IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

WILLIAM AND BROOKE GRAMES,	)	
	)	
CRAIG B. AND CYNTHIA D. DICKIE,	)	
	)	
JUDY H. JOHNSON,	)	
	)	
JAMES AND DIANE KOSTAN,	)	
	)	
and	)	
	)	
PATRICK J. AND LISA A. LOYET,	)	
	)	
Plaintiffs,	)	No.
	)	
v.	)	
	)	
SARASOTA COUNTY, FLORIDA,	)	
	)	
ANN D. BEGEMAN,	)	
	)	
PATRICK J. FUCHS,	)	
	)	
MARTIN J. OBERMAN,	)	
	)	
and	)	
	)	
SURFACE TRANSPORTATION BOARD,	)	
	)	
Defendants.	)	

MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AGAINST SARASOTA COUNTY, FLORIDA AND MEMORANDUM IN SUPPORT

SUMMARY

In the midst of a global pandemic, Sarasota County has demanded that almost three hundred landowners demolish, remove or tear down existing lawfully constructed structures such as fences, swimming pools, sheds, warehouses, and other improvements from their private property. Sarasota County – without any legal authority – contends these owners' pools, fences, sheds, and other improvements "encroach" on the rail-trail corridor Sarasota County plans to build as an extension of its Legacy Trail. Many of these structures have been in place for decades. Sarasota County now claims it "owns" the rail-trail corridor by reason of a grant from the CSXT and Seminole Gulf Railroad and the Trust for Public Land. But the railroads had no interest in this property that they could sell to Sarasota County.

Yet, within the last two weeks, Sarasota County has sent letters demanding these owners demolish existing improvements and has trespassed upon these owners' land and attached signs demanding that the existing improvements must be removed by March 30 or Sarasota County will demolish the structures and bill the owner for the cost of doing so. Sarasota County has imposed this arbitrary deadline upon these landowners at a time when these landowners' lives have been turned upside down by the COVID-19 pandemic.

We do not take lightly the need to ask this Court to order emergency relief at a time when the nation is itself confronting a huge trial of its own. But because of the threats from Sarasota County, the landowners have no choice other than to ask this Court to intervene. For more than two months the landowners and their counsel have attempted to obtain information from Sarasota County about the nature and extent of the legal interest Sarasota County claims and the basis for Sarasota County's claim. Sarasota County has not provided this information.

Sarasota County has sent letters demanding that almost three hundred landowners remove existing improvements from their land. Sarasota County has not provided any legal authority allowing the County to demand that these owners remove existing improvements or to threaten reprisals against the owners if they do not remove the alleged "encroachments." These owners have brought an action under, among other things, the federal Quiet Title Act, 28 U.S.C. 2409a, and Declaratory Judgment Act, 28 U.S.C. 2201.

We ask this Court to issue a temporary restraining order and preliminary injunction directing Sarasota County, Florida to not demolish or remove any existing structure or improvement from any owner's property nor to trespass upon these owners' private property and to not impose any fine or penalty upon any owner until this Court has resolved the outstanding legal and title issues.

MOTION

This lawsuit arises from a rails-to-trails taking in which Sarasota County, Florida landowners ask this Court to, among other things, enjoin Sarasota County from removing or demolishing these owners' private property until the legitimacy of Sarasota County's and the federal government's taking is established.

This is an urgent matter. Sarasota County has recently placed signs on landowners' property improvements—such as fences, pools and sheds—stating that the landowners must remove these existing improvements before March 30 or Sarasota County will demolish and remove the improvements. If landowners do not remove the improvements, Sarasota County said that its contractors will do so themselves.

The landowners ask this Court to enjoin Sarasota County from ordering, threatening or physically removing or destroying any improvements and structures that supposedly "encroach" upon the easement established by the federal Surface Transportation Board (Board). This injunction should remain until this Court enters final judgment determining the parties' respective right to use and possess the land subject to the Board's order invoking the federal Trails Act.

Immediate and preliminary injunctive relief should be granted because there is a substantial likelihood these landowners will prevail on the merits.

If immediate and preliminary injunctive relief is not granted, these Florida landowners will suffer irreparable harm. They have no adequate remedy at law.

The threatened injury to the landowners outweighs any potential harm to Sarasota County.

The injunction these landowners request (individually and on behalf of the putative class members) is not adverse to the public interest.

A memorandum of law in support of this motion is filed herewith.

RELIEF REQUESTED

We ask this Court to enter an order temporary restraining order and preliminary injunction ordering as follows:

1. Sarasota County shall not order, threaten or effect the removal or demolition of any shed, warehouse, home, swimming pool, septic field, fence or other existing improvement or structure, of any Plaintiff or putative class member, located

within the land subject to the easement created by the Surface Transportation Board.

2. Sarasota County shall not issue any fine or other penalty against Plaintiffs and the putative class members due to having alleged encroachments within the land subject to the easement created by the Surface Transportation Board.
3. Sarasota County shall not enter on to the private property of Plaintiffs and the putative class members with respect to the alleged encroachments within the land subject to the easement created by the Surface Transportation Board.

Plaintiffs also ask for such other and further relief as the Court deems proper.

MEMORANDUM IN SUPPORT

BACKGROUND

This lawsuit arises from a rails-to-trails taking in which Sarasota County, Florida landowners ask this Court to, among other things, enjoin Sarasota County from following through with its threats to remove or demolish Plaintiffs' private property improvements (pools, fences, etc.) in order to build a public recreational trail. Plaintiffs ask that this injunction stay in place until Sarasota County's threats are determined as lawful.

This motion is directed to Defendant Sarasota County, a county in the State of Florida.

In 2019, the federal government took Plaintiffs' and the putative class members' land, in the form of an easement, for the northern extension of the Legacy Trail between Sarasota and Venice. The Legacy Trail is a public recreational trail and a rail-trail corridor easement the federal government created under the National Trails System Act.[1]

In the early 1900s, Plaintiffs' predecessors-in-title to their land granted Seaboard Air Line Railway a right-of-way easement allowing the railroad to use a strip of their land to build and operate a railway line between Sarasota and Venice. Seaboard Air Line Railway went bankrupt, and the railway ultimately became the operation of CSX Transportation (CSXT) which leased a segment of the original railroad right-of-way to Seminole Gulf Railway (Seminole Gulf).

[1] The National Trails System Act of 1968 (as amended 1983), codified at 16 U.S.C. 1241, *et seq*. (hereinafter the Trails Act).

By 2002, however, the railroads on this land were inactive. Seventeen years later, in 2019, CSXT and Seminole Gulf petitioned the federal Surface Transportation Board (the Board) for authority to abandon the railroad right-of-way, and the Board granted the petition.

Under Florida law and the terms of the original railroad easement, the railroad right-of-way easement terminated due to the railroad no longer operating, and the present-day landowners held unencumbered title to their land.[2]

But the federal government wanted to reserve the possibility of using the right-of-way for transportation in the future, and one way it can affect this reservation is to simply "take" the land in the form of a new easement and let a third party operate a trail until the federal government decides to utilize the right-of-way for transportation. This is called "railbanking."[3]

Indeed, in May of 2019 the Board issued an order invoking the Trails Act and taking Plaintiffs' property in/on the abandoned railway for railbanking purposes. Plaintiffs have not

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[2] Chief Justice Roberts explained that when a railroad no longer uses its right-of-way, the owner of the fee estate regains unencumbered title and possession of their land:

> 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." "Unlike most possessory estates, easements ... may be unilaterally terminated by abandonment, leaving the servient owner with a possessory estate unencumbered by the servitude." 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.

Marvin M. Brandt Rev. Tr. v. United States, 572 U.S. at 104-05 (2014) (quoting Restatement (Third) of Property).

[3] *See* 16 U.S.C. 1247(d), "Interim Use of Railroad Rights-of-Way."

been paid for this taking, although they have filed claims for compensation with the Court of Federal Claims under the Tucker Act.[4]

Without any apparent paperwork from or agreement with the Board (Plaintiffs having requested such documentation to no avail), Sarasota County has taken on the role of trail developer, proposing to use the old rail right-of-way on Plaintiffs' property as an extension of its "Legacy Trail." Construction on this portion of the trail has either started or is about to start soon.

At the crux of this case, Sarasota County has now notified Plaintiffs and the rest of the putative class via certified mail letters and door hangers that they have "encroachments" (such as pools, fences, sheds and other improvements) that are located within the Board's 100-foot-wide easement, regardless of whether the "encroachments" might be in the path of the trail they plan to build. Sarasota County has demanded that Plaintiffs and putative class members remove these improvements at their own cost.

Sarasota County has not told the owners the authority it has to make these demands, and the Plaintiffs are completely left in the dark as to how the County can rely on a newly-held, federal easement to demand that they remove property improvements that have been in place for many years and, in some cases, decades. Plaintiffs are legitimately worried that construction crews are going to come and damage Plaintiffs' property under color of law.

Plaintiffs need the guidance and protection of this Court. Neither the federal government nor Sarasota County has paid these Florida landowners or even offered to pay

[4] The Tucker Act does not provide jurisdiction for the Court of Federal Claims to provide declaratory or injunctive relief, nor does it provide jurisdiction over Sarasota County's actions.

these landowners. Plaintiffs ask that this Court enjoin Sarasota County from requiring landowners to remove or demolish existing improvements on their land and enjoin Sarasota County from removing or demolishing any improvement on any owner's land itself until it is finally determined by this Court what if any authority Sarasota County has to do what it is doing and threatening to do.

Without such an injunction, the named landowners and the putative class members will suffer irreparable harm and their rights under the United States Constitution and the Florida Constitution will be violated.

A. The history of the railroad right-of-way easement between Sarasota and Venice, Florida.

In November 1910 Adrian Honore, the predecessor-in-interest to Plaintiffs, granted Seaboard Air Line Railway (Seaboard) a right-of-way easement across his land allowing Seaboard to build and operate a railway line from Sarasota to Venice. *See* **Exhibit 1.** Honore's easement provided, "if at any time [following the construction of the railroad] the said [railroad] shall abandon said land for railroad purposes [,] the above described pieces and parcels of land shall ipso facto revert to and again become the property of the undersigned, his heirs, administrators and assigns." *Id*.

B. Seaboard's successor railroads abandoned the railroad right-of-way and the easement terminated with the present-day owners holding unencumbered ownership of their land.

Seaboard went through bankruptcy, and Seaboard's assets (including its interest in the Sarasota-to-Venice right-of-way easement) wound up in the hands of successor railroads. The right-of-way easement Adrian Honore granted Seaboard was ultimately transferred to CSX

Transportation, Inc. (CSXT) which, in turn, leased the railway line to Seminole Gulf Railway, L.P. (Seminole Gulf).

By 2002, CSXT and Seminole Gulf no longer operated a railway line over this land. In March 2019, Seminole Gulf requested that the Surface Transportation Board (Board) authorize the railroad to abandon a 7.68-mile segment of rail line between milepost 890.29 on the north side of Ashton Road and milepost SW 884.70, and between milepost 930.30 and milepost 928.21 on the north side of State Highway 780 (Fruitville Road). **Exhibit 2,** Abandonment Petition, STB Docket No. AB 400 (Sub No. 7X) (March 8, 2019). Seminole Gulf told the Board that "No local or overhead traffic has moved over the Subject Line since prior to 2007, a period of more than ten years." *See* **Exhibit 3,** Notice of Exempt Abandonment, STB Docket No. AB 400 (Sub No. 7X) (March 8, 2019), p. 3.

After Seminole Gulf told the Board that it (Seminole Gulf and CSXT) wanted to abandon the railway line, Sarasota County asked the Board to invoke section 8(d) of the Trails Act and authorize Seminole Gulf and CSXT to sell and transfer the otherwise abandoned right-of-way to Sarasota County for the northern extension of the Legacy Trail. **Exhibit 4** (letter of April 22, 2019, requesting interim trail use) (STB Docket No. AB 400 (Sub No. 7X)). It is not clear why Sarasota County thought Seminole Gulf and CSXT had the right to convey the abandoned railway, as the terms of the 1910 railroad easement clearly stated that the easement extinguished when the railway was no longer in use. **Exhibit 1**, Honore easement; **Exhibit 3,** Notice of Exempt Abandonment (no railway traffic since before 2007).[5]

[5] *See also East Alabama Ry. Co. v. Doe,* 114 U.S. 340, 354 (1885) ("The grant to the 'assigns' of the [railroad] corporation cannot be construed as extending to any assigns except one who should be the assignee of its franchise to establish and run a railroad.").

In May of 2019 the Board issued an order, called a Notice of Interim Trail Use or Abandonment (NITU), invoking section 8(d) of the Trails Act. **Exhibit 5.** The Board's order provided that "[u]se of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service." *Id.* at 2. This created a new easement on the landowners' property for trail purposes.

By reason of the Board invoking section 8(d) of the Trails Act, the Board retains jurisdiction over the new federal rail-trail corridor but has permitted Sarasota County to construct and operate a public recreational trail within the easement. In 2019, Sarasota County adopted a $65 million bond issue to fund the cost of building the recreational trails.[6]

C. This is just one segment of the right-of-way that has been abandoned and converted to a trail.

This same Seaboard railroad right-of-way was the subject of prior Trails Act litigation involving the southern section of the Legacy Trail. *See Rogers v. United States,* 90 Fed. Cl. 418 (2009); *Childers v. United States,* 116 Fed. Cl. 486, 497 (2014); *McCann Holdings v. United States,* 111 Fed. Cl. 608, 614 (2013). The *Rogers* litigation involved an earlier April 2004 order of the Board invoking section 8(d) to take a twelve and one-half mile-long segment of the Sarasota-to-Venice Legacy Trail corridor south of the segment that is the subject of this litigation.

[6] Nicole Rodriguez, Sarasota Herald-Tribune, "Sarasota County to soon begin borrowing money for Legacy Trail extension," available at https://www.heraldtribune.com/news/20190129/sarasota-county-to-soon-begin-borrowing-money-for-legacy-trail-extension (last visited March 4, 2020)

The first segment of the Legacy Trail (the southern segment) runs from Venice to the Culverhouse Nature Park just south of Sawyer Loop Road. The owners of the land taken for this southern segment sued the federal government and were paid in the *Rogers, McCann* and *Childers* litigation presided over by Judge Williams of the Court of Federal Claims. The second segment extends north of the Culverhouse Park to Ashton Road. The owners of land taken for the second segment of Legacy Trail are parties in *Cheshire Hunt v. United States,* 1:18-cv-00111-TCW, pending before Judge Wheeler of the Court of Federal Claims. The land taken for the current northern extension of the Legacy Trail – which is the subject of this litigation – runs about six miles north of Ashton Road to Fruitville Road. The owners of land taken for this northern extension include owners in *4023 Sawyer Road I, LLC v. United States*, 1:19-cv-00757-TCW, pending before Judge Wheeler in the Court of Federal Claims.

D. Sarasota County is demanding these owners remove their existing improvements from their private property.

In apparent reliance upon the Board's order invoking section 8(d) of the federal Trails Act, Sarasota County has issued demands that Plaintiffs and the putative class remove any "encroachments" from the land subject to the Board's order. **Exhibit 6**, Form Letters from Hayley A. Baldinelli and Sarasota County door hangers. Sarasota County entered these owners' land and placed a notice on each owner's front door demanding the owner remove an existing improvement from the owner's property. *Id*. The first round of door hangers stated that improvements must be removed by February 7, 2020; the second round of door hangers state that improvements must be removed by March 16, 2020. *Id*.

The "encroachments" Sarasota County demanded Plaintiffs and the putative class remove from their land include lawfully-permitted in-ground swimming pools, fences, sheds,

septic drain fields, and other improvements to Plaintiffs' property. *See* Sarasota County website, "Legacy Trail Encroachments," https://www.scgov.net/government/parks-recreation-and-natural-resources/find-a-park/specialty-parks/the-legacy-trail/legacy-trail-encroachments (last visited March 4, 2020).

Sarasota County states that "[t]here are 236 total encroachments with some properties having multiple encroachments. Of the 236 total encroachments, there are 89 located within the City of Sarasota." *Id*. Further, "[e]ncroachments must be removed so construction on this portion of the Legacy Trail may commence in mid-2020." *Id*. Most of these owners had received building permits from Sarasota County for those "encroachments" Sarasota County now demands that they remove.

The landowners have requested that Sarasota County provide the details of its demand to Plaintiffs, any documents supporting the demand, any authority Sarasota County has for the demand, and the names of the owners to whom Sarasota County has sent demands to remove existing improvements. **Exhibit 7**, Letter to Sarasota County Commission. Sarasota County has not yet complied with this request as it is required to do under Florida's Sunshine Act law, Fla. Stat. secs. 286.011 to 286.012 (1991); Fla. Stat. secs. 119.01 to 119.15 (1995), or provided any reasonable rationale for its actions.

Counsel for Plaintiffs has also sought explanations and common ground from the U.S. Assistant Attorney General (**Exhibit 8,** Letter), Senator Rick Scott (**Exhibit 9,** Letter), Senator Marco Rubio (**Exhibit 10,** Letter), Representative Vern Buchanan (**Exhibit 11,** Letter), and Representative Greg Steube (**Exhibits 11 and 12,** Letters).

In meetings with Sarasota County, its agents have offered two rationalizations for its authority to remove impediments from Plaintiffs' land. First, Sarasota County has stated that a deed from the railroad (Sarasota County apparently paid the railroad for the property) contains a condition that improvements on the right-of-way on Plaintiffs' land be removed. As stated above, however, the railroad had no rights to the land, even in the form of an easement, once it stopped operating a railroad in 2007 or before. *See* **Exhibits 1 and 3**.

Second, Sarasota County stated that it passed an ordinance that requires Sarasota County to demand owners remove all existing improvements from the entire one-hundred-foot-wide corridor. It is unclear if Sarasota County is attempting to take something more than what the Board took—but certainly Sarasota County has not condemned any of the affected property or utilized public domain, as would be the proper procedure (as opposed to passing an ordinance) to effect a taking.

ARGUMENT

To obtain a temporary restraining order or preliminary injunction, a movant must show: (1) a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the relief is not granted; (3) that the threatened injury outweighs the harm the relief would inflict on the non-movant; and (4) that entry of the relief would serve the public interest. *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1225-26 (11th Cir. 2005).

1. The landowners will likely succeed on the merits on their claim.

A. The federal government took the owners' private property.

In 1983 Congress amended the National Trails System Act of 1968 to add section 8(d), codified as 16 U.S.C. 1247(d). This provision provides that, after a railroad abandons a railroad right-of-way, the federal government (originally the Interstate Commerce Commission and now its successor agency the Surface Transportation Board) can issue an order creating a new easement across the owner's land.[7] The new federally-created easement allows a non-railroad trail-user (such as Sarasota County) to use the land for a public recreational trail and preserves the corridor under the federal government's jurisdiction for a possible future railroad line.

[7] See *Preseault v. Interstate Commerce Comm'n,* 494 U.S. 1 (1990) (*Preseault I*); *Preseault v. United States*, 100 F.3d 1525, 1533 (Fed. Cir. 1996) (*Preseault II*); *Toews v. United States,* 376 F.3d 1371 (Fed. Cir. 2004) and *Trevarton v. South Dakota,* 817 F.3d 1081, 1087 (8th Cir. 2016) (holding the Board's invocation of section 8(d) imposes a new and different easement upon the owner's land); *see also Citizens Against Rails-to-Trails v. Surface Transp. Bd*., 267 F.3d 1144, 1149 (D.C. Cir. 2001) and *Nat'l Wildlife Found. v. Interstate Commerce Comm'n*, 850 F.2d 694, 697-98 (D.C. Cir. 1988) (explaining that Congress intended to extinguish owners' state-law property rights).

On May 14, 2019, when it invoked Section 8(d) of the Trails Act, the federal government, through the Board, took private property by encumbering Plaintiffs' land with an easement for public recreation and so-called railbanking. The federal government took these Florida owners' property and the Just Compensation Clause of the Fifth Amendment of the U.S. Constitution requires that the federal government pay these owners for what the government took.

It should be noted that the railroad company that abandoned the railroad had no interest in the property in 2019; it lost any easement or other interest it had in the right-of-way years before. The 1910 easement from Plaintiffs' predecessor-in-interest provided, "if at any time [following the construction of the railroad] the said [railroad] shall abandon said land for railroad purposes [,] the above described pieces and parcels of land shall ipso facto revert to and again become the property of the undersigned, his heirs, administrators and assigns."[8] **Exhibit 1.** In 2019, Seminole Gulf admitted that "No local or overhead traffic has moved over the Subject Line since prior to 2007, a period of more than ten years." **Exhibit 3,** Notice of Exempt Abandonment, STB Docket No. AB 400 (Sub No. 7X) (March 8, 2019), p. 3. Chief Justice Roberts explained in *Brandt Trust v. United States*, 572 U.S. 93, 105 (2014) that "[w]hen the [railroad] abandoned the right of way…, the easement … terminated. [The owner's] land become[s] unburdened of the easement, conferring on him the same full rights over the [right-of-way land] as he enjoy[s] over the rest of [his land]."

[8] *See also Rogers v. United States*, 90 Fed. Cl. 418, 430-31 (2009) ("the Honore conveyance placed an explicit limitation on the use of the property interest conveyed and contained an unequivocal stipulation that title would revert to the grantor upon discontinuance of the use of the parcel for its intended railroad purpose.").

The railroad's rights to the property—or lack thereof as it stands—is pertinent because Sarasota County has indicated that a deed from the railroad (Sarasota County apparently paid the railroad for the property) contains a condition that improvements on the right-of-way on Plaintiffs' land be removed. As stated above, however, Seminole Gulf and CSXT had no right to transfer or sell *any* interest in these owners' land to Sarasota County. *See East Alabama Ry. Co. v. Doe,* 114 U.S. 340, 354 (1885) ("The grant to the 'assigns' of the [railroad] corporation cannot be construed as extending to any assigns except one who should be the assignee of its franchise to establish and run a railroad."). The railroads did not own anything so they could not sell anything to Sarasota County or anyone else, and they likewise could not impose conditions on Plaintiffs' property.

The federal government's taking in 2019 was thus a new one,[9] and its liability to Plaintiffs was established when the Board issued its order invoking section 8(d) of the Trails Act on May 14, 2019.[10] *Caldwell v. United States*, 391 F.3d 1226 (Fed. Cir. 2004); *Barclay v. United States*, 443 F.3d 1368 (2006); *Illig v. United States,* 274 Fed. Appx. 883 (2008), *cert. denied* 557 U.S. 935 (2009); *see also* Solicitor General Kagan's Brief for the United States in Opposition to Petition of Writ of Certiorari, *Illig v. United States,* 2009 WL 1526939 ("When the NITU is issued, all the events have occurred that entitle the claimant to institute an action based on federal-law interference with reversionary interests, and any takings claim premised

[9] *Rogers*, 90 Fed. Cl. At 432 ("[T]he terms of the Honore easement were limited to use for railroad purposes and did not contemplate use for public trails. Thus, the governmental action converting the railroad right-of-way to a public trail right-of-way imposed *a new easement* on the landowners and effected a Fifth Amendment taking of their property.") (emphasis added).

[10] The Board's order is a Notice of Interim Trail Use or Abandonment (NITU).

on such interference therefore accrues on that date."). In *Barclay*, Judge Dyk of the Federal Circuit wrote:

> The taking, if any, when a railroad right-of-way is converted to interim trail use under the Trails Act occurs when state law reversionary property interests that would otherwise vest in the adjacent landowners are blocked from so vesting. Abandonment is suspended and the reversionary interest is blocked "when the railroad and trail operator communicate to the STB their intention to negotiate a trail use agreement and the agency issues an NITU that operates to preclude abandonment under section 8(d)" of the Trails Act. We concluded that "[t]he issuance of the NITU is the only government action in the railbanking process that operates to prevent abandonment of the corridor and to preclude the vesting of state law reversionary interests in the right of way. Thus, a Trails Act taking begins and a takings claim accrues, if at all, on issuance of the NITU.
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> *Barclay*, 443 F.3d at 1373.

To date, no government has paid these owners anything, nor offered to pay them anything, for the taking. The landowners have filed a related lawsuit for compensation against the United States; that Fifth Amendment Takings Clause claim is brought under the Tucker Act (28 U.S.C. 1491) and is pending in the United States Court of Federal Claims. *4023 Sawyer Road I, LLC v. United States*, 1:19-cv-00757-TCW.

Plaintiffs' compensation claims in *4023 Sawyer Road* are on solid footing, as previous Tucker Act cases regarding other portions of the Legacy Trail have led to payments from the Federal Government. The first segment of the Legacy Trail (the southern segment) runs from Venice to the Culverhouse Nature Park just south of Sawyer Loop Road. The owners of the land taken for this southern segment sued the federal government and were paid in *Rogers v. United States,* 90 Fed. Cl. 418 (2009), *Childers v. United States,* 116 Fed. Cl. 486, 497 (2014), and *McCann Holdings v. United States,* 111 Fed. Cl. 608, 614 (2013), litigation presided over by Judge Williams of the Court of Federal Claims. The second segment extends north of the

Culverhouse Park to Ashton Road. The owners of land taken for the second segment of Legacy Trail are parties in *Cheshire Hunt v. United States,* 1:18-cv-00111-TCW, pending before Judge Wheeler of the Court of Federal Claims.

The Tucker Act, however, does not provide jurisdiction for the Court of Federal Claims to provide declaratory or injunctive relief, nor does that court have jurisdiction over Sarasota County and its actions in this case.

B. Sarasota County is asserting an interest in these owners' private property that is greater than the interest the Surface transportation Board granted Sarasota County.

Following the Board's invocation of section 8(d) on the federal Trails Act, Sarasota County, through a series of transactions that Plaintiffs are not privy to despite requests, became responsible for preserving the federal government's easement for potential use as a future rail line. The preservation comes in the form of a recreational trail maintained by Sarasota County.

As a result of this arrangement, Sarasota County now claims it is the "owner" of Plaintiffs' land. In order to start construction on its new segment of the Legacy Trail, Sarasota County has ordered the Plaintiffs and the putative class to remove all structures and improvements, including in-ground swimming pools, fences, sheds, septic systems and other lawful improvements, that are within the 100-foot-wide right of way that the federal government took. **Exhibit 6**, Form Letters from Hayley A. Baldinelli and Sarasota County door hangers. Sarasota County entered these owners' land and placed a notice on each owner's front door demanding the owner remove an existing improvement from the owner's property. *Id.* The first round of door hangers stated that improvements must be removed by February 7, 2020; the second round of door hangers state that improvements must be removed by March

16, 2020. *Id*. These improvements pre-existed the federal government's imposition of the new rail-trail corridor easement, and many of the improvements were done by permit from Sarasota County.

Nothing stated above is particularly in dispute: (a) the federal government took Plaintiffs' property when it invoked the federal Trails Act and imposed a new and different easement across their land; (b) the Fifth Amendment to the Constitution compels the federal government to justly compensate each landowner for that property; (c) what the Surface Transportation Board took was an easement, not title to the fee estate; and (d) Sarasota County now plans to use the easement to extend the Legacy Trail and has demanded that property improvements along the way, in the entire 100-foot-wide easement, be removed at owners' cost.

The controversy regards the scope of the new rail-trail easement the federal government established across Plaintiffs' land and apparently assigned to Sarasota County. Plaintiffs face two distinct positions which demonstrate why, without further guidance from this Court, Plaintiffs' compensation suit in the Court of Federal Claims will not make them whole. On the one hand, the federal government in that matter wishes to minimize its compensation to Plaintiffs by emphasizing that Plaintiffs still have rights to the taken land, as it is only an easement. On the other hand, Sarasota County argues that it *owns* the property now, and it can either force landowners to remove improvements from the right-of-way or remove the improvements itself.

To Plaintiffs, it appears that Sarasota County is exercising powers over and above those authorized in the federal easement. This is especially apparent because Sarasota County states

that it passed an ordinance that requires Sarasota County to demand owners remove all existing improvements from the entire one-hundred-foot-wide corridor. Indeed, Sarasota County could properly make this expansion of federal rights official: the County possesses the extraordinary power of eminent domain and may forcibly take private property from landowners. But to exercise this power, Sarasota County must comply with the Florida constitution and statutes. Art. X, § 6(a), Fla. Const.; Chapters 73 and 74, Florida Statutes. In this case Sarasota County has not exercised any eminent domain authority over these owners, and the ordinance looks suspiciously like an attempt to avoid going through proper procedures.

If Sarasota County is ordering these removals and demolitions pursuant to federal authority derived from the Board's invocation of section 8(d) of the federal Trails Act, it should say so and demonstrate to this Court the source of that federal authority. Nothing in the Trails Act states that pre-existing improvements such as pools can simply be removed at an owner's expense due to the new easement. Sarasota County should have to prove why the easement gives the County the right to cause landowners such expense and damage.

If Sarasota County is ordering the removal and demolition pursuant to its power of eminent domain under the laws of the State of Florida, it should say so and demonstrate to this Court the source and content of that authority, and Sarasota County should comply with the Florida Constitution governing the condemnation of private property as set forth in Fla. Const. Art. X, § 6, as implemented by Chapters 73 and 74 of the Florida Statutes.

In fact, Sarasota County possesses no legal authority to order the removal and demolition of these improvements from these owners' land. Unless and until it is affirmatively declared that Sarasota County has such authority, this Court should enjoin Sarasota County

from taking any action to remove or demolish any existing improvement on any of these owners' private property, or making related threats and demands.

Because of this dispute, this Court should "declare the rights and other legal relations" (28 U.S.C. 2201) of the landowners, Sarasota County and the Surface Transportation Board regarding these owners' private property. This declaration should specify the physical dimensions of the rail-trail right-of-way easement established under the federal Trails Act and Sarasota County's right to use this land.

Until that crucial question is answered, Plaintiffs request that the Court enjoin Sarasota County from demanding that Plaintiffs remove any improvements from the new easement and further from removing the improvements itself.

2. An injunction is necessary to avoid irreparable harm, and a temporary restraining order and preliminary injunction would preserve the status quo—Plaintiffs' real property improvements remaining undisturbed until a decision on the merits.

The fundamental purpose of a temporary restraining order or preliminary injunction is to maintain the status quo until a final decision on the matter can be reached, and to ensure that the relevant circumstances are not so changed such that the ultimate decision on the merits would be rendered meaningless. *See, e.g., United States v. DBB, Inc*., 180 F.3d 1277, 1282 (11th Cir. 1999); *Warner Bros. Inc. v. Dae Rim Trading, Inc.*, 877 F.2d 1120, 1124-25 (2d Cir. 1989); *see also Fernandez-Roque v. Smith*, 671 F.2d 426, 429 (11th Cir. 1982) ("One inherent characteristic of a temporary restraining order is that it has the effect of merely preserving the status quo rather than granting most or all of the substantive relief requested in the complaint.").

A temporary restraining order would merely preserve the status quo—landowners'

property improvements remaining in place as they have for years and perhaps decades—until a more complete decision on the merits can be reached.

Unconstitutional state action alone is enough to create a presumption of irreparable injury. *See, e.g., United States v. Arizona*, 641 F.3d 339, 366 (9th Cir. 2011) ("[A]n alleged constitutional infringement will often alone constitute irreparable harm.") (internal quotation marks omitted); *KH Outdoor, LLC v. Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006) (similar).

Further, courts treat real property as unique and the loss of real estate faces a lower bar in terms of proving irreparable injury. *Johnson v. United States Dep't of Agric*., 734 F.2d 774, 789 (11th Cir. 1984) (noting, in irreparable harm analysis, that "[r]eal property and especially a home is unique."); *Kim v. Summit & Crowne Capital Partners, LLC*, No. 8:18-cv-2982-T-17SPF, 2019 U.S. Dist. LEXIS 144070, at *10 (M.D. Fla. June 3, 2019) ("every piece of real estate is unique and its uniqueness may, in an injunction case, constitute some evidence of an irreparable harm"); *Kharazmi v. Bank of Am., N.A*., No. 1:11-CV-2933-AT, 2011 U.S. Dist. LEXIS 163454, at *7 (N.D. Ga. Sep. 2, 2011) ("Plaintiff has shown that irreparable harm would result if the sale of his property proceeds on September 6th, for an interest in real property is unique.").

Because Sarasota County's actions involve (a) unconstitutional state action under both the United States and Florida constitutions, and (b) threats to unique, real property, then the irreparable harm element has certainly been met.

3. The balance of hardships weighs in favor of an injunction.

It is equally clear that the balance of hardships favors Plaintiffs and weighs in favor of

issuing emergency injunctive relief. To Sarasota County, the requested temporary restraining order is cost-free, as Plaintiffs are not seeking a delay in Sarasota County's construction of the trail, which can proceed without removing Plaintiffs' improvements and structures, which are not in the way of the trail itself. But to Plaintiffs, it would mean that their land and investment in their land is protected and they are spared the cost, devaluation of property, and eyesore of removing improvements from their land until this Court can fully advise them of their rights and responsibilities. There is no question that the balance of hardships weighs in Plaintiffs' favor.

4. An injunction is in the public interest.

A temporary restraining order serves the public interest since Sarasota County will have to comply with law. *TracFone Wireless, Inc. v. Hernandez*, 196 F. Supp. 3d 1289, 1302 (S.D. Fla. 2016) ("the public interest is advanced by enforcing faithful compliance with the laws of the United States and the State of Florida"); *Garnett v. Zeilinger*, 313 F. Supp. 3d 147, 159 (D.D.C. 2018) (finding public interest in enforcing compliance with the law).

Further, Plaintiffs seek to vindicate their rights under the Fifth Amendment and the Florida Constitution, and the public interest is always served when constitutional rights are vindicated. *Univ. Books & Videos, Inc. v. Metro. Dade Cnty*., 33 F. Supp. 2d 1364, 1374 (S.D. Fla. 1999) (citing *Dia v. City of Toledo*, 937 F. Supp. 673, 679 (N.D. Ohio 1996), *Christy v. Ann Arbor*, 824 F.2d 489, 491 (6th Cir. 1987) and *Doe v. Duncanville Indep. School Dist*., 994 F.2d 160, 166 (5th Cir.).

CONCLUSION

This Court should grant these owner's motion for a temporary restraining order and preliminary injunction, ordering as follows:

1. Sarasota County shall not order, threaten or effect the removal or demolition of any shed, warehouse, home, swimming pool, septic field, fence or other existing improvement or structure, of any Plaintiff or putative class member, located within the land subject to the easement created by the Surface Transportation Board.
2. Sarasota County shall not issue any fine or other penalty against Plaintiffs and the putative class members due to having alleged encroachments within the land subject to the easement created by the Surface Transportation Board.
3. Sarasota County shall not enter on to the private property of Plaintiffs and the putative class members with respect to the alleged encroachments within the land subject to the easement created by the Surface Transportation Board.

Plaintiffs also request such other and further relief as the Court deems proper.

Date: March 30, 2020

Respectfully submitted,

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