

No. 35, ORIGINAL.

Supreme Court, U. S.

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MICHAEL RODAK, JR., CLERK

**In the  
Supreme Court of the United States.**

OCTOBER TERM, 1976.

UNITED STATES OF AMERICA, PLAINTIFF,

v.

STATE OF MAINE, ET AL.,

**Objection to Motion for Supplemental Proceedings and for  
Appointment of a Special Master to Determine the  
Coastline of the State of Rhode Island and  
Memorandum in Support of Objection.**

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The State of Rhode Island and Providence Plantations objects to the motion of the United States of America to commence supplemental proceedings before a special master of this Court to determine the location of the coastline of the State of Rhode Island and asks that said motion be denied.

Respectfully submitted:

JULIUS C. MICHAELSON,  
Attorney General of Rhode Island,  
J. PETER DOHERTY,  
Special Assistant Attorney General.



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**Memorandum in Support of Objection.**

By decree dated October 6, 1975, this Court reserved jurisdiction "to entertain . . . proceedings to determine the coastline of any defendant state . . . as may from time to time be deemed necessary or advisable to give proper force and effect to this decree." 423 U.S. 1, 2 (1975). The United States, through its motion and memorandum, has taken the position

that a coastline dispute has now arisen between the United States and Rhode Island because (a) in the January, 1971, Session of the Rhode Island General Assembly an act, together with a map, seeking to establish the seaward boundaries of Rhode Island became law, Public Laws of Rhode Island, 1971, Chapter 245; codified as Sections 42-1-1 *et seq.*, General Laws of Rhode Island, 1956, as amended; (b) in litigation attacking the validity of a Rhode Island pilotage statute enacted pursuant to a federal statute authorizing state regulation of pilotage "in the bays . . . of the United States," the State of Rhode Island successfully argued, by analogy to definitions contained in Article 7 of the Convention on the Territorial Sea and the Contiguous Zone, that Block Island Sound is a bay. *Warner v. Replinger*, 397 F. Supp. 350 (D. R.I. 1975), *aff'd sub nom. Warner v. Dunlap*, 532 F. 2d 767 (1st Cir. 1976), *petition for writ of certiorari pending sub nom. Ball v. Dunlap*, Docket No. 75-6990.

By virtue of the foregoing, it is neither necessary nor advisable to commence supplemental proceedings. A close examination of Chapter 42-1 of the General Laws of Rhode Island fails to demonstrate where the General Assembly sought to establish the seaward boundary of the State. The map incorporated by the statute is a copy of the *official state highway* map and is without any meaningful markings or baselines! Further, as the statute was passed in 1971 and failed to be of concern to the United States until 1976, it is difficult to perceive that it is of such great, present significance.

The arguments made by defendants in *Ball v. Dunlap*, *supra*, were made solely in an effort to give content to the term "bay" in a federal statute which attempts to achieve safe, competent navigation of specified vessels through a state regulatory network. As the United States admits in its *amicus* brief in *Ball*, ". . . the United States, not having been a party, is not bound by the Court of Appeal's application of the

Convention's definitions . . ." (Amicus pp. 6-7). Absent some action by the State of Rhode Island beyond that of developing a novel legal argument, it is difficult to understand the need for supplemental proceedings.

To draw another legal analogy, there does not presently exist a definite and concrete, coastline controversy touching the legal relationships of parties having adverse legal interests. Cf., e.g., *Poe v. Ullman*, 367 U.S. 497 (1961); *Aetna Life Insurance Company of Hartford v. Harworth*, 300 U.S. 227 (1937). Stated differently, to maintain a motion for supplemental proceedings, the United States must do more than allege chilling consequences flowing from Rhode Island's collateral action and thereafter shiver before this Court. Cf., *Rodos v. Michaelson*, 527 F. 2d 582, 585 (1st Cir. 1975).

Significantly, the United States fails to allege that the State of Rhode Island has either entertained or adopted policies in the management of its coastal zone that conflict with the United States' view of the Rhode Island coastline. See, Sections 46-23-1 *et seq.* of the General Laws of Rhode Island, 1956, as amended, which establish the Rhode Island Coastal Resources Management Council and provide for its jurisdiction, duties, powers and responsibilities. Thus, while the "case or controversy" argument is one of analogy, nevertheless, as a tool for analysis it is useful.

### Conclusion.

The State of Rhode Island agrees that supplemental proceedings before a special master have served and are serving

a useful purpose to achieve necessary ends. Notwithstanding, without a jelled, concrete controversy between adverse interests, supplemental proceedings are presently inappropriate.

Respectfully submitted,

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