

No. 54, Original

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In the Supreme Court of the United States

OCTOBER TERM, 1971

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATES OF FLORIDA AND TEXAS

**MEMORANDUM FOR THE UNITED STATES IN
OPPOSITION TO THE MOTIONS BY THE STATE
OF TEXAS FOR SEVERANCE AND APPOINTMENT
OF A SPECIAL MASTER**

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INTRODUCTION

The United States initiated this litigation to establish that the defendant States have no rights to exercise jurisdiction or control over fishing by foreign vessels and their crews more than three geographical miles from the coastline of the United States. On March 20, 1972, this Court granted the motion for leave to file the complaint and directed the States to answer. In addition to submitting an answer, Texas has moved for severance and for the appointment of a special master. The United States opposes these motions.

In brief, we submit that this dispute involves no issues of fact and presents a legal issue which can appropriately be resolved by this Court without the aid of a special master. Since our claims against the two States involve only a common legal issue, there is no occasion for severance. We are preparing a motion for judgment on the pleadings which will present, in more detail, our contention that this action can appropriately be resolved without the need for evidentiary hearings. The Court may wish to defer action on Texas' motions until receipt of our motion and the responses of the defendants.

ARGUMENT

I. No Special Master is Required

In their answers to our complaint, both Florida and Texas assert that their rights to regulate fishing by foreign vessels and their crews is not limited to the area within three geographic miles from the coastline of the United States, but extends to their historic boundaries which are three leagues from the coastline in the Gulf of Mexico. Fla. Affm. Defense Paras. III, IV; Texas Ans. Para. II(3). These rights are asserted, first, as a result of the historical circumstances surrounding their admission or readmission into the Union—Florida by way of its 1868 Constitution (Fla. Affm. Defense IV) and Texas by way of the Joint Resolution of Admission, 5 Stat. 797, the Treaty of Guadalupe-Hidalgo, 9 Stat. 922, and the Gadsden Treaty, 10 Stat. 1031 (Texas Ans. Para.

II(2)). Alternatively, the States contend that their rights were derived from the Submerged Lands Act of 1953, 67 Stat. 29, 43 U.S.C. 1301, *et seq.* Neither ground raises issues warranting the appointment of a special master.

With respect to the Submerged Lands Act contention, the decisions of this Court have established that the Act granted to Florida and Texas certain rights beyond three geographic miles from the coastline. *United States v. Louisiana*, 363 U.S. 1; *United States v. Florida*, 363 U.S. 121. Whether such rights include the right to regulate fishing by foreign vessels and their crews—a question we believe this Court has already answered with its observation in *United States v. Louisiana*, 363 U.S. 1, 33, that the Submerged Lands Act serves only “purely domestic purposes”—can appropriately be resolved by the Court in the first instance.

Texas’ claim based on special historical circumstances has already been rejected by this Court in previous litigation. *United States v. Texas*, 339 U.S. 707; *United States v. Louisiana et al.*, 363 U.S. 1. In those cases, the Court analyzed the historical contentions at length, and determined that aside from the Submerged Lands Act Texas had no rights in the resources of the seas seaward of the low-water line and the seaward limit of inland waters. Moreover, the decisions were rendered without the aid of a special master; Texas’ request for the appointment of a special master prior to the first decision was denied. 339 U.S. 707.

II. Severance is Inappropriate

This Court has previously held that, despite the independent histories of the States on the Gulf of Mexico, the questions of the rights of those States in the resources off their shores are “so related * * * that the just, orderly, and effective determination of such issues requires that they be adjudicated in a proceeding in which all the interested parties are before the Court.” *United States v. Louisiana*, 354 U.S. 515, 516. The questions of the rights of Florida and Texas to control fishing in the Gulf of Mexico are similarly related and should be determined in a single lawsuit.

In its Motion for Severance, Texas predicts that Florida will seek to present evidence relating to the location of its “coastline” between Cape Romano and the Dry Tortugas and argues that it “should not be burdened with the expense and time which will be involved in the development of that part of the evidence and law which is applicable only to Florida.” Texas Motion for Severance, Para. 2. Texas’ concern is unfounded.

The central issue in this case, as framed by our complaint, is not where the exact coastlines of Florida and Texas are located, but whether the States have any right to control fishing by foreign vessels and their crews more than three geographic miles from the coastline, wherever it is located. Upon resolution of that central issue, the question of the location of the coastline can be resolved if necessary. In fact, the location of the Florida coastline is in issue in *United*

States v. Florida, No. 52, Original, now pending before Judge Albert Maris as Special Master, and thus will not be litigated in this case. With respect to the Texas coastline, the location of its historic boundary has already been determined by the Court. *United States v. Louisiana*, 394 U.S. 836. If a dispute concerning the location of Texas' present coastline arises, the issue can be raised by motion in *United States v. Louisiana*, No. 9, Original. See 394 U.S. at 844.

CONCLUSION

For the foregoing reasons, the motions of the State of Texas for severance and for the appointment of a special master should be denied, although the Court may wish to defer action on the motions until the United States has had an opportunity to file its motion for judgment on the pleadings.

Respectfully submitted.

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