

October 15, 2018

Via the federal eRulemaking portal, <http://www.regulations.gov>

Brian D. Joyner
Chief of Staff
National Mall and Memorial Parks
National Park Service
900 Ohio Drive, SW
Washington, DC 20024

Re: Proposed rule regarding demonstrations and special events in the National Capital Region, 83 Fed. Reg. 40460; Regulation Identifier No. 1024-AE45

Dear Mr. Joyner:

The undersigned individuals and organizations respectfully submit these comments on the National Park Service (“NPS”) proposed rule referenced above.

We note that although the proposed rule begins by stating that “The buildings, structures, and grounds that compose the National Mall and Memorial Parks and President’s Park are national symbols of American democracy,” the proposal is filled with profoundly anti-democratic (and flagrantly unconstitutional) suggestions for how these areas should be managed.

This is all the more remarkable given that just last year the NPS acknowledged that from their very creation by Pierre L’Enfant, the National Mall and Memorial Parks were intended as “an ideal stage for national expressions of remembrance, observance, celebration, and First Amendment rights,” and which, “for more than 200 years . . . have symbolized the nation and its democratic values.” These were no mere passing references; rather they were contained in the *Foundation Document: National Mall and Memorial Parks* (at p. 3) the purpose of which is “to provide basic guidance for planning and management decisions—a foundation for planning and management.” *Id.* p. 2. Indeed, the “purpose statement” for the National Mall and Memorial Parks notes that these serve “as a public park and open space for First Amendment gatherings” (*id.* p. 14), and the *Foundation Document’s* very first “significance statement” (*id.* p. 15) describing their “resources and values” is:

Stage of Democracy. National Mall and Memorial Parks contains the nation’s foremost public spaces and the primary settings for First Amendment activities, presidential inaugurations, civic engagement, and national celebrations. Citizens from throughout the country and around the world come here to participate in American democracy, celebrate freedom, and experience our nation’s history and culture.

We are especially concerned about the following anti-democratic (and, as specifically noted, unconstitutional) parts of the proposed rule:

1. Charging fees for demonstrations. NPS proposes to charge for “costs associated with permitted demonstrations” (83 FR 40465), a breathtaking violation of the First Amendment. While the government can require permits for certain demonstrations (provided that they are no more restrictive than necessary to address the government’s legitimate interests in enforcing appropriate “time, place and manner” limitations), the government cannot compel citizens to pay in order to exercise their First Amendment rights.

2. Requiring permits for all demonstrations by eliminating the distinction between “demonstrations” and “special events”. This proposal (83 FR 40463) has two major flaws: First, special events require permits, while demonstrations (with the exception of large demonstrations under certain limited circumstances) do not. The very notion of requiring government permission to peacefully assemble and petition violates the First Amendment. Second, NPS charges fees for “special events,” but not demonstrations and, for the reasons given in No. 1, above (the proposal to charge fees for demonstrations), this violates the First Amendment.

3. Eliminating demonstrations from the White House sidewalk. The NPS proposes to close the White House sidewalk to demonstrators:

Public access is not allowed on the south sidewalk of Pennsylvania Avenue NW, adjacent to the North Fence Line of the White House Complex, from the security post located just north of West Executive Avenue NW to the security post located just north of East Executive Avenue NW.

Proposed 36 CFR § 7.96(g)(3)(i)(D); 83 FR 40475. It is no exaggeration to say that the White House sidewalk is the most iconic public forum in the country, scene of hundreds of demonstrations involving the most important issues in American history. Women’s suffrage, the Vietnam War, the Civil Rights movement, nuclear weapons, gun control, the Affordable Care Act, abortion, gay marriage, climate change . . . it is difficult to think of a single important political issue that did not find expression – from all sides – on the White House sidewalk.

Unfortunately, we cannot even take issue with the NPS’ reasoning behind this proposal (although we cannot imagine any that would justify this action), because *there is not a single sentence in the entire regulatory preamble mentioning or discussing this in any way.* This is highly unlikely to be mere oversight; rather, it is a most disturbing example of the NPS’ desire to curtail citizens’ First Amendment rights even without any notice or discussion.

We strongly encourage the NPS to rethink these ill-advised proposals in light of common sense and the First Amendment.

Sincerely,

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Arkay Foundation
Ian Bassin, Protect Democracy
Matt Bennett, Senior Vice President, Third Way
Sayu Bhojwani, President, New American Leaders
Mona Charen
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