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ALEXANDER L. STEVAS,  
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## Case No. 97 Original

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# In the Supreme Court of the United States

October Term, 1983

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STATE OF LOUISIANA,

*Plaintiff,*

vs.

THE WESTERN RESERVE HISTORICAL

SOCIETY (An Ohio Corporation),

*Defendant.*

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### BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO FILE AN ORIGINAL COMPLAINT

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## **QUESTION PRESENTED**

Whether the Supreme Court of the United States should exercise its original jurisdiction under 28 U.S.C. §1251(b)(3) to hear the State of Louisiana's replevin action against The Western Reserve Historical Society.

1. The first part of the paper is devoted to a general discussion of the problem of the existence of a solution of the system of equations (1) for arbitrary values of the parameters  $\alpha$  and  $\beta$ . It is shown that the system has a solution for arbitrary values of the parameters  $\alpha$  and  $\beta$  if and only if the condition  $\alpha + \beta = 1$  is satisfied. In this case the solution is unique and is given by the formula

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FOR LEAVE TO FILE AN ORIGINAL COMPLAINT**

The State of Louisiana (hereinafter sometimes referred to as the "State") is seeking Leave to file a replevin action in the Supreme Court of the United States of America. For the reasons set forth below, the Western Reserve Historical Society submits that this Honorable Court is not the proper forum for a replevin action.

**I. STATEMENT OF FACTS**

The Western Reserve Historical Society (hereinafter sometimes referred to as the "Society") is an Ohio non-profit corporation which has its principal office at 10825 East Boulevard, Cleveland, Ohio. At its headquarters, it houses an historical library, an auto-aviation museum, and an historical museum. In addition, the Society owns and administers historical sites throughout northeastern Ohio. It collects and preserves information and historical ma-

terials relating to the area known during the Colonial period as "Connecticut's Western Reserve". Also, it conducts educational programs for the community to create an awareness of the area's cultural and ethnic heritage and also serves as a research center for scholars.

In 1922, the Western Reserve Historical Society purchased from John K. Smith, of Grand Rapids, Michigan, certain maps, documents, notes, and other materials ("Survey Materials") which relate to certain geographical areas within the political boundaries of the State of Louisiana, the State of Mississippi, and the State of Alabama. Thereafter, the Survey Materials were preserved by the Society, and were listed in a 1972 publication listing historical materials owned by the Society.<sup>1</sup>

As the Survey Materials had little or no relevance to the area known as the "Western Reserve", the Survey Materials were delivered in 1982 by the Society to the Swann Galleries, Inc. ("Swann") in New York. Swann was to sell the Survey Materials at a public auction. When the Survey Materials were publicized by Swann to generate interest in the auction, the State of Louisiana became aware of the Survey Materials. The State, thereupon, threatened a replevin action against Swann if the Survey Materials were not withdrawn from the scheduled sale. In response to this threat, Swann withdrew the Survey Materials from the sale and returned them to the Society. The State now asserts that the Survey Materials were once the public records of the State of Louisiana and are, therefore, the property of the State. These assertions made by the State of Louisiana are based upon rather tenuous conclusions drawn by certain historians employed by the State.

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1. Pike, Kermit J., *A Guide To The Manuscripts And Archives Of The Western Reserve Historical Society* (Western Reserve Historical Society, 1972), at p. 58, Item No. 198.



On February 1, 1983, the Society entered into an agreement with the Kemper and Leila Williams Foundation (the "Foundation"), a Louisiana non-profit corporation (which operates a Louisiana historical museum on Royal Street in New Orleans under the trade name of "The Historic New Orleans Collection"), wherein that Foundation agreed to purchase the Survey Materials, if it is determined that the State of Louisiana has no valid claim.<sup>2</sup> Pursuant to the Charter of the Historic New Orleans Collection, a primary purpose of the museum is the preservation of historic documents pertaining to Louisiana for educational purposes, i.e., for public scholarly study.

Thus, whether the Survey Materials are purchased by the Historic New Orleans Collection or whether the Survey Materials are taken by the State of Louisiana pursuant to its replevin action, the result will be essentially the same. The Survey Materials will be stored and preserved in the State of Louisiana and they will be available for research purposes. The only real issue to be served by this suit is whether the Western Reserve Historical Society will be paid for the Survey Materials pursuant to a purchase by the Historic New Orleans Collection, or in the alternative, whether the Survey Materials will be taken from the Western Reserve Historical Society by the State of Louisiana pursuant to its replevin action.

The State of Louisiana is now attempting to have this Honorable Court exercise its concurrent, original jurisdiction, pursuant to 28 U.S. Code §1251(b)(3), to decide this ordinary replevin suit, which involves many factual questions and no questions of federal law.

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2. The State of Louisiana has been advised that microfilm copies of the Survey Materials would be delivered, free of charge, to the State of Louisiana concurrent with the delivery of the Survey Materials to the Foundation.

## II. LAW AND ARGUMENT

### THE SUPREME COURT OF THE UNITED STATES IS NOT THE PROPER ORIGINAL FORUM FOR LOUISIANA'S REPLEVIN ACTION.

#### Introduction

Replevin is one of the oldest actions known to Anglo-American jurisprudence [See 66 AM. JUR. 2d, *Replevin*, §1. Generally. (1973)]. As stated by the Court in *Three States Lumber Company v. Blanks*, 133 Fed. 479 (6th Cir. 1904):

Replevin is one of the most ancient and well-defined writs known to the common law. . . . It is an ancient common law proceeding by which the owner recovers possession of his own. It is defined in the old books as "a redelivery to the owner by the sheriff, of his cattles or goods distrained upon any cause, upon surety that he will pursue the action against him that distrains. . . ." Six Bacon, *Abridgement* (Wilson's Ed.) p. 52.

*Id.* at 481.

That the State of Louisiana's proposed Complaint is an action for replevin cannot be seriously disputed.

The most elementary definition of replevin is that it is a proceeding by which the owner of specific property, which has been taken or obtained by another, seeks to recover possession of that specific chattel with the recovery of damages being only incidental thereto [See 66 AM. JUR. 2d, *Replevin*, §2. Definition. (1973), and 18 O. JUR. 3d, *Conversion and Replevin*, §66. Generally; Nature and Purpose of Remedy (1980)].

The allegations and requests for relief contained in the State of Louisiana's proposed Complaint clearly indicate that this is an action for replevin. In paragraph 3 of the State's Complaint, the State alleges that it is the owner of the subject documents. Other than the ubiquitous plaintiffs' request for "such other relief as this Court deems just and proper", the only substantive relief requested is:

Order that the Defendant deliver into the custody of the State of Louisiana, the land survey maps and related materials belonging to the State of Louisiana and now in the hands of the Defendants; . . .

(Plaintiff's Complaint, Relief Requested, Paragraph B).

Thus, it is quite clear that the State of Louisiana, as alleged owner, seeks to recover possession of specific chattel. The issue presented for this Honorable Court is whether the Supreme Court of the United States is a proper forum for a replevin action.

#### **A. This Court Has Broad Discretionary Powers to Decline Jurisdiction in This Matter.**

The State of Louisiana has moved this Honorable Court to exercise its original jurisdiction pursuant to 28 U.S. Code §1251, which provides in pertinent part:

(b) The Supreme Court shall have original but not exclusive jurisdiction of:

\* \* \* \* \*

(3) All actions or proceedings by a State against the citizens of another State or against aliens.

The Western Reserve Historical Society does not dispute the presence of a genuine case or controversy between

the State of Louisiana and the Society, a citizen of the State of Ohio. It does maintain that the Court should not exercise its original jurisdiction. This Court has consistently held that the presence of its jurisdiction does not mandate exercising said jurisdiction. This is especially true in cases such as the instant one.

This is particularly true in the enforcement by States of claims against citizens of other States where the Court has original but no exclusive jurisdiction. But even where the Court has original and exclusive jurisdiction under §1251 of all controversies between two or more States, it regards that jurisdiction as obligatory only in appropriate cases.

12 MOORE'S FEDERAL PRACTICE, Original Jurisdiction, ¶350.02[5]—Declining Jurisdiction (1980).

The hallmark decision in determining whether the Supreme Court of the United States should exercise its original jurisdiction in a case involving a State and the citizen of another State is *Ohio v. Wyandotte Chemicals Corp.*, 401 U.S. 493, 28 L. Ed. 2d 256, 91 S. Ct. 1005 (1971). In discussing the discretionary nature of this Court's original jurisdiction in an action involving a State and the citizen of another State, this Court, in *Wyandotte*, *supra*, stated that:

As our social system has grown more complex, the States have increasingly become enmeshed in a multitude of disputes with persons living outside their borders. Consider, for example, the frequency with which States and non-residents clash over the application of State laws concerning taxes, motor vehicles, decedent's estates, business torts, government contracts, and so forth. It would, indeed, be anomalous

were this Court to be held out as a potential principal forum for settling such controversies.

\* \* \* \* \*

Thus, we think it apparent that we must recognize "the need [for] the exercise of a sound discretion in order to protect this Court from an abuse of the opportunity to resort to its original jurisdiction in the enforcement by States of claims against citizens of other States."

\* \* \* \* \*

In our opinion, we may properly exercise such discretion, not simply to shield this Court from noisome, vexatious, or unfamiliar tasks, but also, and we believe principally, as a technique for promoting and furthering the assumptions and value choices that underlie the current role of this Court in the federal system. Protecting this Court *per se* is at best a secondary consideration. What gives rise to the necessity for recognizing such discretion is pre-eminently the diminished societal concern in our function as a Court of original jurisdiction and the enhanced importance of our role as the final federal appellate court. A broader view of the scope and purposes of our discretion would inadequately take account of the general duty of courts to exercise that jurisdiction they possess. (citations omitted.)

*Id.* at 497-499.

As further stated in the *Wyandotte* decision, this Court will exercise its original jurisdiction in a controversy between a State and a citizen of another State only when justified "*by the strictest necessity*". *Id.* at 505. The State of Louisiana has failed to demonstrate any necessity, much less the strictest necessity, for this Court to exercise its original jurisdiction over this replevin action.

**B. This Court Should Decline to Exercise Its Original Jurisdiction Because the State of Louisiana Has Failed to Prove That the Exercise of This Court's Original Jurisdiction Is Justified by the "Strictest Necessity".**

The Supreme Court in *Wyandotte* enunciated a two-pronged analysis in determining whether this Court should exercise its original jurisdiction. The first prong of the analysis is whether the declination of jurisdiction would disserve any of the principal policies underlying the Article III jurisdictional grant. The second prong of the analysis deals with the practicality of keeping the Court's functions properly balanced.

1. The first prong of the analysis involves two historical principles which were the basis for conferring original jurisdiction on this Court in suits between States and citizens of other States. The first principle "was the belief that no state should be compelled to resort to the tribunals of other states for redress, since parochial factors might often lead to the appearance, if not the reality, of partiality to one's own." *Id.* at 500. The second historical principle was that a state, needing an alternative forum, had to resort to the Supreme Court in order to have a court which was competent to exercise jurisdiction over the parties. *Id.* at 500.

The first principle cited above is the only basis upon which the State of Louisiana seeks to have this Court hear its case (see State of Louisiana's "Memorandum in Support of Motion for Leave to File an Original Complaint", at page 4). In the early history of this country, the above cited factor may have been sufficient for this Court to exercise its original jurisdiction. However, changes in society, the role of the Supreme Court, and changes in the relationship

between the states comprising the United States of America have considerably lessened the importance of this factor. This Court stated in *Georgia v. Pennsylvania Railroad Co.*, 324 U.S. 439, 89 L. Ed. 1051, 65 S. Ct. 716 (1944):

The original jurisdiction of this Court is one of the mighty instruments which the framers of the Constitution provided so that adequate machinery might be available for the peaceful settlement of disputes between states and between a state and citizens of another state. . . . *Trade barriers, recriminations, intense commercial rivalries had plagued the colonies. The traditional methods available to a sovereign for the settlement of such disputes were diplomacy and war.* Suit in this Court was provided as an alternative. (emphasis added.)

*Id.* at 450.

Obviously, the tensions between the states which gave rise to this Court's original jurisdiction have lessened considerably since Colonial times. Thus, this Court has insisted that a more compelling factor exist before it will exercise its original jurisdiction.

Indeed, one of the factors discussed by this Court in a case involving two states wherein leave to file an original complaint was denied, was the fact that the Plaintiff State, Massachusetts, had a proper forum in the Courts of the Defendant State, Missouri [*See Massachusetts v. Missouri*, 308 U.S. 1, 84 L. Ed. 3, 60 S. Ct. 39 (1939)]. This Court has since cited the *Massachusetts* case with favor and as authority for the proposition that:

We seek to exercise our original jurisdiction sparingly and are particularly reluctant to take jurisdiction of a suit where the plaintiff has another adequate forum in which to settle his claim.

*United States v. Nevada*, 412 U.S. 534, 538, 37 L. Ed. 2d 132, 135, 93 S. Ct. 2763 (1973).

Notwithstanding the State of Louisiana's concern over litigating the title of the subject documents in the Ohio Courts, and its fear of the Ohio Courts' "hostility towards another sovereign" (see the State of Louisiana's "Memorandum in Support of Motion for Leave to File an Original Complaint" at page 4), the Ohio Courts would be quite competent to hear this case. Furthermore, any decision by the Ohio Courts could be reviewed by this Court, should that eventuality prove necessary.

In any event, the bald assertion by the State of Louisiana that it would be prejudiced if it had to litigate this matter in the Ohio Courts certainly does not rise to the standard of "strictest necessity", as enunciated in the *Wyandotte* case, *supra*.

2. For obvious reasons, the State of Louisiana did not mention in its memorandum anything which remotely relates to the second prong of the *Wyandotte* test concerning whether this Court should decline to entertain the subject complaint.

The second prong of the *Wyandotte* analysis deals with practical reasons why this Court is generally an inappropriate forum for original complaints (*Wyandotte, supra*, at 499). As noted in the *Wyandotte* decision, the practical considerations involved in determining whether this Court should hear an original action are many.

The issues to be decided in any case originally brought before this Court are vitally important in determining whether this Court should hear the case. This Court has resisted exercising its original jurisdiction over cases involving mostly factual issues.



The nature of the case Ohio brings here is equally disconcerting. *It can be fairly said that what is in dispute is not so much the law as the facts.* (emphasis added.)

*Wyandotte, supra*, at 503.

This Court's well-founded reservations about acting as a "fact finder" in convoluted fact patterns is especially relevant to the case *sub judice*. The state law governing public records and whether or not they are the property of a governmental entity is reasonably clear. Issues concerning the applicable state law and its application to the facts of this case will be a minor part of the litigation of this matter. The factual issues will constitute the major part of the litigation. Several factual questions will have to be decided relating to: Whether these documents were truly public records; the original ownership of the records; whether these documents were to be transferred to the State of Louisiana subsequent to its becoming a territory and/or state; whether these documents were the original property of the person(s) who first produced them; and, it will be necessary to trace the ownership of the records and documents now owned by the Western Reserve Historical Society back in time, if possible, to their production in the late eighteenth and early nineteenth centuries. Thus, the issues to be confronted by this Court are almost exclusively factual in nature. Accordingly, this Court would be acting in the role of "fact finder", a role which this Court has historically stated to be an inappropriate one for the Supreme Court of the United States.

Other decisions by this Court, decided both prior to and subsequent to the *Wyandotte* decision, have held that the type of case presented for original jurisdiction is also vitally important in this Court's determination of whether

to exercise its original jurisdiction. In *Illinois v. City of Milwaukee*, 406 U.S. 91, 31 L. Ed. 2d 712, 92 S. Ct. 1385 (1972), this Court stated:

It has long been this Court's philosophy that "our original jurisdiction should be invoked sparingly." . . . We construe 28 USC §1251(a)(1), as we do Art III, §2, cl 2, to honor our original jurisdiction but to make it obligatory only in appropriate cases. And the question of *what is appropriate concerns of course, the seriousness and dignity of the claim*; yet beyond that it necessarily involves the availability of another forum where there is jurisdiction over the main parties, where the issues tendered may be litigated and where the appropriate relief may be had. We incline to a sparing use of our original jurisdiction so that our increasing duties with the appellate docket will not suffer. *Washington v. General Motors Corp.*, 406 U.S. 109, 31 L. Ed. 2d 727, 92 S. Ct. 1396. (emphasis added.)

*Id.* at 93-94.

Similarly, in *Maryland v. Louisiana*, 451 U.S. 725, 68 L. Ed. 2d 576, 101 S. Ct. 2114 (1981), this Court held that resort to "obligatory" jurisdiction [exclusive jurisdiction under 28 U.S.C. §1251(a)], would only take place in appropriate cases. This Court held that what is "appropriate" involves: (1) The seriousness and dignity of the claim; and (2) The availability of an alternative forum wherein the case may be litigated and appropriate relief may be had (*Id.* at 739-740).

A replevin action, involving complicated issues of fact and few legal questions certainly is not of such "seriousness and dignity" that this Court should hear it pursuant to 28 U.S.C. §1251(b)(3). Moreover, the Ohio Courts are quite competent, and hearing a replevin action would not be beyond their capabilities.

The last, and perhaps the most important, consideration this Court should address in determining whether to exercise its original jurisdiction, is the fact that this lawsuit has nothing whatsoever to do with difficult and/or important problems of federal law. As stated by this Court in the *Wyandotte* decision:

*Finally, in what has been said it is vitally important to stress that we are not called upon by this lawsuit to resolve difficult or important problems of federal law and that nothing in Ohio's Complaint distinguishes it from any one of a host of such actions that might, with equal justification, be commenced in this Court. Thus, entertaining this Complaint not only would fail to serve those responsibilities we are principally charged with, but could well pave the way for putting this Court into a quandary whereby we must opt either to pick and choose arbitrarily among similarly situated litigants or to devote truly enormous portions of our energies to such matters. (emphasis added.)*

*Wyandotte, supra*, at 504.

The State of Louisiana, in its "Memorandum in Support of Motion for Leave to File an Original Complaint," did not cite a single federal case or one issue of federal law.<sup>3</sup>

To entertain the State of Louisiana's Complaint would seriously intrude upon this Court's paramount responsibility of serving as an appellate tribunal, dealing with serious and important federal common, statutory, and con-

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3. Just as the most important clue was what the dog failed to do in the night-time, i.e., it did not bark [A. Conan Doyle, *Silver Blaze*, in *THE MEMOIRS OF SHERLOCK HOLMES* (A&W Visual Library, 1975) at p. 24], so it is that the most damning aspect of the State of Louisiana's Motion is what it failed to do in its Memorandum in Support thereof, i.e., it cited no cases or federal law.

stitutional law. As stated by this Court in *Wyandotte*, *supra*:

We have no claimed special competence in dealing with the numerous conflicts between states and non-resident individuals that raise no serious issues of federal law.

*Id.* at 497-498. Therefore, this Court should decline to exercise its Original Jurisdiction in this matter.

### III. CONCLUSION

The State of Louisiana is urging this Court to exercise its original jurisdiction in a replevin action which involves no difficult or important problems of federal law. Moreover, the State of Louisiana has an alternative forum within which to bring this action.

Furthermore, should this Court hear this case, its role would be primarily, if not exclusively, that of a "fact finder".

Finally, as noted above, the documents which are the subject of this lawsuit will be preserved within the State of Louisiana and will be made available for public, scholarly study, regardless of the outcome of this replevin action. Thus, the only substantive issue to be determined, should this Court choose to hear this matter, is whether or not the Western Reserve Historical Society will be paid for the documents.

For all of the foregoing reasons, the Western Reserve Historical Society respectfully submits that the State of Louisiana has not, and cannot, justify this Court's exercise of its original jurisdiction. Therefore, the Western Reserve Historical Society requests that this Court deny the

State of Louisiana's "Motion for Leave to File an Original Complaint".

Respectfully submitted,

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## APPENDIX

## AFFIDAVIT OF THEODORE A. SANDE

THE STATE OF OHIO            )  
                                      ) SS:       AFFIDAVIT  
COUNTY OF CUYAHOGA        )

THEODORE A. SANDE, being first duly sworn according to law, deposes and says that he has personal knowledge of the following, to wit:

1. He is the Executive Director of The Western Reserve Historical Society (the "Society") which is an Ohio non-profit corporation; it is headquartered at 10825 East Boulevard in the City of Cleveland, State of Ohio;

2. The Society, at its headquarters, operates an historical library, an historical museum and an auto aviation museum; in addition it administers historical sites throughout northeastern Ohio; incident to the operation of the foregoing facilities, it maintains an active historic preservation advisory assistance program, and it collects and preserves information and historical materials relating to the area known during the late eighteenth century as "Connecticut's Western Reserve"; its facilities are open to the public, are used for educational programs, and serve as a research center for scholars;

3. The Society is the owner of certain historical surveys and related materials involving land, which is located within the present political boundaries of the State of Louisiana, the State of Mississippi, and the State of Alabama (the "Survey Materials");

4. Documents of the Society indicate that in 1922, the Society purchased the Survey Materials from a dealer in autograph letters and manuscripts, J. K. Smith, located in Grand Rapids, Michigan; in 1972, the Society published and circulated a book entitled "A Guide to the Manuscripts and Archives of the Western Reserve Historical Society" in which the Survey Materials were listed; the Survey Materials, deemed under current collections policy as having no relevance to the "Western Reserve", were deaccessioned and delivered to Swann Galleries, Inc. in 1982 for sale at public auction;

5. The State of Louisiana threatened a replevin action against Swann Galleries, Inc., if the Survey Materials were not withdrawn from the scheduled sale; in response to this threat, Swann Galleries, Inc., withdrew the Survey Materials from the sale and returned them to the Society.

6. The Kemper and Leila Williams Foundation (the "Foundation") is a Louisiana non-profit corporation;

7. The Foundation operates an historical museum, open to the public, under the trade name of "The Historic New Orleans Collection"; it is located at 533 Royal Street, in the City of New Orleans, State of Louisiana;

8. On February 1, 1983, the Society and the Foundation entered into a contract (the "Contract") whereby the Society agreed to sell and the Foundation agreed to buy the Survey Materials;

9. Pursuant to the terms of the Contract, the Survey Materials are now deposited in escrow pending the disposition of the claim of title to the Survey Materials by the State of Louisiana;



10. It is the Society's understanding that upon the consummation of the Contract, the Foundation shall deliver the Survey Materials to the Historic New Orleans Collection, in New Orleans, Louisiana, for historical research and public exhibition.

11. The State of Louisiana has never made a formal demand on the Society for the Survey Materials;

12. The State of Louisiana has been advised that microfilm copies of the Survey Materials would be delivered free of cost to the State of Louisiana concurrently with the consummation of the contract and the delivery of the Survey Materials to the Foundation;

13. The Society has sold the Survey Materials to the Foundation with the understanding that the Survey Materials, delivered to the Foundation, would never be sold, deaccessioned, destroyed, or, except for exhibition or restoration purposes, removed from the State of Louisiana.

FURTHER, AFFIANT SAYETH NAUGHT.

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Theodore A. Sande

SWORN TO BEFORE ME and SUBSCRIBED in my presence this 15th Day of December, 1983.

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Notary Public





