

App. No. ____

In the Supreme Court of the United States

Monroe County Commission,
Petitioner,

v.

A.A. Nettles, Sr. Properties Limited, et al.,
Respondents.

PETITIONER’S APPLICATION TO EXTEND TIME TO FILE PETITION FOR A WRIT OF
CERTIORARI FROM JULY 25, 2019 TO SEPTEMBER 23, 2019

To the Honorable Justice Thomas, as Circuit Justice for the United States Court of Appeals
for the Eleventh Circuit, including the State of Alabama:

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5, 22, and 30.3, petitioner Monroe County Commission respectfully requests that the time to file a petition for a writ of certiorari in this case be extended for 60 days to and including September 23, 2019. The Alabama Supreme Court issued its opinion on April 26, 2019. *See App. A, infra.* Absent an extension of time, the petition therefore would be due on July 25, 2019. Petitioner is filing this application at least ten days before that date. *See Sup. Ct. R. 13.5.* This Court has jurisdiction under 28 U.S.C. § 1257(a) to review this case.

Background

This case involves a conflict between state and federal law 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. 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 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. *Preseault v. Interstate Commerce Comm’n*, 494 U.S. 1, 5-6 (1990). The Trails Act (as amended) authorizes the Secretary of Transportation, the Chairman of the Surface Transportation Board (STB), and the Secretary of the Interior to facilitate the conversion of an established railroad right-of-way to use as trails on an interim basis. 16 U.S.C. § 1247(d).

Federal regulations permit a railroad seeking authority to cease rail operations on a line to negotiate with a third party (a State, municipality, or private entity) that is prepared to act as a “trail sponsor” and to assume financial and managerial responsibility for the line and right-of-way. 49 C.F.R. § 1152.29. If a third party so agrees, STB typically 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). 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 automatically reverted for lack of use—it would be difficult (or impossible) to reconstitute a rail corridor in the future.

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 eliminates the possibility of state property-law challenges to the converted use of the right-of-way. 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 11 (citation and brackets omitted).

2. This case concerns 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. App. A at 2, 5. Earlier, in 1997, the railroad had conveyed, by quitclaim deed, real property to Charles Boyles, reserving for itself a right-of-way over Boyles’ property for the maintenance and operation of a railroad. *Id.* at 4. After Charles Boyles’ death, his wife respondent Eula Boyles inherited the property subject to the railroad’s right of way. *Id.* at 4-5. Eula Boyles leases the property to respondent A.A. Nettles, Sr. Properties Limited. *Id.* at 5.

In March 2013, the railroad filed with 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. App. A at 5. 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, STB issued a Notice of Interim Trail Use authorizing petitioner and the railroad to negotiate an agreement. *Id.* at 5-6. After reaching an agreement, the railroad quitclaimed its interest in the right-of-way to petitioner. *Id.* at 6.

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. App. A at 2, 6. Petitioner moved for judgment as a matter of law on the ground that respondents' quiet-title action is preempted by federal law. *Id.* at 6. The trial court denied those motions and, on January 10, 2018, entered an order quieting title to the right-of-way in respondents. *Ibid.* The court applied Alabama property law to conclude that the right-of-way had terminated by operation of law before the railroad conveyed its interest to petitioner. *Id.* at 6-7. The court enjoined petitioner from continuing to create and maintain the trail use on the property owned by respondents. *Id.* at 7.

4. Petitioner appealed to the Alabama Supreme Court, which affirmed.

The state supreme court recognized that federal law vests STB with "exclusive jurisdiction" over "transportation by rail carriers," including the "operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities." App. A at 7-8 (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 8 (quoting 49 U.S.C. § 10501(b)). And the court acknowledged STB’s position that States may not regulate matters directly regulated by STB, including the abandonment of rail lines. *Id.* at 8-9. The court nevertheless held that state property laws governing rights of way provide that “one holding an easement cannot change the character of that easement,” *id.* at 15 (citing *Blalock v. Conzelman*, 751 So. 2d 2 (Ala. 1999))—and that federal law governing railway easements does not trump state law governing the same, *id.* at 7-16. The court thus concluded that the railroad had abandoned its right-of-way under state law and had no authority to transfer the right of way to petitioner pursuant to state law. *Id.* at 24.

Chief Justice Parker filed a dissenting opinion. 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. App. A at 25. 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 Rails-to-Trails Act preempts Alabama law,” Chief Justice Parker expressed “concern[] that the Act violates landowners’ fundamental rights of contract and property.” *Id.* at 27. The Chief Justice explained, however, that “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.” *Id.* at 34.

Justice Shaw also filed a dissenting opinion, expressing his view that STB “has exclusive jurisdiction over this action that seeks to quiet title to an allegedly abandoned railroad easement.” App. A at 35. He would have held that the trial court lacked subject-matter jurisdiction over the case. *Id.* at 44.

Reasons For Granting An Extension Of Time

The time to file a petition for a writ of certiorari should be extended for 60 days to and including September 23, 2019, for several reasons:

1. The forthcoming petition will present an important question of federal law that should be resolved by this Court. Because the Supremacy Clause of the U.S. Constitution, U.S. Const. art. VI, cl. 2, provides that federal law “shall be the supreme Law of the Land,” any state law that conflicts with or frustrates the enforcement of a federal law is preempted. This is an easy case for preemption because the relevant federal statutes contain express—and strongly worded—preemption provisions. Although the Alabama Supreme Court acknowledged that federal law expressly purports to displace state property law in this area, it ultimately held (over the dissent of two Justices) that state property law governing the abandonment of rights-of-way trumps conflicting provisions in federal law. That holding conflicts with governing federal law and with the law of federal circuit courts. *E.g.*, *Grantwood Vill. v. Mo. Pac. R.R.*, 95 F.3d 654, 658 (8th Cir. 1996), *cert. denied*, 519 U.S. 1149 (1997); *Preseault v. United States*, 100 F.3d 1525, 1537 (Fed. Cir. 1996) (en banc).

2. Petitioner has only recently retained Sarah Harrington as Supreme Court counsel for the filing of a petition for a writ of certiorari. Ms. Harrington was not involved in any earlier stage of the case. Additional time is necessary and warranted for counsel, among other things, to review the record in the case, research case law in other circuits and state courts of last resort, and prepare a clear and concise petition for certiorari for the Court’s review.

3. No prejudice would arise from the extension. Whether the extension is granted or not, the petition will be considered during this Term.

4. The press of other matters before this Court makes the submission of the petition difficult absent an extension. Petitioner's counsel is counsel or co-counsel in several other cases in which filings are due in this Court or in the courts of appeals in the next several months.

Conclusion

For the foregoing reasons, the time to file a petition for a writ of certiorari in this matter should be extended for 60 days to and including September 23, 2019.

Respectfully submitted,



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