FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

54 ORIG
NO.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATES OF FLORIDA AND TEXAS,

Defendants.

BRIEF IN OPPOSITION TO THE
MOTION FOR LEAVE TO FILE COMPLAINT

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Tallahassee, Florida 32304

I N D E X

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INTRODUCTORY STATEMENT

The Plaintiff, United States, has filed a Motion for Leave to File Complaint, Complaint, and Brief in Support of Motion in the above styled action. The Complaint asserts that neither Florida nor Texas has ever had any right to control fishing by foreign vessels in the sea more than three miles from the coastline. Plaintiff seeks a decree declaring neither Florida nor Texas has the right to control fishing by vessels of foreign nations outside the three-mile limit.

Florida herewith resists the motion and asks the Court not to allow the filing of the Complaint. As grounds therefore the State of Florida asserts that the issue was decided previously by the Court and that nothing subsequent to that decision has changed the relationships of the parties.

BRIEF IN OPPOSITION TO THE MOTION

The Controversy in United States v. Florida, 363 U.S. 121 (1960)

involved the interests of Florida, along with the interests of all four other Gulf States "in the submerged lands off their shores.... All the claims arise and are decided under the Submerged Lands Act of 1953." 363 U.S. 121.

> The Act granted to all coastal States the lands and resources under navigable waters extending three geographical miles seaward from their coastlines. In addition to the three miles, the five Gulf States were granted the submerged lands as far out as each State's boundary line either "as it existed at the time such State became a member of the Union," or as previously "approved by Congress," even though that boundary extended further than three geographical miles seaward. But in no event was any State to have "more than three marine leagues into the Gulf of Mexico." Emphasis added; quotations supplied by the Court. 363 U.S. 122.

After considerable debate, the Court in language as clear as can be found anywhere held in favor of Florida and against the United States:

> We hold that the Submerged Lands Act grants Florida a three-marine-league belt of land under the Gulf, seaward from its coastline, as described in Florida's 1868 Constitution.

It is obvious from the concurring opinion that the broad brush grant of Mr. Justice Black, who wrote the opinion of the Court, did not go unnoticed. Mr. Justice Frankfurter wrote that he did not think the Act made "an outright grant to any of the Gulf States in excess of three miles." But his objection was only in how the conclusion was reached: "I sustain Florida's claim because I find that its boundary was so approved [when Congress restored Florida to full participation in the Union]" 363 U.S. 131.

The language of the case then is clear - the grant was absolute. If the grant is subject to any qualification at all, it must still be at least as extensive as the Act of 1953. The rights granted in the Act are equally clear and understandable:

> "(a) It is hereby determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable waters within the

boundaries of the respective States, and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law be, and they are subject to the provisions hereof, recognized, confirmed, established, and vested in and assigned to the respective States or the persons who were on June 5, 1950, entitled thereto under the law of the respective States in which the land is located, and the respective grantees, lessees, or successors in interest thereof;

(b) (1) The United States releases and relinquishes unto said States and persons aforesaid, except as otherwise reserved herein, all right, title, and interest of the United States, if any it has, in and to all said lands, improvements, and natural resources; (2) the United States releases and relinquishes all claims of the United States, if any it has, for money or damages arising out of any operations of said States or persons pursuant to State authority upon or within said lands and navigable waters..." Emphasis added, 43 U.S.C. §1311.

The clear import of this statute militates against Plaintiff's allegation that fishing of foreign vessels outside the three-mile limit but within the three-league grant. So long as control is exercised no more than three leagues from the coastline such control is permitted. (Three marine leagues is equivalent to nine marine, nautical or geographic miles or approximately ten and one half land, statute or English miles.)

To grant the United States declaratory relief as prayed in its complaint that this State has no right to regulate foreign fishing vessels beyond the three mile limit but within the historic boundaries granted to Florida by the Act of June 25, 1868, 15 Statutes 73 and by the Submerged Lands Act would be to emasculate the force and effect of that Act and the decision in United States v. Florida, supra.

The apparent distinction Plaintiff suggests, that Florida has a right to control domestic fishing but not foreign fishing is untenable. If Florida has the "ownership" of the "natural resources within such lands and waters" as given in the Submerged Lands Act, does that not carry with it the power to protect that ownership? It is basic universal law requiring no citation of authority that with ownership comes the power of

dominion and control.

The whole argument of Plaintiff is geared around the allegation that the United States has never claimed full jurisdictional rights in excess of the three-mile limit. It is the contention of Florida that such a conclusion is justified neither in light of the United States v. Florida case, in light of the Submerged Lands Act, nor in light of the Federal Fisheries Act, Title 16 U.S.C., Section 1081.

The United States relies improvidently upon 16 U.S.C. 1094:

> Nothing in this Act shall be construed as extending the jurisdiction of the States to the natural resources beneath and in the waters within the fisheries zone established by this Act or as diminishing their jurisdiction to such resources beneath and in the waters of the territorial seas of the United States.

Emphasis is upon the following language, "Nothing in this Act shall be construed ... as diminishing their [the State's] jurisdiction to such resources beneath and in the waters of the territorial seas of the United States."

The territorial sea of the United States for purposes of the Federal Fisheries Act of 1966 is extended to twelve (12) miles. Title 16 U.S.C., Section 1092. In accordance with the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, the fishing must be in control of its territorial sea:

> "Passage of foreign fishing vessels shall not be considered innocent if they do not observe such laws and regulations as the coastal state may make and publish in order to prevent these vessels from fishing in the territorial sea." Emphasis added. 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, Part I, Territorial Sea, Section III (a), Article 14 (5).

Thus, fishing can be controlled within the territorial sea. The United States has chosen to so regulate fishing by foreign vessels to twelve (12) miles. The delegation of this power within such area under the Submerged Lands Act to a State of the nation is purely a matter of municipal law. Accordingly, the State of Florida is not usurping the prerogative of the United States to control international relations or affairs, since the United States has chosen to regulate fishing of foreign nationals and domestics

up to twelve (12) miles. Therefore, in order to do so, it must have extended its territorial sea.

CONCLUSION

If the territorial sea has been extended to twelve (12) miles, (Federal Fisheries Act) the jurisdiction of any state of the nation to regulate the natural resources is not diminished as to any waters within the territorial sea of the United States (16 U.S.C. 1094, cited supra), and the Submerged Lands Act of 1953 grants the State of Florida full jurisdiction at least to three marine leagues, then Florida's right to regulate fishing within this three league belt of vessels foreign or domestic, is not diminished by the Federal Fisheries Act or otherwise is not a proper question for the inquiry of this Court.

Wherefore, for the reasons stated, the Motion for Leave to File Complaint should not be granted.

Respectfully submitted,

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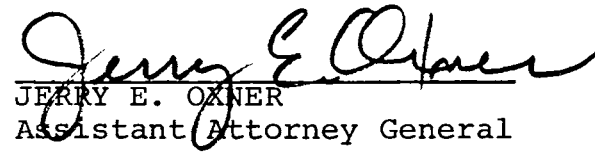

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22 day of February, 1972, a copy of this Brief in Opposition to the Motion for Leave to File Complaint was mailed, postage prepaid, to Honorable John N. Mitchell, Attorney General of the United States, and Honorable Erwin N. Griswold, Solicitor General of the United States, Department of Justice, Washington, D. C. 20530.

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