

January 11, 2006

Akin, Carnahan, and Emerson Introduce H.R. 4581, Easement Owners Fair Compensation Claims Act

WASHINGTON, DC - Congressional Representatives Todd Akin (R-MO), Russ Carnahan (D-MO), and Jo Ann Emerson (R-MO) have filed a bill to assist property owners in Missouri and Kansas, who for the last six years have been in litigation with the Department of Justice because their land was taken by the federal government pursuant to the Rails to Trails statute. Although the Act, which was filed late last year is in response to a problem in Missouri and Kansas, if passed in the upcoming session of Congress the bill would have national significance in helping to curb eminent domain abuses.

In the Missouri case, almost 12 years after their property was taken for a recreational trail and after 6 years of litigation with the Department of Justice an agreement with the Justice Department was reached. Justice agreed that the property was worth \$2,385,000 and that the government was obligated to pay these property owners. Two days before the settlement was to be approved by the judge the Federal Circuit Court of Appeals issued a decision in a Georgia case called Caldwell that changed the statute of limitations for Trails Act claims and scuttled this settlement. The Federal Circuit decision ruled that the statute of limitations for Trails Act compensation claims begins to run, not when the property owners land is actually taken from the landowner, but when the Surface Transportation Board issues a notice that there is a possibility that the land might be taken in the future. The dissenting judge noted that this decision of the court was "Contrary to all authority." The Caldwell case is not final settled law.

Because of this change in the law, the Justice Department pulled out of its agreement with the Missouri property owners and claimed that the statute of limitations had run out on their claim and they were entitled to no compensation for the admitted confiscation of their property. This Caldwell decision: (a) is contrary to Congress' intention of how the Trails Act was intended to operate, (b) denies property owners (in a limited number of cases) their constitutionally required compensation to which the Justice Department already agreed they were entitled; and (c) significantly increases the federal government's liability in other Trails Act takings cases by requiring that the federal government pay far more money and interest in a much greater number of future cases for property that is never actually converted to trail use.

H.R. 4581 restores the date for starting the statute of limitations to the date when the property owners' rights to the property are actually taken by the Federal Government.

This is consistent with Congress' intention when the Trails Act amendments were passed in 1983 and will assure compensation to only those property owners whose land was actually taken by the government, but not require the government to pay compensation or interest for property never converted to trail use or interest for the period before it actually takes a landowners property, as is currently the case under the Caldwell decision. H.R. 4581 will not undercut the operation of the Trails Act but will actually make it more cost efficient and will fairly treat those property owners whose property is actually taken for a trail.

“What’s happened to these St. Louis County landowners is fundamentally unfair,” said Akin. “It’s unbelievable that the government is depriving them of compensation for their land because of a procedural decision.”