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Statement of
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Concerning H.R. 5195
The Journey Through Hallowed Ground National Heritage Area Act of 2006

Before the U.S. House of Representatives Committee on Resources Subcommittee on
National Parks, Recreation and Public Lands

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Mr. Chairman and members of the Subcommittee, thank you for the opportunity to appear before you today. My name is Peyton Knight, and I am Director of Environmental and Regulatory Affairs for The National Center for Public Policy Research, located in Washington, D.C. The National Center is a nonprofit, nonpartisan education foundation founded in 1982.

The Journey Through Hallowed Ground National Heritage Area Act is a prime example of how pork-barrel politics can harm local rule and private property rights.

Worse than run-of-the-mill pork, which wastes federal tax dollars, this legislation would actually purchase preservationist special interest groups, many of which have histories of anti-property rights activism, and encourage them to urge State and local lawmakers to restrict land use, modify zoning and even acquire private property or interests in private property.

Specifically, H.R. 5195 would create a 175-mile long federal corridor, the boundaries of which encompass portions of Virginia, Maryland, West Virginia and Pennsylvania. It would assign a “management entity” consisting of the Journey Through Hallowed Ground (JTHG) Partnership (an umbrella group of preservation activists and lobbyists who stand to directly benefit from the bill’s passage) and the Interior Department to oversee development and land use in the area. This entity would be tasked with creating a “management plan,” which among other things, would include an “inventory” of all property within the boundaries of the Heritage Area that the management entity wants “preserved,” “managed” or “acquired” because of its so-called “national historic significance.” Once this plan meets the approval of the federal government, the legislation directs the management entity to work to implement the plan at the local level, and equips the management entity with federal cash and federal assistance.

According to the legislation, the management entity would have the authority to disburse federal moneys to “States and their political subdivisions” to promote land use policies that are favored by the entity, including acquisition of private property. Taxpayers and residents within the boundaries of the Heritage Area would not be allowed to vote on the management entity's leadership or have a say in its direction. Eligibility for membership in the board of directors of the management entity would be limited to members of the partnership prior to the legislation's enactment.

The bill lists as one of its “purposes” that all “significant historic, cultural and recreational sites in the Heritage Area” should be managed “in a manner consistent with compatible economic development.” And, of course, which sites are deemed “significant” and which types of development are deemed “compatible” is at the discretion of the preservationist interest groups and their federal partners, rather than the residents of the states and localities involved.

The preservationist interest groups couldn't ask for much more than what this legislation would provide them: A congressionally-ordained, members-only club, funded by taxpayers, for the purpose of making taxpayers live under the club's rules.

To claim, as the JTHG Partnership does, that this legislation “does not interfere with the local authority at all” does not pass the straight face test. In fact, this bill is designed to interfere with local authority.

As the General Accountability Office reported in March, 2004, National Heritage Area management plans, like the one prescribed in H.R. 5195, “encourage local governments to implement land use policies that are consistent with the heritage areas’ plans, which may allow the heritage areas to indirectly influence zoning and land use planning in ways that could restrict owners’ use of their property.”

A good example of the negative influence such Areas can have on property rights and zoning can be found in the Yuma Crossing National Heritage Area in Arizona.

The Chairman of the Committee on Resources has filed a report explaining the situation in Yuma. This report accompanies legislation designed to amend the Yuma Heritage Area in order to protect the rights of property owners. It states:

“When the Yuma Crossing Heritage Area was authorized in 2000, the public in Yuma County did not understand the scope of the project and was surprised by the size of the designation... Concerns were raised by citizens about the size of the designation and the potential for additional Federal oversight. The fear of adverse impacts on private property rights were realized when local government agencies began to use the immense heritage area boundary to determine zoning restrictions.”

When confronted with the unpleasant realities of the Journey Through Hallowed Ground National Heritage Area Act, proponents of the legislation enter spin mode, saying the bill

is designed to merely honor the rich history of the region and “elevate” the area’s “national prominence” in an effort to increase historical awareness and bring more tourism to the region. In other words: What’s all the fuss?

Bloomberg News columnist Andrew Ferguson best described this dubious defense of the Hallowed Ground Heritage Area earlier this month. In this particular instance, Mr. Ferguson is describing Senator George Allen’s defense of the Hallowed Ground initiative:

“Allen's response has been typical of a politician who unexpectedly finds himself bucking his base. He wants to reassure both sides simultaneously – preservationists on the one hand and property-rights advocates on the other – and the only way to do this is to brag that the bill is a critically-important measure that will have almost no practical effect.”

H.R. 5195 would have a bad practical effect on private property owners within the boundaries of the Heritage Area.

When property rights advocates consulted with Congressman Wolf’s staff earlier this year, we asked if any property rights legal experts had been consulted when drafting this bill. The answer was “no.” We, however, did consult such experts.

James Burling, principal property rights attorney for the Pacific Legal Foundation, had this to say about H.R. 5195:

“This bill suggests that Congress still doesn't ‘get it.’ The so-called protections for private property are largely symbolic; so long as regulators can browbeat landowners into becoming ‘willing sellers’ we will continue to see the erosion of fee simple property ownership in rural America. With the influx of federal funding, the regulatory pressure on landowners to sell will, in many cases, be insurmountable. The legacy we will leave to future generations will not be the preservation of our history, but of the preservation of a facade masquerading as our history subverted by the erosion of the rights that animated our history for the first two centuries of the Republic.”

Joe Waldo, president of the Virginia property rights law firm Waldo and Lyle, said this regarding H.R. 5195:

“The bill before Congress has nothing to do with a ‘heritage trail’ but will result in a ‘trail of tears’ for those least able to stand up for their property rights. This is no more than an effort to over reach by the federal Government with regulations that will restrict homeowners, farmers and small business people in the use of their property.

“Traditionally the elderly, minorities and the poor are most impacted by regulatory measures that restrict property owners in the use of their land. Protecting our heritage is a noble ambition, however these matters need to be handled at the local level by those

closest to the issues at hand. It is important that the fundamental right of private property not be threatened by more misguided federal legislation.”

R.J. Smith, recognized property rights expert and senior fellow at the National Center for Public Policy Research, said:

“The name itself for this National Heritage Area raises serious questions. It seems improper, even indecent, to name this the Hallowed Ground corridor and claim it is to ‘appreciate, respect and experience this cultural landscape that makes it uniquely American’ when it tramples on the very principles of private property rights, individual liberty and limited government that the Founding Fathers risked and gave their lives for. Lincoln himself reminded us in the Gettysburg Address that ‘we cannot dedicate—we cannot consecrate—we cannot hallow this ground.’ He reminded us that we must be dedicated to see that this ‘new nation’ ‘conceived in liberty’ had ‘a new birth of freedom’ and did ‘not perish from the Earth.’ Rejecting the very principles of the Founding Fathers that created our liberty and freedom is not a journey any free person should want to undertake.

“Any legitimate effort to attract tourism to old homes and mansions and to quaint little country main streets should properly be done privately and voluntarily by chambers of commerce, booster groups, and preservationist organizations. Not by the compulsory diktat of the National Park Service, the U.S. Congress, and anti-growth Greens. If you want to attract visitors try billboards, not federal force.”

And as Dr. Roger Pilon, director of the Cato Institute's Center for Constitutional Studies, notes:

“There's nothing wrong with historic preservation—in fact, it's commendable—but it's got to be done the right way. However worthy your ends, when you prohibit people from using their property as they would otherwise have a perfect right to do, you've got to pay them for their losses. Indeed, it is not a little ironic to simply take those historic rights in the name of historic preservation.”

While property rights experts were ignored, anti-property rights groups have been given a prominent role. For example, the National Trust for Historic Preservation holds high office on the Journey Through Hallowed Ground Partnership's board of directors. Peter Brink, senior vice president of The National Trust, also serves as vice-chairman of the Hallowed Ground Partnership's board.

As award-winning author James Bovard has observed: “The National Trust for Historic Preservation, the premier preservationist organization, has gone from seeking to educate Americans about historic treasures to clamoring for maximum restrictions on private land use across the nation.”

In a much publicized case last year, a Louisa, Virginia man who simply wanted to renovate his home ran into opposition from NTHP. Emily Wadhams, The National

Trust's vice president for public policy, argued against the rights of the homeowner in a hearing on Capitol Hill, testifying, "[P]rivate property rights have never been allowed to take precedence over our shared national values and the preservation of our country's heritage."

There is little doubt that those who make this ground "hallowed" would take umbrage with Wadham's brash attempt at revisionist history. As Thomas Jefferson once said, "The true foundation of republican government is the equal right of every citizen in his person and property and in their management."

The National Trust has also worked to defeat state ballot initiatives designed to restore the private property rights of landowners. For instance, citizens in both Oregon and Washington have had to contend with the National Trust political machine in their battle to receive fair compensation when government devalues their land by taking their property rights.

The group also opposes common sense road improvements. NTHP lobbied to kill plans for a much-needed "outer connector" that would have brought traffic relief to the heavily-congested area near Chancellorsville Battlefield in Spotsylvania County, Virginia. According to The National Trust, the connector "would pass within a mile of the park boundary." How a road one mile away from the battlefield would harm it is not clear.

Another anti-property rights group, Scenic America, is prominently featured on the JTHG Partnership's board of directors. The Partnership's website domain name is owned by Scenic America. For the past six years, Scenic America has vehemently fought the Measure 7 and Measure 37 ballot initiatives in Oregon. These initiatives would simply restore the rights of property owners in that state by requiring landowners to be fairly compensated when government takes their property rights and devalues their land. The citizens of Oregon not only voted to pass both of these popular initiatives, but Oregon's Supreme Court recently upheld the constitutionality of Measure 37. This example shows just how far outside the mainstream Scenic America is when it comes to basic property rights principles.

Particularly in light of the controversial *Kelo v. City of New London* Supreme Court decision, Congress should be seeking ways to protect the rights of property owners, not empowering organizations to harm the property rights of landowners in the Hallowed Ground region, or any other part of the United States.

In addition to being a permanent threat to landowners in the region, the Journey Through Hallowed Ground National Heritage Area would likely be a permanent unit of the National Park Service, as National Heritage Areas have historically required constant federal oversight and/or funding.

This is unfortunate for an agency that currently suffers a multibillion-dollar maintenance backlog and, as documented by the National Parks Conservation Association, is incapable of handling its current responsibilities. This maintenance failure is especially

troubling, considering the agency is spending “more funds per employee, per acre and per visitor than ever before,” according to Lynn Scarlett, Department of the Interior Assistant Secretary for Policy, Management and Budget. Adding a new National Heritage Area to the Park Service’s extensive portfolio of properties would only add to this crisis.

According to the GAO report on National Heritage Areas: “[S]unset provisions have not been effective in limiting federal funding: since 1984, five areas that reached their sunset dates received funding reauthorization from the Congress.”

National Park Service Deputy Director Donald Murphy testified before the U.S. Senate National Parks Subcommittee in June of this year that only one National Heritage Area (the Illinois and Michigan National Heritage Corridor) has met its federal funding expiration. This expiration is not destined to last very long, however. Mr. Murphy also noted that the current Congress has approved legislation to provide additional funding to this Area.

In conclusion, we should never seek to honor the heroes of our nation’s founding by trampling the sacred principles for which they fought and died—namely, those enshrined in the Bill of Rights, including property rights, and the principle of limited, local government.