

AUG 7 1958

JOHN T. PEY, Clerk

NO. 10, ORIGINAL

IN THE  
Supreme Court of the United States

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OCTOBER TERM, 1958

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UNITED STATES OF AMERICA,  
*Plaintiff*

v.

STATES OF LOUISIANA,  
TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA

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BRIEF FOR THE STATE OF ALABAMA  
IN OPPOSITION TO MOTION FOR JUDGMENT  
ON AMENDED COMPLAINT

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JOHN PATTERSON  
*Attorney General*  
Judicial Building  
Montgomery, Alabama

WILLIAM G. O'REAR  
*Assistant Attorney General*  
711 High Street  
Montgomery, Alabama

E. C. BOSWELL  
Geneva, Alabama  
*Legal Advisor to*  
*James E. Folsom,*  
*Governor of Alabama*

GORDON MADISON  
*Assistant Attorney General*  
Judicial Building  
Montgomery, Alabama

NEIL METCALF  
Geneva, Alabama  
*Representing James E.*  
*Folsom, Governor of*  
*Alabama*

E. K. HANBY  
*Special Assistant Attorney*  
*General*

403 Noojin Building  
Gadsden, Alabama

OF COUNSEL

SOLICITORS FOR THE  
STATE OF ALABAMA

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QUESTION PRESENTED

Whether the United States is entitled against the State of Alabama to a judgment on the pleadings fixing its rights to the lands, minerals and other things underlying the sea more than three geographic miles seaward from the ordinary low-water mark and from the outer limit of inland waters on Alabama's coast and extending seaward to the edge of the continental shelf.

CLAIM OF STATE OF ALABAMA

The State of Alabama claims all land, minerals, natural resources and other things, permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward from the coast line of the State of Alabama three marine

leagues into the Gulf of Mexico. Coast line, as above used, means the line of ordinary low water along that portion of the coast which is in direct contact with the sea and the line marking the seaward limit of inland waters.

## BASIS FOR CLAIM OF ALABAMA

Alabama claims that the pleadings show, by virtue of the Submerged Lands Act, Public Law 31, 83d Congress, 1st Session, approved May 22, 1953, 67 Stat. 29, and the admitted historical boundaries as shown when Alabama was a territory, when admitted to the Union, and again in 1868, when admitted to representation in Congress, that its claim is sustained rather than the claim of the United States.

## HISTORICAL BOUNDARIES OF ALABAMA

Before admission to the Union, Alabama was a territory established by Act of Congress, dated March 3, 1817. 3 Stat. 371. Its boundary as a territory was described as follows:

“That all that part of the Mississippi territory **which lies within the following boundaries**, to-wit: beginning at the point where the line of the thirty-first degree of north latitude intersects the Perdido River, thence east to the western boundary line of the State of Georgia, thence along said line to the southern boundary line to the State of Tennessee, thence west along said boundary line to the Tennessee River, thence up the same to the mouth of Bear Creek, thence by a direct line to the northwest corner of Washington Coun-

ty, thence due south to the Gulf of Mexico, **thence eastwardly, including all the islands within six leagues of the shore**, to the Perdido River, and thence up the same to the beginning, shall for the purpose of a temporary government, **constitute a separate territory, and be called 'Alabama.'**" (Emphasis supplied)

The Act to enable the people of Alabama territory to form a constitution and state government, and for admission of such state into the Union on an equal footing with the original states, described the boundary as follows:

**"That the said state shall consist of all the territory included within the following boundaries**, to-wit: Beginning at the point where the thirty-first degree of north latitude intersects the Perdido river; thence east, to the western boundary line of the State of Georgia; thence along said line, to the southern boundary line of the State of Tennessee; thence, west, along said boundary line, to the Tennessee river; thence up the same, to the mouth of Bear creek; thence by a direct line, to the northwest corner of Washington County; thence, due south, to the Gulf of Mexico; **thence, eastwardly, including all islands within six leagues of the shore**, to the Perdido river; and thence, up the same to the beginning." (Emphasis supplied) 3 Stat. 489.

The above descriptions were subsequently changed to provide a line from the northwest corner of Washington County "southwardly, along the line



of the State of Mississippi to the Gulf of Mexico." This was done to avoid encroachment on the Counties of Wayne, Greene and Jackson in the State of Mississippi. 3 Stat. 489.

Alabama was admitted to the union by resolution of Congress approved December 14, 1819. 3 Stat. 608. After the change in the southern boundary line as aforesaid, the following description of the boundaries of Alabama appeared in every Constitution of Alabama, including Section 37, Constitution of Alabama 1901:

"The boundaries of this state are established and declared to be as follows, that is to say: Beginning at the point where the thirty-first degree of north latitude crosses the Perdido river; thence east, to the western boundary line of the State of Georgia; thence along said line to the southern boundary line of the State of Tennessee; thence west, along the southern boundary line of the State of Tennessee, crossing the Tennessee river, and on to the second intersection of said river by said line; thence up said river to the mouth of Big Bear creek; thence by a direct line to the northwest corner of Washington County, in this state, as originally formed; thence southwardly, along the line of the State of Mississippi, to the Gulf of Mexico; thence eastwardly, including all islands within six leagues of the shore, to the Perdido river; thence up the said river to the beginning. . ."

On June 25, 1868 (15 Stat. 73), Congress passed an act entitled, "An Act to Admit the States of North Carolina, South Carolina, Louisiana, Georgia, Ala-

bama and Florida, to Representation in Congress." This Act recited that these states had adopted Constitutions in accordance with the Act of March 2, 1867. **Pope v. Blanton**, 10 F. Supp. 18; **Irwin v. Mayor, Etc., of Mobile**, 57 Ala. 6.

The Constitution of Alabama, which was approved by Congress and which became operative and obligatory in Alabama on the 25th day of June, 1868, contained, in pertinent part, the same description as the Enabling Act and all other Constitutions of the State of Alabama, namely "thence eastwardly, including all islands within six leagues of the shore, to the Perdido river."

Thus, before admission to the union, at the time of admission to the union, and subsequent to admission to the union, Congress has approved Alabama's southern boundary as including all islands within six leagues of the shore.

The Legislature of Alabama, by Act. No. 77, General and Local Acts 1956, page 111, construed the above historical boundary of Alabama by providing, in pertinent part, as follows:

"The Director of Conservation, on behalf of the State, is hereby authorized to lease, upon such terms as he may approve, any lands or any right or any interest therein under any navigable streams or navigable waters, bays, estuaries, lagoons, bayous or lakes, and the shores along any navigable waters to high tide mark, and submerged lands in the Gulf of Mexico **within the historic seaward boundary of this State, which is hereby declared to extend seaward six leagues from the land bor-**

**dering the Gulf**, for the exploration, development and production of oil, gas and other minerals, or any one or more of them, on, in and under such lands; and such lands or interest therein for such purposes shall be supervised and managed by the Department of Conservation." (Emphasis supplied)

This Declaration by the Legislature of Alabama was not an extension of the State's historical boundaries, but was instead its construction of what the description, describing the southern boundary of Alabama meant.

This is true also as to Act. No. 158, General and Local Acts of Alabama 1956, page 24, wherein the historical seaward boundary of Alabama is declared to extend seaward six leagues from the land bordering the Gulf.

On April 7, 1798, 1 Stat. 549, C 28, an act was approved for an amicable settlement of limits with the State of Georgia, and authorizing the establishment of a government in the Mississippi Territory, which read in part: "That all that tract of country bounded on the west by the Mississippi; on the north by a line to be drawn due east from the mouth of the Yasous to the Chattahoochee; on the east by the river Chattahoochee; on the south by the thirty-first degree of north latitude, shall be, and hereby is constituted one district, to be called the Mississippi Territory." This was in conformity with the treaty between Spain and the United States of October 27, 1795. Maps of that date, and subsequently, show that the admitted rights of the United States did not at the time extend south of the thirty-first degree of North latitude at that point.

By resolution, approved January 15, 1811, it was specifically declared that the United States could not, without serious inquietude, see any part of the territory adjoining the southern border of the United States pass into the hands of any foreign power, "and that a due regard to their own safety compels them to provide, under certain contingencies, for the temporary occupation of the said territory." 3 Stat. 471.

May 14, 1812, an Act of Congress was passed, 2 Stat. 734, C 84, to enlarge the boundaries of the Mississippi Territory, which used the following language: "That all that portion of the territory lying east of the Pearl river, west of the Perdido, and south of the thirty-first degree of latitude, be, and the same is hereby annexed to the Mississippi Territory," etc. The country described was not at the time in the possession of the United States, and on February 12, 1812, Congress authorized the President to occupy and hold all that tract of country called **West Florida**, which lies west of the river Perdido, not now in possession of the United States. The President was further authorized to employ such parts of the military and naval forces of the United States as deemed necessary to accomplish said purpose. 3 Stat. 472.

East and West Florida were on February 10, 1763, ceded by Spain to Great Britain (see Definitive Treaty of Friendship and Peace between Spain and Great Britain). While Great Britain was seized and possessed of the Floridas, the King of Great Britain, on October 7, 1763, by proclamation provided as to West Florida the following:

"Thirdly, the government of West Florida bounded to the southward by the Gulf of Mexico, including all islands within six

**leagues of the coast**, from the river Apalachicola to lake Pontchartrain; to the westward by the said lake, the lake Maurepas, and the river Mississippi; to the northward by a line drawn due east from that part of the river Mississippi which lies in thirty-one degree north latitude, to the river Apalachicola or Chattahoochee, and to the eastward by the said river." (Emphasis supplied) See 2 White, New Collection of Laws, Charters and Local Ordinances of Great Britain, France and Spain (1839) 292). **Harcourt v. Gaillard**, 25 U.S. 524.

The Floridas were ceded back to Spain by Great Britain by the "Definitive Treaty of Peace and Friendship" signed at Versailles on September 3, 1783, under the description of "Eastern Florida as well as Western Florida." 3 Fla. Stats. (1941) 101.

By the treaty of 1819, Spain formally ceded East and West Florida to the United States, which treaty was ratified in 1821. 8 Stat. 252, 254.

## ARGUMENT

The State of Alabama, as heretofore shown, consisted on the south of that part of the Mississippi territory west of the Perdido and east of the State of Mississippi. The southern boundary of Alabama was a part of West Florida, which was described by proclamation of the King of Great Britain in 1763 as bounded to the southward by the Gulf of Mexico, including all islands within six leagues of the coast. The pertinent part of West Florida was **taken** by the United States under the said resolution of January 15, 1811, and the Acts of Congress, under dates of

May 14, 1812, and February 12, 1812, **for security reasons**. The **taking** was not settled with Spain until the treaty with Spain, entered into on February 22, 1819, and ratified February 19, 1821. The land and sea area so taken was attached to the Mississippi territory from which Alabama as a territory and state was formed.

Congress had the right to attach this **taken** land and sea area which the naval and military forces of the United States were pledged to defend for security reasons to the Mississippi territory from which Alabama was formed. Vattel, **The Law of Nations**, Sec. 289; see also Common Brief of Defendant States.

There was no rule of foreign policy or International Law as to a three-mile belt at these times and even if in existence would not be applicable as to the land and sea area which the United States took for security reasons. “. . . but between nation and nation the most reasonable rule that can be laid down is that in general the sovereignty of a state over its marginal waters extends as far as is necessary for its safety and as far as it can be effectively maintained.” Vattel, **The Law of Nations**, *supra*.

The main question presented here is the proper construction of the following description of Alabama's southern boundary, namely, “thence due south to the Gulf of Mexico, thence eastwardly, including all islands within six leagues of the shore.”

Alabama contends that it means that the line runs southwardly along the line of the State of Mississippi to a point in the Gulf of Mexico six leagues from shore and thence eastwardly six leagues from and parallel to the shore to a point where said line

intersects an extension of the Perdido River into the Gulf of Mexico, thence northwardly along the Perdido River extended to the point of beginning.

Alabama's Enabling Act provides "that the said state shall consist of **all** the territory **included within the following boundaries**, to-wit: . . ." To include all the territory and the islands within six leagues of shore, the line must of necessity go six leagues out from shore to do so.

" . . . Where a state line is described to run so as to include all of the islands in a body of water, such a description is not a direction so to run it as to exclude the intermediate waters; the boundary is not to be determined by running the boundary along the coastline at low water mark until it reaches points opposite the several islands and thence running lines to and around such islands and returning along the same lines to the points of departure from the low-water mark, excluding all the water between the islands, and between them and the low-water mark on the opposite coastline; rather the line is to be a continuous line inclosing all of the specified islands without traversing lands or waters not included in the territorial limits of the state." 81 C.J.S., States, Section 18 at page 918.

There is another reason also strongly suggesting the correctness of Alabama's contention as to the proper southern boundary.

Mississippi on the south runs ". . . thence westwardly including all the islands within six leagues of the shore. . ." In **Louisiana v. Mississippi**, 202 U. S. 1,

the State of Louisiana filed a bill against the State of Mississippi, October 27, 1902, to settle a boundary line between the two states. That was over fifty-five years ago and at a time when oil had not be-clouded the thinking of some advocates. Louisiana contended that the Mississippi line “. . . would in effect start westward from a point **eighteen miles south of the coastline.**” (Emphasis supplied) Mississippi contended that the boundary line as fixed by Act of Congress, 3 Stat. 348, gave to her “all lands under the waters south of her well defined shore line **to the distance of six leagues from said shore** at every point between the Alabama line and the most eastern function of Pearl river with Lake Borgue, including all islands within said limit.” (Emphasis supplied)

If the United States had thought then as it does now that International Law or National Foreign Policy prevented such constructions by Louisiana and Mississippi as to Mississippi's southern boundary, it should have intervened in said suit.

The United States, when interested, may intervene in a boundary suit between two states, not only for the purpose of being heard in the argument but also with reference to the introduction of evidence. **Florida v. Georgia**, 17 How. 478; **Oklahoma v. Texas**, 252 U. S. 372. Then again:

“... But under our government, a boundary between two states may become a judicial question, to be decided in this court. And when it assumes that form, the assent or dissent of the United States cannot influence the decision. The question is to be decided upon the evidence adduced to the court; and that decision, when pronounced, **is conclus-**



**ive upon the United States**, as well as upon the states that are parties to the suit. . .” (Emphasis supplied) **Florida v. Georgia**, *supra*.

It seems that fifty-five years ago the United States did not feel that the contentions of Louisiana and Mississippi, as to the starting point westwardly of Mississippi's southern boundary, interfered with national foreign policy or were in conflict with International Law, but now since oil has been discovered, it does. Alabama's southern boundary runs eastwardly from the same point that Mississippi's runs westwardly.

The historical southern boundary claim of Alabama, when sustained by this court, will be sufficiently far distant to embrace the three marine leagues from coast as provided for in the Submerged Lands Act.

It is true that the claims of Texas and Florida are the ones more frequently mentioned before the Congress prior to the passage of the Submerged Lands Act. Their senators were for the bill while Alabama's two senators were not. This Act, however, applies to all the defendant states and each is given the right to show a boundary sufficiently far distant to embrace three marine leagues from coast.

It is to be noted, however, that before the passage of the Submerged Lands Act, Alabama's claim was presented to the Committees on the Judiciary by Governor James E. Folsom's legal representative, who on his behalf stated Alabama's claim in pertinent part as follows:

“Alabama has 199 miles of coastline. Alabama claims a distance, under the grant by Spain of six marine leagues, or about 20 miles, south into the sea from the shore line. This includes such islands as Dauphin, which is a distance of 3 miles south from the mainland; Petit Bois Island, which is a distance of 16 miles south from the shore line of the mainland; and other islands.” See Joint Hearings before the Committees on the Judiciary, Eightieth Congress, Second Session on R. 1988 and similar house bills, page 816.

## CONCLUSION

Alabama says that for the reasons stated the motion of the United States for judgment on the pleadings should be denied. If the court feels that Alabama can have full relief under the answer, without the cross-bill, then it is not insisted upon; otherwise it is. The Submerged Lands Act itself is authority for the cross-bill. To hold otherwise will be to say that the states could never establish boundary and could never know judicially what each has under the Act, unless the United States first brought suit.

Alabama contends, however, that from the pleadings alone, as they now exist, and without the cross-bill, it is shown by the descriptions of the southern boundaries of the various defendant states that each is entitled, under the Submerged Lands Act, to three marine leagues from coast.

To uphold the claim of the United States, this court must hold that Congress passed the Submerged Lands Act knowing it was meaningless as to state

ownership or rights up to three marine leagues from coast. This, in Alabama's judgment, the court will not do.

Congress did not do a meaningless and futile act, and the equities of this case demand that each defendant state be given three marine leagues from coast.

Respectfully Submitted,



JOHN PATTERSON

Attorney General of Alabama

WILLIAM G. O'REAR

Assistant Attorney General

GORDON MADISON

Assistant Attorney General

E. K. HANBY

Special Assistant Attorney  
General

E. C. BOSWELL

Legal Advisor to  
James E. Folsom,  
Governor of Alabama

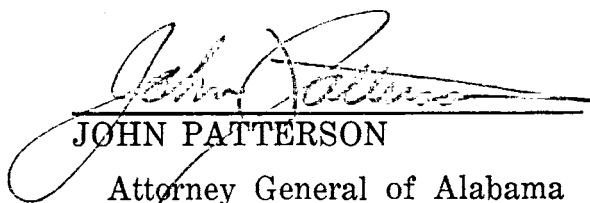
NEIL METCALF

Representing James E.  
Folsom, Governor of  
Alabama

OF COUNSEL

## PROOF OF SERVICE

I, John Patterson, Attorney General of Alabama, certify that on the 6<sup>th</sup> day of August 1958, I mailed copies of the foregoing brief to the Attorney General and the Solicitor General of the United States, respectively, at the Department of Justice Building, Washington, D. C., and to the Attorneys General of the States of Texas, Louisiana, Mississippi and Florida.



JOHN PATTERSON  
Attorney General of Alabama

## APPENDIX

Submerged Lands Act, May 22, 1953, 67 Stat. 29, 43 U.S.C., Supp. V, 1301-1315.

## AN ACT

To confirm and establish the titles of the States to lands beneath navigable waters within the State boundaries and to the natural resources within such lands and waters, to provide for the use and control of said lands and resources, and to confirm the jurisdiction and control of the United States over the natural resources of the seabed of the Continental Shelf seaward of State boundaries.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Submerged Lands Act."

## TITLE I

## Definition

Sec. 2. (43 U.S.C., Supp. V, 1301) When used in this Act —

(a) The term "lands beneath the navigable waters" means —

\* \* \* \* \*

(2) all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles dis-

tant from the coast line of each such state and to the boundary line of each such State where in any case such boundary as it existed at the time such State became a member of the Union, or as heretofore approved by Congress, extends seaward (or into the Gulf of Mexico) beyond three geographical miles \* \* \* ;

\* \* \* \* \*

(b) The term "boundaries" includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, or as extended or confirmed pursuant to section 4 hereof but in no event shall the term "boundaries" or the term "lands beneath navigable waters" be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico ;

(c) The term "coast line" means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters ;

\* \* \* \* \*

## TITLE II

### Lands Beneath Navigable Waters Within State Boundaries

Sec. 3. (43 U.S.C., Supp. V, 1311) Rights of The States. —

(a) It is hereby determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law be, and they are hereby, subject to the provisions hereof, recognized, confirmed, established, and vested in and assigned to the respective States or the persons who were on June 5, 1950, entitled thereto under the law of the respective States in which the land is located and the respective grantees, lessees, or successors in interest thereof;

(b) (1) The United States hereby releases and relinquishes unto said States and persons aforesaid, except as otherwise reserved herein, all right, title, and interest of the United States, if any it has, in and to all said lands, improvements, and natural resources; (2) the United States hereby releases and relinquishes all claims of the United States, if any it has, for money or damages arising out of any operations of said States or persons pursuant to State authority upon or within said lands and navigable waters; and (3) the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States shall pay to the respective States or their grantees issuing leases covering such lands or natural resources all moneys paid thereunder to the Secretary of the

Interior or to the Secretary of the Navy or to the Treasurer of the United States and subject to the control of any of them or to the control of the United States on the effective date of this Act, except that portion of such moneys which (1) is required to be returned to a lessee; or (2) is deductible as provided by stipulation or agreement between the United States and any of said States;

(c) The rights, powers, and title hereby recognized, confirmed, established, and vested in and assigned to the respective States and their grantees are subject to each lease executed by a State, or its grantee, which was in force and effect on June 5, 1950, in accordance with its terms and provisions and the laws of the State issuing, or whose grantee issued, such lease, and such rights, powers, and titles are further subject to the rights herein now granted to any person holding any such lease to continue to maintain the lease, and to conduct operations thereunder, in accordance with its provisions, for the full term thereof, and any extensions, renewals, or replacements authorized therein, or heretofore authorized by the laws of the State issuing, or whose grantee issued such lease: Provided, however, That, if oil or gas was not being produced from such lease on and before December 11, 1950, or if the primary term of such lease has expired since December 11, 1950, then for a term from the effective date hereof equal to the term remaining unexpired on December 11, 1950, under the provisions of such



lease or any extensions, renewals, or replacements authorized therein, or heretofore authorized by the laws of the State issuing, or whose grantee issued, such lease \* \* \*:

\* \* \* \* \*

Sec. 4. (43 U.S.C., Supp. V, 1312) Seaward Boundaries. — The seaward boundary of each original coastal State is hereby approved and confirmed as a line three geographical miles distant from its coast line or, in the case of the Great Lakes, to the international boundary. Any State admitted subsequent to the formation of the Union which has not already done so may extend its seaward boundaries to a line three geographical miles distant from its coast line, or to the international boundaries of the United States in the Great Lakes or any other body of water traversed by such boundaries. Any claim heretofore or hereafter asserted either by constitutional provision, statute, or otherwise, indicating the intent of a State so to extend its boundaries is hereby approved and confirmed, without prejudice to its claim, if any it has, that its boundaries extend beyond that line. Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress.

\* \* \* \* \*

Sec. 9. (43 U.S.C., Supp. V, 1302) Nothing in this Act shall be deemed to affect in any wise the rights of the United States to the natural resources

of that portion of the subsoil and seabed of the Continental Shelf lying seaward and outside of the area of lands beneath navigable waters, as defined in section 2 hereof, all of which natural resources appertain to the United States, and the jurisdiction and control of which by the United States is hereby confirmed.