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## Is Georgia Really Across the Savannah River from South Carolina?

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## *Is Georgia really across the Savannah River from South Carolina?*

by Robert H. Abrams

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**State of Georgia**

v.

**State of South Carolina**

(Docket No. 74, Original)

*Argument Date: Jan. 8, 1990*

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The northernmost branch of the Savannah River is usually thought of as the border separating Georgia from its neighbor to the northeast, South Carolina. For most purposes, and in most stretches of the Savannah River, that popular understanding comports with modern law, historical documents and the needs of the states to have a certain boundary dividing their respective territories and spheres of sovereign authority.

As it turns out, in this case Georgia asks the United States Supreme Court to declare that the popular understanding is inaccurate as a matter of current law and historical record and fails to meet the needs of the states in the assertion of their regulatory authority over areas that now lie to the north of the northernmost branch of the Savannah River. Triggering the need for the Court's intervention are both natural and man-made changes in the river's channel that have caused the channel to move southward in its downstream reaches near the Atlantic Ocean.

### ISSUES

This is a case presenting highly technical issues concerning the methods by which state boundaries and their lateral seaward extensions are drawn. The legal doctrines of accretion (water's gradual and imperceptible addition of sediment to a shoreline) and avulsion (a sudden and perceptible loss or addition to land as the result of an abrupt change in a stream or river's channel) come into play because the boundary under review is formed by a river whose channel has moved over time.

Other even more arcane doctrines control the process of extending the boundary seaward after the landward boundaries are fixed. This case also presents unique issues of interpretation involving the 1787 Treaty of Beaufort, which made the river the boundary, and the clarifying in-

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terpretation given to that treaty by the Supreme Court's 1922 decision in *Georgia v. South Carolina*, 257 U.S. 516.

### FACTS

The current border squabble between Georgia and South Carolina descends from ancient lineage. Legally, its starting point is the 1787 Treaty of Beaufort, a concise document ratified by Georgia, South Carolina and the United States as provided for by the then-current Articles of Confederation. That treaty, however, was forged to settle a simmering boundary dispute between Georgia and South Carolina traceable to the letters of patent that King George II issued to Oglethorpe in 1732.

The principal thrust of the Treaty of Beaufort was that the northernmost branch of the Savannah River should be the boundary between the two states. In an apparent effort to make clear what that meant in regard to islands in the river, the Treaty provided, "reserving all the islands . . . to Georgia." Time and events provided a challenge to the Treaty of Beaufort's clarity as the river's channel moved slowly southward, uniting former islands with the South Carolina bank, building new islands and changing the channel through which most navigation was accomplished. In part the changes were the result of natural phenomena as the river carried sediments downstream and deposited them in its delta. Some of the changes were the result of human intervention, primarily that of the United States Army Corps of Engineers, which erected structures in aid of navigation and otherwise improved the river's channels.

The legal proceedings in state boundary cases all take place in the United States Supreme Court as part of the Court's constitutionally conferred original jurisdiction in cases between two or more states. The Court appoints a Special Master, in this case Walter E. Hoffman, to receive evidence and write a report to the Court recommending a resolution of the dispute. Here this was done in two parts, the first report delineating the points of dispute and reciting the governing law, and the second report suggesting a proposed boundary for adoption by the Court.

The most hotly contested areas under litigation are former channel islands, some of which did not emerge until after 1787. These islands are now, through the action of the Corps of Engineers in dredging and filling, high ground affixed to the South Carolina side of the river. These areas are of substantial present value for port activities capable of generating economic benefits that each

state is eager to claim as its own.

For those familiar with the region, a list of disputed areas is as follows: a small unnamed island west of Pennyworth Island; an unnamed island east of Pennyworth Island referred to as "Tidegate Island"; the Barnwell Islands; south-eastern Denwill; Jones Island; Horseshoe Shoal and Oyster Bed Island. Regulatory jurisdiction disputes that will be settled by the Court's decision of this case involve the mouth of the river generally and the lateral seaward boundary between the states.

#### **BACKGROUND AND SIGNIFICANCE**

State boundary dispute litigation is routinely of limited significance. While the precise location of any given boundary often has important consequences for the areas under review, most determinations are *sui generis*, owing to their application of settled law to site-specific facts.

This case is of that mold. Hanging in the balance are a few commercially attractive harbor sites for which Georgia and South Carolina are vying. Also, at least one acrimonious dispute over fishery licensing and fish-stock depletion led South Carolina to refuse a Georgia extradition order that sought to reach a South Carolina boat captain for violating Georgia catch limits in disputed waters. To those few souls directly affected by the boundary in this case, it carries significance; others may find it only interesting.

#### **ARGUMENTS (exceptions to the report of the special master)**

**For the State of Georgia** (*Counsel of Record, Patricia T. Barmeyer, Assistant Attorney General, 132 State Judicial Building, Atlanta, GA 30334; telephone (404) 656-3389*):

1. The Special Master has misconstrued the 1787 Treaty of Beaufort by locating the Barnwell Islands in South Carolina.
2. As a matter of fact, Georgia has not acquiesced in the location of the Barnwell Islands, nor has South Carolina acquired any prescriptive right to those islands.
3. Near the mouth of the river, the Special Master mistakenly located the boundary in the navigation channel rather than in the geographic middle as required by the 1922 ruling of the Supreme Court.
4. The Special Master erred in using the "right angle method."
5. Islands of natural formation are in Georgia even if they emerged only after the 1787 Treaty of Beaufort.
6. The lateral seaward boundary between the two states should commence in the geographic middle of the river.

**For the State of South Carolina** (*Counsel of Record, Kenneth P. Woodington, Senior Assistant Attorney General, P.O. Box 11549, Columbia, SC 29211; telephone (803) 734-3680*):

1. The Special Master erred in finding that additions to the Denwill tract formed by sedimentation and dredge deposits over a 40-year period were avulsive.
2. The Special Master erred in awarding the Horseshoe Shoals area to Georgia when the evidence showed that the area was formed over several decades as a result of Corps of Engineers training works and the deposit of dredge fill.
3. The additions to Bird Island were formed in the same manner as the additions to the Denwill and Horseshoe Shoals areas and should be treated in an identical fashion to those other areas.
4. The Special Master erroneously drew the lateral seaward boundary north of the overlap of the coastal fronts of the two states, thereby causing that boundary to cut across the South Carolina coastal front.

#### **AMICUS BRIEFS**

##### ***In Support of Neither Party***

**The United States of America** (*Counsel of Record, Kenneth W. Starr, Solicitor General, Department of Justice, Washington, DC 20530; telephone (202) 633-2217*):

1. The Report of the Special Master assumes, unnecessarily and incorrectly, that this nation has used the "straight baseline" method to determine the location of the coastline of the United States.

**The State of Alaska** (*Counsel of Record, G. Thomas Koester, Assistant Attorney General, Alaska Department of Law, P.O. Box K, Juneau, AK 99811; telephone (907) 465-3600*):

1. The Court should reject the United States' suggested rationale for not adopting the Special Master's "straight baseline" discussion because it is unnecessary to the decision of this case.
2. The Supreme Court has never concluded that the use of the "straight baseline" method is contrary to historic maritime boundary delimitation in the United States.