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E. ROBERT SEAYER, CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1970
No. 40 Original

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff,

v.

STATE OF NEW YORK, STATE OF FLORIDA, STATE OF OREGON,
COMMONWEALTH OF VIRGINIA, and THE WESTERN UNION
TELEGRAPH COMPANY,

Defendants.

**OBJECTIONS OF NEW YORK TO MOTION FOR
LEAVE TO FILE BRIEF AMICUS CURIAE**

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v. Plaintiff,

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Respondent, the State of New York, hereby files objection to the motion by the American Express Company for leave to file a brief amicus curiae. Respondent's objection is based upon the following grounds:

1. American Express Company acknowledges that it is seeking a determination which would apply equally to its holdings of abandoned or escheated property. To support this purpose, it has submitted a unilateral statement of facts respecting its travelers checks and money orders. This is in sharp contrast to the extensive and carefully considered agreed statement of facts to which all parties in this action are or will be participants. Although American Express Company disavows an intention to become a party defendant or to have its instruments placed

directly in adjudication, this is the inescapable and ultimate effect of its application. It would be a party defendant in all but name, with the anomalous result that it could present its factual statement and factual discussion without any reasonable possibility on the part of this respondent or any other party making any response or objection.

2. This position of American Express Company, we submit, invokes a theory of ancillary jurisdiction that is unsupportable. The original jurisdiction of the United States Supreme Court does not extend to suits by private corporations or individuals against the various states. United States Constitution, Article III, Section 2, Article XI of the Amendments to the Constitution; *Duhne v. New Jersey*, 251 U. S. 311 (1919); *Hans v. Louisiana*, 134 U. S. 1 (1890). In these circumstances the holding in *Utah v. United States*, 394 U. S. 89, 96 (1968), declining to permit intervention, is compelling. There it was said:

“While Morton doubtless wishes to have us settle its additional claims, we decline to permit intervention for the sole purpose of permitting a private party to introduce new issues which have not been raised by the sovereigns directly concerned.”

3. Rule 42(3) of the Rules of the Supreme Court of the United States provides that on a motion for leave to file a brief *amicus curiae*, in addition to a statement of the movant's interest, there should be a statement of the “facts or questions of law that have not been, or reasons for believing that they will not be, adequately presented by the parties * * *.” There is no such showing here and we suggest that there cannot be any such showing.

For each and all of the foregoing reasons, the motion of the American Express Company to file a brief amicus curiae should be denied.

New York, New York, April 20, 1971.

Respectfully submitted,

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