

2025-1179, 2025-1459

**United States Court of Appeals
for the Federal Circuit**

DEBORAH E. BARRON, JOHN BUENAVENTURA BAEZ, JAMES ACHILLE,
JONATHAN ACHILLE, THE ALB REVOCABLE TRUST, THE RPB
REVOCABLE TRUST, COURTYARD VILLAS, L.L.C., RONALD NOURSE,
OLD FOREST LAKES OWNERS ASSOCIATION, GILDA PASCUAL,
STEPHEN STILLER, CHRISTOPHER WORMWOOD, SHARON KRUEGER,
JAMES MUSSELWHITE, ENOS WEAVER, JR., ANNA MARY WEAVER,
WILLIS MARTIN, ALTA MARTIN, JAMES MYERS, KATHERINE MYERS,
JUNE SHUMWAY, DANIEL J. MALLON, IRENE A. MALLON, as Trustees
of the Mallon Family Trust under agreement dated October 3, 2007,

Plaintiffs-Appellants,

ALEXANDRINE L. BOSWELL, Trustee of the ALB Revocable Trust, dated
July 21, 2003, ROMAN P. BOSWELL, Trustee of the RPB Revocable Trust,
dated August 31, 2004, JACEK GATKIEWICZ, HANNA GATKIEWICZ,
JONATHAN LESTER, ANAPULA V. LESTER,

Plaintiffs,

– v. –

UNITED STATES,

Defendant-Appellee.

*On Appeal from the United States Court of Federal Claims in
No. 1:21-cv-02181-EHM, Honorable Edward H. Meyers, Judge*

(For Continuation of Caption See Inside Cover)

REPLY BRIEF FOR PLAINTIFFS-APPELLANTS

MARK F. HEARNE, II
TRUE NORTH LAW GROUP, LLC
112 S. Hanley Road, Suite 200
St. Louis, Missouri 63105
(314) 296-4000
thor@truenorthlawgroup.com
Counsel for Plaintiffs-Appellants

OCTOBER 15, 2025



4023 SAWYER ROAD I, LLC, DOUGLAS ABBOTT, CYNTHIA G. ABBOTT,
JULIA R. ADKINS, AUSTIN C. MURPHY, RONALD S. ALBRITTON,
JOYCE S. ALBRITTON, LOUIS J. ALDERMAN, JR., as Trustee of Louis L.
Alderman 2013 Revocable Trust, NEAL ATCHLEY, JO ATCHLEY,
JEFFREY DOYLE,

Plaintiffs,

JOHN M. ALVIS, *et al.*,

Plaintiffs-Appellants,

– v. –

UNITED STATES,

Defendant-Appellee.

*On Appeal from the United States Court of Federal Claims in
No. 1:19-cv-00757-EHM, Honorable Edward H. Meyers, Judge*

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTRODUCTION	1
ARGUMENT	3
I. The government’s contention that the railroad acquired title to the fee simple estate in the strip of land used for a railway line is contrary to the explicit text of the conveyances and condemnation decree	3
A. The 1926 condemnation granted Tampa Southern Railroad only an easement, not title to the fee estate in the land itself. (Appx1280–1386)	5
B. The text of the conveyances to the railroad, the context in which they were drafted and the purpose for which the instruments were drafted demonstrates the railroad only acquired a “right-of-way” easement, not title to the fee simple estate in the land.	9
II. The government’s claim that the railroad acquired title to the fee simple estate in the land is premised upon three fundamental errors.....	12
A. Florida Stat. 689.10 applies to instruments conveying an <i>estate</i> in land not to <i>servitudes</i> such as right-of-way easements	12
B. A “right-of-way” is an easement not title to the fee simple estate in the land	18
C. The Florida Supreme Court’s answer to the certified question in <i>Rogers</i> does not support the CFC’s decision	23
CONCLUSION	25

TABLE OF AUTHORITIES

	Page(s)
Cases:	
<i>Adams v. Railroad Co.</i> , 57 Vt. 240.....	22
<i>Atlantic Coast Line R. Co. v. Duval</i> , 154 So. 331 (Fla. 1934).....	24
<i>Behrens v. United States</i> , 59 F.4th 1339 (Fed. Cir. 2023)	21
<i>Bischoff v. Bischoff</i> , 107 So. 3d 1168 (Fla. 4th DCA 2013).....	12
<i>Bridgman v. Railroad Co.</i> , 58 Vt. 198, 2 Atl. 467	22
<i>Castillo v. United States</i> , 952 F.3d 1311 (Fed. Cir. 2020)	11, 21
<i>Cheshire Hunt v. United States</i> , 158 Fed. Cl. 101 (2022)	14
<i>Childers v. United States</i> , 116 Fed. Cl. 486 (2013)	14
<i>Florida Power Corp. v. McNeely</i> , 125 So. 311 (Fla. App. 2nd Dist. 1960).....	24, 25
<i>Florida S. Ry. Co. v. Brown</i> , 1 So. 512 (Fla. 1887).....	11, 12
<i>Florida S. Ry. Co. v. Hill</i> , 23 So. 566 (Fla. 1898).....	22
<i>Great Northern Railway Co. v. United States</i> , 315 U.S. 262 (1942).....	21
<i>Jacksonville R. & K.W. Ry. Co. v. Lockwood</i> , 15 So. 327 (Fla. 1894).....	11
<i>Jacobs v. Brewster</i> , 190 SW.2d 894 (1945).....	25

<i>Kendall v. Railroad Co.</i> , 55 Vt. 438.....	22
<i>Kittell v. Railroad Co.</i> , 56 Vt. 96.....	22
<i>Leo Sheep Co. v. United States</i> , 440 U.S. 668 (1979).....	15, 18, 20, 21
<i>Marvin M. Brandt Revocable Trust v. United States</i> , 572 U.S. 93 (2014).....	<i>passim</i>
<i>McAulay v. Railroad Co.</i> , 33 Vt. 311.....	22
<i>McCann Holdings, Ltd. v. United States</i> , 111 Fed. Cl. 608 (2013)	14
<i>McNair & Wade Land Co. v. Adams</i> , 45 So. 492 (Fla. 1907).....	3
<i>Mills v. United States</i> , 147 Fed. Cl. 339 (2020)	3, 20
<i>Preseault v. Interstate Commerce Comm'n</i> , 494 U.S. 1 (1990).....	15, 16
<i>Preseault v. United States</i> , 100 F.3d 1525 (Fed. Cir. 1996)	<i>passim</i>
<i>Rawls v. Tallahassee Hotel, Co.</i> , 31 So. 237 (Fla. 1894).....	11
<i>Reid v. Barry</i> , 93 Fla. 849, 112 So. 846 (1927).....	3
<i>Rogers v. United States</i> , 184 So.3d 1087 (Fla. 2015).....	23
<i>Rogers v. United States</i> , 90 Fed.Cl. 418 (2009)	14, 24
<i>Smith v. Townsend</i> , 148 U.S. 490 (1893).....	18
<i>Smith v. Horn</i> , 70 So. 435 (Fla. 1915).....	12

<i>Toews v. United States</i> , 376 F.3d 1371 (Fed. Cir. 2004)	16-17
<i>United States Forest Service v. Cowpasture River Preservation Ass'n</i> , 590 U.S. 604 (2020).....	20, 21

Statutes & Other Authorities:

16 U.S.C. § 1247(d)	1
BLACK’S LAW DICTIONARY (11th ed. 2019)	21
Dale A. Whitman <i>et al.</i> , <i>The Law of Property</i> § 11.2 (4th ed. 2019)	12
Dukeminier and Krier, <i>PROPERTY</i> (1981).....	13
Florida Stat. § 689.10	12, 13, 14, 17
Mahlow W. DeLoatch, Jr., <i>Future Interests – The Rule in Shelley’s Case</i> , 4 WAKE FOREST INTRAMURAL LAW REV. 132 (1968).....	13
READING LAW: THE INTERPRETATION OF LEGAL TEXTS	4
RESTATEMENT (FIRST) OF PROPERTY § 154(1) (1936)	19
RESTATEMENT (THIRD) OF PROPERTY: SERVITUDES § 1.2	12, 18
Stoebuck and Whitman, <i>THE LAW OF PROPERTY</i> , 3d ed. (2000).....	14
THE LAW OF EASEMENTS AND LICENSES IN LAND § 1:1	12
THOMPSON ON REAL PROPERTY § 60.02(A)	12
THOMPSON ON REAL PROPERTY § 60.03(A)(7)(III).....	12
THOMPSON ON REAL PROPERTY § 71.01	12

INTRODUCTION

In the early 1900s, the Tampa Southern Railroad Company and the Seaboard Air Line Railway (the “railroad” or the “railroads”) were granted a “right-of-way” easement across a narrow strip of land between Sarasota and Venice, Florida. The six conveyances and the condemnation decree granted the railroads a *servitude*, an easement, to use this strip of land for the specific purpose of operating a railway line. These conveyances and the condemnation decree did not convey title to the fee-simple *estate* in the land.

In our opening brief, we explain that: (a) the *explicit text* of the original conveyances and the condemnation decree; (b) *established principles of Florida property law*; and (c) *controlling precedent* of the United States Supreme Court, the Supreme Court of Florida, and this Court, all direct this Court to conclude the railroad’s interest was a right to use the land, not ownership of the land itself. And, when the railroad abandoned use of the land for a railway line, the owners of the fee estate would have regained unencumbered the land. But the Surface Transportation Board’s (the Board’s) order invoking Section 8(d) of the federal Trails Act (16 U.S.C. §1247(d)) took these owners’ right to use and possess their land and encumbered the land with a new easement for a public recreational trail and possible future railway line. See Opening Brief at p. 16-23.

As explained in our opening brief, the Court of Federal Claims (CFC) erred by concluding that six conveyances and a 1926 condemnation decree granted the railroad title to the fee-simple absolute estate in the land.

Professor Ely, the Pacific Legal Foundation and the National Association of Reversionary Property Owners (the Amici) filed an amicus curiae brief explaining “fundamental and longstanding property law principles make plain that in 1926, Tampa Southern Railroad obtained only an easement for railroad purposes when it condemned a ‘right of way’ to use a strip of land for the operation of a railroad.” Doc. 41 at p.4. The Amici further explained that, “[t]his case represents the latest manifestation of the government’s longstanding strategy to deny property owners just compensation after the U.S. Supreme Court and this Court held that because the Trails Act interferes with the usual operation of state property law by allowing an abandoned rail line to be converted to a public park instead of reverting to the owner of the servient estate, the Fifth Amendment requires just compensation.” *Id* at p.5. The Plaintiffs-Appellants expressly adopt the arguments made by the Amici and join, adopt, and incorporate by reference the reasoning of Amici.

The government’s response fails to provide any reason why this Court should not reverse the CFC’s decision for those reasons explained in the Appellant’s opening brief and in the Amici’s brief.

ARGUMENT

I. The government’s contention that the railroad acquired title to the fee simple estate in the strip of land used for a railway line is contrary to the explicit text of the conveyances and condemnation decree.

The government acknowledges that “[u]nder Florida law, the type of estate conveyed in a deed ‘is determined by the intent of the grantor.’ ... It is a “well-established rule” in Florida law that courts must first look to the plain language of the deed, in its entirety, to find the grantor’s intent. Gov’t Reply at 13-14. The government notes that *McNair & Wade Land Co. v. Adams*, 45 So. 492 (Fla. 1907) is in accord on the proposition that the parties’ “intent, and not the words, is the principal thing to be regarded.” *Id* at 29. *McNair & Wade* held, “it is well established that conveyances in land must be construed to give effect to the parties’ intent, and that this Court has the ‘right to look to the subject-matter embraced in the instrument, and to the intention of the parties and the conditions surrounding them[T]he intent, not the words, is the principle thing to be regarded.” *McNair & Wade* at 493.

In a recent Trails Act case involving another Florida rail-trail corridor, Judge Bruggink noted, “[a] court should “consider the language of the entire instrument in order to discover the intent of the grantor, both as to the character of the estate and the property attempted to be conveyed, and to so construe the instrument as, if possible, to effectuate such intent.” *Mills v. United States*, 147 Fed. Cl. 339, 345 (2020) (citing *Reid v. Barry*, 93 Fla. 849, 852, 112 So. 846 (1927).”)

Thus, the government and landowners begin from a point of agreement on the essential principle of Florida law that courts construing conveyances granting an interest in land must interpret the instrument to faithfully achieve the grantor's intent on the basis of the text of the entire instrument. If the text is ambiguous, the court should then consider the context and purpose for which the instrument was drafted.

Justice Scalia's and Bryan Garner's work, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS*, instructs, "[p]erhaps no interpretive fault is more common than the failure to follow the whole-text canon, which calls on the judicial interpreter to consider the entire text, in view of its structure and of the physical and logical relation of its many parts. ... Context is a primary determinant of meaning. A legal instrument typically contains many interrelated parts that make up the whole. The entirety of the document thus provides the context for each of its parts. *Id* at 167. *READING LAW* continues to note the "ordinary-meaning rule is the most fundamental semantic rule of interpretation. It governs constitutions, statutes, rules, and private instruments. One should assume the contextually appropriate ordinary meaning unless there is reason to think otherwise." *Id* at 69-70.

We turn now to the text of these, more than century-old, instruments and the condemnation decree in light of these undisputed principles. To wit: interpreting the document to achieve the *grantor's intent* considering the text of the *entire instrument*

giving all the words of the document their *ordinary meaning*. We add the further point that, to the extent there is any ambiguity, the purpose for which the document was written and executed and the law and customs at the time the document was drafted inform the resolution of any ambiguity.

A. The 1926 condemnation granted Tampa Southern Railroad only an easement, not title to the fee estate in the land itself. (Appx1280–1386)

The CFC clearly erred when the CFC held the 1925 condemnation proceeding conveyed Tampa Southern Railroad title to the fee estate in the strip of land and not just an easement for a railroad right-of-way. No authority supports the CFC’s holding. *No Florida case*, state or federal, *has ever* held that a railroad condemning a “right-of-way” for a railway line acquires title to the fee simple estate in the land across which the railway line is operated.

This is not a close question. The government cites no authority for the proposition that a railroad condemning a right-of-way in Florida for a railway line acquires title to the fee simple estate in the land. The Amici’s brief, which Appellants adopt, and our opening brief provide a fuller discussion of this point. But the central point remains: there is no authority for the proposition that the 1926 condemnation decree granted Florida Southern Railway title to the fee simple estate in the strip of land across which the railroad built its railway line.

Indeed, Judge Meyers initially recognized this point during oral argument.

Judge Meyers and the government's counsel had the following exchange.

THE COURT: Well, but it would be somewhat weird for the railroad to go in and say, we want to get a right-of-way and come out with fee simple. I mean, at least it sounds like, from all of the materials that Plaintiffs put in, that they were seeking simply a right-of-way across the land and then they'd come out arguably with fee simple. That seems like a strange result.

MR. CHELLIS (for the government): Well, you'll see the term "right-of-way" in deeds as well. I mean, it's not exclusive to condemnations. And the difference that I think the distinction made is that right-of-way isn't being referred to in terms of a particular purpose, as opposed to like limiting the railroad to using it for a railroad purpose.

THE COURT: Well, but what could they condemn it for? Isn't the whole point of the condemnation authority to say you can get the lands to make your railroad? I mean, I don't think the railroad could condemn the property to turn it into a baseball stadium.

MR. CHELLIS: Correct.

THE COURT: So, I mean, I think it sort of goes with the territory that if they're doing a condemnation, it's going to be for a railroad purpose. I mean, it has to be reasonably necessary to carry out the railroad's job.

MR. CHELLIS: Right. And you'll see that in the petitions in all these condemnations. You'll see that, you know, necessary for railroad operations, that sort of similar language in the petitions --

Appx1137

The mystery is why, after recognizing that the 1926 condemnation was for a railroad right-of-way, Judge Meyers's final opinion concluded the railroad acquired title to the fee simple estate in the strip of land. It was an error to do so.

The railroad, as a condemning authority, could acquire no greater interest in the land than necessary to achieve the public purpose for which the railroad was granted the power of eminent domain (operating a railway line). The text of the condemnation documents emphatically and repeatedly define the interest the railroad acquired to be a "right-of-way." The railroad only sought to condemn a "right-of-way." The court ordering the condemnation described the railroad's interest in the condemnation pleadings to be a "right-of-way." The landowners understood in their pleadings that the interest the railroad had condemned across their land was a "right-of-way" easement. And, for more than one hundred years the strip of land was not used for any purpose other than the operation of a railway line.

The railroad's real estate agent described the land subject to the condemnation with a metes and bounds legal description as an 8.98-acre strip across the land owned by Bonnie Tankersley and Mattie Davis "FOR CONDEMNATION OF *RIGHT OF*

*WAY FOR TAMPA SOUTHERN RAILROAD THRU LANDS OF J.C. BISHOP.”*¹

Appx1293-1294. (Capitalization in original, emphasis added).

The Railroad’s September 1925 condemnation lawsuit in federal district court stated that the purpose of the condemnation was to acquire a “right-of-way” across an 8.98-acre strip of land then owned by Bonnie K. Tankersley and Mattie Davies. The railroad told the district court that this strip of land was “for the purpose of its use as *a right-of-way* for the construction of its railroad.” Appx1295-1299. (Emphasis added.).

In its sworn petition Tampa Southern Railroad further stated “it has duly located its line of railroad and intends in good faith to construct *the same over and through* the property hereinafter described. That it desires to condemn [the strip of land] *for use as a right of way the* [described strip of land].” Tampa Southern Railroad further affirmed that, “Petitioner further shows unto the Court that the taking of the said property by your petitioner *is for the purpose of its use as a right of way for the construction of its railroad, and that the said property is necessary for that purpose.*” Appx1296-1297. (Emphasis added).

¹ (Capitalization in original).

Federal district Judge Lake Jones ordered the landowners disputing the condemnation to “show cause why said property should not be taken *for the uses and purposes set forth in the petition filed by Tampa Southern Railroad Company...*and more particularly, why the said lands should not be taken *for use as a right-of-way* by the Tampa Southern Railroad Company....” Appx1314-1318.

As noted, in the opening brief and the Amici’s brief, the CFC’s conclusion that the railroad acquired title to the fee simple estate in the strip of land is contrary to Florida law and public policy, including (a) the strip-and-gore doctrine, (b) the centerline presumption, and (c) the principle that a condemning authority cannot obtain by eminent domain any greater interest in an owner’s greater property than that interest necessary for the condemning authority to accomplish the public purpose for which the condemning authority (here the railroad) was granted the power of eminent domain. The CFC erred by holding the railroad acquired title to the fee simple estate in the strip of land by reason of the 1926 condemnation decree.

B. The text of the conveyances to the railroad, the context in which they were drafted and the purpose for which the instruments were drafted demonstrates the railroad only acquired a “right-of-way” easement, not title to the fee simple estate in the land.

In the early 1900s six landowners granted the Seaboard and Tampa Southern railroad right-of-way easements across their land to allow the railroad to build and operate a railway line between Sarasota and Venice Florida. Copies of the original

instruments and transcriptions of the documents are in the Appendix. They are the conveyances from Sarasota Land (Appx3829-3834), Burton (Appx3820-3828), John Ringling (Appx3869-3877), Florida Mortgage (Appx3842-3862), Neihardt (Appx3863-3868) and Clough (Appx3835-3841). These instruments share a number of common features.

(1) They are all for nominal consideration. The Ringling, Florida Mortgage and Neihardt conveyances were for \$1.00, the Sarasota Land and Burton conveyances were for \$5.00, and the Clough conveyance was for \$50. The government admits “...the lack of any consideration meant that the transfer constituted a voluntary conveyance, which was limited to an easement under Florida law.” Gov’t Response, ECF 50 at p. 8-9.

(2) These conveyances (other than the Neihardt conveyance) describe the narrow strip of land granted the railroad by reference to an existing railway line the railroad had already surveyed and established across the land.

(3) The Ringling and Neihardt conveyances (like the condemnation decree) specifically describe the railroad’s interest as a “right-of-way”. For more than one hundred years this strip of land was used exclusively for a railway line until it was abandoned in 2019. Appx4494-4499.

As noted above, Florida law requires the court interpreting conveyances of an interest in land to achieve the intent of the grantor considering the language of the entire instrument. See *McNair & Wade, Reid v. Barry*, and *Mills*, *supra*. This principle directs this Court to conclude that these instruments granted the railroads only an easement for a railroad right-of-way.

In addition to *Rawls v. Tallahassee Hotel, Co.*, 31 So. 237 (Fla. 1894), there is a line of Florida Supreme Court decisions holding a railroad's interest in the strip of land across which the railroad builds and operates a railway line is an easement not title to the fee simple estate and the owner of the land adjoining the railroad line holds title to the fee estate in the land across which the railroad operates the railway line. See *Florida S. Ry. Co. v. Brown*, 1 So. 512 (Fla.1887), *Jacksonville R. & K.W. Ry. Co. v. Lockwood*, 15 So. 327, 329 (Fla. 1894) (“The abutting proprietor is *prima facie* owner of the soil to the middle of the highway, subject to the easement in favor of the public, the rule being founded on the presumption that the ground was originally taken from such proprietors and for the sole purpose of being used as a highway.”)

In *Castillo v. United States*, 952 F.3d 1311, 1320-21 (Fed. Cir. 2020) this Court held,

Florida courts have applied the centerline presumption to highways, streets, canals, and nonnavigable streams. *See, e.g., Smith*, 70 So. at 436 (applying centerline presumption to “nonnavigable stream or highway”), *Bischoff*, 107 So. 3d at 1168–71 (applying centerline presumption to a canal). In both *Florida Southern Railway* and *Seaboard Air Line Railway*, the boundary involved was a street being used by a railway, though not exclusively. A railroad right-of-way is relevantly akin to other corridors: it comes within the core rationale of the centerline presumption...the centerline presumption supplies a default rule to perform that important task—with the content of the rule being a presumption that the corridor, commonly a narrow strip, is not to be owned separately from the abutting land. *See, e.g., Dale A. Whitman et al., The Law of Property* § 11.2 at 713, 719 (4th ed. 2019) (“deeds, to be valid, must describe or otherwise identify the land affected,” and “[m]onuments having significant width,” such as “public streets and highways,” “raise interesting problems” of precisely identifying the lines that bound the land; the centerline presumption solves that problem).

II. The government’s claim that the railroad acquired title to the fee simple estate in the land is premised upon three fundamental errors.

A. Florida Stat. 689.10 applies to instruments conveying an *estate* in land not to *servitudes* such as right-of-way easements.

The government wrongly contends Florida Stat. §689.10 applies to grants of an easement. To address the government’s argument, we must first distinguish between a *servitude*, a right to use property owned by another for a specific purpose, and an *estate* which is an ownership interest in the land itself. Easements and rights-of-way are a servitude. *See, THE LAW OF EASEMENTS AND LICENSES IN LAND* § 1:1, *THOMPSON ON REAL PROPERTY* § 60.02(A), 60.03(A)(7)(III), AND 71.01, *RESTATEMENT (THIRD) OF PROPERTY: SERVITUDES* § 1.2, COMMENT D, §7.4, COMMENTS A, F, AND 2.2.

Section 689.10 was adopted by Florida in 1925. (Similar model statutes were adopted in almost every other state in the late 1880s and early 1900s.) The purpose of these statutes was to clarify modern the practice of drafting real estate conveyances such that obscure feudal formalities from medieval England would not unsettle title to land. This statutory reform was intended to address antiquated and outmoded land conveyancing practice dating back to feudal England in the 1400s. These statutes, such as Fla. Stat. 689.10, sought to abrogate the obscure medieval rules such as the Rule in Shelly's Case, and the formalities related to future interests in estates in land. See Mahlow W. DeLoatch, Jr., *Future Interests – The Rule in Shelley's Case*, 4 WAKE FOREST INTRAMURAL LAW REV., 132 (1968). These feudal formalities required that, for example, an instrument contain words of inheritance “the heirs of his body” in order to convey title to the fee estate. Dukeminier and Krier explain in their text, *PROPERTY*, 1981 at p. 302 – 396. “Fortunately, the cabalistic requirement that words of inheritance be used to create a fee simple is no longer part of our law – except possibly in Maine and South Carolina. Statutes and judicial decisions now provide that a grantor is presumed to transfer the grantor's entire estate.” *Id* at 365.

The presumption that Fla. Stat. 689.10 applies to the interpretation of instruments in which a grantor conveys an interest in the *fee estate*. This presumption

does not apply to *servitudes* in which the grantor retains title to the land but grants a servitude allowing another the right to use the land for a specific purpose.

In our opening brief we note the numerous authorities explaining this point and noting the distinction between a fee estate and a servitude. See ECF No. 30. If the government's view of Fla. Stat. §689.10 were adopted then every grant of a right-of-way for a utility, a pipeline, a county road, or fiber optic cable would be a conveyance of the fee estate and there would be small strips and gores of land throughout Florida when these corridors were no longer used. One must also ask the obvious question "why would the railroad desire to acquire title to these random disconnected small, narrow strips of land? There is not dispute that the railroad acquired only an easement to use the other land used for this railway line between Sarasota and Venice, Florida. See, *Rogers v. United States*, 90 Fed.Cl. 418 (2009), *Childers v. United States*, 116 Fed. Cl. 486 (2013), *McCann Holdings, Ltd. v. United States*, 111 Fed. Cl. 608 (2013), and *Cheshire Hunt v. United States*, 158 Fed. Cl. 101 (2022).

The government fails to appreciate the important distinction between a *servitude* – the right to use land owned by another - and a conveyance of an *estate* in land subject to a retained interest in the fee estate. See Stoebuck and Whitman, *THE LAW OF PROPERTY*, 3d ed. (2000) at 435. See also Chief Justice Roberts's

decision in *Brandt Trust*, and Justice Rehnquist's decision in *Leo Sheep Co. v. United States*, 440 U.S. 668 (1979)

The government's confusion about these foundational principles of property law is demonstrated by the government's statement "if the railroad holds a rail easement in the corridor, the NITU can prevent the *vesting* of reversionary interests or impose a new trail-use easement." Gov't Response at 4. (emphasis supplied). The government's statement is simply and completely wrong. The owner of land subject to a railroad easement (or any other servitude) does not have an interest that "*vests*" when the railroad abandons the use of the land for the purpose for which the easement was granted, the servitude terminates and the owner of the fee simple estate regains unencumbered title to the land. The owner (and his predecessors-in-title) always held title to the fee simple estate in the land but the owner's fee simple interest in the land was encumbered by an easement allowing a railroad to operate a railway line across the strip of land and, when the railroad no longer operates, the easement terminates, and the owner of the fee estate regains unencumbered title to the land. See, *Preseault v. Interstate Commerce Comm'n*, 494 U.S. 1 (1990) (*Preseault I*),

"[Invoking Section 8(d) of the Trails Act] gives rise to a takings question in the typical rails-to-trails case because many railroads do not own their rights-of-way outright but rather hold them under

easements or similar property interests. While the terms of these easements and applicable state law vary, frequently the easements provide that the property reverts to the abutting landowner upon abandonment of rail operations. State law generally governs the disposition of reversionary interests.”

Preseault I, 494 U.S. at 8.

In *Preseault v. United States*, 100 F.3d 1525 (Fed. Cir. 1996 (*en banc*)) (*Preseault II*), Judge Plager explained, “We note in passing that as a matter of traditional property law terminology, a termination of the easements would not cause anything to ‘revert’ to the landowner. Rather, the burden of the easement would simply be extinguished, and the landowner’s property would be held free and clear of any such burden.”² See also, *Toews v. United States*, 376 F.3d 1371, 1376 (Fed.

² Judge Plager further explained in *Preseault II*:

There is an alternative way, frequently used today . . . to describe property transactions involving easements. Instead of calling the property owner’s retained interest a fee simple burdened by the easement, this alternative labels the property owner’s retained interest following the creation of an easement as a “reversion” in fee. Upon the termination, however achieved, of the easement, the “reversion” is said to become fully possessory; it is sometimes loosely said that the estate “reverts” to the owner.

Under traditional common law estates terminology, a “reversion” is a future interest remaining in the transferor following the conveyance of certain lesser estates to a transferee, typically when the transferee takes a possessory estate of freehold, for example a life estate. An easement is not such a possessory estate of freehold. Traditional characterization describes an easement as a “use” interest, sometimes an “incorporeal hereditament,” but not a “possessory” interest in the land. Therefore labeling the retained interest a “reversion” is not consistent with the

Cir. 2004) and *Marvin M. Brandt Revocable Trust v. United States*, 572 U.S. 93 (2014).

Because Fla. Stat. §689.10 applies to conveyances of a fee estate and not servitudes, §689.10 provides no support for the government’s contention that these original conveyances from the early 1900s must be interpreted as conveying the railroad title to the fee simple estate as opposed to a right-of-way easement.

It is impossible to square the CFC’s decision, holding the railroad acquired title to the fee simple estate in the strip of and across which the railroad operated a railway line, with the controlling authority of the Supreme Court, the Florida Supreme Court, and this Court.”

traditional classification scheme, which views the retained interest as a present estate in fee simple, subject to the burden of the easement.

Be that as it may, whether the property owner’s retained interest following the conveyance of an easement is denominated a fee simple estate or a reversion, it is uniformly treated at common law as a vested estate in fee. Under either characterization the result upon termination of the easement is the same. For consistency we use the traditional terminology which recognizes that the transferor remains seized of the freehold estate, and thus labels the owner’s estate as a fee simple, burdened, during the life of the easement, by the easement-holder’s rights.

100 F.3d 1525 at 1533-34.

B. A “right-of-way” is an easement not title to the fee simple estate in the land.

All the condemnation pleadings describe the railroad’s interest in the strip of land as a “right-of-way.” As the *RESTATEMENT* notes, most courts presume a grant to a railroad is an easement (a right-of-way), not a fee simple interest, unless the deed clearly expresses an intent to convey the fee. In *Marvin M. Brandt Revocable Tr. v. United States*, 572 U.S. 93, 110, (2014), Chief Justice Roberts explained that the Court rejected the government’s argument that an easement could transmogrify into title to the fee estate in land. “We decline to endorse such a stark change in position, especially given ‘the special need for certainty and predictability where land titles are concerned.’” Citing *Leo Sheep Co. v. United States*, 440 U.S. 668, 687–88, 99 (1979). In *Brandt Trust* Chief Justice Roberts wrote,

The essential features of easements—including, most important here, what happens when they cease to be used—are well settled as a matter of property law. An easement is a “nonpossessory right to enter and use land in the possession of another and obligates the possessor not to interfere with the uses authorized by the easement.” *RESTATEMENT (THIRD) OF PROPERTY: SERVITUDES* § 1.2(1) (1998). “Unlike most possessory estates, easements ... may be unilaterally terminated by abandonment, leaving the servient owner with a possessory estate unencumbered by the servitude.” *Id.*, § 1.2, Comment d ; *id.*, § 7.4, Comments a, f.

In other words, if the beneficiary of the easement abandons it, the easement disappears, and the landowner resumes his full and unencumbered interest in the land. See *Smith v. Townsend*, 148 U.S. 490, 499, (1893) (“[W]hoever obtained title from the government to

any ... land through which ran this right of way would acquire a fee to the whole tract subject to the easement of the company, and if ever the use of that right of way was abandoned by the railroad company the easement would cease, and the full title to that right of way would vest in the patentee of the land”); 16 *Op. Atty. Gen.* 250, 254 (1879) (“the purchasers or grantees of the United States took the fee of the lands patented to them subject to the easement created by the act of 1824; but on a discontinuance or abandonment of that right of way the entire and exclusive property, and right of enjoyment thereto, vested in the proprietors of the soil”).

572 U.S. at 104–05.

The Court continued and explained,

Because granting an easement merely gives the grantee the right to enter and use the grantor's land for a certain purpose, but does not give the grantee any possessory interest in the land, it does not make sense under common law property principles to speak of the grantor of an easement having retained a “reversionary interest.” A reversionary interest is “any future interest left in a transferor or his successor in interest.” *RESTATEMENT (FIRST) OF PROPERTY* § 154(1)(1936). It arises when the grantor “transfers less than his entire interest” in a piece of land, and it is either certain or possible that he will retake the transferred interest at a future date. *Id.*, Comment a. Because the grantor of an easement has not transferred his estate or possessory interest, he has not retained a reversionary interest. He retains all his ownership interest, subject to an easement. See *Preseault v. United States*, 100 F.3d 1525, 1533–1534 (Fed. Cir. 1996) (*en banc*).

Id.

The Court in *Leo Sheep* noted the important point that adhering to these traditional principles of property law was important. “This Court has traditionally recognized the special need for certainty and predictability where land titles are concerned, and we are unwilling to upset settled expectations to accommodate some

ill-defined power to construct public thoroughfares without compensation.” 440 U.S. 99.

An instrument describing a railroad’s interest as a “right-of-way” or “for railroad purposes” grant the railroad only an easement not title to the fee simple estate in the land. In *United States Forest Service v. Cowpasture River Preservation Ass’n*, 590 U.S. 604 (2020), the Supreme Court considered the meaning of the term “right-of-way,” *Cowpasture* was a Trails Act case. The Supreme Court held, “Generally, courts conclude that a conveyance of a “right-of-way” creates only an easement whether the grantee is an individual, a railroad, or another entity.” The Court went on to explain:

A right-of-way is a type of easement. In 1968, as now, principles of property law defined a right-of-way easement as granting a nonowner a limited privilege to “use the lands of another.”...Specifically, a right-of-way grants the limited “right to pass...through the estate of another.”...Courts at the time of the Trails Act enactment acknowledged that easements grant only nonpossessory rights of use limited to the purposes specified in the easement agreement...Thus, it was, and is, elementary that the grantor of the easement retains ownership over “*the land itself*.” ...Stated more plainly, easements are not land, they merely burden land that continues to be owned by another...

590 U.S. at 613 (citations omitted).

In *Mills v. United States*, 147 Fed. Cl. 339, 346–47 (2020). Judge Bruggink wrote, “It is incorrect, in other words, to assume that a grant to a railroad of a right-

of-way in Florida is necessarily a fee. ... We think the better view is that a ‘right-of-way’ for railroad purposes should be construed according to its natural meaning, i.e. “[t]he right to pass through property owned by another.” Right-of-Way, *BLACK’S LAW DICTIONARY* (11th ed. 2019).

It is interesting that the government never mention’s *United States Forest Service v. Cowpasture River Preservation Ass’n*, 590 U.S. 604 (2020), *Brandt Trust, Leo Sheep*, or *Great Northern Railway Co. v. United States*, 315 U.S. 262 (1942). These Supreme Court cases each consider the interest a railroad acquires in land used for a railroad right-of-way. See also this Court’s decisions in *Behrens v. United States*, 59 F.4th 1339 (Fed. Cir. 2023) (affirming the presumption under Missouri law which is the same as Florida law that a railroad acquires an easement not title to the fee estate), and *Castillo v. United States*, 952 F.3d 1311 (Fed. Cir. 2020), affirming the centerline presumption in Florida.

And then there is this Court’s *en banc* decision in *Preseault II*. In *Preseault II* this Court elucidates the principles of property law governing the interpretation of conveyances to a railroad and directs how to determine whether the railroad was granted an easement or title to the fee estate in the land. *Preseault II* is controlling precedent.

The CFC and the government do not dispute that, under this Court’s analysis and holding in *Preseault II*, these conveyances granted the railroad only an easement

not title to the fee simple estate in the strip of land. Rather, the CFC and the government say in essence, “well, *Preseault II* involved land in Vermont and these owners land is in Florida.” The CFC wrote “Vermont law is not Florida law – Montpelier does not govern Miami (sic, Tallahassee).” Appx12.

This effort to distinguish *Preseault II* would work if (and only if) the relevant principles of property law in Vermont and Florida were different. But Florida law and Vermont law in the early 1900s were not different. Not only is Florida law not different from Vermont law, but Florida courts actually looked to Vermont law when determining the interests in land used for railway lines. And Florida courts explicitly looked to Judge Redfield and his text on railroad law. Redfield was the Vermont justice who wrote the leading Vermont decision this Court relied on in *Preseault II*. See *Florida S. Ry. Co. v. Hill*, 23 So. 566 (Fla. 1898).

In *Florida Southern* the Florida Supreme Court explicitly followed and adopted Vermont law and Judge Redfield:

Acting upon the intimation of Judge Redfield in *McAulay v. Railroad Co.*, 33 Vt. 311, the supreme court of Vermont, in *Kittell v. Railroad Co.*, 56 Vt. 96, held that, although the vendor’s lien had been expressly abolished in that state, yet, in a case where a railroad company had entered upon land by agreement with the owner, with an understanding that the damages caused thereby should be ascertained by arbitrators, the amount so ascertained became a charge of lien upon the land in the nature of a vendor’s lien, which equity would enforce by appropriate proceedings. See also *Kendall v. Railroad Co.*, 55 Vt. 438; *Adams v. Railroad Co.*, 57 Vt. 240; *Bridgman v. Railroad Co.*, 58 Vt. 198, 2 Atl. 467; Redf. R.R.

Thus, absent some substantive and relevant distinction between the law in Vermont and Florida, this Court should follow and apply the analysis of this Court's *en banc* holding in *Preseault II*.

C. The Florida Supreme Court's answer to the certified question in *Rogers* does not support the CFC's decision.

The government labors under the mistaken notion that because a railroad *may* acquire title to the fee estate in land, all conveyances to a railroad *must* therefore be conveyances of the fee simple estate in the land. For this proposition the government (and the CFC) cite the Florida Supreme Court's decision in *Rogers v. United States*, 184 So.3d 1087 (Fla. 2015). But that is not what the Florida Supreme Court said in *Rogers*. In our opening brief we explain the unique circumstances of *Rogers* and the question this Court certified to the Florida Supreme Court. See ECF No. 30, p. 49-55.

Briefly, the two deeds at issue in *Rogers* were unquestionably intended to grant the railroad title to the fee simple estate. *Rogers* was not a deed construction case. Rather, *Rogers* asked the Florida Supreme Court to clarify whether, even if the grantor intended to convey fee simple title in land to the railroad, did the Florida Special Powers of Railroad Act of 1892 nonetheless limit the interest the railroad acquired to be only an easement. The instruments at issue in *Rogers* were not conveyances of a "right-of-way" but were land to be used for a depot, a wye track

to turn trains around and land upon which to relocate existing railroad tracks. These instruments were part of a larger development and relocation of the southern two-mile segment of the Sarasota to Venice railway line in the early 1920s. The parties to these instruments sought to develop a resort on the land where the original depot and railway had been located. See ECF No. 30, p. 49.

The government advances the notion that because a railroad *could* acquire to title to the fee simple estate in land every conveyance of an interest in land to a railroad *must* be interpreted as conveying fee simple estate to the land. This is wrong as a matter of law and logic.

The government cites *Atlantic Coast Line R. Co. v. Duval*, 154 So. 331 (Fla. 1934). But, Judge Williams pointed out in *Rogers* that, “the parties in *Atlantic Coast Line R. Co. v. Duval*, 154 So. 331 (Fla. 1934), agreed that the railroad acquired a fee in the right-of-way, ‘[t]hus, when the Florida Supreme Court stated that a railroad right-of-way was not an easement, it did so in a context where there was no question that the railway had obtained the land in fee simple.’” *Rogers v. United States*, 90 Fed. Cl. 418, 430 (2009). The relevant question was not before the court. i.e., the holding is merely dicta, at best. Indeed, the court in [*Florida Power Corp. v.] McNeely*, [125 So. 311 (Fla. App. 2nd Dist. 1960)] clarified that ‘[t]his is not to say

that a railroad by arrangement or otherwise could not under any circumstances operate by virtue of an easement.” *Id.* at 317.

In *McNeely* the Florida court looked to *THOMPSON ON REAL PROPERTY*, and the *RESTATEMENT*, and the Missouri case *Jacobs v. Brewster*, 190 SW.2d 894 (1945), for the holding that, ““An easement is not a right to the soil of the land or to any corporeal interest in it, but it is an incorporeal right in the corpus which is considered an interest in the land itself. While it is a right distinct from the ownership of the soil, it is more than a mere personal privilege. Also, while an easement does not operate to dispossess the owner of the fee, the title to the land may be a mere naked one with none of the usual advantages of ownership.” 125. So.2d at 315.

CONCLUSION

This Court should reverse the decision of the CFC because the CFC’s decision is contrary to the controlling precedent of the Florida Supreme Court, the United States Supreme Court and this Court’s own precedent. The CFC’s holding – especially the CFC’s holding that the Tampa Southern Railway obtained title to the fee simple estate in the strip of land across which the railroad operated a railway line by reason of the 1925 condemnation – is contrary to all authority and is contrary to long-established principles of Florida property law. The government’s response does not provide any credible authority or argument to the contrary.

Respectfully submitted,

/s/ Mark F. (Thor) Hearne
MARK F. (THOR) HEARNE, II
True North Law, LLC
112 S. Hanley Road, Suite 200
St. Louis, MO 63105
sdavis@truenorthlawgroup.com

Counsel for Plaintiffs-Appellants

FORM 19. Certificate of Compliance with Type-Volume Limitations

Form 19
July 2020

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS

Case Number: 25-1179, 25-1459

Short Case Caption: Barron v. US

Instructions: When computing a word, line, or page count, you may exclude any items listed as exempted under Fed. R. App. P. 5(c), Fed. R. App. P. 21(d), Fed. R. App. P. 27(d)(2), Fed. R. App. P. 32(f), or Fed. Cir. R. 32(b)(2).

The foregoing filing complies with the relevant type-volume limitation of the Federal Rules of Appellate Procedure and Federal Circuit Rules because it meets one of the following:

- ☒ the filing has been prepared using a proportionally-spaced typeface and includes 6,312 words.
- ☐ the filing has been prepared using a monospaced typeface and includes _____ lines of text.
- ☐ the filing contains _____ pages / _____ words / _____ lines of text, which does not exceed the maximum authorized by this court's order (ECF No. _____).

Date: 10/15/2025

Signature: /s/ Mark F. (Thor) Hearne, II

Name: Mark F. (Thor) Hearne, II