

NOT YET SCHEDULED FOR ORAL ARGUMENT

No. 16-5047

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

A.N.S.W.E.R. COALITION, (ACT NOW TO STOP WAR AND END RACISM),
APPELLANT,

v.

W. RALPH BASHAM, DIRECTOR, SECRET SERVICE, AND SALLY JEWELL,
SECRETARY, U.S. DEPARTMENT OF THE INTERIOR,
APPELLEE.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT

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CERTIFICATE AS TO PARTIES, RULINGS, and RELATED CASES

A. Parties and Amici

The following parties have appeared before the District Court:

Appellant: The Appellant is A.N.S.W.E.R. Coalition (Act Now to Stop War and End Racism), who was the plaintiff in the District Court. The following parties appeared before the District Court as reflected in the Complaint for Emergency Injunctive Relief filed on January 14, 2005, and did not appear as parties on the First Amended Complaint filed on July 28, 2005, or in any subsequent litigation, and are not appearing before the U.S. Court of Appeals in this proceeding: Graylan Hagler, Michael Berg, Muslim American Society Freedom Foundation, National Council of Arab Americans.

Appellee: Appellee is Sally Jewell, Secretary, U.S. Department of the Interior, who was a defendant in the District Court.¹

Amici: None to date.

B. Rulings Under Review

At issue in this appeal is the January 28, 2016, Order and Memorandum Opinion by the Honorable Paul L. Friedman granting summary judgment to Appellee on Counts III and IV.

¹ As the Appellant is not pursuing an appeal of the District Court's grant of summary judgment on Count II, W. Ralph Basham, Director, U.S. Secret Service, will no longer be an appellee in this matter.

C. Related Cases

This case has not previously been before this Court. There are no pending related cases.

CORPORATE DISCLOSURE STATEMENT

The ANSWER Coalition is a nonprofit corporation engaged in political advocacy on issues of social and public import. ANSWER has no parent company and there is no publicly-held company that has a 10% or greater ownership interest in ANSWER.

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*Authorities upon which we chiefly rely are marked with an asterisks.

GLOSSARY

ANSWER	Act Now to Stop War and End Racism Coalition
DOI	Department of the Interior
NPS	National Park Service
PIC	Presidential Inaugural Committee
PICA	Presidential Inaugural Ceremonies Act

JURISDICTIONAL STATEMENT

District Court jurisdiction was based on 28 U.S.C. § 1331 (federal question), 1343(a)(3) and (4) (civil rights jurisdiction). Jurisdiction of this Court is premised on 28 U.S.C. § 1291. The appeal is from a final judgment that disposes of all parties' claims. Ancillary matters related to attorneys fees remain pending. Final judgment was entered on January 28, 2016 (ECF Nos. 219, 220). Notice of appeal was timely filed on February 24, 2016.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

Does the government speech doctrine authorize the government to redesignate quintessential public forum space, including Freedom Plaza, on Inauguration Day as reserved for exclusive use of the Presidential Inaugural Committee, a private partisan advocacy and fundraising entity promoting viewpoints supporting the incoming administration, over groups including the ANSWER Coalition who wish to engage in dissent?

Where the government does not claim a compelling interest, can the government engage in viewpoint-, content-, and identity-based discrimination to favor a private group with a pro-government political viewpoint in the allocation of public forum space for expressive activities along the Presidential Inaugural Parade route?

May the government effectively delegate to the PIC, a private partisan advocacy organization, the discretion to decide who may use Freedom Plaza and

other public forum space for purposes of engaging in free speech, assembly and petition activities?

Whether the District Court erred in granting summary judgment in favor of defendant Sally Jewell on Counts III and IV of the final judgment, order and opinion entered on the 28th day of January, 2016?

Pertinent regulations, 36 C.F.R. §§ 7.96 *et seq.*, and the Presidential Inaugural Ceremonies Act, 36 U.S.C. §§ 500 *et seq.*, appear in the addendum.

STATEMENT OF THE CASE

On Inauguration Day, “an event less private than almost anything else conceivable,” *Mahoney v. Babbitt*, 105 F.3d 1452, 1458 (D.C. Cir. 1997), Freedom Plaza and large swaths of quintessential public forum spaces along Pennsylvania Avenue are by regulation re-designated “for the exclusive use of the Presidential Inaugural Committee,” a private partisan advocacy and fundraising organization, which is delegated the discretion to restrict access based on viewpoints supporting government policy.

Those who wish to petition the government and express dissenting views are restricted from access, including being barred from obtaining permits for Freedom Plaza. The government refuses even to allow multiple occupancy of Freedom Plaza, even though it is indisputable that the space accommodates such.

The government transforms the public forum character of the sidewalks up

and down Pennsylvania Avenue in a viewpoint and content based preference for the pro-government speech of the private PIC. The PIC is allowed to restrict bleacher tickets based on viewpoint rather than having them open to the public and dissenters.

The ANSWER Coalition is an anti-racism and anti-war grassroots civil rights organization that engages in free speech, assembly and petition activities, and has sought to do so at Freedom Plaza at each Inaugural Parade since 2005 regardless of which party wins. JA¹ 435 – 36 (Declaration of Brian Becker, ANSWER National Coordinator) (hereinafter Becker Decl.); JA 84 ¶ 1 (Am. Complaint). It has again submitted a permit application for the upcoming 2017 Inauguration.

By operation of National Park Service regulations amended in 2008, 36 C.F.R. § 7.96(g)(4), ANSWER is barred from securing a demonstration permit for Freedom Plaza on Inauguration Day. The regulations suspend the operation of the first-come first-served permit allocation of public fora and create an exclusive set-aside for the private, partisan PIC for the Inauguration.

The Pennsylvania Avenue National Historic Site Management Plan describes Freedom Plaza as “a raised urban paved landscape designed to accommodate demonstrations and special events . . .” JA 755.

¹ “JA” refers to the Joint Appendix.

ANSWER seeks access to Freedom Plaza because it is an open, long, deep and elevated plaza with unobstructed contiguous and flat plaza space. JA 435 ¶ 7 (Becker Decl.). There is no comparable park space along Pennsylvania Avenue for ANSWER's collective expressive, assembly and petition activities. JA 435 ¶ 7, 445 - 46 ¶ 39 - 40.

Freedom Plaza is dedicated in honor of Dr. Martin Luther King's leadership of historic civil rights and peace movements that brought voices of dissent to be heard by the forces of government and authority, and which so profoundly altered government policy and benefitted society. JA 436 ¶ 10. Yet, the Plaza is denied to dissenting demonstration groups on Inauguration Day.

The challenged regulations also permanently bar ANSWER from accessing large swaths of the public sidewalks of Pennsylvania Avenue to engage in political expression, leafleting and petitioning activities on Inauguration Day. This includes space abutting the new Trump Hotel at the Old Post Office, a situs which has substantial political significance given the political prominence of its namesake.

The PIC is issued a permit as a matter of right for these spaces.

Each PIC is a privately funded, non-governmental, politically partisan organization made up of campaign and party officials that advances the interests and views of the President-elect in organizing private balls, galas, dinners and events associated with the Inauguration. *See* JA 474 (Congressional Research

Service report), JA 65. It is a private fundraiser of tens of millions of dollars and is regulated by the Federal Election Commission and the Bipartisan Campaign Reform Act. The PIC is not required to disclose its expenditures, including the millions of dollars in “surplus” funds left over after the Inauguration.

The PIC selects the participants in the Inaugural Parade. JA 477.

The Armed Forces Inaugural Committee commands and controls the parade. JA 388, 73 Fed. Reg. 67739 (Nov. 17, 2008) (referencing designated “Armed Forces Inaugural Committee parade control area[s]” for “parade support,” “monitoring and managing the parade”); JA 687 (AFIC control areas are “used to coordinate the Inaugural Parade”). AFIC Parade Control Areas designated on regulatory maps, Addendum 10 – 14, are unaffected by relief requested.

Historically, Inaugural Committees erected parade route bleachers along Pennsylvania Avenue that were *public* grandstands, with tickets sold to the public at nominal cost on a non-partisan and non-viewpoint basis. *See infra* pp. 29 - 31.

It is different under NPS stewardship of the sidewalks, assumed in 1996. Now the government allows each PIC to distribute tickets to bleachers on any basis, including a partisan or viewpoint basis to supporters of the incoming administration. *See* JA 388, 73 Fed. Reg. at 67742 (“each PIC decides how, and to whom, to distribute the PIC bleacher seat tickets”). Under NPS stewardship, those who wish to petition their government and voice dissenting views are excluded

from specific identified quintessential public fora alongside the inaugural parade route.

The regulations effect identity-based, viewpoint- and content- based discrimination to enhance the visible presence of the PIC's pro-government views.

Under the Free Speech Clause of the U.S. Constitution, absent a compelling government interest to discriminate, this is prohibited.

No compelling interest is claimed by the government to justify the regulations challenged herein.

The District Court, the Honorable Paul L. Friedman presiding, decided to analyze the challenged regulation administering access to these public forums under the government speech doctrine, JA 66, which holds that government-controlled speech is exempt from the First Amendment and its Free Speech Clause, *Johanns v. Livestock Mktg. Ass'n*, 544 U.S. 550, 553 (2005).

The government speech doctrine had never been briefed despite years of dispositive motions briefing. The government has acknowledged in the many years of litigation over the Inaugural parade route that the public forum analysis is the correct doctrine for evaluation.

There is no evidence that speech from PIC Bleacher Areas is government speech or government-controlled, not historically or currently. For this and other reasons, discussed below, the government speech doctrine is inapplicable. This

extension of the government speech doctrine to resolve the question of who may assemble and speak on a quintessential public forum is unprecedented in the law and a dangerous threat to the First Amendment.

The District Court's ruling is inconsistent with this Court's opinion in *Mahoney v. Babbitt*, which holds that public forum analysis is the constitutional doctrine under which access to these spaces for purposes of political expression is to be conducted. This Court was emphatic that the government cannot simply redefine these sidewalk and plaza spaces as existing above the Free Speech Clause's restrictions against discrimination, effectively destroying the "public forum" status of these quintessential public forums.

The District Court characterized its government speech ruling as adjudicating a "close and novel question" of law. JA 66.

It observed the government speech doctrine to be a "relatively recent development in federal case law" and further opined that "the test to determine if something is an example of government speech has not been clearly established." JA 65 - 66.

The case at bar does not pose a close question. It is not government speech. The regulation of access to quintessential public forum spaces for political expression - - spaces which historically and from time immemorial have been available to the public for free speech and dissent - - is not analogous to the cases

relied upon by the court in which the government speech doctrine has been applicable.

The degree of even-handed restraint the government must exercise in regulating access to Freedom Plaza and the Pennsylvania Avenue sidewalks on Inauguration Day is fundamentally different from the complete control the government has over the form and inscriptions on permanent monuments in parks, *see Pleasant Grove City v. Summum*, 555 U.S. 460 (2009), the words and design of government-stamped, issued and owned license plates, *see Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, ___ U.S. ___, 135 S. Ct. 2239 (2015), or the words it uses in government promotional advertising campaigns, *see Johanns*.

If the government can simply redefine spaces along Pennsylvania Avenue - - or any quintessential public space in the United States - - as reserved for pro-government speech on the days in which that public fora is most in demand and historically used for public free speech including protest, there would be little left of the Free Speech Clause. The character of these spaces as public forums is enduring and, indeed, essential for democracy.

Nor may the government predetermine and reserve, as it seeks to, the balance of space allotted for dissent versus government-supportive speech.

The First Amendment does not countenance the government dictating the balance or content of expression on sidewalks and plazas and parkland alongside

state-sponsored parades.

Such spaces “have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.” *Perry Ed. Assn. v. Perry Local Educators’ Assn.*, 460 U.S. 37, 45 (1983).

The government may not keep its hand on a dial to determine the appropriate balance of supportive versus dissenting speech in a park. Such control over free speech is not consistent with democracy or the Constitution. This is a critical demarcation line distinguishing freedom of expression from authoritarian government. *See R.A.V. v. St. Paul*, 505 U.S. 377, 392 (1992) (“[A government] has no ... authority to license one side of a debate to fight freestyle, while requiring the other to follow Marquis of Queensberry rules.”); *Women Strike for Peace v. Morton*, 472 F.2d 1273, 1293 (D.C. Cir. 1972) (Opinion of Wright, J.) (requiring “even-handed enforcement of the rules of the road” in the NPS permitting system).

The lower court ruling imperils free speech rights. The decision gives government a free hand to essentially destroy the public forum character of the sidewalks and plazas along Pennsylvania Avenue by the *ipse dixit* act of declaring the plazas and sidewalks to constitute “PIC Bleacher Areas” and removing them from First Amendment analysis.

“The First Amendment was not designed to protect the voice of government or government approved speech. The First Amendment in this country protects the voice of the people, even as against government. There can be no ambiguity or doubt about these basic postulates of constitutional democracy.” *Women Strike for Peace*, 472 F.2d at 1280.

The ruling below expands the government speech doctrine, which is supposed to protect government *qua* government when it articulates or executes policy or speaks directly, to enhance the visible presence of a private advocacy organization supporting government policies such that its public forum expression may be favored by regulation without regard to the First Amendment’s protection of dissenting organizations. This is a dangerous encroachment, especially given the careful development of public forum doctrine.

There is vast difference between government speech and government-*favored* speech of others.

The Supreme Court in *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015) reaffirmed the need for “clear and firm rules” to govern government’s hand to prevent content-based discrimination of expression in public forum spaces. That same need is manifest by the circumstances *sub judice*.

ANSWER seeks a neutral, non-discriminatory allocation of expressive use space on Freedom Plaza and other public forums for Inauguration Day. The NPS

can use the generally applicable first-come first-served system or any other system that is not identity-, viewpoint- or content-based.

PROCEDURAL HISTORY

In 1996, the Department of the Interior assumed jurisdiction of the plazas and sidewalks along Pennsylvania Avenue, including Freedom Plaza. JA 61.

The NPS became the steward of these public lands, directed to regulate them to “the common benefit of all the people of the United States.” 54 U.S.C. § 100101. Then-existing NPS regulations established a first-come first-served application process. JA 396 – 97 (“the use of a particular area is allocated in order of receipt of fully executed applications”).

As a matter of practice the NPS unconstitutionally exempted the PIC from the terms and requirements of its permitting system, issuing permits to the PIC that did not comply with the promulgated regulations and which preempted demonstration permit applications by dissenters. *See, e.g., Mahoney v. Babbitt*, 105 F.3d 1452, 1453 – 55 (D.C. Cir. 1997); *A.N.S.W.E.R. Coalition v. Kempthorne (ANSWER II)*, 537 F. Supp. 2d 183, 198 - 200 (D.D.C. 2008).

For the January 1997 Inauguration of William Jefferson Clinton, the NPS apparently determined the balance of expression along the Inaugural Parade route should appear uniformly and vastly in support of the government. The NPS issued the 1997 PIC “a blocking permit” for “the entire length of Pennsylvania Avenue

sidewalks” and threatened arrest for those who carried signs critical of Clinton’s policies in spaces assigned to the PIC. *Mahoney*, 105 F.3d at 1459.

The threatened arrests and other policies were enjoined but, receiving the case on an emergency basis, this Court did not reach the constitutionality of the permitting practices. *Id.* at 1455. Likewise, the NPS’s illegal practices were challenged for each of the subsequent inaugurations, but as the NPS’s process was as opaque as it was unconstitutional, the government would wind the clock down and refuse to provide necessary information as to the status of permits. This ensured that each case was heard on a last-minute basis.

For the 2001 and 2005 Inaugurations of George W. Bush, the NPS again issued each PIC exclusive-use permits spanning substantial lengths of Pennsylvania Avenue sidewalks and plazas. *See* JA 1267, *Washington Post Editorial Board*, “A Semi-Private Parade,” January 21, 2005.

While the public and the media were falsely advised that bleacher seats were available on a non-discriminatory basis to those who wished to purchase tickets, the reality is that potential ticket purchasers were screened and vetted before they were allowed access. Bleacher tickets were distributed on a partisan basis only to donors and supporters of the incoming administration.²

² *See* JA 680, 682 (2001 PIC After-Action Report, Ticketing and Invitations) (PIC established 3 lists: “A List” was PIC “Friends and Family,” “B List” was PIC invitees, “C List” was public requesters); JA 677 (2001 PIC Exit Report, Ticketing

The International Action Center, whose demonstration permit was revoked days before the 2001 Inauguration, filed suit. *Int'l Action Ctr. v. United States*, Civil Action No. 96-2827 (Kessler, J.). The denial of the Center's motion for a preliminary injunction, heard on an emergency basis, was not appealed to this Court.

ANSWER, whose demonstration permit was revoked just days before the 2005 Inauguration, filed the instant litigation. JA 80, ECF No. 1. ANSWER's emergency motion for a preliminary injunction was denied, ECF No. 11, and, lacking a full record, was not appealed.

ANSWER persisted in litigation to have the constitutionality of the NPS's permitting practices adjudicated on a full record. *A.N.S.W.E.R. Coalition v. Kempthorne (ANSWER I)*, 493 F. Supp. 2d 34 (D.D.C. 2007) (holding issues were capable of repetition yet evading review).

On March 20, 2008, the District Court granted ANSWER's Motion for Summary Judgment on Count I of the Amended Complaint. The Court held that NPS's "policy and practice of exempting itself and/or the [PIC] from compliance with the generally applicable permitting regulations, 36 C.F.R. § 7.96(g) [was] unconstitutional" and permanently enjoined NPS from doing so "with respect to

and Invitations) (PIC was "unable to accommodate" any ticket requests from C List); JA 676, Affidavit of Anne Wilson (2005 PIC issued tickets only to PIC invitees with a special invitation ID number).

events relating to the Inauguration.” *A.N.S.W.E.R. Coalition v. Kempthorne* (*ANSWER II*), 537 F. Supp. 2d 183 (D.D.C. 2008). This ruling, effectively establishing that the 1997, 2001 and 2005 PIC permits were unconstitutionally issued, was not appealed.

Forced to regulate the administration of public space alongside the inaugural parade without favoritism, on November 4, 2008, in a one-time settlement of challenges for the 2009 Inauguration, the NPS agreed to issue ANSWER a permit for Freedom Plaza “within which to have bleachers, a stage and sound towers.” JA 423 (settlement agreement); JA 427 (map of Freedom Plaza to be permitted to ANSWER for Inauguration Day); JA 735 – 44 (ANSWER’s demonstration permit for Freedom Plaza on Inauguration Day 2009).

This precedent is prohibited from repeat under the currently challenged regulations.

On November 17, 2008, the NPS issued final rule amendments to 36 C.F.R. §§ 7.96, *et seq.* JA 385.

Under the amended regulations, the first-come first-served order of processing of permit requests is generally applicable. Addendum 7 - 8.

The amendment redefines Freedom Plaza and substantial sidewalk and other areas along the Inaugural Parade route as “PIC Bleacher Area[s]” for Inauguration Day, granting PIC the permit for these spaces as a matter of right. Addendum 8 -

14.

PIC Bleacher Areas are not subject to the generally applicable first-come first-served order of processing. They are reserved “for the exclusive use of the Presidential Inaugural Committee on Inauguration Day for [] [t]icketed bleachers viewing and access areas . . .” This set-aside creates exclusive and priority use based on viewpoint and content of message.

The regulations contain a caveat. Under the “10-Minute Parade Rule” seats in the PIC Bleacher Areas that remain unclaimed 10 minutes before the parade passage must be released to “members of the public” without discrimination and “without regard to viewpoint or content of message.” Addendum 8, 36 C.F.R. § 7.96(g)(4)(iii)(B)(1); JA 387, 73 Fed. Reg. at 67741. “[A]ppropriate action” by agency or law enforcement will be taken for failure of any PIC to comply with this rule. JA 387.

The genesis of this rule is that PIC bleacher seats have been left empty and abandoned by PIC ticket-holders. JA 387; JA 764; JA 257 – 58. Donors to the PIC do not need to brave freezing cold or wet Inaugural Day weather nor band together in collective assembly to have a moment of influence on passing government officials.

On February 10, 2012, ANSWER filed its Supplemental Pleading. JA 108. Count III of the 2005 Amended Complaint alleges that discrimination in

favor of the PIC violates the First Amendment and Equal Protection Clause, *see* JA 104 – 05, Am. Complaint.³

The Supplemental Pleading added Count IV, which alleges that the PIC regulatory preference provisions at 36 C.F.R. § 7.96(g)(4)(iii)(B), as specifically amended in 2008, constitute identity-, viewpoint-, and content-based discrimination in violation of the First Amendment and the Equal Protection Clause. JA 113 – 14, Supp. Pleading.

The Supplemental Pleading seeks injunctive relief enjoining the PIC exemption language at 36 C.F.R. § 7.96(g)(4)(iii)(B)(1) as unconstitutional and directing the removal from regulatory maps of areas designated as “PIC Bleacher Area[s].” JA 114.

No relief is sought with respect to any designated area except the PIC Bleacher Areas. *Id.*

Count IV is advanced as a facial and as-applied challenge.

With respect to the as-applied challenge, in connection with the January 2013 of Inauguration of Barack Obama, the NPS acknowledged ANSWER filed the first-in-time permit application (filed at 8:00 a.m. on December 7, 2011) for use of Freedom Plaza, prior to the NPS’s own filing of a permit request on behalf of the PIC (filed at 8:01 a.m.). JA 107 – 08 ¶¶ 4 – 5, Supp. Pleading; JA 437 ¶ 14,

³ Count II of the Amended Complaint pertained to restrictions on sign supports. The Court dismissed this count, which has not been appealed.

Becker Decl.; JA 687, NPS acknowledgment letter.

NPS met with ANSWER and confirmed that ANSWER's logistical plans for Freedom Plaza were acceptable, but that it would not state whether ANSWER's permit was granted or denied until after the PIC determined its plans. JA 439 ¶¶ 19-20, Becker Decl.; JA 688, NPS letter. After ANSWER requested NPS communicate with the PIC regarding ANSWER's intention to have a demonstration including a "speak-out of America's unemployed for jobs and justice," the NPS revoked ANSWER's permit. JA 440 – 41 ¶¶ 24 - 26. Top PIC officials met with ANSWER regarding use of Freedom Plaza, which ANSWER stated it was willing to share as it had done in 2009. JA 442 – 43 ¶¶ 30-32. During this meeting PIC officials politically vetted ANSWER, asking about political goals, messaging, outreach and how it organizes its expressive and assembly activities. JA 443 ¶ 33. PIC officials stated the two organizations had "competing interests" for expression along the parade route and, thereafter, PIC Executive Director David Cusack sent notice to ANSWER that PIC had decided to use the entire portion of Freedom Plaza. *Id.* ¶ 34.

In its as-applied challenge, ANSWER alleges that the new regulations delegate unfettered discretion to the private partisan PIC to determine what groups may use the public forum of Freedom Plaza for expressive purposes and that this discretion was exercised in a viewpoint-based manner by PIC.

The ruling under review is the January 28, 2016, opinion in which the Honorable Paul L. Friedman granted summary judgment in favor of the government as to Counts III and IV and denied ANSWER's cross-motion for summary judgment. JA 46 – 79.

STANDARD OF REVIEW

A grant of summary judgment is reviewed on appeal *de novo*. See *Ctr. for Auto Safety v. Nat'l Highway Traffic Safety Admin.*, 244 F.3d 144, 147 (D.C. Cir. 2001) (citation omitted).

SUMMARY OF ARGUMENT

The government has implemented an unconstitutional identity-, viewpoint- and content-based system for the regulation of access to quintessential public fora that favors the pro-government speech of the Presidential Inaugural Committee over dissenters causing the abridgement of ANSWER's freedom of speech, assembly and expression.

The lower court incorrectly found that the regulatory set-aside for the private partisan PIC was an expression of government speech. The standards for analyzing government speech are not met in the case at bar.

Under the proper public forum analysis, the government has never asserted a compelling interest. As such, the regulations fail. Even under its preferred intermediate scrutiny standard, the government has not met its burden of proof.

ARGUMENT

I. The District Court Erred in Concluding that the Government Speech Doctrine Governs this Case

Government-controlled speech is the *sine qua non* of the government speech doctrine.

The government discriminatorily favors the pro-government speech of PIC, but the government *qua* government is not engaging in speech from the Pennsylvania Avenue sidewalks.

PIC is a private, privately funded, non-governmental partisan advocacy organization appointed by the President-elect. All parties, including the District Court, agree. JA 65; *Newdow v. Robert*, 603 F.3d 1002, 1006 (D.C. Cir. 2010) (PIC is a “private . . . group”); *See also* 501 U.S.C. § 510; 11 C.F.R. § 104.21 (as a privately funded campaign related organization, donations are subject to reporting obligations and restrictions under the Bipartisan Campaign Reform Act of 2002).

The District Court found each PIC was private and non-governmental, but opined that this consideration was overcome by the fact that the PIC is “ultimately accountable to the electorate” because the President-elect traditionally appoints the PIC. JA 69. PICs as private entities are not accountable to the public or to the government for oversight. *See* JA 525, “After the inaugural balls, where does the extra money go?”; JA 528, Congressional Quarterly News, “Inaugural Funds Raise Questions”; JA 518 (2009 PIC refused media requests for disclosure of how profits

spent). They are not required to publish even their expenditures. That the President appoints this private entity is not outcome determinative or else each political campaign committee appointed for the re-election of the President would be engaged in government speech in its advocacy, which is not the case as acknowledged by the Court at oral argument, *see* JA 308 – 09.

This Court held in *Mahoney* that public forum doctrine and the Free Speech Clause provides the constitutional framework for review of NPS regulation of access to these public forum spaces on Inauguration Day.

The District Court erroneously analogized the administration of access to quintessential Pennsylvania Avenue public forums - - which must be regulated without discrimination and with even-handedness - - to the plenary authority government has to determine what words and designs may be placed on vehicle license plates, or inscribed upon permanent monuments in public parks.

License plates and permanent statues - - mediums of communication which have never been open to the public, *see Sumnum*, 555 U.S. at 472-73, *Walker*, 135 S. Ct. at 2250-52 - - are a class distinct from quintessential public forum space.

Political expressions by individuals - - transitory and not subject to government censorship or control - - cannot be confused or conflated with the permanent inscriptions on a granite monument or a license plate that has been stamped, issued and is owned by the state. *See Sumnum*, 555 U.S. at 464 (public

forum analysis applies to transitory speech in public forums).

The District Court formulates the dispositive issue as “[D]oes PIC’s speech in the set-aside areas at the Inaugural Parade constitute government speech or private speech?” JA 63. This formulation presupposes that the speech in the set-aside areas is controlled by the PIC such that it can be attributed to the PIC or, more precisely, to the government. The speech emanating from the set-aside area is the speech of PIC ticketholders and any members of the public admitted under the 10-Minute Parade Rule. NPS allows the PIC to select ticketholders based on their support for the incoming administration, which means that the collective expression will be pro-government as the PIC determines. The award of the permit to the PIC means that no collective demonstration of dissent can be permitted for such space. However, allowing pro-government viewpoint-based discrimination in the selection of individual ticketholders is not the same as dictating that the expression in the bleacher areas is compelled or censored such that their expressions constitute government policy or satisfy the requirements of the government speech doctrine.

The Supreme Court warned of the “legitimate concern that the government speech doctrine not be used as a subterfuge for favoring certain private speakers over others based on viewpoint.” *Summum*, 555 U.S. at 473.

The *Summum* Court emphasized the “strong free speech rights” of the public

in quintessential public forums, *id.* at 469, stating that in public forums “restrictions based on viewpoint are prohibited.” *Id.* at 469 (citing *Carey v. Brown*, 447 U.S. 455, 463 (1980)).

This Court was emphatic that the Free Speech Clause governs NPS’s regulation of access to the spaces at issue on Inauguration Day.

If the free speech clause of the First Amendment does not protect the rights of citizens to “interject” their own convictions and beliefs into a public event on a public forum then it is difficult to understand why the Framers bothered to include it at all.

Mahoney, 105 F.3d at 1459.

This Court rejected efforts by the government to redefine the purposes of these spaces to limit their function to carrying pro-government speech, effectively stripping these spaces of their constitutionally significant public forum status.

[T]he government “may not by its own *ipse dixit* destroy the ‘public forum’ status of streets and parks which have historically been public forums.” *Mahoney*, 105 F.3d at 1458 (quoting *United States Postal Service v. Council of Greenburgh Civic Ass’n*, 453 U.S. 114, 133 (1981)).

[T]here is no authority for the proposition that the government may by fiat take a public forum out of the protection of the First Amendment by behaving as if it were a private actor. Indeed, such authority as exists is directly to the contrary.

Mahoney, 105 F.3d at 1457.

This Court is clear that government cannot “transform the character of

property by the expedient of including it within the statutory definition of what might be considered a nonpublic forum parcel of property” or property open to only certain viewpoints or speakers. *Mahoney*, 105 F.3d at 1458 (quoting *United States v. Grace*, 461 U.S. 171, 180 (1983)); *See also Henderson v. Lujan*, 964 F.2d 1179, 1181 (D.C. Cir. 1992). Yet, that is exactly what the NPS seeks to do with its regulatory definition of “PIC Bleacher Area[s].”

The District Court stated that its ruling addressed a “close and novel question.” JA 66. It opined that the doctrine it was applying to reach this “close” decision was “a relatively recent development in federal case law and that the test to determine if something is an example of government speech has not been clearly established.” JA 65 – 66 (citing *Nat’l Ass’n of Manufacturers v. Perez*, 103 F. Supp. 3d 7, 15 n. 4 (D.D.C. 2015)).

Whatever the outer reaches may be of the government speech doctrine, as articulated in *Walker*, it is clearly not applicable to the public forums *sub judice*.

In proceedings below, even the government did not suggest *Walker* was relevant to this case or to be relied upon.

The first reference to *Walker* is in the court’s final opinion. There was no reference to *Walker* or the three *Walker* standards in any brief or at oral argument.

Dispositive briefs were completed in 2014. *Walker* issued on June 18, 2015.

Opportunities existed, but were not availed, for the government to submit

notice of supplemental authority if the government viewed the case as relevant.

See, e.g., ECF No. 218 (ANSWER's supplemental authority, *Reed v. Gilbert*, 135 S. Ct. 2218 (2015)); ECF No. 197 (regarding *McCullen v. Coakley*, 134 S. Ct. 2518 (2014) and *Edwards v. District of Columbia*, 755 F.3d 996 (D.C. Cir. 2014)).

No reference was made at the October 22, 2015, dispositive oral argument by any party or the court to either *Walker* or *Summum*. JA 247 – 364.

It may be the case that the absence of adversarial presentation and development contributed to the substantial error in the court's ruling.⁴

Evaluation of the three *Walker / Summum* factors is dispositive that the government speech doctrine is inapplicable here.

A. The First *Walker / Summum* Factor (History of the Medium Conveying Government Speech) Is Not Satisfied

The first *Summum / Walker* factor is whether the medium at issue has a long history of conveying government speech. *See Walker*, 135 S. Ct. at 2250.

The District Court's analysis was as follows:

[S]ince the founding of this nation, the United States government has used the Presidential Inaugural Ceremony and its attendant celebrations to “speak to the public.” Going back to George Washington's Inaugural Address at the first Inauguration in 1789 and

⁴ As the Court notes, JA 67, ANSWER at times referenced PIC's speech as “that of the government,” referring to the alignment of viewpoint between PIC and the administration and the government's favoring of PIC's speech. ANSWER never suggested or represented that the PIC's speech from sidewalks or bleacher areas constituted “government speech” as a legal term of art, nor had the government speech doctrine even been suggested as relevant to this case.

the first organized Inaugural Parade in 1809 at the Inauguration of James Madison, **the Inauguration Ceremony and the Parade** are used every four years as a platform for the government to communicate with the public.

JA 66 (emphasis added).

The District Court uses the wrong object for its analysis. The Inauguration Ceremony, the swearing-in at the U.S. Capitol or the oath of office, is not the medium at issue. Neither is the Inaugural Parade on the roadway. This case is not about access to the swearing-in ceremony or participation in the parade on the roadway.

The medium that is the object of proper analysis is the Pennsylvania Avenue sidewalks and parklands on Inauguration Day and the issue is about the right of the people to speak to their government from that public fora.

Any suggestion that the “celebration” of an inauguration means that dissent is unwelcomed must be rejected. A celebration of democracy encompasses free speech, whether consonant with or dissenting from administration policy. Nothing in the record establishes that dissent interferes with the celebration of democracy. Dissent manifests democracy.

The District Court does not address this first required factor, whether there exists a long history of using those traditional public forums, generally, or the PIC Bleacher Areas, specifically, for government speech. There is no such history.

1. Historically, the Pennsylvania Avenue Sidewalks and Public Spaces Along the Inaugural Parade Route Have Been for the Expression of the People, Including Dissenters

There is no record evidence, nor history, of the Pennsylvania Avenue sidewalks and parklands being used for government-controlled speech on Inauguration Day. *See* JA 534 (NPS: The Avenue is “America’s Main Street”); JA 544 (NPS: “the place where Americans from all over the country have come together throughout our nation’s history . . . to try to influence their president and representatives”).

It is erroneous to conflate the parade on the roadway with the expression of the people, including dissent, *alongside* the parade.

“The careful selection of participants for the inaugural parade is a traditional way for a new President to make a statement about his beliefs or values.” JA 963 – 64, Shelly McKenzie, A Brief History of Presidential Inaugural Celebrations at the White House, *in* A History of Presidential Inaugural Celebrations and Events of Public Expression at the White House and President’s Park (1999) (Administrative Record 3428-32). “Additional and intentional significance was added to the inaugural celebration in the mid-20th century with the adoption of a ‘themed’ inauguration.” JA 964.

Just as firmly rooted in history and democratic tradition is the use of the public spaces approaching Pennsylvania Avenue for the expression of the people,

including protest groups.

The public and protesters have their say, whether consonant with or dissenting from the government's message, on the plazas and sidewalks along the parade route.

Just as those involved in inaugural preparations have sought to infuse an inauguration with a particular theme, other Americans have found presidential inaugurations, with their political significance and public focus, an optimal time to bring public attention to a particular issue or cause. Woodrow Wilson's inauguration in 1913 saw the first large-scale demonstration outside the White House gates. Women's suffrage advocates stages a protest march down Pennsylvania Avenue and near the White House on the day before the inauguration hoping to influence the new President's beliefs. The inaugurations of the 1960s and 1970s were also the focus of several large demonstrations on behalf of civil rights and anti-war causes. Today, any group wishing to protest or support a cause can apply to the Department of the Interior for a permit to demonstrate on January 20.

JA 964 – 65.

At times, dissent is the dominant manifestation alongside the Inaugural Parade route. The second Inauguration of President Richard M. Nixon is one such example. JA 1079, Administrative Record 3545 (“Protestors lined the streets during the parade . . .”).

In recent inaugurations since the NPS became the stewards of this space, including in 1997, 2001 and 2005, there have been efforts by the government to convert the sidewalks and plazas into vast and exclusive forums for government supportive, and thus government-favored, speech. In 2008, the District Court ruled

this practice unconstitutional, a ruling not appealed. Constitutionally impermissible conduct cannot bootstrap itself into existence in such a self-referential manner.

Henderson, 964 F.2d at 1183.

Nor does the recent practice of creating exclusion areas on a politically partisan basis - - challenged consistently in these courts - - constitute a historic basis on which to justify their perpetuation.

The first *Summum / Walker* factor requires an almost unyielding and universal history to be satisfied.

In *Summum*, it was observed that “[p]ermanent monuments displayed on public property typically represent government speech.” *Summum*, 555 U.S. at 470. “When a government entity arranges for the construction of a monument, it does so because it wishes to convey some thought or instill some feeling in those who see the structure.” *Id.* This has held true “[s]ince ancient times” to current day. *Id.* It is an “obvious proposition” that a government commissioned monument constitutes government speech and, in *Summum*, the Court found a government selected monument to be no different. As the record in *Summum* reflects, history admits of no deviation from this near-axiomatic truism.

In *Walker*, the Court reviewed the long history of states displaying state slogans and messages on license plates. *Walker*, 135 S. Ct. at 2248. Since 1913 Texas displayed its state emblem on its plates and, since 1936, printed state and

state-selected slogans on the plates. *Id.* License plates, essentially Government IDs, *id.* at 2249, “are not traditional public forums for private speech,” *id.* at 2250.

“[T]he history of license plates shows that, insofar as license plates have conveyed more than state names and vehicle identification numbers, they long have communicated messages from the States.” *Id.* at 2248. The Court found that without exception, license plates are “government-mandated, government-controlled, and government-issued IDs that have traditionally been used as a medium for government speech.” *Id.* at 2250.

Comparison is completely inapposite between the historic usage of Pennsylvania Avenue sidewalks and plazas, quintessential public forums *see Perry*, 460 U.S. at 45, and that of the government structures and property in *Sumnum* and *Walker*.

2. Historically, Inaugural Committee Bleachers were Public Grandstands with Tickets Sold to the Public at Nominal Cost on a Non-Partisan Basis

Historically, public bleachers were erected by Inaugural Committees with tickets sold to the public at nominal cost and on a non-partisan basis. JA 969, Administrative Record 3435 (nonpartisan merchants’ guaranty fund, used throughout the 19th to mid-20th centuries, “financed the construction of public grandstands, for which tickets were sold”).

For the 1905 Inauguration of Theodore Roosevelt:

Over 200,000 spectators witnessed the inaugural parade. Tickets for seats in the public grandstands were sold in Washington department stores for a nominal fee. Bleachers featuring a roof or overhang usually commanded a slightly higher price.

JA 1030, Administrative Record 3496.

For the 1913 Inauguration of Woodrow Wilson, “Tickets for the [inaugural parade] grandstands were sold to the public for \$1 per seat by the inaugural committee.” JA 1035, Administrative Record 3501.

The inaugural committees maintained a practice of arms-length sales of tickets to the public well past the 1956 enactment of the PICA. In 1985, the Reagan-Bush Inaugural Committee “was forced to refund 25,000 tickets worth almost \$900,000 because of the cancelled parade.” JA 1087, Administrative Record 3553.

The 1997 (Clinton), 2001 and 2005 (Bush) PICs distributed tickets to the PIC Bleacher Areas on a partisan or viewpoint basis, with all tickets being distributed to donors or supporters of the inaugurated President. *See Mahoney; Supra n. 2*. The 2009 (Obama) PIC reportedly elected a hybrid approach, distributing 5,000 tickets to the public at nominal cost on a non-partisan basis,⁵ and the estimated remaining approximately 3,500 to donors or supporters. The 2013

⁵ *Gone in 60 seconds - inaugural parade tickets*, Associated Press, Jan. 10, 2009, <http://www.politico.com/story/2009/01/gone-in-60-seconds-inaugural-parade-tickets-017310>.

(Obama) PIC reportedly sold an unspecified number of tickets to the public for \$25 apiece.⁶ Under the 10-Minute Parade Rule, unclaimed seats, if any, in PIC Bleacher Areas are filled by members of the public without regard to viewpoint.

What is manifestly clear is that there is no record evidence of a long historic tradition - - even with respect to PIC Bleacher Area spaces - - that they are a medium used for government speech, much less exclusively used for such.

B. The Second *Summum* / *Walker* factor (Close Identification Between Speech and the Government) is Not Satisfied

The second *Summum* / *Walker* factor is whether there is close identification between the speech at issue and the government.

In *Summum*, the Court found “there is little chance that observers would fail to appreciate the identity of the speaker” as the government when they come upon a permanent monument erected on public parkland. *Summum*, 555 U.S. at 471.

In *Walker*, the Court concluded that license plate designs “are often closely identified in the public mind with the [State].” *Walker*, 135 S. Ct. at 2248 (citing *Summum*, 555 U.S. at 472). The Court observed that: license plates serve the government purpose of vehicle registration and identification; the State places the name “TEXAS” in large letters at the top of each plate; the state requires owners to

⁶ Sheryl Goy Stolberg, *After Ticketmaster Glitch, Inaugural Ball and Parade Tickets Sell Out Early*, N.Y. Times, Jan. 7, 2013, http://thecaucus.blogs.nytimes.com/2013/01/07/after-ticketmaster-glitch-inaugural-ball-and-parade-tickets-sell-out-early/?_r=0.

display the plates; the state issues each plate; the state owns the designs of the plates including those adopted from private individuals or organizations; and the state controls all aspects of use even to mandating the manner of disposal. *Walker*, 135 S. Ct. at 2248. Because “Texas license plates are, essentially, government IDs,” *Id.* at 2249, persons who view the IDs “routinely - - and reasonably - - interpret then as conveying some message on the [issuer’s] behalf.” *Id.*

Applying this factor to the circumstances at bar requires evaluation of whether a fully informed or reasonable observer, looking at the free speech of individuals on the sidewalks and plazas approaching Pennsylvania Avenue on Inauguration Day would “fail to appreciate the identity of the speaker” as the government.

There is no basis for such an observer to even begin to think that the speech of the people on the public sidewalks or plazas along the public Inaugural Parade route is the government’s speech. No reasonable person would think that the U.S. Government, upon the inauguration of “the leader of the free world,” scripts or exerts editorial control over the expression of the individuals who line the parade route and occupy the parks or sit in the bleachers. Broadcast the world over, the appearance of the people along the route engaged in free speech is a manifestation of democracy, lending credence to the notion that this is a free society and that the citizenry is able to engage in free speech alongside the Inaugural Parade without

government-compelled speech or censorship.

The people occupying the sidewalks, parks and bleachers alongside the parade and speaking to the government officials in the parade - - regardless of whether they cheer for or chant dissent - - are viewed by observers as having their own free will, not as mouthpieces of government speech. They are not monuments or license plates.

The signs, banners, manifestations of dissent and patriotism, cacophony of diverse voices and images - - some of which support and some which oppose certain government policies - - is what democracy looks like. An observer expects the speech on these sidewalks to be free speech and not government speech.

The District Court misapplied this second factor, focusing its analysis on the Inauguration swearing-in ceremony and the Inaugural Parade rather than the viewing and expressive spaces along the parade.

[T]he Inauguration Ceremony and Parade are “closely identified in the public mind with” the United States government. Indeed, it is difficult to conceive of speech more closely associated with the government than the oath-of-office of the Chief Executive of the United States and the celebration of his or her Inauguration. “[A] reasonable and fully informed observer would understand [such] expression to be government speech, as distinct from private speech[.]”

JA 22.

While the District Court referenced “celebration of [the incoming President’s] Inauguration,” even that celebration cannot be defined as monolithic

or limited to a narrow realm of expression that simply parrots support for the new President's policies. Such a viewpoint-restricted understanding of "celebration" is unjustified. The celebration is of American democracy, which embraces dissent. JA 965 – 66, Administrative Record 3432 ("The quadrennial festivities of January 20 no longer celebrate one person's election to political office but a democratic government at work.")

Elsewhere in its opinion, the District Court returns to this factor to state [R]easonable observers would readily identify the Parade and the activities surrounding it, including the official viewing stands for the President's ticketed guests, as representing the viewpoint of the United States government.

JA 69.

No doubt the official Presidential Reviewing Stand is distinctive. It is also not at issue in this litigation. It is located at the White House. It bears the official seal of the President of the United States. Seated within those stands are the President, First Family, invited guests of the President, identifiable members of government. Ceremonial duties of review of the passing parade are conducted from there.

C. The Third *Summum* / *Walker* Factor (Government Control of Speech at Issue) is not Satisfied

The District Court concluded that "the final, and perhaps most important, factor - - control over content - - arguably weighs to some extent against finding government speech." JA 68.

Government control over the speech at issue is the *sine qua non* of government speech. The additional two earlier factors flow only from the existence of direct government control of the content of communication.

The Supreme Court precedents are uncompromising. There must be complete, full and final government control over every last word of expression for this factor to be satisfied.

Obviously, government fully controls the messages and form of permanent monuments it commissions. Government “‘effectively control[s]’” the messaging and form by “‘exercising ‘final approval authority’” over selected works, *Summum*, 555 U.S. at 473, and by exercising full “‘editorial control’” over form and substance, *id.* at 472.

The Texas government “‘maintains direct control over the messages conveyed on its specialty plates,” *Walker*, 135 S. Ct. at 2249, “‘has sole control over the design, typeface, color, and alphanumeric pattern for all license plates,” *id.*, and has “‘final approval authority’” over every aspect of these multi-faceted elements of communication.

A government-funded advertising campaign, created with the involvement of a third party advertising agency, constitutes government speech because government “‘exercises final approval authority over every word’” of the advertising. *See Johanns*, 544 U.S. at 561.

The District Court correctly found that “there is no direct evidence in the record as to the extent to which, if any, the government retains control and final authority over PIC’s expressive activities – such as the signs, flags, or banners displayed – within the set-aside areas at the Inaugural Parade.” JA 67.

The NPS allows PICs to distribute tickets on a partisan basis, to decide who has access to public fora, but that does not constitute the full, final and complete editorial control over all speech required to satisfy the government speech doctrine.

The issue, of course, is whether every last word of expression is *government* controlled such that the emanating speech and expression from PIC bleacher areas constitutes that of the government itself.

Although the PIC can fill the bleachers with pro-government expression, and block issuance of permits to demonstrators, there is no record evidence that either the government or PIC exercises full editorial control and final authority over the speech that may be used by ticketholders or by members of the public admitted under the 10-Minute Parade Rule.

The record evidence, with consideration of the 10-Minute Parade Rule, is that the government now eschews such formal and direct governmental control over individuals’ speech in the PIC Bleacher Areas.

II. The Challenged Regulations are Unconstitutional Under Public Forum Analysis

The First Amendment provides, in relevant part, “Congress shall make no

law . . . abridging the freedom of speech . . . or the right of the people to peaceably assemble, and to petition the government for a redress of grievances.” U.S. Const. amend. I.

Claims under the Free Speech Clause of the First Amendment are analyzed in three steps: First, “we must . . . decide whether [the activity at issue] is speech protected by the First Amendment, for, if it is not, we need go no further.” *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 797, 105 S. Ct. 3439, 87 L. Ed. 2d 567 (1985). Second, assuming the activity is “protected speech, we must identify the nature of the forum, because the extent to which the Government may limit access depends on whether the forum is public or nonpublic.” *Id.* And third, we must assess whether the government’s justifications for restricting speech in the relevant forum “satisfy the requisite standard.” *Id.*

Boardley v. U.S. Dep’t of the Interior, 615 F.3d 508, 514 (D.C. Cir. 2010).

Strict scrutiny is the requisite standard for judicial review of a speech restriction that turns on a content- or viewpoint-based distinction. *See Boos v. Barry*, 485 U.S. 312, 321 (1988) (content- and viewpoint-based distinctions in a public forum are subjected to the “most exacting scrutiny”); *See also Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995) (viewpoint-based discrimination is a “more blatant” and “egregious form of content-discrimination”); *Citizens United v. Federal Election Comm’n*, 558 U.S. 310, 340 (2010) (identity-based restrictions “are all too often simply a means to control content”).

The Supreme Court emphasizes the constitutional need for application of

“clear and firm” rules as an “essential means of protecting freedom of speech, even if laws that might seem ‘entirely reasonable’ will sometimes be ‘struck down because of their content-based nature.’” *Reed*, 135 S. Ct. at 2231 (quoting *City of Ladue v. Gilleo*, 512 U.S. 43, 60 (1994) (O’Connor, J., concurring)).

ANSWER makes no suggestion that the challenged regulations are reasonable. *See Hague v. Comm. for Indus. Org.*, 307 U.S. 496, 516 (1939) (one’s right to free speech “must not, in the guise of regulation, be abridged or denied”). The government argues, though, that its restrictions on dissent are more reasonable and less severe under these regulations than in 1997, 2001 or 2005. The threshold issue is not whether today the government is more or less severe in the exercise of content-based distinctions, but whether the Constitution affords the government the authority to make such distinctions whatsoever.

The fact that the government has reduced the set-aside for PIC - - albeit still blocking the whole park of Freedom Plaza from demonstrators - - is demonstrative proof that even its claims of significant government interest in these set-asides have always been overblown. Under current regulations, there is no legitimate government interest in blocking demonstrators from full or multiple occupancy of Freedom Plaza.

The identity-based distinction in the challenged regulations is a viewpoint-based, as well as content-based, distinction for reasons discussed.

To survive strict scrutiny, the government must prove that the content- or viewpoint-based regulation is necessary to serve a compelling government interest and is narrowly drawn to that end. *Boos*, 485 U.S. at 321 (citing *Perry*, 460 U.S. at 45); *Mahoney*, 105 F.3d at 1455.

The government in this case does not claim a compelling interest is served by the challenged regulatory distinction. As such, it lacks the authority to issue the regulations at bar. It has never attempted to meet this standard and proffered nothing to do so.

The total ban on demonstration permits for Freedom Plaza denies groups voicing dissent access to this park, even shared use of the raised plaza. It is the only space along the route designed and capable of accommodating a centralized large demonstration assembly. There is no alternative channel for such collective expression and assembly.

A. ANSWER's Demonstration Activity is Speech Protected by the First Amendment

ANSWER's demonstration activities, its free speech including on issues of racism and war, constitute core political speech protected by the First Amendment. *See Grace*, 461 U.S. at 176; *Mahoney*, 105 F.3d at 1455.

The "general concepts of First Amendment freedoms are given added impetus as to speech and peaceful demonstrations in Washington, D.C., by the clause of the Constitution which assures citizens of the right to assemble peaceably

at the seat of government and present grievances.” *A Quaker Action Group v. Morton (Quaker Action III)*, 460 F.2d 854, 859 (D.C. Cir. 1971).

B. Freedom Plaza, the Pennsylvania Avenue Sidewalks and Parklands Are Quintessential Public Forums

It is not disputed that the spaces at issue are traditional public forums.

1. Pennsylvania Avenue Sidewalks Are Public Forums

“[T]he sidewalks of Pennsylvania Avenue [] decidedly constitute a public forum.” *Mahoney*, 105 F.3d at 1457.

Here, the dedicated use of the property in question is as a sidewalk - a quintessentially public forum. Its use on the date on which appellants sought to exercise their First Amendment rights was not only as a forum as public as ever, but if anything more so. The event in question was the observance of the inauguration of the Chief Executive of the United States, an event less private than almost anything else conceivable.

Mahoney, 105 F.3d at 1458.

2. Freedom Plaza is a Quintessential Public Forum With Unique History, Dedication, Physical Characteristics, Design and Purpose for Facilitating Demonstrations

Freedom Plaza is unique among the public spaces along Pennsylvania Avenue in terms of physical characteristics, design, dedication and function.

The NPS Pennsylvania Avenue National Historic Site Management Plan states Freedom Plaza is “a raised urban paved landscape **designed to accommodate demonstrations** and special events . . .” JA 755; JA 732 (picture); JA 435 – 36 ¶¶ 7, 9, 10, Becker Decl. (attesting to why there is no comparable

space along the route for ANSWER's intended activities).

The government has argued ANSWER should be satisfied with John Marshall Park. The NPS expressly distinguishes Freedom Plaza, a "site[] for demonstrations and public gatherings," from "spaces for passive recreation, such as Pershing and John Marshall parks." JA 754; JA 445 ¶ 39, Becker Decl. (why John Marshall cannot physically accommodate the bleachers and demonstration activities intended for Freedom Plaza); *See also* JA 445 – 46 ¶ 40 (why the obstructed peripheral sidewalk near Freedom Plaza is no substitute for the Plaza).

One need look only at the 2008 settlement which granted ANSWER a permit for shared occupancy of Freedom Plaza, to "have bleachers, a stage and sound towers" for demonstration and rally activities. JA 423, 427 (map). John Marshall Park cannot accommodate these activities.

C. The Challenged Regulations are Subject to Strict Scrutiny

The government does not claim that the challenged regulations survive strict scrutiny. This is fatal to the regulation.

1. The Regulatory Distinction is Identity-Based, Viewpoint-Based and Content-Based, and Therefore Subject to Strict Scrutiny

The challenged regulations do not distinguish between permit applicants for Freedom Plaza and other designated spaces on the basis of neutral or non-discriminatory circumstances.

The regulations distinguish expressly on the basis of identity. Addendum 8,

36 C.F.R. § 7.96(g)(4)(i, iii) (designating spaces as “PIC Bleacher Area[s]” for the “exclusive use of the Presidential Inaugural Committee on Inaugural Day for ... [t]icketed bleachers viewing and access areas”).

This identity-based distinction is a viewpoint-based distinction.

Within this and predecessor litigation, the government has repeatedly argued that each PIC is a private viewpoint-based advocacy organization aligned with the incoming government and that dissenters interfere with its pro-government viewpoint and expression. *See Mahoney* at 1458-59 (dissenters argued to constitute intruders upon PIC’s pro-government speech); *ANSWER II*, 537 F. Supp. 2d at 204-06 (same, ANSWER’s expression argued was an interference with PIC’s pro-government expression); ECF No. 20 at 32 (NPS vigorously contends PIC has right to obtain permit and “express their views free from interference or unwarranted intrusion from other groups” including ANSWER).

At oral argument, the government argued the regulatory set-aside enhanced the “visible presence” of PIC ticketholders’ viewpoint and political expression. JA 256: 18 - 21 (“if you are engaging in First Amendment activities, you want to have a visible presence, and that’s where the Presidential Inaugural Committee for its ticketholders wants to be able to provide a presence”). Notably, the government did not argue that this “presence” was government speech outside the Free Speech clause but rather that the PIC’s ticketholders were engaged in First Amendment

activities.

In concluding that the regulatory distinction does not constitute viewpoint- or content-based discrimination because the government speech doctrine applies, the District Court conflated government-*favored* speech with the government's own speech. JA 68.

While the holding was erroneous that the doctrinal exception applies, once that error is recognized, what remains for adjudication is the straightforward question of whether the viewpoint-based distinction survives the appropriate doctrinal framework, i.e., public forum analysis.

[T]he fact that a distinction is speaker based does not ... automatically render the distinction content neutral. Because **“[s]peech restrictions based on the identity of the speaker are all too often simply a means to control content.”** *Citizens United v. Federal Election Comm’n*, 558 U.S. 310, 340, 130 S.Ct. 876, 175 L.Ed.2d 753 (2010), **we have insisted that “laws favoring some speakers over others demand strict scrutiny when the legislature’s speaker preference reflects a content preference,”** *Turner*, 512 U.S., at 658.

Reed, 135 S. Ct. at 2230 (emphasis added).

“[T]he Government may commit a constitutional wrong when by law it identifies certain preferred speakers.” *See Citizens United*, 588 U.S. at 340-41.

[S]peaker-based laws demand strict scrutiny when they reflect the Government's preference for the substance of what the favored speakers have to say (or aversion to what the disfavored speakers have to say). *See Regan v. Taxation with Representation of Wash.*, 461 U.S. 540, 548, 103 S.Ct. 1997, 2002, 76 L.Ed.2d 129 (1983) (rejecting First Amendment challenge to differential tax treatment of veterans groups and other charitable organizations, but noting that the case

would be different were there any “indication that the statute was intended to suppress any ideas or any demonstration that it has had that effect”).

Turner Broad. Sys., Inc. v. F.C.C., 512 U.S. 622, 658 (1994).

Every aspect of the challenged regulatory distinction is about the government’s preference for the entity which promotes the incoming government’s viewpoint. Only one entity is favored. The entity favored is a partisan political organization. The favored entity is, by its structure, politically aligned with the incoming President. The government function at issue has to do exclusively with the administration of public forum spaces for engaging in political expression along the Inaugural Parade route.

This is the same government agency, the NPS, which evidenced its intent to engage in “blatant viewpoint discrimination” in *Mahoney*, and which engaged in viewpoint-based discrimination to issue the PIC permits for the 1997, 2001 and 2005 Inaugurations deemed unconstitutional in this litigation, *ANSWER II*, 537 F. Supp. 2d 183. The NPS’s intent to favor the PIC’s facilitation of pro-government speech is patent and enduring.

The government has argued, below, that its distinction does not constitute viewpoint-based discrimination because “different PICs represent different viewpoints” and because “until an election is held the views of the incoming administration are completely unknown.” This is a meritless argument. The

government-aligned viewpoint and the administration's advocacy group is granted preferential treatment regardless of which party wins or what viewpoints are held. The government's favored views are *always* granted preferential treatment.

Of course, administrations change and consequentially government policies change. Even within the course of an administration, policy views may alter. What is constant in this case is that favored viewpoint is always aligned with the government. The abridged speech is dissenting free speech and assembly.

By all definitions, the regulatory distinction is identity-based, viewpoint-based and content-based. *See Reed* at 2231, 2226-28 (“[A] speech regulation is content based if the law applies to particular speech because of the topic discussed or the idea or message expressed.”); *Rosenberger*, 515 U.S. at 829 (viewpoint-based discrimination is a subset of content-based discrimination, a more “egregious form of content discrimination”); *See also R.A.V.*, 505 U.S. at 386 (“The government may not regulate based on . . . favoritism . . . towards the underlying message expressed.”).

Content-based restrictions on speech are presumptively unconstitutional and may be justified only if the government proves they are narrowly tailored to serve compelling state interests. *Reed*, 135 S. Ct. at 2226; *R.A.V.*, 505 U.S. at 395; *Forsyth Cnty v. Nationalist Movement*, 505 U.S. 123, 135 (1992); *Boos*, 485 U.S. at 321; *Grace*, 461 U.S. at 177; *Mahoney*, 105 F.3d at 1455.

The Constitution protects against an outright ban or censorship on the basis of favored or disfavored view. It also protects against abridgment on such basis. *R.A.V.*, 505 U.S. at 392; *Police Dep't of City of Chicago v. Mosley*, 408 U.S. 92, 96 (1972) (“[G]overnment must afford all points of view an equal opportunity to be heard”); *White House Vigil for the ERA Comm. v. Clark*, 746 F.2d 1518, 1527 (D.C. Cir. 1984) (courts “will not tolerate any attempt to discriminate among protestors on the basis of viewpoint or subject matter”); *Women Strike for Peace*, 472 F.2d at 1293 (to be constitutional, NPS permitting regulations must “meet the test of scrupulous evenhanded required when government regulates First Amendment activity”).

2. The Government Does Not Claim the Regulation Advances a Compelling Government Interest

The government does not claim a compelling government interest is advanced by the challenged regulation. As such, it cannot survive strict scrutiny.

3. The Government Does Not Show That a Discriminatory Allocation of Public Space is Narrowly Tailored to Advance Any Significant Interest

The government argues an intermediate scrutiny standard applies.

The government has the burden to establish that discriminatory allocation, as opposed to non-discriminatory allocation of public space including the demonstration site of Freedom Plaza, is narrowly tailored to advance any significant interest.

The government has disclaimed all previously proffered significant interests save two: The interest in having an inauguration and the interest in having PIC media platforms on Freedom Plaza.

Previously, the government claimed the challenged set-aside of PIC Bleacher Areas advanced a significant interest in having the PIC provide public toilets. This was disclaimed at oral argument. JA 269:2 - 3.

The government also disclaimed any government interest in helping PIC engage in private fundraising or sales through ticket sales/distributions. JA 269:4 - 5 (“The government interest here is not in having PIC sell tickets.”).

Government counsel described its significant interest as follows:

The Government interest here is having an Inauguration. That’s the level at which we believe this Court should be looking at this particular part of the analysis. . . . And that significant government interest is embodied in the Presidential Inaugural Ceremonies Act. So we have a statute that indicates what the Government interest is. That there be an inaugural ceremony, that the ceremony [and] assorted functions and activities be planned and organized by the Presidential Inaugural Committee.

JA 269:5 - 16.

The government has failed to meet its burden of providing evidence to show that the challenged regulatory provision substantially and materially advances its interest in “having an inauguration” or an inaugural parade.

There is no risk that the Inauguration or parade is not going to happen. In the complete absence of the discriminatory regulatory set-aside there will be, and have

been, inaugurations and inaugural parades.

That the [government's] asserted interests are substantial in the abstract, however, does not end our inquiry. To satisfy narrow tailoring, the [government] must prove the challenged regulations directly advance its asserted interests....The burden is not satisfied by mere speculation or conjecture; rather, a governmental body seeking to sustain a restriction on ... speech must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree.

Edwards v. District of Columbia, 755 F.3d 996, 1003 (D.C. Cir. 2014) (citations omitted).

Particularly where First Amendment rights are at stake, claims of government purpose or harm must be proven “upon substantial evidence.” *Id.* (quoting *Turner*, 520 U.S. at 196).

Courts must “closely scrutinize challenged speech restrictions” to determine if they indeed promote claimed interests or guard against claimed harms. *Id.* (citing *Lederman v. United States*, 291 F.3d 36, 44 (D.C. Cir. 2002)).

The government has failed its burden.

The record is devoid of evidence that there is any jeopardy to the recurrence of the national inaugural celebration.

There is no evidence that discriminatory allocation, as opposed to non-discriminatory allocation of public space, including specifically access to Freedom Plaza, advances any legitimate interest.

The public Inaugural Parade is deeply rooted in the American tradition,

dating to the very first Inauguration when George Washington took the oath of office in 1789 in New York City. The Inauguration will go on regardless of whether demonstration groups are allowed a permit to express themselves on Freedom Plaza.

In 2009, ANSWER was permitted use of Freedom Plaza for demonstration bleachers sitting alongside PIC's bleachers and the media platform. JA 423, 427, 735 – 44. The nation had an Inauguration and a parade. The sky did not fall.

This fact alone definitively disproves the government's argument as to the necessity of the Freedom Plaza set-aside to further the government's interest in "having an inauguration."

The government claims a significant interest is embodied in the PICA, *id.*, arguing that PIC "statutorily comes into existence under the" PICA. JA 266:13 - 15.

The PICA does not create a PIC. It does not grant special statutory status to the PIC. The PIC has no duty to sponsor or determine any particular inaugural-related event, but "is merely recognized by statute as a coordinating committee should a future President so designate such a group." *Newdow*, 603 F.3d at 1011.

The purpose of PICA enactment, as reflected in legislative history, was administrative convenience.

In 1956, prior to the District of Columbia Home Rule Act of 1973, there was

no ongoing authority for the government to issue permits for public space to Inaugural Committees. The cumbersome practice was that every four years the Commissioners of the District of Columbia sent requests to Congress for congressional enactment of routine proposed resolutions to authorize such use and other Inaugural-related matters. *See* JA 419, H.R. Rep. No. 2611 at 2 (1956); JA 421, S. Rep. No. 2645 at 1 (1956) (identifying purpose of PICA); *See* ECF No. 4 at 10-17 (providing detailed legislative and regulatory history of PICA).

The PICA granted this routine authority, authorizing that District and federal governments “**may** grant to the Inaugural Committee a permit” for use of public spaces in connection with Inaugural activities. Addendum 22, 36 U.S.C. § 503(a) (emphasis added). The provision is permissive, not mandatory. PIC is not even entitled to a permit under PICA as a matter of right. The Inaugural Committee permittee is expressly subject to whatever permit conditions are imposed by the grantor or by law. *Id.*

Nothing in the PICA addresses demonstrators or the constitutional standards to which the government is subject under the First Amendment. *See Saffron v. Wilson*, 481 F. Supp. 228, 234 (D.D.C. 1979) (PICA “did not address demonstrators or demonstrations or the effect of the *Quaker Action* order”); *ANSWER II*, 537 F. Supp. at 202 - 203.

Nothing in the PICA’s text or history authorizes discrimination against

dissent.

Whatever “planning and executing” functions a PIC may assume, *see* JA 71, the use of Freedom Plaza by PIC ticketholders on Inauguration Day has nothing to do with event planning.

The PIC Bleacher Areas do not support parade execution. The PIC does not command or control the execution of the parade. The Armed Forces Inaugural Committee does. JA 388, 73 Fed. Reg. at 67742; JA 687. AFIC Parade Control Areas designated on regulatory maps, Addendum 10 – 14, are unaffected by the relief requested.

The government, at oral argument, persisted in the assertion that the government had a significant interest in ensuring that PIC’s media platforms were undisturbed on Freedom Plaza.

The relief requested does not affect PIC’s media platforms.⁷ The only space affected is public forum space used for expressive purposes, i.e., PIC Bleacher Areas, which must be permitted on a non-discriminatory basis.

Freedom Plaza accommodates media platforms *and* bleachers. The map accompanying ANSWER’s 2009 permit for Freedom Plaza shows that the plaza was ample for simultaneous occupancy by PIC bleachers, ANSWER bleachers and

⁷ Given that one current Presidential candidate has revoked media credentials of major media organizations which have aired critical reporting, the notion that media platforms be intermediated by the PIC on a potential partisan basis raises substantial issues possibly for another day.

PIC media platforms. JA 743.

Although the government disclaimed an interest in helping PIC engage in private fundraising or sales through ticket sales/distributions, incongruously the District Court credited a significant interest that parade ticketholders are “a substantial source of PIC’s private fundraising.” JA 72.

PICs are private political advocacy and campaign-related organizations whose purpose includes holding lavish private celebrations of the incoming President’s electoral victory.

Adding to PIC’s private coffers is a private pecuniary interest, not a significant government interest. *See* JA 506, 62 Comp. Gen. 323, 1983 Comp. Gen. LEXIS 1305, *3 (Comptroller General finds no legal basis for DOD participation in PIC’s balls and celebratory events, as “Presidential inaugural balls are basically private gatherings or parties . . . whose proceeds go to the private, non-Government PIC.”).

The PICs are profitable fundraising machines that accumulate millions in excess revenues for its private coffers with the U.S. Government subsidizing the lion’s share of parade- and other event-related expenses. The U.S. taxpayer pays the largest share of Inaugural-related expenses. *See* JA 473 – 74 (Congress Research Service report); JA 493 – 96 (NPS budget 2013 multi-million dollar appropriations for Inauguration); JA 514 – 516 (Government Service

Administration contributes substantial material resources to Inaugural planning, starting three years in advance). PICs reportedly accumulate millions in profit or surplus revenue. JA 524 (Associated Press: 1997 PIC surplus added to President Clinton's 1993 PIC surplus of \$9 million); JA 518 – 20 (2009 PIC raised \$9 million surplus above \$45 million budget), JA 521 (same); JA 525 – 29.

For the 2009 Inaugural, the Architect of the Capitol was authorized to spend \$3.6 million on inaugural support, the JCIC was authorized \$1.24 million, the JTF-AFIC and DOD reported a total cost of \$21.6 million, and the D.C. government reported it spend an estimated \$42.98 million on inaugural operations and support. JA 474; JA 530 (In 1987, Senator William Proxmire issued his “Golden Fleece” award to the PIC for “ridiculous, ironic or wasteful spending” due to the large taxpayer support for PIC private extravaganzas).

Edwards observes that arguments based on economic harms are “susceptible to empirical evidence,” *Edwards*, 755 F.3d at 1005.

There is no evidence that net revenues from bleacher ticket sales are necessary for any PIC to engage in any particular function nor any evidence as to any of PIC's actual expenses related to the parade. PICs don't pay for military participation and support, for law enforcement and security. PICs don't even pay for the local bands which, along with military units and bands, comprise a substantial part of the parade. High school bands have to fundraise for their own

travel and lodging expenses. *See* JA 553 – 54 (Facebook event, high school band raising money for lodging and travel); JA 557 (*New York Times*: participants pay for lodging and travel).

The only purported evidence relating to ticket sales, revenues or expenses was stricken from the record, an affidavit from a Park Ranger who conclusorily stated without personal knowledge that she thought tickets sale helped recoup unspecified expenses. JA 54 – 55.

Any argument about lost PIC ticket sales or revenues is specious. The relief requested would not preclude PIC from having bleacher seats.

4. The Discriminatory Distinction Fails to Leave Ample Alternative Channels for Communication with Respect to Freedom Plaza and the Particular Blocks of Sidewalk Space That May Have Significance Based on Location

The set-aside permanently bars ANSWER from receiving a demonstration permit for Freedom Plaza. There is no comparable or alternative space for demonstration, petition and assembly activity.

“[T]he government’s power over the property under its control is to preserve it ‘for the use to which it is lawfully dedicated.’” *Mahoney*, 105 F.3d at 1458 (quoting *Grace*, 461 U.S. at 177-78).

The District Court too readily dismisses the unique function and physical characteristics of Freedom Plaza as a situs for collective assembly and free speech, to say nothing of its dedication in honor of a profound movement for social justice

and dissent.

ANSWER's interests in collective expression and assembly are at the interstices of free speech, assembly and petition interests - - each of which have constitutional significance.

The Court stated that ANSWER had previously received a permit for "unreserved portions of Freedom Plaza," JA 72. This is not the plaza of Freedom Plaza. It is a corner of unelevated sidewalk space abutting 14th Street, obstructed with trees and a fountain, *see* JA 743 (map reflects area, including tree and fountain obstructions).

This is not an alternative to Freedom Plaza. The regulations deny ANSWER use of the plaza of Freedom Plaza, which is the forum subject to analysis. *See Mosley*, 408 U.S. at 96 ("government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views").

The Pennsylvania Avenue National Historic Site Management Plan describes Freedom Plaza as "a raised urban paved landscape designed to accommodate demonstrations . . ." JA 755. An obstructed portion of space on the periphery and near but not on the raised plaza is no substitute. It is "unreserved" by for the PIC precisely because it lacks the objective qualities of the plaza. *See* JA 445 – 46 ¶ 40.

The government urges that John Marshall Park is a functionally identical situs for ANSWER's activities. As ANSWER's National Coordinator attests, "John Marshall Park is not a plaza. It is narrow and is not flat. It is obstructed by steps/stairs, grassy areas, grates, trees and benches, among other obstructions. These obstructions prevent placement of sizeable bleachers, stage or sound platforms . . . there is a relatively smaller portion of John Marshall Park that abuts Pennsylvania Avenue as compared to Freedom Plaza." *Id.* ¶ 39. The NPS, in its management plan, expressly distinguishes the passive recreation function of John Marshall Park from the active demonstration and assembly function of Freedom Plaza. JA 754.

The District Court erred when it credited the government's argument that ANSWER should be satisfied with John Marshall Park, citing a 2005 post-Inaugural posting in which it declared its organizing to be successful and observed that signs of dissent could be seen from the sidewalks of John Marshall Park as the motorcade passed.

The court's reasoning conflates an ability for individuals to display signs on a shallow sidewalk with ANSWER's collective interest in assembling together for demonstration/rally, to be able to address those assembled with political messaging during the rally, to have a speak-out where the assembled group can be addressed, to have a contiguous space for free exchange between those who gather thereupon,

to be able to have a large and consistent visible manifestation of collective dissent and political messaging from a plaza that is designed to facilitate such democratic action.

In *Mahoney*, the Court observed the absence of authority

for the proposition that the government may choose for a First Amendment actor what public forums it will use. Indeed, it cannot rightly be said that all such forums are equal. The very fact that the government here struggles to bar the speech it fears or dislikes from one forum while offering, whether freely or grudgingly, access to another belies the proposition of equality.

Mahoney, 105 F.3d at 1459; *See also A Quaker Action Group v. Morton (Quaker Action IV)*, 516 F.2d 717, 733 (D.C. Cir. 1975) (rejecting government argument that protesters should protest on the Ellipse, the rear of the White House, rather than in Lafayette Park at the front).

ANSWER's need for Freedom Plaza is to engage in collective assembly and expressive activity. *See De Jonge v. State of Oregon*, 299 U.S. 353 (1937) ("The right of peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental.").

With respect to the designations of sidewalk space as PIC Bleacher Areas, while such spaces in the abstract are similar in functionality to other sidewalks, they are not fungible in terms of political significance. For example, the sidewalks abutting the new Trump Hotel next to the Old Post Office, a situs of enhanced political significance, are designated as off-limits to demonstration permits by the amended regulations, Addendum 12 (map), and yet are uniquely significant given

the prominence of Mr. Trump’s political statements on matters of core social and political import.

In addition, the arbitrary pre-designation of blocks of sidewalk space as outside a generally applicable permitting system removes these spaces from nonexclusive access by ANSWER and other dissenters who wish to leaflet and engage in free speech along the frontlines of the parade route without viewpoint-based exclusion zones.

D. A *Quaker Action Group v. Morton* Prohibits Discrimination on the Basis of Viewpoint or Content in NPS Permitting Regulations

The government justifies the reservation of space for the PIC Bleacher Areas by referencing *Quaker Action IV*, one of a line of cases in which this Circuit struck down NPS permitting actions as unconstitutional, emphatically ruling that the Constitution requires the elimination of discrimination, including political favoritism, however manifest by the NPS in the administration of permitting authorities. *Quaker Action IV*, 516 F.2d at 717 (“[W]e wish to make clear to the Park Service that the premise of our holding is that the provisions of the permit system will be enforced uniformly and **without discrimination** . . .”); *id.* at 728 (requiring modification of regulations “in terms that **do not impermissibly discriminate** against First Amendment activity”); *id.* (observing the Court has no objection to a definition “**which in no way discriminates** against First Amendment activity”); *id.* at 729 (“The Department of Interior has not shouldered

the responsibility to provide discriminating rather than discriminatory park regulations”); *see also O’Hair v. Andrus*, 613 F.2d 931, 934 (D.C. Cir. 1979) (describing *Quaker Action* as requiring that “parks be made available for groups **without discrimination on the basis of content of expression**”); *Saffron*, 481 F. Supp. at 240 (*Quaker Action* requires restrictions on access be imposed only “according to **non-discriminatory**, articulated standards”) (emphasis added in all instances).

The government relies on the portion of the *Quaker Action* opinion which provides that “if the Park Service wishes, it could retain a system of ‘NPS events,’ reserve time in, say, Lafayette Park, and even publish advance schedules.” JA 391, 73 Fed. Reg. at 46216 (quoting *Quaker Action IV*, 516 F.2d at 729).

The government’s citation, however, disregards the full context of the opinion. In offering the suggestion of system of “NPS Events,” the Circuit was clear that it would not disregard its stated “concern that the National Park Service may discriminate against First Amendment activity by selectively granting . . . ‘NPS event’ status . . .” *Quaker Action IV*, 516 F.2d at 728.

The Circuit - - in the very same section of its opinion - - pointedly observed with clear disapproval how “[i]n a previous litigation, the Park Service tried to limit certain protest activities because of conflict with an ‘NPS event’ which was not without political overtones.” *Id.* (citing *Women Strike for Peace*, 472 F.2d at

1280). Political overtones are present here.

E. The Discriminatory Regulations Are Not Saved By NPS Regulations Dictating a 3:1 Ratio of Pro-Government Speech to Dissent in Lafayette Park on Inauguration Day

The NPS argues that the challenged regulations are constitutional because, since 1980, the NPS has reserved space for the Presidential Reviewing Stand upon the White House sidewalks and has established that a 3:1 ratio of PIC-supported or pro-government speech to dissent be established for Lafayette Park on Inauguration Day. The District Court agreed, describing the challenged regulations as “expand[ing] the set-aside to include Freedom Plaza” and other spaces. JA 62.

With respect to the NPS’s determination that there should be a government-fixed balance of pro-government speech to potentially dissenting expression of 3:1 in Lafayette Park, no court has ever adjudicated this arrangement. However, with respect to the Presidential Reviewing Stands, where sits the President and official Presidential guests directly outside the White House across from and at Lafayette Park, and from where the President ceremonially reviews the parade, there are unique ceremonial and security issues that distinguish that space.

ANSWER’s intended Inaugural Day activities do not encompass Lafayette Park and ANSWER’s complaint seeks no relief with respect to the Lafayette Park regulation.

The Lafayette Park set-aside, no matter how long in existence, cannot justify

even more viewpoint-based discrimination by the NPS. *See Henderson*, 964 F.2d at 1183 (abridgments of free speech cannot “bootstrap themselves into validity by their mere existence, even if prolonged”).

The Secretary of Interior, when promulgating the Lafayette Park regulations expressly justified this set-aside “devoting the front of the White House” for the PIC on the basis that it “narrowly restrict[ed] the area necessary to further the legitimate government interest while providing ready access to the immediately adjacent and other nearby area for demonstration conduct.” Other areas were to remain available for permitting “under the National Park Service’s regular demonstration permit system as set forth in 36 C.F.R. § 50.19. In accord with that system, permits will be granted on a first-come first-served basis.” JA 453, 45 Fed. Reg. 84997, 84998 (Dec. 24, 1980).

Far from authorizing the subsequent expansion beyond the White House and Lafayette Park to include the whole of Freedom Plaza and vast swaths of space up and down Pennsylvania Avenue, this regulatory set-aside is predicated on those public forums being open for demonstration conduct.

F. NPS Unconstitutionally Delegates to the PIC Overly Broad Discretion to Determine on a Viewpoint Basis Who May Use Freedom Plaza and Other Spaces for Free Speech

The regulations facially and as-applied, *see* JA 388, 73 Fed. Reg. at 67742, grant PIC the overly broad discretion to engage in viewpoint-based discrimination

to determine which groups or persons may use Freedom Plaza and other spaces on Inauguration Day. *See Forsyth County*, 505 U.S. at 133 n.10 (1992) (“[T]he success of a facial challenge on the grounds that an ordinance delegates overly broad discretion to the decision maker rests not on whether the administrator has exercised his discretion in a content-based manner, but whether there is anything in the ordinance preventing him from doing so.”)

In fact, the 2013 PIC engaged in a thorough political vetting of ANSWER, in its request to use or share Freedom Plaza, concluding on the basis of viewpoint that ANSWER had “competing interests” for expression along the parade route and determining that the entirety of the plaza would be used by PIC. JA 443; *see supra* 16 - 17.

CONCLUSION

This Court should reverse the District Court’s opinion, declare that the regulatory references to “PIC Bleacher Area[s]” are unconstitutional, order that references to the “PIC Bleacher Area[s]” be stricken from the Code of Federal Regulations, and remand the case for further proceedings consistent with the Court’s opinion.

August 22, 2016

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation in Rules 32(a)(7)(B) and (C) of the Federal Rules of Appellate Procedure because the brief contains 13,889 words, excluding the parts of the brief exempted. This brief complies with the typeface and style requirements of Rule 32(a)(5) and (6) of the Federal Rules of Appellate Procedure because it has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in Times New Roman 14-point.

August 22, 2016

/s/ Carl Messineo
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of August 2016, the foregoing Appellant's Brief has been served by this Court's Electronic Case Filing System (ECF).

August 22, 2016

/s/ Carl Messineo
Carl Messineo
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ADDENDUM WITH PERTINENT STATUTES AND REGULATIONS

ADDENDUM WITH PERTINENT STATUTES AND REGULATIONS

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cultural resource protection, and other management activities and objectives.

[36 FR 21666, Nov. 12, 1971, as amended at 48 FR 29845, June 30, 1983; 52 FR 34777, Sept. 15, 1987; 70 FR 31353, June 1, 2005]

§ 7.93 Guadalupe Mountains National Park.

(a) *Cave entry.* No person shall enter any cave or passageway of any cave without a permit.

[48 FR 30296, June 30, 1983]

§ 7.94 Bryce Canyon National Park.

(a) The Superintendent may designate for bicycle use routes or portions of routes on the following sections of the park's multi-use recreational path:

(1) A section between the park boundary near Bryce Canyon City and Inspiration Point parking area (approximately 3.9 miles);

(2) A section between the intersection of Bryce Point road and Inspiration Point road, and a trailhead near Bryce Point parking area (approximately 2.3 miles).

(b) The Superintendent will provide notice of all bicycle route designations through one or more of the methods listed in §1.7 of this chapter, and place the designations on maps that are available in the office of the Superintendent and other places convenient to the public.

(c) The Superintendent may open or close designated bicycle routes, or portions thereof, or establish conditions or restrictions for bicycle use after considering public health and safety, natural and cultural resource protection, carrying capacity, and other management activities and objectives.

(1) The Superintendent will provide public notice of all such actions through one or more of the methods listed in §1.7 of this chapter.

(2) Violating a closure, condition, or restriction is prohibited.

[80 FR 24212, Apr. 30, 2015]

§ 7.95 [Reserved]

§ 7.96 National Capital Region.

(a) *Applicability of regulations.* This section applies to all park areas administered by National Capital Region in

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the District of Columbia and in Arlington, Fairfax, Loudoun, Prince William, and Stafford Counties and the City of Alexandria in Virginia and Prince Georges, Charles, Anne Arundel, and Montgomery Counties in Maryland and to other federal reservations in the environs of the District of Columbia, policed with the approval or concurrence of the head of the agency having jurisdiction or control over such reservations, pursuant to the provisions of the act of March 17, 1948 (62 Stat. 81).

(b) *Athletics*—(1) *Permits for organized games.* Playing baseball, football, croquet, tennis, and other organized games or sports except pursuant to a permit and upon the grounds provided for such purposes, is prohibited.

(2) *Wet grounds.* Persons holding a permit to engage in athletics at certain times and at places authorized for this use are prohibited from exercising the privilege of play accorded by the permit if the grounds are wet or otherwise unsuitable for play without damage to the turf.

(3) *Golf and tennis; fees.* No person may use golf or tennis facilities without paying the required fee, and in compliance with conditions approved by the Regional Director. Trespassing, intimidating, harassing or otherwise interfering with authorized golf players, or interfering with the play of tennis players is prohibited.

(4) *Ice skating.* Ice skating is prohibited except in areas and at times designated by the Superintendent. Skating in such a manner as to endanger the safety of other persons is prohibited.

(c) *Model planes.* Flying a model powered plane from any park area is prohibited without a permit.

(d) *Fishing.* Unless otherwise designated, fishing in a manner authorized under applicable State law is allowed.

(e) *Swimming.* Bathing, swimming or wading in any fountain or pool except where officially authorized is prohibited. Bathing, swimming or wading in the Tidal Basin, the Chesapeake and Ohio Canal, or Rock Creek, or entering from other areas covered by this section the Potomac River, Anacostia River, Washington Channel or Georgetown Channel, except for the purpose of

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saving a drowning person, is prohibited.

(f) *Commercial vehicles and common carriers*—(1) *Operation in park areas prohibited; exceptions.* Commercial vehicles and common carriers, loaded or unloaded, are prohibited on park roads and bridges except on the section of Constitution Avenue east of 19th Street or on other roads and bridges designated by the Superintendent, or when authorized by a permit or when operated in compliance with paragraph (f)(2) of this section.

(2) *George Washington Memorial Parkway; passenger-carrying vehicles; permits; fees.* (i) Taxicabs licensed in the District of Columbia, Maryland, or Virginia, are allowed on any portion of the George Washington Memorial Parkway without a permit or payment of fees.

(ii) Passenger-carrying vehicles for hire or compensation, other than taxicabs, having a seating capacity of not more than fourteen (14) passengers, excluding the operator, when engaged in services authorized by concession agreement to be operated from the Washington National Airport and/or Dulles International Airport, are allowed on any portion of the George Washington Memorial Parkway in Virginia without a permit or payment of fees. However, when operating on a sightseeing basis an operator of such a vehicle shall comply with paragraph (f)(2)(iv) of this section.

(iii) Passenger-carrying vehicles for hire or compensation, other than those to which paragraphs (f)(2) (i) and (ii) of this section apply, are allowed on the George Washington Memorial Parkway upon issuance of a permit by the Regional Director, under the following conditions:

(A) When operating on a regular schedule: to provide passenger service on any portion between Mount Vernon and the Arlington Memorial Bridge, or to provide limited direct nonstop passenger service from Key Bridge to a terminus at the Central Intelligence Agency Building at Langley, Virginia, and direct return, or to provide limited direct nonstop passenger service from the interchange at Route 123 to a terminus at the Central Intelligence Agency Building at Langley, Virginia, and direct return. Permittees shall file

a schedule of operation and all schedule changes with the Regional Director showing the number of such vehicles and total miles to be operated on the parkway.

(B) When operating nonscheduled direct, nonstop service primarily for the accommodation of air travelers arriving at or leaving from Dulles International Airport or Washington National Airport: between Dulles International Airport and a terminal in Washington, DC, over the George Washington Memorial Parkway between Virginia Route 123 and Key Bridge; or between Washington National Airport and a terminal in Washington, D.C., over the George Washington Memorial Parkway between Washington National Airport and 14th Street Bridge; or between Dulles International Airport and Washington National Airport over the George Washington Memorial Parkway between Virginia Route 123 and Washington National Airport. Permittees shall file a report of all operations and total miles operated on the George Washington Memorial Parkway with the Regional Director.

(C) Permits are issued to operators of vehicles described in paragraphs (f)(2)(iii) (A) and (B) normally for a period of one year, effective from July 1 until the following June 30, at the rate of one cent (1) per mile for each mile each such vehicle operates upon the parkway. Payment shall be made quarterly within twenty (20) days after the end of the quarter based upon a certification by the operator of the total mileage operated upon the parkway.

(iv) Sightseeing passenger-carrying vehicles for hire or compensation other than taxicabs may be permitted on the George Washington Memorial Parkway upon issuance of a permit by the Regional Director, to provide sightseeing service on any portion of the parkway. Permits may be issued either on an annual basis for a fee of three dollars (\$3.00) for each passenger-carrying seat in such vehicle; on a quarterly basis for a fee of seventy-five cents (75) per seat; or on a daily basis at the rate of one dollar (\$1.00) per vehicle per day.

(3) *Taxicabs*—(i) *Operations around Memorials.* Parking, except in designated taxicab stands, or cruising on

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the access roads to the Washington Monument, the Lincoln Memorial, the Jefferson Memorial, and the circular roads around the same, of any taxicab or hack without passengers is prohibited. However, this section does not prohibit the operation of empty cabs responding to definite calls for hack service by passengers waiting at such Memorials, or of empty cabs which have just discharged passengers at the entrances of the Memorials, when such operation is incidental to the empty cabs' leaving the area by the shortest route.

(ii) *Stands.* The Superintendent may designate taxicab stands in suitable and convenient locations to serve the public.

(4) The provisions of this section prohibiting commercial trucks and common carriers do not apply within other Federal reservations in the environs of the District of Columbia and do not apply on that portion of Suitland Parkway between the intersection with Maryland Route 337 and the end of the Parkway at Maryland Route 4, a length of 0.6 mile.

(5) *Parking.* Violation of a traffic control device regulating parking is punishable by fine. In any violation of a traffic control device regulating parking, proof that the described vehicle was parked in violation, together with proof that the defendant was at the time the registered owner of the vehicle, shall constitute a prima facie presumption that the registered owner of the vehicle was the person who committed the violation.

(g) *Demonstrations and special events—*
(1) *Definitions.* (i) The term “demonstration” includes demonstrations, picketing, speechmaking, marching, holding vigils or religious services and all other like forms of conduct that involve the communication or expression of views or grievances, engaged in by one or more persons, the conduct of which is reasonably likely to draw a crowd or onlookers. This term does not include casual park use by visitors or tourists that is not reasonably likely to attract a crowd or onlookers.

(ii) The term “special events” includes sports events, pageants, celebrations, historical reenactments, regattas, entertainments, exhibitions, pa-

rades, fairs, festivals and similar events (including such events presented by the National Park Service), which are not demonstrations under paragraph (g)(1)(i) of this section, and which are engaged in by one or more persons, the conduct of which has the effect, intent or propensity to draw a crowd or onlookers. This term also does not include casual park use by visitors or tourists which does not have an intent or propensity to attract a crowd or onlookers.

(iii) The term “national celebration events” means the annually recurring special events regularly scheduled by the National Capital Region, which are listed in paragraph (g)(4)(i) of this section.

(iv) The term “White House area” means all park areas, including sidewalks adjacent thereto, within these bounds: on the south, Constitution Avenue NW.; on the north, H Street NW.; on the east, 15th Street, NW.; and on the west, 17th Street NW.

(v) The term “White House sidewalk” means the south sidewalk of Pennsylvania Avenue NW., between East and West Executive Avenues NW.

(vi) The term “Lafayette Park” means the park areas, including sidewalks adjacent thereto, within these bounds: on the south, Pennsylvania Avenue NW.; on the north, H Street NW.; on the east, Madison Place NW.; and on the west, Jackson Place NW.

(vii) The term “Ellipse” means the park areas, including sidewalks adjacent thereto, within these bounds: on the south, Constitution Avenue NW.; on the north, E Street, NW.; on the west, 17th Street NW.; and on the east, 15th Street NW.

(viii) The term “Regional Director” means the official in charge of the National Capital Region, National Park Service, U.S. Department of the Interior, or an authorized representative thereof.

(ix) The term “other park areas” includes all areas, including sidewalks adjacent thereto, other than the White House area, administered by the National Capital Region.

(x) The term “Vietnam Veterans Memorial” means the structures and adjacent areas extending to and bounded by the south curb of Constitution Avenue

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on the north, the east curb of Henry Bacon Drive on the west, the north side of the north Reflecting Pool walkway on the south and a line drawn perpendicular to Constitution Avenue two hundred (200) feet from the east tip of the memorial wall on the east (this is also a line extended from the east side of the western concrete border of the steps to the west of the center steps to the Federal Reserve Building extending to the Reflecting Pool walkway).

(2) *Permit requirements.* Demonstrations and special events may be held only pursuant to a permit issued in accordance with the provisions of this section except:

(i) Demonstrations involving 25 persons or fewer may be held without a permit *provided* that the other conditions required for the issuance of a permit are met and *provided further* that the group is not merely an extension of another group already availing itself of the 25-person maximum under this provision or will not unreasonably interfere with other demonstrations or special events.

(ii) Demonstrations may be held in the following park areas without a permit *provided* that the conduct of such demonstrations is reasonably consistent with the protection and use of the indicated park area and the other requirements of this section. The numerical limitations listed below are applicable only for demonstrations conducted without a permit in such areas. Larger demonstrations may take place in these areas pursuant to a permit.

(A) *Franklin Park.* Thirteenth Street, between I and K Streets NW., for no more than 500 persons.

(B) *McPherson Square.* Fifteenth Street, between I and K Streets NW., for no more than 500 persons.

(C) *U.S. Reservation No. 31.* West of 18th Street and south of H Street NW., for no more than 100 persons.

(D) *Rock Creek and Potomac Parkway.* West of 23rd Street, south of P Street NW., for no more than 1,000 persons.

(E) *U.S. Reservation No. 46.* North side of Pennsylvania Avenue, west of Eighth Street and south of D Street, SE., for no more than 25 persons and south of D Street SE., for no more than 25 persons.

(3) *Permit applications.* Permit applications may be obtained at the Division of Permits Management, National Mall and Memorial Parks, 900 Ohio Drive SW., Washington DC 20024. Applicants shall submit permit applications in writing on a form provided by the National Park Service so as to be received by the Regional Director at the Division of Permits Management at least 48 hours in advance of any proposed demonstration or special event. This 48-hour period will be waived by the Regional Director if the size and nature of the activity will not reasonably require the commitment of park resources or personnel in excess of that which are normally available or which can reasonably be made available within the necessary time period. The Regional Director shall accept permit applications only during the hours of 8 a.m.-4 p.m., Monday through Friday, holidays excepted. All demonstration applications, except those seeking waiver of the numerical limitations applicable to Lafayette Park (paragraph (g)(5)(ii) of this section), are deemed granted, subject to all limitations and restrictions applicable to said park area, unless denied within 24 hours of receipt. However, where a permit has been granted, or is deemed to have been granted pursuant to this subsection, the Regional Director may revoke that permit pursuant to paragraph (g)(6) of this section.

(i) *White House area.* No permit may be issued authorizing demonstrations in the White House area, except for the White House sidewalk, Lafayette Park and the Ellipse. No permit may be issued authorizing special events, except for the Ellipse, and except for annual commemorative wreath-laying ceremonies relating to the statutes in Lafayette Park.

(ii) *Other park areas.* Demonstrations and special events are not allowed in the following other park areas:

(A) The Washington Monument, which means the area enclosed within the inner circle that surrounds the Monument's base, except for the official annual commemorative Washington birthday ceremony.

(B) The Lincoln Memorial, which means that portion of the park area which is on the same level or above the

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base of the large marble columns surrounding the structure, and the single series of marble stairs immediately adjacent to and below that level, except for the official annual commemorative Lincoln birthday ceremony.

(C) The Jefferson Memorial, which means the circular portion of the Jefferson Memorial enclosed by the outermost series of columns, and all portions on the same levels or above the base of these columns, except for the

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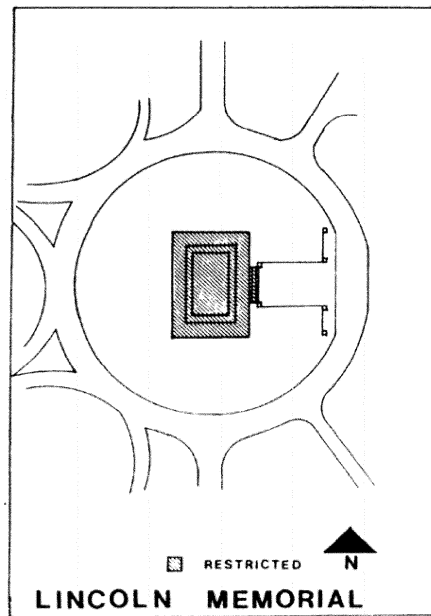
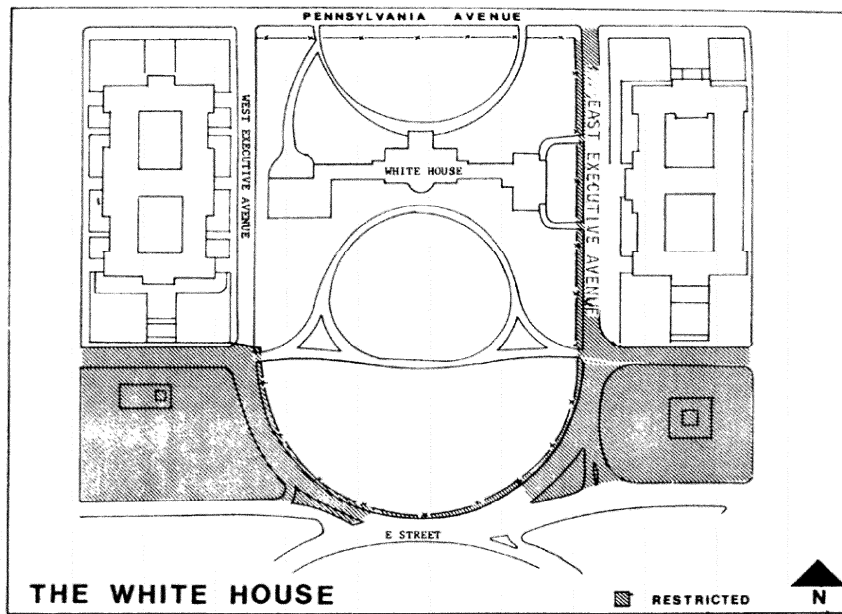
official annual commemorative Jefferson birthday ceremony.

(D) The Vietnam Veterans Memorial, except for official annual Memorial Day and Veterans Day commemorative ceremonies.

(E) Maps of the park areas designated in this paragraph are as follows. The darkened portions of the diagrams show the areas where demonstrations or special events are prohibited.

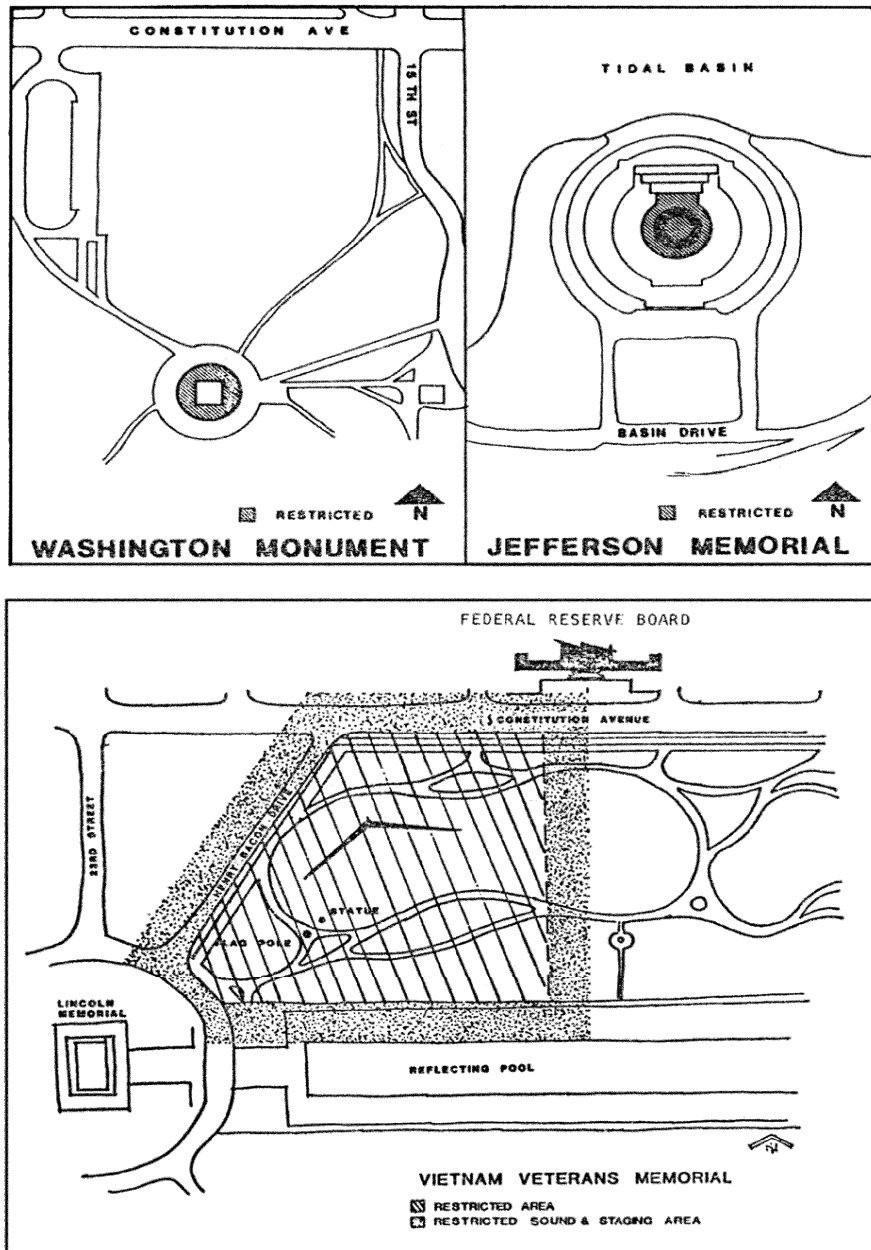
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(4) *Permit processing.* (i) NPS processes permit applications for demonstrations and special events in order of receipt. NPS will not accept applica-

tions more than one year in advance of a proposed continuous event (including set-up time, if any). Use of a particular area is allocated in order of receipt of

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fully executed applications, subject to the limitations in this section. park areas as shown in the following table:

(ii) Specific national celebration events have priority use of particular

The following event . . .	Has priority use of the following area . . .	At the following time . . .
(A) Lighting of the National Christmas Tree and Christmas Pathway of Peace.	Northern half of the oval portion of the Ellipse.	The last four weeks in December as well as necessary set-up and take-down between October 1 through February 1.
(B) Cherry Blossom Festival	Park areas adjacent to the Tidal Basin and the sidewalk areas adjacent to Constitution Avenue, between 15th & 17th Streets NW.	Two weeks usually in late March or early April as well as the an additional two weeks for the necessary set-up and take-down.
(C) Fourth of July Celebration	Washington Monument Grounds and the Lincoln Memorial Reflecting Pool area.	Time required for necessary staging and fireworks set-up and take-down, totaling three weeks in late June and early July.
(D) Smithsonian Folklife Festival	The area bounded on the south by Jefferson Drive NW; on the north by Madison Drive, NW; on the east by 7th Street, NW; on the west by 14th Street, NW.	For a two-week period in approximately late June and early July and an additional eight weeks for the necessary set-up and take-down.
(E) Columbus Day Commemorative Wreath-Laying.	At the Columbus statue on the Union Plaza.	On Columbus Day.
(F) Presidential Inaugural Ceremonies	See paragraph (g)(4)(iii) of this section	See paragraph (g)(4)(iii) of this section.

(iii) In connection with Presidential Inaugural Ceremonies the following areas are reserved for priority use as set forth in this paragraph.

(A) The White House sidewalk and Lafayette Park, exclusive of the northeast quadrant for the exclusive use of the Presidential Inaugural Committee on Inaugural Day.

(B) Portions of Pennsylvania Avenue, National Historic Park and Sherman Park, as designated in the maps included in paragraph (g)(4)(iii)(E) of this section, for the exclusive use of the Presidential Inaugural Committee on Inaugural Day for:

(1) Ticketed bleachers viewing and access areas, except that members of the public may use a ticketed bleacher seat that has not been claimed by the ticket holder 10 minutes before the Inaugural Parade is scheduled to pass the bleacher's block;

(2) Portable toilets, except that they will be available to the public;

(3) Television and radio media and Armed Forces Inaugural Committee parade support structures;

(4) The area in front of the John A. Wilson Building for the District of Columbia reviewing stand;

(5) Viewing areas designated for individuals with disabilities, except that they will be available to any disabled persons.

(C) The area of the National Mall between 14th and 1st Streets, for the exclusive use of the Armed Forces Inaugural Committee on Inaugural Day for the assembly, staging, security and weather protection of the pre-Inaugural parade components and floats on Inaugural Day, except for:

(1) The placement of jumbotrons and sound towers by the Architect of the Capitol or the Joint Congressional Committee on Inaugural Ceremonies so that the Inaugural ceremony may be observed by the Joint Congressional Committee's ticketed standing room ticket holders between 4th and 1st Streets and the general public between 7th and 4th Streets; and

(2) A 150-foot-by-200-foot area on the National Mall just east of 7th Street, for the exclusive use of the Presidential Inaugural Committee for television and radio media broadcasts on Inaugural Day.

(D) The Presidential Inaugural Committee may also use portions of its designated areas reasonably necessary for setting up and taking down stands, bleachers, media and parade support structures as shown in the following table:

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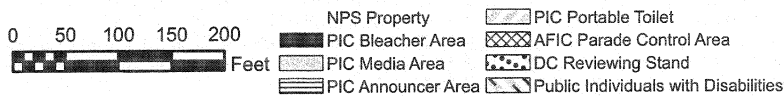
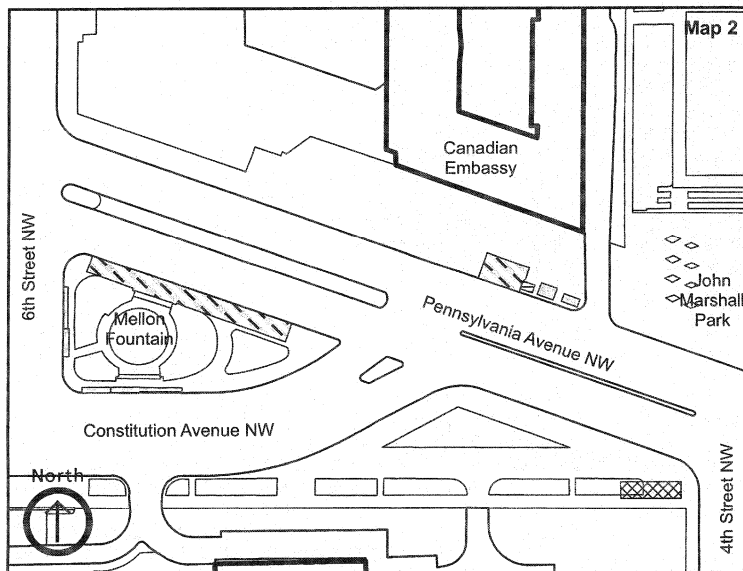
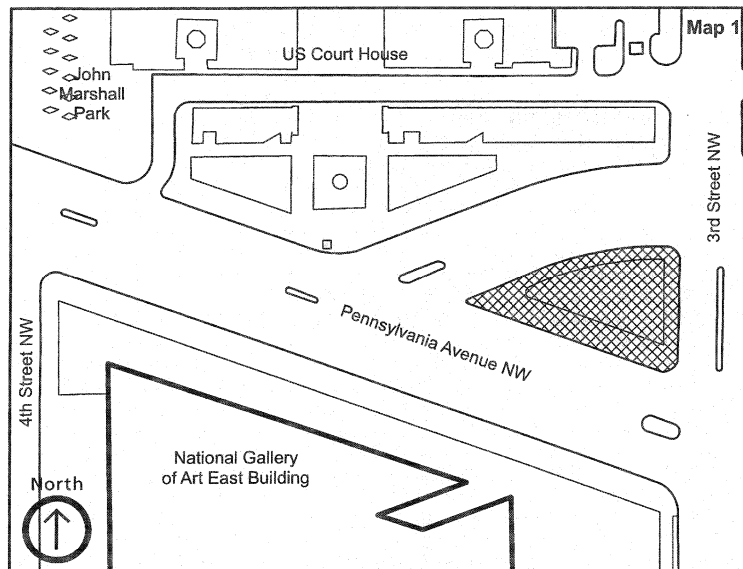
The Presidential Inaugural Committee may use the following area . . .	During the following period . . .
(1) The White House sidewalk and Lafayette Park.	November 1 through March 1.
(2) Pennsylvania Avenue, National Historic Park and Sherman Park.	December 7 through February 10.
(3) The National Mall between 14th and 1st Streets.	January 6 through January 30.

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(E) Maps of designated portions of Pennsylvania Avenue, National Historic Park and Sherman Park referred to in paragraph (g)(4)(iii)(B) of this section are as follows:

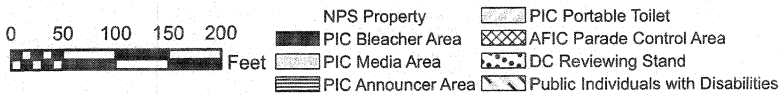
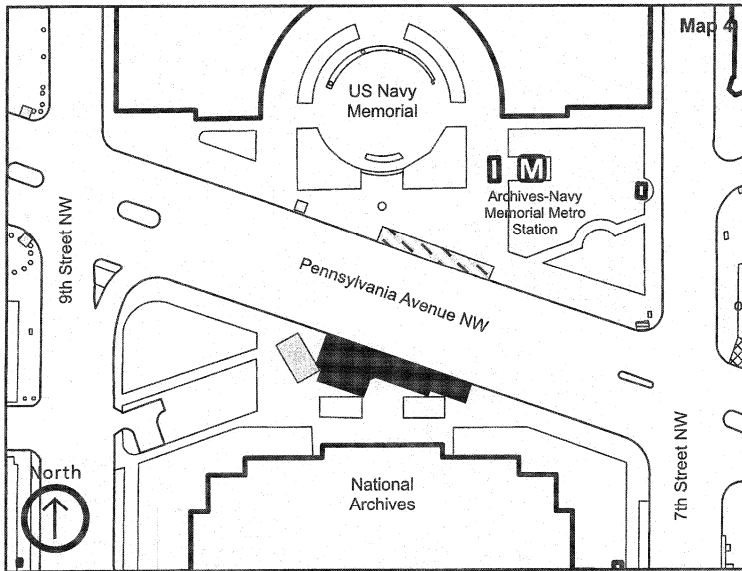
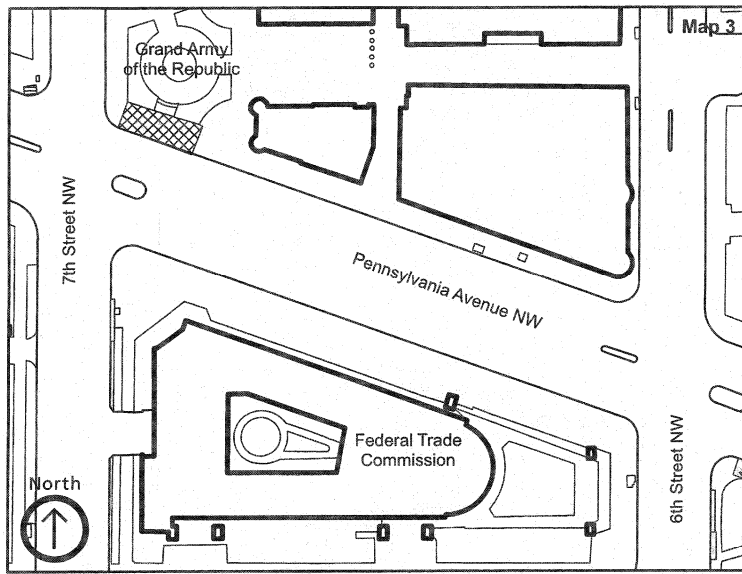
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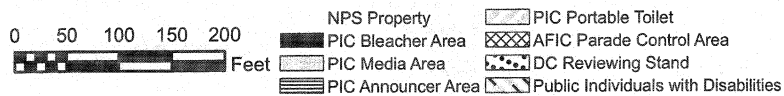
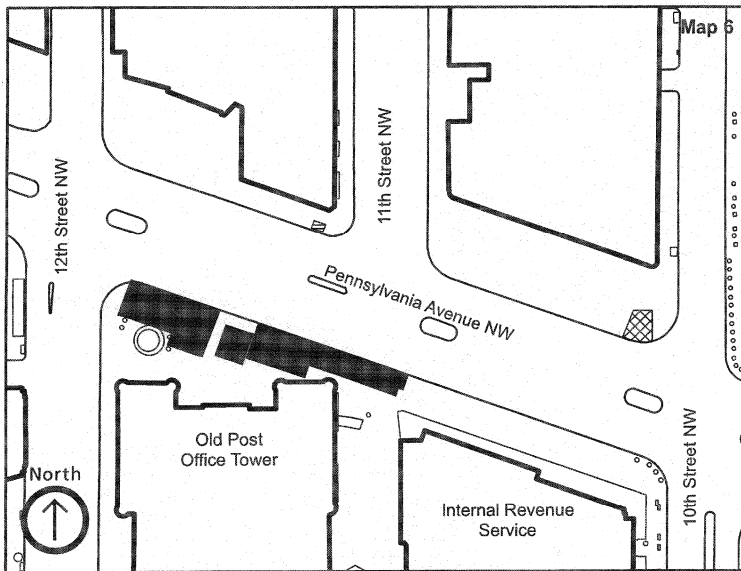
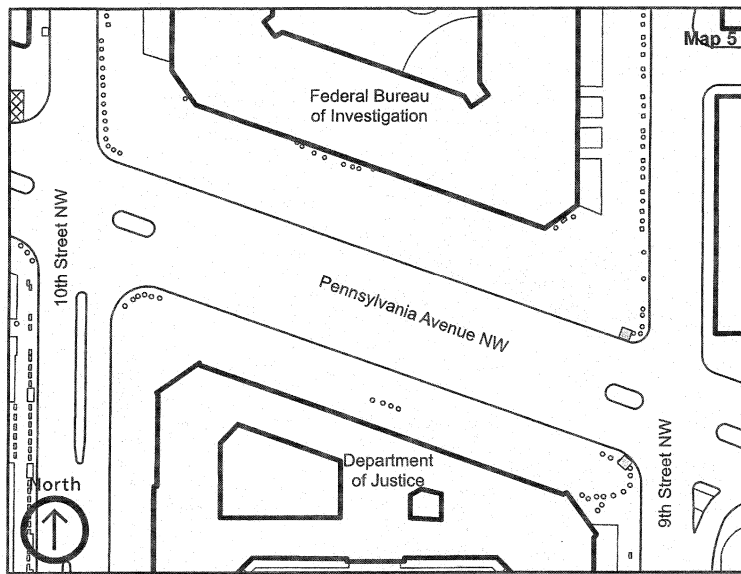
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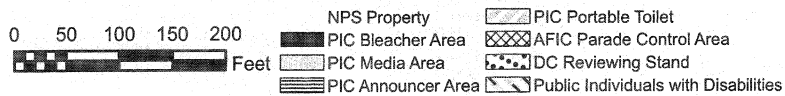
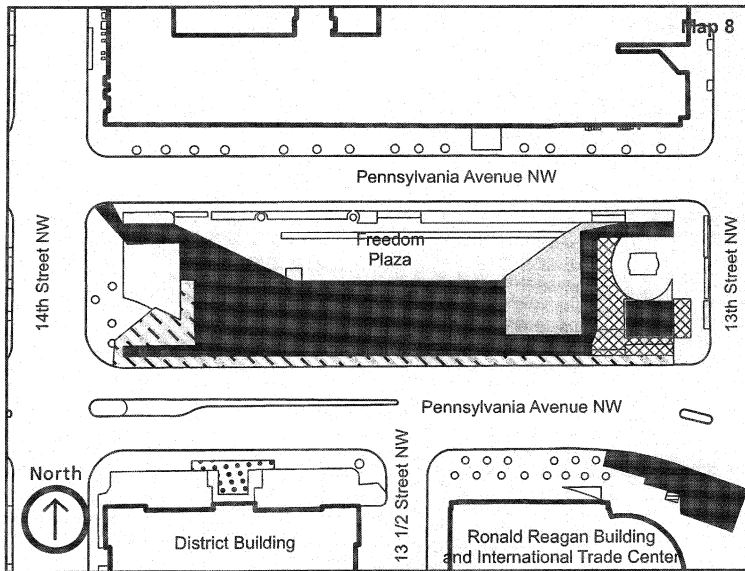
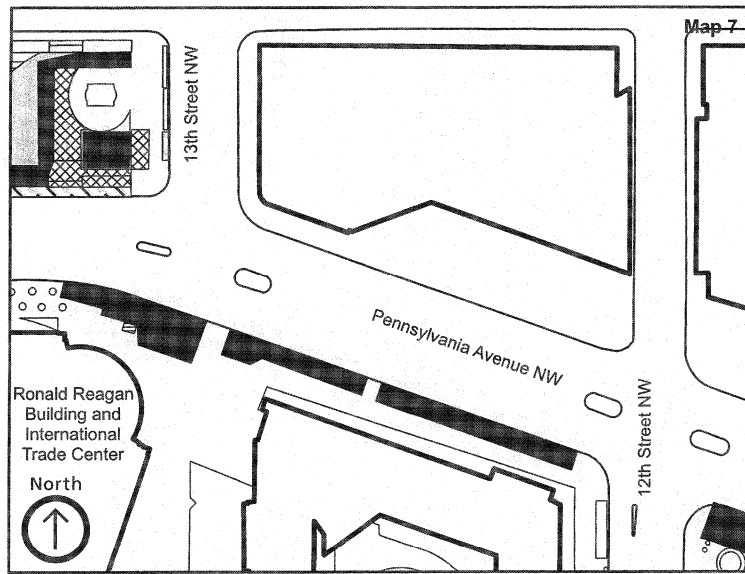
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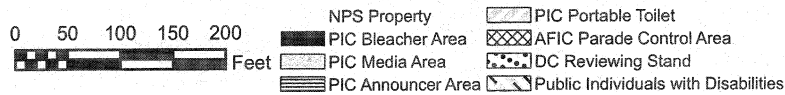
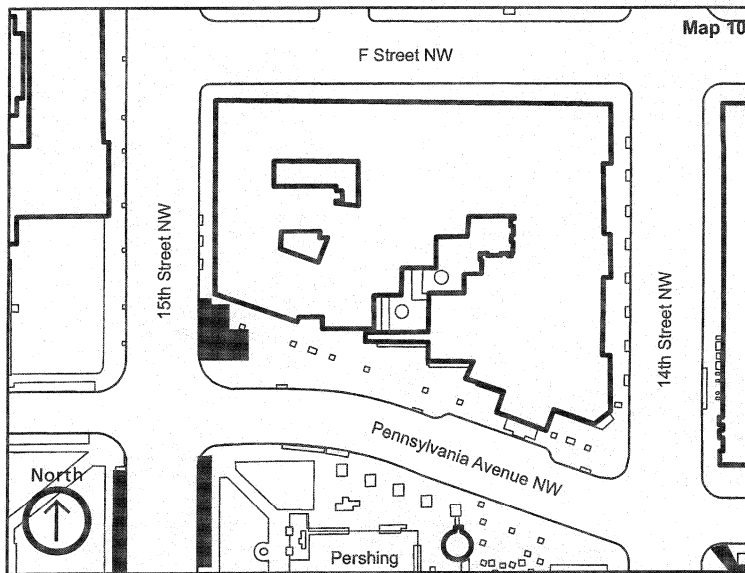
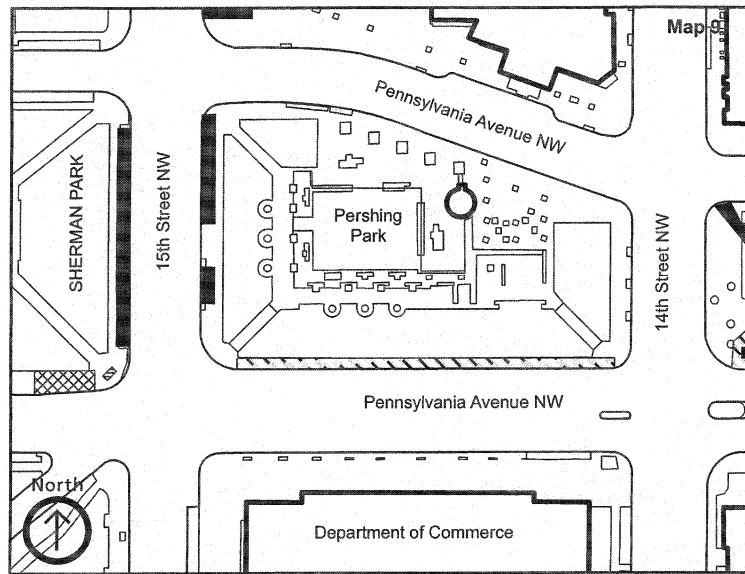
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(iv) Other demonstrations or special events are permitted in park areas under permit for the National Celebration Events listed in paragraph

(g)(4)(ii) of this section to the extent that they do not significantly interfere with the National Celebration Events.

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Except for Inaugural ceremony activities, no activity containing structures is permitted closer than 50 feet to another activity containing structures without the mutual consent of the sponsors of those activities.

(v) NPS will issue a permit for a demonstration on the White House sidewalk and in Lafayette Park at the same time only if the requirements of this paragraph are met. The organization, group, or other sponsor of the demonstration must undertake in good faith all reasonable action, including the provision of sufficient marshals, to ensure that the sponsor:

(A) Maintains good order and self-discipline in conducting the demonstration and any necessary movement of persons; and

(B) Observes the numerical limitations and waiver provisions described in paragraphs (g)(5)(i) and (ii) of this section.

(vi) NPS will issue permits authorizing demonstrations or special events for the periods shown in the following table. NPS may extend these periods for demonstrations only, unless another application requests use of the particular area and that application precludes double occupancy.

Park area	Permit validity period	Permit validity period for inaugural activities
(A) White House area, except the Ellipse.	7 days	Between October 24 through April 1 for reasonable and necessary set-up and take-down activities for the White House Sidewalk and Lafayette Park.
(B) The Ellipse and all other park areas.	4 months	Between December 7 through February 10 for reasonable and necessary set-up and take-down activities for Pennsylvania Avenue, National Historic Park and Sherman Park.

(vii) A permit may be denied in writing by the Regional Director upon the following grounds:

(A) A fully executed prior application for the same time and place has been received, and a permit has been or will be granted authorizing activities which do not reasonably permit multiple occupancy of the particular area; in that event, an alternate site, if available for the activity, will be proposed by the Regional Director to the applicant.

(B) It reasonably appears that the proposed demonstration or special event will present a clear and present danger to the public safety, good order, or health.

(C) The proposed demonstration or special event is of such a nature or duration that it cannot reasonably be accommodated in the particular area applied for; in that event, the Regional Director shall propose an alternate site to the applicant, if available for the activity; in this connection, the Regional Director shall reasonably take into account possible damage to the park, including trees, shrubbery, other plantings, park installations and statues.

(D) The application proposes activities contrary to any of the provisions of this section or other applicable law or regulation.

(5) *Permit limitations.* Issuance of a permit is subject to the following limitations:

(i) No more than 750 persons are permitted to conduct a demonstration on the White House sidewalk at any one time.

(ii) No more than 3,000 persons are permitted to conduct a demonstration in Lafayette Park at any one time.

(A) The Regional Director may waive the 3,000 person limitation for Lafayette Park and/or the 750 person limitation for the White House Sidewalk upon a showing by the applicant that good faith efforts will be made to plan and marshal the demonstration in such a fashion so as to render unlikely any substantial risk of unreasonable disruption or violence.

(B) In making a waiver determination, the Regional Director shall consider and the applicant shall furnish at least ten days in advance of the proposed demonstration, the functions the marshals will perform, the means by which they will be identified, and their method of communication with each other and the crowd. This requirement will be satisfied by completion and submission of the same form referred to in paragraph (g)(3) of this section.

(iii) No permit will be issued for a demonstration on the White House

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Sidewalk and in Lafayette Park at the same time except when the organization, group, or other sponsor of such demonstration undertakes in good faith all reasonable action, including the provision of sufficient marshals, to insure good order and self-discipline in conducting such demonstration and any necessary movement of persons, so that the numerical limitations and waiver provisions described in paragraphs (g)(5) (i) and (ii) of this section are observed.

(iv) The Regional Director may restrict demonstrations and special events weekdays (except holidays) between the hours of 7:00 to 9:30 a.m. and 4:00 to 6:30 p.m. if it reasonably appears necessary to avoid unreasonable interference with rush-hour traffic.

(v) Special events are not permitted unless approved by the Regional Director. In determining whether to approve a proposed special event, the Regional Director shall consider and base the determination upon the following criteria:

(A) Whether the objectives and purposes of the proposed special event relate to and are within the basic mission and responsibilities of the National Capital Region, National Park Service.

(B) Whether the park area requested is reasonably suited in terms of accessibility, size, and nature of the proposed special event.

(C) Whether the proposed special event can be permitted within a reasonable budgetary allocation of National Park Service funds considering the event's public appeal, and the anticipated participation of the general public therein.

(D) Whether the proposed event is duplicative of events previously offered in National Capital Region or elsewhere in or about Washington, DC.

(E) Whether the activities contemplated for the proposed special event are in conformity with all applicable laws and regulations.

(vi) In connection with permitted demonstrations or special events, temporary structures may be erected for the purpose of symbolizing a message or meeting logistical needs such as first aid facilities, lost children areas or the provision of shelter for elec-

trical and other sensitive equipment or displays. Temporary structures may not be used outside designated camping areas for living accommodation activities such as sleeping, or making preparations to sleep (including the laying down of bedding for the purpose of sleeping), or storing personal belongings, or making any fire, or doing any digging or earth breaking or carrying on cooking activities. The above-listed activities constitute camping when it reasonably appears, in light of all the circumstances, that the participants, in conducting these activities, are in fact using the area as a living accommodation regardless of the intent of the participants or the nature of any other activities in which they may also be engaging. Temporary structures are permitted to the extent described above, provided prior notice has been given to the Regional Director, except that:

(A) Structures are not permitted on the White House sidewalk.

(B) All such temporary structures shall be erected in such a manner so as not to harm park resources unreasonably and shall be removed as soon as practicable after the conclusion of the permitted demonstration or special event.

(C) The Regional Director may impose reasonable restrictions upon the use of temporary structures in the interest of protecting the park areas involved, traffic and public safety considerations, and other legitimate park value concerns.

(D) Any structures utilized in a demonstration extending in duration beyond the time limitations specified in paragraphs (g)(5)(iv) (A) and (B) of this section shall be capable of being removed upon 24 hours notice and the site restored, or, the structure shall be secured in such a fashion so as not to interfere unreasonably with use of the park area by other permittees authorized under this section.

(E) Individuals or groups of 25 persons or fewer demonstrating under the small group permit exemption of paragraph (g)(2)(i) of this section are not allowed to erect temporary structures other than small lecterns or speakers'

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platforms. This provision does not restrict the use of portable signs or banners.

(vii) No signs or placards shall be permitted on the White House sidewalk except those made of cardboard, posterboard or cloth having dimensions no greater than three feet in width, twenty feet in length, and one-quarter inch in thickness. No supports shall be permitted for signs or placards except those made of wood having cross-sectional dimensions no greater than three-quarter of an inch by three-quarter of an inch. Stationary signs or placards shall be no closer than three feet from the White House sidewalk fence. All signs and placards shall be attended at all times that they remain on the White House sidewalk. Signs or placards shall be considered to be attended only when they are in physical contact with a person. No signs or placards shall be tied, fastened, or otherwise attached to or leaned against the White House fence, lamp posts or other structures on the White House sidewalk. No signs or placards shall be held, placed or set down on the center portion of the White House sidewalk, comprising ten yards on either side of the center point on the sidewalk; *Provided, however*, that individuals may demonstrate while carrying signs on that portion of the sidewalk if they continue to move along the sidewalk.

(viii) No parcel, container, package, bundle or other property shall be placed or stored on the White House sidewalk or on the west sidewalk of East Executive Avenue NW., between Pennsylvania Avenue NW., and E Street NW., or on the north sidewalk of E Street NW., between East and West Executive Avenues NW.; *Provided, however*, that such property, except structures, may be momentarily placed or set down in the immediate presence of the owner on those sidewalks.

(ix) The following are prohibited in Lafayette Park:

(A) The erection, placement or use of structures of any kind except for the following:

(1) Structures that are being hand-carried are allowed.

(2) When one hundred (100) or more persons are participating in a demonstration in the Park, a temporary

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speaker's platform as is reasonably required to serve the demonstration participants is allowed as long as such platform is being erected, dismantled or used, *provided that* only one speaker's platform is allowed per demonstrating group, and *provided further that* such speaker's platform is authorized by a permit issued pursuant to paragraph (g) of this section.

(3) When less than one hundred (100) persons are participating in a demonstration in the Park, a temporary "soapbox" speaker's platform is allowed as long as such platform is being erected, dismantled or used, *providing that* only one speaker's platform is allowed per demonstrating group, and *provided further that* the speaker's platform is no larger than three (3) feet in length, three (3) feet in width, and three (3) feet in height, and *provided further that* such speaker's platform is authorized by a permit issued pursuant to paragraph (g) of this section.

(4) For the purpose of this section, the term "structure" includes props and displays, such as coffins, crates, crosses, theaters, cages, and statues; furniture and furnishings, such as desks, chairs, tables, bookcases, cabinets, platforms, podiums and lecterns; shelters, such as tents, boxes and other enclosures; wagons and carts; and all other similar types of property which might tend to harm park resources including aesthetic interests. *Provided however* that the term "structure" does not include signs; bicycles, baby carriages and baby strollers lawfully in the Park that are temporarily placed in, or are being moved across, the Park, and that are attended at all times while in the Park (the term "attended" is defined as an individual being within three (3) feet of his or her bicycle, baby carriage or baby stroller); and wheelchairs and other devices for the handicapped in use by handicapped persons.

(B) The use of signs except for the following:

(1) Hand-carried signs are allowed regardless of size.

(2) Signs that are not being hand-carried and that are no larger than four (4) feet in length, four (4) feet in width and one-quarter ($\frac{1}{4}$) inch in thickness (exclusive of braces that are reasonably

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required to meet support and safety requirements and that are not used so as to form an enclosure of two (2) or more sides) may be used in Lafayette Park, *provided that* no individual may have more than two (2) such signs in the Park at any one time, and *provided further that* such signs must be attended at all times (the term ‘attended’ is defined as an individual being within three (3) feet of his or her sign(s)), and *provided further that* such signs may not be elevated in a manner so as to exceed a height of six (6) feet above the ground at their highest point, may not be arranged or combined in a manner so as to exceed the size limitations set forth in this paragraph, and may not be arranged in such a fashion as to form an enclosure of two (2) or more sides. For example, under this provision, two four-feet by four-feet signs may not be combined so as to create a sign eight feet long and four feet wide, and three such signs may not be arranged to create a sign four feet long and twelve feet wide, and two or more signs of any size may not be leaned or otherwise placed together so as to form an enclosure of two or more sides, etc.

(x) Stages and sound amplification may not be placed closer than one hundred (100) feet from the boundaries of the Vietnam Veterans Memorial and sound systems shall be directed away from the memorial at all times.

(xi) Sound amplification equipment is allowed in connection with permitted demonstrations or special events, provided prior notice has been given to the Regional Director, except that:

(A) Sound amplification equipment may not be used on the White House sidewalk, other than hand-portable sound amplification equipment which the Regional Director determines is necessary for crowd-control purposes.

(B) The Regional Director reserves the right to limit the sound amplification equipment so that it will not unreasonably disturb nonparticipating persons in, or in the vicinity of, the area.

(xii) A permit may contain additional reasonable conditions and additional time limitations, consistent with this section, in the interest of protecting park resources, the use of

nearby areas by other persons, and other legitimate park value concerns.

(xiii) A permit issued under this section does not authorize activities outside of areas under administration by the National Capital Region. Applicants may also be required to obtain a permit from the District of Columbia or other appropriate governmental entity for demonstrations or special events sought to be conducted either wholly or in part in other than park areas.

(6) *Permit revocation.* A permit issued for a demonstration is revocable only upon a ground for which an application therefor would be subject to denial under paragraphs (g) (4) or (5) of this section. Any such revocation, prior to the conduct of the demonstration, shall be in writing and shall be approved by the Regional Director. During the conduct of a demonstration, a permit may be revoked by the ranking U.S. Park Police supervisory official in charge if continuation of the event presents a clear and present danger to the public safety, good order or health or for any violation of applicable law or regulation. A permit issued for a special event is revocable, at any time, in the reasonable discretion of the Regional Director.

(7) Further information on administering these regulations can be found in policy statements published at 47 FR 24299, June 4, 1982, and at 47 FR 24302, June 4, 1982. Copies of the policy statements may be obtained from the Regional Director.

(h) *Soliciting.* (1) The in-person soliciting or demanding of money or funds for donation on Federal park land is prohibited, unless it occurs as part of a permit issued for a demonstration or special event.

(2) Persons permitted to solicit must not:

(i) Give false or misleading information regarding their purposes or affiliations;

(ii) Give false or misleading information as to whether any item is available without donation.

(i) *Camping.* (1) Camping is defined as the use of park land for living accommodation purposes such as sleeping activities, or making preparations to sleep (including the laying down of

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bedding for the purpose of sleeping), or storing personal belongings, or making any fire, or using any tents or shelter or other structure or vehicle for sleeping or doing any digging or earth breaking or carrying on cooking activities. The above-listed activities constitute camping when it reasonably appears, in light of all the circumstances, that the participants, in conducting these activities, are in fact using the area as a living accommodation regardless of the intent of the participants or the nature of any other activities in which they may also be engaging. Camping is permitted only in areas designated by the Superintendent, who may establish limitations of time allowed for camping in any public campground. Upon the posting of such limitations in the campground, no person shall camp for a period longer than that specified for the particular campground.

(2) Further information on administering these regulations can be found in policy statements published at 47 FR 24302 (June 4, 1982). Copies of the policy statements may be obtained from the Regional Director.

(j)(1) In Lafayette Park the storage of construction material, tools, lumber, paint, tarps, bedding, luggage, pillows, sleeping bags, food, clothing, literature, papers and all other similar property is prohibited.

(2) Notwithstanding (j)(1) of this section, a person in Lafayette Park may have literature, papers, food, clothing, blankets and a reasonable cover to protect such property, occupying up to three (3) cubic feet of space, so long as such property is attended at all times while in the Park (the term "attended" is defined as a person being within three (3) feet of his or her property).

(k) *Sales.* (1) No sales shall be made nor admission fee charged and no article may be exposed for sale without a permit except as noted in the following paragraphs.

(2) No merchandise may be sold during the conduct of special events or demonstrations except for books, newspapers, leaflets, pamphlets, buttons and bumper stickers. A permit is required for the sale or distribution of permitted merchandise when done with the aid of a stand or structure. Such

stand or structure may consist of one table per site, which may be no larger than 2½ feet by 8 feet or 4 feet by 4 feet. The dimensions of a sales site may not exceed 6 feet wide by 15 feet long by 6 feet high. With or without a permit, such sale or distribution is prohibited in the following areas:

(i) Lincoln Memorial area which is on the same level or above the base of the large marble columns surrounding the structure, and the single series of marble stairs immediately adjacent to and below that level.

(ii) Jefferson Memorial area enclosed by the outermost series of columns, and all portions on the same levels or above the base of these columns.

(iii) Washington Monument area enclosed within the inner circle that surrounds the Monument's base.

(iv) The interior of all park buildings, including, but not limited to, those portions of Ford's Theatre administered by the National Park Service.

(v) The White House Park area bounded on the north by H Street, NW; on the south by Constitution Avenue, NW; on the west by 17th Street, NW; and on the east by 15th Street, NW; except for Lafayette Park, the White House sidewalk (the south Pennsylvania Avenue, NW sidewalk between East and West Executive Avenues) and the Ellipse; *Provided, however,* that the free distribution of literature conducted without the aid of stands or structures, is permitted on East Executive Avenue.

(vi) Vietnam Veterans Memorial area extending to and bounded by the south curb of Constitution Avenue on the north, the east curb of Henry Bacon Drive on the west, the north side of the north Reflecting Pool walkway on the south and a line drawn perpendicular to Constitution Avenue two hundred (200) feet from the east tip of the memorial wall on the east (this is also a line extended from the east side of the western concrete border of the steps to the west of the center steps to the Federal Reserve Building extending to the Reflecting Pool walkway); *Provided, however,* that the free distribution of literature conducted without the aid of stands or structures, is permitted on the Constitution Avenue and Henry

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Bacon Drive sidewalks adjacent to the Vietnam Veterans Memorial.

(3) Persons engaged in the sale or distribution of printed matter under this section shall not obstruct or impede pedestrians or vehicles, harass park visitors with physical contact, misrepresent the purposes or affiliations of those engaged in the sale or distribution, or misrepresent whether the printed matter is available without cost or donation.

(1) *Rock Creek Park.* (1) Notwithstanding the provisions of 36 CFR 5.1, the Superintendent of Rock Creek Park may permit the recognition of and the advertising by the primary sponsor or sponsors of not more than two professional tennis tournaments per year at the Rock Creek Tennis Center.

(2) All activities conducted under this paragraph shall be appropriate to park values and consistent with the protection of park resources and shall comply with criteria specified in a written permit.

(3) Any permit issued under this paragraph shall be valid only for those periods of time during which a professional tennis tournament is being held, and shall limit all advertising and recognition to the confines of the tennis stadium structure and the contiguous paved plaza, not to include any of the fields or paved parking lots except within the interior of permitted tents on Parking Lot A. These areas shall be marked on a map available in the Superintendent's office.

(4) No advertising or recognition activities may take place without a written permit as specified in this paragraph. Any person who violates a provision of this paragraph is subject to the penalty provisions of 36 CFR 1.3 and revocation of the permit if a permit exists.

(m) *Information collection.* The information collection requirements contained in this section have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1024-0021. The information is being collected to provide notification to park managers, United States Park Police, Metropolitan Police, and the Secret Service of the plans of organizers of large-scale

demonstrations and special events in order to assist in the provision of security and logistical support. This information will be used to further those purposes. The obligation is required to obtain a benefit.

[51 FR 37011, Oct. 17, 1986, as amended at 57 FR 4576, Feb. 6, 1992; 57 FR 29797, July 7, 1992; 60 FR 17649, Apr. 7, 1995; 60 FR 33351, June 28, 1995; 60 FR 55791, Nov. 3, 1995; 62 FR 30234, June 3, 1997; 62 FR 32203, June 13, 1997; 72 FR 54843, Sept. 27, 2007; 73 FR 67744, Nov. 17, 2008; 75 FR 8807, Feb. 26, 2010; 76 FR 17028, Mar. 28, 2011; 78 FR 14678, Mar. 7, 2013]

§ 7.97 Golden Gate National Recreation Area.

(a) *Boat landings—Alcatraz Island.* Except in emergencies, the docking of any privately-owned vessel, as defined in § 1.4 of this chapter, or the landing of any person at Alcatraz Island without a permit or contract is prohibited. The Superintendent may issue a permit upon a determination that the applicant's needs cannot be provided by authorized commercial boat transportation to Alcatraz Island and that the proposed activities of the applicant are compatible with the preservation and protection of Alcatraz Island.

(b) *Powerless flight.* The use of devices designed to carry persons through the air in powerless flight is allowed at times and locations designated by the superintendent, pursuant to the terms and conditions of a permit.

(c) *Designated bicycle routes.* The use of a bicycle is permitted according to § 4.30 of this chapter and, in non-developed areas, as follows:

(1) Bicycle use is permitted on routes which have been designated by the Superintendent as bicycle routes by the posting of signs, and as designated on maps which are available in the office of the superintendent and other places convenient to the public.

(2) Bicycle speed limits are as follows:

(i) 15 miles per hour: Upon all designated routes in Golden Gate National Recreation Area.

(ii) 5 miles per hour: On blind curves and when passing other trail users.

(3) The following are prohibited:

(i) The possession of a bicycle on routes not designated as open to bicycle use.

PROC. NO. 5574. THE ROSE PROCLAIMED THE NATIONAL FLORAL EMBLEM OF THE UNITED STATES OF AMERICA

Proc. No. 5574, Nov. 20, 1986, 51 F.R. 42197, provided: Americans have always loved the flowers with which God decorates our land. More often than any other flower, we hold the rose dear as the symbol of life and love and devotion, of beauty and eternity. For the love of man and woman, for the love of mankind and God, for the love of country, Americans who would speak the language of the heart do so with a rose.

We see proofs of this everywhere. The study of fossils reveals that the rose has existed in America for age upon age. We have always cultivated roses in our gardens. Our first President, George Washington, bred roses, and a variety he named after his mother is still grown today. The White House itself boasts a beautiful Rose Garden. We grow roses in all our fifty States. We find roses throughout our art, music, and literature. We decorate our celebrations and parades with roses. Most of all, we present roses to those we love, and we lavish them on our altars, our civil shrines, and the final resting places of our honored dead.

The American people have long held a special place in their hearts for roses. Let us continue to cherish them, to honor the love and devotion they represent, and to bestow them on all we love just as God has bestowed them on us.

The Congress, by Senate Joint Resolution 159 [Pub. L. 99-449, now this section], has designated the rose as the National Floral Emblem of the United States and authorized and requested the President to issue a proclamation declaring this fact.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the rose as the National Floral Emblem of the United States of America.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of November, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

RONALD REAGAN.

§ 304. National march

The composition by John Philip Sousa entitled "The Stars and Stripes Forever" is the national march.

(Pub. L. 105-225, Aug. 12, 1998, 112 Stat. 1263.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
304	36:188.	Dec. 11, 1987, Pub. L. 100-186, 101 Stat. 1286.

§ 305. National tree

The tree genus Quercus, commonly known as the oak tree, is the national tree.

(Added Pub. L. 108-447, div. J, title I, §109(a), Dec. 8, 2004, 118 Stat. 3344.)

CHAPTER 5—PRESIDENTIAL INAUGURAL CEREMONIES

- Sec. 501. Definitions.
- 502. Regulations, licenses, and registration tags.
- 503. Use of reservations, grounds, and public spaces.
- 504. Installation and removal of electrical facilities.
- 505. Extension of wires along parade routes.
- 506. Duration of regulations and licenses and publication of regulations.

- Sec. 507. Application to other property.
- 508. Enforcement.
- 509. Penalty.
- 510. Disclosure of and prohibition on certain donations.
- 511. Authorization of appropriations.

AMENDMENTS

2006—Pub. L. 109-284, §5(1), (2), Sept. 27, 2006, 120 Stat. 1211, added item 510 and redesignated former item 510 as 511.

§ 501. Definitions

For purposes of this chapter—

(1) "Inaugural Committee" means the committee appointed by the President-elect to be in charge of the Presidential inaugural ceremony and functions and activities connected with the ceremony; and

(2) "inaugural period" means the period that includes the day on which the Presidential inaugural ceremony is held, the 5 calendar days immediately preceding that day, and the 4 calendar days immediately following that day.

(Pub. L. 105-225, Aug. 12, 1998, 112 Stat. 1263.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
501	36:721(b). 36:730.	Aug. 6, 1956, ch. 974, §1(b), 70 Stat. 1049. Aug. 6, 1956, ch. 974, §10, as added Jan. 30, 1968, Pub. L. 90-251, §4, 82 Stat. 4.

In this chapter, the word "Mayor" is substituted for "Commissioners" in the Presidential Inaugural Ceremonies Act (ch. 974, 70 Stat. 1049) [subsequently changed to "Commissioner" in 36:ch. 30 because section 401 of Reorganization Plan No. 3 of 1967 (5 App. U.S.C.) transferred the functions of the Board of Commissioners of the District of Columbia to the Commissioner of the District of Columbia and because of 36:730] because of sections 421 and 711 of the District of Columbia Self-Government and Governmental Reorganization Act (Public Law 93-198, 87 Stat. 789, 818), which abolished the office of Commissioner of the District of Columbia and replaced it with the office of Mayor of the District of Columbia.

In this section, the text of 36:721(b)(3)-(5) is omitted because the complete names of the Mayor of the District of Columbia and the Secretaries of Defense and of the Interior are used the first time the terms appear in a section.

§ 502. Regulations, licenses, and registration tags

(a) REGULATIONS AND LICENSES.—For each inaugural period, the Council of the District of Columbia shall—

(1) prescribe reasonable regulations necessary to preserve public order and protect life, health, and property;

(2) prescribe special regulations related to the standing, movement, and operation of vehicles; and

(3) grant special licenses to peddlers and vendors to sell merchandise in places the Council considers proper, subject to conditions and fees for the licenses the Council considers proper.

(b) REGISTRATION TAGS.—The Mayor of the District of Columbia may issue, for any motor

vehicle made available for the use of the Inaugural Committee, special registration tags, valid for not more than 90 days, designed to celebrate the inauguration of the President and Vice President.

(Pub. L. 105–225, Aug. 12, 1998, 112 Stat. 1264.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
502(a)	36:722(a).	Aug. 6, 1956, ch. 974, § 2, 70 Stat. 1049; Jan. 30, 1968, Pub. L. 90–251, § 1, 82 Stat. 4.
502(b)	36:722(b). 36:730.	Aug. 6, 1956, ch. 974, § 10, as added Jan. 30, 1968, Pub. L. 90–251, § 4, 82 Stat. 4.

In this chapter, the words “Council of the District of Columbia” are substituted for “District of Columbia Council” because of sections 401 and 711 of the District of Columbia Self-Government and Governmental Reorganization Act (Public Law 93–198, 87 Stat. 785, 818).

In subsection (a)(2), the words “of whatever character or kind during such period” are omitted as unnecessary.

In subsection (a)(3), the words “the privilege of”, “goods, wares, and”, and “in the District of Columbia” are omitted as unnecessary.

In subsection (b), the words “both duly registered . . . and unregistered”, “a period”, and “the occasion of” are omitted as unnecessary.

§ 503. Use of reservations, grounds, and public spaces

(a) PERMIT FOR USE.—With the approval of the officer having jurisdiction over any of the Federal reservations or grounds in the District of Columbia, the Secretary of the Interior may grant to the Inaugural Committee a permit to use the reservations or grounds during the inaugural period, including a reasonable time before and after the inaugural period. The Mayor of the District of Columbia may grant a similar permit to use public space under the Mayor’s jurisdiction. Each permit granted under this subsection is subject to conditions the grantor of the permit prescribes.

(b) REVIEWING STANDS AND COMMERCIAL STANDS AND STRUCTURES.—A reviewing stand or a stand or structure for the sale of merchandise, food, or drink may be built on public grounds in the District of Columbia only if approved by the Inaugural Committee and by the Secretary or the Mayor, as appropriate.

(c) RESTORATION AFTER INAUGURAL PERIOD.—After the inaugural period, the reservation, ground, or public space occupied by a stand or structure shall be restored promptly to its prior condition.

(d) INDEMNIFICATION.—The Inaugural Committee shall indemnify and save harmless the District of Columbia and the appropriate department, agency, or instrumentality of the United States Government against any loss or damage to, and against any liability arising from the use of, the reservation, ground, or public space, by the Inaugural Committee or a licensee of the Inaugural Committee.

(Pub. L. 105–225, Aug. 12, 1998, 112 Stat. 1264.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
503(a)	36:724 (1st, 2d sentences). 36:730.	Aug. 6, 1956, ch. 974, § 4, 70 Stat. 1049. Aug. 6, 1956, ch. 974, § 10, as added Jan. 30, 1968, Pub. L. 90–251, § 4, 82 Stat. 4.
503(b)	36:724 (3d sentence). 36:730.	
503(c)	36:724 (4th sentence).	
503(d)	36:724 (last sentence).	

In subsection (a), the words “restrictions, terms, and” are omitted as unnecessary. The word “prescribes” is substituted for “imposed” for consistency in the revised title and with other titles of the United States Code.

In subsection (b), the words “With respect to public space”, “goods, wares”, “sidewalk, street, park, reservation, or other”, and “depending on the location of such stand or structure” are omitted as unnecessary.

In subsection (d), the words “department, agency, or instrumentality” are substituted for “agency” for consistency in the revised title and with other titles of the United States Code. The words “or agencies” are omitted because of 1:1.

§ 504. Installation and removal of electrical facilities

(a) INSTALLATION.—The Mayor of the District of Columbia may allow the Inaugural Committee to install suitable overhead conductors and electrical facilities, with adequate supports. The official in charge of a park or reservation in the District of Columbia in which it is necessary to place wires shall supervise the placing and removal of those wires.

(b) REMOVAL.—The conductors and supports shall be removed not later than 5 days after the end of the inaugural period.

(c) INDEMNIFICATION.—The United States Government and the District of Columbia may not incur any expense or damage from the installation, operation, or removal of a temporary overhead conductor or electrical facility. The Inaugural Committee shall indemnify and hold harmless the District of Columbia and the appropriate department, agency, or instrumentality of the Government against any loss or damage, and against any liability arising, from any act of the Inaugural Committee or any agent, licensee, servant, or employee of the Inaugural Committee in connection with the installation, operation, or removal of a temporary overhead conductor or electrical facility.

(Pub. L. 105–225, Aug. 12, 1998, 112 Stat. 1264.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
504(a)	36:725 (1st, 2d sentences). 36:730.	Aug. 6, 1956, ch. 974, § 5 (1st–3d, last sentences), 70 Stat. 1050. Aug. 6, 1956, ch. 974, § 10, as added Jan. 30, 1968, Pub. L. 90–251, § 4, 82 Stat. 4.
504(b)	36:725 (3d sentence).	
504(c)	36:725 (last sentence).	

In subsection (a), the words “lighting or other” and “for illumination or other purposes” are omitted as unnecessary.

In subsection (c), the words “illumination or other” are omitted as unnecessary. The words “department,

agency, or instrumentality” are substituted for “agency” for consistency in the revised title and with other titles of the United States Code. The words “or agencies” are omitted because of 1:1. The words “in connection with the installation, operation, or removal of a temporary overhead conductor or electrical facility” are added for clarity.

§ 505. Extension of wires along parade routes

The Mayor of the District of Columbia, the Secretary of the Interior, and the Inaugural Committee may allow communications companies to extend overhead wires to places along a parade route that are considered convenient for use in connection with the parade and other inaugural purposes. The wires shall be removed not later than 10 days after the inaugural period ends.

(Pub. L. 105–225, Aug. 12, 1998, 112 Stat. 1265.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
505	36:727. 36:730.	Aug. 6, 1956, ch. 974, § 7, 70 Stat. 1050. Aug. 6, 1956, ch. 974, §10, as added Jan. 30, 1968, Pub. L. 90–251, § 4, 82 Stat. 4.

The words “communications companies” are substituted for “telegraph, telephone, radio-broadcasting, and television companies” to eliminate unnecessary words.

§ 506. Duration of regulations and licenses and publication of regulations

Regulations prescribed and licenses authorized under this chapter are effective only during the inaugural period. The regulations shall be published in at least one daily newspaper published in the District of Columbia. A penalty prescribed for violating such a regulation may not be enforced until 5 days after publication.

(Pub. L. 105–225, Aug. 12, 1998, 112 Stat. 1265.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
506	36:728 (1st, 2d sentences).	Aug. 6, 1956, ch. 974, § 8 (1st, 2d sentences), 70 Stat. 1051.

The words “full force and” are omitted as unnecessary.

§ 507. Application to other property

This chapter does not apply to the United States Capitol Buildings or Grounds or other property under the jurisdiction of Congress or a committee, commission, or officer of Congress. A service or facility authorized by or under this chapter is available for the property on request or approval of the joint committee of the Senate and House of Representatives appointed by the President of the Senate and the Speaker of the House of Representatives to arrange for the inauguration of the President-elect and the Vice President-elect.

(Pub. L. 105–225, Aug. 12, 1998, 112 Stat. 1265.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
507	36:729.	Aug. 6, 1956, ch. 974, § 9, 70 Stat. 1051.

§ 508. Enforcement

The Mayor of the District of Columbia, or other official having jurisdiction in the premises, shall enforce this chapter, take necessary precautions to protect the public, and ensure that the pavement of any street, sidewalk, avenue, or alley disturbed or damaged is restored to its prior condition.

(Pub. L. 105–225, Aug. 12, 1998, 112 Stat. 1265.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
508	36:725 (4th sentence). 36:730.	Aug. 6, 1956, ch. 974, § 5 (4th sentence), 70 Stat. 1050. Aug. 6, 1956, ch. 974, § 10, as added Jan. 30, 1968, Pub. L. 90–251, § 4, 82 Stat. 4.

§ 509. Penalty

A person violating a regulation prescribed under this chapter shall be fined under title 18 or imprisoned for not more than 30 days. A separate violation occurs under this section for each day the violation continues.

(Pub. L. 105–225, Aug. 12, 1998, 112 Stat. 1265.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
509	36:728 (3d, last sentences).	Aug. 6, 1956, ch. 974, § 8 (3d, last sentences), 70 Stat. 1051; Jan. 30, 1968, Pub. L. 90–251, § 3, 82 Stat. 4.

The words “by the Council of the District of Columbia” and “the authority of” are omitted as unnecessary. The words “under title 18” are substituted for “not more than \$100” for consistency with title 18. The words “A separate violation occurs under this section for each day the violation continues” are substituted for 36:728 (last sentence) for consistency in the revised title and with other titles of the United States Code and to eliminate unnecessary words.

§ 510. Disclosure of and prohibition on certain donations

(a) IN GENERAL.—A committee shall not be considered to be the Inaugural Committee for purposes of this chapter unless the committee agrees to, and meets, the requirements of subsections (b) and (c).

(b) DISCLOSURE.—

(1) IN GENERAL.—Not later than the date that is 90 days after the date of the Presidential inaugural ceremony, the committee shall file a report with the Federal Election Commission disclosing any donation of money or anything of value made to the committee in an aggregate amount equal to or greater than \$200.

(2) CONTENTS OF REPORT.—A report filed under paragraph (1) shall contain—

- (A) the amount of the donation;
- (B) the date the donation is received; and

(C) the name and address of the person making the donation.

(c) LIMITATION.—The committee shall not accept any donation from a foreign national (as defined in section 319(b) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441e(b))).¹

(Added Pub. L. 107–155, title III, §308(a)(2), Mar. 27, 2002, 116 Stat. 103.)

REFERENCES IN TEXT

The Federal Election Campaign Act of 1971, referred to in subsec. (c), is Pub. L. 92–225, Feb. 7, 1972, 86 Stat. 3, which was formerly classified principally to chapter 14 (§431 et seq.) of Title 2, The Congress, prior to editorial reclassification and renumbering in Title 52, Voting and Elections, and is now classified principally to chapter 301 (§30101 et seq.) of Title 52. Section 319 of this Act is classified to section 30121 of Title 52. For complete classification of this Act to the Code, see Tables.

PRIOR PROVISIONS

A prior section 510 was renumbered section 511 of this title.

EFFECTIVE DATE

Section effective Nov. 6, 2002, see section 402 of Pub. L. 107–155, set out as an Effective Date of 2002 Amendment; Regulations note under section 30101 of Title 52, Voting and Elections.

§ 511. Authorization of appropriations

(a) AUTHORIZATION.—Necessary amounts are authorized to be appropriated—

(1) to enable the Mayor of the District of Columbia to provide additional municipal services in the District of Columbia during the inaugural period, including—

(A) employment of personal services without regard to chapters 33 and 51 and subchapter III of chapter 53 of title 5;

(B) travel expenses of enforcement personnel, including sanitarians, from other jurisdictions;

(C) the hiring of the means of transportation;

(D) meals for policemen, firemen, and other municipal employees;

(E) the cost of removing and relocating streetcar loading platforms, construction, rent, maintenance, and expenses incident to the operation of temporary public comfort stations, first-aid stations, and information booths; and

(F) other incidental expenses in the discretion of the Mayor; and

(2) to enable the Secretary of the Interior to provide meals for the members of the United States Park Police during the inaugural period.

(b) PAYMENT.—Amounts appropriated under—

(1) subsection (a)(1) of this section are payable in the same way as other appropriations for the expenses of the District of Columbia; and

(2) subsection (a)(2) of this section are payable in the same way as other appropriations

¹ See References in Text note below.

for the expenses of the Department of the Interior.

(Pub. L. 105–225, Aug. 12, 1998, 112 Stat. 1265, §510; renumbered §511, Pub. L. 107–155, title III, §308(a)(1), Mar. 27, 2002, 116 Stat. 103.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
510(a)	36:723 (less words between 1st and 2d commas and between next-to-last and last commas). 36:730.	Aug. 6, 1956, ch. 974, §3, 70 Stat. 1049; Jan. 30, 1968, Pub. L. 90–251, §2, 82 Stat. 4. Aug. 6, 1956, ch. 974, §10, as added Jan. 30, 1968, Pub. L. 90–251, §4, 82 Stat. 4.
510(b)	36:723 (words between 1st and 2d commas and between next-to-last and last commas).	

In subsection (a)(1)(A), the words “chapters 33 and 51 and subchapter III of chapter 53 of title 5” are substituted for “the civil-service and classification laws” for clarity and consistency in the revised title and with other titles of the United States Code.

AMENDMENTS

2002—Pub. L. 107–155 renumbered section 510 of this title as this section.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–155, effective Nov. 6, 2002, see section 402 of Pub. L. 107–155, set out as an Effective Date of 2002 Amendment; Regulations note under section 30101 of Title 52, Voting and Elections.

CHAPTER 7—FEDERAL PARTICIPATION IN CARL GARNER FEDERAL LANDS CLEANUP DAY

Sec. 701.	Findings.
702.	Definition.
703.	Duties of Federal land management agency.
704.	Activities.

§ 701. Findings

Congress finds that—

(1) Federal lands, parks, recreation areas, and waterways provide recreational opportunities for millions of Americans each year;

(2) Federal lands administered by Federal land management agencies contain valuable wildlife, scenery, natural and historic features, and other resources which may be damaged by litter and misuse;

(3) it is in the best interest of the United States and its citizens to maintain and preserve the beauty, safety, and availability of these Federal lands;

(4) these Federal land management agencies have been designated as the caretakers of these Federal lands and are responsible for maintaining and preserving those areas and facilities;

(5) there is great value in volunteer involvement in maintaining and preserving Federal lands for recreational use;

(6) the Federal land management agencies should be concerned with promoting a sense of pride and ownership among citizens toward these lands;