Testimony of
Peter Blackman
Private Property Owner

My name is Peter Blackman. I own a farm that is a contributing property to National Register listed Green Springs Historic District in Central Virginia, twelve miles east of Charlottesville. I am currently engaged in litigation with the National Park Service over plans to renovate my house. The nub of the lawsuit, brought by the United States, is a purported conservation easement it holds on the property as part and parcel to the National Register program. On advice of counsel, I am limited in how I can comment on the litigation itself, but I offer to the Subcommittee the full court record to date, among other documents.

The issue I wish to address today is Section 2(a) of the discussion draft regarding proposed amendments to the Historic Preservation Act. Specifically, I am concerned with Section 101(a)(6) of the Act. This Section currently allows the Secretary to find a property eligible for the National Register over the objections of a property owner. The effect of this provision is to basically run roughshod over the property rights of that owner through a back door eligibility designation, which can have the same restrictions as a normal listing. The proposed amendment, by closing this loophole, is long overdue. I applaud this, a step in the right direction that returns an important property right protection to homeowners.

I respectfully submit to the subcommittee, though, that this amendment does not go far enough. A property owner needs more than a true veto power over a potential National Register listing. He should be able to opt out or withdraw from National Register at any time. The National Register is supposed to be elective, after all, and an honor. You can do anything you wish with your house without penalty, even demolish your house, within the limits of state and local law. That is what the Park Service literature trumpets time and again and what you are told when being wooed to list your property on the National Register.

Alas, that is only part of the story. The National Park Service and others will use the National Register as a bludgeon against the property owner and trample his property rights, if they can. To them, your property, once listed, is just a “resource;” to them, it is not a home.

This danger may sound far-off and academic. I am here today to tell you that it is happening today. It is happening to me, and I am not alone!

The cause of this problem is what I would call the “add-ons” to the National Register.
These add-ons are most often local or state preservation regulation that kicks in when a property has National Register status. Here in Washington, to use just one example, if a property is listed on the National Register, you can not demolish any part of it without the approval of a mayor’s agent, something that is seldom given. It does not matter that the property was not on the local list of landmarks. The National Register is enough to trigger this rule.

In my case, the add-on was an alleged easement, which the Park Service assumed from a private nonprofit organization in 1978, then placed with the Shenandoah National Park to manage. Every step of this process, by the way, was carried out, I believe, without any apparent statutory authority to do so, in contravention of basic administrative law.

The Park Service has used the easement it claims to have on my property to apply as mandatory requirements what is known as the Secretary of Interior’s Standards for Rehabilitation to their review of renovation plans for my house. It has applied these guidelines in a punitive manner. These standards were never intended to be used this way. Like the National Register’s itself, these standards were meant to be non-compulsory and to be treated flexibly, as at most a starting point in discussions with a property owner. But to give you an idea what the Park Service has done, they have prevented me from remediating extensive toxic mold and fixing dire structural problems, invoking these standards. A federal judge agreed that these standards are not supported by the easement document the government relied upon. They have done all this in the name of “preservation.” I have some pictures to show you what I mean. SHOW PHOTOS
And they were on record even disallowing me to do more limited work, which would have no effect on the long-term cosmetic appearance of the house, all in the name of “preservation.” I submit, with their form of preservation, their valuable “resource,” my home, may collapse!

As to their objections to my larger plans, it can be summed up as this: my modifications or additions, which the government attorney herself described as “gorgeous,” are one of two things: most often, they are too much in the style of the original house! Other times, they are different from the original house, and thereby objectionable! Go figure!

Now I can tell you that I am not the only person, even in my community, who has encountered this morass of vague, shifting standards, but most property owners end up having no choice but to give in. The government has a huge advantage in terms of time and money when a dispute arises. The Park Service knows this. They know that they can then mess with

a property owner. It does not cost them personal time or money! Yet their decisions can disrupt a property owner's life and home, as they have, mine.

I wish I could go into greater detail. I would like to mention, before my time is up, or if the subcommittee will permit me, that there are a few other issues that my situation raises that bear its looking into.

One is that the National Register was meant to protect a property owner from federal action. That is the purpose of Section 106 of the Historic Preservation Act. That is a section that triggers an intricate review whenever a federal action, such as a highway, might negatively impact a National Register property. But the Park Service has inverted the notion of "federal undertaking," a term defined in the regulations under the Act, to use it as weapon against me, without any support under that definition. They have actually asserted that their aesthetic review of my house constitutes a federal undertaking. It makes no sense. I have no doubt they have done this with others.

In my case, also, there has been an improper delegation to a local nonprofit organization. This has been done without the Park Service vetting the group. In fact, the Park Service itself has repeatedly expressed reservations about this group's – quote – "closely held agenda." – close quote.

I could also speak about the Park Service abuse of the whole FOIA process, and but for the litigation, the possible retaliatory behavior of the Park Service. I think, though, the documents I provide may speak for themselves on this last point.

Before I close, I will quickly summarize the documents I am leaving with you that help support what I have alluded to in this speech. The court record includes a transcript from an evidentiary hearing, appellate briefs on a narrower certified question about the easement's validity under the common law, a question argued just yesterday before the Virginia Supreme Court, and documents surrounding a failed attempt by the government to hold me in criminal contempt for an alleged violation of an injunction. The charge was thrown out because the government tried to bypass going to the federal judge hearing the case. The court record includes many illustrative documents as attachments, including, of course, the disputed easement. In addition, I offer a fuller written statement about the district I live in and my dealings with the National Park Service leading up to the litigation. I also have attached to that are correspondence relating to an investigation initiated by Congressman Eric Cantor and two Freedom of Information requests I made in 2003, and some documents uncovered in the FOIA investigations.

Once again, I thank the subcommittee for affording this opportunity to address my concerns.