

IN THE
Supreme Court of the United States

Supreme Court, U.S.

FILED

DEC 20 1971

E. ROBERT SEAVER, CLERK

October Term, 1971

No. 52, Original

UNITED STATES OF AMERICA,
Plaintiff

v.

STATE OF FLORIDA,
Defendant

**REPORT OF THE SPECIAL MASTER UPON
THE MOTION BY THE UNITED STATES TO
DISMISS THE COUNTERCLAIM AND DENY
THE DEMAND FOR JURY TRIAL FILED
BY THE STATE OF FLORIDA**

November 30, 1971

ALBERT B. MARIS
Special Master

IN THE
Supreme Court of the United States

October Term, 1971

No. 52, Original

UNITED STATES OF AMERICA,
Plaintiff

v.

STATE OF FLORIDA,
Defendant

**REPORT OF THE SPECIAL MASTER UPON
THE MOTION BY THE UNITED STATES TO
DISMISS THE COUNTERCLAIM AND DENY
THE DEMAND FOR JURY TRIAL FILED
BY THE STATE OF FLORIDA**

TO THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE
SUPREME COURT OF THE UNITED STATES:

Pursuant to the order of the Court entered June 28, 1971, 403 U.S. 949, your special master submits the following report with respect to the motion filed by the United States to dismiss the counterclaim and deny the demand for a jury trial filed by the State of Florida, which motion was referred to me by that order.

The complaint, which was filed by the United States in No. 35, Original, against the States of Maine, New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia and Florida alleged that the United States is entitled, to the exclusion of the defendant States, to exercise sovereign rights over the seabed and subsoil underlying the Atlantic Ocean, including the Straits of Florida, lying more than three geographical miles from the ordinary low water mark or from the outer limit of inland waters on the coast (within which coastal area the United States had transferred its rights to the States by the Submerged Lands Act, 67 Stat. 29, 43 U.S.C. §§1301 et seq.) seaward to the limits of the Continental Shelf for the purpose of exploring the area and exploiting its natural resources. The complaint asserted that the defendant States, including the State of Florida, claim rights in the seabed and subsoil of the Continental Shelf beyond the outer limits of the areas granted them by the Submerged Lands Act. A separate cause of action was asserted against each defendant State and a declaratory decree and order for accounting were sought.

The State of Florida filed an answer and on February 4, 1971 an amended answer. The latter contains a counterclaim for damages and a demand for a jury trial on the counterclaim. By its amended answer Florida denies the claim of the United States to rights in the seabed and subsoil of the Continental Shelf and sets up two affirmative defenses, one to a portion of the claim of the United States and the other to the whole of it. The first is that the Straits of Florida are an arm of the Gulf of Mexico, that the Florida Keys are in the Gulf of Mexico, and that Florida is entitled to a southern seaward boundary of three marine leagues from its coastline wherever located in this area. Florida's other and principal affirmative defense is that by the Act of June 25, 1868, 15 Stat. 73, Congress approved the marine boundaries of the State and granted to Florida whatever interest the United States possessed in the maritime terri-

tory within those boundaries, which boundaries, Florida asserts, run more than three geographical miles seaward from its coast in part of the Atlantic Ocean.

By the counterclaim which it included in its amended answer, Florida repeats its averments that Congress by the Act of 1868 granted to the State the submerged lands within the marine boundaries specified in its constitution and thereby vested title to at least 509,224 acres of submerged lands in the Atlantic Ocean. The counterclaim then asserts that "By now denying said title of the State of Florida, the United States of America is seeking to take said property without just compensation" and it asks for damages from the United States in excess of \$51,000,000 and demands a trial by jury on the claim.

Thereafter, the United States filed a motion to dismiss the counterclaim on the ground that it represents a suit against the United States to which it has not consented and that, in any event, it fails to state a claim for which relief can be granted. The motion also seeks denial of the demand for jury trial on the ground that Florida is not a "citizen" and its counterclaim is not an "action at law" within the meaning of 28 U.S.C. §1872. In its memorandum filed in opposition to the motion to dismiss the counterclaim, Florida seeks to broaden the basis for its counterclaim by asserting that the United States "seemingly contends that the Submerged Lands Act limits" to three geographic miles the larger area of seabed in the Atlantic Ocean which allegedly had been granted to it by the Act of 1868, and that the subsequent enactment of the Submerged Lands Act, therefore, constituted a taking of its property for which it is entitled to just compensation.

On joint motion of the United States and the State of Florida and upon the report of your special master the Court by the orders of June 28, 1971, 403 U.S. 949, 950, severed the cause of action asserted by the United States against the State of Florida from its causes of action against the other twelve Atlantic seaboard States in No. 35, Original, for all purposes and consolidated that cause of action

with the remaining proceedings with respect to the State of Florida in the case of United States v. Louisiana, Texas, Mississippi, Alabama and Florida, No. 9, Original, the severed and consolidated case to be known as United States of America v. State of Florida, No. 52, Original.

The motion of the United States came on for hearing before me on October 22, 1971. In a reply memorandum filed for the United States, the Solicitor General asserts that "we have never contended that the Submerged Lands Act took anything away from any State. The Act was a grant, not a taking. If, contrary to our belief, Florida had seabed rights beyond three miles before the Act, the Act did not diminish them, and they presumably will be recognized by the judgment in this case." At the hearing counsel for the United States stated that the United States adhered to that view and would, in this case, continue to adhere to it. In view of the position of the United States as thus stated, counsel for the State of Florida conceded that the counterclaim filed by that State was without legal basis and that it might, therefore, be dismissed. Counsel also stated that Florida did not desire to press its demand for a jury trial, which demand falls, in any event, with the dismissal of the counterclaim to which it was directed.

Your special master accordingly recommends that an order be entered dismissing the counterclaim of the State of Florida filed February 4, 1971 and denying the demand of the State of Florida for a trial thereof by jury.

Respectfully submitted,

ALBERT B. MARIS
Special Master

November 30, 1971

