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

WILLIAM AND BROOKE GRAMES, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 8:20-cv-739-CEH-CPT
	)	
SARASOTA COUNTY, FLORIDA, *et al.*,	)	
	)	
Defendants.	)	

RENEWED MOTION FOR PRELIMINARY INJUNCTION AGAINST SARASOTA COUNTY, FLORIDA, AND MEMORANDUM IN SUPPORT

On April 9, 2020, plaintiff-landowners filed their motion for preliminary injunction. On June 4, the Court held a telephonic hearing during which the parties and the Court agreed that, to give the plaintiffs and Sarasota County several weeks to work out agreements regarding disputed "encroachments" of the landowners on the right-of-way for the rails-to-trails project initiated by Sarasota County, the preliminary injunction motion would be denied without prejudice, with the explicit understanding that if sufficient progress toward agreements had not been made by mid-July, 2020, the plaintiffs would be renewing the motion. See **Exhibit 16** (transcript of telephone motion hearing before Judge Tuite, June 4, 2020), pp. 6, 9.

Unfortunately, these landowners are now closer to the danger of having their property destroyed by Sarasota County than they were when we were last in front of this Court. Since June 4, counsel for the landowners and Bora Kayan, counsel for Sarasota County, have had several amicable telephone conferences; but Mr. Kayan's client, Sarasota County, has taken no steps toward a resolution of the issues addressed in the Motion for Preliminary Injunction. Three email letters from Stephen Davis, one of the landowners' attorneys, to Mr. Kayan detail

the unrequited efforts of the landowners to reach a resolution. On July 1, 2020, Mr. Davis sent the following email letter to Mr. Kayan:

> Dear Bora:
>
> At the conclusion of our phone conversation Monday afternoon, June 29, 2020, we said we would send you a communication regarding items that need to be clarified between our clients and yours.
>
> On June 25, 2020, we and many of our clients listened intently to the Sarasota County Parks Department's Zoom meeting regarding the extension of the Legacy Trail. While the meeting was helpful in obtaining some useful information, the county's message had several significant inaccuracies.
>
> Here are three examples of untrue statements:
>
> - Sarasota County said it is not involved in and is not a party to the federal lawsuit over the Legacy Trail. This is false. Sarasota County and its county commissioners are named defendants in the *Grames v. Sarasota County* lawsuit we filed in federal court in Florida.
> - Sarasota County also said some adjacent landowners are "non-compliant" in removing "encroachments" from the rail-trail right-of-way. This is false. Structures, such as fences, sheds, patios, swimming pools, and septic fields, that have existed within the right-of-way do not have to be removed unless and until we reach agreement with you or, failing that, the federal court says so. The *Grames v. Sarasota County* case will ultimately decide whether or not Sarasota County has the right to demand that any "encroachments' be removed.
> - Sarasota County said they own the land underlying the rail-trail corridor. This is false. As the abutting property owners, our clients own the land under the rail-trail corridor. This was decided in three federal lawsuits we brought over the past decade relating to the Legacy Trail. See *Rogers v. United States,* 90 Fed. Cl. 418 (2009), *McCann Holdings, Ltd. v. United States,* 111 Fed. Cl. 608 (2013), and *Childers v. United States,* 116 Fed. Cl. 486 (2014). Sarasota County possesses only a license to build and maintain a recreational trail over and across our clients' property. Sarasota County does not own fee simple title to the rail-trail corridor across our clients' land.
>
> Sarasota County said during the meeting that the first encroachments they plan to remove are fences, and that this removal will not begin until August. But the county also said they are planning a groundbreaking for the trail extension on July 9.
>
> As you, Bora, have repeatedly told us over the past many weeks, the soonest any encroachments would be removed is August. And you have promised us lists specifying a) which encroachments the county wants removed in order to begin construction, and b) which encroachments the county may later wish to have removed but do not need to be removed in order for the trail to be constructed. As we discussed with you this past Monday, we need to have those lists, or at least the first on containing "encroachments" that are

immediately in the way of construction of the trail, no later than Monday, July 6, so that we can determine forthwith whether it will be necessary for us to re-assert our motion for preliminary injunction. As we discussed with you, it is essential that if there are disagreements, we give the court several weeks of lead time to resolve the dispute by way of preliminary injunction proceedings before demolition or other removal of the "encroachments" begins in August.

Thank you for your attention to these matters. Our hope continues to be that we can continue working amicably toward a resolution.

Best Regards,
Stephen S. Davis

Following telephone conferences between counsel for landowners and Mr. Kayan, Mr. Davis sent the following email to Mr. Kayan on July 7, 2020:

Bora,

Thank you for the information you provided today and yesterday. Given the county's approval of the contract with Swift today, can you assure us that no encroachments will be removed until August 18th at the earliest (six weeks from today)? If you are not able to provide this assurance, we will need to immediately re-file our motion for preliminary injunction.

Thanks again,

Steve

Getting no response, Mr. Davis sent the following email on July 10, 2020:

Bora,

I'm following up to see if you learned anything from the meeting you said you had this past Wednesday and if you can give us an assurance that no encroachments will be removed until August 18th.

Today one of our landowners called to say that Swift was on her property and asked her if they could remove her fence. She feels pressured, and many of our other clients are very worried about this.

Please let us know. Thanks.

Steve

Sarasota County has provided no response to the emails of July 7 or 10, 2020. Accordingly, the landowners have no choice but to renew their request that the Court intervene

and order Sarasota County to not demolish these owners' property until the Court can first resolve whether Sarasota County has the authority to demolish or remove these owners' sheds, pools, fences, patios, decks, and other structures it is threatening to demolish. The landowners ask this Court to preserve the status quo — all the structures currently existing — until the Court rules upon the pending Quiet Title and Declaratory Judgment Actions.

BACKGROUND

Sarasota County demands that over two hundred landowners demolish existing, lawfully constructed structures such as fences, swimming pools, sheds, warehouses, and other improvements on their private property. Without any legal authority, it contends these decades-old pools, fences, sheds, and other improvements "encroach" on the federal rail-trail corridor Sarasota County plans to build upon as an extension of the Legacy Trail.

In March, Sarasota County sent letters demanding these owners demolish existing improvements and trespassed upon their land and attached signs to their property demanding that the existing improvements be removed or Sarasota County would demolish the structures and bill the owners for the cost of doing so.

Yet Sarasota County has not provided any legal authority allowing the County to demand that these owners remove existing improvements. Sarasota County 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. Sarasota County has not provided the surveys, title documents or other records defining the scope or nature of the property interest it claims.

The landowners now respectfully ask the Court to issue a preliminary injunction

against Sarasota County, as follows.

MOTION FOR PRELIMINARY INJUNCTION

1. 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 their private property until the legitimacy and scope of Sarasota County's and the federal government's authority and interest in their property is established.

2. This is an urgent matter. Sarasota County has placed signs on landowners' property improvements — such as fences, pools, and sheds — stating that the landowners must remove these existing improvements 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. Sarasota County has approved contracts for the removal of these landowners' property improvements.

3. 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 preliminary injunction should remain until this Court enters final judgment determining the parties' respective rights to use and possess the land subject to the Board's order invoking the federal Trails Act.

4. Preliminary injunctive relief should be granted because there is a substantial likelihood these landowners will prevail on the merits. If preliminary injunctive relief is not granted, these Florida landowners will imminently suffer irreparable harm. See **Exhibit 1**

(Declaration of Cynthia D. Dickie) ¶¶1-5; **Exhibit 2** (Declaration of Megan Epperson) ¶¶1-6; *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"). These landowners have no adequate remedy at law.

5. The threatened injury to the landowners outweighs any potential harm to Sarasota County. Landowners face a loss of property. On the other hand, potential harm to the County is negligible. The width of the rail easement is such that any property improvements within the easement can co-exist with a trail, which will occupy only a fraction of the easement.

6. The injunction these landowners request (individually and on behalf of the putative class members) is not adverse to the public interest. The public has an interest in seeing property rights vindicated, and, as discussed in the previous paragraph, the County likely does not need to remove Plaintiffs' property improvements in order to build its trail.

7. The landowners should not be required to post any bond or security, because the relief they are requesting — that Sarasota County be forbidden to remove improvements and structures on the margins of a 100-foot-wide easement that Sarasota County does not own — will not prevent Sarasota County from extending the Legacy Trail and will not deprive Sarasota County of any revenue. In the language of Rule 65(c), there are no "costs or damages" to Sarasota County associated with the injunctive relief requested by the landowners.

RELIEF REQUESTED

The landowners ask this Court to enter a preliminary injunction ordering the following:

1. Sarasota County shall not order, threaten, or effect the removal or demolition

of any shed, warehouse, home, swimming pool, septic field, drainage field, fence, patio, deck, or other existing improvement or structure, of any landowner or putative class member, located within the property subject to the easement created by the Surface Transportation Board.

2. Sarasota County shall not issue any fine or impose any other penalty upon any landowner (including the putative class members) related to 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 the landowners or the putative class members with respect to the alleged encroachments within the land subject to the easement created by the Surface Transportation Board.

The landowners ask that bond be waived, and for other relief this Court deems proper.

MEMORANDUM IN SUPPORT

INTRODUCTION

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

By 2002, however, the railroads no longer operated across this railway line. Seventeen years later, in 2019, CSXT and Seminole Gulf petitioned the Surface Transportation 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 easement

terminated, and the present-day landowners held unencumbered title to their land.[1] But even though the original railroad right-of-way easement terminated, the federal government wanted to encumber the owners' land with a new easement for public recreation and so-called "rail-banking."[2]

In May of 2019 the Board issued an order invoking section 8(d) of the federal Trails Act, imposing this federal rail-trail corridor easement across these owners' land. But because the federal government did not pay the owners, this was a taking of private property without compensation that violated the Fifth Amendment. See *Preseault v. Interstate Commerce Comm'n,* 494 U.S. 1, 8 (1990) (*Preseault I*); *Preseault v. United States*, 100 F.3d 1525, 1533 (Fed. Cir. 1996) (*en banc*) (*Preseault II*); *Toews v. United States*, 376 F.3d 1371, 1375 (Fed. Cir. 2004); *Trevarton v. South Dakota*, 817 F.3d 1081, 1086-87 (8th Cir. 2016); *Knick v. Township of Scott*, 139 S.Ct. 2162, 2170 (2019). Almost 300 Sarasota County landowners

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[1] 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. Trust v. United States, 572 U.S. 93, 104-05 (2014) (quoting *Restatement (Third) of Property: Servitudes* §1.2(1) (1998)) (citations omitted).

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

have filed claims for compensation with the Court of Federal Claims under the Tucker Act.[3]

Under apparent authority of the Board's order (or at least Sarasota County's interpretation of the Board's order) Sarasota County has taken on the role of trail-builder and operator and has demanded that almost 300 landowners remove "encroachments" (such as pools, fences, septic fields, warehouses, sheds, patios, and other improvements) the County claims are located within the 100-foot-wide federal rail-trail corridor easement. These "encroachments" do not prevent Sarasota County from building the northern extension of the Legacy Trail. Trail paths are generally 10-14 feet in width,[4] so "encroachments" and the trail can co-exist on the 100-foot-wide easement. And yet, Sarasota County demands the landowners remove supposedly offending structures at the owners' cost and has threatened that, if not removed, the County itself will remove the structures, fine the landowners, and charge them for the cost of demolition.

The landowners need the guidance and protection of this Court, which is why they filed an action under the federal Quiet Title Act and Declaratory Judgment Act. Neither the federal government nor Sarasota County has paid these landowners for that property taken for the Legacy Trail. The landowners ask this Court to enjoin Sarasota County from requiring them 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 this Court first

[3] 28 U.S.C. §1491. 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.

[4] "12 feet is the recommended width for shared use paths." Sarasota County Trails Master Plan, September 2017, p. 16, available at: https://www.scgov.net/Home/ShowDocument?id=30330) (last visited July 17, 2020).

determines those interests the Board and Sarasota County acquired in the landowners' property.

Without a preliminary injunction preventing the destruction of their property, the landowners will suffer irreparable harm and their rights under the United States Constitution and the Florida Constitution will be violated.

FACTUAL HISTORY

In November 1910 Plaintiffs' predecessors-in-interest, Adrian Honore and other landowners, granted Seaboard Air Line Railway a right-of-way easement across their land allowing Seaboard to build and operate a railroad line from Sarasota to Venice.[5] See **Exhibit 3.** 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*.

By 2002, the railroad no longer needed or used this railway line over this land. In March 2019, Seminole Gulf requested that the 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 4** (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."

[5] The Board's order is a Notice of Interim Trail Use or Abandonment.

See **Exhibit 4** (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 5** (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 3** (Honore easement); **Exhibit 4** (Notice of Exempt Abandonment (no railway traffic since before 2007)).[6]

In May 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 6.** 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

[6] 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.").

adopted a $65 million bond issue to fund the cost of building the recreational trails.[7]

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 April 2004 order of the Board invoking section 8(d) to take a 12.5 mile-long segment of the Sarasota-to-Venice Legacy Trail corridor south of the segment that is the subject of this litigation.

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. Land taken for the northern extension of the Legacy Trail—which is the subject of this litigation—includes the second segment and another segment running 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, and *Cheshire Hunt v. United States*, 1:18-cv-00111-TCW, both pending before Judge Wheeler in the Court of Federal Claims.

In apparent reliance upon the Board's order invoking section 8(d) of the federal Trails Act, Sarasota County is demanding almost three hundred landowners remove any alleged

[7] Nicole Rodriguez, *Sarasota County to soon begin borrowing money for Legacy Trail extension*, Sarasota Herald-Tribune (Jan. 29, 2019), available at: https://www.heraldtribune.com/news/20190129/sarasota-county-to-soon-begin-borrowing-money-for-legacy-trail-extension (last visited July 17, 2020).

"encroachments" from the land. **Exhibit 7** (form letters from Hayley A. Baldinelli and Sarasota County door hangers). See also **Exhibit 2** (Declaration of Megan Epperson) ¶¶1-6. 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 "encroachments" Sarasota County demanded the 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 these landowners' 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 July 17, 2020); see also **Exhibit 2** (Declaration of Megan Epperson) ¶¶5-6. Sarasota County states that "[t]here are 236 total encroachments with some properties having multiple encroachments." See Sarasota County website, "Legacy Trail Encroachments," *supra.* Further, "[e]ncroachments must be removed so construction on this portion of the Legacy Trail may commence in mid-2020." *Id*. These owners lawfully constructed the structures that Sarasota County now demands the owners remove.

The landowners asked Sarasota County to provide the owners 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 8** (letter to Sarasota County Commission). Sarasota County did not respond or provide any rationale for its actions.

In addition to their approaches to Sarasota County, counsel for the landowners sought to resolve this matter and clarify the respective authority of the Surface Transportation Board

and Sarasota County by writing the Assistant Attorney General Jeffrey Clark (**Exhibit 9**), Senator Rick Scott (**Exhibit 10)**, Senator Marco Rubio (**Exhibit 11**), Representative Vern Buchanan (**Exhibit 12**), and Representative Greg Steube (**Exhibits 13** and **14**).

In meetings with Sarasota County, its agents have offered two explanations for its authority to remove structures from the owners' property. *First*, Sarasota County has stated that a deed from the railroad 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 3** and **4**. *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. See **Exhibit 15** (resolution of the Sarasota County Board of Commissioners, November 19, 2019). It is unclear if Sarasota County is attempting to claim some interest in these owners' land that is greater than what the Board took. Sarasota County has not condemned any of the affected property or utilized public domain, which would be the proper procedure (as opposed to passing an ordinance) to effect a taking. Resolving this conflict is the reason these owners filed this case.

ARGUMENT

To obtain a 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).

I. 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 statute provides that, after a railroad abandons a railroad right-of-way, the federal government can issue an order creating a new easement across the owner's land.[8] The new federally-created easement allows a non-railroad trail-user (such as Sarasota County) to use the land for a recreational trail and preserves the corridor under the federal government's jurisdiction for a possible future railroad line (so-called "railbanking").

On May 14, 2019, when the Board invoked section 8(d) of the Trails Act, the federal government took private property by encumbering Plaintiffs' land with an easement for public recreation and railbanking. The federal government took these Florida owners' property, and the Just Compensation Clause of the Fifth Amendment requires that the federal government pay these owners for what the government took. See n. 8, *supra.*

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' predecessors-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

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[8] See *Preseault I*, 494 U.S. at 8; *Preseault II*, 100 F.3d at 1533; *Toews*, 376 F.3d at 1375; *Trevarton*, 817 F.3d at 1087 (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 (DC Cir. 2001); *Nat'l Wildlife Found. v. Interstate Commerce Comm'n*, 850 F.2d 694, 697-98 (DC Cir. 1988) (explaining that Congress intended to extinguish owners' state-law property rights).

property of the undersigned, his heirs, administrators and assigns."[9] **Exhibit 3.** 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 4 (**Notice of Exempt Abandonment, STB Docket No. AB 400 (Sub No. 7X) (March 8, 2019)), p. 3. And, as noted above, Chief Justice Roberts explained in *Brandt*, 572 U.S. at 105, 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]."

The railroad's lack of any interest in the land once subject to the easement that terminated is pertinent because Sarasota County premises its authority to demand these owners remove existing structures from their land upon the claim that Sarasota County acquired the right to do so from the railroad or from the intermandatory Public Trust for Land. As stated above, however, Seminole Gulf, CSXT, and the Public Trust for Land had no right to transfer or sell *any* interest in these owners' land to Sarasota County. See *East Alabama Ry.*, 114 U.S. at 354 ("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."). See also *Monroe Cnty. Comm'n v. Nettles, Sr. Props*., 288 So.3d 452, 459 (Ala. 2019), *cert. denied*, 2020 U.S. LEXIS 203 (U.S. Jan. 13, 2020) (Deed from railroad "conveyed nothing to the Commission because the railroad, at the time of conveyance, had

[9] *See Rogers*, 90 Fed. Cl. at 430-31 ("[T]he 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.").

nothing to transfer. In other words, the railroad's inaction in failing to use its right-of-way terminated the right-way-of, divesting it of any further interest in the property."). 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 a new one,[10] 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. See *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 Elena 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 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

[10] *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).

claim accrues, if at all, on issuance of the NITU.

443 F.3d at 1373.

To date, no government has paid these owners anything, nor offered to pay them anything. The amount of compensation the federal government owes these landowners will be determined by the Court of Federal Claims. The landowners have filed lawsuits for compensation against the United States under the Tucker Act. See *4023 Sawyer Road I, LLC v. United States*, 1:19-cv-00757-TCW; *Cheshire Hunt v. United States*, 1:18-cv-00111-TCW.

Plaintiffs' compensation claims in *4023 Sawyer Road* and *Cheshire Hunt* are on solid footing. The owners whose property was taken for the southern segment of the Legacy Trail were paid by the federal government. The southern segment of the Legacy Trail runs from Venice to the Culverhouse Nature Park just south of Sawyer Loop Road. See *Rogers*, 90 Fed. Cl. at 418, *Childers*, 116 Fed. Cl. at 497, and *McCann Holdings*, 111 Fed. Cl. at 614.

The Tucker Act, however, does not provide jurisdiction for the Court of Federal Claims to provide declaratory or injunctive relief, nor does the Court of Federal Claims have jurisdiction over Sarasota County and its actions in this case. Hence, it falls to this Court to resolve the title issues and declare the nature and scope of that interest the federal Surface Transportation Board took, and the nature and scope of that interest Sarasota County acquired.

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.

Sarasota County now claims it "owns" these landowners' property. In order to start construction on its new segment of the Legacy Trail, Sarasota County has ordered over two-hundred owners to remove all structures and existing improvements, including in-ground swimming pools, fences, sheds, septic systems, patios, decks, and other lawful improvements,

that are within the 100-foot-wide right-of-way easement that the federal government took. **Exhibit 7** (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.* These improvements pre-existed the federal government's imposition of the new rail-trail corridor easement, and many of the improvements were constructed with a permit from Sarasota County.

The following facts are undisputed: (a) the federal government took the landowners' property when it invoked the federal Trails Act and imposed a new, different easement across their land; (b) the Fifth Amendment 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 what rights Sarasota County enjoys as a result. 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 they, the owners, still have rights to the taken land, as what was taken is only an easement. On the other hand, Sarasota County argues that it *owns* the property now, and it can force owners to remove improvements from the right-of-way or remove the

improvements itself.

To these landowners, it appears Sarasota County is exercising power over and above that 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 100-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.; Florida Statutes, Chapters 73 and 74. In this case Sarasota County has not exercised any eminent domain authority over these owners or their land, 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," under 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 the Court to enjoin Sarasota County from demanding that Plaintiffs remove any improvements from the new easement and further from removing the improvements on its own. When these questions are answered, and the rights of the parties—landowners, Sarasota County, and the Board—are finally determined, the landowners and class members will have succeeded.

Sarasota County is attempting to exercise authority it does not have. It is therefore readily apparent that the Plaintiffs have shown a substantial likelihood of success on the merits.

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

The fundamental purpose of a 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 (2nd Cir. 1989); see also *Fernandez-Roque v. Smith*, 671 F.2d 426, 429 (11th Cir. 1982). A preliminary injunction would merely preserve the status quo — landowners' property improvements remaining in place as they have for years and perhaps decades — to avoid imminent, irreparable harm (see **Exhibit 1** (Declaration of Cynthia D. Dickie) ¶¶1-5) 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).

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, *10 (M.D. Fla. June 3, 2019) (stating that "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, *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.").

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

III. 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 preliminary injunction 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 can co-exist with the trail itself. But to Plaintiffs, an injunction 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 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 preliminary injunction 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.).

5. An injunction bond should be waived.

The bond requirement of Rule 65(c) is appropriately waived in certain circumstances. See *Baldree v. Cargill, Inc.,* 758 F. Supp. 704 (M.D. Fla. 1990), *aff'd*, 925 F.2d 1474 (11th Cir. 1991) (district court has discretion to waive bond requirement imposed by Rule 65(c)); see also *Caterpillar, Inc. v. Nationwide Equip.*, 877 F. Supp. 611 (M.D. Fla. 1994) (waiving bond requirement in trademark infringement case); *Smith v. Bd. of Elections Comms.*, 591 F. Supp. 70, 71 (D.C. Ill. 1984) (citations omitted) (recognizing that despite the literal language of Rule 65(c), appropriate circumstances exist which justify waiving the bond requirement).

"[I]n a case where, as here, Plaintiff's fundamental constitutional rights are at issue, imposing a financial burden on a plaintiff as a condition to protecting fundamental constitutional rights would create an unfair hardship on that plaintiff." *Johnston v. Tampa Sports Auth.*, 2006 U.S. Dist. LEXIS 77614, *3 (M.D. Fla. Oct. 13, 2006).

An injunction would not damage Sarasota County. Sarasota County can build its trail without removing Plaintiffs' "encroachments," as those property improvements do not block the trail. The easement the trail is to be built upon is 100 feet wide; the width of the trail will only occupy a fraction of the easement; and the "encroachments" do not come close to blocking the entirety of the 100-foot easement.

Even if an injunction did actually stop construction on the trail (which would not be the case), Sarasota County would not suffer monetary damages. This would only delay construction — construction that is going to cost Sarasota County money — and the trail itself does not provide revenues for Sarasota County. The proposed preliminary injunction would not result in any "costs or damages" under Rule 65(c) to Sarasota County.

6. A preliminary injunction protecting the class may issue prior to class certification.

Although the class in this case has not yet been certified, the law is clear that courts may enter class-wide injunctive relief before certification. *Gooch v. Life Inv'rs Ins. Co. of Am*., 672 F.3d 402, 433 (6th Cir. 2012) ("Simply put, there is nothing improper about a preliminary injunction preceding a ruling on class certification."); *Just Film, Inc. v. Merch. Servs., Inc*., 474 Fed. Appx. 493, 495 (9th Cir. 2012); *Rodriguez v. Providence Cmty. Corr., Inc.*, 155 F. Supp.3d 758, 766 (M.D. Tenn. 2015); Newberg on Class Actions § 4:30 (5th ed. 2013) ("[A] court may issue a preliminary injunction in class suits prior to a ruling on the merits.").

CONCLUSION

This Court should grant Plaintiff's motion for a preliminary injunction, as follows:

1. Sarasota County shall not order, threaten, or effect the removal or demolition of any shed, warehouse, home, swimming pool, septic field, drainage field, fence, patio, deck, or other existing improvement or structure, of any landowner or putative class member, located within the property subject to the easement created by the Surface Transportation Board.

2. Sarasota County shall not issue any fine or impose any other penalty upon any landowner (including the putative class members) related to 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 the landowners or 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 that any bond or security be waived.

Date: July 23, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served on all registered parties on this 23rd day of July, 2020 using the Court's online filing system.

/s/ Mark F. (Thor) Hearne, II
Counsel for the Landowners