

Dow Jones Reprints: This copy is for your personal, non-commercial use only. To order presentation-ready copies for distribution to your colleagues, clients or customers, use the Order Reprints tool at the bottom of any article or visit www.djreprints.com

- [See a sample reprint in PDF format.](#)
 - [Order a reprint of this article now](#)
-

POLITICS AND POLICY

Supreme Court Sides With Landowner in Rails-to-Trails Case

By JESS BRAVIN

March 10, 2014 3:52 p.m. ET

WASHINGTON—The Supreme Court ruled Monday the federal government has no claim to rights of way that railroads abandon after receiving them from Congress—a victory for property owners that could undermine plans for a nationwide network of recreational trails.

The case is a legacy of America's westward expansion during the late 19th century, when Congress gave public land to private railroads to spur development of a transcontinental transportation network.

Not every project was successful, however. In 1996, one such railroad in Wyoming gave up and tore out the tracks. The U.S. Forest Service then sought to use the rights of way—which crossed through the Medicine Bow National Forest as well as 31 parcels of private property—for public trails.

All but one property owner acquiesced to the trails plan: Marvin Brandt, whose 83-acre property was by far the largest and one associated with his family since his father began working at a local sawmill in 1939.

The government argued that when the railroad ended operations, certain property rights reverted to the government, such as using the right of way for a trail.

Mr. Brandt, represented by the conservative Mountain States Legal Foundation, contended that under the 1875 act providing the right of way, the railroad held only an easement, or limited right to use another's property for a specific purpose, which expired when that use was abandoned. By a vote of 8-1, the Supreme Court agreed.

In his majority opinion, Chief Justice [John Roberts](#) wrote that the court actually had settled the legal question in a 1942 opinion rejecting a railroad's plan to drill for oil on its right of way in Montana.

"The Government loses [its] argument today, in large part because it won when it argued the opposite before this Court more than 70 years ago," he wrote.

At that time, the chief justice said, the government had argued that Congress "granted an easement and nothing more." Just as the court said then that the easement included no right to "the underlying oil and minerals," today it provides no right for continued public use of the right of way for hikers and bicyclists rather than locomotives.

Only Justice [Sonia Sotomayor](#) dissented. She wrote that the 1942 case concerned only subterranean rights,

not the surface transportation uses provided in the 1875 act.

"The Court undermines the legality of thousands of former rights of way that the public now enjoys as means of transportation and recreation," she wrote. "And lawsuits challenging the conversion of former rails to recreational trails alone may well cost American taxpayers hundreds of millions of dollars."

The Justice Department currently is defending more than 90 lawsuits challenging Rails-to-Trails projects involving 10,000 properties in more than 30 states, amounting to "aggregate legal claims in the hundreds of millions of dollars," according to a government report.

William Perry Pendley, president of the Mountain States Legal Foundation in Lakewood, Colo., said the government should never have tried to expand the trail to begin with.

"The idea that a bunch of people is going to come out there and start riding that trail is asinine," he said.

The contested property, at 9,000 feet elevation, is "under snow from late October until June," Mr. Pendley said. Since 2006, when the tracks were ripped out, Mr. Brandt "has seen only about 50 bikers total. Mostly, he's seen horseback riders, ATV riders and motorcycle riders, and those three uses are prohibited."

Mr. Pendley said Mr. Brandt has no plans to develop the area including the former railroad line, but did object to strangers traversing his property.

"It's an area that used to be forest, and the forest is trying to come back," Mr. Pendley said. The trail is filled with spikes of trees trying to come back."

A spokesman for the Rails-to-Trails Conservancy, a Washington-based nonprofit that filed a friend of the court brief, couldn't be reached immediately. In January, Kevin Mills, a vice president of the group, said a loss in the case "would not only potentially block the completion of the Medicine Bow Rail Trail, but could also threaten existing rail-trails across America that utilize federally granted rights-of-way... Just like our national parks, these former rail corridors are public assets in which we all share and benefit."

Write to Jess Bravin at jess.bravin@wsj.com

Copyright 2013 Dow Jones & Company, Inc. All Rights Reserved

This copy is for your personal, non-commercial use only. Distribution and use of this material are governed by our [Subscriber Agreement](#) and by copyright law. For non-personal use or to order multiple copies, please contact Dow Jones Reprints at 1-800-843-0008 or visit www.djreprints.com