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## Stop the Beach Renourishment, Inc. v. Fla. Dep't of Env'tl. Prot., 130 S.Ct. 2592 (2010)

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## FEDERAL COURTS

### UNITED STATES SUPREME COURT

**Stop the Beach Renourishment, Inc. v. Fla. Dep't of Envtl. Prot., 130 S.Ct. 2592 (2010)** (holding that a state supreme court did not engage in an unconstitutional taking of littoral property owners' rights to future accretions by upholding a state decision to restore eroded beach by filling in submerged land).

Stop the Beach Renourishment, Inc. ("Corporation") was a nonprofit corporation formed by people who owned beachfront property in Destin and Walton County, Florida. The Corporation sued the Florida Department of Environmental Protection ("Department") in the Florida District Court of Appeal for the First District ("district court") to challenge the Department's decision to give permits to a proposed project that the local government instituted. The district court reversed and remanded the agency's decision to grant the permits and certified a question to the Florida Supreme Court, asking whether the Beach and Shore Preservation Act unconstitutionally deprived upland owners of littoral rights without just compensation. The court answered the certified question in the negative and denied request for rehearing. The United States Supreme Court ("Court") granted certiorari.

The state of Florida owned the land permanently submerged beneath navigable waters as well as the foreshore, which was the land between the low-tide line and the mean high-water line. Accordingly, the mean high-water line was the ordinary boundary between private beach front, or littoral property, and state-owned land. Littoral owners had special rights with regard to the water and the foreshore. Specifically, littoral owners had right of access to the water, the right to use the water for certain purposes, the right to an unobstructed view of the water, and the right to receive accretions and relictions to the littoral property.

Accretions are additions of sand, sediment, or other deposits to waterfront land. Relictions are lands once covered by water that become dry when the water recedes. Both relictions and accretions occur gradually and imperceptibly. For simplicity, the Court referred to accretions and relictions collectively as accretions and the process whereby they occur as accretion. Conversely, an avulsion occurs when a sudden or perceptible loss or addition to land occurs. The littoral owner automatically takes title to dry land added to his property by accretion. However, land added by avulsion continues to belong to the state. Significantly, when avulsion occurs, adding a new strip of land to the shore, the littoral owner has no right to subsequent

accretions.

In 1961, the Florida Legislature passed the Beach and Shore Preservation Act ("Act"), under which a local government could apply to the Department for funds and permits to restore a beach. When a project involves placing fill on the state's submerged lands, the state sets an erosion control line. This line replaces the mean high-water line as the boundary between privately owned littoral property and state property. Thus, when accretion to the shore moves the mean high-water line seaward, the occurrence does not extend the property of beachfront landowners to that line but remains bounded by the permanent erosion-control line.

In 2003, the city of Destin and Walton County applied for permits to restore beach within their jurisdictions. The permits would add approximately seventy-five feet of sand seaward of the mean high-water line, to later be designated the erosion control line. The Department issued a notice of intent to award the permits, and the state approved the erosion-control line. The Corporation brought an unsuccessful administrative challenge to the proposed project. Thereafter, the Department approved the permits. The Corporation challenged that action and this suit followed.

After granting certiorari, the Court considered whether the Florida Supreme Court violated the Takings Clause of the Fifth and Fourteenth Amendments of the United States Constitution by permitting the beach restoration project. The Takings Clause bars the state from taking private property without paying for it regardless of which branch was the instrument of the taking.

The Court determined that unless the Corporation could show that its rights to future accretions and to have littoral property touch the water were superior to Florida's right to fill in its submerged land, there could be no taking. The Corporation was unable to make that showing. In examining this issue, the Court relied on two principles of Florida law. First, the state, as owner of submerged land adjacent to the littoral property, had the right to fill that land so long as it did not interfere with the rights of the public and the right of littoral landowners. Second, if an avulsion exposed previously submerged land seaward of littoral property, that newly exposed land belonged to the state even if it interrupted the littoral owner's contact with the water.

The Court reasoned that Florida law allowed the state to fill in its own seabed, and Florida law treated the resulting sudden exposure of previously submerged land as an avulsion. The right to accretions, therefore, was subordinate to the state's right to fill. Accordingly, the Florida Supreme Court did not abolish the members' right to future accretions but merely held that the beach-restoration project did not implicate the right because the doctrine of avulsion applied. Subsequently, the Court affirmed the Florida Supreme Court decision.

*Molly Callender*