Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

ALASKA *v.* UNITED STATES

ON EXCEPTIONS TO REPORT OF SPECIAL MASTER

No. 128, Orig. Argued January 10, 2005—Decided June 6, 2005

States are generally entitled "under both the equal footing doctrine and the Submerged Lands Act to submerged lands beneath tidal and inland navigable waters, and under the Submerged Lands Act alone to submerged lands extending three miles seaward of [their] coastline." *United States* v. *Alaska,* 521 U. S. 1, 6, 9 *(Alaska (Arctic Coast)).* The Federal Government can overcome the presumption of title and defeat a future State's claim, however, by setting submerged lands aside before statehood in a way that shows an intent to retain title. *Id.,* at 33–34. Here, Alaska and the United States dispute title to two areas of submerged lands. The first consists of pockets and enclaves of submerged lands underlying waters in the Alexander Archipelago that are more than three nautical miles from the coast of the mainland or any individual island. Alaska can claim these pockets and enclaves only if the archipelago waters themselves qualify as inland waters. The second area consists of submerged lands beneath the inland waters of Glacier Bay, a well-marked indentation into the southeastern Alaskan coast. To claim them, the United States must rebut Alaska's presumption of title. The Special Master recommended that summary judgment be granted to the United States with respect to both areas, concluding that the Alexander Archipelago waters do not qualify as inland waters either under a historic inland waters theory or under a juridical bay theory, and concluding that the United States had rebutted the presumption that title to the disputed submerged lands beneath Glacier Bay passed to Alaska at statehood. Alaska filed exceptions to these conclusions.

Held: Alaska's exceptions are overruled. Pp. 4–35.

(a) The Alexander Archipelago's waters are not historic inland waters. To make a historic waters claim, a State must show that the United States exercises authority over the area, has done so continu-

ously, and has done so with the acquiescence of foreign nations. This "exercise of sovereignty must have been, historically, an assertion of power to exclude all foreign vessels and navigation," *United States* v. *Alaska,* 422 U. S. 184, 197, including vessels engaged in "innocent passage," *i.e.,* passage that does not prejudice the coastal State's peace, good order, or security. Based on his examination of five different periods from 1821 to the present, the Special Master found that Russia and the United States historically have not asserted the requisite authority over the waters of the Alexander Archipelago. The evidence that Alaska points to—including incidents during Russian and early United States sovereignty, and the United States' litigating position during a 1903 arbitration proceeding—is insufficient to demonstrate the continuous assertion of exclusive authority, with acquiescence of foreign nations, necessary to support a historic inland waters claim. Pp. 4–15.

(b) Nor do the Alexander Archipelago's waters qualify as inland waters under the juridical bay theory Alaska advances in the alternative. The claimed juridical bays would exist only if, at minimum, four of the archipelago's islands were deemed to form a constructive peninsula extending from the mainland and dividing the archipelago's waters in two. Yet even assuming, *arguendo,* that each of the islands should be assimilated one to another, Alaska's hypothetical bays still would not meet the criteria for juridical bays set forth in Article 7(2) of the Convention on the Territorial Sea and the Contiguous Zone (hereinafter Convention). In particular, the resulting bodies of water north and south of Alaska's constructive peninsula do not qualify as well-marked indentations under the Convention, for they do not possess physical features that would allow a mariner looking at navigational charts that do not depict bay closing lines nonetheless to perceive the bays' limits in order to avoid illegal encroachment into inland waters. Pp. 15–20.

(c) The United States has rebutted Alaska's presumed title to the submerged lands underlying the waters of Glacier Bay National Monument (now Glacier Bay National Park). The United States can defeat a future State's presumed title to submerged lands by, *inter alia,* setting the lands aside as part of a federal reservation "such as a wildlife refuge." *Idaho* v. *United States*, 533 U. S. 262, 273. To determine whether Congress has used that power, this Court first asks whether the United States clearly intended to include the submerged lands within the reservation. If the answer is yes, the Court then asks whether the United States expressed its intent to retain federal title to the lands within the reservation.

The Special Master's conclusion that the monument, at the time of Alaska's statehood, included the submerged lands underlying Glacier

Syllabus

Bay has strong support in the precedents and whole record of the case, and Alaska does not take exception to it. As for the second question, the Alaska Statehood Act's (ASA) provisions suffice to overcome Alaska's ownership presumption arising from the equal footing doctrine and the Submerged Lands Act (SLA) and to reserve Glacier Bay's submerged lands to the United States.

Under the ASA, Alaska acquired title to any property previously belonging to the Territory of Alaska and the United States retained title to its property located with Alaska's borders, subject to exceptions set forth in ASA §6. The first clause of §6(e) directs a transfer to Alaska of any United States property used "for the sole purpose of conservation and protection of [Alaska's] fisheries and wildlife" under three specified federal laws. The proviso following that clause made clear that the initial clause's directive did not apply to "lands withdrawn or otherwise set apart as refuges or reservations for [wildlife] protection." In *Alaska (Arctic Coast),* this Court held that the proviso expressed congressional intent to retain title to a reservation such as the Alaska National Wildlife Refuge, and that intent was sufficient to defeat Alaska's presumed title under both the equal footing doctrine and the SLA. Alaska cannot avoid that result here.

Alaska's narrow reading—that the proviso applies only to federal property covered by §6(e)'s initial clause, which does not include Glacier Bay—is neither necessary nor preferred. A proviso may refer only to things covered by a preceding clause, but it can also state a general, independent rule. The Court agrees with the United States that the proviso is best read, in light of the interpretation given to it in *Alaska (Arctic Coast),* as expressing an independent and general rule uncoupled from the initial clause. Under the initial clause the United States obligated itself to transfer to Alaska equipment and other property used for general fish and wildlife management responsibilities Alaska was to undertake upon acquiring statehood. Under the proviso the United States expressed its intent, notwithstanding this property transfer, to retain ownership over all federal refuges and reservations set aside for the protection of wildlife, regardless of the specific statutory authority enabling the set-aside. This expression of intent encompassed Glacier Bay National Monument, which was set aside "for the protection of wildlife" within the meaning of §6(e). The text thus defeated the presumption that the new State of Alaska would acquire title to the submerged lands underlying the monument's waters, including the inland waters of Glacier Bay. Pp. 20–35.

Exceptions overruled.

KENNEDY, J., delivered the opinion for a unanimous Court with re-

Syllabus

spect to Parts I, II, III, and IV, the opinion of the Court with respect to Part V, in which STEVENS, O'CONNOR, SOUTER, GINSBURG, and BREYER, JJ., joined, and the opinion of the Court with respect to Part VI, in which STEVENS, O'CONNOR, SOUTER, GINSBURG, and BREYER, JJ., joined, and in which REHNQUIST, C. J., and SCALIA and THOMAS, JJ., joined except as to those portions related to Part V. SCALIA, J., filed an opinion concurring in part and dissenting in part, in which REHNQUIST, C. J., and THOMAS, J., joined.