

MAR 29 1971

E. ROBERT BEAVER, CLERK

No. 35, Original

In the Supreme Court of the United States

OCTOBER TERM, 1970

UNITED STATES OF AMERICA, PLAINTIFF

v.

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

JOINT MOTION OF THE UNITED STATES AND THE STATE OF
FLORIDA TO CONSOLIDATE PROCEEDINGS HEREIN AGAINST
THE STATE OF FLORIDA WITH UNITED STATES v. STATE OF
LOUISIANA, ET AL., NO. 9, ORIGINAL, AND MEMORANDUM IN
SUPPORT OF MOTION

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The United States of America, by its Solicitor General, and the State of Florida, by its Attorney General, jointly move the Court to consolidate for all purposes these proceedings against the State of Florida with *United States v. State of Louisiana, et al.*, No. 9, Original, and that such further proceedings be had with respect to the State of Florida as may be ordered in said cause, pursuant to the jurisdiction retained by the Court therein under its decree of December 12, 1960, 364 U.S. 502, upon the condition that in No. 9, Original, the State of Florida will not present any evidence or make any argument with re-

spect to the rights of the British colonies under colonial grants or charters, or with respect to any claim that the States of the Union have purely constitutional rights of a proprietary character in the submerged lands or the natural resources of the bed of the sea adjacent to their coasts; but the State of Florida shall be entitled in No. 9, Original, to the benefit of any determination that the Court may make in No. 35, Original, with respect to those questions to the extent that such a determination may be relevant under the equal footing doctrine or otherwise applicable to the factual situation of the State of Florida. However, the State of Florida is not prohibited from approving of or submitting *amicus curiae* briefs in No. 35, Original.

This motion is made on the following grounds:

1. This case raises the question of the extent of Florida's submerged lands in the Atlantic Ocean.

2. The same question has been raised in the Amended Complaint in *United States v. Louisiana, et al.*, No. 9, Original, but in the view of the United States it was not considered by the Court in its opinion of May 31, 1960.

3. Simultaneously herewith there is being submitted to this Court, in *United States v. Louisiana, et al.*, No. 9, Original, a joint motion of the United States and the State of Florida to initiate supplemental proceedings; to consolidate therewith the proceedings in this case between the United States and Florida; to appoint a Special Master to hold hearings and make recommendations for a decree; and for entry of a decree defining the boundary between that area

of the seabed in which the State of Florida has rights to the natural resources and the area of the seabed in which the United States has such rights along the entire coast of Florida, in both the Gulf of Mexico and the Atlantic Ocean, not determined by this Court in its opinion in *United States v. Florida*, 363 U.S. 121 (1960), or its decree in *United States v. Louisiana, et al.*, No. 9, Original, 364 U.S. 502.

4. The cases raise common questions of law and fact.

5. The Special Master appointed in this case after hearing on the Motion for Severance of the State of Florida referred to him by this Court on November 16, 1970, has advised the parties that he is submitting a report recommending that the proceedings against Florida be severed from this case and be consolidated with proceedings against Florida in No. 9, Original. Respectfully submitted.

ERWIN N. GRISWOLD,
*Solicitor General of the
 United States.*

ROBERT L. SHEVIN,
*Attorney General of the
 State of Florida.*

Dated this day of MARCH 1971.

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MEMORANDUM IN SUPPORT OF MOTION

For completeness, the Amended Complaint in *United States v. Louisiana et al.*, No. 9, Original, put in issue the extent of Florida's submerged lands in the Atlantic Ocean as well as in the Gulf of Mexico; but the United States understanding has been that in its opinion of May 31, 1960, 363 U.S. 121, and decree of December 12, 1960, 364 U.S. 502, the Court dealt with Florida's limits only in the Gulf of Mexico. Recognizing that the issue of the extent of Florida's rights in the submerged lands off of its Atlantic coast was thus still before the Court pursuant to its retained jurisdiction in No. 9, Original, the United States nevertheless included Florida as a defendant in the present case, as to its claims in the Atlantic.

This was done in the belief that the issues affecting the rights of Florida on its Atlantic coast are so similar to the issues affecting the rights of the other Atlantic States as to make it desirable that all be considered together.

Florida then filed a motion for a severance in this case, which the Court submitted to the Special Master by order of November 16, 1970. At the hearing on that motion it appeared that Florida's claims in the Atlantic are not the same as those of the other defendant States, and that Florida does not intend to present any evidence or make any argument with respect to the rights of British colonies under colonial grants or charters, or with respect to any claim that States of the Union have purely constitutional rights of a proprietary character in the submerged lands or natural resources of the seabed adjacent to their coasts. The Special Master has advised the parties that he is submitting his recommendation that the proceedings against Florida in this cause be severed from those against the other Atlantic States, provided, however, that Florida shall nevertheless be entitled to the benefits of any determination that the Court may make as to other States in this cause with respect to those questions to the extent that such determination may be relevant under the equal footing doctrine or otherwise applicable to the factual situation of the State of Florida.

At the same time, circumstances have arisen making it necessary for the parties to move in No. 9, Original, to institute supplemental proceedings to define the limit of Florida's submerged lands in the Gulf of Mex-

ico with greater particularity than was done in the 1960 decision. A joint motion for that purpose is being filed simultaneously herewith. It thus appears that proceedings to define the limits of Florida's rights in the submerged lands of the Gulf and Atlantic will be proceeding simultaneously. As there are common questions of law and fact presented, both parties believe and, as the parties are advised, the Special Master is recommending that it will be more orderly and convenient to have the State of Florida's claims to the submerged lands in the Gulf and in the Atlantic determined in a single proceeding. This motion to consolidate the severed proceedings in the present case with the proceedings about to be initiated in No. 9, Original, is designed to accomplish that purpose.

The issues affecting Florida here include some that are similar in character to those affecting the other Atlantic States and those affecting Louisiana in the supplemental proceedings now pending before a Special Master in No. 9, Original. We assume that the Court will consider reference to a Special Master appropriate here for the same reasons that led it to make reference in those cases. We therefore have moved in No. 9, Original, that the consolidated proceedings as to Florida be referred either to the Honorable Albert B. Maris, whose position as Special Master in this cause has already introduced him to the subject, or to such other Special Master as the Court may designate. This reference should be made subject to the condition that Florida will not present evidence or argument with respect to the issues raised by other Atlantic States,

referred to above, namely, the rights of British colonies under colonial grants or charters, or the claim that States of the Union have purely constitutional rights of a proprietary character in the submerged lands or natural resources of the seabed adjacent to their coasts. It is understood that Florida shall nevertheless be entitled to the benefit of any determination that the Court may make in No. 35, Original, with respect to those questions, to the extent that such determination may be relevant under the equal footing doctrine or otherwise applicable to the factual situation of the State of Florida. Moreover, it is understood that Florida is not prohibited from approving or submitting *amicus curiae* briefs in No. 35, Original.

Respectfully submitted.

ERWIN N. GRISWOLD,
*Solicitor General of
the United States.*

ROBERT L. SHEVIN,
*Attorney General of
the State of Florida.*

March 1971.