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Stunning Supreme Court victory vindicates property owners beset by Big Green's 'rails-to-trails' movement

By Ron Arnold
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Dick Welsh is not a name you'll find in Monday's huge property rights victory at the U.S. Supreme Court, but he was the biggest winner. It was his vindication.

Welsh is the Washington state property owner who became a reluctant hero as the father of the "reversionary rights" movement in 1985 when a chunk of his yard was seized so bicyclists could peer in his front window from an abandoned railroad bed that happened to be his driveway.

Big Green's "rails-to-trails" movement and the federal amendments made in 1983 to the National Trails System Act forced Welsh into devoting more than two decades of his life operating the National Association of Reversionary Property Owners, a network for victims of land-greedy government agencies and their nonprofit green-grabber touts.

That's not to take even a glimmer of the hard-fought glory from Marvin Brandt of Fox Park, Wyo., the besieged plaintiff in the high court case, and Mountain States Legal Foundation, the outstanding nonprofit law firm that won the startling 8-1 decision.

MSLF President William Perry Pendley said it all: "We are indebted to the courage of Marvin Brandt of Fox Park for his willingness to take on the federal government and the biggest law firm in the world, the Department of Justice."

As previously explained in this space, Brandt challenged the U.S. Forest Service's construction of a bicycle trail on an abandoned railway that slices through his property.

The point of contention was, who owns the "right of way" once the railway bed was abandoned, the private owner or the government?

Legal history gives a clear answer in the General Railroad Right of Way Act of March 3, 1875, which granted ROWs to railroads, but the railroads only got an easement for railroad purposes.

The Code of Federal Regulations confirmed that law a century later in 1976: "A railroad



company to which a right-of-way is granted does not secure a full and complete title to the land on which the right-of-way is located. It obtains only the right to use the land for the purposes for which it was granted and for no other purpose."

But in 2005, the Forest Service gave in to bicycle activist pressure and, with full knowledge of the law, made the wretchedly slimy decision to propose a bicycle trail and claim a "reversionary interest" in Brandt's land, making his life miserable.

Worse, the government had won a 1942 Supreme Court case against the Great Northern Railway Company by arguing that the 1875 law gave only a temporary easement (the feds wanted to prevent the railroad from a proposed mineral development after tearing up its rails), which Chief Justice John Roberts threw in the face of Forest Service lawyers: "The Government loses this case in large part because it won when it argued the opposite in *Great Northern R. Co. v. United States*."

I asked Pendley what he saw as the key point in this case. He said, "In 2006, when the U.S. Forest Service decided to seize Marvin Brandt's land for its ill-advised trail it knew its legal position had zero merit; nonetheless, it thought it could wear him down by dragging him to the Supreme Court where it thought it could get the court to reverse itself. The federal government's conduct in this case is nothing less than shameful!"

Pendley has a lot of company in that assessment. I asked Ron Ewart, another reluctant hero of the property rights movement who has seen these battles firsthand. He too has devoted years of his life to the cause as president of the National Association of Rural Landowners. NARLO, like NARPO, is a network for victims of Big Green government.

Ewart told me, "The issues of railroad right-of-way abandonment and reversionary rights have raged across America for decades, pitting landowners against trail-hungry counties and cities trying to scoop up abandoned railroad right-of-ways for pedestrian and bicycle trails, by twisting the rails-to-trails act to get their way."

In politics, it's never over. I spoke to Dick Welsh and asked what he thought of the Supreme Court decision and what's next.

He said, "To say the least, I and my NARPO members throughout the United States are very happy with the court's decision in Brandt.

"But I wish it were more far-reaching. The Brandt case has no bearing on the rails to trails act; the case only concerns the rights of way granted under the 1875 act.

"In 1990 the U.S. Supreme Court ruled that the rails to trails act was constitutional, but allowed property owners with reversionary rights to get just compensation through the U.S. Court of Claims."

So there is still a harsh burden on property owners, placed there by people with no respect for private property or the rights that ought to go with it.

What's next? We still have to crack Big Green. When they accuse property owners of acting only in their narrow selfish interests, they're looking in a mirror.

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