

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 40 ORIGINAL

Supreme Court, U.S.

FILED

FEB 8 1972

E. ROBERT SEAVER, CLERK

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff,

and

STATES OF CONNECTICUT, CALIFORNIA and INDIANA,

Intervening Plaintiffs,

v.

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

Defendants,

and the

STATE OF ARIZONA,

Intervening Defendant.

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

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Respondent
The State of New York
80 Centre Street
New York, New York 10013

SAMUEL A. HIRSHOWITZ
First Assistant Attorney General

JULIUS GREENFIELD
Assistant Attorney General

GUSTAVE HARROW
Assistant Attorney General
of Counsel

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 40 ORIGINAL

COMMONWEALTH OF PENNSYLVANIA,

Plaintiff,

and

STATES OF CONNECTICUT, CALIFORNIA and INDIANA,

Intervening Plaintiffs,

v.

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

Defendants,

and the

STATE OF ARIZONA,

Intervening Defendant.

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

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

statement of facts to which all parties in this action have agreed concerning the Western Union Telegraph Company. American Express Company therefore seeks to become 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 for making any response or objection. In its motion for leave to file a brief *amicus curiae* and in its accompanying brief, American Express Company sets forth new and concededly different factual statements at length which are not and cannot now be properly placed before this Court. American Express Company's Motion and Brief, pp. 3, 4, 8, 9, 14, 15, 16.

2. The only question now before this Court is which state is entitled to take or hold certain abandoned intangible personal property. Because Western Union Telegraph Company is the holder of certain specific items of such property (indicated in the Stipulation of Facts) subject to specific conflicting claims by the states which are parties herein, it is also a party. We submit that American Express Company, in attempting at this time to place new facts before this Court with respect to abandoned property it holds in effect attempts to invoke 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."

Moreover, as noted in *Texas v. New Jersey*, 379 U.S. 674, 677 (1964) this Court refused to grant the State of Illinois permission to intervene in that case, 372 U.S. 973, since it claimed no interest in the property involved.

3. Rule 42(3) of the Rules of the Supreme Court of the United States provides that on 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.

Dated: New York, New York, February 4, 1972.

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Respondent
The State of New York
80 Centre Street
New York, New York 10013

SAMUEL A. HIRSHOWITZ
First Assistant Attorney General

JULIUS GREENFIELD
Assistant Attorney General

GUSTAVE HARROW
Assistant Attorney General
of Counsel

