No. 19-___

IN THE

Supreme Court of the United States

MONROE COUNTY COMMISSION,

Petitioner,

v.

A.A. NETTLES, SR. PROPERTIES LIMITED AND EULA LAMBERT BOYLES,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Alabama

PETITION FOR A WRIT OF CERTIORARI

Jamie Helen Kidd
WEBB & ELEY, P.C.
7475 Halcyon Pointe Dr.
Post Office Box 240909
Montgomery, AL 36124
(334) 262-1850

Sarah E. Harrington
Counsel of Record
Erica Oleszczuk Evans
Charles H. Davis
GOLDSTEIN & RUSSELL, P.C.
7475 Wisconsin Ave.
Suite 850
Bethesda, MD 20814
(202) 362-0636
sh@goldsteinrussell.com

QUESTION PRESENTED

Federal law expressly grants to the Surface Transportation Board (STB) exclusive jurisdiction over the abandonment of rail lines, 49 U.S.C. § 10501, meaning that no rail line can be considered abandoned without the STB's authorization. The National Trails System Act (Trails Act), Pub. L. No. 90-543, 82 Stat. 919 (codified as amended at 16 U.S.C. § 1241 *et seq.*), authorizes the conversion of unused rail lines to use as recreational trails, subject to later restoration to active rail use, as an alternative to abandonment of the lines. 16 U.S.C. § 1247(d). The Trails Act provides that, when the conversion of a rail line to interim use as a trail "is subject to restoration or reconstruction for railroad purposes, such interim use shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes." *Ibid.* The question presented is:

Whether federal law giving the STB exclusive jurisdiction over abandonment of rail lines and expressly stating that conversion of a railroad right-of-way to an interim trail use shall not be treated "for purposes of any law" as abandonment, preempts state law that would deem a railroad right-of-way abandoned because of disuse or conversion to interim trail use.

RELATED PROCEEDINGS

Supreme Court of Alabama:

Monroe County Commission v. A.A. Nettles, Sr. Properties Ltd., et al., No. 1170738 (Apr. 26, 2019)

Circuit Court of Monroe County, Alabama:

A.A. Nettles, Sr. Properties Ltd., et al. v. Monroe County Commission, No. CV-2017-900097.00 (Jan. 10, 2018)

Surface Transportation Board:

Alabama Railroad Co.—Abandonment Exemption—in Monroe County, Ala., No. AB 463 (Sub-No. 1X) (Apr. 19, 2013)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Monroe County Commission respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Alabama.

OPINIONS BELOW

The opinion of the Supreme Court of Alabama (Pet. App. 1a-35a) is not yet published in an official or regional reporter but is available at 2019 WL 1873856. The final order of the Circuit Court of Monroe County, Alabama (Pet. App. 36a-39a) is unpublished. The Decision and Notice of Interim Trail Use or Abandonment of the Surface Transportation Board (Pet. App. 40a-46a) is available at 2013 WL 1701800.

JURISDICTION

The judgment of the Supreme Court of Alabama was entered on April 26, 2019. Pet. App. 1a. On July 17, 2019, Justice Thomas extended the time within which to file a petition for a writ of certiorari to and including September 23, 2019. No. 19A53. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The relevant constitutional and statutory provisions are reproduced at Pet. App. 47a-49a.

INTRODUCTION

It is difficult to imagine an area of interstate commerce over which federal law has greater preemptive reach than railroads. The Interstate Commerce Commission was created for the express purpose of regulating railroads. Within that sphere, this Court has repeatedly endorsed the broad preemptive effect of

federal agencies' jurisdiction over the abandonment of rail lines specifically. For decades, federal courts of appeals and state courts of last resort have acknowledged and respected the fact that federal law governing the abandonment of rail lines preempts state property law that would otherwise apply. Until now. Ignoring express preemption provisions in federal statutes—not to mention the Supremacy Clause, U.S. Const. art. VI, cl. 2—the Supreme Court of Alabama has exempted the entire State of Alabama from full application of the national "Rails-to-Trails" scheme that is designed to preserve an interstate system of rail lines for future use. A comprehensive system of interstate commerce—particularly one involving rail lines—cannot function if States are free to simply exempt themselves based on state law, even in the face of express statutory preemption provisions. This Court should grant the petition for a writ of certiorari for plenary review or for summary reversal to bring the State of Alabama into line with the rest of the country in this vital area of interstate commerce.

STATEMENT

This case involves a direct conflict between state and federal laws governing the conversion of portions of interstate rail corridors from rail use to trail use pursuant to the federal law governing "railbanking." The state court below erroneously held that state law prevails in such a conflict.

1. a. Since the enactment of the Interstate Commerce Act, ch. 104, 24 Stat. 379 (1887), "Congress has granted to" federal agencies "authority to regulate various activities of interstate rail carriers." *Chi. & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S.

311, 313 (1981). "The Interstate Commerce Act is among the most pervasive and comprehensive of federal regulatory schemes[.]" *Id.* at 318. In 1920, Congress gave the Interstate Commerce Commission (ICC) "exclusive" and "plenary" authority to regulate abandonment of rail lines by rail carriers when it enacted the Transportation Act of 1920, ch. 91, 41 Stat. 456, 477-478. *Chi. & N.W. Transp. Co.*, 450 U.S. at 319-320; *Colorado v. United States*, 271 U.S. 153, 161-166 (1926). That authority now resides in the Surface Transportation Board (STB or Board). *See* ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803. "The Transportation Act prohibited a carrier from abandoning any portion of a line without first obtaining from the [ICC or STB] a certificate of abandonment verifying that the future public convenience and necessity permitted the cessation of the carrier's rail service." *Hayfield N. R.R. v. Chi. & N.W. Transp. Co.*, 467 U.S. 622, 628 (1984).

The STB's (formerly ICC's) "authority over abandonments" is "[s]o broad" that "it extends even to approval of abandonment of purely local lines operated by regulated carriers when" interstate commerce would be affected. *Chi. & N.W. Transp. Co.*, 450 U.S. at 320. Congress has expressly provided that "[t]he jurisdiction of the Board over" the "abandonment" "of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State, is exclusive." 49 U.S.C. § 10501(b). Congress further specified that, except as otherwise noted, "the remedies provided" under the Transportation Act "are exclusive and preempt the remedies provided under Federal or State law." *Ibid.* And Congress has endowed federal regional courts of

appeals with exclusive jurisdiction over any action to enjoin, suspend, or determine the validity of an STB order. 28 U.S.C. §§ 2321, 2342(5).

When the STB authorizes a railroad to abandon a line and the railroad subsequently consummates the abandonment, that portion of the line is no longer within the STB's jurisdiction. *Preseault v. ICC*, 494 U.S. 1, 6 n.3 (1990). In contrast, when service on a rail line is discontinued, but the rail corridor is not abandoned—as occurs when the rail line is converted to interim trail use—the railroad may "cease operating a line for an indefinite period while preserving the rail corridor for possible reactivation of service in the future." *Ibid.*

b. In 1983, Congress enacted the National Trails System Act Amendments of 1983, Pub. L. No. 98-11, 97 Stat. 48, which amended the National Trails System Act (Trails Act), Pub. L. No. 90-543, 82 Stat. 919 (codified as amended at 16 U.S.C. § 1241 *et seq.*). That law is intended to preserve America's rapidly disappearing interstate railway corridor infrastructure for future rail service and energy-efficient transportation uses by allowing inactive railroad corridors to be used on an interim basis as public trails. *See Preseault*, 494 U.S. at 5-6. The Trails Act (as amended) authorizes the Secretary of Transportation, the Chairman of the STB, and the Secretary of the Interior to facilitate the conversion of an established railroad right-of-way to use as a trail on an interim basis, as an alternative to abandonment. 16 U.S.C. § 1247(d).

When a railroad wishes to abandon a rail line, it files a Notice of Intent with the STB. 49 C.F.R. § 1152.20(a)(1). Within 30 days of that filing, the railroad must file an application for abandonment with

the Board. *Id.* § 1152.20(b). Within 20 days of receiving a complete application, the Board publishes in the Federal Register a notice of the application. *Id.* § 1152.24(e)(2). If a State, local government, or private entity is interested in converting the right-of-way used for the rail line to use as a trail, and is interested in serving as the "trail sponsor" by assuming financial and managerial responsibility for the line and the right-of-way, it may submit a trail-use proposal within 45 days of the filing of the abandonment application. *Id.* § 1152.29. If the STB determines that conditions for abandonment are met and that the trail-use proposal meets the requisite criteria, the railroad may decide whether to negotiate a trail-use agreement with the putative trail sponsor. *Ibid.* If no agreement is reached—or if the trail-use proposal does not meet the necessary criteria—the Board authorizes the railroad to abandon the line. *Ibid.*

When a railroad and a putative trail sponsor can reach an agreement, the STB permits the railroad to transfer the right-of-way to the sponsor for use as a trail, subject to possible restoration of rail service in the future. 16 U.S.C. § 1247(d); 49 C.F.R. § 1152.29. That process is referred to as "railbanking" because it preserves past rail corridors for potential future restoration to a rail use. In the absence of railbanking—*i.e.*, if currently unused portions of railroad rights-of-way are automatically deemed "abandoned" under state law when they are no longer actively used for railroad purposes—it would be difficult (or impossible) to reconstitute a rail corridor in the future. *See Reed v. Meserve*, 487 F.2d 646, 649-650 (1st Cir. 1973) ("To assemble a right of way in our increasingly populous nation is no longer simple.").

In order to make it worthwhile for trail sponsors to invest the time and money necessary to accomplish a rail-to-trail conversion, the Trails Act postpones application of state law (and related state-law causes of action) that would otherwise deem a railroad right-of-way to be abandoned when the right-of-way is converted to a trail use. Before the 1983 amendments, efforts to convert rail lines to trail use had been frustrated by state property laws that terminated the right-of-way or easement when it was no longer used for railroad purposes. *Preseault*, 494 U.S. at 6-8. The 1983 amendments prevented such a termination (or reversion of rights) by declaring that, when the conversion of a railway to interim use as a trail "is subject to restoration or reconstruction for railroad purposes, such interim use shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes." 16 U.S.C. § 1247(d). As this Court has explained, "[b]y deeming interim trail use to be like discontinuance rather than abandonment, Congress prevented property interests from reverting under state law." *Preseault*, 494 U.S. at 8 (internal citation omitted). "Inevitably, interim trail use will conflict with the reversionary rights of adjacent land owners"—and therefore conflict with state law—"but that is the very purpose of the Trails Act." *Id.* at 10 (citation and alteration omitted).

2. This case involves a right-of-way that was conveyed in 2013 by the Alabama Railroad Company to petitioner Monroe County Commission for use as a recreation trail in accordance with the Trails Act. Pet. App. 1a-2a, 5a. In 1997, the railroad conveyed real property to Charles Boyles by quitclaim deed, reserving for itself a right-of-way over Boyles' property for

the maintenance and operation of a railroad. *Id.* at 4a. After Charles Boyles' death, his wife respondent Eula Boyles inherited the property subject to the railroad's right-of-way. *Id.* at 4a-5a. Eula Boyles leases the property to respondent A.A. Nettles, Sr. Properties Limited. *Id.* at 5a.

In March 2013, the railroad filed with the STB a required "Notice of Exemption" seeking permission to abandon approximately 7.42 miles of rail line, including the right-of-way at issue in this case. Pet. App. 5a. In the notice, the railroad certified that it had not run trains over the line for at least two years. *Ibid.* After the railroad published its notice in the Federal Register, petitioner filed a request with the STB to assume responsibility for the line in order to use it as a trail, pursuant to the Trails Act. *Ibid.* Petitioner acknowledged that the use of the right-of-way for trail purposes would subject the right-of-way to possible future reconstruction and reactivation for rail service. *Ibid.* After the railroad indicated its willingness to negotiate with petitioner for interim trail use, the STB issued a Notice of Interim Trail Use or Abandonment authorizing petitioner and the railroad to negotiate an agreement. *Id.* at 5a, 40a-46a; 49 C.F.R. § 1152.29(d). Respondents did not seek review of the STB's decision in a federal court of appeals within the time specified in 28 U.S.C. §§ 2321, 2342(5). After reaching an agreement with petitioner, the railroad quitclaimed its interest in the right-of-way to petitioner for conversion to trail use. Pet. App. 5a.

3. Respondents filed a complaint in Monroe County Circuit Court, seeking to quiet title to the right-of-way, seeking a declaration that Eula Boyles owns the right-of-way in fee simple, and seeking an

injunction prohibiting petitioner from proceeding with the trail project. Pet. App. 5a. Petitioner moved for judgment as a matter of law on the ground that respondents' quiet-title action is preempted by federal law. *Id*. at 6a. The trial court denied those motions and, on January 10, 2018, entered an order quieting title to the right-of-way in respondents. *Id.* at 6a, 36a-39a. The court applied Alabama property law to conclude that the right-of-way had terminated by operation of state law before the railroad conveyed its interest to petitioner. *Id.* at 6a, 37a-38a. The court further held that "Alabama law" prohibited the railroad from "chang[ing] the character of the Easement from a railroad easement to an easement for recreational trail use." *Id.* at 37a. The court enjoined petitioner from continuing to create and maintain the trail use on the property owned by respondents. *Id.* at 6a, 39a.

4. Petitioner appealed to the Supreme Court of Alabama, which affirmed by a vote of six to three. Pet. App. 1a-35a.

The state supreme court first held that the trial court had "jurisdiction to hold that the right-of-way had been abandoned under state law." Pet. App. 6a; *id.* at 6a-10a. The supreme court recognized that federal law vests in the STB "exclusive jurisdiction" over "'transportation by rail carriers,'" including the "'operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities.'" *Id.* at 6a-7a (quoting 49 U.S.C. § 10501(b)). The court further recognized that the same law states that "the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law." *Id.* at 7a (quoting 49 U.S.C. § 10501(b)). And the

court acknowledged the STB's position that States may not regulate matters directly regulated by the STB, including the abandonment of rail lines. *Id.* at 7a-8a.

The Alabama Supreme Court nevertheless held that determining the ownership of the right-of-way at issue here is a matter of "state property law that existed before the advent of railroads." Pet. App. 9a. Under Alabama law, the court concluded, the railroad had abandoned its right-of-way "by nonuse" before it conveyed the right-of-way to petitioner. *Id.* at 12a. "Thus," the court concluded, "the quitclaim deed conveyed nothing to [petitioner] because the railroad, at the time of the conveyance, had nothing to transfer." *Ibid.* The court further held that, even if the right-of-way had not lapsed through the railroad's nonuse of it for railroad purposes, the railroad lacked authority to "change the character of th[e] easement" from use for railroad purposes to use as a trail. *Ibid.* (citing *Blalock v. Conzelman*, 751 So. 2d 2 (Ala. 1999)). Because the court thus concluded that federal law governing railway easements does not preempt state law governing the same, *id.* at 6a-13a, it affirmed the trial court's holding that the railroad had abandoned its interest in the right-of-way, relying in part on "the railroad's actions of negotiating with [petitioner] to sell all of its interest in the right-of-way for use as a recreational trail," *id.* at 19a.

Chief Justice Parker filed a dissenting opinion. Pet. App. 21a-28a. He explained that "[t]he rule of law requires that [the court] cannot ignore the federal statute, the United States Supreme Court's interpretation of it," and the Alabama Supreme Court's own precedent. *Id.* at 21a. He noted that "federal courts have

repeatedly held that 'there could be no abandonment [of a railroad easement] until authorized by federal law.'" *Ibid.* (quoting *Barclay v. United States*, 443 F.3d 1368, 1374 (Fed. Cir. 2006)). Recognizing that "the []Trails Act preempts Alabama law," Chief Justice Parker expressed "concern[] that the Act violates landowners' fundamental rights of contract and property." *Id.* at 22a. The Chief Justice explained, however, that "due to express federal preemption by the []Trails Act, the jurisdiction to address these violations of fundamental contract and property rights lies exclusively in the federal government." *Id.* at 28a.

Justice Shaw, joined by Justice Stewart, also filed a dissenting opinion. Pet. App. 29a-35a. He explained that "[u]nder the plain language of 49 U.S.C. § 10501(b), the claims in the underlying action are preempted by" federal law "and exclusive jurisdiction of the action rests with the STB." Pet. App. 35a.

REASONS FOR GRANTING THE WRIT

I. The Decision Below Directly Conflicts With Decisions Of Multiple Federal Courts Of Appeals And State Courts.

Together, the Transportation Act of 1920 and the Trails Act govern the abandonment of rail lines in the United States. "[I]n furtherance of the national policy to preserve established railroad rights-of-way for future reactivation of rail service, to protect rail transportation corridors, and to encourage energy efficient transportation," federal law expressly grants to the STB exclusive jurisdiction over the abandonment of rail lines and over the conversion of railroad rights-of-way to interim trail use as an alternative to abandonment. 16 U.S.C. § 1247(d); *see* 49 U.S.C. § 10501.

Federal law expressly preempts the application of state property law that would treat the conversion of a railroad right-of-way to a trail-use right-of-way as an abandonment of the right-of-way. 16 U.S.C. § 1247(d); 49 U.S.C. § 10501. The Supreme Court of Alabama held the opposite, *i.e.*, that state property law both determines whether and when a railroad has abandoned its railroad right-of-way and prohibits the conversion of a railroad right-of-way to a trail-use right-of-way. That decision is plainly incorrect—and it conflicts with decisions of every federal court of appeals and state court of last resort to consider these issues. This Court should grant the petition for a writ of certiorari for plenary review or summary reversal.

A. Federal law gives the STB (and the ICC before it) "exclusive" and "plenary" jurisdiction over the abandonment of rail lines. *Chi. & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 318 (1981). That means that a railroad *cannot* abandon a rail line without the STB's authorization, *Hayfield N. R.R. v. Chi. & N.W. Transp. Co.*, 467 U.S. 622, 628 (1984), even when state law would otherwise dictate that a railroad right-of-way has been abandoned through, *e.g.*, disuse or conversion, 49 U.S.C. § 10501(b). Federal law further provides, *inter alia*, that the STB may authorize a railroad to discontinue service on a rail line without abandoning the corridor if it engages in "railbanking" by transferring the right-of-way to a trail sponsor who will maintain the corridor for interim use as a trail subject to later reactivation for railroad purposes. 16 U.S.C. § 1247(d).

This Court considered the constitutionality of 16 U.S.C. § 1247(d) in *Preseault v. ICC*, 494 U.S. 1 (1990). Although the Court was not asked in that case to

determine the property rights of the parties before it, the Court's reasoning implicitly acknowledged that the Trails Act preempts application of state law governing abandonment or reversion of railroad rights-of-way. The Court acknowledged that "[s]tate law generally governs the disposition of reversionary interests" in railroad easements but explained that such state law is "subject of course to the ICC's 'exclusive and plenary' jurisdiction to regulate abandonments." *Id.* at 8 (quoting *Chi. & N.W. Transp. Co.*, 450 U.S. at 321). The Court further explained that, "[b]y deeming interim trail use to be like discontinuance rather than abandonment, Congress prevented property interests from reverting under state law." *Ibid.* (internal citation omitted). In other words, the Trails Act preempts the application of state law that would deem a railroad right-of-way to be abandoned.

Every federal court of appeals that has addressed the issue has held that the federal scheme preempts application of state property laws that would cause a railroad right-of-way to terminate by operation of state law and revert to the holder of a reversionary interest. The Eighth and Ninth Circuit have squarely held that the Trails Act preempts state property law in essentially the same circumstances presented here. And the D.C. and Federal Circuits have held the same in related types of proceedings.

In *Grantwood Village v. Missouri Pacific Railroad*, the Eighth Circuit considered a factual scenario materially identical to the one presented here: a railroad transferred its right-of-way to a trail sponsor for interim use as a trail, with approval from the ICC, and the holder of the reversionary interest filed a quiet-title action in Missouri state court, contending that the

railroad had abandoned the right-of-way. 95 F.3d 654, 656-657 (8th Cir. 1996). The suit was removed to federal court, and the district court entered summary judgment for the railroad and trail sponsor. *Id.* at 657. The Eighth Circuit affirmed. *Id.* at 656. The court explained that "the ICC has exclusive and plenary authority to determine whether a rail line has been abandoned," *id.* at 657, and that "[s]tate law claims can only be brought *after* the ICC has authorized an abandonment and after the railroad has consummated that abandonment authorization," *id.* at 659. But the court held that the ICC does not relinquish its authority over a rail line when it authorizes conversion of the line to interim trail use. Because "Congress determined" by its enactment of Section 1247(d) "that interim trail use was to be treated like discontinuance rather than as an abandonment," the court explained, "the ICC's authorization of interim trail use in its Decision precludes a finding of abandonment of the right-of-way under state law." *Ibid.* Even when state law would otherwise consider the right-of-way to be abandoned when converted to use as a trail, the court held, that law does not apply because "federal law preempts state law on the question of abandonment while the ICC retains jurisdiction over the right-of-way." *Id.* at 658.

The Ninth Circuit reached the same conclusion in similar circumstances in *Hornish v. King County*, 899 F.3d 680 (9th Cir. 2018), *cert. denied*, 139 S. Ct. 1546 (2019). That court held that the STB-authorized conversion of a rail line to interim trail use, subject to future reactivation as a rail line, does not change the nature of a railroad easement or constitute abandonment of such an easement for purposes of state law. *Id.* at

695. Rather, the court explained, "'the Trails Act merely preempts abandonment of the state law easement'" and "preserves—rather than converts—the existing railroad easement" by "creat[ing] an additional recreational trail easement." *Id.* at 694-695 (citation omitted). In other words, "[t]he Trails Act, by its plain language, prevents the operation of state laws that would otherwise come into effect upon abandonment—property laws that would result in extinguishment of easements for railroad purposes and reversion of rights of way to abutting landowners." *Id.* at 695 (internal quotation marks omitted); *see id.* at 691 ("Congress acted in the Trails Act to preclude the operation of state laws regarding abandonment[.]"). The Ninth Circuit specifically noted that ordinarily the applicable state law would have deemed the railroad easement abandoned and reverted to the reversionary interest holders in that case, but concluded that "the Trails Act ha[d] stopped the reversion from occurring" by preempting state law. *Id.* at 696.

Although the Federal Circuit does not hear quiet-title actions like the one at issue here, it serves a vital role in the implementation of the rails-to-trails program because it has exclusive jurisdiction over appeals of actions in which land-owners assert takings claims against the United States based on the conversion of a railroad right-of-way to an interim trail use. In that context, the Federal Circuit has repeatedly held that state property law is preempted by federal law to the extent it would deem a railroad right-of-way abandoned through disuse or because of its conversion to an interim trail use. That court has held, for example, that federal law governing railroads has "the power to preempt state-created property rights, including the

rights to possession of property when railroad easements terminate." *Preseault v. United States*, 100 F.3d 1525, 1537 (Fed. Cir. 1996) (en banc). More recently, the Federal Circuit again held that when the STB authorizes conversion of a railroad right-of-way to interim trail use, the Board "preserves [its] jurisdiction over the corridor, thereby preempting the application of state law that might otherwise apply." *Rogers v. United States*, 814 F.3d 1299, 1303 (Fed. Cir. 2015).

The D.C. Circuit has also considered the preemptive effect of the Trails Act, in the context of reviewing the validity of the ICC's final rules implementing 16 U.S.C. § 1247(d). *Nat'l Wildlife Fed'n v. ICC*, 850 F.2d 694 (D.C. Cir. 1988). That court explained that state property law "operate[s] subject to the ICC's plenary authority to regulate railroad abandonments," *id.* at 703, and concluded that state law cannot "cause a reverter of a right-of-way prior to an ICC-approved abandonment," *id.* at 704. The D.C. Circuit described as "fundamental" the view "that Congress has the authority to provide that rights-of-way no longer needed for rail use be converted to trail use" and "that state property laws to the contrary must be displaced by Congress's exercise of that authority." *Id.* at 705.

State courts of last resort have similarly recognized that state law governing abandonment and conversion of railroad rights-of-way is preempted by federal law, including Section 1247(d). The Kansas Supreme Court has explained, for example, that "the federal government exclusively regulates the abandonment or discontinuance of a railroad right-of-way, and railbanking is clearly a part of that regulatory process." *Miami Cty. Bd. of Comm'rs v. Kanza Rail-Trails Conservancy, Inc.*, 255 P.3d 1186, 1198 (Kan. 2011).

That court further held that, "under the plain language of [Section] 1247(d), the subject provision in this case, it is clear that railbanked rights-of-way remain part of the national rail transportation system subject to the jurisdiction of the STB. In other words, the STB retains jurisdiction for future railroad use." *Ibid.* The New Hampshire Supreme Court has similarly recognized that the railbanking scheme indicates "that Congress intended the federal government to exclusively occupy the field of railroad regulation, including the preservation of railroad corridors for future rail use." *In re Conservation Law Found.*, 782 A.2d 909, 913 (N.H. 2001).[1]

B. In a stark departure from that unbroken consensus—and in the face of express statutory preemption language—the Supreme Court of Alabama held that state property law preempts the federal Trails Act because the state law "existed before the advent of railroads." Pet. App. 9a. That is not the way the Supremacy Clause works. When federal and state law conflict, federal law prevails, regardless of which came first. Although the court was correct that *in general* "determining the ownership of real property requires a review of state law," *id.* at 10a, state property law

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[1] In addition, the Washington Court of Appeals has expressly held that Section 1247(d) "preempts state law on just compensation remedies," *Good v. Skagit County*, 17 P.3d 1216, 1217 (Wash. Ct. App. 2001), explaining in part that "[s]o long as the STB retains jurisdiction, state law, including that governing creation and extinguishment of easements, is preempted, *id.* at 1219. *See ibid.* ("By deeming interim trail use to be a discontinuance rather than abandonment, Congress effectively prevented property interests from reverting under state law.").

must yield when, as here, federal law expressly displaces it.

The Supreme Court of Alabama appeared to believe that its state law could not be preempted in this area unless the law "impose[s] economic regulation on rail transportation" and concluded that preemption does not apply in this case because it does not involve "an Alabama regulation attempting to regulate rail transportation and to limit the use of rail property to deter interstate commerce." Pet. App. 9a. The court noted in the margin that Section 1247(d) expressly provides that, when an approved interim trail use "is subject to restoration or reconstruction for railroad purposes, such interim use shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes," *id.* at 3a n.2—but did not even attempt to grapple with that express preemption of state law in the text of its opinion. That is hardly surprising because the court's reverse-preemption holding *cannot* be reconciled with the express preemption language of Section 1247(d) and should be reversed.

C. The Supreme Court of Alabama's decision squarely conflicts with the holdings of the Eighth and Ninth Circuits, as well as with the decisions of the D.C. Circuit, Federal Circuit, and Kansas and New Hampshire Supreme Courts, as discussed at pp. 12-16, *supra*. Each of those cases held or recognized that state property law is preempted to the extent it would declare a railroad right-of-way abandoned without STB approval or would prevent conversion of a railroad right-of-way to interim trail use pursuant to the Trails Act. The Supreme Court of Alabama held exactly the opposite.

The conflict could not be more stark. In the Eighth and Ninth Circuit cases, as in this case, state law would have deemed the railroad right-of-way to be abandoned through disuse and/or through conversion to a non-railroad purpose. In the federal courts, that state law was preempted and the right-of-way preserved for interim trail use subject to future reactivation as a rail line; in this case, state law prevailed and the right-of-way reverted to the abutting property owner. There can be no doubt that this case would have come out the opposite way if it had arisen in the Eighth or Ninth Circuits—or in Kansas or New Hampshire state courts.

The conflict is even broader than that. The Supreme Court of Alabama's holding functionally declared invalid the STB's final order authorizing the conversion to interim trail use. But state courts do not have subject matter jurisdiction over challenges to an STB order. Rather, Congress has expressly provided that the regional courts of appeals have *exclusive* jurisdiction over any action challenging an order of the STB. 28 U.S.C. §§ 2321, 2342(5). The Eighth Circuit recognized as much in *Grantwood Village*, holding that the plaintiff had waived its right to challenge the validity of the ICC's order authorizing interim trail use by failing to file a petition for review in a court of appeals. 95 F.3d at 657-658. Because respondents in this case did not file a timely (or any) petition for review of the STB's decision authorizing interim trail use in a federal court of appeals, they waived their right to challenge the validity of the STB's order and that order must be treated as valid in this litigation. That fact underscores the absurdity of the Alabama Supreme Court's holding that state property law

supersedes a conflicting federal order that is authorized by federal law.

II. The Preemption Question Presented Is Important.

A. The Supremacy Clause of the United States Constitution provides that federal law "shall be the supreme Law of the Land." U.S. Const. art. VI, cl. 2. The Supreme Court of Alabama turned that provision on its head when it held that state law trumps conflicting federal law—even when the federal law includes an express preemption provision.

This Court plays a vital role in policing federal preemption principles. In service of that role, the Court routinely grants petitions for a writ of certiorari when an outlier court erroneously holds that a state law is not preempted by a conflicting federal law. *See*, *e.g.*, *Coventry Health Care of Mo., Inc. v. Nevils*, 137 S. Ct. 1190 (2017); *DIRECTV, Inc. v. Imburgia*, 136 S. Ct. 463 (2015); *Mut. Pharm. Co. v. Bartlett*, 570 U.S. 472 (2013). The Court should grant the petition in this case as well to bring Alabama back into line with federal law and with every other major court to consider the question presented (not to mention every other State in the Union). Although Alabama is so far the only State to exempt itself from the Trails Act, that lawless act should not be permitted to stand. States undoubtedly have plenary authority in developing general property law—but they do not have authority to unilaterally exempt themselves from a federal statutory scheme governing interstate rail corridors, and permitting that type of lawless action by even one State would seriously undermine the interstate scheme.

Because the federal statutes are unambiguous in their express preemption of state law in this area—and because this Court's decision in *Preseault* comes close to holding that state laws governing reversion and abandonment of railroad rights-of-way are preempted in the railbanking context—the Court may wish to consider summary reversal.

B. If left undisturbed, the Supreme Court of Alabama's erroneous decision will seriously undermine the STB's "exclusive" and "plenary" authority to regulate abandonment of rail lines. *Chi. & N.W. Transp. Co*, 450 U.S. at 319-320. The Transportation Act of 1920 and the Trails Act implement a fundamentally *national* statutory scheme; such a scheme cannot function as intended if it applies in only 49 States. The reason Congress exercises exclusive and plenary authority over the abandonment of rail lines is because the Nation's rail system is the quintessential interstate enterprise. The central purpose of the railbanking scheme in particular is to preserve the rapidly disappearing interstate rail system rather than allowing it to be dismantled piecemeal by operation of state law. *Preseault*, 494 U.S. at 5-9. The Supreme Court of Alabama's decision strikes at the heart of that interstate-commerce scheme by simply exempting Alabama from the railbanking system in spite of the statute's express preemption language. And that court's reverse-preemption ruling will have real-world consequences. Congress created the railbanking scheme because it "believed that every line is a potentially valuable national asset," *id.* at 19, and recognized that recreating a rail corridor once dismantled would be difficult if not impossible. If States are permitted to reclaim rail lines through operation of expressly preempted state

property law, future expansion or rehabilitation of rail corridors will be foreclosed. *See Reed v. Meserve*, 487 F.2d 646, 650 (1st Cir. 1973) ("A federal agency charged with designing part of our transportation policy does not overstep its authority when it prudently undertakes to minimize the destruction of available transportation corridors painstakingly created over several generations.").

Explicit in the Trails Act—backed up by the power of the Supremacy Clause—is that state property law *cannot* cause a railroad easement to be deemed abandoned and cannot block the STB-approved conversion of a railroad right-of-way to interim trail use. The Supreme Court of Alabama has broad authority to construe the laws of Alabama—but whatever those laws provide, Congress has declared that they simply do not apply in this context and the Supreme Court of Alabama has *no* authority to ignore the supremacy of federal law.[2]

This case is an ideal vehicle to address the question presented because the state court's reverse-preemption holding is unambiguous and dispositive. That decision should not be allowed to stand.

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[2] The concern expressed in Chief Justice Parker's dissenting opinion—that the Trails Act violates landowners' property rights—is no reason to deny review in this case. *See* Pet. App. 22a. Any landowner whose property rights are impaired by operation of the Trails Act can seek just compensation from the United States pursuant to the Tucker Act, 28 U.S.C. § 1491(a)(1). *Preseault*, 494 U.S. at 11-17.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted for plenary review. In the alternative, the Court may wish to consider summarily reversing the decision below.

Respectfully submitted,

Jamie Helen Kidd
WEBB & ELEY, P.C.
7475 Halcyon Pointe Dr.
Post Office Box 240909
Montgomery, AL 36124
(334) 262-1850

Sarah E. Harrington
Counsel of Record
Erica Oleszczuk Evans
Charles H. Davis
GOLDSTEIN & RUSSELL, P.C.
7475 Wisconsin Ave.
Suite 850
Bethesda, MD 20814
(202) 362-0636
sh@goldsteinrussell.com

September 23, 2019

APPENDIX

APPENDIX A

SUPREME COURT OF ALABAMA

No. 1170738

MONROE COUNTY COMMISSION

v.

A.A. NETTLES, SR. PROPERTIES LIMITED and EULA LAMBERT BOYLES

Rel: April 26, 2019

Appeal from Monroe Circuit Court (CV-17-900097)

SELLERS, Justice.

A.A. Nettles, Sr. Properties Limited ("Nettles") and Eula Lambert Boyles (hereinafter referred to collectively as "the plaintiffs")[1] filed in the Monroe Circuit Court an action seeking to quiet title to a right-of-way that had been conveyed by Alabama Railroad Company ("the railroad") to the Monroe County

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[1] The complaint to quiet title identifies Nettles, a plaintiff, as an Alabama family limited partnership doing business in the State of Alabama and as lessee of "the lands herein described." The trial court's order, discussed infra, quieted title to the right-of-way in both Nettles and Eula. Because, however, it appears that Eula holds sole title to the right-of-way and the right-of-way runs across property owned by Eula, we identify her as the owner of the property, where appropriate.

Commission ("the Commission") for use as a recreational trail in accordance with the National Trails System Act ("the Trails Act"), 16 U.S.C. § 1247. The trial court quieted title in favor of the plaintiffs. The Commission appealed. We affirm.

I. Background – The Trails Act

> "As background, the Interstate Commerce Act of 1887, ch. 104, 24 Stat. 379, and the Transportation Act of 1920, ch. 91, 41 Stat. 477-78, grant the Interstate Commerce Commission, now the Surface Transportation Board ('STB'), exclusive authority over the construction, operation and abandonment of the Nation's rail lines. In order for a railroad company to terminate rail service, the railroad company must obtain the consent of the STB. To obtain consent, the railroad company may apply for permission to discontinue service, seek permission to terminate through abandonment proceedings, or file a request for an exemption from abandonment proceedings. Once the STB consents, the rail line is removed from the national transportation system and the STB's jurisdiction comes to an end.
>
> "In 1983, Congress amended the National Trails System Act to include an alternative process for railroad companies to abandon

rail lines. 16 U.S.C. § 1247(d)[2]. This process, known as 'railbanking,' preserves corridors or rights-of-way not in use for train service for possible future use as recreational trails.

"In order for a rail line to be 'railbanked,' the railroad company must first file an abandonment application under 49 U.S.C. § 10903, or a notice of exemption from that process under 49 U.S.C. § 10502. Once an abandonment application, or request for an exemption, is filed, a party interested in railbanking may request the issuance of a Certificate of Interim Trail Use ('CITU') (in abandonment application proceedings) or a Notice of Interim Trail Use ('NITU') (in abandonment exemption proceedings). If the railroad company indicates that it is willing to negotiate a railbanking and interim trail use agreement, the STB issues the CITU or NITU. The issuance of the CITU or NITU preserves the STB's jurisdiction over the rail line and allows

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[2] 16 U.S.C. § 1247(d) states, in part:

"Consistent with the purposes of [the Railroad Revitalization and Regulatory Reform Act of 1976], and in furtherance of the national policy to preserve established railroad rights-of-way for future reactivation of rail service, to protect rail transportation corridors, and to encourage energy efficient transportation use, in the case of interim use of any established railroad rights-of-way pursuant to donation, transfer, lease, sale, or otherwise in a manner consistent with this chapter, if such interim use is subject to restoration or reconstruction for railroad purposes, such interim use shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes."

> the railroad company to discontinue operations and remove track and equipment while the parties negotiate a railbanking and interim trail use agreement.
>
> "The NITU or CITU affords the railroad company 180 days in which to negotiate a railbanking and interim trail use agreement with the third party. If an agreement is reached, the NITU (or CITU) automatically authorizes the interim trail use. If the STB takes no further action, the trail sponsor then may assume management of the right-of-way, subject only to the right of a railroad to reassert control of the property for restoration of rail service. If no agreement is reached, the railroad company may proceed with the abandonment process."

Burnett v. United States, 139 Fed. Cl. 797, 801-02 (2018)(internal citations omitted).

II. Facts and Procedural History

In May 1997, the railroad conveyed, by quitclaim deed, real property to Charles W. Boyles, retaining for itself a right-of-way over Charles's property for the maintenance and operation of a railroad.[3] After Charles died, his wife Eula inherited the property

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[3] The railroad retained, among other things, "a perpetual easement, rights of way, railroad tracks, track fixtures, tunnel structure, wire lines, signal lines, pipelines, wires, cables, apparatus, and other appliances presently existing for the operation of the railroad"; the right to maintain the right-of-way; and the right to restrict Charles's activities so as to prevent him from interfering with or damaging railroad operations or property.

subject to the railroad's right-of-way; Nettles leases the property from Eula.

In March 2013, the railroad filed with the Surface Transportation Board ("the STB") a "Notice of Exemption," seeking to abandon approximately 7.42 miles of rail line, which included the right-of-way over the property owned by Eula and leased by Nettles. To support its invocation of the exemption, the railroad certified that it had not run trains over the line for at least two years. The railroad published its Notice of Exemption in the Federal Register on March 21, 2013. By letter dated March 22, 2013, the Commission filed with the STB a request for a public-use condition, as well as a request for interim trail use pursuant to the Trails Act. In that request, the Commission indicated its willingness to assume responsibility for the management, legal liability, and payment of taxes for the right-of-way, and it acknowledged that use of the right-of-way for trail purposes was subject to possible future reconstruction and reactivation of the right-of-way for rail service. The railroad, in turn, filed a response indicating its willingness to negotiate with the Commission for interim trail use. On April 19, 2013, the STB issued a Notice of Interim Trail Use ("NITU") permitting the Commission and the railroad to negotiate a trail-use agreement. After the railroad and the Commission reached an agreement, the railroad quitclaimed its interest in the right-of-way to the Commission. The plaintiffs thereafter filed a complaint to quiet title to the right-of-way; they sought a judgment declaring that Eula owned the right-of-way in fee simple, as well as an injunction prohibiting the Commission from proceeding with the trail project pending resolution of the quiet-title action.

On December 20, 2017, the trial court conducted a bench trial. At the close of the plaintiffs' evidence and again at the close of all the evidence, the Commission moved for a judgment as a matter of law on the basis that the plaintiffs' quiet-title action was federally preempted. The trial court denied those motions.

On January 10, 2018, the trial court entered a final order quieting title to the right-of-way in the plaintiffs. The trial court, applying Alabama property law, held that the right-of-way had terminated by operation of law before the railroad purported to convey its interest in the right-of-way to the Commission. Accordingly, the trial court enjoined the Commission from proceeding with the recreational trail on the property owned by Eula and leased by Nettles. The Commission thereafter filed a motion requesting that the trial court alter, amend, or vacate its judgment or, in the alternative, order a new trial on the basis of federal preemption. Following a hearing, the trial court denied that motion. This appeal followed.

III. Discussion

1. Federal Preemption

The Commission contends that the trial court lacked jurisdiction to hold that the right-of-way had been abandoned under state law because, its says, the STB has exclusive jurisdiction over abandonments of regulated rail lines. "We review de novo whether the trial court had subject-matter jurisdiction." *Solomon v. Liberty Nat'l Life Ins. Co.*, 953 So. 2d 1211, 1218 (Ala. 2006). It is undisputed that the Interstate Commerce Commission Termination Act ("ICCTA") vests the STB with exclusive jurisdiction over "(1) transportation by rail carriers" and "(2) the construction,

acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities" and states that "the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law." 49 U.S.C. § 10501(b). The STB has explained that there are two broad categories of state regulation that are categorically preempted:

> "Indeed, the courts have found two broad categories of state and local actions to be preempted regardless of the context or rationale for the action. The first is any form of state or local permitting or preclearance that, by its nature, could be used to deny a railroad the ability to conduct some part of its operations or to proceed with activities that the [STB] has authorized.
>
> "Second, there can be no state or local regulation of matters directly regulated by the [STB]—such as the construction, operation, and abandonment of rail lines; railroad mergers, line acquisitions, and other forms of consolidation; and railroad rates and service.
>
> "Both types of categorically preempted actions by a state or local body would directly conflict with exclusive federal regulation of railroads. Accordingly, for those categories of actions, the preemption analysis is addressed not to the reasonableness of the particular state or local action, but rather to the act of regulation itself.

> "In other words, state and local laws that fall within one of the precluded categories are a *per se* unreasonable interference with interstate commerce. For such cases, once the parties have presented enough evidence to determine that an action falls within one of those categories, no further factual inquiry is needed.
>
> "For state or local actions that are not facially preempted, the section 10501(b) preemption analysis requires a factual assessment of whether that action would have the effect of preventing or unreasonably interfering with railroad transportation."

CSX Transp., Inc.—Petition for Declaratory Order, STB Finance Docket No. 34662 (STB May 3, 2005) (internal citations omitted).

"Despite its breadth, the jurisdiction of the STB does not foreclose every conceivable state claim." *Sunflour R.R. v. Paulson*, 670 N.W.2d 518, 523 (S.D. 2003). Rather, "[i]n all pre-emption cases, and particularly in those in which Congress has 'legislated . . . in a field which the States have traditionally occupied,' . . . we 'start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.'" *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996) (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)). The United States Supreme Court has explained this assumption: "We rely on the presumption because respect for the States as 'independent sovereigns in our federal system' leads us to assume that 'Congress does not cavalierly preempt state-law causes of action.'" *Wyeth v. Levine*,

555 U.S. 555, 565 n. 3 (2009) (quoting *Lohr*, 518 U.S. at 485). "The presumption thus accounts for the historic presence of state law but does not rely on the absence of federal regulation." 555 U.S. at 566 n. 3. The idea is that, although the STB has "exclusive and preemptive jurisdiction," this expansive jurisdiction is given for a specific reason: to prevent attempts by states to impose economic regulation on rail transportation. In other words, the goal of the STB is to limit, if not prevent, state regulation of interstate rail transportation to avoid the pitfalls and nuances of laws enacted by each state's legislature that would deter a railroad's ability to operate efficiently and the possibility of divergent regulations from each state.

In this case, we are not faced with an Alabama regulation attempting to regulate rail transportation and to limit the use of rail property to deter interstate commerce. Rather, we are dealing with state property laws that existed before the advent of railroads, and we are asked to consider the impact of a railroad right-of-way, reserved in a quitclaim deed, on the rights of an adjoining property owner when the purpose of the right-of-way has lapsed by nonuse and the holder of the right-of-way attempts to transfer its interest to create a new use, not envisioned by the reservation of rights in the initial instrument conveying the right-of-way.

In *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1001 (1984), the United States Supreme Court stated: "[W]e are mindful of the basic axiom that "'[p]roperty interests . . . are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law.'"'

(Quoting *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 161 (1980), quoting in turn *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972).) In *Oregon ex rel. State Land Board v. Corvallis Sand & Gravel Co.*, 429 U.S. 363, 378 (1977), the United States Supreme Court stated that, "[u]nder our federal system, property ownership is not governed by a general federal law, but rather by the laws of the several States." See also *Davies Warehouse Co. v. Bowles*, 321 U.S. 144, 155 (1944) ("The great body of law in this country which controls acquisition, transmission, and transfer of property, and defines the rights of its owners in relation to the state or to private parties, is found in the statutes and decisions of the state."). It is clear then that, even in a regime of federal preemption, determining the ownership of real property requires a review of state law.

2. State-Law Quiet-Title Action

As indicated, the plaintiffs filed a complaint seeking to quiet title to the right-of-way. It is helpful to remember that the right-of-way was created by reservation in a 1997 quitclaim deed and that the railroad, as the holder of the easement, attempted to convey the right-of-way also by quitclaim deed. As a matter of Alabama law, the precise language and nature of the rights reserved under the 1997 quitclaim deed are critical in assessing whether the railroad had any right or title to effectively quitclaim its interests in the right-of-way to the Commission. The trial court determined that, under the quitclaim deed, the railroad reserved for itself a right-of-way for the maintenance and operation of a railroad only; that the railroad had changed the character of the right-of-way from a railroad right-of-way to a right-of-way for recreational trail use; that

the railroad had abandoned the right-of-way when it failed to rebuild a burnt train trestle and removed the rails and cross ties from the right-of-way; and that the right-of-way was thus extinguished by operation of law. Accordingly, the trial court concluded that, because the right-of-way had been extinguished by operation of law, the railroad had nothing to convey to the Commission. See *Benedict v. Little*, 288 Ala. 638, 643, 264 So. 2d 491, 494 (1972) (noting that, under Alabama law, "[a] quitclaim deed can convey nothing more than what the grantor actually owns"). The analogy used by the trial court is the same analogy employed by a federal claims court assessing a claim under the Miller Act, 28 U.S.C. § 1491. See, e.g., *Burnett*, 139 Fed. Cl. at 804:

> "To determine whether a Fifth Amendment takings has occurred in a rails-to-trails case, the Court follows a three-part analysis established by the United States Court of Appeals for the Federal Circuit. First, the Court must determine who owned the land at issue at the time of the takings, and specifically, whether the railroad company owned the land in fee simple or held only an easement. Second, if the railroad company owned only an easement, the Court must determine whether the terms of the easement are limited to use for railroad purposes, or whether the terms include use as a public recreational trail. Third, if the railroad company's easement is broad enough to encompass recreational trail use, the Court must determine whether the easement terminated prior to the alleged takings, so that the property owner held a fee

> simple estate unencumbered by easement at the time of the takings."

(Citations omitted.)

Thus, as did the trial court, we look to what the railroad owned at the time it executed and delivered the quitclaim deed to the Commission. When the railroad undisputedly ceased using the right-of-way for railroad purposes, under Alabama property law, its right-of-way across Eula's property lapsed by nonuse. When the right-of-way lapsed by nonuse, the right-of-way was extinguished, and the property burdened by the right-of-way vested in Eula automatically, by operation of law. Thus, the quitclaim deed conveyed nothing to the Commission because the railroad, at the time of conveyance, had nothing to transfer. In other words, the railroad's inaction in failing to use its right-of-way terminated the right-way-of, divesting it of any further interest in the property. Further, the right-of-way was limited to use for railroad purposes; even under decisions from the federal courts, conveying a railway easement for another use allows the adjoining property owner to look to state law to determine the owner's rights in the property.

Under Alabama law, one holding an easement cannot change the character of that easement. *Blalock v. Conzelman*, 751 So. 2d 2 (Ala. 1999). Neither can the easement holder "enlarge upon an easement for other purposes." *Roberts v. Monroe*, 261 Ala. 569, 577, 75 So. 2d 492, 499 (1954). An easement, then, specifically for railroad purposes precludes the easement holder from expanding the use of the easement to anything other than railroad operations. Alabama has specifically addressed railroad easements and has determined that they are limited and cannot be

expanded. See *Nashville, Chattanooga & St. Louis Ry. v. Karthaus*, 150 Ala. 633, 43 So. 791 (1907); *West v. Louisville & Nashville R.R.*, 137 Ala. 568, 34 So. 852 (1903). "[A]n easement given for a specific purpose terminates as soon as the purpose ceases to exist, is abandoned, or is rendered impossible of accomplishment." *Tatum v. Green*, 535 So. 2d 87, 88 (Ala. 1988). Thus, under the facts of this case, the trial court did not err in applying state-law principles to conclude that the right-of-way had been extinguished by operation of law, causing title to the right-of-way to revert to Eula. "In an action to quiet title, when the trial court hears evidence ore tenus, its judgment will be upheld unless it is palpably wrong or manifestly unjust." *Woodland Grove Baptist Church v. Woodland Grove Cmty. Cemetery Ass'n, Inc.*, 947 So. 2d 1031, 1036 (Ala. 2006). We cannot say that the trial court's determination here was wrong, much less unjust.

3. *Mobile & Gulf R.R. v. Crocker*, 455 So. 2d 829 (Ala. 1984)

The Commission relies on *Mobile & Gulf R.R. v. Crocker*, 455 So. 2d 829 (Ala. 1984), to support its argument that the trial court lacked subject-matter jurisdiction to determine that the railroad had abandoned its right-of-way over Eula's property. In *Crocker*, the landowners sought a judgment declaring that a railroad had abandoned its right-of-way over their property. At the time the landowners filed their state-court action, the railroad had not initiated any proceedings with the Interstate Commerce Commission ("ICC"), now the STB, seeking to abandon the right-of-way; thus, the ICC had not authorized the abandonment of the right-of-way. The railroad filed, among other things, a motion to dismiss the

landowners' declaratory-judgment action on the basis that the trial court lacked subject-matter jurisdiction over it. The trial court denied that motion. This Court granted the railroad permission to appeal pursuant to Rule 5, Ala. R. App. P. The *Crocker* Court reversed the judgment of the trial court, concluding that the ICC had exclusive jurisdiction over the abandonment of the right-of-way; that the ICC had not authorized the abandonment of the right-of-way; and that the trial court, thus, lacked jurisdiction to hear the landowners' action.

In this case, the Commission's reliance on *Crocker* is misplaced; *Crocker* is easily distinguished, not only procedurally, but also by changes in the law since *Crocker* was decided. Consider the manner in which the rights-of-way were created. The right-of-way easement in *Crocker* was created by a condemnation action. In this case, the right-of-way easement was reserved in a quitclaim deed when the railroad conveyed its property to Eula's predecessor in title. Because a condemnation action is a much more aggressive means to create a right-of-way and requires not only judicial action but also a showing of necessity, the lapse of a right-of-way by nonuse is much harder to establish in such a case and requires judicial scrutiny. By merely reserving the right-of-way in a quitclaim deed and limiting it to railroad use, establishing lapse by nonuse in such a case involves a lower threshold, especially because the railroad had reserved the right-of-way without any court action and the right-of-way would lapse by nonuse without a specific finding or the necessity of any court action. Thus, reserving a right-of-way in a quitclaim deed is a nonjudicial method by which a railroad can establish an easement, and it stands to

reason that such an easement could be undone without judicial action. Condemnation, on the other hand, is a much more involved judicial process such that any lapse in use and establishing nonuse would require judicial action to vacate the right-of-way and change its use. Additionally, in *Crocker*, both the landowners and the railroad requested a judgment declaring whether the right-of-way had been abandoned. As noted, the railroad had never invoked the jurisdiction of the ICC seeking permission to abandon the right-of-way. In other words, the declaratory-judgment action in *Crocker* would have required the trial court to specifically invade the ICC's jurisdiction to determine whether the right-of-way had been abandoned. Here, neither the plaintiffs nor the Commission sought a judgment concerning whether the right-of-way had been abandoned. Rather, the plaintiffs merely filed a statutory action seeking to quiet title to the right-of-way because the Commission had represented, in conjunction with the trails project, that it held fee title to the right-of-way. Section 6-6-540, Ala. Code 1975, provides:

> "When any person is in peaceable possession of lands, whether actual or constructive, claiming to own the same, in his own right or as personal representative or guardian, and his title thereto, or any part thereof, is denied or disputed or any other person claims or is reputed to own the same, any part thereof, or any interest therein or to hold any lien or encumbrance thereon and no action is pending to enforce or test the validity of such title, claim, or encumbrance, such person or his personal representative or guardian, so in

> possession, may commence an action to settle the title to such lands and to clear up all doubts or disputes concerning the same."

See also *Dake v. Inglis*, 239 Ala. 241, 243, 194 So. 673, 674 (1940) ("The purpose of the [quiet-title] proceeding is not to invest the court with jurisdiction to sell or dispose of the title to the land, but merely to determine and settle the same as between the complainant and the defendants.").

In entertaining the plaintiffs' quiet-title action, the trial court had before it various documents, including the decision of the STB granting the NITU based on the railroad's certification that it had not used the right-of-way for at least two years. In other words, the trial court had an admission by the railroad as the former title holder affirming that it had ceased to use the right-of-way for railroad purposes. The trial court clearly had jurisdiction to decide the nature and extent of the right-of-way under Alabama law and to quiet title in Eula. Accordingly, unlike *Crocker*, where the jurisdiction of the ICC had not been invoked, the STB had already acted in this case, and the trial court merely relied on the STB's findings to quiet title to the right-of-way.

Finally, we note that *Crocker* was decided in July 1984, shortly after Congress amended the Trails Act in March 1983 to include interim trail use as an alternative process by which railroad companies could abandon rail lines. Contrary to the Commission's interpretation of *Crocker*, i.e., that the plaintiffs' quiet-title action falls exclusively within the STB's jurisdiction, we note that the STB has routinely issued decisions refusing to intervene in actions involving property disputes that can be resolved under state law.

See, e.g., *Allegheny Valley R.R.—Petition for Declaratory Order—William Fiore*, STB Finance Docket No. 35388 (STB April 25, 2011) (denying a railroad's request for a declaratory order that state-law claims and remedies concerning the size and extent of a railroad easement were preempted by 49 U.S.C. § 10501(b), where the disputes involved "the application of state property law and properly are before the state court"). In the *Allegheny Valley* case, the landowner purchased a parcel of land subject to a railroad's right-of-way; the railroad had acquired the right-of-way from another railroad via a quitclaim deed. The landowner filed a state-court action seeking a determination under Pennsylvania law as to the width and location of the property claimed by him and the railroad, as well as a determination whether the railroad owned the property in fee simple or had only an easement. The STB declined the railroad's request for a declaratory order because the landowner's action involved questions of state property law that would be best handled by state courts. Again, the STB's decisions express an unwillingness to accept jurisdiction of matters involving state-property issues even when railroad companies attempt to invoke the STB's exclusive jurisdiction. See also *Ingredion Incorporated—Petition for Declaratory Order*, STB Finance Docket No. 36014 (STB September 30, 2016), where the STB declined to issue a declaratory order when the case arose from a property dispute originating in state court concerning the application of state property law on the ground that those are questions that the state court should resolve—"questions of [state] property law generally are more appropriately decided by [state] courts."

4. Sufficiency of the Evidence – Abandonment

Alternatively, the Commission argues that the trial court erred in refusing to grant it a new trial because, it says, there was no evidence indicating that the railroad had abandoned its interest in the right-of-way before it conveyed the property to the Commission by quitclaim deed. It is undisputed that, at all times relevant to this appeal, the rail line fell into disrepair and had not ben used for many years. The trial court stated in its order that the character of the right-of-way was changed when the railroad conveyed its interests in it to the Commission and that both the failure of the railroad to construct an essential trestle and the removal of the rails indicated an abandonment of the right-of-way and rendered the specific purpose of the easement impossible. Thus, the trial court held that the right-of-way was extinguished by operation of law, causing title to the right-of-way to vest with Eula. In *Chatham v. Blount County*, 789 So. 2d 235, 241 (Ala. 2001), this Court stated explained:

> "As a general rule, one holding an easement cannot change the character of that easement, *Blalock v. Conzelman*, 751 So. 2d 2 (Ala. 1999), or 'enlarge upon [that] easement for other purposes.' *Roberts v. Monroe*, 261 Ala. 569, 577, 75 So. 2d 492, 499 (1954). Specifically as to a railroad easement, this Court has held that such an easement was limited in use to railroad purposes. *Nashville, C. & St. L. Ry. v. Karthaus*, 150 Ala. 633, 43 So. 791 (1907); *West v. Louisville & N. R.R.*, 137 Ala. 568, 34 So. 852 (1903). An easement granted for a specific purpose is deemed abandoned when its owner ""by his own act

> renders the use of the easement impossible, or himself obstructs it in a manner inconsistent with its further enjoyment."" *Byrd Cos. v. Smith*, 591 So. 2d 844, 847 (Ala. 1991) (quoting *Polyzois v. Resnick*, 123 Neb. 663, 668, 243 N.W. 864, 866 (1932) (quoting treatise)). See also *Tatum v. Green*, 535 So. 2d 87, 88 (Ala. 1988) ('[A]n easement given for a specific purpose terminates as soon as the purpose ceases to exist, is abandoned, or is rendered impossible of accomplishment.')."

The Commission contends that there was no evidence before the trial court indicating that the railroad had removed the tracks and ties from the railroad corridor. Notably, there is nothing in the trial transcript indicating that the tracks and ties had been removed from the railroad corridor. However, the record does indicate that the parties had been before the court on at least two other occasions; those transcripts are not before us. In any event, we conclude that the trial court had sufficient evidence before it to determine that the railroad intended to abandon its interest in the right-of-way. The trial court had before it pictures of a train trestle that had burned in January 2007; the railroad never rebuilt that trestle, thereby making the specific purpose of the right-of-way, i.e., operation of a railroad, impossible. The evidence of intent to abandon is further bolstered by the railroad's actions of negotiating with the Commission to sell all of its interest in the right-of-way for use as a recreational trail. See, e.g., *Lawson v. State*, 107 Wash. 2d 444, 452, 730 P.2d 1308, 1313 (1986)(holding that, where deed conveyed right-of-way for railroad purposes only, change in use from "Rails to Trails" constituted abandonment).

Accordingly, the trial court did not err in concluding that the easement reserved to the railroad by a right-of-way as provided in the quitclaim deed conveying the property to Charles lapsed by nonuse and was thus extinguished by operation of law, leaving nothing for the railroad to convey to the Commission.

IV. Conclusion

Based on the foregoing, the judgment of the trial court is due to be affirmed.

AFFIRMED.

Bolin, Wise, Mendheim, and Mitchell, JJ., concur.

Bryan, J., concurs in the result.

Parker, C.J., and Shaw and Stewart, JJ., dissent.

PARKER, Chief Justice (dissenting).

I reluctantly dissent. The rule of law requires that we cannot ignore the federal statute, the United States Supreme Court's interpretation of it, and this Court's precedent in *Mobile & Gulf R.R. v. Crocker*, 455 So. 2d 829 (Ala. 1984).

When we interpret an express-preemption clause in a federal statute, we must "'focus on the plain wording of the clause.'" *Norfolk Southern Ry. v. Goldthwaite*, 176 So. 3d 1209, 1213 (Ala. 2015) (quoting *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 664 (1993)). The statutory scheme underlying the Rails-to-Trails Act gives the Surface Transportation Board ("the STB") exclusive jurisdiction over the "abandonment[] or discontinuance" of a rail line. 49 U.S.C. § 10501(b)(2). Although "[s]tate law generally governs the disposition of reversionary interests, . . . [the STB has] 'exclusive and plenary' jurisdiction to regulate abandonments." *Preseault v. ICC*, 494 U.S. 1, 8 (1990).

Thus, the federal courts have repeatedly held that "there could be no abandonment until authorized by federal law." *Barclay v. United States*, 443 F.3d 1368, 1374 (Fed. Cir. 2006); see *Jackson v. United States*, 135 Fed. Cl. 436, 443 (2017) ("The Trails Act prevents a *common law abandonment* of the railroad right-of-way from being effected, thus precluding state law reversionary interests from vesting." (emphasis added)); *Preseault v. ICC*, 853 F.2d 145, 150 (2d Cir. 1988) ("Until the [STB] issues a certificate of abandonment, the railway property remains subject to the [STB's] jurisdiction, and state law may not cause a reverter of the property."); *National Wildlife Fed'n v. ICC*, 850 F.2d 694, 704 (D.C. Cir. 1988) ("Nor may state law

cause a reverter of a right-of-way prior to an [STB]-approved abandonment.").

Moreover, this Court has already decided the issue whether a state court has "subject matter jurisdiction of an abandonment of a railroad right-of-way, or . . . [whether] the question of abandonment [is] preempted by . . . 49 U.S.C. § 10501 et seq." *Crocker*, 455 So. 2d at 830. After reasoning that the "act is among the most pervasive and comprehensive of federal regulatory schemes," the Court held that "the [STB] has exclusive jurisdiction to determine whether there was an abandonment of the railroad right-of-way." *Id.* at 832, 834. Because *Crocker* squarely addressed preemption of the issue of abandonment, I am unpersuaded that *Crocker* is distinguishable based on the vagaries of how or when the issue arises in the state court. I am also not convinced that the prior denials of relief by the STB are relevant here, because those denials either addressed legal issues not within the scope of 49 U.S.C. § 10501(b)(2) or simply declined to rule on preemption. Therefore, this Court should reverse the circuit court's judgment and remand the case with directions to dismiss the plaintiffs' action.

Nevertheless, although I recognize that the Rails-to-Trails Act preempts Alabama law, I am concerned that the Act violates landowners' fundamental rights of contract and property. When the railroad reserved an easement over Charles W. Boyles's property, it negotiated for the right to use the easement for railroad operations. The railroad did not negotiate for a public recreational trail. The United States Court of Appeals for the Federal Circuit has recognized this disparity in anticipated use, noting that "[i]t is difficult to imagine that either party to the original transfers had

anything remotely in mind that would resemble a public recreational trail." *Preseault v. United States*, 100 F.3d 1525, 1543 (Fed. Cir. 1996). Comparing the two uses, the court observed:

> "When the easements here were granted . . . specifically for transportation of goods and persons via railroad, could it be said that the parties contemplated that a century later the easements would be used for recreational hiking and biking trails, or that it was necessary to so construe them in order to give the grantee railroad that for which it bargained? We think not. Although a public recreational trial could be described as a roadway for the transportation of persons, the nature of the usage is clearly different. In the one case, the grantee is a commercial enterprise using the easement in its business, the transport of goods and people for compensation. In the other, the easement belongs to the public, and is open for use for recreational purposes, which happens to involve people engaged in exercise or recreation on foot or on bicycles."

100 F.3d at 1542-43.

Other courts have similarly noted that "[r]ecreational hiking, jogging and cycling are not connected with railroad use in any meaningful way." *Glosemeyer v. United States*, 45 Fed. Cl. 771, 779 (2000); see also *Harley-White v. United States*, 129 Fed. Cl. 548, 556 (2016) ("Because the easements were held for a railroad purpose, the transformation of the right-of-way into a recreational trail goes beyond the scope of the easements . . . ."); *Lawson v. State*, 107 Wash. 2d 444, 451, 730 P.2d 1308, 1312 (1986) ("[A] hiking and

biking trail is not encompassed within a grant of an easement for railroad purposes only."); *Toews v. United States*, 376 F.3d 1371, 1376-77 (Fed. Cir. 2004) ("[U]se of these easements for a recreational trail—for walking, hiking, biking, picnicking, frisbee playing, with newly-added tarmac pavement, park benches, occasional billboards, and fences to enclose the trailway—is not the same use made by a railroad, involving tracks, depots, and the running of trains. . . . Some might think it better to have people strolling on one's property than to have a freight train rumbling through. But that is not the point. The landowner's grant authorized one set of uses, not the other."). More than a slight alteration, the Rails-to-Trails Act creates "a *new* easement for a new use—for recreational trail use." *Hornish v. King Cty.*, 899 F.3d 680, 696 (9th Cir. 2018).

The Federal Circuit has also acknowledged that "different uses create different burdens." *Toews*, 376 F.3d at 1376.

> "It is one thing to have occasional railroad trains crossing one's land. Noisy though they may be, they are limited in location, in number, and in frequency of occurrence. . . . When used for public recreational purposes, however, in a region that is environmentally attractive, the burden imposed by the use of the easement is at the whim of many individuals, and . . . has been impossible to contain in numbers or to keep strictly within the parameters of the easement."

Preseault v. United States, 100 F.3d at 1543.

This use of the Rails-to-Trails Act thus thwarts landowners' expectations. Before the Act, landowners "would have been secure in the knowledge . . . that the only use that could be made of their lands were those related to the operation of a railroad." *Glosemeyer*, 45 Fed. Cl. at 781. However, "[s]olely because of the operation of the Rails-to-Trails Act," the lands are "now burdened by new easements—for recreational trails. Whereas previously the [landowners] could exclude all but the railroads from use of the right-of-ways, now the public at large has access." *Id.* In this way, the Act strong-arms landowners into a new, unnegotiated agreement—a new contract for which they were not given consideration and to which they did not assent.

The Rails-to-Trails Act also violates a landowner's property rights. The importance of those rights was emphasized by those whose ideas helped organize the English common law, inspire American independence, and create the United States Constitution. John Locke explained: "The reason why men enter into society is the preservation of their property . . . . [W]henever the legislators endeavor to take away and destroy the property of the people, . . . they put themselves into a state of war with the people . . . ." John Locke, *Concerning Civil Government, Second Essay* 75-76 (Robert Maynard Hutchins ed., Encyclopedia Britannica, Inc., 1952) (1690). The English jurist William Blackstone called the right to property "that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe." 2 William Blackstone, *Commentaries* *2.

During the Founding Era, James Madison, Father of the Constitution, echoed this right before the

Virginia Constitutional Convention. He argued that "the rights of persons, and the rights of property, are the objects, for the protection of which Government was instituted." James Madison, "Speech in the Virginia Constitutional Convention" (1829), in *James Madison: Writings* at 824 (Jack N. Rakove ed., Library of America 1999). Madison also wrote that "[g]overnment is instituted to protect property of every sort; . . . [T]hat alone is *just* government, which *impartially* secures to every man, whatever is his *own*." James Madison, "Property" (1792), in *Madison: Writings* at 515. Conversely, Madison warned that it "is not a just government, nor is property secure under it, where the property which a man has in his personal safety and personal liberty, is violated by arbitrary seizures of one class of citizens for the service of the rest." *Id.* at 516.

The Rails-to-Trails Act violates a landowner's property rights by taking his land and giving it to a railroad company for use by the public at large. Specifically, the Act "takes a landowner's right to use or sell his or her reversionary interest and gives this right to a railroad company. The railroad company now has the right . . . to sell an interest in the landowner's property." Mark F. Hearne II, Lindsay Brinton & Meghan Largent, *The Trails Act: Railroading Property Owners and Taxpayers for more than a Quarter Century*, 45 Real Prop. Tr. & Est. J. 115, 162 (2010). Where once the owner held the full bundle of sticks (minus an easement allowing a railroad to operate), the Act "takes this entire bundle of sticks from the owner and gives them to the railroad . . . . The landowner is left with nominal title . . . ." *Id.* As a consequence, the landowner may be stuck with increased

crime from those using the trail, loss of privacy, decrease in property values, and litigation costs. See Emily Drumm, Comment, *Addressing the Flaws of the Rails-to-Trails Act*, 8 Kan. J.L. & Pub. Pol'y 158 (Spring 1999).

Notably, the Act permits the whole public onto a landowner's property, terminating one of the most important property rights: the right to exclude. "In the bundle of rights we call property, one of the most valued is the right to sole and exclusive possession—the right to *exclude* strangers, or for that matter friends, but especially the Government." *Hendler v. United States*, 952 F.2d 1364, 1374 (Fed. Cir. 1991); see also *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435-36 (1982) ("The power to exclude has traditionally been considered one of the most treasured strands in an owner's bundle of property rights. . . . [T]he permanent physical occupation of property forever denies the owner any power to control the use of the property . . . .").

Compounding these violations of contract and property rights, the rails-to-trails process does not require actual notice to the landowner before conversion of the easement. See *National Ass'n of Reversionary Prop. Owners v. ICC*, 70 F.3d 638 (D.C. Cir. 1995) (table). Although the Act requires notice of a railroad's intent to abandon a rail line, that notice is not sufficient to apprise the landowner that the easement will be converted to a recreational trail. Thus, the Act essentially effects a taking without notice.

In all these ways, the Rails-to-Trails Act allows the federal government to take property rights away from Alabamians. "[T]he right to control one's property is a sacred right which should not be taken away

without urgent reason." *Smith v. Smith*, 254 Ala. 404, 409, 48 So. 2d 546, 549 (1950). A recreational trail is not such a reason. However, due to express federal preemption by the Rails-to-Trails Act, the jurisdiction to address these violations of fundamental contract and property rights lies exclusively in the federal government.

SHAW, Justice (dissenting)

I respectfully dissent. Under federal law, the Surface Transportation Board ("the STB") has exclusive jurisdiction over this action that seeks to quiet title to an allegedly abandoned railroad easement.

The Interstate Commerce Commission Termination Act, 49 U.S.C. § 10101 et seq. ("the ICCTA"), established the STB and gave it "exclusive jurisdiction over certain aspects of railroad transportation." *Adrian & Blissfield R.R. v. Village of Blissfield*, 550 F.3d 533, 539 (6th Cir. 2008). Additionally, "Congress intended to preempt state and local laws that come within the [STB's] jurisdiction." *Texas Cent. Bus. Lines Corp. v. City of Midlothian*, 669 F.3d 525, 530 (5th Cir. 2012). The intent of the ICCTA to "preempt state and local regulation of railroad transportation has been recognized as broad and sweeping." *Union Pac. R.R. v. Chicago Transit Auth.*, 647 F.3d 675, 678 (7th Cir. 2011). See also *New England Cent. R.R. v. Springfield Terminal Ry.*, 415 F. Supp. 2d 20, 27 (D. Mass. 2006) ("Courts have consistently found that state law that directly or indirectly regulates railroads is preempted by § 10501(b).").

The main opinion holds that the STB's "exclusive and preemptive jurisdiction" is limited by its "specific reason": to prevent "economic regulation" by the states of rail transportation. ___ So. 3d at ___. Numerous federal court decisions, however, have rejected the idea that the ICCTA is limited only to "economic" regulation. Although economic regulation has been described as the "core of ICCTA preemption," its preemptive effect "may not be limited to state economic regulation." *Elam v. Kansas City S. Ry.*, 635 F.3d 796, 806 (5th Cir. 2011) (footnote omitted). The ICCTA "does

not preempt only explicit economic regulation. Rather, it preempts all 'state laws that may reasonably be said to have the effect of managing or governing rail transportation, while permitting the continued application of laws having a more remote or incidental effect on rail transportation.'" *New York Susquehanna & W. Ry. v. Jackson*, 500 F.3d 238, 252 (3d Cir. 2007) (quoting *Florida E. Coast Ry. v. City of W. Palm Beach*, 266 F.3d 1324, 1331 (11th Cir. 2001)). See also *Wisconsin Cent. Ltd. v. City of Marshfield*, 160 F. Supp. 2d 1009, 1014 (W.D. Wis. 2000) ("The ICCTA expressly preempts more than just state laws specifically designed to regulate rail transportation.").

In *City of Auburn v. United States*, 154 F.3d 1025 (9th Cir. 1998), a city challenged the STB's finding that the ICCTA preempted state and local environmental permitting laws, arguing that "the ICCTA legislative history establishes Congress' intent to preempt only *economic* regulation of rail transportation, not the traditional state police power of environmental review." 154 F.3d at 1029. The city, pointing to legislative history, stated in its brief that the local environmental regulations at issue were not "economic regulations" but rather "'essential local police power required to protect the health and safety of citizens. . . .'" 154 F.3d at 1029.

The court noted that "there is nothing in the case law that supports [the city's] argument that, through the ICCTA, Congress only intended preemption of economic regulation of the railroads." 154 F.3d at 1030. Further, it stated: "[I]f local authorities have the ability to impose 'environmental' permitting regulations on the railroad, such power will in fact amount to 'economic regulation' if the carrier is prevented from

constructing, acquiring, operating, abandoning, or discontinuing a line." 154 F.3d at 1031.

Thus, contrary to the main opinion, the preemptive effect of the ICCTA and the jurisdiction it provides to the STB is not limited to "economic" regulation.

In addressing whether the ICCTA preempts state-law claims that rail lines have been abandoned, courts have looked to the plain language of 49 U.S.C. § 10501(b), which states, in pertinent part:

> "(b) The jurisdiction of the [STB] over—
>
> > "(1) *transportation* by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and
> >
> > "(2) the construction, acquisition, operation, *abandonment*, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State,
>
> "*is exclusive*. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are *exclusive and preempt* the remedies provided under Federal or State law."

(Emphasis added.)

Under the ICCTA, "transportation" has a very broad meaning that includes "property . . . regardless of ownership or agreement concerning use." 49 U.S.C. § 10102(9)(A). *Union Pacific*, 647 F.3d at 678

("Congress also defined 'transportation' to include railroad property, facilities, and equipment 'related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use.' 49 U.S.C. § 10102(9)."). Thus, as discussed below, the STB has exclusive jurisdiction over railroad property and the issue of abandonment of that property—and any remedy provided by state law—is preempted.

In the context of attempts to use state law to obtain property from railroads, such as by condemnation or adverse possession, federal courts, in applying § 10501(b), have explicitly held that such claims are preempted and fall under the jurisdiction of the STB. In *Soo Line R.R. v. City of St. Paul*, 827 F. Supp. 2d 1017 (D. Minn. 2010), the court held that a city's proposed condemnation action seeking an easement over railroad property that ran along a rail line "falls squarely within the definition of 'transportation' as defined by '49 U.S.C. § 10102(9),'" despite the city's argument that the easement it sought would not interfere with railroad operations. 827 F. Supp. 2d at 1021. The proposed condemnation, the court held, "would be an act seeking to control" the property and was thus "a form of regulation" that fell "into the broad category of actions that are *per se* preempted under the ICCTA." 827 F. Supp. 2d at 1022. See also *Union Pacific*, 647 F.3d at 683 (holding that a state-law action to condemn an easement over a portion of a railroad's property that was being leased to the plaintiff was "preempted because it prevents and unreasonably interferes with railroad transportation" on the property); *B & S Holdings, LLC v. BNSF Ry.*, 889 F. Supp. 2d 1252, 1260 (E.D. Wash. 2012) (holding that a quiet-title action alleging that property along a rail line had

been adversely possessed under state law "necessarily involve[d] the regulation of rail transportation"); and *14500 Ltd. v. CSX Transp., Inc.* (No. 1:12CV1810, March 14, 2013) (N.D. Ohio 2013) (not reported in F. Supp. 2d) (holding that the ICCTA preempted an action to quiet title over railroad property that had allegedly been adversely possessed).

In the context of allegations identical to the one in the instant case, i.e., that railroad easements or rights-of-way were abandoned, courts have held that the ICCTA preempts state-law actions. In *Cedarapids, Inc. v. Chicago, Central & Pacific R.R.*, 265 F. Supp. 2d 1005 (N.D. Iowa 2003), the plaintiff contended that a railroad had abandoned a section of a rail-line easement by ceasing operations and, thus, under Iowa state law, that the property reverted to the plaintiffF. 265 F. Supp. 2d at 1007. After discussing the language of 49 U.S.C. § 10501(b) and the broad definition of "property" under 49 U.S.C. § 10102(9)(A), the court stated that "the ICCTA grants to the STB exclusive jurisdiction over nearly all matters of rail regulation." 265 F. Supp. 2d at 1012. Such regulation included not only state "economic" regulation, but also regulation of the abandonment of rail lines, which included the plaintiff's state-law suit to declare a rail line abandoned:

> "The Court's review of the nature and purpose of the ICCTA, as evidenced by both the legislative history and the plain language of the statute, leads the Court to conclude that, in enacting the ICCTA, Congress intended to occupy completely the field of state economic regulation of railroads. The Court *also finds that the ICCTA preempts state*

> *regulation of the abandonment of lines of railroad*. The ICCTA's grant of exclusive jurisdiction to the STB over the abandonment of tracks and its expansion of the types of tracks within this exclusive jurisdiction to include wholly intrastate spur and industrial tracks indicates that Congress intended for the abandonment of all types of tracks to be under the STB's jurisdiction. This comports with Congress' stated desire of deregulation of the railroad industry by ensuring that states do not impose regulations which conflict with or undermine those set forth in the ICCTA and imposed by the STB with respect to the abandonment of tracks."

265 F. Supp. 2d at 1013 (emphasis added). See also *Wedemeyer v. CSX Transp., Inc.* (No. 2:13-cv-00440-LJM-WGH, Oct. 20, 2015) (S.D. Ind. 2015) (not reported in F. Supp. 2d) (holding that "the term 'regulate' does not only refer to a state regulation or state action; rather it refers to controls or limitations of any kind" and, thus, that an action to quiet title alleging that a railroad had abandoned an easement was an attempt to use state law to "regulate" the railroad's use of the easement), and *Groh v. Union Pacific R.R.* (No. 17-00741-CV-W-ODS, Dec. 1, 2017) (W.D. Mo. 2017) (not reported in F. Supp. 2d) (holding that a state-law action alleging that a railroad had abandoned its easement fell within the scope of the ICCTA).

This concept is not new in Alabama. In *Mobile & Gulf R.R. v. Crocker*, 455 So. 2d 829 (Ala. 1984), certain landowners sought a judgment declaring that a railroad easement across their property had been abandoned because the railroad "ceased all operation

of trains across the right-of-way in dispute." 455 So. 2d at 831. This Court held, however, that the STB's predecessor agency, the Interstate Commerce Commission, "had exclusive jurisdiction to determine whether there was an abandonment of the railroad right-of-way." 455 So. 2d at 834. The main opinion attempts to distinguish *Crocker* by noting a distinction in the way the easement in *Crocker* was obtained as compared to the easement in the instant case. However, 49 U.S.C. § 10501(b) does not provide that its application is contingent on how a railroad obtains property initially. Furthermore, no proceedings before the STB are required to "invoke" its jurisdiction; the ICCTA itself preempts remedies under state law, and the STB's jurisdiction is "exclusive." *Grosso v. Surface Transp. Bd.*, 804 F.3d 110, 114 (1st Cir. 2015) ("Whether or not the [STB] is exercising its regulatory authority over the transportation, state and local laws governing such transportation are generally preempted." (footnote omitted)).

Under the plain language of 49 U.S.C. § 10501(b), the claims in the underlying action are preempted by the ICCTA and exclusive jurisdiction of the action rests with the STB. Under *Crocker*, the trial court lacked subject-matter jurisdiction in this case.

Stewart, J., concurs.

APPENDIX B

CIRCUIT COURT OF
MONROE COUNTY, ALABAMA

Case No. CV-2017-900097.00

AA NETTLES, SR. PROPERTIES LIMITED,
BOYLES DOVIE, BOYLES EULA LAMBERT,
Plaintiffs,
v.
MONROE COUNTY COMMISSION,
Defendant.

January 10, 2018

FINAL ORDER

The parties appeared before the Court on December 20, 2017 for a trial on the merits of the Plaintiff's action to quiet title to their property. After examining the testimony and evidence before the Court, this Court makes the following findings of law and fact.

1. The property which is the basis of this action is located in Monroe County Alabama. Therefore, said property is subject to the jurisdiction of this Court and of the State of Alabama.
2. The Plaintiffs were conveyed the real property which is the basis of this action by the railroad in 1997. The conveyance from the railroad to the Plaintiffs contained an easement (the

"Easement") in favor of the railroad. The Easement was narrowly drafted and provided only for the operation and maintenance of a railroad on the Plaintiffs' property.

3. In 2013, the Railroad conveyed the real property to the Monroe County Commission for use as a recreational trail. The property was conveyed from the Railroad to the Monroe County Commission via quitclaim deed.

4. The Railroad could not have changed the character of the Easement from a railroad easement to an easement for recreational trail use. Under Alabama law, the Railroad was prohibited from changing the character of the Easement. As a general rule, one holding an easement cannot change the character of that easement, Blalock v. Conzelman, 751 So.2d 2 (Ala. 1999), or "enlarge upon [that] easement for other purposes." Roberts v. Monroe, 261 Ala. 569, 577, 75 So.2d 492, 499 (1954). See also Chatham v. Blount County, 789 So. 2d 235, 241 (Ala. 2001). The Alabama Supreme Court has held that as to a railroad easement, such easements are limited in use to railroad purposes. Nashville, C. & St. L. Ry. v. Karthaus, 150 Ala. 633, 43 So. 791 (1907); West v. Louisville & N. R.R., 137 Ala. 568, 34 So. 852 (1903).

5. The Railroad abandoned its easement when it failed to rebuild the burnt train trestle and when it removed the rails and cross ties from the property. The evidence before the Court indicates that the Railroad had abandoned its easement by removing the rails and by failing to reconstruct an trestle bridge which was essential for operation of

the railroad on the disputed property. Under Alabama law, an easement granted for a specific purpose is deemed abandoned when its owner "by his own act renders the use of the easement impossible, or himself obstructs it in a manner inconsistent with its further enjoyment." Byrd Cos. v. Smith, 591 So.2d 844, 847 (Ala. 1991) (quoting Polyzois v. Resnick, 123 Neb. 663, 668, 243 N.W. 864, 866 (1932) (quoting treatise)). See also Tatum v. Green, 535 So.2d 87, 88 (Ala. 1988) ("[A]n easement given for a specific purpose terminates as soon as the purpose ceases to exist, is abandoned, or is rendered impossible of accomplishment."). Both the failure to construct an essential trestle and the removal of the rails indicated abandonment of the railroad easement and rendered the specific purpose of the easement (i.e. the maintenance and operation of a railroad service) impossible. Accordingly, the easement had terminated and no longer existed.

6. Ownership of the Easement property vested with the Plaintiffs when the Easement terminated. When an easement terminates, the underlying fee title of the right of way passes to the abutting landowner[.] Ex parte Jones, 669 So.2d 161 (Ala. 1995). Specifically, where roadbeds or railroad easements are terminated, ownership of the underlying fee . . . is presumed to vest in the adjoining landowners. Id. at 165. When the Easement terminated, the Railroad owned nothing.

7. The 2013 conveyance from the Railroad to the Monroe County Commission, which was done via quitclaim deed, did not convey the property to the Commission because the Railroad had nothing to

convey, "A quitclaim deed can convey nothing more than what the grantor actually owns." Benedict v. Little, 288 Ala. 638, 643, 264 So.2d 491, 494 (Ala. 1972). See also Chatham v. Blount County, 789 So. 2d at 243, in its discussion of Benedict v. Little, ("Under the circumstances of [Chatham], Cheney's quitclaim deed conveyed nothing to the County and the City because before it executed that deed, Cheney had already abandoned any rights, title, and interests it had had in the easements. In Benedict, which also involved the question whether a railroad easement had been abandoned, this Court stated, "'[T]he quitclaim from L & N to appellees conveyed nothing because L & N had nothing to convey after abandoning the right of way and removing the rails and crossties.'"). Therefore, it is

ORDERED, ADJUDGED and DECREED that this Court enters a PERMANENT INJUNCTION and the Monroe County Commission shall not proceed with the recreational trail on the Plaintiffs' property.

DONE this 10th day of January, 2018.

/s/ JACK B WEAVER
CIRCUIT JUDGE

APPENDIX C

SURFACE TRANSPORTATION BOARD

Docket No. AB 463 (Sub-No. 1X)

ALABAMA RAILROAD CO.—
ABANDONMENT EXEMPTION—
IN MONROE COUNTY, ALA.

April 19, 2013

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

By the Board, Rachel D. Campbell, Director, Office of Proceedings

Alabama Railroad Co. (ALAB) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—*Exempt Abandonments* to abandon approximately 7.42 miles of rail line between milepost 655.20 (east of Route 21 at Tunnel Springs) and milepost 662.62 (west of Main Street in Beatrice), in Monroe County, Ala. Notice of the exemption was served and published in the *Federal Register* on March 21, 2013 (78 Fed. Reg. 17,468). The exemption is scheduled to become effective on April 20, 2013.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on March 26, 2013. In the EA, OEA stated that the National Geodetic Survey (NGS)

submitted comments stating that four geodetic survey markers are located in the area of the proposed abandonment. Accordingly, OEA recommends that ALAB consult with NGS and notify NGS at least 90 days prior to beginning salvage activities that would disturb or destroy any geodetic station markers.

In addition, OEA stated that the U.S. Fish and Wildlife Service (USFWS) submitted comments stating that the following threatened, endangered, and candidate species are found in the project area: Red Hills salamander, Gopher tortoise, Southern clubshell, and Alabama pearlshell. USFWS further stated that the proposed abandonment would have no impacts on these species if salvage operations are conducted within the right-of-way and there is no disturbance of the stream/creek bottom;[1] to that end, USFWS recommends that ALAB utilize Best Management Practices (BMPs) in order to protect water quality. Accordingly, OEA recommends a condition requiring ALAB to ensure that BMPs are followed during salvage activities.

Comments to the EA were due April 10, 2013. No comments were received. Accordingly, the conditions recommended by OEA in the EA will be imposed. Based on OEA's recommendation, the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

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[1] OEA notes ALAB's statement in its environmental report that it would not be conducting any in-stream work as part of the planned abandonment and that salvage activities would be conducted within the right-of-way.

In the EA, OEA also stated that the right-of-way may be suitable for other public use following abandonment and salvage of the line. On March 22, 2013, the Monroe County Commission (MCC) filed a request for the issuance of a notice of interim trail use (NITU) to negotiate with ALAB for acquisition of the line for use as a trail under the National Trails System Act (*Trails Act*), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. Pursuant to 49 C.F.R. § 1152.29, MCC has submitted a statement of its willingness to assume financial responsibility for the right-of-way, and has acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service. By response filed on March 29, 2013, ALAB has indicated its willingness to negotiate with MCC for interim trail use.

Because MCC's request complies with the requirements of 49 C.F.R. § 1152.29 and ALAB is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement for the right-of-way during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h); *Nat'l Trails Sys. Act & R.R. Rights-of-Way*, EP 702 (STB served Apr. 30, 2012). If no agreement is reached within 180 days, ALAB may fully abandon the line. 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

MCC also has requested imposition of a public use condition under 49 U.S.C. § 10905 for the right-of-way.

MCC asks that ALAB be prohibited from disposing of the corridor, other than tracks, ties, and signal equipment, except for public use on reasonable terms, and that ALAB be barred from the removal or destruction of potential trail-related structures, such as bridges, trestles, culverts, and tunnels, for a 180-day period from the effective date of the abandonment authorization. MCC's justification for its request is that these structures have considerable value for recreational trail purposes. MCC states that the 180-day period is needed to complete a detailed trail plan and to commence negotiations with ALAB.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. § 10905. *See Rail Abans.—Use of Rights-of-Way as Trails*, 2 I.C.C.2d 591, 609 (1986). Under § 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. 49 C.F.R. § 1152.28(a)(2). Because MCC has satisfied these requirements, a 180-day public use condition will be imposed, requiring ALAB to keep intact the right-of-way (including trail-related structures such as bridges, trestles, culverts, and tunnels) and to refrain from disposing of the corridor (other than

tracks, ties, and signal equipment), commencing from the April 20, 2013 effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. Here, however, while both conditions will be imposed at this time, the public use condition will expire on October 17, 2013, while the trail use negotiating period will run 180 days from the service date of this decision and notice until October 16, 2013. If a trail use agreement is reached on a portion of the right-of-way prior to October 16, 2013, ALAB must keep the remaining right-of-way intact for the remainder of the 180-day public use condition period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, ALAB is not required to deal exclusively with MCC, but may engage in negotiations with other interested persons.

As conditioned, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.

2. Upon reconsideration, the notice served and published in the *Federal Register* on March 21, 2013, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below to

permit MCC to negotiate with ALAB for trail use for the rail line, for a period of 180 days from the service date of this decision and notice, until October 16, 2013 and to permit public use negotiations as set forth below, for a period of 180 days commencing from the April 20, 2013 effective date of the exemption, until October 17, 2013. The abandonment is also subject to the conditions that ALAB: (1) consult with NGS and notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers; and (2) ensure that BMPs are followed during salvage activities.

3. Consistent with the public use and interim trail/rail banking conditions imposed in this decision and notice, ALAB may discontinue service and salvage track and related materials. ALAB shall otherwise keep intact the right-of-way, including potential trail-related structures such as bridges, trestles, culverts, and tunnels, for a period of 180 days (until October 17, 2013) to enable any state or local government agency, or other interested person, to negotiate the acquisition of the right-of-way for public use. If an interim trail use/rail banking agreement is executed before expiration of the 180-day public use condition period, the public use condition will expire to the extent the trail use/rail banking agreement covers the same portion of the right-of-way.

4. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any

potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.

5. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in ordering paragraph 4 above.

6. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).

7. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

8. If an agreement for interim trail use/rail banking is reached by October 16, 2013 for the right-of-way, interim trail use may be implemented. If no agreement is reached, ALAB may fully abandon the line.

9. This decision and notice is effective on its service date.

APPENDIX D

Article VI, clause 2 of the U.S. Constitution provides:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

16 U.S.C. § 1247 provides in part:

§ 1247. State and local area recreation and historic trails

* * *

(d) Interim use of railroad rights-of-way

The Secretary of Transportation, the Chairman of the Surface Transportation Board, and the Secretary of the Interior, in administering the Railroad Revitalization and Regulatory Reform Act of 1976 [45 U.S.C. 801 et seq.], shall encourage State and local agencies and private interests to establish appropriate trails using the provisions of such programs. Consistent with the purposes of that Act, and in furtherance of the national policy to preserve established railroad rights-of-way for future reactivation of rail service, to protect rail transportation corridors, and to encourage energy efficient transportation use, in the case of interim use of any established railroad rights-of-way pursuant to donation, transfer, lease, sale, or otherwise in a manner consistent with this chapter, if such interim use is subject to restoration or reconstruction

for railroad purposes, such interim use shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes. If a State, political subdivision, or qualified private organization is prepared to assume full responsibility for management of such rights-of-way and for any legal liability arising out of such transfer or use, and for the payment of any and all taxes that may be levied or assessed against such rights-of-way, then the Board shall impose such terms and conditions as a requirement of any transfer or conveyance for interim use in a manner consistent with this chapter, and shall not permit abandonment or discontinuance inconsistent or disruptive of such use.

* * *

49 U.S.C. § 10501 provides in part:

§ 10501. General jurisdiction

* * *

(b) The jurisdiction of the Board over—

(1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and

(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State,

is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to

regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

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