

October 15, 2018

Brian D. Joyner

Chief of Staff

National Mall and Memorial Parks

National Park Service

900 Ohio Drive, SW

Washington, DC 20024

Letter in opposition to proposed rule regarding demonstrations and special events in the National Capital Region, 83 Fed. Reg. 40460

Dear Mr. Joyner:

The R Street Institute is a nonprofit, nonpartisan, public policy research organization. Our mission is to engage in policy research and outreach that promotes free markets and limited, effective government. I write today, on behalf of R Street, to oppose the proposal to effectively limit the public's ability to assemble and protest near the White House and the National Mall.

As a conservative organization that prioritizes individual liberty in any given policy matter, we view the proposed changes, particularly the provision that would impose fees for demonstration, as arbitrary government actions that violate the First Amendment.

Proposed Change Regarding Demonstration Fees

The National Parks Service (NPS) seeks comment on “the merits of recovering costs associated with permitted demonstrations.” NPS claims that it has “the authority to recover all costs of providing necessary services associated with special use permits,” but legal precedent holds that permits for constitutionally protected demonstrations are not discretionary: “Public assembly for First Amendment purposes is as surely a ‘park use’ as any tourist or recreational activity.”¹ Indeed, the Department of the Interior, which oversees NPS, has admitted as much. The NPS Reference Manual states:

When the requested use is a right involving access to park land for the exercise of First Amendment rights ... the superintendent will issue a permit without any requirement for fees ... The solicitor has ruled that to charge or require bond or insurance for these types of activities might be beyond the means of some applicants and prohibit them from exercising their rights. This would constitute an infringement of rights and be considered a form of restraint on the exercise of those rights.²

The Supreme Court has ruled against imposing fees for activities protected by the First Amendment. The court struck down a Pennsylvania town ordinance imposing a canvassing license fee on the grounds that: “Freedom of speech, freedom of the press, freedom of religion are available to all, not merely to those who can pay their own way.”³

NPS has requested comment on the merits of offering an indigency waiver for this provision, but we concur with the American Civil Liberties Union that such a waiver would meet serious implementation obstacles and would be infeasible.⁴

R Street also opposes other provisions, including the proposal to close to demonstrations a portion of walkable area near the White House that amounts to 80 percent of White House sidewalk, and changes in the permit application process that would reduce accommodations for spontaneous demonstration.

We are sensitive to the reality that NPS faces budgetary constraints, but constitutionally guaranteed freedoms cannot be curtailed in the name of austerity. We believe that the government has not given proper justification for substantially curbing the right to petition government for redress of grievances, and that the proposed rule changes are therefore unconstitutional. We respectfully submit our comments opposing the proposal on the basis of conservative principles, and urge NPS to withdraw it.

Sincerely,

Jon Haggerty

Criminal Justice and Civil Liberties Policy Manager, R Street Institute

¹ *Quaker Action Group v. Morton*, 516 F.2d 717, 724 (D.C. Cir. 1975).

² NPS Reference Manual 53: Special Park Uses, p. 1. <https://www.nps.gov/policy/DOrders/RM53.pdf>.

³ *Murdock v. Pennsylvania*, 319 U.S. 105 (1943).

⁴ American Civil Liberties Union Foundation of the District of Columbia, “ACLU Comments on RIN 1024-AE45,” p. 15. <https://www.aclu.org/letter/aclu-public-comment-opposing-trump-administration-proposal-restrict-protest-rights-washington?redirect=nps-protest-public-comment>.