

Background

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Another Federal Assault on Property Rights: The Journey Through Hallowed Ground National Heritage Area Act

Ronald D. Utt, Ph.D.

The House Committee on Natural Resources has reported out the Journey Through Hallowed Ground National Heritage Area Act (H.R. 319)—a badly flawed bill introduced by Representative Frank Wolf (R-VA).¹ The bill would give a handful of Virginia environmentalists and wealthy landowners extraordinary powers over how private property can be used in a broad swath of land stretching from southern Pennsylvania through western Maryland south to Charlottesville in central Virginia.

This group has organized itself as the Journey Through Hallowed Ground Partnership, a not-for-profit Virginia corporation. H.R. 319 would provide the partnership \$1 million of federal money per year to operate this multistate land use planning exercise. The bill would also authorize the Secretary of the Interior to work in partnership with the group through the National Park Service (NPS).

Many critics believe that, if enacted, H.R. 319 would significantly threaten the rights of many private property owners living in the designated area while providing a financial windfall to a select group of landowners who have already developed their properties. At risk would be the housing and homeownership opportunities for middle-income and moderate-income families through exclusionary zoning and other legal mechanisms that are used to upgrade a community's demographic profile.

The private organizers of the partnership have also acknowledged that they are contemplating additional wealth-enhancing opportunities through the creation

Talking Points

- If enacted, the Journey Through Hallowed Ground National Heritage Area Act (H.R. 319 and S. 289) would threaten the rights of property owners in a corridor encompassing four states.
- By designating the Journey Through Hallowed Ground Partnership as the management entity for the area, the bill would give environmental groups more influence over land use policies in the area and up to \$1 million per year in taxpayers' money to fund their efforts.
- The bill would largely benefit the well-to-do estate owners in the area by facilitating exclusionary policies.
- A better solution would be a voluntary compact among the states and communities in the area to cooperate to protect historic sites. Such an approach would require minimal federal involvement and no federal funding.

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214 Massachusetts Avenue, NE
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(202) 546-4400 • heritage.org

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of a privately owned, for-profit real estate investment trust (REIT) to acquire properties in the heritage area and presumably develop them for the benefit of the REIT's shareholders in a way that shelters their profits from the state and federal corporate income tax.

A better solution than H.R. 319 would be a voluntary compact among the four states affected by the proposal. The states would then choose a management entity through competitive tendering, and all who were involved in the project should be subject to strong ethics standards that prohibit self-dealing and conflicts of interest.

Background

As currently defined in the bill, the Journey Through Hallowed Ground National Heritage Area (JTHG) would "in general" stretch from just north of Gettysburg, Pennsylvania, to a point south of Charlottesville, Virginia, following the Route 15 corridor south for about 175 miles through western Maryland into Virginia. The land to be included in the area will be that "as generally depicted"² on a NPS map of the proposal. At its narrowest, between Leesburg, Virginia, and the West Virginia border, the corridor will be about 15 miles wide. But further south, between Fredericksburg, Virginia, and the Shenandoah National Park, the corridor will be approximately 60 miles wide.

Whatever its exact boundaries, H.R. 319 states that the area will include "8 homes of former United States Presidents, the largest concentration of Civil War battlefields in the country...[and] 11 units of the National Park System." A local historian notes that the corridor also used to be a buffalo trail.³ To date, Congress has created 37 national heritage areas, each by a separate piece of legislation and in partnership with the National Park Service.

Significantly, H.R. 319 specifically identifies the Journey Through Hallowed Ground Partnership as the "management entity"⁴ that will run the operation and be eligible for the \$1 million annual authorization from the federal treasury, including a \$1 million earmark already provided by the transportation reauthorization legislation of 2005.⁵ Its board of directors includes representatives from a number of Virginia and national organizations (e.g., Piedmont Environmental Council, National Trust for Historic Preservation, and Civil War Preservation Trust) that have actively opposed growth and housing development for middle-income and moderate-income people in the state and region and have frequently proposed limiting the rights of private property owners as a way to deter such growth.

More specifically, these groups and their financial supporters have often acted to thwart construction of all but the most expensive houses and estates in the Virginia segment of the corridor. At the same time, they have worked to discourage or prohibit the development of moderate-income and middle-income housing that might infringe on the rustic charm of the wealthy communities now prominent in the area.

Specifically, they have encouraged many of the affected counties to engage in "downzoning"—zoning (or rezoning) an area to set a minimum lot size, generally five acres to 25 acres per house—which effectively limits new housing construction to expensive single-family homes. In this way, communities can maintain their upscale demographic profile by excluding all but the very well-off. As S. Bruce Smart, one of the area's residents and the owner of a 600-acre horse and cattle spread, explained:

Restricting development to homes on 50-acre lots sounds somewhat elitist.... But not everyone has a Monet in their living room.

1. The Senate version is S. 289.
2. Journey Through Hallowed Ground National Heritage Area Act, H.R. 319, § 3(a)(2).
3. J. J. Ebro, "Campaign Pushes to Protect U.S. 15's Hallowed Ground," *Loudoun Times Mirror*, May 31, 2005, at www.timescommunity.com/site/tab1.cfm?newsid=14619997 (April 11, 2007).
4. Journey Through Hallowed Ground National Heritage Area Act, § 2(2).
5. Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59, § 1702, Project No. 5059. This earmark, added by one of the Senators from Virginia, has the unique distinction of funding a federal program that does not yet exist.

And you wouldn't tear up a Monet just because not everybody can have one.⁶

Nonetheless, these communities support development that is consistent with their lifestyles and development that could profit them personally. For example, one of the super-wealthy residents in the area, who is also a generous funder of environmental causes, has proposed building a 180-room luxury spa and country inn on her 340-acre property, which spans two counties that have such land use restrictions.⁷ The head of Loudoun County's convention and visitor center says, "We are well positioned to be a gateway for a heritage tourism itinerary along the hallowed ground corridor," while Fauquier County's tourism director says, "The most positive results of the JTHG would be felt by our bed and breakfasts, our restaurants, and our wineries."⁸

The partnership's president, Cate Magennis Wyatt, explains, "I'm a developer.... We are not against development, so long as it is context sensitive." The partnership has proposed creating a captive REIT to raise investment capital for these many context-sensitive projects and to shelter the resulting profits from federal and state corporate income taxes. Wyatt notes that "Farmers and landowners have no place to go but to a developer. We want to give them an alternative."⁹ In fact, if H.R. 319 is enacted, farmers and developers may have no other place to go than the partnership's REIT.

The Potential Abuse of Property Rights

While many critics contend that H.R. 319 would become a vehicle to violate the property rights of

those who live in the JTHG, supporters argue that it would not violate property rights. The partnership's Web site notes:

While ensuring that our heritage is intact for generations to come, so too is the need to respect the interests of individual landowners. Senator [George] Allen [R-VA] and Congressman Wolf have been diligent in drafting legislation that protects the rights of personal property.¹⁰

In fairness to the partnership, the original version of H.R. 319 included a series of cosmetic property rights "acknowledgements" in Sections 10 and 11, but most of these were removed when the bill was marked up in committee on March 12, 2007. Subcommittee Chairman Raul Grijalva (D-AZ) offered the amendment, which was not opposed by Representative Wolf, and it passed on a party-line vote. Apparently, even symbolic acknowledgments of property rights are too threatening to the bill's supporters, and the Democrats on the committee voted unanimously to diminish even these.

Nonetheless, the bill's supporters contend that it will not violate property rights, based on a rather limited view of property rights that can be traced back to the Supreme Court's infamous ruling in *Kelo v. New London*,¹¹ which prompted more than 30 state legislatures to limit eminent domain takings.¹² Many see the property rights issue as simply one of eminent domain abuse, and the bill's supporters correctly note that the bill would give no such authority to the partnership or the NPS, its government partner. However, because the partnership

6. S. Bruce Smart, quoted in Michael Laris and Peter Whoriskey, "Loudoun's Ambitious Search for Perfection," *The Washington Post*, July 22, 2001, p. A1.
7. Daniel Morrow, "Salamander to Middleburg: Deal or No Deal?" *Middleburg Eccentric*, March 24, 2007, p. 1, at www.mbecc.com/scripts/NewsManager/templates/ecc_artical.aspx?articleid=264 (April 11, 2007).
8. Ebro, "Campaign Pushes to Protect U.S. 15's Hallowed Ground."
9. *Ibid.*
10. Journey Through Hallowed Ground Partnership, "Establishing the Journey as a National Heritage Area," at www.hallowedground.org/content/view/182/51 (April 11, 2007).
11. *Kelo v. New London*, 545 U.S. 469. See Ronald D. Utt, Ph.D., "Kelo Backlash Could Lead to Restoration of Property Rights Lost to Smart Growth and Eminent Domain Abuses," Heritage Foundation *WebMemo* No. 781, June 29, 2005, at www.heritage.org/Research/SmartGrowth/wm781.cfm.
12. For more details on state efforts, see Ronald D. Utt, Ph.D., "States Vote to Strengthen Property Rights," Heritage Foundation *Backgrounder* No. 2002, February 1, 2007, at www.heritage.org/Research/SmartGrowth/upload/bg_2002.pdf.

intends to work closely with local jurisdictions and because three of the four states involved in the JTHG still allow *Kelo*-type takings, the partnership's lack of authority is largely a technicality.¹³

While outright private property seizures like *Kelo* may be more difficult to execute in the future, other more cost-effective alternatives exist, such as zoning and the ability to grant or deny building permits. As noted, most of the municipalities in the prospective area have already used their ability to zone, rezone, and not rezone land for different uses and densities to achieve certain growth and development objectives. A community that chooses to have more open space, to limit development and growth, and to preserve its rustic charm could therefore simply deny owners of undeveloped land the right to develop their land or could limit development to projects approved by their neighbors or others in the community without having to bother with cumbersome eminent domain procedures or compensating landowners whose property has been taken or devalued.

Many of the institutions represented on the partnership's board have demonstrated a long-standing antipathy toward residential development in the JTHG and have shown a decided preference for using the zoning process to prohibit or limit development to upscale housing and estates. The Civil War Preservation Trust lists the Gettysburg battlefield as one of the most endangered on their 2007 list, contending that "[Adams County] estimates that 1,100 homes are either under construction or slated to begin shortly. Another 14,000 units have been proposed, and 6,500 more are foreseeable in the near future."¹⁴ Although all of these structures would be placed on private land, not on the battlefield owned and managed by the NPS, the trust opposes them because they will be in the vicinity of the battlefield.

While the partnership will have no direct authority to rezone the land in the Gettysburg region or any other part of the JTHG, its federal authorization, federal funding, influential supporters, and

National Park Service association make it a major player in land use decisions in the communities that are ultimately included in the scheme. Indeed, several affected communities have already endorsed it, seeing the partnership and its federal authorization as a green light to continue their efforts to upgrade the demographic profile of their communities.

In recent years, the key organizations with seats on the partnership board have actively advocated no-growth policies in the region and have often participated in local zoning hearings and land use decisions to stop proposed residential developments. H.R. 319 would provide federal funding to support these efforts through the foundation and would authorize departments of the federal government to work with the foundation, giving it unmatched political clout at the state and local level.

The headquarters of the Piedmont Environmental Council (PEC) is in Warrenton, Virginia, not far from Route 15 and in the heart of the corridor. The PEC's ability to oppose non-luxury residential development will be greatly enhanced by its leadership role in the partnership and the federal designation of the land in its area of operation as a national heritage area.

Founded in the 1970s, the PEC has aggressively opposed many development projects in its area of influence, including housing developments, a gas-fired power plant, electric transmission lines, and many new highway proposals. It also endorsed the Virginia governor's recently unsuccessful proposal to enhance the local government's ability to diminish private property rights. Although it has opposed most development that would broadly benefit the public, the PEC supports projects that would preserve and enhance the upscale quality of the community. For example, it opposed rezoning an 85-acre rural agriculture site to allow construction of 90 new homes but implied that the "by right" limits permitting construction of just six homes (one house per 14 acres) would be acceptable.¹⁵

13. In March 2007, Virginia enacted a property rights protection bill that would limit *Kelo*-type abuses, despite aggressive lobbying against it by the state's cities and counties.

14. See press release, "Civil War Preservation Trust Unveils Report on Most Endangered Battlefields," Civil War Preservation Trust, March 13, 2007, at www.civilwar.org/PressReleases/PressDetail.asp?lngPressID=142 (April 11, 2007).

Another key member of the partnership board is the National Trust for Historic Preservation, with headquarters in Washington, D.C. It was created in 1951 to rehabilitate and preserve historic structures, including Frank Lloyd Wright's home and studio in Oak Park, Illinois; James Madison's Montpelier; and Woodlawn Plantation. Under its current leadership, the trust has shifted its resources and attention to opposing development throughout the United States. Among its many efforts unrelated to historic preservation, the trust has teamed up with environmental groups to oppose Oregon's successful effort to relax its restrictive growth boundaries and to oppose pro-property rights referenda in Washington; has supported anti-property rights actions in Lake Tahoe and a New Urbanist development in Spotsylvania County, Virginia; and has opposed construction of a factory in New York and big-box retailers in general.¹⁶

As with the PEC and the Civil War Preservation Trust, H.R. 319 would greatly enhance the trust's ability to limit growth and development to the tastefully appointed estates of the wealthy elites who now dominate many of the communities that would become a part of the proposed national heritage area.

Most troubling of all is the National Park Service's involvement in the proposed national heritage area. For much of the past decade or more, the NPS has been criticized for its mismanagement of the many natural and historic sites under its direct responsibility. Despite annual increases in its appropriations, the NPS has a maintenance and repair backlog that the Congressional Research Service estimates may now be as high as \$10 billion.¹⁷

The NPS's difficulties in maintaining the parks adequately may be one reason why the number of park visitors has stagnated or declined in recent years. Typical of its inability to execute even the sim-

plest of tasks, the NPS took over a month to clear away trees downed by a February ice storm and to reopen just the first 15 miles of the 102 miles of the Blue Ridge Parkway that had been closed. This was long after all of the surrounding communities had fully recovered from the storm. The NPS claimed that "the cleanup has been slowed by vacancies in the maintenance staff."¹⁸

Persistent NPS management problems raise two key questions about NPS involvement in the JTHG land use scheme:

- If personnel deficiencies prevent the NPS from performing basic stewardship tasks on the land for which it is currently responsible, would not expanding its responsibilities under H.R. 319 make this problem worse because existing NPS staff would be expected to attend scores of meetings of zoning boards, planning commissions, and county councils in the hundreds of municipalities in the proposed JTHG?
- If the NPS cannot provide adequate stewardship over the areas for which it is responsible, why would Congress want to inflict that inadequacy on an even larger and more economically important land area covering parts of four states?

Another problem, in addition to questions about its managerial competence, is the NPS's long-standing hostility toward private property rights, improved mobility, and economic development. In central Virginia, the NPS has recently objected to urban bypasses to relieve serious interstate traffic congestion, a communications tower on private land, and infrastructure improvements at a power plant in Maryland that could be seen from NPS sites on both sides of the Potomac River. NPS Park Superintendent Vidal Martinez was especially troubled by the fact that a "steam cloud will be a visual adverse effect from both parks."¹⁹ If NPS leaders are troubled by

15. For details on its activities in opposition to growth within its area of operation, see Piedmont Environmental Council, Web site, at www.pecva.org (April 11, 2007).

16. Peyton Knight, "Historically Untrustworthy: How the Trust for Historic Preservation Works Against Property Rights," Capital Research Center *Foundation Watch*, November 2005, at www.capitalresearch.org/pubs/pdf/FW1105.pdf (April 11, 2007).

17. Carol Hardy Vincent, "National Park Management," Congressional Research Service *Issue Brief for Congress*, June 24, 2005, p. 7.

18. Associated Press, "Stretch of Blue Ridge Parkway Opens," *The Free Lance-Star*, March 24, 2007, p. B7.

vapor clouds created by federal mandates for pollution control, one can only imagine the aesthetic restrictions that they might impose on the hapless people living in the proposed JTHG.

Experiences from some other national heritage areas managed by the NPS provide a hint of just how counterproductive the NPS could be in exercising such expanded authority. In 1994, testifying before Congress on legislation to create the Augusta Canal National Heritage Corridor, an NPS official cited a lack of “evidence of commitment to modify zoning regulations” as one of the plan’s deficiencies.²⁰ A decade later, the Yuma Crossing Heritage Area—authorized by Congress in 2000—had created so much opposition in New Mexico that Congress amended the law (H.R. 326) to revise its boundaries and limit its coverage. As the report language that accompanied H.R. 326 noted:

When the Yuma Crossing Heritage Area was authorized in 2000, the public in Yuma County did not understand the scope of the project and was surprised by the size of the designation. Citizens originally believed that the heritage area would focus mainly around the historic districts and wetlands. Furthermore, many property owners were not aware that they were also included in the new designation. Concerns were raised by citizens about the size of the designation and the potential for additional Federal oversight. The fear of adverse impacts on private property rights were realized when local government agencies began to use the immense heritage area boundary to determine zoning restrictions.²¹

Opportunities for Self-Dealing and Conflicts of Interest

The partnership’s organizers have emphasized their intention to make economic development and tourism a key component of their activities. “Creating a heritage tourism program that will provide economic development opportunities, through regional branding and cooperative marketing, in communities throughout the corridor” is one of the goals.²² Cate Magennis Wyatt, the partnership’s president, recently reemphasized the business component when commenting about the response from the Loudoun County Board of Supervisors. “It’s astonishing that this would get so derailed by disinformation,” Wyatt said, “because what this is truly about is marketing our heritage attractions, supporting our existing businesses and, in the process, protecting our quality of life.”²³

The evidence indicates that these frequent mentions of economic development, product branding, and tourism enhancements by the partnership and its supporters reflect more than just a sincere gesture to convince skeptical landowners that the heritage area will not become a stagnant backwater of the regional economy or a fossilized exhibit in the world’s largest open-air museum. More to the point, the partnership seems genuinely committed to fostering business opportunities, especially those that can benefit its supporters, preferably through a captive REIT, which over the past few years has been one of the best-performing investment vehicles in the stock market:

It will be a long-term investment hold and appeal to socially conscious investors. After purchasing private land, the trust would place [conservation] easements and restric-

19. Frank Delano, “Park Service Opposes Plans for Plant,” *The Free Lance-Star*, March 15, 2007, p. D2.

20. Denis P. Galvin, Associate Director, Planning and Development, National Park Service, Department of the Interior, statement before the Subcommittee on National Parks, Forests and Public Lands, Committee on Natural Resources, U.S. House of Representatives, June 28, 1994.

21. House Report No. 109-294, *To Amend the Yuma Crossing National Heritage Area Act of 2000 to Adjust the Boundary of the Yuma Crossing National Heritage Area*, 109th Cong., 1st Sess., November 15, 2005, at www.congress.gov/cgi-bin/cpquery/T?&report=hr294&dbname=109&.

22. Journey Through Hallowed Ground Partnership, “Who We Are,” at www.hallowedground.org/content/view/110/6 (April 11, 2007).

23. Amy Gardner, “Board Takes Detour on Route 15 Resolution,” *The Washington Post*, February 9, 2006, at www.washingtonpost.com/wp-dyn/content/article/2006/02/08/AR2006020800101.html (April 17, 2007).

tive uses on the properties and then sell them. Farmers and landowners have no place to go but to a developer. We want to give them an alternative.²⁴

The commitment to consider the potential of creating a captive REIT is also discussed on the partnership's Web site:

[The partnership plans to] commission a study to explore the creation of a "socially responsible" real estate investment trust (REIT) that will leverage private real estate capital into a fund to purchase land for the purpose of promoting environmental protection, social equity, and heritage/cultural sensitivity. Most of the land along the JTHG corridor is privately held. In recognition of the laws and rights of property owners, the JTHG is exploring a means to create a JTHG "REIT" - position to provide any willing land owner a market rate purchase price for their land. This innovative financial vehicle could provide a landowner a viable alternative to selling property for development.²⁵

The partnership's preference for a REIT over any of the other less costly types of corporate entities that could hold property for "preservation" purposes is telling. It suggests that the potential for profits is of compelling interest to the partnership. If holding land for conservation or preservation was all that mattered, a not-for-profit multistate corporation would be just as legally competent and less expensive to create and operate.

By comparison, a REIT is relatively costly to create and operate and would make sense only if the partnership needs to shelter from taxes the profits produced by income-producing real estate. The federal and state laws permitting REITs were enacted many decades ago for the purpose of giving real estate investors the equivalent of a mutual fund for income-producing properties (e.g., shopping cen-

ters, hotels, and apartments) by exempting the REIT from federal and state corporate taxes on profits, provided that most of a REIT's annual profits are immediately passed on to its shareholders as dividends. Like mutual funds in common stocks and bonds, the purpose of the REIT vehicle is to avoid the double or triple taxation of income that might otherwise occur if the entity holding the investments was an ordinary corporation subject to the state and federal corporate tax.

Given the wealth and financial sophistication of the many supporters of the partnership and the Hallowed Ground initiative, a REIT proposal could be seen as an opportunity to "do well by doing good," and it might well be difficult to resist the temptation to profit substantially from the ability of the partnership, in complicity with the NPS, to oppose some real estate development projects while approving others: namely, those put forth by the partnership's REIT. As a result, the partnership's REIT or any other such entity could end up with a near monopoly on real estate development opportunities within the Hallowed Ground National Heritage Area.

Many of the organizations that sit on the partnership's board have actively and aggressively opposed many commercial real estate development projects in the region. Federal funding and the endorsement by the federal government via NPS involvement under H.R. 319 would multiply the ability of the partnership and its supporters to oppose other commercial development. At the same time, a real estate development project proposed by their REIT and endorsed by the partnership, the NPS, and their supporters would naturally have a higher likelihood of being approved. Under such circumstances, landowners and developers in the national heritage area would quickly recognize the necessity of forming for-profit partnerships with the Journey Through Hallowed Ground Partnership and its REIT to

24. L. M. Schwartz, "US Senator Allen: A Property Rights Betrayal," *Virginia Land Rights Coalition Bulletin*, September 30, 2006, at www.vlrc.org/articles/184.html (April 11, 2007), Ebro, "Campaign Pushes to Protect U.S. 15's Hallowed Ground."

25. Press release, "Partnership Announces National Campaign to Raise Awareness of Heritage Corridor—June 2, 2005: Effort Gains Momentum with New Congressional Support, National Trust for Historic Preservation 11 Most Endangered Status, and Private Funding," Journey Through Hallowed Ground Partnership, June 2, 2005, at www.hallowedground.org/content/view/120/23 (April 11, 2007).

facilitate the necessary approvals from local zoning, permitting, and planning boards.

While the goal of protecting and preserving America's many historic sites and structures is obviously a worthy one, there is no reason why this eleemosynary exercise should ever be allowed to be paired formally with a captive for-profit real estate development entity that could easily monopolize its position to profit from legislative privilege. The partnership's stated intention to seek for-profit opportunities exposes one of H.R. 319's many dangerous flaws: It would establish by federal statute the Virginia-incorporated Journey Through Hallowed Ground Partnership as the sole beneficiary of all of this federal munificence.

Making a Bad Situation Worse

As noted earlier, the partnership's board members have already had considerable success in limiting residential real estate development in the prospective area by encouraging municipalities to adopt restrictive land use regulations that deter moderate-income and modest-income families from living in their communities. To date, the chief mechanism for discouraging unwanted residential development has been zoning regulations that ration the amount of land available for development and limit construction to expensive houses on large lots.

As a consequence of aggressive downzoning and other limits on land use, home prices in Virginia have soared. The U.S. Census Bureau reports that the median value of a home in Prince William County increased by 162 percent between 2000 and 2005 and, at \$391,000, was 133 percent above the national average in 2005. Similar restrictions in Loudoun County have led to similar consequences: Median home values soared by 159 percent from 2000 to 2005, to \$519,200.²⁶ Median home prices in the Washington metropolitan area reached \$431,000 in late 2006 and were among the highest in the nation.

In contrast, median home prices were \$176,000 in Atlanta and \$152,000 in Houston in the same period. Both are prosperous and fast-growing metropolitan areas, but they have eschewed the types of zoning abuses that have become common in Virginia and Maryland and their Piedmont region.²⁷

Because of the home price inflation caused by land rights abuses, Virginia is becoming a less welcoming place for those of modest and moderate incomes. While the national homeownership rate increased by a full percentage point between 2001 and 2006, Virginia's homeownership rate fell by 4 percentage points. Indeed, between 2001 and 2006, the homeownership rate fell faster and farther in Virginia than in any other state.²⁸

Moreover, because lower-income households bear the brunt of the high housing costs and a disproportionate share of lower-income families are racial minorities, these groups face the greatest challenges in finding affordable housing. This may explain why the African-American population in Fauquier County—a center of advocacy for the JTHG—fell from 11.2 percent of the county's population in 1990 to 8.8 percent in 2005.

A Better Approach

As currently written, the Journey Through Hallowed Ground National Heritage Area Act is badly flawed and would serve little purpose beyond using federal power and resources to assist a relatively small number of wealthy households in their efforts to exclude middle-income and moderate-income families and certain commercial activities from a not yet clearly defined area spanning four states. Given the many challenges facing the federal government, including the long-standing management problems at the National Park Service and a burgeoning budget deficit, adding "coercive efforts to upgrade a region's demographic profile" to the federal government's many responsibilities would be a mistake.

26. For all regional data, see U.S. Census Bureau, "American Factfinder," at <http://factfinder.census.gov> (April 12, 2007).

27. For extensive data on relative housing cost differences, see Wendell Cox and Ronald D. Utt, Ph.D., "Housing Affordability: Smart Growth Abuses Are Creating a 'Rent Belt' of High-Cost Areas," Heritage Foundation *Backgrounder* No. 1999, January 22, 2007, at www.heritage.org/Research/SmartGrowth/upload/bg_1999.pdf.

28. U.S. Census Bureau, "Housing Vacancy Survey—Annual Statistics: 2006," Table 13, revised February 12, 2007, at www.census.gov/hhes/www/housing/hvs/annual06/ann06t13.html (April 12, 2007).

As for protecting the many historic sites within the region, all of them have enjoyed long-standing and expensive federal support, and that support is certain to continue into the future. Nonetheless, if these efforts need to be coordinated better, there are more effective ways to accomplish this goal. At the very least:

- The states affected (Pennsylvania, Maryland, Virginia, and West Virginia), not the federal government, should decide whether or not to create a coordinating entity, which should be in the form of a voluntary interstate compact with no federal involvement or funding.
- If such a compact is created and chooses to exercise its efforts through a full-time private management entity, the management entity should be chosen competitively based on experience, cost, and qualifications. If the management entity is public or semi-public, it should be subject to the usual strictures governing public employment and operation, including all of the ethics and conflict-of-interest statutes.
- No person or entity involved in the management and/or policymaking associated with the regional compact should be permitted to conduct for-profit activities that relate in any way to activities within the designated area of focus.
- Neither the compact nor its management entity should be permitted to engage in any activity or effort that could undermine the property rights of individuals or corporations owning properties in the region. Such prohibitions on the compact's activities should include regulatory takings, rezoning, growth boundaries, and any other limits on the use of property.

- From time to time, the compact and its management entity should consult with relevant federal agencies, including the Department of the Interior, to ensure that the performance of federal agencies, such as the NPS, is properly focused on their core responsibilities in ways that advance the goals of the compact.

In addition to these recommendations, the Journey Through Hallowed Ground National Heritage Area Education and Tourism Act (H.R. 1270), introduced by Representative Roscoe Bartlett (R-MD), is an attractive alternative to H.R. 319. It would provide greater property rights protections to landowners in the area, including a requirement that local governments wishing to participate in the national heritage area provide fair-market-value compensation to property owners if their property is devalued as a result of government action.

Conclusion

The Journey Through Hallowed Ground National Heritage Area Act is a badly flawed bill that would give a handful of Virginia environmentalists and wealthy landowners extraordinary powers over the use of private property along the Route 15 corridor. Ideally, if an interstate compact is truly needed to coordinate efforts in the area, the affected states—Pennsylvania, Maryland, Virginia, and West Virginia—should form the coordinating entity. At the very least, the involved governments, including the federal government, should protect the rights of private property owners.

—*Ronald D. Utt, Ph.D., is Herbert and Joyce Morgan Senior Research Fellow in the Thomas A. Roe Institute for Economic Policy Studies at The Heritage Foundation.*