IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 78, Original

STATE OF CALIFORNIA,
Plaintiff,
vs.
STATE OF ARIZONA and the
UNITED STATES OF AMERICA,
Defendants.

REPLY BRIEF OF THE STATE OF ARIZONA

JOHN A. LaSOTA, JR.
Attorney General of the State of Arizona

ANTHONY B. CHING
Assistant Attorney General

11/29/78 ✓ RUSSELL A. KOLSRUD – Argued
Assistant Attorney General

200 State Capitol
1700 West Washington Street
Phoenix, Arizona 85007
Telephone (602) 271-4266

Attorneys for Defendant
State of Arizona

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The State of Arizona respectfully replies to (1) the brief of the United States in response to the motion for leave to file complaint, and (2) the Reply filed by California to the Responses of the United States and the State of Arizona.

I

JURISDICTION OF THE DISTRICT COURT

The United States and California insist that Arizona cannot surrender itself to the "jurisdiction" of the district court in California. California argues that such an act by Arizona is impossible and the United States contends that Arizona cannot "confer jurisdiction" upon the district court.

Initially, it should be noted that the question under consideration is not one of subject matter jurisdiction but of jurisdiction over a party. Arizona cannot confer subject matter jurisdiction on a district court in California, because jurisdiction over the subject matter of litigation cannot be bestowed by agreement or consent. *Industrial Addition Ass'n v. Commissioner of Internal Revenue,* 323 U.S. 310, 313 (1945); *Grubb v. Public Utilities Comm'n of Ohio,* 281 U.S. 470, 475 (1930). However, Arizona may submit itself to personal jurisdiction in any court since jurisdiction over a party may arise from voluntary submission or consent. *Cooper v. Reynolds' Lessee,* 77 U.S. (10 Wall.) 308 (1870).

In the present case, the district court where the land is located has jurisdiction over the subject matter to quiet title. *Uhlhorn v. U.S. Gypsum Co.,* 366 F.2d 211 (1966). Once the court has subject matter jurisdiction, then jurisdiction over the parties can be obtained through various means including consent as discussed herein.

The cases cited by the United States and California fail to support their argument that the district court lacks the power to exercise jurisdiction over Arizona. Moreover, these cases support Arizona's argument favoring jurisdiction of the district court. *Illinois v. City of Milwaukee,* 406 U.S. 91 (1972) was an action by Illinois against four Wisconsin cities. This Court held that the term "states" in 28 U.S.C. § 1251(a)(1) did not include political subdivisions. Therefore, Illinois' motion for leave to file the complaint was denied and the case was remitted to the district court, whose powers were adequate to resolve the issues. Further, the court also implied that the State of Wisconsin could

intervene as a party defendant in the action and have the issues resolved at the district court level.

California and the United States also cite *United States v. Nevada,* 412 U.S. 534 (1973), for the proposition that Arizona cannot submit to the jurisdiction of a district court in California. That case involved a suit by the United States to perfect water rights. Although California was an upper riparian owner and could not be forced to subject itself to suit in Nevada, this Court suggested that California could voluntarily appear.

> We recognize that the United States will not be able to join California as a defendant in a suit in Nevada to perfect Pyramid Reservation water rights and that, *absent California's voluntary appearance,* a Nevada decree would not bind that State. 412 U.S. at 538 (emphasis added).

As stated herein, so long as the district court has subject matter jurisdiction then a party may appear voluntarily and be bound by any decree entered. This is precisely what can be done in the present case.

The United States and California also rely upon *State Water Control Board v. Washington Suburban Sanitary Comm'n,* 61 F.R.D. 588 (1974), which involved, *inter alia,* the question of whether Maryland could intervene as a party defendant against the State of Virginia. The court stated that Maryland's entry as a party defendant would divest that court of jurisdiction because the suit would then involve a controversy between two states. The court relied upon and cited the Constitution of the United States, Article III, § 2,

Clause 2,[1] and 28 U.S.C. § 1251.[2] The court stated that a suit between two states was an action to be maintained only in the United States Supreme Court, and emphasized that Maryland cited no authority to relax the jurisdictional statement of the Constitution and 28 U.S.C. § 1251.

As can be ascertained by a cursory reading of this case, the court's decision was based on a strict and literal interpretation of the constitutional and statutory language. Moreover, Maryland's lack of cited authorities to interpret the application of original jurisdiction under 28 U.S.C. § 1251 weighed heavily in the decision. The court was in error because a state may voluntarily appear and not divest the district court of jurisdiction. *See United States v. Nevada; Illinois v. City of Milwaukee,* and *Cooper v. Reynolds' Lessee.*

There is no constitutional barrier to a lawsuit between two states in a federal district court. The Constitution states that the Supreme Court shall have original jurisdiction in those cases in which a state is *a*

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[1] Constitution of the United States, Art. III, § 2, Cl. 2, states as follows:

> In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

[2] 28 U.S.C. § 1251, *Original Jurisdiction,* provides:

> (a) The Supreme Court shall have original and exclusive jurisdiction of:
>
> (1) All controversies between two or more states;
>
> . . .

party.[3] The Constitution does not say jurisdiction in the Supreme Court is original only if the controversy is between *two states,* nor does the Constitution specify that jurisdiction is exclusive. The classification between states and non-states as parties to a lawsuit is a distinction premised upon the principle that the dignity of states as parties prevents them from litigating without their consent in any court other than the United States Supreme Court. Alexander Hamilton, commenting upon the original jurisdictional clause of the Constitution, stated, "In cases in which a state might happen to be a party, it would ill suit its dignity to be turned over to an inferior tribunal." *The Federalist No. 81* (J.C. Hamilton ed. 1868), p. 601.

The Constitution does not impose any guidelines upon the jurisdiction of the Supreme Court regarding cases between states. Indeed, this was recognized by Congress in the first Judiciary Act of 1789, where it was determined that the original jurisdiction of the Supreme Court expressed in the Constitution could be discharged with concurrent jurisdiction in lower federal courts.

The first reported case under the Judiciary Act of 1789 was *United States v. Ravara,* 2 Dall. 297 (C.C.D. Pa. 1793). The court in *Ravara* said that merely because the Constitution states jurisdiction is original it does not follow that it is also exclusive. *See also United States v. California,* 328 F.2d 729 (1964).

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[3] See discussion of *Chisholm v. Georgia,* 2 Dall. 419 (1792), *infra,* at n. 4.

Further, sovereign immunity is not an impediment to jurisdiction over Arizona in the federal court in California since Arizona consented to suit in the federal judiciary system when it was admitted to the Union in 1912. A state, by adopting the Constitution, agrees to submit to the judicial power of the United States, and in that respect the state has given up its rights of sovereignty. *Chisholm v. Georgia,* 2 Dall. 419 (1792).[4] Upon entering the Union, all rights of states as independent nations were surrendered. The anarchy existing in the international sphere of states was eliminated from the internal structure of the United States. Therefore, any exemption from federal judicial power is waived. *Rhode Island v. Massachusetts,* 37 U.S. (12 Pet.) 657 (1838). Consequently, Arizona as a sovereign state is subject to suit within the federal judiciary system, including district courts.

The exclusive jurisdiction of the Supreme Court is subject to interpretation not only by Congress as in 28 U.S.C. § 1251, but also by this Court, which has delineated various barriers to exclusive jurisdiction. *See, e.g., Arizona v. New Mexico,* 425 U.S. 794 (1976), and *Massachusetts v. Missouri,* 308 U.S. 1 (1939). If another forum is available to adjudicate the issues, then this Court through its discretion can decline to accept jurisdiction. In this regard, see Arizona's brief in opposition to the motion for leave to file complaint.

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[4] The authority of *Chisholm v. Georgia* was abrogated by the Eleventh Amendment adopted January 8, 1798. The controversy in *Chisholm* was between a state and citizens of another state, and Georgia argued that it was immune from suit as defendant.

II

OTHER PARTIES DEFENDANT

Any lawsuit between Arizona and California involving land located near the Colorado River will inevitably affect interests of the United States and other unknown riparian land owners. California, in its briefs admits that other parties will be involved in this litigation, especially if continuing jurisdiction is granted. It should be recognized that continuing jurisdiction will create a darker cloud upon the titles of the riparian land owners than may already exist since large quantities of property will be under the jurisdiction of this Court. As stated in Arizona's original Response in this action, such a result renders this case inappropriate for litigation in the Supreme Court and would more properly be maintained in the district court.

III

CONCLUSION

If California and the United States are correct in their position, then *any* dispute between two states, *irrespective of its merits,* must be brought in the Supreme Court and the Court would be compelled to hear it. This result is erroneous and not in accordance with the interpretation given to the Constitution and 28 U.S.C. § 1251. This Court has consistently held that it does not assume jurisdiction of matters involving slight importance even if the controversy is between two states. *E.g., New York v. New Jersey,* 256 U.S. 296, 309 (1921).

The United States District Court in the district where the land is located has subject matter jurisdiction to quiet title. *Uhlhorn v. U.S. Gypsum Co.*, 366 F.2d 211 (1966). Jurisdiction over the parties can be accomplished by Arizona consenting to suit in the proper district where the land is located and all issues may be adjudicated therein. Therefore, the argument presented by California and the United States that the district court has no power to litigate this case is erroneous and nugatory. Further, the large quantity of unknown parties that could appear in this litigation and the complex factual matters render this case inappropriate for litigation in the Supreme Court.

Therefore, Arizona urges this Court to decline jurisdiction of this matter.

RESPECTFULLY SUBMITTED this 19th day of June, 1978.

JOHN A. LaSOTA, JR.
Attorney General of the
State of Arizona

By _____
ANTHONY B. CHING
Assistant Attorney General

RUSSELL A. KOLSRUD
Assistant Attorney General

Attorneys for Defendant
State of Arizona

PROOF OF SERVICE

ANTHONY B. CHING, a member of the bar of this Court, certifies that all parties required to be served have been served on this 19th day of June, 1978, by mailing three copies of this brief, airmail postage prepaid, and addressed to:

(i) The Honorable Edmund G. Brown, Jr.
Governor of the State of California
State Capitol
Sacramento, California 95814

(ii) Evelle J. Younger
Attorney General of California
Allan J. Goodman
Deputy Attorney General
Department of Justice
3580 Wilshire Boulevard
Los Angeles, California 90010

(iii) Wade H. McCree, Jr.
Solicitor General of the United States
United States Department of Justice
Washington, D.C. 20530

(iv) James W. Moorman
Assistant Attorney General of the
United States
Land and Water Resources Division
United States Department of Justice
Washington, D.C. 20530

ANTHONY B. CHING