



U.S. Department of Justice

Environment and Natural Resources Division

MTG
90-1-2-14114

Appellate Section
701 San Marco Blvd.
Jacksonville, FL 32207

Telephone (202) 352-3147
Facsimile (202) 514-0557

February 20, 2015

BY EMAIL AND U.S. MAIL

Ralph I. Lancaster, Jr.
Pierce Atwood
Merrill's Wharf
254 Commercial Street
Portland, ME 04101

Re: February 10, 2015, Status Conference

Dear Special Master Lancaster:

I write on behalf of the United States to request that the United States be permitted to file by March 11, 2015, a brief as amicus curiae concerning Georgia's motion to dismiss this case for failure to join the United States as a required party. Georgia filed its motion on February 16, 2015. Case Management Order 3 provides that "any party opposing such a motion will have ten (10) days to respond." Assuming it opposes the motion, a response by Florida is therefore due on February 26, 2015. As indicated in paragraph D of our Statement of Participation, the United States anticipates participating as amicus curiae in the briefing on motions "[t]o the extent the United States determines its participation . . . is appropriate to address the interests of the United States or provide assistance to the Court."

Georgia's motion raises substantial questions about the role and status of the United States in this case. And as the Supreme Court has noted, "the issue of joinder can be complex, and determinations are case specific." *Republic of Philippines v. Pimentel*, 553 U.S. 851 (2008). The United States is currently considering its views on Georgia's motion. That consideration involves substantial inter-agency coordination and an ultimate decision by the Solicitor General on whether the United States is a required party and, if so, whether the case must be dismissed in its absence. The Solicitor General is arguing the case of *King v. Burwell*, No. 14-114, regarding a challenge to the Affordable Care Act, on March 4, 2015. We therefore request that the United States be permitted to file a brief as

amicus curiae one week later, on March 11, 2015, so that the Solicitor General will have time to adequately consider the position of the United States in this matter.

We have consulted with counsel for both Florida and Georgia on this request. Georgia takes no position. Florida states that “Florida cannot consent to the United States’ request to file an amicus brief on March 11, 2015, because the United States is unable to state at this time whether, or not, it intends to support Georgia’s motion and under the schedule the United States has proposed it would file its amicus brief nearly two weeks after Florida has filed its response to Georgia’s motion, denying Florida an opportunity to see the United States’ position before it files its response. At the same time, Florida is not opposed to altering the schedule so that the United States has more time to make a decision on its position, consistent with the heavy demands of the lawyers in the Solicitor General’s office. But Florida requests that, if the Special Master grants the United States’ request to file an amicus brief, the Special Master also modify the schedule—by extending the time for Florida’s response to Georgia’s motion—so that Florida will have an opportunity to review the United States’ amicus brief before filing its response.”

Very truly yours,

s/Michael T. Gray

In The
Supreme Court of the United States

STATE OF FLORIDA,
Plaintiff

v.

STATE OF GEORGIA
Defendant

Before the Special Master

Hon. Ralph I. Lancaster

CERTIFICATE OF SERVICE

This is to certify that the foregoing letter from Michael T. Gray on behalf of the United States to Special Master Lancaster has been served this 20th day of February, 2015, in the manner specified below:

For State of Florida	For State of Georgia
<p><u>By U.S. Mail and Email:</u> Allen Winsor Solicitor General <i>Counsel of Record</i> Office of Florida Attorney General The Capital, PL-01 Tallahassee, FL 32399 T: 850-414-3300 allen.winsor@myfloridalegal.com</p> <p>By Email Only: Donald G. Blankenau Jonathan A. Glogau Christopher M. Kise Matthew Z. Leopold Osvaldo Vazquez Thomas R. Wilmoth floridawaterteam@foley.com</p>	<p><u>By U.S. Mail and Email:</u> Craig S. Primis, P.C. <i>Counsel of Record</i> Kirkland & Ellis, LLP 655 15th St., NW Washington, D.C. 20005 Craig.primis@kirkland.com</p> <p><u>By Email Only:</u> Samuel S. Olens Nels Peterson Britt Grant Seth P. Waxman K. Winn Allen Sarah H. Warren georgiawaterteam@kirkland.com</p>

s/Michael T. Gray
MICHAEL T. GRAY,
United States Department of Justice
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