

IN THE SUPREME COURT OF TEXAS

No. 09-0387

CAROL SEVERANCE, PETITIONER,

v.

JERRY PATTERSON, COMMISSIONER OF THE TEXAS GENERAL LAND OFFICE; GREG ABBOTT, ATTORNEY GENERAL FOR THE STATE OF TEXAS; AND KURT SISTRUNK, DISTRICT ATTORNEY FOR THE COUNTY OF GALVESTON, TEXAS, RESPONDENTS

ON CERTIFIED QUESTIONS FROM THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JUSTICE WILLETT, concurring.

I join the Court's opinion and write separately to underscore a point easily overlooked by casual readers: Today's decision centers on West Galveston Island, not the entire Gulf Coast.

The Fifth Circuit asks broadly whether Texas law mandates an unproven rolling easement on *all* private Gulf-front beaches. While holding generally that such an easement is not embedded in Texas common law (unlike the State's right to submerged land), the Court focuses its analysis on Severance's property, emphasizing the unique historical lineage of title to West Galveston Island. The Court recognizes, if obliquely, that Texas's 367-mile shoreline is governed by different land patents and conveyances that may impose varying limitations, including encumbrances for public use. In short, the absence of a common-law theory of an easement that leaps onto private land upon which the public has never set foot in no way forecloses the State from proving an easement the old-fashioned way, using traditional means. Upshot: Easements may well burden private Gulf Coast properties, including on West Galveston Island—but they must be proved, not merely presumed.

Don R. Willett
Justice

OPINION DELIVERED: March 30, 2012