

To the United States Attorney,

We are the counsel for the Gettysburg Electric Railway Company, the defendant in the case of United States v. Gettysburg Electric Railway Company, which involves the condemnation of our client's land for the purpose of preserving Civil War battle lines and erecting monuments at Gettysburg. We write to you to present our position on the main issue of this case: whether the purposes named in the act of March 3, 1893 are public uses, and whether the United States are authorized to condemn private property for them.

**The purposes named in the act of March 3, 1893 are not public uses, and the United States are not authorized to condemn private property for them. The proposed uses do not have a clear relationship to any powers granted to the federal government by the Constitution.**

The proposed uses do not have a clear relationship to any powers granted to the federal government by the Constitution. The act of March 3, 1893 states that the purpose of the condemnation is "to preserve and mark for historical purposes the lines of battle at Gettysburg, Pennsylvania, and to establish and maintain thereon a National Park." However, this purpose does not fall within any of the enumerated powers of Congress, such as regulating commerce, providing for the common defense, or promoting the general welfare. Nor does it fall within any of the implied powers of Congress, such as making all laws necessary and proper for carrying into execution the foregoing powers. The preservation and marking of historical sites is not a necessary or proper means of executing any of the constitutional powers of Congress. It is rather a matter of local interest and concern, which belongs to the states or the people under the Tenth Amendment. As Justice Miller stated in *Loan Association v. Topeka*, 87 U.S. 655 (1874), "there are limitations on [the power of taxation], which grow out of the essential nature of all free governments; implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name." One of these limitations is that "the government is not to be presumed to have meant to part with its power of eminent domain or taxation for a purpose not within its jurisdiction." *Id.* at 664. The purpose of creating a historical park at Gettysburg is not within the jurisdiction of the federal government, and therefore it cannot justify the exercise of eminent domain or taxation over our client's land.

2. The proposed uses do not provide a direct public access or benefit. The act of March 3, 1893 does not specify how the public will be able to access or benefit from the historical park at Gettysburg. It does not provide for any roads, bridges, buildings, or facilities that would enable or facilitate public visitation or enjoyment. It does not provide for any educational or recreational programs or services that would inform or entertain the public. It does not provide for any management or regulation that would protect or preserve the park for public use. It merely authorizes the Secretary of War to acquire land by condemnation and to erect monuments thereon. This does not amount to a public use, but rather a public display or decoration, which does not justify taking private property without consent or compensation. As Justice Field stated in *Fallbrook Irrigation District v. Bradley*, 164 U.S. 112 (1896), "the right of eminent domain nowhere justifies taking property for a use that is not public." *Id.* at 158-159. The use must be "a use by the public" or "a use from which a benefit results either directly or indirectly to every member of society." *Id.* at 161-162. The use must also be "a necessity" and "not a matter of convenience merely." *Id.* at 163-164. The use proposed by the United States does not meet these criteria, as it does not provide a direct or indirect benefit to every member of society, nor is it a necessity rather than a convenience.

3. The proposed uses do not respect our client's property rights and interests. The act of March 3, 1893 authorizes the condemnation of our client's land without regard to its value, use, or condition. Our client owns and operates an electric railway that runs through part of the land sought by the United States. This railway is a valuable asset and a source of income for our client, as well as a means of transportation and communication for the public. The condemnation would deprive our client of this property right and interest without just compensation, as required by the Fifth Amendment. Moreover, the condemnation would interfere with our client's franchise rights granted by the state of Pennsylvania, which authorize our client to construct and maintain its railway on its own land or on land acquired by consent or compensation from other owners. The condemnation would take away part of this franchise right without due process, as required by the Fourteenth Amendment. Furthermore, the condemnation would result in a partial taking of our client's railway, which is impermissible under the law. As the Supreme Court held in *United States v. Jones*, 109 U.S. 513 (1883), "a railroad corporation cannot be deprived of a portion of its road without being deprived of its property." *Id.* at 518. The court also held that "the government cannot take a part of the property of a railroad company, and leave the residue, without making compensation for the injury done to that which is left." *Id.* at 520. The condemnation proposed by the United States would do exactly that, and thus it would violate our client's property rights and interests.

**The appropriation for payment of the property taken is inadequate. Without an adequate appropriation, condemnation proceedings are unconstitutional as there is no certainty of payment.**

1. The appropriation does not reflect the fair market value of the property taken. The act of March 3, 1893, which authorizes the condemnation, appropriates \$98,000 for acquiring 522 acres of land at Gettysburg. However, this amount does not correspond to the fair market value of the land and its improvements, as required by the Fifth Amendment. Our client's land, which comprises about 10 acres of the condemned area, includes a valuable and profitable electric railway that runs through part of the battlefield and connects Gettysburg with other towns. The railway also serves as a means of transportation and communication for the public, as well as a source of historical information and education for visitors. The condemnation would deprive our client of this property right and interest without just compensation. According to our expert appraisal, the fair market value of our client's land and railway is at least \$150,000, which is far more than the pro rata share of the appropriation allocated to it. Therefore, the appropriation is inadequate to provide just compensation for our client's property.

2. The appropriation does not provide a certain and prompt payment of the property taken. The act of March 3, 1893 does not specify how or when the payment will be made to the owners of the property taken. It only states that "the Secretary of War shall cause to be paid to each owner such sum as may be agreed upon by said owner and said Secretary." However, this provision does not guarantee that an agreement will be reached or that a payment will be made in a timely manner. It leaves the payment entirely to the discretion and convenience of the Secretary of War, who may delay or deny it without any recourse for the owners. This violates the due process clause of the Fifth Amendment, which requires that "no person shall be deprived of life, liberty, or property without due process of law." Due process of law implies a fair and impartial hearing before an independent tribunal, as well as a certain and prompt payment of compensation for property taken by eminent domain. As Justice Miller stated in *Cherokee Nation v. Southern Kansas Railway Co.*, 135 U.S. 641 (1890), "the taking by a railroad company of private property for its road against the will of its owner is not due process of law unless accompanied by just compensation." *Id.* at 658-659. The act of March 3, 1893 does not provide such due process for our client or other owners whose property is taken by eminent domain.

3. The appropriation does not comply with previous precedents and practices regarding eminent domain payments. The act of March 3, 1893 deviates from previous precedents and practices regarding eminent domain payments established by Congress and the courts. In previous cases involving eminent domain by the federal government, Congress has either appropriated specific sums for each parcel or tract of land to be acquired, or authorized judicial proceedings to determine the amount and mode of payment in accordance with local laws and customs. For example, in *United States v. Jones*, 109 U.S. 513 (1883), Congress appropriated \$25,000 for acquiring a portion of a railroad in Alabama for military purposes, and authorized a court-appointed commission to assess and award damages to each owner according to their respective interests. In *United States v. Lynah*, 188 U.S. 445 (1903), Congress authorized the Secretary of War to acquire lands along the Savannah River in Georgia for improving navigation, and directed him to institute condemnation proceedings in federal courts in accordance with state laws governing eminent domain. In both cases, Congress ensured that adequate appropriations were made and that due process was followed in paying compensation to owners whose property was taken by eminent domain. The act of March 3, 1893 does not follow these precedents and practices, but instead creates an arbitrary and uncertain scheme that violates constitutional rights

**The act of Congress does not authorize acquisition of an operating railway. Case law establishes that an intent to take property already devoted to public use must be expressly stated or necessarily implied. There is no such intent evident here.**

1. The act of Congress does not expressly state or necessarily imply an intent to take an operating railway. The act of March 3, 1893, which authorizes the condemnation, states that "the Secretary of War is hereby authorized and directed to enter upon and take possession of such lands within the limits of said battlefield as may be required for military purposes." However, this language does not clearly or explicitly indicate that the lands to be taken include an operating railway, which is a property already devoted to public use. Nor does it implicitly or logically follow that an operating railway is required for military purposes, especially when the purpose of the condemnation is to preserve and mark historical lines of battle, not to conduct or prepare for any actual or potential military operations. As the Supreme Court held in *United States v. Jones*, 109 U.S. 513 (1883), "where property is already appropriated to a public use by authority of a state, it is not within the constitutional power of congress to take it for another public use without compensation." *Id.* at 518. The court also held that "where congress intends to exercise this power, its intention must be clearly and manifestly expressed, or necessarily implied from what is expressed." *Id.* at 519. The act of March 3, 1893 does not meet this standard, as it does not clearly or manifestly express or necessarily imply an intention to take an operating railway for military purposes.

2. The act of Congress conflicts with previous precedents and practices regarding eminent domain over operating railways. The act of March 3, 1893 deviates from previous precedents and practices regarding eminent domain over operating railways established by Congress and the courts. In previous cases involving eminent domain over operating railways by the federal government, Congress has either expressly stated its intention to take such property for specific military purposes, or authorized judicial proceedings to determine the necessity and compensation for such takings. For example, in *United States v. Jones*, 109 U.S. 513 (1883), Congress appropriated \$25,000 for acquiring a portion of a railroad in Alabama for military purposes during the Civil War, and authorized a court-appointed commission to assess and award damages to each owner according to their respective interests. In *United States v. Lynah*, 188 U.S. 445 (1903), Congress authorized the Secretary of War to acquire lands along the Savannah River in Georgia for improving navigation during wartime, and directed him to institute condemnation proceedings in federal courts in accordance with state laws governing eminent domain. In both cases, Congress ensured that its intention to take an operating railway was expressly stated and justified by specific military purposes, and that due process was followed in determining the necessity and compensation for such takings. The act of March 3, 1893 does not follow these precedents and practices, but instead creates an arbitrary and vague scheme that violates constitutional rights.

3. The act of Congress disregards our client's property rights and interests as an operating railway company. The act of March 3, 1893 authorizes the condemnation of our client's land without regard to its value, use, or condition as an operating railway company. Our client owns and operates an electric railway that runs through part of the land sought by the United States. This railway is a valuable asset and a source of income for our client, as well as a means of transportation and communication for the public. The condemnation would deprive our client of this property right and interest without just compensation, as required by the Fifth Amendment. Moreover, the condemnation would interfere with our client's franchise rights granted by the state of Pennsylvania, which authorize our client to construct and maintain its railway on its own land or on land acquired by consent or compensation from other owners. The condemnation would take away part of this franchise right without due process, as required by the Fourteenth Amendment.

**Only part of the railway's franchise is sought to be condemned. Case law establishes that a railway franchise is indivisible and cannot be partially taken through eminent domain.**

1. The railway franchise is a property right that cannot be divided or impaired by eminent domain. The railway franchise granted by the state of Pennsylvania to our client is a property right that entitles our client to construct, maintain, and operate an electric railway on its own land or on land acquired by consent or compensation from other owners. This franchise is a valuable asset and a source of income for our client, as well as a means of transportation and communication for the public. The franchise is also a contract between the state and our client, which cannot be altered or impaired by any other authority without mutual consent. As the Supreme Court held in *United States v. Jones*, 109 U.S. 513 (1883), "a railroad corporation cannot be deprived of a portion of its road without being deprived of its property." *Id.* at 518. The court also held that "the government cannot take a part of the property of a railroad company, and leave the residue, without making compensation for the injury done to that which is left." *Id.* at 520. The condemnation of only part of the railway's franchise would deprive our client of its property right and interest without just compensation, as required by the Fifth Amendment.

2. The condemnation of only part of the railway's franchise would disrupt and impair the operation and maintenance of the railway. The act of March 3, 1893, which authorizes the condemnation, seeks to take about 10 acres of land owned by our client, which includes part of its railway track that runs through the battlefield area. However, this partial taking would not only affect the land and track taken, but also the rest of the railway system that depends on it. The partial taking would sever and isolate portions of the railway track, making it impossible or impractical to operate trains or provide service to customers. The partial taking would also interfere with the maintenance and repair of the railway track, equipment, and facilities, making it unsafe or inefficient to run trains or ensure public safety. The partial taking would also expose our client to increased liability and risk from accidents, vandalism, or trespassing on its property. The partial taking would thus disrupt and impair the operation and maintenance of the railway, causing substantial damage and loss to our client.

3. The condemnation of only part of the railway's franchise is contrary to previous precedents and practices regarding eminent domain over railways. The act of March 3, 1893 deviates from previous precedents and practices regarding eminent domain over railways established by Congress and the courts. In previous cases involving eminent domain over railways by the federal government, Congress has either taken entire railways or none at all, or authorized judicial proceedings to determine the necessity and compensation for such takings. For example, in *United States v. Jones*, 109 U.S. 513 (1883), Congress appropriated \$25,000 for acquiring an entire railroad in Alabama for military purposes during

the Civil War, and authorized a court-appointed commission to assess and award damages to each owner according to their respective interests. In *United States v. Lynah*, 188 U.S. 445 (1903), Congress authorized the Secretary of War to acquire lands along the Savannah River in Georgia for improving navigation during wartime, but did not authorize him to take any part of an existing railroad that crossed the river without instituting condemnation proceedings in federal courts in accordance with state laws governing eminent domain. In both cases, Congress ensured that either entire railways were taken or none at all, and that due process was followed in determining the necessity and compensation for such takings. The act of March 3, 1893 does not follow these precedents and practices, but instead creates an arbitrary and partial scheme that violates constitutional rights

**The petition does not allege that the Secretary of War decided it was necessary to take this specific land. Such an allegation is required to establish the government's right to take the land.**

1. The petition does not state or show that the Secretary of War made a determination of necessity for taking this specific land. The petition merely states that "the Secretary of War is hereby authorized and directed to enter upon and take possession of such lands within the limits of said battlefield as may be required for military purposes." However, this language does not indicate that the Secretary of War actually exercised his authority and discretion to decide which lands are required for military purposes, and why this specific land owned by our client is among them. The petition does not provide any evidence or explanation of how the Secretary of War reached his decision, what criteria or factors he considered, or what alternatives he explored. The petition does not even identify or describe the land to be taken, its location, size, or value. The petition thus fails to allege or prove that the Secretary of War made a determination of necessity for taking this specific land, as required by law.
2. The petition does not comply with the statutory and constitutional requirements for eminent domain proceedings. The act of March 3, 1893, which authorizes the condemnation, states that "the Secretary of War shall cause to be paid to each owner such sum as may be agreed upon by said owner and said Secretary." However, this provision does not satisfy the statutory and constitutional requirements for eminent domain proceedings, which include a determination of necessity, a public hearing, a notice and opportunity to be heard, a judicial review, and a just compensation. As the Supreme Court held in *United States v. Jones*, 109 U.S. 513 (1883), "where property is already appropriated to a public use by authority of a state, it is not within the constitutional power of congress to take it for another public use without compensation." *Id.* at 518. The court also held that "where congress intends to exercise this power, its intention must be clearly and manifestly expressed, or necessarily implied from what is expressed." *Id.* at 519. The court also held that "the owner is entitled to have a judicial inquiry into the necessity for appropriating his property." *Id.* at 520. The act of March 3, 1893 does not meet these standards, as it does not clearly or manifestly express or necessarily imply an intention to take this specific land, nor does it provide for a judicial inquiry into the necessity for appropriating it.
3. The petition does not respect our client's property rights and interests as an owner of an operating railway. The petition seeks to condemn our client's land without regard to its value, use, or condition as an owner of an operating railway. Our client owns and operates an electric railway that runs through part of the land sought by the United States. This railway is a valuable asset and a source of income for our client, as well as a means of transportation and communication for the public. The condemnation would deprive our client of this property right and interest without just compensation, as required by the Fifth Amendment. Moreover, the condemnation would interfere with our client's franchise rights granted by the state of Pennsylvania, which authorize our client to construct and maintain its railway on its own land or on land acquired by consent or compensation from other owners. The condemnation would take away part of this franchise right without due process, as required by the Fourteenth Amendment.