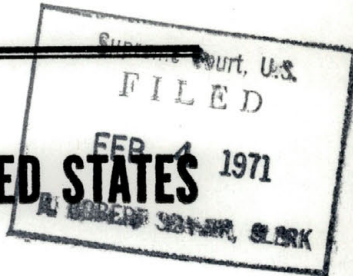


IN THE  
**SUPREME COURT OF THE UNITED STATES**

October Term, 1970

No. 49 Original



STATE OF ILLINOIS, ex rel.  
WILLIAM J. SCOTT, Attorney General of Illinois,

*Plaintiff,*

*vs.*

CITY OF MILWAUKEE, WISCONSIN, a municipality incorporated under the laws of the State of Wisconsin, and a political subdivision thereof, and

CITY OF KENOSHA, WISCONSIN, a municipality incorporated under the laws of the State of Wisconsin, and a political subdivision thereof, and

CITY OF RACINE, WISCONSIN, a municipality incorporated under the laws of the State of Wisconsin, and a political subdivision thereof, and

CITY OF SOUTH MILWAUKEE, WISCONSIN, a municipality incorporated under the laws of the State of Wisconsin, and a political subdivision thereof, and

THE SEWERAGE COMMISSION OF THE CITY OF MILWAUKEE, a municipality existing under the laws of the State of Wisconsin, and a political subdivision thereof, and

THE METROPOLITAN SEWERAGE COMMISSION OF THE COUNTY OF MILWAUKEE, a municipality incorporated under the laws of the State of Wisconsin, and a political subdivision thereof,

*Defendants.*

**BRIEF IN OPPOSITION TO PLAINTIFF'S  
MOTION FOR LEAVE TO FILE THE  
BILL OF COMPLAINT**

MICHAEL S. FISHER, City Attorney  
BURTON A. SCOTT, *of Counsel*

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CITY OF KENOSHA

Rm. #203-Municipal Bldg.,  
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*Defendants.*

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**BRIEF IN OPPOSITION TO PLAINTIFF'S  
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## ORIGINAL JURISDICTION

Plaintiff's motion for leave to file Bill of Complaint requests that the United States Supreme Court take original jurisdiction under Article III, Section 2, Clause 2, of the United States Constitution and, Title 28 U.S.C., Section 1251.

The City of Kenosha acknowledges the allegation that this court has jurisdiction to entertain plaintiff's proposed Bill of Complaint. It is respectfully submitted, however, that the allegations submitted in the proposed Bill of Complaint do not demonstrate either a pressing or imperative need for the exercise of jurisdiction by this court. The City of Kenosha is discharging its municipal obligations and governmental responsibilities in order to avoid and prevent pollution and contamination of Lake Michigan on a reasonable basis, giving consideration to practicability and the physical and economic feasibility of securing abatement of any pollution of waters which may be established as being attributable to the City of Kenosha.

Based upon the timetables established by both State and Federal agencies, the City of Kenosha, Wisconsin, is ahead of schedule in their efforts to eliminate pollution. To this end, the City of Kenosha has complete secondary treatment and chlorination on a daily basis. The City of Kenosha has also received Federal grants in order to conduct a demonstration project designed to treat excess storm water flows. Presently under project design is a program to remove phosphorus.

It is respectfully submitted that the court, in the past, has stated with reference to accepting original jurisdiction in certain cases: ". . . . our original jurisdiction should be invoked sparingly . . . ." *Utah v. United States*, 394 U.S. 89, S. Ct. 761, 22 L. Ed. (2d) 99, 105, and,

" . . . when the necessity was absolute . . . .", *Louisiana v. Texas*, 176 U.S. 1, 20 S. Ct. 251, 44 L. Ed. 347.

### REMEDIES AVAILABLE TO PLAINTIFF

In 1967, former Governor Kerner of the State of Illinois, in accordance with the provisions of Title 33, Sections 466 through 466 K., petitioned the proper Federal authorities, which resulted in a conference in the matter of pollution of Lake Michigan and its tributary basin waters in the State of Wisconsin, Illinois, Indiana and Michigan. It appears that sessions of such conference have been held in January of 1968, 1969 and 1970, and such sessions were held pursuant to the provisions of Section 10 of the Federal Water Pollution Control Act as amended.

As a result of the first conference, held in 1968, the State of Wisconsin signed a joint statement of agreement with all of the Lake Michigan basin states, which was directed at the development of a common policy for the protection of Lake Michigan from economic poisons.

Pursuant to the signing of such a joint statement, the State of Wisconsin established water quality standards, which were approved by the Secretary of Interior. In the State of Wisconsin, the Wisconsin Department of Natural Resources, existing under the provisions of Chapter 144 of the Wisconsin Statutes, and an agency of that State, is clothed with the administrative jurisdiction to deal with Wisconsin municipalities in matters pertaining to water pollution occurring in Lake Michigan and the Wisconsin Department of Natural Resources is also capable of cooperating with other States under the Federal Water Pollution Control Act.

In the interests of convenience, efficiency and justice, a program which has been in operation for more than

three years should not be disrupted and abandoned. Clearly, the administrative agencies which now exist and are in operation provide an adequate remedy for the State of Illinois to accomplish the goals which it allegedly is seeking and, it further appears that the administrative agencies which now exist can, and have been dealing effectively with the water pollution problems in Lake Michigan.

Plaintiff's brief sets forth cases wherein the Supreme Court previously has exercised its original jurisdiction in matters of this type. However, all of these cases involved air or water pollution complaints which arose prior to June 30, 1948, when Title 33, Sections 466 through 466 K. were originally enacted. Therefore, based upon the above cited approach, we respectfully submit that whatever may be the seriousness attached to the claimed circumstances of water pollution in Lake Michigan, as alleged by the State of Illinois, we respectfully submit that such circumstances can be adequately met administratively.

WHEREFORE the defendant, City of Kenosha, respectfully prays that the motion made by the plaintiff for relief to file a Bill of Complaint be denied.

*Respectfully submitted,*

MICHAEL S. FISHER,  
City Attorney

BURTON A. SCOTT,  
*Of Counsel*

*Attorneys for Defendant*

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