

Supreme Court Agrees to Hear Property Rights Rails-to-Trails Case

The Supreme Court of the United States has granted the petition for a writ of certiorari in *Brandt Revocable Trust v. United States*, a case with the potential to affect thousands of landowners across the country who own land burdened by railroad rights-of-way.

In the mid-to-late-1800s, Congress passed the General Railroad Right-of-Way Act of 1875, which allowed Government to grant rights-of-way to railroads on public lands. In 1976, Melvin and Lulu Brandt acquired roughly 80 acres of land in Fox Park, Wyoming from the United States by patent. That land was bisected by an existing railroad right-of-way held by Laramie Hahn's Peak, a railroad company. After the Brandt's acquired the land, Laramie's successor in interest abandoned its right-of-way. But the Government claimed that it, not the Brandts, held the reversionary interest in the right-of-way.

The Brandts argue that the Government's position is contrary to more a century of precedent in which courts have interpreted rights-of-way granted under the 1875 Act as easements in which the Government hold no reversionary interest once the land is transferred. Under that interpretation, when the railroad abandoned the easement on Brandt's property, ownership would not revert to the Government—ownership would remain with Brandt.

But this argument was rejected by the district court and the Tenth Circuit, which affirmed holding that the Government has a reversionary interest in all rights-of-way granted under the 1875 statute. The Tenth Circuit's opinion expressly noted that this holding was contrary to precedent in the Seventh and Federal Circuit, both of which have held that the rights-of-way did not revert to the Government once they are abandoned by the railroad.

The issue certified for review by the Supreme Court is: Did the United States retain an implied reversionary interest in 1875 Act rights-of-way after the underlying lands were patented into private ownership?

Read the petition [here](#).

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