

September 13, 1999

Dear Representative,

The National Religious Partnership for the Environment encourages you to oppose H.R. 2372, the "Private Property Rights Implementation Act of 1999." The Partnership is an ecumenical and interfaith effort, with a diverse membership of Catholics, Jews, Protestants, Orthodox Christians, and Evangelicals, Republicans and Democrats, theological conservatives and theological progressives. What unites our collective effort is our commitment to care for God's creation. In its present form, H.R. 2372 violates a number of the shared moral principles which constitute the basis of that caring: an adequate protection of the common good; the promotion of economic justice and equality of participation; the practice of subsidiarity, the love of neighbors, and the lifting up of the voice of communities. For prudential reasons, we also object to its over-reliance on litigatory solutions. This legislation fails the test of our moral principles because it changes the balance of power between property owners and the common good of their communities, thus effectively elevating property rights above other rights. Accordingly, we are united in our fundamental opposition to H.R. 2372 and all similar bills.

#### Property Rights and the Common Good

Legitimate ownership and the proper use of private property are clear moral values -- but are nonetheless limited values, conditioned by their contribution to the common good of society as a whole. As Pope John Paul II stated, reflecting our shared biblical tradition, "the goods of this world are originally meant for all. The right to private property is valid and necessary, but it does not nullify the value of this principle. Private property, in fact, is under a (social mortgage,<sup>1</sup> which means that it has an intrinsically social function, based upon and justified precisely by the principle of the universal destination of goods." This is especially true of land ownership. Scripture states unambiguously that "the earth is the Lord's, and all that is in it." (Psalm 24:1), so that human "ownership" is actually a tenancy to be managed for the good of all. Therefore, property rights are subject to a greater moral vision centering on the needs of people, communities, and the good of God's creation. In our judgment, this bill ignores those needs by elevating property rights above civil rights, environmental health and safety protections, and the needs of local communities.

#### Economic Justice and Equality of Participation

Because all people are equally created in God's image (Genesis 1:27), all people deserve equal treatment under the law and an equal opportunity to

participate in our society and economy. Through such participation, state and local governments across our country have developed zoning and land-use laws designed to protect residents from environmentally or socially destructive development. H.R. 2372, however, bypasses local and state land-use procedures with veiled threats of federal lawsuits if local decisions are not favorable to developers. This places undue financial pressure on local jurisdictions to accede to developers wishes, even when those violate the common good. H.R. 2372 further favors those with greater financial resources by turning to federal courts as the first-line remedy, rather than using federal courts as appropriate avenues for later appeals, as is presently the case. For many people in poor, rural areas, the nearest federal courts are often a considerable distance away and thus participation in such courts can be a great financial burden. In many additional cases, removing the opportunity to participate in local or state administrative procedures, as H.R. 2372 does, effectively eliminates the easiest point of local citizen access to land-use decisions. Consequently, property owners with sufficient financial resources will be heard — but residents affected by the use of that property who do not have similar financial resources will not.

#### **Subsidiarity, the Love of Neighbors, and the Voice of Communities**

We have long supported the principle of subsidiarity -- that to encourage the broadest levels of participation and the full richness of social life, social tasks should be accomplished by "lower" levels of organizations, such as families, localities, and state governments, whenever appropriate. Federal solutions should be turned to only when these levels require assistance in promoting justice and the common good, as, for example, has sometimes been necessary in the protection of civil rights and liberties, as well as health and environment. H.R. 2372, however, seems a step in the opposite direction. It explicitly overrules community process and state courts, thus silencing the voice of families and neighborhoods whose common good should be considered in land use regulations. Furthermore, rather than helping us to love our neighbors, one of the most central commandments of Scripture (see, e.g., Lev. 19:13, Psalm 15:3, Matt. 22:37-40, Rom. 13:9-10), H.R. 2372 encourages us to ignore our neighbors, and to ignore how what might profit us might harm others. And, as noted above, moving straight to federal courts would systemically silence the voices of less well-off neighbors in this process.

#### **Reducing Litigation**

We also share a prudential judgment that this bill relies too exclusively on litigation to solve land use disputes. By doing this, it ignores more fruitful alternative mechanisms such as arbitration and flexible permit processing regulations, which can help promote the common good and economic justice. Litigation is an expensive process, as well as one that

tends to lead to deeper community divisions, rather than pursuit of the common good. In contrast, alternatives to litigation are often especially helpful to small property owners. H.R. 2372 encourages both litigation and the threat of litigation, bypassing whatever alternative means for dispute resolution that local governments and states have implemented.

We do not hold these principles without practical knowledge of the effect of land use regulations. Rather, our institutions -- as well as our congregants -- own property, manage buildings, and are subject to regulations. As such, we directly experience the land-use conflicts that H.R. 2372 purports to address. We are directly aware of the concerns of business and property owners, large and small, as well as more general concerns about regulatory flexibility. We have in the past supported innovative solutions that reduce the regulatory burden of landowners even as they continue to protect public health and safety and the integrity of the environment. We firmly believe, however, that H.R. 2372 does little to help small business and property owners, and that support of such legislation would cause us to violate our commitment to care for creation, our covenant as stewards on this earth, our call to serve the common good, and our ongoing commitment to justice. We urge you to join us in opposition to this troublesome bill.

Yours in faith,

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\*\*\* For more information about NRPE and its stand on H.R. 2372, please call Rabbi Daniel Swartz in our Washington Office, 301-891-3250. \*\*\*