

March 24, 2009

## ACLU, CEI and OTHERS OPPOSE H.R. 146, OMNIBUS PUBLIC LAND MANAGEMENT ACT OF 2009

### CIVIL LIBERTIES, DUE PROCESS AT STAKE

**H.R. 146 OPPOSED BY: ACLU, Association of Applied Paleontological Sciences, Competitive Enterprise Institute, National Association of Criminal Defense Lawyers, and National Center for Public Policy Research**

Dear Colleague,

Below is a letter from an unusual collection of organizations, but they speak in one voice in opposition to H.R. 146, the Omnibus Public Land Management Act of 2009. I hope you will join me in voting no on the previous question so that this bill may be amended and improved.

Sincerely,

DOC HASTINGS  
Ranking Republican  
Committee on Natural Resources

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Dear Speaker Pelosi, and Minority Leader Boehner,

Our respective organizations have diverse viewpoints, but we share a deep and abiding belief in due process under the law. We believe that that Congress should perform careful diligence before adding violations to the criminal codes, that federal crimes should be narrowly defined and show clear criminal intent, and that the use of asset forfeiture must be narrowly tailored so that it does not unduly punish the accused before a trial has proven their guilt. As such we have grave concerns about sections of the pending Omnibus Land Management Act of 2009, which passed the Senate last week as H.R. 146, regarding "paleontological resources preservation."

These sections, now contained in the bill under Subtitle D of Title VI, seek to empower the Departments of Agriculture and the Interior to "protect paleontological resources on Federal land using scientific principles and expertise." We understand that preventing theft of and harm to important fossils on federal land is a serious objective. However, we are concerned that the bill creates many new federal crimes using language that is so broad that the provisions could cover innocent human error. There is also, in defining the crimes, a troubling lack of words such as "knowingly" that clearly establish criminal intent as

a prerequisite for prosecution. As Georgetown University legal ethicist John Hasnas has written, to serve the greater goal of justice, all criminal laws must require the government to establish that "one had to knowingly or at least recklessly act in a morally blameworthy way to be subject of criminal punishment."

H.R. 146 would make it illegal to "excavate, remove, damage, or otherwise alter or deface or attempt to excavate, remove, damage, or otherwise alter or deface any paleontological resources located on Federal land" without special permission from the government. Penalties for violations include up to five years imprisonment. "Paleontological resources" are loosely defined as all "fossilized remains ... that are of paleontological interest and that provide information about the history of life on earth." We are troubled by this definition that paleontological organizations say could cover many common rocks that adults and children collect. The Association of Applied Paleontological Sciences has warned that with this wording, it is easy to visualize "a group of students unknowingly crossing over an invisible line."

We are also concerned about the bill's prohibition against "false labeling" of fossil specimens, an offense that also carries criminal penalties. The bill makes it a crime to "make or submit any false record, account or label for, or any false identification of, any paleontological resource excavated or removed from federal land." This broad language could criminalize innocent misidentifications, limit scientific inquiry, and infringe on the First Amendment's protection of freedom of speech. Fossil labeling is a complex process, and even the top museums of the world have been known to revise labeling in their exhibits upon scholarly review or new facts being discovered. Thus, the fear of making an honest mistake in fossil labeling or even having fossil identifications proven "false" in light of new scientific discoveries could have a chilling effect on new research in paleontology.

We are pleased that the Senate recently improved provisions regarding forfeiture. Language in earlier versions of the legislation would have allowed government officials to engage in the pretrial seizure of "all vehicles and equipment of any person" accused of theft or harm to a "paleontological resource." Forfeiting a person's property without a conviction undermines the bedrock principle of our legal system: that a person is innocent until proven guilty. Past abuses of forfeiture led to bipartisan passage of the Civil Asset Forfeiture Reform Act of 2000, and we had feared that these provisions would go against the spirit of these reforms. The Senate heeded our concerns with an amendment, and as passed on March 20, "vehicles and equipment" were removed from the forfeiture language, so that the forfeiture provisions apply only to the "paleontological resources" taken from federal land. This is a marked improvement, and we would oppose any attempts to reinsert forfeiture of personal property in a revised bill.

Above all, we are concerned that a bill containing new federal crimes, fines and imprisonment, and forfeiture provisions may come to the House floor without first being marked up in the House Judiciary Committee. That committee is tasked with providing centralized oversight of criminal legislation, thereby enhancing the fairness and consistency of those enactments. As such we strongly urge that the criminal provisions of the Omnibus Public Land Management Act be stripped from any final legislation until they are subject to Judiciary Committee review and amendment."

Representatives of the signatory organizations of this letter would be happy to meet with you or members of your staff to address these concerns.

Sincerely,

Caroline Fredrickson  
Director

American Civil Liberties Union  
Washington Legislative Office

Tracie Bennitt  
President  
Association of Applied Paleontological Sciences

John Berlau  
Director, Center for Investors and Entrepreneurs  
Competitive Enterprise Institute

Kyle O'Dowd  
Assoc. Executive Director for Policy  
National Association of Criminal Defense Lawyers

David A. Ridenour  
Vice President  
The National Center for Public Policy Research

Cc: House Majority Leader Steny Hoyer  
House Majority Whip James Clyburn  
House Minority Whip Eric Cantor

House Judiciary Committee Chairman John Conyers  
House Judiciary Committee Ranking Member Lamar Smith

President Barack Obama  
Attorney General Eric Holder