



IN THE
Supreme Court of the United States

OCTOBER TERM, 1977

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NO. _____, ORIGINAL

STATE OF GEORGIA, *Plaintiff*,

v.

STATE OF SOUTH CAROLINA, *Defendant*.

**BRIEF IN SUPPORT OF MOTION
FOR LEAVE TO FILE COMPLAINT**

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JURISDICTION

The State of Georgia moves for leave to file this original action against the State of South Carolina pursuant to Art. III, Sec. 2, Clause 2 of the Constitution of the United States, and 28 U.S.C. § 1251(a)(1).

This action seeks to establish and determine the location of the boundary line between the State of Georgia and the State of South Carolina in the lower reaches and mouth of the Savannah River and out to the three-mile limit. The original jurisdiction of this Court is invoked because negotiations between the two states have proved fruitless, and because this Court has exclusive jurisdiction of suits between two states. The proposed Complaint asserts Georgia's claim to jurisdiction over certain lands, waters and waterbottoms in the lower reaches and mouth of the Savannah River and extending out to the three-mile limit. The State of Georgia has suffered and continues to

suffer injury and uncertainty as a result of the State of South Carolina's adverse claim to territory which is within the boundaries of the State of Georgia.

STATEMENT

On June 9, 1732, George II, King of Great Britain, France and Ireland, issued letters patent constituting the Charter of the Colony of Georgia. The Charter describes the boundary between the Colony of Georgia and the Colony of South Carolina as the most northern stream of the Savannah River and includes all islands within twenty leagues of the coast.¹ The boundary line between Georgia and South Carolina proved to be a matter of dispute between the two colonies and between the two states after the formation of the United States. In 1787, commissioners appointed by the two states met at Beaufort, South Carolina and entered into a convention concerning their common boundary.² The treaty of Beaufort, properly ratified by the states and the United States Congress pursuant to the Articles of Confederation, provides that the boundary between the two states is "The most northern branch or stream of the River Savannah, from the Sea or mouth of such stream, to the fork or confluence of the Rivers now called Tugoloo and Keowee, . . . reserving all the islands in the said Rivers Savannah and Tugoloo to Georgia. . . ."³ The Treaty of Beaufort also provides that the navigation of the Savannah River, from the bar and mouth, up the main northern channel of the river, shall be equally free to the citizens of both states.⁴

¹ Franklin K. Van Zandt, *Boundaries of the United States and the Several States* (Geological Survey Professional Paper 909, 1976), at 100.

² *Id.* at 99; *Georgia v. South Carolina*, 257 U.S. 516, at 518 (1922).

³ *Georgia v. South Carolina*, *supra*, at 519.

⁴ *Id.* at 519.

Even subsequent to the Treaty of Beaufort, disputes continued to arise concerning the location of the boundary in the Savannah River. In 1917 the State of Georgia brought an original action in the Supreme Court concerning this boundary. The Court's decision held as follows:

"(1) Where there are no islands in the boundary rivers the location of the line between the two states is on the water midway between the main banks of the river when the water is at ordinary stage; (2) Where there are islands the line is midway between the island bank and the South Carolina shore when the water is at ordinary stage; and (3) That islands in the Chattooga river are reserved to Georgia as completely as are those in the Savannah or Tugaloo rivers."⁵

The current dispute and uncertainty concerning the Georgia-South Carolina boundary deals with the segment of the Savannah River from the City of Savannah, Georgia, southeastwardly downstream to the Atlantic Ocean and then to the three-mile limit.⁶ Because of the importance of the City of Savannah as a harbor, the United States Army Corps of Engineers has engaged in significant works to improve the navigability of the Savannah River. The navigational improvements by the United States Army Corps of Engineers commenced in the late 19th Century and continue to this date. These construction activities have resulted in substantial avulsive changes in the topography and configuration of the river, islands in the river, and the adjacent banks. While the states agree that the boundary was established by the Treaty of Beaufort, the construction and application of the treaty is in question due in large part to the significant changes which have occurred in this segment of the river since 1787.

⁵ *Id.* at 523.

⁶ Exhibits A and B to Complaint.

The present uncertainty as to the location of the boundary is graphically illustrated by maps published by the United States Geological Survey and attached as Exhibit A and Exhibit B to the proposed Complaint. South Carolina contends that Exhibit A, published in 1955, shows the correct location of the boundary. Exhibit B, published in 1971, correctly relocates the boundary in certain areas and in such areas describes the Georgia-South Carolina boundary as an "Indefinite Boundary".

One example of the areas affected by the artificial changes in the river and as a result currently in dispute is Barnwell Island, which was once an island in the Savannah River but which became affixed to the South Carolina bank as a result of construction works of the United States Army Corps of Engineers.⁷ Barnwell Island was the subject of a condemnation petition filed in 1952 by the United States in the United States District Court for the Southern District of Georgia. Both the State of Georgia and the State of South Carolina were named as defendants in that action, along with certain individuals, but the State of South Carolina never appeared in the litigation. The appropriateness of the jurisdiction in the United States District Court for the Southern District of Georgia was challenged by a private claimant to the property, and the case was dismissed by the District Court. The United States Court of Appeals for the Fifth Circuit reversed, holding, "There is, there can be, no doubt that the land here involved is in the State of Georgia."⁸ While a petition for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit was pending in the United States Supreme Court, the State of South Caro-

⁷ Exhibits A and B to Complaint.

⁸ *United States v. 450 Acres of Land*, 220 F.2d 353 at 356 (5th Cir.), cert. denied, 350 U.S. 826 (1955).

lina sought to bring an original action, asserting a claim to jurisdiction over Barnwell Island. The Motion for Leave to File Complaint, alleging that Barnwell Island was in South Carolina, was denied.⁹ A subsequent request by South Carolina to bring an original action dealing with the boundary in the area of Barnwell Island was likewise refused.¹⁰

ARGUMENT

There exists a substantial controversy between the two states and it appears that litigation is the only means available to resolve the dispute.

Despite the prior litigation concerning Barnwell Island, the State of South Carolina has once again resurrected a claim to jurisdiction over Barnwell Island. South Carolina has demanded that revised maps of this area soon to be published by the United States Geological Survey be altered so as to omit any delineation of a Georgia-South Carolina boundary line in the areas of Barnwell Island and Oyster Bed Island. Barnwell Island, like other areas claimed by both Georgia and South Carolina, is valuable property for development of port and industrial facilities associated with the Savannah harbor. South Carolina's claim to Barnwell Island, while spurious, has the effect of creating a cloud on Georgia's title to and jurisdiction over Barnwell Island.

The current uncertainty concerning the location of the Georgia-South Carolina boundary line in the mouth of the Savannah River has created serious problems with regard to enforcement of the laws relating to commercial fishing. As set forth in the proposed Complaint, Georgia's efforts

⁹ *South Carolina v. Georgia*, 350 U.S. 812 (1955).

¹⁰ *South Carolina v. Georgia*, 352 U.S. 1030 (1957).

to arrive at a working agreement for enforcement of such laws pending resolution of the boundary dispute have failed. An example of the immediate and significant problems arising from the continued dispute is an incident which occurred on June 29, 1977, when a commercial shrimp fisherman licensed by South Carolina was arrested for engaging in illegal fishing in Georgia waters which were then closed to commercial fishing. The South Carolina fisherman resisted arrest, assaulted the Georgia law enforcement officers, and fled to South Carolina. On July 15, 1977, the Governor of Georgia requested the Governor of South Carolina to extradite the South Carolina fisherman to Georgia to stand trial on charges of obstruction of officers, simple battery, and illegal commercial fishing. On July 22, 1977, the Governor of South Carolina refused the requested extradition, stating in a letter to Governor George Busbee of Georgia that the refusal was based on the boundary dispute and claiming that the fisherman was in South Carolina waters at the time of his arrest.

The lateral seaward boundary has also been a matter of controversy between the two states. In 1969 a tentative settlement was arrived at,¹¹ but it was not ratified by the United States Congress and thus never became effective.

Since 1970 representatives from the two states have met on several occasions in attempts to resolve the boundary dispute. However, such attempts have proved fruitless. The State of Georgia feels that further delay in the resolution of the dispute would be a disservice to both states and to the citizens thereof, and therefore seeks to initiate the present action to achieve a final determination as to the boundary line.

¹¹ Ga. Laws 1969, p. 677; S.C. Laws 1970, p. 2051.

The proposed Complaint is appropriate for the exercise of this Court's jurisdiction. The resolution of the present controversy is crucially important to both states, not merely financially but also in the exercise of their respective jurisdictions. This Court alone can achieve resolution of the controversy. Under Art. III, Sec. 2, Clause 2 of the Constitution of the United States and the decisions of this Court in *Virginia v. Tennessee*, 148 U.S. 503 (1893), and *Rhode Island v. Massachusetts*, 37 U.S. (12 Pet.) 657 (1838), the present case is a proper one for the exercise of this Court's original jurisdiction.

CONCLUSION

Based on the foregoing, it is respectfully submitted that the Motion for Leave to File Complaint should be granted.

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