Supreme Court Ruling Represents Major Shift for Railroad Rights of Way

This week, the Supreme Court ruled that the United States Forest Service could not construct a trail on an abandoned railroad right of way (ROW) that crosses through private property. *Brandt v. United States*, No. 12-1173, 2014 WL 901843 (U.S. Mar. 10, 2014). This ruling represents a major shift regarding the appropriate use of rights of way and has a strong potential to spur thousands of landowner lawsuits all across the country.

The decision is being hailed by property rights activists as a major victory, but Justice Sotomayor, the sole dissenting justice, warned that the majority's ruling will be extremely disruptive to the historical use of abandoned railroad ROWs, stating that: "[s]ince 1903, this Court has held that rights of way were granted to railroads with an implied possibility of reverter to the United States . . . By changing course today, the Court undermines the legality of thousands of miles of former rights of way that the public now enjoys as means of transportation and recreation. And lawsuits challenging the conversion of former rails to recreational trails alone may well cost the American taxpayers hundreds of millions of dollars." *Brandt*, 2014 WL 901843, at *15 (U.S. Mar. 10, 2014) (Sotomayor, J., dissenting).

The question presented in *Brandt* is "what happens to a railroad's right of way granted under . . . the General Railroad Right-of-Way Act of 1875—when the railroad abandons it: does it go to the Government, or to the private party who acquired the land underlying the right of way?" 2014 WL 901843, at *2. The 1875 Act provides that "'[t]he right of way through the public lands of the United States is granted to any railroad company' meeting certain requirements, 'to the extent of one hundred feet on each side of the central line of said road.'" *Id*. at *3.

The dispute between the subject landowner, Marvin Brandt, and the United States arose after the United States patented[1] 83 acres of land in the State of Wyoming to Brandt in fee simple. The patent provided 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. . . '" *Id*. at *4. The subject ROW was obtained by the railroad company in 1908 pursuant to the 1875 Act. In 2004, the then-owner of the rail line abandoned the ROW. *Id*. Thereafter, in 2006, the United States sought a judicial declaration of abandonment and an order quieting title in the United States to the abandoned ROW, naming as defendants the owners of the parcels crossed by the abandoned ROW. Brandt defended the action and counterclaimed, asserting that the stretch of the ROW crossing his land was an easement that was extinguished upon abandonment of the railroad and, as a result, he enjoyed full title to the land without the burden of the easement. The United States argued that it had retained a reversionary interest in the railroad ROW and that a future estate would be restored to the United States once the railroad abandoned its interest. *Id*. at *5.

The Supreme Court disagreed with the United States, stating that the "[g]overnment loses that argument today, in large part because it won when it argued the opposite before this Court more than 70 years ago, in the case of Great *Northern Railway Co. v. United States*, 315 U.S. 262, 62 S.Ct. 529 (1942)."

2014 WL 901843, at *5. In *Great Northern*, the railroad possessed an 1875 Act ROW. When oil was discovered in the area, the railroad wanted to drill beneath its ROW. The Government successfully sued to enjoin the railroad from doing so, arguing that the railroad had only an easement and no rights to drill for minerals beneath the surface. Relying on *Great Northern*, the *Brandt* Court found that the 1875 Act merely conveyed an easement, which it defined as a "'nonpossessory right to enter and use land in the possession of another and obligates the possessor not to interfere with the uses authorized by the easement.'" *Id*. at *7 (quoting Restatement (Third) of Property: Servitudes § 1.2(1) (1998)).

The Court continued that "if the beneficiary of the easement abandons it, the easement disappears, and the landowner resumes his full and unencumbered interest in the land." *Id*. It concluded, therefore, that Brandt's land became unburdened of the easement, "conferring on him the same full rights over the right of way as he enjoyed over the rest of [his] parcel." *Id*. In so doing, the Court noted: "[m]ore than 70 years ago, the Government argued before this Court that a right of way granted under the 1875 Act was a simple easement. The Court was persuaded, and so ruled. Now the Government argues that such a right of way is tantamount to a limited fee with an implied reversionary interest. We decline to endorse such a stark change in position, especially given 'the special need for certainty and predictability where land titles are concerned.'" *Id*. at *10 (quoting *Leo Sheep Co. v. United States*, 440 U. S. 668, 687 (1979)).

Ultimately, Justice Sotomayor's concern regarding the potential proliferation of lawsuits will likely materialize. Given the Court's ruling, it is almost certain that property owners similarly situated to Mr. Brandt will sue the United States claiming, among other things, a taking without just compensation. It is also quite possible that the United States will seek legislation confirming to it a reversionary interest in abandoned easements granted under the 1875 Act. Either way, the ramifications of this case will be significant.

[1] A land patent is an official document reflecting a grant by a sovereign that is made public, or "patent."

Ryan A. Smith
Shareholder
rsmith@bhfs.com
Washington, DC
T 202.747.0507

Courtney A. Davis
Associate
cdavis@bhfs.com
Santa Barbara
T 805.882.1426