

FILED

Michael Douglas MacDougall
C/O Xinides Boat Yard
258 Riberia St.
St. Augustine, Fl. 32084
207-458-7867

2013 JUN 17 PM 2:13

CLERK, US DISTRICT COURT
MIDDLE DISTRICT OF FL
JACKSONVILLE FLORIDA

Plaintiff Pro Se

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

“IN ADMIRALTY”

Michael Douglas MacDougall)	Case no. <u>3:13-cv-98-J-34JRK</u>
Plaintiff,)	
)	
v.)	
)	
City of St. Augustine, FL.)	
Joseph Boles, in his capacity as Mayor of St. Augustine)	
James Piggot, in his capacity as Director of General)	
Services for the City of St. Augustine)	
John Regan, in his capacity as City Manager)	
Ronald Brown, in his capacity as City Attorney)	
Donald Crichlow, in his former capacity)	
as City Commissioner)	
Commander Stephen Fricke in his capacity as)	
Chief of Police for City of St. Augustine)	
Thomas Shipp, in his capacity as Florida Fish and Wildlife))	
Boating and Waterways Section Captain)	
State of Florida)	
)	
Defendent)	

**COMPLAINT
ACTION FOR DELARATORY JUDGMENT AND SUMMONS**

Comes now Plaintiff, Michael Douglas MacDougall (MacDougall) for his
complaint against the State of Florida; The City of St. Augustine; Thomas Shipp in

his capacity as FL Fish and Wildlife Management Agency (FWC); Joseph Boles in his capacity as Mayor of the City of St. Augustine, FL.; James Piggott in his official capacity as Director of General Services; John Regan in his official capacity as City Manager; Commander Stephen Fricke in his official capacity as Chief of Police for the City of St. Augustine; Ronald Brown in his capacity as City Attorney For the City of St. Augustine and citizen Donald Crichlow in his former capacity as City of St. Augustine Commissioner.

JURISDICTION AND VENUE

This is an admiralty or maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure as appears more fully below.

The Jurisdiction of this court is invoked under 28 U.S.C. 1333 as a case in admiralty.

The Jurisdiction of this court is also invoked under 28 U.S.C. 1333 as arising under the Constitution and laws of the United States.

The Jurisdiction of this court is also invoked under 28 U.S.C. 2201 and 2202 for a declaratory judgment to determine the rights of the plaintiff and defendants.

The plaintiff MacDougall is a United States citizen and a resident of St. Augustine, Florida.

Defendants, The State of Florida and The City of St. Augustine are a political body. Defendants, Thomas Shipp, Joseph Boles, James Piggot, John Reagan,

Commander Fricke and Ronald Brown are officers or agents of the Defendant State of Florida or the Defendant City of St. Augustine and are responsible for regulating certain maritime activities in response to the laws of Florida and certain regulations and administrative rules promulgated pursuant thereto.

Citizen Donald Critchlow is sued in his former capacity as City of St. Augustine Commissioner.

U. S. District Court and U. S. Supreme Court Cases have been heard and have left us with a preponderance of evidence that Federal Law , as it applies to Navigational rights upon the surface waters of the United States, is supreme and Cannot be regulated by the several states to any extent that said regulation shall Obstruct or impede navigation. A listing of these cases and rulings are included Below.

General Allegations

The Plaintiff MacDougall by right utilizes the navigable waters of the United States incidentally claimed by the State of Florida and the City of St.

Augustine. The surface waters in dispute in this case are not only considered the navigable waters of the United States, but in fact constitute a portion of the Atlantic Intra Coastal Waterway and it tributaries, a part of our Nations interstate waterway system.

Plaintiff MacDougall exercises his rights of navigation for the purpose of recreation and commerce. Rights which includes by incident anchorage and the right to man his vessel in accordance with United States law.

Plaintiff MacDougal has been issued citations by the City of St. Augustine, under the authority of the FWC Pilot Program For Anchoring (Fl statute 327.4105), and ordered to remove his vessel from its current location to a location which will comply with the City of St. Augustine's Pilot Program Ordinance 7-93. Plaintiff is currently being sued in the County Court, Seventh Judicial Circuit in St. Johns County Florida for a permanent mandatory injunction against the Plaintiff. (refer to Case No. cc12-1894 div. 66 Seventh Judicial Circuit, St. Johns County Fl.)

The Plaintiff MacDougall is the owner of a legally registered vessel which is anchored 39 feet outside of the marked channel in the San Sebastian River of St. Augustine. The San Sebastian River is a tidal tributary connecting directly to the Atlantic Intra Coastal Waterway. The San Sebastian River was dredged by the U.S. Army Corps of Engineers and the Federal channel markers are maintained by the U.S. Coast Guard. By the City of St. Augustine's own definition,

“these local rivers and creeks are all categorized as surface waters and are regulated by the St. Johns River Water Management District, the Florida Department of Environmental Protection, the Army Corps of Engineers, and the U. S. Department of Environmental Protection Agency (EPA).”

The only agency mentioned above that has power to regulate navigation is the Army Corps of Engineers.

The City of St. Augustine Ordinance 7-93 by the direct authority of the

State of Florida Statute 327.4105 requires that no vessel shall anchor within fifty feet of the marked channel of the San Sebastian River. The Ordinance also obstructs the mariners rights of navigation by prohibiting anchorage during certain times of day in the Salt Run area, by prohibiting anchorage if you choose to man your vessel for longer than thirty consecutive days, by prohibiting anchorage unless the captain agrees to navigate his vessel to the City Municipal Marina, give his personal data, and receive a medallion which in practical purposes is a license to anchor. All of the above mentioned prohibitions directly obstruct navigation and violate U. S. law and the Constitution.

Plaintiff's case will show knowing and willing violation of:

U. S. Constitution

United States Constitution, Article VI

Article 1, Sec. 8, Para.3 of the US Constitution

The Bill of Rights, Article XIV

U. S. Statutes

U.S.Statutes at Large, Fifty – fifth Congress, Sess. III Ch. 425. Sec. 15

U.S. Statutes at Large, Vol 30, 55th Congress, Sess 425, Sec. 10

U. S. Rules and Regulations

U.S. Code of Federal regulation 33 CFR 329.11

33 USC Sec.1

Exhibit G	p
Copy of City of St. Augustine	
Rate policy for mooring balls	
Exhibit H	p
Anchoring restrictions implemented	
On the Okechobee by USAACE	

TABLE OF AUTHORITIES

U. S. Constitution

United States Constitution, Article VI	3
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U. S. Statutes

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U.S. Statutes at Large, Vol 30, 55 th Congress, Sess 425, Sec. 10	2

U. S. Rules and Regulations

COUNT ONE

City of St. Augustine ordinance and the Florida Statute from which it obtains authority denies mariners the constitutional right of navigation within the boundaries of federal navigable waters. Ordinance prohibits anchorage of vessels for a number of reasons and is contrary to United States Law and violates articles VI and XIV of the United States Constitution.

1. By authority of Florida Statute 327.4105, The City of St. Augustine ordinance no. 2011-10 Amending section 7-93 “*To provide for regulation of the anchorage of vessels; amending definitions; providing for regulation of anchorage of vessels on waterways located within the corporate limits of the city of St. Augustine; providing for regulation of anchorage in bottomlands owned by the City of St. Augustine.*” Has codified the most recent attempt by state and local interest to completely control the anchoring of all vessels within its boundaries.
2. The Ordinance:
 - a. Prohibits anchoring within 50 feet of a federally marked channel in a Tidal tributary of the Atlantic Intra-coastal waterway. (San Sebastian River)
 - b. Prohibits anchoring after 30 consecutive days of manning ones vessel.
 - c. Prohibits anchoring within 50 feet of any structure.
 - d. Prohibits anchoring during certain times of day
3. The Federal Government has repeatedly expressed its will concerning the navigable waters within the territorial waters of the individual states and has enacted laws demanding compliance with its will. For example,

The U.S. Supreme Court in 1979 created four tests for determining what Constitutes navigable waters. Established in Kaiser Aetna v. United States, 444 U.S. 164, 100 S. Ct. 383, 62 L. Ed. 2d 332, the tests ask whether the body of water (1) is subject to the ebb and flow of the tide, (2) connects with a continuous interstate waterway, (3) has navigable capacity, and (4) is it actually navigable. All of the waterways of St. Augustine, including the San Sebastian River meets each test for navigability. Thereby subjecting them To full federal regulation.

US Supreme Court: Colberg Inc. v. State public Works Commission of California, 432 p.2d 3, 409 u.s.949

Ruled that the right of navigation is a public right.

US v. Monstad, 134 F. 2d 986,988; Hubbard, 229 F. 352; Hawkinson, 54 F. R. D. 517; Federal District Court, Anderson v. Reames 161 S.W. 2d 957 961.

Ruled that anchorage is navigation, the rights of navigation include the Right to anchor which may be exercised for business purposes or pleasure.

U.S.Statutes at Large, Fifty – fifth Congress, Sess. III Ch. 425. Sec. 15; U.S. v Bay State, 26 F. 2d 603; The Caldy, 153 F. 837; Strathleven, 244 F. 412; The Oregon, 158 US 943; The Boston Maru, 20 F. 2d 508; Dahlmer, 26 F. 2d 603; Atlanta, 31 F. 2d 961; Sisson, 110 S. Ct. 2892

Ruled that anchorage shall be prohibited ONLY in navigable channels when such anchorage shall be done in such a manner as to prevent or obstruct the passage of other vessels or craft or where it has been denied by federal regulation. City of St Augustine Ordinance 2011-10 prohibits anchorage outside of the marked channel based on distance, time of day, and duration of occupation in direct violation of US Law.

U.S. Statutes at Large, Vol 30, 55th Congress, Sess 425, Sec. 10 States: “That the creation of any obstruction not affirmatively authorized by Congress , to the navigable capacity of any of the waters of the United States Is hereby prohibited;...” U. S. Supreme Court, State of Wisconsin v. State Of Illinois 362 US 482 clarifies the phrase “not affirmatively authorized by Congress” as opposed to the phrase “affirmatively authorized by law” which was used in an earlier similar law (51st Congress...) makes mere state authorization inadequate.”

U.S v. Republic Steel Corp. Ill., 362 U.S.. 482

Ruled that obstruction to navigation is not limited to structures specifically, but also includes diminution of navigable capacity by other means.

City of St Augustine Ordinance 7-93 prohibits anchorage, an essential part of navigation thereby diminishing the navigable capacity of both the Atlantic Intra Coastal Waterway and its tributary, the San Sebastian River.

Code of Federal Regulation 33 CFR 329.11- Geographic and jurisdictional limits of rivers and lakes.

States that “private ownership of the underlying lands has no bearing on the existence or extent of the dominant Federal jurisdiction over a navigable waterbody”. Consequently, ownership of bottom lands does not override navigational servitude to federal law.

Scranton v Wheeler, 179 us 141, 163; U.S. v Dunbar, 229 us 53. Chappell v Waterworth, 39 F. 77, 86; Stockton v Baltimore & NYRR, Supra, 53 F. Supp. 143, 145

Ruled that private ownership rights of submerged lands under the navigable waters of the United States are subservient to the public rights of navigation. This dominate right must include the rights to use the bed of water for every purpose which is in aid of navigation , such as anchoring. The City of St Augustine Ordinance 2011-10 partially bases its authority on it's ownership of the submerged lands within the city limits, in direct violation of U. S. Law

4. These Federal rulings and regulations clearly indicate the intent of the federal government to regulate navigation and the essential practice of anchoring. The City of St Augustine Ordinance 2011-10 and the Florida Statute 327.4105 are contrary to these United States Laws because they supersede the scope of state jurisdiction over navigation upon the navigable waters of the United States.

Additionally,

5. The United States Constitution, Article VI states inter alia, "This Constitution, and the Laws of the United States which shall be made in pursuance thereof...shall be the supreme Law of the Land..."
6. The Bill of Rights, Article X IV states, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."
7. U. S. Law 33 USC 471 Chap 10 States "The Secretary of Homeland Security is authorized, empowered, and directed to define and establish anchorage grounds for vessels in all harbors, rivers, bays, and other navigable waters of the United States whenever it is manifest to the said secretary that the maritime or commercial interest of the United States require such anchorage grounds for the safe navigation..." (personal comment) when the language "authorized, empowered and directed" is used it implies sole authority to perform the named act.
8. The City of St. Augustine and the State of Florida, in prohibiting and restricting the rights of anchorage upon the bottomlands of the navigable waters of the United States is in opposition with the expressed will of the United States Congress, The United States Supreme Court, and is in violation of Article VI and XIV of the United States Constitution.

COUNT TWO

City of St. Augustine ordinance requiring Medallion as proof of navigability is an illegal imposition of license

9. City of St Augustine ordinance 2011-10 amending sec 7-93, (7) requires that any vessel at anchor within the corporate limits of the City of St Augustine must navigate to the City Marina twice per year in order for the City to determine that the vessel is indeed navigable. This trip must take place during the coldest month of the year, February, and again during the hottest month of the year, August. Once at the City Marina, mariners may be required to deliver personal contact information such as name, address and phone number to City personnel which will become public information. Upon completion of satisfactory demonstration of navigability and collection of required information, the City Marina staff shall issue a medallion certifying navigability.

9. St Augustine's required medallion on all wet stored vessels at anchor is a "license" since it is a formal permission to do some particular act. People v Henderson, 391 Mich. 612m 218 N.W. 2d,2 4.

10. Huron Portland Cement Co. v City of Detroit Mich, Supra at 447; Harman v City of Chicago, 147 US 396, 13 S. Ct. 306 37 L. Ed. 216.
Ruled that a vessel cannot be subjected to local license imposts for the use of a navigable waterway. In practical use, any mariner who anchors his vessel within the City of St Augustine and does not obtain the city medallion will be fined and could be arrested for non payment of said fine. Even though there is no initial cost to the mariner up front, refusal to go to the City Marina and obtain it will result in fines of \$100 first offence, \$250 second offence, and \$500 for all subsequent offences.

COUNT THREE

City of St. Augustine and the Florida Statute from which it obtains authority is contrary to the need for “national uniformity” of regulation upon the navigable waters of the United States and therefore violates United States Law and article I of the United States Constitution

11. The City of St Augustine’s Ordinance 2011-10 along with Florida Statute 327.4105 regulates the anchorage of vessels which violates the sovereignty of the United States Congress “ to regulate commerce with foreign nations, and among the several states.” Article 1, Sec. 8, Para.3 of the US Constitution.
12. The power to regulate commerce granted to Congress is necessarily exclusive, and the same power cannot be constitutionally exercised by the States.
Holmes v. Jennison, 14 Peters 570; 39 US 540, 570; Houston v. Moore, 5 Wheat. 23, 18 US 1, 23; Gibbons v. Ogden, 22 US 1, 195, 196; Brown v. State of Maryland, 25 US 419, 446 ; United States v. The Amistad, 40 US 518, 570; City of New York v. Miln, 36 US 102, 158; Passenger Cases, 48 US 283; Steamship Co. v. Portwardens, 73 US 31.
13. All vessels which navigate the navigable waters of the United States are engaged in commerce. The Hazel Kirke, 25 F.601
14. Regulation of navigation in the Atlantic Intra Coastal Waterway and its tributaries is specifically reserved for the Secretary of Homeland Security and sub sequentially the U.S. Army Corps of Engineers. The Corps, whenever it deems it necessary, does impose anchoring restrictions upon the interstate waters of the Atlantic Intra Coastal Waterway or its tributaries. 33 USC Sec.1 (~~See anchoring restriction Okeechobee River EXHIBIT H~~)
15. The City of St Augustine Ordinance 2011-10 and State of Florida Statute 327.4105 assumes jurisdiction it does not possess in that both laws regulate navigation on the interstate waterways of the United States. The power to regulate navigation, including anchoring resides in the Federal Government and cannot be transferred to the states. “In the interest of national uniformity, the power of regulation of commerce and thereby navigation resides solely with the congress.” Gibbons v. Ogden 22 US 1. The practical application, should this Pilot Program and City Ordinance be allowed to stand, will be a mayhem of anchoring regulations being codified by any city, county or state

which chooses to do so.

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16. In responding to and overturning a lower court decision where a state was attempting to apply a local state law to all vessels which visit or navigate in the state the U.S. Supreme Court decreed:

“This cause presents a situation where there was no attempt to prescribe general rules. On the contrary the manifest purpose was to permit any state to alter the maritime law, and thereby introduce conflicting requirements. To prevent this result the Constitution adopted the law of the sea as the measure of maritime rights and obligations. The confusion and difficulty if vessels were compelled to comply with the local statutes at every port are not difficult to see. Of Course, some within the states may prefer local rules, but the Union was formed with the very definite design of freeing maritime commerce from intolerable restrictions incident to such control. The subject is national. Local interests must yield to the common welfare. The Constitution is supreme.” U. S. Supreme Court, State of Washington v. Dawson 264 US 219

COUNT FOUR

City policy, as it relates to management of the Municipal mooring fields, violates Constitutional rights to equal treatment and enforcement of the law.

The City of St. Augustine’s policy on management of the municipal moorings includes:

- A) A clause requiring some citizens of the United States to pay more for use of the municipal mooring balls based residency.
- B) A clause requiring that all mariners carry a minimum of \$300,000 in vessel liability insurance.

~~(SEE EXHIBIT F AND G)~~

Because the safe anchorage area outside of the municipal mooring fields are so limited, the City runs a near monopoly on good holding ground. Coupled with this monopoly, are the strict conditions under which a vessel may lease and mooring ball. The end result is the codification of vessel and mariner discrimination with the intent to deny rights of navigation. All of which violate the following:

The Bill of Rights, Article XIV states, “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.”

A “navigational servitude” is a common law right of public access to navigable waters of

the United States. It is the public right of navigation for the use of the people at large. U.S. v 412,715 Acres of Land, 53 F. Supp. 143, 148-49; LOVING V. Alexander, 548 F. Supp. 1079, 1090 (D. va.1982) US v. Kaiser Aetna, 408 F. Supp. 42, 49 (D. Haw. 1976)

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Being that the “people at large” are guaranteed access to the navigable waters of the United States, The Bill of Rights demands that all of the people may access these waters under equal privilege. Mariners who enter the City of St. Augustine without insurance or twice the money as some will be denied their rights of anchorage clearly violating U. S. law and the Constitution.

PRAYER FOR RELIEF

Plaintiff Michael Douglas MacDougall is entitled to a declaratory judgment that the State of Florida and the City of St. Augustine’s refusal to allow anchorage in the navigable waters of the United States and in particularly within the interstate waterways and its tributaries is repugnant to United States law and is null and void.

Wherefore, plaintiff prays for judgment as follows:

ON ALL COUNTS:

- I. The court declare that the plaintiff has the right to navigate all the waters of the United States including the interstate waterways and its tributaries unless prohibited by federal law.
- II. The court reaffirm and declare that anchoring is an incidental act of navigation which plaintiff has a right to exercise on all the navigable waters, interstate waterways and tributaries of the United States unless prohibited by federal law.
- III. On Count One: The court declare that anchorage upon federal navigable waters including interstate waterways and their tributaries cannot be legislated by the states and that Florida Statute 327.4105 and St. Augustine City Ordinance 7-93 are in violation of U. S. law and the U. S. Constitution, thereby null and void. In Addition, plaintiff prays the court specifically declare that rapparian rights over bottomlands of navigable waters are in fact secondary to the rights of navigation including anchorage.
- IV. On Count Two: The court declare that St. Augustine City Ordinance 7-93, which requires vessels to be inspected and issued a medallion twice per year constitutes a license, violating U.S. law, and should be null and void.
- V. On Count Three: The court declare that the particular location of plaintiff’s vessel lies within a direct tributary of the Atlantic Intra Coastal Waterway thereby affording it all the legal and maritime protections entitled to the

interstate waterway it self. The court reaffirm and declare that all the waters of St. Augustine are indeed surface waters of the United States and are not subject to local or State regulation of navigation including anchorage.

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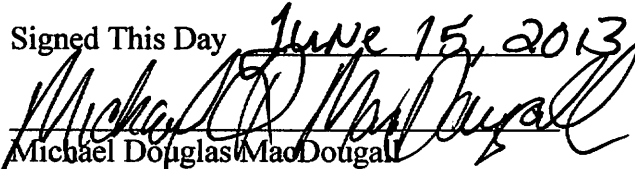
- VI. On Count Four: The court declare that the City of St. Augustine's management policy governing the municipal mooring field violates the Bill of Rights and Article XIV of the U. S. Constitution by unequally applying the privilege of leasing a municipal mooring ball to citizens.
- VII. Finally, reaffirm and declare that the waters of the Atlantic Intra Coastal Waterway, all federally marked channels and any tributary which connects directly to them are in fact regulated solely by the federal government in respect to navigation and that this authority cannot be arrested by the states.

As a final request in my prayer for relief I can only ask that the court consider the following guiding doctrine.

The United States Supreme Court in Knickerbocker Ice Company v. Stewart, 253 U.S. 149, 160

“As the plain result of these recent opinions and the earlier cases upon which they are based, we accept the following doctrine: The Constitution itself adopted and established, as part of the laws of the United States, approved rules of the general maritime law and empowered Congress to legislate in respect of them and other matters within the admiralty and maritime jurisdiction. Moreover, it took from the States all power, by legislation or judicial decision, to contravene the essential purposes of, or to work material injury to, characteristic features of such law or to interfere with its proper harmony and uniformity in its international and interstate relations. To preserve adequate harmony and appropriate uniform rules relating to maritime matters and bring them within control of the Federal Government was the fundamental purpose; and to such definite end Congress was empowered to legislate within that sphere. Since the beginning, federal courts have recognized and applied the rules and principles of maritime law as something distinct of the laws of the several States – not derived from or dependent on their will. The foundation of the right to do this, the purpose for which it was granted, and the nature of the system so administered, were distinctly pointed out long ago. That we have a maritime law of our own, operative throughout the United States, cannot be doubted.....One thing, however, is unquestionable; the Constitution must have referred to a system of law coextensive with, and operating uniformly in, the whole country. It certainly could not have been the intention to place the rules and limits of maritime law under the disposal and regulation of the several states,.....”

Plaintiff claims that the State of Florida, the City of St. Augustine, and the officers listed as defendants in this suit have deprived him of his constitutional rights of free travel and navigation. Plaintiff seeks full disclosure of these facts in an Admiralty hearing.

Signed This Day June 15, 2013

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