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Supreme Court, U. S.
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MICHAEL ROSAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1974

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NO. 54, ORIGINAL

* * *

UNITED STATES OF AMERICA,

Plaintiff

V.

STATES OF FLORIDA AND TEXAS,

Defendants

* * *

RESPONSE TO PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANTS' MOTION FOR
LEAVE TO FILE COUNTERCLAIM

* * *

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* * *

The argument set forth in pages 1-3 of the Plaintiff's Memorandum opposing the States' Motion for Leave to File Counterclaim requires little refutation. By their Counterclaim, the Defendants States, Florida and Texas, seek a declaration that they possess the right to enforce their fishing laws and regulations within three geographical miles from their coastlines. As stated in their Motion for Leave to File Counterclaim, the Department of State (at whose request this lawsuit is being prosecuted) flatly denies that the Defendants possess that right.

The Defendants are entitled to have this issue adjudicated in this proceeding. That other coastal states of the United States have an interest in the issue thus raised does not justify denying the Defendants the right to have this issue resolved. To the contrary, justice and a fair regard for the legitimate interests of the coastal states of this nation mitigate in favor of the resolution of the rights of the parties in the entire relevant geographical area.

A. DEFENDANTS' LEAVE TO FILE
COUNTERCLAIM SHOULD NOT
BE DENIED ON THE GROUND OF
SOVEREIGN IMMUNITY.

The Plaintiff urges that the doctrine of sovereign immunity should bar the Defendants' filing of their Counterclaim. This Court has observed that

" . . . the immunity enjoined by the United States as territorial sovereign is a legal doctrine which has not been favored by the test of time. It has increasingly been found to be in conflict with the growing subjection of governmental action to the moral judgment." National Bank v. Republic of China, 348 U.S. 356, 358.

The Plaintiff's attempt to employ the doctrine in this case in order to avoid the merits of the Defendants' Counterclaim runs counter to any moral judgment, and well illustrates why we as a nation have traditionally had "a chilly feeling against sovereign immunity." Id. at 358. Here the United States has brought the States of Florida and Texas into this

Court seeking a declaration that those States have no rights to enforce their fishing laws in the area more than three miles from their shores. While asserting that they possess such rights within a nine mile area, the Defendant States by counterclaim merely seek an affirmative declaration that they do possess those rights within the three mile area. No logical or just, as opposed to dogmatic, justification exists for denying the filing of this Counterclaim on the grounds of sovereign immunity. The States do not by their Counterclaim seek in any way to limit or restrict the Plaintiff in the exercise of any right, nor do they attempt to compel the Plaintiff to take any action whatsoever. Hence that rationale for invoking sovereign immunity as a bar does not exist. See Larson v. Domestic and Foreign Commerce Corp., 337 U.S. 682. The adjudication of the issue raised in the States' counterclaim would not result in any monetary judgment against the Plaintiff, nor limit or affect its rights in any property or property rights. Dugan v. Rank, 372 U.S. 609, and similar cases are therefore not controlling. In fact, the States do not seek by their Counterclaim any relief of any nature against the Plaintiff. The Counterclaim will merely allow the States to seek to obtain "justice . . . with regard to the subject matter" of the lawsuit. United States v. The Thekla, 266 U.S. 328, 340. Although the Plaintiff for obvious reasons does not explicitly so state in its memorandum, only an acceptance of the notion that "the King may do no wrong" would justify denial of the States' Motion on the basis of sovereign immunity.

B. DEFENDANTS' MOTION FOR
LEAVE TO FILE THIS COUNTER-

CLAIM SHOULD NOT BE DENIED
ON THE GROUNDS OF RIPENESS.

The Defendant States have maintained at all stages in this litigation that the Plaintiff's Complaint is insufficient because no justiciable case or controversy exists. See Answer of the State of Texas, Paragraph I, and Defendants' Brief in Support of Motion for Leave to File Counterclaim at page 9. The Plaintiff now seeks to bar the filing of the Defendants' Counterclaim on the same grounds. The arguments contained in pages 6 and 7 of the Plaintiffs' Memorandum in Opposition apply with as much force to the issue raised in the Plaintiff's Complaint as to that raised by Defendants' Counterclaim, and thus support the Defendants' position that the Plaintiff's Complaint does not set forth a justiciable case or controversy. The Defendants merely urge that justice requires its Counterclaim to be filed and adjudicated in this lawsuit if the matters raised in Plaintiff's Complaint are to be decided.

CONCLUSION

The Motion for Leave to File a Counterclaim should be granted.

Respectfully submitted,

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October 1975

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CERTIFICATE OF SERVICE

We, Robert L. Shevin and John L. Hill, do hereby certify that three copies of the foregoing Response to Plaintiff's Memorandum in Opposition to Defendants' Motion for Leave to File Counterclaim were mailed by United States Certified Mail, return receipt requested, on the _____ day of October, 1975, to the following: Honorable Robert H. Bork, Solicitor General, Department of Justice, Washington, D. C. 20530, and Edward F. Bradley, Jr., Attorney, Marine Resources Section, Land and Natural Resources Division, United States Department of Justice, Washington, D. C. 20530

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