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Supreme Court, U. S.
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JUL 15 1975

MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1974

* * *

NO. 54, ORIGINAL

* * *

UNITED STATES OF AMERICA,

Plaintiff

V.

STATES OF FLORIDA AND TEXAS,

Defendants

* * *

MOTION FOR LEAVE TO
FILE COUNTERCLAIM, COUNTERCLAIM
AND

BRIEF IN SUPPORT OF MOTION
FOR LEAVE TO FILE COUNTERCLAIM
BY DEFENDANTS STATES OF FLORIDA
AND TEXAS

* * *

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

NO. 54, ORIGINAL

UNITED STATES OF AMERICA,
Plaintiff

v.

STATES OF FLORIDA AND TEXAS,
Defendants

MOTION FOR LEAVE
TO FILE COUNTERCLAIM

The States of Florida and Texas
respectfully request leave of the Court to
file the attached counterclaim against the
United States of America.

Respectfully submitted,

ROBERT L. SHEVIN
Attorney General of
Florida

JOHN L. HILL
Attorney General of
Texas

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

NO. 54, ORIGINAL

UNITED STATES OF AMERICA,
Plaintiff

-v-

STATES OF FLORIDA AND TEXAS,
Defendants

COUNTERCLAIM

The States of Florida and Texas, Defendants
in the above entitled cause, allege and say:

I.

The jurisdiction of this Court is invoked under
Article III, Section 2, clause 2 of the Constitution
of the United States.

II.

Each of the Defendant States has asserted that
it has the right to control fishing by foreign vessels
and their crews in the sea within nine geographical
miles seaward of their coastlines. The United States

by its Complaint in this cause has denied the States' authority to control such fishing in the area more than three geographical miles seaward of their coastlines; the United States through discovery has denied the States' authority to control fishing by foreign vessels and their crews in the area within three miles seaward of their coastlines.

WHEREFORE, in order to avoid the strong probability of future, unnecessary litigation involving the authority of the States of Florida and Texas to control fishing by foreign vessels and their crews within three geographical miles seaward of their coastlines, the States of Florida and Texas request that a decree be entered declaring that the Defendant States have the right and authority to control fishing by foreign vessels or their crews in the sea within three geographical miles seaward of their coastlines.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

NO. 54, ORIGINAL

UNITED STATES OF AMERICA,
Plaintiff

-v-

STATES OF FLORIDA AND TEXAS,
Defendants

BRIEF IN SUPPORT OF MOTION
FOR LEAVE TO FILE COUNTERCLAIM

JURISDICTION

This counterclaim to the United States' Complaint is within the original jurisdiction of this Court under Article III, Section 2, clause 2, of the Constitution of the United States.

STATEMENT

The purpose of this counterclaim is to confirm that the Defendant States have the right to exercise jurisdiction and control over fishing by foreign

vessels and their crews within three geographical miles from the coastline of the United States.

The Complaint filed by the United States here-in requests that a decree be entered declaring that neither Florida nor Texas has the right to control fishing by foreign vessels or their crews in the seas more than three geographical miles from the coastline of the United States. Significantly, it does not challenge the Defendant States' rights to control such fishing within three miles of their coastlines. Thus, during the initial stages of the extensive discovery process, the Defendant States reasonably assumed that the United States did not question their right to enforce their laws against any fishing within three miles of their coastlines. It has not become apparent that the United States does not distinguish between the rights of the States with regard to the control of foreign fishing in the area within three miles and the area seaward of three miles; rather, it is the position of the United States that the States do not have the authority to control foreign fishing in any area seaward of their coastlines. In its response to Texas' third set of interrogatories, filed in June, 1974, the United States questioned, for the first time, the right and authority of the Defendant States to control fishing by foreign vessels and their crews within three miles of the coastline of the States. In its response to Interrogatory No. 1, the United States stated as follows:

The United States contends that the State of Texas has not at any time since its annexation to the United States in 1845 had the right, independent of specific

federal authorization, to detain, arrest, seize, board, search, or prosecute any foreign vessel or crew for alleged or suspected violations of Texas' laws which occurred seaward of the coastline of the United States unless the foreign vessel and crew have consented to the jurisdiction of the nation.

In depositions of ranking State Department officials held in September, 1974, it became apparent that it is the official position of the Department of State that the States have no right to control fishing by foreign vessels and their crews in the area within three miles seaward of the coastlines. This deposition testimony is cited in a letter, dated November 25, 1974, to the counsel of the United States, in which the State of Texas, in an effort to remove this potential issue from the suit, asked the United States to stipulate that the states have the right and authority to control fishing by foreign vessels within the area three miles seaward of the coastlines of the States. This letter is contained in Appendix A hereto and is incorporated for all purposes herein. In its response the United States refused to stipulate, because, it said, the issue of the States' rights and authority within three miles of their coastline is not involved in this lawsuit. The United States' response to Texas' letter of November 25, 1974, dated January 29, 1975, is contained in Appendix B hereto.

Finally, by interrogatories dated November 19, 1974, Florida asked as follows:

State whether the State of Florida at any time since its re-admission to the United States had or has the right to detain, arrest, seize, board, search, or prosecute any foreign vessel or crew for alleged or suspected violation of Florida laws which occurred within three (3) miles seaward of the Florida coast in the Gulf of Mexico.

The United States complained that the interrogatory was irrelevant and, therefore, refused to answer.

ARGUMENT

I.

THE COUNTERCLAIM SHOULD BE PERMITTED TO AVOID MULTIPLICITY OF LITIGATION.

Notwithstanding the relief requested in the United States' Complaint, it is the stated official position of the United States that the Defendant States do not have the right to control fishing by foreign vessels and their crews in any area seaward of their coastlines. Justice requires, therefore, that the entire disputed issue be resolved before this forum in this cause. The law and the facts relating to the States' authority within three miles and more than three miles are basically the same. The discovery and research required are essentially the same and duplication of effort would result were the claims tried separately. Actual trial time will be increased very little by permit-

ting the counterclaim; a refusal to permit the counterclaim, however, would double the trial time, causing unnecessary duplication of judicial effort.

Unless the counterclaim is permitted, a future lawsuit brought by the United States challenging the same right presented in this counterclaim is virtually inevitable. The position of the United States on this issue is clear from testimony and statements referred to above. A future exercise of jurisdiction by a state to control foreign fishing in the area within three miles of its coastline certainly would be considered by the United States to be interference with an exclusive federal right, and would result immediately in a lawsuit. The fact that the United States has decided not to explicitly challenge the States' authority within three miles in its Complaint herein and the unlikely possibility that no lawsuit will occur in the future should not lead to a refusal to permit the counterclaim.

Refusal to permit the counterclaim will create uncertainty on the part of the States as to the United States' reaction to future arrests by State authorities of foreign vessels within three miles of the coastline. The States, by exercising the jurisdiction heretofore recognized by the federal government, may be subjected to yet another expensive, time-consuming lawsuit brought by the United States. This uncertainty should be avoided and the entire issue determined in this cause of action.

II.

THE COUNTERCLAIM RAISES ISSUES
ENTITLING THE STATES TO RELIEF.

In 1953, Congress enacted the Submerged Lands Act, 43 U.S.C. 1301-1315, quitclaiming to the coastal states ownership of the natural resources of the sea and seabed within their boundaries, not exceeding three geographical miles from the coastline. That three mile limitation was subject to an exception in the Gulf of Mexico, however, for any state boundary previously approved by Congress or existing at the time of statehood, not exceeding three leagues from the coastline. In United States v. Louisiana, 363 U.S. 1 (1960), this Court held that Texas and Florida have historic boundaries of three leagues from their coastlines in the Gulf of Mexico.

The United States, prior to this lawsuit, has never questioned the right of the States to enforce fishing laws against foreign nationals within three miles of their coastline. To the contrary, in 1964, the United States recognized Defendant Florida's jurisdiction over foreign nationals in the waters within three miles from the coastline. As recently as 1971, the United States stated its position in its Memorandum of Law in Support of Motion for Preliminary Injunction in United States v. Florida, Civil No. 1762 (N.D. Fla., filed December 18, 1970). In that case, the United States sought to enjoin the State of Florida from interfering with aliens fishing beyond twelve geographical miles from its coastline. In its memorandum, the United States stated that Florida "can control fishing by aliens only within the three-mile limit." See United States' Memorandum of Law in Support of Motion for Preliminary Injunction, page 6. Indeed, in its Brief in Support of Motion to File the Original Complaint in this case, the United States virtually admits on pages

8-11 that the Submerged Lands Act granted to the States jurisdiction to control fishing by foreign vessels within three miles of their coastlines. The States by this Counterclaim merely seek a declaration that they possess that right.

III.

REFUSAL TO PERMIT THE COUNTER-CLAIM WILL RESULT IN IRREPARABLE HARM TO THE FISHING INDUSTRY OF DEFENDANT STATES.

Until resolved, the disagreement over the States' authority threatens to cause irreparable damage to the fishing industry in the Defendant States. Illegal foreign fishing off the coasts of the States could deplete coastal fisheries and thus seriously endanger the general economy of the States. Therefore, foreign fishing should be carefully regulated and controlled. Adoption of the United States' position undoubtedly would result in less regulation and less control; thus the fisheries could be irreparably depleted. To avoid this result, coterminous jurisdiction in the area within three miles of the coastline must be preserved.

Defendants emphasize that, by their counterclaim, they do not waive any rights to assert jurisdiction beyond three miles from their coastline. Nor are any defenses to Plaintiff's complaint waived or modified. Defendants do not by this counterclaim waive the defense to the Complaint of a lack of a sufficient case or controversy. However, should it be determined that there is such, then the issue

raised by Defendants should be litigated as well. Defendants have attempted to resolve the matter without litigation by requests for a stipulation, and for a definite statement of policy. The United States has refused to cooperate in these efforts, and Defendants are therefore forced to file a counterclaim to settle the issue.

In conclusion, in order to avoid the strong probability of future, unnecessary litigation involving the authority of the States of Texas and Florida to control fishing by foreign vessels and their crews within three geographical miles seaward of their coastlines, with its attendant costs in time and money, the States of Florida and Texas request that the Motion for Leave to File Counterclaim be granted and that a decree be entered declaring that the Defendant States have the right and authority to control fishing by foreign vessels or their crews in the sea within three geographical miles seaward of the coastlines of the States of Florida and Texas.

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Austin, Texas 78711

CERTIFICATE OF SERVICE

We, Robert L. Shevin and John L. Hill, do hereby certify that copies of the foregoing Motion for Leave to File Counterclaim, Counterclaim, and Brief in Support of Motion for Leave to File Counterclaim were mailed by United States Certified Mail, return receipt requested, on the ____ day of June, 1975, to the following: Honorable Charles L. Powell, United States District Judge, Eastern District of Washington, Box 1432, Spokane, Washington, 99210; and Edward F. Bradley, Jr., Attorney, Marine Resources Section, Land and Natural Resources Division, United States Department of Justice, Washington, D. C. 20530.

ROBERT L. SHEVIN
Attorney General of
Florida

JOHN L. HILL
Attorney General of
Texas

APPENDIX A

November 25, 1974

Mr. Edward F. Bradley, Jr.
Attorney, Marine Resources Section
Land and Natural Resources Division
United States Department of Justice
Washington, D. C. 20530

Dear Mr. Bradley:

Enclosed is a proposed stipulation whereby the United States and the states of Texas and Florida stipulate that the States have the right to enforce state laws as against foreign nationals in the area between the coastlines and three (3) miles seaward of the coastlines of Texas and Florida.

As stated by Mr. York in the pre-trial conference held in Washington November 14, 1974, we recently have become concerned that it may be the policy and legal position of the United States government that the coastal states, and specifically the State of Texas, do not have any right to enforce their laws as against foreign nationals in the area seaward of their coastlines. We are aware, of course, that the Petition filed in this case by the United States challenges only the defendant states' right and authority to enforce fishing laws against foreign nationals in the area between three and nine miles seaward of their coastlines. We had assumed, consequently, that the right of the states to enforce fishing laws against foreign nationals within three miles of their coastlines was recognized by the United States. U.S. Responses to recent interrogatories and deposition testimony of responsible

Mr. Edward F. Bradley, Jr.
November 25, 1974
Page Two

United States government officials indicate, however, that the position of the U. S. government is that the states do not have that right in any area seaward of their coastlines.

In its answer to Interrogatory No. 1 of Texas' Third Set of Interrogatories to the United States, which were the most recent interrogatories served on the United States by Texas, the United States responded as follows:

"The United States contends that the State of Texas has not at any time since its annexation to the United States in 1845 had the right, independent of specific federal authorization, to detain, arrest, seize, board, search, or prosecute any foreign vessel or crew for alleged or suspected violations of Texas' laws which occurred seaward of the coastline of the United States unless the foreign vessel and crew have consented to the jurisdiction of the nation."

More recently, in depositions of various State Department officials held in Washington during the week of September 16, 1974, several witnesses testified that it was the policy of the State Department that the states had no jurisdiction to enforce their laws as against foreign nationals seaward of their coastline. Mr. Leonard Meeker, Legal Advisor of

Mr. Edward F. Bradley, Jr.
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the State Department from 1965 through 1969, testified as follows:

"Q. One other question and I will be through, Mr. Meeker. In the official opinion of the State Department as of the time you were Legal Adviser, was there any crime or class of crimes that a foreign national might commit off the coast of the State of Texas for which the State of Texas could arrest and prosecute that foreign national without the Federal Government's concurrence?

"A. Beyond the three-mile limit?

"Q. No, sir.

"A. In between three and nine, is that the area you are asking about?

"Q. I am referring to the entire area between zero--

"A. Beginning at the shore?

"Q. Beginning at the shore and out to nine.

"A. If we are speaking of foreign nationals, I think the answer is No.

Mr. Edward F. Bradley, Jr.

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"Q. That includes criminal action, pollution laws, natural resource laws, conservation laws, safety laws--just any law; correct?

"A. The question of jurisdiction out beyond the line of the shore and the line of internal waters is one which we regarded as being within the Federal authority rather than the state authority.

"Q. And that position was consistent as to all kinds of violations that a foreign national might commit; correct?

"A. Yes." Meeker deposition, pages 39, 40.

Mr. Meeker's testimony was echoed by Mr. John Norton Moore, Chairman of the National Security Council Inter-Agency Task Force on the Law of the Sea and the Deputy Special Representative of the President for the Law of the Sea Conference. Mr. Moore testified as follows:

"Q. Can you distinguish--well, first of all--let me state it this way: I understand from your testimony a moment ago that you feel that it is--that Texas, the State of Texas--is without power to enforce its fishing laws within the territo-

Mr. Edward F. Bradley, Jr.
November 25, 1974
Page Five

rial sea of the United States; is that correct?

"A. It certainly seems to me that there should not be any state jurisdiction or authority to enforce against foreign vessels within the areas of the high seas or the territorial sea." Moore deposition, page 16.

Mr. Myron Nordquist, Executive Assistant to the Chairman of the National Security Council Inter-Agency Task Force on the Law of the Sea, testified as follows:

"Q. Right. He was legal adviser between 1965 and 1969. At any rate, not only testimony from Mr. Meeker but also from Mr. Moore, we have learned it is the official policy of the United States State Department that the various states of the United States have no jurisdiction or power to enforce their fishing laws and regulations at any point off of their coast starting with zero and on out to the limits--these are the 12-mile belts when you have the 3 and 9-mile contiguous sea together. Is that your understanding of the United States State Department policy?

Mr. Edward F. Bradley, Jr.

November 25, 1974

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"A. I think that is true except insofar as the nationals of the state.

"Q. Excuse me. I did not make my statement plain. I was referring to enforcing fishing laws against foreign nationals. All right, now, with that understanding is that also your understanding of the official policy of the United States Department of State?

"A. That is my understanding of our policy as well as what the law is."
Nordquist deposition, pages 10, 11.

By letter dated September 27, 1974, the State of Texas requested the United States to provide the defendants in this case with a written statement of the policy of the United States Government with regard to the right of the states to enforce fishing laws as against foreign nationals in the area between their coastline and three (3) miles seaward of their coastline. As of this date, we have not received a response to that request.

We feel that it is imperative that the United States sign the enclosed stipulation. As stated in the pre-trial conference, this stipulation is necessary in order to assure the states that the current litigation does not question the right and authority of Florida and Texas to control and regulate fishing

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November 25, 1974
Page Seven

by foreign nationals in the area within three nautical miles seaward of their coastlines.

Moreover, we feel that we would be compelled to notify our sister coastal states if the policy of the United States government is that coastal states have no right to enforce laws as against foreign nationals seaward of their coastlines.

Thus, by agreeing to this stipulation, we can remove this potential issue from the lawsuit and we can press forward with the case on the disputed issues presently before the Court. However, if the United States is unwilling to sign the stipulation, Texas will be compelled to take whatever steps are deemed appropriate, including notifying other coastal states of the United States' position in this matter, and including the filing of appropriate papers seeking a declaratory judgment that the State of Texas has the right to enforce its fishing laws as against foreign nationals in the area within three (3) miles seaward of its coastline.

We sincerely hope that the United States will sign the stipulation so that an unnecessary expansion of this lawsuit can be avoided and we can proceed to litigate our differences with reference to the controversial areas beyond three nautical miles. We look forward to hearing from you on this matter at your earliest convenience.

Mr. Edward F. Bradley, Jr.
November 25, 1974
Page Eight

Very truly yours,

John L. Hill
Attorney General of Texas

David M. Kendall
Executive Assistant
Attorney General

Daniel O. Goforth
Special Assistant Attorney
General

Lee C. Clyburn
Assistant Attorney General

/km

cc: Honorable Charles L. Powell
United States District Judge
for the Eastern District of
Washington
P. O. Box 1432
Spokane, Washington 99210

Mr. Jerry Oxner
Assistant Attorney General
Department of Legal Affairs
725 South Calhoun
Tallahassee, Florida 32304

Mr. Edward F. Bradley, Jr.
November 25, 1974
Page Nine

Mr. J. Chrys Dougherty
Attorney at Law
P. O. Box 98
Austin, Texas 78767

IN THE SUPREME COURT OF
THE UNITED STATES OF AMERICA

October 1973 Term

THE UNITED STATES
OF AMERICA,

Plaintiff

v.

THE STATES OF
FLORIDA AND
TEXAS,

Defendants

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Original No. 54

STIPULATION

It is hereby agreed, admitted, and stipulated by and among all parties that the Defendants herein, the States of Florida and Texas, do possess and at all times relevant to this litigation have possessed, as a matter of law, the right and authority to control and regulate fishing by foreign nationals in all portions of the area within three nautical miles seaward of their coastlines.

UNITED STATES

By: _____
Department of Justice

By: _____
Department of State

By: _____
Office of Solicitor General

FLORIDA

By: _____

TEXAS

By: _____
Daniel O. Goforth

By: _____
Lee C. Clyburn

APPENDIX B

1. The first of these is the fact that the
 2. of the system is not a simple one.
 3. It is a complex one, involving many
 4. factors, and it is not possible to
 5. give a simple answer to the question
 6. of what is the best way to
 7. proceed. The second of these is the
 8. fact that the system is not a
 9. simple one. It is a complex one,
 10. involving many factors, and it is
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 12. answer to the question of what
 13. is the best way to proceed.

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 11. not possible to give a simple
 12. answer to the question of what
 13. is the best way to proceed.

1b

January 29, 1975

Honorable John L. Hill
Attorney General of Texas
Supreme Court Building
Austin, Texas 78711

Dear Mr. Attorney General:

This letter is in response to your letter to me of November 25, 1974, by which you requested the United States to stipulate that Florida and Texas possess and have possessed, as a matter of law, the right and authority to control and regulate fishing by foreign nationals in all portions of the sea within 3 nautical miles of their coastlines. Please forgive our delay in responding but it was necessary to coordinate our response with the Department of State.

In your letter you stated that the proposed stipulation was necessary to assure the States that the current litigation does not question their right and authority within the territorial sea off of their coasts. We assure you that the present litigation was not brought and does not put into issue the question of Texas' right and authority in that area. As you correctly indicated in your letter, the Complaint in this case challenges the defendant States' right and authority to enforce fishing laws against foreign nationals only in the area between 3 and 9 miles seaward of their coastlines in the Gulf of Mexico. Since the issue of the States' right to enforce their fishing laws against foreign vessels in the territorial sea is not an issue in this case, it is

our position that a stipulation is not necessary to remove it from the lawsuit. Consequently, the United States will not enter into a stipulation for that purpose.

With due respect to your right to pursue the issue, we sincerely hope you will proceed with us to litigate the issues which are raised by the Complaint and avoid the delay which will result from any attempt to expand this lawsuit unnecessarily.

Sincerely,

Assistant Attorney General
Land and Natural Resources Division

By:

Edward F. Bradley, Jr.
Attorney, Marine Resources Section

