

9-1-2005

## Alaska v. United States, 125 S. Ct. 2137 (2005)

Julie M. Schmidt

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### FEDERAL COURTS

#### UNITED STATES SUPREME COURT

**Alaska v. United States, 125 S. Ct. 2137 (2005)** (holding submerged lands under the waters of the Alexander Archipelago were neither historic inland waters nor part of a juridical bay, and holding the United States had expressly reserved submerged lands under Glacier Bay, making the disputed lands property of the United States).

Alaska invoked original jurisdiction of the Supreme Court to resolve its dispute with the United States over title to submerged lands underlying waters in the Alexander Archipelago and Glacier Bay in southeastern Alaska. The Supreme Court appointed a Special Master, who recommended summary judgment in favor of the United States on each of Alaska's claims. Alaska then issued exceptions to the Special Master's report.

The Court began its analysis with a review of the general principles of law governing submerged lands. Under the equal footing doctrine and the Submerged Lands Act, "[s]tates enjoy a presumption of title to submerged lands beneath inland navigable waters within their boundaries and beneath territorial waters within three nautical miles of their coasts." The Federal Government can overcome the presumption and defeat a future state's title to submerged lands by setting the lands aside before statehood in a way that shows a definitely declared or otherwise very plain intent to retain title.

Alaska's first claim was for the submerged lands beneath the waters of the Alexander Archipelago. All the submerged lands lie more than three miles off the coast, and if the waters are not inland, they qualify as a territorial sea and belong to the United States. Therefore, Alaska based its claim on two grounds: (1) the waters were historic inland waters, and (2) the waters were part of two juridical bays.

Alaska alleged the waters of the Alexander Archipelago were historic inland waters. In order to claim submerged lands based on an area's status as historic inland waters, Alaska must show that the United States: "(1) exercises authority over the area; (2) has done so continuously; and (3) has done so with the acquiescence of foreign nations." The exercise of sovereignty is required to have been an assertion of power to exclude all foreign vessels and navigation, including "innocent passage" – passage that is "not prejudicial to the peace, good order or security of the coastal State." The Court has also considered the "vital interests of the United States" in designating historic inland waters.

The Court held the waters of Alexander Archipelago were not historic inland waters, based on a review encompassing the history of the area from Russian sovereignty through Alaskan statehood. During that period, the Court found that the United States had made only one statement which described the waters as inland, and it seized only one foreign vessel in a manner consistent with the status of the waters as inland. The Court held that these incidents were not enough to establish continuous assertion of exclusive authority, and therefore not enough to support an inland historic waters claim.

Alaska alternatively alleged the waters of the Alexander Archipelago were part of two juridical bays. Juridical bays, which are deemed inland waters, require "a well-marked indentation" having an area "as

large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation.” Alaska alleged that the Court should consider the four islands in the Alexander Archipelago connected to each other and the mainland creating juridical bays to the north and south.

The Court assumed, *arguendo*, that they should consider the islands connected as part of a peninsula, but found the waters to the north and south of that peninsula still did not meet the criteria of a juridical bay. Neither the waters on the north, nor the waters on the south formed the requisite well-marked indentations. The Court found these hypothetical bays would not be evident to the eye of a mariner, therefore rejecting Alaska’s juridical bay theory.

Alaska’s second claim was to the submerged lands beneath Glacier Bay within Glacier Bay National Park (formerly Glacier Bay National Monument) (“Park”). These lands are undisputedly part of an inland bay. Alaska would have title to these lands unless the United States could rebut the strong presumption that title to these lands passed to Alaska at statehood. The United States could defeat a future state’s presumed title by setting submerged lands aside as part of a federal reservation. To prevail, the United States must have clearly intended to include submerged lands within the reservation and must have expressed its intent.

The Court found that the United States clearly intended to include the submerged lands under the waters of Glacier Bay when it created the Park in the 1930s. The purposes of the Park’s creation included conservation and scientific study of the glaciers and the wildlife within Glacier Bay, which included studying the submerged lands. The Court also found that the United States expressed its intent through the Alaska Statehood Act (“ASA”). After considering the context within which Congress enacted the ASA, the text of the ASA, and a prior case on the ASA, the Court concluded that the ASA did express the intent of the United States to retain the submerged lands under Glacier Bay when it granted Alaska statehood. The Court held the United States successfully rebutted Alaska’s presumptive title.

The Court concluded by rejecting Alaska’s claims to the submerged lands under Alexander Archipelago and Glacier Bay and directed the parties to prepare and submit to the Special Master a decree for the Court’s consideration.

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**Orff v. United States, 125 S. Ct. 2606 (2005)** (holding that Section 390uu of the Reclamation Reform Act does not waive sovereign immunity from suits directly against the United States, but constitutes a limited waiver to join the United States as a necessary party defendant to