

No. 111 Original

Supreme Court, U.S.

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1992

STATE OF DELAWARE,
Plaintiff,
and

STATE OF TEXAS,
Intervening Plaintiff,

vs.

STATE OF NEW YORK,
Defendant.

**RESPONSE BY TEXAS, ET AL., AND MICHIGAN, ET AL.,
IN OPPOSITION TO NEW YORK'S MOTION
TO AMEND AND FILE COUNTERCLAIMS**

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January 11, 1993

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The Texas group (Texas, Arizona, Colorado, Connecticut, Idaho, Minnesota, New Mexico, North Carolina, Oregon, South Carolina, Tennessee, Virginia, and Wisconsin) and the Michigan group (Michigan, Maryland, Nebraska, and the District of Columbia) respond as follows in opposition to the Motion of the State of New York for Leave to File First Amended Answers and Leave to File Counterclaims:

New York's motion is in one sense too late and in another, more significant sense too early. It is too late because it comes *after* last month's oral argument and nearly a year after issuance of the document to which it is a reaction, without any explanation for the delay. It is too early because it is expressly made contingent upon this Court's adoption of either the Special Master's report and recommendation or some other related contingency, which

is the very matter now under consideration by the Court following oral argument on January 9, 1992.

To see the contingent, and therefore premature, nature of the principal objective of New York's motion -- that is, the filing of counterclaims -- the Court need do no more than consult the counterclaims' introductory paragraph: "*In the event that the Court adopts the recommendations of the Special Master in his Report dated January 28, 1992 in their entirety*, New York asserts its right to the custodial taking of the following property[.]" New York Motion to Amend, at A-7 (emphasis added). The other three paragraphs in the counterclaims also are premised on similar types of contingencies. *Id.*, at A-8. (All begin with "[i]n the event", followed by a decisionmaking scenario other than adoption of New York's arguments of December 9th.)

Judicial efficiency is an especially important consideration in cases falling within the Court's original jurisdiction. *Cf. Illinois v. City of Milwaukee*, 406 U.S. 91, 93-94 (1972) (discussing the need to sparingly exercise original jurisdiction in order to husband the Court's resources for its appellate docket); *see also Mississippi v. Louisiana*, 113 S.Ct. 549, ___ (1993).

In this instance, considerations of efficiency clearly indicate that the Court should either: (i) refer the motion to the Special Master for later consideration, after the Court disposes of the exceptions now before it; or (ii) deny the motion without prejudice to its later filing should the occasion arise and New York still be desirous of such a filing following the Court's impending ruling. Taking a different approach, and ruling on the merits of the motion now, would be premature and a waste of the Court's scarce appellate resources.

"[P]otential threat[s] of injury" are inappropriate bases for original jurisdiction decrees. *Nebraska v. Wyoming*, 325 U.S. 589, 608 (1945). That firmly established principle applies at this time to New York's effort.

Based upon the foregoing matters, the 16 states (and the District of Columbia) joining this response urge the Court to deny New York's motion without prejudice to its being reurged initially before the Special Master following the Court's disposition of the already-pending exceptions and other motions.

Respectfully submitted,

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