

**UNITED STATES SENATE  
COMMITTEE ON ENERGY AND NATURAL RESOURCES  
SUBCOMMITTEE ON NATIONAL PARKS**

*APRIL 23, 2008*

*SENATE DIRKSEN - 366 3:00PM*

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**STATEMENT OF GALE ILLIG  
IN SUPPORT OF S. 2073  
“THE TRAILS ACT TECHNICAL CORRECTION 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 now abandoned rail line. 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 organization negotiated with MoPac to acquire this 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 owned this land and had the right to use and occupy our land once it was abandoned by MoPac. While the railroad had a full 100 foot wide easement, they only used a very narrow 12 feet that was occupied by the train tracks and, as I mentioned, it was used infrequently before it was abandoned.

The private trail group transferred this trail easement to the St. Louis County Parks Department. The County now claims the legal right to use the full 100 foot width of the original railroad easement, including the right to cut and remove all of the trees and other landscaping on this part of our land. There are now hundreds of people biking and walking through our property where we previously enjoyed a quiet and secluded home. The Trails Act did not just create a trail across our land but also created a new easement across our yard for a railroad or light rail to possibly 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 we do not oppose the Trails Act or recreational hiking and biking trails. To the contrary, we think parks and recreational trails are an important part of our community. We support public recreational trails in 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 access trail now 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 by the government 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 more than 15 years ago. We (and our neighbors) spent more than 6 years in a lawsuit with the government seeking to be compensated for the government's taking of our land. In that lawsuit, the Justice Department agreed that the federal government had taken \$72,065 in the value of our home from us. This is a significant portion of the equity in our home which was appraised as having a value of less than \$300,000. This amount was determined by not one but two separate appraisers, one of which was hired by the Justice Department. The Justice Department also agreed that they would pay us this money and that they were responsible to make this payment of "just compensation" 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 15 years since our land 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 fifteen 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 maybe not much money to the federal government, is quite literally huge to us. This is why we were so pleased when the case was settled in December, 2004.

Sarah and I are not alone. There are almost 100 other land 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 a few of my neighbor's letters with this testimony.) The total amount due all these property owners for the value of their land 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 almost 100 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 of money 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 federal Judge to approve the settlement authorizing payment of compensation to us, the Court of Appeals for the Federal Circuit 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 for the taking of our land. Understand that this was *not* because the government did not take our property. Everyone agrees that the government took our property. Now the Justice Department - because of the *Caldwell* decision - claims that they took our property nine months earlier and therefore should not have to pay us. The government, of course, gets to keep our land.

I am not a lawyer so maybe that is why I cannot understand the nuance of this, but, to us, a very simple principle is involved. The government has taken our land, the government agreed that they have taken our land, the government agrees how much they owe us for taking our land, including interest, and the government is required by the U.S. Constitution to pay us this "just compensation" for taking our land. Then, at literally the last minute, they claim the "law has changed" retroactively

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.

Our neighbors that owned the land on the section of the same trail running two miles to the north were paid when the trail was extended over their land. But, we have not been paid.

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 Congress' intention of how the federal Trails Act was intended to work. In addition, the *Caldwell* 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 when negotiations for a possible trail are authorized, even when no trail is ever created. The government must also pay interest for time during these negotiations for a possible trail, even before any property is converted to a trail.

Since the *Caldwell* decision means that the government must pay property owners when it merely authorizes negotiations that may possibly, ultimately lead to 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. This makes no sense.

Sarah and I have always worked hard, saved our money, and paid our taxes and we 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 and very substantial injustice.

For that reason, I and these other property owners in St. Louis County are extremely grateful for Senators McCaskill and Bond and Congressmen Carnahan, Akin, Clay, Emerson and Graves's effort to correct this injustice. We are very grateful for this Committee providing

this opportunity to hear this important legislation. Senators McCaskill and Bond have shown admirable bi-partisan leadership in crafting S. 2073 to make sure that Sarah and I and our neighbors will receive compensation for the government taking our property while at the same time saving the federal government money by making the Trails Act work as originally written by Congress at less cost to taxpayers.

S. 2073 – The Trails Act Technical Correction Act - is narrowly drafted to strengthen the Trails Act, save taxpayers money and make sure that those land owners such as myself are fairly treated. This is a good law, and one for which I am proud of both of my Senators for sponsoring.

Mr. Chairman, Sarah and I thank you. We thank Senators McCaskill and Bond, the members of this Committee and your staff, for your work on this important piece of legislation. Especially in an election year we hear a lot about partisan division in Congress. Well, Senators Bond and McCaskill's support of this legislation and the similar bi-partisan support this bill enjoys in the House of Representatives is a very gratifying experience. It is very encouraging to me to see that when the United States Senate recognizes that citizens have suffered an injustice at the hands of their federal government, this Committee and the United States Senate will work to correct that injustice.

Thank you again for the great honor and privilege of appearing before you today.

Betty-Mae Stienhans  
# 1 Grantwood Lane  
Grantwood Village, Missouri 63123

Senator Kit Bond  
United States Senate  
274 Russell Senate Office Building  
Washington, D.C. 20510

Dear Senator Bond

I am a single woman and I live in the home that I grew-up in with my parents. For more than fifty one years I have lived in my home in the town of Grantwood Village in St. Louis County. My parents, now both deceased, also lived in this home. As I have gotten older, one of the pleasures I have is my garden. Recently, I had to have hip replacement so I am not able to work in the garden as I would like but still it is a great joy for me to have a garden.

About fifteen years ago the federal government took a significant part of my yard for a public trail. I do not oppose trails and parks, but this was a trail that ran through my back yard and garden very near my home. It had been an abandoned railroad but the railroad had not used the easement in years and the portion of my property that the railroad had used (when they did many years ago) was very narrow. The railroad had abandoned this easement and I owned the property which was my yard and garden. The part of my property taken and used for the trail is much wider than that part which had been used years ago by the railroad.

I understand that it is the prerogative of the federal government to create parks and trails and that doing so sometimes means that the government needs to take private property owned by citizens for these trails and parks. I also understood that when, as in my case, the government takes a citizens' property, the government is required to pay for the value of the property they have taken.

Well, in my case this has not happened. I have not been paid for the portion of my home that the government took for this trail. What is

especially outrageous is that a federal judge and the United States Justice Department all agree that the government took my property, and that I was entitled by the U.S. Constitution to be paid "just compensation" the Justice Department agreed to pay me \$31,000 for the value of my home that was taken. While I would rather have had my property back, being paid for this was at least some consolation for the loss of my yard and garden. To give you an idea of how significant a portion of my property was taken, you should know that my home was appraised by the St. Louis County Assessor with a market value of \$125,000 and the Justice Department agreed that the government had taken \$31,000 of this value. While I realize that \$31,000 is not a large amount of money to the federal government, it means a great deal to me. My home is the only real estate that I own and the government taking this much of my home equity is a devastating financial effect. Especially as I get older I look to my home equity as a source of funds for my long-term care.

Unbelievably, just two days before the federal judge was to approve the settlement with the Justice Department, a Court of Appeals in a Georgia case called Caldwell, retroactively changed the statute of limitations and the Justice Department said I could not be paid. That was in 2004. In other words, the government was able to avoid its constitutional obligation to pay me for the property they took from me, not because another government did not take my property but because some court in another case retroactively changed the rules.

It is difficult to express how very disheartening it is to be treated this way by my government. I have always paid my taxes, voted and tried to support my community and country in every way I can. I never thought that the government would take my property but, if they did, I always assumed that they would treat me fairly. As you can see, that has not been my experience.

I am not alone in this situation. About one hundred of my neighbors (also your constituents) were also denied this compensation by this retroactive change in the statute of limitations. We have all been treated unfairly by our own government.

I understand that you are already familiar with what I am telling you because in the last Congress you sponsored S. 3478 which would have corrected the error and injustice of the Caldwell case. I wrote you a note then to thank you for your support of that bill. I am writing today to ask that you support similar legislation again in this session of the Senate. This is a matter of very great importance to me and to my neighbors.

It means a great deal to me that you have helped me on this matter in the past and I hope that we can get it passed this year. I have been waiting more than 15 years for the government to pay me for the property they have taken, I just hope that this year I will finally be paid.

Very truly

Betty-Mae Stienhans

*Betty Mae Stienhans*

Frank and Juanita S. Scotino  
1454 Friar Tuck Lane  
St. Louis, MO 63125

February 25, 2007

Senator Kit Bond  
United States Senate  
274 Russell Senate Office Building  
Washington, DC 20510

Dear Senator Kit Bond,

We are one of your constituents and live in St. Louis County of Lemay Missouri. We are writing to thank you for your assistance last year and to ask for your continued assistance this year.

Last year you introduced Senate Bill S. 3478. It meant a great deal to us that you introduced this Bill and gave us hope that we would finally be paid for the property that the government took from us. It truly made us proud to know that my U. S. Senator cared about making sure that we and these other Missouri property owners were treated fairly by the federal government. We realize that the Senate and you as our senator are involved in a lot of important national issues. However, as one Missouri voter we were very impressed and pleased to know that you were interested enough in our situation to introduce this legislation. Thank you again!

We understand that S. 3478 did not pass in the last Congress. We understand that congressmen Carnahan and Akin are preparing to introduce a new bill in the House that is very similar to S. 3478 and that it will be co-sponsored by Congressmen Akin, Clay, and Emerson in the House. We would like to ask that you introduce similar legislation in the U.S. Senate this year.

Here is some brief background on why your help means so much to me. We are senior citizens (82 years old). We have a wonderful family that we enjoy. You have done so much for Senior Citizens in Missouri. Thank you for the job you have done for us. This compensation would mean a lot to us. It would help with our independence.

Senator Kit Bond  
February 25, 2007  
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It is amazing to us that it take an Act of Congress for citizens to be paid for the government's taking of their property. This is especially amazing when the Justice Department has already agreed that the government took our property and agreed how much we are owed. A federal judge has also agreed that the government took our property and that we are owed this compensation. The U. S. Supreme Court said that the Fifth Amendment to the U.S. Constitution guaranteed our right to receive this compensation when a rail to trail easement across our property.

We are very glad that you are our Senator and that I can write to ask for your help with this. It would mean a great deal to us personally if you would reintroduce a Bill similar to S. 3478 that you introduced last year. Thank you for reading this letter and thank you so much for your help last year.

Sincerely,

*Frank Sotiro*  
*Juanita S. Sotiro*

Erwin A. Jeffers  
2506 Via Mirakata Pl.  
St. Louis, MO 63125  
Feb. 28, 07

Senator Claire McCaskill  
United States Senate  
340 Russell Senate Office Building  
Washington, DC 20510

Dear Senator McCaskill,

My wife and I congratulate you on your election as Missouri's new Senator. I am one of your constituents living in south St. Louis County, I am writing to ask you to help me receive payment for property that the federal government took from us.

I understand last year Congressman Carnahan and Akin introduced legislation in the House and Senator Bond and Talent introduced a bill S. 3478, in the Senate. It meant a great deal to us that our Congressman and Senator's introduced these Bills, and gave me hope that I would finally be paid for the property that the government took from us.

We realize that the Senate and you as our Senator are involved in a lot of important issues. I was very impressed to know that our representatives in congress were interested enough to introduce this legislation.

This Bill S 3478 did not pass in the last Congress, but I understand Congressman Carnahan is preparing to

introduce a new bill in the house similar to S 3478 and it will be Co-sponsored by Congressman Akin, Clay and Emerson in the house.

Your help would mean so much to me if you could introduce similar legislation in the U.S. Senate.

My wife and I own our home at 2506 Via Miralesta dr St. Louis, Mo. 63125. We bought our home in 1965 and where we lived and raised our family. Our home I feel is worth 125,000.

In 1992 the ICC authorized a private trail group to negotiate with the Mo Pac Railroad to acquire the rights to the abandoned railroad easement that crossed our property. This railroad was abandoned and under Missouri law we owned this property and it was not subject to any easement for a railroad or for a public trail. Never the less, the Mo Pac gave the property to a private trail group that had the right to use this abandoned right-of-way for a recreational trail. Even though the Mo Pac did not own the right to give our property to the private trail group, the Mo Pac was able to give them our property to use for a public trail because of the federal Rails-to-Trails Act. This abandoned railroad corridor can (and may) also be reactivated in the future for light-rail or railroad use.

As I understand the situation, the U.S. Supreme Court has said that the Trails Act is legal but that the federal government owes us compensation for this taking of our property.

To receive this compensation we filed a claim in a case in the United States Court of Claims known as *Illig v. United States*. This lawsuit took more than five years and was finally resolved when the Justice Department agreed in the fall of 2004 to pay us \$8,000. for our property. The Justice Department also agreed to pay us interest. But unfortunately, in a totally unbelievable turn of events, two days before the settlement with the Justice Department was to be approved by the Judge in our case, a Court of Appeals decision in a Georgia case called *Caldwell* was issued. The *Caldwell* case retroactively changed the statute of limitations and meant that our case was dismissed with us receiving nothing for the government's taking of our property. Our lawyers said the *Caldwell* case made no sense and that one of the three judges dissented and said the decision was "contrary to all authority."

Our lawyers have also said that the only way we can be certain to get the compensation that everyone agrees we are owed is by Congress passing a law like S 3478 to correct the error of this *Caldwell* case.

I am writing to ask that you support similar legislation this year in the Senate to make sure that I and the almost 100 other Missouri property owners receive compensation for this taking of our property by the federal government.

We are very glad we can write to ask for your help with this. It would mean a great deal to us personally if you would support legislation in the Senate similar to what Congressman Carnahan will be introducing in the House.

It is amazing to me that it takes an Act of Congress for citizens to be paid for the government's taking of their property, and is especially amazing when the Justice Department has already agreed that the government took our property and agreed how much we are owed.

Thank you for reading this letter.

Sincerely,

Erwin Pfeiffer

*Mary Kathryn England*

10 Vogel Circle  
Arnold, Missouri 63010

March 21, 2007

Senator Claire McCaskill  
United States Senate  
340 Russell Senate Office Building  
Washington, DC 20510

Dear Senator McCaskill,

I live in Arnold, Missouri but formerly resided along Grant's Trail in St. Louis County.

I am writing to ask you to help me receive payment for property that the federal government took from my family. About 100 other Missouri property owners are in the same situation and are entitled to receive compensation for the government's taking of their property but we all need you help.

Congressmen Carnahan is preparing to introduce a bill in the House that is co-sponsored by Congressmen Clay, Akin and Emerson. This bill will allow me and the other Missouri property owners to receive the payment that the Justice Department has already agreed we are owed for the government's taking of my property. Here is some brief background.

Last year Congressmen Carnahan and Akin introduced similar legislation in the House and Senator Bond and Talent introduced a bill, Senate Bill S. 3478, in the Senate. It meant a great deal to me that our Congressmen and Senators introduced these Bills and gave me hope that I would finally be paid for the property that the government took from my late wife and myself. It truly made me proud to know that my U.S. Senators cared about making sure that I and these other Missouri property owners were treated fairly by the federal government. We realize that the Senate, and you as our senator, are involved in a lot of important national issues. However, as one Missouri voter I was very impressed and pleased to know that our representatives in Congress were interested enough in my situation to introduce this legislation.

Unfortunately, S.3478 did not pass in the last Congress. I understand that Congressmen Carnahan is preparing to introduce a new bill in the House that is very similar to S. 3478 and that it will be co-sponsored by

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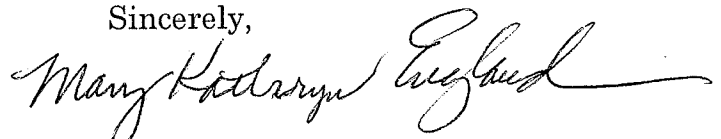
Congressmen Akin, Clay and Emerson in the House. If I could be so bold, I would like to ask that you introduce similar legislation in the U.S. Senate this year. While this bill did not pass last year, I am hopeful that it can this year.

In 1992 the ICC authorized a private trail group to negotiate with the MoPac Railroad to acquire the rights to the abandoned railroad easement that crossed our property. This railroad was abandoned and under Missouri law we owned this property and it was not subject to any easement – for a railroad or for a public trail. Never the less, the MoPac gave the property to a private trail group that had the right to use this abandoned right-of-way for a recreational trail. Even though the MoPac did not own the right to give our property to the private trail group, the MoPac was able to give them our property to use for a public trail because of the federal Rails-to-Trails Act. This abandoned railroad corridor can (and may) also be reactivated in the future for light-rail or railroad use.

I lived in my home with my mother when the railroad abandoned its easement and a trail was created. I joined an action to get compensation for the significant equity taken out of my home by the federal government. Shortly thereafter, the company I worked for, Eastern Airlines, went under and I lost my job. I soon found another but that company moved from the area. In the end, I had to give up my home because I was unable to afford to live there. When I sold it, I was unable to receive full value because of the presence of a public trail on the property. The government was supposed to compensate me but it never has. Instead, it is hiding behind a newly created legal rule to deny me compensation. The proposed legislation will do nothing more than make sure the federal government pays for property it now uses for the public. The U.S. Supreme Court said that the Fifth Amendment to the U.S. Constitution guaranteed our right to receive this compensation when a rail-to-trail easement was created across our property.

Please let me know if there is anything I can do to help make sure that this bill passes this year. Thank you for reading this letter and thank you so much for your help.

Sincerely,

A handwritten signature in cursive script that reads "Kathryn England". The signature is written in dark ink and is positioned above the printed name.

Kathryn England

February 27, 2007

Senator Claire McCaskill  
United States Senate  
340 Russell Senate Office Building  
Washington, DC 20510

Dear Senator McCaskill

Congratulations on your election to be Missouri's new Senator. As a citizen who lives in St. Louis County, Missouri, I am writing to ask you to help me receive payment for the property that the federal government took from me. About 100 other Missouri property owners are in the same situation and are entitled to receive compensation for the government's taking of their property but we all need your help.

Congressmen Carnahan is preparing to introduce a bill in the House that is co-sponsored by Congressmen Clay, Akin and Emerson. This bill will allow me and the other Missouri property owners to receive the payment that the Justice Department has already agreed we are owed for the government's taking of my property. Here is some background.

Last year Congressmen Carnahan and Akin introduced similar legislation in the House and Senator Bond and Talent introduced a bill, Senate Bills S. 3478, in the Senate. It truly made me proud to know that my US Senators cared about making sure that I and the other property owners were treated fairly by the federal government.

Since the bill last year did not pass, Congressman Carnahan is preparing a new bill in the House that is very similar to S. 3478 and that it will be co-sponsored by Congressmen Akin, Clay and Emerson in the House. I would like to ask that you introduce similar legislation in the Senate this year.

In 1992 the ICC authorized a private trail group to negotiate with the MoPac Railroad to acquire the right to the abandoned railroad easement that crossed our property. This railroad was abandoned and under Missouri law we owned this property and it was not subject to any easement—for a railroad or for a public trail. The MoPac gave the property to a private trail group that had the right to use this abandoned right-of-way for a recreational trail. Even though the MoPac did not own the right to give my property to the private trail group, the MoPac was able to give them my property to use for a public trail because of the federal Rails-to-Trails Act.

It was my home, my property and is my most significant asset. The fifty-foot wide easement for a public trail represented a substantial loss in the value of my home and the loss in my home equity that I have worked over the years to build up.

As I understand the situation, the US Supreme Court has said the Trails Act is legal but the federal government owes me compensation for the property. To receive this compensation, I filed a claim in a case in the United States Court of Claims known as *Illig v. United States*. The lawsuit took more than five years and was finally resolved when the Justice Department agreed in the fall of 2004 to pay for the property. The Justice Department also agreed to pay me interest. To me, it is a lot of money that I could use. It is also doing the right thing!

I am 64 years old and have waited for more than 15 years for the government to pay me.

Unfortunately, in a totally unbelievable turn of events, two days before the settlement with the Justice Department was to be approved by the Judge in our case, a Court of Appeals decision in a Georgia case called *Cardwell* was issued. The *Caldwell* case retroactively changed the statute of limitations and meant that our case was dismissed with me receiving nothing for the government's taking of my property.

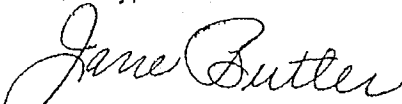
Senator McCaskill  
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Our lawyers said the *Caldwell* case made no sense and that one of the three judges dissented and said the decision was "contrary to all authority." The Judge in our case said the *Caldwell* case was the "Grinch that Stole Christmas" and even though he disagreed with the decision he was bound to follow it.

Our lawyers told me that the only way I can be certain to get the compensation I am owed, is by Congress passing a law like S. 3478 to correct the injustice. The Justice Department has admitted that I am entitled to receive compensation for my property. It is time to "Do the Right Thing." It is amazing that it takes an Act of Congress for citizens to be paid for their property. The US Supreme Court said that the Fifth Amendment to the US Constitution guaranteed this right for compensation when a rail-to trail crossed my property.

Would you please support legislation in the Senate similar to what Congressman Carnahan will be introducing in the House. Thank you for your time and for reading this letter.

Sincerely,

A handwritten signature in cursive script that reads "Jane Butler".

Jane Butler  
7732 Missy Court  
St. Louis, MO 63123

Brenda Brinkmann  
4330 Clearbrook Ln.  
Imperial, Missouri 63052

March 13, 2007

Senator McCaskill  
United States Senate  
340 Russell Senate Office Building  
Washington, D.C. 20510

Dear Senator McCaskill,

I live in Imperial, Missouri. I am writing to encourage you to support legislation that will help to compensate Missouri property owners. I was very pleased to learn that you are again joining other legislators from Missouri, re-introduce legislation that will help compensate Missouri property owners for property taken from them for use by the public.

My husband and I made our home at 2512 Via Miralesta in St. Louis, County. I was a secretary and am now retired. My husband passed away some time ago without ever having been paid for the property taken from us. In 1992, the government established a hiking and biking trail for the public to use across our property. We have still not been paid.

In 1992, the federal government took part of my home for use as a public trail. The railroad had abandoned its easement it had used for rail service and the property was to come to my family for our use and enjoyment. We made a claim for compensation to the government because of the taking. Even though I know that the government can take private property for public use, I also know it must pay compensation to the property owner when it does so.

The reason the government gave for backing out of a settlement just two days before it was to be finalized by the federal court was that a decision by two judges, in a case unrelated to mine called *Caldwell v. United States*, changed the date of the taking. The most upsetting thing is that the government is trying to avoid compensation even though it admits that it took my property and admits that it took \$8,000 from the equity in that home. It is not fair that I, as a private individual, must pay that amount for what amounts to a public park without the public contributing a dime for the use of my property. It was a great disappointment to me that the government would treat us in this way – hiding behind a decision in another case which the dissenting judge said was “against all authority.” The government should honor its constitutionally required obligation to pay private property owners when it takes their land for public use.

I am told that representatives Carnahan, Akin, Clay and Emerson will introduce legislation to correct the situation and provide the compensation owed to me and the others in my case. I hope you will support that effort. I also ask that you sponsor similar legislation in the Senate. I cannot express here how important this is to me and others in my situation.

Sincerely,

  
Brenda Brinkmann

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*Robert Barczewski*  
*Affton Athletic Association*  
*10300 Gravois Road*  
*Affton, Missouri 63125*

April 23, 2007

Senator Claire McCaskill  
United States Senate  
340 Russell Senate Office Building  
Washington, DC 20510

Dear Senator McCaskill,

Congratulations on your election to be Missouri's new Senator. I am one of your constituents and live in Affton. I am writing to ask you to help me receive payment for property that the federal government took from our association. About 100 other Missouri property owners are in the same situation and are entitled to receive compensation for the government's taking of their property but we all need your help.

Congressman Carnahan is preparing to introduce a bill in the House that is co-sponsored by Congressmen Clay, Akin and Emerson. This bill will allow us and the other Missouri property owners to receive the payment that the Justice Department has already agreed we are owed for the government's taking of my property. Here is some brief background.

Last year Congressmen Carnahan and Akin introduced similar legislation in the House and Senator Bond and Talent introduced a bill, Senate Bill S. 3478, in the Senate. It meant a great deal to us that our Congressmen and Senators introduced these Bills and gave me hope that I would finally be paid for the property that the government took from our association. It truly made me proud to know that my U.S. Senators cared about making sure that I and these other Missouri property owners were treated fairly by the federal government. We realize that the Senate, and you as our senator, are involved in a

lot of important national issues. However, as one Missouri voter I was very impressed and pleased to know that our representatives in Congress were interested enough in my situation to introduce this legislation.

Unfortunately, S.3478 did not pass in the last Congress. I understand that Congressman Carnahan is preparing to introduce a new bill in the House that is very similar to S. 3478 and that it will be co-sponsored by Congressmen Akin, Clay and Emerson in the House. If I could be so bold, I would like to ask that you introduce similar legislation in the U.S. Senate this year. While this bill did not pass last year, I am hopeful that it can this year.

In 1992 the ICC authorized a private trail group to negotiate with the MoPac Railroad to acquire the rights to the abandoned railroad easement that crossed our property. This railroad was abandoned and under Missouri law we owned this property and it was not subject to any easement – for a railroad or for a public trail. Never the less, the MoPac gave the property to a private trail group that had the right to use this abandoned right-of-way for a recreational trail. Even though the MoPac did not own the right to give our property to the private trail group, the MoPac was able to give them our property to use for a public trail because of the federal Rails-to-Trails Act. This abandoned railroad corridor can (and may) also be reactivated in the future for light-rail or railroad use.

As I understand the situation, the U.S. Supreme Court has said that the Trails Act is legal but that the federal government owes us compensation for this taking of our property. To receive this compensation we filed a claim in a case in the United States Court of Claims known as *Illig v. United States*.

Our lawyers have now told us that the only way we can be certain to get the compensation that everyone agrees we are owed is by Congress passing a law like S. 3478 to correct the error of this *Caldwell* case.

The value of the land that was taken from us is \$152,000. We would love to be compensated so we could use this money to further enhance our sports programs for children in South St. Louis County.

I should also say that I do not oppose the Trails Act or the creation of recreational trails. The legislation that Congressman Carnahan is planning to introduce in the House will actually improve the Trails Act and make it possible for more railroad rights-of-ways to be converted to recreational trails at less expense to taxpayers. However, it will allow the federal government to pay me and these other Missouri property owners for land that the Justice Department has admitted was taken from us in our case. The Justice Department and the Court agreed that we were entitled to receive compensation for this taking of our land. It is only right that the government honor this obligation.

I am writing to ask that you support similar legislation this year in the Senate to make sure that I and the almost 100 other Missouri property owners receive compensation for this taking of our property by the federal government.

It is amazing to me that it takes an Act of Congress for citizens to be paid for the government's taking of their property. This is especially amazing when the Justice Department has already agreed that the government took our property and agreed how much we are owed. A federal judge has also agreed that our property was taken by the government and that we are owed this compensation. The U.S. Supreme Court said that the Fifth Amendment to the U.S. Constitution guaranteed our right to receive this compensation when a rail-to-trail easement was created across our property. I just do not understand how, with all this, a two-judge decision in a Georgia case can retroactively change the law two days before we were suppose to be paid and now we get nothing even though everyone agrees the government took – and still has – our property.

I am very glad that I can write to ask for your help with this. It would mean a great deal to me personally if you would support legislation in the Senate similar to what Congressman Carnahan will be introducing in the House. Thank you for reading this letter.

Sincerely,



Robert Barczewski