No. 19-386

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

REPLY BRIEF

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INTRODUCTION

The Supreme Court of Alabama held that state law preempts conflicting federal law, even though the federal law contains an express preemption provision. That holding is obviously wrong and should be reversed.

The federal law governing the "Rails-to-Trails" program authorizes the conversion of a railroad right-of-way that is under the jurisdiction of the Surface Transportation Board (STB) to a trail-use right-of-way—and it expressly preempts state law that would stand in the way of that conversion. Under Alabama's state property law, disuse of a railway right-of-way or conversion of a rail-use right-of-way to trail use can terminate the right-of-way in some circumstances. There is no dispute about that. But federal law expressly preempts that state law, preserving the right-of-way in the face of disuse and authorizing its conversion to interim trail use when (as here) permitted by the STB and subject to restoration to future rail uses.

The Supreme Court of Alabama held that, notwithstanding the supremacy of federal law, its state property law preempts application of the federal law governing the rails-to-trails scheme. Respondents essentially concede as much. As explained in the petition for a writ of certiorari, that decision is incorrect and conflicts with multiple decisions of federal courts of appeals and other state courts of last resort. A State cannot simply exempt itself from an interstate federal program that expressly displaces state law—particularly when the federal program is designed to maintain the existence of an interstate rail corridor.

With little to say in response to the obvious cert-worthiness of the petition, respondents resort to grasping at straws by mischaracterizing the facts on the ground and the Supreme Court of Alabama's decision. First, respondents disingenuously contend that the question presented in the petition will have "no real-world consequences" because "[s]ince the filing of the petition, the Commission has made clear that it does not plan to move forward with its rails-to-trails program." Br. in Opp. 5. That assertion is false, as respondents' own brief bears out. Petitioner filed the petition for a writ of certiorari for the express purpose of completing the trail that is the subject of this litigation—and no act or statement by petitioner even hints otherwise. More broadly, allowing the Alabama courts' erroneous decision to stand will prevent petitioner and others from pursuing many future rails-to-trails projects in Alabama.

Second, respondents attempt to reimagine this case as a takings case. Respondents argue that the state court merely decided whether application of federal law would violate respondents' state-law rights if the railroad right-of-way were converted to a trail-use right-of-way—but did not decide whether federal law made the conversion to trail use effective. That view is impossible to square with respondents' own cause of action (a quiet-title action, not a taking claim) or with the Alabama Supreme Court's decision affirming the trial court's entry of a permanent injunction blocking construction of the trail that was authorized by federal law.

Finally, respondents' suggestion (Br. in Opp. 6, 21-24) that, if the Court grants the petition, it should also consider whether Congress intended the rails-to-

trails program to effect the taking of property, is misplaced. This Court has already held that a compensable taking claim may arise in this and similar circumstances. *Preseault v. ICC*, 494 U.S. 1 (1990). Indeed, an extensive body of federal law already exists to govern such claims. *E.g.*, *Preseault v. United States*, 100 F.3d 1525 (Fed. Cir. 1996) (en banc). If respondents believe they are entitled to compensation for a taking, they should file a claim in the appropriate court seeking such compensation. Any complaints respondents have about the federal-court procedures established to govern such claims should be considered in that lawsuit, not added as a thought exercise to this one.

I. Respondents' Suggestion That This Case is Moot Is Incorrect And Disingenuous.

Respondents assert that, "[w]ith or without this Court's intervention, the trail at the center of this dispute will likely never be built." Br. in Opp. 7. That assertion is completely false. As respondents well know, petitioner will continue with the construction of the trail at issue here if and when the Alabama Supreme Court's erroneous decision is reversed.

a. The trail at issue here involves 7.42 miles of rail line that includes a right-of-way across respondents' land. Pet. App. 5a. Although nearly all of the trail has already been constructed, the right-of-way over respondents' land lies at the center of the trail and includes an 840-foot tunnel that is the centerpiece of this trail project. Rails to Trails Conservancy (RTC) Amicus Br. 8. Because there are no other trail destinations within 80 miles of Monroe County, petitioner expects the trail to be an economic boon to the County. *Id.* at 9. For that reason, the trail has enjoyed strong

support from local businesses, *ibid.*, and petitioner intends to complete it. At this point, the *only* thing preventing petitioner from completing the trail is the decision of the Alabama Supreme Court—and petitioner's ongoing effort to get that decision overturned demonstrates that petitioner is serious about completing the trail and has every intention of doing so if the legal obstacle of the state court's decision is removed.

In support of their false assertion that "there is no real-world controversy" about the trail at issue here, Br. in Opp. 8, respondents rely on a decision by petitioner not to pursue a *different* rails-to-trails project. *Id.* at 7. That project, as respondents acknowledge, involved 47 miles of *different* rail line, arising from a *different* Notice of Interim Trail Use. *Ibid.* ("[T]he Commission's vote addressed a portion of its trail project not at issue in this dispute[.]"). It did not involve the trail at issue in this case and did not involve any right-of-way over respondents' land. Respondents' contention (*ibid.*) that petitioner's decision not to pursue a different project "made clear" that it would not pursue *this* project has no basis in reality. Petitioner intends to complete construction of this trail if this Court restores the supremacy of federal law in this context.

b. Far from indicating that no controversy remains, petitioner's decision not to pursue a different rails-to-trails project illustrates the damaging effects the state court's decision is already having on rail-corridor preservation. Although the newspaper article that reported the vote does not reflect why petitioner opted not to pursue a different rails-to-trails project, it is not difficult to imagine that it preferred not to invest its resources only to have its trail project derailed by the state court's reverse-preemption holding in this

case. In fact, the newspaper article respondents rely on quotes County Commissioner Billy Ghee saying: "I'm for holding on to what we have ([the] Tunnel Springs trail [at issue here]), but it would be ludicrous to try and take on another trail with the problems we've had with this one." Mike Qualls, *Trail Lawsuit Appeal Gets Extension*, The Monroe Journal, Nov. 21, 2019, at 8A (cited at Br. in Opp. 7). The Commission vote that respondents rely on is therefore a real-world illustration of the harm the Alabama Supreme Court's decision is already causing, not evidence that no controversy exists.

If the decision below is permitted to stand, other rails-to-trails projects in the State of Alabama will face similar fates because that decision makes it essentially impossible to convert a railroad-use right-of-way into an interim trail-use right-of-way without the consent of the underlying or contiguous property owner. That is the opposite of what Congress intended. *See Preseault*, 494 U.S. at 8 (explaining that 16 U.S.C. § 1247(d) displaces state law that would deem a railroad right-of-way to be abandoned when converted to a trail use); H.R. Rep. No. 98-28, at 8-9 (1983); S. Rep. No. 98-1, at 9 (1983).

The real-world consequences of the state court's decisions are explained in some detail in the amicus briefs supporting the petition. The amicus brief on behalf of the Rails to Trails Conservancy, et al., explains, for example, that "if the Alabama Supreme Court's holding stands, despite the clear contradictory requirements of the Trails Act, trails like this will be much harder to create in Alabama." RTC Amicus Br. 3. Equally important, amicus Association of American Railroads (AAR) explains that if, as the Alabama

courts held, state courts can "extinguish railroads' property rights based on their varying views of what constitutes a railroad's non-use of property, the national rail network would become fragmented and unmanageable, with segments of rail lines being removed from the rail network without federal oversight or approval." AAR Amicus Br. 14. As a result, it would become more difficult for railroads "to carry out their statutory obligations as common carriers." *Id.* at 2.

In sum, the "real-world consequences," Br. in Opp. 5, of the issues raised in the petition are concrete in this case and are serious enough in general to warrant this Court's intervention.

II. The Alabama Supreme Court's Reverse-Preemption Decision Is Wrong And Warrants This Court's Review.

As explained in the petition, federal law 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, in lieu of abandonment. 16 U.S.C. § 1247(d); 49 U.S.C. § 10501. Federal law also 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 *under state law*. 16 U.S.C. § 1247(d); *see* 49 U.S.C. § 10501. The Supreme Court of Alabama held the opposite when it affirmed an injunction blocking petitioner from building the trail because, it held, state law prevented the conversion of the railroad-use right-of-way to a trail-use right-of-way. That decision is wrong and conflicts with decisions of multiple federal courts of appeals and state courts of last resort. Pet. 10-21.

Respondents' defense of the state court's reverse-preemption holding is frankly bizarre. Ignoring the nature of their own cause of action and of the relief they sought and obtained from the state courts, respondents attempt to reimagine this suit as a taking claim—and to reinvent the state-court judgment as simply an advisory declaration of respondents' state-law property rights that were taken when the railroad right-of-way was converted to an interim trail-use right-of-way. The story they tell has no basis in the Alabama Supreme Court's decision and should be rejected.

Respondents consume pages and pages explaining that state law "define[s] state property interests implicated by the rails-to-trails program." Br. in Opp. 10; *id.* at 8-19. No one disputes that. It is common ground that application of the rails-to-trails scheme may abrogate state-law property rights by preventing the extinguishment (and reversion) under state law of a railroad right-of-way. Whether state-law property rights are abrogated is, of course, a question of state law. And if respondents were to file a taking claim pursuant to the Tucker Act, 28 U.S.C. § 1491(a)(1), their state-law property rights would be adjudicated, a precondition to a court's deciding whether respondents would be entitled to compensation from the federal government for any abrogation of those rights, *Preseault*, 494 U.S. at 9-15.

But respondents did not file a taking claim; they filed a quiet-title action to *prevent* execution of the conversion to trail use through a permanent injunction. Pet. App. 5a-6a, 39a. And the question presented in *this* suit is whether state property law governing reversion of a railroad right-of-way can prevent

application of federal law that would block such a reversion when the right-of-way is converted to an interim trail use pursuant to the federal railbanking law. Every other court to consider the question has correctly held that the federal law governing the rails-to-trails program preempts any state law that would block the conversion to trail use. The Supreme Court of Alabama held the opposite—that state property law preempts application of federal law because the state law "existed before the advent of railroads." Pet. App. 9a. In other words, the state court held that, *because* the rails-to-trails scheme would displace respondents' state-law property rights, the *federal law* was preempted. As explained in the petition, that holding is wrong, directly conflicts with decisions of federal courts of appeals and other state courts of last resort, and poses a serious ongoing obstacle to the operation of federal law.

Respondents are correct that "the Railroad could only transfer by quitclaim deed the property rights it actually possessed at the time of execution." Br. in Opp. 11. The question presented in this case is whether federal railbanking law or state property law defined the railroad's use rights at that moment. The Alabama Supreme Court held that, under state law, the railroad had no right-of-way to convey because it had been abandoned—first, when the railroad stopped using the line and second, when the railroad changed the purpose of the right-of-way from a railroad use to a trail use. Pet. App. 9a-13a. But Congress has expressly preempted state property law in these circumstances, providing that, "in the case of interim use of any established railroad rights-of-way," "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*." 16 U.S.C. § 1247(d) (emphases added); *see* 49 U.S.C. § 10501(b) (giving the STB "exclusive" "jurisdiction" over "abandonment" of rail lines).

Respondents ultimately acknowledge the *possibility* that federal law could authorize creation of the trail, notwithstanding respondents' state-law property rights, arguing (Br. in Opp. 20-21) that the federal government (or petitioner) is free to build a trail on respondents' property by exercising a right of eminent domain. That is a non sequitur. The Constitution makes federal law the supreme law of the land, and Congress has relied on that supremacy to displace state law that would prevent conversion of a railroad right-of-way to an interim trail-use right of way. Whether the federal government could build a trail in its own name through the exercise of eminent domain has nothing to do with the preemption question presented here. Respondents' eminent-domain arguments are a red herring.

III. Respondents' Request That This Court Add A Question Is Misplaced.

Implicitly acknowledging that the Alabama Supreme Court's decision warrants this Court's review, respondents urge (Br. in Opp. 21-24) the Court to add an additional question if it grants the petition. Specifically, respondents urge the Court to "address the underlying question whether Congress actually authorized the Surface Transportation Board to oversee a broad, costly program of rails-to-trails takings." *Id.* at 21 (capitalization altered). If the Court grants the

petition to address the question presented, it can certainly answer any questions that are subsumed within the question, including predicate questions. Stephen M. Shapiro et al., *Supreme Court Practice* ch. 6.25(g), at 6-94 to 6-98 (11th ed. 2019). But the question respondents would add is neither subsumed within nor a predicate to the question presented.

First, the question respondents would have this Court add was neither pressed nor passed on below. *Supreme Court Practice*, *supra*, ch. 6.26(b), at 6-103 to 6-105. Respondents do not contend otherwise. That is not surprising because respondents did not seek compensation for a taking in this lawsuit; they sought an injunction that would use state law to block a land use authorized by federal law.

Second, although respondents argue (Br. in Opp. 22-23) that Congress could not have intended to create a takings regime when it created the rails-to-trails program, this Court held nearly 30 years ago that Congress intentionally displaced state-law property rights, *Preseault*, 494 U.S. at 8-9; "that rail-to-trail conversions giving rise to just compensation claims are clearly authorized by" Section 1247(d), *id.* at 13; and that landowners may seek compensation for any rails-to-trails taking under the Tucker Act, *id.* at 13-17. If respondents believe that the conversion at issue in this case gives rise to a taking, they can pursue the remedy this Court has already identified. And if respondents are dissatisfied with the statutory scheme, they may address their complaints to Congress.

Finally, none of the issues respondents raise (Br. in Opp. 23-24) about the takings-compensation scheme developed by the Federal Circuit over the last 20 years is properly presented in this case. If

respondents feel that the conversion of the railroad-use right-of-way to a trail-use right-of-way effected a compensable taking, the proper course is to seek compensation from the federal government under the Tucker Act. Any problems respondents perceive in the Tucker Act remedy and associated procedures may be explored in that litigation.

* * * * *

At bottom, there is no denying that federal law expressly preempts state law in this area—and that the Supreme Court of Alabama erred in holding that the opposite is true. The rails-to-trails program is a critical component of Congress's important interstate goal of preserving our Nation's railroad infrastructure for "future reactivation of rail service, to protect rail transportation corridors, and to encourage energy efficient transportation use." 16 U.S.C. § 1247(d); *Preseault*, 494 U.S. at 5-9. A single State should not be permitted to undermine that interstate project by simply declaring that it is exempt from the supremacy of this federal law. The decision below conflicts with decisions of every other state court of last resort and every federal court of appeals to address the question presented. This Court should restore nationwide uniformity in this quintessentially interstate—and quintessentially federal—area of law.

CONCLUSION

For the foregoing reasons, and those offered in the petition for a writ of certiorari, the petition should be granted for plenary review. In the alternative, the Court may wish to consider summarily reversing the Supreme Court of Alabama's decision.

Respectfully submitted,

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