No. 132, Original

In the Supreme Court of the United States

STATE OF ALABAMA, STATE OF FLORIDA, STATE OF TENNESSEE, COMMONWEALTH OF VIRGINIA, AND THE SOUTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT COMMISSION, PLAINTIFFS

v.

STATE OF NORTH CAROLINA

ON MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Whether this Court should exercise its original and exclusive jurisdiction, under 28 U.S.C. 1251(a), over a suit, brought by four States and a compact commission against another compacting State, seeking a remedy for an alleged breach of an interstate compact addressing the regional management of low-level radioactive waste.

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This brief is submitted in response to the order of this Court inviting the Solicitor General to express the views of the United States.

STATEMENT

Article III, Section 2, of the United States Constitution provides that this Court shall have original jurisdiction over cases "in which a State shall be Party." U.S. Const. Art. III, § 2. Congress has additionally provided that the Court shall have original and exclusive jurisdiction over "all controversies between two or more States." 28 U.S.C. 1251(a). The issue in this case is whether the Court should exercise original jurisdiction over a suit brought by the States of Alabama,

Florida, and Tennessee, the Commonwealth of Virginia, and the Southeast Interstate Low-Level Radioactive Waste Management Commission (Southeast Commission), against the State of North Carolina, seeking a remedy for North Carolina's alleged breach of the Southeast Interstate Low-Level Radioactive Waste Management Compact (Southeast Compact) (reproduced at Br. in Opp. App. 5a-26a). That Compact was authorized by Congress in 1986 through the Omnibus Low-Level Radioactive Waste Interstate Compact Consent Act, Pub. L. No. 99-240, Tit. II, § 223, 99 Stat. 1872 (Compact Consent Act).

1. The Compact Clause of the Constitution provides that "No State shall, without the Consent of Congress, * * * enter into any Agreement or Compact with another State." U.S. Const. Art. 1, § 10, Cl. 3. See *United States Steel Corp.* v. *Multistate Tax Comm'n*, 434 U.S. 452 (1978). Congress has enacted legislation authorizing the States to enter into regional interstate compacts to address the disposal of low-level radioactive waste. See Compact Consent Act, Pub. L. No. 99-240, Tit. II, 99 Stat. 1859. The Southeast Compact, one of several such interstate compacts, is an agreement originally among the States of Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia. Southeast Compact, Art. 7(A), 99 Stat. 1878; Br. in Opp. App. 21a. Each State enacted legislation enabling it to enter into the Compact. *E.g.*, N.C. Gen. Stat. § 104F-1 (1998) (repealed July 22, 1999).

The States entered into the Southeast Compact for the purpose of, *inter alia*, creating "the instrument and framework for a cooperative effort" to "provide sufficient facilities for the proper management of low-level radioactive waste generated in the region." See Southeast Compact, Art. 1, 99 Stat. 1872; Br. in Opp.

App. 6a. Under the Compact, a pre-existing facility in Barnwell County, South Carolina, would initially provide for the disposal of the region's low-level radioactive waste, but the Compact provided that "in no event shall this disposal facility serve as a regional facility beyond December 31, 1992." See Southeast Compact, Art. 2(10), 99 Stat. 1873; Br. in Opp. App. 8a. The Compact provided that the Southeast Commission would develop and adopt procedures and criteria for selecting one of the compacting States as the host State for the next regional facility. Southeast Compact, Art. 4(E)(6), 99 Stat. 1875; Br. in Opp. App. 12a-13a.

The Southeast Commission consists of two representatives of each member State, each of whom is entitled to one vote. Southeast Compact, Art. 4(A) and (B), 99 Stat. 1874; Br. in Opp. App. 11a. Upon becoming a party to the Southeast Compact, each member State was required to pay $25,000 to the Commission for use in covering the Commission's costs. Southeast Compact, Art. 4(H)(1), 99 Stat. 1876; Br. in Opp. App. 15a. In addition, the Compact requires each State hosting a regional waste disposal facility to levy "special fees or surcharges on all users of such facility" to be paid to the Commission to the extent required to cover its annual budget. Southeast Compact, Art. 4(H)(2), 99 Stat. 1876; Br. in Opp. App. 15a-16a.

The Southeast Compact confers on the Commission various administrative duties and powers. Southeast Compact, Art. 4(E), 99 Stat. 1874-1875; Br. in Opp. App. 11a-14a. Those powers include the authority to impose sanctions against any party State that fails to comply with the Compact's provisions or to fulfill the obligations incurred by becoming a party to the Compact. Southeast Compact, Art. 7(F), 99 Stat. 1879; Br. in Opp. App. 23a. The Compact specifically provides:

> Any party state which fails to comply with the provisions of this compact or to fulfill the obligations incurred by becoming a party state to this compact may be subject to sanctions by the Commission, including suspension of its rights under this compact and revocation of its status as a party state.

Ibid. Sanctions may be imposed "only upon the affirmative vote of at least two-thirds of the Commission members." *Ibid.*

2. The present controversy arises from the Southeast Commission's decision to sanction the State of North Carolina for what the Commission found to be North Carolina's failure to comply with its Compact obligations. In 1986, the Commission chose North Carolina as the host State for a regional waste disposal facility. See Mot. for Leave to File Bill of Complaint 7 (Mot.). To assist in developing the facility, the Commission appropriated money from its annual budget for a trust fund for North Carolina's use in creating the facility. Mot. 9; Br. in Opp. 4-5. The Commission also adopted a Capacity Assurance Charge on waste sent to the Barnwell County, South Carolina, facility "[t]o assure the timely development of the second regional disposal facility in North Carolina." Mot. 8-9 (quoting Mot. App. 39a); Br. in Opp. 5. In 1990, however, North Carolina notified the Commission that it could not meet the January 1, 1993, target date for completion of the facility. See Mot. 9. The Commission nonetheless continued to help fund the development of the facility through additional fees, including a Regional Access Fee and an Out-of-Region Access Fee, charged on waste sent to the Barnwell County facility. See Mot. 9-10.

In December 1994, North Carolina informed the Southeast Commission that the opening of the new facility would be postponed until 1998. Mot. 10. In 1995, South Carolina withdrew from the Compact after the Commission rejected that State's proposal to extend the operation of the Barnwell County facility for all of the member States, but deny access to North Carolina until North Carolina issued a license for the new facility. *Id.* at 11. After South Carolina's withdrawal, the Commission informed North Carolina that additional Commission funding would be unavailable, because the Commission could no longer obtain fees from the Barnwell County site. See *id.* at 11-12. In June 1996, North Carolina notified the Commission that it could not continue developing the second facility without further funding from the Commission. *Id.* at 12-13. The Commission and North Carolina engaged in further discussions regarding the funding issue, but were unable to resolve their differences. See *id.* at 13-16.

On June 21, 1999, the Florida and Tennessee representatives requested that the Southeast Commission sanction North Carolina. Mot. 16. The sanctions complaint alleged that, by failing to provide the second disposal facility for the region, North Carolina had failed to fulfill its obligations as a member State under the Southeast Compact. *Ibid.* The complaint sought, *inter alia*, the return of nearly $80 million in funding that the Commission had provided to North Carolina to assist in developing the facility. *Ibid.*

On July 26, 1999, North Carolina withdrew from the Southeast Compact, alleging that the Commission had violated the Compact by cutting off supplemental funding of the facility and stating that it "had no option but to" withdraw. See Mot. 17 (quoting Mot. App. 133a).

In November 1999, the Commission sent North Carolina notice of a hearing on the sanctions complaint. *Ibid.* The hearing was held in December 1999, but North Carolina did not participate. *Id.* at 17-18. North Carolina asserted that the Commission lacked jurisdiction to hold the sanctions hearing because North Carolina had voluntarily withdrawn from the Compact. Br. in Opp. 10-11.

After the hearing, the Commission unanimously found that North Carolina had violated the Southeast Compact. Mot. 18. It ordered North Carolina to repay $79,930,337 to the Commission in addition to interest accruing from January 1, 1998, the date when North Carolina stopped its work on the second facility. *Ibid.* The Commission also ordered North Carolina to pay the Commission's attorney's fees and $10 million for the loss of revenue that the Commission would have received from the second facility. *Ibid.* The Commission directed North Carolina to comply with the sanctions order by July 10, 2000. *Ibid.* North Carolina did not comply with the order. See *ibid.*

In response, the Southeast Commission moved for leave to file a bill of complaint in this Court against North Carolina seeking enforcement of its sanctions order. See Motion for Leave to File Bill of Complaint, *Southeast Interstate Low-Level Radioactive Waste Management Commission* v. *North Carolina*, 531 U.S. 942 (2000) (No. 131, Original). The Commission invoked this Court's original jurisdiction on the ground that the Southeast Compact grants the Commission the power, upon a majority vote of its members, to "act or appear on behalf of any party state or states," as "an intervenor or party in interest before Congress, state legislatures, any court of law, or any federal, state, or local agency, board, or commission which has juris-

diction over the management of wastes." Southeast Compact, Art. 4(E)(10), 99 Stat. 1875; Br. in Opp. App. 14a. The Court invited the Solicitor General to express the views of the United States. See 531 U.S. 942 (2000).

The United States, as amicus curiae, urged the Court to deny the Southeast Commission's motion for leave to file a bill of complaint because the proposed suit did not fall within the Court's exclusive original jurisdiction over "all controversies between two or more States." 28 U.S.C. 1251(a). U.S. Amicus Br., *Southeast Interstate Low-Level Radioactive Waste Management Commission* v. *North Carolina*, 533 U.S. 926 (2001) (No. 131, Original) (reproduced at Mot. App. 1a-23a). The United States observed that the Commission is not itself a State for purposes of this Court's original jurisdiction, that it was questionable whether Congress could authorize the Commission to file suit in the place of a State, and that, in any event, there was no persuasive reason to believe that Congress had intended that the Commission could invoke this Court's exclusive original jurisdiction under 28 U.S.C. 1251(a). U.S. Amicus Br. 6-17 (Mot. App. 11a-22a). This Court subsequently denied the Commission's motion for leave to file a bill of complaint. 533 U.S. 926 (2001).

Four of the compacting States, together with the Southeast Commission, have now invoked this Court's original jurisdiction, seeking a remedy for North Carolina's alleged breach of the Southeast Compact. They specifically seek a determination whether (1) the Southeast Commission acted within its power under Article 4(F) of the Compact in issuing a sanctions order requiring North Carolina to disgorge the $79,930,337 that the Commission had provided that State to license and develop the regional disposal facility that never materialized; and (2) North Carolina must comply with the

Southeast Commission's sanctions order. Mot. 20. North Carolina opposes the motion, arguing that this Court lacks jurisdiction because the suit does not differ substantially, apart from addition of the States as "nominal parties," from the Southeast Commission's previous proposed suit. Br. in Opp. 12-15. North Carolina additionally argues that the nature of this case does not warrant the Court's exercise of its original jurisdiction, *id.* at 16-20, that alternative fora are available, *id.* at 21-24, and that, in any event, North Carolina did not breach its obligations under the Compact, *id.* at 24-28.

DISCUSSION

The movants properly invoke the original jurisdiction of this Court to resolve a significant interstate controversy. The Court should grant the motion for leave to file a bill of complaint and direct North Carolina to answer. Because the complaint, at the threshold, presents issues of law that could dispose of the case and would in any event determine the direction of future proceedings, the Court may wish to consider entertaining motions for partial summary judgment before referring this case to a special master.

1. The Complaint Presents Claims That Warrant The Exercise Of This Court's Original Jurisdiction

This Court has original and exclusive jurisdiction over a judicial case or controversy between States. See U.S. Const. Art. III, § 2, Cl. 2; 28 U.S.C. 1251(a). That jurisdiction "extends to a suit by one State to enforce its compact with another State or to declare rights under a compact." *Texas* v. *New Mexico*, 462 U.S. 554, 567 (1983); see, *e.g.*, *New Jersey* v. *New York*, 523 U.S. 767 (1998); *Kansas* v. *Colorado*, 514 U.S. 673 (1995); *Virginia* v. *West Virginia*, 206 U.S. 290, 317-319 (1907).

Nevertheless, the Court has determined that its exercise of original jurisdiction is "obligatory only in appropriate cases." *Mississippi* v. *Louisiana*, 506 U.S. 73, 76 (1992) (quoting *Illinois* v. *City of Milwaukee*, 406 U.S. 91, 93 (1972)); see *Nebraska* v. *Wyoming*, 515, U.S. 1, 8 (1995); *Texas* v. *New Mexico*, 462 U.S. at 570. In deciding whether to grant leave to file a complaint in a dispute arising under the Court's exclusive original jurisdiction, the Court examines "the nature of the interest of the complaining State," focusing on the "seriousness and dignity of the claim." *Mississippi* v. *Louisiana*, 506 U.S. at 77 (internal quotations and citations omitted). The Court also considers "the availability of an alternative forum in which the issue tendered can be resolved." *Ibid.* Measured against those standards, the complaint presents a matter warranting the Court's exercise of its original jurisdiction.

a. The Southeast Compact constitutes an interstate agreement among sovereign States that creates rights and obligations enforceable in this Court. The moving States, joined by the Southeast Commission, allege that North Carolina has breached its obligations under that agreement and has failed to submit to the agreement's prescribed remedial mechanisms. Those allegations give rise to a "controvers[y] between two or more States" within the reach of this Court's "original and exclusive jurisdiction." 28 U.S.C. 1251(a).

North Carolina contends that the complaint falls outside this Court's exclusive original jurisdiction because the moving States are not the "real parties in interest," but rather are "nominal" parties that represent the interests of the Southeast Commission, which cannot itself invoke this Court's original jurisdiction. Br. in Opp. 12-15. The United States agrees that the Southeast Commission cannot, by itself, invoke this Court's

exclusive jurisdiction for the reasons set out in the United States' brief amicus curiae in *Southeast Interstate Low-Level Radioactive Waste Management Commission* v. *North Carolina*, 533 U.S. 926 (2001) (No. 131, Original) (reproduced at Mot. App. 1a-23a). The United States disagrees, however, with North Carolina's characterization of the respective roles of the moving States and the Southeast Commission in this case.

In No. 131, Original, the Southeast Commission was the sole plaintiff in the proposed complaint. The United States pointed out that the Southeast Commission is plainly not a State of the Union and therefore itself lacked the power to invoke this Court's exclusive original jurisdiction. Mot. App. 12a-16a. Furthermore, the United States argued that the Southeast Commission could not invoke this Court's exclusive original jurisdiction as a representative of States that are parties to the Southeast Compact. *Id.* at 17a-20a. The Southeast Commission's inability to invoke this Court's original jurisdiction does not, however, prevent the compacting States themselves from doing so. As the United States explained in its amicus brief in No. 131, Original, "[t]he Court's rejection of original jurisdiction over a suit by the Commission would not, however, preclude one or more States that are parties to the Compact from bringing an original action under 28 U.S.C. 1251(a) against another party State to enforce the Compact and seek an appropriate remedy." *Id.* at 21a. The moving States have sought leave to file a bill of complaint on that very basis. See Mot. 1-2.

Contrary to North Carolina's assertions, the moving States have not invoked this Court's original jurisdiction "to forward the claims of individual citizens" or, more specifically, the claims of the Southeast Com-

mission. Br. in Opp. 12 (quoting *Kansas* v. *Colorado*, 533 U.S. 1, 8 (2001)). Rather, the moving States themselves have sued North Carolina, Compl. paras. 1-7, "for violation of the member States' rights under the Compact, breach of contract, unjust enrichment, promissory estoppel and money had and received." *Id.* para. 9. See *id.* paras. 62-86. The moving States are, in short, asserting their *own* rights under the Southeast Compact, claiming that they themselves "were harmed not only by the fact that they found themselves without a site within their region at which to dispose of low-level radioactive waste, but also because close to $80 million of the Commission's funds were converted by North Carolina without North Carolina fulfilling its obligations undertaken pursuant to the Compact." *Id.* para. 9. The moving States are entitled to pursue any available compact remedy for North Carolina's alleged breach of the Compact, and those States have chosen to seek declaratory relief and enforcement of the Southeast Commission's sanctions order, which imposes a sanction in the nature of a restitutionary remedy. See *id.* paras. 18-45.

North Carolina is also mistaken in asserting that the moving States' action here to recover money paid to North Carolina by the Southeast Commission is equivalent to an action in which a State "merely seek[s] recovery for the benefit of individuals who are the real parties in interest." Br. in Opp. 12 (quoting *Oklahoma ex rel. Johnson* v. *Cook*, 304 U.S. 387, 396 (1938)). The moving States seek relief that would redound to their own benefit under the Compact. They ask the Court to validate their view of the Compact's sanctions provisions by declaring that (1) "North Carolina is subject to the jurisdiction of the Commission and subject to the Commission's sanctions decisions"; (2) "the Sanctions

Hearing conducted by the Commission was fair and valid"; and (3) "the sanctions against North Carolina * * * were fair and reasonable and are subject to enforcement." Compl., Prayer for Relief, paras. 1-3. If the moving States are correct that the Southeast Compact subjected North Carolina to the described sanctions regime under the facts alleged, then they are entitled, on the basis of their *own* rights under the Compact, to seek appropriate declaratory relief and enforcement of the sanctions that the Commission imposed against North Carolina. *Texas* v. *New Mexico*, 462 U.S. at 567 (This Court's jurisdiction "extends to a suit by one State to enforce its compact with another State or to declare rights under a compact.").

The moving States are not disqualified from invoking this Court's jurisdiction by the Southeast Commission's presence in the lawsuit as an additional proposed plaintiff. See Br. in Opp. 13-14. The Court's exclusive original jurisdiction provides a forum for interstate disputes, and the participation of non-state parties is normally unnecessary by virtue of a State's parens patriae role in representing the interests of its citizens. See, *e.g.*, *New Jersey* v. *New York*, 345 U.S. 369, 372-373 (1953). Nevertheless, this Court has, on occasion, allowed non-state parties to participate in original actions as intervenors or amici curiae. See, *e.g.*, *Arizona* v. *California*, 373 U.S. 546, 564 (1963); see generally Robert Stern et al., *Supreme Court Practice* 571-574 (8th ed. 2002). The presence of non-state parties accordingly does not deprive the Court of jurisdiction. *Id.* at 553-554. North Carolina additionally notes that not all of the compacting States have joined this lawsuit, but North Carolina does not suggest that the absence of the other compacting States would deprive

the Court of jurisdiction in this case. Compare Br. in Opp. 15, with Reply Br. 4 n.2.

b. The moving States' claim that North Carolina has violated the Southeast Compact constitutes a substantial sovereign claim that warrants this Court's exercise of it original jurisdiction. Interstate compacts play an important role in the federal system, permitting States, with the consent of Congress, to formulate regional compromises and adjustments that might otherwise lead to interstate friction. See Felix Frankfurter & James M. Landis, *The Compact Clause of the Constitution—A Study in Interstate Adjustments*, 34 Yale L.J. 685 (1925). When the compacting States disagree over the meaning or application of the Compact, the States may properly invoke this Court's original jurisdiction to resolve the dispute. See, *e.g.*, *Kansas* v. *Nebraska*, 525 U.S. 1101 (1999) (Republican River Compact); *New Jersey* v. *New York*, 511 U.S. 1080 (1994) (Compact of June 28, 1834) ; *Kansas* v. *Colorado*, 475 U.S. 1079 (1986) (Arkansas River Compact); *Texas* v. *New Mexico*, 421 U.S. 927 (1975) (Pecos River Compact).

As North Carolina points out, this Court may decline to exercise jurisdiction if a dispute lacks sufficient seriousness and dignity. See *California* v. *West Virginia*, 454 U.S. 1027 (1981) (declining to exercise jurisdiction over an alleged breach of contract respecting athletic contests between two state universities). But contrary to North Carolina's assertions (Br. in Opp. 16-20), this case does not present an insubstantial dispute. Congress has determined that "the disposal of low-level radioactive waste can be most safely and effectively managed on a regional basis," Compact Consent Act, § 4, 99 Stat. 1845, and it has authorized States to enter into interstate compacts, such as the Southeast Com-

pact, "to provide for the establishment and operation of regional disposal facilities," *ibid.* The moving States allege that North Carolina has failed to fulfill its obligations under the Southeast Compact and has thereby impeded their interstate efforts to create a much-needed low-level radioactive waste disposal facility for their region. See Compl. para. 9. Those allegations raise a matter of substantial importance.

North Carolina's contention that this suit constitutes "little more than a contract dispute seeking compensatory damages" (Br. in Opp. 18) understates the seriousness of its compact obligations. A State that enters into an interstate compact has made a sovereign commitment, on behalf of its citizens, to honor legally enforceable promises to its sister States and their citizens. Indeed, even if this suit merely involved "purely monetary compensation" (*id.* at 20), the moving States' assertion that North Carolina has unlawfully retained nearly $80 million needed to prepare for a second disposal facility for low-level radioactive waste could, by itself, present a matter of sufficient gravity among the compacting States to justify this Court's exercise of its original jurisdiction. Cf. *Kansas* v. *Colorado*, 533 U.S. at 9 n.2 (noting that Kansas claimed $62 million in damages for compact violations, of which $9 million represented direct and indirect losses and $53 million reflected adjustments for inflation and interest).

c. North Carolina asserts that fora other than this Court are available to resolve this dispute. This case, however, involves a dispute among States over the meaning and application of an interstate compact, and the States have been unable to resolve their differences through consensual means. This Court, through the exercise of its original jurisdiction, presents the only realistic forum for adjudication of that interstate

dispute. As the United States explained in No. 131, Original, in some cases "state courts are appropriate fora for resolving interstate compact controversies that do not fall within this Court's exclusive original jurisdiction." Mot. App. 21a-22a (emphasis omitted). This dispute, however, falls squarely within the Court's exclusive original jurisdiction and the Court has a "serious responsibility" to resolve an interstate dispute of this magnitude. See *Oklahoma* v. *New Mexico*, 501 U.S. 221, 241 (1991); *Arizona* v. *California*, 373 U.S. 546, 564 (1963).

2. The Court May Wish To Grant The Parties Leave To File Motions For Partial Summary Judgment Before Referring This Case To A Special Master

Upon granting a motion for leave to file a complaint, the Court typically directs the defendant to file an answer and then, shortly thereafter, refers the matter to a special master to conduct appropriate proceedings. See, *e.g.*, *New Jersey* v. *New York*, 511 U.S. 1080 (1994); 513 U.S. 924 (1994); *Nebraska* v. *Wyoming*, 479 U.S. 1051 (1987); 483 U.S. 1002 (1987). In appropriate situations, however, this Court has considered or resolved preliminary or controlling legal issues before, or in lieu of, referring the case to a master. See, *e.g.*, *New Hampshire* v. *Maine*, 530 U.S. 1272 (2000); 531 U.S. 1066 (2001); 532 U.S. 742 (2001); *Kansas* v. *Nebraska*, 525 U.S. 805, 1101 (1999); 528 U.S. 1001 (1999); 530 U.S. 1272 (2000); *United States* v. *Alaska*, 499 U.S. 946 (1991); 501 U.S. 1248, 1275 (1991); 503 U.S. 569 (1992). We suggest that this controversy presents a situation in which the latter course may be advisable.

The moving States and North Carolina fundamentally disagree on two basic interpretive issues respecting the Southeast Compact: (1) whether the Compact

empowers the Southeast Commission to impose, as a sanction for North Carolina's failure to construct a waste facility, a requirement that North Carolina return funds that the Commission provided in preparation for construction of that facility; and (2) whether the Compact divested the Commission of authority to impose that sanction when North Carolina withdrew from the Compact before the Commission completed the sanctions process. Compare Mot. 20 and Reply Br. 9-10, with Br. in Opp. 24-28. Because resolution of those threshold issues could dispose of the case and would in any event focus the dispute and determine the course of future proceedings, the Court may wish to consider addressing those matters before referring the case to a special master.

This Court has broad authority to structure proceedings under its original jurisdiction to promote the fair and efficient resolution of an interstate dispute. See *Florida* v. *Georgia*, 58 U.S. (17 How.) 478, 491-494 (1854). The Court may "mould its proceedings for itself, in a manner that would best attain the ends of justice, and enable it to exercise conveniently the power conferred." *Id.* at 492. As a general matter, this Court employs the Federal Rules of Civil Procedure as a guide to the Court's proceedings. See Sup. Ct. R. 17.2. In this case, the Court may wish to adapt the summary judgment procedures, set out in Federal Rule 56, to this case in order to facilitate the disposition of the action. Rule 56 provides that, after commencement of the action, a party seeking to recover upon a claim may move for "a summary judgment in the party's favor upon all or any part thereof." Fed. R. Civ. P. 56(a).

In this instance, the initial issues noted above, respecting the Commission's authority vel non to impose sanctions, present pure questions of law, and the

historic facts that form the background for those questions appear undisputed. We accordingly expect that the parties would be able to agree on a stipulated record for the purpose of resolving those threshold questions through cross-motions for partial summary judgment. The Court successfully employed that procedure in *United States* v. *Alaska*, *supra*. Following the Court's grant of the United States' motion for leave to file a bill of complaint and the filing of an answer, 499 U.S. at 946, the Court invited the parties to file a stipulation of facts and cross-motions for summary judgment, 501 U.S. at 1248, 1275. The Court then resolved the dispute through summary judgment, without the need for appointment of a special master. 503 U.S. at 569. Cf. *New Hampshire* v. *Maine*, 532 U.S. at 756 (resolving an original action, without the need for appointment of a special master, through a motion to dismiss).

Under the envisioned procedure, the Court would retain the power to resolve the motions for partial summary judgment itself and then, if its resolution of those motions does not dispose of the case, commit any future proceedings to a special master. Alternatively, the Court would retain the option of referring those motions to a special master for a recommended decision if the Court concluded, upon inspection of the motions, that circumstances so warranted. See *Kansas* v. *Nebraska*, 525 U.S. at 1101 (inviting motion to dismiss); 528 U.S. at 1001 (appointing special master and referring to him the motion to dismiss). In either event, the provision of a mechanism for resolving the threshold legal questions is likely to focus the litigation on two controlling issues and facilitate the ultimate resolution of the controversy.

The United States accordingly urges that the Court grant the moving States' motion for leave to file a complaint and direct North Carolina to answer. Following the filing of North Carolina's answer, the Court may wish to invite the parties to file cross-motions for partial summary judgment, supported by a stipulation of facts, limited to two questions: (1) Whether the Southeast Compact empowers the Southeast Commission to impose, as a sanction for a State's failure to construct a low-level radioactive waste facility, a requirement that the State return funds that the Commission provided in preparation for construction of that facility; and (2) Whether the Southeast Compact divests the Southeast Commission of authority to impose that sanction if the State withdraws from the Compact before the Commission completes the sanctions process.

CONCLUSION

The motion for leave to file a bill of complaint should be granted.

Respectfully submitted.

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APRIL 2003