IN THE

Supreme Court of the United States

OCTOBER TERM, ~~1957~~ 1958

No. ~~11~~ 10, Original

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA and FLORIDA,
Defendants.

Answer of the State of Texas to the Motion of the United States for Judgment; Motion for Leave to Take Evidence; Motion for Severance and for Separate Trial and Argument; and Statement in Support of Motions and in Reply to Response of the United States to Motion for Pretrial Conference

WILL WILSON
Attorney General of Texas
JAMES N. LUDLUM
First Assistant Attorney General
JAMES H. ROGERS
Assistant Attorney General
Capitol Station
Austin, Texas

Of Counsel:
PRICE DANIEL
Governor of Texas
Austin, Texas
JAMES P. HART
Brown Building
Austin, Texas
J. CHRYS DOUGHERTY
Capital National Bank Building
Austin 16, Texas

February 3, 1958

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ANSWER OF THE STATE OF TEXAS TO THE MOTION OF THE UNITED STATES FOR JUDGMENT

In response to the Motion of the United States for Judgment as to the Second Cause of Action, the State of Texas says:

The motion of the United States for Judgment should be denied. The Submerged Lands Act (67 Stat. 29) released and relinquished to each Gulf Coastal State an area extending seaward to its boundary as it existed at the time the State became a member of the Union, not to exceed three marine leagues into the Gulf of Mexico. The Republic of

Texas by statute in 1836 (1 Laws, Republic of Texas 133) established the seaward boundary of Texas as follows:

> "That from and after the passage of this act, the civil and political jurisdiction of this republic be, and is hereby declared to extend to the following boundaries, to-wit: beginning at the mouth of the Sabine river, and running west along the Gulf of Mexico three leagues from land, to the mouth of the Rio Grande, * * *"

This boundary existed prior to and at the time Texas became a member of the Union. The existence of this boundary requires that the motion of the United States for judgment against Texas be denied as a matter of law. However, if judgment against Texas should not be denied as a matter of law for this reason, then it should be denied because any attack made by the United States on the validity of said boundary would involve genuine issues as to material facts, such as the intent and meaning of doucuments, diplomatic correspondence, usage, contemporary construction, international law and the like. A full hearing should be granted and evidence taken. In the case of *United States v. Texas*, 339 U. S. 707, 715, this Honorable Court stated:

> "The Court in original actions, passing as it does on controversies between sovereigns which involve issues of high public importance, has always been liberal in allowing full development of the facts. . . . If there were a dispute as to the mean-

ing of documents and the answer was to be found in diplomatic correspondence, contemporary construction, usage, international law and the like, introduction of evidence and a full hearing would be essential."

WHEREFORE, the State of Texas prays that the Motion of the United States for Judgment be denied.

WILL WILSON
Attorney General of Texas

February 3, 1958

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MOTION FOR LEAVE TO TAKE EVIDENCE

If the motion of the United States for judgment is not denied as a matter of law for the reasons stated in the answer of the State of Texas to said motion, the State of Texas moves for leave to take evidence by such means as the Court may deem most appropriate and convenient.

WILL WILSON
Attorney General of Texas

February 3, 1958

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MOTION FOR SEVERANCE AND FOR SEPARATE TRIAL AND ARGUMENT

The issues involved in the Second Cause of Action (against the State of Texas) in the amended complaint are so distinct and different from the issues involved in the other causes of action against the other States that, in the furtherance of convenience and to avoid prejudice, Texas moves that the Second Cause of Action (against the State of Texas) be severed and be proceeded with separately and that a separate trial as to the issues of fact and separate arguments be ordered.

WILL WILSON
Attorney General of Texas

February 3, 1958

STATEMENT

Since the filing of the Amended Complaint, the Answers of Defendants, and Defendants' Motion for Pretrial Conference, the United States has filed its Motion for Judgment and a memorandum in response to the Motion for Pretrial Conference asserting, in essence, that no fact issues are present and that the causes can be determined summarily on pleadings, briefs and arguments.

Texas joined in the motion for an early conference mainly for the purpose of (1) presenting its reasons why evidence is essential to a just determination of the Second Cause of Action, (2) informally discussing with the Court the most expeditious means of presenting the evidence consistent with the convenience of the Court and the other parties and with justice to the State of Texas and (3) exploring with the Court the advantage to be gained by severing the Second Cause of Action.

The Motion of the United States Should Be Denied as a Matter of Law

The Submerged Lands Act (67 Stat. 29) relinquished and released to the several coastal States an area extending to their respective seaward boundaries as they existed at the time each State entered the Union. By an Act of the Congress of the Republic of Texas on December 19, 1836 (1 Laws, Republic of Texas 133) the boundary of Texas was fixed at three leagues into the Gulf of Mexico, and the boundary so fixed existed prior to and at the

time Texas entered the Union. This boundary is the seaward limit of the area released and relinquished to Texas by the Submerged Lands Act. Since the Submerged Lands Act was enacted by Congress and approved by the President, this statute represents the joint action of both political branches of the Government. The Congress, with the approval of the President, has the right in its discretion to dispose of any property of the United States, and the exercise of this discretion and the fixing of the limits of this disposition of the property of the United States are political matters. *Alabama v. Texas*, 347 U. S. 272. As a matter of law, the motion of the United States for Judgment should be denied.

Necessity for Presenting Evidence

If the motion of the United States for judgment is not denied as a matter of law for the reasons stated above, then the motion should be denied because the contentions of the United States must necessarily involve material issues of fact, in so far as the United States seeks to impair or destroy the validity of the seaward boundary of Texas as it existed at the time she became a member of the Union.

In *United States v. Texas*, 339 U. S. 707, 715, this Court, with reference to the plea of Texas to be heard on the facts, stated:

> "The Court in original actions, passing as it does on controversies between sovereigns which involve issues of high public importance, has always been liberal in allowing full development of the facts. . . . If there

> were a dispute as to the meaning of documents and the answer was to be found in diplomatic correspondence, contemporary construction, usage, international law and the like, introduction of evidence and a full hearing would be essential."

Unlike *United States v. Texas*, supra, where the seaward boundary of Texas was assumed to exist at three marine leagues but that fact was held to be immaterial to the issues then before the Court, the existence of that boundary is a main issue in the present case. Moreover, the meaning and effect of the Texas seaward boundary statute, among other documents, may be disputed by the United States. If it is, the answer must be found in "diplomatic correspondence, contemporary construction, usage, international law and the like". Under these circumstances, as said by this Court, the introduction of evidence and a full hearing are essential.

Much of the relevant source material upon which a conclusion about international law must be based is to be found in documents which the Court would not judicially notice, such as unpublished diplomatic corespondence now in the files of foreign state departments.

Texas particularly desires to offer the testimony of experts in international law upon the question of the legal significance and effect of the Texas statute establishing her boundary at three leagues into the Gulf of Mexico while she was an independent republic and the continued existence of that boundary at the time she became a member of the Union. Texas desires also to offer the testimony of experts

concerning the present state of international law relating to the area in controversy.

Even should this Court consider international law a matter of which it can take judicial notice, it nevertheless has on other occasions welcomed the opinions of experts in the field. *Black Diamond S. S. Corporation v. Robert Stewart & Sons*, 336 U.S. 386, 397.

Finally Texas will contend that various agencies of the executive branch of of the Federal Government have construed the Submerged Lands Act as releasing and relinquishing to Texas the area in controversy, and Texas desires to offer proof of administrative construction of the Act for the consideration of the Court in arriving at a judicial construction. Whether Texas is to be permitted to present the opinions of experts, together with certain other evidence such as departmental construction, as well as the means of presentation of this evidence, should be determined as a preliminary matter.

Necessity for a Severance

As to the motion of Texas for severance, and for separate trial and argument, Texas says that the transfer to each coastal State, under the Submerged Lands Act, depends upon the peculiar facts relating to each State as to its boundary prior to and at the time of its admission into the Union, or as heretofore approved by the Congress of the United States. Four of the five states involved were created out of Federal territory. Texas is the only State that was an independent republic with a right to determine its national boundary prior to its admission into the Union. She is the only State which had established an

existing boundary by its Act as an independent republic prior to its admission.

In *United States v. Texas*, 339 U.S. 707, 717, this Court said:

> "Texas prior to her admission was a Republic. We assume that as a Republic she had not only full sovereignty over the marginal sea but ownership of it, of the land underlying it, and of all the riches which it held. In other words, we assume that it then had the *dominium* and *imperium* in and over this belt which the United States now claims."

In this respect, the position of Texas is wholly different from that of the other defendant States. Because of this fact, the determination of her seaward boundary at the time of admission to the Union involves consideration of documents, laws, treaties, diplomatic correspondence, and international law wholly separate and distinct from issues, factual or legal, with which the other defendant States are concerned.

Separate and distinct areas beneath the Gulf of Mexico are at issue with respect to each of the defendants. In a sense, the United States has recognized the separate character of its causes of action, for it has pleaded a separate cause of action against each of the five defendant States. A joint trial and hearing, and particularly a joint oral argument, would prejudice the presentation of the defenses of Texas by leading to a confusion of its rights and claims with those to be asserted by the other defendant States. The issues are so important that a

complete severance, to the end that separate and distinct consideration may be had, is imperative.

Time for Filing Brief

We anticipate that the time suggested by the United States for the filing of a reply brief by Texas will be insufficient. We would prefer that the Court defer setting the time for the filing of a reply brief until after the United States has filed its brief, when Texas will be in a better position to suggest the length of time which will be required to prepare and file her reply.

Texas has no wish to delay an expeditious determination of this case so long as that can be achieved consistent with a reasonable time for Texas to assemble, digest, select, and present its proof and legal authorities. But, from the very nature of the issues involved, the proof and authorities in response to the anticipated claims of the United States cannot be assembled, sorted, and condensed for orderly presentation to this Court within the time limits suggested by the United States. If an order is to be entered now, Texas suggests that at least one hundred twenty (120) days after receipt of the brief of the United States will be needed for the filing of her reply brief.

Time for Oral Argument

Finally, we consider it premature to fix the time for oral argument pending the formation of issues

and the determination of the necessity for and the extent of evidentiary material and the means of its presentation.

Respectfully submitted,

WILL WILSON
Attorney General of Texas
JAMES N. LUDLUM
First Assistant Attorney General
JAMES H. ROGERS
Assistant Attorney General
Capitol Station
Austin, Texas

Of Counsel:

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Governor of Texas
Austin, Texas
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PROOF OF SERVICE

I, Will Wilson, a member of the Bar of the Supreme Court of the United States, certify that on the 1st day of February, 1958, I served copies of the foregoing pleadings and statement by mailing, postage prepaid, copies thereof to the office of the Attorney General and of the Solicitor General of the United States, respectively, in the Department of Justice Building, Washington, D. C., and to the Attorneys General of the States of Alabama, Florida, Louisiana, and Mississippi, respectively.

WILL WILSON