

Mr. Gale Illig

Testimony before the Committee on Resources  
Subcommittee on National Parks  
United States House of Representatives

Hearing on HR 4581,  
“The Easement Owners Fair Compensation Claims Act”

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My name is Gale Illig. I live with my wife Sarah in Grantwood Village, Missouri which is a small suburb in St. Louis County. Sarah and I have a small commercial holiday decorating business that we operate out of our home.

After a number of years of saving, in 1984 we bought our home in Grantwood Village. It is a modest three bedroom, two bathroom, slightly more than 2,000 square foot home but one that we love and have worked hard to care for and improve over the years. This home is where we have raised our family and now spend our retirement years. We are not a family of great wealth and the equity in our home represents our most significant asset.

When we bought our home in 1984, one of the features that appealed to us was the quiet and secluded community and location. A screened-in sun porch on the south side of our home is one of our favorite rooms. Outside the sun porch and further to the south is the now abandoned Missouri Pacific Railroad right-of-way. We own the property over which the MoPac held an easement for this branch-line of their railroad. The tracks themselves were just a single line and they were infrequently used. Between the tracks and our home was a large, attractive hedge which gave us privacy.

In 1992 a not-for-profit nature trail group negotiated with MoPac to acquire this now abandoned railroad right-of-way. The federal government gave the trail group the authority to acquire this abandoned railroad right-of-way property and to prevent us from using our property. We understand that the federal Trails Act gave them this ability to take our property even though under Missouri law we had the right to use and occupy this property once it was abandoned by MoPac. While the railroad had a full 100 foot width easement, they only used a very narrow 12 feet that was occupied by the train tracks and, as noted, that was used infrequently.

The private trail group transferred this trail easement to the St. Louis County Park Department and they now claim the right to use the full 100 foot width of the original railroad easement, including the right to cut and remove all of the foliage on this part of our property. There are now hundreds of people biking and walking through our property where previously we enjoyed a quiet and secluded home. It is not just a trail, however, this easement also means that a railroad or light rail will be built over our property in the future. Under Missouri law we owned this land free of any easement for either a public access trail or a railroad

Now, I want to be very clear that I do not oppose the Trails Act or recreational hiking and biking trails and we think parks and recreational trails are an important part of our community. It is just that when, as in our situation, the federal government runs the trail through our private property without our consent we believe that we should be fairly compensated for this taking of our property. This public trail runs just several feet from our sunroom which was our favorite place to relax in our home.

We have always understood that the Fifth Amendment to the U.S. Constitution provided us the guarantee that if our property were to be taken we would be compensated. I mentioned that we are a family of modest means and this is true. This causes us to feel even more painfully the effect that this taking of our property has had upon our own home value.

The government took our property 13 years ago. We spent more than 6 years in a lawsuit with the government seeking to be compensated for the government's taking of this property. In that lawsuit, the Justice Department agreed that this taking of our property represented a value of \$72,065 taken from us by the federal government. This is a significant portion of our home equity in our home which was appraised as having a value of less than \$300,000. This amount (like the amount due the other property owners) was determined by not one but two separate appraisers. The Justice Department also agreed that they would pay us this money and that they were responsible to make this payment under the Fifth Amendment of the U. S. Constitution. The Justice Department also agreed to pay us interest on this because it has now been 13 years since our property was taken. The Justice Department's agreement that they would pay us was long overdue but was very welcome.

As we get older we face the realistic understanding that we will not be able to live in our home forever. During the twelve years since the trail was created, I have suffered both cancer and a multiple heart valve replacement. The value that Sarah and I have built up in our home is an asset that we look to provide for our needs when we reach a point where we can no longer care for this home and need to move into other living arrangements. For this reason the \$72,065 plus interest since 1992,

while not much money to the federal government, is quite literally huge to us. This is why we were so pleased when the settlement was reached in December, 2004.

Sarah and I are not alone. There are a total of almost 100 property owners that the Justice Department agreed to pay for the taking of their property before the *Caldwell* decision was issued. (I have included copies of some of their letters with this testimony.) The total amount due all these property owners for the value of their property was agreed by the Justice Department to be \$2.3 Million. Again, I understand that this is not a lot of money to the federal government and – if the *Caldwell* decision is not corrected by this legislation – the federal government will be required to unnecessarily pay many times more money for claims where no property is ever converted to a trail and for interest before the property is ever taken.

Two point three million dollars is, however a lot of money to the homeowners whose home equity was taken. Some of these homeowners have homes less than 1,000 square feet on lots less than one-fifth acre worth \$70,000. Yet, all of these property owners are families that have worked hard to pay for their home and care about their property and community. All of these families - according to the property values agreed to by the Justice Department – had a significant portion of their home equity taken. For some the property taken had a value of only \$1,900 but this is a significant amount for these families. Other homeowners have since sold their homes and now live in assisted care facilities. These homeowners are still looking to this (much delayed) compensation for the taking of their home equity that they depend on for their living expenses.

Two days before the hearing with the Judge to approve the settlement, the Court of Appeals decided a Georgia Trails Act case – *Caldwell v. United States*. The government claimed this case changed the law and meant that now the federal government no longer had to pay us what the Justice Department had agreed to pay us for the confiscation of our property. Understand that this was **not** because the government did not take our property. Everyone agrees that the government took our property. No, the Justice Department – because of the erroneous *Caldwell* decision – now claimed that they had taken our property nine months earlier and therefore should not have to pay.

I am not a lawyer so maybe that is why I cannot understand the nuances of this, but, to us, a very simple principle is involved. The government has taken our property, the government agreed that they have taken our property, the government agrees how much they owe us for the property, including interest, and the government is required by the U. S. Constitution to pay us this money. Then, at literally the last minute, they claim the “law has changed” because of the *Caldwell* case so they no longer have to pay us. This is just flat wrong! And, no amount of legal nuance can make it right.

We understand from the dissenting judge in the *Caldwell* case and from our own attorneys that the two-judge majority in *Caldwell* issued a decision that is also contrary to Congresses’ intention when the federal trails act was adopted. In addition, the decision means that – while we do not get paid for the taking of our property – the government must pay much more for property in the future that is never taken for a trail and pay interest for time before the government even takes property that is ultimately used for a trail.

Since the *Caldwell* decision means that the government must pay property owners when it merely authorizes negotiations that may ultimately lead to the establishment of a trail and not when property is actually taken, the government would end up paying a property owner even if that person ultimately does not have a trail and railroad easement imposed on their property. Also, because the date of taking is earlier, the government, in every case, will be obligated to pay more in interest.

Sarah and I have always worked hard, saved our money, and paid our taxes and expected that the federal government would treat us in a fair and just manner. We must tell you that we see this effort by the government to now escape their clear constitutional obligation to pay us (and the other one hundred property owners from whom they admit taking property) as a very fundamental injustice.

For that reason, I and these other property owners in St. Louis County are grateful for Congressmen Akin, Carnahan and Emerson’s effort to correct this injustice occasioned by this aberrant decision of the two judges in the Federal Circuit. Congressmen Carnahan and Akin (and Congresswoman Emerson) have shown admirable leadership in crafting HR 4581 which will assure that Sarah and I and other property owners will receive compensation for our property while at the same time saving the federal government money by making sure the government does not pay for property where a trail is never created nor interest for the time before any property was taken from a property owner. HR 4581 is narrowly drafted to strengthen the Trails Act, save the federal government money and assure that the federal government does fairly pay those property owners from whom it has taken property. This is a good law and one that I am proud my congressman is sponsoring.

Sarah and I thank you, Congressman Carnahan, Akin and Congresswoman Emerson and each member of this Committee, and your staff, for your work on this important piece of legislation. It is a very gratifying experience when the United

States Congress recognizes that citizens have suffered an injustice and works to correct that injustice.