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, DEFENDANTS.

Supplemental Brief of the State of Louisiana in Opposition to Motion for Judgment on Amended Complaint by the United States.

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May it please the Court:

Pursuant to the permission granted by this Court to Louisiana at the conclusion of the oral arguments herein on October 15, 1959, we submit this supplemental brief in the light of the oral arguments of counsel for the United States and the questions propounded by the Court during the arguments. Louisiana appreciates the permission granted.

This supplemental brief is limited to (1) the question of foreign policy with relation to a purported national boundary and State boundaries, (2) State boundaries in the Gulf of Mexico, as fixed by Acts of Congress—the supreme law of the land, and (3) the application of the Submerged Lands Act to the

State's Gulfward boundary as it existed at the time the State became a member of the Union.

I.

The Proper Construction of the Submerged Lands Act Supports a Three League Measurement of the Submerged Lands and Property Rights To Be Enjoyed by Louisiana and No Foreign Policy Question Can Vitiate Such Rights and None Is in Conflict Therewith.

This suit is brought to interpret and apply the provisions of the 1953 Submerged Lands Act, 67 Stat. 29, which granted and confirmed full title to the respective states of all lands which at the effective date of the Act and formerly were lands beneath navigable waters within the seaward boundaries of the states as they existed *at the time* such state became a member of the Union, *or as theretofore approved by the Congress*, extending from the coastline not less than 3 geographical miles and not more than 3 marine leagues into the Gulf of Mexico, the term "coastline" being defined as that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters.

The Submerged Lands Act is a policy declaration by the Congress and the President that the States should have the natural resources from the submerged lands within the specified limits.

Obviously, the Submerged Lands Act which was designed to produce a different effect from that resulting from the California decision (*United States v. California*, 332 U.S. 19) cannot fairly be said to contain within itself an implication that national and international considerations which produced the California decision must be applied to any state claims to submerged lands beyond three miles. On the contrary, the Congress, while uniformly setting the three-mile pattern of ownership of submerged lands and resources for the Atlantic and Pacific Oceans, made two exceptions, one for the States bordering the Great Lakes which receive submerged lands for many, many miles, another for the States on the Gulf of Mexico not more than three marine leagues from coast.

Congress viewed the Submerged Lands Act as a restoration, but whether viewed as a restoration or grant, Congress did define the term "boundaries" in Section 2(b) within which said restoration or grant of submerged lands and resources therein was made to the states as including the seaward boundaries of a state in the Gulf of Mexico as they existed *at the time* such state became a member of the Union, *or as theretofore approved by the Congress*, but in no event as extending from the coast line more than three marine leagues into the Gulf of Mexico. In Section 4 of the Submerged Lands Act Congress further provided that nothing in said section was to be construed as prejudicing the existence of any state's seaward

boundary beyond three geographical miles if it was so provided by its Constitution or laws prior to or at the time such state became a member of the Union, or if theretofore approved by Congress.

The Solicitor General has urged the Court to decide this case under a strained construction, both as to the Submerged Lands Act and as to laws or treaties defining the boundaries of the interested States. It is the view of the defendant states that the Court should construe the applicable laws so as to carry out the purpose and intent of Congress in passing the Submerged Lands Act. Congress declared it to be in the public interest to vest these resources and their management in the states. The intent thus declared is outlined and explained in the committee reports which recommended passage of the Act.

The Senate and House reports both emphasize a purpose to restore to the states possession and control of submerged lands within their historic boundaries as a matter of equity so as to make a fair and just settlement of conflicting claims which had retarded the development of resources of tremendous value and importance to the States and to the Nation.

SENATE REPORT No. 133 at page 24 states this purpose clearly:

> "The committee submits that the enactment of Senate Joint Resolution 13, as amended, is an act of simple justice to each of the 48 states in that it reestablishes in them as a matter of law

that possession and control of the lands beneath navigable waters inside their boundaries which have existed in fact since the beginning of our Nation. It is not a gift; it is a restitution. By this joint resolution the Federal Government is itself doing the equity it expects of its citizens."

Attached to and made a part of Senate Report No. 133 are the reports of prior Committees which likewise emphasize that the purpose of Congress is to restore to the states possession and control over submerged lands within their historic boundaries as a matter of equity and simple justice. In Appendix E of the Senate Report at page 67-68 the equitable principles involved were stated as follows:

> "The evidence shows that the States have in good faith always treated these lands as their property in their sovereign capacities; that the States and their grantees have invested large sums of money in such lands; that the States have received, and anticipate receiving large income from the use thereof, and from taxes thereon; that the bonded indebtedness, school funds, and tax structures of several States are largely dependent upon State ownership of these lands; and that the legislative, executive, and judicial branches of the Federal Government have always considered and acted upon the belief that these lands were the properties of the sovereign States.
>
> * * *
>
> "....The committee believes that, as a matter of policy in this instance, the same equitable prin-

> ciples and high standards that apply between individuals, should be applied by Congress as between the National Government and the sovereign States. (See *Indiana v. Kentucky*, 136 US 479, 500 (1890); *U. S. v. Texas*, 162 US 1, 61, (1896); *New Mexico v. Texas*, 275 US 279 (1927).) Therefore, the committee concludes that in order to avoid injustices to the sovereign States and their grantees, legislative equity can best be done by the enactment of S. 1988."

House Report No. 215 emphatically states that the rights of the States in the Submerged Lands Act are not to be determined on the basis of technical rules but rather on broad principles of equity. We quote from page 47 of the report:

> "The Congress, in the exercise of its policy powers, is not and should not be confined to the same technical rules that bind the courts in their determination of legal rights of litigants. Too many people have acted over too long a period of time under a justifiable and reasonable belief for the Congress to refuse to vest in the States the submerged lands within their boundaries, merely because of the lack of a technical legal consideration moving from the States."

In view of the legislative history concerning the objects and purposes of the Submerged Lands Act and its language, it is quite evident that Congress did not intend to view the questions presented to this Court in a narrow or technical sense. Such a construction will not support the government's position that state

boundaries can only be determined on the basis of foreign policy or international law.

United States v. State of Michigan, 190 U.S. 379, referred to by the Solicitor General in oral argument, does not in the slightest detract from the statements just made. The Court there dealt with whether or not certain statutes relative to a canal put the state in a position of trustee or were intended to give the state a profit. It is from that case which the Solicitor General drew his comment concerning strict construction limiting grants by the United States, but the Solicitor General overlooked the basic statement of the Court which we quote:

> "In the consideration of this case, the controlling thought must, of course, be to arrive at the meaning of the parties, as expressed in the various statutes set forth in the bill. While that meaning is to be sought from the language used, yet its construction need not be of a narrow or technical nature, but, in view of the character of the subject, the language should have its ordinary and usual meaning."

Moreover, the Acts of Admission of the States are not to be considered in the light of grants, but the establishment of member states of our great Union, and in the case of Louisiana, it was the execution of a trust or obligation assumed in the Treaty of Cession of the Louisiana Territory in 1803.

We must and do assume that the Submerged Lands Act was not a purposeful deception of the

Congress and the President, and that it is not to be nullified by application of a national policy said by the Solicitor General to have existed during the years in which these five states came into the Union, though the actions of the government concerning them during those years would convince anyone knowing the record that no foreign policy limiting a national boundary to three miles existed in the Gulf of Mexico then or now.

Re: Foreign Policy

Although it should be accepted as axiomatic that the boundaries of States admitted into the Union by Acts of Congress, under its exclusive authority of Article IV, Section 3 of the U. S. Constitution are controlled by the description of said boundaries, whether landward or seaward, in the Act of Admission, and that the alleged foreign policy of this country is entirely irrelevant and cannot control the extent of state boundaries, we submit that the record absolutely refutes the claims of a 3 mile belt foreign policy or national boundary advocated by the Solicitor General in this case.

The amended complaint of the United States against the States of Louisiana, Texas, Mississippi, Alabama and Florida uniformly alleges that when these states became members of the Union, their boundaries did not extend into the Gulf of Mexico more than 3 geographical miles from the outer limit of inland waters, and the Congress of the United

States has never approved a boundary for said states extending into the Gulf of Mexico more than 3 geographical miles from the outer limits of their inland waters,—all because the Solicitor General says the width of the marginal sea within the jurisdiction of the United States, is controlled by application of the foreign policy of the United States, which since 1793 established a 3 mile national boundary, beyond which no state's maritime boundary may extend.

The government's entire case is based upon this theory.

The voluminous references in argument and briefs by the Solicitor General for the United States in this case is summarized in the statements on alleged foreign policy made in a letter of June 15, 1956 by the late Secretary Dulles to ex-Attorney General Brownell.[1] The principal claims to a 3 mile foreign policy since 1793 there made were based on statements by Thomas Jefferson, as Secretary of State, in his letter to French Minister Genet on November 8, 1793; to Secretary of State Madison's statement in 1807 that there could be no pretext for allowing less than a marine league from shore, that being the narrowest claim of any nation; and to the note addressed by Secretary Seward to the Spanish Minister on December 16, 1862 regarding a 3 mile belt around Cuba.

[1] Appendix B, pages 176 to 180 of Government Brief, filed 1957.

From these, the government wishes the Court to accept its view that the 3 mile limit has remained unchanged from the beginning of our Nation to this day. Mr. Dulles' letter does not support that position for he clearly says that our statesmen kept an open mind on the matter for awhile after the turn of the nineteenth century and nothing in his letter refers to any definite policy of our government regarding the extent of its territorial waters in the Gulf of Mexico.

The record refutes the conclusion which the government seeks to draw from statements made by Jefferson, Madison and Seward as will be shown by the following:

The Jefferson-Genet Letter

A reading of the Jefferson-Genet letter of November 8, 1793 will show that Jefferson actually wrote that the greatest distance extended among nations was upward of 20 miles, and the smallest distance claimed by any nation was "the outmost range of a cannon ball, usually stated at one league;" and that 3 leagues has some authority in its favor; but that the character of our coast did entitle us, "to as broad a margin of protective navigation," as any nation and while not proposing at that time to fix the distance to which the United States may ultimately insist upon the right of protection, the President gave instructions for the present to the distance of one sea league, or three miles from shore.

Jefferson Repudiated 3 Mile Claim

In 1806 Thomas Jefferson, as President, repudiated the above declaration in his letter to Genet as establishing a fixed limit, and he claimed that the limit of neutrality should extend "to the Gulf stream which was a natural boundary (!) and within which we ought not to support any hostility to be committed."[2]

Backing up his Gulf stream claim, President Thomas Jefferson, in his Fifth Annual Message to Congress on December 5, 1805, said:

> "I found it necessary to equip a force to cruse within our own seas, to arrest all vessels of those descriptions found hovering on our coasts within the limits of the Gulf Stream and to bring the offenders in for trial as Pirates." [3]

Madison Claimed To Gulf Stream

Although the late Secretary's letter quotes Secretary of State Madison in 1807, to the effect that there could be no pretext for allowing less to the nation than a marine league from the shore, his letter is silent on Madison's historic letter to Messrs. Monroe and Pinkney, Ministers to London, on May 17, 1806, as follows:

> "In defining the distance protected against belligerent proceedings, it would not, perhaps,

[2] Fulton, The Sovereignty of the Sea, 1911, page 575.

[3] Richardson's Vol. 1. Messages and Papers of the Presidents. 1789-1817, pages 382-388.

be unreasonable, considering the extent of the United States, the shoalness of their coast, and the natural indication furnished by the well defined path of the Gulf stream, to expect an immunity for the space between that limit and the American shore."[4]

The late Secretary's letter does not point out nor does the Solicitor General in his argument or briefs refer to the fact that evidently President Jefferson and Secretary Madison saw to it that their statements regarding the natural Gulf stream limits were adopted by Congress.

1807 Act Of Congress Ratified Gulf Stream Claim

On February 10, 1807, President Thomas Jefferson signed an Act of Congress which authorized the President to cause a survey to be taken of the coasts of the United States, "within 20 leagues of any part of the shores of the United States," and beyond "to the Gulf stream," as in his opinion may be especially subservient to the commercial interests of the United States.[5]

In connection with the 20 league coastline authorization by Congress, it should be pointed out that Thomas Jefferson was one of the five ministers appointed by Congress to make and sign the treaty with

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[4] Masterson, Jurisdiction in Marginal Seas, p. 254.

[5] Laws of the U.S.A. Vol. 4, 1789-1815, pp. 79-80.

the British Crown which concluded the Revolutionary War in 1783.[6]

The Congress, by resolution adopted August 4, 1779,[7] had instructed our ministers negotiating for said treaty to insist on the 20 league boundary as an "ultimatum." Article 2 of the treaty fixed the Atlantic coastal States' boundary at 20 leagues from shore and also fixed the original states' boundaries on the Great Lakes where they exist today, many, many times more than 3 miles to the international boundary with Canada.

This Court had occasion to refer approvingly to those boundaries in *Johnson v. McIntosh*, (1823).[8]

The statement attributed to Madison as Secretary of State in 1807 that the least that could be allowed the United States was a marine league from shore, although meaningless from the standpoint of establishing any 3 mile belt, is certainly negatived by the fact that it was the same James Madison, who as President, approved the Act of Congress on April 8, 1812, which admitted Louisiana as a State into the Union and fixed its maritime boundary at 3 leagues from coast in the Gulf of Mexico.

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[6] General Records of the U. S. Govt. (R. G. 11) Papers of the Continental Congress, Item 25-Vol. 1.

[7] Ibid, R. G. 11, Treaty Series No. 102.

[8] 8 Wheat. 543, 584.

Now, those are the facts of record which absolutely refute the claim made by the government, that Jefferson and Madison in effect originated the 3 mile belt from shore foreign policy, which supposedly resulted in a 3 mile maritime national boundary.

Further, the late Secretary Dulles' letter attributes to Secretary of State Seward a position supposedly illustrating his advocacy of the 3-mile belt principle, in a letter to the Spanish Minister in 1862, involved in diplomatic exchanges between Britain and Spain, over Spain's 6 mile maritime claim,—at the same time Britain exercised maritime jurisdiction from 2 leagues to 100 leagues under various Acts of Parliament, affecting different British possessions and colonies. Spain adhered to its 6 mile claim.[9]

Secretary Seward Negotiated Alaska Treaty 10 Leagues From Coast (Not 3 Miles)

To the contrary, however, it was Secretary Seward who negotiated the Treaty with Russia for the purchase of the Alaska Territory on June 20, 1867,[10] which fixed the Alaska Territory maritime boundary out to "10 marine leagues from the coast", and which was ratified by the U. S. Senate.

No Treaty Ever Fixed 3-Mile Belt

It is admitted that there have been numberless diplomatic exchanges, commercial conventions and

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[9] Masterson, ibid., pp. 256, 288-289.

[10] 15 Stat. 539.

treaties and the like, but none of these ever purported to fix the territorial limits of the United States at 3 miles from shore.

Those diplomatic exchanges were merely expressions of "firm intention to uphold the principle that 3 marine miles constitute the proper limits of territorial waters".[11]

In view of all these inaccuracies made in support of a 3 mile belt foreign policy claim, how can the Court consider it as evidence of anything relating to maritime boundaries?

This Court Rejected 3-Mile Belt

In 1804,[12] regarding the claim that the maritime boundary extended only to the cannon shot, or 3-mile belt, this Court said:

> "Indeed the right given to our revenue cutters, to visit vessels four leagues from our coast, is a declaration that in the opinion of the American Government, *no such principle as that contended for has a real existence*". (Our emphasis)

This decision was based on a 1790 Act of Congress, R.S. 2867 and 2868.

And, in 1818,[13] this Court held:

> "What, then, is the extent of jurisdiction which a State possesses?

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[11] Masterson, ibid., pp. 346, 352, 395, Foot-note 54.

[12] *Church v. Hubbart,* 2 Cranch 187, 284.

[13] *U. S. v. Bevans,* 3 Wheat 386, 385.

"We answer, without hesitation, *the jurisdiction of a State is co-extensive with its territory; co-extensive with its legislative power.*" (Our emphasis)

In 1892,[14] this Court held that in questions respecting the boundaries of nations, more political than legal, the Courts of every country must respect the pronounced will of the legislature, (Citing *Foster v. Neilson*, 2 Pet. 253, 307, 309.) and that in questions of boundaries arising between the general government and one of the states composing the Union, *the correct decision of such boundary depended upon the constitution, laws and treaties of the United States.*

II.

Congress Rejected Three Mile Belt and Adopted Three Leagues from Coast in the Gulf.

In Secretary Dulles' letter, used as "evidence" in this case (Appendix B, pp. 342-346 of Plaintiff's brief) filed May 1958, he said:

"When the Submerged Lands Act was under consideration in Congress, the Department of State testified before the Senate Committee on Interior and Insular Affairs on the foreign relations aspects of the proposed legislation, including the extent of the territorial waters of the United States. The Department testified that the United States had traditionally supported the three-mile limit, that is, a breadth of territorial

[14] *United States v. Texas*, 143 U.S. 621.

waters of three nautical miles measured from low water mark on the shore. (See Hearings on S. J. Res. 13 and other bills before the Committee on Interior and Insular Affairs, United States Senate, 83rd Congress, 1st Session, February 16-27, March 2-4, 1953, p. 1051.)

"This position is supported by a long line of court decisions, treaties and statements of the Executive going back as far as 1793, when this Government first had to face the question of the breadth of territorial waters."

During congressional hearings on the Submerged Lands Act, the U. S. Attorney General and Deputy Legal Adviser to the State Department testified, and made the same claims for a 3 mile from shore foreign policy and national maritime boundary, *as they make again in this case, but Congress rejected them flatly.*

Here is some of the evidence from the record of those hearings before the Senate Interior Committee, in March, 1953, at pages noted: (all italics added for emphasis)

While Attorney General Brownell was testifying, he was questioned at length on this subject, as follows:

At p. 931:

"**Attorney General Brownell.** The traditional 3-mile limit would be an accurate description."

"**Senator Anderson.** It is very important that we know *out from what.* Out from *the coastline or the shoreline?* The Holland bill says the coast."

At p. 932:

"**Attorney General Brownell.** The general description *we would use* is *the shoreline.*"

"**Senator Anderson.** Shoreline. *You recognize that that is completely different from the language in the Holland bill* and the Daniel Bill?"

"**Attorney General Brownell.** I believe *you are correct* in that statement."

At p. 933:

"**Senator Anderson.** I could not agree with you more, General Brownell, and I think if somebody came in with a line drawn that *3 miles from the shore, it might be one thing;* but *3 miles from the coast,* if the coast is nebulous and reaches out *to the farthermost edge of the farthermost reef,* it is quite a problem as to where it is going to be."

"**Attorney General Brownell.** I *agree with that.*"

At p. 939:

"**Senator Long.** There has been some *question raised* with regard to *whether* you should *use a shoreline definition or a coastline definition* . . . . . You would have a boundary between inland waters and the marginal belt; and, based upon that, if there were to be a 3-mile limit, it would have to measure forward from *the boundary of inland waters, which is the distinction which is made between the word 'coast' and the word 'shoreline.' The word 'coast' means to*

measure from the boundary line of inland waters, while the word 'shoreline' means to measure from the shore itself . . . . I would point out to you that, *with regard to the State of Louisiana,* the Enabling Act that brought the State in refers to the southern *boundary as 'extending to the said gulf* to the place of beginning, including all islands *within 3 leagues of the coast.'* "

"*Congress cannot very well apply a shoreline definition to Louisiana after it has already fixed its boundary as a coast line, can it?*"

"**Attorney General Brownell.** We would want to give that a little study, Senator, before we answer that particular point."

At p. 947:

"**Senator Kuchel.** * * * *When you suggested the 'shoreline'* be used as the basis for any congressional description, you would of course *exclude* from your use of the word 'shoreline' *any inland waters along any coastal State involved.*"

"**Attorney General Brownell.** *That is right.*"

"**Senator Kuchel.** The reason I ask that question is that the bill introduced by the Senator from Florida defines the term 'coastline' as meaning the line of ordinary low water along that portion of the coast which is in direct contact with the open sea, and is a line marking the seaward limit of inland waters, which includes all estuaries, ports, harbors, bays, channels, straits, historic bays and sounds, and all other bodies of water which joins the open seas."

At page 948:

> "In either of those instances would you object if these bills failed to describe in metes and bounds the lands that the congress is concerning itself with and used language generally as the Holland bill does?"
>
> "**Attorney General Brownell.** We certainly could not object to that. *That is a matter of congressional policy.* We only make our suggestion for the purpose of certainty."

The State Department was represented by its Deputy Legal Adviser, Mr. Tate, before the Senate Interior Committee.

He made the same broad and unfounded statements that the federal government's claim as to territorial waters always has been 3 miles from shore, —and he added, "This position has never been changed."[15]

When asked if Congress recognized a coastal state's seaward boundary at more than 3 miles from shore, would that constitute a departure from established historic positions of the United States with respect to outer limits of territorial waters of the United States, and Mr. Tate answered, most positively (and most incorrectly), as follows:

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[15] Report of said hearings, pp. 1052, 1053, 1056, 1065.

At page 1065:

"**Mr. Tate.** As I said before, it would be inconsistent with the traditional claim of the United States."

"**Senator Jackson.** The claims that this country has maintained ever since Thomas Jefferson was Secretary of State?"

"**Mr. Tate.** That is right."

So, when Congress finally enacted the Submerged Lands Act, and granted and confirmed full title in the respective States of all lands which at the time the State entered the Union and at the time of the passage of the Act were submerged lands within the Seaward or Gulfward boundaries of the State as they existed at the time such State became a member of the Union, extending from the coast line up to three marine leagues into the Gulf of Mexico, and when that Act was signed and approved by the President, the Congress and President rejected the so-called traditional 3 mile belt foreign policy or national boundary theory urged by the State Department and the Attorney General of the United States.

So, we submit that there is no basis or foundation in fact for a so-called 3 mile belt foreign policy restricting State boundaries, and that we should look solely and only to the Acts of Congress which admitted

the States into the Union for the extent of their Seaward or Gulfward boundaries.

III.

All Five States' Gulfward Boundaries Fixed at Three Leagues or More.

The United States Constitution, Article 4, Section 3, gives to Congress alone the authority to admit new states into the Union and to fix their boundaries. Article 6 also provides that all provisions of the Constitution and all laws enacted by Congress pursuant thereto, as well as treaties made by the United States, shall be the *supreme law of the land.*

The Acts of Congress, therefore, which admitted the five Gulf coastal States as members of the Union and described their limits and boundaries, are *the supreme law of the land.* The Solicitor General for the United States cannot point to any treaty affecting the gulfward boundaries of these States, which might serve to complicate the issue.

If foreign policy has anything to do with the extent of a State's boundary, then most certainly these Acts of Congress, approved by the President, established that foreign policy for this Gulf Coast area.

Louisiana, Three Leagues from Coast

Louisiana was the first Gulf Coastal State admitted by Act of Congress on April 8, 1812,[16] which

[16] 2 Stat. 701.

described the State's boundary the same as in the enabling act on February 20, 1811,[17] which authorized the people of the territory of Orleans to adopt a constitution to establish a state government, and the same as in the State's 1812 constitution, which was approved by the Act of Congress which admitted Louisiana as a State in the Union, within certain specified limits including "all that part of the territory or country ceded under the name of Louisana" by the treaty made in Paris on April 30, 1803 "contained within the following limits, that is to say:—Beginning at the mouth of the River Sabine, thence by a line to be drawn along the middle of said river, including all islands to the thirty-second degree of latitude, *** to the Gulf of Mexico; thence bounded by the said Gulf, to the place of beginning, including all islands within 3 leagues of the coast."

In *Louisiana v. Mississippi*, 202 U.S. 1, this Court quoted the above boundary description and held "Map of diagram No. 1 given in the opening statement shows the *limits* as thus defined."

We have attached at the end of this brief a copy of Diagram I, showing an unbroken line three leagues from coast in the Gulf of Mexico.

Those *limits* include all islands eastward of the middle of the River Sabine to the thirty-second degree latitude and also all islands within three leagues of the coast in the Gulf of Mexico.

[17] 2 Stat. 641.

However, the reference to the inclusion of islands within the limits of the state, whether in the east half of the River Sabine or within three leagues of the Gulf coast, should not confuse one's thinking with the fact that by boundary description in the Congressional Enabling Act of 1811, the 1812 Louisiana Constitution, and again in the Congressional Act of Admission of April 8, 1812, the purpose was to fix the territorial limits of the State of Louisiana, both landward and seaward and to include all islands within said limits. Therefore, the limits described in those three instruments must be accepted as having contained all that part of the Louisiana territory ceded by France beginning at the mouth of the River Sabine thence a line to be drawn along the middle of said river, to the thirty-second degree of latitude, etc., to the River Mississippi, thence down said river to the Gulf of Mexico; thence bounded by the said Gulf to the place of beginning within three leagues of the Coast.

This three league boundary in the Gulf to the "Place of beginning" which is given as the mouth of the River Sabine established the corner recognized by the United States and Spain in the 1819 treaty, reaffirmed with Mexico in 1828, and again with the Republic of Texas in 1838, and became the basis for the Treaty of Guadalupe Hidalgo in 1848.

That was Louisiana's gulfward boundary as it existed *at the time* the State entered the Union.

Mississippi, 6 Leagues from Shore in Gulf of Mexico

The Enabling Act of Congress of March 1, 1817,[18] authorized the inhabitants of the western part of the Mississippi territory to form a constitution and state government.

The 1817 Mississippi Constitution, adopted pursuant to said Enabling Act described Mississippi's boundaries as follows: "Beginning in the Mississippi River (meaning thereby the center of said river or thread of the stream)," then following certain courses, "thence on a direct line to a point ten miles east of Pascagoula River on the Gulf of Mexico, thence westwardly, *including all the islands* within six leagues of the shore, to the most eastern junction of the Pearl River with Lake Bourgne;" then following certain courses, "thence up the middle of the Mississippi River or thread of the stream, to the place of beginning, *including all islands lying east of the thread of the stream of said river.*"

Again, reference to the inclusion of all islands east of the thread of the Mississippi River and within six leagues of the shore in the Gulf of Mexico, did not affect the exterior boundaries of the State of Mississippi as being either the middle thread of said river or six leagues from shore in the Gulf of Mexico.

The 1817 Mississippi State Constitution, including said boundary description, was approved by the

[18] 3 Stat. 348.

Act of Admission by Congress on December 10, 1817.[19] Therefore Mississippi's gulfward boundary as it existed *at the time* the state entered the Union was six leagues from shore.

Alabama, 6 Leagues from Shore in Gulf of Mexico

The Enabling Act of Congress of March 2, 1819,[20] authorized the inhabitants of the territory of Alabama to form a constitution and state government, the said state to consist of "all the territory included within the following boundaries, to-wit: "Beginning at the point where the thirty-first degree of north latitude intersects the Perdido River"; then following certain courses, "thence, due south, to the Gulf of Mexico thence, eastwardly, *including all islands* within six leagues of the shore, to the Perdido River; and thence, up the same to the beginning."

The same boundary description was included in the Act of Congress of March 3, 1817,[21] creating the Alabama territory, in the original Alabama Constitution which was approved by Congress in its Act of Admission of Alabama as a state into the Union on December 14, 1819,[22] and in the 1868 Alabama Constitution approved by Congress on June 25, 1868.[23]

[19] 3 Stat. 472.

[20] 3 Stat. 489.

[21] 3 Stat. 371.

[22] 3 Stat. 608.

[23] 15 Stat. 73.

Again, reference to the inclusion of all islands did not defeat the purpose of these instruments in describing the outer limits or boundaries of the State of Alabama, as they existed *at the time* the State entered the Union, and as heretofore approved by Congress in 1868, within six leagues from shore in the Gulf of Mexico.

Florida, at least 3 Leagues in Gulf of Mexico

By Act of March 30, 1822,[24] Congress created the territory of Florida, and by Act of March 3, 1845,[25] Congress admitted the State of Florida into the Union, and in each Act described the Florida boundaries as embracing "the territories of East and West Florida, which, by the Treaty of Amity, settlement and limits between the United States and Spain, on the 22nd day of February, 1819,[26] was ceded to the United States."

The historic boundaries of East and West Florida territories were established by proclamation of the British Crown on October 7, 1763,[27] at six leagues from coast,—(recognized by this Court in *Harcourt v. Gaillard*, 1827, 12 Wheat. 523), after acquisition thereof from Spain by Treaty of Cession on February

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[24] Thorpe, Charters and Constitutions, Vol. 2, p. 657.

[25] ibid., p. 678.

[26] 8 Stat. 252-73.

[27] Commanger, Documents of American History, 5th Ed. 47.

10, 1763,[28] and the same was retroceded by Britain to Spain, January 20, 1783.[29]

The East and West Florida territories were ceded by Spain to the United States to the same extent, in 1819,[30] and to the same extent included in the Florida state boundaries fixed by reference by Congress in its Act of Admission in 1845, at six leagues from coast in the Gulf of Mexico, at the time Florida entered the Union.

In 1868 Florida adopted a State Constitution, in which the State's Gulfward boundary was described as three leagues from land in the Gulf of Mexico, which was approved by Congress the same year.

So, Congress fixed the Florida State boundary at the time it became a member of the Union, and heretofore, in 1868, approved its Constitution which described its gulfward boundary, each time a distance at least three leagues into the Gulf of Mexico.

We think it is quite clear that the action of Florida in naming a three league boundary was in recognition of the fact that the Louisiana boundary and the Texas boundary had been set at three leagues by the Congress and that the Treaty of Guadalupe Hidalgo so clearly set a national boundary of three leagues in the Gulf of Mexico. We think that the approval

[28] American History Leaflets, No. 5, Sept. 1892, by A. Lovell & Co., N.Y.

[29] White's Recopilacion, Vol. 2, p. 298.

[30] Thorpe, ibid., p. 678.

of the Constitution of the State of Florida by the Congress in 1868 stands for Congressional approval of that concept rather than a specific enlargement of the boundaries of Florida alone, and we think the statements of Attorney General Erwin to the Court corroborated our view, for he said at the conclusion of his argument that the three league boundary in the Florida Constitution was a recognition of what was believed to be the national boundary in the Gulf.

Florida clearly has a three league boundary, not because it claimed more in returning its representatives to Congress than it had before (an unlikely result) but because it at all times enjoyed so much.

Texas Boundary 3 Leagues into Gulf of Mexico

By Act of December 29, 1845,[31] Congress admitted Texas as a State into the Union to the extent of its territory properly included within the Republic of Texas.

The boundaries of the Republic of Texas had been fixed by its Congress on December 19, 1836,[32] and existed at the time it entered the Union as extending from "the mouth of the Sabine River, and running West along the Gulf of Mexico three leagues from land to the mouth of the Rio Grande."

In this connection we ask the Court to note that Attorney General Wilson of Texas has said that ne-

[31] 9 Stat. 108.

[32] 1 Laws, Republic of Texas 133; 1 Gammel's Laws 1193.

cessarily the Republic of Texas in establishing its boundary took note of what had been done previously by the United States and Spain, and by the United States in admitting Louisiana, and construed the two together to mean that the United States had established for itself and Louisiana a three league boundary at the mouth of the Sabine River.

Nothing has been pointed to as evidence by the Solicitor General, nor can any showing be made that the 3 league gulfward boundary of the State of Texas was ever adjusted or modified by any act of the United States government under the reservation made in the Act as Annexation of Texas by Congress of March 1, 1845.[33]

To the contrary, the Guadalupe Hidalgo Treaty of 1848[34] confirmed this 3 league boundary line by making the same the international boundary with Mexico, adjoining the same Texas Gulfward boundary.

IV.

Supreme Law of the Land.

The above acts of Congress, admitting the five gulf coastal states, defendants, were enacted by Congress pursuant to express grant of authority by Article IV, Section 3 of the United States Constitution. Under Article VI of the Constitution, these Acts of

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[33] 5 Stat. 797.

[34] 9 Stat. 922.

Congress and the Treaty of Guadalupe Hidalgo are *the supreme law of the land.*

Counsel for the United States must admit, as his failure to produce any evidence to the contrary attests, that no treaty has ever been entered into by the United States which, in any manner, can be construed as compromising any of these state boundaries.

Diplomatic exchanges expressing intention to uphold the principle that three marine miles constitute the proper limits of territorial waters, no matter how often repeated and by whom, cannot supersede the supreme law of the land.

CONCLUSION

All along the shore of Louisiana the waters are so very shallow that sea going vessels cannot use them. This prevailed at the time Louisiana became a state. These waters are termed inland waters because of their character. Our coast begins where these inland waters meet the sea which has been and is recognized by all of the agencies of our government concerned with this matter. Recognition of this simple geographic fact imports fully with the definition used in the Submerged Lands Act and conforms also to the use of coast in the Act of Admission.

The term "coast line" is defined in Section 2(c) as being the line marking the seaward limit of inland waters. The report of the Committee on the Judiciary of the House of Representatives, House Report No.

215, which accompanied H. R. 4198, enacted as the Submerged Lands Act, explained (page 4) that the term "coast line" included ports, bays, channels, sounds and other bodies of water which join the open sea.

Similarly the Senate Committee on Interior and Insular Affairs reported that the term "coast line" meant the seaward limit of inland waters, which included ports, harbors, bays, etc. which joined the open sea and that the definition of "coast line" as carried in the Submerged Lands Act neither added nor took away anything a state had in the way of a coast and the lands underneath waters behind it (page 18, Senate Report No. 133).

In any event a consideration of this question is not necessary for determination of the issues in this case,—because the Submerged Lands Act, Section 2(b), specifically defines the term "boundaries" as including the seaward boundaries of states in the Gulf of Mexico as they existed at the time such state became a member of the union or as heretofore approved by Congress, but in no event to be interpreted as extending *from the coast line* more than three marine leagues into the Gulf of Mexico.

Therefore, we submit that as a matter of law the only judgment or decree which can be rendered in favor of the gulf coastal states for a recognition of their right to the submerged lands and resources therein within a certain distance out from their coast line, depends upon the extent of the state's boundary into the Gulf of Mexico at the time the state entered the union, or as heretofore approved by the Congress.

In the case of Louisiana, as shown above, the enabling act of Congress, the original 1812 Louisiana Constitution, approved by the Congressional Act of Admission of April 8, 1812, all fixed Louisiana's gulfward boundary at *three leagues from coast* in the Gulf of Mexico.

Therefore, we submit that the only judgment which can be rendered in this case according to law, insofar as the defendant State of Louisiana is concerned, is a decree that Louisiana's gulfward boundary as it existed at the time this state entered the union was three leagues from coast in the Gulf of Mexico and that the State of Louisiana is entitled to all lands and the natural resources within such lands and waters which at the time the state entered the union, and at the time of the effective date of the Submerged Lands Act were submerged lands within such gulfward boundaries of the State of Louisiana.

Respectfully submitted,

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PROOF OF SERVICE

I, Jack P. F. Gremillion, Attorney General of the State of Louisiana, one of the attorneys for said state, a defendant herein, and a member of the Bar of the Supreme Court of the United States, certify that I have served the required number of copies of the foregoing Supplemental Brief of the State of Louisiana in Opposition to Motion for Judgment on Amended Complaint, by mailing said copies to the Attorney General and the Solicitor General of the United States, respectively, addressed to them at their offices in the Department of Justice Building, Washington, D. C. Said copies have been sent, via Air Mail, postage prepaid, on October ____, 1959.

Of Counsel

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