

Nos. 25-1179, 25-1459

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UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT

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DEBORAH E. BARRON, JOHN BUENAVENTURA BAEZ, JAMES ACHILLE,  
JONATHAN ACHILLE, THE ALB REVOCABLE TRUST, THE RPB  
REVOCABLE TRUST, COURTYARD VILLAS, L.L.C., RONALD NOURSE,  
OLD FOREST LAKES OWNERS ASSOCIATION, GILDA PASCUAL,  
STEPHEN STILLER, CHRISTOPHER WORMWOOD, SHARON KRUEGER,  
JAMES MUSSELWHITE, ENOS WEAVER, JR., ANNA MARY WEAVER,  
WILLIS MARTIN, ALTA MARTIN, JAMES MYERS, KATHERINE MYERS,  
JUNE SHUMWAY, DANIEL J. MALLON, IRENE A. MALLON, as Trustees of  
the Mallon Family Trust under agreement dated October 3, 2007,  
*Plaintiffs-Appellants*

ALEXANDRINE L. BOSWELL, Trustee of the ALB Revocable Trust, dated July  
21, 2003, ROMAN P. BOSWELL, Trustee of the RPB Revocable Trust, dated  
August 31, 2004, JACEK GATKIEWICZ, HANNA GATKIEWICZ, JONATHAN  
LESTER, ANAPAUULA V. LESTER,  
*Plaintiffs*

v.

UNITED STATES,  
*Defendant-Appellee*

(caption continued on inside cover)

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Appeal from the United States Court of Federal Claims  
in No. 1:21-cv-02181-EHM, Judge Edward H. Meyers.

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**RESPONSE BRIEF OF THE UNITED STATES**

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4023 SAWYER ROAD I, LLC, DOUGLAS ABBOTT, CYNTHIA G. ABBOTT,  
JULIA R. ADKINS, AUSTIN C. MURPHY, RONALD S. ALBRITTON, JOYCE  
S. ALBRITTON, LOUIS J. ALDERMAN, JR., as Trustee of LOUIS L.  
ALDERMAN 2013 REVOCABLE TRUST, NEAL ATCHLEY, JO ATCHLEY,  
JEFFREY DOYLE,  
*Plaintiffs,*

JOHN M. ALVIS, et al.,  
*Plaintiffs-Appellants*

v.

UNITED STATES,  
*Defendant-Appellee*

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Appeal from the United States Court of Federal Claims  
in No. 1:19-cv-00757-EHM, Judge Edward H. Meyers.

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## STATEMENT OF RELATED CASES

No other cases pending before this Court are appeals from individual judgments based on the same underlying opinions at issue in the present appeals.

The proceedings before the U.S. Court of Federal Claims for the following cases could be directly affected by this Court's decision in the pending appeals:

- Remaining claims in *Barron et al. v. United States*, No. 21-cv-02181-EHM
- Remaining claims in *4023 Sawyer Road I, LLC, et al. v. United States*, No. 19-cv-757-EHM
- *Gruters v. United States*, No. 23-cv-2072

## INTRODUCTION

In these consolidated appeals, Plaintiffs attempt to relitigate legal questions that this Court previously certified to the Supreme Court of Florida, which rejected Plaintiffs' arguments. Under Florida law, common law policies and parol evidence cannot overcome the plain language of a conveyance that shows the grantor intended to transfer a fee simple interest in a strip of land. Here, a set of deeds and a condemnation judgment from the early 1900s clearly conveyed fee simple interests to the predecessors-in-interest of the Seminole Gulf Railway in Sarasota, Florida. As such, the current landowners of adjacent parcels do not have an interest in that corridor, which the City of Sarasota intends to add to its existing Legacy Trail under the National Trails System Act, 16 U.S.C. §§ 1241–49. Absent a cognizable interest in the land, the Court of Federal Claims denied Plaintiffs' Fifth Amendment takings claims, granting summary judgment to the United States. For the reasons discussed herein, this Court should affirm.

## JURISDICTIONAL STATEMENT

The Court of Federal Claims had jurisdiction in *Barron et al. v. United States*, No. 21-cv-02181-EHM, and *4023 Sawyer Road I, LLC, et al. v. United States*, No. 19-cv-757-EHM under the Tucker Act, 28 U.S.C. § 1491(a)(1), because Plaintiffs alleged Fifth Amendment takings claims seeking just compensation from the United States. Appx83 (*Barron*); Appx4319 (*4023 Sawyer Road*).

The Court of Federal Claims entered final judgment in *Barron* on November 1, 2024, pursuant to Court of Federal Claims Rule 54(b), disposing of the claims that Plaintiffs press on appeal. Appx60. Plaintiffs timely appealed from this judgment on November 8, 2024. Appx1406.

The Court of Federal Claims entered final judgment in *4023 Sawyer Road* on February 14, 2025, pursuant to Court of Federal Claims Rule 54(b), disposing of the claims that Plaintiffs press on appeal. Appx78. Plaintiffs timely appealed from this judgment on February 14, 2025. Appx4306–07.

This Court has jurisdiction under 28 U.S.C. § 1295(a)(3).

### **STATEMENT OF THE ISSUES**

1. Did the Court of Federal Claims correctly conclude that the plain language of the source deeds at issue in the appeal indicated that the landowners transferred fee simple interests to the railroads, meaning that Plaintiffs lack any cognizable ownership in the land to be used for Sarasota’s Legacy trail?
2. Did a 1926 condemnation judgment convey a fee simple interest to the railroad, either due to the unambiguous language of the judgment or because the other documents from those proceedings show that the parties understood that the railroad was taking a fee simple interest?
3. Does Florida law provide sufficient guidance as to the application of Florida Statutes Section 689.10 and the type of interest a railroad may receive

through eminent domain proceedings such that this Court need not certify those questions to the Supreme Court of Florida?

## STATEMENT OF THE CASE

### I. STATUTORY AND REGULATORY BACKGROUND

The Surface Transportation Board has plenary authority to regulate nearly all of the Nation’s rail lines. 49 U.S.C. § 10501(b). A railroad carrier that intends to abandon any part of a line must first apply to the Board for permission. *Id.* § 10903. If the Board grants permission to abandon, the railroad typically has one year to decide whether it will consummate abandonment by filing a notice with the Board. 49 C.F.R. § 1152.29(e)(2). Consummating abandonment may terminate easements in the corridor and cause property interests to revert to abutting landowners under state law.

Congress enacted the National Trails System Act Amendments of 1983 to promote the preservation of rail corridors through an alternative to abandonment called “rail banking.” *Caquelin v. United States*, 959 F.3d 1360, 1363 (Fed. Cir. 2020). When a rail line is railbanked, the Board retains jurisdiction over the corridor so that it can be reactivated for rail use in the future. 16 U.S.C. § 1247(d). And, in the interim, the railroad transfers managerial responsibility over the corridor to a sponsoring state, municipality, or private group—allowing the corridor to be used and preserved as a recreational trail. *Id.*

The Board's regulations set out how this railbanking process works. If a railroad has applied for permission to abandon, any entity interested in sponsoring the rail corridor's interim use as a trail may file a comment with the Board indicating that interest. 49 C.F.R. § 1152.29(a). The railroad then has the option of negotiating an agreement with the sponsor that would allow interim trail use. *Id.* § 1152.29(d)(1). If the railroad agrees to negotiate potential trail use, the Board issues a Notice of Interim Trail Use or Abandonment (NITU). *Id.* The NITU gives the carrier and sponsor time to negotiate a trail-use agreement, but the NITU does not itself establish interim trail use. *Id.* § 1152.29(d)(1)(i). Instead, trail use is established—and the corridor railbanked—once the railroad and sponsor reach a trail-use agreement and notify the Board of their agreement. *Id.* § 1152.29(d)(2).

This Court has concluded that the issuance of a NITU can sometimes cause a Fifth Amendment taking because, if the railroad holds a rail easement in the corridor, the NITU can prevent the vesting of reversionary interests or impose a new trail-use easement. *E.g., Caquelin*, 959 F.3d at 1367. But if the railroad owns the land in fee simple, a NITU cannot cause a taking. *Anderson v. United States*, 23 F.4th 1357, 1361 (Fed. Cir. 2022).

## **II. FACTUAL BACKGROUND**

This case concerns approximately 7.68 miles of a railroad corridor in Sarasota County, Florida, known as the Venice Branch corridor. Appx190. On March 8,

2019, the operator—Seminole Gulf Railway, L.P.—filed a Notice of Exemption with the STB, under 49 C.F.R. § 1152 subpart F, to discontinue rail service and trackage rights over the Venice Branch corridor. Appx155–60. On April 22, 2019, the Sarasota County Board of County Commissioners (“the County”) filed a Request for Public Use Condition and Request for Interim Trail Use with the STB. Appx185–88. The County asked the STB to find that the Venice Branch corridor was suitable for trail use under the Trails Act, noting that more than 14 miles of former rail corridor between Sarasota and Venice, Florida, had been previously railbanked to create the Legacy Trail. Appx185–86.

On May 14, 2019, the STB issued a Decision and Notice of Interim Trial Use or Abandonment (NITU) for the Venice Branch. Appx190–94. The NITU provided Seminole Gulf Railway and the County 180 days to negotiate an interim trail use agreement. Appx192. The County, Seminole Gulf Railway, and the owner of the underlying land, CSX Transportation, Inc., complied with that provision and the County assumed full responsibility for the right-of-way for the Legacy Trail.

### **III. PROCEDURAL HISTORY**

Although all Plaintiffs party to these appeals about the Venice Branch rail corridor, their claims were brought in two separate cases: *Barron et al. v. United States*, No. 21-cv-02181-EHM, and *4023 Sawyer Road I, LLC, et al. v. United States*, No. 19-cv-757-EHM.

**A. *Barron***

In November 2021, a group of landowners (eventually totaling 19) filed suit in *Barron* alleging that the NITU for the new portion of the Legacy Trail resulted in a taking under the Fifth Amendment. *See* Appx55; Appx83. Three of those claims are not at issue as they involved a previously litigated conveyance, the Honore deed, that all parties agree granted an easement rather than a fee simple. *See* Appx9–10. The remaining claims can be traced to four deeds and a condemnation judgment from the early 1900s that transferred fee simple interests to Seminole Gulf Railway’s predecessors-in-interest, the Seaboard Air Line Railway, the Florida West Shore Railway, and the Tampa Southern Railroad Company. *See* Appx10–25.

On December 22, 2022, the *Barron* Plaintiffs who are parties to this appeal moved for summary judgment on their takings claims. Appx804–06. The following month, the Government responded with a cross-motion for summary judgment on those claims. Appx938–51. At the hearing on the parties’ motions in May 2024, the Court of Federal Claims (CFC) ordered the parties to submit supplemental briefing addressing the proper interpretation of the 1926 condemnation judgment. *See* Appx59, Appx1176; Appx1231.

On October 31, 2024, the CFC issued a decision granting the Government’s motion for summary judgment. Appx1. The court began by setting out principles of deed interpretation under Florida law, noting that many of Plaintiffs’ arguments

were foreclosed by the Supreme Court of Florida’s decision in *Rogers v. United States* (“*Rogers IV*”), 184 So.3d 1087 (Fla. 2015). Appx4–9. Because Florida law emphasizes the plain language of a deed when interpreting the type of interest conveyed, Appx4, the court then systematically examined each of the four deeds at issue: the Sarasota Land Company, Clough, Burton, and Neihardt deeds. Appx10–17. The court determined that each of these deeds transferred a fee simple interest to the railroads. *Id.* Turning next to the 1926 condemnation judgment, the court found that the plain language of the court’s judgment was ambiguous. Appx20. It therefore looked at other documents regarding the proceedings to determine the parties’ intent. Appx20–25. Ultimately, the court determined that “review of the record before the district court demonstrates that the parties understood that fee simple title was being taken.” Appx25.

The CFC issued judgment on November 1, 2024, and Plaintiffs filed their notice of appeal to this Court the following week. Appx60, Appx1406.

**B. 4023 Sawyer Road I**

In May 2019, another group of landowners (eventually totaling 214) filed suit in *4023 Sawyer Road*, alleging that the NITU constituted a Fifth Amendment taking. *See* Appx63; Appx4319. On August 17, 2023, all 214 Plaintiffs moved for summary judgment on their claims. Appx2126–28. The Government filed a cross-motion for summary judgment as to the 164 claims that did not rely on the Honore conveyance

mentioned above. Appx3907–45. These claims stemmed from the four deeds and the 1926 condemnation judgment at issue in *Barron* as well as five other conveyances. See Appx3921–42.

The CFC heard arguments on the cross-motions for summary judgment on December 12, 2024. Appx77. The following week, after Plaintiffs noticed their appeal in the *Barron* case, the court bifurcated the 47 claims that were not challenged in the Government’s motion for summary judgment, and deferred ruling on 124 claims that relied on the conveyances at issue in *Barron*, leaving 43 claims. Appx29–30. In addressing these remaining claims, the court indicated that “there [wa]s no reason to reinvent the wheel” and therefore “applie[d] the principles of law explained in *Barron* to this case as well.” Appx28.

The court granted partial summary judgment to some Plaintiffs on three different grounds. First, the court determined that the Palmer conveyance (a deed not at issue in this appeal) vested the railroad with only an easement. Appx36–40. The court noted that the Palmer and Honore conveyances used language indicating that the railroad’s interest was limited to a right-of-way and included a reversionary interest in the grantor should the land no longer be used for railroad purposes. Appx 38. Additionally, the deed included only a blank space for the amount of consideration given for the conveyance, and the lack of any consideration meant the transfer constituted a voluntary conveyance, which was limited to an easement under

Florida law. Appx38–40. Second, the court held that the Government had not met its burden of proving that the railroad had obtained a fee simple interest by adversely possessing land claimed by three Plaintiffs. Appx45–46. Third, the court held that the unexecuted Pendley deed did not convey fee simple title to the railroad, but deferred ruling on whether the claims related to this land were governed by a different deed. Appx47–49. These holdings adverse to the Government are not at issue in this appeal.

At issue on appeal from the *4023 Sawyer Road* judgment is the court’s holding that two deeds from the Florida Mortgage and Investment Company and a deed from the Charles Ringling Company conveyed fee simple title to the railroad. Appx40–45. The court analyzed the plain language of the deeds, finding that the grantors clearly intended to convey a fee simple interest. *Id.* Therefore, on February 11, 2025, the court granted summary judgment to the Government for all claims based on these three deeds.

Plaintiffs timely appealed the *4023 Sawyer Road* judgment on February 14, 2025. Appx4306–07. Upon a motion from Plaintiffs, this Court consolidated the two appeals. For the reasons discussed below, the Court should uphold the decisions of the Court of Federal Claims.

## SUMMARY OF ARGUMENT

1. The CFC correctly held that the challenged deeds transferred fee simple title to the railroad such that the abutting landowners have no interest in the railbanked corridor. Plaintiffs' arguments that the railroad was precluded from receiving a fee simple interest as a matter of law were already settled by this Court and the Supreme Court of Florida in the *Rogers* line of cases. See *Rogers v. United States* ("*Rogers V*"), 814 F.3d 1299, 1306 (Fed. Cir. 2015); *Rogers v. United States* ("*Rogers IV*"), 184 So.3d 1087, 1095 (Fla. 2015). This Court should reject Plaintiffs' attempts to relitigate those issues.

Additionally, the CFC properly interpreted the challenged conveyances. Under Florida law, if a deed is clear on its face as to the grantor's intent, the court does not look beyond the plain language of the deed. *Rogers IV*, 184 So.3d at 1095. And unless that plain language says otherwise, it is assumed the grantor intended to transfer a fee simple interest. Fla. Stat. § 689.10. The deeds at issue here show a clear intent to transfer fee simple title to the railroad because they include broad language conveying all the grantors' title without any reversionary interests; discuss the interest in the land, rather than a right-of-way for railroad purposes; include habendum or warranty clauses; and/or explicitly declare an intent to transfer a fee simple estate. Therefore, Plaintiffs do not have a cognizable interest in the rail corridor subject to the NITU.

2. Similarly, the Court should uphold the CFC's decision that the 1926 condemnation judgment resulted in the railroad taking fee simple title to the land. Plaintiffs fail to demonstrate that a railroad was precluded from acquiring a fee simple interest through condemnation as a matter of law. The text of the condemnation judgment shows that the parties understood that the railroad was condemning a fee simple interest. Although the judgment refers to the property interest as a right of way, it describes the interest as land, providing the acreage to be acquired, and does not contain any language suggesting that the landowners retained a reversionary interest. Even if the Court agreed with the CFC that the judgment is ambiguous, other documents from the proceedings make clear that the parties understood the railroad sought fee simple title to the entirety of the parcel.

3. Finally, the Court should deny Plaintiffs' request to certify questions to the Supreme Court of Florida. That court and other courts have already determined that a railroad can obtain a fee simple interest through condemnation. Similarly, Florida courts have applied the presumption of fee simple found in Florida Statutes § 689.10 in determining whether a deed to a railroad transfers fee simple title or only an easement interest. Therefore, there is no need to certify these questions and delay these proceedings.

## STANDARD OF REVIEW

This Court reviews de novo a grant of summary judgment. *Anderson v. United States*, 23 F.4th 1357, 1361 (Fed. Cir. 2022). Summary judgment is proper where “there is no genuine dispute as to any material fact” and “the movant is entitled to judgment as a matter of law.” *Id.* Whether a plaintiff claiming a taking by the United States has a compensable property interest is a question of law that is subject to de novo review by this Court. *Casitas Mun. Water Dist. v. United States*, 708 F.3d 1340, 1351 (Fed. Cir. 2013). The property interest conveyed by a deed is likewise a question of law reviewed de novo, applying the law of the state where the property interest arises. *Chicago Coating Co. v. United States*, 892 F.3d 1164, 1169–70 (Fed. Cir. 2018).

## ARGUMENT

### **I. THE DEEDS CONVEYED FEE SIMPLE TITLE IN THE RAILROAD CORRIDOR TO THE RAILROAD.**

As in all railbanking cases, the “threshold question” here “is whether the claimant has a compensable property interest in the land allegedly taken, which is often answered by analyzing the original deeds that conveyed the property to the railroad.” *Chicago Coating Co.*, 892 F.3d at 1167. “If the railroad company owns the land in fee simple, then the Government cannot have committed a taking and the analysis ends.” *Anderson v. United States*, 23 F.4th 1357, 1361 (Fed. Cir. 2022).

This Court “analyze[s] the property rights of the parties in a rails-to-trails case under the relevant state’s law, which in this case is Florida law.” *Castillo v. United States*, 952 F.3d 1311, 1319 (Fed. Cir. 2020). The CFC principally relied on the line of decisions issued by the CFC, the Florida Supreme Court, and this Court in *Rogers v. United States*, filed in the CFC in 2007 (Nos. 07-273L and 07-426L): *Rogers I*, 90 Fed. Cl. 418 (2009); *Rogers II*, 93 Fed. Cl. 607 (2010); *Rogers III*, 107 Fed. Cl. 387 (2012); *Rogers IV*, 184 So. 3d 1087 (Fla. 2015) (answering this Court’s certified question); and *Rogers V*, 814 F.3d 1299 (Fed. Cir. 2015).<sup>1</sup> Appx4–9.

Under Florida law, the type of estate conveyed in a deed “is determined by the intent of the grantor.” *Rogers IV*, 184 So.3d at 1095. It is a “well-established rule” in Florida law that courts must first look to the plain language of the deed, in its entirety, to find the grantor’s intent. *Id.*; *see also Reid v. Barry*, 112 So. 846, 862 (Fla. 1927). “If there is no ambiguity in the language employed then the intention of the grantor must be ascertained from that language,” regardless of other circumstances or parol evidence.<sup>2</sup> *Rogers IV*, 184 So.3d at 1095 (quoting *Saltzman*

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<sup>1</sup> In *Barron*, the CFC referred to the decision of the Florida Supreme Court as *Rogers V* but in *4023 Sawyer Road* the CFC referred to that decision as *Rogers IV*. We use the *4023 Sawyer Road* citation method herein because the Florida Supreme Court decision is dated November 5, 2015, and this Court relied on that decision in rendering its decision in *Rogers* on December 28, 2015.

<sup>2</sup> Plaintiffs cite an earlier case, *McNair & Wade Land Co. v. Adams*, 45 So. 492, 493 (Fla. 1907), for the proposition that the parties’ “intent, and not the words,

*v. Ahern*, 306 So.2d 537, 539 (Fla. Dist. Ct. App. 1975)). Importantly, under Florida law, “no statute, state policy, or factual considerations prevail[] over the language of the deeds when the language is clear.” *Rogers V*, 814 F.3d at 1309. The CFC carefully analyzed each of the deeds and held that, under these principles of Florida law, the railroad acquired a fee simple interest in the rail corridor through the conveyances at issue in this appeal. Appx26; Appx50.

Despite this clear requirement to look first to the plain language of the deed to determine the grantor’s intent, Plaintiffs’ brief barely discusses the text of the six deeds at issue in this appeal. *See, e.g.*, Aplt.Br. 11–15 (noting a few words and phrases in the deeds); Aplt.Br. 41–45 (arguing that use of the word “right-of-way” anywhere in a deed indicates that only an easement is conveyed); Aplt.Br. 55 (noting a few words and phrases in the deeds). Plaintiffs make no attempt to show that the Court of Federal Claims incorrectly applied Florida’s deed construction principles

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is the principal thing to be regarded.” Aplt.Br. 29. *Rogers IV* articulates the current standard under Florida law, but in any event, *McNair* is entirely consistent with *Rogers IV*. The issue in *McNair* was whether a deadline for cutting timber should be read into a timber-sale deed, and the Florida Supreme Court explained that the parties’ intent regarding a deadline “must be gathered from the whole instrument.” 45 So. at 493. In that case, the asserted lack of a deadline undermined other aspects of the deed. It was in this context that the court said that “the intent, and not the words, is the principal thing to be regarded.” *Id.*

to the deeds at issue. As explained below, the plain language of the deeds shows the grantors' unambiguous intent to convey fee simple title to the railroad.

Plaintiffs instead devote the majority of their brief to arguing that, regardless of the text of the deeds, Florida statutes, Florida policy, and factual circumstances surrounding the conveyances require the conclusion that only an easement was conveyed to the railroad. These arguments were addressed and rejected by the Florida Supreme Court and this Court in *Rogers IV* and *Rogers V*. Plaintiffs' various efforts to distinguish or discredit these decisions are meritless. As explained below, this Court should reject the recycled arguments Plaintiffs' counsel previously presented (and lost) before this Court and the Supreme Court of Florida regarding the governing legal principles of Florida law.

**A. The *Rogers* decisions are controlling.**

The *Rogers* plaintiffs claimed an interest in segments of the Sarasota to Venice rail corridor that were subject to an earlier NITU for the Legacy Trail based on deeds similar to those at issue in this litigation. They were represented by the same counsel representing Plaintiffs in *Barron* and *4023 Sawyer Road*. The Court of Federal Claims concluded that the deeds at issue unambiguously conveyed fee simple estates to the railroad. *Rogers III*, 107 Fed. Cl. at 395–98. Based on the appellate briefs and oral argument, this Court agreed with the Government that the deeds “appear[ed] on their face to transfer a fee simple interest in the properties at issue.” Certification

Order, *Rogers v. United States*, Fed. Cir No. 13-5098, Doc. 62 at 5 n.1 (filed July 21, 2014). The Court then certified a question of law to the Supreme Court of Florida, asking whether Florida's Special Powers of Railroad Statute (Fla. Stat. § 2241 (1892)), state policy, or factual considerations overrode the plain language of the deeds and limited the conveyances to easements. *Id.* at 5; *Rogers IV*, 184 So.3d at 1090; *Rogers V*, 814 F.3d at 1308. The Supreme Court of Florida responded that none of these factors trumped the unambiguous language of the deeds. *Rogers IV*, 184 So.3d at 1096, 1099, 1100. With that decision on Florida law, this Court held that the deeds conveyed fee simple title to the railroad, rejecting the *Rogers* plaintiffs' arguments that the railroad held only an easement. *Rogers V*, 814 F.3d at 1306, 1309.

Plaintiffs in these consolidated appeals appear to understand that their claims to a reversionary interest in the rail corridor fail if the *Rogers* decisions are followed. Therefore, they argued in the CFC that the Florida Supreme Court's decision in *Rogers IV* does not apply to this case for three reasons, all of which were rejected by the CFC. Appx6–8. Plaintiffs reiterate these arguments on appeal, but they remain unavailing.

First, Plaintiffs argue that *Rogers IV* is inapposite because this Court in certifying the question and the Florida Supreme Court in answering the question did not actually interpret the deeds in question but merely assumed that the deeds

conveyed fee simple title to the railroad. Aplt.Br. 51. That is incorrect. The certification order, issued after review of the briefs and oral argument, stated that this Court viewed the deeds as “unambiguously convey[ing] a fee simple interest.” Certification Order, *Rogers v. United States*, Fed. Cir No. 13-5098, Doc. 62 at 5 (filed July 21, 2014). And the Florida Supreme Court clearly did so as well: “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.” *Rogers IV*, 184 So.3d at 1090 n.1. Moreover, the holdings in *Rogers IV* answered questions regarding the application of Florida law and policy “regardless of the language of the deeds.” *Id.* at 1090.

Second, Plaintiffs argue that this case is different because the deeds at issue in this appeal are “voluntary grants” under Florida’s Special Powers of Railroad Statute, Fla. Stat. § 2241 (1892),<sup>3</sup> rather than deeds for consideration, thus limiting the interest conveyed to an easement. Aplt.Br. 49, 52–53. But Plaintiffs’ counsel made the same allegation regarding the deeds in *Rogers* and the Florida Supreme

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<sup>3</sup> Though it has been numbered in various ways over the years, the substance of Fla. Stat. § 2241 has remained the same. *Rogers IV*, 184 So.3d at 1092. The portion Plaintiffs rely upon states that “the real estate received by voluntary grant [to a railroad] shall be held and used for purposes of such grant only.” Fla. Stat. § 2241(2) (1892). Another subsection clarifies, however, that railroads may also “purchase, hold and use all such real estate and other property as may be necessary.” *Id.* § 2241(3) (1892).

Court disagreed. *See Rogers IV*, 184 So.3d at 1093–94; *see also* Appx8 (CFC noting that “the Florida Supreme Court expressly rejected this argument under Florida law”).

“A ‘voluntary conveyance’ is ‘[a] conveyance made without valuable consideration.’” *Rogers IV*, 184 So.3d at 1094 (quoting *Black’s Law Dictionary* 408 (10th ed. 2014)). Under Florida law, so long as some form of valid consideration is provided, “[e]ven a nominal consideration will support a deed.” *Kingsland v. Godbold*, 456 So. 2d 501, 502 (Fla. Dist. Ct. App. 1984). As set forth below, each conveyance at issue on appeal states that the railroad provided valuable consideration. Notably, inclusion of consideration in these deeds distinguishes them from the Palmer deed (which the CFC held conveyed only an easement) where there was no evidence that the grantor received any consideration. *See* Appx38–39. The recitation of valuable consideration in the challenged deeds therefore shows that they are not voluntary conveyances subject to any limitations on land use under Fla. Stat. § 2241 (1892).

And third, Plaintiffs invoke *Stop the Beach Renourishment v. Florida Department of Environmental Protection*, 560 U.S. 702 (2010), as a potential legal bar to a holding that the railroad owns the corridor in fee simple. Aplt.Br. 54. The CFC rejected Plaintiffs’ argument that the Florida Supreme Court’s holding that the railroad was granted fee simple title redefined property interests established in the

early 1900s. Appx7. On appeal, Plaintiffs argue that “to the extent” the Florida Supreme Court’s decision in *Rogers IV* “announc[ed] a novel declaration of Florida law,” it would violate the Fifth Amendment under *Stop the Beach*. Aplt.Br. 54. But nothing in the Florida Supreme Court’s decision indicates that it was changing Florida property law in a way that took vested property rights. This argument is meritless.

Having established that the *Rogers* cases are controlling here, Plaintiffs’ remaining arguments can be readily dispensed with below.<sup>4</sup>

**B. Florida law does not prohibit a railroad from obtaining a fee simple estate in a railroad corridor.**

Plaintiffs reject the well-established principle that, under Florida law, the best evidence of a grantor’s intent is the plain language of a deed. *See* Aplt.Br. 29. Completely ignoring this Court’s decision in *Rogers V*, Plaintiffs argue that the

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<sup>4</sup> The amicus brief supporting the Plaintiffs relies on general treatises and decisions addressing the law of other states with scant reference to Florida law. Its sole oblique reference to the Florida Supreme Court’s decision in *Rogers* is to the principle that the purchasers of lots in a subdivision presumptively received title to the land extending to the center of the street abutting their lots, but that “the centerline presumption can be rebutted when a party can show that the strip of land being claimed is titled in someone else.” Amicus Br. 6 n.2 (quoting *Rogers IV*, 184 So. 3d at 1098) (cleaned up). This centerline presumption is irrelevant here, as the Florida Supreme Court explained: the “cases on subdivision plats are distinguishable” and in any event, “the presumption that an owner of a lot abutting a street owns to the center of the street will not prevail over clear language in a deed showing contrary intent.” *Rogers IV*, 184 So. 3d at 1099.

intent of the grantors here is instead best gleaned from selected statements found in legal treatises on easements and railroads published in the late 1800s and early 1900s. *See* Aplt.Br. 29–30. They also rely on the later-drafted Restatement of the Law (Third): Property (Servitudes) § 2.2 in support of their assertion that “conveyances of strips of land for a railroad right-of-way” are presumptively easements. Aplt.Br.30. Even if the quoted Restatement provision purported to summarize Florida law, which it does not, it recognizes that a court must “read[] the instrument as a whole,” and only “resort to the circumstances surrounding the transaction and public-policy preferences” if “ambiguity cannot be resolved” by the text. *Id.* (quoting Restatement § 2.2).

Contrary to Plaintiffs’ argument, there was no presumption in Florida law that conveyances of land for a railroad corridor were merely easements. The Florida Supreme Court rejected this presumptive-easement argument from Plaintiffs’ counsel in *Rogers*, holding that “Florida law recognizes that railroads may hold fee simple title to land acquired for the purpose of building railroad tracks.” *Rogers IV*, 184 So.3d at 1095–96 (collecting cases). “The determinative factor is the language of the deed when the language is clear.” *Id.* at 1096.

In fact, Florida law assumes that “[w]here any real estate heretofore has been conveyed or granted” it “shall be construed to vest the fee simple title or other whole estate or interest . . . unless a contrary intention shall appear in the deed, conveyance

or grant.” Fla. Stat. § 689.10. Plaintiffs contend that Section 689.10 does not apply to the conveyances at issue in this case, which they argue grant only easements. Aplt.Br. 45–48. Setting aside the fact that Plaintiffs begin with a flawed premise that these conveyances concern only servitudes, the language of the statute is clear: it applies to “any real estate.” Fla. Stat. § 689.10. By its terms, then, Section 689.10 applies where the question is *whether* the deed conveyed fee simple title or an easement. The Florida Supreme Court understood that Section 689.10 is relevant to the interpretation of deeds conveying land for a railroad corridor as it discussed the statute as part of its analysis in *Rogers IV*, 184 So.3d at 1095 n.5. The Court of Federal Claims in *Barron* and *4023 Sawyer Road* properly relied on that holding. Appx5; Appx32–35 (noting that “*Rogers IV* appeared to deal conclusively with this issue”).

The CFC also discussed the case of *Holland v. State*, Appx33, where a Florida appellate court relied on Section 689.10 to hold that a deed conveying a strip of land for right-of-way purposes included the mineral estate underlying the strip. 388 So. 2d 1080, 1081 (Fla. Dist. Ct. App. 1980) (“The deed in statutory form operated to convey the fee simple title in the absence of words of limitation or other expressions of a contrary intention in the instrument.”).

Plaintiffs criticize the CFC’s reliance on *Holland*, but they do not effectively distinguish it. Aplt.Br. 46–47. Plaintiffs argue that the more apposite precedent is

*Thrasher v. Arida*, 858 So.2d 1173, 1175 (Fla. Dist. Ct. App. 2003), Aplt.Br. 47–48, but that case undercuts their argument. In *Thrasher*, the court applied Section 689.10 when interpreting whether a deed conveyed fee simple title or was merely an “ingress & egress easement.” 858 So.2d at 1175. The court noted that Section 689.10 creates a presumption of a fee simple conveyance “unless a contrary intention shall appear in the deed.” *Id.* (quoting Fla. Stat. § 689.10 (1969)). The court found that the plain language of the deed was ambiguous as to the parties’ intent, and it remanded the case for an evidentiary hearing on that issue. *Id.* at 1176. The court did not, as Plaintiffs claim (Aplt.Br. 48), conclude that “Section 689.10 did not apply,” but remanded for a finding as to whether the presumption in that statute was rebutted concerning the parties’ intent. In other words, the court applied Section 689.10 to a purported transfer of an easement.

This Court should conclude, like the CFC, that the seven deeds at issue in this appeal unambiguously conveyed fee simple title to the railroad, but if the Court identifies an ambiguity, it should follow the direction of the Florida Supreme Court in *Rogers IV*, 184 So.3d at 1095 n.5, and apply the presumption in Section 689.10 that the deeds conveyed a fee simple estate.

**C. Under Florida law, the common law strips-and-gores doctrine does not trump the plain language of a conveyance.**

Plaintiffs argue that the common law disfavors the creation of fee estates in strips or gores used as rights of way. Aplt.Br. 31–35. The Supreme Court of Florida

walked through Plaintiffs’ same arguments in *Rogers IV* and explained that the presumption is inapplicable where, as here, the grantor’s intent is clear from the plain language of the conveyance. 184 So. 3d at 1098. Plaintiffs make no arguments regarding the language of most of the deeds in this case. *Rogers IV* makes clear that they cannot eschew that analysis in favor of a common law presumption regarding strips and gores.

**D. This Court’s interpretation of Vermont law in *Preseault II* does not prevail over the plain language of the deeds.**

Plaintiffs’ reliance on *Preseault v. United States* (“*Preseault II*”), 100 F.3d 1525 (Fed. Cir. 1996), Aplt.Br. 35–40, is also misplaced. The deeds at issue in *Preseault II* were interpreted under Vermont law. *See Rogers IV*, 184 So.3d at 1099. Plaintiffs assert, without supporting authority, that “the relevant law in both Vermont and Florida were identical in the early 1900s.”<sup>5</sup> Aplt.Br. 38. Remarkably, nowhere in their analysis of *Preseault II* do Plaintiffs acknowledge this Court’s decision in *Rogers V*, 814 F.3d at 1307, which reached a different result under Florida law guided by the Florida Supreme Court’s decision in *Rogers IV*. The CFC correctly

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<sup>5</sup> Plaintiffs list numerous decisions from courts that cite *Hill v. Western Vermont Railroad*, 32 Vt. 68 (1859), when interpreting deeds under the law of various states, but they identify no decisions that specifically interpreted a deed under Florida law. Aplt.Br. 38–40.

concluded that the *Rogers* decisions provide the relevant legal principles in this case, not *Preseault II*. Appx12.

Plaintiffs rely on *Preseault II* to argue that deeds that are “given following survey and location of the right-of-way” convey only an easement, not a fee. Aplt.Br. 37 (quoting *Preseault II*, 100 F.3d at 1536). That reliance is misplaced. In *Rogers IV*, the Florida Supreme Court held that the fact that a railroad surveyed the land at issue prior to receiving a deed is immaterial in determining the type of interest subsequently conveyed. 184 So. 3d at 1099. The court explained that the outcome in *Preseault II* was based on Vermont law, which did not champion the grantor’s intent as the primary indicator of the type of interest conveyed. *Id.* The court specifically rejected Plaintiffs’ argument, repeated here, that *Preseault II* mandates a finding that a railroad receives only an easement when it first surveys the land to preclude improper influence by the railroad. *Id.*

**E. The plain language of the conveyances unambiguously granted fee interests to the railroad.**

Because Plaintiffs failed to show that the railroad received only easements as a matter of law, the Court must turn to the conveyances themselves to ascertain the grantors’ intent, beginning with the presumption of a fee interest. As shown below, each conveyance unambiguously transferred a fee simple interest to the railroad. For that reason, Plaintiffs are not entitled to just compensation because they did not have

a valid property interest in the railroad corridor at the time of the taking alleged here.

*See Wyatt v. United States*, 271 F.3d 1090, 1096 (Fed. Cir. 2001).

**1. Sarasota Land Company Conveyance (Appx3829–34)**

Several landowners trace their property interests to a 1910 deed from the Sarasota Land Company to Seaboard Air Line Railway, a predecessor in interest to Seminole Gulf Railways. That deed states, in relevant part:

[F]or and in consideration of the sum of Five Dollars (\$5.00) in hand paid, the receipt whereof in hereby acknowledged, and other valuable consideration, the [Sarasota Land Company] hereby grants, bargains, sells and conveys unto the [Seaboard Air Line Railway] all their right, title and interest, of any nature whatsoever in and to the following property, to-wit:

All those certain pieces or parcels of land lying and being in the County of Manatee, and State of Florida, and being described as follows:

A strip of land 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 the lands owned by the [Sarasota Land Company] . . . .

TOGETHER WITH all and singular the tenements, hereditaments and appurtenances there unto belonging or appertaining, and every right, title or interest, legal or equitable, of the said portion of [Sarasota Land Company] in and to the same.

Appx3832–33. As the CFC concluded, Appx10–14, this deed clearly conveys an interest in fee simple. The deed contains “an expansive granting clause that lacks any restrictive or limiting clauses.” *Kent v. United States*, 174 Fed. Cl. 684, 690 (2025). Indeed, this Court considered similar language in *Rogers* and found that it demonstrated the grantor’s intent to convey land in fee simple. *Rogers V*, 814 F.3d

at 1306 (finding “no error in the Court of Federal Claim’s thorough parsing of the language” of the deeds); *Rogers III*, 107 Fed. Cl. at 395 (noting that the grantors conveyed “all their right, title and interest, of any nature whatsoever” and “every right, title or interest, legal or equitable, . . . to the same”).

Additionally, the deed’s description of the property as “a strip of land,” Appx3832, rather than a right-of-way, “is further indication that the parties intended to convey land rather than a right to use or control land for a limited purpose.” *Rogers v. United States* (“*Rogers II*”), 93 Fed. Cl. 607, 619 (2010), *aff’d*, *Rogers V*, 814 F.3d 1299 (2015); *see also Holland*, 388 So. 2d at 1081 (holding that 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).

As in the *Rogers* line of cases, the Honore conveyance is instructive in its distinctions. *See Rogers II*, 93 Fed. Cl. at 620. That language, which the parties agree conferred an easement, states that “this deed is given for the sole purpose of transferring to said grantee a right of way for railroad purposes” and grants reversionary interest “to the grantors, their heirs, successors or assigns.” Appx137. The Sarasota Land Company deed contains neither provision; its unambiguous language clearly shows that Sarasota Land Company granted fee simple title to the railroad.

**2. *Clough Conveyance (Appx3835–41)***

The Clough deed was executed shortly after the Sarasota Land Company conveyance and contains almost identical language, substituting only the Cloughs as grantors and \$50 as consideration. Appx2839–40. As such, the same analysis applies, and the grant was in fee simple. See Appx10–14 (CFC analyzing the Sarasota Land Company and Clough conveyances together and finding that both conveyed fee simple title).

**3. *Burton Conveyance (Appx3820–28)***

The Burtons engaged in a series of transactions in 1909 and 1910 in which they transferred property to the railroad through two conveyances. Appx3824. The deeds set forth language identical to the Sarasota Land Company and Clough conveyances above, Appx3824–25, which is why the CFC found that the transfer “unambiguously conveys fee simple title,” Appx14. In addition to language from the deeds recited above, the Burton conveyance also states:

TO HAVE AND TO HOLD the same unto [Seaboard Air Line Railway] its successors and assigns, to its or their own proper use, benefit and behoof, forever. And [the grantor], for value received, doth hereby sell, transfer and assign unto [Seaboard Air Line Railway] all its right, title and interest in and to the aforesaid contract of sale . . . .

Appx3825. This habendum clause is another sign of the parties’ intent to convey all right and title to the land “forever,” as opposed to a reversionary interest. See *Rogers II*, 93 Fed. Cl. at 619 (finding a fee simple where “the habendum clause does not

contain language which would limit or restrict the grantee’s use of the lands”). The plain language of both the granting and habendum clauses unambiguously shows that the grantors conveyed fee simple title to the railroad.

**4. *Neihardt Conveyance (Appx3863–68)***

The CFC also found that the Neihardt deed also conveyed land in fee simple.

Appx16–18. The language of the deed states:

That [Moses N. Neihardt] for and in consideration of the sum of One Dollar, to him in hand, paid by [Florida West Shore Railways], the receipt whereof is hereby acknowledged, has granted, bargained, and sold to [Florida West Shore Railways] its successors and assigns forever, the following described land to wit.

Appx3867. Like the preceding deeds, the Neihardt deed contains no exclusions or limitations on the interest being conveyed, and therefore conveys fee simple title. *See Andrews v. United States*, 147 Fed. Cl. 519, 526 (2020), *aff’d*, 844 F. App’x 351 (Fed. Cir. 2021); *Whispell Foreign Cars, Inc. v. United States*, 97 Fed. Cl. 324, 340 (2011). The Neihardt deed also contains a warranty clause. Appx3867. Under Florida law, “covenants warranting title in an instrument factor in favor of interpreting the instrument as conveying fee simple.” *Kent*, 174 Fed. Cl. at 691. The clear intent of the parties, then, was to convey a fee simple in the Neihardt deed.

**5. *Florida Mortgage & Investment Company Conveyances (Appx3842–62)***

Thirty-one Plaintiffs in the consolidated cases claim an interest in the railroad corridor through two nearly identical deeds executed by the Florida Mortgage &

Investment Company (“Florida Mortgage”). Appx40. These instruments conveyed fee simple title to Florida West Shore Railway. Appx3842–62. The deeds stated that, for consideration, Florida Mortgage “granted, bargained, and sold to [Florida West Shore Railway], its successors and assigns forever, the following described land.” Appx3853, 3858. The deeds then provide a legal “[d]escription of part of the right of way to be obtained.” *Id.* The legal descriptions conclude by describing the property as a “parcel of land . . . containing [14.545, 3.76, or 12.2] acres, more or less” Appx3855, 3859, 3861. And both deeds include a warranty clause, like the Neihardt deed above. *Id.*

Like the aforementioned deeds, the granting clauses of the Florida Mortgage conveyances use broad language and lack any mention of a reversionary interest. *See Andrews*, 147 Fed. Cl. at 526; *Whispell Foreign Cars*, 97 Fed. Cl. at 340. Additionally, like the Neihardt deed, the Florida Mortgage deeds include a warranty clause. Together, these factors show an intent to transfer the land in fee simple.

Plaintiffs argue that use of the word “right of way” in the deed transforms the interest at issue into an easement. Aplt.Br. 41–45. Again, Plaintiffs rely almost exclusively on secondary authorities for this proposition.<sup>6</sup> But Florida law is clear

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<sup>6</sup> Plaintiffs also cite dicta from *Mills v. United States*, 147 Fed. Cl. 339, 347 (2020). Aplt.Br.42. But the holding in *Mills* turned not on the interpretation of deed language under Florida law, but rather on the interpretation of the Florida railroad charter statute. 147 Fed. Cl. at 347.

that “[s]uch a descriptor can refer either to a ‘right of crossing’—an easement—or to ‘a strip of land which a railroad takes, upon which to construct its railroad’—an estate in fee.” *Kent*, 174 Fed. Cl. at 691 (citation and internal quotation marks omitted); *see also Preseault v. I.C.C.* (“*Preseault I*”), 494 U.S. 1, 16 (1990) (“Some rights-of-way are held in fee simple.”). The operative consideration is whether the conveyance transfers land or a right. *Robb v. Atl. Coast Line R.R. Co.*, 117 So. 2d 534, 536–37 (Fla. Dist. Ct. App. 1960) (citing 4 Thompson, Real Property § 2063). “[I]n deeds granting ‘land’ rather than a ‘right,’ the fact that the instrument contains additional language embodying some reference to its contemplated use as a ‘right of way’ does not without further qualifying terms operate to limit the estate conveyed or cut it down from a title in fee to an easement.” *Id.*; *see also Whispell Foreign Cars*, 97 Fed. Cl. at 340 (holding that where grant of title was to “the following described land” and description of the “strip of land” was followed by warranty of title “to said land,” the deed conveyed fee simple title even though it referred to the property as a “right of way”).

Here, the interests being transferred were described as a “parcel of land,” Appx3854–55; a “tract or parcel of land,” Appx3859, 3861; and a “plat or parcel of land,” Appx3861. And rather than limiting the conveyance to a right of entry, the deeds discuss the property’s acreage. Appx3855, 3859, 3861. This language makes

clear that the grantors intended to convey all property rights to the railroad in fee simple.

**6. Charles Ringling Company Conveyance (Appx3869–77)**

In 1925, the Charles Ringling Company transferred land to Tampa Southern Railroad Company, another predecessor in interest to Seminole Gulf Railways. Appx3874. That conveyance was explicitly made “in fee simple forever.” Appx3876. Additionally, the deed has all the hallmarks of a fee simple transfer discussed above—broad granting language without any reversionary interests, a description of the interest as “land” rather than a right, and a habendum clause without limitations. Therefore, the Ringling Conveyance plainly granted to the railroad fee simple title to the land at issue, and as the CFC found, “the Ringling Plaintiffs’ taking claims fall flat.” Appx45.

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In sum, the Court of Federal Claims correctly concluded that the original deeds here conveyed fees, and Florida law squarely forecloses Plaintiffs’ contrary arguments. For those reasons, Plaintiffs have no ownership interest in the land subject to the NITU and cannot maintain their takings claims.

**II. THE 1926 CONDEMNATION JUDGMENT CONVEYED FEE SIMPLE TITLE IN THE RAILROAD CORRIDOR TO THE RAILROAD.**

In 1926, Tampa Southern Railroad Company condemned a parcel totaling 8.98 acres owned by Bonnie Tankersley and Mattie Davis, who were awarded

\$61,500 in compensation. Appx1280–1360. The CFC correctly held that the railroad acquired fee simple title through that condemnation. Appx17–25. Plaintiffs baldly assert that “[t]he CFC’s conclusion is flatly contrary to Florida law and the text of the condemnation documents,” Aplt.Br. 28, but fail to show any error in the CFC’s analysis. They identify no Florida statute or judicial decision that limits a railroad’s interest in condemned property to an easement as a matter of law. And their arguments about the text of the condemnation judgment similarly fail.

As with the deeds, Plaintiffs mistakenly rely on *Preseault II*. Aplt.Br. 25; *see also* Aplt.Br. 35–36, 40. This Court held in that case, based on *Vermont* law, that the Vermont railroad acquired only an easement through the Vermont procedure for condemning a railroad right-of-way. *Preseault II*, 100 F.3d at 1535. *Preseault II* says nothing about Florida law.

Plaintiffs reference three other inapposite decisions. Aplt.Br. 25–26. First, *Rawls v. Tallahassee Hotel Co.*, 31 So. 237, 239 (Fla. 1894), does not speak to condemnation law, but instead dealt with whether the defendant’s wife needed to be named in a lawsuit seeking to enjoin the Rawlses from tapping into a hotel’s sewer line. In *Naglee v. Alexandria & Fredericksburg Railroad Co.*, 3 S.E. 369 (Va. 1887), the Virginia Supreme Court held that a Virginia railroad could not evade tort liability by transferring its property to trustees. And in *Thomas v. Railroad Co.*, 101 U.S. 71 (1879), the U.S. Supreme Court held that a New Jersey railroad could not lease all

its assets to another railroad. None of these cases shed any light on the 1926 condemnation judgment.

Similarly, Florida's Special Powers of Railroad Statute does not support Plaintiffs' arguments. Florida's statutory provision addressing voluntary grants, Fla. Stat. § 2241(2) (1892), discussed above at pages 17–18 above, is irrelevant because there was no voluntary grant from the landowners—thus the need for the condemnation suit. Plaintiffs' argument improperly alters the voluntary grants provision by inserting the words “condemnation or by condemnation or.” Aplt.Br. 28. Plaintiffs also reference Fla. Stat. § 2241(1) (1892), which authorized railroads to undertake “examinations and surveys for the proposed railroad,” Aplt.Br. 27, without explaining its relevance.

In fact, Florida's Special Powers of Railroad Statute supports the CFC's determination that a railroad right-of-way can be “acquired by purchase *or condemnation* and vests a fee in the company acquiring it.”<sup>7</sup> Appx18 (quoting

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<sup>7</sup> A passing comment in *Andrews v. United States* suggests the Government agreed in that case that “under Florida law, a railroad which takes rights in property through condemnation takes an easement for railroad purposes, not fee simple title.” 844 F. App'x 351, 353–54 (Fed. Cir. 2021). The Government made no such concession. In fact, the Government explained that the issue was not before the Court, stating in its brief that “the scope of the railroad's property interest in this case” was “irrelevant.” Brief of Defendant-Appellee at 34, *Andrews v. United States*, No. 20-1814 (Fed. Cir. Sept. 29, 2020). The Court explicitly did not reach the issue. 844 F. App'x at 353–54.

*Atlantic Coast Line R.R. Co. v. Duval County*, 154 So. 331, 332 (Fla. 1934)) (emphasis added by the CFC). Section 2241(4) entitled a railroad “to take as much land as may be necessary for the proper construction, operation and security” of the railroad, “making compensation therefor as provided for land taken for the use of the company.” Fla. Stat. § 2241(4) (1892). Unlike the provision of this statute regarding voluntary grants, Fla. Stat. § 2241(2) (1892), there is no limitation on the railroad’s interest in or use of land taken by condemnation, indicating the railroad may take a fee simple. In *Mills v. United States*, 147 Fed. Cl. 339, 347 (2020), the CFC reached the same conclusion, finding that “under Florida statutes applicable at the time, a railroad could acquire and hold fee simple title in property by either purchase or condemnation.” *See also Atlantic Coast Line R.R. Co.*, 154 So. at 332 (“A railroad right of way . . . is acquired by purchase or condemnation and vests a fee in the company acquiring it . . .”).

To determine whether the condemnation judgment transferred a fee simple or an easement, the Court must employ the same principles of interpretation that apply to the deeds, as explained above. Specifically, if the language of a judgment “is plain and unambiguous there is no room for construction nor interpretation, and the effect thereof must be determined in the light of the literal meaning of the language used.” *Boynton v. Canal Auth.*, 311 So. 2d 412, 415 (Fla. Dist. Ct. App. 1975). “If a judgment cannot be interpreted from the language in the judgment itself, the entire

record may be examined and considered for the purpose of interpreting the judgment and determining its operation and effect.” *Id.*

Here, the plain language of the condemnation judgment grants fee simple title to the railroad. In describing the property, the judgment refers not to an interest, but rather to “[a]ll that certain piece, parcel, or strip of land . . . containing 8.98 acres, more or less.” Appx1359–60. This broad granting language, transferring “all” of the property, is consistent with a fee simple conveyance. *See Andrews*, 147 Fed. Cl. at 526; *Whispell Foreign Cars*, 97 Fed. Cl. at 340.

Additionally, the granting clause here does not contain language limiting the railroad’s interests to certain uses or purposes, nor does it reference an easement. *See Rogers II*, 93 Fed. Cl. at 618. Instead, the condemnation judgment states that “the property . . . be appropriated by the Tampa Southern Railroad Company for use as a right of way for said Railroad Company.” Appx1360. As with the deeds, Plaintiffs argue that the term “right of way” limits the interest conveyed in the condemnation judgment to an easement. Aplt.Br. 8–11, 41–45. But if the judgment had intended to limit the use of the right-of-way for “railroad purposes” only (as in the Honore Conveyance discussed above), the judgment would have included that limiting language. Moreover, use of the term “right of way” in the condemnation judgment does not indicate an easement was granted. *Cf. Rogers V*, 814 F.3d at 1309 (noting that “a railroad can acquire either an easement *or* fee simple title to a railroad

right-of-way”). “Consider[ing] the language of the entire instrument,” *Mills*, 147 Fed. Cl. at 345, a plain reading of the condemnation judgment is that the railroad received a fee simple interest in all the subject property.

Even if the Court were to conclude, as the Court of Federal Claims did, that the condemnation judgment is ambiguous as to the interest the railroad condemned, the record and “accompanying circumstances” show that the railroad condemned a fee simple interest in the property. *Boynton*, 311 So. 2d at 415. The CFC correctly concluded that documents submitted during the condemnation litigation showed the parties’ intent that the railroad would acquire a fee simple interest. Appx20–22.

First, as the CFC emphasized, jury instructions submitted by both parties broadly discuss the property interest at issue. Appx20–21. The railroad’s proposed instruction tells the jury to determine the fair market value “for the land about to be taken,” not just the right to use the land as an easement. Appx1338. Indeed, the sixth requested charge instructed the jury to “find for the defendants a fair equivalent for the *entire piece of property*.” Appx1339 (emphasis added). Even the landowners’ proposed instruction referred to the property as “the land sought to be taken” and “the proposed appropriation.” Appx1342. And rather than asking the jury to determine the cost of encumbering the enumerated parcel, the landowners asked the court to instruct the jury to consider “injury or impairment of value to the adjoining land of Defendants of the same tract from which this land is taken.” *Id.*

Clearly, both parties to the lawsuit understood that the condemned land was being taken in fee simple. The substantial judgment awarded to the landowners—\$61,500 in compensation in 1926 dollars—also supports the conclusion that the railroad took something more than a mere easement.<sup>8</sup>

Second, the parties evidenced their understanding of the property interest at issue in the condemnation proceedings in a joint description of the parcel. Appx21–22; Appx1349–52. The parties “agreed that the area of the land sought to be taken in this proceeding” matched the legal description in that joint stipulation. Appx1352. The parties did not include any description of easements, encumbrances, or rights-of-way.

Finally, the CFC persuasively explained why the description of the condemned property as a “right of way” in the condemnation petition, the show cause order, and the landowners’ answer refers not to a right-of-way for a railroad purpose but to “land” more generally. Appx22–23; Appx1316–18. Discussing Fla. Stat. § 2241(4) (1892), the CFC explained that a railroad had to show that the land to be condemned was “necessary for the proper construction, operation and security of the road” and thus had to describe the purpose of the condemnation, but that

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<sup>8</sup> To be sure, under Florida law, “the amount of consideration stated in a deed provides no basis for questioning the validity of the deed.” *Rogers IV*, 184 So.3d at 1097. But the amount of compensation awarded by a jury for the taking of property is indicative of the nature of the taking, including the type of interest conveyed.

“Florida law recognizes the railroad’s ability to obtain a fee simple estate through condemnation.” Appx23.

Plaintiffs offer no response to the CFC’s analysis of the condemnation proceeding documents which supported the court’s conclusion that the railroad acquired fee simple title through the 1926 condemnation judgment. Based on Florida statutes that authorized a railroad to condemn land in fee simple, precedent interpreting those statutes, the text of the 1926 condemnation judgment, and the supporting evidence of the litigation documents, this Court should affirm the CFC’s holding that the railroad acquired no less than the entirety of the landowners’ fee simple interest in the parcel at issue. Therefore, Plaintiffs have no ownership interest in the railroad corridor.

**III. CERTIFICATION TO THE SUPREME COURT OF FLORIDA IS UNNECESSARY BECAUSE EXISTING LAW ANSWERS PLAINTIFFS’ PROPOSED QUESTIONS.**

Plaintiffs ask the Court to certify two questions to the Supreme Court of Florida: (1) whether a railroad can obtain a fee simple estate from a condemnation proceeding, and (2) “whether Florida statute 689.10 means a document granting a servitude must be interpreted as conveying title to the fee simple absolute estate in the land.” Aplt.Br. 6. While the Florida Constitution permits certification of questions of law, Fla. Const. Art. 5, § 3, it is unnecessary in this case. Certification to state court is appropriate only where “the answer is determinative of the cause

*and* there is no controlling precedent of the Supreme Court of Florida.” Fla. R. App. P. 9.150 (emphasis added).

This Court has made clear that certification is rare. *See Toews v. United States*, 376 F.3d 1371, 1381 (Fed. Cir. 2004) (“[C]ourts have a duty to decide the cases before them whenever it reasonably can be done.”). This is not a case, like others certified by this Court, where “nothing in [the state’s] law suggested a clear answer” and “there was an absence of any [state] law remotely on point.” *Id.* at 1380–81; *see also Tidler v. Eli Lilly & Co.*, 851 F.2d 418, 426 (D.C. Cir. 1988) (“Where the applicable state law is clear, certification is inappropriate; it is not a procedure by which federal courts may abdicate their responsibility to decide a legal issue when the relevant sources of state law available to it provide a discernible path for the court to follow.”).

Here, existing Florida law answers both questions posed by Plaintiffs. First, as discussed above in Part II, Florida’s Special Powers of Railroad Statute, Fla. Stat. § 2241(4), permitted railroads to take land by eminent domain and did not limit that taking to an easement, as it did in the voluntary grants provision of the same statute. The Court of Federal Claims reviewed this statute and found that “under Florida statutes applicable at the time, a railroad could acquire and hold fee simple title in property by either purchase or condemnation.” *Mills*, 147 Fed. Cl. at 347. And the Supreme Court of Florida explicitly stated in 1934 that land “acquired by purchase

or condemnation . . . vests a fee in the company acquiring it.” *Atlantic Coast Line R.R. Co.*, 154 So. at 332. Plaintiffs made no serious effort in their brief to argue a different interpretation of Fla. Stat. § 2241(4) (1892) and did not even discuss *Atlantic Coast Line Railroad Co. v. Duval County*. This authority forecloses any need to ask the Florida court whether a railroad could ever receive a fee simple estate through condemnation proceedings.

Nor is there any need to certify any question regarding interpretation of a condemnation judgment to the Florida Supreme Court. Presented with Plaintiffs’ request for such a certification, the CFC correctly observed that, even if it had authority to certify a question to the Florida Supreme Court, “[i]t does not seem like a disputed proposition that a condemnation judgment should be interpreted like a deed insofar as the court must look to the language of the judgment to ascertain the nature of the estate conveyed.” Appx24 (citing *Boynton*, 311 So. 2d at 415).

The second question proposed for certification is also readily answered by existing Florida precedent. Part I.B above explains that Florida Statute § 689.10 clearly applies to “any real estate,” and Florida courts have applied its presumption of a fee simple estate to challenged conveyances, including purported easements. *See Rogers IV*, 184 So. 3d at 1095 n.5; *Holland*, 388 So. 2d at 1081. Because the Supreme Court of Florida has already spoken on the applicability of Section 689.10 to situations like those at bar, there is no need to send the issue back to that court.

## CONCLUSION

For the foregoing reasons, the decisions of the Court of Federal Claims should be affirmed.

Respectfully submitted,

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### CERTIFICATE OF COMPLIANCE

This brief complies with the page limitation set forth in Federal Rule of Appellate Procedure 32(a)(7)(A), and the type-volume limitation set forth in Federal Circuit Rule 32(b)(1). Excepting the portions of the brief described in Federal Rule of Appellate Procedure 32(f) and Federal Circuit Rule 32(b)(2), the brief contains 10,052 words.

I certify that this brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6). The brief has been prepared using Microsoft Word in 14-Point Times Roman, a proportionally spaced font.

/s/ Emily Polachek  
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