



# Florida v. Georgia: Can the Supreme Court finally resolve this decades-long feud over the right to water in the ACF Basin?

By: Frederick L. Aschauer, Jr.<sup>1</sup>

The United States Constitution gives States a unique venue to seek redress for alleged harms brought about by another State.<sup>2</sup> Indeed, in surrendering their sovereign powers to pursue diplomatic resolutions against their sister States, or, worse, make war against them, the States needed some unique venue to seek a remedy.<sup>3</sup> That venue was before the United States Supreme Court in the form of an original action.

## *Florida v. Georgia – the Beauty of the Apalachicola Bay*

In October, 2013, the State of Florida sought leave to file a bill of complaint in the United States Supreme Court, an original action against the State of Georgia, requesting the “equitable apportionment” of the waters flowing in the Apalachicola-Chattahoochee-Flint River Basin (ACF Basin).<sup>4</sup> “Florida alleged that Georgia’s consumption of Flint River water ‘reduce[s] the amount of water flowing to the Apalachicola River at all times,’ and noted that ‘the effects are especially apparent during the low flow summer and fall periods.’”<sup>5</sup> When “the Court is asked to resolve an interstate water dispute raising questions beyond the interpretation of specific language of an interstate compact, the doctrine of equitable apportionment governs [the Court’s] inquiry.”<sup>6</sup>

The ACF Basin is made up of three river basins – the Chattahoochee, Flint and Apalachicola River Basins.

The Chattahoochee River begins in northeastern Georgia, flowing south, at times forming the border between Georgia and Alabama.<sup>7</sup> Ultimately, the Chattahoochee River flows into Lake Seminole at the Georgia-Florida state line.<sup>8</sup> The Flint River begins south of Atlanta and flows through agricultural areas in southwest Georgia before it ends at Lake Seminole.<sup>9</sup> Flowing south from Lake Seminole is the Apalachicola River, which ultimately feeds into Apalachicola Bay.<sup>10</sup>

In his report, the Special Master described the Apalachicola Bay as a “wide, shallow estuary along the Gulf Coast,” and as “one of the largest estuaries in the southeastern United States and ... one of the most productive estuaries in the northern hemisphere.”<sup>11</sup> One crop that the Apalachicola Bay has produced over the years is oysters. In that regard, “Apalachicola oysters are widely recognized for their quality and have significant commercial value.”<sup>12</sup> However, in order to maintain the Apalachicola Bay’s health and ability to produce high-quality oysters, a certain amount of fresh water flowing into the Bay is necessary. The Bay’s salinity levels, which directly impact oyster production, are influenced by flows from the Apalachicola River.<sup>13</sup> Indeed, the Special Master noted that river flow “is the primary determinant of salinity in the Bay.”<sup>14</sup>

The management of the waters in the ACF Basin has been the subject

of a decades-long dispute between Florida, Georgia and Alabama.<sup>15</sup> Much of this litigation involved the United States Army Corps of Engineers operation of various dams and reservoirs on the Chattahoochee River. Ultimately determining it was necessary to bring an original action in the United States Supreme Court, Florida filed its claim alleging “it has suffered serious harm to its ecology and economy because of reduced flows in the [Apalachicola] River resulting from Georgia’s increasing consumption of water from the [ACF] Basin for municipal, industrial, and agricultural uses.”<sup>16</sup> For its remedy, Florida requested “that the Court ‘enter a decree equitably apportioning the waters of the ACF Basin.’”<sup>17</sup>

## *The Special Master and the Report*

The Court granted Florida’s request to file a Complaint and appointed a Special Master to conduct the necessary proceedings and return

See “Florida v. Georgia” page 5

## INSIDE:

From the Previous Chair .....	2
On Appeal .....	3
Stetson Law Hosts International Finals of 23rd Annual Stetson International Environmental Moot Court Competition .....	4

# From the 2018-19 Chair

by David Bass

Heat. Rain. Mosquitos. Hurricanes. Summer in Florida. Well, summer is here, and despite what they say on Game of Thrones, Winter is *not* Coming (at least anytime soon). It also means that my turn as Chair of the Environmental and Land Use Law Section has come to an end. Time surely did fly, but we had a great year, and the future of the Section is bright.

We had our third Executive Council meeting of the year in conjunction with the Council's Long-Range Planning retreat, May 18-20, in Fort Lauderdale. It was a fun-filled and productive weekend, arranged by ELULS 19-20 Chair, and Fort Lauderdale native, Jon Harris Maurer. The weekend started with a well-attended mixer at Park & Ocean, a beautiful restaurant and bar aptly located between Hugh Birch Taylor state park and the Atlantic Ocean, followed by dinner at an ocean-front restaurant, and after dinner, drinks at the famous Elbo Room. Saturday morning, we held our Executive Council meeting, followed by our Long-Range Planning session, where a roadmap for next

year's activities was developed. In the afternoon, we traversed down the New River in a flotilla of Tiki Huts, which provided wonderful views of life in Fort Lauderdale, along with Tiki Hut beverages. So, as you can tell, we have a lot of fun in addition to putting on wonderful CLE programs throughout the year.

We recently had our fourth and final Executive Council meeting of the year, held in Boca Raton in conjunction with the Florida Bar Annual Convention. We had our awards ceremony during the Executive Council meeting this year, which was held from 3:00-5:45 p.m. in the Royal Palm Ballroom III of the Boca Raton Resort & Club. Following the meeting, we had a mixer in conjunction with the Administrative Law Section from 6:00-7:00 p.m. The following morning, ELULS put on its final CLE event of the year, our 2019 update which featured many great speakers, including a legislative update, administrative law update, and the general counsel's roundtable.

To keep our momentum going, we need interested and energetic ELULS members to become involved in the Section. We need help with updating the treatise, organizing webinars (including speakers and topics), social media and outreach for new and current members, and becoming a law school liaison. These are just a few of the ways you can get involved and participate in the Section. Please contact Section Administrator, Cheri Wright, at [cwright@floridabar.org](mailto:cwright@floridabar.org) if you are interested in getting involved in the Section and she can provide more information.

Finally, I'd like to thank all the hard-working folks on the Executive Council who put in the effort to keep the Section moving ahead this past year. I'd like to give special recognition to Cheri Wright, who completed her first full year as Section Administrator. Cheri tirelessly accepted every challenge and assignment with a positive attitude and made everybody's life a lot easier.

I wish you all the best of luck this fiscal year!

This newsletter is prepared and published by the Environmental and Land Use Law Section of The Florida Bar.

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# ON APPEAL

by Larry Sellers, Holland & Knight, LLP

*Note: Status of cases is as of June 3, 2019. Readers are encouraged to advise the author of pending appeals that should be included.*

## FLORIDA SUPREME COURT

*City of Miramar, et al., v. Kanter Real Estate, LLC, et al.*, Case No. SC19-639. Petition for review of an opinion by the 1<sup>st</sup> DCA reversing DEP final order denying an application for oil and gas drilling permit, over contrary recommendation by ALJ, 254 So. 3<sup>rd</sup> 1056. Status: Petition for review filed on April 18, 2019; Notice of voluntary dismissal filed May 9, 2019.

*Lieupo v. Simon's Trucking, Inc.*, Case No. SC18-657. Petition for review of decision by 1<sup>st</sup> DCA in which the court certified the following question as one of great public importance: "Does the private cause of action contained in s. 376.313(3), Florida Statutes, permit recovery for personal injury?" *Simon's Trucking, Inc., v. Lieupo*, Case No. 1D17-2065 (Fla. 1<sup>st</sup> DCA, April 18, 2018). Status: Oral argument held on April 4, 2019.

*The Richman Group of Florida, Inc. v. Pinellas County*, Case No. SC18-456. Petition for review of decision by 2<sup>nd</sup> DCA reversing final judgment awarding the Richman Group of Florida, Inc., over \$16.5 million in damages under 42 U.S.C. § 1983, based on the trial court's conclusion that the County violated Richman's substantive due process and equal protection rights by denying Richman's proposed amendment to the county's land use plan. 42 Fla. L. Weekly D2526a (Fla. 2<sup>nd</sup> DCA 2017). Status: Petition for review denied November 29, 2018. On March 25, 2019, the US Supreme Court denied *certiorari*.

## FIRST DCA

*Pelican Bay Foundation, Inc. v. Florida Fish and Wildlife Conservation Commission and City of Naples, Florida*, Case No. 1D18-4760 Appeal from a final order dismissing the Foundation's challenge to a proposed rule that updated Manatee Protection Zones for all waterbodies within Collier County, which considered but rejected protection for the Clam Bay

System. Status: Notice of appeal filed January 29, 2018; all briefs filed; transferred from Second DCA Case No. 2D18-0353 to First DCA on November 9, 2018.

*Jose Oliva, Bill Galvano and the Florida Legislature v. Florida Wildlife Federation, Inc., Florida Defendants of the Environment, Inc., et al.* Case No. 1D18-3141. Appeal from Final Judgement for Plaintiffs: (1) interpreting Amendment 1 to limit the use of the funds in the Land Acquisition Trust Fund created by Article X, Section 28 to the acquisition of conservation lands or other property interests that the state did not own on the effective date of the Amendment and thereafter, and to improve, manage, restore natural systems thereon, and enhance public access or enjoyment of those conservation lands; and (2) determining that numerous specific appropriations inconsistent with that interpretation are unconstitutional. Status: Notice of appeal filed July 26, 2018; all briefs have been filed.

*Kanter Real Estate, LLC v. DEP, et al.*, Case No. 1D17-5096. Appeal from final order denying an application for oil and gas drilling permit, over contrary recommendation by administrative law judge. Status: Reversed and remanded on February 5, 2019; motion for rehearing en banc and in the alternative for certification as of great public importance and motion for rehearing, rehearing en banc and to certify as question of great public importance denied March 19, 2019.

## THIRD DCA

*City of South Miami v. Florida Power & Light Company*, Case No. 3D19-0020. Appeal from final order on remand approving certification, after the matter was remanded to the Siting Board for further review to take action consistent with the court's opinion in *Miami-Dade County v. In Re: Florida Power & Light Co.*, 208 So. 3d 111 (Fla 3<sup>rd</sup> DCA 2016). Status: Notice of appeal filed January 3, 2019.

*Florida Retail Federation, Inc., et al. v. The City of Coral Gables*, Case No. 3D17-562. Appeal from final

summary judgment upholding the City of Coral Gables ordinance prohibiting the sale or use of certain polystyrene containers, based upon trial court's determination that three state laws preempting the ordinance are unconstitutional. Status: Oral argument held on December 13, 2017.

## FOURTH DCA

*Everglades Law Center Inc. v. SF-WMD*, Case Nos. 4D18-1220, -1519 and -2124. Appeals from Order Denying Writ of Mandamus Against Plaintiff South Florida Water Management District and Entering Final Judgment on Defendant Everglades Law Center's Counterclaim. The Everglades Law Center sought to require disclosure of the transcripts of a "shade" meeting held by the SF-WMD Governing Board involving discussions regarding mediation between the District and its Governing Board in attorney-client sessions. The order concludes that the transcripts of such discussions constitute communications at a mediation proceeding within the meaning of Section 44.102(3), Florida Statutes, and therefore are exempt from disclosure under the public records law. Status: Oral argument held on March 12, 2019.

*Maggy Hurchalla v Lake Point Phase I LLC*, Case Nos. 4D18-1221 and 1632. Plenary appeal from jury verdict finding Ms. Hurchalla liable for \$4.4 million in damages on a claim of tortious interference with a contract for a public project, due to her public comments in opposition to the project. Status: Oral argument held on March 12, 2019.

## FIFTH DCA

*Adele Simons, et al v Orange County, et al*, Case No. 5D18-1418. Appeal from a final order of the Administration Commission finding to be "in compliance" the "Lake Pickett" plan amendments adopted by Orange County. The administrative law judge had recommended that the Administration Commission find the plan amendments not in compliance. Status: Oral argument held on March 19, 2019; affirmed per curiam on May 28, 2019



# Stetson Law Hosts International Finals of 23rd Annual Stetson International Environmental Moot Court Competition

On April 11–13, 2019, Stetson Law hosted the International Finals of the Stetson International Environmental Moot Court Competition (IEMCC) on its Gulfport campus. Now in its 23rd year, the Stetson IEMCC is the world's largest moot court competition devoted exclusively to global environmental issues. The theme of this year's competition problem was "Use of the Sargasso Sea and the Protection of Eels."

Hundreds of students prepared written memorials and participated in national and regional rounds throughout the world between November 2018 and March 2019. The top teams from the national and regional rounds were invited to participate in the International Finals

at Stetson Law this spring. Twenty-seven teams from Brazil, China, Colombia, India, Ireland, Kazakhstan, Mexico, the Philippines, Republic of Korea, Singapore, Taiwan, Trinidad and Tobago, Ukraine, and the United States participated in the International Finals this April.

The National Law School of India University, Bangalore was this year's champion, and the National University of Singapore was the runner-up. The University of the Philippines and the National University of Advanced Legal Studies, Kochi were semifinalists. The William S. Richardson School of Law, University of Hawaii at Manoa received the best memorial award. Two teams—Universidad de Monterrey and Hugh Wooding Law

School—received the Spirit of Stetson Award, which recognizes the team or teams that best exemplify civility, justice, and fair play during the competition.

This was the largest ever International Finals of the Stetson IEMCC, and we are incredibly grateful to the many people who helped with the competition, including members of the Environmental and Land Use Law Section (ELULS) of The Florida Bar who served as oral round judges. We also would like to thank the ELULS and the Joy McCann Foundation for their generous financial support of the competition. Planning for the next Stetson IEMCC is already underway, and we hope to expand the competition to include even more countries next year.



Competitors and judges after the championship round of the 2018–2019 Stetson International Environmental Moot Court Competition



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a report to the Court.<sup>18</sup> Under this authority, the Special Master, after months of extensive discovery, convened a multi-week evidentiary hearing in Portland, Maine, on October 31, 2016.<sup>19</sup> The Special Master issued his report on February 14, 2017.<sup>20</sup>

After hearing the evidence, the Special Master made a number of findings regarding the Apalachicola Bay and its oyster industry, and the collapse of that industry in 2012. For instance, he concluded that: “[t]here is little question that Florida has suffered harm from decreased flows in the [Apalachicola] River”; “Florida experienced an unprecedented collapse of its oyster fisheries in 2012”; and “the oyster collapse came as a result of increased salinity in the [Apalachicola] Bay caused by low flows in the [Apalachicola] River.”<sup>21</sup> The Special Master also noted that “the high salinity in the [Apalachicola] Bay from reduced streamflow allowed marine predators to invade the [Apalachicola] Bay in unprecedented levels, preying on the [Apalachicola] Bay’s oyster population.”<sup>22</sup>

Turning to Georgia’s use of water in the ACF Basin, the Special Master noted that it “appears that Georgia’s upstream agricultural water use has been – and continues to be – largely unrestrained.”<sup>23</sup> Noting a dramatic increase in agricultural water use since 1970<sup>24</sup> – for instance, Georgia’s irrigated acreage increased from less than 75,000 acres in 1970 to over 825,000 acres by 2014<sup>25</sup> – the Special Master found “Georgia’s position – practically, politically, and legally – [could] be summarized as follows: Georgia’s agricultural water use should be subject to no limitations, regardless of long-term consequences for the [ACF] Basin.”<sup>26</sup>

Ultimately, however, the Special Master concluded that there was “a single, discrete issue that resolves this case: even assuming that Florida has sustained injury as a result of unreasonable upstream water by Georgia....”<sup>27</sup> After discussing the operations of the United States Army Corps on the Chattahoochee River,<sup>28</sup> the Special Master found that the “evidence as presented at trial suggests that the Corps’ reservoir operations are a significant, and perhaps

the primary, factor influencing the amount of streamflow crossing the state line during times of drought and low flows.”<sup>29</sup> The Special Master concluded, in pertinent part, as follows:

Florida has failed to show that a consumption cap will afford adequate relief. The testimony and evidence submitted at trial demonstrates that the Corps can likely offset increased streamflow in the Flint River by storing additional water in its reservoirs along the Chattahoochee River during dry periods. The evidence also shows that the Corps retains extensive discretion in the operation of those federal reservoirs. As a result, the Corps can release (or not release) water largely as it sees fit, subject to certain minimum requirements under the [Revised Interim Operating Plan]. There is no guarantee that the Corps will exercise its discretion to release or hold back water at any particular time. Further, Florida has not shown that it would benefit from increased pass-through operations under normal conditions. Finally, without the Corps as a party, the Court cannot order the Corps to take any particular action. Accordingly, Florida has not proven by clear and convincing evidence that any additional streamflow in the Flint River resulting from a decree imposing a consumptive cap on Georgia’s water use would be released from Jim Woodruff Dam into the River at a time that would provide a material benefit to Florida.

Accordingly, the Special Master recommended that “the Court deny Florida’s request for relief.”

#### *SCOTUS Weighs In*

The United States Supreme Court heard oral argument by the parties on January 8, 2018; the opinion of the Court was issued on June 27, 2018. After summarizing the proceedings before the Special Master, the Court begins by explaining its jurisdiction in original actions. “We must approach interstate disputes ‘in the untechnical spirit proper for dealing with a quasi-international controversy, remembering that there is no

municipal code governing the matter, and that this court may be called on to adjust differences that cannot be dealt with by Congress or disposed of by the legislature of either State alone.”<sup>30</sup> “[W]hen we are confronted with competing claims to interstate water, the Court’s ‘effort always is to secure an equitable apportionment without quibbling over formulas.’”<sup>31</sup>

Deciding not to quibble over technical formulas, the Court concludes that “the Special Master applied too strict a standard when he determined that the Court would not be able to fashion an appropriate equitable decree.”<sup>32</sup>

We believe the Master’s standard, as indicated by these statements, is too strict. In our view, unless and until the Special Master makes the findings of fact necessary to determine the nature and scope of likely harm caused by the absence of water and the amount of additional water necessary to ameliorate that harm significantly, the complaining State should not have to prove with specificity the details of an eventually workable decree by “clear and convincing” evidence. Rather, the complaining State should have to show that, applying the principles of “flexibility” and “approximation” we discussed above, it is likely to prove possible to fashion such a decree.<sup>33</sup>

In reversing the judgment, the Court outlined five “subsidiary questions” to the “threshold question,” to wit:

*First*, has Florida suffered harm as a result of decreased water flow into the Apalachicola River? (The Special Master assumed “yes.”)

*Second*, has Florida shown that Georgia, contrary to equitable principles, has taken too much water from the Flint River (the eastern branch of the Y-shaped river system)? (Again, the Special Master assumed “yes.”)

*Third*, if so, has Georgia’s inequitable use of Basin waters injured Florida? (The Special

*continued...*



## FLORIDA V. GEORGIA

from previous page

Master assumed “yes.”)

*Fourth*, if so, would an equity-based cap on Georgia’s use of the Flint River lead to a significant increase in streamflow from the Flint River into Florida’s Apalachicola River (the stem of the Y)? (This is the basic question before us.)

*Fifth*, if so, would the amount of extra water that reaches the Apalachicola River significantly redress the economic and ecological harm that Florida has suffered? (This question is mostly for remand.)<sup>34</sup>

Upon reading this, one would think that these “subsidiary questions” would most likely drive the remand.

In dissent, Justice Thomas argues that the “Special Master applied this balance-of-harms standard and, after presiding over a 1-month trial involving 40 witnesses and more than 2,000 exhibits, found that Florida had not met its burden.”<sup>35</sup> Finding that the Special Master’s decision “is well supported by the evidence,” Justice Thomas notes that he would “have overruled Florida’s objections to the Special Master’s Report (Report) and

denied Florida’s request for relief.”<sup>36</sup> “Giving Florida another bite at the apple will likely yield no additional evidence, but it will be unfair to Georgia, which has already spent the time and resources to defeat the case that Florida chose to present. In short, we have all the evidence we need to decide this case now.”<sup>37</sup>

### *There’s a New Special Master in Town*

On remand, the newly-appointed Special Master,<sup>38</sup> the Honorable Paul J. Kelly, Jr., issued Case Management Order No. 23 (CMO 23). In CMO 23, the Special Master ordered the parties to submit a joint report responding to several questions. The oversimplified version of CMO 23 is the requirement that the parties submit a joint statement addressing whether additional discovery or evidentiary hearings are necessary. Of course, the parties disagreed in the joint statement. Florida proposed limited discovery and a “short supplemental evidentiary hearing”;<sup>39</sup> whereas, Georgia proposed that the Special Master proceed on the current record. The Special Master agreed with Georgia and ordered the parties to, among other things, provide proposed findings and conclusions as well as supplement briefs (and reply briefs).

The parties submitted their

proposed findings and conclusions on January 31, 2019. As one might expect, the parties each advanced arguments as to how/why Georgia’s water use is/is not harmful to the Apalachicola Bay. For instance, Florida proposed, among others, the following findings:

- There is little dispute that recent river flows have been severely and persistently low, and Georgia’s expert hydrologist acknowledged this during trial. (Proposed Finding No. 6)
- The growth of agricultural irrigation in Georgia also has resulted in pumping increasingly significant amounts of water from the Upper Floridan aquifer, which has impaired and reversed the natural process by which the Upper Floridan supplements river flows and caused river water in Georgia to flow into the Upper Floridan to feed the pumping demand, rather than flowing from the aquifer into the rivers and streams.
- Florida has demonstrated that a remedy providing 2000 additional cfs in flows in summer months of peak consumption during drought would be reasonable and not unduly costly to Georgia.

*continued...*



# Ethics Questions?

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## FLORIDA V. GEORGIA

from previous page

Some of Georgia's proposed findings include:

- Georgia's total consumptive use in the ACF Basin (reflecting stream-flow depletions from both the Flint and Chattahoochee Rivers) is a small fraction of total streamflow in the ACF Basin.
- A cap on Georgia's consumptive use would not meaningfully increase state-line flows at the times of year, or in the amounts, necessary to significantly ameliorate Florida's alleged harms.

### What's Next?

At this point, the parties have briefed the Special Master and provided proposed findings. An additional non-evidentiary hearing may be held; however, that is not a guarantee. We know that the previous Special Master found that Apalachicola Bay has been impacted by low flows, and that Georgia has increased its consumption of water upstream, in the Flint River Basin, particularly, by a significant amount. Will the newly-appointed Special Master find Georgia responsible for Florida's injury? Will the Corps' actions on the Chattahoochee and the Court's inability to fashion a decree without the Corps' participation<sup>40</sup> in this matter prevent the Court from entering a decree? At this point, one can only guess what the Special Master might decide. Whatever he decides, the Supreme Court will get another opportunity to weigh in on this decades-long feud. The question is: will the Supreme Court finally resolve this decades-long feud over the right to water in the ACF Basin?

### Endnotes

1 Mr. Aschauer is Of Counsel with Lewis, Longman & Walker, P.A., in its Tallahassee office. His practice focuses on both state and federal environmental regulatory issues. Mr. Aschauer is the former General Counsel to the Florida Department of Environmental Protection and, in that capacity, had the great fortune of witnessing the first two weeks of the hearing before Special Master Lancaster in person. He was also present, in a private capacity, for the oral argument before the Supreme Court.

2 "In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction." U.S. Const. art. III, § 2, cl. 2. (emphasis supplied)

3 *State of Missouri v. State of Illinois*, 180 U.S. 208, 241, 21 S. Ct. 331, 344, 45 L. Ed. 497

(1901)("If Missouri were an independent and sovereign state all must admit that she could seek a remedy by negotiation, and, that failing, by force. Diplomatic powers and the right to make war having been surrendered to the general government, it was to be expected that upon the latter would be devolved the duty of providing a remedy, and that remedy, we think, is found in the constitutional provisions we are considering.").

4 See *United States Supreme Court website* at <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/22o142.html>; and see *Florida v. Georgia*, 138 S. Ct. 2502, 2510, 201 L. Ed. 2d 871 (2018)("In 2013, Florida, the downstream State, sought to sue Georgia, the upstream State, asking us to exercise our 'original and exclusive jurisdiction' and issue a decree equitably apportioning the waters of the Basin.").

5 *Florida v. Georgia*, 138 S. Ct. 2502, 2510, 201 L. Ed. 2d 871 (2018); see also *Florida's Complaint for Equitable Apportionment and Injunctive Relief*, Pg. 9, ¶ 21. The docket for this case is maintained at <https://www.ca10.uscourts.gov/special-master-142> and documents from the Docket, with the exception of the Special Master's Report and the Supreme Court's opinion in this matter, will be cited to as follows: FL v. GA Docket, Pleading, Pg. #.

6 *Florida v. Georgia*, 138 S. Ct. 2502, 2513, 201 L. Ed. 2d 871 (2018) citing *See Colorado v. New Mexico*, 459 U.S. 176, 183, 103 S.Ct. 539, 74 L.Ed.2d 348 (1982) (*Colorado I*) and *Virginia v. Maryland*, 540 U.S. 56, 74, n. 9, 124 S.Ct. 598, 157 L.Ed.2d 461 (2003).

7 Special Master's Report, pg. 4. While the Special Master's Report may be found at the online docket, due to the focus placed on it herein, the Special Master's Report shall be cited as "Report, Pg. #".

8 Report, Pg. 4.

9 *Id.* at 5.

10 *Id.*

11 *Id.* at Pg. 8.

12 *Id.* at Pg. 9.

13 *Id.*

14 *Id.*

15 *Id.* at 10.

16 *Id.* at 14.

17 *Id.* at 16.

18 Docket, Order Appointing Ralph Lancaster Special Master, Pg. 1. ("It is ordered that Ralph I. Lancaster, Esquire, of Portland, Maine, is appointed Special Master in this case with authority to fix the time and conditions for the filing of additional pleadings, to direct subsequent proceedings, to summon witnesses, to issue subpoenas, and to take such evidence as may be introduced and such as he may deem it necessary to call for. The Special Master is directed to submit Reports as he may deem appropriate.")

19 Report, Pg. 21.

20 Report, Pg. 70.

21 Report, Pg. 31.

22 *Id.* at 32.

23 *Id.*

24 *Id.*

25 *Id.* at 33.

26 *Id.* at 34.

27 *Id.* at 30.

28 *Id.* at 36-46.

29 *Id.* at 61.

30 *Florida v. Georgia*, 138 S. Ct. 2502, 2513, 201 L. Ed. 2d 871 (2018)(quoting *Virginia v. West Virginia*, 220 U.S. 1, 27, 31 S.Ct. 330, 55 L.Ed. 3533 (1911)).

31 *Id.* (quoting *New Jersey v. New York*, 283 U.S. 336, 51 S.Ct. 478, 75 L.Ed. 1104 (1931)).

32 *Id.* at 2516.

33 *Id.*

34 *Id.* at 2518.

35 *Id.* at 2529.


36 *Id.*

37 *Id.* at 2541.

38 Special Master Kelly was appointed by the Supreme Court on August 9, 2018. See Docket, US Supreme Court Order Appointing Judge Paul J. Kelly, Jr. as Special Master.

39 Docket, Parties Joint Memorandum pursuant to CMO 23, Pg. 12

40 The Corps asserted sovereign immunity.



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<input type="checkbox"/>	AFFILIATE – Students	\$20

I understand that all privileges accorded to members of the section are accorded affiliates and law students, except that affiliates may not advertise their status in any way, and neither affiliates nor law students may vote, or hold office in the Section or participate in the selection of Executive Council members or officers.

**CERTIFICATION:** I hereby certify that I have never been denied admission to any bar, or been the subject of any proceeding questioning my moral character, disbarred from any legal bar, convicted of a felony, expelled from any University or Law School, or investigated for fraud, misappropriation or mismanagement of funds.

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_