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In The
Supreme Court of the United States

OCTOBER TERM, 1968

NO. 35, ORIGINAL

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATES OF MAINE, NEW HAMPSHIRE, MASSACHU-
SETTS, RHODE ISLAND, NEW YORK, NEW JERSEY,
DELAWARE, MARYLAND, VIRGINIA, NORTH CARO-
LINA, SOUTH CAROLINA, GEORGIA AND FLORIDA.

ANSWER

STATE OF NORTH CAROLINA
ROBERT MORGAN
Attorney General

Jean A. Benoy
Deputy Attorney General

Thomas J. Bolch
Special Assistant

Department of Justice
P. O. Box 629
Raleigh, North Carolina 27602

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ANSWER OF DEFENDANT NORTH CAROLINA

The defendant, State of North Carolina, by Robert Morgan, the Attorney General of North Carolina, in answer to the tenth cause of action set forth in paragraph XVII of the complaint, repeating and realleging the allegations contained in paragraphs I through IV, and VI through VIII of plaintiff's first cause of action, states.

I

The allegations contained in paragraphs I, IV and VIII of the complaint as they relate to the State of North Carolina in paragraph XVII of the complaint are admitted, except that portion of paragraph VIII stating "... because the fundamental question in issue relates to aspects of the foreign policy of the United States . . ." which allegation, set out in quotes herein, is denied.

II

The allegations contained in paragraphs II, III, VI, and VII

of the complaint as they relate to the defendant State of North Carolina in paragraph XVII of the complaint are denied; except such portions thereof which are specifically admitted in the State of North Carolina's further answer, hereinafter set forth.

AND FOR A FURTHER ANSWER, DEFENSE AND COUNTERCLAIM, THE DEFENDANT STATE OF NORTH CAROLINA ALLEGES AND SAYS:

I

It admits that the 83rd Congress of the United States of America did on May 22, 1953, enact Public Law 31, known as the Submerged Lands Act, 67 Statutes at Large 29, and by said law, the United States did release and quitclaim all rights and claims the United States of America had to the submerged lands, subsoils, and minerals lying beneath the ocean waters of the Atlantic Ocean up to three geographic miles from the low-water mark of North Carolina's shores.

II

It denies that the United States of America acquired, or could acquire, by unilateral legislative enactment of the Congress of the United States any right, title or ownership interest to the submerged lands lying beneath the ocean waters of the Atlantic Ocean adverse to the defendant State of North Carolina's rights, title or ownership interests therein whether within three miles or more than three miles from the low-water mark of North Carolina's shores except in a manner prescribed by Article I, Section 8, Paragraph 17 of the Constitution of the United States of America.

III

To the extent that the Congress of the United States of America has attempted to acquire such right, title, or ownership interest in the submerged lands lying off North Carolina's shores adverse to defendant North Carolina's rights, title, or ownership interest by unilateral act of the Congress of the United States by the Submerged Lands Act, said acts and

law are unconstitutional in that said acts and law are in violation of Article I, Section 8, Paragraph 17; Article 4, Section 3; and the Ninth and Tenth Amendments to the Constitution of the United States of America.

IV

It admits that the 83rd Congress of the United States of America did on August 7, 1953 enact Public Law 212, known as the Outer Continental Shelf Lands Act, 67 Statutes at Large 462, and therein declared the "urgent need for further exploration and development of the oil and gas deposits of the submerged lands of the outer continental shelf" and provided that such need should be met by the issuance of mineral leases in that area by the Secretary of the Interior to private operators; and further admits that there is such "urgent need" as declared by the Congress.

V

If the Secretary of the Interior could issue mineral leases in the aforesaid area to private operators pursuant to said law, then he could do so only as an agent of the true owner of the said submerged lands, to wit: the State of North Carolina which is the owner of the said submerged lands and all minerals contained therein or thereunder.

VI

It denies that the United States of America is the owner of said submerged lands and denies that the Secretary of Interior could issue any such leases and retain the income or profits from such leases to the use and benefit of the United States of America or to the Interior Department, said income or profits from such leases, let or to be let, by the Secretary of Interior pursuant to the Outer Continental Shelf Lands Act which arise out of such activity being the property of the defendant State of North Carolina.

VII

It claims all title, right, and ownership interest in said sub-

merged lands, soils, minerals, income and profits from whatever source, as being vested in the State of North Carolina through a succession in a chain of title to such lands from the Charter of James I to the Virginia Company in 1606 to the present date.

VIII

The defendant North Carolina denies that the United States of America acquired or could acquire by unilateral legislative enactment of the Congress of the United States in enacting the Outer Continental Shelf Lands Act, aforesaid, any right, title or ownership interest to the submerged lands lying beneath the ocean waters of the Atlantic Ocean adverse to the defendant State of North Carolina's rights, title or ownership interests therein whether within three miles or more than three miles from the low-water mark of North Carolina's shores; and to the extent that the Congress of the United States of America has attempted to acquire such right, title, or ownership interests in the submerged lands lying off North Carolina's shores adverse to defendant North Carolina's rights, title, or ownership interest by unilateral act of the Congress of the United States said act is unconstitutional in that said act is in violation of Article I, Section 8, Paragraph 17; Article 4, Section 3 of the Constitution of the United States of 1787; and the Ninth and Tenth Amendments to the Constitution of the United States of America.

IX

It shows unto the Court in 1947, the General Assembly of North Carolina did enact a law declaring the "... eastern limit and boundary of the State of North Carolina on the Atlantic seaboard [to] have always been ... one marine league eastward from the Atlantic seashore, measured from the extreme low water mark ..." and so declared the eastern boundary of North Carolina to be so fixed, (Chapter 1031, 1947 Session Laws of North Carolina, N. C. Gen. Stat. Section 141-6); and further shows that the General Assembly was acting pursuant

to Article I, Section 34, of the N. C. Constitution of 1868 which declared that the "limits and boundaries of the State shall be and remain as they now are."

X

To the extent, if any, of any inconsistency between the laws enacted by the General Assembly and the North Carolina Constitution; and any inconsistency between the laws of North Carolina and of the United States of America, said inconsistency can only be resolved by a judicial determination of the original Eastern boundary of defendant North Carolina at the time of its entry into the Federal Union in 1789.

XI

Such unilateral declarations by legislatures, whether Federal or State, are not conclusive of the matter of the State's offshore boundary nor binding on either plaintiff or defendant in this Cause; and, further alleges that rights to property beneath the Atlantic Ocean can be made only by a determination of the boundary of the State at the time of its entry into the Federal Union together with a determination of whether subsequent to that date the State has ceded any of its property rights to the Federal government in the manner prescribed in Article I, Section 8, Paragraph 17, of the Constitution of the United States of America.

XII

It has never ceded any property rights it had in the lands underlying the Atlantic Ocean at the time of its entry into the Federal Union in 1789, to the United States of America; nor has the United States acquired any such property rights so had by North Carolina since that date, in a manner prescribed by the Constitution of the United States of America.

WHEREFORE, defendant, North Carolina, prays the Court for a determination of its proper historic eastern boundary which existed at the time of its entry into the Federal Union, and for judgment that the defendant North Carolina presently

is the owner of such submerged lands, subsoil, and mineral rights, and has the right to receive the profits and income, if any, so derived from the aforesaid lands within its historic boundary; and having fully answered the complaint of the plaintiff, that defendant have such other and further relief as is deemed proper, and that the costs of this action be taxed against the plaintiff, United States of America.

This the 11th day of September, 1969.

ROBERT MORGAN
Attorney General

Jean A. Benoy
Deputy Attorney General

Thomas J. Bolch
Special Assistant

