No. 128, Original

In the Supreme Court of the United States

STATE OF ALASKA, PLAINTIFF

v.

UNITED STATES OF AMERICA

ON MOTION FOR LEAVE TO FILE A BILL OF COMPLAINT

BRIEF FOR THE UNITED STATES

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QUESTIONS PRESENTED

The State of Alaska invokes this Court's original jurisdiction to initiate an action against the United States under the Quiet Title Act of 1972, 28 U.S.C. 2409a. That action would determine the following three issues:

1. Whether, as alleged in Count I of the Complaint to Quiet Title, the State of Alaska has title to marine submerged lands within the Alexander Archipelago that are more than three nautical miles from any point on the coast line of the mainland or the islands of the Archipelago, but that are either landward or within three nautical miles seaward of a series of closing lines described in the 1903 Alaska Boundary Tribunal Arbitration proceedings as marking the seaward limits of the inland waters of the Archipelago.

2. Whether, as alleged in Count II of the Complaint to Quiet Title, the State of Alaska has title to marine submerged lands within the exterior boundaries of the Tongass National Forest that are within three nautical miles of any point on the coast line of the mainland or the islands therein and that the United States claims as within the jurisdiction of the United States Forest Service.

3. Whether, as alleged in Count III of the Complaint to Quiet Title, the State of Alaska has title to marine submerged lands within the exterior boundaries of the Glacier Bay National Park and Preserve that are within three nautical miles of any point on the coast line of the mainland or the islands therein and that the United States claims as within the jurisdiction of the National Park Service.

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JURISDICTION

The jurisdiction of this Court is invoked under Article III, § 2, Cl. 2, of the United States Constitution and 28 U.S.C. 1251(b)(2).[1]

[1] As we explain in the Statement, the Quiet Title Act of 1972 (QTA), 28 U.S.C. 2409a, provides a limited waiver of the United States' sovereign immunity in cases, such as this one, in which a plaintiff (including a State) seeks to quiet title to land in which the United States claims an interest. The QTA's jurisdictional provision, 28 U.S.C. 1346(f), provides:

> The district courts shall have exclusive original jurisdiction of civil actions under section 2409a to quiet title to an estate or interest in real property in which an interest is claimed by the United States.

Although that text would appear to preclude Alaska from bringing this action in this Court, the Court has construed 28 U.S.C. 1346(f) to impose no bar to its exercise of jurisdiction in cases that would

STATEMENT

The State of Alaska seeks leave to commence an original action against the United States under the Quiet Title Act of 1972 (QTA), 28 U.S.C. 2409a. Alaska alleges that it owns marine submerged lands bordering its southeastern uplands, which consist of a narrow strip of mountainous mainland comprising the Boundary Range of the Coast Mountains and a series of islands known as the Alexander Archipelago. The submerged lands in question lie within the current exterior boundaries of the Tongass National Forest and the Glacier Bay National Park and Preserve. Alaska requests a determination from this Court that the United States has not retained title to those lands.

To place this matter in context, we begin by describing the QTA, which provides the waiver of sovereign immunity necessary for Alaska to maintain this suit. We then briefly describe the equal footing doctrine and the Submerged Lands Act, 43 U.S.C. 1301 *et seq.*, which provide the basic legal principles on which Alaska bases its complaint. Finally, we summarize Alaska's three specific claims for relief.

A. The Quiet Title Act Of 1972

"The States of the Union, like all other entities, are barred by federal sovereign immunity from suing the United States in the absence of an express waiver of this immunity by Congress." *Block* v. *North Dakota*, 461 U.S. 273, 280 (1983). Congress enacted the QTA to provide a limited waiver of that immunity in cases in which States or private parties seek to quiet title to real property in which the United States claims an

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otherwise fall within the Court's constitutional grant of original jurisdiction. See *California* v. *Arizona*, 440 U.S. 59 (1979).

interest. See *id.* at 275-276, 280-286. The QTA, which contains a number of carefully crafted conditions and limitations, provides "the exclusive means by which adverse claimants c[an] challenge the United States' title to real property." *Id.* at 286. Except to the extent that Congress has provided otherwise, those limitations apply equally to suits brought by States and to suits brought by private parties. *Id.* at 287-290.

The QTA places a variety of limitations on suits seeking to quiet title against the United States. For example, the QTA does not waive the United States' immunity to suit respecting trust or restricted Indian lands. 28 U.S.C. 2409a(a). In addition, the United States may not be disturbed in its possession until 60 days after a final adverse judgment, and it has the option of retaining possession or control by paying just compensation. 28 U.S.C. 2409a(b). The complaining party may not obtain a preliminary injunction running against the United States, 28 U.S.C. 2409a(c), and it must set out in its complaint "with particularity" its claim and the United States' competing claim to the real property, 28 U.S.C. 2409a(d). The United States may disclaim its interest at any time prior to the actual commencement of trial and, in that circumstance, upon the court's confirmation of the disclaimer, the court's jurisdiction shall cease. 28 U.S.C. 2409a(e). Furthermore, the QTA specifies that the action shall be tried by the court without a jury. 28 U.S.C. 2409a(f).

The QTA also contains specific limitations on the timing of such suits. The Act originally provided that any action "shall be barred unless it is commenced within twelve years of the date upon which it accrued." 86 Stat. 1176 (28 U.S.C. 2409a(f)). See *Block*, 461 U.S. at 275 n.1. This Court ruled in *Block* that the 12-year statute of limitations applied to States and private

parties alike. *Id.* at 287-290. Congress thereafter amended the QTA to provide special rules for suits by States. See Act of Nov. 4, 1986, Pub. L. No. 99-598, 100 Stat. 3351. Under the revised and newly added provisions, a State's action is not subject to the general 12-year bar. 28 U.S.C. 2409a(g). Nevertheless, the QTA does place time-based restrictions on a State's right to bring a suit involving lands used for national defense purposes, 28 U.S.C. 2409a(h), and lands on which the United States has made substantial improvements or investments or conducted other substantial activities, 28 U.S.C. 2409(i) and (j).[2]

In addition, the QTA places special notice requirements on the State. Subsection (m) provides:

> Not less than one hundred and eighty days before bringing any action under this section, a State shall notify the head of the Federal agency with jurisdiction over the lands in question of the State's

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[2] Specifically, subsection (h) provides that a State may not bring a quiet title action respecting lands that are in use for national defense purposes unless the suit is brought within 12 years after the State knew or should have known of the claims of the United States; if the State fails to sue within that time period, it may dispute title only after the land ceases to be used for national defense purposes. 28 U.S.C. 2409a(h). Subsection (i) bars a State from bringing an action respecting uplands that have been subject to substantial improvements, investments, or activities unless the State brings suit within 12 years of receiving notice of the claims of the United States. 28 U.S.C. 2409a(i). Subsection (j) provides that, if a State brings a quiet title action respecting submerged lands more than 12 years after receiving notice of the United States' claim to the lands, and the State is adjudged to own the lands in question, the State shall take title subject to any existing lease, easement, or right-of-way. 28 U.S.C. 2409a(j). See also 28 U.S.C. 2409a(k) (describing "notice"); 28 U.S.C. 2409a(l) (defining "submerged lands").

> intention to file suit, the basis therefor, and a description of the lands included in the suit.

28 U.S.C. 2409a(m). The final subsection of the QTA, which is applicable to both States and private parties, makes clear that "[n]othing in this section shall be construed to permit suits against the United States based upon adverse possession." 28 U.S.C. 2409a(n).

B. The Equal Footing Doctrine And The Submerged Lands Act

Alaska has moved for leave to file a QTA complaint against the United States that seeks to quiet title to marine submerged lands based on three distinct theories. Those theories, set out in the three separate counts of the complaint, rest on legal principles derived from the equal footing doctrine and the Submerged Lands Act, 43 U.S.C. 1301 *et seq.*

1. The Equal Footing Doctrine

The equal footing doctrine, as applicable to submerged lands, rests on principles derived from English common law. See *Utah Division of State Lands* v. *United States*, 482 U.S. 193, 195 (1987). The English courts recognized that the English Crown held sovereign title to all lands underlying navigable waters. *Id.* at 195-196. When the 13 Colonies declared their independence, they claimed title to lands under navigable waters within their boundaries as the sovereign successors to the Crown. *Id.* at 196. Because subsequently admitted States enter the Union on an "equal footing," they likewise acquire title to submerged lands within their boundaries. *Ibid.* See, *e.g.*, *Pollard's Lessee* v. *Hagan*, 44 U.S. (3 How.) 212 (1845). The equal footing doctrine is subject, however, to significant limitations. Two such limitations are particularly relevant here.

First, this Court has recognized that the 13 Colonies had no sovereign entitlement to submerged lands that are seaward of the coast line, which is determined by the low-water mark along the coast and the closing lines of bays or river mouths. See *United States* v. *Alaska (Beaufort Sea)*, 521 U.S. 1, 5 (1997). The equal footing doctrine strictly applies, correspondingly, only to submerged lands that are landward of the coast line, *viz.*, tidelands and lands beneath inland navigable waters. Under settled principles, "the United States has paramount sovereign rights in submerged lands seaward of the low-water line." *Ibid.* See *United States* v. *California* (*California I*), 332 U.S. 19, 33-36 (1947).

Second, this Court has recognized that the United States has constitutional power under the Property Clause, Art. IV, § 3, Cl. 2, to defeat a future State's entitlement under the equal footing doctrine to submerged lands. *Alaska (Beaufort Sea)*, 521 U.S. at 33-34. The United States may do so, prior to statehood, by either conveying those lands to private parties, see *Shively* v. *Bowlby*, 152 U.S. 1, 48 (1894), or reserving those lands for federal governmental use, *Alaska (Beaufort Sea)*, 521 U.S. at 33-34. The Court's equal footing decisions indicate, however, that "'[a] court deciding a question of title to the bed of navigable water must . . . begin with a strong presumption' against defeat of a State's title." *Id.* at 34 (quoting *Montana* v. *United States*, 450 U.S. 544, 552 (1981)). The United States accordingly bears the burden of establishing its title to such lands.

2. The Submerged Lands Act

Congress enacted the Submerged Lands Act (SLA), 43 U.S.C. 1301 *et seq.*, as an exercise of its sovereign

paramount powers. See, *e.g.*, *United States* v. *Maine*, 420 U.S. 515, 524-525 (1975). The Act recognizes the States' historic equal footing claims to inland submerged lands, but also grants coastal States title to a specified measure of submerged lands seaward of the coast line. See SLA §§ 3-6, 43 U.S.C. 1311-1314. Specifically, Section 3(a) of the Submerged Lands Act "confirm[s]" and "establish[s]" the States' title to and interest in "lands beneath navigable waters within the boundaries of the respective States." 43 U.S.C. 1311(a). As this Court explained in *Alaska (Beaufort Sea)*, *supra*:

> The Act defines "lands beneath navigable waters" to include both lands that would ordinarily pass to a State under the equal footing doctrine and lands over which the United States has paramount sovereign rights, beneath a 3-mile belt of the territorial sea. [SLA § 2(a), 43 U.S.C. 1301(a)]. The Act essentially confirms States' equal footing rights to tidelands and submerged lands beneath inland navigable waters; it also establishes States' title to submerged lands beneath a 3-mile belt of the territorial sea, which would otherwise be held by the United States.

521 U.S. at 5-6.

The Submerged Lands Act's grant of submerged lands to the States is subject to important exceptions. Of particular interest here, Section 5(a) of the Act states in pertinent part:

> There is excepted from the operation of [Section 3(a)]—
>
> (a) * * * all lands expressly retained by or ceded to the United States when the State

> entered the Union (otherwise than by a general retention or cession of lands underlying the marginal sea).

43 U.S.C. 1313(a). That provision prevents the Submerged Lands Act from divesting the United States of submerged lands that the United States reserved for federal use at the time of statehood. See S. Rep. No. 133, 83d Cong., 1st Sess. 16, 20 (1953) (describing the language as "self-explanatory"); 99 Cong. Rec. 2619 (1953) ("The purpose of the language is to reserve to the United States those facilities and those areas which are used by the Government in its governmental capacity for one or more of its governmental purposes.") (remarks of Sen. Cordon).

This Court ruled in *Alaska (Beaufort Sea)* that the question whether the United States has retained submerged lands that would otherwise pass to the State involves essentially the same inquiry under Section 5(a) of the Submerged Lands Act and under the equal footing doctrine. 521 U.S. at 33-36. The Court will not infer an intent to defeat a future State's title to submerged lands unless the intention was "definitely declared or otherwise made very plain." *Id.* at 34, 35-36 (quoting *United States* v. *Holt State Bank*, 270 U.S. 49, 55 (1926)). Nevertheless, the question whether the United States has retained submerged lands "is ultimately a matter of federal intent." 521 U.S. at 36. The Court accordingly examines whether the United States intended to include the submerged lands within a federal reservation and whether the United States intended to retain that reservation of submerged lands at statehood. *Ibid.*

C. Alaska's Claims For Relief

Alaska's proposed complaint asserts ownership of submerged lands based on three distinct theories that apply to different geographic regions. Those theories are embodied in the three separate counts of the complaint.

1. "Count I: Historic Waters of the Alexander Archipelago"

Count I of Alaska's complaint (paras. 4-22) objects to the way in which the United States has measured the Submerged Lands Act's grant of the three-mile belt of lands beneath the territorial sea in the area of the Alexander Archipelago. The Submerged Lands Act specifies that the three-mile grant is measured from the "coast line," which the Act defines as "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." SLA § 2(c), 43 U.S.C. 1301(c). This Court has ruled that the Convention on the Territorial Sea and the Contiguous Zone (the Convention), Apr. 29, 1958, [1964] 15 U.S.T. 1606, supplies the principles for determining, among other things, the extent of inland waters under the Submerged Lands Act. See *Alaska (Beaufort Sea)*, 521 U.S. at 8.

In this case, as in *Alaska (Beaufort Sea)*, the United States has applied the Convention's "normal baseline" principles, which employ the "arcs-of-circles" method for determining the extent of the territorial sea. See 521 U.S. at 9. Under that method, which the United States has uniformly applied throughout the Nation for both international and domestic purposes, a coast line that is deeply indented or that includes closely spaced

barrier islands may generate small areas or "enclaves" that are more than three miles from shore, but that are partially or completely surrounded by the 3-mile belt. See *ibid.* The Alexander Archipelago, like the Steffanson Sound at issue in *Alaska (Beaufort Sea)* (see *ibid.*), exhibits that characteristic. See Alaska Compl. Exh. 1. Alaska contends that it is entitled to the submerged lands beneath those enclaves as part of its Submerged Lands Act grant. See Compl. paras. 4-22.

Alaska rests its claim on the international principle of "historic bays." The Convention recognizes that a foreign nation may base a claim of inland waters on the theory that the waters constitute a historic bay, Art. 7(6), 15 U.S.T. 1609, and this Court has recognized that a State may claim title to submerged lands on that basis. See *United States* v. *Louisiana (Alabama & Mississippi Boundary Case)*, 470 U.S. 93 (1985) (holding that Mississippi Sound is a historic bay); but see *United States* v. *Alaska (Cook Inlet)*, 422 U.S. 184 (1975) (rejecting the claim that Cook Inlet is a historic bay); *United States* v. *Louisiana (Louisiana Boundary Case)*, 394 U.S. 11, 17-32 (1969) (rejecting the claim that the United States' creation of an "Inland Water Line" for purposes of regulating navigation created historic inland waters); *United States* v. *California (California II)*, 381 U.S. 139, 173-175 (1965) (rejecting claims that Santa Monica Bay, San Pedro Bay, and other disputed waters are historic bays).

To succeed on its claim, Alaska must demonstrate, among other things, that the United States has "effectively exercised sovereignty over the area continuously during a time sufficient to create a usage and have done so under the general toleration of the community of States." *Alabama & Mississippi Boundary Case*, 470 U.S. at 102 (quoting *Juridical Regime of Historic*

Waters, Including Historic Bays 56, U.N. Doc. A/CN.4/143 (1962)); see also *Alaska (Cook Inlet)*, 422 U.S. at 189, 197 ("the exercise of sovereignty must have been, historically, an assertion of power to exclude all foreign vessels and navigation"). The State must also overcome the effect of the United States' longstanding international disclaimer of the Alexander Archipelago as forming a historic bay. Cf. *Alabama & Mississippi Boundary Case*, 470 U.S. at 111-112; *California II*, 381 U.S. at 175 (giving decisive weight to a disclaimer of the United States in a case involving "questionable evidence of continuous and exclusive assertions of dominion over the disputed waters").

2. "Count II: The Tongass National Forest"

Count II of Alaska's complaint (paras. 23-28) recognizes that, prior to Alaska's admission to the Union, the United States withdrew substantial acreage in the southeastern region of the Territory of Alaska to create the Tongass National Forest. See Proclamation of Sept. 10, 1907, 35 Stat. 2152; Exec. Order No. 908 (July 2, 1908); Proclamation of Feb. 16, 1909, 35 Stat. 2226; Proclamation of June 10, 1925, 44 Stat. 2578. The Tongass National Forest is distinct from many other forest reserves because the forest can be reached, and its timber removed, only through marine facilities. The presidential proclamations and executive order creating and enlarging the Tongass National Forest correspondingly established its exterior boundary seaward of the marine coast line. See Compl. Exh. 2 (map of Tongass National Forest). Upon Alaska's admission to the Union, the United States expressly retained its title to lands within national forests, subject to Alaska's right to select 400,000 acres of those lands for the State's use. See Act of July 7, 1958 (Alaska Statehood Act), Pub. L.

No. 85-508, §§ 5, 6(a), 72 Stat. 339, 340. The United States accordingly claims rights and interests in the marine submerged lands within the Tongass National Forest.

Alaska, through Count II of its complaint, contests the United States' claim and asserts that the federal "withdrawal and reservation of lands within the boundaries [of the Tongass National Forest] did not reserve or defeat Alaska's title to those submerged lands." Compl. para 25. To succeed on Count II, Alaska must overcome the United States' claim, under the legal principles that this Court identified in *Alaska (Beaufort Sea)*, that the United States intended to reserve the submerged lands in question and to retain them at statehood. See *Alaska (Beaufort Sea)*, 521 U.S. at 32-61.[3]

3. "Count III: Glacier Bay National Monument"

Count III of Alaska's complaint (paras. 29-44) addresses the United States' pre-statehood withdrawal of public lands, and redesignation of a portion of the Tongass National Forest, to create Glacier Bay National Monument. See Proclamation No. 1733, 43 Stat. 1988 (1925) (creating the original Monument); Proclamation No. 2330, 3 C.F.R. 83 (1939) (enlarging the Monument). The United States created the Monument to protect the distinctive features of Glacier Bay, including tidewater glaciers and wildlife species that rely on marine resources and tideland habitat. As in the case of the Tongass National Forest, the

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[3] The enclaves at issue in Count I of Alaska's complaint are within the exterior boundaries of the Tongass National Forest. Hence, to establish its claim of title to those enclaves, Alaska must prevail on both Counts I and II of the complaint.

presidential proclamations creating and enlarging Glacier Bay National Monument established its exterior boundary seaward of the marine coast line. See Compl. Exh. 3 (map of Glacier Bay National Monument). Upon Alaska's admission to the Union, the United States expressly retained its title to those public lands, expressly excepting from State ownership "lands withdrawn or otherwise set apart as refuges or reservations for the protection of wildlife [and] facilities utilized in connection therewith, or in connection with general research activities relating to fisheries or wildlife," Alaska Statehood Act § 6(e), 72 Stat. 340. See *Alaska (Beaufort Sea)*, 521 U.S. at 47. That description embraces what was then Glacier Bay National Monument and what is now part of Glacier Bay National Park and Preserve. See Alaska National Interest Lands Conservation Act (ANILCA), §§ 202(1), 203, 16 U.S.C. 410hh-1, 410hh-2.

Alaska, through Count III of its complaint, contests the United States' claim and asserts that Alaska "took title to all lands underlying marine waters within the boundaries of Glacier Bay National Monument at statehood, pursuant to the equal footing doctrine and the Submerged Lands Act." Compl. para. 42. To succeed on Count III, Alaska must overcome the United States' claim, under the legal principles that this Court identified in *Alaska (Beaufort Sea)*, that the United States intended to reserve the submerged lands in question and to retain them at statehood. See *Alaska (Beaufort Sea)*, 521 U.S. at 32-61.

ARGUMENT

ALASKA'S MOTION FOR LEAVE TO FILE A BILL OF COMPLAINT SHOULD BE GRANTED

Subject to the qualifications described below, the United States submits that Alaska should be granted leave to file its complaint. Alaska's claim that the Alexander Archipelago is a "historic bay" presents a boundary dispute of the type that traditionally has been decided through this Court's exercise of original jurisdiction. Alaska's claims of title to submerged lands within the Tongass National Forest and the Glacier Bay National Park and Preserve raise issues that are sufficiently related to the Alaska's "historic bay" claim to warrant resolution in a single original action to quiet title. Alaska's claims for relief, as circumscribed by the complaint and the understandings of the parties, satisfy the threshold jurisdictional and prudential criteria for an original action and present appropriate matters for referral to a special master.

A. Alaska's Complaint Raises The Types Of Issues Over Which This Court Traditionally Has Exercised Its Original Jurisdiction

Article III grants the Court original jurisdiction over cases "in which a State shall be Party." U.S. Const. Art. III, § 2, Cl. 2. Congress has specified, however that this Court's original jurisdiction over "controversies between the United States and a State" is not exclusive. 28 U.S.C. 1251(b)(2). See *Case* v. *Bowles*, 327 U.S. 92, 97 (1946). Congress has granted the district courts authority, through the jurisdictional provisions governing the QTA, to decide disputes between the United States and a State over title to real property.

See 28 U.S.C. 1346(f); note 1, *supra*. Nevertheless, disputes between the United States and a State over the location of a maritime federal-state boundary have traditionally been filed as original actions in this Court. See *California ex rel. State Lands Comm'n* v. *United States*, 457 U.S. 273, 277 n.6 (1982).

This Court has expressed a preference for resolving maritime federal-state boundary disputes through its original jurisdiction. As Alaska notes (Br. in Support of Motion 7), the United States brought an action in federal district court during the 1960s to resolve Alaska's claim of title to submerged lands within Cook Inlet. See *Alaska (Cook Inlet)*, 422 U.S. at 186. When the issue reached this Court on writ of certiorari, the Court suggested that an original action would have been the more appropriate course. *Id.* at 186 n.2. See also *United States* v. *Louisiana*, 363 U.S. 1, 85 n.143 (1960) (denying Louisiana's motion to transfer an original action involving a federal-state boundary dispute to a United States district court in Louisiana). The issue that Alaska raises in Count I of its complaint——whether the Alexander Archipelago is a "historic bay" under the Convention—presents the same type of issue that was raised in *Alaska (Cook Inlet)* and that this Court indicated could be raised in original action. Compare 422 U.S. at 187-189, with Alaska Compl. paras. 4-22.[4]

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[4] The Court's preference for resolving federal-state boundary disputes through original actions rests, in substantial part, on historical practice. In 1945, the United States invoked this Court's original jurisdiction to resolve the nationally important issue of whether the United States had paramount rights and interests in marine submerged lands below the low-water mark. See *California I*, *supra*. Following the Court's decision in *California I*, Congress enacted the Submerged Lands Act and the Outer

This Court has also recognized that, when a marine federal-state boundary is properly in controversy, the parties may invoke the Court's original jurisdiction to resolve disputes over the scope of federal reservations that embrace related submerged lands. For example, in *Alaska (Beaufort Sea)*, the United States brought an original action to determine the location of the federal-state boundary in the oil-rich Beaufort Sea. See 521

Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331 *et seq.*, which generated new questions over the location of the federal-state boundary. The United States and the States continued the practice of invoking the Court's original jurisdiction to resolve those questions, which typically arose out of controversies over off-shore mineral leasing rights. See, *e.g.*, *United States* v. *Louisiana*, 363 U.S. 1 (1959); *California II*, *supra*; *Louisiana Boundary Case*, 394 U.S. 11 (1969); *United States* v. *Maine*, 420 U.S. 515 (1975); *Alaska (Beaufort Sea)*, *supra*.

There are sound reasons, beyond simply following tradition, for continuing the practice. Through the exercise of its original jurisdiction, this Court has developed an extensive body of law respecting federal-state boundary disputes. Furthermore, as Alaska notes (Alaska Br. in Support of Motion 7 n.2), federal-state boundary disputes resemble interstate boundary disputes, over which the Court has always exercised exclusive original jurisdiction. See 28 U.S.C. 1257(a); Vincent L. McKusick, *Discretionary Gatekeeping: The Supreme Court's Management of its Original Jurisdiction Docket Since 1961*, 45 Me. L. Rev. 185, 200 (1993). In addition, Congress amended the Submerged Lands Act in 1986 to enable the United States and a State to settle federal-state boundary disputes with finality by fixing the otherwise ambulatory boundary through the mechanism of seeking a Supreme Court decree setting out fixed coordinates. See 43 U.S.C. 1301(b). The Court's unique statutory power to effect the fixing of federal-state boundaries through its decrees has provided an additional incentive for resolving disputes through the mechanism of an original action. See, *e.g.*, *United States* v. *Louisiana* (*Texas Boundary Case*), 525 U.S. 1 (1998) (decree fixing the United States-Texas boundary).

U.S. at 4. At Alaska's request, and with the United States' concurrence, the Court also resolved a dispute over whether the United States' creation of two important federal reservations along the Beaufort Sea—the National Petroleum Reserve-Alaska and the Arctic National Wildlife Refuge—deprived Alaska of submerged lands within the reservation boundaries. See *ibid.* Alaska's claims respecting submerged lands in the Tongass National Forest and Glacier Bay National Park and Reserve raise the same type of issues and may appropriately be considered in conjunction with Alaska's claims respecting the location of the federal-state boundary in the Alexander Archipelago.

B. Alaska's Complaint Satisfies The Threshold Prerequisites For An Original Action, Provided That Alaska's Claims For Relief Are Limited To Submerged Lands That Are Within The Administrative Jurisdiction Of The Forest Service Or The National Park Service

Although Alaska's proposed complaint poses the types of issues that this Court has traditionally entertained as an original action, the character of the issues, by itself, is not dispositive. The Court may properly decline to exercise jurisdiction if the complaint fails to satisfy the threshold prerequisites for commencing a quiet title suit against the United States or if the underlying dispute fails to present issues of sufficient practical importance to warrant the invocation of the Court's original jurisdiction.

1. The United States has a threshold jurisdictional concern with respect to Counts II and III. As we have explained (pp. 2-5, *supra*), a State may bring a quiet title action against the United States only in conformity with the QTA. The QTA requires, among other things,

that any plaintiff, including a State, set forth in its complaint not only the nature of the right, title, or interest that the plaintiff claims, but also "the right, title, or interest claimed by the United States." 28 U.S.C. 2409a(d). In addition, the QTA requires that the State provide 180 days' advance notice to "the head of the Federal agency with jurisdiction over the lands in question of the State's intention to file suit, the basis therefor, and a description of the lands included in the suit." 28 U.S.C. 2409a(m). Alaska has provided adequate notice with regard to those marine submerged lands that are currently included in and administered by the Forest Service as a part of the Tongass National Forest and those submerged lands that are currently included in and administered by the National Park Service as part of Glacier Bay National Park and Preserve.

We read Alaska's complaint to place only those lands at issue in this case. But Alaska's complaint, when viewed in conjunction with the associated maps, could be construed to include not only the marine submerged lands currently included within and administered as part of the Tongass National Forest and the Glacier Bay National Park and Preserve, but also marine submerged lands within the same general area over which the Forest Service and the National Park Service do not claim administrative jurisdiction.[5] See, *e.g.*, Alaska Br. in Support of Motion 1-2 ("The lands subject to this action include all lands underlying marine waters

[5] The tracts of concern could include, for example, marine submerged lands within the exterior boundaries of the reservations that: (1) were withdrawn for, or have been transferred to, other federal agencies; (2) are associated with conveyed uplands; (3) are held in trust or restricted status for Indian Tribes.

within the Tongass National Forest, created in 1907, and all lands underlying marine waters within Glacier Bay National Monument, created in 1925. The Tongass and Glacier Bay reservations encompass nearly all Southeast Alaska. See Exs. 1-3 (maps).”). Alaska has not provided the required notice to the appropriate federal land managers with respect to lands that are not administered by the Forest Service within the exterior boundaries of the Tongass National Forest or by the National Park Service within the exterior boundaries of Glacier Bay National Park and Preserve.

The tracts for which no notice has been given, though generally small, are potentially numerous and varied. They may include, for example, lighthouse sites administered by the Coast Guard, Indian cannery sites, and tidelands associated with Fish and Wildlife Service piers. The United States would be concerned, for both jurisdictional and practical reasons, if those tracts were included within this suit. The QTA's requirement that a State provide advance notice to the Federal land manager responsible for the particular lands in dispute of the location of the lands and the State's basis for contesting the United States's title is a condition on the United States' waiver of sovereign immunity, and Alaska's failure to provide such notice with respect to the tracts of concern would pose a jurisdictional obstacle to disputing their ownership. Cf. *Hallstrom* v. *Tillamook County*, 493 U.S. 20 (1989). In addition, the QTA does not waive the United States' sovereign immunity with respect to lands held in trust or restricted status for Indian Tribes. 28 U.S.C. 2409a(a). And apart from those jurisdictional concerns, considerable resources could be expended by this Court and the parties in determining the location and status of small tracts that would be more appropriately litigated—if at

all—through an action in federal district court. See *United States* v. *Nevada*, 412 U.S. 534, 538 (1973) (per curiam) ("We seek to exercise our original jurisdiction sparingly and are particularly reluctant to take jurisdiction of a suit where the plaintiff has another adequate forum in which to settle his claim.").

We have raised this concern with Alaska's counsel, and they have confirmed that Counts II and III of their complaint do not encompass the tracts of concern.[6] Rather, Alaska seeks to quiet title only with respect to those marine submerged lands within the exterior boundaries of the Tongass National Forest and the Glacier Bay National Park and Preserve that the United States claims as within the jurisdiction of the Forest Service or the National Park Service. On that understanding, the United States perceives no jurisdictional obstacles that would prevent the Court from proceeding with the claims set out in Alaska's complaint.[7]

2. Although Alaska's complaint appears to satisfy the threshold QTA requirements for invoking this Court's original jurisdiction, the Court nevertheless has discretion to deny Alaska's motion for leave to file its complaint on prudential grounds if, for example, the complaint fails to present an issue of sufficient practical importance to warrant resolution by this Court as an

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[6] Alaska has made that representation without prejudice to its right to move for leave to file a future original action under the QTA (after providing the required notice) in the event that the State determines that any of the tracts of concern gives rise to a case or controversy warranting this Court's exercise of its original jurisdiction.

[7] In making that observation, we do not waive our right to raise any defenses that normally would be presented after the filing of a complaint. See Fed. R. Civ. P. 12.

original matter. See *California* v. *Texas*, 457 U.S. 164, 168 (1982) ("A determination that this Court has original jurisdiction over a case, of course, does not require us to exercise that jurisdiction. We have imposed prudential and equitable limitations upon the exercise of our original jurisdiction."). We believe that the issues Alaska tenders, as described above, are sufficiently important to warrant this Court's attention.

In most of the previous occasions in which the United States or a State has invoked the Court's original jurisdiction to resolve an offshore federal-state boundary, the parties had reason to believe that the submerged lands in question might contain potentially valuable mineral resources. See note 4, *supra*. The question whether the United States or a State owned the submerged lands at issue typically resolved important practical questions respecting the division of leasing rights and royalties in the disputed areas. See, *e.g.*, *Alaska (Beaufort Sea)*, 521 U.S. at 4-5; *United States* v. *Louisiana*, 452 U.S. 726 (1981) (final decree establishing mechanism for division of mineral leasing revenues).

The submerged lands at issue in Alaska's proposed complaint are not known to have any substantial mineral value, and we are not aware of any disputes over mineral leasing rights in the disputed areas. Nevertheless, the United States submits that those submerged lands do not belong to the State, but instead constitute essential components of the Tongass National Forest and the Glacier Bay National Park and Preserve. Alaska's contrary view, which challenges the United States' international position respecting inland waters within the Alexander Archipelago and questions the United States' title to thousands of acres of territory within two important federal reservations, pre-

sents a sufficiently serious inter-sovereign dispute to warrant the exercise of the Court's original jurisdiction. Compare *New Jersey* v. *New York*, 523 U.S. 767, 770-771 (1998) (original action arising from competing sovereign claims to territorial jurisdiction over 24.5 acres of Ellis Island).[8]

C. Alaska's Complaint Presents Issues That Would Be Appropriate For Resolution Through The Assistance Of A Special Master

Alaska's brief in support of its motion for leave to file a complaint addresses in some detail the legal theories and evidence on which Alaska bases its claim for relief. See Alaska Br. in Support of Motion 12-29. It would be premature at this stage of the proceedings for the United States to respond at length to those legal arguments and factual assertions. Under the Court's normal practice, if the Court grants Alaska's motion for leave to file a complaint, it will direct the United States to file an answer and the case will proceed in general conformity with the Federal Rules of Civil Procedure. We can state at this stage, however, that the United

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[8] We note that various disputes have arisen over the years respecting the scope of federal and state authority to regulate marine resources and activities, such as fishing and pollution discharges, within the Alexander Archipelago. This suit cannot be expected to resolve those controversies because regulatory jurisdiction over offshore activities does not necessarily depend on the location of the Submerged Lands Act boundary or on who holds title to the submerged lands. See, *e.g.*, SLA § 6(a), 43 U.S.C. 1314(a). Nevertheless, this Court's determination of the location of that boundary and the ownership status of the underlying lands may have a bearing, in particular cases, on the ways in which the federal and state officials may discharge their respective regulatory responsibilities.

States has substantial responses to Alaska's claims for relief.

For example, the United States would dispute, on both legal and factual grounds, Alaska's assertion that the United States has continuously claimed the enclaves described in Count I as inland waters and that foreign nations have acquiesced in that claim. To the contrary, the United States has expressly disclaimed to the international community that the enclaves are inland waters. Cf. *Alaska (Cook Inlet)*, *supra*. In response to Counts II and III of Alaska's complaint, the United States would demonstrate, as a legal and factual matter, that the federal government drew the seaward boundaries of the Tongass National Forest and the Glacier Bay National Monument to include marine submerged lands in order to support the purposes of those reservations, and that the federal government retained those reservations, including the submerged lands, upon Alaska's entry into the Union. Cf. *Alaska (Beaufort Sea)*, 521 U.S. at 32-61.

Based on Alaska's allegations and the United States' anticipated responses, we think it clear that, if the Court grants Alaska's motion, the Court would benefit from the assistance of a special master. The issues are somewhat complicated and the parties are likely to dispute historical and other facts, which may ultimately require a trial. Accordingly, if the Court grants Alaska's motion for leave to file a complaint, it should follow its normal practice of granting the United States a suitable period of time to file an answer and then referring the matter to a master.

In our experience, the progress of original actions can be facilitated if the parties are able to reach agreement at the outset on a statement of the issues that would be placed before the the master. Counsel for the United

States and counsel for Alaska have reached agreement that the issues, as described at page I (Questions Presented), provide a fair description of the issues that the master would face in this case. That statement of the issues should be deemed to include, of course, all arguments and defenses fairly included therein. Furthermore, in stating the issues in this manner, neither party waives its right to seek this Court's leave to amend its pleadings or assert additional claims in the litigation, or to respond as it sees fit to any such amendment or introduction of new claims. Finally, the parties recognize that, if the Court allows the suit to go forward, they may be able to refine the statement of issues as the case progresses through completion of the pleading and discovery phases.

CONCLUSION

The motion of the State of Alaska for leave to file a bill of complaint should be granted.

Respectfully submitted.

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