No. 122 Orig.

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

STATE OF TEXAS; TEXAS DEPARTMENT OF AGRICULTURE;
and RICK PERRY, in his official capacity as
Commissioner of Agriculture, State of Texas
Plaintiffs,

vs.

STATE OF LOUISIANA; LOUISIANA DEPARTMENT OF AGRICULTURE AND
FORESTRY; and BOB ODOM, in his official capacity as Commissioner,
Louisiana Department of Agriculture and Forestry
Defendants.

ORIGINAL ACTION

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT; BILL OF COMPLAINT; MOTION FOR PRELIMINARY INJUNCTION; AND BRIEF IN SUPPORT OF BOTH MOTIONS

DAN MORALES
Attorney General of Texas
JORGE VEGA
First Assistant Attorney General
SAM GOODHOPE*
Special Assistant Attorney General
**Counsel of Record*
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July 13, 1995

INDEX TO FILING

No. _____

IN THE
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STATE OF TEXAS; TEXAS DEPARTMENT OF AGRICULTURE; and RICK PERRY, in his official capacity as Commissioner of Agriculture, State of Texas,
Plaintiffs,

vs.

STATE OF LOUISIANA; LOUISIANA DEPARTMENT OF AGRICULTURE AND FORESTRY; and BOB ODOM, in his official capacity as Commissioner, Louisiana Department of Agriculture and Forestry,
Defendants.

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

The State of Texas, the Texas Department of Agriculture and Rick Perry, in his official capacity as Commissioner of Agriculture (hereinafter collectively referred to as "Plaintiffs"), by and through the Texas Attorney General, respectfully requests leave of the Court to file the Bill of Complaint submitted herewith. In addition, the Plaintiffs in this original action seek immediate injunctive relief pursuant to the All Writs Act and the Rules of the Supreme Court to enjoin the State of Louisiana, the Louisiana Department of Agriculture and Forestry ("LDAF") and Bob Odom, in his official capacity as Commissioner,

LDAF (hereinafter collectively referred to as "Defendants") from enforcing the Sweet Potato Weevil Protocol because it interferes with interstate commerce and infringes on the Privileges and Immunities of the citizens of the State of Texas.

STATEMENT IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT

A "case" or "controversy" exists between the State of Texas and the State of Louisiana within the meaning of Article III, Section 2, of the United States Constitution in that the State of Louisiana has imposed unconstitutional requirements (the "Sweet Potato Weevil Protocol") on out-of-state sweet potato growers shipping into that state. Although the sweet potato weevil may be small, it has caused and is causing constitutional issues of a very serious magnitude. Pursuant to the Declaratory Judgment Act, the Plaintiffs respectfully request that this Court declare the Sweet Potato Weevil Protocol to be unconstitutional because it interferes with interstate commerce and it infringes on the Privileges and Immunities of Texas citizens.

The State of Louisiana is experiencing an infestation of the sweet potato weevils in most of its parishes. In an effort to address the problem, Defendants Commissioner Bob Odom and the LDAF have implemented an unnecessary and expensive program (*i.e.*, the Sweet Potato Weevil Protocol) that out-of-state shippers must follow in order to ship sweet potatoes into Louisiana. Louisiana has no evidence that Texas has been, or is the source of the sweet potato weevil infesting Louisiana parishes. Indeed, the evidence indicates that the sweet potato weevil problem is a purely intrastate one. Nevertheless, if any Texas sweet potato grower ships his crops to Louisiana and fails to comply with the Louisiana protocol, the crop is subject to quarantine.

The Sweet Potato Weevil Protocol was implemented in April 1995, but the greatest adverse impact on Texas and its sweet potato growers is not expected until the beginning of August 1995 (the sweet potato harvest season). Nonetheless, the protocol has already had an adverse effect on Texas sweet potato shipments of slips.[1] In addition to the adverse effect on Texas sweet potato growers, in 1995 alone, the Louisiana protocol will cost the State of Texas approximately $40,000. The requirement places an undue burden on Texas sweet potato growers shipping into Louisiana and the State of Texas without any benefit accruing to the State of Louisiana.

There being no other competent forum available to the parties, and there being a clear threat of imminent and irreparable harm to the State of Texas, it is imperative that this Court exercise its original and exclusive jurisdiction by granting this Motion for Leave to File Bill of Complaint and proceeding to determine whether the Sweet Potato Weevil Protocol:

> (1) imposes an undue burden on interstate commerce in violation of the United States Constitution; and
>
> (2) infringes on the Privileges and Immunities of the citizens of the State of Texas.

Plaintiffs respectfully request that this Honorable Court grant their Motion for Leave to File the Bill of Complaint. A brief in support of this motion is served and filed herewith.

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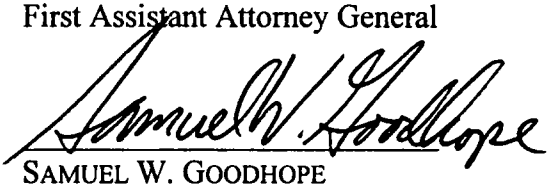
[1] "Slips" are sweet potato cuttings of about 8 to 10 inch height.

Respectfully submitted,

DAN MORALES
Attorney General of Texas

JORGE VEGA
First Assistant Attorney General



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STATE OF TEXAS; TEXAS DEPARTMENT OF AGRICULTURE; and RICK PERRY, in his official capacity as Commissioner of Agriculture, State of Texas
Plaintiffs,

vs.

STATE OF LOUISIANA; LOUISIANA DEPARTMENT OF AGRICULTURE AND FORESTRY; and BOB ODOM, in his official capacity as Commissioner, Louisiana Department of Agriculture and Forestry
Defendants.

BILL OF COMPLAINT

Plaintiffs State of Texas, the Texas Department of Agriculture, and Rick Perry, in his official capacity as Texas Commissioner of Agriculture, with leave of the Court, files this Bill of Complaint by Dan Morales, their Attorney General, against Defendants State of Louisiana, Louisiana Department of Agriculture and Forestry, and Bob Odom, in his official capacity as Commissioner, Louisiana Department of Agriculture and Forestry. The Attorney General of Texas is the official of the State of Texas who is charged under the Constitution and laws of the State of Texas with the duty to represent the Plaintiffs in civil litigation.

I. JURISDICTION

1. The original and exclusive jurisdiction of this Court is invoked under the authority of Article III, Section 2, of the Constitution of the United States and 28 U.S.C. § 1251. The Plaintiffs seek temporary, immediate, and final relief pursuant to the All Writs Act, 28 U.S.C. § 1651, and the Declaratory Judgment Act, 28 U.S.C. § 2201 and § 2202.

II. PARTIES

2. The State of Texas brings this original action in its sovereign and governmental capacity to protect the State of Texas and its citizens from restrictions imposed by the State of Louisiana on interstate trade and commerce that violate the United States Constitution. In addition, the State of Texas brings this action in its *parens patriae* capacity on behalf of the citizens of Texas in order to protect their rights under the Privileges and Immunities Clause of the United States Constitution, U.S. CONST. ART. IV, § 2, CL. 2, as well as their rights to engage in interstate commerce.

3. Plaintiff Texas Department of Agriculture ("TDA") is the primary state agency responsible for ensuring and maintaining a vigorous agricultural sector in the Texas. It has general responsibilities related to agriculture, as well as specific duties and programs related to the delivery of important agricultural services to the farmers, ranchers, and other citizens of Texas. These governmental and regulatory responsibilities will be directly and indirectly impacted by the Defendants' insistence that the State of Texas comply with the Sweet Potato Weevil Protocol. *See* Appendix pages 1a through 6a-Map.

4. More specifically, Chapter 12 of the Texas Agriculture Code ("Code") provides a general grant of responsibility, power, and duty that the TDA shall encourage

the "proper development of agriculture, horticulture, and related industries." TEX. AGRIC. CODE § 12.005. TDA's responsibilities are further specified throughout Chapter 12. Pursuant to § 12.006 of the Code, TDA shall investigate opportunities for broadening the market and increasing the demand for Texas agricultural goods and products. Pursuant to § 12.007 of the Code, TDA shall investigate the diseases of crops grown in Texas in order to discover remedies.

5. Plaintiff Rick Perry, in his official capacity as Commissioner of the TDA ("Texas Commissioner"), is the duly elected official charged with directing the activities of the TDA. He is responsible for exercising the powers and performing the duties assigned to the TDA by the Code or other applicable law.

6. Defendant State of Louisiana is sued in its governmental and sovereign capacity as a state of the United States.

7. Defendant Louisiana Department of Agriculture and Forestry ("LDAF") is the State of Louisiana's agency responsible for agricultural-related activities throughout Louisiana. It is the agency responsible for developing and implementing the Sweet Potato Weevil Protocol. *See* Appendix pages 1a through 6a-Map.

8. Defendant Bob Odom ("Louisiana Commissioner"), in his official capacity as Commissioner of the LDAF, is charged with "carry[ing] out all provisions of the law relative to pests and diseases affecting agricultural or horticultural plants and plant products and quarantines . . . ." LA. R.S. 3:1772. Such Defendant is responsible for the implementation of the Sweet Potato Weevil Protocol, as defined *infra* in paragraph 15.

III. FACTS

9. Texas sweet potato crops yielded approximately $8 million in 1994 and $16 million in 1993 for Texas citizens. In addition, the planting, growing, harvesting, and selling of the sweet potato crops have an economic "multiplier effect" on the communities in which the sweet potato crops are grown. That is, the economic value of the sweet potato crops to the Texas citizens and communities in which the sweet potatoes are grown is greater than the actual value of the crops sold.

10. Approximately 30 to 35 percent of the Texas sweet potato crop is shipped into Louisiana. Ninety-five percent of the sweet potatoes shipped into Louisiana is shipped for purposes of processing. Thus, in 1994, over $2 million worth of sweet potatoes was shipped into Louisiana for processing purposes.

11. The processing plants for the sweet potatoes are located in southern Louisiana.

12. The State of Louisiana is experiencing an infestation of the sweet potato weevils in most of its parishes. *See* Appendix page 6a-Map, "Map of Louisiana Parishes Infested with Sweet Potato Weevils." This map was produced by the LDAF.

13. The State of Louisiana is not undertaking any program to eradicate sweet potato weevils from infested areas. Rather, the State of Louisiana is attempting to contain the sweet potato weevils to the already infested areas of Louisiana.

14. The parishes in which the sweet potato processing plants are located are all infested with the sweet potato weevil. That is, the parishes to which Texas sweet

potato growers seek to ship their crops are already infested with sweet potato weevils.

15. Defendant State of Louisiana, through Defendant Bob Odom, has mandated the implementation of a program or protocol to identify, and, possibly quarantine sweet potatoes infested by sweet potato weevils (the "Sweet Potato Weevil Protocol"). This protocol imposes unnecessary and expensive procedures that out-of-state suppliers of sweet potatoes must follow in order to sell and ship sweet potatoes to purchasers located in Louisiana.

16. Louisiana has provided no evidence that Texas is the source of its sweet potato weevil problem or that Texas sweet potato weevils have harmed any Louisiana sweet potato crops. Indeed, from all indications, Louisiana is the source of the sweet potato weevil problem. The evidence indicates that Louisiana's sweet potato weevil problem is a purely intrastate one. Louisiana's sweet potato weevil problem is so severe that one state--North Carolina--has banned Louisiana's sweet potatoes from entering the state. *See* Appendix pages 7a and 8a, Memo from North Carolina.

17. According to the Sweet Potato Weevil Protocol, should any Texas sweet potato grower attempt to sell and ship his sweet potatoes to Louisiana purchasers or processors and fail to comply with the Sweet Potato Weevil Protocol, the crop will be quarantined by the LDAF.

18. The protocol has already had an adverse effect on Texas shipments of sweet potato "slips" into Louisiana. "Slips" are small sweet potato cuttings 8 to 10 inches high that are transplanted by sweet potato growers. Slips grown in Texas have been quarantined by the State of Louisiana; however, none of the slips were found to be infested by the sweet potato weevil.

19. Texas and its sweet potato growers will feel its full impact beginning August 1, 1995 (the commencement of the sweet potato harvest season).

20. In addition to the adverse effect on Texas sweet potato growers, compliance with the Sweet Potato Weevil Protocol will cost TDA approximately $40,000 in 1995 alone. Thus, the taxpayers of the State of Texas will be burdened by the forced implementation of the State of Louisiana's Sweet Potato Weevil Protocol.

21. Purportedly, the Louisiana Sweet Potato Weevil Protocol was promulgated for health and safety reasons. However, as indicated by Appendix page 6a-Map, the areas into which Texas sweet potatoes will be shipped are already infested with the sweet potato weevil. Furthermore, Louisiana has not provided any evidence that Texas is a source for the sweet potato weevil. The Sweet Potato Weevil Protocol does not, therefore, provide a health or safety benefit to the State of Louisiana and the costs imposed on the Plaintiffs by the protocol greatly outweigh any conceivable benefit claimed by Louisiana.

22. Texas and Louisiana sweet potato growers and shippers are in direct competition with each other. The Sweet Potato Weevil Protocol prevents Texas sweet potatoes from entering into the processing plants located in already infested areas of Louisiana. This limitation confers a direct economic benefit on Louisiana growers and shippers at the expense of Texas growers. Thus, the Sweet Potato Weevil Protocol constitutes economic discrimination against Texas sweet potatoes imposed to protect the sweet potato growers of Louisiana.

23. Plaintiffs have no other adequate remedies at law and no remedy whatsoever in any other court. Accordingly, this case is one in which the Supreme Court should exercise its original jurisdiction.

IV. CAUSES OF ACTION

INTERFERENCE WITH INTERSTATE COMMERCE

24. Plaintiff repeats and realleges paragraphs 1 through 23.

25. The Defendants and the Sweet Potato Weevil Protocol interfere with interstate commerce in violation of the United States Constitution.

VIOLATION OF PRIVILEGES AND IMMUNITIES CLAUSE

26. Plaintiff repeats and realleges paragraphs 1 through 23.

27. The Defendants and the Sweet Potato Weevil Protocol violate the Privileges and Immunities Clause of the United States Constitution.

RELIEF REQUESTED

Wherefore, Plaintiff prays:

(1) That this Court exercise its original and exclusive jurisdiction over the parties and subject matter;

(2) That this Court issue a declaratory judgment pursuant to the Declaratory Judgment Act and Rule 57 of the Federal Rules of Civil Procedure that Louisiana's Sweet Potato Weevil Protocol is an unconstitutional interference on interstate commerce, as well as an infringement of the Privileges and Immunities of the citizens of the State of Texas;

(3) That this Court hear and determine the controversy between the parties, either by referring this case to a Special Master, or in such other manner as the court deems

appropriate, for findings of fact and law and recommendations to this Court;

(4) That a preliminary injunction be issued pursuant to the All Writs Act, Rule 17.2 of the Rules of the Supreme Court, and Rule 65 of the Federal Rules of Civil Procedure restraining the State of Louisiana, and its agents from enforcing the Sweet Potato Weevil Protocol against the State of Texas and its citizens shipping sweet potatoes into Louisiana, or otherwise impeding the sale of Texas sweet potatoes to Louisiana purchasers;

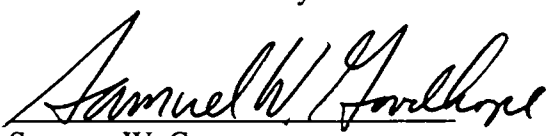
(5) That upon final adjudication of this suit by this Court the temporary injunction requested in (4) be made permanent; and

(6) That the Plaintiff, the State of Texas, have such other and further relief that this Court may deem proper and just.

Respectfully submitted,

DAN MORALES
Attorney General of Texas

JORGE VEGA
First Assistant Attorney General



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April 24, 1995

MEMORANDUM

TO: All State Plant Regulatory Officials

FROM: Craig M. Roussel, Director /s/
Horticulture & Quarantine Programs

RE: Sweet Potato Weevil Requirements

In March, 1995, sweetpotato weevil was found in northeast Louisiana's green tag area. The weevil has been found in one operation in two adjacent storage houses.

Potatoes in these warehouses originated from eight different small growers. Pheromone traps were placed in and around storage houses of these eight growers and thorough visual inspections were made of potatoes in their warehouses on at least two additional occasions. No sweetpotato weevils were detected in any of these eight storage houses.

As a result of this sweetpotato weevil find, Louisiana is implementing a comprehensive pheromone trapping program to more accurately certify growers as being weevil free. This will involve placing pheromone traps in and around storage houses, in seed beds, and in production fields in accordance with the attached protocols.

Accordingly, Louisiana will require that all sweet potatoes, including seed, plants, canners, and fresh market potatoes, shipped to Louisiana from other states under weevil-free status be trapped according to the attached protocols using traps which are secured to prevent tampering. The Southern Plant Board has appointed a committee to adopt uniform trapping standards. However, until those standards can be put into place, Louisiana will require the attached as certification procedures.

If you have any questions, please call at 504/925-7772.

CM:fmm

SWEETPOTATO WEEVIL TRAPPING PROTOCOLS

Beginning March/April 1995

General Information

Traps used will be boll weevil traps, or equivalent, baited with 10 micrograms of synthetic sweetpotato weevil (SPW) sex pheromone. A vapona, or equivalent, insecticide strip will be placed in each trap. Traps should be placed at ground, pallet or canopy level depending on the site to be trapped. Dowel rods or bamboo canes may be used to position traps at proper height as necessary. Security tape should be secured in place on both sides of the lid to the weevil chamber, and should extend down the outside of the chamber beyond the chamber/screen cone juncture so that trap tampering is not possible.

Traps will be deployed at all locations using the following protocol:

Traps will be baited with pheromone lure and placed at the site. Traps will remain in place for three consecutive days, during which time the approximate high and low temperatures for each day should be recorded. At the end of three days, traps should be carefully checked for the presence of SPW. Checks should include examination of the trap itself and the area immediately around the trap. Pheromone lures should be removed (gloved hands only) and stored in a freezer. Unbaited traps may be left in place or moved as needed.

Three weeks after the date of first placement, the traps should again be baited with pheromone lure, and the lure left in the trap for three consecutive days. At the end of three days, traps should be carefully checked for the presence of SPW as mentioned above. High and low temperatures should be recorded daily. This cycle of baiting and checking traps will be continued throughout the growing season in fields and as long as potatoes are in storage sheds.

Pheromone lures can be reused over an extended period of time so long as they are stored in the freezer. The

exact same pheromone lure need not be placed back into the same trap each time.

Trapping in Storage and Packing Sheds

One trap will be placed in each storage or packing shed indicated. The trap should be placed on the floor of the shed or placed so that the base of the trap is in contact with the edge of a pallet box. In addition, two traps should be placed outside the shed, preferrably near an entrance or doorway. If a cull pile is present, a trap also should be placed beside it.

Trapping Seed Beds

One trap will be placed in each seed bed indicated. If the size of the seed bed exceeds 10 acres, one trap per 10 acres should be placed. The trap should be placed on or near the ground early in the season but as plants grow, traps should be placed so that the base of the trap is at a level equal to and in contact with the plant canopy. Traps should be randomly moved throughout the seed bed area at the beginning of each cycle.

Trapping Production Fields

One trap should be placed for every 10 acres of production field. The traps should be placed on or near the ground early in the season but as plants grow, traps should be placed so that the base of the trap is at a level equal to and in contact with the plant canopy. Traps should be randomly moved throughout the field at the beginning of each cycle.

Paperwork and Field Activity

It is important that traps be checked and serviced on a strict schedule. Security tape should be carefully checked once a trap has been placed, to be certain that the tape has not been broken accidentally by the inspector during servicing. Also, any evidence of trap tampering should be reported immediately. New security tape will need to be placed for each trapping cycle.

Louisiana Department of Agriculture & Forestry
Office of Agricultural & Environmental Sciences
P.O. Box 3118
Baton Rouge, Louisiana 70821-3118

Bob Odom
Commissioner

Matthew J. Keppinger, III
Assistant Commissioner

FAX MEMORANDUM
TO: Dr. Shashank Nilakhe
Plant Quality Program
Texas Dept. of Agriculture
P.O. Box 12847, Capital Station
Austin, TX 78711

May 10, 1995
FROM: Tad N. Hardy,
Admin. Coord. /s/
Louisiana Dept. Agric.
& For.
P.O. Box 3118
Baton Rouge LA 70809

Dear Shashank:

The following information may be helpful in planning your SPW trapping efforts for Texas sweet potato growers wishing to ship to Louisiana under green tag status. These requirements are not specific to Texas -- all states must meet the Louisiana protocols in order to ship to Louisiana under weevil-free status.

1. Use of personnel other than official employees of TDA is an acceptable alternative as long as those personnel are objective state officials. Texas A&M personnel are acceptable; however, technicians and/or field workers collecting data or checking traps should in no way be involved in or tied to the state's sweet potato industry or growers. TDA will be required to provide documentation of all trapping procedures.

2. Funds to support the SPW trapping program, if supplied by growers or the sweet potato industry, should be channeled through an official state agency rather than supplied directly to those persons responsible for the trapping activities.

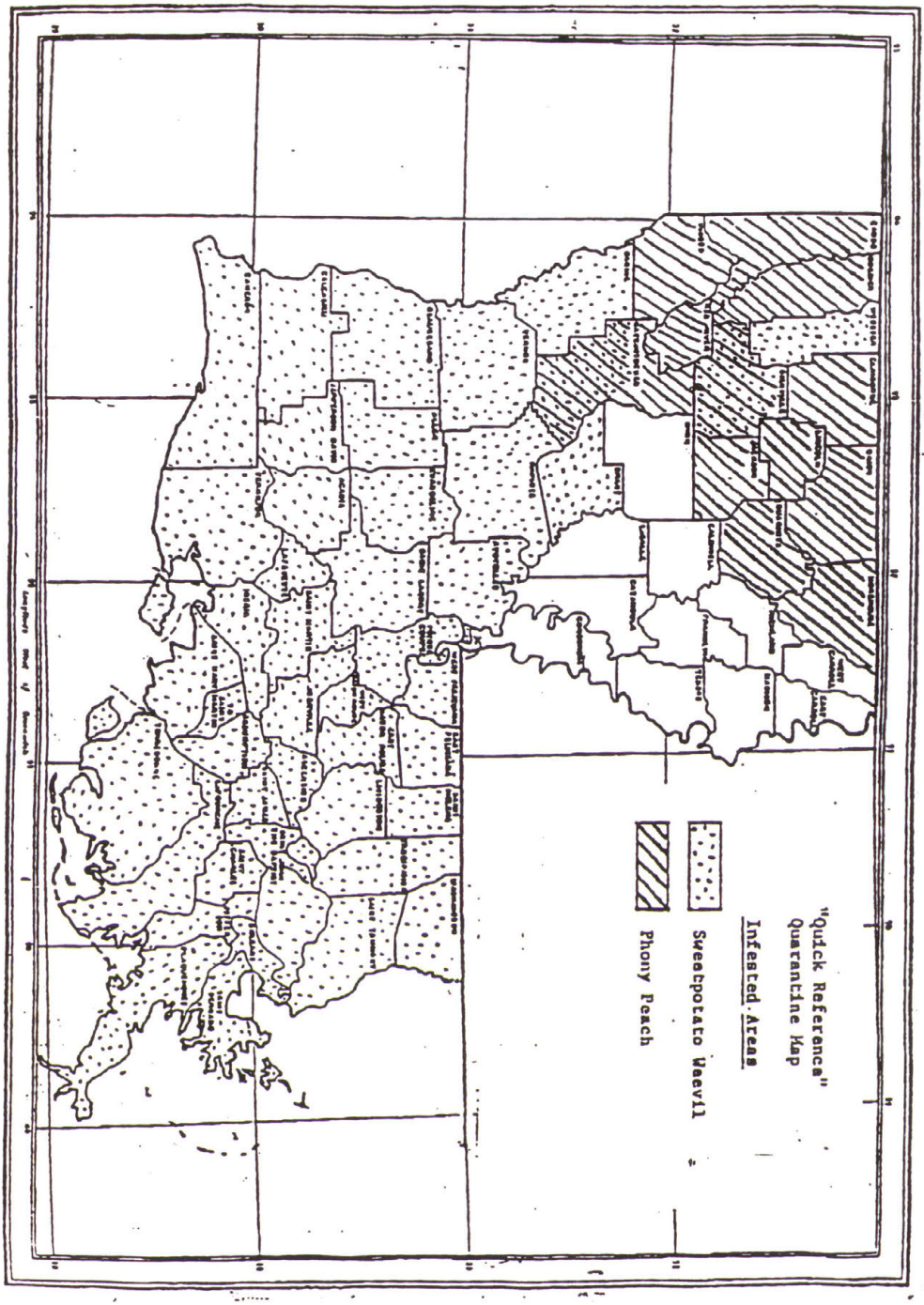
3. Louisiana will require TDA to supply a list of growers participating in the SPW trapping program who are certified by TDA to ship into Louisiana. Any potatoes shipped into Louisiana by individuals not on the official TDA list will be subject to quarantine action. If questionable shipments are identified in our year-round routine marketplace inspection program, TDA will be asked to confirm whether the shipments meet certification criteria.

4. Attached is a map indicating Louisiana's SPW infested parishes. Infested parishes are shown by dotted areas. Please keep in mind, however, that regardless of the destination in Louisiana, any sweet potatoes bearing a green tag must have met the trapping criteria.

We appreciate your efforts in working with the Texas sweet potato industry to establish a trapping program to determine weevil statuts. If you have additional questions please give me a call at (504) 925-7772; FAX (504) 925-3760.

cc: Craig Roussel, LDAF

6a - Map


"Quick Reference"
Quarantine Map
Infested Areas
Sweetpotato Weevil
Phony Peach

1995

North Carolina
Department of Agriculture
Plant Industry Division

March 8, 1995

MEMORANDUM

TO: All North Carolina Sweet Potato Growers

FROM: W.A. Dickerson
Plant Pest Administrator

SUBJECT: Suspension of Movement of Sweet Potatoes from Louisiana into North Carolina

Until further notice, the movement of sweet potatoes from Louisiana into North Carolina is prohibited, unless fumigated in a manner approved by the North Carolina Department of Agriculture. This action is being taken under authority of the North Carolina Plant Pest Law (G.S. 106, Article 36-TO 2:48A .09000 Sweet Potato Weevil). North Carolina growers who have received seed potatoes from Louisiana are asked to contact Lloyd Garcia (919-733-6930) and arrange for sweet potato weevil traps to be placed around seed beds or remaining tuber stock.

The sweet potato weevil was found in a seed potato storage house in West Carroll Parish in northern Louisiana last week. Louisiana Department of Agriculture officials and growers are working feverishly to determine the extent of the problem. They will notify us of North Carolina growers who received potatotes from any infested houses. The North Carolina Department of Agriculture will in turn, contact such growers and trap the seed beds to determine if weevil infested potatoes did move into North Carolina.

At this time, Louisiana officials do not know the extent of the problem. Our restrictions will remain in place until the problem is better understood.

No. _____

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vs.

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Defendants.

MOTION FOR PRELIMINARY INJUNCTION

TO THE HONORABLE ANTONIN SCALIA, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND THE CIRCUIT JUSTICE FOR THE FIFTH JUDICIAL DISTRICT:

Now come the State of Texas, the Texas Department of Agriculture ("TDA"), and Rick Perry, in his official capacity as Commissioner of Agriculture, Plaintiffs in the above-entitled matter, and respectfully move this Court for a preliminary injunction, restraining the State of Louisiana, Louisiana Department of Agriculture and Forestry

("LDAF"), and Bob Odom, in his official capacity as Commissioner, LDAF, Defendants herein, from enforcing the Sweet Potato Weevil Protocol against the State of Texas, or its growers or shippers or from quarantining any sweet potatoes grown in Texas until the motion on file with this Honorable Court for leave to file a Bill of Complaint against Defendants has been passed upon by this Court and the matters set forth in the Bill of Complaint be determined.

In the alternative, Plaintiffs pray for such additional decree or orders as may be just and proper to restrain the State of Louisiana, and its officials, agents or representatives from enforcing the Sweet Potato Protocol, until such time as this Honorable Court can pass upon the Motion for Leave to File a Bill of Complaint and, should such motion be granted, until such time as the controversies set forth in said Bill of Complaint are decided and the rights of the parties adjudicated.

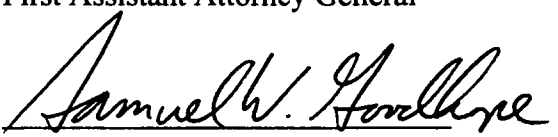
This motion is based on the matters fully detailed in Plaintiffs Motion for Leave to File a Bill of Complaint and Bill of Complaint, as well as in the supporting brief filed and served herewith.

Dated: July 13, 1995.

Respectfully submitted,

DAN MORALES
Attorney General of Texas

JORGE VEGA
First Assistant Attorney General



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BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE BILL OF COMPLAINT, BILL OF COMPLAINT, AND MOTION FOR A PRELIMINARY INJUNCTION

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CONSTITUTIONAL PROVISIONS

FEDERAL RULES

This brief is served and filed with the Motion for Leave to File Bill of Complaint, the Bill of Complaint, and the Motion for a Preliminary Injunction.

I. THE MOTION FOR LEAVE TO FILE THE BILL OF COMPLAINT SHOULD BE GRANTED BECAUSE THE PLAINTIFFS HAVE AND WILL CONTINUE TO SUFFER WRONG CAUSED BY THE STATE OF LOUISIANA AND, FURTHERMORE, ESSENTIAL NOTIONS OF FEDERALISM ARE AT STAKE.

A. Standing

Pursuant to Article III of the United States Constitution, the United States Supreme Court has original jurisdiction in all cases "in which a State shall be a party." U.S. CONST. ART. III, § 2, CL. 2. 28 U.S.C. § 1251(a) codifies this grant of authority: the United States Supreme Court shall have "original and exclusive jurisdiction of all controversies between two or more States." The "controversy" requirement is satisfied when the "complaining State has suffered a wrong through the action of the other State, furnishing grounds for judicial redress, or is asserting a right against the other State which is susceptible of judicial enforcement according to the accepted principles of the Common Law or equity systems of jurisprudence." *Massachusetts v. Missouri*, 308 U.S. 1, 15 (1939).

Whether the Supreme Court will entertain a "controversy" depends upon the "seriousness and dignity of the claims." *Illinois v. City of Milwaukee*, 406 U.S. 91, 93 (1972) (quoting *Utah v. United States*, 394 U.S. 89, 95 (1969)). As described more fully *infra*, the Sweet Potato Weevil Protocol[1] raises serious constitutional questions

[1] The "Sweet Potato Weevil Protocol" is described in the Bill of Complaint and its attached appendices. Essentially, the protocol, for

regarding the State of Louisiana's interference with the flow of interstate commerce, as well as to what extent one state can enact measures that infringe upon the Privileges and Immunities of the citizens of another state. This case clearly "implicate[s] the unique concerns of federalism forming the basis of [this Court's] original jurisdiction." *Maryland v. Louisiana*, 451 U.S. 725, 743 (1981).[2]

The State of Texas has standing to bring this original action in its sovereign and governmental capacity in order to protect the State of Texas and its citizens from unconstitutional restrictions on interstate trade and commerce imposed by the State of Louisiana. In order to protect the rights of its citizens to freely sell and transport their crops across and into the Louisiana border, the State of Texas Department of Agriculture ("TDA") must implement a

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purposes of this action, consists of both the announced protocol by the State of Louisiana (Appendix pages 1a through 4a to the Bill of Complaint) and the Letter of May 10, 1995 from Bob Odom, Louisana Department of Agriculture and Forestry, to Dr. Shashank Nilakhe (Appendix pages 5a through 6a to the Bill of Complaint).

[2] Moreover, in light of the Court's recent decision in *United States v. Lopez*, 115 S.Ct.1624 (1995) (Congress exceeded its authority in enacting the Gun-Free School Zones Act of 1990) regarding the scope and contours of the Commerce Clause, it may be a propitious time to revisit the so-called "Dormant Commerce Clause" in order to ascertain to what extent states have authority with respect to restricting interstate commerce.

The State of Texas is mindful, however, that the Privileges and Immunities Clause, U.S. CONST. ART. IV § 2, might more appropriately provide the constitutional protection for Texas citizens. *See Tyler Pipe Industries v. Washington Department of Revenue*, 483 U.S. 232, 107 S.Ct. 2810, 2829 (1987) (J. SCALIA, concurring in part and dissenting in part) (discrimination by one State against citizens of other States is regulated by the Privileges and Immunities Clause and not by the Commerce Clause). *See also* footnote 5 *infra*.

program which will significantly cost the taxpayers of the State of Texas.[3]

In addition, the imposition of the program infringes upon the self-governing authority of the State of Texas protected by the Tenth Amendment to the Constitution[4] because it must, in order to fulfill its duties and responsibilities set forth in the Texas Agriculture Code, mobilize its agency resources in accordance with the dictates of the Louisiana Department of Agriculture and Forestry ("LDAF") in order to ensure that the Texas growers' abilities to freely sell and transport their crops into Louisiana are fully preserved. That is, the State of Louisiana seeks to "commandeer" the resources of the State of Texas and its taxpayers by essentially mandating the implementation of the Sweet Potato Weevil Protocol.

In addition, the State of Texas has standing to bring this action in its *parens patriae* capacity on behalf of the citizens of Texas in order to protect their interests under the Privileges and Immunities Clause of the United States Constitution, U.S. CONST. ART. IV, § 2, CL. 2, as well as their right to engage in interstate commerce. "[A state] may act as the representative of its citizens in original actions where the injury alleged affects the general population of a State in a substantial way." *Maryland v. Louisiana*, 451 U.S. 725, 737 (1981); *Missouri v. Illinois*, 200 U.S. 496 (1906); *Kansas v. Colorado*, 185 U.S. 125, 142 (1902).

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[3] Under the terms of the protocol, TDA will not be able to comply with the protocol in any event. *See* section II.B.2 (page 9) *infra.*

[4] U.S. CONST. amend. X (the "Tenth Amendment") provides

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

B. Violations

1. THE SWEET POTATO WEEVIL PROTOCOL VIOLATES THE CONSTITUTION'S PROSCRIPTION AGAINST STATE INTERFERENCE WITH INTERSTATE TRADE.

ART. I, § 8, CL. 3 of the United States Constitution, hereinafter, the "Commerce Clause," grants Congress the power "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." "Although the [Commerce Clause] thus speaks in terms of powers bestowed upon Congress, the Court long has recognized that it also limits the power of the States to erect barriers against interstate trade." *Maine v. Taylor*, 477 US. 135, 138 (1986), citing *Lewis v. BT Investment Managers, Inc.*, 477 U.S. 27, 35 (1980). This proscription against states erecting barriers against interstate trade has been premised on the so-called "negative" or "dormant Commerce Clause."[5]

There are two lines of analyses with respect to the dormant Commerce Clause: "first, whether the [measure] discriminates against interstate commerce, [*Philadelphia v. New Jersey* , 437 U.S. 617, 624 (1978)]; and second, whether the [measure] imposes a burden on interstate commerce that is clearly excessive in relation to the putative local benefits,' *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142, 90 S.Ct. 844, 847, 25 L.Ed.2d 174 (1970)." *C & A Carbone, Inc. v. Town of Clarkstown, N.Y.*, 114 S.Ct. 1677 (1994). Typically, the essential vice in the measures found unconstitutional is that they bar the import of the processing services.[6] However, it

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[5] There is no textual support for the "dormant" or "negative Commerce Clause" in the Constitution: "the 'negative Commerce Clause' is "'negative' not only because it negates state regulation of commerce, but also because it does not appear in the Constitution. [Citations omitted]." *Oklahoma Tax Commission v. Jefferson Lines, Inc.*, 115 S.Ct. 1331, 1346 (1995) (J. SCALIA, J. THOMAS concurring).

[6] *See Minnesota v. Barber*, 136 U.S. 313 (1890) (striking down a Minnesota statute that required any meat sold within the state, whether

is just as obstructive of interstate commerce to bar the import of the product to be "serviced," or in this case, processed.

With respect to either path of dormant Commerce Clause analyses, "the critical consideration is the overall effect of the statute on both local and interstate activity." *Brown-Forman Distillers Corporation v. New York State Liquor Authority*, 476 U.S. 573, 579 (1970). Under either line of "dormant Commerce Clause" analyses, the Sweet Potato Weevil Protocol is unconstitutional.

a. The Sweet Potato Protocol Clearly Discriminates Against Texas Sweet Potato Growers.

The Sweet Potato Weevil Protocol by its terms discriminates against out-of-state sweet potatoes. *See* Appendix pages 1a through 6a to the Bill of Complaint. Furthermore, the Sweet Potato Weevil Protocol discriminates against interstate commerce.

The protocol is no less discriminatory against Texas growers simply because in-state growers may be covered by

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originating within or without the State, to be examined by an inspector within the State); *Foster-Fountain Packing Co. v. Haydel*, 278 U.S. 1, 49 S.Ct. 1, 73 L.Ed. 147 (1928) (striking down a Louisiana statute that forbade shrimp to be exported unless the heads and hulls had first been removed within the State); *Johnson v. Haydel*, 278 U.S. 16 (1928) (striking down analogous Louisiana statute for oysters); *Toomer v. Witsell*, 334 U.S. 385, 68 S.Ct. 1156, 92 L.Ed. 1460 (1948) (striking down South Carolina statute that required shrimp fishermen to unload, pack, and stamp their catch before shipping it to another State); *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 90 S.Ct. 844, 25 L.Ed.2d 174 (1970) (striking down Arizona statute that required all Arizona-grown cantaloupes to be packaged within the State prior to export); *South-Central Timber Development, Inc. v. Wunnicke*, 467 U.S. 82, 104 S.Ct. 2237, 81 L.Ed.2d 71(1984) (striking down an Alaska regulation that required all Alaska timber to be processed within the State prior to export).

the same protocol.[7] *C & A Carbone, at 1682* ("The [solid waste flow control] ordinance is no less discriminatory because in-state or in-town processors are also covered by the prohibition."); *Fort Gratiot Landfill v. Michigan Department of Natural Resources*, 112 S.Ct. 2019, 2025 (1992) ("[In *Brimmer v. Rebman*, 138 U.S. 78 (1891)], [w]e concluded that the [Virginia] statute violated the Commerce Clause even though it burdened Virginia producers as well as the Illinois litigant before the Court."); *Dean Milk Company v. Madison*, 340 U.S. 349, 354 (1951) (violation of Commerce Clause even though a Wisconsin city ordinance discriminated against all producers, whether in Wisconsin or not, which were more than five miles from the center of the city).

It is too narrow to focus on the intended consequence of a state action, much less the stated or purported reasons for the state action.[8] Rather, a state's action may be found to constitute "economic protectionism" on the basis of either discriminatory purpose or discriminatory effect. *Chemical Waste Management, Inc. v. Hunt*, 112 S. Ct. 2009 (1992). Once a statute, rule, or regulation is shown to discriminate against interstate commerce "either on its face or in practical effect," the burden falls on the state seeking to impose the discriminating statue, rule, or regulation that the restriction "serves a legitimate local purpose," and that this purpose

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[7] The State of Texas notes that it is unclear to what extent the protocol is actually being applied intrastate by the State of Louisiana.

[8] Upholding a state action because it professed to be a health regulation would leave the Commerce Clause unable to limit state action except "for the rare instance where a state artlessly discloses an avowed purpose to discriminate against interstate goods." *Dean Milk*, 340 U.S. 349, 354.

could not be served as well by available nondiscriminatory means. *Maine v. Taylor*, 477 U.S. at 138.[9]

The Sweet Potato Weevil Protocol discriminates on its face as well as in effect against the State of Texas and its citizens, and, furthermore, clearly impedes interstate commerce. Therefore, the State of Louisiana carries the burden of showing why and how the Sweet Potato Weevil Protocol serves a legitimate local purpose. Because most of the parishes in Louisiana are already infected and because the State of Louisiana has not commenced a program to eradicate the infestations (but rather has adopted a program of weevil containment to the parishes already infested), it is impossible for Louisiana to show that any legitimate purpose is furthered by preventing the sale of uninfested Texas sweet potatoes to processors located in sweet potato-infested parishes.

Moreover, the protocol could use far less restrictive means of accomplishing its putative goals. For example, given its preference for containment, the State of Louisiana could have instituted a program to protect the few remaining parishes which are not infested by the sweet potato weevil.

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[9] As stated in *Hughes v. Oklahoma*, 441 U.S. 335, 338 (1979):

> The burden to show discrimination rests on the party challenging the validity of a statute, but "when discrimination against commerce . . . is demonstrated, the burden falls on the State to justify it both in terms of the local benefits flowing from the statute and the unavailability of nondiscriminatory alternatives adequate to preserve the local interests at stake." *Hunt v. Washington Apple Advertising Commission*, 432 U.S. 333, 353 (1977).

As stated, furthermore, in *C & A Carbone*, 114 S.Ct. at 1683:

> Discrimination against interstate commerce in favor of local business or investment is *per se* invalid, save in a narrow class of cases in which the municipality can demonstrate, under rigorous scrutiny, that it has no other means to advance a legitimate local interest.

Or, the State of Louisiana could have instituted a protocol which controlled sweet potatoes from entering Louisiana's farm fields, but not its processing plants.

Unfortunately, the State of Louisiana has decided to use the blunt ax of the Sweet Potato Weevil Protocol to further whatever its goals may be. This protocol sweeps too broadly and too indiscriminately imposes needless burdens.

b. The Sweet Potato Protocol Does Not Provide Sufficient Benefits Relative the Costs Incurred by the State of Texas and Its Citizens.

Even if it were shown that the Sweet Potato Weevil Protocol did not discriminate on its face or in effect against out-of-state sweet potatoes, as well as against interstate commerce, the costs imposed on Texas and its citizens far outweigh any benefit to Louisiana stemming from the implementation of the Sweet Potato Weevil Protocol.

The benefits from the Sweet Potato Weevil Protocol accruing to Louisiana are nonexistent--most of the parishes in Louisiana are already infested. *See* Appendix page 6a-Map to the Bill of Complaint. The costs imposed on the State of Texas and its taxpayers, however, include not only the $40,000 (approximately)[10] needed to implement the protocol in conformance with Louisiana mandate, but also include the costs to Texas growers of not being able to sell sweet potatoes to the processors located in the already-infested areas of Louisiana.

Thus, the State of Louisiana cannot, under the guise of its police powers, interfere with the trade in sweet potatoes on the basis of origin because the putative benefits are

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[10] This assumes that the State of Texas could implement the Sweet Potato Weevil Protocol at all at this time. It is impossible to comply at this point. *See* section II.B.2. (page 9) *infra*.

nonexistent while the costs on Texas and its citizens are exorbitant. Rather the protocol should be seen for what it is: economic protectionism. Such protectionism is need for the Louisiana because of the lower quality of the infested sweet potatoes and because of the loss of outside markets for the sweet potatoes. *See* Appendix 1C to the Bill of Complaint.

2. THE SWEET POTATO WEEVIL PROTOCOL VIOLATES THE PRIVILEGES AND IMMUNITIES CLAUSE.

Article IV § 2 of the United States Constitution, hereinafter the "Privileges and Immunities Clause," provides:

> The Citizens of each State are entitled to all the Privileges and Immunities of Citizens in the several States.

The Privileges and Immunities Clause "was designed to insure to a citizen of State A who ventures into State B the same privileges which the citizens of State B enjoy." *Toomer v. Witsell*, 334 U.S. 385, 395 (1948).[11]

a. A Protected "Privilege" or "Immunity" is Involved In This Case.

In order to determine whether there are violations of the Privileges and Immunities Clause, it must first be determined whether there exists a "privilege" to be protected. *United Building & Construction v. Mayor & Council of Camden*, 465 U.S. 208, 219 (1984).

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[11] In *Toomer*, South Carolina attempted to regulate commercial shrimp fishing within three miles of the coast of South Carolina by imposing a license fee for non-resident shrimpers equal to 100 times that required for resident shrimpers. *Id.* The Court held that the license fee violated the Privileges and Immunities Clause because the result was, in effect, total exclusion of out-of state shrimpers. *Id.* at 399.

Importantly, according to *Toomer*: "it was long ago decided that one of the privileges which the clause guarantees to citizens of State A is that of doing business in State B on terms of substantial equality with the citizens of that State."[12] *Id.* at 396. Furthermore, as stated in *United Building* at 220, "the pursuit of a common calling is one of the most fundamental of those privileges protected by the Clause." Thus, it is clear that the privilege of selling sweet potatoes—the "common calling"—is a "privilege" protected by the Privileges and Immunities Clause.

The State of Louisiana, furthermore, has created a *de facto* classification: on one hand there are Louisiana sweet potato growers, and on the other hand there are Texas sweet potato growers. The Texas sweet potato growers/sellers engaged in their "calling" (a protected "privilege") are being treated differently.

b. There Is No Basis for the State of Louisiana to Discriminate Against Texas Growers. Furthermore, There Are Less Intrusive Means Of Accomplishing Louisiana's Putative Goals.

Having determined that an activity is protected by the Privileges and Immunities Clause, the next step is to analyze the activity under the two-pronged framework as outlined by *Hicklin v. Orbeck*, 437 U.S. 526 (1978), and *United Building*.

The two-pronged test inquiry is: "whether [valid, independent] reasons exist [for discriminating between out-of-state citizens and state citizens] and whether the degree of

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[12] Citing, *inter alia*, *Ward v. Maryland*, 12 Wall. 418, 20 L.Ed. 449 (1870). *See Baldwin v. Fish and Game Commission of Montana*, 436 U.S. 371, 384 (1978) (the Privileges and Immunities Clause prevents a state from imposing unreasonable burdens on citizens of other states in their pursuit of common callings within the state).

discrimination bears a close relation to them." *United Building* 465 U.S. at 222 (citing *Toomer* 334 U.S. at 396).

"A 'substantial reason for the discrimination' will not exist, however, 'unless there is something to indicate that non-citizens constitute a peculiar source evil at which the [discriminatory] statute is aimed.'" *Hicklin v. Orbeck*, 437 U.S. 518, 527 (citing *Toomer* 334 U.S. at 398). The citizens of Texas do not represent a threat and are not a "peculiar source of evil" to the State of Louisiana. There is no evidence indicating that sweet potatoes produced by Texas farmers are either the primary or continuing source of Louisiana's sweet potato weevil infestation. Therefore, there is no substantial reason for the discrimination against Texas farmers.

Furthermore, because there is no indication that the Texas growers represent a source of the evil to be alleviated, the degree of discrimination against them by the State of Louisiana does not bear a substantial relationship to the achievement of that state's objectives.

With regard to the second prong of the inquiry there are less intrusive ways of addressing the sweet potato weevil infestation than those called for by the Sweet Potato Weevil Protocol. *See* I.B.1.b. *supra* (regarding less intrusive means of accomplishing Louisiana's purported purposes).

Because there is "no reasonable relationship between the danger represented by non-citizens and the severe discrimination practiced upon them,"[13] the Sweet Potato Protocol violates the Privileges and Immunities of Texas citizens.

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[13] *See* section II *infra*.

II. THE SWEET POTATO WEEVIL PROTOCOL SHOULD BE DECLARED UNCONSTITUTIONAL AND A PRELIMINARY INJUNCTION SHOULD BE ISSUED TO PREVENT THE DEFENDANTS FROM ENFORCING THE PROTOCOL OR OTHERWISE IMPEDING THE FLOW OF SWEET POTATOES INTO LOUISIANA.

A. Declaratory Judgment

The State of Texas is entitled to a judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 and § 2202,[14] and Rule 57 of the Federal Rules of Civil Procedure because the Sweet Potato Weevil Protocol is unconstitutional, as is described in section I of this brief. It violates:

(a) the Constitution's prohibition against states interfering with interstate commerce; and

(b) the Privileges and Immunities Clause of the United States Constitution.

B. Preliminary Injunction

In addition to seeking declaratory relief, the State of Texas seeks a preliminary injunction to prevent the implementation of the Sweet Potato Weevil Protocol, as well as to prevent the defendants from interfering in the sale,

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[14] The Declaratory Judgment Act (28 U.S.C. § 2201) provides;

> In a case of actual controversy within its jurisdiction, . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.

The term "court of the United States" includes the Supreme Court. 28 U.S.C. § 451.

transport, and shipment of sweet potatoes to processing plants located in Louisiana. Pursuant to the All Writs Act,[15] or through any and all other means that this Court deems necessary, the Plaintiffs request immediate injunctive relief to ensure the Court will have a basis to exercise its original and exclusive jurisdiction.

Rule 17.2 of the rules of the Supreme court provides "[t]he form of pleadings and motions prescribed by the Federal Rules of Civil Procedure shall be followed in an original action . . . ." Rule 65 of the Federal Rules of Civil Procedure provides for preliminary injunctions.[16]

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[15] The All Writs Act, 28 U.S.C. § 1651, provides:

> The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

While the All Writs Act is not a jurisdictional statute, it clearly authorizes a federal court, including the Supreme Court, to issue writs necessary for the exercise of a jurisdiction already existing. *United States v. New York Telephone Co.*, 434 U.S. 159 (1977) and *Stern v. South Chester Tube Co.*, 390 U.S. 606, 608 (1968). The language in the All Writs Act, which provides that a federal court "may issue all writs necessary or appropriate in aid of their respective jurisdictions," vests power in a federal court to issue orders "as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained." *United States v. New York Telephone Co.*, 434 U.S. 159 at 172 (emphasis added).

In this case a preliminary injunction restraining the Defendants and the Sweet Potato Weevil Protocol would aid in preserving the controversy between the State of Texas and the State of Louisiana and would therefore aid in maintaining the original and exclusive jurisdiction of the Supreme Court.

[16] The requirements of Rule 65 apply to all injunctions. *United States v. Thier*, 801 F.2d 1463, 1468 (5th Cir. 1986), *modified on other grounds*, 809 F.2d 249 (5th Cir. 1987).

Assuming, therefore, proper jurisdiction pursuant to Article III of the United States Constitution, U.S. CONST. ART. III, § 2, CL. 2, and 28 U.S.C. § 1251(a), the Court can grant a preliminary injunction in this case if the traditional elements for the need for such relief are shown. *See California v. Texas*, 450 U.S. 1038 (1981) (the Court issued a temporary restraining order staying enforcement of an emergency order promulgated by the Texas Department of Agriculture). Indeed, the Court can order such relief pending action on the motion for leave to file a bill of complaint. *Id.*

In order to obtain a preliminary injunction, a movant has the burden of proving four elements: "a substantial likelihood of success on the merits; a substantial threat that he will suffer irreparable injury if the injunction is not issued; that the threatened injury to him outweighs any damage the injunction might cause to the non-movant; and that the injunction will not disserve the public interest." *Doe v. Duncanville Independent School District*, 994 F.2d 160, 163 (5th Cir. 1993), citing *Apple Barrel Prods. v. Beard*, 730 F.2d 384, 386 (5th Cir. 1984).[17]

1. SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS.

As is discussed in Plaintiffs' Motion for Leave to File Bill of Complaint, *supra* in section I, as well as in the Bill of Complaint, the Sweet Potato Weevil Protocol implemented by the State of Louisiana violates both the Commerce Clause and the Privileges and Immunities Clause of the United States Constitution.

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[17] In *Treasure Salvors v. Unidentified Wrecked and Abandoned Sailing Vessel*, 640 F.2d 560 (5th Cir. 1981), the Fifth Circuit held that the four factors set forth are interrelated, rather than independent

2. IRREPARABLE HARM TO PLAINTIFFS.

With respect to the 1995 growing and harvesting season, Plaintiffs are unable to comply with the Sweet Potato Weevil Protocol implemented by the State of Louisiana. The protocol mandated by the Defendants provides for the implementation of the protocol from the time seeds are planted in the seed bed through the time the sweet potatoes are harvested and shipped. *See* Appendix 1A. The TDA was not notified of the Sweet Potato Weevil Protocol until after the Texas sweet potato planting season. Therefore, even if the implementation of the Sweet Potato Weevil Protocol were a legitimate exercise of Louisiana's authority to regulate interstate trade, the TDA could not comply with the protocol for the 1995 planting season.

Furthermore, even if timing were not an obstacle, the State of Texas will suffer irreparable harm if no immediate injunctive relief is granted. The harvest season for Texas sweet potatoes commences the first week of August. Since Texas does not have any sweet potato processing capabilities, Texas sweet potatoes must be sent to southern Louisiana for processing. It is cost prohibitive for the Texas sweet potato growers to ship the sweet potatoes to North Carolina (the alternative site for processing sweet potatoes). Even if the State of Texas could comply with the Sweet Potato Weevil Protocol as dictated by the State of Louisiana, the taxpayers of Texas would be forced to incur costs for an unnecessary protocol which does not even minimally benefit the already weevil-infested areas of Louisiana.[18]

3. HARM TO PLAINTIFFS OUTWEIGHS ANY DAMAGE THE INJUNCTION MIGHT CAUSE DEFENDANTS.

In the event that this Court denies Plaintiffs' Motion for Preliminary Injunction, the harm to the State of Texas

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[18] *See* section I.B.1.b. (page 8).

will greatly outweigh any perceived harm to the Defendants. The State of Texas ships a significant portion of its sweet potato crops to the State of Louisiana for processing; and, as stated earlier, the State of Texas has no comparable processing capability. The Sweet Potato Weevil Protocol implemented by the State of Louisiana places an undue and unnecessary burden on the shipment of sweet potatoes from Texas into Louisiana.

Plaintiffs acknowledge that a large portion of the Louisiana's sweet potato growing region is infested by the sweet potato weevil. Nevertheless, there is no evidence that the source of the infestation originates in Texas or that Texas sweet potatoes would make Louisiana's weevil problems worse.

Accordingly, the implementation of the Sweet Potato Weevil Protocol against the State of Texas serves no meaningful purpose, and acts only to impinge upon the free flow of commerce between Texas and Louisiana, and the Privileges and Immunities of Texas citizens.

On the other hand, the protocol much harms the State of Texas and its citizenry. In order to implement the required protocol, the State of Texas would be forced to expend, in 1995 alone, in excess of $40,000. Further, as discussed earlier, Texas growers ship a large portion of their crops to Louisiana for processing. If the State of Texas refuses to comply with Louisiana's Sweet Potato Weevil Protocol, all Texas sweet potato slips or crops shipped to Louisiana to be processed will be quarantined, which denies Texas sellers access to Louisiana's buyers, while also denying Louisiana buyers access to Texas sweet potatoes. Given that Texas exports a substantial, multi-million dollar portion of its sweet potato crops to Louisiana, the harm to Texas and its growers and shippers will be extensive.

The sweet potato harvesting season begins in early August, 1995. Hence, if a preliminary injunction is not issued immediately to prevent the Defendants from implementing the Sweet Potato Weevil Protocol against the State of Texas and its citizens, the harm to the State and its citizens will be immediate and significant.

In balancing the harm to Louisiana against the harm to the State of Texas and its growers and shippers, it is clear that the harm to Texas greatly outweighs any alleged harm to Louisiana.

4. THE INJUNCTION WILL NOT DISSERVE PUBLIC INTERESTS.

The issuance of the requested preliminary injunction is not adverse to the public interest. On the contrary, a preliminary injunction only serves to vindicate the public's interest in the free and unfettered flow of interstate commerce, and allows this Court to examine the limitations imposed on a State's power to interfere with interstate commerce.

III. CONCLUSION

Because of the negative impact on Texas sweet potato growers, the State of Texas, and interstate commerce, this is an appropriate case in which this Court should exercise its original, exclusive jurisdiction. There is no other forum for one sovereign state to sue a sister sovereign state. Accordingly, the Motion for Leave to File Bill of Complaint should be granted, and the accompanying Bill of Complaint and all allegations therein reviewed by this Honorable Court. Furthermore, the State of Texas requests that the State of Louisiana, its officers, agents, and employees be enjoined from enforcing its Sweet Potato Weevil Protocol against the State of Texas, its officers, agents, and employees, as well as its citizens until the Motion for Leave to File a Bill of

Complaint against Louisiana has been passed upon and the matters set forth in the Bill of Complaint determined.

Alternatively, Plaintiffs request that this Court issue additional decrees or orders as may be just and proper to enjoin the State of Louisiana, its officers, agents, and employees from enforcing the Sweet Potato Weevil Protocol against the State of Texas, its officers, agents, and employees.

Respectfully submitted,

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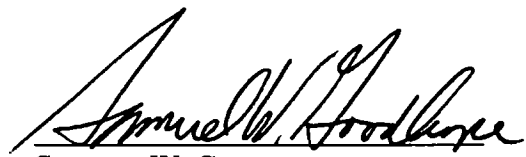

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