October 15, 2026

Dear Members of Congress:

On behalf of **106 Strong, an unprecedented national coalition of 1,000 organizations and Tribal Nations representing more than 9 million Americans**, we urge you to **vote NO on S. 5653**, the so-called Bipartisan American Affordability and Jobs Act.

Today marks the 60th anniversary of the National Historic Preservation Act (NHPA), one of America's most important and successful good government laws. Yet Congress is now considering legislation that would dismantle its central safeguard: Section 106.

America knows how to balance development needs and preservation values. In 1965, a special committee of the U.S. Conference of Mayors issued *With Heritage So Rich*, a landmark report documenting the devastating consequences of urban renewal and the interstate highway system on American's historic sites. Of approximately 12,000 historic places then recorded by the Historic American Buildings Survey, roughly **half** had already been destroyed or ruined. The report warned that the surviving records of these vanished places resembled a **"death mask of America."** Congress responded to this collective grief by enacting the NHPA in 1966, recognizing that America's historic and cultural heritage could not survive without meaningful federal safeguards.

Section 106 works because it asks federal agencies to do something simple: **stop, look, and listen before harming places Americans value.** It gives Tribal Nations, states, local governments, property owners, and communities a voice before historic downtowns, battlefields, burial grounds, and sacred sites are damaged or lost.

The overwhelming majority of Section 106 reviews are completed quickly and without controversy. Of more than 120,000 federal undertakings reviewed annually, only about eight result in litigation. The real causes of permitting delays include understaffed agencies, inadequate funding, poor planning, and project applicants who fail to provide necessary information. Section 106 is not the problem, and dismantling it is not the solution.

Title III-Historic Preservation of S. 5653 is not permitting reform. It is a sweeping assault on the protections Congress enacted sixty years ago to ensure that federal agencies consider the consequences of their decisions for America's historic and sacred places. Its provisions are so poorly conceived, internally contradictory, and counterproductive to efficient permitting that they cannot be repaired through amendments in this Congress.

Our eight principal objections to S. 5653 are as follows:

1. It strips Americans of their right to be heard.

Today, property owners, local preservation organizations, and neighbors can participate in Section 106 reviews as consulting parties, raising concerns about impacts to historic places before the bulldozers arrive. The bill removes that role entirely. The public is omitted from the list of parties an agency may consult. The agency's report on harm to historic places goes to officials and the developer, never to the public. Decisions are disclosed to the public only after they are final, through postings on agency websites. Incredibly, the bill prohibits Americans from challenging issues in court that they failed to raise during a "public comment period," but the bill never provides for one. **The public is denied an opportunity to participate, then punished for failing to participate.** Americans will learn that their government has approved the destruction of a treasured historic place only after the decision is final.

2. It betrays Tribal Nations and threatens sacred places.

The bill singles out tribal sites and requires new, more restrictive criteria for places of tribal cultural or religious significance to qualify for the National Register of Historic Places. If this bill passes, Congress will be giving the Administration license to scrub the National Register of sites associated with tribal history. The bill also makes consultation with Tribal Nations meaningless by eliminating requirements to seek ways to avoid, minimize, or mitigate harm to known sites and to incorporate information about significant places discovered during a project. The bill establishes a new system under which federal officials could judge Tribal Historic Preservation Officers against subjective standards, eliminate their funding, and even assume control of programs that Tribes administer on their own lands. Most alarmingly, it conditions funding on Tribal Nations compiling comprehensive lists of sacred places in government-accessible databases potentially subject to public records requests. Places that generations of Tribal leaders have worked to protect from disclosure would become vulnerable to looting, vandalism, and desecration. **A law enacted to protect sacred places would instead become a mechanism for exposing them to harm.**[1]

3. It exempts vast categories of federal projects from review.

Section 106 currently applies to federal undertakings, including projects involving federal funding, licenses, or permits. The bill radically narrows that definition to exclude most federal activity. Projects whose "only" federal involvement is a grant, loan, or loan guarantee are excluded, which removes federal highways grants, HUD and CDBG projects, and a host of other projects. Other exemptions depend on whether the federal government exercises "substantial Federal control and responsibility," a critical phrase the bill fails to define. Indeed, when asked about unresolved definitions, committee staff acknowledged that they could not agree on many of them and

[1] See also the *Joint Tribal Organization Letter Opposing Title III of the Bipartisan American Affordability and Jobs Act* (Oct. 9, 2026). **The letter** is signed by nine leading national and regional Tribal organizations, including members of the 106 Strong Coalition, who advocate for a vast and geographically diverse constituency of Tribal Nations and Tribal preservation programs across the United States. Their unified opposition demonstrates the breadth and depth of Indian Country's objections to the legislation.

suggested that "the courts will have to sort that out." A bill advertised as a way to reduce permitting delays would instead invite years of litigation over what its provisions even mean. Other exemptions are fundamentally circular. For example, an agency may exempt a project on public safety grounds if the project would not diminish the integrity of a historic property. But determining whether a project would cause such harm requires the very review process the exemption allows the agency to bypass. In effect, agencies can declare projects exempt without first establishing that they qualify for the exemption.

4. It makes entire categories of harm legally invisible.

Today, Section 106 allows communities to identify to the federal government places that are important to them. Yet this bill is clear that historic places identified after review begins would not have to be considered at all. Even for properties already in a government database, the bill would narrow the definition of harm so drastically that adverse effects would count only if they were severe enough to disqualify a property from the National Register. The proposal would also exclude visual, atmospheric, audible, cumulative, and indirect effects, as well as supposedly "temporary" harm. But "temporary" can mean the entire duration of a project. For example, under a 50-year hydroelectric license, harmful effects that persist for half a century could be excluded from consideration simply because they would end when the license expires. **The view from a sacred landscape, the silence of a battlefield, and the historic setting of a cemetery would cease to count as harms the federal government must consider.**

5. It lets agencies acknowledge harm and do nothing about it.

Federal officials could recognize that a project will damage or destroy a historic property and still decline to exert any effort to avoid, minimize, or mitigate that harm whenever, "in the sole discretion of the applicable Federal official," undefined "other considerations" outweigh preservation. Reaching agreements among agencies, Tribal Nations, states, and developers, which have resolved countless disputes and allowed projects to proceed, would become optional. **The bill does not eliminate conflicts between developers and communities; rather, it removes the process for resolving them.**

6. It shields unlawful decisions from meaningful judicial remedies.

Section 106 is not a significant source of litigation risk. Of more than 120,000 federal undertakings reviewed annually, on average only 8 result in court challenges. The bill seeks to solve a problem that scarcely exists while dramatically restricting the ability of Americans to hold federal agencies accountable. Courts would be required to give agencies "substantial deference," and challenges would proceed directly to federal courts of appeals rather than district courts, removing the ability for successful claimants to win attorney's fees. Even when an agency is found to have violated the law, the bill would prevent courts from setting aside unlawful decisions, allowing destruction to continue. Imagine the consequences if federal officials could bypass historic preservation requirements when undertaking major changes to the Kennedy Center, constructing a monumental arch in Washington, or altering the Eisenhower Executive Office Building, while courts lacked effective remedies to prevent irreversible damage. Meanwhile, developers would gain new rights to sue, including seeking injunctions to enforce timelines. **The result is a system in which**

developers gain new tools to compel agency action while the public loses the ability to prevent unlawful destruction.

7. It commandeers state and Tribal historic preservation offices, raising serious 10th amendment, federalism, and sovereignty concerns.

Section 106 currently operates as a federal-state-Tribal partnership, relying on State and Tribal Historic Preservation Offices to bring local expertise, technical knowledge, and community perspectives into federal decision-making. The bill turns that cooperative federalism model on its head. The bill also imposes new deadlines, reporting requirements, and administrative responsibilities on SHPOs and THPOs without providing the resources necessary to carry them out. If a deadline is missed, state and Tribal officials must devote at least half their work week to that project. These provisions raise serious Tenth Amendment, federalism, and Tribal sovereignty concerns. They would also divert scarce staff resources away from other projects, creating new backlogs and delays.

8. It will create the very delays it promises to eliminate.

For six decades, Section 106 has served as a practical and successful conflict-resolution process. It allows agencies, developers, Tribal Nations, states, and communities to identify problems early, exchange information, and negotiate solutions before construction begins. The real bottlenecks arise from inadequate resources, federal agency understaffing, incomplete information from project applicants, and consultation that begins too late. This bill compounds those problems. Burial grounds and historic places overlooked during planning do not disappear. They are discovered later, often during construction, when delays, redesigns, litigation, and public controversy become far more expensive. **Removing the meetings where people resolve conflicts does not end the conflict. It moves it from the conference room to the construction site, and from the consultation table to the courtroom.**

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Congress can make federal permitting faster and more predictable without silencing Americans, undermining Tribal sovereignty, or sacrificing the places that tell our nation's story. Indeed, meaningful consultation, early planning, and effective conflict resolution are essential to efficient permitting. S. 5653 does the opposite. It substitutes exclusion for consultation, confusion for clarity, and litigation for cooperation. Its historic preservation provisions are too fundamentally flawed to repair through amendments in this Congress.

We urge you to vote NO on S. 5653 and work with us in the next Congress on genuine permitting reform that strengthens Section 106 rather than dismantling it.

Our coalition includes organizations and Tribal Nations across the country, including in your state. We welcome the opportunity to meet with you or your staff. Our full analysis, including a section-by-section annotated redline of the legislation, is available at **106strong.com/the-statutory-fight**.

Sincerely,

Gregory A. Werkheiser
Marion F. Werkheiser
Co-Founders, Attorneys at Law, Cultural Heritage Partners, PLLC
info@culturalheritageparters.com
On behalf of the **106 Strong Coalition**
www.106strong.com

*P.S. On today's 60th anniversary of the National Historic Preservation Act, we invite you to watch our **new short film** about the extraordinary places Section 106 has helped protect, the people whose voices it has empowered, and what America stands to lose if Congress dismantles it.*