TESTIMONY OF JOHN ECHEVERRIA
SUBMITTED TO THE HOUSE TRANSPORTATION COMMITTEE
APRIL 30, 2025

My name is John Echeverria, and I appreciate the opportunity to submit this testimony regarding the legal trails language added to the Senate-passed version of the Transportation bill. I urge the Committee to support a final version of the Transportation bill that eliminates this language.

The trails language in the Transportation bill is not new to this Committee. The language in the bill is derived from S. 4, introduced in the Senate at the beginning of the current session. S. 4 is essentially identical to H. 370 which was introduced in the House at the beginning of the prior legislative session and referred to this Committee. The Committee did not move forward with H. 370. While I am not privy to the Committee's thinking on H. 370, a member of the House offered me the explanation that the Committee did not move forward with the bill because it amended provisions of Title 19 which are the subject of ongoing litigation.

For nearly three years my wife Carin Pratt and I have been pursuing a declaratory judgment action in Vermont Superior Court against the Town of Tunbridge seeking to resolve a dispute over the correct reading of the current trails language in Title 19. We contend that the statutory language reveals clear legislative intent to grant landowners the authority to decide whether and how to maintain legal trails crossing their properties. The Town of Tunbridge maintains that the statute confers on local governments the authority to decide whether and how to maintain legal trails.

In general, it appears to be good practice for the legislature to hold off on amending statutory provisions that are the subject of ongoing litigation. Depending on the outcome of the

litigation, legislative action may turn out to be wholly unnecessary. If legislative action is appropriate after a court has resolved a dispute over statutory language, the court's decision can help the legislature identify what specific changes to the statute may be needed and appropriate.

The case for the legislature to stay its hand on amending the trails language due to the pending Tunbridge litigation has become more compelling over time. Since H. 370 was introduced, the Superior Court dismissed our petition for lack of a ripe claim (for the second time). We then appealed the case to the Vermont Supreme Court, which in a unanimous 13-page decision reversed the Superior Court, ruled that our case was in fact ripe, and sent the case back to the Superior Court, The parties have fully briefed the merits of the case and we are waiting for a decision from the Superior Court any day. The Court's decision should be of considerable help to the legislature in determining whether and how to move forward on this topic.

A second and even more compelling reason for the legislature to stay its hand on this issue is that proceeding now would, in our view, almost certainly inflict unconstitutional takings of private property on us and hundreds of other Vermont landowners with legal trails crossing their properties. On the other hand, deferring action this year on this issue would allow the legislature to resolve the trails dispute in due course while ensuring that no Vermont landowners' constitutional rights are violated,

The conclusion that moving forward now with the trails language would result in unconstitutional takings of private property is based on two simple points. The first point is that current Title 19 does not confer authority on towns to maintain and repair legal trails and, therefore, the statute necessarily must be read to leave that authority with the landowners. A straightforward reading of 19 V.S.A. §§ 304 and 310 reveals that the legislature has explicitly conferred maintenance and repair authority on towns with respect to highways, but is

conspicuously silent about town trail maintenance authority, a compelling indication that the legislature intended to not confer this authority. What clinches the argument, however, is the fact that between 1973 and 1986, the legislature included language in Title 19 explicitly conferring trail maintenance authority on towns, but then in 1986 eliminated this authority, providing another compelling indication that the legislature intended that the authority not exist. The legislative history of the 1986 act suggests that the legislature eliminated town trail maintenance authority so that legal trails would impose no financial burdens on towns already facing overwhelming burdens from highway maintenance responsibilities.

The second point is that, if towns presently lack the authority to come onto private lands to do trail maintenance and the legislature enacted legislation changing the law and conferring this authority on towns, the result would be a "taking" of private property rights. The reason it would be a taking is that a physical invasion or occupation of private property by the government is always and necessarily a taking under the United States and Vermont Constitution. The government cannot unliterally legislate the creation of a public right of way, or expand an existing public right of way, without engaging in a taking. (This point is explained in greater detail in a memorandum I prepared for the Senate Transportation Committee, attached to this testimony.) And what makes the takings **un**constitutional is the lack of a showing of "necessity" for the taking and the lack of payment in compensation for the property interests taken, as required by the Vermont and U.S. Constitutions.

The record developed before the Senate Transportation Committee provides support for the position that the proposed trails language would result in unconstitutional takings. On April 4 I testified in a hearing before the Committee and explained why towns lack trail maintenance authority under current law. Senator Rebecca White, a co-sponsor of S. 4, responded to my

testimony by stating, "I think you are correct in your current reading of the law, and that is kind of what the point of the bill is, to change that." Subsequently on April 22, the Office of Legislative Counsel presented its opinion to the committee that, if towns currently lack trails maintenance authority, then amending the law to confer trails maintenance authority on towns would result in unconstitutional takings. Case closed, or very close to it. (In fairness to Senator White, she subsequently stated to me privately, without explanation, that she "misspoke' on April 4.) In sum, there is, at a minimum, a very considerable likelihood that if the legislature enacted the trails language in the Senate version of the Transportation bill, hundreds of Vermont landowners would suffer unconstitutional losses of their private property rights.

On the other hand, the legislature could completely avoid imposing unconstitutional takings on private property owners if it stayed its hand on the trails issue and allowed time for the Superior Court to issue its decision. If the Superior Court concludes that Tunbridge is correct, then both the dispute over trail maintenance authority and the takings issue should disappear, and the town could lawfully proceed to maintain and repair legal trails. While I am confident of our legal position, the litigation process is inherently unpredictable, and it would be disrespectful of the Court to suggest certainty about the future outcome of the case. On the other hand, if, as we hope, the Court rules in our favor on the trails maintenance issue, then the legislature could make an informed decision about whether to exercise the eminent domain power (accompanied by payments of just compensation) to secure expanded public access to legal trails. I hope that at that point the legislature would think hard about the fairness of exercising eminent domain, the cost burden doing so would impose on taxpayers, and whether it might wish to adopt criteria limiting the use of eminent domain in some circumstances. However the legislature chose to proceed, it would have a pathway for expanding public access

to legal trails while simultaneously acknowledging and protecting the constitutional rights of Vermont landowners.

Finally, adopting this balanced, deliberate approach to the trails issue would not impose a serious or unfair burden on advocates seeking to expand public access to legal trails. I say this recognizing that many, perhaps all members of the General Assembly have received multiple communications from bicyclists and others urging prompt action on the trails issue. Practices vary widely from town to town, with some towns currently exercising trail maintenance authority on the assumption that they possess this authority and other towns, such as Tunbridge, having never previously asserted much less exercised trail maintenance authority. The pending lawsuit involving Tunbridge has not yet been decided. Even after the Superior Court issues its ruling the decision will only have binding effect on the parties to the case and will have no precedential force for anyone else. Regardless of what the Court may decide, hopefully in the next several months, other communities currently doing trail maintenance work (or not doing trail maintenance work) can and will continue doing what they are now doing, at least for the next year. In sum, there is no urgent need, much less an emergency that can justify precipitous legislative action this year that would run roughshod over constitutionally protected private property rights.

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