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## **A Big Legal Blow to the Rails-to-Trails Movement**

[Sarah Goodyear](#), Mar 11, 2014

You can find them in every state of the union, from Maine to Hawaii, from Alaska to Florida: old railroad rights of way that have been or are being converted to trails for biking, hiking, and other recreational uses. As many as 1,400 such trails covering perhaps 15,000 miles have been built since a movement to repurpose such land began in the 1960s, and about another 1,100 are in the planning stages.

But a [decision handed down by the U.S. Supreme Court Monday](#) could endanger those trails, many of which have become integral to the economies and communities where they are located.

As many as 80 such cases are before courts in the United States today.

The court ruled decisively, 8 to 1, in favor of a southern Wyoming landowner named Marvin Brandt, whose father once ran a sawmill making railroad ties on the family's 83-acre piece of land, now contained within the Medicine Bow National Forest. Brandt had contested the United States Forest Service's right to use a half-mile-long, 200-foot-wide rail right of way going through his land as part of a 21-mile-long trail that runs along the former rail tracks.

His case against the United States, which claimed that the government had lost the right to use the old rail line for anything other than a railroad as part of a land deal his family made in the 1970s, was defeated in two lower courts. But he emerged victorious from the nation's highest court, which [ruled](#) on the basis of an act of Congress dating back to 1875 and a 1942 Supreme Court case that concerned the Great Northern Railway.

The abandonment of the railroad, the majority [wrote](#), terminated the easement that governed it when the trains were running, "leaving Brandt's land unburdened."

The opinion was hailed as "an important victory for property rights" in [a blog post](#) by the libertarian Cato Institute, which added that "if the government wants to turn rails into trails, they can pay for the land, just like anyone else."

What effect might the ruling have on the trail you and your family enjoy near your home? Right now, that is the multimillion-dollar question. Justice Sonia Sotomayor was the only dissenting

opinion in the Brandt case, [writing](#), "The court undermines the legality of thousands of miles of former rights of way that the public now enjoys as means of transportation and recreation. And lawsuits challenging the conversion of former rails to recreational trails alone may well cost American taxpayers hundreds of millions of dollars."

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The Rails-to-Trails Conservancy, a nonprofit that had filed a [friend of the court brief](#) in support of the government's position in *Brandt*, issued a statement reiterating its position:

It is our belief that the original intent of the 1875 legislation was that these linear public spaces should remain of, and for, the people. Just like our national parks, these former rail corridors are public assets in which we all share and benefit. ...

This erosion of protections for these public lands in the Supreme Court not only may block the completion of the Medicine Bow Rail Trail through the former rail corridor, but also threatens existing rail-trails, mainly in the West, that utilize federally-granted rights-of-way and are not railbanked. ...

Our legal team is taking a closer look at the decision—and its implications for other rail-trails—to determine next steps. This decision is likely to result in more litigation over rail-trails in federally granted rights of way.

One reality that emerges from the case is that despite the wide popularity of rail trails among recreational users, there are many property owners who do not take kindly to the idea of strangers hiking and biking through their land. Not only might these people potentially litter or relieve themselves along the way, they also represent a threat to privacy.

Brandt himself has been quoted as saying he would have no problem with trains running through his piece of Wyoming as was provided for in the original easement, but people on bicycles were another story: "We traded for the land with a right of way on it for railroad uses," he told [E&E Greenwire](#) last year. "They want to bring a train through here, that's fine. We never expected and we never agreed to a bicycle trail." Brandt also claimed in the interview that the section of trail he could view from his house ruined his view, although he also said he had only seen 60 or 70 people riding bicycles there since the path opened in 2007.

Justice Stephen Breyer, himself a bicyclist, raised the specter of an onslaught of bicyclists crashing through the homes of unsuspecting property owners: "For all I know, there is some right of way that goes through people's houses, you know," [Breyer said during oral arguments on the case back in January](#), "and all of a sudden, they are going to be living in their house and suddenly a bicycle will run through it."

As hyperbolic as Breyer's argument might seem, it reflects a very real undercurrent of anxiety in the American psyche. Private property is sacred in the United States in part because so many Americans do want to be buffered from random human interaction. According to that thinking, having a noisy, diesel-powered multi-ton train run through your land – even one potentially

carrying toxic chemicals or explosive fuel – is not nearly so threatening as the prospect of another person on foot or on bike, whose face you can see, and who might even say hello.

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