

This Land is Your Land, This Land is My Land . . .

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Who owns a federally granted railroad right-of-way once the railroad abandons it-the United States or the land owner on whose property the right-of-way is located? The Court will examine the issue in *Marvin M. Brandt Revocable Trust v. United States*.

As the nation expanded Westward after the Civil War, the Federal government granted major rights of way (ROW's) to encourage the building of railroads. Buffers, sometimes hundreds of feet wide, were granted for thousands of miles of track across the country under the General Railroad Right-of-Way Act of 1875 (1975 Act) and subsequent legislation. The ROW's were significant inducements to railroad companies, which dramatically accelerated America's emergence as a major power in the early 20th century. But as railroad usage patterns have shifted over time, various lines have fallen into disuse. Many of the 1875 Act ROW's have been abandoned—and controversy has ensued: Whether these ROW's were merely easements (whereby the government would have no interest in the land once the railroad ceased using it) or whether they provided the government with an implied reversionary interest in the land after abandonment by the railroad was never fully settled, due to imprecise statutory wording and inconsistent case law.

One such dispute involves the Brandt property, located in Wyoming. Around 1908, the Laramie, Hahn's Peak and Pacific Railway Company was granted an 1875 Act ROW for a 200-foot wide ROW 66 miles long, running from Laramie, Wyoming South to the Colorado border. Nearly 70 later, in 1976, the parents of Marvin Brandt acquired 80 acres of land by patent from the Federal government. The patent stated that the land was "subject to ... the railroad's purposes" under the 1875 ROW, which bisected the Brandt's tract. The ROW was utilized for rail service until 2004, when the railroad company formally abandoned it.

Upon abandonment, the United States filed suit to quiet title to approximately 28 miles of the ROW which traversed some 50 different properties, including the Brandt's land. It claimed that the 1875 ROW created a reversionary interest which, upon abandonment by the railroad, caused the ROW to revert to the government. The Brandt's and other affected property owners argued that the wording of the patent and the 1875 ROW did nothing more than create an easement to use the property for railroad purposes; once that usage ceased, the property was no longer burdened by any interest of the government.

The Federal District Court in Wyoming agreed with the United States, and the Tenth Circuit affirmed. Following its own precedents, it found that the ROW was "vested and quieted" in the government. It further held that the ROW entitled the government to construct and operate a recreational trail, consistent with the National Trails System Act (16 USC 1247 (d)) which allows the federal government to take back abandoned railroad ROW's and turn them into land for public recreation (a process commonly referred to as "railbanking"). But the Tenth Circuit decision conflicts with decisions in the Seventh and Federal Circuits and the Federal Court of Claims, which hold that the government does not retain an implied reversionary interest in abandoned railroad ROW's. And it is one battle in a more expansive war, with independent landowners around the country claiming that the original ROW grants from the 19th century did not contain residual rights of possession for the government.

The split among the circuits required resolution by the Court, which granted certioriari in October. The issue is whether the United States retained an implied reversionary interest in rights-of-way created by the General Railroad Right-of-Way Act of 1875 after underlying lands were patented into private ownership.

NOTE:

On the surface this case is a matter between the federal government and private landowners. However, the federal railbanking program has been extremely beneficial for IMLA members. Through the Rails to Trails Conservancy, the program has successfully preserved over 4,000 miles of abandoned rail corridors in 33 states. IMLA joined the State and Local Legal Center (SLLC) and the National Association of Counties (NACo) in filing an *amicus* brief supporting the United States. The brief argues that state and local governments have long relied on the federal statutes relevant to this case to build public highways in abandoned railroad rights-of-way. In a similar case, *Samuel C. Johnson 1988 Trust v. Bayfield County, Wisconsin*, 649 F. 3d 699 (7th Cir. 2011) the Seventh Circuit ruled against Bayfield County, which intended to build snowmobile trails on the abandoned railroad right-of-way.

Oral argument was heard on January 14; the Court will issue its opinion by June 30. **Marvin M. Brandt Revocable Trust v. United States, No. 12-1173 (cert. granted Oct. 1, 2013)**. ML