersey be permitted to require New York to give up its power altogether in order that the River might come down to it undiminished. Both States have real and substantial interests in the River that must be reconciled as best they may be. The different traditions and practices in different parts of the country may lead to varying results, but the effort always is to secure an equitable apportionment without quibbling over formulas. * * *
>
> "This case was referred to a Master and a great mass of evidence was taken. In a most competent and excellent report the Master adopted the principle of equitable division which clearly results from the decisions of the last quarter of a century. Where that principle is established there is not much left to discuss. The removal of water to a different watershed obviously must be allowed at times unless States are to be deprived of the most beneficial use on formal grounds. In fact it has been allowed repeatedly and has been practiced by the States concerned." 283 U. S. at pp. 342-343.

Against this background, Illinois asserts the right of this Commission to withdraw for domestic purposes an amount of water estimated to average 25 to 30 cubic feet per second over the next twenty years—an amount which will have no perceptible effect on the level of the Great Lakes. The amount is *de minimis;* the threats which prevent its withdrawal have no basis in precedent.

While we are forced to assume that the Defendants, in their answer, will actually object to the minimal with-

drawal, we think it clear that the urgent need of these communities for drinking water justifies a declaration of their right to take. Justice Holmes, in *Wisconsin* v. *Illinois,* 281 U. S. 179, recognizing the right of Illinois to withdraw water from Lake Michigan for domestic purposes unless the amount withdrawn should become excessive—in which case "it will be open to complaint"—said that the amount ultimately to be withdrawn by the City of Chicago and other areas within the Chicago Sanitary District (the withdrawal of domestic pumpage in 1930, amounting to 1,700 cubic feet per second, plus an amount of direct diversion of 1,500 cubic feet per second, totalled 3,200 cubic feet per second) was relatively small. That amount has not been materially increased, and the amount proposed to be withdrawn by the Commission would not significantly increase it.

III.

THE NEED OF THESE COMMUNITIES FOR WATER IS SO URGENT THAT A DECISION AS TO THE RIGHT TO TAKE WATER AND TO THE RELIEF REQUESTED SHOULD NOT BE POSTPONED.

If it is asserted that there should be a return to the Lake, even of the insignificant amounts here proposed to be withdrawn, it can be answered that there is no precedent for any such requirement and there are numerous precedents against any such requirement. Of course the direct precedent against such requirement is *Wisconsin* v. *Illinois,* 281 U. S. 179. Furthermore, in *New Jersey* v. *New York,* 283 U. S. 336, New York was permitted to take water from the Delaware River into a different watershed without any obligation to restore that which was taken to the original watershed. See also, *Connecticut* v. *Massachusetts,* 282 U. S. 660, where Massachusetts was permitted to divert water from the Ware and Swift Rivers without any obligation to restore to the original watershed.

Furthermore, this Court does not have to be told that under no conditions are all waters withdrawn from the Lake, either in Illinois or in any other State, accounted for and returned to the Lake. Water is consumed in one place and its waste discharged in far distant places; it is taken on by railroad trains and steamships and carried away for consumption; it is incorporated in processed foods, beverages and other products and shipped away; it is dispersed into the air as vapor in various processes, to be carried away by the winds and precipitated elsewhere; it is used for agricultural irrigation, in the course of which it is absorbed by plants or it seeps into the underground. It is surely true that the minimal amounts of water proposed to be taken by the Commission would prove to be no larger than the amounts taken in any one of the defendant States and not restored by reason of the foregoing factors.

Such a taking violates no rights. As Special Master Charles Evans Hughes said in his 1929 report (page 122), in *Wisconsin* v. *Illinois:*

> "If the City of Chicago is entitled to take its water supply from Lake Michigan for the ordinary and reasonable uses of its inhabitants, it cannot be said that the State or the City is subject to any established rule of law which requires it to turn into the Lake what is no longer water but sewage or the effluent of sewage treatment plants. If there were a way of destroying the sewage or sewage effluent altogether, or evaporating it, it does not appear that the State or the City would violate any right of the complainants in doing so (*Fisk* v. *Hartford,* 69 Conn. 375)."

The question whether the sewage effluent resulting from the use of Lake Michigan water for domestic purposes by the communities within The Metropolitan Sanitary District of Greater Chicago should be returned to the Lake is the subject matter of another action in this Court. The Elmhurst - Villa Park - Lombard Water Commission has no

function or power to dispose of sewage wastes. While the area to be served by the Commission is not within the Sanitary District, the amount of sewage effluent from the Commission's area is a matter *de minimis* and the need for water is urgent. Interposition of this question should not be permitted in this case to delay the satisfaction of the immediate need of the communities to be served by the Commission with Lake water for domestic uses.

During recent years the needs of the population have exceeded the water supply available from underground sources, and although many new wells have been drilled, the total water supply has not been increased sufficiently and the water level in all of the wells has been dropping at an average rate of from 7 to 10 feet per year. During the year 1958 there has been a recession of water levels of 20 to 30 feet. It has been necessary to drill the wells deeper and deeper and to set the pumps lower and lower and at the present time the pumps have been placed at approximately 650 to 700 feet below ground level, which is the lowest practicable setting. The water in the existing wells of these communities is derived from the sandstone substrata and the wells run to a depth of approximately 1,800 feet. At 2,000 feet below the surface salt water has been encountered so that it is impossible to obtain more water by drilling the wells deeper. The drilling of additional wells has proved not to produce an appreciable amount of additional water. For some time it has been obvious that even with severe restrictions on domestic use, the wells could not continue to supply the existing population. There is no other source of water supply in this area except Lake Michigan. Here, as in *New Jersey* v. *New York,* "Some plan must be formed and soon acted upon. . . .", 283 U. S. at p. 344.

IV.

THE DEFENDANTS' THREATS HAVE CREATED A JUSTICIABLE CONTROVERSY FOR WHICH DECLARATORY RELIEF IS APPROPRIATE.

This action is for a declaratory judgment, and no original action between States has sought such relief. But the Declaratory Judgment Act, 62 Stat. 964, as amended, 28 U. S. C. § 2201 (see Appendix), applies by its terms to "any court of the United States," and under that statute the crucial question is whether a justiciable case or controversy in the Constitutional sense is present. *Ashwander* v. *Tennessee Valley Authority,* 297 U. S. 288, 324. This Court's oft-repeated statement that "we cannot issue declaratory decrees," *Nebraska* v. *Wyoming,* 325 U. S. 589, 608; *Arizona* v. *California,* 283 U. S. 423, 464, has always meant only that genuine controversies, rather than abstract questions, must be presented.

The facts alleged in the complaint show a controversy in which "valuable legal rights asserted by the complainant and threatened with imminent invasion by appellees, will be directly affected to a specific and substantial degree by the decision of the question of law. * * *" *Nashville, C. & St. L. Ry.* v. *Wallace,* 288 U. S. 249, 262.

In lieu of the threats they have made, the Defendants could have brought an action in this Court to enjoin the proposed diversion. *Wyoming* v. *Colorado,* 259 U. S. 419, 455. That the threats were real and effective is demonstrated by their results. Bond purchasers will not consummate their purchase where the project to be financed with the proceeds thereof is threatened with litigation to determine the project's validity, and the Commission, as a result of the Defendants' threats, has been unable to complete the sale of its bonds. Likewise, if the Commission had already received the proceeds of the sale of its bonds,

contractors would hardly undertake a project threatened with stoppage. And the Commission could not safely commence a project under threats of action which might delay its progress (if not prevent its ultimate completion), causing financial damage of immeasurable consequence.

Under these circumstances, in the absence of the relief here sought, the Defendants could effectively frustrate the purposes of the Complainant without themselves ever commencing an action in which the Complainant could defend itself.

CONCLUSION.

It is therefore respectfully urged that this Court grant the motion for leave to file the complaint and, without delay, grant the prayer of the complaint, (1) declaring the right of the State of Illinois through its instrumentality, The Elmhurst - Villa Park - Lombard Water Commission, to withdraw water from Lake Michigan for the domestic purposes of the City of Elmhurst and the Villages of Villa Park and Lombard, municipalities of the State of Illinois and the other customers of said Commission located along the line of its proposed water main, and (2) restraining and enjoining the Defendants, the States of Michigan, Ohio, Pennsylvania, Minnesota, New York and Wisconsin, from interfering with such proposed withdrawal of Lake water by said Commission.

Respectfully submitted,

LATHAM CASTLE,
Attorney General of the State of Illinois,

WILLIAM C. WINES,
Assistant Attorney General,

GEORGE E. BILLETT,
CHARLES A. BANE,
CALVIN D. TROWBRIDGE,
Special Assistant Attorneys General,
Counsel for Complainant.

APPENDIX.

Declaratory Judgment Act, 62 Stat. 964, as amended, 28 U. S. C. § 2201.

§ 2201. Creation of remedy.

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.