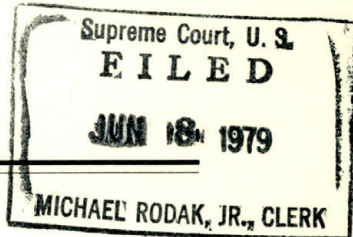


No. 84 Original



IN THE
Supreme Court of the United States

OCTOBER TERM, 1978

UNITED STATES OF AMERICA,

Plaintiff

v.

STATE OF ALASKA,

Defendant

**MEMORANDUM OF NONOPPOSITION TO
MOTION FOR LEAVE TO FILE COMPLAINT**

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June 8, 1979

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UNITED STATES OF AMERICA, *Plaintiff*

v.

STATE OF ALASKA, *Defendant*

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MOTION FOR LEAVE TO FILE COMPLAINT**

STATEMENT

This memorandum is submitted in response to a motion by the United States for leave to file an original bill of complaint against the State of Alaska. The issue is whether Alaska or the United States owns certain submerged lands in the Beaufort Sea off Alaska's northern coast. The disputed lands are more than three geographic miles from the mainland; however, they are located between the mainland and a fringe of barrier islands, and are so situated that they are completely surrounded by lands indisputably owned by Alaska.

Alaska agrees with several points set out by the United States in its memorandum in support of its motion. Both Alaska and the United States claim ownership of the disputed areas. The existence of the dispute between Alaska and the United States is an obstacle to exploration and development of what are believed to be significant deposits of oil, natural gas and other resources in those areas. Granting the United States' motion for leave to file an original bill of complaint will permit Alaska and the United States to enter into an interim agreement for immediate leasing of the disputed lands under their respective statutory authorizations to lease. AS 38.05.137 and 43 U.S.C. 1336. Finally, this Court has original jurisdiction over the subject matter of the dispute and is the most appropriate forum for its resolution and this is an appropriate case for the exercise of this Court's original jurisdiction.

For those reasons, Alaska believes that the United States' motion for leave to file an original bill of complaint should be granted.

While Alaska agrees with those portions of the United States' memorandum in support of its motion which address the merits of the motion, Alaska disagrees with those portions of the United States' memorandum which constitute argument on the merits of the case. However, because argument on the merits is irrelevant to the Court's decision on the motion for leave to file a complaint, Alaska will not burden the Court at this time with a detailed discussion of all the points on which it disagrees with the United States.

On the other hand, Alaska is compelled at this early stage to take issue with the United States' assertions that "[t]he extensive coastal claims of Alaska in the Beaufort Sea also threaten to interfere with the conduct of the foreign affairs of the United States" and "[t]he State's claims thus have the potential for embarrassing the

United States in the conduct of its foreign affairs." United States' Memorandum in Support of Motion for Leave to File Complaint at 12-13.

Alaska submits that the dispute between Alaska and the United States involves a purely domestic question: does Alaska own the disputed areas or does the United States? Under the rule of *Pollard's Lessee v. Hagan*, 44 U.S. (3 How.) 212 (1845), the several States gain title to lands underlying inland waters upon admission to Statehood. The several coastal States were granted ownership of submerged lands adjacent to their respective coasts under the Submerged Lands Act, ch. 65, 67 Stat. 29, 43 U.S.C. 1301, *et seq.* Under the Outer Continental Shelf Lands Act, ch. 345, 67 Stat. 462, 43 U.S.C. 1331, *et seq.*, the United States claims ownership of submerged lands lying seaward of those owned by the several coastal States. The issue here is whether the disputed areas in the Beaufort Sea are subject to the rule of *Pollard's Lessee v. Hagan*, *supra*, the Submerged Lands Act, or the Outer Continental Shelf Lands Act. Alaska's position is that the disputed areas underly inland waters subject to the rule of *Pollard's Lessee v. Hagan*, *supra*, a position conceded by the United States under strikingly similar facts in *United States v. Louisiana*, 363 U.S. 1 (1960). In the alternative, Alaska submits that they are included in the class of lands which Congress intended to encompass in the Submerged Lands Act. Under either of these theories, a decree by this Court that Alaska owns the disputed areas may be framed such that it will have no impact on the conduct of the foreign affairs of the United States.

This Court has recognized that

[t]he national responsibility for conducting our international relations obviously must be accommodated with the legitimate interests of the States in the territory over which they are sovereign. Thus, a contraction of a State's recog-

nized territory imposed by the Federal Government in the name of foreign policy would be highly questionable *United States v. California*, 381 U.S. 139, 168 (1965).

All Alaska claims is that it has a legitimate interest in the disputed areas. While the United States may argue that international law may have some relevance to resolution of this dispute, the foreign policy implications of this case are *de minimis* in that the relief Alaska seeks need not be inconsistent with positions that the United States has taken in its foreign relations. It goes without saying that Alaska would not presume to seek to expand the United States' sovereign jurisdiction vis-a-vis other countries.

But those are issues which are premature at this time and irrelevant to the motion currently before the Court. Suffice it to say at this juncture that Alaska does not oppose the United States' motion for leave to file an original bill of complaint against the State of Alaska. Accordingly, Alaska respectfully requests that this Court grant the United States' motion for leave to file the complaint, that the State of Alaska be permitted to answer, and that in due course a Special Master be appointed to hear evidence and report his recommended findings and conclusions to the Court.

CONCLUSION

For the reasons stated above, it is respectfully submitted that the United States' motion for leave to file an original bill of complaint against the State of Alaska should be granted.

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