

No. 19-386

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In the  
**Supreme Court of the United States**

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MONROE COUNTY COMMISSION,  
*Petitioner,*

v.

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

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ON PETITION FOR WRIT OF CERTIORARI  
TO THE SUPREME COURT OF ALABAMA

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**BRIEF AMICI CURIAE OF  
RAILS TO TRAILS CONSERVANCY, ET AL.  
IN SUPPORT OF PETITIONER**

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## **QUESTIONS PRESENTED**

1. Whether the Alabama state courts lacked subject matter jurisdiction to declare a rail line abandoned or to entertain a challenge to a valid order controlling use of the line issued by the Surface Transportation Board of the United States (STB)?

2. Whether federal law granting the STB exclusive jurisdiction over the abandonment of rail lines and stating that interim trail use shall not be treated as abandonment, preempts contrary state law, including the vesting of reversionary property rights, and mandates reversal of the Alabama Supreme Court's ruling?

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**INTEREST OF AMICI CURIAE<sup>1</sup>****Rails-to-Trails Conservancy**

Section 8(d) of the National Trails System Act (Trails Act) was enacted by Congress in 1983 for the dual purposes of preserving our national rail system and providing public trails. 16 U.S.C. § 1247(d). Three years later, the Rails-to-Trails Conservancy (RTC), a non-profit organization, was founded. Now, with more than 250,570 members and supporters nationwide, RTC facilitates the preservation of inactive rail corridors for future public transportation uses, a process known as “railbanking.”

RTC has been heavily involved in the implementation of the Trails Act across the country, testifying before Congress, commenting on regulations and regulatory policy, and providing information and technical assistance to state and local jurisdictions on railbanking. RTC has also participated in numerous interim railbanking negotiations. Through its “early warning system,” RTC alerts communities and officials about railbanking opportunities from railroad abandonment applications filed with the STB. RTC has also acted as an interim trail manager to facilitate rails-to-trails conversions. Additionally,

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<sup>1</sup> The parties of record received timely notice of the intent to file the amicus brief, and consent was granted by both parties. No counsel for any party authored this brief in whole or in part, and no person or entity other than the amici curiae and their counsel made a monetary contribution intended to fund its preparation or submission.

RTC maintains a database of rail-trails, which includes specific information on railbanked trails gathered through records maintained by the STB and through direct communications with trail managers. RTC has a particular interest in the present case because the Alabama Supreme Court's erroneous holding contravenes the text and purpose of the Trails Act and interferes with RTC's core purposes.

**National League of Cities**

**U.S. Conference of Mayors**

These membership associations are comprised of local governments and their elected leaders. Some of their members have painstakingly worked to create trails that are maintained or created by local municipalities. Some members are also in the process of creating railbanked trails. These trails provide tremendous economic and health benefits to the public and are a source of civic pride. These groups are concerned that the Alabama Supreme Court decision, if not overturned, will create uncertainty about the railbanking law.

**Freshwater Land Trust**

**Missouri Rock Island Trail**

**Alabama Hiking Trail Society**

**Iowa Natural Heritage Foundation**

These groups are nonprofit organizations that have worked tirelessly to maintain and create railbanked trails. For instance, the Freshwater Land Trust (FLT) in Birmingham, Alabama established and helps to develop the Five Mile Creek Greenway,

which includes a rails-to-trails project. The Five Mile Creek Greenway will traverse five cities along Five Mile Creek. This trail will be the longest trail in central Alabama and is projected to become a significant tourist attraction and resource for the community. The majority of the cities served by the Greenway are low-income communities, and as such, the economic and health benefits generated by the trail are badly needed.<sup>2</sup> FLT plans to use the Five Mile Creek Greenway as a model to replicate throughout the region. However, 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.

Similarly, groups across the nation depend on the Trails Act; the Iowa Natural Heritage Foundation has helped create at least 48 trail projects totaling over 865 miles, amounting to 65% of Iowa's trails. Approximately 385 miles of these trails have been railbanked. The railbanked corridors are an essential part of the overall trail system in Iowa. Several are part of the proposed Great American Rail-Trail, a trail that is more than 52% complete and will connect the west and east coasts of the United States. Further, the Missouri Rock Island Trail is in the process of railbanking 144 miles which will benefit more than 20 communities. In order to facilitate railbanking, it is vitally important for these

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<sup>2</sup> *FY19 Income Limits Summary, Birmingham-Hoover, AL HUD Metro FMR Area*, HUD User, <https://www.census.gov/quickfacts/fact/table/birminghamcityalabama,centerpointcityalabama,fultondalecityalabama,gardendalecityalabama,tarrantcityalabama/PST045218> (last visited Nov. 6, 2019).

groups that this Court reaffirms the federal STB as the exclusive authority that determines abandonment of a railroad line.

**The Madison County Mass Transit District**

**PeopleforBikes Foundation**

**Alabama Bicycle Coalition**

Rail-trails provide excellent opportunities for biking. The Madison County Mass Transit District, a governmental organization, has developed 137 miles of trails and integrates the trail system with its transit system. (The Mass Transit also preserves rail corridors for future light rail possibilities.) The PeopleForBikes Foundation, a national nonprofit with 1.3 million advocates and supporters that works to improve bicycle infrastructure in American communities, and the Alabama Bicycle Coalition both advocate measures to enhance bicycle safety and accessibility. These groups have a particular interest in this case because the Alabama Supreme Court decision discourages the creation of rail-trails, which bikers enjoy.

**Project for Public Spaces**

The Project for Public Spaces is a national nonprofit organization that helps create and sustain public spaces that build strong communities. Rail-trails are quintessential examples of public spaces that bring community benefits.

All of the groups and organizations listed above share a reliance on railbanking and rail-trails to advance their public missions. The holding of the Alabama Supreme Court would make railbanking more subject to litigation and therefore financially

riskier. As such, the ruling is antithetical to these groups' missions.

## STATEMENT OF THIS CASE

### A. Legal Background

The federal railbanking law, 16 U.S.C. § 1247(d), also known as the Trails Act, was enacted in 1983 to preserve America's rapidly disappearing railway corridor infrastructure for potential future rail service by permitting inactive railroad corridors to be used on an interim basis as public trails. See *Preseault v. Interstate Commerce Comm'n*, 494 U.S. 1, 4-8 (1990) (detailing the history and objectives of the Trails Act). When a railroad company wants to cease service through a corridor and the STB determines that the public interest is served, the Trails Act creates a mechanism for sponsors to negotiate with the railroad to buy, lease, or otherwise obtain the corridor. These sponsors, often communities, maintain the corridor for future public transportation use, including rail. This process is known as railbanking, and without it, these corridors, which were "painstakingly created over several generations," would eventually be sold or otherwise dismantled. *Reed v. Meserve*, 487 F.2d 646, 649-50 (1st Cir. 1973). Once fragmented, these corridors are difficult to put back together, due to factors such as high costs and a complex regulatory environment.

Before the Trails Act was enacted, trail sponsors who agreed to assume responsibility for maintaining and converting railroad rights-of-way under easement to trails faced the risk of expensive and time-consuming litigation challenging their property

interests and trail usage. Congress intended to avoid such difficulties when it passed the Trails Act, which states that the government “shall encourage State and local agencies and private interests to establish appropriate trails,” and to ensure that these corridors will be kept available for future service if needed by establishing that “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).

### **B. Factual Background**

This case involves a 7.4-mile railroad right-of-way connecting Tunnel Springs, Alabama, to Beatrice, Alabama. Pet. App. 40a. As required by federal law, the Alabama Railroad Company sought permission from the STB to abandon rail service on the right-of-way in 2013. *Id.* at 41a. Notice of the proposed abandonment was published in the Federal Register on March 21, 2013. *Id.* at 40a. On March 22, 2013, the Monroe County Commission (the County) filed a request for a Certificate or Notice of Interim Trail Use, in lieu of an outright abandonment. *Id.* at 42a. The railroad responded on March 29, 2013 and indicated its willingness to negotiate for interim trail use. *Id.* The STB then issued a Notice of Interim Trail Use (NITU) on April 19, 2013, setting a 180-day period for negotiations between the railroad and the County. *See generally id.* at 40a-46a.

After successful negotiations, the railroad’s right-of-way was conveyed to the County by quitclaim deed dated December 11, 2013, as corrected on August 17, 2015. Complaint to Quiet Title at ¶ 5,



*Nettles, Sr. Props. Ltd. v. Monroe Cty. Comm'n*, 51-CV-2017-900097 (Ala. Cir. Ct. Aug. 25, 2017). The County paid \$89,000 to the railroad to obtain the property rights needed to establish an interim trail. *Id.* at Ex. C (Doc. 5). As the deed of conveyance specified, during this interim use, “the property remains subject to the jurisdiction of the Surface Transportation Board.” *Id.* In December of 2013, the railroad company informed the STB of the interim trail use agreement and the property transfer to the County per that agreement. *Ala. R.R. Co.—Abandonment Exemption—in Monroe Cty., Ala.*, S.T.B. No. AB 463 (Sub-No. 1X), ID 235203 (Dec. 17, 2013).

Four years after the agreement for interim trail use was finalized, A.A. Nettles Sr. Properties Limited (Nettles) and Dovie Boyles filed a complaint in the Circuit Court of Monroe County, Alabama asking the court to quiet title to the corridor in their favor. Complaint to Quiet Title, *Nettles*, 51-CV-2017-900097, (Aug. 25, 2017). Dovie Boyles (deceased) was a Florida resident who held an easement on the property granted by the railroad, which was signed in 1997. *Id.* ¶ 2. Nettles, a timber and land company, held a lease for this land. *Id.* ¶ 3. In this 2017 Alabama action, the Respondents asked the Monroe County Circuit Court to quiet title, arguing that the railroad abandoned the property because the railroad had not rebuilt a trestle that had been accidentally burned in 2007.<sup>3</sup> Proposed Order ¶ 5, *Nettles*, 51-CV-2017-900097 (Jan. 8, 2018).

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<sup>3</sup> Ironically, it was apparently Nettles who had set fire to the bridge, and the railroad sued him for nuisance, wantonness,

By order dated January 10, 2018, the Circuit Court quieted title to the corridor in favor of the Respondents and ordered a permanent injunction against further development of the trail. Pet. App. 36a-39a. The trial court ruled the corridor had been abandoned, terminating the easement and triggering state law reversionary rights to vest in the Respondents' favor. *Id.* The Alabama Supreme Court affirmed that decision, reasoning that the STB's exclusive jurisdiction over abandonment of the corridor, and federal preemption on that issue, did not apply to this "regulation" of the corridor, for reasons discussed in more detail below. *See generally* Pet. App. 1a-20a.

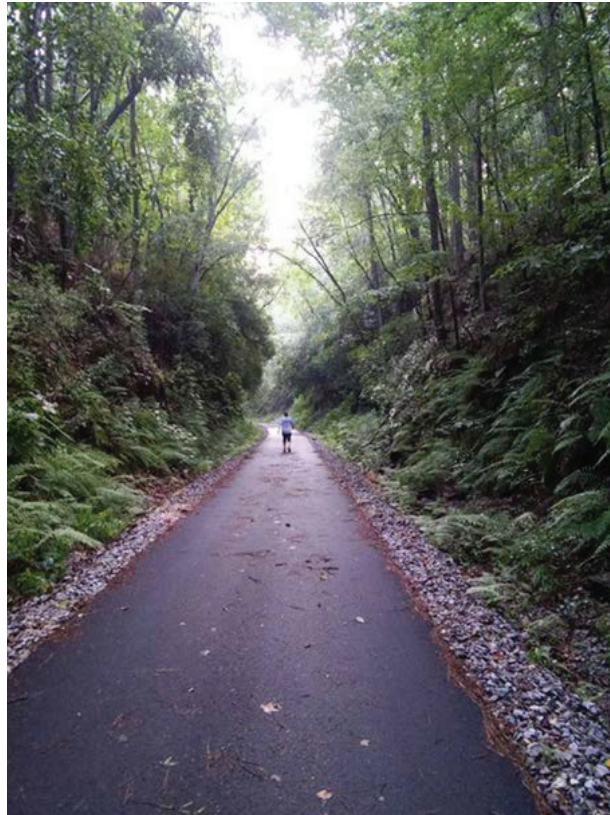
The trail at issue is called "the Mockingbird Trail." (Harper Lee, author of the classic novel *To Kill A Mockingbird*, resided in this county.) Almost two miles of the trail have been constructed, along with a paved parking lot. However, the Nettles/Boyles property is in the center of the trail and contains a 840-foot tunnel which is the centerpiece of the project. The county has already expended over \$500,000 (mostly obtained through grants) in property acquisition, engineering fees, and construction costs, in good faith reliance on the legal protections afforded by the Trails Act. This is a significant commitment of resources for a county that has only 21,067 residents, with a median household income of \$26,036.<sup>4</sup> This trail connects three rural communities as well as the larger town of

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and trespass for causing the damage. *See Ex parte J.E. Estes Wood Co., Inc.*, 42 So. 3d 104, 107 (Ala. 2010).

<sup>4</sup> 2018 Census Estimates, Monroe County, Alabama, U.S. Census Bureau (last visited Nov. 6, 2019).

Monroeville. The next closest trail destination is 80 miles away, and as such, Monroe County expects this trail to provide significant and much needed economic development. The trail has strong support from local businesses and the Monroeville and Monroe County Chamber of Commerce. Below is a picture from Monroe County of a portion of the finished section of the trail.



### SUMMARY OF ARGUMENT

The Court should grant certiorari or summarily reverse the ruling below for several reasons. First, the Alabama courts lacked subject matter jurisdiction, both because the issue of abandonment of a rail line is within the exclusive authority of the STB and because a binding STB order was issued years before the Respondents filed suit. Such STB orders can only be challenged in specified federal courts. Second, the Alabama Supreme Court's rationale for affirming the trial court's ruling, that the abandonment ruling and the resulting vesting of property interests to the Respondents were outside the scope of federal preemption, was erroneous and in direct conflict with decades of binding jurisprudence on the issue. The Alabama Supreme Court's decision allowing a quiet title action to collaterally attack the authority and final decision of the STB flagrantly flouts well-established principles of federal law.

Finally, any suggestion that the conversion to trail use conflicted with the Respondents' expectations about the nature or scope of the easement is without merit. The Trails Act was passed in 1983, and the quitclaim deed from the railroad granting an easement to Respondent Boyles was signed in 1997—14 years later. Pet. App. 7. The bargain struck by Respondents and the railroad was subject to the federal law in place at the time. The Respondents had ample notice of the applicability and effect of that statute.

Monroe County depended on the Trails Act in good faith, which has succeeded in preserving rail

corridors for present and future public use. Communities in 45 states, including Alabama, have utilized the Trails Act to preserve rail corridors as trails and to preserve them for future use.<sup>5</sup> The United States now has more than 2,151 open rail-trails, totaling 24,149 miles. Four hundred of these rail-trails were successfully railbanked, encompassing over 5,925 miles; accordingly, approximately 21% of all rail-trails in the country are railbanked. Trails such as the 93-mile Lamoille Valley Rail Trail in Vermont, the 64-mile Caprock Canyons State Park Trailway in Texas, 40 miles of the Great Allegheny Passage in Maryland and Pennsylvania, 200 miles of the Katy Trail in Missouri; and, Nebraska's 320-mile Cowboy Line (the longest recreational rail-trail in the country) were created from railbanked corridors. Alabama currently has 28 miles of railbanked corridors, and several Alabama communities are currently negotiating with railroads with the goal of railbanking another 50 miles of trails in the near future. Importantly, these corridors have also been preserved for future rail use and transportation needs. For instance, *amicus curiae*, the Madison County Mass Transit District, has railbanked a trail to use for light rail in the future. However, if the Alabama Supreme Court decision stands, railbanked trails and corridors in Alabama and possibly around the country are at risk. The aberrant decision casts a cloud of uncertainty that will discourage railbanking and encourage meritless quiet title claims that

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<sup>5</sup> The data in this paragraph comes from Rails-to-Trails Conservancy's database, some of which is available at <https://www.railstotrails.org/our-work/united-states/>.

Congress expressly intended to preempt in the Trails Act.

## ARGUMENT

### I. The trial court lacked subject matter jurisdiction.

The trial court lacked jurisdiction to rule on the issue of abandonment of a rail line, and the Alabama Supreme Court should have reversed on that basis. The Transportation Act of 1920 long ago established that there can be no abandonment of a rail line absent a certificate issued by the Interstate Commerce Commission (ICC) (now the STB). ch 91, 41 Stat 456. This Court has affirmed that principal unequivocally. *See, e.g., Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311 (1981). The STB's exclusive jurisdiction over abandonment was expressly reaffirmed in the Interstate Commerce Commission Termination Act of 1995 (ICCTA), 49 U.S.C. § 10501(b)(2). It is undisputed that the STB, the only body with authority to do so, did not issue a certificate of abandonment of the corridor at issue. *See* Pet. App. 1a-20a. The Alabama Supreme Court tried to skirt these provisions by avoiding use of the word abandonment, writing instead that under Alabama law, the right-of-way was “extinguished by operation of law,” *id.* at 11a, or “terminated” by disuse, *id.* at 12a, prior to issuance of the NITU, which allegedly left the railroad with no property rights to convey to the County. No matter how the Alabama Supreme Court worded it, the trial court improperly decided that “the Railroad abandoned its easement when it failed to rebuild the burnt train trestle.” *See id.* at 37a. An abandonment finding can

only be made by the STB, not a circuit court in Alabama. 49 U.S.C. § 10501(b)(2).

Second, the trial court lacked subject matter jurisdiction because the corridor had already been railbanked when the Respondents filed suit. The STB's NITU was entered in April of 2013 pursuant to 49 C.F.R. § 1152.29(a)(d), four years before the Respondents filed their quiet title action. Pet. App. 7. A railbanking order can only be challenged by filing a timely petition for review in the appropriate federal court of appeals. 28 U.S.C. § 2344. The NITU was a final order of the STB subject to judicial review pursuant to 28 U.S.C. § 2321. Federal courts of appeal have exclusive jurisdiction to review any challenge to an STB order, 28 U.S.C. § 2342(5), and such a challenge must be initiated by filing a petition within 60 days of service or publication of the order. *Id.* § 2344; *see ICC v. Brotherhood of Locomotive Eng'rs*, 482 U.S. 270, 287-88 (1987) (setting forth the requirements for challenging ICC orders).

The Respondents did not file a challenge to the NITU in accordance with these statutory procedures and timeframes. Pet. App. 7. Their quiet title action was an impermissible collateral challenge of the NITU which should have been dismissed for lack of subject matter jurisdiction on its face. *See Grantwood Vill. v. Mo. Pac. R.R. Co.*, 95 F.3d 657, 658, (8th Cir. 1996) ("Although the Village could have challenged the ICC's Decision by filing a petition directly in this court, they failed to do so. The Village's attacks on the ICC's Decision are, therefore, foreclosed."); *see also Glosemeyer v. Mo.-Kan.-Tex. R.R.*, 879 F.2d. 316, 320-21 (8th Cir. 1996)



(holding that the district court lacked subject matter jurisdiction over the plaintiffs' challenge to the ICC's order). Allowing collateral state court challenges of STB orders without any jurisdictional basis would defeat the exclusive jurisdiction of the federal courts granted by Congress and create chaos and uncertainty as to the STB's ability to administer the railbanking system. Review or summary reversal is therefore appropriate.

## **II. The ICCTA and the Trails Act preempted Alabama state reversionary property rights.**

In addition to conferring exclusive jurisdiction over abandonment upon the STB, the ICCTA also provides that any conflicting state law remedies are expressly preempted. *See* 49 U.S.C. § 10501(b)(2). In application, the ICCTA preempts all state laws that have the effect of managing or governing rail transportation. *See N.Y. Susquehanna & W. Ry. Corp. v. Jackson*, 500 F.3d 238, 252 (3d Cir. 2007) (citation omitted); *City of Auburn v. U.S. Gov't*, 154 F.3d 1025, 1030 (9th Cir. 1998). Thus, as the Alabama Supreme Court has itself previously recognized, federal preemption applies where landowners seek a ruling in state court that a railroad's easement has been abandoned. *See Mobile & Gulf R.R. Co. v. Crocker*, 455 So.2d 829, 834 (Ala. 1984) (holding that the ICC had "exclusive jurisdiction to determine whether there was an abandonment of the railroad right-of-way"). The Alabama Supreme Court should have followed its own precedent and ruled that the Respondents'



claims asserting state law rights of reversion via abandonment were preempted as a matter of law.

Even though it recognized the STB's exclusive regulatory authority over abandonment of rail lines, Pet. App. 2a-3a., the Alabama Supreme Court erroneously reasoned that the application of state property law of reversionary rights in an easement was not the type of "regulation" covered by the STB's authority because it did not constitute an "economic regulation on rail transportation" and was therefore outside the scope of the STB's authority. *Id.* at 9a. This rationale is invalid.

Preemption in this context is not limited to "economic regulation" but is instead much broader. The Supremacy Clause "invalidates state laws that 'interfere with or are contrary to, the laws of Congress.'" *Kalo Brick*, 450 U.S. at 317 (internal citation omitted). State law is preempted by federal regulation whenever it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Id.* (quoting *Perez v. Campbell*, 402 U.S. 637, 649 (1971)); *City of Auburn*, 154 F.3d at 1030 (noting nothing in the case law supports the idea that Congress, in the ICCTA, intended preemption to apply only to economic regulation). Deeming a railroad corridor abandoned, as the lower courts did, is directly contrary to the laws of Congress, and a permanent "obstacle" to the STB's exclusive jurisdiction granted by Congress.

The Alabama Supreme Court also ignored the text of the Trails Act in its erroneous ruling. The Act states that interim trail use "shall not be treated, for any purposes, of any law or rule of law, as an

abandonment of the use of such right-of-way for railroad purposes.” 16 U.S.C. 1247(d). Therefore, a NITU decision authorizing interim trail use “precludes a finding of abandonment of the right-of-way under state law.” *Grantwood Vill.*, 95 F.3d at 659 (affirming dismissal of quiet title action against a railbanked rail corridor). Thus, the Trails Act prevents the Respondents’ state reversionary property rights from vesting when such rights would terminate the railroad’s easement during interim use. *See Hornish v. King County*, 899 F.3d 680, 695-96 (9th Cir. 2018) (citing several Federal Circuit cases supporting its application of that rule). As the Court has noted previously, this makes interim trail use more like discontinuance than true abandonment.<sup>6</sup> *Preseault*, 494 U.S. at 8. The power of the Trails Act “includes 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) (internal citations omitted).

The Alabama Supreme Court inexplicably refused to apply this settled principle of law, and this failure warrants summary reversal or review to protect the integrity of the Trails Act. If allowed to

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<sup>6</sup> A railbanking order continues until the STB modifies or revokes the interim trail certificate or notice pursuant to 49 C.F.R. § 1152.29, which never happened in this case. And then state law claims to the right of way may only be brought after the STB has authorized abandonment and after the railroad has consummated that abandonment authorization. *See Deford v. Soo Line R.R. Co.*, 867 F.2d 1080, 1089-90 (8th Cir. 1989) (documenting the process).

stand, this decision will set Alabama apart from every other jurisdiction in the country on this issue. Many other jurisdictions besides the ones already cited have acknowledged the preemptive effect of the federal railbanking law and dismissed similar quiet title actions as being contrary to the plenary and exclusive jurisdiction of the STB over federally railbanked corridors. *See, e.g., Glosemeyer*, 879 F.2d at 317 (8th Cir. 1989); *Good v. Skagit County*, 17 P.3d 1216, 1219 (Wash. Ct. App. 2001); *Blendu v. Friends of the Weiser River Trail, Inc.*, No. Civ. 98-0311-S-BLW, 1999 WL 33944266 (D. Idaho June 10, 1999). If upheld, the erroneous decision would create a statewide gap in our national rail corridor system and potentially encourage other state courts to follow Alabama's rogue decision.

### **III. Respondents had other remedies.**

While federal law precludes reversion without the STB authorized abandonment, other remedies were or are available to the Respondents. The Respondents could have challenged the order in STB proceedings. *See Kalo Brick*, 450 U.S. at 323. Also as discussed above, they could have challenged the NITU order in an appropriate federal court of appeals. Additionally, they may pursue a claim in the United States Court of Federal Claims to secure compensation for any "taking" of their reversionary property interests. *See Hornish*, 899 F.3d at 695-96 (surveying the law on the issue). *See generally Preseault*, 100 F.3d at 1529-30.

**IV. The Alabama decision poses a threat to the integrity of the railbanking program and would threaten future rails and trails, depriving communities of economic and health benefits.**

Congress sought to preserve America's rapidly disappearing rail corridors for future rail use and so allowed communities to create trails to preserve these corridors. *Preseault*, 494 U.S. at 5-6. Acquiring, designing, and building a rail-trail can be a lengthy, complicated, and expensive process. The costs of converting a railroad corridor to a public trail include acquisition from the railroad, design, environmental and historic due diligence and compliance, and construction of the trail and trail-related facilities. Post-conversion, trails also incur recurring operational and maintenance costs.

Congress recognized that the success of railbanking depends on a trail sponsor's willingness to make the significant investments required for a rails-to-trails conversion. The Trails Act eliminates a significant disincentive for making those investments: legal challenges to rails-to-trail conversions rooted in state property law. Congress concluded that previous efforts to preserve rights-of-way through trail conversion "ha[d] not been successful" because none of them affected the operation of state property law, which often automatically extinguished the railroad's interest in the right-of-way and disposed of corridor property long before transfer to a trail sponsor could occur. *Id.* at 6 (citation omitted). Therefore, the Trails Act expressly preempted state law reversionary interests

premised upon abandonment of rail operations from vesting when interim trail use is approved. This allowed for a uniform application of the law among the states. A uniform Trails Act creates certainty that allows communities, such as many represented here, to form trails that cross state lines.

According to RTC's trails database, 21.5% of all open rail-trail mileage consists of railbanked corridors, including treasured long-distance trails such as Missouri's Katy Trail and Nebraska's Cowboy Trail. Without railbanking, many of these trails, along with their attendant benefits, would not exist. The development of a rail-trail offers numerous benefits to the public and to surrounding communities. Although Alabama Supreme Court Justice Parker speculated in his dissent that the landowner "may be stuck with increased crime from those using the trail, loss of privacy, [and] decrease in property values," Pet. App. 27a (citation omitted), this notion is not supported by empirical data. Instead, study after study demonstrates that property adjacent to rail-trails usually increases in value more than similar property not adjacent to a trail.<sup>7</sup> Most recently, two professors at the University of Cincinnati found that "proximity to trail entrances positively effects property values."<sup>8</sup>

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<sup>7</sup> For an overview of such studies, see Rails-to-Trails Conservancy, *Economic Benefits of Trails and Greenways*, <https://www.railstotrails.org/resourcehandler.ashx?id=4618> (last visited Nov. 6, 2019).

<sup>8</sup> Olivier Parent & Rainer vom Hofe, *Understanding the Impact of Trails on Residential Property Values in the Presence of Spatial Dependence*, 51 *Annals of Regional Sci.* 355, 355 (2013).

In San Antonio, Texas, a study showed that trails and greenways are associated with a two to five percent price premium.<sup>9</sup> In New Castle County, Delaware, homes within 50 meters of bike paths commanded a four percent price premium.<sup>10</sup> In rural Methow Valley, Washington, homes within one-quarter mile of trails benefited from an 11% change in real sale price.<sup>11</sup> A thorough literature review of more than twenty studies found that “the presence of a bike path/trail either increases property values and ease of sale slightly or has no effect . . . Opponents to bike path and trail projects often say that property values will be adversely affected but there is not much evidence of this.”<sup>12</sup>

Research also shows that those who initially oppose a trail prior to construction generally find the trail to be a better neighbor than they anticipated. In Seattle, Washington<sup>13</sup> and upstate New York,<sup>14</sup> adjacent property owners were concerned about trail-related crime before the trail was built, but researchers found no change in crime rate after the

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<sup>9</sup> Paul Asabere & Forrest Huffman, *The Relative Impacts of Trails and Greenbelts on Home Price*, 38 J. Real Estate Fin. & Econ. 408-19 (2009).

<sup>10</sup> David Racca & Amardeep Dhanju, *Property Value/Desirability Effects of Bike Paths Adjacent to Residential Areas*, Ctr. for Applied Demography & Research, Univ. of Del. 20-21 (2006).

<sup>11</sup> Resource Dimensions, *Economic Impacts of MVSTA Trails and Land Resources in the Methow Valley* 107 (2005).

<sup>12</sup> Racca, *supra* note 17, at 22.

<sup>13</sup> Seattle Eng'g Dep't, *Evaluation of the Burke-Gilman Trail's Effect on Property Values and Crime* 3 (1987).

<sup>14</sup> Schenectady Cty. Dep't of Planning, *The Mohawk-Hudson Bike-Hike Trail and Its Impact on Adjoining Residential Properties* 18 (1997).

trail was built. In fact, RTC has obtained data from 372 trails and found that crime on the trails occurred at a fractional rate compared to the national average.<sup>15</sup>

Rail-trails have consistently brought economic and health benefits to the communities where they are built. For example, business owners on the Great Allegheny Passage indicate that 25% of their gross revenue was directly attributed to trail users and two-thirds reported that they experienced some increase in gross revenue because of their proximity to the trail.<sup>16</sup> The total economic impact of the Virginia Creeper Trail is estimated at \$1.59 million, and the trail supports approximately 27.4 new full time job equivalents.<sup>17</sup> The Katy Trail in Missouri generates over \$18 million annually in local revenue.<sup>18</sup> In Dunedin, Florida, after a former CSX rail line was transformed into the Pinellas Trail, the downtown went from a 30% storefront vacancy rate to a 95% storefront occupancy, as new businesses emerged to serve the people drawn to the

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<sup>15</sup> Rails-to-Trails Conservancy, *Rail-Trails and Safe Communities: The Experience on 372 Trails* (1998); see also D. Omaha Greer, *Recreational Trails: Their Effect on Property Values and Public Safety* (2000).

<sup>16</sup> Campos, Inc., *The Great Allegheny Passage Economic Impact Study (2007-08)* 16 (2009).

<sup>17</sup> J.M. Bowker, et al., *The Virginia Creeper Trail: An Assessment of User Demographics, Preferences, and Economics* 28 (2004).

<sup>18</sup> Synergy Group et al., *Katy Trail Economic Impact Report 6* (2012).

recreational opportunities of the trail.<sup>19</sup> Alabama should be able to reap these same benefits.

Trails also provide abundant health benefits. Adjacent property owners to a trail are normally its most avid users, and derive benefits from the attendant health and wellness results of regular exercise.<sup>20</sup> A study in Nebraska found that every dollar invested in trails for physical activity led to \$2.94 in direct medical benefits.<sup>21</sup> In Nova Scotia, a professor of economics found that the total annual value of increased physical activity expected to arise from a proposed trail was approximately \$456,000 (\$2.88 per trip).<sup>22</sup> Inspiring more physical activity is especially important in Alabama, which has the fifth-highest obesity rate in the nation.<sup>23</sup>

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<sup>19</sup> Alta/Greenways, *Florida Coast to Coast Connector, Economic Benefits and Market Report* 8-9 (2013).

<sup>20</sup> Two works of research conducted by RTC show this: Rails-to-Trails Conservancy, *Health and Wellness Benefits* (2004), [https://www.railstotrails.org/resourcehandler.ashx?name=health-and-wellness-benefits-of-trails-and-greenways&id=3070&fileName=HealthandWellness.](https://www.railstotrails.org/resourcehandler.ashx?name=health-and-wellness-benefits-of-trails-and-greenways&id=3070&fileName=HealthandWellness;); and Rails-to-Trails Conservancy, *Historic Preservation and Community Identity* (2003), [https://www.railstotrails.org/resourcehandler.ashx?name=historic-preservation--community-identity&id=3074&fileName=tgc\\_historic.pdf](https://www.railstotrails.org/resourcehandler.ashx?name=historic-preservation--community-identity&id=3074&fileName=tgc_historic.pdf)

<sup>21</sup> Wang et. al, *A Cost-Benefit Analysis of Physical Activity Using Bike/Pedestrian Trails*, 6 HEALTH PROMOTION PRACTICE 174 (2005).

<sup>22</sup> Brian Vanblarcom, *Comparing the Costs and Health Benefits of a Proposed Rail Trail*, 5 J. Pol'y Research in Tourism, Leisure & Events 186 (2013).

<sup>23</sup> *Obesity Trends (Data)*, Ala. Dep't Pub. Health, <https://www.alabamapublichealth.gov/obesity/trends.html> (last visited Nov. 6, 2019).



The Alabama Supreme Court decision not only defies the U.S. Constitution and federal law, it deprives municipalities and counties across the state of a critical tool to help create these benefits for their residents.

### CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari or summarily reverse the decision below.

Respectfully submitted,

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