

H.R. 1461 and H.R. 1491

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL PARKS, RECREATION,
AND PUBLIC LANDS

OF THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

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**LEGISLATIVE HEARING ON H.R. 1461, TO
AMEND THE NATIONAL PARKS OMNIBUS
MANAGEMENT ACT OF 1998 TO REMOVE
THE EXEMPTION FOR NONPROFIT ORGANI-
ZATIONS FROM THE GENERAL REQUIRE-
MENT TO OBTAIN COMMERCIAL USE
AUTHORIZATIONS; AND H.R. 1491, TO
ASSIST IN THE PRESERVATION OF ARCHAEO-
LOGICAL, PALEONTOLOGICAL, ZOOLOG-
ICAL, GEOLOGICAL, AND BOTANICAL ARTI-
FACTS THROUGH CONSTRUCTION OF A
NEW FACILITY FOR THE UNIVERSITY OF
UTAH MUSEUM OF NATURAL HISTORY,
SALT LAKE CITY, UTAH.**

**Thursday, June 7, 2001
U.S. House of Representatives
Subcommittee on National Parks, Recreation, and Public Lands
Committee on Resources
Washington, DC**

The Subcommittee met, pursuant to call, at 10:03 a.m., in Room 1334, Longworth House Office Building, Hon. Joel Hefley [Chairman of the Subcommittee] presiding.

**STATEMENT OF THE HONORABLE JOEL HEFLEY, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH**

Mr. HEFLEY. The Committee will come to order. Welcome to the hearing today this morning. The Subcommittee on Parks, Recreation, and Public Lands will hear testimony on two bills, H.R. 1461 and H.R. 1491.

H.R. 1461, which I introduced, would amend the National Parks Omnibus Management Act of 1998 to remove the exemption for certain nonprofit organizations from the general requirement to obtain commercial use authorizations. Under the current law, tax-exempt organizations that offer tour and travel services to the general public are exempt from the requirement to obtain commercial use authorization from the Park Service to lead tour groups for rafting, hiking, and other commercial recreational activities. We are aware

that the minority has expressed some concerns over certain provisions in the bill, but we are hopeful that we can work together to resolve any differences. It is not my intent to remove the exemption from a legitimate nonprofit organization such as the Boy Scouts or Scouts, and I will make sure that I address their concerns.

Mr. HEFLEY. H.R. 1491 was introduced by Congressman Jim Matheson of Utah. This bill would direct the Secretary of Interior to make a grant to the University of Utah in Salt Lake City, Utah to pay the Federal share of the costs of construction for a new natural history museum, including the design, planning, furnishing, and equipping of the new building. The museum holds more than 1 million objects and specimens recovered from Federal, State, and private lands in Utah and surrounding states. The museum is known for its extensively archaeological and paleontological collections.

Mr. HEFLEY. At this time I would like to ask unanimous consent that Congressman Matheson be permitted to sit on the dais following his statement. Without objection, so ordered.

I would like to thank all the witnesses who will testify on these bills today. And I think first of all what I will do is turn to Chairman Hansen and let's see if he has an opening statement.

[The prepared statement of Mr. Hefley follows:]

**Statement of The Honorable Joel Hefley, Chairman, Subcommittee on
National Parks, Recreation, and Public Lands**

Good morning and welcome to the hearing today. This morning, the Subcommittee on National Parks, Recreation and Public Lands will hear testimony on two bills—H.R. 1461 and H.R. 1491.

H.R. 1461, which I introduced, would amend the National Parks Omnibus Management Act of 1998 to remove the exemption for certain nonprofit organizations from the general requirement to obtain commercial use authorizations. Under the current law, tax-exempt organizations that offer tour and travel services to the general public are exempt from the requirement to obtain commercial use authorization from the Park Service to lead tour groups for rafting, hiking and other commercial recreational activities. We are aware that the minority has expressed some concerns over certain provisions in the bill but we are hopeful that we can work together to resolve any differences. It is not my intent to remove the exemption for legitimate non-profit organizations such as the Boy Scouts or the Girl Scouts, and I will make sure that I address their concerns.

H.R. 1491 was introduced by Congressman Jim Matheson of Utah. This bill would direct the Secretary of Interior to make a grant to the University of Utah in Salt Lake City, Utah, to pay the Federal share of the costs of construction for a new natural history museum, including the design, planning, furnishing, and equipping of the new building. The museum holds more than one million objects and specimens recovered from Federal, state and private lands in Utah and surrounding states. The museum is known for its extensive archaeological and paleontological collections.

At this time, I would like to ask unanimous consent that Congressman Matheson be permitted to sit on the dais following his statement. Without objection, so ordered.

I would also ask the Ranking Member, Ms. Christian, if it would be alright with her if Chairman Hansen made his opening statement first. Without objection, so ordered.

I would like to thank all of our witnesses for being here today to testify on these bills and now turn to Chairman Hansen.

**STATEMENT OF THE HONORABLE JAMES V. HANSEN, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH**

Mr. HANSEN. Well, thank you, Mr. Chairman. I appreciate the opportunity for being in the Committee today and I do have an opening statement that I would like to read. I want to welcome President Bernie Machen, president of my alma mater, University of Utah, to this Subcommittee. I am pleased to welcome Mr. Matheson, my colleague from the Second Congressional District and commend him for recognizing the need for this legislation.

Many reasons to come to Utah are the parks, forests, public lands, the abundant outdoor recreational and cultural opportunities, and our history is well worth the trip for anyone who has not been to the "beehive State." However, there is one thing that the State of Utah is sorely lacking in, a museum which showcases our incredible natural history.

I congratulate Representative Matheson and Senator Bennett for recognizing the need to assist the community in relocating the museum from its current and unsatisfactory location to its new building. With 69 percent of the State managed by Federal agencies, many of the artifacts recovered from Federal lands are currently archived and protected in the Museum of Natural History. In the past, a Federal agency such as the Bureau of Reclamation or Forest Service recovered artifacts on public lands. They would be sent to the collections at the University of Utah which is the Federal repository.

Archeological sites such as those found in Glen Canyon were the previous homes for many of the items found in this collection. In fact, the museum is now currently home to more than 1 million artifacts, almost 75 percent of which were found on Federal lands. The University of Utah has done a commendable job preserving these priceless natural treasures, but they can only do so much with the outdated facilities at their disposal. The George Thomas Building was a fine library in its day. I spent hundreds of hours in that place, but it is really an unsuitable home for the collection we are talking about.

Given the facts of such an extensive collection that comes from the Federal lands, it only makes sense that the Federal Government should assume some responsibility for providing for these artifacts in an appropriate home. Such Federal involvement is not unheard of. Many museums receive Federal funds, including the New York Public Library, the Chicago Museum of Science and Industry, and the list goes on and on.

Although I might point out to my colleagues this legislation authorizes \$15 million, which is only 25 percent of the cost of the new facility, with the 3-to-1 match the Federal Government is as much a beneficiary as the State and community.

Mr. Matheson represents the interests of the constituency well by introducing this legislation to ensure that this unique collection is protected and well preserved. He has made it a priority to be sure their final home is a place worthy of their true value. I feel he is to be commended for that and that is why I want to join him in this effort. I hope all members of this Subcommittee will do the same thing. I thank you for allowing us to have this hearing today and I appreciate the opportunity for giving this opening statement.

Mr. HEFLEY. Thank you, Mr. Hansen.
[The prepared statement of Chairman Hansen follows:]

Statement of The Honorable James V. Hansen, Chairman, Committee on Resources, on H.R. 1491

Thank you, Chairman Hefley, for holding this hearing today. I want to welcome President Bernie Machen, President of my alma mater, the University of Utah to the Subcommittee. I am pleased to welcome Mr. Matheson, my colleague from the Second Congressional District and commend him for recognizing the need for this legislation.

There are many reasons to come to Utah. Our parks, forests and public lands, the abundant outdoor recreational and cultural opportunities and our history is well worth the trip for anyone who is not from the Beehive state. However, there is one thing that the State of Utah is sorely lacking—a destination museum which showcases our incredible natural history. I congratulate Congressman Matheson and Senator Bennett for recognizing the need to assist the community in relocating the museum from its current and unsatisfactory location to a new building.

With 69 percent of the State managed by Federal agencies, many of the artifacts recovered from Federal lands are currently archived and protected at the Museum of Natural History. In the past, as Federal agencies such as the Bureau of Reclamation, BLM, or Forest Service, recovered artifacts on public lands, they would be sent to the collections at the University of Utah, which is a Federal repository. Archaeological sites such as those found in Glen Canyon were the previous homes for many of the items in this collection. In fact, the Museum now currently home to more than one million artifacts, almost 75 percent of which were found on Federal lands.

The University of Utah has done a commendable job at preserving these priceless natural treasures, but they can only do so much with the outdated facilities which they have at their disposal. The George Thomas Building was a fine library in its day, but it is really an unsuitable home for the collection we are talking about.

Given the fact that such an extensive collection has come from the Federal lands, it only makes sense that the Federal Government should assume some responsibility for providing these artifacts an appropriate home. Such Federal involvement is not unheard of; many museums receive Federal funds, including New York Public Library, the Chicago Museum of Science and Industry, and so on. Although I might point out to my colleagues that this legislation authorizes \$15 million which is only 25 percent of the cost for the new facility. With a 3-to-1 match, the Federal Government is as much a beneficiary as the state and the community.

Mr. Matheson, represents the interest of his constituents well by introducing legislation to assure that this unique collection is protected and well preserved. He has made it a priority to assure that their final home will be a place worthy of their true value. I feel he is to be commended for that, and it is why I want to join him in that effort, and hope that all the members of the Subcommittee will do the same.

Thank you Chairman Hefley for holding this hearing.

Mr. HEFLEY. Mrs. Christensen, I think you were awed by the honor we have of having Mr. Hansen join our Committee here too, so I went ahead to him first and now I will turn to you.

STATEMENT OF THE HONORABLE DONNA M. CHRISTENSEN, A DELEGATE IN CONGRESS FROM THE VIRGIN ISLANDS

Mrs. CHRISTENSEN. Thank you very much. It is nice to have our Chairman here with us today. I would like to make a statement on the two measures before us this morning. The first measure, H.R. 1461, would repeal the omnibus act of 1998 that exempts nonprofit groups from the requirement to obtain a commercial use authorization from the National Park Service unless taxable income is derived from the park use. This exemption was added to the legislation by the Resources Committee in 1998 and was supported at that time by the Majority and Minority alike.

Since then, no one has contacted the Minority to express a concern with this exemption and the administration's testimony today

does not recognize the exemption as being a problem for either the resources of our park or their management. Many not-for-profit organizations such as the Boy Scouts, church camps, and outdoor clubs such as the Sierra Club take their members on outings to national parks, providing their own guide services and charging fees to cover their costs. This alone does not make them commercial operations, and there is language in the exemption to deal with any use that generates taxable income.

Further, these not-for-profit organizations are not permitted unregulated use of our national parks. While they are exempt from obtaining a commercial use authorization, they are still required to obtain any other necessary National Park Service permits and comply with any regulations that the NPS may have to protect park resources.

Mr. Chairman, nonprofit organization like the Scouts and others are different than for-profit entities and should be treated as such. We have seen no evidence thus far indicating any need for the change proposed by H.R. 1461.

The second measure, H.R. 1491, directs the Secretary of the Interior to make a grant to the University of Utah to pay what the bill refers to as the Federal share of the cost to construct an expansion of the university's Museum of Natural History. The bill requires the museum to submit a formal grant proposal to the Secretary and limits the Federal share to 25 percent of the total cost of the project.

Finally, H.R. 1491 authorizes \$15 million for the purposes of this legislation. Mr. Chairman, pass-through grants like this have been a matter of ongoing concern within our Committee. The legislation would require the Secretary to award these funds to the University outside of any existing grant programs designed to fund museums, allowing this project to avoid a competitive grant process.

We look forward to learning more about the need for both of these pieces of legislation from the witnesses before us today. And I would also like to welcome my other colleague. Thank you.

[The prepared statement of Senator Bennett follows:]

Statement of The Honorable Robert F. Bennett, a U.S. Senator from the State of Utah, on H.R. 1491

I thank Representative Hefley and the Subcommittee on National Parks, Recreation, and Public Lands for holding today's hearing on the Utah Public Lands Artifact Preservation Act. I appreciate the House of Representatives moving forward with this important legislation. The Senate will begin its work on this legislation shortly. Additionally, I welcome the support of Representatives Cannon, Hansen, and Matheson on this bill which will help Utah protect and preserve its natural history and cultural heritage.

S.139 and its House companion, H.R. 1491, are rather simple pieces of legislation that will go a long way to preserve and protect almost one million artifacts, which showcase the natural and cultural significance of Utah's public lands. When this bill becomes law, the Secretary of the Interior will be directed to make available to the University of Utah Museum of Natural History a grant in the amount of \$15 million for the construction and other associated costs of a new facility that will allow for the proper curation of the scientifically significant Federal collection. It should be noted that the Federal share of this project will not exceed 25% of the total project costs. The success of the new museum relies on the support of private individuals and interested foundations. One of the most fulfilling aspects of this project has been the impressive and generous financial support from Utah's citizens and foundations. Since I announced my intentions to introduce and pass this legislation last fall, the museum has already received a \$10 million gift from the Emma Eccles

Jones foundation. Furthermore, it is my understanding that another \$10 million from a different foundation is very close to being given to the museum, pending progress in the Congress.

As you may know, Utah is almost two-thirds Federally managed. Almost every agency within the Department of the Interior has a land interest in Utah. I strongly believe that this museum will not only benefit the people of the Intermountain region and scientific researchers, but will also benefit the public land management agencies. This museum will help its visitors understand the significance of Utah's public lands. Utah's public lands are not only mountains, basins, mesas, and canyons, they were once roamed by dinosaurs and home to thriving ancient cultures. It is my hope that a visit to the new museum will enhance the public's future visits to our National Parks, BLM lands, and BuRec dams and lakes.

Again, I appreciate the efforts of Representative Hefley, the members of Utah's delegation, and the Committee on Resources on this legislation. I look forward to working with them so that we may pass this legislation this year.

[The prepared statement of Mr. Cannon follows:]

**Statement of The Honorable Chris Cannon, a Representative in Congress
from the State of Utah**

Thank you Mr. Chairman for holding this hearing today. I also thank Congressman Matheson for introducing the Utah Public Lands Artifact Preservation Act of 2001. This legislation will enable the Museum of Natural History at the University of Utah to construct a new facility.

As any of you have visited Utah know, the variety and abundance of natural resources is stunning. From Dinosaur National Monument with its dinosaur quarry to Grand Gulch with its high concentration of archaeological sites, Utah is a historian's paradise. Aside from dinosaur relics, we also boast an incredible variety of plant and animal life.

With such a high proportion of Federal ownership of our land, it is crucial that we preserve the artifacts that are recovered. This legislation allows the Federal Government to leverage state and private money to protect Federally owned artifacts. Preservation efforts will ensure that future generations of Utahns will enjoy the rich ancient history Utah has to offer. I look forward to hearing the testimony of the witnesses.

[The prepared statement of Mr. McGovern follows:]

**Statement of The Honorable James P. McGovern, a Representative in
Congress from the State of Massachusetts**

I would like to thank the distinguished Chairman, Mr. Hefley for holding today's hearing on amendments to the National Parks Omnibus Management Act of 1998.

I would also like to thank the distinguished panelists for being here today. I look forward to hearing your testimony.

There are a number of reasons that I am opposed to H.R. 1461. I believe an attempt to amend the Act in this manner is unfair for both nonprofit groups and for profit organizations, alike. If this amendment passes, small groups will be forced to compete with larger more profitable institutions for Commercial Use Authorizations permits (CUAs). If every organization is forced to file for a CUA permit, the cost of trips, clean-ups, scientific and leisure expeditions will increase. This amendment sends a signal to nonprofit organizations that we do not trust them and that we do not appreciate their work in our national parks. I believe that these nonprofit organizations deserve a lot of appreciation and respect for their dedication to our environment. I will oppose any legislation that forces them to cut their programs.

If this amendment passes, the additional cost of a CUA permit will hinder activity in the national parks. There are many organizations that partake in events in the National Parks. If they are required to obtain a CUA permit, these organizations might not organize as many events as they usually do because of the increased cost.

We should realize that many of the events sponsored by nonprofits are not just leisurely strolls through the woods. They provide a great service for the United States by giving many people the opportunity to see the beauty and splendor of our National Parks. A majority of the events that nonprofits organize in the National Parks are for the purpose of promoting awareness. Nonprofits usually have to supplement the cost of these trips from other sources. Many organizations also run service trips in the National Parks. Service trips help build and repair trails, plant

new trees, and maintain the parks. Without the assistance of these organizations, our National Parks would fall into disrepair. If organizations are required to spend additional funds to obtain a permit and hire a guide, they will not be able to provide as many trips as they currently do. The entire country will suffer if we make it more difficult for these organizations to provide our National Parks with the support that they need and deserve.

Lastly, I would like to stress that the Administration is against this legislation. It will prevent smaller organizations from being able to compete against other larger organizations. The additional revenue from the fees that the nonprofit organization will have to pay in order to file to receive a CUA is overshadowed by the additional administrative cost that would be required to read the applications and issue the permits. If this amendment passes, the National Parks will actually lose money because the Park Service will be forced to pick up where organizations left off.

Thank you, Mr. Chairman, and I request that my statement be included in the record of this hearing.

Mr. HEFLEY. Okay. Our first panel will start with Congressman Matheson. I hope you appreciate, Congressman, the rapidity with which we are getting to your bill and I hope that it in no way reflects the fact that the gentleman sitting to my right is Chairman of the Committee. It is simply that my right arm has been twisted so hard by him, as it has on so many other occasions, that we welcome you today with your wonderful piece of legislation. So would you go ahead and take the time to read it?

**STATEMENT OF THE HONORABLE JIM MATHESON, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH**

Mr. MATHESON. Thank you very much. I will leave comments about your right arm so you can discuss that with Mr. Hansen.

But, Chairman Hefley and Ranking Member Mrs. Christensen, I just want to thank you for having this hearing today. It is important. It is not only important to the people of Utah, it is also important to our shared national heritage. And I want to give special thanks to Chairman Hansen and Congressman Cannon and to their staffs for their steadfast support on this project. Today's hearing is really a culmination of our collective efforts as a delegation from Utah.

In 1824, a philanthropist named James Smithson bequeathed his fortune to the Government of the United States in order to found an institution to, and I quote, increase the diffusion of knowledge among men.

In 1846, the United States established the Smithsonian Institution and established the wise and remarkable precedent of the value of public investment into institutions of science, research, and heritage.

President Machen and I have come here today as part of this precedent. Mr. Chairman, in Utah we have an institution that houses 1 billion years of the history of life on our planet. It is an institution that holds three-quarters of a million artifacts, detailing tens of thousands of years of Native American life throughout the Rocky Mountain and Great Basin areas of our Nation. It contains over 30,000 specimens of mammals, one of the 30 largest collections in the Western Hemisphere and its 18,000 specimen reptile collection contains one of the largest turtle assemblages in the world.

It is an institution that houses one of the world's great paleontology collections. Its 12,000 specimen vertebrate fossil collection is

dominated by 150-million-year-old dinosaurs from the Jurassic period, as well as Ice Age mammals such as giant bears, mammoths and mastodons.

What I have just described is just a fraction of the resources provided by the University of Utah's Natural History Museum. It is a source for archaeological, anthropological, and paleontology treasures unsurpassed in the western United States.

However, these resources are under threat. First, they are housed in a converted library built in the 1930's. It is a building constructed for the close, claustrophobic stacking of books, not for the storage of national treasures. Most of the ceilings throughout the building are 7 feet 2 inches high, which, as you can imagine, makes dinosaur storage somewhat of a problem. Climate control and water systems are woefully antiquated. The humidity and temperature in the display and storage areas has wide swings. This inconsistency puts tremendous strain on the increasingly fragile collections.

A few weeks ago I took a tour of the museum, and halfway through the tour we encountered a chunk of ceiling that had falling during a water leak that had occurred within the last couple of days. As with many Depression era buildings, there are numerous structural deficiencies that put the collections at risk and inhibit access to the public. Fire protection systems are inadequate, an outdated HVAC system, no possibility for expansion, and no freight elevator loading dock.

All of these are compounded by the fact that the collection now sits 400 yards away from the second most active fault in the Continental United States in a building with beams built to hold books rather than mastodons.

It is plausible to think that our kids' Pokemon cards might be at less risk for damage than some of the pieces of this collection.

The University, along with private donors and the State government, have embarked on an ambitious project to build a new museum that would be a centerpiece for cultural and scientific education in the intermountain West. They have selected a site for the new building that would be located at the University's Research Park and will be adjacent to the city zoo, a living history heritage park, and the State arboretum. The University has just completed its preprogram study of the site as well as determining the project costs. This project will be a partnership in every sense of the word. State and private donors have promised to match every Federal dollar with three of their own. The University's donors and alumni network view this as a priority project for Utah and are actively engaged in its development.

The University has already contributed the 14 acres for the development. The State has guaranteed the operating funds for the facility at \$800,000 annually. To date, close to \$12 million has been raised from private donors and this includes \$10 million from the Emma Eccles Jones Foundation.

Unlike many museums throughout the country, about 75 percent of the museum's holdings are owned outright by the Federal Government, with more than 90 percent of some collections coming from Federal lands. That means that these artifacts, fossils, and specimens belong to the people of the United States. These exhibits

and collections are part of our collective national heritage. I hope with your help we can save these treasures for future generations of Americans. And I appreciate your time.

Mr. HEFLEY. Thank you, Congressman.

[The prepared statement of Mr. Matheson follows:]

**Statement of The Honorable Jim Matheson, A Representative in Congress
from the State of Utah**

Chairman Hefley, Ranking Member Christensen, I want to thank you for having this hearing today. It is important, not only to the people of Utah, but also to our shared national heritage.

I want to give special thanks to Chairman Hansen and Congressman Cannon and their staffs for their steadfast support of this project, and today's hearing is a culmination of our collective efforts as a delegation.

In 1824, a philanthropist named James Smithson bequeathed his fortune to the government of the United States in order to found an Institution to, and I quote, "increase the diffusion of knowledge among men."

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It contains over 30,000 specimens of mammals, one of the thirty largest collections in the western hemisphere, and its 18,000 specimen reptile collection contains one of the largest turtle assemblages in the world.

It is an institution that houses one of the world's great paleontology collections. Its 12,000 specimen vertebrate fossil collection is dominated by 150 million year old dinosaurs from the Jurassic period, as well as Ice Age mammals such as giant bears, mammoths and mastodons.

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Most of the ceilings throughout the building are seven feet two inches high. Which, as you can imagine, makes dinosaur storage somewhat of a problem.

Climate control and water systems are woefully antiquated. The humidity and temperature in the display and storage areas has wide swings. This inconsistency puts tremendous strain on the increasingly fragile collections.

A few weeks ago, I took a tour of the museum. Halfway through the tour a chunk of ceiling fell and crashed at my feet. Never have I been so serendipitously hit in the head by a chunk of plaster.

As with many Depression Era buildings there are numerous structural deficiencies that put the collections at risk and inhibit access to the public. Fire protection systems are inadequate and antiquated, an outdated HVAC system, no possibility for expansion, and no freight elevator or loading dock.

All of these are compounded by the fact that the collection now sits 400 yards away from the second most active fault in the continental United States in a building with beams built to hold books rather than mastodons.

It's plausible to think that our kid's Pokemon cards might be at less risk for damage than some of the pieces in this collection.

The University along with private donors and the state government have embarked on an ambitious project to build a new museum that would be a centerpiece for cultural and scientific education in the Intermountain West.

They have selected a site for the new building that will be located in the University's Research Park, and will be adjacent to the City's zoo, a living history heritage park, and the state arboretum. The University has just completed its pre-program study of the site, as well as determining the project costs.

This project will be a partnership in every sense of the word. State and private donors have promised to match every Federal dollar with three of their own. The University's donors and alumni network view this as a priority project for Utah, and are actively engaged in its development.

The University has already contributed the 14 acres for the development. The State has guaranteed the operating funds for the facility at \$800,000 annually. To date close to \$12 million has been raised from private donors, this includes \$10 million from the Emma Eccles Jones foundation.

Unlike many museums throughout the country, about seventy-five percent of the museum's holdings are owned outright by the Federal government. With more than ninety percent of some collections coming from Federal lands.

That means that these artifacts, fossils, and specimens belong to the people of the United States. These exhibits and collections are part of our collective national heritage. I hope with your help, we can save these treasures for future generations of Americans.

Thank you for your time.

Mr. HEFLEY. Mrs. Christensen.

Mrs. CHRISTENSEN. I don't have any questions at this time.

Mr. HEFLEY. Mr. Hansen.

Mr. HANSEN. I have no questions. I commend my colleague from Utah for his standpoint on this matter.

Mr. SIMPSON. Just one question. Did I hear you correctly that—what was it—70 percent of the artifacts are actually owned by the Federal Government?

Mr. MATHESON. Seventy-five percent.

Mr. SIMPSON. Thank you.

Mr. HEFLEY. You made a good case for the quality of the collection and for the need for a new facility.

You know, I used to go with the Fish and Wildlife Service every year fishing out on the eastern plains of Colorado and we caught lots of fish, and I have accused them of having divers down there put it on my hook.

How could you have a more opportune thing happen than the roof fall in just as you are viewing it? I want to talk to the president of the University about that.

I guess the question I would have is I think the case needs to be made that this is a Federal responsibility, that the Federal Government should do this. I know that we have, as Chairman Hansen has said, we have given money to museums, \$80 million for Steamtown—Mr. Hansen, you and I have talked about that a lot; \$6.4 million for the New York botanical garden; 16 million for the Hispanic Cultural Center in New Mexico; 13 million for the American Museum of Natural History; and 10 million for Fort Pack Dam Interpretive Center in Montana; 3.8 million for the Center for Historically Black Heritage at Texas A&M; 3 million for a museum at Brown University.

So it is not without precedent. But this, as I understand it, would come out of the Park System's hide. And with all the other needs we have in the Park System, convince us that this is an expenditure of money that we need to be making.

Mr. MATHESON. Sure. First of all, there is nothing in the legislation that specifically says it would come from the National Park Service alone. This is looking at it as a Department of Interior appropriations at the discretion of the Secretary of Interior, so we want to make sure that it is understood. We have a lot of Federal land in Utah we have BLM lands, we have national forestland, we have national parkland in Utah. These artifacts come from all of these locations.

I do want to correct—at least my understanding would be is this is not necessarily a target of just the National Park Service funding as a source of funds for this museum construction. As I said in my testimony, 75 percent of the artifacts in this museum are Federal artifacts. Many of these artifacts come from Federal lands, and I think that in and of itself is a compelling case there ought to be some Federal involvement.

Mind you, as I said, this is a 3-to-1 match. We are looking at \$3 coming in from elsewhere to match \$1 that comes from the Federal Government.

Mr. HEFLEY. Okay. I don't think I have any further questions. Thank you very much for being here and please join us if you would like.

Mr. MATHESON. Thank you.

Mr. HEFLEY. Our second panel will be Mr. Richard Ring, Associate Director of Park Operations and Education for the National Park Service. He will be speaking on both bills.

Mr. Ring, we will give you the time, and we ordinarily do 5 minutes of testimony, and in this case you will be speaking on both bills, so if you need to take more time than that, feel free to do that.

**STATEMENT OF RICHARD G. RING, ASSOCIATE DIRECTOR,
PARK OPERATIONS AND EDUCATION, NATIONAL PARK
SERVICE**

Mr. RING. Thank you, Mr. Chairman, I will try to keep it down to 5 minutes. And again, thank you for the opportunity to testify this morning. I am here to present the Department of Interior's views first on H.R. 1461, a bill to amend the National Park Omnibus Management Act to remove the exemption for nonprofit organizations from the general requirement to obtain commercial use authorizations.

The Department does not support H.R. 1461 because of the financial burden that it would potentially place on many nonprofit organizations including educational groups, outdoor clubs, and other nonprofits. Section 14 of the Omnibus Management Act of 1998 permits the National Park Service to authorize commercial use authorizations for these for a variety of smaller operations, and these operations are intended to be used only for services that lack minimal impacts on park resources and values and are consistent with the purposes for which the park were established. These operations are limited to those grossing \$25,000 or less annually and the law does exempt nonprofits from the requirement of obtaining commercial use authorizations unless taxable income is derived from their operations.

H.R. 1461 would remove the provision in the law, and organizations such as outdoor clubs, scout groups, educational groups, and other nonprofits would be required to obtain the authorization and pay for it. And it is subject to the payment of the same fees and/or requirements as other commercial operators. Such a change in the law would result in financial burdens being placed on some smaller nonprofits, potentially discouraging or precluding them from being able to conduct their activities in national parks. The financial benefit from additional fee receipts that we would like to

receive from these folks would be both minimal and would be offset by the additional administrative costs that would be necessary to evaluate the commercial value of nonprofit operations that do not generate taxable income.

The Department would be glad to work with the Committee to ensure that this issue is addressed in an appropriate and fair manner. And I would be happy to answer any questions on this bill.

[The prepared statement of Mr. Ring follows:]

Statement of Richard G. Ring, Associate Director, Park Operations and Education, National Park Service, U.S. Department of the Interior, on H.R. 1461

Mr. Chairman, thank you for the opportunity to present the Department of the Interior's views on H.R. 1461, a bill to amend the National Parks Omnibus Management Act of 1998 to remove the exemption for nonprofit organizations from the general requirement to obtain commercial use authorizations.

The Department does not support H.R. 1461 because of the financial burden it would potentially place on many nonprofit organizations, including educational groups, outdoor clubs, and other nonprofits.

Section 418 of the National Parks Omnibus Management Act of 1998 permits the National Park Service to authorize individuals, corporations, or other entities to provide visitor services in units of the National Park System through a commercial use authorization. Such authorizations are not concessions contracts, and are intended to be used only for services that will have minimal impact on park resources and values and are consistent with the purposes for which the park was established.

Furthermore, the law limits this type of authorization to commercial operations grossing \$25,000 or less annually from services originating and provided solely within a park, or operations whose use of the park is incidental and whose services originate and terminate outside of the park. In addition, the law specifically recognizes commercial use authorizations for uses such as organized children's camps, outdoor clubs, and other nonprofit institutions. However, the law exempts nonprofits from the requirement of obtaining a commercial use authorization unless taxable income is derived from their operations in the park.

H.R. 1461 would remove the provision in the law that exempts nonprofits from having to obtain a commercial use authorization. The effect of this would be to require all nonprofit organizations, even those that do not derive taxable income from their operations in a park, to obtain a commercial use authorization. Potentially, organizations such as outdoor clubs, scout troops, educational groups, and other nonprofits could be required to obtain an authorization, subject to payment of the same fees and other requirements as commercial operators. While the Department strongly supports the concept of requiring commercial operators, including nonprofits that derive taxable income from their park operations, to pay a fee in order to obtain an authorization, we do not believe that this requirement should apply to all nonprofits. Such a change in the law would result in a financial burden being placed on some smaller nonprofits, potentially discouraging or precluding them from being able to conduct their activities in national parks.

For the National Park Service, the financial benefit from additional fee receipts would likely be both minimal and offset by the added administrative requirements to evaluate the commercial value of nonprofit operations that do not generate taxable income. However, the Department would be glad to work with the committee to ensure that this issue is addressed in an appropriate and fair manner.

This concludes my testimony. I would be glad to answer any questions that you or members of the subcommittee might have.

Mr. RING. And I am pleased to go to the second bill, Mr. Chairman.

Mr. HEFLEY. Go ahead with your testimony on the other one, and then we will do both.

Mr. RING. Okay. I would like to also testify on H.R. 1491, a bill to assist in the preservation of archaeological, paleontological, zoological, geological, and botanical artifacts through the construction of a new facility for the University of Utah Museum.

The Department opposes H.R. 1491. We appreciate the interest the museum has in providing the highest level of care to the objects in its collection. We believe the limited use of National Park Service appropriations to fund the design, construction, and operation of projects of non-National Park Service projects of this type is inappropriate.

In the last Congress alone, the legislation was passed and signed into law that authorized over \$80 million in grants to be passed through the National Park Service budget for nonpark system projects. Each time this is done it reduces the ability of a limited amount of discretionary funds to address the needs of the national parks. We believe that funds are more appropriately directed at this time to reducing the long list of necessary but deferred construction projects, as well as those meeting curatorial needs, that have been identified in our national parks.

Again, the Department is willing to work with all the involved agencies and the museum to thoroughly assess all possible alternatives for providing the highest level of care to the objects currently housed at the museum, including, if necessary, the transferring of the collection to Federal repositories that are managed directly by the Federal agencies. And again, that summarizes my testimony and I will be happy to answer any questions on either bill.

Mr. HEFLEY. Thank you.

[The prepared statement of Mr. Ring follows:]

Statement of Richard G. Ring, Associate Director, Park Operations and Education, National Park Service, U.S. Department of the Interior, on H.R. 1491

Mr. Chairman, thank you for the opportunity to present the views of the Department of the Interior on H.R. 1491, a bill to assist in the preservation of archaeological, paleontological, zoological, geological, and botanical artifacts through construction of a new facility for the University of Utah Museum of Natural History, Salt Lake City, Utah.

The Department opposes the enactment of H.R. 1491. Our opposition does not detract from the significance and importance of the museum as a place of learning and as a keeper of important collections that showcase many features of America's past. We encourage the University and the State of Utah to continue to seek funding and other solutions for the preservation and protection of the collections, including working with existing programs managed by all of the Federal agencies with collections stored at the museum.

We appreciate the interest the museum has in providing the highest level of care to the objects in its collection. However, we believe the use of limited National Park Service appropriations to fund the design, construction, and operation of projects of non-National Park Service projects of this type is inappropriate.

In the last Congress alone, legislation was passed and signed into law that authorized over \$80 million in grants to be passed through the National Park Service budget for non-Park System projects. Each time this is done, it reduces the availability of a limited amount of discretionary funds to address the needs of our national parks and other important national priorities.

The Department is committed to supporting the President's Initiative to eliminate the deferred maintenance backlog in our national parks. We believe funds are more appropriately directed at this time to reducing the long list of necessary but deferred construction projects, as well as those meeting curatorial needs, that have been identified in our national parks.

H.R. 1491 authorizes the Secretary of the Interior, subject to the availability of appropriations, to award a grant to the museum to pay for a Federal share of the cost of construction of a new facility. The bill states that more than 75 percent of the museum's collection have come from Federal lands and have been collected for a number of years. Items in the collection have come from land managed not only by the Bureau of Land Management, the Bureau of Reclamation, the National Park Service, the United States Fish and Wildlife Service, the U.S. Forest Service, but

also the Department of Defense and the Bureau of Indian Affairs—agencies not mentioned in the legislation. The Federal share of the cost for this project is not to exceed 25 percent. A total of \$15 million is authorized to be appropriated as a grant to the University of Utah. Federal funds are to be used for the design, planning, furnishing and equipping of the museum.

The University of Utah is in Salt Lake City and the Museum of Natural History has been designated by the state legislature as the State museum of natural history. Current exhibit and storage facilities are inadequate and place the collection in danger. We realize that museum facilities throughout the country, including the University of Utah Museum of Natural History, are in need of improved conditions to allow them to adequately protect and preserve the objects in their care.

Due to the financial implications of the bill on national parks and park programs, we must oppose H.R. 1491. However, the Department is willing to work with all of the involved agencies and the museum to thoroughly assess all possible alternatives for providing the highest level of care to the objects currently housed at the museum, including, if necessary, the transferring of collections to Federal repositories.

This completes my statement. I will be pleased to answer any questions you or other members of the Subcommittee may have.

Mr. HEFLEY. Mrs. Christensen.

Mrs. CHRISTENSEN. Thank you, Mr. Chairman. Good morning Mr. Ring. I have a few questions. There will be two on 1461, one on 1491.

Does the exemption language of section 418 seek or create any problems with you for protecting park resources or providing for visitors' safety. This is with regard to the nonprofit.

Mr. RING. Does the exemption in the proposed bill?

Mrs. CHRISTENSEN. Is it problematic for you, has it provided problems for the Park Service who manage the resources, because of the exemption for the nonprofit groups?

Mr. RING. No, it has not.

Mrs. CHRISTENSEN. It has not. Also do you have any way—would you characterize the nonprofit groups that have outings in our national parks commercial operations?

Mr. RING. For the most part they are not; but again, the current law makes a very clear distinction that it is not just nonprofit status but it is nonprofit status where the activity is not generating taxable income.

Mrs. CHRISTENSEN. And there is a provision if there is any taxable income.

Mr. RING. Then they would have to get a commercial use authorization and pay all the fees that would normally apply.

Mrs. CHRISTENSEN. And the other bill, until I heard the testimony this morning I wasn't really aware that 75 percent of the artifacts were Federal, as Congressman Matheson has said. Do you consider those as belonging to the Federal Government?

Mr. RING. I think that is a matter that bears a lot of examination. Many of the artifacts may have been collected before the designation or the establishment of a national park unit, and there may be some relationship to the Smithsonian if they were public lands. I think that bears a very detailed examination as to the ownership of them.

Mrs. CHRISTENSEN. Thank you. I don't have any other questions, Mr. Chairman.

Mr. HEFLEY. Thank you. Mr. Hansen.

Mr. HANSEN. Thank you, Mr. Chairman.

Mr. Ring, you stated in the opposition that the administration has to 1491 that you do not believe they should fund construction or operation of a non-national park project. Do you believe that the Department of Interior has the responsibility, financial responsibility, to assist States, organizations, universities, whoever, that have taken it upon themselves to preserve natural resources such as artifacts, fossils, things that have national significance?

Mr. RING. We are most willing to work with State and local governments on those kinds of issues, and we are very interested in sitting down and examining what are the options, what choices are there to best accomplish that.

Mr. HANSEN. You say State and local governments. Do we expand that to mean State-owned institutions.

Mr. RING. Certainly, sir.

Mr. HANSEN. So you do accept the fact that possibly the Federal Government should have a hand in those things, is that right?

Mr. RING. I believe we work with all of these kinds of institutions, both directly and with technical assistance, and work with them on a range of these kinds of problems.

Mr. HANSEN. And do you accept the fact that the Federal Government has done this for other institutions?

Mr. RING. Well, yes, sir. I mentioned, that particularly in the last year alone, about \$80 million of past grants were authorized through the Park Service budget for these kinds of activities. The concern that we have is facing such an enormous backlog within the national park system that these grants are being passed through the National Park Service budget and it is very difficult with scarce allocations to pursue a wide range of very important priorities. So I think that is more the issue.

I also think, sir, that the scope of this concern needs to be understood. There are approximately 583 nonFederal museums that house some portion of collections that are either owned by or collected from Federal land. Of these, about 142 are associated with National Park Service collections.

Mr. HANSEN. Do you accept the fact that the majority of these artifacts or things that are found basically come off of Federal grounds; therefore, there is somewhat of a correlation or a responsibility of the Federal Government, if they have an interest in that, and I think in my 20 some years they have always declared they have an interest in it, the Federal Government does have a responsibility to be part and particle of this, as you have stated is done all over America basically?

Mr. RING. Yes, sir, I do. When a problem arises that we welcome the opportunity to sit down with the institution and discuss what happens and the best way to solve the problem.

Mr. HANSEN. Have you been out there, by any chance, and looked at the present repository of these things?

Mr. RING. No, sir, I have not seen—.

Mr. HANSEN. The dilapidated Thomas Library.

Mr. RING. No, sir, I have not seen this particular site, but I have visited a number of other repositories that the National Park Service manages directly and seen equally deplorable conditions. We have a very large problem with the collections.

Mr. HANSEN. I don't argue the facts at all that the Park Service has an infrastructure problem. When I chaired this Committee, I went through that same frustration with the literally billions of dollars of backlog. That is one of the reasons we did the demonstration project and others to bring those things to light. I notice in your testimony that you stated that the University really ought to look at other existing programs that are put out by the Federal Government for additional monies. How much did you have in mind?

Mr. RING. Sir, I don't have a specific program to mention to you today, but I would be happy to provide to you that information.

Mr. HANSEN. I would be happy if you would do that so we can see what other avenues we can explore.

[The information referred to follows:]

Question: In reference to the NPS testimony that the museum should "continue to seek funding and other solutions for the preservation and protection of the collections, including working with existing programs managed by all of the federal agencies with collections stored at the museum," Mr. Hansen asked the specifics about which programs the museum should look to.

Answer: The following list provides information on potential funding sources for the Utah Museum of Natural History (UMNH) to use in caring for Federal collections. The UMNH has been successful in obtaining funds from most of the Federal granting agencies. We note that in 1935 Federal WPA funds financed the construction of the building that currently houses the Museum.

National Endowment for the Humanities

Challenge Grants—Challenge grants help institutions and organizations secure long-term support for, and improvements in, their humanities programs and resources. In special circumstances challenge grants can also help with limited direct costs, such as the purchase of capital equipment, construction and renovation, and even debt retirement. Because of the matching requirements, these NEH awards also strengthen the humanities by encouraging non-Federal sources of support.

Preservation Assistance Grants—Preservation Assistance Grants can help museums enhance their capacity to preserve their humanities collections. Applicants may request support for general preservation assessments or consultations with preservation professionals to develop a specific plan for addressing an identified problem. Awards will also be made to purchase basic preservation supplies, equipment, and storage furniture.

Institute for Museum and Library Services

General Operating Support—The IMLS General Operating Support program encourages the best in museum service. Museums use these funds to strengthen collections care and raise funds from other sources. The two-year award provides unrestricted funds for ongoing institutional activities.

Conservation Project Support—Grants are available for five broad types of conservation activities, including collections treatment and environmental improvements.

National Science Foundation

The Biological Research Collections (BRC) program provides support for collection improvement, for collection computerization, for research to develop better techniques of curation and collection management, and for collections community based development undertakings. Physical improvements typically involve rehousing a collection, replacing inadequate resources, providing new resources for continued growth, or incorporating one or more collections donated by another institution or individual. Allowable costs generally include the purchase and installation of new storage systems, the purchase of curatorial materials, as well as new curatorial and technical assistance specifically designed to effect the proposed improvements for the duration of the proposed project.

National Park Service

Native American Graves Protection and Repatriation Act (NAGPRA) Grants—NAGPRA grants are awarded on a competitive basis to Indian tribes, Native Hawaiian organizations, and museums that need financial assistance to carry out duties associated with NAGPRA compliance. Although Congress does not make the distinction between funds intended for distribution to the two groups of eligible applicants—Indian tribes and Native Hawaiian organizations, and museums—the NAGPRA Grants office administers these grants separately. The number of proposals submitted, as well as the total amount of requested funds, by each group of applicants determines the distribution of the Congressionally appropriated grant funds.

Save America's Treasures—Grants are available for preservation and/or conservation work on nationally significant intellectual and cultural artifacts and nationally significant historic structures and sites. Intellectual and cultural artifacts include artifacts, collections, documents, monuments and works of art. Historic structures and sites include historic districts, sites, buildings, structures and objects. Grants are awarded through a competitive process. Each grant requires a dollar-for-dollar non-Federal match.

Historic Preservation Fund Grants—Among the kinds of activities funded are design guidelines and preservation plans and rehabilitation or restoration of National Register listed properties. The UMNH currently occupies the George Thomas Library building which is on the National Register of Historic Places. This building was financed with WPA funds and completed in 1935. In 1968 the University remodeled it to house the UMNH. If the UMNH were to continue to occupy this historic building, Historic Preservation Fund Grants could be applied to its rehabilitation.

Non-Grant Options for Support from Federal Bureaus with Collections at UMNH

Department of the Interior—The Department is developing discount agreements with vendors of specialty museum supplies to apply to non-Federal museums that house Federal collections. It has agreements in place with six vendors.

Bureau of Indian Affairs (BIA)—BIA is currently developing curation agreements with non-Federal institutions to facilitate providing funding to manage BIA collections at those institutions. It has contracted with the Army Corps of Engineers to survey BIA collections in non-Federal institutions. Utah is covered in the current survey. Very limited funding is currently available to support these activities. The bureauwide museum program is funded at \$247,000.

Bureau of Land Management (BLM)

Museum Partnership Program—This program supports cooperative projects that involve 13LM collections at non-Federal museums. Modest funding of \$5,000 to \$10,000 per project is provided. UMNH has been receiving \$5,000 annually from Utah BLM as well as a one-time payment of \$47,160 this fiscal year.

Bureau of Reclamation (BOR)

BOR provides funding to non-Federal repositories on a case-by-case basis. To date, BOR has provided \$242,000 to UMNH to care for BOR collections stored at the museum. This funding has supported cataloging, rehousing and reconciliation of records. In addition, each summer since 1999, BOR has provided the museum with a student intern to work on the BOR collections. The current cost of the intern is \$5,160.

Fish and Wildlife Service (FWS)

Because the FWS collections at UMNH occupy an estimated 14 cubic feet and FWS could accommodate this material in another facility, there is no need to seek support for keeping these FWS collections at UMNH.

National Park Service (NPS)

Backlog Cataloging—The Backlog Catalog program is funded by a line-item in the NPS appropriation to catalog the backlog of 52 million items in park collections. This program is funded at \$2.5 million in fiscal year 2001. Under contracts or agreements, parks can pay non-Federal museums to catalog park collections into the NPS cataloging system, the Automated National Catalog System (ANCS+). No non-Federal match required.

Museum Collections Preservation and Protection Program—The Museum Collections Preservation and Protection Program (MCCPP) is funded by a line-item in the NPS appropriation to address deficiencies in the preservation and protection of park collections. Service-wide facilities housing park collections meet only 66% of museum collections preservation and protection standards. The program addresses storage, environmental control, security and fire protection deficiencies. This program is funded at \$3.0 million in fiscal year 2001. Parks may purchase supplies and equipment needed to maintain park collections in non-Federal museums, e.g. storage cabinetry. The equipment, while used in the non-Federal museum, remains Federal property. No non-Federal match is required.

Storage in NPS Facility—To date, the UMNH has identified and estimated 216 cubic feet of archaeological collections that belong to the NPS. NPS could accommodate these collections in existing NPS facilities without incurring any construction costs. UMNH has indicated there may be additional natural history collections belonging to NPS, but has not yet provided information on storage space required or number of specimens. When this information is provided, NPS will evaluate its capability to store this material. NPS anticipates that this material could also be accommodated in existing NPS facilities. Storage in NPS facilities would obviate the need for UMNH to seek funding to store these park materials.

Question: Mr. Matheson asked if the funding for the museum were spread out over time and spread across the Department, rather than just the NPS, would the Department still oppose the bill.

Answer: Although the museum may have merit, the Department would still oppose the bill. Even if the funding for this non-Federal museum were spread out over time and across the Department, it would still take away funds from what is available for agencies to address priorities and take care of existing Federal responsibilities. Thus, this project would not be a top priority compared to other needs, including Federal facilities where curatorial needs cannot be met. Given the large backlog of deferred maintenance and construction projects, agencies need to establish clear priorities and focus resources on their priority needs. These needs cannot be addressed if large portions of construction funds are diverted to non-Federal facilities.

Mr. HANSEN. Thank you, Mr. Chairman. That is all the questions I have for Mr. Ring.

Mr. HEFLEY. Thank you. Ms. McCollum.

Ms. MCCOLLUM. No, thank you.

Mr. HEFLEY. Mr. Simpson.

Mr. SIMPSON. Thank you, Mr. Chairman. On H.R. 1461, the commercial uses authorization for the nonprofits, how much revenue are we talking about? What is the average cost of a commercial use authorization?

Mr. RING. We are still in the process of converting these authorizations from the old from the way we did them under the old law into the new law, but these things have been issued at 100 to 200 a year, has been the valuation on them.

Mr. SIMPSON. Do you have any idea what the total loss of income would be by exempting the nonprofits if they were to be—if they were required to have commercial use authorization?

Mr. RING. Well, currently we have a little over 3,100 of these types of authorizations that we will be converting to the new type of authorization under the new law. Right now, about 77 of those are issued to nonprofits. That is slightly less than 2-1/2 percent.

Mr. SIMPSON. Okay, thank you. On H.R. 1491, if the State of Utah were to declare these artifacts belong to the State of Utah and not the Federal Government, would the Federal Government have a problem with that?

Mr. RING. I think we would like to sit down and understand what were those artifacts, where were they collected, when were they collected, because I think that there is a lot of information that would need to be reviewed to understand exactly who they belong to.

Mr. SIMPSON. I certainly appreciate the concern that the Park Service has with the unmet backlog that they have not only in the Park Service, as Congressman Matheson said, and in the Forest Service and BLM and other public agencies. I would hope that those agencies when legislation comes forwards in this Committee dealing with—I believe it is called CARA—that puts \$900 million into the State and Federal Land and Water Conservation Funds—that there are going to be some amendments offered to take some of that money to address the backlog needs of the National Park Service and in other areas.

I notice that Secretary Norton was out in Yellowstone and Grand Teton National Park a couple of weeks ago and she commented on the extraordinary need to address the backlog in these national parks, and I would like to see the Park Service and the Forest Service and the BLM get together on the need to address this backlog and hopefully they can support some of these amendments which would direct some of that money to this backlog. If we can do that, it would actually free up some money not only to address the backlog, but to do some of these things that I think are necessary. But I do think the Federal Government has a responsibility to maintain some of these artifacts that obviously have been collected off Federal lands, and I suspect that the Federal Government would object if the State of Utah said that they are the State of Utah's and not the Federal Government's.

Mr. RING. I certainly agree that the issue of care for these collections nationwide is a very large issue. The Department of Interior alone has over 117 million artifacts. About 25 percent of them are being cared for in nonFederal institutions. About 3.7 percent of National Park Service's collections are being cared for in non-Federal institutions. It is a challenge. We recognize it as a challenge to the State of Utah, but also to many of us in terms of providing the proper care for these artifacts.

Mr. SIMPSON. Thank you.

Mr. HEFLEY. Thank you, Mr. Simpson.

Mr. Ring, it is certainly not the purpose of any of us, I think, to restrict nonprofit organizations from taking in groups and enjoying our great national resources, particularly groups like the Boy Scouts and all. The only thing was we had some feeling that there are some groups that do make money on this that operate like a commercial operator, and those are the only groups that we would want something like this, if it were to go forward, to affect. If they are a commercial operator, even under the guise of nonprofits, then they should pay for the permit. If they are not a commercial operator and they take their Boy Scout troops or their members in there for something and don't make any money offer of it, then they shouldn't pay.

You in your testimony state that this legislation would result in an added administrative burden to evaluate the commercial value

of nonprofit operations that do generate taxable income. How does there Park Service make this determination currently?

Mr. RING. We would be asking, in an application, for the applicant to tell us what their status is and provide a certification to us with regards to whether or not they were a nonprofit, and, whether or not the revenue being generated by this activity was under their nonprofit status or whether it would be subject to taxation. If we had any question in that regard, we certainly would query the Internal Revenue Service and pursue any false statements that may be made to us.

Mr. HEFLEY. Well, suppose you have a big organization. You were asking them, you know, where they make a taxable income profit—and the big organization does not make a taxable income profit, let's say, but on this particular operation they make a considerable profit, a profit which goes back into their organization for lobbying or for education or for fund-raising or for other things. Do you have any way of determining whether this particular operation makes a profit as opposed to whether the whole organization makes a profit?

Mr. RING. We basically would turn to the rules set up for nonprofit organizations that the IRS administers, and if funds are expended on certain activities that are within the scope of the law governing nonprofit organizations, then we would be guided by IRS' determination on that.

Mr. HEFLEY. Okay. Let me mull that a bit while I turn to Mr. Matheson. I didn't mean to ignore you. I want to give you the opportunity to ask any questions you would like to ask as well.

Mr. MATHESON. Well, thank you, and I appreciate the Subcommittee allowing me to sit up on the panel today. I appreciate that again, Mr. Chairman. I just had a couple of questions.

Mr. Ring, in your statement you took issue with the project because it would take resources from the National Park Service budget at a time when the administration made national parks a priority and what we have all agreed is an important backlog of projects that needs to be addressed. If the funding for this program is spread out over time, and it came from other sources within the Department of Interior, would you then maintain your opposition?

Mr. RING. That is something I would need to go back and examine. We certainly would consider that and be happy to respond to you on it.

Mr. MATHESON. In reading this legislation, I see mention of the National Park Service only once, and that is sort of a cursory mention in the findings section along with all public land management agencies that are in the State of Utah. Do you see a place in this bill where it says the funding would only come from the National Park Service?

Mr. RING. I do not see it in this bill, but the routine practice is that these types of grants are placed in the National Park Service budget.

Mr. MATHESON. Well, I applaud you making the point in your testimony that the administration believes this is a valuable project and you would be willing to assist this project somehow in the future. Do you have a sense of how you could—how we could

assist this project from a Federal level, if not through the funding that is suggested in this bill itself?

Mr. RING. We would welcome the opportunity to sit down and meet with the museum and discuss what our range of options are.

Mr. MATHESON. Thank you, Mr. Chairman.

Mr. HEFLEY. Ms. McCollum.

Ms. MCCOLLUM. Thank you, Mr. Chairman. If I could ask a follow-up on what you were talking about earlier, Mr. Ring, I think the Chair raises a good question about not-for-profit groups—sometimes what they are paying CEOs, what they are doing for lobbying and other things—in essence are doing quite well.

Do you ever look at the fee that is being charged by a nonprofit for the individuals coming in? I mean, let's say you know—I know as a Girl Scout leader, if we go in someplace, how much it is going to cost for me for the food for cookouts, for incidentals. Sometimes we take it out of dues, or the girls ante up. Maybe it would cost me \$5 per girl for one night. If we are doing something that is \$35 for 1 week, that is breaking even, that is covering my costs.

Let's say I charge \$100 for the girls to participate that night. Then I am increasing the coffers of my treasury. Do you ever look at, or do people submit what they are charging for using the park as part of when people are coming in?

Mr. RING. With these incidental scale authorizations, we are focused more on what their status is and whether or not they are generating revenue that is subject to taxation. If the revenue is being applied to the nonprofit purposes of the organization, whether on the same trip or on something else that is associated with their nonprofit status, we have not made a distinction. In the law that we have on the books now, we certainly would be focused on whether or not any of that revenue is being devoted to do things that under the Internal Revenue Code a nonprofit organization would be taxed on.

Ms. MCCOLLUM. Mr. Chair, if I may, another question. Mr. Ring, I find it also kind of, as I am mulling this through—Girl Scouts—you know my Girl Scout troop might come in once a year, maybe once every 4 years. The Girl Scout Council would come in more often because of an umbrella group. Would anything maybe trigger that you will want to do a further investigation versus how—you know, how often a group is coming in, a nonprofit group is coming in to use a particular facility?

Mr. RING. Well, certainly, we would take any information that we got that raised any question concerning the status—either the nonprofit status or the taxable nature of the activity that the nonprofit organization was engaged in, and pursue it with the IRS. We also could consider just random spot checks on those.

Ms. MCCOLLUM. Thank you, Mr. Chairman.

Mr. HEFLEY. Mr. Simpson.

Mr. SIMPSON. Mr. Chairman, could I ask a couple more questions?

Mr. HEFLEY. Sure.

Mr. SIMPSON. Mr. Ring, you mentioned—back to this nonprofit status. I think we all know what we are talking about. We are not talking about the Girl or Boy Scouts, those types of organizations. People are using the national parks in a nonprofit status, not

having to pay the commercial fee. And they are using them, organizations are, I suspect for advocacy, to try to advance their agenda and so forth, which is okay. But you would think that many of these organizations, these environmental groups that use this in that manner, would in fact want to pay the fee that goes into supporting the national parks instead of opposing that fee, wouldn't you?

Mr. RING. We would have to ask those organizations. We certainly get donations from quite a range of groups and individuals. The question you raised with regards to what we require versus what they are interested in doing is the issue. We feel that in the case of the nonprofits, most, if not all of the nonprofits that are not engaged in collecting taxable income, are very much dedicated to purposes that are educational and have been looked at under the IRS Code and determined to be appropriate and consistent with the purposes of the national parks. The level of activities that is under the \$25,000 level that we are talking about, and the nature of the activity, where it is typically a group coming in for an organized visit or a guided or an educational visit, lies very lightly on the land.

From a resources standpoint, we have very little concern over it. We think these are appropriate and are very supportive of them.

Mr. SIMPSON. If we were to try to change this and not just withdraw the nonprofit status, is the only way we could do that is go through the IRS Code and change the nonprofit designation in the IRS Code, or could we change this so that we were actually addressing those groups that do quite well that are nonprofits, versus the Boy Scouts and Girl Scouts?

Mr. RING. I think you have raised a question of how do you set a standard. The standard in the law right now refers to the IRS Code. The IRS has reviewed these organizations from the standpoint of their purposes, as well as routinely requiring them to report their income. It makes distinctions as to which of that income is going toward those educational purposes versus not. We are certainly willing to work with the Committee on an appropriate way to address this issue. But the question is what standard do you use and how do you make a distinction that is fair and impartial?

Mr. SIMPSON. I guess what surprises me, to some degree what it remind me of is the demonstration fee project we have in some of our national forests. That money stays within the national forest to upgrade the trails, and the people that object to that the most are the very people that want us to upgrade the trails and the forest and so forth, the same hikers and backpackers that are opposed to the demonstration fee project. And I think the same type of thing is going on within the National Park Service and the commercial use fee.

Mr. RING. I don't know—.

Mr. HEFLEY. I am sorry, we will have to go and vote. If you will hold that thought, we will recess and vote and come back.

[Recess.]

Mr. HEFLEY. The Committee will come back to order. Mr. Ring, you were in the middle of answering Mr. Simpson's question. Mr. Simpson is not here, but if you would like to continue it for the record.

Mr. RING. For the record, if I could have that read back, it would help.

Mr. HEFLEY. Do we have someone who can do that? I don't think we do. Forget that question. Let's go to another one.

The IRS has looked askance at recent times in what they call unrelated earned income or unrelated business income, and one example that is often used is of the YMCA. And the YMCA had lofty purposes and they accomplished wonderful things. I am a big fan of the YMCA.

Many of them operate very lucrative health clubs as a part of their operation, and the IRS has looked at this as a—well, is this really—they are out competing with private health clubs. Is this really a part of their basic charitable mission, the reason they have a 501(c)(3)? And this is, I think what we are getting at is, do some of these organizations who are exempt really operate a business, a profitable business, an unrelated earned income?

Now, you can always—you can always figure some relationship. For the Y, for instance, one of our charges is to keep people healthy, so they have a health club and a masseuse and exercise machines and all that goes with that. But do you have groups that operate tours that are essentially commercial tours but they are doing it under the guise of their 501(c)(3), and do you have any way to determine that, any rules and regulations that you promulgated based upon the law to determine that, other than to just simply, if you checked—and I am not sure you do check, because in your testimony there seemed to me there was a lot of could have and should have and we are able to do this, we are able to check the IRS and so forth, but there doesn't seem much indication you are really doing that.

Are you really doing it? Do you have a way to check and find out if these suboperations of an overall organization are big profit centers for the organization?

Mr. RING. That is a good question, Mr. Chairman. I think the law itself basically places a limit on the scale of these at \$25,000, so that there is one constraint. We wouldn't be getting into large profit-making operations or nonprofit operations in this section of the law.

We are still in the process of promulgating the regulations associated with the commercial use authorizations. The question you have raised is a very good one. We would go back and examine that in the context of the promulgation of these rules.

Mr. HEFLEY. Okay. We are having a—I think we are having a hard time getting at what we are trying to get at here, but you have been very helpful and I appreciate it. And since there is no one else to ask—Mr. Matheson? Or Dale, do you have any—

Mr. KILDEE. No.

Mr. HEFLEY. Thank you very much. We will go to the next panel, then.

The next panel is made up of J. Bernard Machen, President, University of Utah, Salt Lake City; Dave Simon, Director of Outdoor Activities for the Sierra Club; and Dan Mastromarco, Executive Director, Travel Council for Fair Competition.

And if you all would take your place, and I think we will start with President Machen from the University of Utah. And if you

would, try to keep your comments to 5 minutes, and you will see the little lights there that go off, but your full statements will, without objection, will be put into the record.

**STATEMENT OF J. BERNARD MACHEN, PRESIDENT,
UNIVERSITY OF UTAH, SALT LAKE CITY, UTAH**

Mr. MACHEN. Thank you, Mr. Chairman. Mr. Chairman and members of the Subcommittee, we very much appreciate the opportunity to appear before you today. We are here to seek Congressional support through H.R. 1491 for a new museum of science and nature on the University of Utah campus in Salt Lake City.

Utah and the intermountain West is a place that is world renowned for its natural and cultural history, and millions of Americans and foreign guests visit our State and this region every year. Over the years, Utah has yielded vast and unique collections recording its history, and these are now in the care of the Utah Museum of Natural History at the University of Utah. Displayed before you over here on my left are photos of some of the extraordinary objects that are in our collection.

As was stated earlier, Utah is a State that is almost 70 percent owned by the Federal Government. By necessity, research on the State's natural and cultural history takes place on Federally managed lands. Collections obtained through this kind of research and through other Federally mandated recovery programs indicate that these collections are in fact Federally owned. The University has numerous pieces of correspondence from the Federal Government which clearly establishes their presumption of ownership over this collection.

The museum and the University have not shrunk from our responsibility as caretakers. Over the years we have made significant investments in infrastructure, personnel and programs to support the care for these important collections. We have asked for and received very little from the Federal Government. In fact, during the collection's history, we have received less than \$300,000 in direct Federal support for the management of these collections.

But at this point, we do need help. We have made significant and successful efforts to conserve these collections, but our building is not suitable for any further upgrading and renovation as a museum. I draw your attention to some of the photographs that were included in the written testimony. The overhead water pipes clearly threaten these irreplaceable objects, and the accident referred to by Congressman Matheson is, unfortunately, not a rare occurrence.

We have run out of room for existing collections, much less any future additions, and yet research in the natural sciences continues on the public lands, and the research facilities and the exhibit space that is accessed by the American public is extraordinarily insufficient for what we are trying to do.

The University has stepped up to the plate and has designed a plan to secure these collections and to meet the American public's desire to have access to them. We already have a donor who has pledged the largest ever single gift to a cultural institution in Utah, and in fact 20 percent of the cost of the project has already been raised.

We have secured the land, 14 acres adjacent to the University, with a commercial value of \$4.2 million. And the state of Utah has agreed to cover the building operation and maintenance costs in perpetuity, which is currently estimated at \$800,000 per year. We are confident that we can match every Federal dollar 3 to 1.

The total cost of the project could be as much as \$60 million, and we are asking from the Federal Government for 25 percent of that cost, \$15 million.

Museums are places of hope. The American public trusts museums implicitly. Museums are about the future, and in them we learn about our past in order to make more informed decisions about our future. This museum was founded by the University and by the community so that Americans could have access to the Federal collections that have been recovered in our region. And we do ask for your partnership in creating this extraordinary new museum for the future. Thank you, sir.

[The prepared statement of Mr. Machen follows:]

**Statement of J. Bernard Machen, President, University of Utah,
Salt Lake City, Utah**

Introduction

We are here today to seek Congressional support for a project to build a new museum of science and nature on the University of Utah campus in Salt Lake City. Our request is for about 25 percent of the cost of the facility. There are compelling reasons for this project and for Federal participation in it. The new museum will ensure the safety and future preservation of a vast and priceless collection of Federally owned objects that have been recovered from Federally managed lands in Utah and surrounding regions during the last 150 years. It will greatly improve the accessibility of these collections for scientific study and it will make them available to the citizens of the United States and their children and visitors. The project addresses several issues of deep and abiding interest to the American people: the need to understand the natural systems and process that have shaped the Earth and life on Earth, to understand the human experience on this continent and to be literate in the methods and processes scientists use to achieve that understanding.

Utah Museum of Natural History

The nationally accredited Utah Museum of Natural History¹ (the Museum) is Utah's state museum of natural history. It is a public educational institution committed to creating and sharing knowledge in all aspects of natural science and human cultures, with emphasis on the astonishing richness of the Intermountain West, especially the Great Basin and northern Colorado Plateau. The Museum is a primary repository for Federal agencies in Utah, holding collections from lands managed by the Bureau of Land Management (BLM), Bureau of Reclamation (BOR), United States Forest Service (USFS), National Park Service (NPS), Fish and Wildlife Service (FWS), Department of Defense (DOD), Bureau of Indian Affairs (BIA) and from various National State Recreation Areas (NSRA) and National Monuments. In addition, the Museum is charged by the legislature with creating exhibits and other educational programs in the natural sciences for the citizens of Utah and their visitors, supporting museum activities in the State, and oversight responsibility for the State's archaeological and paleontological collections.

The Museum contains collections of more than one million objects and specimens, representing all of the natural sciences and describing the natural and human history of this region of North America. These systematic collections in the disciplines of geology, biology and anthropology rank among the largest and most

¹The Museum is accredited by the American Association of Museums (AAM). The achievement of its recognition of a museum's commitment to and achievement of high professional standards of operations. Museum accreditation certifies that a museum has undergone a rigorous, professional examination established by the AAM. At present 750 U.S. Museums (out of approximately 8,000) are accredited by the AAM. The Museum was first accredited in 1972 (first museum in the State and among the first nationally); reaccredited in 1985 and again in 1999, although the latest accreditation was tabled for almost a year because of concerns related to the age, structural integrity and HVAC systems in collections storage and lab spaces in its building.

comprehensive in the western states. They are regional in scope but global in importance. More than 75 percent of the Museum's collections are Federally owned, that is, recovered from Federally managed public lands. Ninety percent of some collections, such as the vertebrate fossils and botanical holdings, are Federally owned. Of the remaining 25 percent of the Museum's collections, significant portions were collected on state lands under Federally mandated permitting procedures.

The large number of Federal collections in the Museum is the consequence of the high percentage of Federal lands in Utah. The State contains vast tracts of Federally managed public lands. Almost 70 percent of the land area (32.5 million acres) is administered by the Federal Government, the second highest percentage for any state in the nation. As a consequence, research in the natural sciences in Utah predominantly occurs on Federal lands.²

The Present

The Museum is housed in the old University library, built in 1932. The building does not meet current professional standards for collections care, research or interpretation, and is completely full, with no room for growth.

Most collection store rooms, work areas and research laboratories are located in a portion of the building that was originally constructed as closed-stacks storage. The 7' 2" ceilings are supported at regular 4' by 3' intervals by load-bearing posts designed to hold bookshelves. The building was assessed in 1989 (Reaveley Engineers & Associates),³ 1993 (Patterson),⁴ and 1994 (Lord Cultural Resources)⁵ and found to contain points of serious deficiency, especially given that it is located within a quarter mile of the second most active seismic fault in the continental United States. These deficiencies pose threats to the collections and dramatically constrain adequate public access. They include seismic instability, inadequate fire protection, an antiquated HVAC system, no expansion for overcrowded collections storage, inadequate laboratories, no loading dock or freight elevator, oversubscribed classrooms and inadequate exhibit space.

Over the years, the Museum and University have made considerable effort and invested significant sums to overcome the worst of these problems. For example, seismic bracing has been installed on the open rack and shelf systems; special rooms have been constructed with their own heating, ventilating and air handling systems to house the most delicate specimens; open, wooden shelf storage has been covered with inert padding. Consultants, including those from Lord Cultural Resources Planning and the American Association of Museums have noted that significant and successful efforts have been made by the Museum to adequately house and conserve the collections, but the building, designed as a library, is not suitable for any further upgrading and renovation as a museum and in fact puts the collections at risk.

The Project

The Museum has conducted a series of studies to assess needs, determine operational feasibility, and lay a solid foundation of facility planning. Lord Cultural Resources Planning and Management was retained in 1994 to write a Master Plan, which articulated the urgent need for the Museum to move to a new facility with climate control and seismic stability for the fragile collections, larger exhibit galleries allowing greater public access to the collections, state of the art research laboratories, and significantly improved ease of access for the public.

The Museum Building Committee then weighed a variety of site options against the criteria laid out in the Lord Master Plan.⁶ These criteria included: site area, visibility, compatibility, partnership opportunities, accessibility, serviceability, and technical and financial factors. The site that best met the criteria was in University Research Park. It is still a part of the University campus, enabling students and faculty easy access, necessary for meeting the Museum's crucial educational mission. At the same time, it is adjacent to Salt Lake City's zoo, living history heritage park, and state arboretum; such clustering of cultural institutions encourages cooperative

² Of this amount, 42.0 percent is managed by the Bureau of Land management, 15.3 percent by the National Forest Service, 3.6 percent by the Department of Defense, 3.3 percent by the National Park Service and 1.7 percent by other Federal agencies.

³ Reaveley Engineers & Associates, 1989 Rapid Seismic Evaluation of University of Utah Buildings. Report on file, Utah Museum of Natural History, Salt Lake City.

⁴ Peterson, Carl, 1993 Utah Museum of Natural History: IMS Conservation Assessment of Anthropology Collections. Report on file, Utah Museum of Natural History, University of Utah, Salt Lake City.

⁵ Lord Cultural Resources Planning and Management, 1994 Utah Museum of Natural History Master Plan: Phase I. Report on file, Utah Museum of Natural History, University of Utah, Salt Lake City.

⁶ The Museum Building Committee is comprised of the University Facilities Planning Office, Museum Management staff, and Museum Advisory Board members.

and coordinating programs as well as ease of access by the public. Located in the eastern foothills of Salt Lake City, the site allows extraordinary opportunities in research and interpretation for the Museum. Although within the city limits, the site is bounded to the east by land controlled by the U.S. Forest Service. It is unusual for an urban museum to have such immediate access to wild lands.

In 1998, the Museum retained Ralph Appelbaum Associates to develop a conceptual plan for the new facility at the Research Park site. The plan conceives of a facility carefully integrated into the site, relatively invisible from the city side. Collections, exhibits, laboratories, classrooms will all be seamlessly connected, with the institution serving as a window into the process of science and the natural history of Utah.

The Museum has just completed an architectural pre-program study to estimate the project scope and budget, analyze comparable facilities, and conduct a site analysis and detailed parking study. The following is a summary of the budget for the project, calculated with inflation (construction estimated to begin in 2004).

Preliminary Costs (pre-program, architectural program, site survey, utility and geotechnical analyses)	420,498
Building Design	2,957,925
Exhibit Design	3,526,400
Building Construction	33,509,771
Furnishings and Exhibit Fabrication	16,430,857
Administration and Inspection, Miscellaneous Costs, University Construction Contingency	2,982,489
Total Project Cost	\$59,827,939

The Building Committee is developing a timeline, in consultation with the University Facilities Planning Office for the project. The three major stages are:

Architectural Program (1 year)	To be completed in 2002.
Architectural and Exhibit Design (2 years)	To be completed in 2004.
Construction (2.5 years)	To be completed in late 2006 or early 2007.

Public-Private Partnership

The new Museum facility is envisioned as a private-state-Federal partnership. The University is confident of its ability to match any congressional investment in the new facility which, of course, is concerned with housing and interpreting primarily Federally owned collections. University donors are very much interested in the project and have indicated that, should congressional funds become available, they will be leveraged three private/state dollars for each Federal dollar. The Federal willingness to participate in the project is, of course, key to its success.

The University of Utah has contributed the land, 14 acres with a market value of almost \$8,000,000. The State of Utah has guaranteed the ongoing funds to operate and maintain the building (\$800,000 annually). To date, \$11,955,000 in cash or pledges has been received from eight private foundations and individuals for the building itself; this includes a single gift of \$10,000,000 explicitly pledged as a match for congressional funding.

History of Federal Support

The citizens of Utah have invested a great deal in assembling and caring for the Federal collections that are housed in the old library on the University of Utah campus. The Museum, its donors, the University and the State are heavily vested in the research, planning, infrastructure, trained personnel, and ongoing resources required to assemble and adequately care for and interpret Federally owned objects. Federal laws and regulations govern the recovery and subsequent care of objects and data from Federal lands and set properly high standards for collections storage

conditions, treatment, management and access. The Museum uses primarily state and private funds to meet those standards. Federal support for the collections has come in the form of grant awards for specific collections related projects rather than ongoing care.

Since its founding in 1969, and excluding competitive Federal grants, the Museum has received less than \$300,000 in Federal funding for collections inventory and care. During that period, the Museum also has benefited from a number of competitive Federal grants from the Institute of Museum and Library Services, the National Science Foundation, Department of Education, National Historic Publications and Records Commission, the National Endowment for the Humanities and the National Endowment for the Arts, to support exhibit development, programming, research and collections care.⁷ Some of these awards have supported activities required by the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA). For example, in partnership with the State Division of Indian Affairs and the State Division of History, the Museum was recently awarded \$67,840 by the NPS to provide one year of salary for a State NAGPRA Coordinator. The position will be housed at the Museum and will facilitate compliance efforts by Federal and state land managing agencies, museums and Indian nations throughout the State. The Museum also recently was honored to receive a \$50,000 Save America's Treasure grant to support the study and conservation of a remarkable trove of prehistoric moccasins recovered in the 1930's from a cave near the Great Salt Lake. To date, however, there have been no Federal investments in the infrastructures (storage facilities, research laboratories etc.) that provide the critical foundation for good collections care.⁸ Clearly, more needs to be done to keep this important scientific resource safe and available to the citizens of United States, their children and visitors.

Detailed Descriptions of Federal Collections at the Utah Museum of Natural History

The collections curated at the Museum document all aspects of the region's natural history: birds, mammals, reptiles, insects, plants, rocks, minerals. They describe its ancient human past and affirm the vibrant contemporary lives of its First Nation inhabitants. They testify to the changes resulting from 150 years of urbanization and modernization and to hundreds of millions of years of adaptations and evolution of its animal and plant communities. Many aspects of the collections are of global interest: the carnivorous dinosaurs from the world famous Cleveland Lloyd quarry and other Utah sites, the perishable prehistoric artifacts from Utah's remarkable dry cave sites, and the diversity of the montane life inhabiting the mountain islands of the western Utah. The collections constitute a primary resource for Native American communities, students, artists, tourists, and the general public.

This region has been a center for research in the natural sciences for more than a century. Its arid lands provide large exposures of ancient landscapes that produce bones and fossils that date from 10,000 to over 1 billion years ago, its famous dry caves have captured the essence of more than 10,000 years of human occupation prior to Euroamerican settlement. In fact, every major period of the earth's geologic history is represented in natural exposures in the State. This landscape provides remarkable opportunities for geologists, paleontologists, archaeologists, historians, and biologists to advance the knowledge in their fields for the benefit of the American public. Along all these dimensions, and others, the collections held by the Utah Museum of Natural History are national public treasures.

Archaeological Collections

Approximately 3/4 million artifacts recovered from about 3,800 sites are stored at the Museum. Taken as a whole, the archaeological collections describe the deep antiquity and full breadth of human experience in the Great Basin. The collections contain material from the earliest investigations in the area, including the seminal work at Ancestral Pueblo (Anasazi) sites during the first decade of the 20th century, and investigation of the caves around the Great Salt Lake during the 1930s. The Museum also houses complete collections from major Federal salvage programs including the Glen Canyon and Flaming Gorge dam projects. Approximately 71 percent of the archaeological collections are Federal: 33% BLM, 53% BOR, 7% USFS, 4% NPS, and the balance from the FWS and DOD. All of the Museum's

⁷Since its founding, the Museum has received a total of slightly more than \$1.3 million in competitive Federal grants for the entire scope of its activities.

⁸It is important to note that Congress recently directed a \$500,000 Economic Development Initiative grant to the University to support design and planning for the new museum building.

archaeological collections recovered prior to November 1990 are subject to the provisions of NAGPRA.⁹

Biological Collections

These collections constitute one of the most complete sources of information on biodiversity of the Intermountain West, and represent an invaluable resource for regional research in systematics, biogeography, zooarchaeology, and conservation biology. They include specimens and associated data acquired during decades of biological research at the University of Utah, as well as material received from other regional institutions. The biology collections include:

Plant Collections

The Garrett Herbarium contains many examples of rare or endangered species, including most of Utah's 300+ endemic plants, and irreplaceable specimens from riverine environments that are now reservoirs (e.g., Glen Canyon and Flaming Gorge). Many recent acquisitions are voucher specimens for biochemical and/or cytogenetic analyses that have exceptional research value. Other features of the Herbarium contribute to the value of the collection. Recent analysis indicates that the Herbarium will be an important resource for future DNA studies of regional flora. The collection also shows uncommonly high levels of seed and spore germination, providing scientists the rare opportunity to grow living plants from dried specimens collected many years ago. This makes the collection extraordinarily valuable as a source of living research materials. The collection comprises nearly 121,000 specimens, 70 percent from Utah and the remaining 30 percent from around the United States and the world. It is the third largest herbarium in Utah and ranks in the top 15 percent worldwide. No other collection has such a complete representation of plants from Utah's Wasatch front and Salt Lake Valley. The flora of this area is rapidly being altered and displaced by urbanization and the Herbarium provides a crucial historic baseline from which to judge the environmental health of the entire Salt Lake region. An estimated 90% of the collections are Federal; of those 48% are USFS, 39% are BLM; 1.2% are NPS, 1.4% are BIA; 0.62% are NRA; 0.03% are DOD.

Zoological Collections

The zoology collections housed at the Museum contain materials dating from the 1870's. These collections grew rapidly during the first half of the 20th century and include the results of pioneering statewide biological inventories. By the late 1950's, the University of Utah was widely recognized as an important center for work on evolutionary systematics of birds, mammals, reptiles and various arthropods, (insects, crustaceans, etc.). The research collections devoted to these groups are historical archives documenting the rich natural diversity of the Intermountain Region and major changes in its animal populations.

The Museum's collection of mammals (30,000 specimens) is one of the 30 largest collections of its kind in the western hemisphere. While the collection is primarily regional in scope, from the eastern Great Basin, southern Columbia Plateau, northern Colorado Plateau and central Rocky Mountains, there are also significant numbers of specimens from the eastern U.S., Alaska, Central America and the Philippines.

The bird collection (20,000 specimens) is one of the largest and most complete assemblages in the Intermountain Region, with a large number of specimens and nesting records from the late 19th and early 20th centuries. The collection also includes important holding from Alaska, Kansas, Oregon, Arizona, Thailand and the South Pacific.

The reptiles and amphibian collection (18,000 specimens) is one of the largest collections of turtles in the world, and includes Utah specimens from the early decades of the 20th century.

The Museum also holds two separate collections of invertebrates. The insect collections (120,000 specimens) contain historically significant material collected during the first half of the 20th century throughout the western United States. The

⁹Because the anthropology collections have special significance for Utah's Native American communities, the Museum convened an Indian Advisory Committee. The Committee meets regularly to consult on the use, care, disposition, and interpretation of Native American materials, and repatriation issues. This committee is composed of tribal representatives from Utah's eight nations. The committee also includes representation from the University's Native American student association and Department of Ethnic Studies, the State Division of Indian Affairs, the Native American Education Specialist for the State Division of Education, and urban Indian organizations. The Museum has and continues to implement all applicable provisions of Native American Remains Protection and Repatriation Act.

mollusks (shells) includes 25,000 research specimens of native Utah species and shells from around the globe. These collections support basic research in areas of evolutionary systematics, zoogeography, functional morphology, ecology and zooarchaeology and are also a resource for intellectual and popular public interest in biological diversity. About 90% of the vertebrate specimens and 62% of the balance of the biological collections from Utah were recovered on lands managed by agencies of the Federal Government (BLM, USFS, NPS, FWS, and DOD).

Paleontology Collections

The world class paleontology collections at the Utah Museum of Natural History contain fossil vertebrates, invertebrates and plant specimens collected from Utah and surrounding western states as well as numerous international localities. This region is recognized as one of the most important sources of Jurassic aged fossils on earth, with museums worldwide displaying dinosaurs recovered here.

The vertebrate fossil collection (animals with backbones, approximately 12,000 specimens), is the largest of three paleontology collections at the Museum. This collection is rapidly expanding as a result of ongoing work in Utah. Currently, the collections are dominated by classic dinosaurs from the Late Jurassic (about 150 million years ago). Most numerous are specimens collected from the internationally renowned Cleveland Lloyd Dinosaur Quarry. This gigantic predator trap preserves thousands of bones representing numerous dinosaur species, but by far the most dominant is *Allosaurus fragilis*, Utah's state fossil. Indeed the Cleveland-Lloyd Quarry includes the largest accumulation of *Allosaurus* known anywhere in the world. The Museum is also the repository of thousands of Cretaceous aged (85–65 million years old) fossils, including fishes, amphibians, and mammals, as well as dinosaurs. This region is also famous for Pleistocene (Ice Age) remains, and the Museum houses a representative collection of large mammals from this period, including giant bears, bison, mammoths and mastodons.

Recently, the Museum accepted transfer of the Ash Paleobotany Collection, an important assemblage of fossil plants that represents the largest Triassic fossil plant collection outside of the Smithsonian Institution. Although a precise count is not yet available, the collections occupies some 150 large storage drawers. The paleobotany collections also include fossil plants from other geological periods and international localities as well.

Other important aspects of the Museum's holdings include the invertebrate fossil collection (animals without backbones), and 7,000 rocks and minerals recovered from sites around the globe. About 80% of the fossil collections are from Federal lands. The remaining 20% represent material collected from the Long Walk Quarry, an important early Cretaceous dinosaur site that is owned by the Museum, and materials from state lands and international sites.

Conclusion

The project we have described today is one with relevance for an important number of American people. The Federally owned collections housed at the Utah Museum of Natural History and the research, exhibits and programs they support deal with issues of serious concern. They document the recent and distant past and thus inform decisions about the future.

The new Museum is proposed to be built at the University of Utah, an internationally recognized center for scientific research, in a landscape that is known around the world for its natural and cultural history and antiquities. It is proposed to be built in Salt Lake City, the capital city of Utah and indeed, of the Intermountain West; Salt Lake City is the largest city between Denver and San Francisco. It is proposed to be built in a state with the second highest percentage of Federally managed land in the United States. Federal dollars will be matched at a 3:1 ratio. The project will protect a priceless collection of Federally owned objects, specimens, records and photographs currently at risk, and will make this resource available to the American public, their children and their visitors. The Committee's favorable consideration of this project is essential to its success. We thank you for your time.

Mr. HEFLEY. Thank you, Dr. Machen, and I think we will go ahead with the questions for you, because Mr. Matheson is here for that purpose, I think, and I don't want to unduly delay him.

Mr. Matheson, do you have questions?

Mr. MATHESON. Well, thank you, Mr. Chairman. I will just ask a couple of questions, if I may. President Machen, welcome. I would

like to ask how much of your future funding is contingent upon receipt of Federal support for this project.

Mr. MACHEN. The initial \$10 million gift we received from the Jones Foundation that you mentioned is in fact a matching gift. We must raise the additional monies in order to leverage this kind of gift, and in our part of the country, private donors are very interested in public-matched contributions. That is why this partnership is so appealing to our people, and that is why I think we have been successful to date and why I think it is fundamental for the rest of the project to come together.

Mr. MATHESON. When the project is completed, what will the role of the Federal Government be in terms of either maintenance or administration of the museum?

Mr. MACHEN. Their contribution is one time, the part that we think is the most palatable to the Federal Government. We will maintain the project—the building and the collections—in perpetuity with funds from the State and from the University.

Mr. MATHESON. If the natural history museum receives the funding we talked about in this bill today, what proportion of remaining funds would still be needed, and how is the museum going to go about—how do you intend to go about raising additional funding?

Mr. MACHEN. If we were fortunate enough to get the Federal contribution, that would put us over 50 percent in our fund-raising efforts. And we think that kind of support will catalyze the remaining fund-raising efforts. The kinds of things we are looking at for private contributions are individual exhibit halls and individual naming opportunities that would come in after the bricks and mortar for the main building is secured. We think that would be the easy part. The hard part is getting the basic structure built.

Mr. MATHESON. Can you talk a little bit about your sense of the public support for this project in Utah and elsewhere maybe?

Mr. MACHEN. This is the State Museum of Natural History. Within 50 miles of the University of Utah campus, 75 percent of the people of Utah live. As I told you, most of the land in Utah is not private land, so we have a very high concentration of people right around our urban campus. Currently the number of public school children who visit the current facility is extraordinary. We have a constant traffic jam with the yellow buses that are parked outside. We believe that the availability of additional education space will simply mean that more of our school children and more of our visitors will come to this facility.

Mr. MATHESON. Well, I appreciate you coming, and, Mr. Chairman, I will yield back the balance of my time.

Mr. HEFLEY. Thank you. Mr. Simpson?

Mr. SIMPSON. Mr. Chairman.

Dr. Machen, I am sorry that I missed your testimony. Let me clarify one thing. The \$10 million that you received needs to be matched. Does the Federal—if this is appropriate, does that qualify as a match, or does it have to be privately raised?

Mr. MACHEN. No. This would be qualifying as the match.

Mr. SIMPSON. I appreciate that. While I do intend to support this, because I think it is important, I must admit that I could enthusiastically support it if it went to my alma mater, to Utah State University, but that is—you know, that is one of those things. Utah

is beating up on us too often, but that is okay. I appreciate you being here today.

Mr. MACHEN. Thanks for your understanding.

Mr. HEFLEY. Mr. Simpson, I will entertain an amendment to that effect if you would like.

Mr. SIMPSON. Well, I am sure that when this comes before the full Committee—that as long as we are building a new building, Mr. Chairman.

Mr. HEFLEY. Are you through, Mr. Simpson?

Dr. Machen, I think Mr. Simpson does raise an issue, though. Does Utah State or Brigham Young have similar facilities—similar museums?

Mr. MACHEN. They do not.

Mr. HEFLEY. They do not. So yours is the only museum—archaeological museum of this type in Utah?

Mr. MACHEN. That is correct. And it is designated as the State Museum of Natural History.

Mr. HEFLEY. Okay. So you wouldn't be duplicating—.

Mr. MACHEN. No, sir.

Mr. HEFLEY. —that resource?

Can you tell me—you mentioned the water pipes, but except for the crowdedness of the building, what kind of damage is likely to occur to the collections if they are kept there? And I suppose one of the things is that you can't display them properly, and that is a major concern. But what about damage to the collections?

Mr. MACHEN. Well, we mentioned the potential for earthquakes—this is an old library where Congressman Hansen studied as a student, and it is poorly constructed. I won't—I am glad he is not here now. But—.

Mr. HEFLEY. Let me make sure I spell your name right.

Mr. MACHEN. Oh, he knows how to spell it. But the building itself is—it is in danger of imploding on the collection. It is conceivable that if we can't figure out a way to move it to a place where we can display it more openly, we are going to have to think in terms of just the safety of the collection, because the current facility is dangerous in terms of the fact that it could fall in on it.

Mr. HEFLEY. I don't think I have any further questions, except my background is with the University of Oklahoma, and they have an outstanding museum such as this there now. Would you consider moving the collection down there? I suppose that would be out of the question.

Mr. MACHEN. Well, it is a long way to Oklahoma.

Mr. HEFLEY. Indeed it is. Thank you very much for making the trip out here and for making this case. You make a very good—a very good case.

Mr. MACHEN. Thank you, sir.

Mr. HEFLEY. We appreciate it.

If there are no further questions related to this subject, let us go to the next subject, and Dave Simon, we will start with you. Dave, as I mentioned earlier, is the director of outdoor activity for the Sierra Club.

**STATEMENT OF DAVE SIMON, DIRECTOR OF OUTDOOR
ACTIVITIES, SIERRA CLUB, SAN FRANCISCO, CALIFORNIA**

Mr. SIMON. Mr. Chairman, thank you, members of the Committee. My name is Dave Simon, as he mentioned, and I am the Sierra Club's director of outdoor activities. Thank you for the opportunity to testify on behalf of the Sierra Club's 700,000 members in opposition to H.R. 1461, legislation to amend the National Parks Omnibus Management Act of 1998. We strongly oppose H.R. 1461. It does not benefit the public nor the national park resources, and it would curtail or eventually terminate the Sierra Club's voluntary educational-led trips in the national parks.

This legislation will not only impair the manner and scope of the Sierra activities but those of others. The other groups includes such diverse organizations as the Boy Scouts, the Girl Scouts, Catholic Youth Organizations and summer camps.

This year the Sierra Club is celebrating the centennial of our outdoor activities program. Beginning with John Muir and continuing throughout the Club's history, direct outdoor experience has motivated Club members to become advocates for environmental protection. As Muir said, "If people in general could be got out into the woods, even for once, to hear the trees speak for themselves, all difficulties in the way of forest preservation would vanish." The only reason we have an outdoor activities program is to inspire our members about the natural world.

Outings are led by volunteer leaders and are conducted with high regard for the safety of our participants and ethical standards of land use. There is a small administrative staff in San Francisco. Outdoor activity programs range from locally organized day hikes and overnights to week-long backpacking and service trips to outings for inner-city youth. Many outings are free and others are priced with a goal of recovering cost to the extent possible so that this vital educational program is not a drain on other Club activities or resources.

Unfortunately, this is a difficult goal to achieve. In fiscal 2000, for example, the audited financial statements of the Sierra Club indicate that the outdoor activities program had revenues of \$4.1 million, expenses of \$4.9 million. In 1999 revenues were 4 million and expenses were 4.4 million.

Despite the perception of some in the outdoor recreation industry, the Sierra Club does not generate a surplus from its outdoor activities that it uses to subsidize other programs. One-week backpack trips are priced at \$450, 10-day service trips at \$350. There is no surplus to be generated at those prices.

With that background, I would now like to talk about why we oppose H.R. 1461. The 1998 act challenged the assumption that all visitor services should be provided by commercial outfitters. The act allows groups to provide their own guide services for their members, as long as no taxable income is derived from those trips. This change is good public policy. Institutional groups have the competence to guide their own trips and do not need commercial outfitter services and should not be forced to either pay for them or be denied access to the national parks, as is currently the case in some of the parks.

The reality is that institutional groups and commercial outfitters are not in competition with each other for commercial recreation users. Unlike commercial outfitters, groups conduct far fewer trips involving far fewer visitors. And institutional groups engage in educational and civic activities that are not generally offered by for-profit travel organizations. A dozen Sierra Club members on a trip I led last summer to the High Sierra had a Sierra Club experience. They learned about leaving little or no trace on the land. They shared with the cooking and cleaning chores. They hauled their own gear and some of the communal gear. They learned about local environmental threats. They did all sorts of things that are not the focus of other fine for-profit travel programs.

The Sierra Club is not looking for preferences. In reality, the 1998 act does not confer a preference onto institutional groups nor does it lead to a misuse of resources. Institutional groups like the Sierra Club must still compete for wilderness permits, and we must still conduct our trips in accordance with land management plans and regulations.

If H.R. 1461 is implemented, the Sierra Club, the Boy Scouts, the Girl Scouts, church groups, summer camps, groups which work with the Park Service on providing visitor education and conduct service trips to improve park resources, will be unfairly precluded from continued use of the national parks.

Accordingly, we urge you to reject 1461 so that valuable children's educational and civic programs in our national parks are not endangered. And I would like to thank you for the opportunity to convey the views of the Sierra Club and our 700,000 members, and we look forward to working with the Committee as it further considers H.R. 1461. Thank you.

Mr. HEFLEY. Thank you.

[The prepared statement of Mr. Simon follows:]

**Statement of Dave Simon, Director of Outdoor Activities, The Sierra Club,
on H.R. 1461**

The Sierra Club, a non-profit organization with 700,000 members nationwide, appreciates the opportunity to submit testimony to the Subcommittee regarding H.R.1461, legislation to Amend the National Parks Omnibus Management Act of 1998. Sierra Club strongly opposes H.R. 1461 because it does not benefit the public or National Park resources and it would curtail or eventually terminate the Club's volunteer-led environmental education trips in the National Parks.

The Sierra Club's mission is to explore, enjoy and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives. Thus the Club operates at local, national and international levels to promote and protect the environment, through volunteer leadership and with paid staff.

H.R. 1461 rescinds a key provision of the National Parks Omnibus Management Act of 1998 that ensures a better balance of access in the National Parks by bona fide non-profit institutional groups and the use made by outfitter and guide concessionaires. The proposed legislation will not only impair the manner and scope of Sierra Club outdoor activities conducted in the National Parks, it will also damage or curtail activities of other groups operating children's, educational, and civic programs.

Over the years, institutional groups that make no taxable income from Park use have been increasingly required to use outfitter and guide concessionaires to access several National Parks. In other cases, these groups have had to compete with for-profit ventures for commercial use authorizations. The 1998 Act recognized that these groups provide a service to their members that is often unavailable from commercial ventures. In addition, these groups have the competence to guide their own

trips without the need for the services of outfitter and guide concessionaires. These groups should not be denied access to the Parks or forced to pay for services that are not required.

1. SIERRA CLUB OUTDOOR ACTIVITIES OVERVIEW

In 2001, the Sierra Club is celebrating the Centennial of its outdoor activities program. A hundred years ago, at the request of John Muir, William Colby led one hundred Sierra Club members on a one-month trip in Yosemite that later became known as the "High Trip".

The Sierra Club now has three Outdoor Activities program areas: National/International Outings, Group/Chapter Outings, and Inner City Outings. All of these programs are integrally related to the mission of the Sierra Club—to explore, enjoy and protect the wild places of the Earth. Beginning with John Muir and continuing throughout the Club's history, direct outdoor experience has motivated and prepared Club members to become advocates for wilderness preservation and environmental protection. As Muir said, "If people in general could be got out into the woods, even for once, to hear the trees speak for themselves, all difficulties in the way of forest preservation would vanish."

In general, the goal is to conduct outings on which participants:

- have an enjoyable, consciousness-raising outdoor experience
- learn about the conservation issues relating to the area visited and the Club's general conservation goals
- learn new outdoor conduct and skills
- increase their natural history awareness
- experience a broad range of cultural values.

Outings are led by volunteer leaders and are conducted with a high regard for the safety of participants and ethical standards of land use.

National/International Outings. The program is conducted on a fiscally self-sustaining basis with trip prices set so that the program breaks even in the long-term. The program has about 700 active volunteers leading approximately 310 domestic and 40 international trips per year that provide an outdoor experience for about 4,000 Sierra Club members. Most trips are between one and two weeks in length, with approximately 150 trips in the National Parks, and another 50 trips on other Federal lands. There is a small staff in the San Francisco headquarters that handle administrative duties such as answering member questions and taking reservations, publicizing trips, arranging volunteer leader training and travel, and paying trip expenses.

The National/International Outing program consists of four categories of trips that advance the mission of the Sierra Club in unique ways:

- Domestic Trips. There are a variety of trips throughout the United States ranging from base camp (one location) and highlight trips (several locations with transportation provided between locations), to hard-core Sierra backpacks, to easy family trips. There are also specialty trips: women-oriented trips, age-specific trips, and singles trips.
- Service Trips. Ever since the first service trip in 1958 to remove trail garbage in Kearsarge Pass in the southern Sierra Nevada, the Club's service trips program has become one of the pre-eminent wilderness restoration and public lands maintenance programs in the United States. Service trip participants build trails, repair damage from campers, survey and map fragile Native American archaeological sites, and re-vegetate distressed areas.
- Activist Trips. The activist trips take members to areas that the Sierra Club is working to protect and provide trip participants with the tools and inspiration to become advocates for those areas. Trip participants then return to their local communities to share their newly acquired skills, knowledge, and passion with other environmentalists and the general public.
- International Trips. A variety of trips are conducted including trekking, rafting, alpine hiking, van touring and naturalist excursions. International trip participants learn about the native cultures and fragile ecosystems while respecting local traditions.

Group/Chapter Outings. The program is conducted on a direct cost recovery basis (park entry fees, etc.) with many outings being free. The program has approximately 5,000 active volunteers leading approximately 20,000 outings serving several hundred thousand Sierra Club members and guests. Most trips are day trips and few are run on National Park and other Federal lands. There is a staff of two in the San Francisco headquarters that handle administrative duties such as providing policy guidance, addressing risk management issues, assisting local programs in providing leader training and certification, and helping enhance the educational aspects.

Inner City Outings: The Inner City Outings (ICO) program is entirely grant funded through tax-deductible donations. ICO provides outdoor experiences for persons who might not otherwise have them, including low-income youth of diverse cultural and ethnic backgrounds, hearing or visually impaired individuals, and the physically disabled. Currently, the 47 ICO groups provide about 1,000 outings per year, totaling 19,000 participant days. Only a few of these trips are run on Federal lands. The goals of ICO are to:

- promote personal development by linking cultures, fostering respect of self and others, and providing leadership skills
- promote appreciation and protection of our local and global environments through a process of educating and sharing.

All of the different types of Sierra Club outings incur some level of overhead costs, in particular insurance, publicity, and logistical coordination. The Sierra Club Board of Directors has directed the Outings Department to recover these costs to the extent possible so that this vital program is not a drain on other Club activities or resources. Unfortunately, this is a difficult goal to achieve. In fiscal year 2000, for example, the audited financial statements of the Sierra Club indicate that the Outdoor Activities program had revenues of \$4.1 million and expenses of \$4.9 million; in 1999, revenues were 4.0 million and expenses were 4.4 million.

Despite the perception of some in the outdoor recreation industry, the Sierra Club does not generate a surplus from its outdoor activities that it uses to subsidize other programs. On the contrary, the opposite is true - general Club funds are used to subsidize this vital education program. The Sierra Club wants to expose our members to the natural world so that they will be inspired and take responsibility for its protection. That is why one-week backpacking trips are priced at \$450 and ten-day service trips at \$350. There is no surplus to be generated at these prices.

II. OPPOSITION TO H.R. 1461

The National Parks Omnibus Management Act of 1998 challenged the assumption that all visitor services should be provided through either concessionaires or holders of commercial use authorizations. For non-profit institutional groups not deriving taxable income from their trips, the 1998 Act allows groups to provide their own guide services for their members. These groups have the competence to guide their own trips and do not need the services of concessionaires and guides - and should not be forced to pay for them.

When its provisions are implemented, the 1998 Act will remove the requirement that groups either compete with for-profit ventures for commercial use authorizations or, as is required in some Parks, use outfitter and guide concessionaires in order gain access. These changes are good public policy. Unlike commercial outfitters, institutional groups, many relying on volunteer leadership, take many fewer trips involving far fewer visitors to the Parks. Institutional groups engage in educational and civic activities and do not compete with outfitters and guides concessionaires for commercial recreation users.

The Sierra Club is not looking for preferences - it is trying to avoid being either denied access to the National Parks or being forced to use outfitter or guide concessionaires. In reality, the 1998 Act does not confer a preference for institutional groups nor does the 1998 Act lead to misuse of resources. Non-profit institutional groups like the Sierra Club must still compete for wilderness permits and conduct its trips in accordance with land management plans and regulations. However, while the Club and other groups are not looking for preferences, we do want a fair allocation of any resource use that is allowed.

If H.R. 1461 is implemented, various institutional groups which now use units of the National Park System would not be able to continue their patterns of use. These groups not only include various types of youth camps, but also outdoor organizations who typically organize and lead their own trips to many types of public land areas. Many of these groups work with the Park Service on visitor education. Some even conduct service trips to improve Park resources. It would be unfair to preclude these groups from continuing this type of use of the National Park System.

Accordingly, we urge you to reject H.R. 1461 so that valuable children's, educational and civic programs conducted in our National Parks are not endangered.

We thank you for the opportunity to convey our views and look forward to working with the Subcommittee as it further considers H.R. 1461.

Mr. HEFLEY. Mr. Mastromarco.

**STATEMENT OF DAN MASTROMARCO, EXECUTIVE DIRECTOR,
TRAVEL COUNCIL FOR FAIR COMPETITION, ALEXANDRIA,
VIRGINIA**

Mr. MASTROMARCO. Thank you, Mr. Chairman. It is nice to begin my testimony knowing that the Sierra Club and the administration both support 1461. If it weren't for the first and last sentences of their testimony, I would think they fully endorse the bill.

Let me begin in an unusual way by recognizing what this hearing is not about today. It is not about denying Boy Scouts access to National Parks, nor is it about denying nonprofits the ability to use parks or even to conduct profitmaking activities in the parks. The hearing is about repealing a gaping loophole that allows tax-free, license-free and regulatory-free use of National Park lands by a special class of business, depending on what tax return they file. It is about restoring equity between commercial users of parks; returning to local managers the ability to oversee resource use; abandoning an ill-conceived notion that nontaxable equates to non-commercial.

Through section 418, Congress gave park managers authority to issue CUAs—commercial use authorizations—but only when that use has minimal impact on resources, is consistent with the preservation and conservation of park resources, and is either incidental or involves commercial operations of less than \$25,000.

However, during the 11th-hour consideration of this language, without debate, without the knowledge of small firms, and without any apparent rationale, Congress exempted nonprofits from the need to obtain CUAs unless they have taxable income.

So what is the harm in exempting nonprofits who don't have taxable income?

If we listen to the testimony of the Administration, there is no problem, but for one: Section 418(c) really just exempts all nonprofits from the requirement to obtain CUAs at all without expressly doing so.

Taxable income implicitly refers to the notorious unrelated business income tax, a provision that taxes income only when it is, not substantially related, to the exempt purposes of the organization.

By requiring a subjective balancing act, UBIT offers a nice theoretical and academic standard but one that is famously unenforceable. Even the Department of Treasury has admitted that UBIT's practical result is an ad hoc test that offers inadequate guidance to the courts, exempt organizations and revenue agents. In fact, unless advised by thoroughly incompetent and bumbling counsel, nearly any nonprofit can successfully exempt fees for recreational purposes from tax. And they do.

Take the Sierra Club. The Sierra Club mission is to partly, explore and enjoy the wild places of the Earth. So the more the exploration, the more enjoyment, the more closely it furthers this exempt purpose. There is no surprise that the Sierra Club's Form 990 tax return shows more than \$6 million in taxable income from trips totally exempt.

Even if the National Park Service decided to train its personnel to be tax lawyers and the UBIT bar was raised, technical problems with the UBIT standard exist. For example, how would the

National Park Service determine the appropriate level of deductions allocable to that activity?

The unworkability of the UBIT standard is no small matter, because nonprofit activity is not small business anymore. UBIT was enacted when nonprofits constituted less than 1 percent of the gross domestic product of this country and numbered fewer than 46,000. That was in 1950. Tax-exempts constitute more than 12 percent of gross domestic product today, and there are more than 1.5 million of them, 650,000 501(c)(3)s. If you are still wondering why small businesses are upset, consider that unfair competition was rated a top concern in both the 1995 and 1986 White House Conferences on Small Businesses. Small businesses hoped to see a dismantling of competitive barriers, not construction of new ones.

But you don't need to be a tax lawyer to ask a more fundamental question, Mr. Chairman. Is the UBIT standard the right standard to employ for resource management reasons? What connection is there between the furtherance of an objective to explore and enjoy the wild places of the Earth and the need of park managers to regulate use? The more exploration, the more enjoyment, the more park managers should be able to regulate.

But don't take our word for it. Take the word of Outward Bound, another nonprofit. They said the larger issue here is one of accountable use by all parties, regardless of tax status. The objective should be to partner with park managers and provide quality visitor services, while simultaneously protecting and preserving park resources. We could not have said it more eloquently. Section 418(c) will not be missed by anyone with the exception of a few abusive nonprofits.

Mr. HEFLEY. Thank you very much.

[The prepared statement of Mr. Mastromarco follows:]

Statement of Dan R. Mastromarco, Executive Director, Travel Council for Fair Competition (TCFC)

Chairman Hefley and Members of the Subcommittee on National Parks, Recreation and Public Lands:

As Executive Director of the Travel Council for Fair Competition (TCFC), I thank you for focusing this hearing on H.R. 1461 and the problem it addresses. TCFC was formed 7 years ago with two objectives: first, to raise public awareness of a growing problem of unfair commercial competition by nonprofits against for-profits; and second, to defeat misguided public policies which contribute to that problem. We are comprised of eight small business trade associations.¹ In turn, these organizations represent tens of thousands of tax-paying small firms—campground owners, concessionaires, outfitters, and hospitality providers—with hundreds of thousands of employees who struggle against unfair nonprofit competition. TCFC member companies introduce Americans to the National Parks and other treasures on a daily basis.

TCFC applauds Chairman Hefley for your legislation. H.R. 1461 would repeal a rifle shot provision in section 418(c) of Public Law 105–391, the National Parks Omnibus Management Act of 1998, that effectively exempts commercial “nonprofits” from the requirement to obtain “Commercial Use Authorizations” or CUAs. H.R. 1461 would simply require all commercial organizations to play by the same rules when selling goods or services to visitors, regardless of whether the commercial enterprise happens to be organized under Subchapter S, Subchapter C, Subchapter K or Subchapter F of the Internal Revenue Code (IRC). H.R. 1461 is common sense. It is sound resource management policy. It is sound environmental policy. It is fundamentally fair. With the changes recommended here, we urge your inclusion of this legislation in the first available vehicle for passage.

Section 418(c) has functioned very well in one respect: it has given tax-exempt organizations (tax-exempts) a huge competitive advantage when offering the same commercial service as their for-profit competitors on public lands. Section 418(c), however, is not a garden variety special interest break. Section 418(c) provides a lose-lose situation for park managers, resource managers, small firms that serve the public through the Parks, and the visiting public at large. In essence, the provision creates a sort of enterprise zone for entities organized as tax-exempt on lands in public trust. Through this wholesale exemption, tax-exempts excuse themselves from limitations on use, environmental and resource oversight, fees, safety requirements and a host of rules. They undermine park management by exonerating themselves from oversight. Ironically, they are the very organizations that ought to embrace these rules, not seek immunity from them.

It is important for members of this Subcommittee to recognize what this hearing is not about. This hearing is not about denying access to Boy Scouts, clubs and church groups who are engaged in noncommercial activities inside National Parks. Your legislation can easily be written to exclude such noncommercial groups. In fact, it is not even about denying access to the Parks by our Nation’s largest and most commercially oriented nonprofits. We would not support the legislation if it were. Instead, this hearing is about closing a gaping loophole that allows tax-free, license-free and regulatory free use of national park lands by a special class of business. It is about restoring equity between commercial users of Parks. It is about returning to local managers the ability to oversee resource use. It is about replacing an unworkable, unenforceable, illusory and incorrect standard for granting CUAs with a realistic standard. It is about abandoning an ill-conceived notion that non-taxable equates to noncommercial. It is about adding revenues of the Parks, and increasing safety for park users. Tax-exempt entities are the largest commercial users of Federal lands, and they should be subject to the same regulatory strictures and oversight as their for-profit competitors.

This testimony breaks the issue into several parts. First, we discuss the genesis of section 418 and the double-blanketed immunity it provides nonprofits. Second, we discuss the problems created by this grant of immunity. Third, we discuss the operation of H.R. 1461 and offer views on ways your legislation might be improved.

Section 418 “Commercial Use Authorizations”: How it Operates

a. The General Rule

Today there are two basic methods by which the Department of Interior can authorize commercial activities in National Parks: concessions contracts and

¹National Tour Association, the American Society of Travel Agents, United Motorcoach Association, American Bus Association, American Hotel & Motel Association, America Outdoors and the National Park Hospitality Association.

“commercial use authorizations” (“CUA’s”).² Through section 418³ Congress delegated authority to the Secretary (and derivatively to park managers) to issue CUAs. Congressional intent in enacting Section 418 was to fill a void existing since the 1965 National Park Service (NPS) authorizing legislation. That legislation had failed to specify the processes by which the agency might sanction incidental commercial use. The agency filled this gap through executive fiat, specifically by issuing “Incidental Business Permits [IBPs]” (formerly “Commercial Use Licenses [CULs]”). When issuing IBPs the agency was not discharging its duties under the organic statute, but acting under assumed authority derived from a need to avoid the cumbersome concessions contracting mechanism. Section 418 was meant to formalize the agency’s authority to permit limited commercial activity in Parks, streamline the method for seeking and granting such authorizations (a goal not yet achieved), and set forth general standards by which requests for such for authorizations could be evaluated.

The standards for exercising discretion to issue CUAs are described in Section 418 as “limitations,” “criteria” and “elements of authorization.” The agency may grant CUA’s only when: “the Secretary determines [they] will have minimal impact on resources and values of the unit of the National Park System and are consistent with the purpose for which the unit was established and with all applicable management plans and park policies and regulations.”⁴ The Secretary shall, “require payment of a reasonable fee for issuance of an authorization—to recover associated management and administrative costs.”⁵ Additionally the Secretary is to “require that the provision of services under such an authorization be accomplished in a manner consistent to the highest practicable degree with the preservation and conservation of park resources and values,”⁶—take appropriate steps to limit the liability of the United States arising from the provision of services under such an authorization,⁷ and issue [no] more authorizations than are consistent with the preservation and proper management of park resources and values.⁸ In the “limitation” section of the Act, Congress provided the general rule that CUAs are limited to “commercial operations with annual gross receipts of not more than \$25,000 resulting from services originating and provided solely within a unit,”⁹ [or] incidental use of resources of the unit by commercial operations which provide services originating and terminating outside of the boundaries of the unit”.¹⁰

b. A Double-Blanketed Exemption for Tax-Exempts

The restrictions are significant for for-profits. However, during the 11th hour consideration of Public Law 105–391, without debate, without hearings, without the knowledge of small firms and most nonprofits and without any apparent rationale—the following language was added: “[n]onprofit institutions are not required to obtain commercial use authorities unless taxable income is derived by the institution from the authorized use.”¹¹ In one fell swoop, Congress exempted any “nonprofit” from any of the above requirements, without so much as defining “nonprofit.”¹² Section 418 created three distinct standards: a stringent one for commercial for-profit firms, and two lenient ones for commercial nonprofits.

Just how lenient the standard is for nonprofits depends on whether it declares taxable income from the commercial enterprise. The vast majority of nonprofits enjoy the greatest leniency the law can provide: they are fully excused from seeking CUAs because they have no “taxable” income.¹³ Section 418, however, provides a double layer of protection. On the few occasions taxable recreational fee income is

² Section 418 provides: “IN GENERAL- To the extent specified in this section, the Secretary—may authorize a private person, corporation, or other entity to provide services to visitors to units of the National Park System through a commercial use authorization.

³ Title IV, section 418, November 13th, 1998 (112 Stat. 326).

⁴ Section 418(b)(1).

⁵ Id. at section 418(b)(2)(B).

⁶ Section 418(b)(2)(A).

⁷ Section 418(b)(2)(C).

⁸ Section 418(b)(2)(D). Finally, the Secretary “shall establish such other conditions for issuance of such an authorization as the Secretary determines appropriate for the protection of visitors, provision of adequate and appropriate visitor services, and protection and proper management of the resources and values of the park.

⁹ Section 418 c (1).

¹⁰ Section 418 c (2).

¹¹ Section 418(c).

¹² “Nonprofits” are distinguishable from tax-exempts, in that the former is exempt from tax under Section 501(c)(3). Surprisingly, the Sierra Club and other 501(c)(4) organizations also claim exemption from Section 418(c).

¹³ It should be noted that some nonprofits, including Outward Bound, have adhered to the CUA’s by their own volition, despite their ability to escape its purview.

earned by a tax-exempt, the so-called “limitation” section of 418 makes it clear that CUA’s can still be provided to “nonprofit institutions (including back country use),”¹⁴ irrespective of the conditions applicable to for-profit operations. More specifically, when they qualify for CUAs, tax-exempts are apparently immune from either the \$25,000 dollar limit or the requirement that their use shall be “incidental” or originate and terminate outside of the boundaries.

What are the Problems with Section 418(c)

a. Section 418(c) “Taxability Standard” Effectively Exempts All Nonprofits from the Requirement to Obtain CUAs

As noted, section 418(c) effectively exempts tax-exempts from the need to seek and obtain permits if no taxable income is derived from the commercial enterprise. By employing the term of art “taxable income,” the section implicitly refers to a notorious section of the Internal Revenue Code (26 U.S.C. 512 et seq) commonly referred to as the “unrelated business income tax” or “UBIT”. Under IRS sections 512, income that “contributes importantly” (i.e. is “substantially related”) to the exempt mission of a tax-exempt is considered nontaxable. Only income that is not “substantially related” is UBIT. Additionally, unrelated business income (UBI) is gross income from an unrelated business regularly carried on, less deductions connected with that business.

To understand why this 52 year-old standard is illusory requires a brief tax policy history lesson. The “substantially related” UBIT standard was indeed developed to forestall unfair competition, but mostly in response to a specific anecdote. The quintessential case giving rise to the law was the gift of Mueller’s Macaroni Company to New York University Law School, which wanted to operate the pasta producer tax-free, arguing that the income was directed to an eleemosynary purpose (i.e. the destination principle). Needless to say, their competitors cried foul, arguing the proper goal of NYU was to produce students, not pasta. Congress reacted by imposing the regular corporate income tax “with respect to so much of [a tax-exempt’s income] as arises from active business enterprises—unrelated to the exempt purposes of the organizations.”¹⁵

UBIT was enacted when nonprofits constituted less than 1 percent of the Gross Domestic Product and numbered fewer than 46,000, and the growth in the breadth and scope of nonprofit commercial activity was unforeseeable. Tax-exempts constitute more than 12 percent of GNP today, and their growth rate has far outstripped the growth of the private sector. In 1996 there were over 650,000 501(c)(3)’s.¹⁶ Over the next five years, the IRS projects Form 990 returns will be filed by 618,000 such organizations.¹⁷ There were more than 65,059 applications pending in 1999 just for 501(c)(3) status, and out of 73,605 applications filed in that year, only 585 were denied. During the 20-year period from 1975 to 1995, the real assets and revenues of nonprofit organizations filing information returns with the IRS more than tripled, to \$1.9 trillion and \$899 billion, respectively. This compares to real growth in gross domestic product (GDP) of 74 percent during the same 20-year period.

The UBIT was never meant to withstand the vast volume of nonprofit commercial activity, and has failed miserably in application. If the “substantially related” test is a toll bridge upon which all commercial activity of nonprofits was expected to cross, it is broken in an upward position. Taxes paid by nonprofits have not kept pace with their growth. In 1994, all exempt organizations paid a total of \$195.1 million in taxes of all kinds, and the amount of UBIT (unrelated business income tax) paid by 501(c)(3) nonprofit organizations was a paltry \$64.7 million or 1 percent of revenues. While some nonprofits did pay taxes on net unrelated business income (UBI), they also claimed total deductions of \$4.1 billion, for a combined net loss of \$955.1 million. This amounted to about 5/100ths of one percent of their program service revenue, or less than 1/20th of what private corporations pay in income tax

¹⁴ Section 418(c) (3).

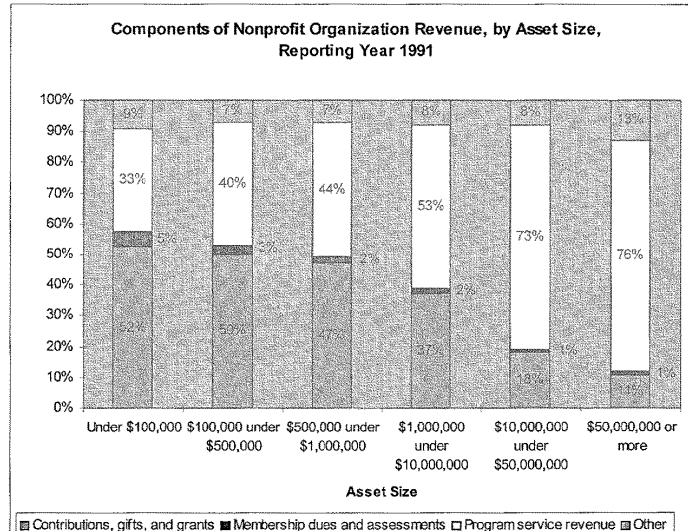
¹⁵ That Congress intended UBIT to help prevent unfair competition by tax-exempt entities against taxable entities is clear. According to the Senate and House reports: “The problem at which the tax on unrelated income is directed is primarily that of unfair competition.” P.L. 814 (Ch. 994), 81st Cong., 2nd Sess., 64 Stat. 479, 906. See, S. Rep. No. 2375, 81st Congress, 2d Session (1950). See also, H. Rep. No. 2319, 81st Congress, 2d Session (1950). The Supreme Court has so held that this was the legislative intent of the UBIT in the Court’s 1986 decision, U.S. v. American Bar Endowment, 477 U.S. 105, 91 L.Ed.2d 89, 106 S.Ct. 2426, 2432.

¹⁶ This figure is understated because it excludes certain organizations such as farmer’s cooperatives and religious organizations.

¹⁷ Returns are filed only when gross receipts are greater than \$25,000.

as a percentage of revenues.¹⁸ Most nonprofits consider commercial activities that compete against for-profit small firms as “substantially related” and therefore tax-free under the UBIT. Finally, the nation’s largest nonprofits disproportionately rely on commercial as opposed to donative sources of revenue.¹⁹

Understanding the full scope of the problem requires us to see its economic dimension. Tax-exempt commercial enterprises are not only business competitors, they are large businesses, which become increasingly more commercially oriented the larger they get.



Organizations with assets of \$50 million and above rely on contributions, gifts and grants for only 11 percent of their income in 1991.

UBIT offers a nice theoretical standard, but its subjective nature makes it almost impossible to apply in the real world. Whether or not a rafting trip is taxable for example depends on the relationship of the particular income producing activity to the tax-exempt’s mission. To properly apply the provision, the NPS must know precisely how the commercial activity furthers the exempt mission of each organization. To take an example, let us explore briefly the factors that might enter into a decision about the relationship of the commercial activity to the exempt mission of a nonprofit. At least 20 factors are most apposite to tour and travel activities of educationally based organizations:

- Whether the tour utilizes traditional modes of education;
- Whether the tour “focuses” on or is “geared toward” education of students or those who have exhibited an interest in the subject,²⁰
- Whether the tour is to the location furthered by the mission of the group;
- Whether the tour has qualified scholars and certified teachers,²¹ or minister and priests,²²
- Whether the tour mandates organized study, as demonstrated by the number of classroom hours or required seminars or lectures,²³
- Whether the tour does not schedule recreational activities and recreational activities that do exist are only “incidental,”²⁴

¹⁸This contrasts to more than one percent of gross receipts in income tax paid by corporations. In other words, significantly more than 20 times as much. See SOI Bulletin, Table 13, Fall 1998.

¹⁹Only 1 percent of all 990T filers in 1991, or 433 organizations, had gross income of \$1 million or more from unrelated sources. These organizations accounted for nearly half of all UBI reported and 64 percent of all tax liability from the UBI. Conversely, only 2 percent of the total tax, or \$2.4 million was reported by the smallest nonprofits, which comprised more than 50 percent of the taxpayer population.

²⁰E.g. Revenue Ruling 69-400, 1969-2 C.B. 114, Revenue Ruling 70-534, 1970-2 C.B. 113.

²¹Revenue Ruling 69-400, 1969-2 C.B. 114, Revenue Ruling 70-534, 1970-2 C.B. 113.

²²Revenue Ruling 77-430, 1977-2 C.B. 194.

²³Revenue Ruling 77-430, 1977-2 C.B. 194.

²⁴Revenue Ruling 70-534, 1970-2 C.B. 113, Revenue Ruling 77-430, 1977-2 C.B. 194.

- Whether a library is provided,²⁵
- Whether the organization administers exams,²⁶
- Whether a governing board allows credit,²⁷
- Whether the tour was commercial in nature²⁸ or did not differ substantially from commercially operated tours,²⁹
- Whether the tour provided formal educational training,³⁰
- Whether the tour devoted extensive resources to social and recreational programs³¹ or those programs were “not insubstantial,³² of a “wide range,³³ or scheduled;³⁴ and
- Whether the tour’s educational activity was not mandatory.³⁵

Despite the many pages of authority, neither the statute, the regulations, nor the dozens of underlying rulings have so much as dimly illuminated what is meant by unrelated in the myriad contexts in which the standard must be applied. The subjective standard is not only difficult to understand in the abstract, it is impossible for the IRS to adequately enforce. Frustration in enforcing this standard has been acknowledged at various times by the Congress, the Department of Treasury, by the Commissioners of the IRS by the IRS’ field agents and by everyone else affected by the standard, except for the nonprofits. Treasury, IRS and the General Accounting Office,³⁶ have also, at one time or another, taken swipes at the “substantially related” standard. According to testimony by former Assistant Secretary Don Chapoton during extensive Ways and Means Committee hearings on the failure of the law:

Our primary concern with the “substantially related” test is whether in practice it has been useful in distinguishing activities entitled to exemption, from those that are not. The general concepts enunciated in the regulations inherently require facts and circumstances determinations that are not likely to achieve consistency among different exempt organizations. The practical result appears to be an ad hoc test that, in many cases offers inadequate guidance to the courts, exempt organizations and revenue agents. Moreover, to the extent the relatedness standard has provided guidance, “it has been applied in an overly generous manner.”³⁷

According to then IRS Commissioner, Lawrence Gibbs, at those same hearings: ...application of the tax requires a very subjective decision that is based on the facts and circumstances of each case. Again, I will not go into them in detail other than to mention them and to express my opinion that they do cause administrative difficulties for the Internal Revenue Service—this has been a difficult area for us in making decisions that require an examination of the relationship between the income-producing activity itself and the accomplishment of the exempt purpose....

It should come as little surprise that few if any of the well-healed tax-exempts ever make the mistake of deriving taxable income from the activity. Indeed, unless they are poorly advised by bumbling counsel, nearly any nonprofit can successfully exempt the vacations they offer their members from taxation. To take the Sierra Club as an example, one of their stated missions is “to explore and enjoy the wild places of the earth.”³⁸ Seemingly, the more exploration, the more enjoyment and the more commerciality, the more related it is to its exempt function. Perhaps it is for this reason that the Sierra Club’s Form 990 nonprofit tax return shows that more than 6 million in taxable income from trips is totally exempt.

Tax-exempts can not only circumvent the UBIT and the CUA process by ensuring their mission is loose, or their commercial activities are wordsmithed to match the mission, but also because the nonprofit charter is merely a technicality. Section 418(c) will encourage groups to consider setting up adjuncts so, through the miracle

²⁵ Revenue Ruling 70-534, 1970-2 C.B. 113.

²⁶ Revenue Ruling 70-534, 1970-2 C.B. 113.

²⁷ Revenue Ruling 70-534, 1970-2 C.B. 113.

²⁸ Revenue Ruling 67-327, 1967-2 C.B. 187.

²⁹ Revenue Ruling 78-43, 1978-1 C.B. 164.

³⁰ Revenue Ruling 78-43, 1978-1 C.B. 164.

³¹ Revenue Ruling 77-366, 1977-2 C.B. 192.

³² Schoger Foundation v. Commissioner, 76 T.C. 380 (1981).

³³ Schoger Foundation v. Commissioner, 76 T.C. 380 (1981).

³⁴ Revenue Ruling 77-366, 1977-2 C.B. 192.

³⁵ Schoger Foundation v. Commissioner, 76 T.C. 380 (1981).

³⁶ According to Jeannie Stathis, at the same hearings (then Associate Director, General Government Division, U.S. General Accounting Office): “Administering this tax can be difficult because of the individual circumstances that must be considered to determine whether an activity is “substantially related” to an exempt purpose.

³⁷ Id.

³⁸ Sierra Club, Mission Statement.

of technicalities, they can take advantage of a loophole that exempts those activities from the need to obtain use authorizations in National Parks. Any for-profit can establish a nonprofit organization to either conduct the tours directly or contract out.

The truth is that the UBIT standard is one the Internal Revenue Service cannot enforce, let alone the park ranger. Even if one could find a nonprofit willing to pay taxes on income produced from “commercial” activity in Parks, how would the NPS determine if they should pay tax on that income when the IRS cannot do so? How would the NPS determine the appropriate level of deductions applied to gross income from the Parks? There is no agreement to share micro data with the Internal Revenue Service and the nonprofit Form 990T—their tax return—is not disclosable. And how would the NPS determine if the activity is “regularly conducted” within the meaning of IRC section 512?

b. Section 418(c) Is Unfair To Small Firms and Files in the Face of Federal Policy Goals

1. In General

Since section 418 only applies when services are being offered to the public, the effect of adopting the illusory UBIT standard is to exempt commercial tax-exempts from the requirements to pay for a CUA, from the monetary ceiling, from the governance or control over the number of commercial services provided, from park fees, and from control over the impact of the nonprofit on resources. The absence of meaningful regulations has therefore fostered an environment where tax-exempt organizations compete with impunity against small businesses.

In order to fully understand small firm’s frustration with the special treatment accorded nonprofits in section 418(c), we should view the provision in the context of the burgeoning awareness of unfair competition. In both the 1995 and 1986 (the last two conferences) White House Conference on Small Business, small firm owners rated unfair competition resulting from governmental and nonprofit activities as one of their top 15 issues. According to the delegates’ recent 1995 recommendation:

Support fair competition: Congress should enact legislation that would prohibit government agencies, tax-and antitrust-exempt organizations from engaging in commercial activities in direct competition with small business.³⁹

Through the White House Conference, small firms hoped to see a dismantling of competitive barriers, not the construction of new and subtle ones.

The concerns of small firms has also been echoed by the Department of Treasury, which establishes tax policy respecting nonprofits:

Limits on the scope of such tax exemption are appropriate and necessary. This Nation has prepared through its reliance on private, market-based economy to supply necessary goods and services. The role of the government generally has been restricted to those socially important activities not adequately supported by the private sector. The role of the quasi-governmental, not-for-profit sector should similarly be restricted to that of supplementing, and not supplanting, the activities of for-profit businesses.⁴⁰

The for-profit small firms that provide the bulk of our nation’s travel and tour activities do not resent competition per se, even from the Nation’s largest commercial nonprofits. However, they do resent regulatory and congressional policy that is insensitive to, indifferent to, or worse yet, supportive of, unfair competition. When a tax-exempt unfairly competes against a small firm, it invariably treads on the interests of struggling entrepreneurs. Entrepreneurs contribute not only by providing a competing service, but also by paying taxes on that service. These small businesses find themselves regularly competing against their own tax dollars. Moreover, when nonprofits compete, social goals are often reversed because nonprofits frequently market their tax-subsidized tours and outings to the most educated and wealthy segment of our population. Consumers suffer from the lessening of choice. Taxpayers suffer when they pay higher tax rates for the benefit nonprofits and the government receives when engaging in such commercial activity. Section 418 comes at a time when small businesses are united in their fundamental opposition to unfair competition from commercial nonprofits, especially when the business community has traditionally filled those market needs on their own.

Underneath their “halo”, commercial tax-exempts are simply business competitors. They can sometimes be viewed as closely held businesses operated to no small degree to augment the salaries and benefits of the management of the organization.

³⁹ Report on the 60 Final Recommendations of the White House Conference on Small Business (1995).

⁴⁰ Hearings before the Subcommittee on Oversight, Committee on Ways and Means (Serial 100–26 (June 1987)).

The difference between tax-exempt and for-profit business competitors does not lie in the markets they serve, the services they market, or the means of marketing but in the unjustifiable policy distinctions that are too frequently drawn. Both are businesses, but the for-profit business pays tax and the nonprofit does not. Commercial nonprofits are often accountable to no one—not shareholders, not donors, and not the objects of their mission. In this case, they are not even accountable to resource and environmental managers.

2. One Example

To see the potential for abuse within National Parks, one needn't look beyond this hearing room. The Sierra Club alone conducts an estimated 330 tours and many rafting trips (some utilize for-profit rafting operations and river runners, but they needn't do so). The Sierra Club is one of the nation's largest adventure travel companies. One need only look at the web site to see the numerous tours they operate. When reading just a few of the excerpts below from the hundreds of extensive printed brochures of the Sierra Club ask yourself this question: how do they differ from commercial tours that could be offered by a for-profit?:

- Escape to the Great Outdoors, but enjoy a hearty meal and warm bed at night! Nestled in Donner Summit's pine forest near Lake Tahoe, California, Clair Tappaan Lodge offers outdoor adventures for those eager to escape civilization, but who still want access to the basic amenities—and not-so-basic luxuries, like our hot tub. Activities for all levels of ability.
- Sierra Club Water Trips: ride the exhilarating rapids of canyon country! Float serenely down a canyon, shoot rapids, sample swimming holes and side hikes. For help deciding what to bring on your trip, refer to our Raft Equipment List.
- Join an exciting four-day family float through the wild and scenic section of the Rogue River in western Oregon. We'll raft through a lush, forested canyon filled with rapids (Class III) and spectacular scenery. Enjoy the wildlife, swimming in the clear, refreshing water, and hiking to a historic homestead. Minimum age is seven.—We'll stop to visit fern grottos, splash in waterfalls, and play on sandy beaches.

We decided to ask the Sierra Club leaders that very question. They were hard-put to answer. Some actual responses included these: “all Sierra Club members and share common interests and values,” “the whole group has a common thought,” “our rafters are like-minded (environmental etc.) people” who “share camping chores such as cooking, gathering water etc.” As for the environment, they said “concern for the environment is evident,” or that they “place a conservation emphasis on our trips, which [they] ‘feel’ adds value,” or that they “appeal to those who want to help save wilderness areas, not just recreate in them.” They also justify it on the basis that “they have a great tradition and history...well over 100 years old.” My favorite is that they differ because of “the looks on people's faces after our trips.” Each of these factors could just as easily apply to the for-profit outfitters.

The more honest answers focused on product differentiation. “As far as I know, we are the only ones that do the full trip—Everybody else splits it into two trips. We avoid Phantom Ranch, and that way, are able to do more side-canyon hikes that most commercial trips do not take advantage of.” As for money, they claim, “it is an excellent value for the money!” “Our prices on water trips are about the same or a little more than commercial trips when any add-on taxes and permit fees are included in their prices.

The real differences? The blanket exemption provided nonprofits in Section 418 ensures that they are also exempt from fees and environmental oversight. The enjoyment of the vacation is not taxable to the “volunteers.” Contributions to the Sierra Club Foundation (and to other tax-exempts operating as a 501(c)(3)) are normal deductible, so the Sierra Club has lower costs of capital than the commercial enterprises. The Sierra club does not pay state sales taxes and real estate taxes. They can market services for half the cost, compliments of postal rates subsidized by for-profits. And they enjoy instant goodwill from their “halo.” And because resource use is finite, for every use assumed by the tax-exempt, the for-profit must forego their use.

c. Section 418(c) Frustrates Resource Management Policy

One needn't be a tax lawyer to seriously question the appropriateness of this standard for CUAs. A more fundamental question should be posed. Is the UBIT tax standard the right standard to employ for resource management, environmental and safety reasons?

Whether or not a use should be exempted should depend more on the frequency of use, the type of use and the consumption of resources. The UBIT standard is

relative to a tax-exempt's primary purpose. If a tax exempt were to have as its mission, "To explore and enjoy the wild places of the earth,"⁴¹ what does the nexus of that mission have to do with the need of the park managers to regulate use? In fact, the more exploration, the more enjoyment, the more park managers should be able to regulate.

To make this point more clear, we can list the standards now applicable to for-profit firms. For example, a CUA requires for-profits to adopt an environmental management program (EMP) that includes: (1) a specification of goals with specific targets with measurable results, (2) responsibility and accountability,⁴² (3) plans, procedures, manuals, and other documentation maintained by the concessionaire, (4) document controls, (5) training and communication plans, (6) procedures for notification of discharges. Additionally, NPS must approve of promotional materials (including Websites, broadcast and print media) and rates and charges, outfitters and guides must wear name badges, the business must produce employee manuals for pre-employment screening, hiring, training, employment and termination, and conduct a background review of applicants. They must train applicants with up-to-date job skills. They must establish performance review procedures, and drug free workplace programs. They must notify park officials of violation of any applicable laws by employees, agents and contractors, including environmental laws, non-discrimination laws. They must establish environmental management objectives and comply with all laws pertaining to protection of human health and the environment. Moreover, a concessionaire shall develop, document, implement and comply fully with a comprehensive EMP.

As none of these requirements apply to tax-exempts which side-step the CUA process, there is no benefit to tourists, to the NPS or to the environment from Section 418(c). The exemption excludes the tax-exempts from the governance of the NPS over the number of commercial services provided and the impact of these services on the Parks resources. Under section 418(c), there are no limits on the numbers of nonprofits that can provide commercial services, like rafting trips. There is no oversight in terms of enduring minimal impact on resources, and there is no requirement that they adhere to resource management practices.

If you desire proof of the merits of this argument, you needn't listen only to tax-paying firms. An anonymous Forest Service manager had this to say: "Many nonprofits feel that they are entitled to non-fee, permit-free access. If this was ever the case, my fear is that every for-profit would soon have a non-profit arm of their business and 'soon become unregulated when it came to outfitter and guided use.'" The exemption is also opposed by responsible nonprofits, whose managers could benefit from its unfair advantages. In criticizing the proposed rulemaking on Concession Contracts (Title IV,) the National Outdoor Leadership School and Outward Bound USA made the following observations in their regulatory comment letter:

- WEC members did not support this language as a part of S. 1693 and were not involved in or aware of its inclusion in the Act. The members of the WEC are all non-profit institutions with a long history of accountability in our use of public lands. This language will allow unrestricted and unaccountable access by a single category of user—regardless of the amount of use or impact on park resources.
- WEC members question ... how effectively [park managers] can—control access and manage use in backcountry venues. This is especially true in a world where many General Management Plans [GMPs] are still in process, and wilderness or backcountry plans are not in place and may not be for years to come.
- The larger issue here is one of accountable use by all parties, regardless of tax status. The objectives should be to partner with park managers in providing quality visitor services while simultaneously protecting and preserving park resources for future generations. This language provides a limited user class with exemption from administrative, financial and physical accountability.

We could not have said it more eloquently.

Suggestions for Improving H.R. 1461

TCFC believes the legislation is primary directed at the heart of the problem—it repeals the ability of nonprofits to self-exclude themselves from the requirements of obtaining CUAs. This is a critical change; however, we would recommend two additional changes.

⁴¹ See, Sierra Club, Mission Statement.

⁴² Must have an environmental program manager and program to evaluate employee and contractor performance under these responsibilities.

First, we recommend subjecting all organizations in the park to the requirements specifically applicable to for-profits. For a for-profit firm to obtain a CUA, their services must either generate less than \$25,000 in gross fees or be incidental to the Park. To grant such a CUA, the Secretary must affirmatively find that the provision of services will have minimal impact on resources, will be conducted in a manner consistent to the highest practicable degree with the preservation and conservation of park resources and values and in a number consistent with the preservation and proper management of park resources. However, if those same commercial enterprises are conducted by a nonprofit, even if that nonprofit were to pay tax on its commercial income, it would be able to obtain a CUA. Merely using the phrase “[n]onprofit institutions are not required to obtain commercial use authorities unless taxable income is derived by the institution from the authorized use” as the bill would do, would not address this problem. It would still allow commercial nonprofits unwarranted leeway to conduct sales or services regardless of the gross earnings ceiling or the incidental use restriction. Subjecting nonprofits to those requirements is simply ensuring that they are placed on a level playing field with their for-profit competitors.

Second we believe it is important to make clear that an exception for CUAs is warranted in the case of noncommercial endeavors. We would define these endeavors to encompass scout outings and churches, for example, when there is no requisite element of commerciality. For example, we might seek to repeal Section 418(c)(3) in its entirety, and add the following section:

(g) Commercial defined. Commercial use means recreational use of the public lands and related waters for business or financial gain. The activity is commercial if:

- (1) it is conducted by a for-profit organization, or,
- (2) if conducted by an organization organized under section 501(c) of the Internal Revenue Code, and such organization
 - (A) makes or attempts to make a profit, receive money, amortize equipment or obtain goods or services as compensation from participating in recreational activities;
 - (B) collects a fee or received other compensation that is not strictly a sharing of actual expenses, or exceeds actual expenses incurred for the purposes of the activity, service or use;
 - (C) charges participants for a duty of care or an expectation of safety; or,
 - (D) publicly advertises to seek participants.

We would be pleased to work with the Subcommittee and responsible nonprofits in developing these modifications to the language.

Conclusion

Section 418(c) is one sentence on one page comprising many chapters in a book of advantages accorded nonprofits unfairly competing against small businesses, but it is an excellent example of how commercial nonprofits are exempted from the laws that apply with vigor to their for-profit competitors. This provision does not affect Boy Scouts, Girl Scouts, clubs and church group activities in the Parks. However, it does mean that all commercial users are on a level playing field. Nonprofits, particularly those who are founded on environmental missions, should not seek to avoid rules established for the protection of the Parks. They should embrace those rules. Your legislation is a win-win. Section 418(c) may be missed by abusive nonprofits, but few others.

Mr. HEFLEY. Mrs. Christensen?

Mrs. CHRISTENSEN. Can I pass and come back—.

Mr. HEFLEY. Sure.

Mrs. CHRISTENSEN. —in another round?

Mr. HEFLEY. Sure.

Mr. Simpson?

Mr. SIMPSON. Thank you, Mr. Chairman. Mr. Simon, how much would it cost you if you were subjected to the commercial use permit?

Mr. SIMON. As the Park Service said, they have not yet implemented the new regulations. So we do currently have to go through what is called the incidental business permit process. So we currently operate under the old law. Nothing has changed since 1998, as no regs have been issued. The issue for us is not fees. My

understanding of the fees is actually slightly higher than that. They are closer to 2- or \$300. But that is not the issue. The issue is access. We are denied in certain parks the ability to get an IBP, an incidental business permit. The park will say we have enough commercial providers, we are not issuing anymore, you can't do your backpack for 1 week for 12 people.

That is what I am here today about. I am not here today to try to exempt ourselves from the \$200 fee in the 40 or 50 parks that we run trips in. We just want access.

Mr. SIMPSON. So you wouldn't be opposed to paying the fee; is that correct?

Mr. SIMON. I pay them now.

Mr. SIMPSON. You know, it is interesting that you bring up the issue of access, because that, quite frankly, is the issue surrounding many of the bills and legislation and proposals in the West that the Sierra Club opposes, is the issue of access of the public to public lands, not just parks but to other public lands.

Mr. SIMON. There are two levels of access in the national parks and in most public lands. The first is you have to cross the hurdle of getting an incidental business permit in the parks. Then you go and try to get a back-country permit. So the land managers still have the ability to restrict use, and we in no way want to upset that balance. If they are going to not allow any more trips, there is too much use on a particular trail at a particular time of year and there are no trips going through there, we are fine with that. But there is this preliminary hurdle that you have to go through of getting an IBP, or, in the new language, a commercial use authorization, that we feel has been unevenly administered and has actually precluded us from getting to the second hurdle, which is the back-country permits.

Mr. SIMPSON. Why should you have an advantage, though, over someone else to use that—to use that park?

Mr. SIMON. That is an excellent question, because we feel the—

Mr. SIMPSON. Of course it is.

Mr. SIMON. We feel the 1998 act—we feel there are more than two types of use. We feel that history shows and we feel the reality is that it is not just the public and commercial providers. We believe that there is a long history and a long need of this third body, and that is nonprofit, noncommercial providers, such as hiking organizations, boy's clubs, all of those organizations. We provide different types of services. You can't go into the high Sierra—you can't find someone that will lead you—or it is very difficult to find someone who will lead you on a 1-week backpack. You can find someone who—where you can stay at a posh lodge, who will take you out with a mule train and things like that, but there just aren't businesses providing those services. Plus they are not providing them to our members at a loss, as my testimony stated.

Mr. SIMPSON. But I mean, some people prefer to experience it at a posh lodge or a pack train or something like that. Why should they be disadvantaged? Why should they have less of an access to it than you have to it?

Mr. SIMON. But they are not. This bill does not address that level of access. That level of access is in the land management policies, land management plans created by each land manager, and they

will allocate a certain portion of their resource for outfitters, a certain portion for their concessionaires, a certain portion for the public at large, and we are not trying to upset that balance. This law doesn't even deal with it. This law is at a higher level.

Mr. SIMPSON. Well, some commercial operations that I have seen, as an example, some of the snow machine trips you take into Yellowstone Park, commercial operations regulated by the Park Service are very educational, and that is the purpose of them. They are not just to go in there and rip up the park and throw snow around. They are actually to go in and see Yellowstone in the winter and see the bison and so forth, and they are as educational, I would suggest, as anything that you do, and I don't know why they have one level that they have to meet and you have an unrestricted level because you have—because you don't have to have this commercial license. That just confounds me. I am not seeing the difference in the two. It is like somehow we are—we provide something that is better than some commercial organization does, so we shouldn't have to meet the same standard as they do. This is kind of what is confusing me.

Mr. SIMON. I believe that nonprofit institutions are providing different services, and I don't think that the activities on our public lands conducted by nonprofits are the same as those by for-profit providers. I am not sure I can actually respond to your question.

Mr. SIMPSON. They may not be the same, but are they of higher quality and benefit, obviously to you, but maybe not to the individual that is deciding what they want to do? Why should we decide that your use is more beneficial than some commercial operators's use?

Mr. SIMON. I believe that commercial operators—there is a fundamental difference, and I believe the law in this country—and I am getting a little out of my field, I am sorry, but I believe the law in this country recognizes that there are organizations that are doing something for the public good or the perception of the public good, and that is why we have the concept of nonprofits. And I think if you don't buy into the idea that nonprofits provide a service that for-profits organizations don't, then you are right. Your view is consistent. But I actually—I believe nonprofits do provide a different kind of service.

Mr. SIMPSON. If I might ask one more question, do you ever use commercial operators on your trips?

Mr. SIMON. Yes, we do; where we are obligated to in order to gain access to the park. There have been certain cases where we were denied access unless we were to use a commercial provider, and for certain types of trips, our insurance doesn't actually allow us to own boats and things like that, so every raft trip that we run uses a commercial outfitter.

Mr. SIMPSON. Thank you.

Mr. HEFLEY. Mr. Holt?

Mr. HOLT. Thank you, Mr. Chairman. It does seem that it is access that we are talking about here, and we have an obligation to see that these areas that are intended for the public have the access of the public. And of course, that access could be apportioned in various ways. It could be on a first-come, first-served basis; it could be by some sort of geographic quota. It could be by passing

a physical fitness test. It could be by strict economic restrictions—the highest bidder.

What I would like to know—let me first ask you, Mr. Mastromarco, for a 1-week backpacking trip in the Sierra, what would one of your providers charge?

Mr. MASTROMARCO. Well, I—.

Mr. HOLT. If there is such a trip.

Mr. MASTROMARCO. Well, the providers charge approximately what the Sierra Club charges, and I can get back with you on the specifics, but I don't have the precise fees in hand. If I can, would you permit me—.

Mr. HOLT. Yes.

Mr. MASTROMARCO. —to address something I think needs to be addressed before it is dangling out there? And you hit the nail on the head in the early part of your remarks. We are not talking about denying the Sierra Club access to the parks. What they want, frankly, and the whole genesis of the provision of 418(c) was through their lobby effort, is simply to exempt themselves so they don't have to compete for access for commercial use authorizations. But the question here is, if their mission is founded on environmental principles, then should they not embrace those principles? Should they not be the first group in line to say, I want to subject myself to the regulations that govern park resources and use?

Now, we have mentioned earlier the question that was asked by Mr. Simpson about posh trips. Well, we can probably live with a posh trip standard. It might be better having a posh trip standard as opposed to the unrelated business income tax standard. But let me point out a specific example from one of their trips. Here is one from their brochure, Mr. Holt. This is specifically from their brochure.

Mr. HOLT. This is in your testimony. I have read that. You probably don't need to put that in the record again.

Mr. MASTROMARCO. Okay. Very good.

Mr. HOLT. I understand. Let me just say further that there is certainly a long tradition—many of us had our first—most, I would argue, Americans had their first and most memorable introduction to these areas through Boy Scouts, Sierra Club-type organizations.

But let me turn to a related matter. Let me ask you, Mr. Simon, let's just choose some area. You seem to be familiar with the Sierra. How many service trips a year do you have, you know, say in the State of California or something of the sort? And then let me ask the same question for you of your providers, Mr. Mastromarco.

Mr. SIMON. Mr. Holt, of our roughly 330 national outings, approximately this year about 90 or 95 are service trips. In the State of California, I don't have the exact number, my guess is it is about a dozen, including things like—.

Mr. HOLT. So for that fraction of your trips, the percentage of your trips is what?

Mr. SIMON. Just under a third.

Mr. HOLT. Mr. Mastromarco?

Mr. MASTROMARCO. We are slightly comparing apples and oranges, because Mr. Simon is the outings expert for the Sierra Club. I am not. I am a policy spokesman for the Travel Council. So—.

Mr. HOLT. Service trips, would it be in the hundreds or the dozens or—

Mr. MASTROMARCO. Hundreds.

Mr. HOLT. And what fraction of the total outings would that be?

Mr. MASTROMARCO. I would say that—and this is just a guess, but I think that they are commensurate with the use of park country, and so a lot of it is on national forestland. Maybe a quarter—

Mr. HOLT. Could you get that number for me?

Mr. MASTROMARCO. Yes.

Mr. HOLT. For us, please.

Mr. MASTROMARCO. I would be delighted to.

Mr. HOLT. The fraction of your outings that are service outings, in the same sense that the Sierra Club are service outings?

Mr. HOLT. And if you would like, Mr. Simon, to refine your numbers on that, we would appreciate it. Thank you.

Thank you, Mr. Chairman.

Mr. HEFLEY. Thank you, Mr. Holt. Mrs. Christensen?

Mrs. CHRISTENSEN. Thank you, Mr. Chairman. I guess before I ask my question, I have not had the pleasure of going on a Sierra trip or a commercial trip, but I do think that not-for-profit organizations provide a different kind of service, and the people ought to have a choice. And I also heard in the prior testimony that the non-profit organization trips are such a small percentage of the overall number of trips that access our park system, that I can't really see where that would be unfair competition, and I would invite both of you to comment on that.

I guess my question first would go to Mr. Simon. We have heard some discussion about the not-for-profit organizations operating without restriction, and to my understanding, you do have restrictions. I imagine the park restricts how many people can enter at any given time. You have to buy permit regulations. Would you comment on the charge that you operate without restriction?

Mr. SIMON. The charge that we operate without restriction is absolutely untrue. Every trip has to get a back-country permit. That permit has certain restrictions that vary from park to park, and often within a park. It varies from park to park based on the land management plan for that Park Service unit. Those permits govern number of people, where you can go, where you cannot go. It is very specific. You can be going down the John Muir Trail and you absolutely cannot camp in these 3 miles along the John Muir Trail and you need to plan your trip accordingly. Full itineraries are submitted with each trip application. So there is a high degree of oversight of each of these trips.

Mrs. CHRISTENSEN. And the other thing that I heard that I had sort of a different understanding just came to the response of some of the questions, that without the nonprofit status, your membership might not have access. Is that true, that your having that status does somehow allow your members some access that they might not otherwise have?

Mr. SIMON. Yes.

Mrs. CHRISTENSEN. Because you said that your being here is to talk about the need for access, and while you operate under restrictions, there are members of the Sierra Club, of Boy Scouts, of other

nonprofit organizations that might not have access, were it not for the provision that allows nonprofits to also come in.

Mr. SIMON. That is our belief. We are currently—again, pointing out that the regs that relate to the 1998 act have not been issued yet, currently there are a number of parks in which we cannot operate trips. We have been denied the ability to get an incidental business permit, which then denies you the ability to apply for a back-country pass. So the current reality is that we cannot get into certain parks, and we feel that without this exemption in the 1998 law, that that will only become more commonplace.

Mrs. CHRISTENSEN. What are the justifications? Is this why are you not able to get into certain parks? I am not sure I understand.

Mr. SIMON. I don't have firsthand knowledge of some of them, but I do know—we have heard things like we have enough commercial providers, you are a commercial provider. There are other things. I believe it has gotten down to personalities. I can't—it is hard for me to speculate on the motivations behind all these cases. We have not asked for written justifications of those positions, on the assumption that that would—

Mrs. CHRISTENSEN. Is this the Sierra Club, or do other nonprofits have the same experience, to the best of your knowledge?

Mr. SIMON. I only know anecdotally of some groups in the Northwest, the Mozamas and the Mountaineers that have also had trouble getting into some of the national parks in the northwest.

Mrs. CHRISTENSEN. To the other gentlemen, whose name I can't see quite—

Mr. MASTROMARCO. You're forgiven. It looks like an eye chart at 30 feet.

Mrs. CHRISTENSEN. I saw you taking some notes, and I would give you an opportunity to comment on anything.

Mr. MASTROMARCO. Well, I appreciate it. Thank you. I think it is important to point out that nonprofit organizations, those, for example, that are exempted under Title 26, United States Code, section 501, in one way or another, are the largest users, by far, in our country of back-country use in the United States. They are the largest users. And all we are saying is that tax-exempt entities should function—they should be subject to the same regulatory strictures and oversight as their for-profit competitors. That is what we are saying.

Mrs. CHRISTENSEN. Well, I don't know how that reconciles with the small percentage that I heard Mr. Ring—

Mr. MASTROMARCO. Well, I think the small percentage that Mr. Ring suggested needs to be clarified. He said, if I remember correctly, that there were 700 or so commercial use authorizations issued, and only a handful were to nonprofits. Well, there is a very good reason for that. What Mr. Ring didn't point out is that nonprofits don't need to get commercial use authorizations. Therefore, those statistics are not relevant.

Mrs. CHRISTENSEN. As I recall, that wasn't quite what he said. Of all of the—sorry. Of all of the groups, organizations, that are given access, a very small—I seem to remember that he said about 2 percent are nonprofits. But I thank you for your comments. But I disagree with your interpretation of what Mr. Ring said.

Thank you, Mr. Chairman.

Mr. HEFLEY. Thank you. Mr. Simpson?

Mr. SIMPSON. Thank you, Mr. Chairman. I do have a couple other questions that I just need to ask, and then I have to slip out to preside. So I appreciate you letting me take this opportunity. You said, Mr. Simon, that there were incidental business permits that you have been denied in some parks. I assume that there are commercial operations that have been denied permits in those same parks?

Mr. SIMON. I don't know what the parks—I don't know what other—

Mr. SIMPSON. But they are probably full, they figured they had enough activity and therefore it is tough to get a permit?

Mr. SIMON. I think in some cases they feel they are full. I think in other cases there are other pressures, and sometimes the Sierra Club is singled out and denied access while others get them. That is only my perception. I could not support that, but I could do research if you like.

Mr. SIMPSON. And I want to tell you that I am not opposed to the trips of the Sierra Club. I think they do good work in many cases, and I don't have a problem with their trips. I just think they ought to be treated like everybody else.

And I want you to respond to this comment that was made by Herb Grench, who is the Chairman of the Water Trip Subcommittee for the Sierra Club. He was asked: I am curious as to the difference between your rafting trips and those of other companies. I know that you are a nonprofit and focus on conservation, but where do the real differences lie? Is there a favorable price difference?

And this was his response: We use commercial outfitters to run our trips, along with a trained Sierra Club volunteer leader. We feel we employ the best outfitters. Our trips are different from most commercial trips, in that our passengers are all Sierra Club members and share common interests and values. This helps make for a very compatible group. We do place a conservation emphasis on our trips, which we feel adds value. Our prices on water trips are about the same or a little more than commercial trips when any add-on taxes and permit fees are included in their prices.

Now, if that is the difference, that all the members in your trip are Sierra Club members and that they share common values and that you add an environmental or conservation emphasis on your trips, why should you have an advantage over someone that does a commercial? This just blows me away I guess is the answer.

Mr. SIMON. Well, Mr. Simpson, in that case, we have actually hired a commercial outfitter to take that trip. As I mentioned, all of our water trips are conducted by commercial outfitters. We are just a customer of that commercial outfitter at that point, just like the public. Even under the new rules, we would not have to get a commercial use authorization, I don't believe, to run that trip, depending on how the rules are issued.

I agree with what Mr. Grench said. I believe you paraphrased his statement, leaving out a couple of the key components. He said say there was a conservation emphasis on our trips, and I believe people do learn about the history of where they have been, both from a natural history but also from public policy standpoint, and we do

believe that that does add a fair amount of value, and water trips comprise about 25 of our 330 nationally run trips.

Mr. SIMPSON. I find it interesting that you—as you said in this case here, that you are just a customer of this outfitter, like any other public customer. And I am wondering why you shouldn't be a customer of the public Park Service, just like any other customer that uses it.

Mr. SIMON. But at that point, the outfitter is conducting the trip, and the Park Service is regulating the outfitter.

Mr. SIMPSON. Well, I think we are making a distinction without difference here in many cases.

Mr. SIMON. I don't believe so, sir. In this case the Park Service has issued the permits to the outfitter, and because there is no other way the Sierra Club could possibly get anybody on the water, we just go out and hire an outfitter. So that is not the kind of trip I believe that would need to be affected by the law as it is currently written or as it is proposed to be amended.

Mr. SIMPSON. I am saying why should other trips be affected by the law? Why shouldn't that same regulation apply in all trips, whether it is back-country packing or whatever?

Mr. SIMON. Because then we are not using commercial outfitters, for the primary reason that there are no commercial outfitters, and also we feel that we are providing a different kind of experience.

Mr. SIMPSON. Well, I appreciate your testimony, and we are going to have to—you are going to have to stop by my office, I guess. We are a long ways apart on what we are talking about here, I think. Thank you.

Thanks, Mr. Chairman.

Mr. HEFLEY. Thank you very much. I used to be a commercial outfitter, or more accurately, I suppose, I worked for a commercial outfitter, packing people on horseback in the wilderness areas, and I loved the experience. Whether it is done by a nonprofit or it is done by commercial groups, I personally love the experience, whether it be a river rafting trip, which I have done, or the wilderness trips, which I spent a lot of time on my own in the wilderness. And I notice in this expensive four-color ad here in the magazine, for Sierra Club trips, they range from—oh, there is 460. There is 355, 495, 495, 1,995, \$2,095. And I am familiar with a lot of—a number of outdoor magazines, and you get the ads there for commercial outfitters, and these prices seem to be pretty much in compliance with—with those kind of prices, and they make a profit, or they don't stay in business.

And I guess if you don't make a profit, Mr. Simon, I wonder why. And I am a little confused. In reviewing the Sierra Club's form 990, which is the tax return for tax-exempt organizations, for the calendar year 1998, on Schedule 6, the Sierra Club lists its total annual lodging and outing expenses at \$315,500 and your annual exemption income from outing and lodging expenses at approximately \$4.5 million. In 1999, that \$4.5 million went from \$5.2 million, with the expenses at \$358,000.

Now, in your written testimony, you indicated the Sierra Club's expenses for its outdoor activities program is \$4.9 million, and its revenues are \$4.1 million.

I guess I may be reading these forms wrong. Gosh knows that the IRS forms are a bit confusing, even to the experts, and I am sort of not an expert on it. But I would like to request, Mr. Simon, that you submit some kind of supplemental material to the Subcommittee to clarify what appears to be a discrepancy between your tax returns and your written testimony. And if you would like to comment now, fine, or if you would like to submit it, fine.

Mr. SIMON. Mr. Hefley, we would be happy to do so, and I would like to say that in support of my testimony, I did give the Subcommittee staff our audited financials by the company KPMG. You know, the nationally known, internationally known, CPA firm. So we will be happy to get back to you to map accrual-based financial statements to IRS forms.

Mr. HEFLEY. Yeah. If we could tie that in. You also testified that this proposed legislation would damage or curtail activities of many groups operating children, educational, and civic programs, and you talked about this denying access to the parks. It appears to me that what the Park Service does is try to determine how many visitors the resource will accommodate and still protect the resource, which is of course a very important thing to the Sierra Club.

And I don't know, can either one of you show—you have already talked about this some. Can you show any evidence that the Sierra Club had been denied over and above commercial outfitters? It seems to me that both are denied if they meet the maximum that they think that that park can accommodate.

Mr. SIMON. Mr. Hefley, I can state that in several of the park units, we have run trips for many years, and then all of a sudden we were denied commercial incidental business permits. If you would like details of time and place, those can be provided.

The kinds of parks I am talking about are Glacier, Rocky Mountain, Teton, and that is just reality. Now, in that year that they started denying us our permits, did they deny others? I don't know. Did they do it on first come, first out? I don't know. I do not know what their criteria was for deciding who would no longer be able to run trips on their lands.

Mr. HEFLEY. Mrs. Christensen asked a question about whether your people that you take in, the Sierra Club members, would be able to take trips if you didn't have this exemption. You indicated that some would be denied that. It is my understanding that members of the Sierra Club, the average income is several times the median income in America, that most Sierra Club members are not poor folks. Also the indication is that your costs are about the same. So do you still say that some would be denied if the law is changed?

Mr. SIMON. I don't have any specific information about the income of our members. I do know that we price our trips to cover field costs and overhead costs, such as insurance, publicity in our magazine and things of that nature. I do also know that there are cases where there are not commercial providers providing the services that we do, and I do know that on every single one of our trips, it is a different experience than those provided from the commercial providers in the areas where they operate and that we operate.

Mr. HEFLEY. I don't believe I have any further questions. Do either of you have any further comments you would like to make?

Mr. MASTROMARCO. I would just like to make one briefly. If the Sierra Club is operating at a loss, as they claim, then I think that it is important to understand what salary, for example, the CEO of Sierra Club would make or how much they pay their paid staff. They have to be one of the poorest managed tour operators in the country, because commercial firms charge the same amount for trips and outings, and they make money. Either that, or they have a very creative system of accounting.

The primary difference—and I will just leave you with this—with both for-profits and nonprofits now which constitute the growing and commercial share of our gross domestic product, is this: The difference is not in the markets they serve or the services that they market; the difference is that one pays tax, one is subject to the regulations and oversight of Park Service resource managers, and one is seeking a thorough exemption from that.

Mr. HEFLEY. Thank you. Mr. Simon, do you have any further comments?

Mr. SIMON. No, sir.

Mr. HEFLEY. Thank you both very much. It has been very helpful and the Committee stands adjourned.

[Whereupon, at 11:59 a.m., the Subcommittee was adjourned.]

[Additional statements submitted for the record follow:]

[The prepared statement of Mr. Coughlin follows:]

**Statement of Cris Coughlin, President, Glacier Wilderness Guides, Inc.,
Montana Raft Company, West Glacier, Montana**

Chairman Hefley and Members of the Subcommittee on National Parks, Recreation and Public Lands:

Glacier Wilderness Guides, Inc. has been a concessioner since 1983 in Glacier National Park that guides day hikes and extended backpacking trips. The Montana Raft Company has operated under a permit from the Flathead National Forest since 1987 on the North and Middle Forks of the Flathead River.

RE: Non profits exempt from requirements of concession contracts and CUA's

I would like to begin by stating that I do not have anything against non-profit organizations, as a matter of fact, I think many of them provide a wonderful means of education and service. However, simply because they do not pay taxes, should not be reason to exempt them from any compliance of the vast requirements in the outfitting industry.

As the guided hiking concessioner in Glacier National Park, the following is a list of some of the requirements that our guides and company are currently required to comply with:

- Attend NPS Bear Management Training
- Current copies of first aid and CPR certification on file, with a list of those expiration dates to the Park
- "Leave No Trace" training
- Monitoring of trips by the NPS staff
- Approval of rates
- Loss Control Plan implemented
- Limits to the party size acceptable in the backcountry
- That our advertising is not misleading in any way
- That the educational and environmental messages that we relay to the public are correct and in sync with that of the NPS

All of these regulations have been put in place to protect the visitor in areas of safety and to protect the resource to environmental damage. The new language of future concession contracts will have many more requirements to comply with on appropriate service in overseeing the outfitting industry. However, under the current law if you are a non-profit organization you are exempt from any of these requirements.

My question to you is why would we want to exempt a large segment of the outfitting industry from meeting these standards that provide for assured quality and

safety of operations? The non-profit outfitting industry is grand in scale and needs the same regulations from which to adhere. Some of these companies are professional enough in scale to give the appearance of a regular outfitter, yet the consumer has no way of knowing that the staff taking them on these tours may not have been through the types of training assigned to commercial outfitters.

An example of this would be an experience that we shared with a non-profit organization in the late "80's and early "90's. They are a counseling school for troubled teens, many of which had drug and alcohol related problems. The clients were from all walks of life and from all across the country. The parents pay \$6,000 per month for their child's tuition. The school was told by the NPS that they needed to use our services. We felt that the schools principles were very worthy and for three years we bent over backwards to do everything we could to make the trips successful for them and convenient under our contract. We offered a \$10 per person per day rate for our guides to accompany them (normal rate was \$80) and they were to provide the food and equipment. To start out with the quantity and quality of food on the trip became a safety issue in the cold fall weather. We took some of their staff and put them through our guide training. On subsequent trips in years to follow they showed total disregard to the policies the NPS had in place for the backcountry, or to adhere to any of our policies. In Glacier, we have approximately 350 grizzly bears and the same number of black bears. There are many "do's and don'ts" in regard to camping in bear country. Of main concern is when it comes to food storage and handling. You must hang your food and keep your sleeping area away from the food preparation area. They kept some of their food in ziplock bags under a rock in a stream. They spent the last three days of each trip doing what they called the "Solo" portion of the trip where the clients needed to be completely separated from everyone. This practice alone is not advised in the backcountry but they also kept food items in their tents during this portion. Needless to say we arrived at the point that we could no longer work with this company as they jeopardized our contract after repeated attempts for compliance by our guides went unheeded.

The main point, is that I'm sure the parents of these teens assumed that they were in safe hands because the company appeared to be very professional. The current exemption of non-profits opens the doors to companies as these that don't have the proper supervision to provide safe quality services.

There is a strong need to be consistent in the requirements of the outfitters and guides in our National Parks and the only way to achieve that is through contracting. Non-profits should not be exempt from the contractual and selection process that is designated to protect our resources and the safety of the public.

I thank you for the opportunity to share my views on this much-needed change in legislation.

[The prepared statement of Mr. Jackson follows:]

**Statement of Stefan J. Jackson, Public Policy Manager (Acting),
National Outdoor Leadership School, Lander, Wyoming**

Mr. Chairman and members of the Subcommittee, today I address you on behalf two partners of the Alliance for Wilderness Education and Stewardship (AWES): The National Outdoor Leadership School (NOLS), based in Lander, Wyoming, and Outward Bound USA, based in Garrison, NY. We support the removal of the provision that exempts non-profit groups from the requirement that they obtain Commercial Use Authorizations under Public Law 105-391, the "National Park Omnibus Management Act of 1998.

We support this removal as a matter of sound public policy and most importantly in seeking what is best for management of the public's natural resources—our National Parks. As the law currently stands, we will be relieved of an administrative burden, the associated cost in money (fees) and time, but our use will go unaccounted for and we will not be enabling land management to recover costs for administering our programmatic use of public resources—our National Parks.

We are 501(c)(3), non-profit educational organizations. Critical to the comments that follow is the fact that—on Federally managed lands and waters—all program days operated by NOLS and Outward Bound are fully authorized commercial use days regulated by permit, license or contract.

NOLS, with operations in 12 states, has operations in 22 NPS units. This includes three concessions permits/contracts and twenty Incidental Business Permits (IBPs). Outward Bound, with operations in 25 states, has operation in 19 NPS units. This includes three concession permits/contracts.

Through concessions permits/contracts and IBPs all of our access to and use of National Park Service units is fully authorized and regulated. We are members of the outfitter and guide community. We are members of America Outdoors, the national trade association of the outfitter and guide industry.

Our two organizations are the recognized leaders in wilderness education. We are non-profit organizations with long histories of accountability in our use of public lands. We operate almost exclusively on Federal Public Lands. For over 35 years, we have utilized the National Parks. The backcountry wild places of the National Parks are our classrooms. We have hundreds of thousands of graduates in the United States. We have dealt with a dazzling array of law, regulation, policy, directive and guidance related to our authorized use of public resources.

The larger issue here is one of accountability of use by all parties, regardless of tax status. As it currently stands, this exemption will allow unrestricted and unaccountable access by a single category of user—regardless of the amount of use or impact on park resources. The objectives should be to partner with park managers in providing quality visitor services while simultaneously protecting and preserving park resources for future generations. This provision provides a limited user class with exemption from administrative, financial, and physical accountability. The environmental impacts from over-use by non-monitored, non-permitted organized user groups are likely to be devastating in popular areas, thereby degrading the “visitor experience” for all categories of users.

A very real threat of accountability of use is that use (access) will be capped once land managers understand the true number of users and user groups. There exist park units where no more permits are being issued and new or infrequent users, or relatively unsophisticated users (unschooled in the ways of permit authority) are shut out of the permit acquisition process. Despite these frustrations, the problems of allocation of limited resources will not be resolved by providing statutory pretense that the use does not exist or that land managers do not have the authority count such use. Our public resources need all users to take responsibility for their activities and to do all they can to improve resource management rather than seek paths that undermine it.

National Park Service officials have offered that the need to secure backcountry permits and other allocation or administrative tools will effectively limit access and account for use within this category despite the exemption. We question whether this is the case in all parks and how effectively these tools can and will be utilized to control access and manage use in backcountry venues. This is especially true in a world where many General Management Plans (GMPs) are still in process and wilderness or backcountry plans are not in place and may not be for years to come. We wonder what sort of challenges Section 418(c)-exempt-non-profits (or Congress) might raise to an NPS devised permit authority that is not explicit in statute.

Use and enjoyment of these public resources must be subject to restraints in order to sustain resources and benefits such as clean air and healthy watersheds. As organized users of public resources, we should be obligated to protecting natural resources in areas where we operate; providing for the public health and safety; and paying an equitable share of the agency's cost of administering recreational and educational programs. We should be willing to be held accountable for our use of public resources. An agent's consideration of use allocation should reflect the complete picture of actual use and not be undermined in law by some hidden, unknown, and typically growing X factor (use under the exemption).

In point of fact, some of our operations could exploit the non-profit exemption. With clever and creative accounting a greater portion of our operations could avoid the administrative burden of the commercial use authorization. Nonetheless, in the best interest of sound resource management, our desire is for accountability for our use. The only benefits we would find under the exemption would be some cost savings and our avoidance of administrative entanglements. Meanwhile the cost of our striving for un-accountability is too high for the public resources it is our mission to serve and our privilege to use. While the exemption encourages non-profit use to remain unaccounted, it also draws artificial distinction between organizations that use public resources. Whether or not an organization is non-profit and derives income from its authorized use, for- and non-profit organizations come in all sizes, in significant numbers and with sufficient organization and sophistication to leave tremendous and lasting impact on National Park resources.

Thank you for your careful consideration of this matter. We ask you to remove the exemption.

[The prepared statement of Mr. Jenkins follows:]

**Statement of David Jenkins, Director of Conservation and Public Policy,
American Canoe Association**

The American Canoe Association (ACA), on behalf of its members, and on behalf of the more than 200 canoe and kayak clubs who teach safety clinics and paddling skills on the nation's public lands and waters, respectfully submits its comments regarding H.R. 1461, a bill that would remove the exemption for nonprofit organizations from the general requirement to obtain commercial use authorizations. This legislation would adversely affect the ability of local canoe and kayak clubs, summer camps, and organizations such as the Boy Scouts of America to conduct activities on National Park Service (NPS) managed lands by forcing them to directly compete with commercial outfitters for allocation of user days.

Many non-profit organizations require only sporadic use of specific public lands or waters and rely heavily on volunteer help. To treat them exactly as commercial outfitters who operate on the resource daily and have paid staff is unfair. Often the trigger that allows the agency to regard non-profit organized trips to be considered "commercial" is something such as paying for equipment rental or the compensation of an instructor hired for a day. Whether the NPS recognizes it or not, there is a big difference between an organization simply trying to cover the cost of an activity, and a commercial outfitter running trips for profit.

If a local nonprofit canoe club hires an outside instructor to teach a class on swiftwater rescue, suddenly the activity is "commercial." Neither the club nor the instructor is an outfitter, neither has a regular operation on the river, yet under this bill they would apparently need to become an authorized outfitter. In places where such authorizations are limited, these users can be denied access because the commercial outfitters have already taken all the commercial permits or commercial allocation.

A good example of this has occurred on the Nantahala River, a river in North Carolina that is managed by the USDA Forest Service. A few years ago, summer Camps, schools, and clubs were determined by the Forest Service to be commercial users and forced to compete with outfitter operations for a limited number of commercial permits. Canoe clubs and summer camps that had been teaching kids to paddle on that river for decades were suddenly locked out. The ACA managed to secure a revoked outfitter permit and use it as an umbrella permit in order to restore access for these "semi-public/institutional" users.

Still, that was not enough to restore fairness. Even though ACA is treated as a commercial outfitter with respect to the amount of paperwork required and the fees required, the ACA (and by extension the clubs and camps) is denied weekend use during the summer. The agency gives those "priority use" days to the truly commercial outfitters. The outfitters have been able to convince agencies to give nonprofits the burdens of being commercial without giving them the benefits of being commercial. There is nothing even remotely fair about this.

While the example just given is from a USDA Forest Service managed resource, the NPS has its own legacy of treating nonprofits unfairly. In many national parks the agency has failed to address the allocation needs of nonprofit (semi-public/institutional) groups. In many popular parks, such as Grand Canyon National Park, NPS does not assign any allocation to "semi-public/institutional" use. In order to access the Colorado River through the Grand Canyon a nonprofit group must hire a commercial outfitter—which for many groups makes such a trip financially impossible.

The language that H.R. 1461 would strike was originally proposed because of other provisions in S.1693 (the 1998 legislation that became the National Parks Omnibus Management Act of 1998) that would adversely affect nonprofit organizations. To simply strike this corrective language, as H.R. 1461 does, instead of proposing a bill that attempts to address the concerns of outfitters and nonprofits alike, seems unusually hostile to the nonprofit community. Surely there is a way to enact legislation that would protect outfitters from the possibility of unfair competition in the arena of outfitter services, while still fairly addressing the issue of access for nonprofits.

The mission-based work of nonprofits in areas such as boating safety, teaching outdoor skills, and promoting the stewardship of natural resources provide a valuable service to society. Much of this work is geared toward providing youth with skills that will keep them safe and enrich their lives. Congress should be encouraging these types of activities, not throwing roadblocks in the way of them. For these reasons the American Canoe Association strongly opposes H.R. 1461 and respectfully asks the Committee to reject this legislation.