SC14-1465

IN THE SUPREME COURT OF FLORIDA

STEPHEN J. ROGERS, *et al.*,
Appellants

v.

THE UNITED STATES OF AMERICA,
Appellee

ON A CERTIFIED QUESTION FROM THE
UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

ANSWERING BRIEF OF APPELLEE UNITED STATES

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STATEMENT OF THE CASE AND FACTS

The Appellants (forty Plaintiffs to whom we collectively refer as the "Adjacent Landowners") own property adjacent to portions of a 12.43-mile stretch of rail corridor in Sarasota County, Florida. In 2004, CSX Transportation, Inc., quitclaimed all of its rights, title, and interest to this particular stretch of rail corridor to the Trust for Public Land (a nonprofit organization), "subject to the jurisdiction of the [Surface Transportation Board] for purposes of reactivating rail service," Appendix 58, in accordance with the National Trails System Act, 16 U.S.C. § 1247(d) ("Trails Act"). Sarasota County now operates and maintains a popular public trail, known as the Legacy Trail, along this route.

The Adjacent Landowners allege that they held a property interest in the land over which the Legacy Trail now runs. They sued, alleging a taking of their property by the United States without just compensation, through the operation of the Trails Act, in violation of the Fifth Amendment of the United States Constitution. The first filed action, *Rogers v. United States,* Ct. Cl. No. 07-273L, was certified as a class action, and over 300 plaintiffs joined that class. *Rogers v. United States*, 90 Fed. Cl. 418, 420 n.1 (2009). The United States Court of Federal Claims held that the Adjacent Landowners were not entitled to compensation because the railroad corporation's predecessor held fee simple title to the portions of the railroad corridor abutting the Adjacent Landowners' properties. *Rogers v.*

United States, 93 Fed. Cl. 607, 625 (2010); *Rogers v. United States*, 107 Fed. Cl. 387 (2012). Because the Adjacent Landowners did not own an interest in the railroad corridor, the use of the corridor as a trail did not "take" the Adjacent Landowners' property interests. The Adjacent Landowners appealed to the United States Court of Appeals for the Federal Circuit.

The case as presented to the Federal Circuit turned on whether the deeds from the Adjacent Landowners' predecessors in interests to the railroad corporation granted the railroad a fee simple title to the land within the rail corridor, or whether the deeds granted only an easement. The extent of a plaintiff's property interests in a railroad corridor is generally determined by the law of the state in which the property is located. *Caldwell v. United States*, 391 F.3d 1226, 1228-29 (Fed. Cir. 2004). Thus, whether the Adjacent Landowners in this case owned a property interest in the railroad corridor at issue is determined by the law of the State of Florida.

Following briefing and oral argument, the Federal Circuit certified the following question to this Court:

> Assuming that a deed, on its face, conveys a strip of land in fee simple from a private party to a railroad corporation in exchange for stated consideration, does Fla. Stat. § 2241 (1892) (recodified at Fla. Stat. § 4354 (1920); Fla. Stat. § 6316 (1927); Fla. Stat. § 360.01 (1941)), state policy, or factual considerations – such as whether the railroad surveys property, or lays track and begins to operate trains prior to the conveyance of a deed – limit the railroad's interest in the property, regardless of the language of the deed?

(Appendix 5).

The Federal Circuit concluded that the relevant deeds at issue, on their face, unambiguously transferred fee simple title to the grantee railroad corporation. (Appendix 5 n.1.) Therefore, the case before this Court presents no factual disputes, and asks a pure question of Florida property law.

I. Legal Background

The Surface Transportation Board ("STB") has exclusive and plenary authority over the construction, operation and abandonment of virtually all of the nation's rail lines. *See Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311 (1981). Consequently, a railroad cannot be relieved of its legal obligation to offer service on a particular rail line without first obtaining the express consent of the STB. *See Colorado v. United States*, 271 U.S. 153, 165 (1926); *Nat'l Ass'n of Reversionary Property Owners v. STB*, 158 F.3d 135, 137 (D.C. Cir. 1998). A railroad may apply to abandon use of a rail line entirely, which, if granted by the STB and consummated by the railroad, would remove the rail line from the national transportation system and end the STB's jurisdiction over that corridor. *Hayfield N. R.R. Co. v. Chicago & N.W. Transp. Co.*, 467 U.S. 622 (1984); *Preseault v. ICC*, 494 U.S. 1, 6 n.3 (1990) ("*Preseault I*"). Alternatively, the railroad may apply for permission to discontinue service, which permits the

railroad "to cease operating a line for an indefinite period while preserving the rail corridor for possible reactivation of service in the future." *Preseault I*, 494 U.S. at 5 n.3.

In the Trails Act, Congress provided a mechanism by which rail corridors not currently needed for active rail service could be preserved for future reactivation ("railbanked"). The railroad transfers responsibility for the corridor to a third party (a state, municipality, or private entity), which uses the land as a recreational trail. During the "interim" period of trail use, the railroad's right-of-way is not deemed abandoned. 16 U.S.C. § 1247(d). The Trails Act charges the STB with reviewing and issuing Notices of Interim Trail Use that authorize railbanking. *Id.* If the parties do not reach a railbanking/interim use agreement, the railroad may consummate abandonment of its rail line, bringing the STB's regulatory jurisdiction to an end. If a trail use agreement is reached, the trail sponsor assumes full responsibility for the management of, and for any legal liability arising out of the transfer of, the railroad corridor. That use remains subject to the right of a railroad to restore active rail service. *Goos v. ICC*, 911 F.2d 1283, 1295 (8th Cir. 1990).

Trails Act litigation has proliferated since the United States Supreme Court indicated that railbanking could possibly give rise to compensable takings. *Preseault I*, 494 U.S. at 12. The Federal Circuit has premised liability on two

questions of state law: the nature of the railroad's property interest and whether that interest was abandoned prior to the NITU. *Preseault v. United States*, 100 F.3d 1525, 1533 (Fed. Cir. 1996) (*en banc*) ("*Preseault II*"). However, "[i]t is axiomatic that only persons with a valid property interest at the time of the taking are entitled to compensation." *Wyatt v. United States*, 271 F.3d 1090, 1096 (Fed. Cir. 2001). In order to determine whether a property owner held a valid interest for which the United States might owe compensation in a Trails Act case, a court must first ask "who owned the strips of land involved, specifically did the Railroad . . . acquire only easements, or did it obtain fee simple estates[?]" *Preseault II*, 100 F.3d at 1533. Thus, a threshold question in this case is what interest the Adjacent Landowners' predecessors conveyed to the railroad corporation.

II. **Factual Background**

The rail corridor at issue here was originally acquired by the Seaboard Air Line Railway, a large railroad corporation that through bankruptcy and merger has subsequently been known by several other names, including Seaboard Air Line Railroad, Seaboard Coast Line Railroad, Seaboard System Railroad, and, most recently, CSX Transportation, Inc. (Appendix 68-69.) As these changes in name and corporate structure are not relevant to the question presented, we refer to the railroad simply as "Seaboard."

For purposes of this case, it is simplest to divide the relevant portion of the trail into a northern segment and a southern segment, separated by Curry Creek which runs roughly east-west across the trail. Thirty-three of the Adjacent Landowners allege an interest in the northern segment of the trail, which runs from Curry Creek north towards Sarasota, Florida. (Appendix 83.) The interest held by Seaboard in this portion of the rail corridor was acquired by four written deeds, each of which is substantively identical. These deeds have been referred to throughout the litigation by the names of their grantors: the Blackburn, Phillips, Frazer, and Knight deeds. Each of these was executed in September 1910, stated consideration in amounts ranging from $10 to $200 "and other valuable consideration," and stated that the grantors "hereby grant, bargain, sell and convey" to Seaboard "all their right, title and interest, of any nature whatsoever, in and to the following property." (Appendix 75-82.) The granting provisions do not state any specific purpose for the conveyances. They make no reference to a "right-of-way," but instead convey a "strip of land" described as "one hundred (100) feet wide, being fifty (50) feet on each side of the center line of the Seaboard Air Line Railway as located across lands owned by the said parties of the first part." *Id.* One of these four deeds differs only in the inclusion of a handwritten notation that the land is only to be conveyed "[p]rovided the said railroad is built within five years from date hereof, otherwise this deed becomes null [and] void." (Appendix 81.)

There is no dispute that the Seaboard railroad was running trains along this portion of the corridor by the following year, in late 1911.

The segment of the rail corridor that runs south of Curry Creek was acquired by Seaboard in a deed from the pension fund of the Bureau of Locomotive Engineers ("BLE") in 1927. (Appendix 53-56.) This deed (often referred to in this litigation as the "1927 BLE deed") states that the grantor has "granted, bargained, sold, aliened, remised and released, and doth by these presents grant, bargain, sell, convey, alien, remise and release, unto the said Seaboard Air Line Railway Company, its successors and assigns, forever, all of its right, title and interest in and to the following real estate." (Appendix 53.) The deed contains legal descriptions of three tracts of land, the first of which includes a portion of the rail corridor that abuts some of the Adjacent Landowners' property. (Appendix 18-19.) The deed states that this land was conveyed "in fee simple, forever," and "fully warrants the title to the said lands and [BLE] would defend the same against the lawful claims of all persons whomsoever." (Appendix 53.)

SUMMARY OF ARGUMENT

The answer to the Federal Circuit's certified question is "no." No statute, rule of Florida law, or public policy considerations undermine the bedrock principle that a court is limited to the four corners of a deed when the deed

contains no ambiguous terms. Additionally, not only did Florida law not prevent a railroad corporation from acquiring fee simple title to property when these deeds were executed, but it expressly authorized railroads to do so without limitation. Fla. Stat. § 2241 sec. 10 ¶ 3 (1892). Here, these five unambiguous deeds each describe the sale of fee simple title in a strip or parcel of land by a private party to Seaboard. As no extrinsic or parol evidence may be considered in the evaluation of these deeds, their unambiguous language is the sole basis for understanding the parties' intentions, and thus what form of title was being conveyed.

Although the Adjacent Landowners discuss the law applying to voluntary grants and land taken through eminent domain, it is plain from these deeds that those methods were not used to acquire these property interests. A purchase is indicated by a valid deed stating the exchange of valuable consideration, and that is unquestionably what each of these deeds provides.

Even if it were permissible under Florida law to consider extrinsic factual circumstances surrounding the execution of these deeds, those facts do not establish that Seaboard took anything less than fee simple title. The granting deeds all state that "land," rather than a "right-of-way," is being conveyed. They each state valuable consideration (in amounts ranging from $5 to $200 plus other valuable consideration). And no law of Florida prevents a railroad from purchasing

fee simple title to land after entering that land for the purposes of surveying and locating its rail line, or even after constructing its rail line.

Finally, no public policy in the State of Florida law limits the title acquired by Seaboard by deeded conveyances in this case. Florida does not apply a "centerline presumption" to railroads as a result of the "strips and gores" doctrine. Furthermore, important state policies favoring settled expectations and stability in real estate transactions counsel a ruling in favor of the Appellees, holding that an unambiguous deed means what it says in Florida, and that rule is not any different when the grantee is a railroad corporation.

ARGUMENT

I. The construction of the deeds is limited to the four corners of the documents, each of which describe a sale of fee simple interest in a strip of land to the railroad.

A. Florida statute authorized railroads to acquire any interest in land, including fee interests, for their rail corridors.

The question certified by the Federal Circuit asks this Court to assume that each of the deeds at issue "conveys a strip of land in fee simple from a private party to a railroad corporation in exchange for stated consideration." (Appendix 5.) It then asks in part whether Fla. Stat. § 2241 (1892) may "limit the railroad's interest in the property, regardless of the language of the deed?" *Id.* The answer is

"no." Nothing in that statute limited a railroad's ability to take fee simple title to land.

At the time the deeds at issue in this case were executed, a railroad corporation was authorized by statute to acquire property by three different means of acquisition: (1) by condemnation, Fla. Stat. § 2683 (1914); (2) by "voluntary grant," Fla. Stat. § 2241 sec. 10 ¶ 2 (1892); or (3) by the purchase of a fee simple interest, Fla. Stat. § 2241 sec. 10 ¶ 3 (1892). A purchase of a fee simple interest is demonstrated by a deed exchanged for valuable consideration. *See Reid v. Barry*, 112 So. 846, 854 (Fla. 1927) (citation omitted). In contrast, the acquisition of property by "voluntary grant" is demonstrated when there is no consideration provided. *Infra* at 24. Condemnation is indicated by the express application of eminent domain authority and the payment of full compensation for the value of the condemned property. *Infra* at 26-27. Each property at issue in this case was purchased by the railroad in exchange for valuable consideration, as memorialized in the five deeds before this Court.

1. The General Railroad Act of 1874 provided railroads generally the same authority to purchase fee simple title that had previously been granted railroads by individual charters.

The State of Florida once chartered railroads by individual acts of legislation, and those charters often granted railroads the power to acquire fee

simple title to land. One representative railroad charter of the mid-nineteenth century, incorporating the Florida, Atlantic, and Gulf Central Rail Road Company, empowered that railroad to "purchase, receive, retain, and enjoy to them and their successors or assigns, *lands and tenements*, goods, chattels and effects, of whatsoever the same may be, and the same to grant, sell, mortgage and dispose of." Ch. 481, § 1, Laws of Fla. (1852) (emphasis added). All property that the railroad bought "shall forever afterwards belong to and become the property of said Company, its successors and assigns, *in fee simple*, in proportion to the number of shares owned by the Stockholders respectively." *Id.* § 13 (emphasis added). This power to purchase and sell property was independent of the railroad's authority to exercise eminent domain. *Id.* § 11.

Then, in 1874, the Florida Legislature enacted a statute entitled "An Act to Provide a General Law for the Incorporation of Railroads and Canals." 1874 Fla. Laws 41 ("The General Railroad Act of 1874"). Rather than continue to provide railroad corporations with the power to take title to land on an individual basis, Florida granted all railroads that power in this general statute, which was in effect at the time of each of the property transactions at issue in this case. That Act provides, in part, that a railroad corporation:

> Shall be empowered – To purchase, hold, and use all such real estate and other property as may be necessary for the construction and maintenance for its road or canal and the stations and other accommodations necessary to accomplish the objects of its

> incorporation, and to sell, lease, or buy any land or real estate not necessary for its use.

1874 Fla. Law 45 § 10 ¶ 3, *codified at* Fla. Stat. § 2241 sec. 3 (1892). The provision was reorganized under a new section several times, but the quoted language was never altered. *See* Fla. Stat. § 4354 (1920); Fla Stat. § 6316 (1927); Fla Stat. § 360.01 (1941). This provision was eventually repealed in 1981. 1981 Fla. Laws 1492.

2. Each of the deeds plainly states that the railroad is purchasing fee simple title to a strip or tract of land.

For purposes of this certified question, the deeds at issue are presumed to convey fee simple title by their plain language.[1] But because that language is discussed in the Adjacent Landowners' initial brief, we will briefly describe it here. Whether the deeds represent a purchase of fee simple title by the railroad is determined by the language of the written documents themselves. *Reid v. Barry*, 112 So. 846, 852 (1927); 19 Fla. Jur. 2d Deeds § 108. These deeds clearly and unambiguously demonstrate purchases of parcels of land in fee simple by the railroad, in exchange for valuable consideration.

[1] The Federal Circuit reached this conclusion after reviewing the entire record on appeal. "While the Appellants dispute whether the deeds appear on their face to transfer a fee simple interest in the properties at issue, like the Court of Federal Claims before us, we conclude that they do." Appendix 5 n.1.

As to the Blackburn, Frazer, Phillips, and Knight deeds, the language of the granting clauses "could not be clearer – the property owners were conveying all of their interest." *Rogers v. United States*, 107 Fed. Cl. 387, 395-96 (2012). Each states that the grantors "hereby grant, bargain, sell and convey" to Seaboard "all their right, title and interest, of any nature whatsoever, in and to the following property." (Appendix 75-82.) The granting clause places no limitations on the transfer, and makes no references to a "right-of-way" or an easement. Similarly, the granting clause of the 1927 BLE deed, transferring the southern segment of the trail, "intended to transfer full title in the land to Seaboard." *Rogers v. United States*, 93 Fed. Cl. 607, 619 (2010). "The granting clause does not contain language limiting the interests conveyed to certain uses or purposes, nor does it reference an easement." *Id.*

In addition, each of the five relevant deeds describes the conveyed property as either a "strip of land" or a "tract of land." Those descriptions contain only metes and bounds, and contain no language enumerating purposes or restricting the transfer in any way. The conveyance of "land" without restriction is further evidence that fee simple title was being conveyed. *See, e.g.*, A.E. Korpela, *Deed to railroad company as conveying fee or easement*, 6 A.L.R. 3d 973 § 4 ("Deeds purporting to convey to railroads a strip, piece, parcel or tract of 'land,' which do not contain additional language describing or otherwise referring to the land in

terms of the use or purpose to which it is to be put . . . are generally construed as passing an estate in fee.").

The Adjacent Landowners attempt to find significance in the description of the rail corridor being purchased in the four individual deeds (Blackburn, Frazer, Knight, and Phillips) "as located *across* lands owned by" each of the grantors. (Initial Br. at 3-4, 6-7.) But such language does not limit the title being conveyed, nor do the Adjacent Landowners cite any authority for that proposition. The term "across" does not appear in the granting provision of the deeds. Instead, it appears in the legal descriptions of the properties conveyed, to help describe the *location* of "the center line of the Seaboard Air Line Railway" and therefore the location of the conveyed "strip of land."

Furthermore, each deed states that the railroad provided valuable consideration. The Adjacent Landowners allege that "Seaboard never paid anything more than nominal consideration for any of these conveyances." (Initial Br. at 4.) Of course, even if this statement were true, nominal consideration would not by itself alter the fee simple title conveyed by those deeds. So long as some form of valid consideration is provided, "even nominal consideration will support a deed." *Kingsland v. Godbold*, 456 So. 2d 501, 502 (Fla. Dist. Ct. App. 1984). Each of the deeds at issue states a valid form of consideration, provided in exchange for the grant of property rights. The *amount* of money stated on the face of the deed is

irrelevant for determining what interest the grantor intended to convey. *Id.* (reversing trial court's decision to void a deed for lack of consideration because $10 consideration was recited in a deed to convey a condominium unit in fee simple). "It is fundamental that the law will not consider the adequacy or the sufficiency of the consideration given for a conveyance or transaction." *Venice East, Inc. v. Manno*, 186 So. 2d 71, 75 (Fla. Dist. Ct. App. 1966). Each deed states money and valuable consideration were exchanged, making clear that title to the land being conveyed was purchased by the grantee (the railroad).[2]

As a final matter, the habendum clause of the 1927 BLE deed warrants the conveyed title and states that the deed transfers the land "in fee simple, forever." JA 1713. The purpose of the habendum clause "is 'to define the estate which the grantee is to take in the property conveyed, whether a fee, life estate, or other interest.'" *Reid*, 112 So. at 851 (quoting Devlin on Deeds (3d ed.) §§ 213, 220). In this case, the intention to convey fee simple title to the railroad could not be more clear.

[2] The Adjacent Landowners misstate the amounts of consideration given by the railroad to the Adjacent Landowners' predecessors in interest in the relevant deeds. None of the deeds at issue in this case conveyed property for one dollar. *Cf.* Initial Br. at 4. Although the dollar amount has no legal relevance here, the correct deeds and the amount of stated consideration therein are found at Appendix pp. 53 ($5), 75 ($200), 77 ($100), 79 ($200), and 81 ($10).

3. Even if the deeds were ambiguous, Florida law favors construing the deeds to convey a fee simple interest.

Even if the deeds at issue were open to interpretation in this case, presumptions in the law governing property in Florida require this Court to find that the deeds at issue conveyed fee simple title to Seaboard. One of "[t]he principles controlling in the construction of deeds" is "that where a deed permits of more than one interpretation the one most favorable to the grantee should be adopted." *Thompson v. Ruff*, 78 So. 489, 490 (Fla. 1918). Here, the most favorable interpretation in favor of the grantee is that the deeds convey fee simple title. "A title in fee simple is the highest quality of estate in land known to law." *State ex rel. Ervin v. Jacksonville Expressway Auth.*, 139 So. 2d 135, 138 (Fla. 1962).

That fee simple title was conveyed is further buttressed by a statute, first enacted in 1903, stating that a deed containing no "words of limitation . . . shall be construed to vest the fee simple title or other whole estate or interest which the grantor had power to dispose of at that time in the real estate conveyed or granted, unless a contrary intention shall appear in the deed, conveyance or grant." 1903 Fla. Laws 5145 § 1 (currently codified at Fla. Stat. § 689.10). As a result of both this statute and the underlying presumptions of Florida property law, should a grantor wish to convey anything less than fee simple title "it is, of course, necessary to expressly reserve that right to the grantor; otherwise the unqualified,

unconditional conveyance will be of the whole estate (fee simple absolute)." *Dean v. MOD Props, Ltd.*, 528 So. 2d 432, 433 (Fla. 1988). Thus, as no contrary intention is expressed on the face of these deeds, Florida law holds that they must be read to convey fee simple title.

B. Each of these deeds represents an exercise of the railroad's statutory authority to buy any property.

The Adjacent Landowners have identified no special rules governing property ownership by railroads in Florida, under which "fee simple" means anything other than "fee simple." And there are none. The General Railroad Act of 1874 expressly authorizes a railroad corporation not only "[t]o purchase, hold and use all such real estate and other property as may be necessary for the construction and maintenance of its road or canal and the stations and other accommodations necessary to accomplish the objects of its incorporation," but also "to sell, lease or buy any lands or real estate not necessary for its use." Fla. Stat. § 2241 (1892). This statutory language contains no limitations on a railroad's authority to "sell, lease or buy any lands or real estate," *id.*, and was in effect on the date that each of the relevant deeds in this case was executed. *See* Fla. Stat. § 6316 (1927) (recodifying prior statute with identical language). The railroads therefore had clear statutory authorization to purchase lands for its railroad corridor and acquire

fee simple title to those lands. The deeds described above demonstrate that the railroad did so.

The Adjacent Landowners never once mention Section 10, paragraph 3 of the General Railroad Act of 1874 in their initial brief, let alone attempt to interpret that provision. But the plain language of this provision leaves no room for other interpretations. "When the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning." *A.R. Douglass, Inc. v. McRainey*, 137 So. 157, 159 (Fla. 1937) (citation omitted). *Accord State v. Burriss*, 875 So. 2d 408, 412 (Fla. 2004) ("[A] statute's plain and ordinary meaning must control unless this leads to an unreasonable result or a result clearly contrary to legislative intent"). There is no ambiguity in the clear phrasing of this statutory section, authorizing railroad corporations to purchase and hold property, just as any other corporate entity could, without limitation.

II. Florida law requires an unambiguous deed to be given full effect without regards to extrinsic or parol evidence.

A. A deed that conveys fee simple title by its plain language is not open to further interpretation.

The question certified by the Federal Circuit asks this Court to assume that each of the deeds at issue "conveys a strip of land in fee simple from a private party to a railroad corporation in exchange for stated consideration." (Appendix 5.) And as we have seen above, the deeds fully support that assumption. *Supra* at 12-16. Once we assume a deed that unambiguously conveys fee simple title to a party, Florida law requires that the courts honor that conveyance, unaffected by public policy concerns or other factual considerations that could, if applied, affect interpretation of an ambiguous deed. There is no exception to this rule available for this case.

"The primary consideration in the construction of a deed is the intention of the parties thereto." 19 Fla. Jur. 2d Deeds § 107 (2014). "The test of the meaning and intention of the parties is the content of the written document." *Gendzier v. Bielecki*, 97 So. 2d 604, 608 (Fla. 1957). If that intention is unambiguously conveyed by the language of a deed, it is not subject to further interpretation by a court. *See Thompson v. Ruff*, 78 So. 489, 491 (Fla. 1918).[3] Florida law prohibits the

[3] According to the Real Property, Probate and Trust Law Section of the Florida Bar, appearing as *amicus curiae* in this case, the principle of Florida law that a court may not look outside the four corners of an unambiguous deed is "unbending

use of extrinsic evidence to "vary, contradict, or defeat the terms of a complete and unambiguous instrument." *Fla. Moss Prods. Co. v. City of Leesburg*, 112 So. 572, 574 (Fla. 1927). Thus, if the deeds at issue here are to be assumed to convey fee simple title by their plain language, then as a legal matter no further inquiry is allowed.

B. References in other documents to Seaboard's "right-of-way" do not transform the conveyed fee simple title into something else.

The Adjacent Landowners state that "every subsequent conveyance in the chain of title that references the railway – 75 of them – describes Seaboard's interest as a 'right-of-way' or 'ROW.'" (Initial Br. at 10.) The Adjacent Landowners imply that use of the phrase "right-of-way" in other documents — not the granting deeds — must somehow reach back in time to retroactively limit Seaboard's property interest to something less than the fee simple title conveyed by the subject deeds. There is no legal support for that proposition.

All five of the relevant deeds at issue here (the Blackburn, Phillips, Frazer and Knight deeds of 1910, as well as the 1927 BLE deed) convey "land" and not a "right-of-way." The phrase "right-of-way" does not appear in any of the deeds. The Adjacent Landowners' reference to the 75 deeds in the chain of title are either

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and inveterate." Br. of *Amicus Curiae* Real Property, Probate and Trust Law Section of the Florida Bar at 3.

subsequent grants or prior grants, often of *other* pieces of property, which refer to Seaboard's "right-of-way" to help locate the property being conveyed. But Florida law prohibits consideration of these extrinsic references in interpreting the deeds at issue: they may not be introduced "to vary, contradict, or defeat the terms of a complete and unambiguous written instrument." *Fla. Moss Prods.*, 112 So. at 573.

Furthermore, the Adjacent Landowners have identified no authority stating that use of the phrase "right-of-way" as a descriptor necessarily establishes that the deeds could not convey fee simple title to land. In Florida, "[t]he term 'right-of-way' as applied to a railroad company has a twofold significance – a right of crossing and the strip of land which a railroad company takes, upon which to construct its railroad. The terms 'right of way,' 'roadway,' and 'main line' have been employed synonymously." Fla. Jur. Railroads § 32.

The treatise cited by the Adjacent Landowners in their Initial Brief is not to the contrary. The treatise addresses a situation where a grantor intends to convey only a limited "right-of-way" in the granting clause of a deed. Initial Br. at 11 (quoting The Law of Easements and Licenses in Land, Bruce and Ely § 1.22 (2014)). But that is not what the deeds at issue here state. Nor is it clear that use of the phrase "right-of-way" in those deeds would prevent the railroad from taking fee title, were it to appear there. In *Florida D.O.T. v. Dardashti Properties*, 605 So. 2d 120, 122 (Fla. Dist. Ct. App. 1992), the court held that a deed transferring a

"right of way and easement" to Palm Beach County for a highway conveyed a fee simple interest to the County. Even though the deed contained a condition that the land would revert if not used as a public highway, the court of appeal held that the presumption in favor of fee simple title held and the reversion provision was merely a "covenant of the deed." *Id.* at 122.

In *Robb v. Atlantic Coast Line RR Co.*, 117 So. 2d 534 (Fla. Dist. Ct. App. 1960), the court held that a railroad owned fee simple title to property that it acquired by a deed that limited its grant "for right-of-way purposes," in exchange for $1 stated consideration. The plaintiff sued for a declaratory judgment that the railroad "is entitled to a right of way or easement for railroad purposes only," with "the fee remaining in the plaintiff." 117 So. 2d at 536. The court disagreed, holding that declaring the land being transferred was "for right-of-way purposes" did not limit the title conveyed. *Robb*, 117 So. 2d at 536-37 (citing 4 Thompson, Real Property § 2063). Similarly, a deed conveying a strip of land for right-of-way purposes for a road was held to convey fee simple title to that strip of land in *Holland v. State*, 388 So. 2d 1080 (Fla. Dist. Ct. App. 1980). In each of those cases, the phrase "right-of-way" appeared in the conveying deed. In *this* case, by contrast, none of the relevant deeds use that phrase. Even if the use of the term "right-of-way" were meaningful, references to Seaboard's rail corridor in *other*

deeds have no bearing on the unambiguous deeds by which Seaboard acquired its property. *Fla. Moss Prods.*, 112 So. at 573-74.

III. Assuming extrinsic evidence could be considered, no evidence establishes that the relevant portions of the rail corridor were acquired by voluntary grant or condemnation.

The Adjacent Landowners suggest in their Initial Brief that the interests acquired by Seaboard were limited because they were either taken pursuant to the General Railroad Act of 1874's provision for "voluntary grants," or pursuant to condemnation. Neither is correct. Thus, whether Florida law would prevent a railroad from acquiring fee simple title to land by either of those processes is not germane to the certified question currently before this Court.

A. Seaboard did not receive a "voluntary grant" of these properties.

The Adjacent Landowners do not discuss the General Railroad Act of 1874's explicit grant of authority to railroads to purchase property without limitation. Instead, they refer to the preceding statutory subpart, providing for "voluntary grants" of interests in land to a railroad corporation. *See, e.g.*, Initial Br. at 9 (citing Fla. Stat. § 2241 sec. 2 (1892)). This section of the statute authorizes a railroad corporation

> To take and hold such voluntary grants of real estate and other property as shall be made to it to aid in the construction, maintenance

> and accommodation of its road or canal, but the real estate received by voluntary grant shall be held and used for the purposes of such grant only.

Fla. Stat. § 2241(2) (1892).

The statute does not define "voluntary grants of real estate," and Florida case law does not appear to provide a definition either. But it is well established that a "voluntary grant" is a term of art in property law synonymous with a "voluntary conveyance," which is one given "[w]ithout valuable consideration." *Black's Law Dictionary* 1212 (2d Ed. 1910). *See also* Powell on Real Property, § 81A.01. The Supreme Court of Missouri, in reviewing a Missouri statute containing language nearly identical to that of Fla. Stat. § 2241 sec. 2 (1892) regarding voluntary grants of rights-of-way to railroad corporations, explained that whether a property was given by voluntary grant to a railroad was determined by whether the deed states that the right-of-way was given for valuable consideration. *Coates & Hopkins Realty Co. v. Kansas City T. Ry. Co.*, 43 S.W. 2d 817, 821-22 (Mo. 1931). This holding was not grounded in specifics of Missouri law, but rather traditional principles of property law. "If there is a valuable consideration, no matter how trivial or inadequate, the conveyance is not voluntary." Bump, *Fraudulent Conveyances* (3d Ed.) at 267, *as quoted by Gentry v. Field*, 45 S.W. 286, 287 (Mo. 1898).

Again, the deeds at issue in this case were provided in exchange for money and other valuable consideration, demonstrating that they were a purchase, rather than a voluntary grant made without consideration. This Court has previously acknowledged that a purchase is a distinct form of property acquisition from a gift or a grant. "To recapitulate briefly, we have then in the country railroad rights of way acquired by legislative and congressional grant, private grant, purchase, gift, condemnation, and prescription." *Seaboard Air Line Ry. Co. v. Bd. of Bond Trustees*, 108 So. 689, 696 (Fla. 1926). In that case, this Court described the well over 9 million acres of land that the State of Florida granted to railroads between 1855 and the turn of the century. *Id.* at 693. In the mid-nineteenth century, Florida

> had a population of about 100,000 people. We had no railroads or other means of communication, except by stage and steamboat. Land was cheap, and population necessarily sparse. From the foregoing, and other inducements not necessary to mention, we must conclude that our Legislature was making very liberal concessions to the railroad companies mentioned to the end that our people might be provided with the best and most accessible means of travel and transportation then known to civilized life. This spirit actuating our people was entirely in harmony with that actuating the people of every other part of our country at that time.

Id. This Court's opinion further explained that allowing railroads to purchase property and allowing for legislative grants of property to a railroad served very different purposes. "A right of way by purchase or private grant is actuated primarily by the hope of reward or profit flowing to the grantor either directly or

indirectly, while legislative or public grants are actuated by the anticipation of benefits flowing to the whole people." *Id.* at 698.

This distinction between the two forms of property acquisition by railroads may well explain why the authority to receive "voluntary grants" and to purchase property is granted in two independent statutory subsections. But this Court is not asked in this case to determine whether property taken by a railroad pursuant to a "voluntary grant" of real estate is limited in any way. The presence of consideration in the deeds rules out the possibility that these properties were conveyed by voluntary grant, and thus the limitations of Section 10 ¶ 2 of the General Railroad Act of 1874, if indeed there are any, do not apply in this case.

B. Seaboard did not acquire the properties at issue here by condemnation.

Although railroad corporations in Florida were granted the authority to initiate eminent domain proceedings in order to acquire property for railroad purposes, Fla. Stat. § 2683 (1914), at no point did Seaboard exercise that authority for the corridor at issue here. The record contains no evidence of any condemnation proceedings held for any of these properties. The Adjacent Landowners repeatedly allege in the Initial Brief that Seaboard exercised eminent domain to acquire its railroad corridor, but each such allegation is without any citation to the underlying factual record for the specific deeds at issue here. For

example, they allege that "Seaboard seized the 12 miles of railway here," Initial Brief at 8, and claim that "Seaboard exercised its eminent domain power to extend its line." (Initial Br. at 10.) Those claims are completely without any basis with respect to the properties at issue here.

It is clearly established, and the question presented presumes, that Seaboard's property interest was acquired by means of valid deeds from the Adjacent Landowners' predecessors in interest. And notably, the deeds themselves do not reference any condemnation proceeding. Therefore, much as with the question of voluntary grants, this case does not present the question of whether Florida law might limit the title that a railroad could acquire through the exercise of eminent domain.

C. The railroad's fee interest was not limited by the fact it had already conducted a survey to locate its rail corridor prior to purchasing the properties.

The certified question before this Court asks if the railroad's title is affected by "whether the railroad surveys property, or lays track and begins to operate trains prior to the conveyance of a deed." (Appendix 5.) Those facts have no effect whatsoever on what title the railroad may acquire in the property.

The Railroad Act of 1874 expressly authorized a railroad corporation to enter the lands of any person for the purpose of examining and surveying a future

rail corridor. Fla. Stat. § 2241 (1892). The record does not clearly indicate when Seaboard first surveyed the location of its rail corridor, but it appears to have done so prior to acquiring most or all of the underlying property interest. One of the deeds conveying property to Seaboard in the northern segment of the trail at issue contains a handwritten provision that the land was only to be conveyed "[p]rovided the said railroad is built within five years from date hereof, otherwise this deed becomes null [and] void." (Appendix 81.) This suggests that at the time that the deed granted a property interest to the railroad, a location for the railroad had been identified but the railroad had not yet been built. South of Curry Creek, Seaboard constructed an active rail corridor sometime before 1916 but then moved this portion of its corridor about a quarter-mile to the east in 1926. (Appendix 73.) It appears from the record that as of 1927, the date of the deed by which Seaboard purchased this property, Seaboard was already running trains along this relocated stretch of corridor. (Appendix 74.)

Yet these facts do not alter the interest that Seaboard acquired. As described above, Seaboard did not condemn these properties. And given unambiguous deeds conveying fee simple title on their face, the use of further extrinsic facts to alter their meaning is contrary to Florida law. *Fla. Moss Prods.*, 112 So. at 573. Furthermore, the Adjacent Landowners advance no argument explaining why the exercise of the authority to enter property for the conducting of a survey would

prevent a railroad from later entering into a real estate transaction to purchase that same property. We are aware of no court in Florida that has ever held that the act of surveying land limited the property interest subsequently acquired by the railroad in that land. In *Clark v. Cox*, 85 So. 173, 174 (Fla. 1920), a landowner conveyed a strip of land "in fee simple, forever," to a railroad corporation when the railroad was already operating trains across that strip of land. That such a transfer was legally permissible was never challenged.

In other Trails Act cases elsewhere in the nation, landowners adjacent to the railroad corridor have argued that the act of surveying and locating a rail line somehow limits what a railroad can acquire through a subsequent purchase. Courts have regularly dismissed this argument, holding that a railroad can take fee simple title to land after it has surveyed and located (and in some cases, constructed) its rail lines. *See, e.g., Clark v. CSX Transp. Co.*, 737 N.E. 2d 752 (Ind. Ct. App. 2000) (applying Indiana law); *Old Railroad Bed, LLC v. Marcus*, 95 A. 3d 400 (Vt. 2014) (applying Vermont law); *Rasmuson v. United States*, 109 Fed. Cl. 267, 277 (2013) (applying Iowa law); *Gregory v. United States*, 101 Fed. Cl. 203, 216 (2011) (applying Mississippi law); *Miller v. United States*, 67 Fed. Cl. 542 (2005) (applying Missouri law). The deeds at issue in this case identify a legal, arms-length transaction between parties authorized to buy and sell real estate, and no additional factual circumstances may be introduced to call an otherwise valid

purchase into question absent identifiable ambiguities in the deed. *Whitfield v. Webb*, 131 So. 786, 788 (Fla. 1931).

The Adjacent Landowners also allude to a related argument, once endorsed by the Federal Circuit, that the purchase of property by a railroad always retains an "eminent domain flavor" warranting skepticism in the interpretation of deeds given to a railroad. *Preseault II*, 100 F.3d at 1537. But this case rested exclusively on Vermont law, *id.* at 1536, and the Federal Circuit's holding has now been repudiated by the Supreme Court of Vermont. "To the extent that . . . *Preseault* holds that a location survey automatically converts a subsequent fee-simple conveyance into an easement, we know of no law in Vermont or elsewhere to support such a claim." *Old Railroad Bed*, 95 A.3d at 403.

Likewise, under Florida law, once a deed conveys fee simple title, the fact that the grantee also held eminent domain powers does not give a court cause to look outside the four corners of a deed. For example, in *Holland v. State*, 388 So. 2d 1080 (Fla. Dist. Ct. App. 1980), a landowner executed a warranty deed for a strip of land to the State of Florida for highway purposes, but oil was later discovered beneath the strip. The landowner argued that the deed was ambiguous as to what interest was conveyed. The Court of Appeal disagreed with the landowners' argument that because the State had the option of acquiring the strip of land by eminent domain, parol evidence could be used to impeach the deed by

which the State purchased fee simple title instead. "[B]ecause the State had power to buy and appellants had power to sell (for a negotiated price) and by warranty deed to convey fee simple title to land deemed necessary for road right of way purposes . . . we decline to impeach the parties' 1969 transaction, now that oil has been found, upon a theory that the State could not have shown a necessity for acquisition of subsurface rights if that had appropriately been challenged in eminent domain proceedings." *Id.* at 1081-82. Because the railroad was authorized by statute to purchase property, and did so, the court may not look outside those documents to establish the intention of the parties when the deeds contain no ambiguous terms. This bedrock rule of property law is not changed by the simple fact of the railroad having entered the property (pursuant to its statutory authority to do so) prior to purchasing that property.

IV. Railroads in Florida routinely take fee simple title to land.

The Adjacent Landowners ask that, contrary to unbending Florida law regarding unambiguous deeds, this Court should nevertheless hold that Seaboard received less than a fee simple interest in deeds that would have granted fee simple interest to any non-railroad party. Such a position is tantamount to suggesting that in Florida a railroad could *never* take fee simple title to property. That contention is plainly not Florida law.

As previously discussed, the General Railroad Act of 1874 expressly authorized railroad corporations to buy, sell and hold property without limitation. In 1934, this Court recognized that a railroad could acquire property in fee by purchase, separate from its power to acquire property by condemnation. *Atlantic Coast Line R. Co. v. Duval County*, 154 So. 331 (Fla. 1934). "A railroad right of way in this state is not a mere easement or user for railroad purposes. Like other property it is acquired by purchase or condemnation and vests a fee in the company acquiring it which cannot be divested except as the law provides."[4] *Id*. at 332.

The case law of Florida is replete with examples of railroad corporations holding fee simple title to the land across which their rails run. "Ordinarily, a railroad right of way in Florida is not a mere easement or user for railroad purposes but is a fee vested in the railroad." *Fla. Power Corp. v. McNeely,* 125 So. 2d 311, 316 (Fla. Dist. Ct. App. 1960). In cases in which a railroad conveys its land to a successor or sues for compensation for a taking, the courts have acknowledged fee title held by the railroad. *See, e.g., Seaboard Air Line Ry. Co. v. Bd. of Bond Trustees*, 108 So. 689, 700 (Fla. 1926) ("[T]he lands on which the right of way existed that were conveyed by the state to the railroad company became vested in

[4] The Adjacent Landowners dismiss this statement as *dicta* because in that case the plaintiff admitted that the railroad owned fee simple title to its property. (Initial Br. at 11 n.1.) But that is precisely the point – a railroad *could* hold fee title to the property comprising its rail corridor in Florida.

fee simple absolute in the company, no contrary statutory intent appearing."); *Fla. East Coast Ry. Co. v. Broward County*, 421 So. 2d 681 (Fla. Dist. Ct. App. 1982) (affirming award of compensation for taking of a portion of railroads' fee simple interest in the property along its rail corridor); *Fla. East Coast Ry. Co. v. City of Miami*, 372 So. 2d 152 (Fla. Dist. Ct. App. 1979) (same). *See also Clark*, 85 So. at 174 (railroad purchased a strip of land "in fee simple forever"). These cases further establish that a railroad may acquire fee simple title to property in Florida.

V. Florida should not adopt a centerline presumption for property adjacent to railroads.

The Adjacent Landowners advance one final basis for reducing the title held by Seaboard's successors in interest to something less than fee simple title. The Adjacent Landowners claim that the common-law doctrine of "strips and gores," a presumption historically applied by Florida in the case of streams, lake shores, and some public roads, should be applied to railroad corridors as well. (Initial Br. at 14-17.) The few Florida cases on which the Adjacent Landowners rely do not apply this doctrine in the manner they urge this Court to adopt. Indeed, no Florida court has ever applied the doctrine as the Adjacent Landowners put it. This Court should decline the invitation to adopt a new presumption that would run counter to well over 150 years of settled property law.

A. The strips and gores doctrine creates a presumption only used to interpret ambiguous deeds.

The strips and gores doctrine arose historically because it was "presumed that a party granting land does not intend to retain a narrow strip between the land sold and the boundary line in the absence of express provision to that effect in the deed, especially where the strip is so narrow as to be of no practical use to the grantor." 23 Am. Jur. 2d Deeds § 254, Presumptions – As to Narrow Strips of Land. This doctrine led to the creation of the "centerline presumption," which in some circumstances presumes that a landowner abutting a public road or a stream owns the land to the center of the road or stream. This presumption could aid in the interpretation of ambiguous conveyances, by helping to ascertain the intention of the parties, and is always rebuttable. *Id.* After all, as described above, "when the intention is ascertainable from the face of the instrument or a record, other evidence is not admissible." *Id.* Additionally, "[t]he presumption is inapplicable where the strip is commercially valuable property." *Id.*

The centerline presumption regarding an abutting landowner's ownership is therefore inapplicable in this case for two reasons. First, the certified question accepted by this Court presumes that the deeds at issue are *not* ambiguous. Therefore, no presumptions need be applied because there is no issue of deed interpretation. Second, the strip of land at issue here was previously used as an active rail corridor for at least 80 years. It was therefore by definition

"commercially valuable property," and the strips and gores doctrine does not apply to the interpretation of a deed that conveys it. 23 Am. Jur. 2d Deeds § 254.

B. The centerline presumption historically applied only to some streams and public highways.

Even if this Court had been asked to interpret an ambiguous deed in this case, the centerline presumption would not be an appropriate interpretive tool. It was traditionally applied in the cases of streams and public highways. It assisted when a deed specified boundaries in relationship to a stream or highway which then, over the years, moved from the points where it was located at the time of the deed's execution. That movement might then create a "strip" of land between two deeded properties that was not described in any deed, leading to litigation over its ownership. Such concerns do not arise with the metal rails along a railroad corridor, and the centerline presumption would not serve its purpose if applied in that context. Florida has never applied this presumption to grant ownership of a rail corridor to an adjacent landowner.

The presumption was well described in 1850 by the Vermont Supreme Court. *Buck v. Squiers*, 22 Vt. 484 (1850).

> The following general principles, however, seem now to be pretty well established. That where one owns land adjoining to or abutting a highway, the legal presumption is, in the absence of evidence showing the fact to be otherwise, that such land owner owns to the middle of the highway;--so, also, where one conveys land adjoining to or

> bounded upon a highway, (of which the grantor owns the fee,) the law presumes the party intended to convey to the middle of the highway, and will give the deed such an effect, unless the language used by the grantor is such, as to show a clear and explicit intent to limit the operation of the deed, or grant, to the *side*, or *outer edge*, of the highway.

Id. at 489. As that court made clear, this was only a presumption "in the absence of evidence showing the fact to be otherwise." *Id.* It did not (and still does not) apply when a deed's legal description of the conveyed property explicitly states that the conveyed property ends at the edge of a highway. In *Buck*, the Vermont Supreme Court was asked to extend this doctrine, so that a deed conveying land abutting a highway should also convey property to the center line of that highway, despite the boundaries specified in the deed. *Id.* The Vermont Supreme Court rejected this argument. In reviewing the cases of both the United States and of England at the time, it could find no court that would so hold, and stated that as of 1850 "[t]his doctrine seems now, however, to be very justly and generally exploded." *Id. See, e.g.*, *Jackson v. Hathaway*, 15 Johns. 447 (N.Y. 1818); *Tyler v. Hammond*, 11 Pick. 193 (Mass. 1831); *O'Linda v. Lothrop*, 21 Pick. 292 (Mass. 1838) (all as cited in *Buck*, 22 Vt. at 490).

Nevertheless, some states continued to apply the presumption. The Adjacent Landowners rely on an 1895 decision of the United States Court of Appeals for the Sixth Circuit that applied the presumption when interpreting

deeds that conveyed property located between a road and a river. *Paine v. Consumers' Forwarding & Storage Co.*, 71 F. 626, 629-30 (6th Cir. 1895). In doing so, the court relied on the explanation provided in 1866 by the Supreme Judicial Court of Massachusetts that the centerline presumption would apply to property descriptions bounded by "an object, whether natural or artificial, the name of which is used in ordinary speech, as defining a boundary, and not as describing a title in fee, and which does not, in its description or nature, include the earth as far down as the grantor owns, and yet which has width, as in the case of a way, a river, a ditch, a wall, a fence, a tree, or a stake and stones." *Id.* at 629 (quoting *City of Boston v. Richardson*, 13 Allen, 146, 154 (Mass. 1866)). Thus "a grant of land bordering on a road or river carries the title to the center of the river or road, unless the terms or circumstances of the grant indicate a limitation of its extent by exterior lines." *Paine*, 71 F. at 629 (quoting *Banks v. Ogden*, 69 U.S. 57, 68 (1864)).

However, the centerline presumption does *not* apply when the deed describes a boundary by reference to *other land*, or buildings, and structures, to which title has previously been granted. *Paine*, 71 F. at 629 (quoting *City of Boston*, 13 Allen at 154). Thus it does not apply to a railroad corridor where the

corridor itself has been deeded to another property owner (in this case, the railroad).

Nor is there support for the Adjacent Landowners in a decision of the United States Court of Appeals for the Seventh Circuit, as Judge Posner's opinion explicitly rejects the argument advanced by the Adjacent Landowners that a railroad may *not* purchase fee simple title to land for its railroad corridor. *Penn. Cent. Corp. v. U.S. R.R. Vest. Corp.*, 955 F.2d 1158, 1160 (7th Cir. 1992). After discussing some of the reasons traditionally cited to justify the strips and gores doctrine, the opinion notes that, this doctrine notwithstanding, "there is nothing to prohibit a farmer or other landowner from selling outright to the railroad a strip of land for the railroad's tracks." *Id*. In that case, the Seventh Circuit not only did not apply the strips and gores doctrine, it enjoined application of an Indiana statute attempting to codify that doctrine. *Id.* at 1160, 1164. The Adjacent Landowners are plainly incorrect in describing that case as one where a federal court "explained the doctrine *and applied it* to a railroad's interest in a strip of land used for a railway." (Initial Br. at 15.)

The Adjacent Landowners misplace reliance in their initial brief on three cases for the proposition that Florida "follows the strip-and-gore doctrine as well." (Initial Br. at 15.) These cases make clear that Florida only does so with respect to roads, some waterways, and some subdivision plats. The Adjacent Landowners

identify no case in which a Florida court has applied a centerline presumption to convey half of a railroad corridor to the owner of the neighboring property, and we are aware of none.

Moreover, the quoted language from *Seaboard Air Line Ry v. Southern Inv. Co.*, 44 So. 351, 353 (Fla. 1907), Initial Br. at 15, makes clear that the centerline presumption in Florida is merely a presumption to apply "in the absence of evidence to the contrary." That case involved a subdivision plat, and the court stated that there was no evidence in the record that anyone else held fee title to the land where the street was located. *Id.* at 353. Although a railroad corporation was the defendant, the case did not involve application of the centerline presumption or the strips and gores doctrine to the railroad. Rather, the court held that where the railroad wanted to lay tracks across a street, the railroad was required to compensate the owner of fee title in that street. *Id.* at 355-57. *See also Florida Southern Rwy. v. Brown*, 1 So. 512 (Fla. 1887) (accord).

Southern Inv. Co., in turn, relied on two other Florida cases that applied the centerline presumption to determine title to the center of a public street. *Jacksonville T & K. W. Ry. V. Lockwood*, 15 So. 327 (Fla. 1894); *Rawls v. Tallahassee Hotel Co.*, 31 So. 237 (Fla. 1901). *Lockwood* explains that the presumption applies to public streets "in the absence of proof to the contrary." 15 So. at 329. "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." *Id.* (citing *Dunham v. Williams,* 37 N.Y. 251 (1867); *Stiles v. Curtis*, 4 Day 328, 333 (Conn. 1810)).

In the case of a subdivision plat, this Court has applied the centerline presumption to alleys as well as roads, on the theory that the strips and gores doctrine disfavors "an isolated piece of land" that "could be of no use to anyone except owners of property it touched and persons dealing with them." *Servando Bldg. Co. v. Zimmerman*, 91 So. 2d 289, 293 (Fla. 1956). In a later case, this Court further explained that the doctrine applies in a subdivision plat where the initial grantor clearly owned both the subdivided lots and the streets drawn on the map or plat running along those lots. *United States v. 16.33 Acres of Land in Dade County*, 342 So. 2d 476, 480 (Fla. 1977). This results in an easement for public use of the road, with the adjacent landowners retaining a reversionary interest in title to the center of the road that would return to them "where the highway is lawfully surrendered." *Id.* (quoting *Smith v. Horn*, 70 So. 435, 436 (1915)). But this presumption does not apply in the current case, as the railroad corridor was acquired in fee simple by purchase rather than as an easement that could later expire or be abandoned.

The Adjacent Landowners cite two additional Florida cases for the proposition that this Court "has applied the doctrine in the context of railroads." Initial Br. at 16 (citing *Silver Springs, O. &.G.R. Co. v. Van Ness*, 34 So. 884 (Fla. 1903); *Van Ness v. Royal Phosphate Co.*, 53 So. 381 (Fla. 1910)). But neither of these cases applies the strips and gores doctrine *at all*. In *Silver Springs*, a landowner conveyed a strip of land to a railroad corporation by deed, and the deed contained a covenant that the railroad corporation must, with 60 days' written notice, move its tracks from that land so that the grantor could mine the valuable phosphate deposits located beneath the right-of-way. *Id.* The issue was not whether the railroad could acquire fee simple title, but whether the grantor could seek damages when the railroad failed to comply with the covenant in the deed. In *Royal Phosphate Co.*, the mining company bought land that already had on it a functioning railroad, which was operating pursuant to a deed from the same grantor executed some years earlier. The question in that case was whether the existence and continued operation of the railroad was a breach of the warranty of title in the deed conveying that same land to the mining company. This Court held that it was not, and that the existence of a railroad or public highway on a piece of property was something a purchaser could be expected to notice and incorporate into the price that purchaser is willing to pay. 53 So. at 383-84. But again, the case says

nothing about the strips and gores doctrine or whether a railroad may take fee simple title to property in Florida.

VI. Other public policies and judicial doctrines favor the Appellees in this case.

Adopting a new rule ceding ownership of railroad corridors in Florida to the neighboring landowners would contravene other important state policies underlying current property law in Florida. These policies are best protected by recognizing the railroads' fee ownership of its land in this case.

First, as the Florida Real Property, Probate and Trust Law Section of the Florida Bar explains in its brief, the law in Florida strongly favors certainty in real estate transactions. *See* Br. of *Amicus* at 9-10. Thus, for example, deeds must be conveyed in writing and executed with certain formalities. *Id.* (citing Fla. Stat. § 689.01 (2014)). The importance of certainty has been codified by the State in the Florida Marketable Record Title Act, Fla. Stat. § 712 (2014). This statute provides that "[a]ny person having the legal capacity to own land in this state, who . . . has been vested with any estate in land of record for 30 years or more, shall have a marketable record title to such estate in said land, which shall be free and clear of all claims" subject to certain exceptions not applicable in this case. Fla. Stat. § 712.02 (2014). "The chief purpose of the Act is to extinguish ancient defects and stale claims against the title to real property." *Florida Real Property Title*

Examination and Insurance Manual, "Marketable Record Title Act and Uniform Title Standards," Florida Bar § 2.2 (7th ed. 2012). With some exceptions, "any claim or interest, vested or contingent, present or future, is cut off unless the claimant preserves the claim by filing a notice within a 30-year period." *Id.* Thus, in Florida, the importance of certainty and the settled expectations of landowners is paramount, and challenges to those expectations must be brought within thirty years or else they are foreclosed by statute. Fla. Stat. § 712.02 (2014).

"[P]reserving stability and settled expectations in real property transactions and title ownership" is further ensured by the judicial doctrine that a private party may not challenge a corporation's acquisition of title to property as *ultra vires*. *Old Railroad Bed, LLC v. Marcus*, 95 A. 3d 400, 407-08 (Vt. 2014). *Old Railroad Bed* presented a case very analogous to that now presented here – after a party acquired a former railroad corridor for the purposes of building a recreational trail, the neighboring landowners claimed a reversionary interest in the railroad corridor and sued for ejectment. *Id.* at 401-02. They argued that a railroad acquiring property could only receive an easement interest, rather than fee simple title to the land. *Id.* at 402-03. The Vermont Supreme Court held that the neighboring landowners lacked standing to challenge the nature of the original conveyances to the railroad corporation. *Id.* That challenge could only be brought by "the state, not by subsequent grantees or strangers to the sale." *Id.* at 406 (citing 7A C. Jones,

Fletcher Cyclopedia of the Law of Private Corporations § 3500 at 94-95 (2006); 5 S. Thompson, Commentaries on the Law of Private Corporations §§ 5795, 5797 at 4489-91 (1894)). And this principle, espoused by the United States Supreme Court in *Kerfoot v. Farmers' & Merchants' Bank*, 218 U.S. 281, 286 (1910), has been followed by this Court as well. *Pembroke v. Peninsular Terminal Co.*, 146 So. 249, 258-59 (Fla. 1933). While we do not press a standing defense in the context of this certified question of state law, it must be recognized that subsequent grantees or strangers to the sale of land to a railroad are generally precluded from challenging that conveyance.

That doctrine dovetails nicely with the general principle of Florida property law that protects the rights of peaceful possessors when landownership is indeterminate. *See, e.g.*, *Goffin v. McCall*, 108 So. 556, 558-59 (Fla. 1926); *Floro v. Parker*, 205 So. 2d 363, 366-68 (Fla. Dist. Ct. App. 1967). Each of these judicial doctrines demonstrates the importance of not suddenly upending the title that affected parties reasonably have long believed was held to property, which in this case is anywhere from 70 to over 100 years. These policies advise against the introduction of a centerline presumption or adoption of a new rule limiting the fee title that was acquired by railroads in Florida. Such new rules could have broad, unintended consequences throughout real estate markets in the state and cast a shadow over the title currently held by innumerable parties that have acquired

lands once owned or used by a railroad corporation. The Adjacent Landowners in this case have given this Court no reason to alter the long-established legal framework under which railroads could own fee simple title to property, and the law provides no support for their contrary position.

CONCLUSION

For the foregoing reasons, this Court should answer the certified question of the Federal Circuit in the negative, holding that Florida law does not authorize a holding that fee simple title can mean anything less as applied to the title to land acquired by railroads.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that this **Answering Brief of Appellee United States** was served by means of the Florida Supreme Court's e-portal system on all counsel of record in this matter, including Mark F. "Thor" Hearne II, thor@arentfox.com, who is lead counsel for the Appellants.

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CERTIFICATE OF FONT COMPLIANCE

I hereby certify pursuant to Florida R. App. P. 9.210(a)(2) that this **Answering Brief of Appellee United States** complies with this Court's rules for briefs and was prepared in 14-point Times New Roman font.

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