Maine Law Review

Volume 45 | Number 2 Article 2

May 2018

Discretionary Gatekeeping: The US Supreme Court's Management of Its Original Jurisdiction Docket Since 1961

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DISCRETIONARY GATEKEEPING: THE SUPREME COURT'S MANAGEMENT OF ITS ORIGINAL JURISDICTION DOCKET SINCE 1961

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INTRODUCTION

There is a special drama when a state sues another state invoking the original jurisdiction of the Supreme Court of the United States. In the international arena, similar disputes between sovereign states would be settled through diplomatic negotiations or armed conflict, and the stakes in the Supreme Court trial are often as high as in international disputes.[2] In 1963, after protracted litigation brought under the Supreme Court's original jurisdiction by the State of Arizona against the State of California, the Court issued its decision

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* Chief Justice, Maine Supreme Judicial Court, 1977-1992. Of counsel, Pierce, Atwood, Scribner, Allen, Smith & Lancaster, Portland, Maine, 1992-. Special Master, *Connecticut, et al. v. New Hampshire* (No. 119 Orig.), 1992-93.

This Article is an elaboration of a paper delivered by the author at the 1992 Autumn Meeting in Philadelphia of the American Philosophical Society. The author received valuable assistance in preparing this paper from Susanni Douville, Esq. and David Littell, Esq., both of Pierce, Atwood, Scribner, Allen, Smith & Lancaster, Portland, Maine.

1. This Article studies the Supreme Court's management of its original jurisdiction docket during the period from October 1, 1961 through April 25, 1993. The starting date coincides with the Court's change of its original jurisdiction docket to continuous consecutive numbering, from its prior system of giving new docket numbers each term to the cases carried over from the preceding term. Until April 26, 1993, the most recently filed original jurisdiction case under the consecutive numbering system was *Connecticut v. New Hampshire* (No. 119 Orig.), which was initiated on October 30, 1991. The Supreme Court dismissed that latest case on April 16, 1993, pursuant to a settlement agreement announced by the parties shortly before the Court was scheduled to hear oral argument on exceptions to the final report filed by the present author as special master. 113 S. Ct. 1837 (1993); *New Hampshire Alters Tax Plan for Seabrook, Averting Court Fight*, WALL ST. J., Apr. 14, 1993, at B11. On April 26, 1993, the State of New Jersey filed a motion for leave to file a complaint against the State of New York to determine the state boundary on Ellis Island in New York Harbor, thus initiating *New Jersey v. New York* (No. 120 Orig.). This Article does not reflect any Supreme Court action subsequent to April 25, 1993, in that or any other original jurisdiction case.

The Article complements the excellent student work, Note, *The Original Jurisdiction of the United States Supreme Court*, 11 STAN. L. REV. 665 (1959), which surveyed all original jurisdiction cases that produced at least one published opinion in the first 170 years of Supreme Court history.

2. *See* James E. Beaver, *Common Law vs. International Law Adjective Rules in the Original Jurisdiction*, 20 HASTINGS L.J. 1 (1968); William W. Van Alstyne, *The Justiciability of International River Disputes: A Study in the Case Method*, 1964 DUKE L.J. 307; William W. Van Alstyne, *International Law and Interstate River Disputes*, 48 CAL. L. REV. 596 (1960).

limiting the amount of Colorado River water that California might divert,[3] thereby assuring Arizona of the opportunity to continue to grow and forcing California to seek water elsewhere. Now, three decades later, Arizona has nearly tripled in population[4] while California has spent billions to move water from the north and still faces constant water shortages.[5]

The same special drama attends a trial in the Supreme Court with the United States opposing one or more of the fifty States. In 1947 the Supreme Court, again acting as a trial court under its original jurisdiction, in a suit brought against the State of California by the United States, held that title to the submerged lands off the California coast rested in the federal government.[6] In the 1950s and 1960s in original jurisdiction suits by the United States against the states of Louisiana, Texas, and the other Gulf States,[7] and in the 1970s and 1980s in suits against Maine and the other states on the Atlantic Seaboard,[8] the Court established the same federal claim to the tidelands along the shorefronts of those states even though they had come into the Union along a variety of very different historical paths.

In drafting Article III of the Constitution the Founders treated the states as quasi-sovereigns and, to match the dignity of the tribunal to the dignity of the parties, gave the Supreme Court original jurisdiction over any case "in which a State shall be Party."[9] That

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3. Arizona v. California (No. 8 Orig.), 373 U.S. 546 (1963) (previously numbered No. 10 in 1952-1957 and No. 9 in 1958-1960) (still pending as of April 25, 1993). For a full history of the case, see Note, *supra* note 1, at 716, and Appendix C to this Article.

4. UNITED STATES DEP'T. OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 1991 20 (111th ed. 1991).

5. *See, e.g.*, Jeanne McDowell, *No Rain, No Gain; And Much Pain, as California's Drought Threatens a Way of Life*, TIME, Feb. 18, 1991 at 54; Jordan Bonfante, *The Endangered Dream; The Land of Golden Opportunity is Becoming a Land of Broken Promises*, TIME, Nov. 18, 1991 at 42.

6. United States v. California (No. 5 Orig.), 332 U.S. 19, 38 (1947) (previously numbered No. 12 in 1946-1948, No. 11 in 1949-1950, and No. 6 in 1951-1960). For a full history of *United States v. California* (No. 5 Orig.) since the Supreme Court granted the motion to file complaint in 1946, see Note, *supra* note 1, at 703, and Appendix C to this Article.

7. United States v. Louisiana (No. 9 Orig.), 339 U.S. 699 (1950), 363 U.S. 1 (1960) (previously numbered No. 15 in 1955, No. 11 in 1956 and 1957, and No. 10 in 1958-1960); United States v. Texas (No. 7 Orig.), 339 U.S. 707 (1950) (previously numbered No. 14 in 1948, No. 13 in 1949 and 1950, and No. 8 in 1951-1960). For a full history of *United States v. Louisiana* (No. 9 Orig.) and *United States v. Texas* (No. 7 Orig.), see Note, *supra* note 1, at 703, and Appendix C to this paper.

8. United States v. Maine (No. 35 Orig.), 420 U.S. 515 (1975) (decision on merits of suit to establish title to submerged lands off coasts of 13 states bordering the Atlantic Ocean); 469 U.S. 504 (1985) (decision on merits of Rhode Island and New York boundary case); 475 U.S. 89 (1986) (decision on merits of Massachusetts boundary case).

9. U.S. CONST. art. III, § 2.

special status went to only one other category—namely, cases "affecting Ambassadors, other public Ministers, and Consuls."[10] In fact, in two hundred years, the Supreme Court has decided only two cases on the merits under the foreign envoy branch of its original jurisdiction.[11] During the most recent three decades that this paper studies, all five attempts to bring a suit under that branch of original jurisdiction have been summarily rejected by the Court.[12] The absence of foreign envoy cases undoubtedly flows from the combined circumstances of more easily available forums in the federal district and state courts and the United States' liberality in granting diplomatic immunity by executive action.[13] Therefore, for all practical purposes, the only cases in which the Supreme Court exercises its trial court jurisdiction are ones (in the language of Article III) "in which a State shall be Party." This paper will concentrate its attention on state-party suits in the Supreme Court as a court of first and last instance.

At the First Congress, the Founders went beyond the original jurisdiction clause of Article III of the Constitution by legislating in the Judiciary Act of 1789 that the Supreme Court and only the Supreme Court had jurisdiction of suits between two or more states.[14] That exclusive jurisdiction over *State v. State* suits remains the law today.[15] As to all other suits to which a state may be a party, the Supreme Court's original jurisdiction is nonexclusive; that is, both lower federal courts and state courts may also entertain those cases if they otherwise have jurisdiction.[16]

The Founders may well have anticipated that original jurisdiction cases would be a major part of the Supreme Court's workload. In fact, such cases have always been relatively few in number. Prior to October 1, 1961, the start of the period this paper studies,[17] the

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10. *Id.*

11. Jones v. LeTombe, 3 U.S. (3 Dall.) 383 (1798) (suit on bills drawn on French government), and Casey v. Galli, 94 U.S. 673 (1877) (suit on a debt). A third case, *Ex parte* Gruber, 269 U.S. 302 (1925), an application for mandamus to compel an American consul in a foreign state to visa a passport, was dismissed for want of jurisdiction on the grounds that Art. III, § 2, cl. 2 refers to diplomatic and consular representatives accredited to the United States by foreign powers, not to American diplomats representing this country abroad.

12. See Appendix A detailing the subject matter of the five attempted foreign envoy suits since 1961 and the apparent reasons for the Court's summary rejection of those suits without explanation.

13. PAUL M. BATOR ET AL., HART AND WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM 345-46 (3d ed. 1988 & Supp. 1992).

14. The Judiciary Act of 1789, ch. 20, § 13, 1 Stat. 73, 80-81 (1789).

15. *See* 28 U.S.C. § 1251 (1988). It is unclear whether the Supreme Court's exclusive jurisdiction is exclusive of only other federal courts or of both federal and state courts. *See* ROBERT L. STERN ET AL., SUPREME COURT PRACTICE 476 (6th ed. 1986).

16. *See* 28 U.S.C. § 1251(b) (1988).

17. *See supra* note 1.

Court issued opinions in only 121 original jurisdiction cases.[18] From October 1, 1961, to April 1, 1993, the Court has published proportionately more opinions in such cases—51 in total—but it still typically issues opinions in only two or three original jurisdiction cases a year, a very small fraction of its opinion output.[19]

The Court controls its original jurisdiction docket by a procedural rule unique among trial courts. Plaintiffs wishing to initiate litigation in the Supreme Court may not simply file a complaint in the clerk's office as they may do in the federal district court; rather, they must first file a motion seeking the Court's express leave to file a complaint commencing an original jurisdiction suit.[20] The Court's rule anticipates that briefs will be filed supporting and opposing the motion and that oral argument before the Court may also in some cases be necessary to aid the Court in deciding this important threshold question. In the three decades since 1961, only 102 motions asking leave to commence original jurisdiction actions have been filed by or against a state, fewer than 3.5 cases on average each year.[21] Of those motions in state-party cases, the Supreme Court has

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18. *See* Note, *supra*, note 1, at 701 (appendix published in July 1959 showing, until then, 121 original jurisdiction cases that produced at least one written opinion each). From 1958 to 1961, the interim between the coverage of the *Stanford Law Review* Note and this Article, only one original jurisdiction case producing a written opinion was decided, United States v. Louisiana, 363 U.S. 121 (1960) (suit by the U.S. to establish rights to submerged lands and minerals underlying the Gulf of Mexico seaward of Louisiana, Mississippi, Alabama, Texas, and Florida). *See The Supreme Court, 1959 Term*, 74 HARV. L. REV. 81, 99 (1960); *The Supreme Court, 1960 Term*, 75 HARV. L. REV. 40, 85 (1961). That case had produced an earlier opinion and accordingly was counted in the *Stanford Law Review* Note. *See supra* note 7.

19. During October Term 1991, the Supreme Court disposed of two original jurisdiction cases with full opinions out of the total of 114 cases it disposed of by full opinions. *See The Supreme Court, 1991 Term*, 106 HARV. L. REV. 77, 383-85 (1992). Comparable figures for the last 11 years are: two original jurisdiction opinions out of 120 opinions in 1990; one out of 137 in 1989; zero out of 143 in 1988; two out of 142 in 1987; one out of 152 in 1986; one out of 159 in 1985; two out of 151 in 1984; three out of 163 in 1983; four out of 162 in 1982; two out of 167 in 1981; and one out of 138 in 1980. *See The Supreme Court, 1990 Term*, 105 HARV. L. REV. 77, 423-26 (1991); *The Supreme Court, 1989 Term*, 104 HARV. L. REV. 40, 364-66 (1990); *The Supreme Court, 1988 Term*, 103 HARV. L. REV. 40, 399-401 (1989); *The Supreme Court, 1987 Term*, 102 HARV. L. REV. 1, 354-58 (1988); *The Supreme Court, 1986 Term*, 101 HARV. L. REV. 10, 366-70 (1987); *The Supreme Court, 1985 Term*, 100 HARV. L. REV. 1, 308-11 (1986); *The Supreme Court, 1984 Term*, 99 HARV. L. REV. 1, 326-29 (1985); *The Supreme Court, 1983 Term*, 98 HARV. L. REV. 1, 311-14 (1984); *The Supreme Court, 1982 Term*, 97 HARV. L. REV. 1, 299-302 (1983); *The Supreme Court, 1981 Term*, 96 HARV. L. REV. 1, 308-11 (1982); *The Supreme Court, 1980 Term*, 95 HARV. L. REV. 17, 342-45 (1981).

20. SUP. CT. R. 17 (formerly Rule 9).

21. From October 1, 1961 through April 25, 1993, the Supreme Court used 119 numbers on its consecutively numbered original docket, but has in fact had only 116 active cases on the docket, because two cases have been completely inactive since 1961, *United States v. Louisiana*, (No. 6 Orig.) and *United States v. Texas* (No. 7 Orig.), and another case has been renumbered twice, *Nebraska v. Wyoming* (No. 4

denied 50, nearly half. In managing its original jurisdiction docket, the Supreme Court does not consider itself bound to follow what it has itself called a "time-honored maxim of the Anglo-American common-law tradition" that a trial court generally must hear and decide any and all lawsuits that fall within its jurisdiction.[22]

For this Article I have studied all of the cases on the Court's original jurisdiction docket since 1961. In addition to determining any patterns in the subject matter of the state-party cases coming to the Court, my purpose was to study the Court's development and application of principles for separating its grants from its denials of the required threshold motion. The most recent three decades have seen a great increase in the Supreme Court's appellate workload,[23] leading to repeated proposals, all of which have come to naught, for the creation of an additional court[24] or some other mechanism[25] for relieving the pressures on the Court in its role as the final arbiter of federal questions coming to it on appeal from both federal and state courts. The same thirty years have also seen great doctrinal changes at the Court as well as considerable shift in the nature of the Court's appellate work. My study sought to determine what impact those trends in the Court's appellate workload over this most recent period have had upon its exercise of its original jurisdiction.

In performing its "gatekeeping" function, the Supreme Court often rejects original jurisdiction cases in summary orders that give

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Orig., renumbered No. 6 Orig., again renumbered No. 108 Orig.). Both *Nebraska v. Wyoming* and *United States v. Louisiana* at various points used the same docket number, No. 6 Orig. Of the 116 active cases, nine had already been accepted by the Supreme Court prior to October Term 1961 and were carried over to the new consecutive numbering system. Of the 107 subsequently filed cases, five were purportedly brought under the foreign envoy branch of original jurisdiction. *See* Appendix A. Thus 102 motions for leave to commence original jurisdiction actions have been filed in state-party cases since 1961.

22. Ohio v. Wyandotte Chems. Corp. (No. 41 Orig.), 401 U.S. 493, 496-97 (1971) (citing Cohens v. Virginia, 19 U.S. (6 Wheat) 264, 404 (1821)). *See also* New Orleans Pub. Serv., Inc. v. Council of City of New Orleans, 491 U.S. 350, 358-59 (1989) ("federal courts lack the authority to abstain from the exercise of jurisdiction that has been conferred").

23. *See infra* notes 28-32 and accompanying text.

24. *See, e.g.*, Thomas E. Baker & Douglas D. McFarland, *The Need for a New National Court*, 100 HARV. L. REV. 1400 (1987); Warren E. Burger, *The Time is Now for the Intercircuit Panel*, A.B.A. J., Apr. 1985, at 86; Paul A. Freund, *Why We Need the National Court of Appeals*, A.B.A. J., Mar. 1973, at 247; Ruth B. Ginsburg & Peter W. Huber, *The Intercircuit Committee*, 100 HARV. L. REV. 1417 (1987); William H. Rehnquist, *The Changing Role of the Supreme Court*, 14 FLA. ST. U. L. REV. 1 (1986).

25. *See, e.g.*, SAMUEL ESTREICHER & JOHN SEXTON, REDEFINING THE SUPREME COURT'S ROLE: A THEORY OF MANAGING THE FEDERAL JUDICIAL PROCESS (1986); RICHARD A. POSNER, THE FEDERAL COURTS: CRISIS AND REFORM (1985); Paul M. Bator, *What is Wrong with the Supreme Court?*, 51 U. PITT. L. REV. 673 (1990); Arthur D. Hellman, *Case Selection in the Burger Court: A Preliminary Inquiry*, 60 NOTRE DAME L. REV. 947 (1985).

no suggestion of either the subject matter of the attempted suits or the Court's reasons for rejecting them. Of the fifty rejections of state-party cases since October 1, 1961, the Court published opinions explaining the reasons for its denial in only nine cases. In four other cases vigorous dissents or concurrences accompanying the summary orders of denial do reveal something about the subject matter of the suits and about the Court's basis for denying the threshold motions. All of the remaining state-party cases rejected by the Court, however, may appropriately be called "silent" cases. As to those thirty-seven cases, the only published orders are summary denials, and the only way to determine either their subject matter or the reasons for their rejection is by examining the original papers filed with the Supreme Court in support of and in opposition to the threshold motion. In this study I conducted an examination of those original papers in all the "silent" cases.[26]

CAUTIONARY CONSIDERATIONS: REASONS FOR RESTRAINT

The original papers in the state-party cases that the Supreme Court has rejected without explanation since October 1, 1961, when studied in conjunction with the few published opinions of the Court on the threshold motions during this same period, reveal a consistent pattern of marked restraint in the exercise of original jurisdiction. Both the Court's words in its few published opinions and the Court's actions in its summary denials of motions to file demonstrate that it recognizes the existence of powerful considerations for exercising its original jurisdiction with particular caution. Its words and actions bespeak at least five different cautionary considerations underlying its oft-repeated declaration that "our original jurisdiction should be invoked sparingly."[27]

First and foremost among these considerations is the competing demand that the Court's ever-growing appellate work load puts on the time and energies of the nine Justices. That work load, always heavy, has multiplied in the last three decades, without any increase in the membership of the Court. The Supreme Court is the final appellate tribunal within a federal judiciary that since 1960 has grown in authorized size by more than two and a half times.[28] It is

26. *See* Appendix B for the author's analysis of all 50 post-1961 state-party cases disposed of by denials of motions for leave to file complaints. The reasons for the denial are those expressed by the Court in the nine cases where its denial was accompanied by opinions. In the other 41 cases, the reasons for denial are the "apparent reasons" as the author is best able to discern them from the dissents or concurrences and motion papers in four cases and from the original papers alone in the remaining 37 "silent" cases.

27. Illinois v. City of Milwaukee (No. 49 Orig.), 406 U.S. 91, 93 (1972) (quoting Utah v. United States (No. 31 Orig.), 394 U.S. 89, 95 (1968)).

28. In 1960 the total number of authorized federal judgeships outside the Supreme Court was 332—328 Article III judges and 4 Article I judges. In 1990, the total

also the only appellate tribunal that can give a conclusive answer on any federal issue decided by a state supreme court, and it is estimated that a quarter of all cases decided by the states' highest courts involve federal questions.[29] State criminal procedure is now controlled largely by the United States Bill of Rights through incorporation into the Fourteenth Amendment, and the Congress shows a great penchant for creating federal civil causes of action that can be brought in state as well as federal courts.[30] Supreme Court statistics emphasize my point. In its latest term the Court disposed of 5,825 cases.[31] Thirty years earlier the corresponding number was 2,142,[32] less than 37 percent as great a load. The Court thus is under heavy pressure to marshal its resources to address only those cases where a decision by the highest court of the land is urgently needed on an important federal question.

Second among the cautionary considerations is the growth, contemporaneously with the increase in the Court's appellate work load, of a public perception that the Court's function as the final appellate tribunal for federal questions is of overriding importance. By comparison with a great many of the cases on the appellate docket, many original jurisdiction suits, including even boundary cases, seem humdrum, however "dignified" one or both of the parties may be. The American public tends to focus on Supreme Court cases that concern major social and political issues such as abortion, flag-

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was 879—833 Article III judges and 46 Article I judges. *See* GOVERNMENT PRINTING OFFICE FOR THE FEDERAL JUDICIARY, THE HISTORY OF THE AUTHORIZATION OF FEDERAL JUDGESHIPS 145-46 (Table 7) (1990). At the time of this writing, there are 160 active United States Court of Appeals judges, 975 F.2d vii-xv (1993), and 558 district court judges (not including senior status judges), 799 F. Supp. vii-xxiv (1993). This means that there are 17⅓ court of appeals judges and 62 district court judges for every Supreme Court Justice. The disproportion between Supreme Court Justices and the numbers of judges whose opinions must be reviewed on appeal is even more marked when the Supreme Court's review duties in the areas of bankruptcy, administrative law, and tax are taken into account. For example, the Department of Health and Human Services has 698 administrative law judges assigned to reviewing social security cases alone. Ronald A. Cass, *Allocation of Authority Within Bureaucracies: Empirical Evidence and Normative Analysis*, 66 B.U. L. REV. 1, 18-19 (1986). Likewise, the National Labor Relations Board has 115, the Department of Labor, 66, and the Interstate Commerce Commission 55 Administrative Law Judges. *Id.* Professor Cass calculated that Administrative Law Judges in all the federal agencies hear or review a staggering 650,654 cases each year. *Id. See also* Peter L. Strauss, *One Hundred Fifty Cases Per Year: Some Implications of the Supreme Court's Limited Resources for Judicial Review of Agency Action*, 87 COLUM. L. REV. 1093 (1987).

29. Prof. Daniel J. Meador, Remarks at National Conference on State-Federal Judicial Relationships (Apr. 10-12, 1992).

30. *See, e.g.*, 15 U.S.C. § 1640(e) (1988) (Consumer Credit Protection Act); Jakob v. First Ala. Bank of Montgomery, 361 So. 2d 1017, 1020 (Ala.) (holding that cases arising under the Consumer Credit Protection Act of 1978 may be brought in either a federal or state court) *cert. denied*, 439 U.S. 968 (1978).

31. *See The Supreme Court, 1991 Term*, 106 HARV. L. REV. 19, 382 (1992).

32. *The Supreme Court, 1961 Term*, 76 HARV. L. REV. 53, 81 (1962).

burning, and school prayer. For example, the 1989 abortion[33] and flag-burning[34] decisions ranked among the top ten most closely followed news stories from 1986 through 1989, according to a Times Mirror poll.[35] Some 72 percent of respondents said that they had discussed the flag-burning issue with others, and 69 percent reported discussing the abortion case.[36] Twenty years ago Justice Harlan, writing for the Court in *Ohio v. Wyandotte Chemicals Corp.* (No. 41 Orig.),[37] noted, on the one hand, "the enhanced importance of our role as the final federal appellate court"—an "enhanced importance" that derives, he stated, from the expanded "impact on the social structure of federal common, statutory, and constitutional law"[38]—and, on the other hand, "the diminished societal concern in our function as a court of original jurisdiction . . . ."[39]

A third consideration is presented by the change in recent decades in the "milieu" of litigation involving states. No longer are lower federal courts generally perceived as "undignified" forums for "dignified" state parties. States today routinely find themselves in the lower federal courts defending in habeas corpus proceedings that review state criminal convictions or in Section 1983 civil rights actions against state officers. Also states today elect to go into the same lower federal courts to litigate civil cases as plaintiffs. In recent years, for example, attorneys general from several states have combined their resources to press civil antitrust suits. Most of those actions are brought in federal court under federal law,[40] with the states choosing their forum on the basis of factors such as whether federal or state law and procedure are more favorable to their cause.[41] Also, in the administrative law arena, states are not reluctant to pursue cases against the federal government in the lower federal courts. As one example, an officer of the State of Maryland successfully sued the United States Secretary of Labor to enjoin the use of a new method of calculating unemployment statistics until promulgated in accordance with Administrative Procedure Act notice and comment procedures.[42]

A fourth cautionary consideration is the practical limitation on

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33. Webster v. Reproductive Health Servs., 492 U.S. 490 (1989).

34. Texas v. Johnson, 491 U.S. 397 (1989).

35. Thomas R. Marshall, *Public Opinion and the Rehnquist Court*, 74 JUDICATURE 322 (Apr.-May 1990) (citing Times Mirror poll, July 6-9, 1989).

36. *Id.*

37. 401 U.S. 493 (1971).

38. *Id.* at 499, 497.

39. *Id.* at 499.

40. David J. Burman, *Increased Activity by States*, NAT'L L.J., Mar. 12, 1990, at 15.

41. Lloyd Constantine, *Current Antitrust Enforcement Initiatives by State Attorneys General*, 56 ANTITRUST L.J. 111, 114 (1987).

42. *See* Batterton v. Marshall, 648 F.2d 694 (D.C. Cir. 1980).

the fitness of the Supreme Court to act as a trial court. In an original jurisdiction case the Court customarily appoints a special master to hear the evidence and to report a recommended decision on the facts and the law; subsequent proceedings before the Court on whether to accept that report involve the same kind of briefing and oral argument that a case on appeal involves. At least in theory, however, the Court must not give the special master's findings of fact the deference an appellate court gives a trial judge's findings of fact under the "clearly erroneous" standard; the nine Justices are supposed to make their own fact-findings after an independent review of the whole record. The Court is ill-suited for that task.[43] The Court is also ill-suited to fashion and enforce the remedial orders that in some situations are necessary or appropriate. For example, the Court, in *Washington v. General Motors Corp.* (No. 45 Orig.)[44] declared that the federal district courts were more appropriate forums for the eighteen plaintiff states suing the Big Four automobile manufacturers for an alleged conspiracy to impede the development of air pollution devices, because "[a]s a matter of law as well as practical necessity corrective remedies for air pollution . . . must be considered in the context of localized situations."[45] The year before, the Court in *Ohio v. Wyandotte Chemicals Corp.* (No. 41 Orig.)[46] had emphasized these same considerations in denying a motion by the State of Ohio to file a complaint to abate a nuisance allegedly caused by three chemical companies' dumping of mercury into streams in Michigan and Canada, thereby contaminating Lake Erie. The Court emphasized its limited competence in fact-finding and in the "close supervision of the technical performance of local industries."[47]

Finally among the cautionary considerations is the practical disadvantage of short-circuiting the judicial process to which the Court is accustomed in its appellate work. The Supreme Court typically addresses a major question on appeal only after the question has been framed and adjudicated in a number of courts and perhaps in a number of different factual situations. The Court then addresses that major question only after, in the particular case finally selected for Supreme Court review, a trial judge has fully developed the facts and the applicable law, and the trial court's decision has been reviewed by at least one intermediate appellate court. Although the

43. Justice Rehnquist in his dissent in *Maryland v. Louisiana* (No. 83 Orig.), revealed the true inner workings of the Court by referring to "the appellate-type review which this Court necessarily gives to [the special master's] findings and recommendations." Maryland v. Louisiana (No. 83 Orig.), 451 U.S. 725, 765 (1981) (Rehnquist, J., dissenting).

44. 406 U.S. 109 (1972).

45. *Id.* at 116.

46. 401 U.S. 493 (1971).

47. *Id.* at 505.

Court has left this consideration unarticulated, it might well be concerned that the one-level judicial process of original jurisdiction cases, devoid of any opportunity for the second look of appellate review, creates a heightened risk of ultimate error.

GATEKEEPING RULES

Faced thus with an impressive array of reasons for restraint in the exercise of its original jurisdiction, the Court applies a number of rules to reduce the number of state-party cases that go the full length to a decision on the merits. As previously noted, the Court's application of these rules often (indeed, as to three quarters of the denials since 1961) is cloaked behind summary orders containing no explanation of the reasons for denying the motions to file; however, an analysis of the original papers in those "silent" cases fully confirms that the Court is applying the gatekeeping rules expressly identified in the Court's few published opinions.

First, the Court strictly construes what is a state for the purpose of its original jurisdiction over state-party suits. It has held, for example, that a political subdivision of a state is not a state for original jurisdiction purposes in a pollution abatement suit brought by the State of Illinois against the City of Milwaukee.[48] Similarly, the Court summarily denied a suit attempted by Puerto Rico against the State of Iowa seeking a mandamus for extradition of a Puerto Rican fugitive, apparently on the ground that the real defendant was not the State of Iowa, but rather its governor.[49] The Court also has refused to treat what is nominally a *State v. State* case as being within its exclusive jurisdiction if the defendant state is not the real party in interest.[50]

Second, the Court examines with particular care whether the state has standing to bring its original jurisdiction suit, either in its own right or as *parens patriae* for its citizens. The Court, for example, rejected the suit of *Pennsylvania v. New Jersey* (No. 68 Orig.),[51] challenging the validity of a New Jersey commuter tax, because, as the Court said, the suit was "nothing more than a collectivity of private suits against New Jersey for taxes withheld from private parties."[52] A state has standing to sue as *parens patriae* for its citizens only if "its sovereign or quasi-sovereign interests are implicated and it is not merely litigating as a volunteer the personal claims of its

48. *See* Illinois v. City of Milwaukee (No. 49 Orig.), 406 U.S. 91 (1972).

49. *See* Puerto Rico v. Iowa (No. 96 Orig.), 464 U.S. 1034 (1984) (summary denial).

50. *See* Oklahoma v. Arkansas (No. 93 Orig.), 460 U.S. 1020 (1983) (summary denial) (a pollution abatement case where the real parties in interest were the municipalities and private corporations also named as defendants).

51. 426 U.S. 660 (1976).

52. *Id.* at 666.

citizens."[53] In a number of the "silent" cases brought by states against the United States or one of its officers,[54] the motions for leave to file complaints were apparently denied on the ground that the states do not have standing as *parens patriae* to invoke their citizens' federal rights against the federal government, which is after all "the ultimate *parens patriae* of every American citizen."[55]

Third, along with the question of standing, the Court also examines with particular rigor the related question of justiciability—whether the proposed original jurisdiction suit involves a justiciable controversy, one that can or needs to be adjudicated by a court of law. In *California v. Texas* (No. 76 Orig.),[56] the Court held that the suit over the domicile of decedent Howard Hughes did not present a justiciable controversy between the two states, but rather the domicile issue should be litigated between the estate and each of the states separately. When, in a later motion to file, the Hughes estate alleged that an adverse decision in both states posed the risk that the entire corpus of the estate would be exhausted by the inheritance taxes in the two states and the federal estate tax, the Supreme Court granted the motion.[57] In *Delaware v. New York* (No. 28 Orig.),[58] in which the State of Delaware sought to enjoin use of the "state unit" (winner-take-all) system to cast electoral votes for president and vice-president, the Court entered its summary order of denial, apparently at least in part on the basis of non-justiciability. The same is true of *Massachusetts v. Laird* (No. 42 Orig.),[59] in which Massachusetts challenged the constitutionality of the United States' involvement in the Indo-Chinese War. Closely re-

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53. *Id.* at 665.

54. *See* Delaware v. New York (No. 28 Orig.), 385 U.S. 895 (1966) (summary denial of a suit against all 50 states and the District of Columbia to enjoin the use of "state-unit" winner-take-all system to cast electoral votes for presidential and vice presidential candidates); Alabama v. Connally (No. 53 Orig.), 404 U.S. 933 (1971) (summary denial of a suit against the Secretary of Treasury and IRS Commissioner to declare that IRS exemption for charities is discriminatory and subsidizes religion in violation of the First Amendment); Idaho v. Vance (No. 75 Orig.), 434 U.S. 1031 (1978) (summary denial of a suit by Idaho, Iowa, Louisiana, Nebraska, and five U.S. Senators to declare the proper allocation of power between the legislative and executive branches with respect to the disposal of the U.S. property interests in the Panama Canal).

55. South Carolina v. Katzenbach (No. 22 Orig.), 383 U.S. 301, 324 (1966) (citing Massachusetts v. Mellon, 262 U.S. 447, 485-86 (1923)).

56. 437 U.S. 601 (1978).

57. *See* California v. Texas (No. 88 Orig.), 457 U.S. 164 (1982). Justice Powell, for himself and three other Justices, still dissented on the ground that the controversy was not ripe until both states had obtained tax judgments that remained unsatisfied. The case was later dismissed by stipulation. *See* California v. Texas (No. 88 Orig.), 471 U.S. 1051 (1985).

58. 385 U.S. 895 (1966).

59. 400 U.S. 886 (1970).

lated to denials for non-justiciability are denials for mootness[60] and for non-ripeness.[61]

The final and most important gatekeeping rule is the Supreme Court's highly discretionary test—custom-made by it for original jurisdiction cases—that asks whether the attempted suit is an "appropriate" one for the exercise of the Court's jurisdiction as a court of both first and last instance. The gatekeeping rules I have identified up to this point—strict construction of the Court's jurisdiction over state-party cases and rigorous application of standing and justiciability requirements—are not inconsistent with the "time-honored maxim of the Anglo-American common-law tradition" that a trial court will take every case falling within its jurisdiction provided the case is initiated in proper manner.[62] Any other trial court will also dismiss for want of jurisdiction, standing, or justiciability. The Supreme Court, however, as a trial court has gone on to impose an additional specially designed discretionary test of appropriateness.

The Court fully enunciated that test for the first time in *Ohio v. Wyandotte Chemicals Corp.* (No. 41 Orig.).[63] Recognizing several of the same factors that I have called cautionary considerations counselling sparing use of the Court's original jurisdiction, the *Wyandotte* opinion declared that the Court has the discretion to decline to entertain a state-party case, even though the case falls undoubtedly within the Court's Article III jurisdiction. In *Wyandotte*, the Court recognized only two general limitations on that discretion: first, its rejection of a state-party case must be consistent with the principal policies underlying Article III's grant to the Court of jurisdiction over such cases; and, second, the "reasons of practical wis-

60. *See* California v. Texas (No. 87 Orig.), 450 U.S. 1038 (1981) (summary denial without prejudice of a suit to enjoin Texas from quarantining California fruits and vegetables because of Mediterranean fruit fly infestation on the apparent ground that the controversy was mooted by Texas's discontinuance of the quarantine); California v. Texas (No. 90 Orig.), 454 U.S. 886 (1981) (summary denial of a suit to enjoin Texas, Florida, Alabama, Mississippi, and South Carolina from quarantining California fruits and vegetables because of Mediterranean fruit fly infestation on the apparent ground that the controversy was again mooted by defendant states' discontinuance of the quarantine).

61. *See* Alabama v. United States (No. 15 Orig.), 373 U.S. 545 (1963) (per curiam) (denial in full opinion of a suit challenging the use of federal troops to suppress combination or conspiracy to commit violence on the ground that the President had only made ready to station military personnel in the Birmingham area and therefore there was no basis for relief); Arkansas v. Oklahoma (No. 115 Orig.), 488 U.S. 1000 (1989) (summary denial of a suit to enjoin the application of Oklahoma's water quality standards to point sources within Arkansas on the apparent ground that there was a pending administrative proceeding as to one point source and as to the others the controversy was not ripe).

62. *See supra* text accompanying note 22.

63. 401 U.S. 493 (1971).

dom" motivating the Court to reject a state-party case must be consistent with accommodating the Court's original jurisdiction function to the heavy burdens of its appellate work load.[64]

The Court enunciated the *Wyandotte* appropriateness test in a suit by a state against private parties; however, the Court soon extended its use to original jurisdiction cases of other party configurations. Two years after *Wyandotte* the Court applied the appropriateness test to reject a case brought by the United States against a state, *United States v. Nevada* (No. 59 Orig.).[65] The Court subsequently used the appropriateness test to reject three suits between states, even though Congress declares that such cases may be brought exclusively in the Supreme Court: first, *Arizona v. New Mexico* (No. 70 Orig.),[66] a suit challenging the validity of applying a New Mexico electrical energy tax to Arizona utilities; second, *California v. West Virginia* (No. 91 Orig.),[67] a suit alleging a breach of contract between state universities for football games; and, third, *Louisiana v. Mississippi* (No. 114 Orig.),[68] an interstate boundary case.

In practice, the Court's exercise of discretion in determining the "appropriateness" of a state-party suit has entailed a three-dimensional analysis, focusing on three factors: (i) the *parties* to the suit; (ii) the *subject matter* of the suit and its "seriousness and dignity,"[69] that is, its importance; and (iii) the existence or not of an *alternative forum* for the cause of action or for at least the controlling issue. Focusing on the *first* of those appropriateness factors, the *configuration of the parties*, the Court's exclusive jurisdiction over cases between two or more states obviously weighs in favor of accepting jurisdiction. So, too, in the non-exclusive context, does suit by the United States as the plaintiff against a state. With the exception of *United States v. Nevada* (No. 59 Orig.), no suit by the United States against a state has been rejected plainly on the basis

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64. Ohio v. Wyandotte Chems. Corp. (No. 41 Orig.), 401 U.S. 493, 499 (1971). The full holding of this case reads as follows:

> [A]s a general matter, we may decline to entertain a complaint brought by a State against the citizens of another State or country only where we can say with assurance that (1) declination of jurisdiction would not disserve any of the principal polices underlying the Article III jurisdictional grant and (2) the reasons of practical wisdom that persuade us that this Court is an inappropriate forum are consistent with the proposition that our discretion is legitimated by its use to keep this aspect of the Court's functions attuned to its other responsibilities.

Id.

65. 412 U.S. 534, 539-40 (1973).

66. 425 U.S. 794, 796-97 (1976) (per curiam).

67. 454 U.S. 1027 (1981) (summary denial with Stevens, J., dissenting).

68. 488 U.S. 990 (1988) (summary denial with White, Stevens, Scalia, JJ., dissenting).

69. Illinois v. City of Milwaukee (No. 49 Orig.), 406 U.S. 91, 93 (1972).

of the appropriateness test. Any other configuration of parties, however, creates a presumption against accepting jurisdiction. For example, the Court generally has rejected suits by a state *against* the United States, sometimes because the United States enjoys sovereign immunity[70] and more often because a state has no standing as *parens patriae* for its citizens on a claim against the federal government.[71]

Turning to the *second* appropriateness factor, the *subject matter* of the original jurisdiction suit and its importance, there stand at one end of the spectrum the traditional boundary and water rights cases; the Court takes those cases almost without exception. At the other end of the spectrum stands the contract case brought by California against West Virginia alleging the breach of a contract for football games between San Jose State University and the University of West Virginia.[72] That suit, which would be governed by state contract law and which pleaded only a modest *ad damnum*, was probably thought too insubstantial to be worthy of attention by the highest federal tribunal.

Historically, interstate boundary disputes are the paradigm subject matter for original jurisdiction cases. From the 1790s until 1900 all of the *State v. State* cases producing Supreme Court opinions on the merits (thirteen in all) arose out of boundary disputes.[73] At the start of the twentieth century, the Court entertained cases in four additional categories of subject matter: (1) water rights;[74] (2) interstate pollution abatement;[75] (3) enforcement of a contract between states;[76] and (4) state regulation.[77] As of 1939, the Court began to accept yet another category of *State v. State* suits, those involving

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70. By joining the Union, the States gave up their sovereign immunity against suits brought by the United States. *See* Principality of Monaco v. Mississippi, 292 U.S. 313, 328-29 (1934). The converse is not true. *See* Kansas v. United States, 204 U.S. 331, 341-42 (1906). For the invocation of the sovereign immunity of the United States as a defendant in an original jurisdiction case, see Hawaii v. Gordon (No. 12 Orig.), 373 U.S. 57 (1963) (the United States was the real party in interest and had not waived its sovereign immunity in a suit involving the question of what lands the United States must turn over to the State of Hawaii).

71. *See, e.g.*, Idaho v. Vance (No. 75 Orig.), 434 U.S. 1031 (1978) (summary denial) (state not *parens patriae* for its citizens on their federal rights in seeking determination of the proper allocation of power between the legislative and executive branches with respect to the disposal of U.S. property interests in the Panama Canal).

72. California v. West Virginia (No. 91 Orig.), 454 U.S. 1027 (1981) (summary denial with Stevens, J., dissenting).

73. *See* Note, *supra* note 1, at 708-09.

74. Kansas v. Colorado, 185 U.S. 125 (1902) (demurrer to jurisdiction overruled).

75. Missouri v. Illinois, 180 U.S. 208 (1901) (demurrer to jurisdiction overruled).

76. South Dakota v. North Carolina, 192 U.S. 286 (1904) (suit on state bonds); Virginia v. West Virginia, 206 U.S. 290 (1907) (suit on a debt after separation).

77. Louisiana v. Texas, 176 U.S. 1 (1900) (dismissed for want of jurisdiction over bill to enjoin enforcement of Texas quarantine regulations).

interstate tax disputes, when in that year it accepted jurisdiction of *Texas v. Florida*,[78] involving the question of the domicile of a decedent for state inheritance tax purposes.

Since 1961, the only clearly new category of *State v. State* cases that the Court has entertained has involved interstate disputes over the escheat of uncashed checks or other unclaimed property. The Court has taken all escheat cases, starting with *Texas v. New Jersey* (No. 13 Orig.),[79] followed by *Pennsylvania v. New York* (No. 40 Orig.),[80] and *Delaware v. New York* (No. 111 Orig.).[81] In the same period the Court has continued almost invariably to accept the traditional boundary and water-rights cases between two or more states: all but one of twenty-two boundary cases[82] and all but two of sixteen water rights cases.[83] Suits in three other subject matter categories, however, have met only a mixed reception, making future Supreme Court action difficult to predict. Those intermediate categories involve interstate pollution abatement (one denial out of two cases), challenges to state taxes (seven denials out of ten cases), and challenges to state regulation (six denials out of eight cases).[84] Any

78. 306 U.S. 398 (1939).

79. 379 U.S. 674 (1965).

80. 407 U.S. 206 (1972).

81. 488 U.S. 990 (1988). In a 1961 case on appeal to the Supreme Court from a Pennsylvania judgment escheating to that state unclaimed Western Union money orders, Western Union Tel. Co. v. Pennsylvania, 368 U.S. 71 (1961), the Court in vacating the Pennsylvania judgment took the unusual step of remitting the parties to an original jurisdiction suit because escheat controversies could "be settled [only] in a forum where all the States that want to do so can present their claims for consideration and final, authoritative determination." *Id.* at 79.

82. In Louisiana v. Mississippi (No. 114 Orig.), 488 U.S. 990 (1988), the Court denied the motion to file a complaint over the sharp dissent of Justices White, Stevens, and Scalia, who argued that the dispute fell within the Court's exclusive jurisdiction. The dissent downplayed the significance of Louisiana's intervention in a pending lawsuit over ownership of land between private parties raising similar issues because a judgment in the private suit would not be binding upon Mississippi. Justice White, the author of Maryland v. Louisiana (No. 83 Orig.), 451 U.S. 725 (1981), which in dictum recognized the appropriateness test as applied even to the Court's exclusive jurisdiction, thought the denial of leave in *Louisiana v. Mississippi* (No. 114 Orig.) was "no way to treat a sovereign State that wants its dispute with another State settled in this Court." Louisiana v. Mississippi (No. 114 Orig.), 488 U.S. at 991.

83. Wisconsin v. Minnesota (No. 21 Orig.), 382 U.S. 935 (1965) (summary denial of a suit to enjoin Minnesota from permitting Northern States Power Co. to build a dam and a coal-fired steam generating plant on the St. Croix River, allegedly creating a nuisance and impeding recreational use of the river, on the apparent ground that the claim was non-justiciable or that an alternative forum existed); South Dakota v. Nebraska (No. 103 Orig.), 485 U.S. 902 (1988) (summary denial of a suit "in nature of a quiet title action" to determine the rights of South Dakota to waters of the Missouri River as against Nebraska, Iowa, and Missouri on the apparent ground that the basic controversy was with the United States and already the subject of a federal district court action).

84. During the past dozen years, the Court's acceptance of three original jurisdiction cases suggests that the Court may have become somewhat more receptive to

State v. State case involving a subject matter beyond the six or seven categories here mentioned is, judging from past experience, certain to be rejected by the Supreme Court.

When we move from *State v. State* cases to those with the United States aligned as a party adverse to a state, we find that the Supreme Court readily takes cases involving title to tidelands or other property and state-federal boundaries, subjects comparable to the traditional grist of original jurisdiction cases between two or more states. Also, in the early part of the period here under study, the Supreme Court was presented with nine original jurisdiction cases between various states and the United States involving the validity of the Voting Rights Act of 1965 and its amendments. The Supreme Court granted the motions to file a complaint in all but four of those cases, those four apparently being rejected because the same issues were involved in an original jurisdiction suit being accepted contemporaneously by the Court, *South Carolina v. Katzenbach* (No. 22 Orig.).[85] The Court also took one state suit against the Secretary of the Treasury that challenged the constitutionality of an IRS regulation that denied federal income tax exemption for interest earned on

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Commerce Clause challenges to state taxes and state regulation.

In Maryland v. Louisiana (No. 83 Orig.), 451 U.S. 725 (1981), a suit by Maryland and seven other states both as consumers and *parens patriae* for their citizens, the Court held invalid under the Commerce Clause Louisiana's "first use" tax on natural gas brought into that state. The Court said that the challenged Louisiana tax "implicates serious and important concerns of federalism fully in accord with the purposes and reach of our original jurisdiction." *Id.* at 744. Justice Rehnquist dissented, expressing the view that the plaintiff states' claim was indistinguishable from the interests of private citizens and alternative forums existed where those interests could be fully vindicated. *See id.* at 760-61 (Rehnquist, J., dissenting).

In Wyoming v. Oklahoma (No. 112 Orig.), 112 S. Ct. 789 (1992), the Court invalidated under the Commerce Clause an Oklahoma statute requiring that electric generating plants in that state burn at least 10% of Oklahoma-mined coal. The Court said that Wyoming had standing because of its loss of severance tax revenues traced to the Oklahoma statute, and the absence of another forum in which Wyoming's interest would find appropriate hearing and full relief. *Id.* at 796. In strong dissents, Justices Scalia and Thomas, joined by Chief Justice Rehnquist, argued that Wyoming's injury as tax collector was too attenuated to confer standing and that the case was inappropriate for the exercise of original jurisdiction because the real dispute was between the private Wyoming coal companies and the State of Oklahoma. *Id.* at 804-12 (Scalia, J., dissenting).

By summary order, the Court granted the motion to file a complaint in Connecticut v. New Hampshire (No. 119 Orig.), 112 S. Ct. 962 (1992), a suit brought by the States of Connecticut, Rhode Island, and Massachusetts (both as consumers of electricity and as *parens patriae* for their citizens) against New Hampshire, challenging the validity of a special New Hampshire property tax on the utility owners of the Seabrook nuclear facility. Chief Justice Rehnquist and Justice Scalia noted that they would have ordered oral argument on the motion. *Connecticut v. New Hampshire* (No. 119 Orig.) was subsequently dismissed pursuant to a settlement agreement. *See supra* note 1.

85. 383 U.S. 301 (1966) (decision on the merits).

unregistered state and local government bonds.[86]

Beyond those categories, however, any United States-party cases were denied without exception. The cases in which states unsuccessfully sought to sue the United States or its officers involved a wide variety of issues including the constitutionality of United States involvement in the Indo-Chinese War,[87] the validity of the President's impoundment of federal financial assistance to the states,[88] the proper allocation of power between the legislative and executive branches with respect to disposal of United States property interests in the Panama Canal,[89] and the constitutionality of applying the federal wiretapping statute to state judicial proceedings.[90]

We turn finally to the *third* appropriateness factor, the availability of an *alternative forum* "where there is jurisdiction over the named parties, where the issues tendered may be litigated, and where appropriate relief may be had."[91] In view of the cautionary considerations counselling the Court's sparing use of its original jurisdiction, the availability of an alternative forum in one or more state or federal trial courts is bound to be a particularly influential factor in rejecting attempts to invoke that jurisdiction, because appellate review of federal questions by the Supreme Court stands as the possible ultimate step after litigation in the lower courts.[92] In fact, an alternative forum in the full sense has not always been a *sine qua non* for the Court's denial of the threshold motion; the Court has found the third appropriateness factor satisfied if the same issue will be tried out in a pending suit, even though not between the state parties.[93] Furthermore, the existence of an alternative forum may still bar an original jurisdiction action even if the alternative forum is foreclosed. For example, the Supreme Court has refused to exercise its trial court jurisdiction to adjudicate an issue where the party asking to file a complaint could have previously sought the Court's appellate review on certiorari of a state supreme

86. *See* South Carolina v. Regan (No. 94 Orig.), 485 U.S. 505 (1988) (renamed South Carolina v. Baker) (decision on the merits).

87. Massachusetts v. Laird (No. 42 Orig.), 400 U.S. 886 (1970) (summary denial with Harlan and Stewart, JJ., and Douglas, J., dissenting).

88. Georgia v. Nixon (No. 63 Orig.), 414 U.S. 810 (1973) (summary denial).

89. Idaho v. Vance (No. 75 Orig.), 434 U.S. 1031 (1978) (summary denial).

90. Michigan v. Meese (No. 107 Orig.), 479 U.S. 1078 (1987) (summary denial).

91. Illinois v. City of Milwaukee (No. 49 Orig.), 406 U.S. 91, 93 (1972).

92. *See id.* at 108.

93. *See, e.g.*, Arizona v. New Mexico (No. 70 Orig.), 425 U.S. 794 (1976) (per curiam) (Arizona utilities, including a political subdivision of the State of Arizona, already were party plaintiffs in a suit in New Mexico state court raising same federal constitutional question); Louisiana v. Mississippi (No. 114 Orig.), 488 U.S. 990 (1988) (summary denial with White, Stevens, and Scalia, JJ., dissenting) (Louisiana had intervened in Louisiana state court suit between private parties raising issue whether certain island in the disputed area of the Mississippi River was in Louisiana or Mississippi).

court's decision of that same issue.[94] In all, the existence of an alternative forum appears to have been a principal reason for the Court's rejecting about half of the "silent" state-party cases and was a significant factor in every case where the Court published an opinion explaining its reason for rejecting the suit as inappropriate for its original jurisdiction.[95]

CONCLUSION

The substantial set of gatekeeping rules that the Supreme Court has developed adds up to making its original jurisdiction for practical purposes almost as discretionary as its certiorari jurisdiction over appellate cases, even for suits between states that on their face fall within the congressional definition of exclusive Supreme Court jurisdiction. As in exercising any other discretion, the Court applies the gatekeeping rules in each case with a practical flexibility suited to the particular policy considerations pertinent to it. A comparison of the Court's acceptance in 1965 of the Voting Rights Act case and its rejection in 1972 of the federal funds impoundment case is instructive of the flexibility to be expected of the Court in exercising its discretion whether to take an original jurisdiction case.

When the Voting Rights Act became law on August 6, 1965, Attorney General Nicholas Katzenbach, who was charged with its enforcement, faced the prospect of litigation in various state and federal courts in the South—a prospect that shortly became actuality.[96] An unfavorable ruling in a lower court on the constitutionality of the Act, even if in time reversed, would discourage voluntary compliance pending final resolution by the United States Supreme Court. On September 29, 1965, South Carolina moved for leave to file an original jurisdiction complaint against the Attorney General seeking to enjoin him from enforcing certain key provisions of the Act that the State claimed to be unconstitutional.[97] Prospective defendant Katzenbach, speaking through Solicitor General Thurgood Marshall, rather than opposing South Carolina's motion, actively urged the Court to grant it. The Supreme Court accepted the Solici-

94. *See* Illinois v. Michigan (No. 57 Orig.), 409 U.S. 36, 37 (1972) (per curiam) (denial of a suit to enforce a reciprocal insurance statute allegedly violated by a decision of the Michigan Supreme Court, on the ground that "original jurisdiction of the Court is not an alternative to the redress of grievances which could have been sought in the normal appellate process, if the remedy had been timely sought"). *See also* Nevada v. California (No. 62 Orig.), 414 U.S. 810 (1973) (summary denial) (an alternative forum on the critical issue was available in the University of Nevada's pending petition for certiorari to review the California Supreme Court's adverse decision on that issue).

95. *See* Appendix B to this Article.

96. *See* Alexander M. Bickel, *The Voting Rights Cases*, 1966 SUP. CT. REV. 79, 80-81.

97. *See* South Carolina v. Katzenbach (No. 22 Orig.), 383 U.S. 301, 307 (1966).

tor General's recommendation, thus selecting *South Carolina v. Katzenbach* (No. 22 Orig.) as the vehicle for an early determination of the constitutionality of the Voting Rights Act.[98] Inviting all of the other states to participate in the original proceeding as amici curiae[99] and dispensing with the appointment of a special master because South Carolina's complaint raised no issues of fact,[100] the Court under Chief Justice Warren moved the case through the briefing and oral argument stages to a decision on the merits with unusual speed. The Court upheld the constitutionality of the Voting Rights Act against South Carolina's facial attack in an opinion issued only seven months and one day after the Act was signed by President Johnson.[101] Although one scholar, Alexander Bickel,[102] criticized the Court for reaching out to take the Voting Rights Act case, and for deciding it before the full development of the facts and issues through the usual trial and appellate processes, the practical result of the Court's management of the situation was that uncertainty about the enforceability of the Act was promptly removed—exactly what both the Attorney General and the State of South Carolina desired and what the Court thought appropriate in dealing with questions that its opinion said "were of urgent concern to the entire country . . . ."[103]

Robert Bork, the Solicitor General at the time the impoundment cases arose, was not so successful in his Supreme Court advocacy. In 1972 the State of Georgia asked leave to file an original jurisdiction complaint against President Nixon and three different federal agencies (one being the Environmental Protection Agency) seeking, on constitutional grounds, to enjoin them from impounding federal financial assistance that Congress had appropriated for the states.[104] Solicitor General Bork joined in urging the Court to grant Georgia's

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98. *See* South Carolina v. Katzenbach (No. 22 Orig.), 382 U.S. 898 (1965).

99. At the same time, the Court summarily denied the motions to file complaints in the combined case, United States v. Alabama (No. 23 Orig.), United States v. Mississippi (No. 24 Orig.), United States v. Louisiana (No. 25 Orig.), 382 U.S. 897 (1965), and Louisiana v. Katzenbach (No. 26 Orig.), 382 U.S. 950 (1965), for the apparent reason that the same issues were raised in the pending *South Carolina v. Katzenbach* (No. 22 Orig.), and all of the states involved in the four later motions were being given the opportunity of participating as amici curiae in the *South Carolina* case.

100. South Carolina v. Katzenbach (No. 22 Orig.), 383 U.S. at 307.

101. *Id.* The Court founded its original jurisdiction "on the presence of a controversy between a State and a citizen of another State," namely, between South Carolina and Attorney General Katzenbach, a citizen of New Jersey. *Id.* As this Article has pointed out earlier, *State v. Citizen* is not a party configuration normally favored for the exercise of original jurisdiction. *See supra* notes 49-50 and accompanying text. The reality was that the Court entertained a controversy between a state and the United States, represented by its chief law officer.

102. *See* Bickel, *supra* note 96, at 87-92.

103. South Carolina v. Katzenbach, (No. 22 Orig.), 383 U.S. at 307.

104. *See* Georgia v. Nixon (No. 63 Orig.), 414 U.S. 810 (1973).

motion, in order to obtain an early and final decision whether the Executive Branch had the authority to halt congressionally authorized expenditures—a question that had already been raised in thirty-seven suits pending in the lower federal courts.[105] This time the Court did not agree with the Solicitor General; without dissent it summarily denied the State of Georgia's motion.[106] The Court's unspoken reason for rejecting the impoundment case was undoubtedly the "practical wisdom"[107] of letting the full judicial process run its course in the thirty-seven factually complex cases already pending below and the absence of any urgency comparable to that existing in the Voting Rights Act case.

Within two and a half years the Court in its appellate role took and decided two impoundment cases. Both of them involved the impoundment by the EPA of $6 billion authorized by the Federal Water Pollution Control Act for federal assistance to the states in 1973 and 1974 for the construction of sewers and sewage treatment works.[108] Deciding the cases solely as a matter of statutory construction, the Court held that Congress had directed that the full amount appropriated ($11 billion) be initially allotted to the states and that the Executive's power to control outlays under the Act was to be exercised only at the later stage of approving specific projects. Thus, when the Court finally addressed the impoundment issue, it had before it only one federal agency and the interpretation of only that agency's controlling statute; it was not asked to address the broad constitutional question of the division of the spending power between the legislative and executive branches,[109] the question on which the original jurisdiction suit of *Georgia v. Nixon* (No. 63 Orig.) sought a ruling.[110] By rejecting *Georgia v. Nixon* (No. 63

105. *See* Memorandum for the Defendant on Georgia's Motion for Leave to File a Bill of Complaint at 19, 27-33, Georgia v. Nixon (No. 63 Orig.), 414 U.S. 810 (1973).

106. *See* Georgia v. Nixon (No. 63 Orig.), 414 U.S. 810 (1973) (summary denial).

107. The phrase "practical wisdom" comes from Justice Harlan's opinion for the Court in Ohio v. Wyandotte Chems. Corp. (No. 41 Orig.), 401 U.S. 493, 499 (1971). *See supra* note 64.

108. *See* Train v. City of New York, 420 U.S. 35 (1975); Train v. Campaign Clear Water, Inc., 420 U.S. 136 (1975).

109. *See* Brief for the Petitioner, Train v. City of New York, 420 U.S. 35 (1975) (No. 73-1377); Brief for the Petitioner, Train v. Campaign Clean Water, Inc., 420 U.S. 136 (1975) (No. 73-1378); Brief for the Respondent, City of New York, Train v. City of New York, 420 U.S. 35 (1975) (No. 73-1377); Brief for the Respondent, Train v. Campaign Clean Water, Inc., 420 U.S. 136 (1975) (No. 73-1378). A separation-of-powers argument was, however, made in the amicus curiae brief filed by the California Attorney General. *See* Brief of the California Attorney General as Amicus Curiae in Support of Respondent's Position, Train v. City of New York, 420 U.S. 35 (1975) (No. 73-1377); Brief of the California Attorney General as Amicus Curiae in Support of Respondent's Position, Train v. Campaign Clean Water, Inc., 420 U.S. 136 (1975) (No. 73-1378).

110. *See* Georgia's Motion for Leave to File a Complaint, Complaint, and Brief in Support of Motion at 19, 23-26, 39-41, Georgia v. Nixon (No. 63 Orig.), 414 U.S. 810

Orig.), the Court had the benefit of having the judicial process in the lower courts refine the issues at stake and avoided a serious constitutional question that even today has not reached the high court. Timing is thus a critical factor in the Supreme Court's decision whether, on the one hand, to hear and decide a disputed state-party issue immediately through exercise of its original jurisdiction or, on the other hand, to wait for the issue to come to it after filtering through the usual trial and appellate processes.

The Court's 1971 pronouncement of the *Wyandotte* appropriateness test intervened between the Voting Rights Act case and the impoundment case, but by no means does that fact explain the Court's accepting the former and rejecting the latter. The Court's action on the threshold motion in any original jurisdiction case will be determined by an exercise of its collective judgment on the complex of policy considerations relevant to each particular case. With the help of hindsight, it is impossible to say that the Court went wrong in either case.

The Supreme Court's failure to expand the use of its original jurisdiction does not come from any lack of trying on the part of potential plaintiffs eager to "start at the top" to get a final resolution of disputes involving states. The lesson to be learned from the 116 active original jurisdiction cases on the Supreme Court's docket since 1961 is that those plaintiffs should look elsewhere to litigate their claims, except for those very few that unmistakably fall within the Court's traditional exercise of its trial court jurisdiction.[111]

(1973).

111. That this lesson may have been learned is suggested by the fact that no motion for leave to file a complaint in an original jurisdiction case was filed from October 30, 1991 through April 25, 1993—apparently the longest period of non-filing during the three decades here studied. *See supra* note 1.

APPENDIX A*

CASES PURPORTEDLY BROUGHT UNDER FOREIGN ENVOY BRANCH OF THE SUPREME COURT'S ORIGINAL JURISDICTION SINCE OCTOBER 1, 1961

Founding Church of Scientology v. Cromer (No. 51 Orig.), 404 U.S. 933 (1971) (suit against British ambassador to United States and British first secretary, seeking $1 million in compensatory damages and $1.2 million in punitive damages for alleged libel). Summary denial (apparent reason: diplomatic immunity).

Webb v. Porter (No. 55 Orig.), 406 U.S. 941 (1972) (suit by citizen of Ohio to enjoin appointment of William J. Porter as ambassador to Paris Peace Talks on grounds of failure to appoint with advice and consent of Senate). Summary denial (apparent reason: original jurisdiction applies only to foreign ambassadors and, in any event, U.S. ambassadors need not be appointed with the advice and consent of the Senate).

Petersen v. Spiliotopoulos (No. 61 Orig.), 412 U.S. 903 (1973) (malicious prosecution and defamation suit against chancellor of Greek consulate in New Orleans). Summary denial (apparent reason: this insubstantial state-law tort case was not an appropriate one for exercise of the Court's original jurisdiction).

Kostadinov v. Smith (No. 99 Orig.), 469 U.S. 1203 (1985) (suit by Bulgarian consular officer in New York for writ of prohibition against criminal prosecution for espionage). Summary denial (apparent reason: plaintiff had alternative forum, the criminal prosecution, in which to assert diplomatic immunity).

***In re* Republic of Suriname *ex rel.* Boerenveen** (No. 110 Orig.), 484 U.S. 961 (1987) (suit for writ of habeas corpus brought by consular officer convicted of drug conspiracy). Summary denial (apparent reason: consular officer had alternative forum, the criminal proceeding on appeal or habeas review of the criminal proceeding, in which to claim diplomatic immunity).

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* All original jurisdiction cases in Appendix A are "silent" cases in that the Supreme Court denied the threshold motion for leave to file a complaint in summary orders without identification of the subject matter of the attempted suits or the Court's reasons for rejecting them. The parenthetical explanation of each suit and the "apparent reason" given here for the summary denial represent the author's best assessment from the original papers.

APPENDIX B

ALL ORIGINAL JURISDICTION CASES DISPOSED OF AFTER OCTOBER 1, 1961 BY DENIALS OF MOTIONS FOR LEAVE TO FILE COMPLAINTS: ANALYSIS OF SUBJECT MATTER AND REASONS FOR REJECTION

(Total of 111 state-party cases on the original jurisdiction docket from October 1, 1961 through April 25, 1993; 50 denials)*

I. STATE v. STATE (total of 68 cases; 24 denials)

A. State Boundaries (total of 22 cases; 1 denial)

Louisiana v. Mississippi (No. 114 Orig.), 488 U.S. 990 (1988) (suit to establish boundary between Louisiana and Mississippi in portion of Mississippi River). Summary denial (White, Stevens, and Scalia, JJ., dissenting). The dissent argued that the dispute fell within the Court's exclusive jurisdiction. The dissent downplayed the significance of Louisiana's intervention in a pending lawsuit over ownership of land between private parties raising similar issues, because a judgment in the private suit would not be binding upon Mississippi. Justice White, the author of *Maryland v. Louisiana* (No. 83 Orig.), which in dictum recognized the appropriateness test as applied even to the Court's exclusive jurisdiction, thought that denial of leave in the instant case was "no way to treat a sovereign State that wants its dispute with another State settled in this Court." Louisiana v. Mississippi, 488 U.S. at 991.

B. Rights to Interstate Waters (total of 16 cases; 2 denials)

Wisconsin v. Minnesota (No. 21 Orig.), 382 U.S. 935 (1965) (suit to enjoin Minnesota from permitting Northern States Power Company to build dam and coal-fired steam generating plant on St. Croix River, allegedly creating nuisance and impeding recreational use of river). Summary denial (apparent reason: claim was non-justiciable between the states; alternative forum existed for the issues).

South Dakota v. Nebraska (No. 103 Orig.), 485 U.S. 902 (1986) (suit "in nature of a quiet title action" to determine rights of South Dakota to waters of Missouri River as against Nebraska, Iowa, and Missouri). Summary denial (apparent reason: basic controversy was with the United States, and that controversy was already subject of federal district court action).

C. State Escheat of Unclaimed Property (total of 3 cases; no denial)

No motion for leave to file a complaint denied.

D. State Taxes (total of 10 cases; 7 denials)

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* Since 1961 the Supreme Court's original jurisdiction docket has recorded 111 state-party cases, that is, 111 cases that sought to invoke the Court's original jurisdiction on the ground that a state was a party. *See supra* note 21. Of those 111 state-party cases, the Supreme Court rejected 50 by denying the threshold motion for leave to file a complaint. Of the balance, 9 cases had already been accepted before the Court adopted its new docketing system for original jurisdiction cases in 1961, and the other 52 have been accepted since 1961. Two of the 11 cases on the Court's docket at the start of the 1961 Term are not counted for this purpose because both have been completely inactive since 1961. *See supra* note 21.

Pennsylvania v. New Jersey (No. 68 Orig.); **Maine v. New Hampshire** (No. 69 Orig.), 426 U.S. 660 (1976) (suits to challenge constitutionality of commuter income taxes). Motions denied in full opinion (per curiam) (Blackmun, J., concurring) (Brennan and White, JJ., dissenting). In these two cases heard together involving the claimed invalidity of the New Jersey and New Hampshire commuter income taxes, the Court denied the motions for leave to file complaints on the ground the disputes were non-justiciable because the plaintiff states had caused the injury to themselves by voluntarily giving tax credits to their residents who paid the commuter tax in the defendant states. The Court also noted that Pennsylvania could not assert the rights of its citizens embodied in the privileges and immunities clause and equal protection clause because "both Clauses protect people, not States." *Id.* at 665. Pennsylvania's attempt to sue as *parens patriae* also was rejected by the Court, which said that the action was "nothing more than a collectivity of private suits against New Jersey for taxes withheld from private parties." *Id.* at 666.

Arizona v. New Mexico (No. 70 Orig.), 425 U.S. 794 (1976) (suit to challenge constitutionality of application of New Mexico electrical energy tax to Arizona utilities). Motion denied in full opinion (per curiam) (Stevens, J., concurring). In this bill challenging under 15 U.S.C. § 391 both the constitutionality and validity of the application of a New Mexico electrical energy tax to Arizona utilities, the Court for the first time applied the *Wyandotte* doctrine to deny the motion for leave to file the complaint in a *State v. State* suit, noting that a suit was already pending raising the same issue and involving one plaintiff that was a political subdivision of the State of Arizona. Arizona sued both as a proprietary consumer of electricity and as *parens patriae* on behalf of its citizens. Justice Stevens concurred on the ground that Arizona had no standing, but disagreed with the majority's application for the first time of the *Wyandotte* doctrine to a *State v. State* case within the exclusive jurisdiction of the Supreme Court. Subsequently, on review of the state court litigation raising the same issue, the Supreme Court held the New Mexico tax invalid under Section 391 in Arizona Pub. Serv. Co. v. Snead, 441 U.S. 141 (1979).

New York v. New Jersey (No. 71 Orig.), 429 U.S. 810 (1976) (suit to challenge constitutionality of commuter income tax). Summary denial (apparent reason: same reason as for denying motions in Nos. 68 and 69 Orig.).

California v. Texas (No. 76 Orig.), 437 U.S. 601 (1978) (suit to establish domicile of decedent Howard Hughes for tax purposes). Summary denial (Brennan, J., concurring) (Stewart, Powell, and Stevens, JJ., concurring). In this first case involving the domicile of decedent Howard Hughes for state inheritance tax purposes, the Court denied the motion to file a complaint on the ground that the dispute was between the Howard Hughes estate and each of the states and was not a justiciable controversy between the two states. *See* California v. Texas (No. 88 Orig.) 457 U.S. 164 (1982) (motion granted for suit on same subject matter) (per curiam) (Powell, Marshall, Rehnquist, and Stevens, JJ., dissenting).

Arkansas v. Oklahoma (No. 95 Orig.), 465 U.S. 1018 (1984) (suit to challenge constitutionality of "retaliatory" highway use tax on Arkansas-based motor carriers operating in Oklahoma). Summary denial (apparent reason: substantial injury was not shown and an alternative forum was provided by class action pending in state courts).

Pennsylvania v. Oklahoma (No. 98 Orig.), 465 U.S. 1097 (1984) (suit to challenge constitutionality of "retaliatory" highway use tax on Pennsylvania-based motor carriers operating in Oklahoma). Summary denial (apparent reason: substantial injury was not shown and the real parties in interest were Pennsylvania concerns operating motor vehicles in Oklahoma).

E. Interstate Pollution Abatement (total of 2 cases; 1 denial)

Oklahoma v. Arkansas (No. 93 Orig.), 460 U.S. 1020 (1983) (suit against Arkansas and various municipalities and private companies to enjoin discharge of waste into Illinois River). Summary denial (apparent reason: real parties in interest were municipalities and private corporations, which had alternative forums).

F. Enforcement of Contract Between States (total of 3 cases; all denied)

New Jersey v. New York (No. 34 Orig.), 390 U.S. 1000 (1968) (suit against New York and private company, Hudson Rapid Tubes Corp., to enforce agreement between New Jersey and New York as to condemnation value of railway allegedly violated by decision of New York's highest court). Summary denial (apparent reason: issue had already been decided by New York Court of Appeals and the states in reality were adverse to the private company, rather than to each other).

Illinois v. Michigan (No. 57 Orig.), 409 U.S. 36 (1972) (suit to enforce reciprocal insurance statute allegedly violated by decision of Michigan Supreme Court). Motion denied in full opinion (per curiam). In denying motion to file complaint, the Court noted that the State of Illinois was a party to the Michigan court decision complained of (through its Director of Insurance), that review should have been sought through writ of certiorari, and that "original jurisdiction of the Court is not an alternative to the redress of grievances which could have been sought in the normal appellate process, if the remedy had been timely sought." *Id.* at 37. The Court also characterized the controversies as ones between private litigants, and "essentially not state concerns." *Id.*

California v. West Virginia (No. 91 Orig.), 454 U.S. 1027 (1981) (suit to establish breach of contract covering football games between San Jose State University and the University of West Virginia, both state institutions). Summary denial (Stevens, J., dissenting). Justice Stevens dissented on the ground that the *Wyandotte* doctrine is "inapplicable to cases in which our jurisdiction is exclusive," *id.* at 1028, despite the fact that he had only a few months before joined in the Court's opinion (authored by White, J.) in Maryland v. Louisiana (No. 83 Orig.), 451 U.S. 725 (1981), which in dictum asserted the Court's discretion to limit even its exclusive jurisdiction to "appropriate cases." *Id.* at 739.

G. State Regulation (total of 8 cases; 6 denials)

Pennsylvania v. New York (No. 60 Orig.), 410 U.S. 977 (1973) (suit against 25 states to challenge constitutionality of states' liquor "price affirmation" policy, requiring liquor vendors to give states lowest available price). Summary denial (apparent reason: defendant states had not inflicted direct injury on Pennsylvania, and 21st Amendment gives states broad regulatory power over liquor sales).

New Mexico v. Texas (No. 82 Orig.), 444 U.S. 895 (1979) (suit to enjoin enforcement of a Texas PUC order prohibiting any Texas electric util-

ity from interconnecting in interstate commerce unless specifically allowed by the Texas PUC or FERC). Summary denial (apparent reason: injury was speculative, rather than imminent, and the same issue would be adjudicated in a pending case brought by the utilities in Texas courts).

California v. Texas (No. 87 Orig.), 450 U.S. 1038 (1981) (suit to enjoin Texas from quarantining California fruits and vegetables because of Mediterranean fruit fly infestation). Summary denial without prejudice (apparent reason: controversy was mooted by Texas's discontinuance of quarantine).

California v. Texas (No. 90 Orig.), 454 U.S. 886 (1981) (suit to enjoin Texas, Florida, Alabama, Mississippi, and South Carolina from quarantining California fruits and vegetables because of Mediterranean fruit fly infestation). Summary denial without prejudice (apparent reason: controversy was mooted by defendant states' discontinuance of quarantine).

Pennsylvania v. Alabama (No. 101 Orig.), 472 U.S. 1015 (1985) (suit against 38 States to challenge their liquor "price affirmation" systems). Summary denial (apparent reason: issue had already been decided in Joseph E. Seagram & Sons, Inc. v. Hosletter, 384 U.S. 35 (1966); states have broad regulatory power under the 21st Amendment; issues could be raised in alternative forums; and complaint was multifarious because of the variety of state regulations being challenged).

Arkansas v. Oklahoma (No. 115 Orig.), 488 U.S. 1000 (1989) (suit to enjoin application of Oklahoma's water quality standards to point sources within Arkansas). Summary denial (apparent reason: as to one point source a pending administrative proceeding provided an alternative forum and as to others the controversy was not ripe).

H. Other Miscellaneous Subject Matter (total of 4 cases; all denied)

Arizona v. California (No. 16 Orig.) 377 U.S. 926 (1964) (suit against California and California citizen to recover workers' compensation benefits paid by Arizona state fund to Arizona citizen injured in auto accident allegedly caused by defect on San Francisco-Oakland Bridge and to assert tort claims assigned to Arizona by injured Arizonan and his employer). Summary denial (apparent reason: *ad damnum* was relatively insignificant and Arizona had available an alternative forum for claiming a lien on any judgment obtained by the insured Arizonan in California courts).

Delaware v. New York (No. 28 Orig.), 385 U.S. 895 (1966) (suit against all 50 States and the District of Columbia to enjoin use of the "state-unit" (winner-take-all) system to cast electoral votes for presidential and vice presidential candidates). Summary denial (apparent reason: federal government rather than the state is *parens patriae* of citizens with respect to federal rights; Delaware attorney general did not show any authority to sue his own state; and the complaint raised a non-justiciable political question).

Nevada v. California (No. 62 Orig.), 414 U.S. 810 (1973) (suit seeking declaration that Nevada state employee's operation of state-owned vehicle in California did not constitute Nevada's consent to suit in California state courts). Summary denial (apparent reason: alternative forum was available for the issue on the University of Nevada's pending petition for certiorari to review the California Supreme Court's decision in Hall v. University of Nevada, 503 P.2d 1363 (1972), *see* Nevada v. Hall, 440 U.S. 410 (1979) (deci-

sion in same case on direct review of later California judgment for $1,150,000 against Nevada in auto accident suit by California plaintiff Hall)).

Puerto Rico v. Iowa (No. 96 Orig.), 464 U.S. 1034 (1984) (suit seeking mandamus for extradition of Puerto Rican fugitive). Summary denial (apparent reason: neither plaintiff nor real defendant (Iowa Governor Branstad) was a state).

II. UNITED STATES AS PARTY ADVERSE TO A STATE (total of 33 cases; 16 denials)

A. Federal Voting Rights Act (total of 9 cases; 4 denials)

United States v. Alabama (No. 23 Orig.); **United States v. Mississippi** (No. 24 Orig.); **United States v. Louisiana** (No. 25 Orig.), 382 U.S. 897 (1965) (suits to determine validity of Voting Rights Act of 1965). Summary denial (apparent reason: same issues were raised contemporaneously in South Carolina v. Katzenbach (No. 22 Orig.), 382 U.S. 898 (1965), in which the Court granted the motion for leave to file a complaint, and in which Alabama, Mississippi, Louisiana, and other states participated as amici curiae at the Court's invitation. *See* South Carolina v. Katzenbach (No. 22 Orig.), 383 U.S. 301 (1966) (constitutionality of the Voting Rights Act upheld).

Louisiana v. Katzenbach (No. 26 Orig.), 382 U.S. 950 (1965) (suit challenging constitutionality of Voting Rights Act of 1965). Summary denial (apparent reason: same reason as for rejecting Nos. 23, 24 & 25 Orig. above).

B. Title to Tidelands and Other Property (total of 7 cases; no denials)

No motion for leave to file a complaint has been denied.

C. State-Federal Boundaries (total of 4 cases; no denials)

No motion for leave to file a complaint has been denied.

D. Water Rights (total of 2 cases; 2 denials)

United States v. Nevada (No. 59 Orig.), 412 U.S. 534 (1973) (suit against Nevada and California to establish water rights in Truckee River). Motion denied with full opinion (per curiam). The Court, expanding the *Wyandotte* doctrine for the first time to apply to a suit by the United States, noted that the jurisdiction of the federal district court was available and more appropriate because private users of the disputed water could intervene, and stated that the court "need not employ our original jurisdiction to settle competing claims to water within a single State." *Id.* at 538.

Mississippi v. United States (No. 117 Orig.), 111 S. Ct. 2046 (1991) (suit to challenge dredging, diverting of Pearl River by U.S. Army Corps of Engineers and to determine equitable rights to waters of Pearl River, title to thalweg of Pearl River as between Mississippi and Louisiana). Summary denial (apparent reason: Mississippi could not obtain a judicial rescission of Congress's decision to authorize a federal water project; review could properly be had through review of final agency action).

E. Federal Tax Statute (total of 2 cases; 1 denial)

Alabama v. Connally (No. 53 Orig.), 404 U.S. 933 (1971) (suit against Secretary of Treasury and IRS Commissioner to declare that IRS exemption for charities is discriminatory and subsidizes religion in violation of

First Amendment; suit targeted contributions by church to defense fund of avowed Black Panther Angela Davis). Summary denial (apparent reason: state is not *parens patriae* of its citizens in regard to their federal rights, and review of the tax question is available only at instance of a taxpayer challenging his own tax liability).

F. Other Miscellaneous Subject Matter (total of 9 cases; all denied)

Alabama v. United States (No. 15 Orig.), 373 U.S. 545 (1963) (suit to challenge exercise of authority to use federal troops to suppress combination or conspiracy to commit violence). Motion denied in full opinion (per curiam). The Court denied the motion on the ground that the President had only made ready to station military personnel in the Birmingham area and therefore there was no basis for relief. In other words, the dispute was not justiciable or ripe for judicial action.

Florida v. Finch (No. 37 Orig.), 396 U.S. 490 (1970) (suit against 49 other states and the Secretary of Health, Education and Welfare for declaration that no state might be penalized by loss of federal education funding for failure to bus students to achieve a "unitary" school system). Summary denial (apparent reason: state is not *parens patriae* for its citizens in asserting their federal rights, and it could raise any claims of its own in alternative forums).

Alabama v. Finch (No. 38 Orig.), 396 U.S. 552 (1970) (suit against the Secretary of Health, Education and Welfare and the United States Attorney General to challenge allegedly unequal application/enforcement of federal school-desegregation law to Alabama). Summary denial (apparent reason: state is not *parens patriae* for its citizens in asserting their federal rights and its own claim of defendants' unequal enforcement of the federal school-desegregation law either did not raise a justiciable issue or could be asserted in alternative forums).

Mississippi v. Finch (No. 39 Orig.), 396 U.S. 553 (1970) (suit against the Secretary of Health, Education and Welfare and the United States Attorney General seeking to enjoin enforcement of federal school-desegregation law in Mississippi). Summary denial (apparent reason: state is not *parens patriae* for its citizens in asserting their federal rights, and it had alternative forums in which to assert its own claim).

Massachusetts v. Laird (No. 42 Orig.), 400 U.S. 886 (1970) (suit to determine constitutionality of U.S. involvement in Indo-Chinese War). Summary denial (Harlan and Stewart, JJ. and Douglas, J., dissenting). The Court summarily denied the motion for leave to file a complaint presumably on the grounds that Massachusetts lacked standing and that the dispute was non-justiciable and involved a political question. Justices Harlan and Stewart dissented on the ground that oral argument should have preceded action on the motion. Justice Douglas dissented in an extensive opinion discussing each of the assumed grounds for the denial. A subsequent case with additional parties plaintiff in the Massachusetts District Court, with an appeal to the First Circuit, resulted in a First Circuit decision (opinion by Judge Frank M. Coffin) that affirmed the dismissal of the complaint on the ground that there was no justiciable question as to the division of power between the executive and legislative branches relating to the execution of the Vietnam War. *See* Massachusetts v. Laird, 451 F.2d 26 (1st Cir. 1971).

Georgia v. Nixon (No. 63 Orig.), 414 U.S. 810 (1973) (suit to enjoin

President and three federal agencies from withholding or impounding federal financial assistance to states). Summary denial (apparent reason: alternative forums existed in 37 suits then pending in lower federal courts and it was "practical wisdom" to avoid exercising original jurisdiction to decide a serious constitutional question in such a factually complex case (see Train v. City of New York, 420 U.S. 35 (1975), and Train v. Campaign Clean Water, Inc., 420 U.S. 136 (1975), which later addressed impoundment issue on direct review but only as a matter of construction of one agency's controlling statute)).

Idaho v. Vance (No. 75 Orig.), 434 U.S. 1031 (1978) (suit by Idaho, Iowa, Louisiana, Nebraska, and five U.S. senators to declare the proper allocation of power between the legislative and executive branches with respect to the disposal of U.S. property interests in the Panama Canal). Summary denial (apparent reason: states are not *parens patriae* of their citizens with respect to their federal rights).

Indiana v. United States (No. 102 Orig.), 471 U.S. 1123 (1985) (suit to enjoin the U.S. House of Representatives from refusing to administer oath of office to Richard D. McIntyre of Indiana). Summary denial (apparent reason: alternative forum existed in a case already pending in the D.C. Circuit).

Michigan v. Meese (No. 107 Orig.), 479 U.S. 1078 (1987) (suit to determine constitutionality of federal wiretapping statute, 18 U.S.C. § 2515, as applied to state judicial proceedings). Summary denial (apparent reason: alternative forums existed in state criminal proceedings and potentially in federal district courts).

III. STATE v. PARTY OTHER THAN STATE OR UNITED STATES (total of 6 cases; all denied)

A. Interstate Pollution Abatement (total of 3 cases; all denied)

Ohio v. Wyandotte Chems. Corp. (No. 41 Orig.), 401 U.S. 493 (1971) (suit to abate pollution nuisance caused by mercury allegedly dumped by defendant industrial companies in head waters of Lake Erie). Motion denied in full opinion (Harlan, J.) (Douglas, J., dissenting). The Court exercised its discretion under the appropriateness doctrine to deny the motion for leave to file a complaint. The Court's opinion pointed out the availability of an alternative forum in the Ohio state courts, the difficulty of Supreme Court management of the case and enforcement of needed remedies, and the supervening appellate caseload responsibilities of the Court. The *Wyandotte* doctrine had antecedents in Chief Justice Hughes's opinion in Massachusetts v. Missouri, 308 U.S. 1 (1939), a suit by Massachusetts against Missouri trustees, in which Hughes noted "the need [for] the exercise of a sound discretion in order to protect this Court from an abuse of the opportunity to resort to its original jurisdiction in the enforcement by States of claims against citizens of other States." *Id.* at 19. Beyond that, Justice Harlan in *Wyandotte* emphasized changes "in the American legal system and the development of American society" that necessitated the application of a discretion over what cases the Court should take within its original jurisdiction, those changes being "pre-eminently the diminished societal concern in our function as a Court of original jurisdiction and the enhanced importance of our role as a final federal appellate court." Ohio v.

Wyandotte Chems. Corp. (No. 41 Orig.), 401 U.S. at 499. He went on to say that any "serious intrusion on society's interest in our most deliberate and considerate performance of our paramount role as the supreme federal appellate court could, in our view, be justified only by the strictest necessity . . . ." *Id.* at 505. Justice Douglas, in dissenting, downplayed the complexities of the suit. *Id.* at 505-12.

Washington v. General Motors Corp. (No. 45 Orig.), 406 U.S. 109 (1972) (suit by 18 states to challenge alleged conspiracy by Big Four auto companies to impede research and development of automotive air pollution devices). Motion denied in full opinion (Douglas, J.). Applying the *Wyandotte* doctrine, the Court noted that jurisdiction in the federal district courts was available and afforded a more appropriate forum for one or more of the 18 plaintiff states to assert against the Big Four the claim of a conspiracy to impede research and development of automotive air pollution devices.

Illinois v. City of Milwaukee (No. 49 Orig.), 406 U.S. 91 (1972) (suit to abate pollution nuisance on Lake Michigan). Motion denied in full opinion (Douglas, J.). In this suit by the State of Illinois against the City of Milwaukee to abate pollution of Lake Michigan, the Court held that a city or other political subdivision of a state is not a "state" for purposes of the exclusive original jurisdiction of the Court. The Court then applied the *Wyandotte* doctrine to deny the motion to file complaint on the ground that there was available a more appropriate forum, namely, the federal district court in Illinois. The opinion provides an excellent statement of "prudential and equitable limitations" imposed by the Court on the exercise of its original jurisdiction:

> [T]he question of what is appropriate concerns, of course, the seriousness and dignity of the claim; yet beyond that it necessarily involves the availability of another forum where there is jurisdiction over the named parties, where the issues tendered may be litigated, and where appropriate relief may be had. We incline to a sparing use of our original jurisdiction so that our increasing duties with the appellate docket will not suffer.

Id. at 93-94.

B. Other Miscellaneous Subject Matter (total of 3 cases; all denied)

Virginia v. International Air Transp. Ass'n (No. 56 Orig.), 409 U.S. 817 (1972) (suit on behalf of Virginia and all other states similarly situated against 38 airlines and airline associations alleging conspiracy in violation of federal antitrust law to fix transatlantic air cargo rates to prefer Kennedy Airport to all other airports). Summary denial (apparent reason: alternative forums existed in lower federal courts; perhaps CAB approval of the challenged airline agreement immunized it from antitrust law).

Louisiana v. Western Reserve Historical Soc'y (No. 97 Orig.), 465 U.S. 1018 (1984) (replevin suit to retrieve long-lost Louisiana survey documents from an Ohio nonprofit corporation). Summary denial (apparent reason: case involved no question of federal law, but rather only factual questions).

Alabama v. W.R. Grace & Co. (No. 116 Orig.), 495 U.S. 928 (1990) (suit by 29 states against numerous corporate defendants to recoup costs to

states of abating the hazards of asbestos in public buildings). Summary denial (apparent reason: suit in reality was an aggregation of a very large number of product liability actions involving complex factual issues).

IV. MISCELLANEOUS OTHER CASES PURPORTEDLY BROUGHT UNDER STATE-PARTY BRANCH OF ORIGINAL JURISDICTION (total of 4 cases; all denied)

Kelly v. E.H. Schmidt & Assoc., Inc. (No. 19 Orig.), 379 U.S. 952 (1965) (suit alleging in a multifarious and confused complaint numerous conspiracies in violation of federal law). Summary denial (apparent reason: alternative forums existed for any viable causes of action and any involvement of the state was minimal and in any event protected by sovereign immunity).

American Party v. New York (No. 58 Orig.), 409 U.S. 909; 409 U.S. 1021 (1972) (suit to enjoin exclusion of electors pledged to American Party nominees from ballots in 17 states and the District of Columbia). Summary denial (apparent reason: Eleventh Amendment).

Montgomery (Indiana *ex rel.*) v. Congress of the United States (No. 66 Orig.), 420 U.S. 959 (1975) (suit against 49 other states and Congress to require gold and silver tender). Summary denial (apparent reason: plaintiff lacked standing to sue on his own behalf).

Webber v. Oklahoma (No. 100 Orig.), 471 U.S. 1012 (1985) (suit by woman treated in Oklahoma hospitals to challenge constitutionality of Oklahoma statute under which hospitals claimed lien on woman's insurance proceeds). Summary denial (apparent reason: state defendant was not the real party in interest).

APPENDIX C

PUBLISHED ORDERS THROUGH APRIL 25, 1993 IN ALL ORIGINAL JURISDICTION CASES SINCE START OF PRESENT DOCKET NUMBERING SYSTEM IN 1961

STATE v. STATE

Wisconsin v. Illinois* (No. 1 Orig.); **Michigan v. Illinois*** (No. 2 Orig.); **New York v. Illinois*** (No. 3 Orig.) (suits to abate diversion of water from Lake Michigan); **Illinois v. Michigan*** (No. 11 Orig.) (suit to determine rights to waters in Lake Michigan)

359 U.S. 902 (1959) (motion to fix time for reply brief granted) (No. 1, No. 2, No. 3)
359 U.S. 932 (1959) (motion for extension of time to file brief granted) (No. 1, No. 2, No. 3)
359 U.S. 941 (1959) (motion for extension of time to answer motion for leave to file complaint granted) (No. 11)
359 U.S. 963 (1959) (motion to advance and for summary judgment denied) (No. 11)
360 U.S. 712 (1959) (motion to file amicus brief granted; amended application to reopen decree granted; motion to file complaint in No. 11 Orig. granted; special master appointed) (per curiam) (No. 1, No. 2, No. 3, No. 11)
361 U.S. 927 (1960) (motion for leave to file supplemental and amended complaint referred to master) (No. 3)
361 U.S. 956 (1960) (party defendant substituted) (No. 1, No. 2, No.3)
361 U.S. 956 (1960) (motion for leave to intervene granted) (No. 1, No. 2, No. 3, No. 11)
362 U.S. 908 (1960) (master's report received; motion to file supplemental and amended complaint granted) (No. 3)
362 U.S. 957 (1960) (petition to intervene and answer referred to master) (No. 1, No. 2, No. 3)
362 U.S. 958 (1960) (petition to intervene and answer referred to master) (No. 11)
362 U.S. 972 (1960) (response and answer to supplemental and amended complaint referred to master) (No. 3)
385 U.S. 996 (1967) (master's report received) (No. 1, No. 2, No. 3, No. 11)
388 U.S. 426 (1967) (decree entered) (No. 1)
441 U.S. 921 (1979) (special master appointed) (No. 1, No. 2, No. 3)
449 U.S. 812 (1980) (master's report received) (No. 1, No. 2, No. 3)
449 U.S. 48 (1980) (amended decree entered) (No. 1)

Nebraska v. Wyoming* (No. 4 Orig., renumbered No. 6 Orig., again renumbered No. 108 Orig.) (suit to determine equitable apportionment of waters of North Platte River among Nebraska, Wyoming and Colorado)

479 U.S. 1051 (1987) (motion to file petition for order enforcing decree and for injunctive relief granted)
481 U.S. 1011 (1987) (motion to file counterclaim granted)
483 U.S. 1002 (1987) (special master appointed)

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* Case on the docket before 1961.

484 U.S. 1040 (1988) (defendants invited to respond to motion to amend petition)
485 U.S. 931 (1988) (motion to file response to motion to amend petition granted)
487 U.S. 1231 (1988) (master's fee assessed)
490 U.S. 1063 (1989) (master's fee assessed)
492 U.S. 903 (1989) (master's report received)
493 U.S. 973 (1989) (master's fee assessed)
498 U.S. 934 (1990) (master's fee assessed)
111 S. Ct. 2254 (1991) (master's fee assessed)
112 S. Ct. 930 (1992) (motions to file briefs granted)
112 S. Ct. 1287 (1992) (motions to file amicus briefs granted)
112 S. Ct. 1661 (1992) (master's fee assessed)
112 S. Ct. 1930 (1992) (master's report received)
112 S. Ct. 2267 (1992) (master's fee assessed in opinion authored by White, J.) (Stevens, J., dissenting)
113 S. Ct. 36 (1992) (motion to file reply brief granted; oral argument set)
113 S. Ct. 372 (1992) (motion to file sur-reply brief denied)
113 S. Ct. 592 (1992) (master's fee assessed)
113 S. Ct. 651 (1992) (motions respecting oral argument granted in part and denied in part)
113 S. Ct. 1689 (1993) (decision on merits authored by O'Connor, J.)

Arizona v. California* (No. 8 Orig.) (suit to establish rights under Boulder Canyon Project Act to water from Colorado River and its tributaries)
364 U.S. 940 (1961) (master's report received)
368 U.S. 893 (1961) (request for allotment and division of time approved; oral argument set)
368 U.S. 917 (1961) (motion to intervene denied)
368 U.S. 950 (1962) (motion for reconsideration of motion to intervene denied)
370 U.S. 906 (1962) (case restored to calendar for reargument)
370 U.S. 930 (1962) (master's fee assessed)
373 U.S. 546 (1963) (decision on merits authored by Black, J.) (Douglas, J., dissenting) (Harlan, Douglas, and Stewart, JJ., dissenting in part) (Warren, C.J., not participating)
374 U.S. 819 (1963) (motion for extension of time to file petition for rehearing granted)
375 U.S. 892 (1963) (rehearing denied)
376 U.S. 340 (1964) (decree entered) (Douglas, J., dissenting) (Harlan and Stewart, JJ., dissenting in part)
377 U.S. 921 (1964) (master's fee assessed)
383 U.S. 268 (1966) (amended decree entered)
438 U.S. 912 (1978) (joint motion for entry of supplemental decree, motion for leave to intervene as indispensable party, and motion to intervene set for oral argument)
439 U.S. 812 (1978) (motion to file amicus brief granted)
439 U.S. 419 (1979) (supplemental decree granted; special master appointed; motion to intervene partially denied; motions to intervene

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* Case on the docket before 1961.

referred to master) (per curiam)
440 U.S. 942 (1979) (motion for modification of decree referred to master)
444 U.S. 1009 (1980) (master's report received; motion to file exceptions to report denied)
456 U.S. 912 (1982) (master's report received)
459 U.S. 811 (1982) (motion for amicus curiae status granted; exceptions to master's report set for oral argument; motion to file brief in response to reply briefs granted)
459 U.S. 940 (1982) (joint motion for additional time for oral argument and for divided argument granted)
459 U.S. 1012 (1982) (motion for modification of order for divided argument denied)
460 U.S. 605 (1983) (motion to intervene granted; decision on merits authored by White, J.) (Brennan, Blackmun, and Stevens, JJ., concurring in part, dissenting in part) (Marshall, J., not participating)
462 U.S. 1146 (1983) (rehearing denied)
464 U.S. 888 (1983) (motion for comments on proposed decrees granted)
466 U.S. 144 (1984) (supplemental decree entered)
493 U.S. 886 (1989) (motion to reopen decree granted)
493 U.S. 971 (1989) (special master appointed)
498 U.S. 964 (1990) (special master appointed)

Virginia v. Maryland* (No. 10 Orig.) (suit to enjoin enforcement of Maryland statute regulating fishing, oystering, and crabbing on and in the Potomac River)
371 U.S. 943 (1963) (master's report received; complaint dismissed; master's fee assessed; master discharged)

Texas v. New Jersey (No. 13 Orig.) (suit to establish right to escheat unclaimed debts owed by Sun Oil Company to 1,730 small creditors)
369 U.S. 869 (1962) (defendants directed to file a response to motion for temporary injunctions)
370 U.S. 929 (1962) (motion for temporary injunctions denied)
371 U.S. 873 (1962) (motion to file complaint granted)
372 U.S. 926 (1963) (special master appointed; motion to intervene referred to master; motion to intervene denied)
372 U.S. 973 (1963) (motion to intervene denied)
373 U.S. 948 (1963) (master's report received; motion to intervene granted)
375 U.S. 928 (1963) (master's report received)
376 U.S. 960 (1964) (motion to file amicus brief granted)
379 U.S. 674 (1965) (decision on merits authored by Black, J.) (Stewart, J., dissenting)
380 U.S. 518 (1965) (decree entered)
381 U.S. 931 (1965) (motion for clarification and modification of opinion denied)
381 U.S. 948 (1965) (motion for modification of decree denied)

Louisiana v. Mississippi (No. 14 Orig.) (suit to establish boundary between Louisiana and Mississippi in area of Mississippi River known as Deadman's Bend)

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* Case on the docket before 1961.

375 U.S. 803 (1963) (motion to file complaint set for oral argument)
375 U.S. 950 (1963) (motion to file complaint granted)
377 U.S. 901 (1964) (special master appointed; request for admissions referred to master)
381 U.S. 947 (1965) (master's report received)
382 U.S. 876 (1965) (oral argument set)
384 U.S. 24 (1966) (decree entered) (per curiam)
384 U.S. 958 (1966) (rehearing denied)

Arizona v. California (No. 16 Orig.) (suit against California and California citizen to recover workers' compensation benefits paid by Arizona state fund to Arizona citizen injured in auto accident allegedly caused by defect on San Francisco-Oakland Bridge, and to assert tort claims assigned to Arizona by injured Arizonan and his employer)

377 U.S. 926 (1964) (motion to file complaint denied)

Nebraska v. Iowa (No. 17 Orig.) (suit to construe and enforce Iowa-Nebraska Boundary Compact of 1943)

379 U.S. 876 (1964) (motion to file complaint set for oral argument)
379 U.S. 911 (1964) (motion to intervene denied)
379 U.S. 985 (1965) (motion for reconsideration of motion to intervene denied)
379 U.S. 996 (1965) (motion to file complaint granted; special master appointed)
380 U.S. 968 (1965) (special master appointed)
392 U.S. 918 (1968) (special master appointed)
393 U.S. 910 (1968) (special master appointed)
404 U.S. 933 (1971) (master's report received)
406 U.S. 117 (1972) (decision on merits authored by Brennan, J.)
409 U.S. 285 (1973) (decree entered) (per curiam)

Illinois v. Missouri (No. 18 Orig.) (suit to establish boundary between Illinois and Missouri in portion of Mississippi River)

379 U.S. 952 (1965) (response deadline to motion to file complaint)
380 U.S. 901 (1965) (Illinois directed to file response)
380 U.S. 969 (1965) (motion to file complaint granted)
382 U.S. 803 (1965) (motion to make complaint more definite and certain granted)
382 U.S. 1022 (1966) (amended complaint filed)
384 U.S. 924 (1966) (special master appointed)
386 U.S. 902 (1967) (special master appointed)
397 U.S. 959 (1970) (master's report received)
399 U.S. 146 (1970) (decree entered) (per curiam)

Kansas v. Colorado (No. 20 Orig.) (suit to enjoin damming of Clay Creek, a tributary of Arkansas River, in alleged violation of Arkansas River Compact)

382 U.S. 801 (1965) (motion to file complaint dismissed under Rule 60)

Wisconsin v. Minnesota (No. 21 Orig.) (suit to enjoin Minnesota from permitting Northern States Power Company to build dam and coal-fired steam generating plant on St. Croix River, allegedly creating nuisance and impeding recreational use of river)

382 U.S. 935 (1965) (motion to file complaint denied) (Warren, C.J., Stewart and Fortas, JJ., dissenting) (Douglas, J., not participating)

Ohio v. Kentucky (No. 27 Orig.); **Kentucky v. Indiana** (No. 81 Orig.)

(suits to establish boundary between Ohio and Kentucky, Kentucky and Indiana based on low-water mark of Ohio River)

384 U.S. 982 (1966) (motion to file complaint granted) (No. 27)
385 U.S. 803 (1966) (special master appointed) (No. 27)
404 U.S. 933 (1971) (motion to file amended complaint referred to master) (No. 27)
406 U.S. 915 (1972) (master's report received) (No. 27)
409 U.S. 974 (1972) (oral argument set) (No. 27)
409 U.S. 1102 (1973) (motion to allow attorney to argue *pro hac vice* granted) (No. 27)
410 U.S. 641 (1973) (motion to amend complaint denied) (No. 27) (Douglas, J., dissenting)
414 U.S. 989 (1973) (rehearing on denial to amend complaint denied) (No. 27)
416 U.S. 965 (1974) (motion for reconsideration denied) (No. 27)
439 U.S. 1123 (1979) (master's report received) (No. 27)
440 U.S. 902 (1979) (motion to file complaint granted) (No. 81)
441 U.S. 941 (1979) (special master appointed) (No. 81)
442 U.S. 937 (1979) (exceptions to master's report set for oral argument) (No. 27)
444 U.S. 816 (1979) (master's report received) (No. 81)
444 U.S. 335 (1980) (decision on merits authored by Blackmun, J.) (Powell, White, and Rehnquist, JJ., dissenting) (No. 27)
445 U.S. 939 (1980) (rehearing denied) (No. 27)
445 U.S. 941 (1980) (master's report received; motion to intervene denied; motion to file amicus brief granted; motion for summary adoption of master's report granted; case remanded to master for preparation of decree) (No. 81)
454 U.S. 1076 (1981) (motion to intervene referred to master) (No. 27 and No. 81)
456 U.S. 958 (1982) (master's report received; motion to intervene denied) (No. 27 and No. 81)
457 U.S. 1141 (1982) (rehearing on motion to intervene denied) (No. 27 and No. 81)
471 U.S. 153 (1985) (decree entered) (No. 27)
474 U.S. 1 (1985) (decree entered) (No. 81)
476 U.S. 1102 (1986) (master's accounting received; master discharged) (No. 81)
478 U.S. 1002 (1986) (master's accounting received; master discharged) (No. 27)

Delaware v. New York (No. 28 Orig.) (suit against all 50 states and the District of Columbia to enjoin the use of the "state-unit" system (winner-take-all) to cast electoral votes for presidential and vice-presidential candidates)

385 U.S. 895 (1966) (motion to file complaint denied)

Texas v. Colorado (No. 29 Orig.) (suit by Texas and New Mexico against Colorado to require Colorado to deliver water in the Rio Grande at the Colorado-New Mexico state line in accordance with the terms of the Rio Grande Compact)

386 U.S. 901 (1967) (solicitor general invited to file brief)
387 U.S. 939 (1967) (case held without action on motion to file complaint)

389 U.S. 1000 (1967) (motion to file complaint granted)
390 U.S. 933 (1968) (request to reply to counterclaim granted)
391 U.S. 901 (1968) (motion to intervene granted; motion for continuance granted)
474 U.S. 1017 (1985) (motion for dismissal with prejudice granted)

Michigan v. Ohio (No. 30 Orig.) (suit to establish boundary between Michigan and Ohio in Lake Erie)
386 U.S. 1001 (1967) (motion to file complaint granted)
386 U.S. 1029 (1967) (special master appointed)
404 U.S. 933 (1971) (master's report received)
410 U.S. 420 (1973) (decree entered) (per curiam)

Missouri v. Nebraska (No. 32 Orig.) (suit to determine boundary between Missouri and Nebraska at Missouri River)
389 U.S. 1001 (1967) (motion to file complaint granted; special master appointed)
390 U.S. 993 (1968) (answer referred to master)
417 U.S. 904 (1974) (motion to dismiss per stipulation denied without prejudice)
417 U.S. 959 (1974) (complaint dismissed under Rule 60)

Arkansas v. Tennessee (No. 33 Orig.) (suit to establish boundary between Arkansas and Tennessee along west side of Mississippi River in Cow Island Bend area)
389 U.S. 1026 (1968) (motion to file complaint granted; special master appointed)
390 U.S. 985 (1968) (answer and counterclaim referred to master)
396 U.S. 873 (1969) (master's report received)
397 U.S. 88 (1970) (decision on merits) (per curiam)
397 U.S. 91 (1970) (decree entered)
399 U.S. 219 (1970) (decree entered establishing boundary line)

New Jersey v. New York (No. 34 Orig.) (suit against New York and private company, Hudson Rapid Tubes Corp., to enforce agreement between New Jersey and New York as to condemnation value of railway allegedly violated by decision of New York's highest court)
390 U.S. 1000 (1968) (motion to file complaint denied)

Texas v. Louisiana (No. 36 Orig.) (suit to establish boundary between Texas and Louisiana along Sabine Pass, Sabine Lake and Sabine River, as well as lateral seaward boundary extending into Gulf of Mexico)
397 U.S. 931 (1970) (motion to file complaint granted)
398 U.S. 934 (1970) (special master appointed)
406 U.S. 941 (1972) (master's report received)
409 U.S. 816 (1972) (exceptions to master's report set for oral argument)
410 U.S. 702 (1973) (decision on merits authored by White, J.) (Douglas, J., dissenting)
411 U.S. 988 (1973) (rehearing denied)
413 U.S. 918 (1973) (motion to enlarge reference to master referred to master; solicitor general invited to file brief)
414 U.S. 904 (1973) (application for temporary restraining order and preliminary injunction referred to master; master's report received concerning motion to enlarge reference to master)
414 U.S. 1107 (1973) (motion to intervene granted)
416 U.S. 903 (1974) (motion to amend complaint granted)

416 U.S. 965 (1974) (motion to intervene granted; motion for more definite statement denied)
421 U.S. 905 (1975) (master's report received)
423 U.S. 909 (1975) (exceptions to master's report set for oral argument)
426 U.S. 465 (1976) (decision on merits) (per curiam)
429 U.S. 810 (1976) (rehearing denied)
431 U.S. 161 (1977) (decree entered)
431 U.S. 912 (1977) (decree entered; master's fee assessed; master discharged)

Pennsylvania v. New York (No. 40 Orig.) (suit to determine right to escheat unclaimed funds accumulated by Western Union Telegraph Company)

398 U.S. 956 (1970) (motion to file complaint granted)
400 U.S. 811 (1970) (motion to intervene granted; special master appointed)
400 U.S. 924 (1970) (motion to intervene referred to master)
400 U.S. 1019 (1971) (motions to intervene referred to master)
401 U.S. 931 (1971) (master's report adopted concerning motions to intervene)
404 U.S. 988 (1971) (master's report received)
405 U.S. 951 (1972) (motion to file amicus brief denied)
405 U.S. 1014 (1972) (motion for additional time for oral argument granted)
407 U.S. 206 (1972) (decision on merits authored by Brennan, J.) (Powell, Blackmun, and Rehnquist, JJ., dissenting)
407 U.S. 223 (1972) (decree entered)
408 U.S. 917 (1972) (master's fee assessed)
409 U.S. 897 (1972) (rehearing denied)
409 U.S. 1122 (1973) (supplemental master's report received)
410 U.S. 977 (1973) (supplemental master's report adopted)
411 U.S. 902 (1973) (master discharged; master's fee assessed)

Mississippi v. Arkansas (No. 48 Orig.) (suit to establish boundary between Mississippi and Arkansas in Spanish Moss Bend—Luna Bar—Carter Point area of Mississippi River)

400 U.S. 1019 (1971) (motion to file complaint granted)
402 U.S. 926 (1971) (special master appointed)
402 U.S. 939 (1971) (application for stay of proceedings referred to master)
403 U.S. 951 (1971) (master's report approved)
411 U.S. 913 (1973) (master's report received)
414 U.S. 810 (1973) (oral argument set)
415 U.S. 289 (1974) (decision on merits authored by Blackmun, J.) (Douglas, J., dissenting)
415 U.S. 302 (1974) (decree entered)
418 U.S. 903 (1974) (order concerning filing response to specific boundary line description)
419 U.S. 814 (1974) (parties ordered to submit proposed amended decree with approval of master)
419 U.S. 375 (1974) (amended decree entered)

Vermont v. New York (No. 50 Orig.) (suit to enjoin discharge of waste from International Paper Company's mills into Lake Champlain, Ticonder-

oga Creek)
402 U.S. 940 (1971) (motion to file complaint set for oral argument)
405 U.S. 983 (1972) (motion to intervene denied)
406 U.S. 186 (1972) (motion to file complaint granted) (per curiam)
408 U.S. 917 (1972) (special master appointed)
409 U.S. 1103 (1973) (motion to intervene referred to special master)
417 U.S. 270 (1974) (opinion declining to enter proposed consent decree) (per curiam)
419 U.S. 955 (1974) (complaint dismissed under Rule 60)
419 U.S. 961 (1974) (master's fee assessed)

Illinois v. Michigan (No. 57 Orig.) (suit to enforce reciprocal insurance statute allegedly violated by decision of Michigan Supreme Court)
409 U.S. 36 (1972) (motion to file complaint denied) (per curiam)

Pennsylvania v. New York (No. 60 Orig.) (suit against 25 states to challenge constitutionality of states' liquor "price affirmation" policy, requiring liquor vendors to give states lowest available price)
410 U.S. 978 (1973) (motion to file complaint denied)
411 U.S. 977 (1973) (rehearing denied)

Nevada v. California (No. 62 Orig.) (suit seeking declaration that Nevada state employee's operation of state-owned vehicle in California did not constitute Nevada's consent to suit in California state courts)
414 U.S. 810 (1973) (motion to file complaint denied)

New Hampshire v. Maine (No. 64 Orig.) (suit to establish lateral marine boundary separating New Hampshire and Maine between mouth of Portsmouth Harbor and entrance to Gosport Harbor in Isles of Shoals)
413 U.S. 918 (1973) (motion for preliminary injunction denied)
414 U.S. 810 (1973) (motion to file complaint granted)
414 U.S. 996 (1973) (special master appointed)
419 U.S. 814 (1974) (motion to intervene referred to master)
423 U.S. 919 (1975) (master's report received)
423 U.S. 1084 (1976) (motion to file amicus brief granted)
424 U.S. 903 (1976) (oral argument set)
425 U.S. 931 (1976) (motion to participate in oral argument denied)
426 U.S. 363 (1976) (decision on merits authored by Brennan, J.) (White, Blackmun, and Stevens, JJ., dissenting)
434 U.S. 1 (1977) (decree entered)

Texas v. New Mexico (No. 65 Orig.) (suit to establish water rights of United States, Texas, and New Mexico under Pecos River Compact)
421 U.S. 927 (1975) (motion to file complaint granted)
423 U.S. 942 (1975) (special master appointed)
423 U.S. 1085 (1976) (master's report on motion to intervene received; motion to intervene granted)
434 U.S. 809 (1977) (master's report received)
444 U.S. 912 (1979) (master's report received)
444 U.S. 1064 (1980) (motion to strike denied; alternative request to file reply granted; oral argument set)
446 U.S. 540 (1980) (master's report approved) (per curiam) (Stevens, J., dissenting)
448 U.S. 907 (1980) (rehearing denied)
454 U.S. 1076 (1981) (order amending special master appointment; motion to intervene referred to master)

459 U.S. 940 (1982) (master's report received)
459 U.S. 1167 (1983) (oral argument set)
462 U.S. 554 (1983) (decision on merits authored by Brennan, J.)
467 U.S. 1238 (1984) (motion to remand case to master denied; master's report approved)
468 U.S. 1202 (1984) (master's request to be relieved granted; special master appointed)
475 U.S. 1004 (1986) (master's fee assessed) (Burger, C.J., Blackmun, and Rehnquist, JJ., dissenting)
479 U.S. 806 (1986) (master's report received)
479 U.S. 1078 (1987) (oral argument set)
480 U.S. 903 (1987) (motion to participate in oral argument denied)
482 U.S. 124 (1987) (decision on merits authored by White, J.; decree entered)
484 U.S. 973 (1987) (master's report received)
485 U.S. 953 (1988) (master's fee assessed)
485 U.S. 388 (1988) (decree amended; river master appointed) (per curiam)
488 U.S. 808 (1988) (river master's fee assessed)
488 U.S. 917 (1988) (special master appointed)
488 U.S. 921 (1988) (master's fee assessed)
489 U.S. 1005 (1989) (river master's fee assessed)
490 U.S. 1044 (1989) (river master's fee assessed)
492 U.S. 915 (1989) (river master's report received)
493 U.S. 802 (1989) (river master's fee assessed)
493 U.S. 929 (1989) (master's fee assessed)
493 U.S. 1053 (1990) (river master's fee assessed)
494 U.S. 111 (1990) (stipulated judgment entered)
495 U.S. 901 (1990) (river master's fee assessed)
498 U.S. 802 (1990) (river master's fee assessed)
498 U.S. 1010 (1990) (river master's fee assessed)
111 S. Ct. 780 (1991) (river master's fee assessed)
111 S. Ct. 946 (1991) (master's fee assessed; special master discharged)
111 S. Ct. 1679 (1991) (river master's fee assessed)
112 S. Ct. 43 (1991) (river master's fee assessed; motion to review river master's report denied)
112 S. Ct. 291 (1991) (river master appointed)
112 S. Ct. 579 (1991) (river master's fee assessed)
112 S. Ct. 1155 (1992) (river master's fee assessed)
112 S. Ct. 2298 (1992) (river master's fee assessed)
113 S. Ct. 36 (1992) (river master's report received)
113 S. Ct. 372 (1992) (river master's fee assessed)
113 S. Ct. 488 (1992) (river master's fee assessed)
113 S. Ct. 1244 (1993) (river master's fee assessed)

Idaho *ex rel.* Andrus v. Oregon (No. 67 Orig.) (suit to establish equitable apportionment of anadromous fish in Columbia River Basin)

423 U.S. 813 (1975) (solicitor general invited to file brief on behalf of United States)
425 U.S. 957 (1976) (motion to file amicus brief granted; motion to file complaint set for oral argument)
429 U.S. 891 (1976) (motion to file amicus brief granted)

429 U.S. 163 (1976) (motion to file complaint granted) (per curiam)
431 U.S. 952 (1977) (special master appointed)
440 U.S. 943 (1979) (master's report received; solicitor general invited to file brief on behalf of United States)
442 U.S. 937 (1979) (oral argument set)
444 U.S. 922 (1979) (motion for amicus curiae to participate in oral argument granted)
444 U.S. 380 (1980) (case remanded to master in opinion authored by Rehnquist, J.) (Stewart and Marshall, JJ., dissenting)
459 U.S. 811 (1982) (master's report received)
459 U.S. 1142 (1983) (oral argument set)
462 U.S. 1017 (1983) (complaint dismissed without prejudice in opinion authored by Blackmun, J.) (O'Connor, Brennan, and Stevens, JJ., dissenting)

Pennsylvania v. New Jersey (No. 68 Orig.); **Maine v. New Hampshire** (No. 69 Orig.) (suits to challenge constitutionality of commuter income taxes)

423 U.S. 942 (1975) (motion to file complaint set for oral argument) (No. 68)
423 U.S. 943 (1975) (motion to file complaint set for oral argument) (No. 69)
426 U.S. 660 (1976) (motions to file complaint denied) (per curiam) (Brennan and White, JJ., dissenting) (Blackmun, J., concurring) (Powell and Stevens, JJ., not participating)

Arizona v. New Mexico (No. 70 Orig.) (suit to challenge constitutionality of application of New Mexico electrical energy tax to Arizona utilities)

425 U.S. 794 (1976) (motion to file complaint denied) (per curiam) (Stevens, J., concurring)

New York v. New Jersey (No. 71 Orig.) (suit to challenge constitutionality of commuter income tax)

429 U.S. 810 (1976) (motion to file complaint denied)

South Dakota v. Nebraska (No. 72 Orig.) (suit to establish boundary between South Dakota and Nebraska at Elk/Rush Island)

429 U.S. 810 (1976) (motion to file complaint granted)
429 U.S. 996 (1976) (special master appointed; motion to intervene referred to master)
432 U.S. 904 (1977) (master's report on motion to intervene received)
434 U.S. 948 (1977) (exception to master's report overruled; motion to intervene granted)
458 U.S. 276 (1982) (findings and decree entered)

California v. Nevada (No. 73 Orig.) (suit to establish boundary between California and Nevada)

433 U.S. 918 (1977) (motion to file complaint granted; special master appointed)
436 U.S. 916 (1978) (motion to file amicus brief, motion to file amended answer, and motion to file amended complaint and counterclaim referred to master)
438 U.S. 913 (1978) (preliminary master's report received; motion to file amicus brief granted; motion to file amended answer granted; motion to file amended complaint and counterclaim granted)
439 U.S. 906 (1978) (answer to amended complaint and counterclaim and

reply to counterclaim referred to master)
444 U.S. 922 (1979) (master's report received)
444 U.S. 1065 (1980) (oral argument set; solicitor general invited to file brief on behalf of United States)
447 U.S. 125 (1980) (decision on merits authored by Brennan, J.)
456 U.S. 867 (1982) (decree entered)
459 U.S. 812 (1982) (master discharged)

Georgia v. South Carolina (No. 74 Orig.) (suit to establish boundary between Georgia and South Carolina along lower reaches of Savannah River, as well as lateral seaward boundary)
434 U.S. 917 (1977) (motion to file complaint granted)
434 U.S. 1057 (1978) (special master appointed)
475 U.S. 1115 (1986) (master's report received)
490 U.S. 1033 (1989) (master's report received)
493 U.S. 802 (1989) (oral argument set)
493 U.S. 961 (1989) (motion to file rebuttal brief granted)
493 U.S. 1014 (1990) (motion to file rebuttal brief granted)
493 U.S. 1053 (1990) (master's accounting approved; master discharged)
497 U.S. 376 (1990) (decision on merits authored by Blackmun, J.) (White and Marshall, JJ., dissenting in part) (Stevens and Scalia, JJ., dissenting in part) (Scalia and Kennedy, JJ., dissenting in part) (Kennedy, J., and Rehnquist, C.J., dissenting in part)

California v. Texas (No. 76 Orig.) (suit to establish domicile of decedent Howard Hughes for tax purposes)
434 U.S. 993 (1977) (application for temporary restraining order and preliminary injunction denied)
434 U.S. 1058 (1978) (motion to file complaint set for oral argument)
437 U.S. 601 (1978) (motion to file complaint denied) (per curiam) (Brennan, J., concurring) (Stewart, Powell and Stevens, JJ., concurring) (Powell, J., concurring)

Tennessee v. Arkansas (No. 77 Orig.) (suit to establish boundary between Tennessee and Arkansas in Elmot Bar-Island section of Mississippi River)
439 U.S. 812 (1978) (motion to file complaint granted)
439 U.S. 1061 (1979) (special master appointed)
451 U.S. 968 (1981) (master's report received)
454 U.S. 809 (1981) (master's report adopted; master invited to submit proposed decree)
454 U.S. 351 (1981) (decree entered)

California v. Arizona (No. 78 Orig.) (suit to establish boundary in portions of bed of former channel of Colorado River, title to same among California, Arizona, and United States)
439 U.S. 812 (1978) (motion to file complaint set for oral argument)
440 U.S. 59 (1979) (motion to file complaint granted)
441 U.S. 959 (1979) (special master appointed)
452 U.S. 431 (1981) (decree entered)

Oklahoma v. Arkansas (No. 79 Orig.) (suit to establish boundary between Oklahoma and Arkansas in area bordered by Le Flore County, Oklahoma and Sebastian County, Arkansas)
439 U.S. 812 (1978) (motion to file complaint granted)
439 U.S. 1124 (1979) (special master appointed)

469 U.S. 808 (1984) (master's report received)
469 U.S. 1083 (1984) (motion to dismiss complaint denied)
469 U.S. 1101 (1985) (master's report adopted; parties directed to submit proposed decree)
473 U.S. 610 (1985) (decree entered; master discharged)

Colorado v. New Mexico (No. 80 Orig.) (suit to establish equitable apportionment of waters of Vermejo River)

439 U.S. 975 (1978) (motion to file complaint granted)
441 U.S. 902 (1979) (special master appointed)
449 U.S. 1007 (1980) (amended answer to complaint referred to master)
455 U.S. 932 (1982) (master's report received)
456 U.S. 1004 (1982) (motion to file amicus brief granted; oral argument set)
457 U.S. 1103 (1982) (motion for additional time for oral argument denied)
457 U.S. 1115 (1982) (motion for leave to file reply brief granted)
459 U.S. 176 (1982) (case remanded to master for additional factual findings in opinion authored by Marshall, J.) (Burger, C.J., and Stevens, J., concurring) (O'Connor and Powell, JJ., concurring)
459 U.S. 1229 (1983) (rehearing denied)
463 U.S. 1204 (1983) (master's report received)
464 U.S. 927 (1983) (motion to file reply brief granted; oral argument set)
467 U.S. 310 (1984) (decision on merits authored by O'Connor, J.) (Stevens, J., dissenting)
468 U.S. 1224 (1984) (rehearing denied)

New Mexico v. Texas (No. 82 Orig.) (suit to enjoin enforcement of a Texas PUC order prohibiting any Texas electric utility from interconnecting in interstate commerce unless specifically allowed by the Texas PUC or FERC)

442 U.S. 908 (1979) (solicitor general invited to file brief expressing views of United States)
444 U.S. 895 (1979) (motions to intervene denied; motion to file complaint denied)

Maryland v. Louisiana (No. 83 Orig.) (suit to challenge constitutionality of "first use" tax on certain uses of natural gas brought into Louisiana)

442 U.S. 937 (1979) (motion to file complaint granted)
445 U.S. 913 (1980) (special master appointed)
447 U.S. 902 (1980) (master's report received; motion to intervene referred to master)
449 U.S. 812 (1980) (master's report received)
449 U.S. 1031 (1980) (motions for divided argument, additional time at oral argument granted)
449 U.S. 1058 (1980) (motions to file exceptions to master's report and for leave to reply to exceptions granted; oral argument set)
449 U.S. 1107 (1981) (motion to file response to reply granted)
451 U.S. 725 (1981) (decision on merits authored by White, J.) (Burger, C.J., concurring) (Rehnquist, J., dissenting)
452 U.S. 935 (1981) (master's fee assessed)
452 U.S. 456 (1981) (decree entered)
454 U.S. 809 (1981) (accounting of Louisiana received)
454 U.S. 1119 (1981) (master discharged)

Texas v. Oklahoma (No. 85 Orig.) (suit to establish boundary between Texas and Oklahoma along south bank of Red River in Grayson County, Texas)

444 U.S. 1065 (1980) (motion to file complaint granted)
448 U.S. 905 (1980) (special master appointed)
449 U.S. 990 (1980) (motion to intervene referred to master)
450 U.S. 905 (1981) (master's report received)
450 U.S. 1038 (1981) (motion to intervene denied)
452 U.S. 957 (1981) (motion for entry of judgment referred to master)
455 U.S. 932 (1982) (master's report on motion for entry of judgment received)
457 U.S. 172 (1982) (decree entered)

Louisiana v. Mississippi (No. 86 Orig.) (suit to establish boundary between Mississippi and Louisiana in Mississippi River above Giles Bend Cutoff, upstream from City of Natchez)

445 U.S. 957 (1980) (motion to file complaint granted; application for stay of proceedings denied)
454 U.S. 937 (1981) (special master appointed)
463 U.S. 1204 (1983) (master's report received)
464 U.S. 888 (1983) (oral argument set)
466 U.S. 96 (1984) (decision on merits authored by Blackmun, J.)
466 U.S. 921 (1984) (master's fee assessed) (Burger, C.J., dissenting in part) (Blackmun, J., dissenting)
466 U.S. 969 (1984) (motion for clarification of opinion denied)

California v. Texas (No. 87 Orig.) (suit to enjoin Texas from quarantining California fruits and vegetables because of Mediterranean fruit fly infestation)

450 U.S. 961 (1981) (solicitor general invited to file brief expressing views of United States)
450 U.S. 977 (1981) (application for temporary restraining order granted; enforcement of emergency order stayed pending action on motion to file complaint) (White, Stevens, and Rehnquist, JJ., dissenting)
450 U.S. 1027 (1981) (motion to dismiss application for preliminary injunction or temporary restraining order and motion to intervene dismissed under Rule 53)
450 U.S. 1038 (1981) (motion to file complaint denied without prejudice; temporary restraining order vacated; motion to file amicus brief granted)

California v. Texas (No. 88 Orig.) (suit to establish domicile of decedent Howard Hughes for tax purposes)

457 U.S. 164 (1982) (motion to file complaint granted) (per curiam) (Powell, Marshall, Rehnquist and Stevens, JJ., dissenting)
458 U.S. 1119 (1982) (motion for issuance of restraining order denied without prejudice)
458 U.S. 1131 (1982) (rehearing denied)
459 U.S. 963 (1982) (special master appointed)
459 U.S. 1067 (1982) (motion for preliminary injunction granted)
459 U.S. 1083 (1982) (order restraining parties from pursuing in any other court the determination of domicile of decedent for death tax purposes)
459 U.S. 1096 (1983) (certain defendants dismissed)

471 U.S. 1050 (1985) (complaint dismissed under Rule 53)
471 U.S. 1051 (1985) (restraining order vacated; master's fee assessed; master discharged)

California v. Texas (No. 90 Orig.) (suit to enjoin Texas, Florida, Alabama, Mississippi, and South Carolina from quarantining California fruits and vegetables because of Mediterranean fruit fly infestation)
453 U.S. 945 (1981) (stipulation to dismiss party defendant filed under Rule 53)
454 U.S. 886 (1981) (application for temporary restraining order, motion for preliminary injunction, motion to add party defendant, motion to file complaint all denied without prejudice)

California v. West Virginia (No. 91 Orig.) (suit to establish breach of contract covering football games between San Jose University and the University of West Virginia, both state institutions)
454 U.S. 1027 (1981) (motion to file complaint denied) (per curiam) (Stevens, J., dissenting)

Arkansas v. Mississippi (No. 92 Orig.) (suit to establish boundary between Arkansas and Mississippi in vicinity of Bordeaux Point and Whiskey Island/Bourdeaux Island in Mississippi River)
456 U.S. 912 (1982) (motion to file complaint granted)
458 U.S. 1119 (1982) (special master appointed)
458 U.S. 1122 (1982) (motion to file counterclaim referred to master)
459 U.S. 940 (1982) (answer to counterclaim referred to master)
471 U.S. 377 (1985) (master's report received; stipulated decree entered)
473 U.S. 902 (1985) (master's fee assessed; master discharged)

Oklahoma v. Arkansas (No. 93 Orig.) (suit against Arkansas and various municipalities and private companies to enjoin discharge of waste into the Illinois River)
459 U.S. 812 (1982) (solicitor general invited to file brief expressing views of United States)
460 U.S. 1020 (1983) (motion to file complaint denied)

Arkansas v. Oklahoma (No. 95 Orig.) (suit to challenge constitutionality of "retaliatory" highway use tax on Arkansas-based motor carriers operating in Oklahoma)
465 U.S. 1018 (1984) (motion to file complaint denied)

Puerto Rico v. Iowa (No. 96 Orig.) (suit to seek mandamus for extradition of Puerto Rican fugitive)
464 U.S. 1034 (1984) (motion to file complaint denied)

Pennsylvania v. Oklahoma (No. 98 Orig.) (suit to challenge constitutionality of "retaliatory" highway use tax on Pennsylvania-based motor carriers operating in Oklahoma)
465 U.S. 1097 (1984) (motion to file complaint denied)

Pennsylvania v. Alabama (No. 101 Orig.) (suit against thirty-eight states to challenge states' liquor "price affirmation" system)
472 U.S. 1015 (1985) (motion to file complaint denied)

South Dakota v. Nebraska (No. 103 Orig.) (suit "in nature of a quiet title action" to determine rights of South Dakota to waters of Missouri River as against Nebraska, Iowa, and Missouri)
474 U.S. 941 (1985) (solicitor general invited to file brief expressing views of United States)
475 U.S. 1093 (1986) (motion to intervene granted; motion to file com-

plaint denied without prejudice)
485 U.S. 902 (1986) (motion to file complaint denied without prejudice)
New Jersey v. Nevada (No. 104 Orig.) (suit to enjoin interference with New Jersey's contract with private firm for disposal of New Jersey waste in Nevada)
474 U.S. 917 (1985) (motion for preliminary injunction denied; motion to file complaint granted)
474 U.S. 1045 (1986) (special master appointed)
484 U.S. 920 (1987) (special master appointed)
487 U.S. 1211 (1988) (case dismissed pursuant to Rule 53)
487 U.S. 1214 (1988) (master's fee assessed; master discharged)
Kansas v. Colorado (No. 105 Orig.) (suit against Colorado and intervenor-United States to enforce the Arkansas River Compact)
475 U.S. 1079 (1986) (motion to file complaint granted)
478 U.S. 1018 (1986) (special master appointed)
484 U.S. 910 (1987) (special master appointed)
485 U.S. 931 (1988) (master's fee assessed)
488 U.S. 978 (1988) (master's fee assessed)
489 U.S. 1005 (1989) (motion to refer motion to amend complaint to master granted)
493 U.S. 989 (1989) (master's fee assessed)
498 U.S. 933 (1990) (master's fee assessed)
112 S. Ct. 861 (1992) (master's fee assessed)
113 S. Ct. 36 (1992) (master's fee assessed)
Illinois v. Kentucky (No. 106 Orig.) (suit to establish boundary between Illinois and Kentucky along Ohio River)
479 U.S. 879 (1986) (motion to file complaint granted)
480 U.S. 903 (1987) (special master appointed)
486 U.S. 1052 (1988) (master's fee assessed)
487 U.S. 1215 (1988) (special master appointed)
498 U.S. 803 (1990) (master's report received; master's fee assessed)
111 S. Ct. 780 (1991) (oral argument set)
111 S. Ct. 1877 (1991) (decision on merits authored by Souter, J.)
Oklahoma v. New Mexico (No. 109 Orig.) (suit to establish rights to water under Canadian River Compact entered into by Oklahoma, New Mexico, and Texas)
484 U.S. 808 (1987) (motion to file complaint granted)
484 U.S. 1023 (1988) (special master appointed)
486 U.S. 1052 (1988) (master's fee assessed)
488 U.S. 989 (1988) (motion to file supplemental complaint granted)
489 U.S. 1005 (1989) (motion to file supplemental answer granted; master's fee assessed)
493 U.S. 929 (1989) (master's report received; master's fee assessed)
496 U.S. 903 (1990) (master's fee assessed)
498 U.S. 956 (1990) (master's report received)
498 U.S. 1021 (1991) (master's fee assessed)
111 S. Ct. 946 (1991) (oral argument set)
111 S. Ct. 1069 (1991) (motion for divided argument granted)
111 S. Ct. 2281 (1991) (decision on merits authored by White, J.) (Rehnquist, C.J., O'Connor, Scalia, and Kennedy, JJ., concurring in part, dissenting in part)

112 S. Ct. 27 (1991) (rehearing denied)
112 S. Ct. 862 (1992) (master's fee assessed)
113 S. Ct. 592 (1992) (master's fee assessed)

Delaware v. New York (No. 111 Orig.) (suit to establish right to escheat unclaimed securities distributions)

486 U.S. 1030 (1988) (motion for temporary restraining order denied; motion to file complaint granted)
488 U.S. 990 (1988) (special master appointed)
489 U.S. 1005 (1989) (motion to intervene granted)
490 U.S. 1104 (1989) (motion for judgment on pleadings referred to master; motions to file complaints to intervene referred to master; motions to intervene referred to master)
493 U.S. 915 (1989) (motion to intervene referred to master; master's report on motions to intervene received)
493 U.S. 929 (1989) (motion to file amended complaint referred to master)
493 U.S. 989 (1989) (motions to intervene referred to master)
498 U.S. 803 (1990) (motion to intervene referred to master)
498 U.S. 893 (1990) (master's fee assessed)
498 U.S. 918 (1990) (motion to intervene referred to master)
498 U.S. 979 (1990) (motions to intervene referred to master)
111 S. Ct. 2849 (1991) (motion to intervene referred to master)
112 S. Ct. 292 (1991) (motion to intervene referred to master)
112 S. Ct. 1155 (1992) (master's report received)
112 S. Ct. 2271 (1992) (master's fee assessed)
113 S. Ct. 36 (1992) (motions to file amicus briefs granted; motions to file reply briefs granted; motion to intervene granted; oral argument set)
113 S. Ct. 457 (1992) (motions for additional time for argument and divided argument granted in part)
113 S. Ct. 1041 (1993) (motion to file counterclaim denied)
113 S. Ct. 1550 (1993) (decision on merits authored by Thomas, J.) (White, Blackmun, and Stevens, JJ., dissenting)

Wyoming v. Oklahoma (No. 112 Orig.) (suit to challenge constitutionality of Oklahoma statute requiring that electric generating plants burn at least 10% Oklahoma-mined coal)

487 U.S. 1231 (1988) (motion to file complaint granted)
488 U.S. 921 (1988) (motion to dismiss complaint denied)
489 U.S. 1063 (1989) (special master appointed)
498 U.S. 803 (1990) (master's report received)
498 U.S. 893 (1990) (master's fee assessed)
111 S. Ct. 1100 (1991) (briefing schedule adopted)
111 S. Ct. 2822 (1991) (motion to file amicus brief granted; oral argument set)
112 S. Ct. 789 (1992) (decision on merits authored by White, J.) (Scalia, J., Rehnquist, C.J., and Thomas, J., dissenting) (Thomas, J., Rehnquist, C.J., and Scalia, J., dissenting)

Louisiana v. Mississippi (No. 114 Orig.) (suit to establish boundary between Louisiana and Mississippi in portion of Mississippi River)

488 U.S. 808 (1988) (application for stay of federal district court proceedings in Southern District of Mississippi denied)
488 U.S. 990 (1988) (motion to file complaint denied) (per curiam)

(White, Stevens, and Scalia, JJ., dissenting) (Brennan, J., not participating)
489 U.S. 1050 (1989) (rehearing denied; motion to file alternative complaint denied)

Arkansas v. Oklahoma (No. 115 Orig.) (suit to enjoin application of Oklahoma's water quality standards to point sources within Arkansas)
488 U.S. 1000 (1989) (motion to file complaint denied)

Connecticut v. New Hampshire (No. 119 Orig.) (suit to challenge validity of New Hampshire tax imposed on utility owners of Seabrook nuclear power station)
112 S. Ct. 962 (1992) (motion to file complaint granted)
112 S. Ct. 1756 (1992) (special master appointed)
112 S. Ct. 1930 (1992) (motions to intervene referred to master)
112 S. Ct. 2961 (1992) (motion to intervene denied; motion to intervene granted)
112 S. Ct. 2988 (1992) (amicus status granted)
113 S. Ct. 37 (1992) (answer referred to master)
113 S. Ct. 1036 (1993) (master's report received; oral argument set)
113 S. Ct. 1147 (1993) (supplement to master's report received; oral argument set)
113 S. Ct. 1409 (1993) (master's fee assessed)
113 S. Ct. 1810 (1993) (motion respecting oral argument denied)
113 S. Ct. 1837 (1993) (complaint dismissed pursuant to Rule 46.1)

UNITED STATES AS A PARTY ADVERSE TO A STATE

United States v. California* (No. 5 Orig.) (suit to establish title to submerged lands off California coast)
375 U.S. 927 (1963) (motion to file supplemental complaint granted; motion to dismiss denied)
375 U.S. 990 (1964) (motion for extension of time granted)
377 U.S. 926 (1964) (motion for extension of time granted; motion to intervene denied; motion to file amicus brief granted)
377 U.S. 986 (1964) (oral argument set)
379 U.S. 804 (1964) (motion to present oral argument as amicus denied)
379 U.S. 910 (1964) (motion to present oral argument as amicus granted)
379 U.S. 918 (1964) (motion to present oral argument denied)
381 U.S. 139 (1965) (decision on merits; master's report approved as modified) (Black and Douglas, JJ., dissenting) (Warren, C.J., and Clark, J., not participating)
382 U.S. 889 (1965) (rehearing denied)
382 U.S. 448 (1966) (supplemental decree entered)
432 U.S. 40 (1977) (second supplemental decree entered)
436 U.S. 32 (1978) (decision on merits) (White, J., dissenting) (Marshall, J., not participating)
444 U.S. 816 (1979) (master's report received)
444 U.S. 1042 (1980) (oral argument set)
447 U.S. 1 (1980) (exception to master's report overruled)
449 U.S. 811 (1980) (solicitor general requested to file response to petition for rehearing)

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* Case on the docket before 1961.

449 U.S. 1028 (1980) (rehearing denied)

United States v. Louisiana* ** (No. 6 Orig.) (suit to establish title to submerged lands off coast of Louisiana)

United States v. Texas* ** (No. 7 Orig.) (suit to establish title to tidelands off coast of Texas)

United States v. Louisiana* ** (No. 9 Orig.); **United States v. Florida** (No. 52 Orig.) (suits to establish title to submerged lands off coasts of Louisiana, Texas, Mississippi, Alabama, and Florida)

359 U.S. 901 (1959) (case set for oral argument on motions for judgment and to dismiss) (No. 9)

361 U.S. 802 (1959) (motion to file reply brief granted; motion to file memorandum granted; motion to file supplemental memorandum granted) (No. 9)

361 U.S. 872 (1959) (motion to file supplemental brief granted) (No. 9)

363 U.S. 1 (1960) (decision on merits authored by Harlan, J.) (Frankfurter, Brennan, Whittaker, and Stewart, JJ., concurring) (Black, J., concurring in part and dissenting in part) (Douglas, J., dissenting in part) (Warren, C.J., and Clark, J., not participating) (No. 9)

363 U.S. 121 (1960) (decision on merits authored by Black, J.) (Frankfurter, Brennan, Whittaker, and Stewart, JJ., concurring) (Harlan, J., dissenting) (Warren, C.J., and Clark, J., not participating) (No. 9)

364 U.S. 856 (1960) (joint motion to file supplement to petition for rehearing granted; petitions for rehearing denied) (No. 9)

364 U.S. 502 (1960) (final decree entered) (No. 9)

382 U.S. 288 (1965) (supplemental decree entered) (No. 9)

384 U.S. 936 (1966) (motion to file amended account pursuant to supplemental decree granted; motion to file corrections to accounting granted) (No. 9)

386 U.S. 979 (1967) (order on response to motion for entry of supplemental decree, temporary restraining order and preliminary injunction) (No. 9)

386 U.S. 1016 (1967) (motion for preliminary injunction denied; oral argument set on application for entry of supplemental decree) (No. 9—Louisiana Boundary Case)

389 U.S. 155 (1967) (decision on merits authored by Black, J.) (Stewart, J., concurring) (Harlan, J., dissenting) (Warren, C.J., and Marshall, J., not participating) (No. 9)

389 U.S. 1059 (1968) (rehearing denied) (No. 9)

391 U.S. 910 (1968) (motions for entry of supplemental decree set for oral argument) (No. 9)

393 U.S. 811 (1968) (oral argument set on motions for supplemental decree; motions for additional time for oral argument denied) (No. 9)

394 U.S. 1 (1969) (supplemental decree entered in opinion authored by Brennan, J.) (Black, J., dissenting) (Warren, C.J., and Marshall, J., not participating) (No. 9—Texas Boundary Case)

394 U.S. 11 (1969) (decision on merits authored by Stewart, J.; special

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* Case on the docket before 1961.

** Completely inactive since before 1961.

master appointed to make further factual findings) (Black and Douglas, JJ., dissenting) (Warren, C.J., and Marshall, J., not participating) (No. 9—Louisiana Boundary Case)
394 U.S. 836 (1969) (supplemental decree entered) (No. 9)
394 U.S. 994 (1969) (rehearing denied) (No. 9)
395 U.S. 901 (1969) (special master appointed) (No. 9)
403 U.S. 950 (1971) (motion to initiate supplemental proceedings granted; motion to consolidate granted; special master appointed) (No. 9 and No. 52)
404 U.S. 932 (1971) (motion for entry of supplemental decree set for oral argument) (No. 9)
404 U.S. 388 (1971) (supplemental decree entered) (No. 9)
404 U.S. 988 (1971) (motion for relief pursuant to Rule 60(b) denied) (No. 52)
404 U.S. 998 (1971) (motion for entry of supplemental decree granted) (No. 9)
409 U.S. 17 (1972) (supplemental decree entered) (No. 9—Louisiana Boundary Case)
409 U.S. 909 (1972) (motion for entry of supplemental decree granted; motion to file account of funds released granted) (No. 9)
415 U.S. 905 (1974) (master's report received) (No. 52)
419 U.S. 814 (1974) (master's report received) (No. 9)
419 U.S. 814 (1974) (oral argument set) (No. 52)
419 U.S. 990 (1974) (motion for additional time for oral argument granted) (No. 9)
420 U.S. 904 (1975) (oral argument set) (No. 9)
420 U.S. 529 (1975) (decision on merits) (No. 9—Louisiana Boundary Case)
420 U.S. 531 (1975) (opinion and decree; exceptions of United States referred to master) (per curiam) (Douglas, J., not participating) (No. 52)
421 U.S. 972 (1975) (rehearing denied) (No. 9—Louisiana Boundary Case)
421 U.S. 1008 (1975) (master's fee assessed) (No. 9)
422 U.S. 13 (1975) (supplemental decree entered) (No. 9—Louisiana Boundary Case)
423 U.S. 909 (1975) (accountings of parties filed and referred to master) (No. 9)
423 U.S. 1084 (1976) (supplemental master's report received; parties directed to submit proposed decree) (No. 52)
425 U.S. 791 (1976) (decree entered; jurisdiction reserved) (No. 52)
444 U.S. 816 (1979) (supplemental master's report received) (No. 9)
444 U.S. 1029 (1980) (oral argument set) (No. 9)
444 U.S. 1064 (1980) (motion for entry of supplemental decree and cross-motion referred to master) (No. 9)
445 U.S. 901 (1980) (motion for divided argument granted) (No. 9)
445 U.S. 923 (1980) (motion for entry of supplemental decree and cross-motion referred to master) (No. 9)
446 U.S. 906 (1980) (master's fee assessed; action deferred on master's suggestion for discharge re 423 U.S. 909) (No. 9)
446 U.S. 253 (1980) (decision on merits authored by Blackmun, J.) (Powell, Stewart, and Rehnquist, JJ., concurring in part, dissenting in

part) (Marshall, J., not participating) (No. 9—Louisiana Boundary Case)
447 U.S. 930 (1980) (rehearing denied) (No. 9—Louisiana Boundary Case)
452 U.S. 726 (1981) (final decree entered) (No. 9—Louisiana Boundary Case)
454 U.S. 1135 (1982) (final accountings ordered filed; objections thereto referred to master) (No. 9)
456 U.S. 865 (1982) (order entered) (No. 9)
457 U.S. 1115 (1982) (motion for relief from final decree of 12/12/60 referred to master) (No. 9)
459 U.S. 963 (1982) (master's fee assessed) (No. 9)
464 U.S. 927 (1983) (master's fee assessed) (No. 9)
466 U.S. 956 (1984) (master's report received) (No. 9)
467 U.S. 1213 (1984) (master's fee assessed) (No. 9)
469 U.S. 808 (1984) (oral argument set) (No. 9)
469 U.S. 927 (1984) (motion for divided argument granted) (No. 9)
470 U.S. 93 (1985) (decision on merits authored by Blackmun, J.) (Marshall, J., not participating) (No. 9—Alabama and Mississippi Boundary Case)
481 U.S. 1011 (1987) (master's supplemental report received) (No. 9)
484 U.S. 892 (1987) (motion to file reply granted; oral argument set; master's fee assessed) (No. 9)
484 U.S. 920 (1987) (motions to participate in argument and for divided argument denied) (No. 9)
485 U.S. 88 (1988) (decision on merits authored by Blackmun, J.) (Marshall and Kennedy, JJ., not participating) (No. 9—Alabama and Mississippi Boundary Case)
498 U.S. 16 (1990) (supplemental decree entered; jurisdiction retained) (No. 9)
111 S. Ct. 946 (1991) (master's fee assessed; master discharged) (No. 9)
113 S. Ct. 1238 (1993) (supplemental decree entered) (No. 9)

Hawaii v. Bell (renamed **Hawaii v. Gordon**) (No. 12 Orig.) (suit to enjoin Director of Bureau of the Budget from advising federal agencies that U.S. lands in Hawaii no longer needed by U.S. need not be returned to Hawaii)
371 U.S. 804 (1962) (motion to file complaint granted)
371 U.S. 966 (1963) (oral argument set)
372 U.S. 901 (1963) (motion to advance granted; oral argument set)
373 U.S. 57 (1963) (complaint dismissed) (per curiam) (White, J., not participating)

Alabama v. United States (No. 15 Orig.) (suit to challenge exercise of authority to use federal troops to suppress combination or conspiracy to commit violence)
373 U.S. 545 (1963) (motion to file complaint denied) (per curiam) (White, J., not participating)

South Carolina v. Katzenbach (No. 22 Orig.) (suit to enjoin enforcement of Voting Rights Act of 1965)
382 U.S. 898 (1965) (motion to file complaint granted)
382 U.S. 967 (1966) (motion to intervene denied)
383 U.S. 301 (1966) (decision on merits authored by Warren, C.J.) (Black, J., concurring in part and dissenting in part)

United States v. Alabama (No. 23 Orig.); **United States v. Mississippi** (No. 24 Orig.); **United States v. Louisiana** (No. 25 Orig.) (suits to determine validity of Voting Rights Act of 1965)
382 U.S. 889 (1965) (motions to expedite consideration granted)
382 U.S. 897 (1965) (motions to file complaints denied)
Louisiana v. Katzenbach (No. 26 Orig.) (suit to challenge constitutionality of Voting Rights Act of 1965)
382 U.S. 950 (1965) (motion to file complaint denied)
Utah v. United States (No. 31 Orig.) (suit to establish title to shorelands around Great Salt Lake)
387 U.S. 902 (1967) (motion to file complaint granted)
388 U.S. 902 (1967) (special master appointed)
389 U.S. 909 (1967) (motion to intervene and file answer referred to master)
390 U.S. 977 (1968) (motions to intervene with answer and crossclaims referred to master)
391 U.S. 962 (1968) (joint motion to file stipulation referred to master)
393 U.S. 921 (1968) (master's report received)
394 U.S. 89 (1969) (motion to intervene denied)
400 U.S. 875 (1970) (master's report received)
400 U.S. 962 (1970) (motion for extension of time to file exceptions to master's report granted)
401 U.S. 903 (1971) (motion for additional time to file exceptions granted)
401 U.S. 970 (1971) (oral argument set)
403 U.S. 9 (1971) (decision on merits authored by Douglas, J.) (Marshall, J., not participating)
406 U.S. 484 (1972) (decree entered)
406 U.S. 940 (1972) (special master appointed)
416 U.S. 932 (1974) (master's report received)
419 U.S. 814 (1974) (oral argument set)
420 U.S. 304 (1975) (opinion and decree) (per curiam) (Marshall, J., not participating)
425 U.S. 948 (1976) (master's report received)
427 U.S. 461 (1976) (decree entered)
United States v. Maine (No. 35 Orig.) (suit to establish title to submerged lands off coasts of 13 states bordering Atlantic)
395 U.S. 955 (1969) (motion to file complaint granted)
398 U.S. 947 (1970) (special master appointed)
400 U.S. 914 (1970) (Florida's motion for severance referred to master)
403 U.S. 949 (1971) (motion to consolidate case with *United States v. Louisiana* (No. 9 Orig.) granted; motion of Florida for severance granted)
404 U.S. 954 (1971) (motion to file amicus brief granted)
408 U.S. 917 (1972) (motion for preliminary injunction denied)
412 U.S. 936 (1973) (motion for preliminary injunction denied)
419 U.S. 814 (1974) (master's report received)
419 U.S. 1087 (1974) (motion to file amicus brief granted)
419 U.S. 1102 (1975) (motion to file amicus brief granted)
420 U.S. 304 (1975) (oral argument set)
420 U.S. 918 (1975) (motion for reallocation and reduction of time for oral argument granted)

420 U.S. 515 (1975) (decision on merits authored by White, J.) (Douglas, J., not participating)
421 U.S. 958 (1975) (motion that court retain jurisdiction of case granted)
423 U.S. 1 (1975) (decree entered)
433 U.S. 917 (1977) (special master appointed)
452 U.S. 429 (1981) (supplemental decree entered)
465 U.S. 1018 (1984) (master's report on Rhode Island boundary received)
468 U.S. 1213 (1984) (oral argument set)
468 U.S. 1227 (1984) (motion for divided argument granted)
469 U.S. 504 (1985) (decision on merits authored by Blackmun, J.) (Marshall, J., not participating) (Rhode Island and New York Boundary Case)
471 U.S. 375 (1975) (supplemental decree entered)
472 U.S. 1015 (1985) (master's report on Massachusetts boundary received)
474 U.S. 808 (1985) (exceptions to master's report set for oral argument)
474 U.S. 897 (1985) (motion to file reply brief granted)
475 U.S. 89 (1986) (decision on merits authored by Stevens, J.) (Marshall, J., not participating) (Massachusetts Boundary Case)
479 U.S. 806 (1986) (master's accounting in Massachusetts case received)

Florida v. Alabama (No. 37 Orig.) (suit against 49 states, the Secretary of Health, Education and Welfare, and the United States Attorney General for declaration that no state be penalized by loss of federal education funding for failure to bus students to achieve a "unitary" school system)

396 U.S. 490 (1970) (motion to file complaint denied) (per curiam)

Alabama v. Finch (No. 38 Orig.) (suit to challenge allegedly unequal application/enforcement of federal school-desegregation law in Alabama)

396 U.S. 552 (1970) (motion to file complaint denied) (per curiam)

Mississippi v. Finch (No. 39 Orig.) (suit to enjoin enforcement of federal school-desegregation law in Mississippi)

396 U.S. 553 (1970) (motion to file complaint denied) (per curiam) (Harlan, J., not participating)

Massachusetts v. Laird (No. 42 Orig.) (suit to determine constitutionality of U.S. involvement in Indo-Chinese War)

400 U.S. 886 (1970) (motion to file complaint denied) (Douglas, J., dissenting)

Oregon v. Mitchell (No. 43 Orig.); **Texas v. Mitchell** (No. 44 Orig.); **United States v. Arizona** (No. 46 Orig.); **United States v. Idaho** (No. 47 Orig.) (suits to enjoin enforcement of provision on 18-year-olds in 1970 amendments to Voting Rights Act)

400 U.S. 802 (1970) (motion to file complaint granted; motion to intervene in Nos. 43 and 44 denied; motion to participate as amici in oral argument in Nos. 43 and 46 denied)
400 U.S. 802 (1970) (motion to file complaint granted; motion to participate in oral argument as amicus denied; motion to join amicus granted) (No. 44)
400 U.S. 802 (1970) (motion to file complaint granted; motion to participate in oral argument as amicus denied) (No. 47)
400 U.S. 802 (1970) (motion to file complaint granted; motion for permission to participate in oral argument granted) (No. 46)
400 U.S. 810 (1970) (motion to consolidate Nos. 43, 44, 46, and 47

granted; motion to intervene and participate in oral argument in No. 46 denied)

400 U.S. 860 (1970) (motion to participate in oral argument as amicus denied)

400 U.S. 112 (1970) (decision on merits authored by Black, J.) (Douglas, J., concurring in part, dissenting in part) (Harlan, J., concurring in part, dissenting in part) (Brennan, White, and Marshall, JJ., concurring in part, dissenting in part) (Stewart, J., Burger, C.J., and Blackmun, JJ., concurring in part, dissenting in part)

401 U.S. 903 (1971) (motion to intervene and file petition for rehearing denied) (No. 44)

Alabama v. Connally (No. 53 Orig.) (suit against Secretary of Treasury and IRS Commissioner to declare that IRS exemption for charities discriminatory and subsidized religion in violation of First Amendment; suit targeted contributions by church to defense fund of avowed Black Panther Angela Davis)

404 U.S. 933 (1971) (motion to file complaint denied)

United States v. Florida (No. 54 Orig.) (suit to enjoin Florida and Texas from extending jurisdiction of their fishery laws to foreign fishing vessels beyond three miles from coastline)

405 U.S. 984 (1972) (motion to file complaint granted)

408 U.S. 918 (1972) (motion to defer consideration denied; motion for appointment of special master granted; special master appointed)

423 U.S. 1011 (1975) (special master appointed; motion to file counterclaim referred to master)

425 U.S. 931 (1976) (master's report on motion to file counterclaim received)

429 U.S. 810 (1976) (exceptions to master's report on motion to file counterclaim set for oral argument)

430 U.S. 140 (1977) (exceptions to master's report overruled; motion to file counterclaim denied) (per curiam)

434 U.S. 1031 (1978) (complaint dismissed)

435 U.S. 940 (1978) (master's accounting received; master discharged)

United States v. Nevada (No. 59 Orig.) (suit against Nevada and California to establish water rights in Truckee River)

410 U.S. 901 (1973) (motion to file amicus brief in support of motion to file complaint granted; motion to file complaint set for oral argument)

410 U.S. 921 (1973) (motion to participate as amicus in oral argument denied)

412 U.S. 534 (1973) (motion to file complaint denied) (per curiam)

Georgia v. Nixon (No. 63 Orig.) (suit to enjoin President and three federal agencies from withholding or impounding federal financial assistance to states)

414 U.S. 810 (1973) (motion to file complaint denied)

Idaho v. Vance (No. 75 Orig.) (suit by Idaho, Iowa, Louisiana, Nebraska, and five U.S. senators to declare the proper allocation of power between the legislative and executive branches with respect to the disposal of U.S. property interests in the Panama Canal)

434 U.S. 1031 (1978) (motion to file complaint denied)

United States v. Alaska (No. 84 Orig.) (suit to determine title to sub-

merged lands off Alaskan coast under Submerged Lands Act of 1953)
442 U.S. 937 (1979) (motion to file complaint granted)
444 U.S. 1065 (1980) (special master appointed)
445 U.S. 914 (1980) (motion to file counterclaim referred to master)
452 U.S. 913 (1981) (motion to intervene referred to master)
465 U.S. 1018 (1984) (master's report received)
474 U.S. 1044 (1986) (master's fee assessed)

California *ex rel.* State Lands Comm'n v. United States (Orig. No. 89) (suit to quiet title to 184 acres of upland near Humboldt Bay, California, created by accretion)
454 U.S. 809 (1981) (motion to file complaint granted)
454 U.S. 1077 (1981) (motion for judgment on the pleadings set for oral argument)
454 U.S. 1096 (1981) (motion for summary judgment consolidated for oral argument with motion for judgment on the pleadings)
455 U.S. 997 (1982) (motion to file supplemental brief granted)
457 U.S. 273 (1982) (decision on merits authored by White, J.) (Rehnquist, Stevens, and O'Connor, JJ., concurring)
458 U.S. 1131 (1982) (rehearing denied)
459 U.S. 1 (1982) (decree entered)

South Carolina v. Regan (renamed *South Carolina v. Baker*) (No. 94 Orig.) (suit to challenge constitutionality of IRS provision denying federal income tax exemption for interest earned on unregistered long-term state and local government bonds)
462 U.S. 1114 (1983) (motion for preliminary injunction denied; motion to file complaint set for oral argument)
464 U.S. 807 (1983) (motions to file supplemental memoranda granted; motion for divided argument granted; motion to file amicus brief granted)
464 U.S. 888 (1983) (motion to file amicus brief granted)
465 U.S. 367 (1984) (motion to file complaint granted and special master appointed in opinion authored by Brennan, J.) (Blackmun, O'Connor, Powell, and Rehnquist, JJ., concurring) (Stevens, J., concurring in part, dissenting in part)
466 U.S. 948 (1984) (special master appointed)
468 U.S. 1226 (1984) (motion to intervene referred to master)
469 U.S. 1083 (1984) (master's report received)
479 U.S. 1078 (1987) (master's report received)
484 U.S. 808 (1987) (motion to file reply brief granted; oral argument set)
484 U.S. 892 (1987) (motions for divided argument granted; requests for additional time for oral argument denied)
484 U.S. 920 (1987) (special master appointed)
484 U.S. 973 (1987) (master's fee assessed)
485 U.S. 931 (1988) (motion for clarification of previous order granted)
485 U.S. 505 (1988) (decision on merits authored by Brennan, J.) (Rehnquist, C.J., concurring) (Stevens, J., concurring) (Scalia, J., concurring) (O'Connor, J., dissenting) (Kennedy, J., not participating)
486 U.S. 1003 (1988) (master discharged)
486 U.S. 1062 (1988) (rehearing denied)

Indiana v. United States (No. 102 Orig.) (suit to enjoin the U.S. House of Representatives from refusing to administer oath of office to Richard D.

McIntyre of Indiana)
471 U.S. 1002 (1985) (motion to expedite consideration of motion to file complaint denied)
471 U.S. 1123 (1985) (motion to file complaint denied)

Michigan v. Meese (No. 107 Orig.) (suit to determine constitutionality of federal wiretapping statute, 18 U.S.C. § 2515, as applied to state judicial proceedings)
479 U.S. 1078 (1987) (motion to file complaint denied)

Mississippi v. United States (No. 113 Orig.) (suit to determine title to submerged lands of Chandeleur Sound)
487 U.S. 1215 (1988) (special master appointed)
498 U.S. 16 (1990) (master's report received; decree entered)
111 S. Ct. 946 (1991) (master's fee assessed; master discharged)

Mississippi v. United States (No. 117 Orig.) (suit to challenge dredging, diverting of Pearl River by U.S. Army Corps of Engineers and to determine equitable rights to waters of Pearl River, title to thalweg of Pearl River as between Mississippi and Louisiana)
111 S. Ct. 1301 (1991) (motion to file complaint denied)
111 S. Ct. 2046 (1991) (rehearing denied)

United States v. Alaska (No. 118 Orig.) (suit to challenge conditioning of permit approval on disclaimer of rights to submerged lands)
111 S. Ct. 1411 (1991) (motion to file complaint granted)
111 S. Ct. 2884 (1991) (parties invited to file stipulation of facts or special master will be appointed)
112 S. Ct. 24 (1991) (motion to modify briefing schedule granted)
112 S. Ct. 654 (1991) (motion to file amicus brief granted; oral argument set)
112 S. Ct. 1606 (1992) (decision on merits authored by White, J.)

STATE v. PARTY OTHER THAN STATE OR UNITED STATES

Ohio v. Wyandotte Chems. Corp. (No. 41 Orig.) (suit to abate pollution nuisance caused by mercury allegedly dumped by defendant industrial companies into head waters of Lake Erie)
400 U.S. 810 (1970) (motion to file complaint set for oral argument; solicitor general invited to file brief on behalf of United States and to participate as amicus in oral argument)
400 U.S. 955 (1970) (order on motion for allotment of time for oral argument granted)
400 U.S. 963 (1970) (motion to permit three attorneys to participate in oral argument on behalf of defendants granted)
401 U.S. 493 (1971) (motion to file complaint denied in opinion authored by Harlan, J.) (Douglas, J., dissenting)

Washington v. General Motors Corp. (No. 45 Orig.) (suit by 18 states to challenge alleged conspiracy by "Big Four" automobile manufacturers to impede research and development of automotive air pollution devices)
402 U.S. 940 (1971) (motion to file complaint set for oral argument)
403 U.S. 949 (1971) (motion to be named as party plaintiff granted)
404 U.S. 811 (1971) (motion to intervene and participate in oral argument denied; motion to participate in oral argument as amicus denied)
405 U.S. 1015 (1972) (motion to file supplemental brief after argument granted)
406 U.S. 109 (1972) (motion to be named as parties granted; motion to file

complaint denied in opinion authored by Douglas, J.) (Powell, J., not participating)

Illinois v. City of Milwaukee (No. 49 Orig.) (suit to abate pollution nuisance on Lake Michigan)

402 U.S. 940 (1971) (motion to file complaint set for oral argument)

406 U.S. 91 (1972) (motion to file complaint denied in opinion authored by Douglas, J.)

Virginia v. International Air Transp. Ass'n (No. 56 Orig.) (suit on behalf of Virginia and other states similarly situated against 38 airlines and airline associations alleging conspiracy in violation of federal antitrust law to fix transatlantic air cargo rates to prefer Kennedy Airport to all other airports)

409 U.S. 817 (1972) (motion to file complaint denied)

Louisiana v. Western Reserve Historical Soc'y (No. 97 Orig.) (replevin suit to retrieve long-lost Louisiana survey documents from an Ohio nonprofit corporation)

465 U.S. 1018 (1984) (motion to file complaint denied)

Alabama v. W.R. Grace & Co. (No. 116 Orig.) (suit by 29 states against numerous corporate defendants to recoup costs to states of abating the hazards of asbestos in public buildings)

495 U.S. 928 (1990) (motion to intervene denied; motion to file complaint denied)

MISCELLANEOUS OTHER CASES PURPORTEDLY BROUGHT UNDER STATE-PARTY BRANCH OF ORIGINAL JURISDICTION

Kelly v. E.H. Schmidt & Assoc., Inc. (No. 19 Orig.) (suit alleging in a multifarious and confused complaint numerous conspiracies in violation of federal law)

379 U.S. 952 (1965) (motion to file complaint denied)

American Party v. New York (No. 58 Orig.) (suit to enjoin exclusion of electors pledged to American Party nominees from ballots in 17 states and the District of Columbia)

409 U.S. 909 (1972) (motion for temporary restraining order denied)

409 U.S. 1021 (1972) (motion to file complaint denied)

Montgomery (Indiana *ex rel.*) v. Congress of the United States (No. 66 Orig.) (suit against 49 other states and Congress to require gold and silver tender)

420 U.S. 959 (1975) (motion to file complaint denied)

Webber v. Oklahoma (No. 100 Orig.) (suit by woman treated in Oklahoma hospitals to challenge constitutionality of Oklahoma statute under which hospitals claimed lien in woman's insurance proceeds)

471 U.S. 1012 (1985) (motion to file complaint denied)

CASES PURPORTEDLY BROUGHT UNDER FOREIGN ENVOY BRANCH OF ORIGINAL JURISDICTION

Founding Church of Scientology v. Cromer (No. 51 Orig.) (suit against British ambassador to United States and British first secretary, seeking $1 million in compensatory damages and $1.2 million in punitive damages for alleged libel)

404 U.S. 933 (1971) (motion to file complaint denied)

Webb v. Porter (No. 55 Orig.) (suit by citizen of Ohio to enjoin appoint-

ment of Wiliam J. Porter as ambassador to Paris Peace Talks on grounds of failure to appoint with advice and consent of Senate)

406 U.S. 941 (1972) (motion to file complaint denied)

Petersen v. Spiliotopoulos (No. 61 Orig.) (malicious prosecution and defamation suit against chancellor of the Greek consulate in New Orleans)

412 U.S. 903 (1973) (motion to file complaint denied)

Kostadinov v. Smith (No. 99 Orig.) (suit by Bulgarian consular officer in New York for writ of prohibition against criminal prosecution for espionage)

469 U.S. 1203 (1985) (motion to file complaint denied)

***In re* Republic of Suriname *ex rel.* Boerenveen** (No. 110 Orig.) (suit for writ of habeas corpus brought by consular officer convicted of drug conspiracy)

484 U.S. 961 (1987) (motion to file writ of habeas corpus denied)