
IN THE
Supreme Court of the United States

No. **75**, Orig.

JESSE A. HELMS
JAMES A. McCLURE
STROM THURMOND
ORRIN G. HATCH
DANIEL J. FLOOD

STATE OF IDAHO
STATE OF IOWA
STATE OF LOUISIANA
STATE OF NEBRASKA

WILLIAM R. DRUMMOND
THEODORE L. SENDAK

Plaintiffs,

v.

CYRUS R. VANCE

and

JAMES E. CARTER, JR.,

Defendants.

COMPLAINT

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Supreme Court, U. S.

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MICHAEL RODAK, JR., CLERK

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JURISDICTION

1. The original jurisdiction of the Court is invoked under Art. III, Sec. 2, cl. 2 of the Constitution of the United States for declaratory relief authorized by Section 2201 of Title 28 of the United States Code. The suit prays for a ruling as to

the exclusive authority of Congress to dispose of territory and property of the United States under Art. IV, Sec. 3, cl. 2 of the Constitution or, if such a right does not exist, a ruling that any concurrent disposal power lodged in the Executive branch as an implication from its acknowledged treaty power, (Art. II, Sec. 2, cl. 2) may not be so exercised by the President as to effect a repeal of existing territorial legislation or divest United States citizens residing in the Canal Zone of their recourse to Constitutional guarantees.

PARTIES

2. The States of Idaho, Iowa, Louisiana and Nebraska appear herein in their sovereign capacity and as representative of their citizens for the relief hereinafter prayed, suing on their own behalf and for the benefit of all other States similarly situated. These four States are represented in Congress by eight Senators and eighteen Representatives. On information and belief they annually ship by water to other States and foreign destinations in excess of \$10 billion in farm and manufactured products, a substantial proportion of which passes through the Panama Canal, subject to its tolls.

3. Plaintiffs Jesse A. Helms, James A. McClure, Strom Thurmond and Orrin G. Hatch are duly elected members of the Senate of the United States having their official residence in the District of Columbia. They sue on their own behalf and for the benefit of all Senators similarly situated.

4. Plaintiff Daniel J. Flood is a duly elected member of the House of Representatives of the United States, ~~and a member of its Panama Canal Sub Committee~~, having his official residence in the District of Columbia. He sues on

his own behalf and to preserve the voting rights of all members of the House of Representatives.*

5. Plaintiff William R. Drummond is a citizen and employee of the United States, is a resident of the Canal Zone, and President of Local 1798, American Federation of Government Employees, AFL-CIO. He sues herein as an individual and as representative of the class of all United States citizens having their permanent residence in the Canal Zone.

6. Plaintiff Theodore L. Sendak is the Attorney General of the State of Indiana and has his official place of business at 219 State House, Indianapolis, Indiana. Pursuant to request of an Indiana Congressman and a concurrent resolution of the Indiana legislature dated April 15, 1975, he sues under Indiana Code 4-6-1-6 to request prior Congressional authorization of any alienation of the Canal Zone.

7. Defendant Vance is the Secretary of State of the United States. He is the principal Executive Branch official charged with enforcement of the policies of the President in foreign affairs, and has supervised negotiation of the proposed treaty with Panama, which defendants have submitted to the Senate for ratification.

8. The President is the head of the Executive branch and the responsible superior of Secretary Vance. By statute he exercises administrative and military control over the Canal Zone. The President possesses direct Constitutional authority as Commander-in-Chief of the Armed Forces of the United States and has the capability of authorizing unopposed Panamanian occupation of the Canal Zone at any time.

*On October 3, fifty-one other Representatives filed an action in the District Court for the District of Columbia for a similar declaration of their right of review. (Civ. No. 77-1733)

THE CANAL ZONE

9. In June, 1902 an Act was approved (57th Cong. 1st Sess., Ch. 1302, Public No. 183, the "Spooner Act") whereby Congress authorized and directed the President to negotiate for the acquisition of a suitable strip of land across the Panamanian isthmus for the construction and operation of a trans-oceanic canal, the legislative requirement being that the agreement should provide perpetual control thereof under United States jurisdiction.

10. On November 18, 1903 the President, specifying that statute as his authority, entered into an agreement with the newly formed Republic of Panama (Isthmian Canal Convention, a/k/a the Hay-Bunau-Varilla Treaty, 33 Stat. at L. Pt. II, pp. 2234-2241) which included the stated Congressional requirements. The agreement was proclaimed on February 26, 1904.

11. In accordance therewith, Congress

- a) Appropriated from the Treasury and paid
 - \$25 million to Colombia
 - \$10 million to the Republic of Panama
 - \$40 million to a French company which held the Canal concession.
 - \$4 million compensation to individual land holders of the Zone, and
 - \$56 million in subsequent annuity payments to the Republic of Panama.
- b) Expended in excess of \$1.5 billion for construction and maintenance of Canal and Zone facilities.
- c) Enacted legislation for the governance of the Zone, including the establishment of a judicial system, a bill of rights, and civil

and criminal codes to be applied to resident United States citizens and nationals, (the Canal Zone Code, P.L. 87-845, 76 A Stat. 1, 48 U.S.C. §§ 1301 *et seq.*)

- d) Created the Panama Canal Company (until 1950, the "Panama Railroad Company") to operate the canal, giving it "perpetual succession in its corporate name, unless dissolved by Act of Congress." (2 C.Z.C. § 61(b)).
- e) Directed the transfer of the Canal and its facilities to the Panama Canal Company (2 C.Z.C. § 73), which has since operated it.

12. Among the Courts so established by Congress is the United States District Court for the District of the Canal Zone, (3 C.Z.C. § 10). It was made a part of the 5th Judicial Circuit (28 U.S.C. § 41) and this Court was given review jurisdiction over its judgments (28 U.S.C. § 1252). The Court is presently without any judge and on information and belief no nomination of any judge has been made by the President.

13. On February 7, 1974 the then Secretary of State, Henry Kissinger, without legislative authorization, executed with Panama in the name of the United States a "Joint Statement of Principles" pursuant to the terms of which the State Department promised to void the 1903 Convention, transfer the Canal and Zone properties to the Republic of Panama, and submit its residents, including American citizens, to the jurisdiction of the laws and courts of Panama. The current treaty proposal states that it is drawn in accordance with the 1974 statement.

THE PROPOSED AGREEMENT WITH PANAMA

14. On September 7, 1977 the President signed an agreement to enter into a treaty with Panama which by its terms

- a) Terminates the Isthmian Canal Convention of 1903,
- b) Recognizes the Republic of Panama as territorial sovereign in the Zone, and grants it "plenary jurisdiction over the former Canal Zone".
- c) Dissolves "the Panama Canal Company and the Canal Zone Government".
- d) Transfers to Panama without charge "all right, title and interest the United States of America may have with respect to all real property, including non-removable improvements thereon".
- e) Turns over the Canal to Panama "in operating condition and free of liens and debts".
- f) Grants to Panama "a fixed annuity of ten million United States dollars" plus an equal amount for services, plus a further \$10 million if realized from Canal profits, plus .30/ton on all vessels transiting the Canal, (approx. \$43 million) or a total of approximately \$70 annually.
- g) Extinguishes the jurisdiction of the United States District Court for the Canal Zone District and extends Panamanian civil and criminal jurisdiction over citizens of the United States resident in the Zone.

15. The proposed treaty is limited in time. Such time is referred to therein as a "transition period". It terminates on December 31, 1999 after which "only the Republic of Panama shall operate the Canal and maintain military forces, defense sites and military installations within its national territory."

16. The described agreement between the United States and the Republic of Panama was submitted by defendants to the Senate for ratification as a treaty and on September 16, 1977 was referred by the Senate to its Committee on Foreign Relations (123 Cong. Rec. S.15144) where it is presently pending.

THE THREATENED INJURY

17. The proposed payment of approximately \$70 million annually to the Republic of Panama would result in an increase of more than 200% in the tolls now charged for the transit of goods shipped from the plaintiff States to the West Coast states and in their overseas trade and would thereby unreasonably increase the burden on such commerce.

18. Such an increase in tolls would not only cause a loss of trade to plaintiff States, but would burden anticipated shipments of oil from Alaskan or other Pacific sources to Eastern and Mississippi States, diminish the use of refineries now located in the South, and decrease the utilization of shipping facilities in seacoast ports.

19. Additionally, ratification of the said proposal as a treaty would deprive the plaintiff States of any consideration thereof by or vote thereon by their delegations in the House of Representatives and decrease the effective franchises of their citizens.

20. The plaintiff Senators would be injured by any ratification of the said proposal as a treaty in that they would thereby lose the benefit of any review by a Congressional conference committee and be deprived of its evaluation by the Senate Armed Services and Commerce Committees, which are the responsible bodies to evaluate Panama Canal legislation under Senate Rules 25.1(d) and (f). Further, the submission of the proposal in treaty form presents it as a moral commitment by the United States and the Senate consideration normally given to debatable legislation would be diminished.

21. Under the Constitution (Art. IV, Sec. 3 cl. 2) Congress has an exclusive right to dispose of properties of the United States. By submission of the proposal in treaty form it will be considered only by the Senate and the plaintiff Representative and ~~the~~ Panama Canal Subcommittee will be completely deprived of any opportunity to consider or vote on its terms.

22. Under the proposal as signed and submitted, plaintiff Drummond and all other citizens of the United States resident in the Canal Zone would, without a hearing, lose their Constitutional protections and their reliance on the bill of rights and civil and criminal laws enacted by the Congress for their benefit.

23. On behalf of the interests of the State of Indiana, plaintiff Theodore L. Sendak complains of the loss of votes to the delegation of that State in the House of Representatives and the consequent deprivation *pro tanto* of the franchise of Indiana citizens, the threatened burden on Indiana's commerce, and the adverse effect on the States' relative position in government which would result from any recognition of unreviewable property disposal powers in the Executive branch.

WHEREFORE, plaintiffs pray the Court to issue a judgment pursuant to 28 U.S.C. § 2201 declaring that

1. The Canal, the rights to the use of the Canal Zone and the improvements therein are properties of the United States;
2. The Congress has an exclusive constitutional authority to direct their disposition; or
3. In the event that the Executive possesses concurrent power under the treaty clause to dispose of such property, a further declaration that such authority may not be exercised
 - a) in contravention of existing legislation, or
 - b) so as to deprive citizens of the United States of their Constitutional and statutory recourse.

Respectfully submitted,

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