

3-27-1972

03-27-1972 Justice Rehnquist, Dissenting

William H. Rehnquist
US Supreme Court Justice

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Not used

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun ←
Mr. Justice Powell

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Rehnquist, J.

No. 50, Orig.

Circulated: _____

State of Vermont,
Plaintiff,
v.
State of New York et al.

On Motion for Leave to File
Bill of Complaint.

Recirculated: 3/27/72

[April —, 1972]

MR. JUSTICE REHNQUIST, dissenting.

Had Vermont sought leave to file only against International Paper, I would have no doubt that the Court's denial of leave to file was proper. Our jurisdiction of such an action is not exclusive, and an adequate alternative forum is available for prosecution of such a claim. *Ohio v. Wyandotte Chemical Co.*, 401 U. S. 496 (1971); *Illinois v. City of Milwaukee*, — U. S. — (1972). ✓

However, Vermont has sought leave to file not only against International Paper Company but against the State of New York. The Court appears to concede that Vermont has stated a separate but substantial claim against New York, and of course our jurisdiction of such an action is exclusive; Vermont must litigate her claim against New York before this Court or not at all. While the Court does not finally refuse leave to Vermont with respect to the claim against New York, Vermont is told that for the present she must sue another defendant in another court and see how she fares in that litigation. Presumably, if several years hence she is dissatisfied with the result of that case, this Court will be willing to reconsider her motion. I do not believe this extreme form of judicial abstention, whereby the plaintiff is remitted not only to an alternate forum but to an alternate defendant, is either justified by our prior cases or warranted by the constitutional provision conferring original juris-