IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 50 ORIGINAL

STATE OF VERMONT, A sovereign state,
Montpelier, Vermont,
Plaintiff,

against

STATE OF NEW YORK, A sovereign state,
Albany, New York

and

INTERNATIONAL PAPER COMPANY, A corporation existing under the laws of the State of New York, located at New York, New York,
Defendants.

BRIEF IN OPPOSITION TO MOTION FOR LEAVE TO FILE COMPLAINT

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Questions Presented

1. Does the complaint, asserting in effect that New York has failed to prosecute defendant International Paper Company with sufficient zeal and has thereby permitted the sludge bed created by that company to accumulate, state a claim warranting the exercise of this Court's jurisdiction?

2. Does the complaint set forth a claim for relief as against New York, when in fact New York has prosecuted International Paper and is currently engaged in surveys to determine the most suitable means of disposing of the sludge?

3. Is this original action appropriate in view of the existence of an action in the United States District Court for Vermont against International Paper involving the sludge bed?

It is the position of New York that each of these questions should be answered in the negative and that plaintiff's motion for leave to file its complaint should be denied.

Statement

Plaintiff, the State of Vermont, seeks leave to file an original complaint pursuant to 28 USC § 1251 against the State of New York and International Paper Company, contending International Paper has discharged pulp and paper-making waste into Ticonderoga Creek, a non-navigable stream in Essex County, New York, which has, over the years, accumulated in the form of a sludge bed in Lake Champlain. It alleges this sludge has polluted the portion of the lake adjacent to Ticonderoga Creek and has caused air and water pollution to Vermont residents dwelling on the other side of the lake, which is about one mile wide at that point.

Defendant International Paper commenced its pulp and paper-making operations at Ticonderoga in 1925. The discharge of waste material into Ticonderoga Creek by it (and, it contends, by other polluters as well) caused a sludge bed consisting of wood chips and other waste to accumulate in and around the outlet of that creek into Lake Champlain. As early as 1965, New York, cognizant of this pollution, commenced proceedings through its Department of Health charging International Paper with

violating state stream standards and seeking an order requiring removal of the sludge. In December 1966 International Paper consented to an order containing an abatement schedule which required it to end its pollution of the creek by December 1, 1970. In May 1968, International Paper, pursuant to this order of New York's Health Department, submitted its plans for waste treatment facilities, a permit for which was issued the following year by New York. In August, 1970, New York commenced an action against International Paper in its courts* demanding that it cease its pollution in accordance with the administrative order. This suit was prompted by evidence received by New York that International Paper had fallen behind its schedule and would not terminate its pollution of the creek on the date it had agreed to. This suit was terminated by consent judgment entered March 12, 1971, directing International Paper to terminate its pollution on or before April 24, 1971.

Conferences were held in 1968 and again in June, 1970, in which Federal, Vermont and New York authorities discussed ways of dealing with the scientifically complex problem of the sludge bed created by International Paper. At these conferences, presided over by officials of the Federal Water Quality Administration, testimony was taken and reports of the United States Army Engineers, the New York State Health Department, and other agencies with experience in water pollution abatement were evaluated. The June 1970 conference, in which Vermont participated fully, terminated in an agreement by all concerned to abate the nuisance caused by the sludge bed. The method of abatement was left open, and was the subject of a study entered into by the New York Department of Environmental Conservation (which had taken over water pollution abatement responsibility from the Depart-

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* *Diamond, Commissioner of Environmental Protection* v. *International Paper Company,* Sup. Ct., Essex Co., Index No. 11972/71.

ment of Health on July 1, 1970) and International Paper, with representatives of Vermont's Department of Water Resources, the Federal Water Quality Administration, and the New England Interstate Water Pollution Control Commission present as observers. This pilot test consisted of removing 250 cubic yards of sludge and testing the waters in the vicinity to determine the environmental effect of removal upon water quality. The dredging was pursuant to permit issued September 25, 1970 by the Army Corps of Engineers. The result was a finding that "[t]he impact of this return water on the water quality of Lake Champlain would have a detrimental effect on the total ecology of the southern end of the lake by seriously reducing the oxygen content."*

Thereafter it became imperative that a more conclusive study be promptly entered into to determine the feasibility, cost and environmental impact of the alternative methods which had been advanced by various parties, including the United States Army Corps of Engineers, for abating the sludge bed. These included dredging and removal, covering the sludge with clay, and transporting it to a nearby area to be used as landfill.

The results of the October-November 1970 pilot study had indicated that serious environmental issues existed regarding the possible adverse effects of dredging or other physical removal of the sludge, since the Environmental Conservation Department's chemists and marine biologists found that the removal of the sludge might well create substantial additional disturbances of the water and further reduction of its already depleted oxygen content. New York's Department of Environmental Conservation therefore recommended a survey specifically oriented, as the earlier study was not, toward determining the ecological impact of, on the one hand, removal, as op-

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* Report, New York State Department of Environmental Conservation, Nov. 6, 1970, p. 1.

posed to covering the sludge, or constructing a retaining wall or dike to contain it. This study is being performed by an independent consultant firm with a background of competence in pollution abatement, Quirk, Lawler and Matusky of New York City, and a contract engaging that firm was entered into March 26, 1971. The study, which requires tests of the water during the summer months when oxygen depletion is most severe, is scheduled to commence this July and to be completed this fall, with abatement of the sludge bed by whichever method is recommended to commence promptly thereafter.

Vermont was invited to participate in this study, but it refused. Instead, it turned to this Court, seeking money damages and an injunction not only against International Paper, which—and not New York—Vermont concedes deposited the waste material which caused the sludge bed, but also against New York. This complaint amounts to an attempt to employ this Court to achieve a determination which is scientific rather than litigious in nature and which is particularly ill-suited to adversary litigation. Moreover, the action stems from Vermont's own refusal to participate in the survey designed to determine the very environmental matters which Vermont seeks to resolve in this forum. This action amounts to a deliberate decision of Vermont to abandon interstate cooperation to determine the swiftest and safest means of dealing with an admittedly complex ecological problem—one to which New York is presently addressing itself. It flies in the face of this Court's suggestion in *Ohio* v. *Wyandotte Chemicals Corp.*, No. 41 Orig., decided March 23, 1971, as well as *Dyer* v. *Sims*, 341 U. S. 22, 27, and *New York* v. *New Jersey*, 256 U. S. 296, 313, that problems of this nature are "more likely to be wisely solved by cooperative study and by conference and mutual concession on the part of representatives of the states so vitally interested in it than by proceedings in any court however constituted." It presents just the sort of complex, disputed factual issues

which this Court in *Ohio* v. *Wyandotte* aptly described as "an extremely awkward vehicle to manage" (Op. p. 12). The fact that Vermont has chosen to name New York as one party defendant does not alter these rules or the thrust of *Ohio* v. *Wyandotte,* which was directed to the inappropriateness of the issues presented for adjudication by this Court and not to the identity of the defendants.

Indeed, the attempted employment of this Court to resolve these issues is especially ironic since, in contrast to those cases in which one state was actively or passively causing pollution, New York here is presently wrestling with the unprecedented ecological problems caused by the sludge bed, and is advancing toward a solution. It is to be noted that of all the governmental agencies concerned with elimination of the Lake Champlain sludge bed, none has ever suggested a technologically feasible solution which is free of environmental risks. All agree that the sludge bed must be rendered harmless—and the physical facts of the Lake Champlain sludge bed appear to be unique. New York stands ready to direct the performance of whatever the survey recommends. We regret that our neighbor state has seen fit to follow the route of litigation instead of cooperating in the prompt resolution of the scientific issues posed by the alternative methods of abatement.

Summary of Argument

This case falls directly within the holding of this Court in *Ohio* v. *Wyandotte Chemicals Corp., supra,* No. 41 Orig. (decided Mar. 23, 1971), holding original jurisdiction inappropriate for cases of this nature. Moreover, the portions of this complaint addressed to New York raise issues singularly inappropriate for judicial determination—issues as to the relative appropriateness of various alternate methods of eliminating this sludge bed or rendering it harmless which are presently being explored in the sur-

vey commissioned by New York. The real parties in interest here are the inhabitants of the Town of Orwell, across the lake from Ticonderoga, New York and, even if Vermont were to obtain the damages it seeks here, it would be unthinkable for the State to retain these monies.

The anomalous nature of this suit is heightened by the fact that the lakeshore residents of Orwell have already commenced suit to obtain damages and ancillary relief against International Paper, which is the only proper defendant in any event.

Further, Vermont sets forth no claim for relief as against New York since it was International Paper which created the sludge bed, and at most the complaint alleges that New York was not sufficiently zealous in its prosecution of that company—a contention which is belied by the facts, of which this Court may take judicial notice, that New York has commenced administrative and judicial proceedings against International Paper and is at this moment engaged in efforts to determine the most appropriate method of abating the sludge bed pollution of which Vermont complains.

POINT I

The complaint is inappropriate for the invocation of this Court's jurisdiction (*Ohio* v. *Wyandotte Chemicals Corp.*). In any event it fails to state facts on which relief may be granted as against New York, which, it is uncontroverted, did not cause or create the deposit objected to by Vermont, and is presently engaged in surveys to determine the most suitable and speedy means of its removal.

A.

There is no legally intelligible reason for this action to be heard in this Court, the original jurisdiction of which is to be "sparingly invoked." *Utah* v. *United States,* 394

U. S. 89. Vermont, as in *Ohio* v. *Wyandotte Chemicals Corp., supra,* seeks this Court's jurisdiction in a case asserting knotty, technically complex issues of pollution and pollution abatement. Whatever justification may once have existed earlier in our history for the hearing and disposition of cases of this nature in this Court in the first instance, the existence of an arsenal of available administrative and judicial remedies renders the hearing of this case in this forum completely inappropriate. This is precisely the sort of case "bottomed on local law" and requiring the resolution of "novel scientific issues of fact" of which this Court spoke in *Ohio* v. *Wyandotte* (Op. pp. 5, 12). The fact that a state in addition to a corporate defendant was named here does not remove this case from the ambit of *Ohio* v. *Wyandotte.* The gravamen of the action is the abatement of pollution caused by private citizens, chiefly International Paper. The naming of New York was, to say the least, nonessential to the complaint, and Vermont's allegations against New York do not withstand scrutiny. Moreover, other adequate remedies are plainly available to the plaintiff. *Ohio* v. *Wyandotte, supra; Georgia* v. *Pennsylvania R. Co.,* 324 U. S. 439, reh. den. 324 U. S. 890; *Massachusetts* v. *Missouri,* 308 U. S. 1.*

If it be argued that Vermont may sue New York only in this Court (28 U.S.C. § 1251), the short answer is that all the relief Vermont seeks is obtainable in the state courts in suit against International Paper. It is uncontroverted by Vermont that the sludge bed was created not by New York but by International Paper, as the federal-

* The standing of Vermont to institute this action on behalf of a small group of its citizens, all residing in the Town of Orwell (population 826) which lies on the eastern shore of the lake, is debatable at best. See *North Dakota* v. *Minnesota,* 263 U. S. 365, 374-375. The citizens of the town have already evidenced their intent to independently protect their own interests, cf. *Zahn* v. *International Paper Co., infra,* p. 14. Use of the *parens patriae* doctrine is inapplicable where the facts reveal that the citizens the State is ostensibly seeking to protect have already taken efficient steps to protect their interests.

state conferences on this subject have found. New York owns or maintains no facility which pollutes the lake. Thus Vermont may obtain complete relief in the appropriate state court without imposing on the time or burdening the jurisdiction of this tribunal.

B.

It is beyond rational dispute that Vermont's complaint, even if Vermont has standing to commence this action and this Court is an appropriate forum in which to try it, fails to state facts on which relief could be granted as against New York. At most, the complaint asserts that New York has failed to prosecute International Paper with sufficient vigor and has failed to remove the sludge discharged by that company into the lake. Neither of these contentions raises any justiciable issue. As this Court has noted, "something more must be put forward than that the citizens of one state are injured by the maladministration of the laws of another." *Louisiana* v. *Texas*, 176 U. S. 1, 22. The claim that New York gave "its consent and approval" to International Paper's discharge (Complt. ¶ XVI) is fantastic. As early as 1965, New York, as we have noted, charged International Paper with violating state stream standards, and in 1966 ordered it, following administrative proceedings, to comply with a pollution abatement schedule. When International Paper fell behind in this schedule, New York promptly brought suit in its courts to compel an end to the discharge into Ticonderoga Creek. Similarly, New York has shown the utmost concern with regard to the sludge bed in Lake Champlain, and is presently in the midst of a study, scheduled for completion this fall, to determine which method of removal or other elimination of the sludge bed poses the fewest environmental hazards. At conferences held by both state and federal officials in which Vermont participated prior to its refusal to cooperate and its commencement of this litigation, testimony was adduced and reports submitted showing that the removal of the sludge bed is a unique, unprecedented and massive opera-

tion not susceptible of a simplistic solution. Marine biologists, chemists and pollution-abatement engineers have differed in their estimates as to the safety and feasibility of dredging and removing the sludge bed, covering it in place, construction of retaining walls, transfer of the sludge to other areas, and other tentative solutions proposed. Even Vermont, while accusing New York of inaction—a charge belied by the scrutiny and comprehensive investigation New York has given the problem of removal of the sludge bed created by International Paper—fails to suggest what method of elimination of the sludge bed would be most appropriate. This is precisely what the study entered into this month between New York, International Paper and an independent consultant is designed to elicit. We note again that Vermont was invited to participate in this study but refused. Its contribution toward the goal New York earnestly seeks would be better addressed to cooperation rather than seeking scapegoats. Although Vermont's complaint refers at length to water and air pollution caused by the sludge bed, it is noteworthy that Vermont has never pursued any of the administrative remedies available under the Federal Water Pollution Control Act (33 U.S.C. §§ 466 *et seq.*) or the Clean Air Act (42 U.S.C. §§ 1857 *et seq.*). These are the very remedies whose existence was held in *Ohio* v. *Wyandotte Chemicals* to render the invocation of this Court's jurisdiction inappropriate.

As this Court ruled in *Colorado* v. *Kansas,* 320 U. S. 383, 392, "complicated and delicate questions and * * * the possibility of future change of conditions necessitate expert administration rather than judicial imposition of a hard and fast rule." This Court added that "mutual accommodation and agreement should, if possible, be the medium of settlement instead of invocation of our adjudicating power."

Over and above the repeatedly articulated recommendation of this Court that "mutual concession" is far more

appropriate to the resolution of problems of this nature than adversary litigation (*New York* v. *New Jersey, supra,* 256 U. S. at 313), Vermont's insistence that New York has failed to act is at odds with the record facts herein, which Vermont's conclusory assertions fail to rebut. In addition, a mere claim of inaction by State prosecuting authorities does not state facts on which relief can be granted here. It amounts to a request in the nature of mandamus to compel New York to institute proceedings against International Paper. The short answer is that, as a result of New York's administrative and judicial proceedings against it, International Paper has already ceased its pollution of the creek and lake; and New York is presently engaged in expeditiously determining the most rapid and safe method of eliminating the sludge. But even if New York were inactive, Vermont's suit to compel discretionary action by its conservation officials would not lie. *Hammond* v. *Hull,* 131 F. 2d 23, 76 App. D. C. 301 (D. C. Cir. 1942), cert. den. 318 U. S. 777; *Rural Electrification Administration* v. *Northern States Power Co.,* 373 F. 2d 686 (8th Cir. 1967), cert. den. 387 U. S. 945. It has been repeatedly held that the "courts will refuse to substitute their judgment or discretion for that of the official entrusted by law with its execution. Interference in such a case would be to interfere with the ordinary functions of government." *U. S. ex rel. Roughton* v. *Ickes,* 101 F. 2d 248, 253, 69 App. D. C. 324 (D. C. Cir. 1938). See also *United States* v. *West Virginia,* 295 U. S. 463, 472-474.

All this aside, relief in the nature of mandamus requires that the facts be essentially not in dispute, *Girard Trust Co.* v. *Helvering,* 301 U. S. 540, and is unavailable where the right of the plaintiff is confused or dubious or where the granting of relief might work injustice. *Laycock* v. *Hidalgo County Water Dist.,* 142 F. 2d 789 (5th Cir. 1944), cert. den. 323 U. S. 731. To obtain this "extraordinary relief" it must appear that "the claim is clear and certain and duty of the officer involved must be ministerial, plainly

defined and peremptory" as well as "free from doubt." *Prairie Band of Pottawatomie Tribe* v. *Udall,* 355 F. 2d 364, 367 (10th Cir. 1966), cert. den. 385 U. S. 831. Relief in the nature of mandamus is "reserved for really extraordinary causes," *Platt* v. *Minnesota Mining Co.,* 376 U. S. 240, 245, and the scientifically complex, technologically unprecedented difficulties in this case render relief in the nature of mandamus completely inappropriate. This is particularly so in view of the other adequate remedies available to Vermont. *Ohio* v. *Wyandotte, supra; Georgia* v. *Pennsylvania R. Co., supra; Massachusetts* v. *Missouri, supra.*

The fact that the sludge bed was placed by International Paper, as well as other past polluters, including the Village of Ticonderoga, in portions of Lake Champlain to which New York has title does not alter these rules. If it did, Vermont would itself, according to its own allegations, be guilty since it asserts sludge has "been deposited on lands underlying Lake Champlain owned by the State of Vermont" (Complt. ¶ XXII). But rather than hoist Vermont by its own petard we point out that there is no liability by a governmental body in such a situation. *Kitsap County Transportation Co.* v. *City of Seattle,* 135 Pac. 476, 75 Wash. 673 (1913); *Amato* v. *City of New York,* 268 F. Supp. 705 (S.D.N.Y. 1967) (City not liable for injuries to employee of fireworks display operator despite its issuance of permit); *Whittaker* v. *Village of Franklinville,* 191 N. E. 716, 265 N. Y. 11 (1934); *Riss* v. *City of New York,* 240 N. E. 2d 860, 22 N. Y. 2d 579 (1968).

This is underscored by the consistently-stated rule of this Court that in any actions by one state against another "the burden on the plaintiff State of sustaining the allegations of its complaint is much greater than that imposed upon a complainant in an ordinary suit against private parties. 'Before this court can be moved to exercise its extraordinary powers under the Constitution to

control the conduct of one State at the suit of another, the threatened invasion of rights must be of serious magnitude and it must be established by clear and convincing evidence.' " *New York* v. *New Jersey, supra,* 256 U. S. 296, 309; *North Dakota* v. *Minnesota,* 263 U. S. 365, 374.

Seen in this context, the claim that New York is "maintaining" the sludge bed is no more than a legal conclusion, and an inaccurate one. Nor is the assertion that the sludge bed is an "impediment to navigation" more than a make-weight (Complt. ¶ XXI). It is noteworthy that the U. S. Army Engineers, whose jurisdiction over impediments to navigation is plenary (33 U.S.C. § 403), have not seen fit to institute proceedings against either New York or Vermont, but on the contrary have fully cooperated in offering solutions and the benefit of their expertise in effecting a solution to the problem of the sludge bed. The plain fact is that New York did not create the sludge bed and that Vermont (if it has standing) is free to sue International Paper in its own or in New York State's courts to obtain whatever relief it believes itself entitled to. *Ohio* v. *Wyandotte, supra.* Whatever Vermont's reasons for naming New York as a party defendant here, there is no legal necessity for New York to be in this suit and no valid reason for the suit to have been brought in this Court.

The cases relied on by Vermont do not justify the invocation of this Court's jurisdiction. All antedated the enactment and development of statutory and administrative remedies in this field. And they involved immediate and protracted threats to public health involving the imminent peril of disease to large numbers of people (*Missouri* v. *Illinois,* 200 U. S. 496; *New York* v. *New Jersey,* 256 U. S. 296).

The argumentative accusations of "intentional neglect and refusal by defendant State of New York to remove or confine such sludge bed" (Complt. ¶ XXII) are belied by New York's consistent concern with, and independent

insistence upon, the elimination of the sludge bed. What Vermont seeks would be precipitous action, amounting to shooting first and asking questions after, despite the fact that the hazards of removal, dredging or covering the sludge bed have not yet been adequately surveyed. The independent study, scheduled for completion this Fall, is freighted with responsibility to bring chemical and biological as well as engineering expertise to bear on this problem and to provide a prompt solution. New York stands ready to take whatever steps are mandated by the findings of this study, although the complaint incredibly accuses New York of acting for its "pecuniary gain" (Complt. ¶ XXIX). In fact New York, which has already expended substantial amounts of time and money toward effecting an end to the sludge bed, is prepared to follow with dispatch whatever course is dictated by the current study and to insure, through the courts if necessary, the cooperation of International Paper and any other parties responsible for the creation of the sludge bed. We share Vermont's view (without concurring in the stridency of some of its allegations) that the sludge bed is environmentally objectionable and its abatement essential. This was the very reason New York engaged the present independent study to weigh the alternative methods of removing or covering it. Had Vermont continued to cooperate to achieve this result, New York would have welcomed the participation of, and the contribution of, Vermont's pollution abatement personnel.

POINT II

The pendency of an action in the United States District Court for Vermont seeking recovery for damages caused by the sludge bars this action.

The class action brought in the United States District Court for Vermont against International Paper (*Zahn, et al.* v. *International Paper Company,* Docket No. 6192),

seeks relief parallel to that sought by Vermont here—and in a far more appropriate forum. The plaintiffs there made no attempt to inflate the complaint into a suit on behalf of an entire state, but realistically brought the action "on behalf of themselves and * * * all other Lake Champlain lakeshore landowners and lakeshore lessees similarly situated and located in the Town of Orwell, Shoreham and Bridport, County of Addison, State of Vermont"—approximately 800 people (*Zahn* Complt. ¶ 2). These are the only real parties in interest here; and as we have noted, it is debatable whether the State of Vermont is a proper party plaintiff. Over and above this fact, the *Zahn* complaint seeks all of the relief which could possibly be available in the instant action, including compensatory damages as well as punitive damages of $10-million to be "set aside for the benefit of encouraging a pollution-free environment in the area of Lake Champlain and its tributaries under such terms and conditions as are set forth by this [District] Court" (Complt. p. 10). The existence of that suit provides recourse for the Vermont residents actually aggrieved. The present action is not only spurious but unnecessary. It is pointless for two courts to litigate the same state of facts and the same issues. *Arkansas* v. *Texas,* 346 U. S. 368, 371; *Herb* v. *Pitcairn,* 324 U. S. 117.

POINT III

The motion of the Monroe County Conservation Council for leave to intervene should be denied in the utter absence of any threatened injury to any legally-protected interest of that association.

The motion of the Monroe County Conservation Council for leave to intervene should be denied. It utterly fails to show any "interest relating to the property or transaction which is the subject of the action" within the meaning of Rule 24(a)(2) of the Federal Rules of Civil Procedure.

Monroe County is the area surrounding Rochester, New York, at the opposite end of New York from Ticonderoga.

Even under the broadest and most generous rules relating to intervention and standing on the part of citizen groups, this Court has always required some special area of interest or concern on the part of such a group seeking to challenge official action. In *Scenic Hudson Preservation Conference* v. *Federal Power Commission,* 354 F. 2d 608, 616 (2d Cir. 1965), cert. den. 384 U. S. 941, the court held the petitioner conservation organizations had "by their activities and conduct * * * exhibited a special interest in" the preservation of the natural resources of the Hudson Valley. Likewise, in *Citizens Committee for the Hudson Valley* v. *Volpe,* 425 F. 2d 97, 103 (2d Cir. 1970), cert. den. 39 L W 3243, the court again relied on the close geographical proximity of the members of the citizen groups seeking to challenge the Hudson River Expressway and noted the history "of involvement in the preservation of natural scenic and recreational resources" of the petitioner Sierra Club. Likewise, in *Office of Communication of United Church of Christ* v. *FCC,* 359 F. 2d 994 (D. C. Cir. 1966), the court held listeners had the right to participate in proceedings involving broadcasting licenses. None of these cases are of assistance to this unincorporated association located in, and virtually all of whose members reside in, the vicinity of Rochester, New York, 300 miles from Ticonderoga. This Court has held again and again that there must be "some connection between the official action challenged and some legally protected interest of the party challenging that action." *Jenkins* v. *McKeithen,* 395 U. S. 411, 423; *Flast* v. *Cohen,* 392 U. S. 83, 101-106. Plainly, a professed interest in environmental matters in general on the part of a geographically distant association can no more be considered sufficient for intervention here than could a proven interest in general economic problems have justified intervention in a suit raising economic issues. The "property or transaction which is the subject of the

action'' is the area of Ticonderoga Bay on Lake Champlain, and no amount of expressed concern with environmental issues in general will suffice to warrant the intervention of this association in the absence of some special commitment to, or legally protected interest in, the locality involved in this suit, such as were involved in the *Scenic Hudson* and *Citizens Committee* cases.

Association of Data Processing Service Organizations v. *Camp,* 397 U. S. 150, is of no assistance to the applicant for intervention. In that case a business competitor was held to have standing to challenge a ruling by the Comptroller of the Currency since it alleged direct financial injury. Likewise, cases involving First Amendment rights do not advance the applicant's position. The applicant moreover fails to show, as required by Rule 24, that its interests (assuming it had a legally-protected interest) are not already protected by Vermont. The motion for intervention is frivolous and should be denied.

CONCLUSION

The motion to file the complaint should be denied.

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Respectfully submitted,

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