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## The Seaward Boundary Cases

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## *The Seaward Boundary Cases*

by Robert H. Abrams

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**United States**  
v.  
**State of Louisiana**  
**(Alabama and Mississippi Boundary Cases)**  
(Docket No. 9, Original)

*To be argued November 26, 1984*

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**United States**  
v.  
**State of Maine**  
**(Rhode Island and New York Boundary Cases)**  
(Docket No. 35, Original)

*To be argued November 26, 1984*

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### ISSUE

In these cases, argued the same day but not joined, the Supreme Court is being asked to settle the seaward boundary of four coastal states—Alabama, Mississippi, Rhode Island and New York. The more particular legal question that the Court will address is the impact on that determination of the existence of offshore barrier islands in the Gulf of Mexico, and Long Island and Block Island off the North Atlantic coast. These cases will interest and impact upon very few, but should clear up some murky, technical boundary questions that may later surface in jurisdictional disputes. If these islands are deemed by law (as opposed to cartography or common perception) to be within bays, the outer shores of these islands mark the coast of the states, and all water landward of the islands are considered inland waters, wholly within state jurisdiction and control. Waters to the seaward side of the islands are under state jurisdiction for three miles, after which they are subject to exclusive federal control. If instead, these islands are found to be outside of any bays, state jurisdiction extends for three miles from the island shore. To seaward, this resultant division of jurisdiction is identical; to landward, however, areas of water and beds lying more than three miles from the mainland and more than three miles from the islands will be under federal control.

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### FACTS

The Alabama and Mississippi cases are part of a larger litigation that was instituted to settle the seaward boundaries of all of the Gulf coast states. Previous litigation, terminated in 1960, fixed the Louisiana coast and expressly left open the identical question for Alabama and Mississippi. It was thought that the United States and the two states could negotiate an agreement. In 1979, the state of Mississippi, having decided that the negotiations were unlikely to reach a suitable conclusion, filed a motion in the Supreme Court seeking entry of a supplemental decree in the discontinued litigation. Alabama followed suit some months later. The matter was referred to Special Master Walter P. Armstrong, Jr. in early 1980. Roughly four years later, the Report of the Special Master was filed, favoring the claims of the two states. The parties noted their exceptions (legal disagreements) to the master's report, and the Supreme Court in this case considers those exceptions.

The physical setting in the Gulf states case is one in which there is a line of barrier islands several miles off the mainland coast. The waterbody that lies between these islands and the mainland is the Mississippi Sound. The Special Master's Report explained that the 1960 decision of the Supreme Court settling the Louisiana boundary described the applicable method for measuring the boundaries and proceeded to apply that method to the specifics of the case. The result favored the states in their claim that all of the waters of the Mississippi Sound were inland waters subject to state control.

The Rhode Island/New York case, although presenting similar legal issues, arose in a different fashion. Pilots of foreign flag and American registry vessels licensed by the state of Connecticut challenged a Rhode Island statute that required all vessels plying the waters of Block Island Sound to take on a Rhode Island licensed pilot. The federal district court in that case, *Warner v. Replinger* (397 F. Supp. 350 (Dist. R. I. 1975)), determined that the Rhode Island statute was authorized by federal statute (46 U.S.C. section 211) if the waters of Long Island Sound and Block Island Sound were properly considered to be "bays." The court found that under the Geneva Convention on the Territorial Sea and Contiguous Zone, the sounds were bays and the Rhode Island regulation was upheld. The result was affirmed by the United States Circuit Court of Appeals for the First Circuit. Certiorari was sought, but the peti-

tion was never acted upon by the Supreme Court.

The United States also pursued a separate means to review of the determination that the waters involved were bays. It filed a motion in pending litigation (*United States v. Maine*, Docket Number 35, Original) with all of the northeastern coastal states seeking a supplemental determination of the coastal boundary of Rhode Island. This motion was granted and Walter E. Hoffman was appointed Special Master in mid-1977. Thereafter, the Special Master formally advised the other northeastern coastal states of the pendency of the Rhode Island boundary determination and the likelihood that it would settle legal issues that would affect their coastal boundaries. The state of New York eventually joined the supplemental litigation, becoming an active participant in 1981.

The physical setting of the Rhode Island/New York case concerns the waters of Long Island Sound and Block Island Sound. The Special Master concluded that all of Long Island Sound and the bulk of Block Island Sound were juridical bays within the meaning of the Geneva Convention on Territorial Waters and Contiguous zones. As with the Gulf states case, the impact of this determination is that the states control these waters and the underlying beds. Additionally, Rhode Island's authority to regulate pilotage in the portions of these waters assigned to it by the master's report is implicitly sustained.

#### BACKGROUND AND SIGNIFICANCE

There seems to be no major importance to either of these cases. The legal issue is of some general concern, for on occasion, the control of beds and waters lying between the mainland and offshore islands will determine the rights to mineral deposits found beneath the coastal waters. Alaska's presence in the case as an *amicus* gives some indication that the issue involved might have important implication for offshore oil and gas development in that region. Beyond mineral rights, there are some issues of regulatory jurisdiction that are also implicated by these cases. For example, in the Rhode Island case, that state has claimed the right to regulate pilotage of vessels in the disputed area. If the boundary claim favors the state, its regulation can be sustained; if the boundary claim fails, the regulation will be beyond the state's authority.

The legal issues in the case are all rather technical, involving the proper interpretation and application of the Geneva Convention on the Territorial Sea and Contiguous Zone to the factual settings provided by the two cases.

#### ARGUMENTS—MISSISSIPPI SOUND

*For the United States* (Counsel of Record, Donald A. Carr, Department of Justice, Washington, DC 20530; telephone (202) 633-2217)

1. The straight baseline method of Article 4 of the Geneva Convention has not been adopted by the United States.
2. Mississippi Sound is not a juridical bay.
3. Dauphin Island should not be considered a part of the mainland.
4. The Mississippi and Alabama enabling acts did not establish the precise location of state boundaries.
5. The several states did not, on admission to the Union, receive indefeasible title to submerged lands that would prevent a change in governing law.

*For the State of Mississippi* (Counsel of Record, Jim R. Bruce, P. O. Box 37, Kennett, MO 63857; telephone (314) 888-9696)

1. The federal government has disclaimed the use of straight baselines in determining coastal boundaries of the several states.
2. Mississippi Sound is inland water without regard to the treatment of Dauphin Island as part of the mainland.
3. The Mississippi enabling act confirms that Mississippi Sound is inland water.
4. Mississippi Sound is a juridical bay.
5. Mississippi Sound constitutes "historic inland waters" of the state.

*For the State of Alabama* (Counsel of Record, Benjamin Cohen, Special Assistant Attorney General, 2330 Highland Avenue South, Birmingham, AL 35205; telephone (205) 328-1665)

1. The historic land boundary in the region is the seaward side of the barrier islands.
2. The eastern end of Mississippi Sound is a juridical bay.
3. Dauphin Island is an extension of the mainland.

#### AMICUS ARGUMENT

##### *In Support of the States*

The state of Alaska filed the sole amicus brief in this case, raising the following arguments:

1. The intent of the Alaskan statehood act was to eliminate all pockets of open sea off the state's coast and make them part of the state's territorial seas.
2. The discussion of straight baselines is not necessary to the determination of the case.
3. The Submerged Lands Act grants to states all submerged lands between the state's most seaward contiguous boundary and the mainland.
4. The Submerged Lands Act must be viewed as an extension of the "equal footing" doctrine, thereby forbidding disparate treatment of Alabama and Mississippi from that accorded to Louisiana.
5. The executive branch cannot, without congressional approval, alter a policy which effectively deprives a state of claimed lands within the state's boundaries.

**ARGUMENTS—LONG ISLAND AND  
BLOCK ISLAND SOUNDS**

*For the United States (Counsel of Record, Margaret N. Strand, Department of Justice, Washington, DC 20530; telephone (202) 633-2217)*

1. Long Island is not an extension of the mainland and does not form a juridical bay.

*For the State of Rhode Island (Counsel of Record, J. Peter Doherty, Special Assistant Attorney General, RFD Hawkseye Farm, Sharon Sprins, NY 13459, telephone (518) 284-2147)*

1. Article 7 of the Geneva Convention on the Territorial Sea and Contiguous Zone requires that the closing line for the Rhode Island boundary be formed by a line between Montauk Point and Lewis Point on Block Island and a line between Sandy Point on Block Island and Judith Point.
2. The geographic, physical, social and economic ties between Long Island and the mainland and the uses of the enclosed waters between the island and the mainland, establish Long Island as part of the mainland for the purposes of fixing seaward boundaries.

*For the State of New York (Counsel of Record, Peter H. Schiff, Acting Attorney-in-Chief, Appeals and Opinions of the Office of the Attorney General of the State of New York, 2*

*World Trade Center, New York, NY 10047; telephone (212) 488-5123)*

1. Article 7 of the Geneva Convention on Territorial Sea and the Contiguous Zone governs this case.
2. The juridical bay constituted by Long Island Sound should include Block Island Sound and should be closed by baselines from Montauk Point and Point Judith to Block Island.

**AMICUS ARGUMENTS**

*In Support of the States*

The state of Alaska filed the sole amicus brief in this case, raising the following arguments:

1. Division of submerged lands between coastal states and the federal government is a matter of domestic law which does not merit the judicial deference reserved for cases involving foreign policy.
2. The coastline of the Alexander Archipelago was the subject of the Alaskan boundary arbitration with Great Britain in 1903.
3. Application of the equal footing doctrine in the simple manner proposed by the United States would entitle all states to a nine-mile band of submerged lands.
4. Congress, not the executive branch, has the power to fix the coastal boundaries of states.

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**ARGUMENTS: DECEMBER SESSION****Monday, November 26**

1. United States v. Maine et al. (35 Orig.)(*Preview* 107-109)
2. United States v. Louisiana et al. (9 Orig.)(*Preview* 107-109)
3. Town of Hallie v. City of Eau Claire (82-1832)
4. Southern Motor Carriers Rate Conference v. United States (82-1922)

**Tuesday, November 27**

5. United States v. Sharpe (83-529)
6. Bd. of License Commissioners of Town of Tiverton v. Pastore (83-963)
7. Atkins v. Parker (83-1660), Parker v. Block (83-6381)
8. Central States, SE and SW Areas Pension Fund v. Central Transport, Inc. (82-2157)

**Wednesday, November 28**

9. Francis v. Franklin (83-1590)
10. United States v. Johns (83-1625)
11. Federal Election Comm'n v. National Conservative Political Action Committee (83-1032), Democratic Party of the U.S. v. National Conservative Political Action Committee (83-1122)
12. NAACP v. Hampton County Election Comm'n (83-1015)

**Monday, December 3**

1. Cleveland Bd. of Education v. Loudermill (83-1362), Parma Bd. of Education v. Donnelly (83-1363), Loudermill v. Cleveland Bd. of Education (83-6392)
2. Heckler v. Chaney (83-1878)
3. Anderson v. City of Bessemer (83-1623)
4. Lindahl v. Office of Personnel Management (83-5954)

**Tuesday, December 4**

5. Wallace v. Jaffree (83-812), Smith v. Jaffree (83-929)
6. CIA v. Sims (83-1075), Sims v. CIA (83-1249) (83-929)
7. Dean Witter Reynolds Inc. v. Byrd (83-1708)
8. Marrese v. American Academy of Orthopaedic Surgeons (83-1452)

**Wednesday, December 5**

9. School Dist. of City of Grand Rapids v. Ball (83-990)
10. Aguilar v. Felton (84-237), Secretary, U. S. Dept. of Education v. Felton (84-238), Chancellor of Bd. of Education of City of New York v. Felton (84-239)
11. Marek v. Chesny (83-1437)(*Preview* 105-106)



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