NO. 10, ORIGINAL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

UNITED STATES OF AMERICA,
Plaintiff

v.

STATES OF LOUISIANA,
TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA

WRITTEN MEMORIAL OF ORAL ARGUMENT FOR ALABAMA

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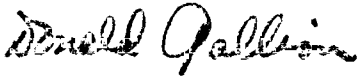
Now comes the State of Alabama and respectfully requests the Court for permission to file with the clerk of this Court sixty copies of the Written Memorial of its Oral Argument, for the Court's convenience and for others who may desire to have it for historical or other reasons.



Respectfully submitted,
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ORAL ARGUMENT FOR THE STATE OF ALABAMA

The United States says that the international position of the United States controls; that at the time Alabama became a territory and when admitted to the Union, the United States claimed for itself, and limited its recognition of claims by others to, three miles from coast and no more. (Reply Brief of United States, page 3)

This contention is clearly without merit as already shown by prior arguments of the defendant states.

Alabama desires to present, however, for the Court's consideration, some of its additional reasons why the three mile rule in the Gulf of Mexico is not applicable.

VARIOUS WARS

As to events prior to the War of 1756, in which Spain and France fought against England, this Court remarked in **Johnson v. M'Intosh,** 8 Wheat. 543, that, "The contests between the Cabinets of Versailles and Madrid respecting the territory on the northern coast of the Gulf of Mexico were fierce and bloody".

In the War of 1756, England was victorious. As

a result, Great Britain became the unquestioned proprietor and had acquired title to all of Florida. On October 7, 1763, by proclamation, the King of Great Britain divided Florida into East Florida and West Florida.

West Florida was 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.

In 1781, Spain acquired West Florida by conquest from England. By the Treaty of 1783, which followed, Spain was seized and possessed of both East and West Florida.

As stated by Dr. A. B. Moore, "The History of Alabama", Volume I, page 82, "Now Spain controlled again the whole Gulf Coast, and her Sixteenth Century dreams of power and sway were revived".

Before that, for seventeen years, the British ruled West Florida, and for thirty-two years more, it functioned under the Spanish flag until the capture of Mobile by General Wilkinson in 1813, and Jackson's later capture of Pensacola.

This occupation and seizure was for security reasons and on orders from James Madison, President of the United States.

The Spanish, during the War of 1812, had allowed her Florida forts to be used by British Vessels and as distributing centers for supplies to the Indians.

The above occupation by the United States has been spoken of by Mr. Justice Baldwin, a former mem-

ber of this Court, as resulting from, ". . . the law-making, war-making power of the United States in authorizing the forcible occupation of the territory by an act of war . . .". **The Lessee of Pollard's Heirs v. Kibbe,** 14 Pet. 353, 10 L. Ed., pages 490-522.

The Encyclopedia Britanica under the heading, "Mississippi" states that the territorial limits of the Mississippi Territory were extended to the south by "the seizure of West Florida in 1810-13".

In 1814, the British Fleet made an attack on Fort Bower, now Fort Morgan, on Mobile Point, but was repulsed.

Later in 1815, while retreating from the mouth of the Mississippi, the British Fleet again attacked the Fort and this time captured it.

These various wars, seizures, and possessions of territory involving the Gulf Coast area south of Alabama and Mississippi and continuing almost to the time Alabama became a territory and Mississippi a state preclude any three mile rule from coast in the Gulf of Mexico, south of Alabama and Mississippi, by any nation, including the United States at the time Alabama and Mississippi became territories or at the time of admission into the Union.

DISPUTE WITH SPAIN

The United States claimed that the pertinent part of West Florida had been included in the Louisiana Purchase.

Spain claimed that no part of the Floridas had been ceded to France by the Treaty of St. Ildefonso,

and therefore could not be included in the Louisiana Purchase.

Alabama is well aware that this Court in **Foster v. Neilson,** 2 Pet. 253, Stated that Alabama was admitted into the Union as an independent state in virtue of the title acquired under the Treaty of April 1803.

The decision was based solely on the fact that Congress by its acts had so interpreted the Treaty of 1803, and that this interpretaion by Congress was binding on the Court.

It is well to note, however, that in 1804, shortly after the Louisiana Purchase, Mr. Monroe, in passing through Paris addressed a letter to Mr. Talleyrand, the French Minister of Exterior Relations, in which he set forth his views as to the boundaries of Louisiana. In reply, Mr. Tallyrand declared in decided terms that Spain had not ceded to France, West Florida; that in all the negotiations between the two governments, Spain had constantly refused to cede any part of the Floridas, even from the Mississippi to the Mobile. **Foster v. Neilson,** supra.

It is also interesting to note that in President Madison's Proclamation of October 1810, relative to the seizure of West Florida, he stated the territory would be held by the United States as "a subject of fair, friendly negotiation and adjustment."

This provision in the Proclamation caused the Minister of Great Britain to call upon this Government in behalf of her ally, Spain, to explain the reason why the United States had incorporated the territory west of the Perdido into the Union when it had

been declared that it was held subject to fair, friendly negotiation and adjustment. (3 State Papers For. Aff. 400)

History records that the United States and Spain settled their differences by the Treaty of February 22, 1819, which was not ratified, however, until February 19, 1821. In this Treaty the King of Spain ceded to the United States all the territories which belonged to him situated to the eastward of the Mississippi known by the name of East and West Florida.

The above facts of history likewise negative any three mile rule from coast in the pertinent part of the Gulf of Mexico at the time Alabama became a Territory or as of the date of admission to the Union.

MODERN DAY REFUTATION OF GOVERNMENT'S CLAIM

But we have a modern day and complete refutation of the Government's three mile claim.

In **Alabama v. Texas,** Mr. Justice Black in his dissenting opinion, while there considering the Submerged Land's Act, stated:

> "Some states are given a three mile strip of ocean; some states are given **about ten miles;** most states are given no ocean at all." (Emphasis supplied)

If Mr. Justice Black is correct, the United States is wrong. Their positions conflict.

A careful review of the opinions of the other justices in said case also leads to the same conclusion

as that expressed by Mr. Justice Black. Their disagreement was on the right to file the complaint in the first instance and not on the above construction of the Submerged Lands Act.

REAL QUESTION PRESENTED

So, the one and only real question presented is: Does the proper construction 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, to the Perdido River", give to Alabama more than three miles from coast, but not exceeding three leagues under the Submerged Lands Act?

DESCRIPTION

In **Alabama v. Texas,** it was stated that Congress may deal with the submerged lands precisely as a private individual may deal with his farming property. It would seem to follow that Alabama may trace its title in the same manner.

West Florida, of which Alabama is a part, was described by the King of Great Britain for the first time in 1763. It was 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.

Subsequent transfers referred only to West Florida without a more specific description; therefore, the six league seaward boundary remained fixed and existed at the time the United States acquired it.

This unquestionably throws light on the mean-

ing of six leagues from shore as used in the southern boundary descriptions of Alabama and Mississippi.

The United States claims, in brief, that it seems that Louisiana's boundary description means that it is bounded to the south by the shore of the Gulf of Mexico.

If this claim is likewise made as to Alabama's southern boundary, such claim renders meaningless that part of the description, "including all the islands within six leagues of the shore."

This is true because by proceeding eastwardly along the coast line all the islands would lie north thereof. In such case, "including all the islands within six leagues of the shore" is given no field of operation and is rendered meaningless.

As a territory, the description provided that all that part of the Mississippi **territory,** which lies **within** the following boundaries, etc., shall constitute a separate territory and be called Alabama. As provided in the Enabling Act, the State shall consist of **all the territory included within** the following boundaries.

These were descriptions fixing boundary of a territory and state, and in order for the **territory** and islands to be **within** and **included within** and **consisting of all the territory within** six leagues of the shore, the line must go out that far to do so. To give meaning to the Enabling Act in all of its parts, a water boundary beyond the farthest island to the south is fixed. That boundary is six leagues from shore.

It is of some importance to note that in the boundary dispute between Louisiana and Mississippi, 202

U. S. 1, Louisiana contended the southern boundary of Mississippi would start westward from a point 18 miles south of the coast line, and Mississippi contended that Congress gave 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 junction of Pearl River with Lake Borgue, including all islands within said limit".

The above suit was filed over fifty-six years ago; oil had not then been discovered. The United States did not intervene in that suit nor make any objection as far as we know to said claims.

Alabama starts eastwardly from the same point that Mississippi starts westwardly.

It is to be stated again that West Florida was bounded to the southward by the Gulf of Mexico, including all islands wihin **six leagues of the coast,** from the **river Apalachicola** to **Lake Pontchartrain.**

This is a boundary from Florida to Louisiana. Alabama is a segment, so to speak, of that boundary. The King of Great Britain evidently had good reason in 1763 to include all islands within six leagues of the coast.

Alabama's description as a territory and state must be considered therefore in the light of the 1763 Declaration of Boundary in determining its meaning and extent.

One of the most important of all points, however, is contained in Section 3 of the Enabling Act of March 2, 1819. There, in order to avoid encroach-

ment on the counties of Wayne, Greene, and Jackson in the State of Mississippi, it was provided as to the line as follows:

> ". . . the same shall be so altered as to run in a direct line from the northwest corner of Washington County **to a point on the Gulf of Mexico** ten miles east of the mouth of the River Pascagoula." (Emphasis Supplied)

Mississippi Sound was at that time called Pascagoula Bay. It is inland water north of the Gulf of Mexico. To a point **on the Gulf of Mexico,** establishes a water boundary beyond the Gulf shore.

It is a positive refutation of the claim of the United States and positive evidence of the correctness of Alabama's claim to a six league boundary in the Gulf of Mexico.

CONCLUSION

In his present brief, as lawyers sometimes do, the distinguished Solicitor General refers to the statement in Alabama's brief in the **Texas case,** "As a member of the Union, Alabama therefore has made no claims to boundaries including a maritime belt of more than three nautical miles in width".

This statement is in error. As pointed out in our present brief, before the passage even of the Submerged Lands Act and before **Alabama v. Texas,** Governor Folsom's legal advisor, acting for him, appeared before the committees on the judiciary, who were then considering a Submerged Lands Act. He stated for the Governor, in pertinent part, "Alabama claims a distance under the grant by Spain of six marine

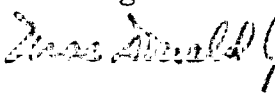
leagues, or about 20 miles, south into the sea from the shore line."

It hardly need be stated that under our Constitution it takes legislative and congressional action to change state boundaries. It cannot be done by a statement in brief.

It is well to note, however, that the brief of the Attorney General of the United States, on which Mr. Rankin also appeared, in **Alabama v. Texas,** devoted a large part to the authority of Congress to give one state more submerged lands than it might give to another. Today he says they all have three miles from coast and no more.

The Congress, a political branch of the Government, with the President's approval, recognized, by the language used in the Submerged Lands Act, that Gulf states may have as much as three marine leagues from the coast in the Gulf of Mexico. It left it to this Court to determine them.

The various descriptions of all the defendant states are such as to give to each three marine leagues from coast. Equitable principles call for no inequality among them.



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