Rel: November 13, 2026

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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2026-2027

SC-2025-0840

Norfolk Southern Corporation et al.

v.

Bellsouth Telecommunications, LLC, d/b/a AT&T Alabama

(Certified Question from the United States District Court for the Northern District of Alabama, Southern Division: 2:25-cv-00375-GMB)

PER CURIAM.

Earlier this year, this Court agreed to answer a question certified to us from the United States District Court for the Northern District of Alabama concerning the installation of telecommunications equipment at railroad crossings:

> "In Alabama, does a telecommunications provider installing any kind of telecommunications facilities within the margin of the right-of-way of a public roadway have an unqualified right to cross a rail corridor without the permission of the railroad?"

Today, after careful consideration and deliberation, we exercise our discretion to decline to answer this question.

QUESTION DECLINED.

Stewart, C.J., and Shaw, Bryan, Sellers, Mendheim, Cook, and McCool, JJ., concur.

Parker, J., concurs specially, with opinion.

Wise, J., recuses herself.

PARKER, Justice (concurring specially).

I concur with our decision not to answer the certified question. The certified-question procedure is a vital aspect of our federal system. And the current question points to state-law issues that are important and unsettled. But after due consideration, I have concluded that now is not the right time to try to resolve them.

I.

A great deal of litigation in this State occurs in federal courts, and those federal courts must frequently apply Alabama law. But this Court remains the final arbiter on all matters of Alabama law. See Arizonans for Official English v. Arizona, 520 U.S. 43, 75-80 (1997).

Recognizing this tension, the certified-question procedure establishes a system of "cooperative federalism." Berkley Reg'l Ins. Co. v. Doe Battery Manufacturer, 173 F.4th 989, 993 (8th Cir. 2026). Under this procedure, our Court may give clear guidance to the federal courts on unsettled matters of Alabama law -- at least when doing so will prove "determinative" of a particular case pending in federal court. Ala. R. App. P. 18(a). This procedure allows our Court to answer questions of Alabama law rather than simply leaving the federal courts to guess at what we

might say. See Berkley Reg'l, 173 F.4th at 992. For all its costs and delay, the certified-question procedure is also more efficient than another alternative -- federal-court abstention (that is, a stay of the federal case) in favor of a "full round of litigation in the state court system before any resumption of proceedings in federal court." Arizonans for Official English, 520 U.S. at 76.

The Alabama Constitution expressly grants this Court "original jurisdiction" to "answer questions of state law certified by a court of the United States." Ala. Const. 2022, Art. VI, § 140(b). And ordinarily, "[w]e have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given." Cohens v. Virginia, 19 U.S. 264, 404 (1821). But it should also go without saying that we cannot and should not answer every conceivable state-law question that might arise during federal litigation. This, presumably, is why the federal courts have acknowledged our broad discretion in deciding how, and even whether, to answer a certified question. See, e.g., Alabama State Conf. of NAACP v. Attorney General of Alabama, 161 F.4th 1286, 1300 (11th Cir. 2025).

The question thus becomes: "What considerations should justify us in not answering a certified question?" Without attempting to exhaust all possible answers to that question, I can think of at least a few:

- The question should be determinative. Our appellate rules say that the answer to any certified question must be "determinative" of the federal litigation. Ala. R. App. P. 18(a); see also New York Times Co. v. Spears, [Ms. SC-2025-0370, Apr. 10, 2026] ___ So. 3d ___ (Ala. 2026) (declining to answer a certified question after initial acceptance because it proved not to be determinative).

- The question should relate to an unsettled area. Our appellate rules also say that there must be "no clear controlling precedents" from this Court. Ala. R. App. P. 18(a).

- The question should be important. Any certified question should likely be one of "widespread [public] importance." Berkley Reg'l, 173 F.4th at 992.

- The question should be purely legal. A certified question should ideally be "purely legal" in nature -- in other words, cleanly presented and capable of clean resolution through traditional legal reasoning. Executive Plaza, LLC v. Peerless Ins. Co., 717 F.3d 114, 118 (2d Cir. 2013). A "clean" question can still turn on facts, but the facts should be sufficiently developed to permit an informed answer, capable of ready determination.

By working through these (and perhaps other) considerations, we, and the federal courts themselves, can be sure that any certified question is truly capable of being answered -- and that any answer we provide will truly matter.

This case presents difficulties related to the first and last of the above considerations. The federal district court in this case certified this question of Alabama law following the filing of a motion for a preliminary injunction. But at that point, there had been little factual development, and the issues had not been narrowed or sharpened by the ordinary course of litigation. Cf. Stewart Title Guar. Co. v. Shelby Realty Holdings, LLC, 83 So. 3d 469 (2011) (declining to answer a certified question after initially consenting). As further explained, this circumstance makes it unclear whether the question is a purely legal one -- and, relatedly, whether our answer would truly be determinative.

II.

The parties' dispute centers on an Alabama statute that grants a right-of-way to certain people and corporations to construct "electric transmission, telegraph, or telephone lines … along the margin of the right-of-way of public highways." Ala. Code 1975, § 23-1-85. The dispute certainly entails a question of statutory interpretation. But it also includes an antecedent question about property rights. Difficulties arise in answering both of these questions.

A.

Because the right-of-way statute essentially conveys an easement, it can convey only those property rights already held by the government in the public-highway right-of-way. After all, "one cannot convey more property than one owns." Hinote v. Owens, 248 So. 3d 964, 967 (Ala. 2017). So, before AT&T can build anything in reliance on the right-of-way statute, we must first ask whether the government could build the same thing without exceeding the government's own right-of-way.

My research suggests that the answer to this question may vary by location. In general, the government has broad rights to control the public-highway right-of-way. See, e.g., Crawford v. Alabama Power Co., 221 Ala. 236, 238-39, 128 So. 454, 457-58 (1930). And, in general, railroad companies have broad rights to control the railroad right-of-way. See, e.g., Central of Georgia Ry. Co. v. Faulkner, 217 Ala. 82, 84, 114 So. 686, 687 (Ala. 1927). But where public roads and railroads intersect, it appears that a new use may interfere with a preexisting use only sparingly. Specifically, the new use may be permissible if (1) "it can be done without destroying the use of the original way" and (2) it "interfere[s] as little as possible with the original use." Southern Ry. Co.

v. Todd, 279 Ala. 260, 263, 184 So. 2d 341, 344 (1966); see also Ala. Code 1975, § 18-1A-72.

On my reading of the law, then, the scope of a right-of-way is fact-intensive and dependent upon the manner in which the right-of-way arose. See Western Ry. of Alabama v. Alabama Grand Trunk R.R., 96 Ala. 272, 277-79, 11 So. 483, 485 (1892) (discussing differences between express dedication, condemnation, and prescription). But therein lies the rub for purposes of our certified-question procedure: This fact-intensive and location-specific nature of the issue makes it virtually impossible to fashion any general answer to the certified question. For this same reason, it is also difficult to see how we can arrive at a statement of the law that in any respect would be "determinative" of the federal dispute.

B.

Related problems arise in interpreting the right-of-way statute. Here, the overarching question boils down to whether fiber-optic cables fall within the statute's reference to "electric transmission, telegraph, or telephone lines." § 23-1-85. Although the parties did not raise the question before the district court, the district court's certification order pointed out that the answer is at least not obvious. Deciding how to

interpret statutory language over a century old in light of technological developments can pose both legal and factual difficulties.

Some of the legal questions include: How general is a word like "telephone?" What about when it is paired with "line?" What do we do with the history of statutory amendments given that "telegraph" was added to the right-of-way statute in 1855,[1] "telephone" was added in 1897,[2] and "electric transmission" was added in 1975?[3] How broadly or narrowly should such terms be read when faced with technology not in existence at the time? At what level of generality should we understand the original public meaning of such terms? What other statutes can inform our understanding of this one?

Factual questions include issues of how the relevant technology works: What, exactly, do fiber-optic cables do? To what extent do they facilitate telephone service? And how has fiber-optic cables' relationship to telephone service changed over time? Similarly, are there factual differences in telegraph and telephone technology that might explain

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[1] See Ala. Acts 1855-1856, Act No. 6.

[2] See Ala. Code 1897, § 2490.

[3] See Ala. Code 1975, § 23-1-85.

why the Legislature presumably concluded that the word "telegraph" did not include telephone lines and thus necessitated the addition of "telephone" in 1897?

Having answers to these questions would be helpful if not essential to a proper interpretation of the right-of-way statute. Their existence underscores why the question is not sufficiently "clean" as to permit us to answer the question.

III.

Today's nonanswer to the certified question may be frustrating, but a job worth doing is a job worth doing right. Perhaps there will be another occasion to consider this question -- perhaps with a more narrowed question and more developed arguments and record. In the meantime, I remain fully committed to answering certified questions when feasible and appropriate. I only reluctantly conclude that the circumstances prevent us from providing such an answer at this time.