Philip J. Perry
Direct Dial: 202.637.2244
philip.perry@lw.com

555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004-1304
Tel: +1.202.637.2200 Fax: +1.202.637.2201
www.lw.com

LATHAM&WATKINS LLP



October 1, 2015

**VIA EMAIL AND U.S. MAIL**

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

Re: *Florida v. Georgia*, No. 142 Original
Response to Georgia's October 1, 2015 Letter

Dear Special Master Lancaster:

Florida respectfully seeks leave to submit this short response to Georgia's letter of earlier today regarding the September 29, 2015 telephone conference.

Florida disagrees with Georgia's characterization of *United States v. Texas*, 339 U.S. 707 (1950). The Supreme Court's *unqualified* statement there about the importance of fact development reflects the Court's longstanding and oft expressed view that original actions between sovereigns are among the most important and serious disputes heard by the Court.[1] It is precisely because such disputes involve "issues of high public importance" that it is necessary to have a *complete* and accurate factual record for the Court to render a just and equitable decision in cases where disputed issues of fact exist. *See id.* at 715.

The Court in *Texas* denied Texas's request to take depositions—and for appointment of a Special Master—because the issue presented in that case could be resolved readily as a matter of law. *Id.* Likewise, the statement quoted by Georgia in *Ohio v. Kentucky* refers to expedited treatment of cases that can be resolved as a matter of law or that do not pass the Court's initial gatekeeping test for original actions. 410 U.S. 641, 644-45 (1973).

By contrast, where the Court has granted leave for an action to proceed and there are disputed issues of material fact, as here, full development of facts is necessary. As Florida noted

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[1] *See, e.g.*, *Mississippi v. Louisiana*, 506 U.S. 73, 77 (1992) ("'The model case for invocation of this Court's original jurisdiction is a dispute between States of such seriousness that it would amount to *casus belli* if the States were fully sovereign.'" (citation omitted)); *South Carolina v. North Carolina*, 558 U.S. 256, 267 (2010) ("[T]his Court exercises 'original and exclusive' jurisdiction to resolve controversies between States that, if arising among independent nations, 'would be settled by treaty or by force.'" (citation omitted)).

during the teleconference, Special Master Paul Verkuil recognized this principle in *New Jersey v. New York* in explaining why he denied summary judgment in that case:

> [T]he Court's referral of the case to me compelled a careful examination of all factual issues. ... ***The Court's jurisprudence teaches that, in original jurisdiction cases, full and liberal factual development is important because of the lofty historical, territorial, and financial implications of these cases to the states involved.*** *See United States v. Texas*, 339 U.S. 707, 715, *modified*, 340 U.S. 848 (1950).

Report of the Special Master, *New Jersey v. New York*, No. 120 Orig., 1997 WL 291594, at *11 (Mar. 31, 1997) (emphasis added).

As also noted during the teleconference, in cases with serious factual issues in dispute, Special Masters have permitted far more than the 20 depositions per side requested by Georgia. *See, e.g.*, *Kansas v. Colorado*, No. 105 Orig., and *Montana v. Wyoming*, No. 137 Orig.[2] Notably, even *today*, Georgia cannot point to a single original action case like this one that adopts the type of limit it seeks here.

Florida's planned depositions are each carefully targeted to pursue admissible evidence relevant to specific issues in this case. Georgia's request should be denied.

Respectfully submitted,

Philip Perry
of LATHAM & WATKINS LLP

[2] We would be pleased to provide the underlying materials for these cases if that would be helpful.