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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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ALABAMA ET AL. *v*. NORTH CAROLINA

ON EXCEPTIONS TO THE PRELIMINARY AND SECOND REPORTS OF THE SPECIAL MASTER

No. 132, Orig. Argued January 11, 2010—Decided June 1, 2010

In 1986, Congress granted its consent to the Southeast Interstate Low-Level Radioactive Waste Management Compact (Compact), which was entered into by Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia. The Compact is administered by a Commission, which was required, *inter alia,* to "identif[y] a host State for the development of a [new] regional-disposal facility," and to "seek to ensure that such facility is licensed and ready to operate . . . no . . . later than 1991." Art. 4(E)(6), 99 Stat. 1875. The Commission designated North Carolina as a host State in 1986, thereby obligating North Carolina to take "appropriate steps to ensure that an application for a license to construct and operate a [low-level radioactive waste storage facility] is filed with and issued by the appropriate authority." Art. 5(C), *id.,* at 1877.

In 1988, North Carolina asked the Commission for assistance with the costs of licensing and building a facility. The Commission adopted a resolution declaring it "appropriate and necessary" to provide financial assistance, and ultimately paid almost $80 million to North Carolina from 1988 through 1997. North Carolina also expended $34 million of its own funds. Yet by the mid 1990s, North Carolina was still many years—and many tens of millions of dollars—away from obtaining a license.

In 1997, the Commission notified North Carolina that absent a plan for funding the remaining licensing steps, it would not disburse additional funds to North Carolina. North Carolina responded that it could not continue without additional funding. After the parties failed to agree on a long-term financing plan, in December 1997 the Commission ceased its financial assistance to North Carolina, and North Carolina subsequently began an orderly shutdown of its pro-

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ject.

In June 1999, Florida and Tennessee filed a complaint with the Commission seeking monetary sanctions against North Carolina. In July 1999, North Carolina exercised its right under Article 7(G) to withdraw from the Compact. In December 1999, the Commission concluded that North Carolina had failed to fulfill its obligations under the Compact and adopted a sanctions resolution demanding that the State repay approximately $80 million in addition to other monetary penalties. North Carolina did not comply.

In 2003, this Court granted Alabama, Florida, Tennessee, Virginia, and the Commission (Plaintiffs) leave to file a bill of complaint against North Carolina under this Court's original jurisdiction, U. S. Const., Art. II, §2, cl. 2; 28 U. S. C. §1251(a). The complaint sets forth claims of violation of Plaintiffs' rights under the Compact (Count I), breach of contract (Count II), unjust enrichment (Count III), promissory estoppel (Count IV), and money had and received (Count V), and requests monetary and other relief, including a declaration that North Carolina is subject to sanctions and that the Commission's sanctions resolution is valid and enforceable.

The Court assigned the case to a Special Master, who has conducted proceedings and has filed two reports. The Preliminary Report recommends denying without prejudice North Carolina's motion to dismiss the Commission's claims on sovereign immunity grounds; denying Plaintiffs' motion for summary judgment on Count I, which sought enforcement of the Commission's sanctions resolution; granting North Carolina's cross-motion to dismiss Count I and other portions of the complaint seeking such enforcement; and denying North Carolina's motion to dismiss the claims in Counts II–V. The Master's Second Report recommended denying Plaintiff's motion for summary judgment and granting North Carolina's motion for summary judgment on Count II; and denying North Carolina's motion for summary judgment on Plaintiffs' remaining claims in Counts III–V. The parties filed a total of nine exceptions to the Master's Reports.

Held:

1. Plaintiffs' seven exceptions are overruled. Pp. 7–21.

(a) The terms of the Compact do not authorize the Commission to impose monetary sanctions against North Carolina. The Court's conclusion is confirmed by a comparison of the Compact's terms with three other interstate compacts concerning low-level radioactive waste storage approved by Congress contemporaneously with the Compact, all of which expressly authorize their commissions to impose monetary sanctions against their party States. Pp. 7–9.

(b) Plaintiffs' exception that North Carolina could not avoid monetary sanctions by withdrawing from the Compact is moot, be-

cause the Compact does not permit the Commission to impose monetary sanctions in any event. The Court deems their exception that North Carolina forfeited its right to object to a monetary penalty by failing to participate at the sanctions hearing both abandoned and meritless. P. 10.

(c) Because the express terms of the Compact do not make the Commission the "sole arbiter" of disputes arising under the Compact, *Texas* v. *New Mexico*, 462 U. S. 554, 569–570, the Court is not bound by the Commission's conclusion that North Carolina breached its obligations under the Compact. Nor does the Court apply deferential administrative-law standards of review to the Commission's conclusion, but instead exercises its independent judgment as to both fact and law in executing its role as the "exclusive" arbiter of controversies between the States, 28 U. S. C. §1251(a). Pp. 10–12.

(d) North Carolina did not breach its contractual obligation to take "appropriate steps" toward the issuance of a license. Pp. 12–19.

(1) The Compact requires North Carolina to take only those licensing steps that are "appropriate." The parties' course of performance establishes that it was not appropriate for North Carolina to proceed with the very expensive licensing process without external-financial assistance. Nothing in the Compact's text or structure requires North Carolina to cover all licensing and building costs on its own. Plaintiffs' assertion that it was understood that the host State would bear the up-front licensing and construction costs, but recoup those costs through its regional monopoly on radioactive waste disposal, is not reflected in the Compact. Pp. 13–18.

(2) Plaintiffs' alternative argument that North Carolina repudiated its obligation to take appropriate steps when it announced it would take no further steps to obtain a license fails for the same reasons their breach theory fails. Pp. 18–19.

(e) North Carolina did not breach an implied duty of good faith and fair dealing when it withdrew from the Compact. The Compact by its terms imposes no limitation on North Carolina's right to exercise its statutory right under Article 7(G) to withdraw from the Compact. A comparison between the Compact and other contemporaneously enacted compacts confirms the absence of a good-faith limitation in the Compact. Pp. 19–21.

2. North Carolina's two exceptions are overruled. Pp. 21–26.

(a) It was reasonable for the Special Master to deny without prejudice North Carolina's motion for summary judgment on the merits of Plaintiffs' equitable claims in Counts III–V. The Special Master concluded that those claims require further briefing, argument, and, possibly, discovery. The Court approves of the Special Master's reasonable exercise of his discretion to manage the proceedings. Pp. 21–

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22.

(b) Under *Arizona* v. *California*, 460 U. S. 605, 614, the Commission's claims are not barred by sovereign immunity so long as the Commission asserts the same claims and seeks the same relief as the plaintiff States. Nothing in the Court's subsequent cases suggests that *Arizona* v. *California* has been implicitly overruled, and North Carolina does not ask the Court to overrule that decision. At least with respect to Counts I and II, the Commission's claims under those Compact-related Counts are wholly derivative of the plaintiff States' claims. The summary judgment disallowing the claims in Counts I and II on their merits renders the sovereign immunity question with regard to any *relief* the Commission alone might have on those claims moot. Counts III–V are on a different footing. The Special Master concluded that further factual and legal development was necessary to determine whether the Commission's claims under these Counts were identical to those of the plaintiff States. The Special Master's case-management decision was reasonable. Pp. 22–26.

Exceptions to Special Master's Reports overruled, and Master's recommendations adopted; North Carolina's motions to dismiss Count I and for summary judgment on Count II granted; Plaintiffs' motions for judgment on Counts I and II denied; and North Carolina's motions to dismiss the Commission's claims on sovereign immunity grounds and for summary judgment on Counts III–V denied without prejudice.

SCALIA, J., delivered the opinion of the Court, in which STEVENS, GINSBURG, and ALITO, JJ., joined, in which ROBERTS, C. J., joined in all but Parts II–D and III–B, in which KENNEDY and SOTOMAYOR, JJ., joined in all but Part II–E, in which THOMAS, J., joined in all but Part III–B, and in which BREYER, J., joined in all but Parts II–C, II–D, and II–E. KENNEDY, J., filed an opinion concurring in part and concurring in the judgment, in which SOTOMAYOR, J., joined. ROBERTS, C. J., filed an opinion concurring in part and dissenting in part, in which THOMAS, J., joined. BREYER, J., filed an opinion concurring in part and dissenting in part, in which ROBERTS, C. J., joined.