



# Rails-to-Trails Decision: Supreme Court Holds that Government Does Not Retain Reversionary Interest

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The "Rails-to-Trails" program sounds like such a great idea in theory: take old, abandoned railroad right of way and turn it into public trails. Who would complain about that? Well, it turns out lots of people might complain. The issue lies in who owns the abandoned railroad right of way. The U.S. Government has claimed for some time that it owns those easements under a reversionary right that kicked in once they were abandoned by the railroad. But the underlying fee owners felt differently, arguing that the abandonment by the railroad caused the easements to be extinguished by operation of law, meaning the owners were left with an unencumbered fee interest.

In an 8 to 1 decision, with Justice Sotomayor as the lone dissenter, the U.S. Supreme Court sided with the property owners, holding that the U.S. Government did not retain an implied reversionary interest when it granted a right of way under the General Railroad Right-of-Way Act of 1875 (*Marvin M. Brandt Revocable Trust v. United States* (Case No. 12-1173, March 10, 2014)). Thus, as there was no express reservation of rights in favor of the Government, when the railroad abandoned the right of way the Government had no interest in the property. The decision constitutes a significant setback for proponents of the "rails-to-trails" program, and a resounding win for private property rights.

## The Factual Background

The facts underlying this lawsuit have been festering for more than a century, as the legislation at the center of this controversy dates back to 1875. Beginning in the 1860s, in order to promote expansion throughout the United States, Congress passed a number of acts to encourage the further development of railroads. Congress' early enactments granted the railroads title to large areas of public lands as well as land grants along the railroad rights of way. In response to growing public opposition to massive land grants, Congress

passed the General Railroad Right-of-Way Act of 1875. The 1875 Act did away with the large land grants, and limited the property conveyed to the railroads to a 200-foot right of way, which the Supreme Court later held qualified as easements, not full fee ownership. The 1875 Act was the law of the land until 1976, when Congress repealed it.

In 1908, pursuant to the 1875 Act, the Laramie, Hahn's Peak and Pacific Railroad obtained a 66 mile long, 200 foot wide right of way in Wyoming. The railroad was completed in 1911, and subsequently changed hands a number of times. In 1976, the Government conveyed an 83-acre parcel to the Brandt family; part of that 83 acres was crossed by the railroad's 200-foot right of way. While the conveyance contained a number of exceptions and reservations, including that the land was granted "subject to those rights for railroad purposes as have been granted to the Laramie Hahn's Peak & Pacific Railway Company, its successors or assigns," it was silent as to what would happen if the railroad abandoned its right of way.

In 2004, the Wyoming and Colorado Railroad, the then owner of the railroad right of way, tore up the tracks and abandoned the right of way. Two years later, with the intent of transforming the right into a public trail, the Government filed an action to quiet title, naming as defendants all of the owners of land crossed by the abandoned right of way.

### **The Lower Court Proceedings**

The Government argued that it had an implied reversionary interest in the right of way that was triggered upon the railroad's abandonment. The Government settled with or obtained a default judgment against all the landowners, except the Brandt family. The Brandt family challenged the action, arguing the railroad right of way was nothing more than a common easement, and as such was extinguished upon abandonment, leaving the property unencumbered.

The District Court agreed with the Government, however, and granted summary judgment in its favor. The Court of Appeals affirmed the decision, noting that while there was an apparent split among various District Courts, in its view the Government retained an "implied reversionary interest."

The Brandt family sought review in the Supreme Court, and the Court granted certiorari.

### **The Supreme Court Decision**

The Supreme Court walked through some of the twisted case history interpreting the various railroad right of way acts that dated back to the Civil War era. Focusing on the 1875 Act, the Court gave great weight to the fact that the Government had argued in a 1942 case that grants under the Act transferred to the railroads nothing more than a simple easement. Having won its argument back in 1942, the Court now felt they had to live with it: "The Government loses [its] argument today, in large part because it won when it argued the opposite before this Court more than 70 years ago."

Having concluded that the railroad possessed a common easement that contained no reversionary interest in the Government, the next question was whether the Government's grant of the underlying fee to the Brandt family contained any restrictions that supported the Government's position. The Court concluded that nothing in the grant contained any restrictions or limitations that impact the railroad's easement or what happened to it if abandoned.

The Court then moved to the question of what happened to an ordinary easement once abandoned. The Court had little trouble with this "well settled" question: when an easement is abandoned, the property

reverts to the underlying fee owner.

### **Justice Sotomayor's Dissent**

Arguing against a near-unanimous majority, Justice Sotomayor reasoned that the earlier 1942 case, while reaching the conclusion that the railroad possessed a mere easement, did not address whether the Government retained a reversionary interest. In support of this position, Justice Sotomayor cited to the Government's brief in the 1942 case, including to a specific comment in the brief stating that the Government may retain a reversionary right. Thus, she concluded, the Government's position today does not necessarily contradict its position in 1942.

In the end, Justice Sotomayor concluded that the categorization of the rights conferred under the 1875 Act as a "fee" or an "easement" was not dispositive of the issue of reversion. Instead, she argued that case law since 1903 had found that as a general matter the Government did retain an implied reversionary right, and she saw no reason to change that conclusion now. As such, she would have upheld the Court of Appeals' decision in favor of the Government. Justice Sotomayor concluded her dissent with a prediction of the results stemming from the majority's ruling: a tidal wave of lawsuits "that may well cost American taxpayers hundreds of millions of dollars."