No. ___, ORIGINAL

IN THE

Supreme Court of the United States

STATE OF ARKANSAS,

Plaintiff,

v.

STATE OF OKLAHOMA,

Defendant.

On Motion for Leave to File Bill of Complaint

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT AND BILL OF COMPLAINT

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MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

Plaintiff State of Arkansas, ex rel. Mike Beebe, Attorney General of the State of Arkansas, on behalf of Arkansas and as *parens patriae* on behalf of the citizens of Arkansas, pursuant to 28 U.S.C. § 1251(a) and Rule 17 of the Rules of this Court, moves for leave to file its Complaint against the State of Oklahoma, for the reasons herein stated.

INTRODUCTION

In 1970, Arkansas and Oklahoma entered into an interstate compact to address issues of water quality and apportionment in the Arkansas River Basin. This compact is administered by a Commission—comprised of three representatives from each State and, upon appointment by the President, a single non-voting federal representative. Over the years, the Commission has engaged in a number of activities aimed at addressing pollution levels—due to increased population and

burgeoning local industries—in and around the Arkansas River and its watersheds.

Controversy has emerged over the extent to which particular agricultural practices contribute excessive nutrients (e.g., nitrogen and phosphorus) to the waters of the Illinois River Watershed. This watershed, which is part of the Arkansas River Basin, covers 1,069,530-acres and is almost equally divided between Oklahoma and Arkansas. In response, Arkansas and Oklahoma have entered into a Statement of Joint Principles and Actions aimed at developing measures to reduce nutrient loading. Arkansas also has collaborated with the Commission to address these issues, which recently led to a substantial revision to portions of the Arkansas Code.

Despite the actions taken under the Compact and individually, Oklahoma apparently remains unsatisfied with the Commission's and Arkansas's attempts to address these water quality concerns from agricultural run-off. Rather than proceeding pursuant to the Compact, however, Oklahoma has taken unilateral action aimed at abating alleged pollution emanating from Arkansas. Accordingly, Oklahoma seeks to impose its own laws and regulations on economic activity and citizens located within Arkansas's borders.

Oklahoma manifests this extraterritorial application of its laws in a suit filed in federal district court in Oklahoma, seeking to enjoin certain lawful activity occurring within Arkansas and demanding compliance with specific Oklahoma laws and regulations. This action, and Oklahoma's more general view that it can subjugate Arkansas to Oklahoma's laws, violates a number of important principles that are worthy of this Court's original jurisdiction. First, Oklahoma violates the negative implications of the Commerce Clause by directly regulating economic activity that occurs wholly within Arkansas. *Healy* v. *Beer Inst.*, 491 U.S. 324, 336 (1989). Second, Oklahoma has breached the basic principle underlying the constitutional compact, viz., each State entered the Union with its sovereignty intact, and the due process principle that the citizens of

all States should not be subject to inconsistent laws and regulations. *Blatchford* v. *Native Vill. of Noatak*, 501 U.S. 775, 779 (1991); *State Farm Mut. Auto. Ins. Co.* v. *Campbell*, 538 U.S. 408, 422 (2003).

Third and most important, Oklahoma seeks to circumvent a process established by Compact, which provides for the resolution of these issues through negotiation and collaboration. This process, which Oklahoma has discarded, was not only achieving real progress in addressing issues of water pollution, but also preserving the fundamental tenet that Oklahoma and Arkansas, as sovereign States, cannot be subjected to each others' laws.

No adequate alternative forum exists for this dispute. Accordingly, Arkansas invokes the Court's original jurisdiction to vindicate its rights under the Constitution and the Compact with Oklahoma to compel Oklahoma to raise its grievances in the appropriate forum, the Compact's Commission.

STATEMENT OF THE CASE

I. THE ARKANSAS RIVER BASIN COMPACT

On March 16, 1970, Arkansas and Oklahoma negotiated an interstate compact—the Arkansas River Basin Compact ("the Compact")—to address issues of water quality and apportionment in the shared watersheds of the Arkansas River Basin. See Ark. Code Ann. § 15-23-401 and Okla. Stat., tit. 82, § 1421.[1] A major purpose for both States' entry into the Compact was to "encourage the maintenance of an active pollution abatement program in each of the two States and to seek the further reduction of both natural and man-made pollution in the waters of the Arkansas River Basin." *Id*., Art. I.D. To reach this objective, both States agreed to "facilitate the cooperation of [their] water administration agencies … in

[1] Revised on March 3, 1972, the Compact was subsequently ratified by Congress on November 13, 1973. Arkansas River Basin Compact, Pub. L. No. 93-152, 87 Stat. 569 (1973).

the total development and management of the water resources of the Arkansas River Basin." *Id.*, Art. I.E.

The Compact by its terms also created an interstate administrative agency, the Arkansas-Oklahoma Arkansas River Compact Commission ("the Commission"), designated to oversee proper administration of the Compact. The Commission is comprised of three commissioners from each State. *Id*., Art. VIII.B. & C. The Commission may also include, upon appointment by the President, a seventh commissioner—as its non-voting chair, *id*., Art. VIII.A.—who represents the United States. *Id*.

The Compact vests within the Commission power to develop its own rules and regulations, *id*., Art. IX.A.(5), and to "[h]old hearings and compel the attendance of witnesses for the purpose of taking testimony and receiving other appropriate and proper evidence and issuing such appropriate orders as it deems necessary for the proper administration of this Compact," *id*., Art. IX.A.(7). Under the terms of the Compact, the Commission must additionally "[c]ollect, analyze and report on data as to stream flows, water quality, annual yields and such other information as is necessary for the proper administration of this Compact." *Id*., Art. IX.B.(2).

II. THE PRESENT CONTROVERSY

Both Arkansas and Oklahoma, by entering into the Compact, committed to collaborate in their efforts to control and reduce pollution in the shared watersheds of the Arkansas River Basin. Specifically, they mutually agreed to: (1) abate man-made pollution within their respective borders and to continually support an active pollution abatement program, *id*., Art. VII.A; (2) have their appropriate State agencies cooperate in investigating and abating sources of alleged interstate pollution within the Arkansas River Basin, *id*., Art. VII.B.; and (3) enter into joint programs "for the identification and control of sources of pollution of the waters of the Arkansas River and its tributaries which are of interstate sig-

nificance," *id*., Art. VII.C. In addition, by entering into the Compact, both States recognized the authority given to the Commission to address interstate pollution control within the Arkansas River Basin. *Id*., Art. IX.A.(7).

Over time, state monitoring programs have detected increases in phosphorus compounds, suspended sediments and bacteria within some segments of the Illinois River. See Joint Arkansas/Oklahoma Scenic River Monitoring Proposal 2 (2004) (App. D 50a). Eventually, in 2003, as part of the collaborative process under the Compact, environmental officials from both States negotiated a "Statement of Joint Principles and Actions," committing both States to coordinate monitoring the release of pollutants and to develop, by 2012, measures for substantially reducing phosphorus and achieving other water-quality goals. Statement of Joint Principles and Actions (2003) (App. GG). This was consistent with the Commission's exercise of pollution control responsibilities within the shared watershed. See, *e.g.*, Minutes, Annual Meetings of the Arkansas-Oklahoma Arkansas River Basin Compact Commission (1981-2004) (Apps. E-FF) (documenting the Commission's jurisdiction over interstate pollution control concerning on-going nutrient-reduction projects).

Agriculture is a primary stimulus of economic growth in Arkansas, making up nearly 11% of its gross state product. Jennie Popp et al., *Impact of the Agricultural Sector on the Arkansas Economy in 2001*, at 8 (Univ. of Ark. Sys. Research Report 975 (2005) (App. II 417a). The poultry industry alone contributes greatly to this output.[2] Arkansas recognized that the growth in agricultural activity in areas such as northwest Arkansas—where farmers and ranchers use commercial and natural fertilizers, including poultry litter—has the potential to create surplus nutrients that may enter the water through

[2] In 2001, the poultry industry provided 50,705 jobs in Arkansas, paid $1.21 billion in wages, and created $1.68 billion in value to the Arkansas economy. Popp et al., *supra*, at 18 (App. II 444a).

runoff from agricultural lands. See Keith Willett et al., *The Opportunity Cost of Regulating Phosphorus From Broiler Production in the Illinois River Basin* 26 (2005) (App. HH 396a-397a). In 2003, the Arkansas General Assembly addressed the environmental effects of surplus nutrients by designating certain geographic areas within the Illinois River Watershed as "nutrient surplus areas" subject to nutrient-management plans designed to protect water quality. See Ark. Code Ann. §§ 15-20-901, *et seq*. (Arkansas Poultry Feeding Operations Registration Act), 15-20-1101, *et seq*. (Arkansas Soil Nutrient Application and Poultry Litter Utilization Act), 15-20-1114 (governing potential conflicts between land application of poultry litter and Arkansas water and air pollution control laws). The Arkansas Natural Resources Commission subsequently adopted rules and regulations to implement the legislation. These regulations attempt to balance the State's interest in protecting the watershed from the adverse effects of excess nutrients with competing interests in maximizing cost-effective soil fertility and plant growth. By September 2005, some 4,057 poultry growing operations were registered in Arkansas.[3]

Despite these collaborative efforts to regulate the utilization of nutrients in their shared watersheds, Oklahoma remained dissatisfied with Arkansas's actions. Rather than proceed through the procedures established by the Commission, or engage in further bilateral negotiations, Oklahoma has instead resorted to unilateral action. Oklahoma now claims the right to apply its laws and regulations to commercial operations occurring wholly within the borders of Arkansas.

To that end, on August 19, 2005, Oklahoma brought a ten-count amended complaint against nine poultry companies—who contract with thousands of Arkansas poultry farmers—

[3] The laws enacted by Arkansas in 2003 are similar to Oklahoma laws, which Oklahoma presumably considered to be a reasonable approach to dealing with nutrient loading originating from agriculture occurring within Oklahoma. *See, e.g.*, Okla. Stat., tit. 2, §§ 20-1, *et seq*. & 10-9.1, *et seq*.

for violating, among other things, Oklahoma statutory and common laws by allegedly polluting the Illinois River Watershed (a designated sub-basin of the Arkansas River Basin, see Compact, Art. IV.B) with nutrients from the land-based application of poultry litter.

By the plain language of its complaint, Oklahoma seeks to significantly alter agricultural practices throughout the Illinois River Watershed region, including those practices conducted within the borders of Arkansas. See Compl. ¶¶ 1, 69, VI.3 (App. A 2a, 19a, 35a) (requesting a permanent injunction requiring defendants to "immediately abate" poultry fertilizer usage within the Illinois River Watershed"). In so doing, Oklahoma seeks to regulate under Oklahoma law the land-application of poultry litter as a natural fertilizer and soil amendment, even when such fertilizer is applied by farmers solely within Arkansas. This is not inadvertent. In fact, Oklahoma's Attorney General publicly has asserted that responsibility for nutrient pollution of the Illinois River Watershed lies "'squarely on the shoulders of the Arkansas poultry industry.'" Press Release, W.A. Drew Edmondson, Industry Blames 161 for Waste in Watershed (Oct. 4, 2005), *available at* http://www.oag.state.ok.us/oagweb.nsf/Press+Releases!OpenView.

The broader impact of this claim cannot be overlooked. Oklahoma seeks to impose extraterritorial obligations upon Arkansas and its citizens and to supplant Arkansas law. Allowing this imposition of Oklahoma law within Arkansas would undermine fundamental principles of State sovereignty. Under the constitutional compact among the People and the States, Arkansas retained unconstrained police powers—except as granted to the federal government or restricted by the Constitution—to determine what behavior may be proscribed as unlawful within its borders. Because Arkansas entered the Nation with its sovereignty intact, Oklahoma's recourse for its grievance that Arkansas law fails to adequately abate pollution within shared watersheds was to seek

redress under the Compact or to file an original action before this Court. What our constitutional plan categorically does not permit is for one State to subjugate a sister State, through the extraterritorial application of laws and regulations.

Therefore, Arkansas, pursuant to Article I, section 10, clause 3 of the Constitution and 28 U.S.C. § 1251(a), moves for leave to file this original action against Oklahoma. Arkansas brings this suit to enjoin the extraterritorial application of Oklahoma law within Arkansas, thereby preventing the abrogation of Arkansas's laws and regulations relating to the same subject matter. Arkansas further seeks to enforce the Compact with Oklahoma, and to compel Oklahoma to address its pollution-based grievances through negotiation and collaboration before the Commission under the mechanism provided by the Compact. The Court provides the only adequate forum in which to bring these claims. The fundamental sovereign interests of Arkansas to enact and enforce laws regulating conduct within its borders without interference by its neighbor presents a matter of vital importance that warrants this Court's exercise of jurisdiction.

REASONS THE COURT SHOULD EXERCISE ITS ORIGINAL JURISDICTION

This case fundamentally involves a dispute between two States—Oklahoma and Arkansas—who negotiated the Compact to address apportionment and water-quality concerns in the shared watersheds of the Arkansas River Basin. At issue is Oklahoma's decision *not* to raise its interstate pollution-related watershed grievances before the Commission, as agreed in the Compact. Instead, Oklahoma seeks unilaterally to impose its laws and regulations on Arkansas, and to enforce these laws by bringing suit in federal district court in Oklahoma to enjoin economic activity that Arkansas has deemed lawful. Arkansas therefore urges this Court to determine if, under the Compact, the course followed by Oklahoma is valid. This Court readily exercises jurisdiction

over disputes concerning interstate water pollution, see *Arizona* v. *California*, 530 U.S. 392 (2000), *supplemented*, 531 U.S. 1 (2000), and interstate compacts, see *West Virginia ex rel. Dyer* v. *Sims*, 341 U.S. 22, 28 (1951), and should adjudicate the dispute between these two States.

Action by this Court is particularly warranted because there are significant constitutional claims at stake. As demonstrated by its action in the federal district court, Oklahoma aims directly to regulate lawful commercial activity within Arkansas's borders, as a solution to its alleged pollution problems. In so doing, Oklahoma has shown blatant disregard for Arkansas's own laws and regulatory regime, clearly violating basic principles of the Commerce Clause, which restrains State power over interstate economic activities. See *Maryland* v. *Louisiana*, 451 U.S. 725, 754 (1981). In addition, extraterritorial application of a State's laws is prohibited. See *C&A Carbone, Inc.* v. *Clarkstown*, 511 U.S. 383, 393 (1994). In seeking to nullify Arkansas's laws and regulations, Oklahoma threatens Arkansas's sovereignty and compromises Arkansas's status as a co-equal State—constitutionally guaranteed upon its entrance into the Union—and the due process protections guaranteed its citizens under the Fourteenth Amendment. *State Farm Mut. Auto. Ins. Co.* v. *Campbell*, 538 U.S. 408, 421 (2003).

This Court's intervention also is warranted because Oklahoma's action has breached the Compact with Arkansas. The Commission is the interstate agency vested by the Compact with power to resolve watershed-related grievances between the States. Oklahoma has rejected the administrative mechanism created by the Compact to facilitate a collaborative resolution of pollution-related concerns.

This Court should exercise its original jurisdiction because there is no appropriate alternative forum in which to resolve this dispute. The Compact's forum-selection clause only confers jurisdiction upon federal district courts in narrow circumstances not present here. See 33 U.S.C. § 466g-1. Nor

is the federal district court in which Oklahoma seeks to impose its laws upon Arkansas an appropriate alternative forum. The private defendants in that suit cannot directly represent Arkansas's sovereign interests. See *Wyoming* v. *Oklahoma*, 502 U.S. 437, 452 (1992). Although the private defendants likely will attempt to avoid liability under Oklahoma law, Arkansas has no say in how its interests, as a State, are represented in the context of those defenses. Only by invoking this Court's jurisdiction can Arkansas assert its sovereignty to protect itself from the extraterritorial application of Oklahoma's laws.

Arkansas is only seeking resolution of its constitutional and compact claims; it is not seeking to litigate the specific liability claims raised by Oklahoma in the trial court. Thus, this suit will *not* involve detailed factual findings into the nature, extent and cause of alleged nutrient pollution in the watershed, a type of dispute this Court has expressed reluctance to adjudicate in the past. See *Ohio* v. *Wyandotte Chems. Corp.*, 401 U.S. 493, 504 (1971). Rather, Arkansas seeks only a ruling on the meaning of the Compact's terms and a determination that the Constitution limits Oklahoma's ability to impose its own laws and regulations regardless of state boundaries. Only this Court provides a forum equal to the dignity of those claims.

ARGUMENT

This Court has considered two factors in determining whether to exercise its original jurisdiction under Article III, Section 2 of the United States Constitution and 28 U.S.C. § 1251(a): "First, we look to the 'nature of the interest of the complaining State,'" focusing on the "'seriousness and dignity of the claim'.… Second, we explore the availability of an alternative forum in which the issue tendered can be resolved." *Mississippi* v. *Louisiana*, 506 U.S. 73, 77 (1992).

The exercise of original jurisdiction is justified because Arkansas raises claims that are best addressed by this Court.

Arkansas seeks leave to bring this action because Oklahoma's decision to regulate commercial activities that occur within Arkansas violates both the Commerce Clause and constitutional principles of federalism embodied in the structure of the Constitution and the Due Process Clause of the Fourteenth Amendment. The Court has previously deemed challenges to the extraterritorial effects of one State's laws by a sister State worthy of the exercise of its original jurisdiction. See *Wyoming* v. *Oklahoma*, 502 U.S. 437 (1992). Further, Arkansas asserts that Oklahoma has circumvented an interstate compact, in which Arkansas and Oklahoma have agreed to collaboratively resolve their disputes concerning interstate water quality. This Court routinely has recognized that it has a particular duty to entertain claims that concern the interpretation and application of an interstate compact. See, *e.g.*, *Texas* v. *New Mexico*, 462 U.S. 554, 567-68 (1983).

I. ARKANSAS'S INTERESTS WARRANT THE EXERCISE OF THIS COURT'S JURISDICTION.

Disputes concerning control over interstate waters and interstate water pollution are not novel, and often require resolution by this Court. See, *e.g.*, *Gibbons* v. *Ogden*, 22 U.S. (9 Wheat.) 1 (1824); *Missouri* v. *Illinois*, 200 U.S. 496 (1906); *Arizona* v. *California*, 530 U.S. 392 (2000), *supplemented*, 531 U.S. 1 (2000). Because such conflicts have profound effects on the sanctity of the territorial boundaries of sovereign States and the well-being of the citizens of the affected States, the Court has not hesitated to exercise its jurisdiction in such suits. See, *e.g.*, *New York* v. *New Jersey*, 256 U.S. 296 (1921); *Missouri* v. *Illinois*, 180 U.S. 208 (1900).

This case presents a dispute over the manner in which two states address pollution in an interstate body of water and surrounding lands—the Illinois River Watershed. The gravamen of Oklahoma's grievance is that Arkansas law does not, to Oklahoma's satisfaction, adequately prevent the pollution of shared bodies of water and lands between the two States.

Rather than address this issue through a congressionally-sanctioned collaborative mechanism established by the Compact, Oklahoma has instead sought directly to regulate economic activity occurring within Arkansas as a means to prevent the alleged pollution, thereby extending Oklahoma law beyond its territorial jurisdiction. Intervention by this Court, therefore, is required not only because Oklahoma seeks to regulate the citizens of Arkansas for commercial activity occurring within Arkansas, but also because Oklahoma plainly seeks to displace Arkansas's statutes, regulations, and common law and make otherwise lawful conduct unlawful. This abrogation of one State's laws by another State directly threatens the sovereignty of Arkansas and undermines the constitutional guarantees that each State entered the Union with its sovereignty *vis-à-vis* its sister States intact.

Oklahoma's attempt to enforce its laws outside its jurisdiction defies a number of constitutional principles. It violates the negative implications of the Commerce Clause. See U.S. Const., art. I, § 8, cl. 3. It contravenes the most basic tenet of federalism incorporated into the constitutional bargain between the States, as well as the due process protections afforded to the citizens of all States against the imposition of inconsistent and conflicting extraterritorial State regulation.

Finally, this dispute merits the exercise of the Court's original and exclusive jurisdiction because it involves the construction of an interstate compact, which is a binding agreement between the States, and one aimed at preventing the type of conflict Oklahoma now creates. See, *e.g.*, *Kansas* v. *Colorado*, 514 U.S. 673 (1995); *Nebraska* v. *Iowa*, 406 U.S. 117, 118 n.1 (1972) ("'Just as this Court has power to settle disputes between States where there is no compact, it must have final power to pass upon the meaning and validity of compacts.'") (quoting *West Virginia ex rel. Dyer* v. *Sims*, 341 U.S. 22, 28 (1951)). The circumvention—indeed, the willful evasion—of a compact authorized by Article I, section 10, clause 3, of the Constitution and ratified by Congress,

demonstrates Oklahoma's fundamental unwillingness to participate in the constitutional mechanisms aimed at resolving grievances between the States in a manner that affords each State its dignity due as a co-equal sovereign. Arkansas relinquished its right to go to war against a sister State for engaging in conduct that interferes with Arkansas's ability to govern within its borders; it thus deserves to be heard by this Court to redress the affront to its sovereign dignity effected by Oklahoma's unilateral effort to regulate the primary conduct of Arkansas's citizens who comply with Arkansas law.

A. Imposition Of Oklahoma Law In Arkansas Constitutes The Direct Regulation Of Interstate Commerce.

It is well-established that a State law that has the "practical effect" of regulating commerce in other States violates the Commerce Clause. See *Brown-Forman Distillers Corp.* v. *New York State Liquor Auth.*, 476 U.S. 573, 579 (1986) (holding that state action runs afoul of the Commerce Clause when it "directly regulates … interstate commerce"). In other words, "[t]he critical inquiry is whether the practical effect of the regulation is to control conduct beyond the boundaries of the State." *Healy* v. *Beer Inst.*, 491 U.S. 324, 336 (1989).

The significance of Oklahoma's decision to regulate Arkansas industry cannot be understated. Its impermissibility is demonstrated by the relief Oklahoma seeks—a declaration that commercial activity, lawfully occurring *in Arkansas*, violates Oklahoma law. This is behavior that only Arkansas, or Congress, has the authority to regulate. For that reason, this Court has long interpreted the Commerce Clause, although silent in its text, as operating as an affirmative restraint on State power over interstate commerce. See *Maryland* v. *Louisiana*, 451 U.S. 725, 754 (1981); *Pennsylvania* v. *West Virginia*, 262 U.S. 553, 596 (1923) ("By the Constitution (article 1, § 8, cl. 3) the power to regulate interstate commerce is expressly committed to Congress and therefore impliedly forbidden to the states."), *aff'd on reh'g*, 263 U.S. 350 (1923).

By so construing the Commerce Clause, this Court has protected interstate commerce from conflicting obligations imposed by potentially overlapping, inconsistent State laws. Although the Commerce Clause limits State power by conferring the exclusive right to regulate interstate commerce upon the national government, the Court has deemed this principle worthy of its exclusive and original jurisdiction when invoked by a State challenging the laws of one of its sister States. See, *e.g.*, *Wyoming* v. *Oklahoma*, 502 U.S. 437, 446-54 (1992); *Maryland*, 451 U.S. at 754; *Pennsylvania*, 262 U.S. at 595-97.

It is no answer to say that Oklahoma's Complaint might be read as seeking only to enforce certain of its statutes and its common law within Arkansas, while arguably limiting the application of other statutes to activities occurring only in Oklahoma. Compare Okla. Compl. ¶¶ 98-108 (App. A 25a-27a) (seeking to impose Oklahoma's statutory and common law of nuisance and statutory damage provisions in Arkansas), and ¶¶ 119-127 (App. A 29a-31a) (seeking to impose Oklahoma common law of trespass and statutory damage provisions in Arkansas), and ¶¶ 128-132 (App. A 31a-32a) (seeking to impose Oklahoma environmental statutes within Arkansas), with ¶¶ 134-135, 138-139 (App. A 32a-34a) (seeking relief under Oklahoma's statutory and regulatory schemes governing waste discharges and Animal Waste Management Plans for conduct occurring in Oklahoma). The extraterritorial application of Oklahoma's laws fails constitutional muster so long as Oklahoma voluntarily seeks to project any of its domestic laws into the State of Arkansas. Moreover, if Oklahoma were permitted to enforce any of its laws governing the use of poultry litter within Arkansas, that would impose additional, and plainly inconsistent, obligations upon commerce occurring wholly within Arkansas. See *CTS Corp.* v. *Dynamics Corp. of Am.*, 481 U.S. 69, 89 (1987) (the Commerce Clause forbids state actions that "create an impermissible risk of inconsistent regulation by different states"). Through its construction of its own laws, Oklahoma

claims the right to regulate, as unlawful, activity that Arkansas has deemed lawful. Oklahoma has alleged that the use of poultry litter as a natural fertilizer and soil amendment within Arkansas violates Oklahoma's statutory and regulatory schemes governing waste discharges see Okla. Compl. ¶¶ 128-132 (App. A 31a-32a), *even though* the people of Arkansas, acting through their duly-elected legislature and expert regulatory agencies, have imposed their own regulatory regime. While Oklahoma possesses the power to exercise its judgment regarding activity that occurs within its territorial borders, Oklahoma has no authority to impose that judgment upon Arkansas. See *C&A Carbone, Inc.* v. *Clarkstown*, 511 U.S. 383, 393 (1994) (a State may not selectively target interstate commerce it deems harmful because "[t]o do so would extend the [State's] police power beyond its jurisdictional bound"); *Edgar* v. *MITE Corp.*, 457 U.S. 624, 643 (1982) ("The limits on a State's power to enact substantive legislation are similar to the limits on the jurisdiction of state courts. In either case, 'any attempt "directly" to assert extraterritorial jurisdiction over persons or property would offend sister States and exceed the inherent limits of the State's power.'"). Absent intervention by the Court, Oklahoma's decision to regulate outside its borders creates the acute risk that a single State will impose *at least* regional, and possibly national, standards on significant interstate economic activity.

Oklahoma's effort to impose liability for purported violations of Oklahoma law occurring in Arkansas would require Arkansas citizens engaged in lawful commercial activity in Arkansas to alter their commercial practices to try to avoid violating Oklahoma law. If, as Oklahoma asserts, several sections of Oklahoma's statutes govern agricultural activities in Arkansas, there would be no reason that the remainder of Oklahoma's statutes would not also apply. Indeed, the absence of intervention by the Court *invites* further enforcement actions by Oklahoma for economic activity occurring in its sister States, thereby providing incentive for Oklahoma to

impose the negative burdens of commerce upon the industries and economic activity occurring *outside*, rather than inside, Oklahoma. Cf. *Chemical Waste Mgmt., Inc.* v. *Hunt*, 504 U.S. 334, 339-40 (1992) ("No State may attempt to isolate itself from a problem common to the several States by raising barriers to the free flow of interstate trade."). Further, Oklahoma's regulatory decision sets the stage for retaliatory actions by the affected States. To that end, this Court considers not only the "consequences" of the acts but also how that act "may intersect with the legitimate regulatory regimes of the other States and what effect would rise if not one, but many or every, State adopted similar legislation." *Healy*, 491 U.S. at 335; see also *Wyoming*, 502 U.S. at 453-54 (same); *Baldwin* v. *G.A.F. Seelig, Inc.*, 294 U.S. 511, 522 (1935) (the Commerce Clause closes "the door … to rivalries and reprisals that were meant to be averted by subjecting commerce between the states to the power of the nation").

Moreover, the Commerce Clause prohibits extraterritorial application of a State statute regardless of "whether the statute's extraterritorial reach was intended by the legislature. The critical inquiry is whether the practical effect of the regulation is to control conduct beyond the boundaries of the State." *Healy*, 491 U.S. at 336. It would be nonsensical for the Court to permit States to shield their regulations from judicial review merely by shifting the discriminatory components of the law from the statutory text to the discretionary enforcement mechanisms of its State officers. Thus, irrespective of whether the policy choice was adopted by the Oklahoma legislature or Oklahoma's officers, Oklahoma's laws as construed and enforced would have the "practical effect" of regulating commerce in Arkansas.

B. The Extraterritorial Application Of Oklahoma Law Infringes Upon The Sovereignty Of Arkansas.

In addition to the Commerce Clause, inherent in our system of government are certain other federalism-maintaining limi-

tations on the power of States to project their laws beyond their borders. "This is so obviously the necessary result of the Constitution that it has rarely been called into question…." *New York Life Ins. Co.* v. *Head*, 234 U.S. 149, 161 (1914). The Court has articulated two constitutional norms violated by the extraterritorial application of State law. First, such application violates "[a] basic principle of federalism," *State Farm Mut. Auto. Ins. Co.* v. *Campbell*, 538 U.S. 408, 422 (2003), and "principles of state sovereignty and comity," *BMW of N. Am., Inc.* v. *Gore*, 517 U.S. 559, 572 (1996), by displacing the decisions of a co-equal State. Second, it violates the due process rights of citizens by punishing them for activities that are perfectly lawful where they occur. See, *e.g.*, *id.* at 573 (States lack the power to punish persons "for conduct that was lawful where it occurred"). Oklahoma's enforcement action violates both these norms.

1. Federalism

The application of Oklahoma law within Arkansas eviscerates the principle that each State entered our Nation with its "sovereignty intact." *Blatchford* v. *Native Vill. of Noatak*, 501 U.S. 775, 779 (1991). Upon entry into our federal system, the constitutional compact guaranteed that each State remain a sovereign entity. See *id.*; *Hans* v. *Louisiana*, 134 U.S. 1, 13 (1890) ("[T]he attributes of sovereignty [are] enjoyed by the government of every State in the Union."). The Constitution, therefore, is offended when a State seeks to "legislate" outside of "its own jurisdiction." *Bonaparte* v. *Appeal Tax Court*, 104 U.S. 592, 594 (1881) ("No State can legislate except with reference to its own jurisdiction…. Each State is independent of all the others in this particular.").

Indeed, the Constitution contains numerous provisions whose purpose is to maintain the distinct and co-equal status of the States. See, *e.g.*, U.S. Const. art IV, § 1 ("Full Faith and Credit shall be given by each State to the public Acts ... of every other State."), art. IV, § 2, cl. 2 ("A Person charged in any State … who shall flee from Justice, and be found in

another State, shall on Demand of the … State from which he fled, be delivered up….”). Consistent with these textual provisions, for over a century this Court’s cases have emphasized the importance of “the constitutional barriers by which all States are restricted within the orbits of their lawful authority and upon which the preservation of the Government under the Constitution depends.” *New York Life*, 234 U.S. at 161.

Hence, the Court has declared unconstitutional actions that violate the “basic principle of federalism that each State may make its own reasoned judgment about what conduct is permitted or proscribed within its borders, and each State alone can determine what measure of punishment, if any, to impose on a defendant who acts within its jurisdiction.” *State Farm*, 538 U.S. at 422. This norm recognizes the basic structural reality that in a republic of co-equal States, one State cannot have a legitimate interest in regulating the activity of citizens in another State. See, *e.g.*, *id.* at 421 (“Nor, as a general rule, does a State have a legitimate concern in imposing punitive damages to punish a defendant for unlawful acts committed outside of the State’s jurisdiction.”); *Gore*, 517 U.S. at 572 (“We think it follows from these principles of state sovereignty and comity that a State may not impose economic sanctions on violators of its laws with the intent of changing the tortfeasors’ lawful conduct in other States.”).

Oklahoma’s decision to impose its laws within Arkansas is an affront to this norm because it treads upon Arkansas’s prerogative to legislate within its own borders. As previously noted, Arkansas has created its own comprehensive system of laws and regulations to govern the use of poultry litter as fertilizer. See, *e.g.*, Ark. Code Ann. §§ 15-20-901, *et seq.*; §§ 15-20-1101, *et seq.* By enforcing Oklahoma law within Arkansas, Oklahoma displaces this regime and governs the poultry industry within Arkansas’s borders according to Oklahoma standards. But Arkansas, as a sovereign State, is entitled to make its own policy choices regarding the agricultural practices within its borders; Oklahoma’s attempt to

impose its own preferences upon Arkansas violates the fundamental principle that a State "cannot extend the effect of its laws beyond its borders so as to destroy or impair the right of citizens of other states." *Hartford Accident & Indem. Co.* v. *Delta & Pine Land Co.*, 292 U.S. 143, 149 (1934).

2. Due Process

Oklahoma's extraterritorial application of its law deprives thousands of Arkansas citizens of due process in violation of the Fourteenth Amendment. Acting as *parens patriae*, Arkansas asserts these rights on behalf of its citizens.[4] This Court has declared on numerous occasions "the due process principle that a state is without power to exercise 'extra territorial jurisdiction,' that is, to regulate and control activities wholly beyond its boundaries." *Watson* v. *Employers Liab. Assurance Corp.*, 348 U.S. 66 (1954). See, *e.g.*, *Huntington* v. *Attrill*, 146 U.S. 657, 669 (1892) ("Laws have no force of themselves beyond the jurisdiction of the state which enacts them…."). By seeking to punish behavior occurring exclusively within Arkansas and which is completely lawful under

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[4] Under the *parens patriae* doctrine, a State has standing to press the claims of its citizens when those claims implicate the State's quasi-sovereign interests. *See Alfred L. Snapp & Son, Inc.* v. *Puerto Rico*, 458 U.S. 592, 601-02 (1982). A quasi-sovereign interest is one that stands apart from the interests of merely private parties, and implicates the State's general concern for "the health and well-being—both physical and economic—of its residents in general." *Id.* at 607.

Oklahoma's decision to regulate Arkansas will punish thousands of Arkansas poultry farmers by forcing them to comply with burdensome injunctions imposed on the named defendants with which they contract, as well as bearing the economic impact of the fines and money damages that Oklahoma seeks to levy against them. *See id.* at 609 (finding standing where only 787 people were immediately effected). Arkansas has an interest in the economic impact of Oklahoma's due process violations on Arkansas citizens not named in Oklahoma's lawsuit. *See Pennsylvania*, 262 U.S. at 591-92 (economic interest of citizens is "a matter of grave public concern in which the state, as the representative of the public, has an interest apart from that of the individuals affected").

Arkansas law, Oklahoma exceeds its legitimate power. Thus, Arkansas has an inherent interest in protecting the constitutional rights of its citizenry against such overreaching by a sister State, as well as in vindicating Arkansas's own dignity and sovereignty before the Court.

In a number of contexts, the Court has forcefully reaffirmed that citizens cannot be punished by the laws of another State for conduct that is legal in the State where it occurs. In *BMW of North America, Inc.* v. *Gore*, this Court held that a punitive damages award based in part on lawful conduct in other States violated the due process rights of the defendant, because "'[t]o punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort.'" 517 U.S. at 573 n.19 (quoting *Bordenkircher* v. *Hayes*, 434 U.S. 357, 363 (1978)); see also *State Farm*, 538 U.S. at 421 ("A State cannot punish a defendant for conduct that may have been lawful where it occurred."). These decisions follow from a long line of cases where the Court has held that laws imposing legal obligations on other jurisdictions violate due process. See, *e.g.*, *New York Life*, 234 U.S. at 162 ("[A] State may not consistently with the due process clause of the Fourteenth Amendment extend its authority beyond its legitimate jurisdiction either by way of the wrongful exertion of judicial power or the unwarranted exercise of taxing power."); *Home Ins. Co.* v. *Dick*, 281 U.S. 397, 407 (1930) ("The Texas statute as here construed [to invalidate insurance contracts that were legal in Mexico where they were executed] deprives the garnishees of property without due process of law."); *Virginia* v. *Bigelow*, 421 U.S. 809, 824 (1975) ("Virginia possessed no authority to regulate the services provided in New York").

Oklahoma, by its efforts to impose its laws within Arkansas, explicitly seeks to punish Arkansas citizens under Oklahoma law for activities that are lawful in Arkansas. See Okla. Compl. ¶¶ 98-108, 128-147 (App. A 25a-27a, 31a-35a). In fact, Oklahoma's attempt to regulate a large area of Arkan-

sas threatens to unconstitutionally punish significant numbers of unnamed Arkansas citizens—farmers who will be plainly affected by the litigation and the obligations it will impose.[5] Accordingly, absent intervention by this Court, Arkansas has no means to defend the interests of these citizens, who are engaged in lawful activity.

C. The Compact Is The Proper Mechanism For Regulating Interstate Water Pollution Issues Between Arkansas And Oklahoma.

Finally, Oklahoma's attempt to regulate within Arkansas, as a means to abate water pollution inside Oklahoma, violates its Compact with Arkansas. Unilateral application of Oklahoma law to the entire Illinois River Watershed circumvents the power of the Commission—the administrative body charged with addressing this grievance through negotiation and collaboration. As a signatory to the Compact, Oklahoma is bound to bring its interstate pollution-related concerns to the Commission. Indeed, an Oklahoma agency charged with protecting water quality has previously concluded that "Arkansas and Oklahoma have essentially agreed through the Compact to pursue resolution of interstate pollution concerns through the Commission before resort to other available legal remedies." Gen. Counsel, Okla. Water Res. Bd., *Pollution Remedies and Jurisdiction Considerations Under the Arkansas River Basin Compact* 2 (Mar. 13, 1981) (App. B 38a).

It is well-established that two States may not enter together into a compact without first receiving congressional consent. U.S. Const. art. I, § 10, cl. 3. When given, "congressional consent transforms an interstate compact … into a law of the

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[5] There can be no doubt that Oklahoma's lawsuit in federal district court seeks to "punish" Arkansas citizens given the repeated requests by Oklahoma for the assessments of "penalties" against the defendants and an express prayer for "exemplary and punitive damages." *See* Okla. Compl. ¶¶ 126, 132, 139 (App. A 30a-31a, 31a-32a, 33a-34a) and prayer ¶¶ 5 & 6 (App. A 36a).

United States," *Cuyler* v. *Adams*, 449 U.S. 433, 438 (1981), even though a compact still remains a contract "that must be construed and applied in accordance with its terms," *Texas* v. *New Mexico*, 482 U.S. 124, 128 (1987) (citing *West Virginia ex rel. Dyer* v. *Sims*, 341 U.S. 22, 28 (1951)). A result of this transformation is that "unless the compact to which Congress has consented is somehow unconstitutional, no court may order relief inconsistent with its express terms." *Texas*, 462 U.S. at 564. By imposing its policy choices concerning water pollution in the entire Illinois River Watershed, Oklahoma violates the explicit terms of the Compact.

By its plain language, a major purpose of the Compact is to "encourage the maintenance of an active pollution abatement program in each of the two States and to seek the further reduction of both natural and man-made pollution in the waters of the Arkansas River Basin." Compact, Art. I.D. Thus, the Compact includes provisions stipulating the collaborative effort needed by both States in order to identify and abate pollution within their shared watersheds. Specifically, both States have mutually agreed (1) that their appropriate State agencies will take steps toward abatement of interstate pollution within their jurisdictions, *id*., Art. VII.B, and (2) to enter into joint programs to identify and control sources of significant interstate pollution in the Arkansas River Basin, *id*., Art. VII.C. Additionally, by their entry into the Compact, both Arkansas and Oklahoma have recognized the authority of the Commission—the interstate agency created by the Compact "for the proper administration of this Compact"—to address interstate water pollution issues in the Arkansas River Basin. *Id*., Art. IX.A.(7).

These pollution abatement provisions are vital to the proper implementation of the Compact. See *TRW, Inc.* v. *Andrews*, 534 U.S. 19, 31 (2001) ("It is 'a cardinal principle of statutory construction' that 'a statute ought, upon the whole, to be construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'") (quoting

Duncan v. *Walker*, 533 U.S. 167, 174 (2001)). Nor has the Commission, in its administration of the agreement, treated these terms as anything but vital to the interests of the party States. In fact, the Commission has long recognized that its responsibilities under the Compact include "jurisdiction over pollution from one state to another." Minutes from the annual meeting of the Arkansas-Oklahoma Arkansas River Compact Commission 7 (Oct. 1, 1981) (App. E 67a). The Commission has substantiated its role in curbing interstate pollution within the shared watersheds by approving rules and regulations aimed at abating pollution within the Arkansas River Basin. See Minutes from annual meeting of the Arkansas-Oklahoma Arkansas River Compact Commission 5-6 (Sept. 27, 1984) (App. J 142a) (creating a forum for the "identification and discussion of pollution" and the "cooperat[ion]" between the States in "maint[aining] … active pollution abatement program[s]"); see also Minutes from the annual meeting of the Arkansas-Oklahoma Arkansas River Basin Compact Commission 76 (Sept. 25, 1986) (App. L 161a) (noting an ongoing study regarding waste discharge and pollution problems in the Illinois River). Moreover, Oklahoma's water quality officials have acknowledged that "[u]nquestionably, the pursuit of interstate water pollution remedies … through the Arkansas River Basin Compact and the Compact Commission is proper, appropriate, and contemplated under the Compact and applicable law." *Pollution Remedies and Jurisdictional Considerations*, at 1 (App. B 37a). In fact, the Oklahoma Water Resources Board has conceded that any interstate water pollution suit should be dismissed in favor of proceedings before the Compact Commission. See *id.* at 2 (App. B 38a).

Over the last decade, water quality in the Illinois River has been a focal point of Commission meetings. See Minutes from the annual meeting of the Arkansas-Oklahoma Arkansas River Basin Compact Commission 151 (Dec. 5, 1995) (App. V 240a) (noting one commissioner's "desire to see both states' agencies begin thinking of dealing with poultry pro-

ducers/companies in terms of creative solutions" when it comes to runoff); Minutes from the annual meeting of the Arkansas-Oklahoma Arkansas River Basin Compact Commission 144 (Oct. 3, 1996) (App. X 255a) (reporting on a joint committee meeting in which setting phosphorus reduction goals was discussed, as well as the positive impacts the Commission has made and will continue to make by working to develop and implement water quality standards). In 1997, the Commission adopted a phosphorus reduction goal of 40% for the Illinois River. Minutes from the annual meeting of the Arkansas-Oklahoma Arkansas River Basin Compact Commission 148 (Sept. 24, 1998) (App. Z 266a). In recent years, the Commission's Environmental and Natural Resources Committee has reported at the annual Commission meetings both the progress and set-backs it has encountered in working to achieve these goals. See Minutes from the annual meeting of the Arkansas-Oklahoma Arkansas River Basin Compact Commission 158-59 (Sept. 29, 1999) (App. AA 281a-282a); Minutes from the annual meeting of the Arkansas-Oklahoma Arkansas River Basin Compact Commission 4-6 (Oct. 17, 2001) (App. CC 305a-309a) (noting potentially flawed methodology and the need for implementing new phosphorus monitoring plans)

These collaborative efforts have led to tangible results. Prior to the filing of Oklahoma's recent lawsuit, both Oklahoma and Arkansas recognized that issues of interstate water quality must be handled on a cooperative basis through the auspices of the Commission. See, *e.g.*, Oklahoma Commissioners' Report, Arkansas-Oklahoma Arkansas River Compact Commission 7-8 (Sep. 24, 2003) (App. EE 332a-334a) (discussing, among other water quality issues, negotiations between Arkansas and Oklahoma officials to establish a numerical water quality standard for phosphorous). In particular, the Commission and both Arkansas and Oklahoma acknowledged that issues associated with surplus nutrients in the Illinois River Watershed were subject to mandatory col-

laboration and study through the Commission, rather than court litigation. See, *e.g.*, *id.* at 8 (App. EE 334a); *Pollution Remedies and Jurisdictional Considerations*, at 1-2 (App. B 37a-38a). As noted above, the Commission has investigated the complex facts surrounding these issues and has made recommendations to reduce the amount of nutrients in interstate water bodies. Before the recent lawsuit, Oklahoma recognized that this collaborative effort was producing legislative and regulatory responses from both Arkansas and Oklahoma. See Joint Arkansas/Oklahoma Scenic River Monitoring Proposal 2 (2004) (App. D 50a-52a) (outlining some of the regulatory successes associated with the Compact's collaborative process). In particular, Arkansas' General Assembly responded by declaring certain watershed areas "nutrient surplus areas" and enacting nutrient-management legislation designed for their improvement. See Ark. Code Ann. §§ 15-20-901, *et seq.*; 15-20-1001, *et seq.*; 15-20-1101, *et seq*. In other words, the process established by the Compact as a replacement for interstate litigation over water quality is working.

In stark contrast, Oklahoma has now cast this well-established collaborative process aside and chosen to attempt directly to impose its policy choices upon Arkansas. Rather than collaborate and negotiate a resolution before the Commission, which Oklahoma agreed to do when it entered into the Compact, Oklahoma has deliberately evaded the Compact by unilaterally imposing its own State pollution abatement regulations on Arkansas. This evasion "'strikes right at the heart' of the two-state Arkansas River Compact Commission." Robert J. Smith, *Member: Suit Waters Role of 2-State Panel*, Ark. Democratic Gazette, Sep. 23, 2005, at NW Ark Sec. (quoting Michael Carter, Commissioner from Arkansas). Oklahoma has thereby deprived the Commission of one of its core responsibilities in its "administration of this Compact"—controlling interstate pollution. Compact, Art. IX.A.(7); see also Smith, *supra*, ("'The [Commission] is well on its way to

becoming an academic body …. If we're not irrelevant now, we will become irrelevant.'") (quoting Commissioner Michael Carter).

Accordingly, Oklahoma's displacement of Arkansas's regulatory scheme constitutes a material breach of the Compact. See *West Virginia ex rel. Dyer* v. *Sims*, 341 U.S. 22, 28 (1951) ("It requires no elaborate argument to reject the suggestion that an agreement solemnly entered into between States by those who alone have political authority to speak for a State can be unilaterally nullified, or given final meaning by an organ of one of the contracting States."). An exercise of original jurisdiction is therefore warranted because this Court has "'a serious responsibility to adjudicate cases where there are actual, existing controversies' between the States over the waters in interstate streams," *Oklahoma* v. *New Mexico*, 501 U.S. 221, 241 (1991) (quoting *Arizona* v. *California*, 373 U.S. 546, 564 (1963)), and, where an interstate compact is the focus of such controversy, this Court alone can settle the dispute. *Sims*, 341 U.S. at 28 (noting that "this Court … must have final power to pass upon the meaning and validity of compacts"); see also *Texas*, 482 U.S. at 128 ("By ratifying the Constitution, the States gave this Court complete judicial power to adjudicate disputes among them … and this power includes the capacity to provide one State a remedy for the breach of [a compact by] another.").

II. THERE IS NO ADEQUATE ALTERNATIVE FORUM FOR RESOLVING THIS DISPUTE.

There is no adequate alternative forum in which Arkansas could raise its constitutional and compact claims.

In considering whether an alternative forum is adequate for a dispute between States, this Court examines whether the alternative body could provide "full relief" for the States. *Wyoming*, 502 U.S. at 452. As discussed below, neither the federal district court in Oklahoma nor the federal district court in Arkansas—*even if* jurisdiction existed to litigate

some of these claims—could provide Arkansas that full relief. In no forum, save before this Court, could the State of Arkansas participate, on its own behalf and on behalf of its citizens, in the adjudication of its constitutional claims.

Nonetheless, Oklahoma may argue that these two federal district courts provide alternative fora for this dispute. Such an argument would be a red herring. For reasons discussed below, neither forum has jurisdiction to resolve all, or even a majority, of the claims raised by Arkansas, and in no manner would Arkansas's interests as a sovereign be represented by litigation in which it must rely upon private parties to present its claims.

First, although in circumstances not present here, under the Compact, "[t]he States of Arkansas and Oklahoma mutually [have] agree[d] and consent[ed] to be sued in the United States District Court under the provisions of [33 U.S.C. § 466g-1]." Compact, Art. XIII.B. But such suits are limited to enforcement actions after a matter has been brought before the Commission. The law provides that resort to federal district court is available only for a dispute "which involves pollution of the waters … alleged to be in violation of the provisions of [the] compact," 33 U.S.C. § 466g-1(a)(2). A district court's jurisdiction under section 466g-1, therefore, is limited to an *enforcement* action under the Compact—such circumstances are not present here where Oklahoma seeks to end run the Commission rather than seek enforcement for a Compact violation. This exceedingly narrow grant of concurrent jurisdiction to district courts is confirmed by the Senate Committee Report:[6]

> The purpose of the proposed legislation is to give the U.S. district courts concurrent original jurisdiction of cases involving the pollution of interstate river systems *where the pollution is an alleged violation of an inter-*

[6] This Court, to our knowledge, has never construed section 466g-1, nor has any lower federal court interpreted the statute in a published decision.

> *state compact* and the signatory States have consented to such jurisdiction in their compact.

S. Rep. No. 87-2211 (1962), *reprinted in* 1962 U.S.C.C.A.N. 3282, 3282 (emphasis supplied); see also *id.* at 3282-83 (noting that "all of the … conditions" must be met for the district court to have concurrent original jurisdiction, including the condition that there be "pollution of the waters … in alleged violation of the compact").

This dispute between Arkansas and Oklahoma, however, does not fall within those narrow circumstances. Nowhere does Oklahoma allege that any pollution violates the Compact; rather, Oklahoma's actions demonstrate a conviction that the Compact simply has no applicability. See Smith, *supra*, (reporting the Oklahoma's Secretary of Energy's opinion that "'[t]he lawsuit doesn't represent an intrusion on the authority of this commission'"). Arkansas contends, on the other hand, that Oklahoma has violated the Compact by failing to raise this dispute before the Commission, which provides a mutually agreed upon, collaborative forum for both sovereigns to address the multi-jurisdictional issue of pollution in the Illinois River Watershed. Accordingly, neither party seeks to pursue an enforcement action, section 466g-1 is inapplicable, and this case is governed by Congress's mandate that controversies between States are within the exclusive and original jurisdiction of the Supreme Court. See 28 U.S.C. § 1251(a).

Second, Oklahoma's action in the Northern District of Oklahoma is not an alternative forum in which Arkansas could adjudicate this grievance. The private defendants before the district court cannot adequately represent Arkansas's interests. In *Wyoming* v. *Oklahoma*, a nearly identical case, this Court rejected an argument that private defendants could adequately represent the interests of the State. There, an Oklahoma statute providing preferential treatment to Oklahoma coal was challenged by Wyoming under this Court's exclusive original jurisdiction as a violation of the Commerce

Clause. While Wyoming coal companies could have raised this challenge in an alternative forum, the Court rejected the contention that such a lower court action would adequately represent the interest of Wyoming and granted leave to file the complaint. 502 U.S. at 452; see also *Maryland*, 451 U.S. at 743 (granting motion for leave to file a complaint even though other suits were pending because, *inter alia*, plaintiff States were not "directly represented" in those suits).

In no manner can the private defendants in the pending case before the Northern District of Oklahoma—entities engaged in the poultry business in Arkansas, Mississippi, Missouri and Minnesota, see Okla. Compl. ¶¶ 6-19 (App. A 4a-10a)—"directly represent" either the State of Arkansas or other Arkansas citizens. Where the Court has deferred to other pending proceedings, a party to the collateral lower court action has been "a political subdivision of the State," a circumstance that does not exist here. *Maryland*, 451 U.S. at 743 (noting that in *Arizona* v. *New Mexico*, 425 U.S. 794 (1976), Arizona's interests were represented by one of its political subdivisions); cf. *Illinois* v. *City of Milwaukee*, 406 U.S. 91 (1972) (rejecting claim that Illinois's suit against political subdivisions of Wisconsin amounted to a dispute against Wisconsin). In this case, the private defendants only seek to avoid liability under Oklahoma law, but Arkansas endeavors to protect its interest as a sovereign—i.e., the sanctity of its borders—from the extraterritorial application of its sister States' laws. These two interests are not coextensive. The private defendants might not assert Arkansas' claims as a sovereign at all or they might settle the case upon terms that implicate the sovereignty of Arkansas. As a non-participant, Arkansas has fundamentally different interests than the private litigants and no control over the manner in which these private parties will litigate their defenses.

Finally, adjudication of the proposed Complaint will not require the Court to address complex water pollution issues requiring expert testimony and detailed factual findings. See

Ohio v. *Wyandotte Chems. Corp.*, 401 U.S. 493, 504 (1971) (finding "even the simplest sort of interstate pollution case an extremely awkward vehicle to manage"); *Washington* v. *General Motors Corp.*, 406 U.S. 109, 113 (1972) (noting, in rejecting leave to file an original jurisdiction complaint based upon alleged antitrust and air pollution violations, that "[t]he breadth of the constitutional grant of this Court's original jurisdiction dictates that we be able to exercise discretion over the cases we hear under this jurisdictional head, lest our ability to administer our appellate docket be impaired"). Arkansas does not request an adjudication of the merits of Oklahoma's claim; rather, Arkansas seeks a declaration that Oklahoma is without power under the Constitution to subjugate Arkansas to the regulatory authority of Oklahoma. Arkansas also seeks an interpretation of the plain terms of the Compact, which vest the Commission with jurisdiction over interstate water quality disputes. Accordingly, the appropriate relief would be an injunction enjoining the extraterritorial application of Oklahoma law and an order requiring Oklahoma to file its grievances with the Commission, a body with technical expertise to resolve claims of water pollution.

CONCLUSION

For the foregoing reasons, the Court should grant Plaintiff's motion for leave to file the Complaint.

Respectfully submitted,

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BILL OF COMPLAINT

IN THE

Supreme Court of the United States

No. ___, Original

STATE OF ARKANSAS,

Plaintiff,

v.

STATE OF OKLAHOMA,

Defendant.

BILL OF COMPLAINT

1. The State of Arkansas, by and through its undersigned Attorney General, for its Complaint against the State of Oklahoma alleges as follows:

PARTIES

2. The State of Arkansas is a member of the Arkansas River Basin Compact (the "Compact"). The Compact was codified by the legislature of Arkansas at Ark. Code Ann. § 15-23-401. The filing of this Complaint has been authorized by Attorney General Mike Beebe.

3. The State of Oklahoma is also a member of the Compact. The Compact was codified by the legislature of Oklahoma at Okla. Stat., tit. 82, § 1421.

4. The Compact by its terms created an interstate administrative agency, the Arkansas-Oklahoma Arkansas River Compact Commission ("the Commission"), designated to oversee proper administration of the Compact. Compact, Art. IX.A.(7). The Commission is comprised of three commissioners from each State. *Id*., Art. VIII.B. & C. The

Commission may also include a seventh commissioner—as its non-voting chair, *id*., Art. VIII.A.—who represents the United States. *Id*.

5. The Compact vests within the Commission power to develop its own rules and regulations, *id*., Art. IX.A.(5), and to "[h]old hearings and compel the attendance of witnesses for the purpose of taking testimony and receiving other appropriate and proper evidence and issuing such appropriate orders as it deems necessary for the proper administration of this Compact," *id*., Art. IX.A.(7). Under the terms of the Compact, the Commission must additionally "[c]ollect, analyze and report on data as to stream flows, water quality, annual yields and such other information as is necessary for the proper administration of this Compact." *Id*., Art. IX.B.(2).

JURISDICTION

6. This Court has exclusive original jurisdiction over this Complaint pursuant to Article III, Section 2, Clause 2 of the Constitution of the United States and 28 U.S.C. § 1251(a).

SUMMARY

7. This action is brought by the State of Arkansas on behalf of itself and as *parens patriae* for the citizens of Arkansas for violations of Arkansas's rights under the Compact, breach of contract, violation of the Commerce Clause (U.S. Const. art. I, § 8, cl. 3), violation of the constitutional guarantee that each State entered the Nation with its sovereign powers intact, and violation of the Due Process Clause (U.S. Const. amend. XIV).

8. Arkansas and Oklahoma entered into the Compact to address issues of water quality and apportionment in the Arkansas River Basin. As part of the Compact, both States agreed to cooperatively resolve their mutual grievances concerning these issues under the auspices of the Commission, in lieu of litigation. Moreover, both States agreed that, as part of

this cooperative process, each State would use its authority to address water quality issues within its own borders and would not attempt to regulate affairs within the other State. Oklahoma has expressed recent dissatisfaction with Arkansas's efforts to abate pollution on the Arkansas side of the Illinois River Watershed (a watershed within the Arkansas River Basin), and, in its efforts to address its dissatisfaction, has focused on economic activities occurring within its sister State's borders. In particular, Oklahoma has sought to reduce nutrients entering the water through run-off from the application of a natural fertilizer and soil amendment—poultry litter—to Arkansas's agricultural lands.

9. Not unaware of Oklahoma's concerns, Arkansas nevertheless has worked within the framework established by the Compact and the Commission to address issues of water quality in the region, including those potentially raised from the utilization of poultry litter as a natural fertilizer and soil amendment. Arkansas has entered into bilateral agreements with Oklahoma and has taken legislative action that has substantially revised the Arkansas Code with respect to water quality in "nutrient surplus areas." Ark. Code Ann. §§ 15-20-901 *et seq*., 15-20-1101 *et seq*., 15-20-1114.

10. Nevertheless, Oklahoma has remained dissatisfied with the efforts of Arkansas and the Commission, and has instead resorted to unilateral action. Specifically, Oklahoma claims the right to apply its statutes, common law and administrative regulations to commercial, agricultural operations occurring wholly within Arkansas, and Oklahoma has filed a complaint in federal district court in Oklahoma seeking to enjoin commercial, agricultural practices lawfully occurring within Arkansas and demanding compliance with Oklahoma law. Oklahoma's action seeks to displace Arkansas law and substantially undermine an industry that is important to the Arkansas economy and a major source of Arkansas tax revenue.

FACTUAL BACKGROUND

THE ARKANSAS RIVER BASIN COMPACT

11. The Arkansas River Basin is a watershed covering parts of the States of Arkansas and Oklahoma. The Arkansas River Basin drains the Arkansas River and its main tributaries, from a point near the confluence of the Grand-Neosho River and the Arkansas River near Muskogee, Oklahoma, to a point below the confluence of Lee Creek and the Arkansas River near Van Buren, Arkansas.

12. This interstate drainage area encompasses several shared watersheds—including the Illinois River Watershed. The Illinois River Watershed covers approximately 1,069,530-acres and is almost equally divided between Oklahoma and Arkansas.

13. Because of the complex issues associated with water quality and apportionment for shared waters between two sovereign States, in 1955, the United States Congress granted consent to Arkansas and Oklahoma to negotiate and enter into a Compact for the management and apportionment of the Arkansas River Basin. Act of June 28, 1955, Pub. L. No. 84-97, 69 Stat. 184.

14. The two States created the Arkansas-Oklahoma Arkansas River Compact Committee on March 14, 1956 and, with the assistance of various federal agencies, 14 years later formulated a Compact.

15. The Arkansas River Basin Compact between Arkansas and Oklahoma was executed on March 16, 1970 and ratified by the United States Congress on November 13, 1973. Pub. L. No. 93-152, 87 Stat. 569 (1973).

16. Two major purposes that motivated Oklahoma and Arkansas to enter into the Compact were to (1) “encourage the maintenance of an active pollution abatement program in each of the two states and to seek the further reduction of both

natural and man-made pollution in the waters of the Arkansas River Basin" and (2) "to facilitate the cooperation of [their] water administration agencies … in the total development and management of the water resources of the Arkansas River Basin." Compact, Art. I.

17. To assist in the implementation of the Compact's objectives, the Compact, by its terms, created the Commission, consisting of three voting members from each State—the director of each State's water regulatory agency and two Arkansas River Basin residents appointed by their respective governors—and, at the President's discretion, a federal non-voting representative. *Id.*, Arts. VII & VIII.

18. The Commission is vested with broad power to promulgate its own rules and regulations, and to "issu[e] such appropriate orders as it deems necessary for the proper administration of this Compact." *Id.*, Art. IX.

19. To facilitate these powers, the Commission also is authorized to "[h]old hearings and compel attendance of witnesses for the purpose of taking testimony and receiving other appropriate and proper evidence" and to "[c]ollect, analyze, and report on data as to stream flows, water quality, annual yields and such other information as is necessary for the proper administration of this Compact." *Id.*, Art. IX.

20. The Compact remains in "full force and effect until changed or amended by unanimous action of the States acting through their Commissioners" and "until such changes are ratified by the legislature of the respective States and consented to by the Congress of the United States in the same manner as this Compact [wa]s required to be ratified to become effective." *Id.*, Art. X.A.

21. The Compact additionally states: "Nothing in [it] shall be deemed: … To interfere with or impair the right or power of either signatory State to regulate within its boundaries the appropriation, use and control of water within that State not

inconsistent with its obligations under this Compact." *Id.*, Art. XI.B.

22. By so providing, the Compact protects each State's ability to preserve the natural resources of the Arkansas River Basin while protecting for the policy judgments that each State might make when confronted with the specific needs of communities and industries located within their borders.

AGRICULTURAL PRACTICES IN ARKANSAS

23. Agriculture is an industry that provides a significant stimulus for economic growth in Arkansas, representing nearly 11% of the gross state product.

24. The poultry industry contributes significantly to this result, as millions of chickens and turkeys are raised on thousands of farms in Arkansas annually. These animals are used for food products, egg production, breeding and resupply purposes.

25. Statewide, there are currently more than 4,000 poultry operations registered with the State of Arkansas. These poultry operations are located in 57 Arkansas counties, and the poultry industry on the whole accounts for more than 50,000 jobs and over $1 billion in annual wages. Agriculture in general and poultry production in particular is an important source of Arkansas tax revenue.

26. In northwest Arkansas, the region of the Illinois River Watershed, poultry industry activity alone generates 12% of the jobs, 13% of the wages and 10% of the value added to the regional economy.

27. A useful commercial byproduct of poultry production is poultry litter, which contains a variety of nutrients, making it a highly efficient and cost-effective fertilizer and soil amendment.

28. Poultry producers apply poultry litter on their own lands as a natural fertilizer, or barter or sell excess poultry

litter to other ranches and farms which also use the poultry litter for land fertilization ("utilization of poultry litter").

29. Poultry litter and its utilization is an integral part of the commercial and agricultural practices of Arkansas farmers in the Illinois River Watershed.

30. Arkansas has regulated the poultry industry, and the utilization of poultry litter as a natural fertilizer and soil amendment, in a manner that addresses and accounts for their effect on the Arkansas economy and their potential to cause pollution to natural resources.

THE PRESENT CONTROVERSY

31. Both Arkansas and Oklahoma, by negotiating the Compact, committed to collaborate in their efforts to control and reduce pollution in the shared interstate watersheds of the Arkansas River Basin. In so doing, they agreed to cede any individual authority to address interstate pollution control within the Arkansas River Basin to the Commission—which has exercised its pollution-control responsibilities within the shared watersheds of the Arkansas River Basin. See, *e.g.*, Minutes, Annual Meetings of the Arkansas-Oklahoma Arkansas River Basin Compact Commission (1981-2004) (Apps. E-FF) (documenting the Commission's jurisdiction over interstate pollution control concerning on-going nutrient-reduction projects).

32. Over time, monitoring programs in both Arkansas and Oklahoma have detected increases in phosphorus compounds, suspended sediments and bacteria within some segments of the Illinois River Watershed.

33. A number of factors have contributed to these increases, including regional population growth and the expansion of local industries in both Oklahoma and Arkansas.

34. While Oklahoma alleges that the Arkansas poultry industry, through the utilization of poultry litter as a natural

fertilizer and soil amendment, contributes to the excess nutrients and other compounds in the water, a number of Oklahoma industries substantially degrade water quality in the region.

35. Oklahoma's grievance—relating to the utilization of poultry litter as a natural fertilizer and soil amendment—is one that Oklahoma is required to submit to the Commission for resolution under the terms of the Compact.

36. Indeed, in 2003, consistent with the principles of cooperation articulated in the Compact, environmental officials from both States negotiated a "Statement of Joint Principles and Actions," committing both States to coordinate monitoring the release of pollutants and to develop, by 2012, measures for substantially reducing phosphorus and achieving other water-quality goals. Statement of Joint Principles and Actions (2003) (App. GG).

37. Also in 2003, the Arkansas General Assembly revised the Arkansas Code to designate certain geographic areas as "nutrient surplus areas" subject to nutrient-management plans designed to protect water quality. See Ark. Code Ann. §§ 15-20-901, *et seq*. (Arkansas Poultry Feeding Operations Registration Act), 15-20-1101, *et seq*. (Arkansas Soil Nutrient Application and Poultry Litter Utilization Act), 15-20-1114 (governing potential conflicts between land application of poultry litter and Arkansas water and air pollution control laws).

38. These laws are administered by the Arkansas Natural Resources Commission, having adopted rules and regulations to balance the State's interest in protecting the shared watersheds from the adverse effects of excess nutrients with the competing interests in maximizing cost-effective soil fertility and plant growth.

39. Despite these collaborative efforts to regulate nutrient utilization within the Illinois River Watershed, Oklahoma remained dissatisfied with Arkansas's and the Commission's

good-faith efforts and chose unilateral action rather than continued bilateral negotiation under the auspices of the Commission.

40. Accordingly, Oklahoma now asserts the right to directly apply its laws and regulations to conduct occurring wholly within Arkansas, as a means to address water quality concerns.

41. To that end, on August 19, 2005, Oklahoma brought a ten-count amended complaint in federal district court in Oklahoma against Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., Cobb-Vantress, Inc., Aviagen, Inc., Cal-Maine Foods, Inc., Cal-Maine Farms, Inc., Cargill, Inc., Cargill Turkey Production, LLC, George's, Inc., George's Farms, Inc., Peterson Farms, Inc., Simmons Foods, Inc., and Willow Brook Foods, Inc. None of these defendants are citizens of Oklahoma. Collectively, these companies contract with thousands of Arkansas citizens.

42. Oklahoma's amended complaint alleges that the defendants violated, among other things, Oklahoma statutory and common laws and regulations by allegedly polluting the Illinois River Watershed (a designated sub-basin of the Arkansas River Basin) with nutrients from the land-based application of poultry litter. See generally Okla. Amend. Compl. (App. A).

43. By the plain language of its complaint, Oklahoma claims the right to regulate lawful commercial agricultural practices occurring within Arkansas under Oklahoma law.

44. For example, Oklahoma seeks to prohibit the use of poultry litter as a fertilizer and soil amendment within Arkansas. See Okla. Compl. ¶¶ 1, 69, VI.3 (App. A 2a, 19a, 35a) (requesting a permanent injunction requiring defendants to "immediately abate" poultry fertilizer usage within the Illinois River Watershed ("IRW")). As previously alleged, this is a lawful commercial, agricultural practice in Arkansas. The poultry farmers both use poultry litter on their own lands

as a natural fertilizer and soil amendment, or barter or sell poultry litter to other farmers who do the same.

45. Enforcement of Oklahoma law within Arkansas will displace and render meaningless laws enacted by the Arkansas General Assembly and state regulations implementing those laws. Compare *id.* ¶¶ 1, 69, VI.3 (App. A 2a, 19a, 35a), with Ark. Code Ann. §§ 15-20-901, *et seq*. (Arkansas Poultry Feeding Operations Registration Act), 15-20-1101, *et seq*. (Arkansas Soil Nutrient Application and Poultry Litter Utilization Act), 15-20-1114 (governing potential conflicts between land application of poultry litter and Arkansas water and air pollution control laws).

46. Oklahoma's decision to directly regulate out-of-state economic activity as a means to address its water quality concerns also circumvents a well-established process, set forth by the Compact, in which signatory States are required to present their grievances to the Commission for resolution through negotiation and collaboration.

47. Indeed, the Oklahoma Water Resources Board, an agency charged with protecting water quality, has conceded that "Arkansas and Oklahoma have essentially agreed through the Compact to pursue resolution of interstate pollution concerns through the Commission before resort to other available legal remedies." Gen. Counsel, Okla. Water Res. Bd., *Pollution Remedies and Jurisdiction Considerations Under the Arkansas River Basin Compact* 2 (Mar. 13, 1981) (App. B 38a).

48. Arkansas remains ready and willing to address these issues under the terms set forth pursuant to the Compact, but Oklahoma has refused to bring these issues before the Commission.

49. Accordingly, Oklahoma has violated the Compact by refusing to present its grievances to the Commission and by seeking to supplant Arkansas law and impose extraterritorial obligations on citizens of Arkansas.

50. Oklahoma's actions also will have a profound negative effect on the economy of Arkansas, reduce the tax revenues collected by Arkansas, and adversely effect interstate commerce in general.

51. Compliance with Oklahoma law will impose substantial costs and burdens upon agriculture in Arkansas. The cost of compliance, including banning the utilization of poultry litter as a natural fertilizer and soil amendment, would cost the agricultural industry millions of dollars annually. This translates into a significant potential loss of tax revenue for Arkansas.

52. Additionally, compliance will lead to a loss of jobs and business in the Illinois River Watershed region, which will have a direct adverse effect on the health and welfare of all the citizens of Arkansas.

COUNT I—VIOLATION OF ARKANSAS'S RIGHTS UNDER THE COMPACT

53. Plaintiff hereby realleges Paragraphs 1 through 52 as if fully set forth herein.

54. The Compact is an agreement between Arkansas and Oklahoma that has the force and effect of federal law. It imposes an express statutory obligation on the signatory States to abide by its terms and fulfill their obligations—which include cooperating to identify and abate pollution within the shared watersheds of the Arkansas River Basin.

55. The Compact precludes Arkansas and Oklahoma from interfering or impairing with the rights or powers of each State to exclusively regulate within its boundaries.

56. Arkansas and Oklahoma both agreed under the Compact to address their pollution-related grievances related to the shared watersheds of the Arkansas River Basin collaboratively, negotiating a resolution before the Commission in lieu of litigation.

57. Oklahoma's complaint that the utilization of poultry litter as a natural fertilizer and soil amendment causes run-off creating increased nutrients in the waters within the Illinois River Watershed is an interstate grievance to be addressed before the Commission.

58. Although required by the Compact, Oklahoma has refused to allow the Commission to resolve this grievance through the procedures established by the Compact.

59. Instead, Oklahoma has taken unilateral action by claiming the right to directly regulate commercial and agricultural activity occurring within Arkansas and has filed a lawsuit to enforce Oklahoma law within Arkansas in federal district court, thereby violating Plaintiff's rights under the Compact.

60. As a result of Oklahoma's evasion of its obligations under the Compact, and its attempt to regulate citizens and operations in Arkansas, as a means to abate water pollution in the shared watersheds of the Arkansas River Basin, Plaintiff's comprehensive regulatory scheme is compromised.

COUNT II—BREACH OF CONTRACT

61. Plaintiff hereby realleges Paragraphs 1 through 60 as if fully set forth herein.

62. As alleged, the Compact is federal law and is a legally binding and enforceable contract.

63. Under the contract, Oklahoma was obligated to forego its unilateral litigation and collaborate with Arkansas under the auspices of the Commission when addressing matters related to pollution in the shared watershed-areas of the Arkansas River Basin, as specified in the Compact.

64. The allegations contained hereinbefore constitute breaches of said contract by Oklahoma.

65. As a direct result of these breaches, Plaintiff's comprehensive regulatory scheme is compromised.

COUNT III—DECLARATORY/INJUNCTIVE RELIEF—VIOLATION OF THE COMMERCE CLAUSE OF ART. I, § 8, CL. 3 OF THE UNITED STATES CONSTITUTION

66. Plaintiff hereby realleges Paragraphs 1 through 65 as if fully set forth herein.

67. The Commerce Clause vests Congress with the authority to "regulate Commerce … among the several States," U.S. Const. art. I, § 8, cl. 3, and simultaneously precludes States from doing so. A State law that has the practical effect of regulating commerce that takes place wholly outside of the State's borders violates the Commerce Clause, whether or not the commerce has effects within the State. See *Healy* v. *Beer Inst.*, 491 U.S. 324, 336 (1989).

68. Poultry litter is an article of commerce. It is produced, bought, traded and sold within Arkansas, where it is applied to lands as a cost effective and highly efficient natural fertilizer and soil amendment that is used in commercial, agricultural operations.

69. Poultry is an article of commerce. Both live poultry and products derived from live poultry are produced, bought, traded and sold within Arkansas. The production of poultry creates poultry litter.

70. Oklahoma's actions violate the Commerce Clause because it purports to regulate commerce occurring wholly outside of Oklahoma's borders. By construing its statutory and common law and regulations to apply to commercial, agricultural activity occurring within Arkansas, Oklahoma imposes its legal standards on agricultural practices that occur on the Arkansas side of the Illinois River Watershed.

71. Because, by bringing an enforcement action against Arkansas's agricultural industries, Oklahoma regulates conduct occurring outside its borders and imposes burdens upon out-of-state commerce, Oklahoma violates the Commerce Clause and its action is void.

COUNT IV—DECLARATORY/INJUNCTIVE RELIEF—VIOLATION OF THE SOVEREIGNTY GUARANTEED CO-EQUAL STATES BY THE UNITED STATES CONSTITUTION

72. Plaintiff realleges paragraphs 1 through 71 as if fully set forth within.

73. Arkansas has enacted extensive laws and regulations governing the use of poultry litter as a fertilizer and soil amendment within its borders.

74. Arkansas's laws governing the use of poultry litter represent a set of deliberate policy choices to not only regulate some conduct but also to leave some conduct unregulated.

75. Having entered the Union with its "sovereignty intact," *Blatchford* v. *Native Vill. of Noatak*, 501 U.S. 775, 779 (1991), Arkansas has the exclusive authority to regulate conduct occurring within its borders subject only to the limitations placed upon it by the United States Constitution and applicable federal law.

76. Oklahoma lacks the constitutional authority to regulate conduct occurring in Arkansas.

77. Oklahoma's attempt to apply its laws to activity occurring within the state of Arkansas which is lawful under Arkansas law is an affront to the dignity and sovereignty guaranteed Arkansas as a co-equal state by the structure of the United States Constitution and the "basic principle of federalism that each State may make its own reasoned judgment about what conduct is permitted or proscribed within its bor-

ders, and each State alone can determine what measure of punishment, if any, to impose on a defendant who acts within its jurisdiction." *State Farm Mut. Auto. Ins. Co.* v. *Campbell*, 538 U.S. 408, 422 (2003).

COUNT V—DECLARATORY/INJUNCTIVE RELIEF—VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION

78. Plaintiff realleges paragraphs 1 through 77 as if fully set forth within.

79. Oklahoma claims the right to regulate the conduct of citizens of Arkansas—the utilization of poultry litter as a natural fertilizer and soil amendment—for activity occurring within Arkansas.

80. The utilization of poultry litter as a natural fertilizer and soil amendment is regulated by and is lawful under Arkansas law.

81. Oklahoma's requested injunction barring the utilization of poultry litter would have a major adverse economic impact on thousands of Arkansas poultry growers and even more citizens of Arkansas whose livelihoods are based in part on the Arkansas poultry industry or who consume poultry products.

82. Oklahoma's attempt to impose its laws on lawful activity occurring within the borders of Arkansas violates the rights of Arkansas citizens under the Due Process Clause of the Fourteenth Amendment by punishing them for activity within Arkansas that is lawful under Arkansas law.

83. Acting as *pares patriae*, Arkansas has standing to assert the Due Process rights of its citizens in this Court, because the Due Process violations by Oklahoma implicate Arkansas's quasi-sovereign interest in the welfare of its citizens, its independent duty to protect their constitutional

rights, and Arkansas's sovereign and constitutional right to exercise exclusive legislative power within its borders subject only to the United States Constitution and applicable federal law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court:

1. Declare that, under the terms of the Compact, Oklahoma is subject to the jurisdiction of the Commission and is required to cooperatively resolve its interstate dispute by presenting its grievances before the Commission.

2. Enjoin Oklahoma from prosecuting its interstate pollution-related grievances, including those alleged in Oklahoma's lawsuit before the federal district court, Case No. 4:05-CV-00329-JOE-SAJ, in any forum before a full presentation and exhaustion of remedies before the Commission.

3. Declare that Oklahoma's attempt to enforce its laws on citizens and conduct occurring within Arkansas violates the Commerce Clause, the Due Process Clause of the Fourteenth Amendment, and/or the sovereignty guaranteed co-equal states by the United States Constitution.

4. Enjoin Oklahoma from projecting its statutory and common laws and regulations into Arkansas.

5. Award Plaintiff further relief as this Court deems just and proper.

Respectfully submitted,

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