

# The Supreme Court's Decision in *Florida v. Georgia*



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# Disclaimer

- This presentation is for entertainment purposes only.
- This presentation is not legal advice.
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# Roadmap

- Background
- Litigation and Decision
- Importance/Takeaways







## 30 years of litigation

- Alabama sues Army Corps of Engineers in 1990 against proposal to use lakes for water storage for surrounding Georgia cities, especially Buford dam near Atlanta
- States reach compact in 1997, approved by Congress, in which they agree to agree to allocate water in the ACF
- Negotiations break down in 2003, and litigation against Corps starts again.
- Alabama wins decision stopping Corp from allowing withdraws from Lake Lanier in 2009. Decision is overturned in 2011.

# Effects on Florida

- In 2012, severe drought reduced flows in Florida
  - Florida experienced the lowest average annual flow at border in the 90-year period of record—65% drop from average
  - 2012 oyster landings were 62.3 percent lower
  - Critical habitat for fish spawning upriver is inaccessible
- Georgia officials project that Georgia's consumption of ACF Basin water will double from present levels by 2040.
- Atlanta growth: 1990—3 mil; 2000—4 mil; 2010—5 mil; 2020—6mil. 3<sup>rd</sup> fastest growth in nation. 6<sup>th</sup> largest metro by 2040.

# The Litigation and Decision

- Florida files original complaint against Georgia seeking equitable apportionment of water in ACF
- All States are riparian—claim is GA's use is unreasonable
- Important limitation—requests cap on GA consumption, not specific level of flow to FLA
  - Recognizes that Army Corp (USA) cannot be joined and USA ultimately controls flows
  - Asserts no cause of action against Alabama

## The Litigation and Decision

- In the absence of USA as party, will capping GA's use increase the flows to FLA?
- Florida: Yes. If GA doesn't take water, it will flow to FLA. That is how gravity works.
- Georgia: No. If GA doesn't take water, USA can do anything it wants with it. Good reason to believe USA will preserve water in lakes during times of drought.

## The Litigation and Decision

- Majority: Threshold issue of redressability should be decided for FLA. Other issues need more litigation and factfinding.
- Dissent: Issue of “appreciable benefit” intertwined with merits. GA has the strongest case.

# Majority



- Redressability
- State has right to “an equitable apportionment without quibbling over formulas”
- Plaintiff state “must prove by clear and convincing evidence some real and substantial injury or damage.”
- Plaintiff has “initial burden” of showing that the injury can be redressed and an equitable apportionment can result in some benefit: “An effort to shape a decree cannot be a ‘vain thing.’”
- The court must seek to “arrive at a just and equitable apportionment” using a flexible approach that takes into consideration all relevant factors.

# Majority

- USA Water Usage Manual
- “[T]he record suggests that an increase in streamflow of 1,500 to 2,000 cubic feet/second is reasonably likely to benefit Florida significantly.”
- Under USA Manual, the amount of water released depends on how much water is stored.
- Sufficient evidence to conclude that, if use of the Flint river is capped, the USA is unlikely to store extra water in Lake Seminole or hold back water in dams on Chattahoochee.



## Dissent



- Appreciable Benefit
  - “This case is about the third rule: the balance-of-harms analysis and, specifically, its appreciable-benefit requirement.”
  - “A State seeking to interfere with established uses must prove its case by clear and convincing evidence—a ‘much greater’ burden than the one normally imposed in civil cases.”

# Dissent



- USA Water Usage Manual
  - “For Florida to receive more water, the Corps must change its current operating procedures. But the Corps is not a party, and it would not be bound by any decree issued by this Court.”
  - “All available evidence suggests that the Corps would not exercise its discretion to release more water into the Apalachicola River during droughts.”

# Dissent



- To give a concrete example, if the natural flows in the Apalachicola River were 2,600 cubic feet per second, then the Corps would release 2,400 cubic feet per second from its reservoirs. And if a cap on Georgia increased the River's natural flow to 4,100 cubic feet per second, the Corps would release 900 cubic feet per second. See *ibid*. In either case, the total flow on the Apalachicola River would remain the same: 5,000 cubic feet per second.

# Majority



- If, however, a consumption cap causes 1,500 cfs extra water (from the Flint) to flow into Lake Seminole (as we assume Florida's proposed cap would), under the dissent's example, the Corps will reduce (or "offset") the amount of water it releases from its upstream Chattahoochee dams from 2,400 cfs to 900 cfs. That is because  $2,400 \text{ cfs} - 900 \text{ cfs} = 1,500 \text{ cfs}$ . What happens to that 1,500 cfs extra water?

# Importance/Takeaways

- Keep courthouse doors open to States
  - “[W]e note that adequate factfinding is especially important where, as here, no interstate compact guides our inquiry or sets forth a congressionally ratified water allocation formula.”
  - “[T]he 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.”

# Importance/Takeaways

- Frustration with the United States
  - “JUSTICE BREYER: So, why don’t you just waive the sovereign immunity, get into this, and try to help the Special Master reach an equitable solution?”
  - “In this case, the record leads us to believe that, if necessary **and with the help of the United States**, the Special Master, and the parties, we should be able to fashion [a remedy].”

# Importance/Takeaways

- Concern about Florida's environmental harm
  - “Would the amount of extra water that reaches the Apalachicola significantly redress the economic and ecological harm that Florida has suffered? There is evidence indicating that the answer to the question is in the affirmative.”

# Questions