

FEB 3 1987

JOSEPH F. SPANIOL, JR.
CLERK

NO. 107
(ORIGINAL)
IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1986

THE STATE OF MICHIGAN
Plaintiff

v.

EDWIN MEESE, ATTORNEY
GENERAL FOR THE UNITED STATES
Defendant

Reply to Answer to Motion
For Leave To File
Complaint for Declaratory Judgment

Frank J. Kelley
Attorney General
State of Michigan

John D. O'Hair
Prosecuting Attorney
County of Wayne
State of Michigan

Timothy A. Baughman
Chief of the Criminal Division
Research, Training and Appeals
1441 St. Antoine
Detroit, MI 48226
(313)224-5792
Counsel for Plaintiff

STATEMENT OF THE QUESTION

IS 18 USC 2515 AN
UNCONSTITUTIONAL INTERFERENCE
WITH RIGHTS RESERVED TO THE
STATES UNDER THE TENTH
AMENDMENT INSOFAR AS IT
PROHIBITS A STATE COURT FROM
ADMITTING INTO EVIDENCE
MATERIAL PROCURED BY A PRIVATE
INDIVIDUAL WITHOUT VIOLATION OF
ANY PROVISION OF THE FEDERAL
CONSTITUTION?

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REPLY

THIS COURT SHOULD EXERCISE ITS DISCRETION UNDER ITS ORIGINAL BUT NONEXCLUSIVE JURISDICTION TO CONSIDER THE TENTH AMENDMENT QUESTION RAISED BY PLAINTIFF.

The Solicitor General opposes the Motion for Leave to File Bill of Complaint for Declaratory Judgment on three principal grounds: 1)there exists an alternate forum available to plaintiff; 2)the question presented is of inadequate importance; and 3)there exists the possibility of some factual controversy requiring the appointment of a special master. Plaintiff disagrees on all points.

It is of course true that there exists an alternative forum--plaintiff is invoking this Court's original nonexclusive jurisdiction. In all cases in which original nonexclusive

jurisdiction is invoked, there exists an alternative forum. The question is whether that forum is adequate. In most contexts, the necessity of a speedy final resolution of a complex federal question has no bearing whatsoever on whether it should be heard by this Court, as a resolution by either State or Federal courts below is a necessary prerequisite to invocation of this Court's jurisdiction. But where jurisdiction is original, considerations of the importance to the plaintiff of a speedy final resolution are pertinent to the question of whether an alternative forum is adequate.

As indicated in the complaint, the federal statute in question is blocking an investigation into public corruption. Because a federal statute is involved, a

federal question is involved. The question raised by plaintiff is a Tenth Amendment question, a question upon which the course of the law has not run smooth, and which remains unsettled to date, as detailed in the complaint. Years of litigation in alternate forums lie before plaintiff simply in an effort to proceed in an investigation of criminal activity. Public confidence is undermined when the existence of evidence of public corruption is widely known, but no investigation advances. Alternate forums simply are not adequate to the speedy resolution of this highly complex question, upon which guidance from this Court is needed.

This Court surely has declined to exercise its original jurisdiction, but in cases where were the Court to do otherwise it "would unavoidably be

reducing the attention (it) could give to those matters of federal law and national import as to which (it is) the primary overseer." Ohio v Wyandotte Chemicals Corporation, 401 US 493, 498 (1971). Further, this Court has exercised jurisdiction in cases where the State has demonstrated injury of "serious magnitude" and the absence of an "adequate alternative forum." South Carolina v Regan, 465 US 367, 401 (Justice O'Connor, concurring). The injury to the State here in the ability to pursue a particularly onerous violation of its laws is, while not a monetary injury, nonetheless is of "serious magnitude," and is caused by an unconstitutional act of Congress.

The Solicitor General minimizes the importance of the question presented. The ability or inability of Congress to

impose evidentiary rules upon the States is clearly an issue of national importance, affecting all of the States. That plaintiff points to its own case as an example is because plaintiff is involved in this case. It is also possible that the Tenth Amendment difficulties inherent in the action of Congress have not been recognized previously.

Finally, the Solicitor suggests that "there are potential issues of fact lurking in this case." This is a hobgoblin. There is not the slightest suggestion by anyone that law enforcement personnel were involved in the surreptitious recording here, or even that there was any official suspicion that wrongdoing might be occurring. Indeed, it is well understood that the

possibility that the source of the eavesdropping will ever be known is virtually non-existent.

CONCLUSION

WHEREFORE, for the reasons above stated Plaintiff requests that the Motion For Leave to File Complaint be granted.

Respectfully submitted,

Frank J. Kelley
Attorney General
State of Michigan

John D. O'Hair
Prosecuting Attorney
County of Wayne
State of Michigan

Timothy A. Baughman
Chief of the Criminal Division
Research, Training and Appeals
1441 St. Antoine
Detroit, MI 48226
(313)224-5792
Counsel for Plaintiff

