



**Ann Bowman
Smith/NCR/NPS**
11/09/2011 12:14 PM

To John Stanwich/WHVIS/NPS@NPS
cc
bcc

Subject Fw: The Nov 15, 8 a.m. mtg re Occupied DC will be held in the NCR conf room. TONYA-plse inform USPP. Thanks!

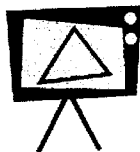
John,

FYI

Ann

Ann Bowman Smith
National Park Service Liaison to the White House
(202) 619-6354 (direct line)
(202) 619-6344 (main office)

----- Forwarded by Ann Bowman Smith/NCR/NPS on 11/09/2011 12:14 PM -----



Judy Bowman /NCR/NPS
11/09/2011 12:04 PM

To Tonya Thomas/NACC/NPS@NPS, Bob Vogel/NAMA/NPS@NPS, Steve Lorenzetti/NACC/NPS@NPS, Ann Bowman Smith/NCR/NPS@NPS, Steve Whitesell/WASO/NPS@NPS
cc

Subject The Nov 15, 8 a.m. mtg re Occupied DC will be held in the NCR conf room. TONYA-plse inform USPP. Thanks!

Judy Bowman
Staff Assistant
Office of the Regional Director
National Capital Region
(office) 202-619-7023
(fax) 202-619-7220



Judy Bowman/NCR/NPS
11/09/2011 12:04 PM

To Tonya Thomas/NACC/NPS@NPS, Bob
Vogel/NAMA/NPS@NPS, Steve
Lorenzetti/NACC/NPS@NPS, Ann Bowman

cc

bcc

Subject The Nov 15, 8 a.m. mtg re Occupied DC will be held in the
NCR conf room. TONYA-plse inform USPP. Thanks!

History:  This message has been forwarded.

Judy Bowman
Staff Assistant
Office of the Regional Director
National Capital Region
(office) 202-619-7023
(fax) 202-619-7220



Lisa Mendelson-Ielmini/NCR/NPS
11/30/2011 10:25 AM

To "Steve Whitesell" <Steve_Whitesell@nps.gov>
cc
bcc
Subject Fw: Attorney-Client Privileged: Draft second response to Carter DeWitt email response dated November 28, 2011

Fyi - loop btwn conversation with National Mall & Memorial Parks and uspp needs to be closed.

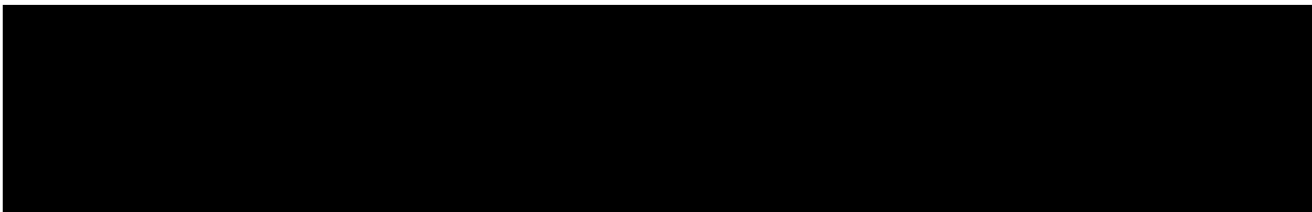
Lisa A Mendelson-Ielmini, AICP
Deputy Regional Director
National Capital Region NPS
202 619 7023 office

Robert MacLean

----- Original Message -----

From: Robert MacLean
Sent: 11/30/2011 09:31 AM EST
To: Randolph.Myers@sol.doi.gov
Cc: Bob Vogel; Steve Lorenzetti; Lisa Mendelson-Ielmini; Teresa Chambers; Kathleen Harasek; Karen Cucurullo; Robbin Owen; Pamela Blyth
Subject: Fw: Attorney-Client Privileged: Draft second response to Carter DeWitt email response dated November 28, 2011

Randy,



Thanks.

Rob

Deputy Chief Robert D. MacLean
Commander, Homeland Security Division
United States Park Police
(202) 619-7085 - Office
(202) 205-7983 - Fax
(202) 438-0000 - Home
robert_maclean@nps.gov - Email

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----- Forwarded by Robert MacLean/USPP/NPS on 11/30/2011 09:19 AM -----

Teresa Chambers/USPP/NPS



To "Robert MacLean" <Robert_MacLean@nps.gov>



11/29/2011 12:47 PM

cc "Pamela Blyth" <Pamela_Blyth@nps.gov>
Subject Fw: Attorney-Client Privileged: Draft second response to
Carter DeWitt email response dated November 28, 2011

Teresa Chambers, Chief
United States Park Police
Work: 202-619-7350

From: "Myers, Randolph" [RANDOLPH.MYERS@sol.doi.gov]

Sent: 11/29/2011 12:45 PM EST

To: Bob Vogel; Steve Lorenzetti

Cc: Steve Whitesell; Lisa Mendelson-Ielmini; Teresa Chambers; Kathleen Harasek; Tonya Thomas; Karen Cucurullo; Robbin Owen

Subject: Attorney-Client Privileged: Draft second response to Carter DeWitt email response dated November 28, 2011

Randy

Randolph J. Myers
U.S. Department of the Interior, Office of the Solicitor
DPW Branch of National Parks
1849 C Street, NW, Room 5320
Washington, D.C. 20240
w (202) 208-4338 fax (202) 208-3877
Randolph.Myers@sol.doi.gov

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From: Bob_Vogel@nps.gov [mailto:Bob_Vogel@nps.gov]
Sent: Tuesday, November 29, 2011 8:44 AM
To: Myers, Randolph; Lorenzetti, Steve
Subject: Fw: Occupy DC versus other park users - I count too!

Fyi

From: Carter DeWitt [cdewitt@taxfoundation.org]
Sent: 11/28/2011 04:29 PM CST
To: Karen Cucurullo
Cc: Bob Vogel; Steve Whitesell; Lisa Mendelson-Ielmini; Teresa Chambers; Kathleen Harasek; Tonya Thomas
Subject: RE: Occupy DC versus other park users - I count too!

Thank you for your response. I found it inaccurate in claiming to follow the letter of the law - -

I certainly appreciate the right to protest under constitutional law - however, this right does not supersede current laws requiring permits or acts already prohibited by federal regulation etc. Federal law prohibits camping overnight in the McPherson Square Park - period. This OCCUPY camp by federal regulations definition is not a protest - but a newly formed shanty town.

Please send me the court ruling which you refer to below by the statement - "the courts have ruled that temporary structures that support First Amendment activities are allowed." I would like that as soon as possible as we are taking further action.

According to The Code of Federal regulations, Title 36, Parks, Forests, and Public property - temporary structures may not be used outside designated camping areas (McPherson Square does not have a federally

designated camping area) for living accommodation activities such as sleeping, or making preparations to sleep including the laying down of beddings for the purpose of sleep, or storing personal belongings or making fire, or ... the above listed activities constitute camping when it reasonably appears in light of all the circumstance, that the participants in conducting these activities are in fact using this 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.*

They can certainly protest, they can get a permit and march or picket - but they cannot camp in a federal park that is not specially designated for camping.

Carter

Ms. Carter DeWitt
Vice President of Development
Tax Foundation
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Washington, DC 20045
(202) 464-5110 (Direct line)
www.TaxFoundation.org

The Tax Foundation is guided by the principles of sound tax policy -- neutrality, simplicity, transparency, and stability

-----Original Message-----

From: Karen_Cucurullo@nps.gov [mailto:Karen_Cucurullo@nps.gov]

Sent: Friday, November 25, 2011 12:18 PM

To: Carter DeWitt

Cc: Bob_Vogel@nps.gov; Steve_Whitesell@nps.gov; Lisa_Mendelson-Ielmini@nps.gov;

Teresa_Chambers@nps.gov; Kathleen_Harasek@nps.gov; tonya_robinson@nps.gov

Subject: Fw: Occupy DC versus other park users - I count too!

Ms DeWitt:

On behalf of the National Mall and Memorial Parks Superintendent Robert Vogel, United States Park Police Chief Teresa Chambers, Regional Director, National Capital Region, Steve Whitesell, and Deputy Regional Director, National Capital Region, Lisa Mendelson-Ielmini, I offer this response to your letter.

Thank you for your inquiry, it is our hope that the following information will provide helpful information on the role and responsibilities of the National Park Service (NPS) and its United States Park Police (USPP) and the actions we are taking to address your concerns.

The National Park Service has a long and proud tradition of providing opportunities for the exercise of First Amendment rights. The national parks of Washington, DC, are used almost daily as places for reflection, commemoration, recreational activities, demonstrations, and public events and by citizens such as you who use the parks for personal enjoyment. The National Park Service protects and interprets our important cultural and natural resources, and the United States Park Police ensure the safety and security of park resources as well as persons who use the common space.

While the sudden appearance of the "encampment" is disturbing to many, the courts have ruled that temporary structures that support First Amendment activities are allowed. As a result, enforcement action in this area is limited and challenging. The USPP will continue to focus their enforcement efforts on illegal behaviors and activities that are observed and reported.

Since the beginning of the activities in McPherson Square and Freedom Plaza, the National Park Service has provided additional trash receptacles and has emptied them at least three times each day. Rodent traps have been placed in the parks, and those who are maintaining a vigil within the park have been requested to clear their trash and debris at the conclusion of each day's events. Portable toilet facilities have been placed within the park at the NPS's request and at the organizer's expense. Please contact the National Mall and Memorial Parks if there are additional concerns that have not been addressed at 202-245-4661.

The USPP has been working with the Metropolitan Police Department (MPD) on monitoring the groups' activities within the city, and the USPP regularly patrols our parks to enforce laws and regulations and those that specifically affect the quality of life. We encourage the public to contact the USPP to report criminal activity or quality of life violations at 202-610-7500 so that individuals responsible for these violations can be identified and appropriate action taken.

We appreciate your taking the time to share your concerns. If there is any way we may be of further assistance in providing information and insight, please let us know. The NPS and the USPP remain committed to the citizens who live near, work near, or use the parks for their enjoyment. We routinely meet with the business community and would be willing to attend citizen group meetings if you think this would be valuable in maintaining our relationships.

Superintendent Bob Vogel
National Mall and Memorial Parks
Bob_Vogel@nps.gov

Chief Teresa C. Chambers
United States Park Police
Teresa_Chambers@nps.gov

Karen Cucurullo
Deputy Superintendent - Operations
National Mall and Memorial Parks
900 Ohio Drive, S.W.
Washington, D.C. 20024-2000
Work: (202) 245-4670
Fax: (202) 426-9309
Fax: (202) 426-1835

From: Carter DeWitt [cdewitt@taxfoundation.org]
Sent: 11/22/2011 12:43 PM CST
To: Teresa Chambers; Bob Vogel
Cc: "lisa_mendelson-ielmimi@nps.gov" <lisa_mendelson-ielmimi@nps.gov>;
Steve Whitesell
Subject: Occupy DC versus other park users - I count too!

Just spent 50 minutes being transferred from one national park department to the other - no one taking responsibility for this mess you all have created.

I have been a resident of DC for three years. In that time I have paid my fair share of federal and DC taxes, donated to charities and supported several volunteer efforts. I live across from McPherson Square Park and almost every Saturday took my book into the park and read. Almost every night I would feed the ducks with bread I purchased at CVS. I fed the squirrels with the nuts Peapod delivered to my door. I am a single mom - my husband passed away six years ago - and I work very hard to pay for two children in college and keep a roof over my head. Do you have any idea how hard that is to do? I am not some spoiled trust fund baby.

Now the ducks are gone, the squirrels are gone and my park bench no longer available thanks to by Occupy DC. The grass is ruined, the trash is horrendous and the rat population has at least tripled. At night I get to listen to their parties, I see under age minors camping there without adult supervision. I get to hear sex, see public urination and be subjected to early morning drums when I have my one day off - Saturday. Even worse is the knowledge that my tax dollars support this irresponsible behavior by the city and federal park service and that you provide police protection to them as they march and as they disturb my peace, my travel to and from work.

Sounds to me like you don't recognize who votes for you - and who butters your bread with their labor. It isn't Occupy DC - it isn't the new generation of class warfare you are propping up - it is me. I am disgusted. I am angry and want this to end. Yesterday I read that the Occupy DC residents at McPherson Square expect to stay into next year. I sincerely hope this is not the case. They need to go home and have someone else support them if they are not willing to work. I have no desire to pay for this via my tax dollars you take from me in so many ways. They do not have a permit and it is unlawful for them to be there. If I tried to camp in one of these parks you would make me leave -

There are thousands of us unhappy and complaining about them - why are you not hearing us?

Laurie Carter DeWitt


Washington, DC 20005

Carter

Ms. Carter DeWitt

Vice President of Development

Tax Foundation

National Press Building

529 14th St., NW, Suite 420

Washington, DC 20045

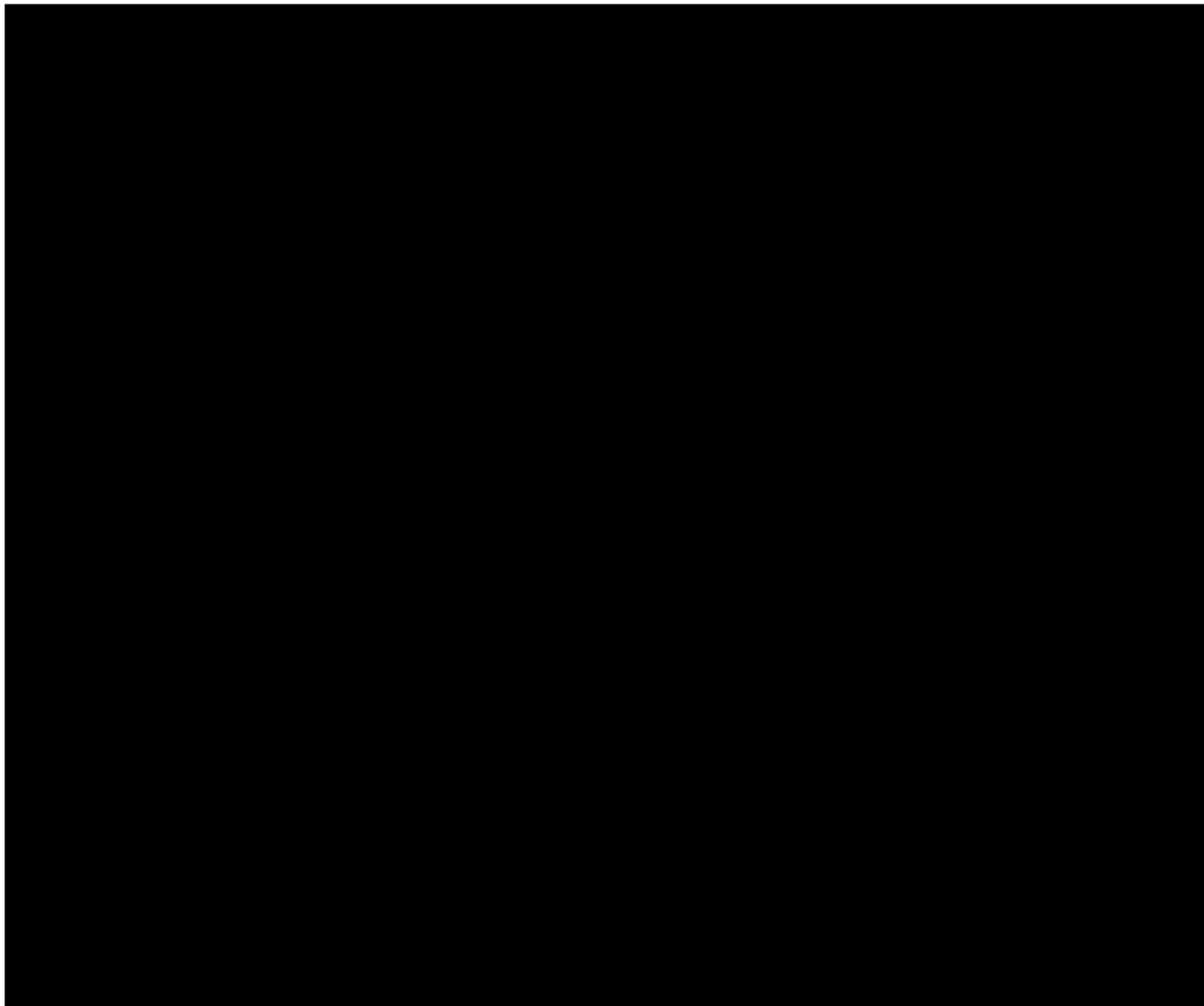
(202) 464-5110 (Direct line)

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Draft second response to DeWitt RMyers 11.29.11.docx Clark v CCNV 468 US 288 (1988).pdf



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Bob_Vogel@nps.gov

Chief Teresa C. Chambers
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Fax: (202) 426-9309

Draft NAMA response to DeWitt Needs USPP and NCR review
Attorney-Client Privileged RMyers 11/29/11

Fax: (202) 426-1835



**CLARK, SECRETARY OF THE INTERIOR, ET AL. v. COMMUNITY FOR
CREATIVE NON-VIOLENCE ET AL.**

No. 82-1998

SUPREME COURT OF THE UNITED STATES

**468 U.S. 288; 104 S. Ct. 3065; 82 L. Ed. 2d 221; 1984 U.S. LEXIS 136; 52 U.S.L.W.
4986**

**March 21, 1984, Argued
June 29, 1984, Decided**

PRIOR HISTORY: CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

DISPOSITION: 227 U. S. App. D. C. 19, 703 F.2d 586, reversed.

DECISION:

National Park Service anti-camping regulation held constitutionally applied to Washington, D.C., demonstrators.

SUMMARY:

The Community for Creative Non-Violence and several individuals brought suit in the United States District Court for the District of Columbia to prevent the application of a National Park Service regulation, prohibiting camping in national parks except in designated campgrounds, to a proposed demonstration in Lafayette Park and the Mall, in the heart of Washington, D.C., in which demonstrators would sleep in symbolic tents to demonstrate the plight of the homeless. The District Court granted summary judgment in favor of the Park Service. The United States Court of Appeals for the District of Columbia Circuit reversed on the ground that the application of the regulation so as to prevent sleeping in the tents would infringe the demonstrators' First

Amendment right of free expression (703 F2d 586).

On certiorari, the United States Supreme Court reversed. In an opinion by White, J., expressing the views of Burger, Ch. J., and Blackmun, Powell, Rehnquist, Stevens, and O'Connor, JJ., it was held that the Park Service regulation did not violate the First Amendment when applied to the demonstrators because the regulation was justified without reference to the content of the regulated speech, was narrowly tailored to serve a significant governmental interest, and left open ample alternative channels for communication of the information.

Burger, Ch. J., while concurring fully in the court's opinion, filed a concurring opinion stating that the camping was conduct and not speech.

Marshall, J., joined by Brennan, J., dissented on the ground that the demonstrators' sleep was symbolic speech and that the regulation of it was not reasonable.

LAWYERS' EDITION HEADNOTES:

[***LEdHN1]

CONSTITUTIONAL LAW §960

demonstration -- camping --

Headnote:[1A][1B][1C]

468 U.S. 288, *; 104 S. Ct. 3065, **;
82 L. Ed. 2d 221, ***LEdHN1; 1984 U.S. LEXIS 136

A National Park Service regulation prohibiting camping in national parks except in campgrounds designated for that purpose does not violate the First Amendment when applied to prohibit demonstrators from sleeping in Lafayette Park and the Mall, in the heart of Washington, D. C., in connection with a demonstration intended to call attention to the plight of the homeless. (Marshall and Brennan, JJ, dissented from this holding.)

[***LEdHN2]

PARKS, SQUARES, AND COMMONS §2

camping --

Headnote:[2A][2B]

Sleeping in tents for the purpose of expressing the plight of the homeless falls within the definition of "camping" in a National Park Service regulation defining camping as the use of park land for living accommodation purposes such as sleeping activities, 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 using any tents or other structure for sleeping or doing any digging or earth breaking or carrying on cooking activities when it 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.

[***LEdHN3]

EVIDENCE §102

First Amendment -- application --

Headnote:[3A][3B]

Although it is common to place the burden on the government to justify impingements on First Amendment interests, it is the obligation of the person desiring to engage in assertedly expressive conduct to demonstrate that the First Amendment even applies.

[***LEdHN4]

CONSTITUTIONAL LAW §934

expression -- restriction --

Headnote:[4]

Expression, whether oral or written or symbolized by conduct, is subject to reasonable time, place, and manner restrictions.

[***LEdHN5]

CONSTITUTIONAL LAW §934

expression -- regulation --

Headnote:[5]

Restrictions on expression, whether oral or written or symbolized by conduct, are valid provided that they are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.

[***LEdHN6]

CONSTITUTIONAL LAW §934

symbolic speech -- regulation --

Headnote:[6]

Symbolic expression delivered by conduct intended to be communicative and in context reasonably understood by the viewer to be communicative may be forbidden or regulated if the conduct itself may constitutionally be regulated, if the regulation is narrowly drawn to further a substantial governmental interest, and if the interest is unrelated to the suppression of free speech.

[***LEdHN7]

UNITED STATES §57

regulation -- situs --

Headnote:[7A][7B]

When the government seeks to regulate conduct that is ordinarily nonexpressive it may do so regardless of the situs of the application of the regulation.

[***LEdHN8]

468 U.S. 288, *; 104 S. Ct. 3065, **;
82 L. Ed. 2d 221, ***LEdHN8; 1984 U.S. LEXIS 136

PARKS, SQUARES, AND COMMONS §2

expressive violations --

Headnote:[8A][8B]

Even against people who choose to violate National Park Service regulations for expressive purposes, the Park Service may enforce regulations relating to grazing animals, flying model planes, gambling, hunting and fishing, setting off fireworks, and urination.

[***LEdHN9]

CONSTITUTIONAL LAW §934

expression-restriction --

Headnote:[9A][9B]

Reasonable time, place, and manner restrictions are valid even though they directly limit oral or written expression.

SYLLABUS

In 1982, the National Park Service issued a permit to respondent Community for Creative Non-Violence (CCNV) to conduct a demonstration in Lafayette Park and the Mall, which are National Parks in the heart of Washington, D. C. The purpose of the demonstration was to call attention to the plight of the homeless, and the permit authorized the erection of two symbolic tent cities. However, the Park Service, relying on its regulations -- particularly one that permits "camping" (defined as including sleeping activities) only in designated campgrounds, no campgrounds having ever been designated in Lafayette Park or the Mall -- denied CCNV's request that demonstrators be permitted to sleep in the symbolic tents. CCNV and the individual respondents then filed an action in Federal District Court, alleging, *inter alia*, that application of the regulations to prevent sleeping in the tents violated the First Amendment. The District Court granted summary judgment for the Park Service, but the Court of Appeals reversed.

Held : The challenged application of the Park Service regulations does not violate the First Amendment. Pp. 293-299.

(a) Assuming that overnight sleeping in connection

with the demonstration is expressive conduct protected to some extent by the First Amendment, the regulation forbidding sleeping meets the requirements for a reasonable time, place, or manner restriction of expression, whether oral, written, or symbolized by conduct. The regulation is neutral with regard to the message presented, and leaves open ample alternative methods of communicating the intended message concerning the plight of the homeless. Moreover, the regulation narrowly focuses on the Government's substantial interest in maintaining the parks in the heart of the Capital in an attractive and intact condition, readily available to the millions of people who wish to see and enjoy them by their presence. To permit camping would be totally inimical to these purposes. The validity of the regulation need not be judged solely by reference to the demonstration at hand, and none of its provisions are unrelated to the ends that it was designed to serve. Pp. 293-298.

(b) Similarly, the challenged regulation is also sustainable as meeting the standards for a valid regulation of expressive conduct. Aside from its impact on speech, a rule against camping or overnight sleeping in public parks is not beyond the constitutional power of the Government to enforce. And as noted above, there is a substantial Government interest, unrelated to suppression of expression, in conserving park property that is served by the proscription of sleeping. Pp. 298-299.

COUNSEL: Deputy Solicitor General Bator argued the cause for petitioners. With him on the briefs were Solicitor General Lee, Assistant Attorney General McGrath, Alan I. Horowitz, Leonard Schaitman, and Katherine S. Gruenheck.

Burt Neuborne argued the cause for respondents. With him on the brief were Charles S. Sims, Laura Macklin, Arthur B. Spitzer, and Elizabeth Symonds. *

* Ogden Northrop Lewis filed a brief for the National Coalition for the Homeless as *amicus curiae* urging affirmance.

JUDGES: WHITE, J., delivered the opinion of the Court, in which BURGER, C. J., and BLACKMUN, POWELL, REHNQUIST, STEVENS, and O'CONNOR, JJ., joined. BURGER, C. J., filed a concurring opinion, post, p. 300. MARSHALL, J., filed a dissenting opinion, in which BRENNAN, J., joined, post, p. 301.

468 U.S. 288, *; 104 S. Ct. 3065, **;
82 L. Ed. 2d 221, ***; 1984 U.S. LEXIS 136

OPINION BY: WHITE

OPINION

[*289] [***224] [**3067] JUSTICE WHITE delivered the opinion of the Court.

[**LEdHR1A] [1A]The issue in this case is whether a National Park Service regulation prohibiting camping in certain parks violates the First Amendment when applied to prohibit demonstrators from sleeping in Lafayette Park and the Mall in connection with a demonstration intended to call attention to the plight of the homeless. We hold that it does not and reverse the contrary judgment of the Court of Appeals.

I

The Interior Department, through the National Park Service, is charged with responsibility for the management and maintenance of the National Parks and is authorized to promulgate rules and regulations for the use of the parks in accordance with the purposes for which they were established.

[*290] 16 U. S. C. §§ 1, 1a-1, 3. ¹ [***225] The network of National Parks includes the National Memorial-core parks, Lafayette Park and the Mall, which are set in the heart of Washington, D. C., and which are unique resources that the Federal Government holds in trust for the American people. Lafayette Park is a roughly 7-acre square located across Pennsylvania Avenue from the White House. Although originally part of the White House grounds, President Jefferson set it aside as a park for the use of residents and visitors. It is a "garden park with a . . . formal landscaping of flowers and trees, with fountains, walks and benches." National Park Service, U.S. Department of the Interior, White House and President's Park, Resource Management Plan 4.3 (1981). The Mall is a stretch of land running westward from the Capitol to the Lincoln Memorial some two miles away. It includes the Washington Monument, a series of reflecting pools, trees, lawns, and other greenery. It is bordered by, *inter alia*, the Smithsonian Institution and the National Gallery of Art. Both the Park and the Mall were included in Major Pierre L'Enfant's original plan for the Capital. Both are visited by vast numbers of visitors from around the country, as well as by large numbers of residents of the Washington metropolitan area.

1 The Secretary is admonished to promote and regulate the use of the parks by such means as conform to the fundamental purpose of the parks, which is "to conserve the scenery and the natural and historic objects and the wild life therein . . . in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." 39 Stat. 535, as amended, 16 U. S. C. § 1.

Under the regulations involved in this case, camping in National Parks is permitted only in campgrounds designated for that purpose. 36 CFR § 50.27(a) (1983). No such campgrounds have ever been designated in Lafayette Park or the Mall. 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 bedding for the purpose [*291] of sleeping), or storing personal belongings, or making any fire, or using any tents or . . . other structure . . . for sleeping or doing any digging or earth breaking or carrying on cooking activities." *Ibid*.

These activities, the regulation provides,

"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." *Ibid*.

[**3068] Demonstrations for the airing of views or grievances are permitted in the Memorial-core parks, but for the most part only by Park Service permits. 36 CFR § 50.19 (1983). Temporary structures may be erected for demonstration purposes but may not be used for camping. 36 CFR § 50.19(e)(8) (1983). ²

2 Section 50.19(e)(8), as amended, prohibits the use of certain temporary structures:

"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 electrical and other sensitive equipment or displays. Temporary structures may not be

468 U.S. 288, *291; 104 S. Ct. 3065, **3068;
82 L. Ed. 2d 221, ***225; 1984 U.S. LEXIS 136

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."

In [***226] 1982, the Park Service issued a renewable permit to respondent Community for Creative Non-Violence (CCNV) to conduct a wintertime demonstration in Lafayette Park and the Mall for the purpose of demonstrating the plight of the [*292] homeless. The permit authorized the erection of two symbolic tent cities: 20 tents in Lafayette Park that would accommodate 50 people and 40 tents in the Mall with a capacity of up to 100. The Park Service, however, relying on the above regulations, specifically denied CCNV's request that demonstrators be permitted to sleep in the symbolic tents.

[***LEdHR2A] [2A]CCNV and several individuals then filed an action to prevent the application of the no-camping regulations to the proposed demonstration, which, it was claimed, was not covered by the regulation. It was also submitted that the regulations were unconstitutionally vague, had been discriminatorily applied, and could not be applied to prevent sleeping in the tents without violating the First Amendment. The District Court granted summary judgment in favor of the Park Service. The Court of Appeals, sitting en banc, reversed. *Community for Creative Non-Violence v. Watt*, 227 U. S. App. D. C. 19, 703 F.2d 586 (1983). The 11 judges produced 6 opinions. Six of the judges believed that application of the regulations so as to prevent sleeping in the tents would infringe the demonstrators' First Amendment right of free expression. The other five judges disagreed and would have sustained the regulations as applied to CCNV's proposed demonstration. ³ We granted the Government's petition for certiorari, 464 U.S. 1016 (1983), and now reverse. ⁴

³ The *per curiam* opinion preceding the individual opinions described the lineup of the

judges as follows:

"Circuit Judge Mikva files an opinion, in which Circuit Judge Wald concurs, in support of a judgment reversing. Chief Judge Robinson and Circuit Judge Wright file a statement joining in the judgment and concurring in Circuit Judge Mikva's opinion with a caveat. Circuit Judge Edwards files an opinion joining in the judgment and concurring partially in Circuit Judge Mikva's opinion. Circuit Judge Ginsburg files an opinion joining in the judgment. Circuit Judge Wilkey files a dissenting opinion, in which Circuit Judges Tamm, MacKinnon, Bork and Scalia concur. Circuit Judge Scalia files a dissenting opinion, in which Circuit Judges MacKinnon and Bork concur." 227 U. S. App. D. C., at 19-20, 703 F.2d, at 586-587.

4 [***LEdHR2B] [2B]

As a threshold matter, we must address respondents' contention that their proposed activities do not fall within the definition of "camping" found in the regulations. None of the opinions below accepted this contention, and at least nine of the judges expressly rejected it. *Id.*, at 24, 703 F.2d, at 591 (opinion of Mikva, J.); *id.*, at 42, 703 F.2d, at 609 (opinion of Wilkey, J.). We likewise find the contention to be without merit. It cannot seriously be doubted that sleeping in tents for the purpose of expressing the plight of the homeless falls within the regulation's definition of camping.

[*293] II

[***LEdHR3A] [3A] [***LEdHR4] [4] [***LEdHR5] [5]We need not differ with the view of the Court of Appeals that overnight [**3069] sleeping in connection with the demonstration is expressive conduct protected to some [***227] extent by the First Amendment. ⁵ We assume for present purposes, but do not decide, that such is the case, cf. *United States v. O'Brien*, 391 U.S. 367, 376 (1968), but this assumption only begins the inquiry. Expression, whether oral or written or symbolized by conduct, is subject to reasonable time, place, or manner restrictions. We have often noted that restrictions of this kind are valid provided that they are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental

468 U.S. 288, *293; 104 S. Ct. 3065, **3069;
82 L. Ed. 2d 221, ***227; 1984 U.S. LEXIS 136

interest, and that they leave open ample alternative channels for communication of the information. *City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789 (1984); *United States v. Grace*, 461 U.S. 171 (1983); *Perry Education Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37, 45-46 (1983); *Heffron v. International Society for Krishna Consciousness*, [*294] *Inc.*, 452 U.S. 640, 647-648 (1981); *Virginia Pharmacy Board v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 771 (1976); *Consolidated Edison Co. v. Public Service Comm'n of N. Y.*, 447 U.S. 530, 535 (1980).

5 [***LEdHR3B] [3B]

We reject the suggestion of the plurality below, however, that the burden on the demonstrators is limited to "the advancement of a plausible contention" that their conduct is expressive. *Id.*, at 26, n. 16, 703 F.2d, at 593, n. 16. Although it is common to place the burden upon the Government to justify impingements on First Amendment interests, it is the obligation of the person desiring to engage in assertedly expressive conduct to demonstrate that the First Amendment even applies. To hold otherwise would be to create a rule that all conduct is presumptively expressive. In the absence of a showing that such a rule is necessary to protect vital First Amendment interests, we decline to deviate from the general rule that one seeking relief bears the burden of demonstrating that he is entitled to it.

[***LEdHR6] [6]It is also true that a message may be delivered by conduct that is intended to be communicative and that, in context, would reasonably be understood by the viewer to be communicative. *Spence v. Washington*, 418 U.S. 405 (1974); *Tinker v. Des Moines School District*, 393 U.S. 503 (1969). Symbolic expression of this kind may be forbidden or regulated if the conduct itself may constitutionally be regulated, if the regulation is narrowly drawn to further a substantial governmental interest, and if the interest is unrelated to the suppression of free speech. *United States v. O'Brien*, *supra*.

[***LEdHR1B] [1B]Petitioners submit, as they did in the Court of Appeals, that the regulation forbidding

sleeping is defensible either as a time, place, or manner restriction or as a regulation of symbolic conduct. We agree with that assessment. The permit that was issued authorized the demonstration but required compliance with 36 CFR § 50.19 (1983), which prohibits "camping" on park lands, that is, the use of park lands for living accommodations, such as sleeping, storing personal belongings, making fires, digging, or cooking. These provisions, including the ban on sleeping, are clearly limitations on the manner in which the demonstration could be carried out. That sleeping, like the symbolic tents themselves, may be expressive and part of the message delivered by [***228] the demonstration does not make the ban any less a limitation on the manner of demonstrating, for reasonable time, place, or manner regulations normally have the purpose and direct effect of limiting expression but are nevertheless valid. *City Council of Los Angeles v. Taxpayers for Vincent*, *supra*; *Heffron v. International Society for Krishna Consciousness, Inc.*, *supra*; *Kovacs v. Cooper*, 336 U.S. 77 (1949). Neither does the fact that sleeping, *arguendo*, may be expressive [*295] conduct, rather than oral or written expression, render [**3070] the sleeping prohibition any less a time, place, or manner regulation. To the contrary, the Park Service neither attempts to ban sleeping generally nor to ban it everywhere in the parks. It has established areas for camping and forbids it elsewhere, including Lafayette Park and the Mall. Considered as such, we have very little trouble concluding that the Park Service may prohibit overnight sleeping in the parks involved here.

The requirement that the regulation be content-neutral is clearly satisfied. The courts below accepted that view, and it is not disputed here that the prohibition on camping, and on sleeping specifically, is content-neutral and is not being applied because of disagreement with the message presented.⁶ Neither was the regulation faulted, nor could it be, on the ground that without overnight sleeping the plight of the homeless could not be communicated in other ways. The regulation otherwise left the demonstration intact, with its symbolic city, signs, and the presence of those who were willing to take their turns is a day-and-night vigil. Respondents do not suggest that there was, or is, any barrier to delivering to the media, or to the public by other means, the intended message concerning the plight of the homeless.

6 Respondents request that we remand to the

468 U.S. 288, *295; 104 S. Ct. 3065, **3070;
82 L. Ed. 2d 221, ***228; 1984 U.S. LEXIS 136

Court of Appeals for resolution of their claim that the District Court improperly granted summary judgment on the equal protection claim. Brief for Respondents 91, n. 50. They contend that there were disputed questions of fact concerning the uniformity of enforcement of the regulation, claiming that other groups have slept in the parks. The District Court specifically found that the regulations have been consistently applied and enforced in a fair and non-discriminatory manner. App. to Pet. for Cert. 106a-108a. Only 5 of the 11 judges in the Court of Appeals addressed the equal protection claim. 227 U. S. App. D. C., at 43-44, 703 F.2d, at 610-611 (opinion of Wilkey, J., joined by Tamm, MacKinnon, Bork, and Scalia, JJ.). Our review of the record leads us to agree with their conclusion that there is no genuine issue of material fact and that the most that respondents have shown are isolated instances of undiscovered violations of the regulations.

[*296] It is also apparent to us that the regulation narrowly focuses on the Government's substantial interest in maintaining the parks in the heart of our Capital in an attractive and intact condition, readily available to the millions of people who wish to see and enjoy them by their presence. To permit camping -- using these areas as living accommodations -- would be totally inimical to these purposes, as would be readily understood by those who have frequented the National Parks across the country and observed the unfortunate consequences of the activities of those who refuse to confine their camping to designated areas.

It is urged by respondents, and the Court of Appeals was of this view, that if the symbolic city of tents was to be permitted and if the demonstrators did not intend to cook, dig, [***229] or engage in aspects of camping other than sleeping, the incremental benefit to the parks could not justify the ban on sleeping, which was here an expressive activity said to enhance the message concerning the plight of the poor and homeless. We cannot agree. In the first place, we seriously doubt that the First Amendment requires the Park Service to permit a demonstration in Lafayette Park and the Mall involving a 24-hour vigil and the erection of tents to accommodate 150 people. Furthermore, although we have assumed for present purposes that the sleeping banned in this case would have an expressive element, it is evident that its

major value to this demonstration would be facilitative. Without a permit to sleep, it would be difficult to get the poor and homeless to participate or to be present at all. This much is apparent from the permit application filed by respondents: "Without the incentive of sleeping space or a hot meal, the homeless would not come to the site." App. 14. The sleeping ban, if enforced, would thus effectively limit the nature, extent, and duration of the demonstration and to that extent ease the pressure on the parks.

Beyond this, however, it is evident from our cases that the validity of this [**3071] regulation need not be judged solely by reference [*297] to the demonstration at hand. *Heffron v. International Society for Krishna Consciousness, Inc.*, 452 U.S., at 652-653. Absent the prohibition on sleeping, there would be other groups who would demand permission to deliver an asserted message by camping in Lafayette Park. Some of them would surely have as credible a claim in this regard as does CCNV, and the denial of permits to still others would present difficult problems for the Park Service. With the prohibition, however, as is evident in the case before us, at least some around-the-clock demonstrations lasting for days on end will not materialize, others will be limited in size and duration, and the purposes of the regulation will thus be materially served. Perhaps these purposes would be more effectively and not so clumsily achieved by preventing tents and 24-hour vigils entirely in the core areas. But the Park Service's decision to permit nonsleeping demonstrations does not, in our view, impugn the camping prohibition as a valuable, but perhaps imperfect, protection to the parks. If the Government has a legitimate interest in ensuring that the National Parks are adequately protected, which we think it has, and if the parks would be more exposed to harm without the sleeping prohibition than with it, the ban is safe from invalidation under the First Amendment as a reasonable regulation of the manner in which a demonstration may be carried out. As in *City Council of Los Angeles v. Taxpayers for Vincent*, the regulation "responds precisely to the substantive problems which legitimately concern the [Government]." 466 U.S., at 810.

[***LEdHR7A] [7A] [***LEdHR8A] [8A] We have difficulty, therefore, in understanding why the prohibition against camping, with its ban on sleeping overnight, is not a reasonable time, place, or manner regulation that withstands constitutional scrutiny. Surely the regulation

468 U.S. 288, *297; 104 S. Ct. 3065, **3071;
82 L. Ed. 2d 221, ***LEdHR8A; 1984 U.S. LEXIS 136

is not unconstitutional on its face. None of its provisions appears unrelated to the ends that it was designed to serve. Nor is it any less valid when applied to prevent camping [***230] in Memorial-core parks by those who wish to demonstrate [*298] and deliver a message to the public and the central Government. Damage to the parks as well as their partial inaccessibility to other members of the public can as easily result from camping by demonstrators as by nondemonstrators. In neither case must the Government tolerate it. All those who would resort to the parks must abide by otherwise valid rules for their use, just as they must observe the traffic laws, sanitation regulations, and laws to preserve the public peace.⁷ This is no more than a reaffirmation that reasonable time, place, or manner restrictions on expression are constitutionally acceptable.

7 [***LEdHR7B] [7B] [***LEdHR8B] [8B]

When the Government seeks to regulate conduct that is ordinarily nonexpressive it may do so regardless of the situs of the application of the regulation. Thus, even against people who choose to violate Park Service regulations for expressive purposes, the Park Service may enforce regulations relating to grazing animals, 36 CFR § 50.13 (1983); flying model planes, § 50.16; gambling, § 50.17; hunting and fishing, § 50.18; setting off fireworks, § 50.25(g); and urination, § 50.26(b).

[***LEdHR1C] [1C] [***LEdHR9A] [9A] Contrary to the conclusion of the Court of Appeals, the foregoing analysis demonstrates that the Park Service regulation is sustainable under the four-factor standard of *United States v. O'Brien*, 391 U.S. 367 (1968), for validating a regulation of expressive conduct, which, in the last analysis is little, if any, different from the standard applied to time, place, or manner restrictions.⁸ No one contends that aside [*299] from [**3072] its impact on speech a rule against camping or overnight sleeping in public parks is beyond the constitutional power of the Government to enforce. And for the reasons we have discussed above, there is a substantial Government interest in conserving park property, an interest that is plainly served by, and requires for its implementation, measures such as the proscription of sleeping that are designed to limit the wear and tear on park properties.

That interest is unrelated to suppression of expression.

8 [***LEdHR9B] [9B]

Reasonable time, place, or manner restrictions are valid even though they directly limit oral or written expression. It would be odd to insist on a higher standard for limitations aimed at regulable conduct and having only an incidental impact on speech. Thus, if the time, place, or manner restriction on expressive sleeping, if that is what is involved in this case, sufficiently and narrowly serves a substantial enough governmental interest to escape First Amendment condemnation, it is untenable to invalidate it under *O'Brien* on the ground that the governmental interest is insufficient to warrant the intrusion on First Amendment concerns or that there is an inadequate nexus between the regulation and the interest sought to be served. We note that only recently, in a case dealing with the regulation of signs, the Court framed the issue under *O'Brien* and then based a crucial part of its analysis on the time, place, or manner cases. *City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 804-805, 808-810 (1984).

We are unmoved by the Court of Appeals' view that the challenged regulation is unnecessary, and hence invalid, because there are less speech-restrictive alternatives that could have satisfied the Government interest in preserving park lands. There is no gainsaying that preventing overnight sleeping will avoid a measure of actual or threatened damage to Lafayette Park and the Mall. The Court of Appeals' suggestions that the Park Service minimize the possible injury by reducing the size, duration, or frequency of demonstrations would still curtail the [***231] total allowable expression in which demonstrators could engage, whether by sleeping or otherwise, and these suggestions represent no more than a disagreement with the Park Service over how much protection the core parks require or how an acceptable level of preservation is to be attained. We do not believe, however, that either *United States v. O'Brien* or the time, place, or manner decisions assign to the judiciary the authority to replace the Park Service as the manager of the Nation's parks or endow the judiciary with the competence to judge how much protection of park lands is wise and how that level of conservation is to be attained.⁹

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9 We also agree with Judge Edwards' observation that "[to] insist upon a judicial resolution of this case, given the facts and record at hand, arguably suggests a lack of common sense." 227 U. S. App. D. C., at 33, 703 F.2d at 600. Nor is it any clearer to us than it was to him "what has been achieved by this rather exhausting expenditure of judicial resources." *Id.*, at 34, 703 F.2d, at 601.

Accordingly, the judgment of the Court of Appeals is
Reversed.

CONCUR BY: BURGER

CONCUR

[*300] CHIEF JUSTICE BURGER, concurring.

I concur fully in the Court's opinion.

I find it difficult to conceive of what "camping" means, if it does not include pitching a tent and building a fire. Whether sleeping or cooking follows is irrelevant. With all its frailties, the English language, as used in this country for several centuries, and as used in the Park Service regulations, could hardly be plainer in informing the public that camping in Lafayette Park was prohibited.

The actions here claimed as speech entitled to the protections of the First Amendment simply are not speech; rather, they constitute conduct. As Justice Black, who was never tolerant of limits on speech, emphatically pointed out in his separate opinion in *Cox v. Louisiana*, 379 U.S. 536, 578 (1965):

"The First and Fourteenth Amendments, I think, take away from government, state and federal, all power to restrict freedom of speech, press, and assembly *where people have a right to be for such purposes*. . . . Picketing, though it may be utilized to communicate ideas, is not speech, and therefore is not of itself protected by the First Amendment." (Emphasis in original; citations omitted.)

Respondents' attempt at camping in the park is a form of "picketing"; it is conduct, not speech. Moreover, it is conduct that interferes with the rights of others to use Lafayette Park for the purposes for which [*3073] it was created. Lafayette Park and others like it are for all the people, and their rights are not to be trespassed even

by those who have some "statement" to make. Tents, fires, and sleepers, real or feigned, interfere with the rights of others to use our parks. Of [*301] course, the Constitution guarantees that people may make their "statements," but Washington has countless places for the kind of "statement" these respondents sought to make.

It trivializes the First Amendment to seek to use it as a shield in the [***232] manner asserted here. And it tells us something about why many people must wait for their "day in court" when the time of the courts is pre-empted by frivolous proceedings that delay the causes of litigants who have legitimate, nonfrivolous claims. This case alone has engaged the time of 1 District Judge, an en banc court of 11 Court of Appeals Judges, and 9 Justices of this Court.

DISSENT BY: MARSHALL

DISSENT

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

The Court's disposition of this case is marked by two related failings. First, the majority is either unwilling or unable to take seriously the First Amendment claims advanced by respondents. Contrary to the impression given by the majority, respondents are not supplicants seeking to wheedle an undeserved favor from the Government. They are citizens raising issues of profound public importance who have properly turned to the courts for the vindication of their constitutional rights. Second, the majority misapplies the test for ascertaining whether a restraint on speech qualifies as a reasonable time, place, and manner regulation. In determining what constitutes a sustainable regulation, the majority fails to subject the alleged interests of the Government to the degree of scrutiny required to ensure that expressive activity protected by the First Amendment remains free of unnecessary limitations.

I

The proper starting point for analysis of this case is a recognition that the activity in which respondents seek to engage -- sleeping in a highly public place, outside, in the winter for the purpose of protesting homelessness -- is symbolic speech protected by the First Amendment. The majority [*302] assumes, without deciding, that the respondents' conduct is entitled to constitutional

468 U.S. 288, *302; 104 S. Ct. 3065, **3073;
82 L. Ed. 2d 221, ***232; 1984 U.S. LEXIS 136

protection. *Ante*, at 293. The problem with this assumption is that the Court thereby avoids examining closely the reality of respondents' planned expression. The majority's approach denatures respondents' asserted right and thus makes all too easy identification of a Government interest sufficient to warrant its abridgment. A realistic appraisal of the competing interests at stake in this case requires a closer look at the nature of the expressive conduct at issue and the context in which that conduct would be displayed.

In late autumn of 1982, respondents sought permission to conduct a round-the-clock demonstration in Lafayette Park and on the Mall. Part of the demonstration would include homeless persons sleeping outside in tents without any other amenities.¹ Respondents sought to begin their demonstration on a date full of ominous meaning to any homeless person: the first day of winter. Respondents were similarly purposeful in choosing demonstration sites. The Court portrays these sites -- the Mall [***233] and Lafayette Park -- in a peculiar fashion. According to the Court:

"Lafayette Park and the Mall . . . are unique resources that the Federal Government holds in trust for the American people. Lafayette Park is a roughly [**3074] 7-acre square located across Pennsylvania Avenue from the White House. Although originally part of the White House grounds, President Jefferson set it aside as a park for the use of residents and visitors. It is a 'garden park with a . . . formal landscaping of flowers and trees, with fountains, walks and benches.' . . . The Mall is a [*303] stretch of land running westward from the Capitol to the Lincoln Memorial some two miles away. It includes the Washington Monument, a series of reflecting pools, trees, lawns, and other greenery. It is bordered by, *inter alia*, the Smithsonian Institution and the National Gallery of Art. Both the Park and the Mall were included in Major Pierre L'Enfant's original plan for the Capital. Both are visited by vast numbers of visitors from around the country, as well as by large numbers of residents of the Washington metropolitan area." *Ante*, at 290.

Missing from the majority's description is any inkling that Lafayette Park and the Mall have served as the sites for some of the most rousing political demonstrations in the Nation's history. It is interesting to learn, I suppose, that Lafayette Park and the Mall were both part of Major Pierre L'Enfant's original plan for the

Capital. Far more pertinent, however, is that these areas constitute, in the Government's words, "a fitting and powerful forum for political expression and political protest." Brief for Petitioners 11.²

1 The previous winter respondents had held a similar demonstration after courts ruled that the Park Service regulations then in effect did not extend to respondents' proposed activities. *Community for Creative Non-Violence v. Watt*, 216 U. S. App. D. C. 394, 670 F.2d 1213 (1982) (*CCNV I*). Those activities consisted of setting up and sleeping in nine tents in Lafayette Park. The regulations at issue in this case were promulgated in direct response to *CCNV I*. 47 Fed. Reg. 24299 (1982).

2 At oral argument, the Government informed the Court "that on any given day there will be an average of three or so demonstrations going on" in the Mall-Lafayette Park area. Tr. of Oral Arg. 3-4. Respondents accurately describe Lafayette Park "as the American analogue to 'Speaker's Corner' in Hyde Park." Brief for Respondents 16, n. 25.

The primary³ purpose for making *sleep* an integral part of the demonstration was "to re-enact the central reality of [*304] homelessness," Brief for Respondents 2, and to impress upon public consciousness, in as dramatic a way as possible, that homelessness is a widespread problem, often ignored, that confronts its victims with life-threatening deprivations.⁴ [***234] As one of the homeless men seeking to demonstrate explained: "Sleeping in Lafayette Park or on the Mall, for me, is to show people that conditions are so poor for the homeless and poor in this city that we would actually sleep *outside* in the winter to get the point across." *Id.*, at 3.

3 Another purpose for making *sleep* part of the demonstration was to enable participants to weather the rigors of the round-the-clock vigil and to encourage other homeless persons to participate in the demonstration. As respondents stated in their application for a demonstration permit:

"If there was ever any question as to whether sleeping was a necessary element in this demonstration, it should be answered by now [in light of the previous year's demonstration]. No matter how hard we tried to get [homeless

468 U.S. 288, *304; 104 S. Ct. 3065, **3074;
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persons] to come to Reaganville [the name given to the demonstration by respondents], they simply would not come, until sleeping was permitted." App. 14.

4 Estimates on the number of homeless persons in the United States range from two to three million. See Brief for National Coalition for the Homeless as *Amicus Curiae* 3. Though numerically significant, the homeless are politically powerless inasmuch as they lack the financial resources necessary to obtain access to many of the most effective means of persuasion. Moreover, homeless persons are likely to be denied access to the vote since the lack of a mailing address or other proof of residence within a State disqualifies an otherwise eligible citizen from registering to vote. *Id.*, at 5.

The detrimental effects of homelessness are manifold and include psychic trauma, circulatory difficulties, infections that refuse to heal, lice infestations, and hypothermia. *Id.*, at 14-15. In the extreme, exposure to the elements can lead to death; over the 1983 Christmas weekend in New York City, 14 homeless persons perished from the cold. See *N. Y. Times*, Dec. 27, 1983, p. A1., col. 1.

In a long line of cases, this Court has afforded First Amendment protection to expressive conduct that qualifies as symbolic speech. See, e. g., *Tinker v. Des Moines School Dist.*, 393 U.S. 503 (1969) (black armband worn by students in public school as protest against United States policy in Vietnam war); *Brown v. Louisiana*, 383 U.S. 131 [**3075] (1966) (sit-in by Negro students in "whites only" library to protest segregation); *Stromberg v. California*, 283 U.S. 359 (1931) (flying red flag as gesture of support for communism). In light of the surrounding context, respondents' proposed activity meets the qualifications. The Court has previously acknowledged the importance of context in determining [*305] whether an act can properly be denominated as "speech" for First Amendment purposes and has provided guidance concerning the way in which courts should "read" a context in making this determination. The leading case is *Spence v. Washington*, 418 U.S. 405 (1974), where this Court held that displaying a United States flag with a peace symbol attached to it was conduct protected by the First Amendment. The Court looked first to the intent of

the speaker -- whether there was an "intent to convey a particularized message" -- and second to the perception of the audience -- whether "the likelihood was great that the message would be understood by those who viewed it." *Id.*, at 410-411. Here respondents clearly intended to protest the reality of homelessness by sleeping outdoors in the winter in the near vicinity of the magisterial residence of the President of the United States. In addition to accentuating the political character of their protest by their choice of location and mode of communication, respondents also intended to underline the meaning of their protest by giving their demonstration satirical names. Respondents planned to name the demonstration on the Mall "Congressional Village," and the demonstration in Lafayette Park, "Reaganville II." App. 13.

Nor can there be any doubt that in the surrounding circumstances the likelihood was great that the political significance of sleeping in the parks would be understood by those who viewed it. Certainly the news media understood the significance of respondents' proposed activity; newspapers and magazines from around the Nation reported their previous sleep-in and their planned display.⁵ Ordinary citizens, too, would likely understand the political message intended by respondents. This likelihood stems from the remarkably apt fit between the activity [***235] in which respondents seek to engage [*306] and the social problem they seek to highlight. By using sleep as an integral part of their mode of protest, respondents "can express with their bodies the poignancy of their plight. They can physically demonstrate the neglect from which they suffer with an articulateness even Dickens could not match." *Community for Creative Non-Violence v. Watt*, 227 U. S. App. D. C. 19, 34, 703 F.2d 586, 601 (1983) (Edwards, J. concurring).

5 See articles appended to Declaration of Mary Ellen Hombs, Record, Vol. 1.

It is true that we all go to sleep as part of our daily regimen and that, for the most part, sleep represents a physical necessity and not a vehicle for expression. But these characteristics need not prevent an activity that is normally devoid of expressive purpose from being used as a novel mode of communication. Sitting or standing in a library is a commonplace activity necessary to facilitate ends usually having nothing to do with making a statement. Moreover, sitting or standing is not conduct that an observer would normally construe as expressive

468 U.S. 288, *306; 104 S. Ct. 3065, **3075;
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conduct. However, for Negroes to stand or sit in a "whites only" library in Louisiana in 1965 was powerfully expressive; in that particular context, those acts became "monuments of protest" against segregation. *Brown v. Louisiana*, *supra*, at 139.

The Government contends that a foreseeable difficulty of administration counsels against recognizing sleep as a mode of expression protected by the First Amendment. The predicament the Government envisions can be termed "the imposter problem": the problem of distinguishing bona fide protesters from imposters whose requests for permission to sleep in Lafayette Park or the Mall on First Amendment [*3076] grounds would mask ulterior designs -- the simple desire, for example, to avoid the expense of hotel lodgings. The Government maintains that such distinctions cannot be made without inquiring into the sincerity of demonstrators and that such an inquiry would itself pose dangers to First Amendment values because it would necessarily be content-sensitive. I find this argument unpersuasive. First, a [*307] variety of circumstances *already* require government agencies to engage in the delicate task of inquiring into the sincerity of claimants asserting First Amendment rights. See, e. g., *Wisconsin v. Yoder*, 406 U.S. 205, 215-216 (1972) (exception of members of religious group from compulsory education statute justified by group's adherence to deep religious conviction rather than subjective secular values); *Welsh v. United States*, 398 U.S. 333, 343-344 (1970) (eligibility for exemption from military service as conscientious objector status justified by sincere religious beliefs). It is thus incorrect to imply that any scrutiny of the asserted purpose of persons seeking a permit to display sleeping as a form of symbolic speech would import something altogether new and disturbing into our First Amendment jurisprudence. Second, the administrative difficulty the Government envisions is now nothing more than a vague apprehension. If permitting sleep to be used as a form of protected First Amendment activity actually created the administrative problems the Government now envisions, there would emerge a clear factual basis upon which to establish the [***236] necessity for the limitation the Government advocates.

The Government's final argument against granting respondents' proposed activity any degree of First Amendment protection is that the contextual analysis upon which respondents rely is fatally flawed by overinclusiveness. The Government contends that the

Spence approach is overinclusive because it accords First Amendment status to a wide variety of acts that, although expressive, are obviously subject to prohibition. As the Government notes, "[actions] such as assassination of political figures and the bombing of government buildings can fairly be characterized as intended to convey a message that it readily perceived by the public." Brief for Petitioners 24, n. 18. The Government's argument would pose a difficult problem were the determination whether an act constitutes "speech" the end of First Amendment analysis. But such a determination is not the end. If [*308] an act is defined as speech, it must still be balanced against countervailing government interests. The balancing which the First Amendment requires would doom any argument seeking to protect antisocial acts such as assassination or destruction of government property from government interference because compelling interests would outweigh the expressive value of such conduct.

II

Although sleep in the context of this case is symbolic speech protected by the First Amendment, it is nonetheless subject to reasonable time, place, and manner restrictions. I agree with the standard enunciated by the majority: "[Restrictions] of this kind are valid provided that they are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information." *Ante*, at 293 (citations omitted).⁶ I conclude, however, that the regulations at issue in this case, as applied to respondents, fail to satisfy this standard.

6 I also agree with the majority that no substantial difference distinguishes the test applicable to time, place, and manner restrictions and the test articulated in *United States v. O'Brien*, 391 U.S. 367 (1968). See *Ante*, at 298-299, n. 8.

According to the majority, the significant Government interest advanced by denying respondents' request to engage in sleep-speech is the interest in "maintaining the parks in the heart of our Capital in an [*3077] attractive and intact condition, readily available to the millions of people who wish to see and enjoy them by their presence." *Ante*, at 296. That interest is indeed significant. However, neither the Government nor the

468 U.S. 288, *308; 104 S. Ct. 3065, **3077;
82 L. Ed. 2d 221, ***236; 1984 U.S. LEXIS 136

majority adequately explains how prohibiting respondents' planned activity will substantially further that interest.

The majority's attempted explanation begins with the curious statement that it seriously doubts that the First [*309] Amendment requires the Park Service to permit a demonstration in Lafayette Park and the Mall involving a 24-hour vigil and the erection of tents to accommodate 150 people. *Ante*, [***237] at 296. I cannot perceive why the Court should have "serious doubts" regarding this matter and it provides no explanation for its uncertainty. Furthermore, even if the majority's doubts were well founded, I cannot see how such doubts relate to the problem at hand. The issue posed by this case is not whether the Government is constitutionally compelled to permit the erection of tents and the staging of a continuous 24-hour vigil; rather, the issue is whether any substantial Government interest is served by banning sleep that is part of a political demonstration.

What the Court may be suggesting is that if the tents and the 24-hour vigil are permitted, but not constitutionally required to be permitted, then respondents have no constitutional right to engage in expressive conduct that supplements these activities. Put in arithmetical terms, the Court appears to contend that if X is permitted by grace rather than by constitutional compulsion, X + 1 can be denied without regard to the requirements the Government must normally satisfy in order to restrain protected activity. This notion, however, represents a misguided conception of the First Amendment. The First Amendment requires the Government to justify *every* instance of abridgment. That requirement stems from our oft-stated recognition that the First Amendment was designed to secure "the widest possible dissemination of information from diverse and antagonistic sources," *Associated Press v. United States*, 326 U.S. 1, 20 (1945), and "to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *Roth v. United States*, 354 U.S. 476, 484 (1957). See also *Buckley v. Valeo*, 424 U.S. 1, 49 (1976); *New York Times Co. v. Sullivan*, 376 U.S. 254, 266 (1964); *Whitney v. California*, 274 U.S. 357, 375-378 (1927) (Brandeis, J., concurring). Moreover, the stringency of that requirement is [*310] not diminished simply because the activity the Government seeks to restrain is supplemental to other activity that the Government may have permitted out of grace but was not constitutionally

compelled to allow. If the Government cannot adequately justify abridgment of protected expression, there is no reason why citizens should be prevented from exercising the *first* of the rights safeguarded by our Bill of Rights.

The majority's second argument is comprised of the suggestion that, although sleeping contains an element of expression, "its major value to [respondents'] demonstration would have been facilitative." *Ante*, at 296. While this observation does provide a hint of the weight the Court attached to respondents' First Amendment claims,⁷ it is utterly irrelevant to [***238] whether [**3078] the Government's ban on sleeping advances a substantial Government interest.

7 The facilitative purpose of the sleep-in takes away nothing from its independent status as symbolic speech. Moreover, facilitative conduct that is closely related to expressive activity is itself protected by First Amendment considerations. I therefore find myself in agreement with Judge Ginsburg who noted that "the personal non-communicative aspect of sleeping in symbolic tents at a demonstration site bears a close, functional relationship to an activity that is commonly comprehended as 'free speech.'" *Community for Creative Non-Violence v. Watt*, 227 U. S. App. D. C. 19, 40, 703 F.2d 586, 607 (1983). "[Sleeping] in the tents rather than simply standing or sitting down in them, allows the demonstrator to sustain his or her protest without stopping short of the officially-granted round-the-clock permission." *Ibid*. For me, as for Judge Ginsburg, that linkage itself "suffices to require a genuine effort to balance the demonstrators' interests against other concerns for which the government bears responsibility." *Ibid*.

The majority's third argument is based upon two claims. The first is that the ban on sleeping relieves the Government of an administrative burden because, without the flat ban, the process of issuing and denying permits to other demonstrators asserting First Amendment rights to sleep in the parks "would present difficult problems for the Park Service." *Ante*, at 297. The second is that the ban on sleeping [*311] will increase the probability that "some around-the-clock demonstrations for days on end will not materialize, [that] others will be limited in size and duration, and that

468 U.S. 288, *311; 104 S. Ct. 3065, **3078;
82 L. Ed. 2d 221, ***238; 1984 U.S. LEXIS 136

the purpose of the regulation will thus be materially served," *ante*, at 297, that purpose being "to limit the wear and tear on park properties." *Ante*, at 299.

The flaw in these two contentions is that neither is supported by a factual showing that evinces a real, as opposed to a merely speculative, problem. The majority fails to offer any evidence indicating that the absence of an absolute ban on sleeping would present administrative problems to the Park Service that are substantially more difficult than those it ordinarily confronts. A mere apprehension of difficulties should not be enough to overcome the right to free expression. See *United States v. Grace*, 461 U.S. 171, 182 (1983); *Tinker v. Des Moines School Dist.*, 393 U.S., at 508. Moreover, if the Government's interest in avoiding administrative difficulties were truly "substantial," one would expect the agency most involved in administering the parks at least to allude to such an interest. Here, however, the perceived difficulty of administering requests from other demonstrators seeking to convey messages through sleeping was not among the reasons underlying the Park Service regulations.⁸ Nor was it mentioned by the Park Service in its rejection of respondents' particular request.

9

⁸ See 47 Fed. Reg. 24301 (1982).

⁹ App. 16-17.

The Court's erroneous application of the standard for ascertaining a reasonable time, place, and manner restriction is also revealed by the majority's conclusion that a substantial governmental interest is served by the sleeping ban because it will discourage "around-the-clock demonstrations for days" and thus further the regulation's purpose "to limit wear and tear on park properties." *Ante*, at 299. The majority cites no evidence indicating that sleeping engaged in as symbolic speech will cause *substantial* wear and tear on park property. [*312] Furthermore, the Government's application of the sleeping ban in the circumstances of this case is strikingly underinclusive. The majority acknowledges that a proper time, place, and manner restriction must be "narrowly tailored." Here, however, the tailoring requirement is virtually [***239] forsaken inasmuch as the Government offers no justification for applying its absolute ban on sleeping yet is willing to allow respondents to engage in activities -- such as feigned sleeping -- that is no less burdensome.

In short, there are no substantial Government

interests advanced by the Government's regulations as applied to respondents. All that the Court's decision advances are the prerogatives of a bureaucracy that over the years has shown an implacable hostility toward citizens' exercise of First Amendment rights.¹⁰

¹⁰ At oral argument, the Government suggested that the ban on sleeping should not be invalidated as applied to respondents simply because the Government is willing to allow respondents to engage in other nonverbal acts of expression that may also trench upon the Government interests served by the ban. Tr. of Oral Arg. 15, 23. The Government maintains that such a result makes the Government a victim of its own generosity. However the Government's characterization of itself as an unstinting provider of opportunities for protected expression is thoroughly discredited by a long line of decisions *compelling* the National Park Service to allow the expressive conduct it now claims to permit as a matter of grace. See, e. g., *Women Strike for Peace v. Morton*, 153 U. S. App. D. C. 198, 472 F.2d 1273 (1972); *A Quaker Action Group v. Morton*, 170 U. S. App. D. C. 124, 516 F.2d 717 (1975); *United States v. Abney*, 175 U. S. App. D. C. 247, 534 F.2d 984 (1976).

[**3079] III

The disposition of this case impels me to make two additional observations. First, in this case, as in some others involving time, place, and manner restrictions,¹¹ the Court [*313] has dramatically lowered its scrutiny of governmental regulations once it has determined that such regulations are content-neutral. The result has been the creation of a two-tiered approach to First Amendment cases: while regulations that turn on the content of the expression are subjected to a strict form of judicial review,¹² regulations that are aimed at matters other than expression receive only a minimal level of scrutiny. The minimal scrutiny prong of this two-tiered approach has led to an unfortunate diminution of First Amendment protection. By narrowly limiting its concern to whether a given regulation creates a content-based distinction, the Court has seemingly overlooked the fact that content-neutral restrictions are also capable of unnecessarily restricting protected expressive activity.¹³ To be sure, the general prohibition against content-based regulations is an essential tool of First Amendment analysis. It helps to put into operation the

468 U.S. 288, *313; 104 S. Ct. 3065, **3079;
82 L. Ed. 2d 221, ***239; 1984 U.S. LEXIS 136

well-established principle [***240] that "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." *Police Department of Chicago v. Mosley*, 408 U.S. 92, 95-96 (1972). The Court, however, has transformed the ban against content distinctions from a floor that offers all persons at least equal liberty under the First Amendment into a ceiling that restricts persons to the protection of First Amendment equality -- but nothing more.¹⁴ [**3080] The consistent [*314] imposition of silence upon all may fulfill the dictates of an evenhanded content-neutrality. But it offends our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *New York Times Co. v. Sullivan*, 376 U.S., at 270.¹⁵

11 See, e. g., *City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789 (1984); *Heffron v. International Society for Krishna Consciousness, Inc.*, 452 U.S. 640 (1981). But see *United States v. Grace*, 461 U.S. 171 (1983); *Tinker v. Des Moines School Dist.*, 393 U.S. 503 (1969); *Brown v. Louisiana*, 383 U.S. 131 (1966).

12 See, e. g., *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829 (1978). It should be noted, however, that there is a context in which regulations that are facially content-neutral are nonetheless subjected to strict scrutiny. This situation arises when a regulation vests standardless discretion in officials empowered to dispense permits for the use of public forums. See, e. g., *Lovell v. City of Griffin*, 303 U.S. 444 (1938); *Hague v. CIO*, 307 U.S. 496 (1939); *Shuttlesworth v. City of Birmingham*, 394 U.S. 147 (1969).

13 See Redish, *The Content Distinction in First Amendment Analysis*, 34 *Stan. L. Rev.* 113 (1981).

14 Furthermore, a content-neutral regulation does not necessarily fall with random or equal force upon different groups or different points of view. A content-neutral regulation that restricts an inexpensive mode of communication will fall most heavily upon relatively poor speakers and the points of view that such speakers typically espouse. See, e. g., *City Council of Los Angeles v. Taxpayers for Vincent*, *supra*, at, 812-813, n. 30. This sort of latent inequality is very much in evidence in this case for respondents lack the

financial means necessary to buy access to more conventional modes of persuasion.

A disquieting feature about the disposition of this case is that it lends credence to the charge that judicial administration of the First Amendment, in conjunction with a social order marked by large disparities in wealth and other sources of power, tends systematically to discriminate against efforts by the relatively disadvantaged to convey their political ideas. In the past, this Court has taken such considerations into account in adjudicating the First Amendment rights of those among us who are financially deprived. See, e. g., *Martin v. Struthers*, 319 U.S. 141, 146 (1943) (striking down ban on door-to-door distribution of circulars in part because this mode of distribution is "essential to the poorly financed causes of little people"); *Marsh v. Alabama*, 326 U.S. 501 (1946) (State cannot impose criminal sanction on person for distributing literature on sidewalk of town owned by private corporation). Such solicitude is noticeably absent from the majority's opinion, continuing a trend that has not escaped the attention of commentators. See, e. g., Dorsen & Gora, *Free Speech, Property, and The Burger Court: Old Values, New Balances*, 1982 *S. Ct. Rev.* 195; Van Alstyne, *The Recrudescence of Property Rights as the Foremost Principle of Civil Liberties: The First Decade of the Burger Court*, 43 *Law & Contemp. Prob.* 66 (summer 1980).

15 For a critique of the limits of the equality principle in First Amendment analysis see Redish, *supra*, at 134-139.

Second, the disposition of this case reveals a mistaken assumption regarding the motives and behavior of Government officials who create and administer content-neutral regulations. The Court's salutary skepticism of governmental decisionmaking in First Amendment matters suddenly dissipates once it determines that a restriction is not [*315] content-based. The Court evidently assumes that the balance struck by officials is deserving of deference so long as it does not appear to be tainted by content discrimination. What the Court fails to recognize is that public officials have strong incentives to overregulate even in the absence of an intent to censor particular views. This incentive stems from the fact that of the two groups whose interests officials must accommodate -- on the one hand, the

468 U.S. 288, *315; 104 S. Ct. 3065, **3080;
82 L. Ed. 2d 221, ***240; 1984 U.S. LEXIS 136

interests of the general public and, on the other, the interests of those who seek to use a particular forum for First Amendment activity -- the political [***241] power of the former is likely to be far greater than that of the latter.¹⁶

¹⁶ See Goldberger, *Judicial Scrutiny in Public Forum Cases: Misplaced Trust in the Judgment of Public Officials*, 32 *Buffalo L. Rev.* 175, 208 (1983).

The political dynamics likely to lead officials to a disproportionate sensitivity to regulatory as opposed to First Amendment interests can be discerned in the background of this case. Although the Park Service appears to have applied the revised regulations consistently, there are facts in the record of this case that raise a substantial possibility that the impetus behind the revision may have derived less from concerns about administrative difficulties and wear and tear on the park facilities, than from other, more "political," concerns. The alleged need for more restrictive regulations stemmed from a court decision favoring the same First Amendment claimants that are parties to this case. See n. 1, *supra*. Moreover, in response both to the Park Service's announcement that it was considering changing its rules and the respondents' expressive activities, at least one powerful group urged the Service to tighten its regulations.¹⁷ The point of these observations is not to impugn the integrity of the National Park Service. Rather, my intention is to illustrate concretely that government agencies by their [*316] very nature are driven to overregulate public forums to the detriment of First Amendment rights, that facial viewpoint-neutrality

is no shield against unnecessary restrictions on unpopular ideas or modes of expression, and that in this case in particular there was evidence readily available that should have impelled the Court to subject the Government's restrictive policy to something more than minimal scrutiny.

¹⁷ See Declaration of Mary Ellen Hombs, Exhibit 1kk, Record, Vol. 1.

For the foregoing reasons, I respectfully dissent.

REFERENCES

Restriction of use of public parks as violating freedom of speech or press under First Amendment of Federal Constitution

59 *Am Jur 2d*, Parks, Squares, and Playgrounds 33

USCS, Constitution, 1st Amendment

US L Ed Digest, Constitutional Law 934, 960

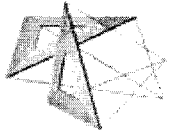
L Ed Index to Annos, Parks

ALR Quick Index, Parks and Playgrounds

Federal Quick Index, National Parks; Parks

Annotation References:

Restriction of use of public parks as violating freedom of speech or press under First Amendment of Federal Constitution. 82 L Ed 2d 958.



Kathleen Harasek/USPP/NPS

12/01/2011 09:43 AM

To Peggy O'Dell/NCR/NPS@NPS, Teresa
Chambers/USPP/NPS@NPS, Steve
Whitesell/WASO/NPS@NPS, Lisa

cc

bcc

Subject #9 McPherson/Freedom Daily

Within the last 24 hours the following incidents were noted;

- Officers were dispatched to McPherson Square for a report of an assault. Upon arrival met with a complainant who stated that one of the protestors had spit at her during verbal argument. The victim was willing to press charges. The subject was identified and arrested.
- Officers observing activities within the park at McPherson noted that the group had erected a large flag on a flagpole in violation of current CFR Regulations
- While on routine patrol in McPherson Square officers noted a very prevalent odor of feces throughout the park, but were unable to detect a source. They identified several plastic bottles outside of tent containing yellow liquid suspected of being urine. Officers spoke to several of the protestors about the conditions, no definable actions were taken. Case number was issued for Hazardous Condition

Scheduled Activities and Events

- Gathering at McPherson Square, marching to 727 15th St NW
Description: Read
<http://occupydc.org/action-alert-occupy-dccc-let-no-party-remain-unaccountable-to-the-people>

Captain Kathleen Harasek
Commander, Central District
U.S. Park Police
202-426-6710 (office)

[REDACTED]
Kathleen_Harasek@nps.gov



"Myers, Randolph"
<RANDOLPH.MYERS@sol.doi.gov>

12/01/2011 09:44 AM

To "Rozdilski, Claire C." <Claire_Rozdilski@nps.gov>, "Teresa_Chambers@nps.gov" <Teresa_Chambers@nps.gov>, "Whitesell, Steve E." <Teresa_Chambers@nps.gov>, "Blyth, Pamela" <Pamela_Blyth@nps.gov>, "Bowman, Judy" <Judy_Bowman@nps.gov>, "Robbins, Tasha" <Tasha_Robbins@nps.gov>, "Thomas, Tonya" <Tasha_Robbins@nps.gov>

bcc

Subject RE: Occupy DC call/meeting on Monday

Claire: I'll be available Monday December 5 at 4:30, and have invited Rob Eaton to join us.

Randy

Randolph J. Myers
U.S. Department of the Interior, Office of the Solicitor
DPW Branch of National Parks
1849 C Street, NW, Room 5320
Washington, D.C. 20240
w (202) 208-4338 fax (202) 208-3877
Randolph.Myers@sol.doi.gov

This e-mail (including attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient or the employee or agent responsible for delivery of this e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this e-mail or its contents is strictly prohibited. If you received this e-mail in error, please notify the sender immediately and destroy all copies.

From: Claire_Rozdilski@nps.gov [mailto: Claire_Rozdilski@nps.gov]
Sent: Thursday, December 01, 2011 9:42 AM
To: Myers, Randolph; Teresa_Chambers@nps.gov; Whitesell, Steve E.; Vogel, Bob A.
Cc: Blyth, Pamela; Bowman, Judy; Robbins, Tasha; Thomas, Tonya
Subject: Occupy DC call/meeting on Monday

Good morning,

Jon and Peggy would like to meet about Occupy DC and next steps.

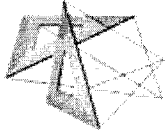
Tasha and I have scheduled it for Monday, December 5 at 4:30pm.
The meeting will be in Jon's office, and Peggy will be calling in.
If you absolutely cannot be here in person, I'll provide call-in information.

if you are absolutely unable to attend at all, please let me know asap so we can try to adjust the time.

Thanks!
Claire

Claire C. Rozdilski
National Park Service
Staff Assistant to the Deputy Director, Operations
1849 C Street NW

Washington, DC 20240
202-208-3818(Office)
[REDACTED]
202-208-7889 (Fax)



Kathleen Harasek/USPP/NPS

12/02/2011 08:34 AM

To Peggy O'Dell/NCR/NPS@NPS, Teresa
Chambers/USPP/NPS@NPS, Steve
Whitesell/WASO/NPS@NPS, Lisa

cc

bcc

Subject #10 McPherson/Freedom Daily

There were no significant incidents at either site over the last 24 hours

- Occupy DC protestors (approximately 20) walked to the area of the Ellipse and were routed around the event remaining on the city streets. No incidents or attempts to infiltrate the event were noted.

Events Scheduled for today

- The protestors are planning on attending a Poet's event from 1230-1400 in the 1000 Blk of 5th St. NW. No impact to NPS jurisdiction
- The protestors are planning a March to protest Wells Fargo Bank from 1600-1800 - location is not named.

Articles of Interest

- The Police are part of the 99% (<http://october2011.org/blogs/kevin-zeese/police-are-part-99>)
- Occupy DC Targets Congressional Democrats (Thursday's March)
http://www.washingtonpost.com/blogs/dc-wire/post/occupy-dc-targets-congressional-democrats/2011/12/01/gIQA6lqnHO_blog.html

Captain Kathleen Harasek
Commander, Central District
U.S. Park Police
202-426-6710 (office)

██████████
Kathleen_Harasek@nps.gov



Bob Vogel/NAMA/NPS
12/02/2011 02:51 PM

To Carter DeWitt <cdewitt@taxfoundation.org>
cc "Karen_Cucurullo@nps.gov" <Karen_Cucurullo@nps.gov>, "Kathleen_Harasek@nps.gov" <Kathleen_Harasek@nps.gov>,
bcc
Subject RE: Occupy DC versus other park users - I count too!

Dear Ms. DeWitt:

This responds to your e-mail to Deputy Superintendent Karen Cucurullo dated November 28, 2011, that asks about the National Park Service (NPS) regulation that authorizes temporary structures as well as a copy of the Court ruling referred to in her e-mail to you dated November 25, 2011.

We are pleased to provide you with the information you requested. As for the NPS regulation on temporary structures, the introductory sentence of 36 CFR 7.96(g)(5)(iv) specifically provides that temporary structures are allowed as part of a permitted demonstration "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 electrical and other sensitive equipment or displays."

As for the Court ruling, attached is a copy of *Clark v. Community for Creative Non-Violence*, 468 U.S. 288 (1984), where the Supreme Court upheld the NPS camping regulation, and noted that allowing the two symbolic tent cities "left the demonstration intact, with its symbolic city, signs, and the presence of those who were willing to take their turns in a day-and-night vigil." Please also note that the duration of a demonstration is not limited by the National Park Service's National Capital Region. This stems from the Court of Appeals decision in *Quaker Action v Morton*, 516 F.2d 717, 734 (D.C. Cir. 1975), that struck down as invalid the NPS regulatory restriction on the duration of demonstrations. Since then, 24/7 demonstration/vigils are a rare but regular feature in some of the Federal parks in Washington DC, which generally are never closed.

Finally, the National Park Service and United States Park Police fully agree that people have the right to protest. We also share your concern that people using parkland should also comply with applicable laws and regulations. In that regard, we have taken proactive steps as well as distributed the Notice dated November 23, 2011 and found on our website at www.nps.gov/nama/parkmgmt/upload/FreedomPlazaMcPhersonNotification_Nov23_2011.pdf, that reminds people of the NPS camping regulation and that temporary structures may not be used for camping. In the event that voluntary compliance does not occur, consistent with First Amendment jurisprudence, the National Park Service and United States Park Police plan to take a reasoned and measured approach to achieve compliance, while hoping to avoid the civil disorder that has occurred in other jurisdictions.

Superintendent Bob Vogel
National Mall and Memorial Parks
Bob_Vogel@nps.gov

Chief Teresa C. Chambers
United States Park Police
Teresa_Chambers@nps.gov

Robert A. Vogel
Superintendent
National Mall and Memorial Parks
(202) 245-4661



Clark v CCNV 468 US 288 (1988).pdf

Carter DeWitt Good afternoon Karen,

12/02/2011 02:08:13 PM



Carter DeWitt
cdewitt@taxfoundation.org

12/02/2011 02:07 PM

To "Karen_Cucurullo@nps.gov" <Karen_Cucurullo@nps.gov>
cc "Bob_Vogel@nps.gov" <Bob_Vogel@nps.gov>,
"Steve_Whitesell@nps.gov" <Steve_Whitesell@nps.gov>,
"Lisa_Mendelson-Ielmini@nps.gov"
<Lisa_Mendelson-Ielmini@nps.gov>,
"Teresa_Chambers@nps.gov"
<Teresa_Chambers@nps.gov>,
"Kathleen_Harasek@nps.gov"
<Kathleen_Harasek@nps.gov>, "tonya_robinson@nps.gov"
<tonya_robinson@nps.gov>
Subject RE: Occupy DC versus other park users - I count too!

Good afternoon Karen,

Than you for your response last Friday. Please send me the court ruling which you refer to below by the statement - "**the courts have ruled that temporary structures that support First Amendment activities are allowed.**" I would like that case number as soon as possible. I can find no record of that, nor can the attorney in my building.

Thank you for your help in this matter.

Carter

Ms. Carter DeWitt
Vice President of Development
Tax Foundation
National Press Building
529 14th St., NW, Suite 420
Washington, DC 20045
(202) 464-5110 (Direct line)

www.TaxFoundation.org

The Tax Foundation is guided by the principles of sound tax policy -- neutrality, simplicity, transparency, and stability

From: Carter DeWitt

Sent: Monday, November 28, 2011 5:29 PM

To: 'Karen_Cucurullo@nps.gov'

Cc: Bob_Vogel@nps.gov; Steve_Whitesell@nps.gov; Lisa_Mendelson-Ielmini@nps.gov;
Teresa_Chambers@nps.gov; Kathleen_Harasek@nps.gov; tonya_robinson@nps.gov

Subject: RE: Occupy DC versus other park users - I count too!

Thank you for your response. I found it inaccurate in claiming to follow the letter of the law - -

I certainly appreciate the right to protest under constitutional law - however, this right does not supersede current laws requiring permits or acts already prohibited by federal regulation etc. Federal law prohibits camping overnight in the McPherson Square Park - period. This OCCUPY camp by federal regulations definition is not a protest - but a newly formed shanty town.

Please send me the court ruling which you refer to below by the statement - "the courts have ruled that temporary structures that support First Amendment activities are allowed." I would like that as soon as possible as we are taking further action.

According to The Code of Federal regulations, Title 36, Parks, Forests, and Public property - temporary structures may not be used outside designated camping areas (McPherson Square does not have a federally designated camping area) for living accommodation activities such as sleeping, or making preparations to sleep including the laying down of beddings for the purpose of sleep, or storing personal belongings or making fire, or ... the above listed activities constitute camping when it reasonably appears in light of all the circumstance, that the participants in conducting these activities are in fact using this 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.*

They can certainly protest, they can get a permit and march or picket - but they cannot camp in a federal park that is not specially designated for camping.

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The Tax Foundation is guided by the principles of sound tax policy -- neutrality, simplicity, transparency, and stability

-----Original Message-----

From: Karen_Cucurullo@nps.gov [mailto:Karen_Cucurullo@nps.gov]

Sent: Friday, November 25, 2011 12:18 PM

To: Carter DeWitt

Cc: Bob_Vogel@nps.gov; Steve_Whitesell@nps.gov; Lisa_Mendelson-Ielmini@nps.gov;

Teresa_Chambers@nps.gov; Kathleen_Harasek@nps.gov; tonya_robinson@nps.gov

Subject: Fw: Occupy DC versus other park users - I count too!

Ms DeWitt:

On behalf of the National Mall and Memorial Parks Superintendent Robert Vogel, United States Park Police Chief Teresa Chambers, Regional Director, National Capital Region, Steve Whitesell, and Deputy Regional Director, National Capital Region, Lisa Mendelson-Ielmini, I offer this response to your letter.

Thank you for your inquiry, it is our hope that the following information will provide helpful information on the role and responsibilities of the National Park Service (NPS) and its United States Park Police (USPP) and the actions we are taking to address your concerns.

The National Park Service has a long and proud tradition of providing opportunities for the exercise of First Amendment rights. The national parks of Washington, DC, are used almost daily as places for reflection, commemoration, recreational activities, demonstrations, and public events and by citizens such as you who use the parks for personal enjoyment. The National Park Service protects and interprets our important cultural and natural resources, and the United States Park Police ensure the safety and security of park resources as well as persons who use the common space.

While the sudden appearance of the "encampment" is disturbing to many, the courts have ruled that temporary structures that support First Amendment activities are allowed. As a result, enforcement action in this area is limited and challenging. The USPP will continue to focus their enforcement efforts on illegal behaviors and activities that are observed and reported.

Since the beginning of the activities in McPherson Square and Freedom Plaza, the National Park Service has provided additional trash receptacles and has emptied them at least three times each day. Rodent traps have been placed in the parks, and those who are maintaining a vigil within the park have been requested to clear their trash and debris at the conclusion of each day's events. Portable toilet facilities have been placed within the park at the NPS's request and at the organizer's expense. Please contact the National Mall and Memorial Parks if there are additional concerns that have not been addressed at 202-245-4661.

The USPP has been working with the Metropolitan Police Department (MPD) on monitoring the groups' activities within the city, and the USPP regularly patrols our parks to enforce laws and regulations and those that specifically affect the quality of life. We encourage the public to contact the USPP to report criminal activity or quality of life violations at 202-610-7500 so that individuals responsible for these violations can be identified and appropriate action taken.

We appreciate your taking the time to share your concerns. If there is any way we may be of further assistance in providing information and insight, please let us know. The NPS and the USPP remain committed to the citizens who live near, work near, or use the parks for their enjoyment. We routinely meet with the business community and would be willing to attend citizen group meetings if you think this would be valuable in maintaining our relationships.

Superintendent Bob Vogel
National Mall and Memorial Parks
Bob_Vogel@nps.gov

Chief Teresa C. Chambers
United States Park Police
Teresa_Chambers@nps.gov

Karen Cucurullo
Deputy Superintendent - Operations
National Mall and Memorial Parks
900 Ohio Drive, S.W.
Washington, D.C. 20024-2000
Work: (202) 245-4670
Fax: (202) 426-9309
Fax: (202) 426-1835

From: Carter DeWitt [cdewitt@taxfoundation.org]
Sent: 11/22/2011 12:43 PM CST
To: Teresa Chambers; Bob Vogel
Cc: "lisa_mendelson-ielmimi@nps.gov" <lisa_mendelson-ielmimi@nps.gov>;
Steve Whitesell
Subject: Occupy DC versus other park users - I count too!

Just spent 50 minutes being transferred from one national park department to the other - no one taking responsibility for this mess you all have created.

I have been a resident of DC for three years. In that time I have paid my fair share of federal and DC taxes, donated to charities and supported several volunteer efforts. I live across from McPherson Square Park and almost every Saturday took my book into the park and read. Almost every night I would feed the ducks with bread I purchased at CVS. I fed the squirrels with the nuts Peapod delivered to my door. I am a single mom - my husband passed away six years ago - and I work very hard to pay for two

children in college and keep a roof over my head. Do you have any idea how hard that is to do? I am not some spoiled trust fund baby.

Now the ducks are gone, the squirrels are gone and my park bench no longer available thanks to by Occupy DC. The grass is ruined, the trash is horrendous and the rat population has at least tripled. At night I get to listen to their parties, I see under age minors camping there without adult supervision. I get to hear sex, see public urination and be subjected to early morning drums when I have my one day off - Saturday. Even worse is the knowledge that my tax dollars support this irresponsible behavior by the city and federal park service and that you provide police protection to them as they march and as they disturb my peace, my travel to and from work.

Sounds to me like you don't recognize who votes for you - and who butters your bread with their labor. It isn't Occupy DC - it isn't the new generation of class warfare you are propping up - it is me. I am disgusted. I am angry and want this to end. Yesterday I read that the Occupy DC residents at McPherson Square expect to stay into next year. I sincerely hope this is not the case. They need to go home and have someone else support them if they are not willing to work. I have no desire to pay for this via my tax dollars you take from me in so many ways. They do not have a permit and it is unlawful for them to be there. If I tried to camp in one of these parks you would make me leave -

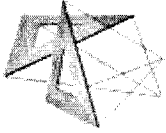
There are thousands of us unhappy and complaining about them - why are you not hearing us?

Laurie Carter DeWitt

Washington, DC 20005

Carter
Ms. Carter DeWitt
Vice President of Development
Tax Foundation
National Press Building
529 14th St., NW, Suite 420
Washington, DC 20045
(202) 464-5110 (Direct line)
www.TaxFoundation.org

The Tax Foundation is guided by the principles of sound tax policy -- neutrality, simplicity, transparency, and stability



Kathleen Harasek/USPP/NPS

12/03/2011 08:34 AM

To Peggy O'Dell/NCR/NPS@NPS, Teresa
Chambers/USPP/NPS@NPS, Steve
Whitesell/WASO/NPS@NPS, Lisa

cc

bcc

Subject #11 McPherson/Freedom Daily

No reported incidents within the last 24 hours

Planned Activities for today

- Activities (discussions) are on the schedule within both parks. There is no indication that the groups plan offsite activities today

News items of interest

- Wikipedia acknowledges the Occupy DC Movement http://en.wikipedia.org/wiki/Occupy_D.C.

Captain Kathleen Harasek
Commander, Central District
U.S. Park Police
202-426-6710 (office)

[REDACTED]
Kathleen_Harasek@nps.gov



Kathleen Harasek/USPP/NPS

12/03/2011 10:14 AM

To Peggy O'Dell/NCR/NPS@NPS, Teresa Chambers/USPP/NPS@NPS, Steve Whitesell/WASO/NPS@NPS, Lisa

cc

bcc

Subject Fw: (U//FOUO) ACTIC Bulletin: OFFICER SAFTEY - Document Found at Occupy Event "When Should You Shoot A Cop?"

Interesting find--- and we need to remember that just because we didn't find the same article here, doesn't mean the sentiment doesn't exist among our group.

Captain Kathleen Harasek
Commander, Central District
U.S. Park Police
202-426-6710 (office)

[REDACTED]
Kathleen_Harasek@nps.gov

----- Forwarded by Kathleen Harasek/USPP/NPS on 12/03/2011 10:11 AM -----



"Riemer, Christopher A"
<Christopher_A_Riemer@ios.doi.gov>

11/04/2011 09:43 AM

To "Riemer, Christopher A" <Christopher_A_Riemer@ios.doi.gov>, "Van Horn, Gary" <gary_vanhorn@ios.doi.gov>, "Richard Deriso" <Richard.Deriso@ic.fbi.gov>, "Smith, Darrel A." <Darrel_Smith@ios.doi.gov>, "Smith, Glenn F" <Glenn_Smith@ios.doi.gov>, "Kmetz, John T" <John_Kmetz@ios.doi.gov>, "Ward, Darryl" <Darryl_Ward@ios.doi.gov>, "Marto, Bruce M" <Bruce_Marto@ios.doi.gov>, "Bosak, Dennis" <Dennis_Bosak@nps.gov>, "Silva, Chrisopher" <Christopher_Silva@nps.gov>, "Russo, Michael A." <Michael_Russo@nps.gov>, "Katherine.Heller@ic.fbi.gov" <Katherine.Heller@ic.fbi.gov>, "Zweig, Marty" <Martin_Zweig@nps.gov>, "Stoffolano, Matt J." <Matt_Stoffolano@nps.gov>, "Guddemi, Charlie" <Charles_Guddemi@nps.gov>, "Bulls, Rebecca" <rebecca_bulls@fws.gov>, "Kish, Christina" <christina_kish@fws.gov>, "Addington, Charles" <Charles.Addington@bia.gov>, "Thompson, Jason" <Jason.Thompson@bia.gov>, "Van Lancker, Jeanne M" <JmVanLan@blm.gov>, DOI_Watch_Office <DOI_Watch_Office@ios.doi.gov>, "Tinker, Richard E" <Richard_Tinker@ios.doi.gov>, "Maybee, Peter" <Peter.Maybee@bia.gov>, "Pannier, Jason" <jason_pannier@fws.gov>, "Rolla, John C" <John_Rolla@ios.doi.gov>, "Thorsen, Kimberly A" <Kim_Thorsen@ios.doi.gov>, "Britton, Jason C" <jbritton@usbr.gov>, "Lynch, Jack J" <Jack_Lynch@ios.doi.gov>, "Fisher, Matt A." <Matt_Fisher@nps.gov>, "Dissier, Regina K." <Regina_Klein@nps.gov>, "Jackson, Greg" <Greg_Jackson@nps.gov>, "Wirth, Daniel E" <Daniel_Wirth@ios.doi.gov>, "Vacha, Patrick" <Patrick.Vacha@bia.gov>, "Futrowsky, Steven"



<Steven_Futrowsky@doioig.gov>, "Kearns, Justin M"
<jkearns@usbr.gov>, "Kemppainen, Paul J"
<Paul_Kemppainen@nps.gov>, "Franklin, Charles N"
<Charles_Franklin@ios.doi.gov>, "Knee, Gregory J"
<Gregory_Knee@ios.doi.gov>, "Lawler, Gregory R"
<Greg_Lawler@ios.doi.gov>, "Gallagher, James P"
<James_Gallagher@ios.doi.gov>, "Hanson, Polly L"
<Polly_Hanson@ios.doi.gov>, "Ingram, Gary"
<Gary_Ingram@nps.gov>, "Kilkeary, Daniel H"
<dkilkear@usgs.gov>, "Erhard, John" <jerhard@usgs.gov>,
"Baker, Dan J." <Dan_Baker@nps.gov>, "Dowdle, Mark"
<Mark_Dowdle@nps.gov>, "Rothbaum, Allen F"
<Allen_Rothbaum@ios.doi.gov>, "Harasek, Kathleen"
<Kathleen_Harasek@nps.gov>, "Achterberg, David G"
<DAchterberg@usbr.gov>

cc

Subject RE: (U//FOUO) ACTIC Bulletin: OFFICER SAFTEY -
Document Found at Occupy Event "When Should You Shoot
A Cop?"

UNCLASSIFIED//FOR OFFICIAL USE ONLY

TITLE: (U//FOUO) Article Found at Occupy Wall Street Encampment Encourages Killing Police

DATE: (U) 3 November 2011

SOURCE: (U) Washington Regional Threat & Analysis Center Officer Safety Bulletin

SUMMARY: (U//FOUO) An article entitled 'When Should You Shoot a Cop?' was discovered on October 31, 2011 at an Occupy Phoenix encampment. The article has been circulating the internet and in paper form since June 2011. Police have no credible information that the article poses additional threats to law enforcement safety, however, vigilance and situational awareness is encouraged.

DOI IMPACT: (U) Presently no direct impact; this bulletin is provided for situational/threat awareness only

FURTHER UPDATES: (U) N/A

UNCLASSIFIED//FOR OFFICIAL USE ONLY

From: Riemer, Christopher A

Sent: Monday, October 31, 2011 8:01 AM

To: Riemer, Christopher A; Van Horn, Gary; 'Richard Deriso'; Smith, Darrel A.; Smith, Glenn F; Kmetz, John T; Ward, Darryl; Marto, Bruce M; Bosak, Dennis; Silva, Christopher; Russo, Michael A.; 'Katherine.Heller@ic.fbi.gov'; Zweig, Marty; Stoffolano, Matt J.; Guddemi, Charlie; Bulls, Rebecca; Kish, Christina; Addington, Charles; Thompson, Jason; Van Lancker, Jeanne M; DOI_Watch_Office; Tinker, Richard E; Maybee, Peter; Pannier, Jason; Rolla, John C; Thorsen, Kimberly A; Britton, Jason C; Lynch, Jack J; Fisher, Matt A.; Dissler, Regina K.; Jackson, Greg; Wirth, Daniel E; Vacha, Patrick; Futrowsky, Steven; Kearns, Justin M; Kemppainen, Paul J; Franklin, Charles N; Knee, Gregory J; Lawler, Gregory R; Gallagher, James P; Hanson, Polly L; Ingram, Gary; Kilkeary, Daniel H; Erhard, John; Baker, Dan J.; Dowdle, Mark; Rothbaum, Allen F; Harasek, Kathleen; Achterberg, David G (DAchterberg@usbr.gov)
Subject: (U//FOUO) ACTIC Bulletin: OFFICER SAFTEY – Document Found at Occupy Event “When Should You Shoot A Cop?”

UNCLASSIFIED//FOR OFFICIAL USE ONLY

TITLE: (U) OFFICER SAFTEY – Document Found at Occupy Event “When Should You Shoot A Cop?”

DATE: (U) 27 OCT 2011

SOURCE: (U) Arizona Counter-Terrorism Information Center Bulletin

SUMMARY: (U) Copies of an “information “letter were left on a table for protestors pick up and read during the “Occupy Phoenix” event at Cesar Chavez Park. The presence of the letter was reported to the ACTIC by a Maricopa County Sheriff’s Deputy who had responded to an unrelated call and was alerted to it by another deputy working the event

(U) This letter is blatantly anti-government and anti-law enforcement in nature. It not condones but even encourages citizens to kill any “government agent”(i.e. law enforcement officer), who in their perception violates their rights. Examples are given in the document, of “illegal” search and seizure, sobriety and border checkpoints, airport security, etc... In essence this document states that citizens have the right and moral obligation to resist any action by law enforcement that is viewed as a violation of the citizen’s rights, and often-times resistance involves killing officers.

(U) “Occupy” events have drawn protestors for various causes including “Chalk

the Police” and “Police Brutality Day”. With emotions high in regards to law enforcement and government personnel, there is obvious concern this document could incite actions with protestors to take actions they might not have taken otherwise.

ATIC COMMENT: There have been no specific or credible threats against law enforcement agencies, officers or public officials, and no arrests have been made. This situation is currently under investigation.

DOI IMPACT: (U) Presently no direct impact; this bulletin is provided for situational/threat awareness only

FURTHER UPDATES: (U) N/A

UNCLASSIFIED//FOR OFFICIAL USE ONLY



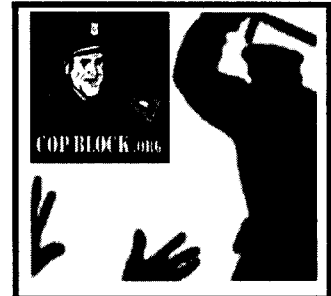
Article Found at Occupy Wall Street Encampment Encourages Killing Police.pdf

(U//FOUO) Article Found at Occupy Wall Street Encampment Encourages Killing Police

(U//FOUO) Executive Summary: An article entitled 'When Should You Shoot a Cop?' was discovered on October 31, 2011 at an Occupy Phoenix encampment. The article has been circulating the internet and in paper form since June 2011. Police have no credible information that the article poses additional threats to law enforcement safety, however, vigilance and situational awareness is encouraged.

(U//FOUO) Scope: Provide law enforcement officers with situational awareness regarding the two-page article 'When Should You Shoot a Cop?' discovered at an Occupy Phoenix encampment.

(U//FOUO) Background: Copblock.org is an organization that seeks to expose police corruption, false arrest, and brutality through online postings of news articles and videos of police brutality. On June 28, 2011, an article entitled 'When Should You Shoot a Cop' was published on Copblock.org.¹ Police discovered the article in the form of a flyer at an 'Occupy Phoenix' encampment on October 31, 2011.



- The Occupy Phoenix movement is an extension of the national 'Occupy Wall Street' movement where participants, exercising their first amendment rights, protest against social and economic inequality, government corruption, and corporate greed, especially in the financial services sector.
- The 'Occupy Wall Street' movement has been heralded by the media as America's Arab Spring. The Arab Spring is a wave of demonstrations in Arab countries beginning in 2010, where protestors used civil resistance, strikes, demonstrations, and social media to organize actions and awareness of the cause. Many Arab Spring demonstrations resulted in violent responses from government forces.

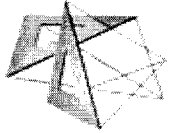
(U//FOUO) Overview: The author of the two-page 'When Should You Shoot a Cop?' article characterizes the government as a tyrannical regime backed by police officers dubbed as "mercenaries, hired thugs and jackboots." The paper focuses on one central point:

If a police officer violates your rights (freedom of speech, right to bear arms, freedom from unreasonable search and seizure) then you have the choice to either submit or kill the officer

The author draws parallels to atrocities committed in the Hitler, Lenin, and Chairman Mao regimes where citizens were treated like sub-humans and gunned down in the street by corrupt and violent 'law enforcement officials.' Readers are told that they have the right to stop corrupt police, which "will almost always require killing them."

(U//FOUO) Outlook: The article 'When Should You Shoot a Cop?' has been circulating online and in hard copy since June of 2011. Although many readers agreed with the substance of the article, numerous people who posted online responses patently disagree with the author's thesis calling it dangerous, over the top, and absurd. Phoenix Police investigating the discovery of the flyer said there were no credible threats against law enforcement officers as a result of the discovery. The District's Occupy Wall Street movement is active however; there has been no local discovery of the document in protest encampments and no local attempts to harm police monitoring the movement.

¹ Rose, L. (June 28, 2011). When Should You Shoot a Cop. <http://www.copblock.org/5475/when-should-you-shoot-a-cop/>



Kathleen Harasek/USPP/NPS

12/05/2011 09:35 AM

To Peggy O'Dell/NCR/NPS@NPS, Teresa
Chambers/USPP/NPS@NPS, Steve
Whitesell/WASO/NPS@NPS, Lisa

cc

bcc

Subject 13# McFearson/Freedom Daily

The following incidents occurred within the last 24 hours:

- A wooden barn-like structure was erected in the southwest quadrant of McPherson Square in the morning of 12/04/11. Officers responded and instructed the protestors to take down the structure within an hour as it was not permitted. The protesters refused and staged an occupancy on and within the structure. USPP officers established a perimeter as resources were called in. Initially 9 arrests were made within the park for crossing a police line, disorderly conduct or failure to obey lawful order. Once the area was isolated and secured with sufficient resources to include; DOI Solicitor's Office, MPD, Metro Transit, DC FEMS and NPS Maintenance, the DCRA conducted an inspection of the structure and deemed that it was unsafe (12 DCMR 115.1). It was appropriately placarded by the DCRA Inspector. USPP then ordered the protestors to leave the structure and they refused. A police line was established around the structure, warnings were given and arrests were affected to 18 protestors within the structure. 6 remained on the roof and a tactical plan was established to safely extricate them from the structure. Once all protestors were removed from the structure it was disassembled and removed from the park without further incident. The park was reopened to the public at approximately 2330 hours. **Total arrests=31**

Events Scheduled for today

- **Effective today at 0600 USPP will provide 24 hour coverage to both McPherson and Freedom.**
- Jackson Browne will be giving a concert to the Freedom Plaza group today at 1300.

Internet Blogs and articles

- Occupy DC's Statement on the Wooden Structure
<http://occupydc.org/statement-the-wooden-structure/>
- Jackson Browne sings at Freedom Plaza
<http://october2011.org/blogs/kevin-zeese/jackson-brown-sings-freedom-plaza-monday>
- Protestors arrested in standoff
http://www.washingtonpost.com/local/occupy-dc-protesters-arrested-in-standoff-over-makeshift-shelter-at-mcpherson-sq/2011/12/04/gIQAElD9TO_story.html?tid=pm_pop
- 31 Arrested at Occupy DC Site
<http://www.nytimes.com/2011/12/05/us/occupy-dc-stopped-from-putting-up-a-building.html>

Captain Kathleen Harasek
Commander, Central District
U.S. Park Police
202-426-6710 (office)


Kathleen_Harasek@nps.gov



"Myers, Randolph"
<RANDOLPH.MYERS@sol.doi.gov>

12/05/2011 04:27 PM

To "Roth, Barry" <BARRY.ROTH@sol.doi.gov>, "Eaton, Robert" <Robert.Eaton@sol.doi.gov>, "Fondren, Kimberly" <Kim.Fondren@sol.doi.gov>
cc "Whitesell, Steve E." <Steve_Whitesell@nps.gov>, "Mendelson, Lisa" <Lisa_Mendelson-Ielmini@nps.gov>, "Vogel, Bob A." <Bob_Vogel@nps.gov>, "Harasek,
bcc

Subject FW: Henke v DOI (DDC)

Attached is the just-received lawsuit styled Harke v DOI, which I am now reviewing. The case is set for a TRO today at 5:45 pm before Judge James Boasberg in Courtroom 19.

Randy

Randolph J. Myers
U.S. Department of the Interior, Office of the Solicitor
DPW Branch of National Parks
1849 C Street, NW, Room 5320
Washington, D.C. 20240
w (202) 208-4338 fax (202) 208-3877
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From: Braswell, Marina (USADC) [mailto:Marina.Braswell@usdoj.gov]
Sent: Monday, December 05, 2011 4:15 PM
To: Myers, Randolph
Subject: FW: Henke

From: Rowan, Reginald (USADC)
Sent: Monday, December 05, 2011 4:13 PM
To: Braswell, Marina (USADC)
Subject: Henke



Henke 11-2155 Documents.pdf

TYPE-D

**U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:11-cv-02155-JEB**

HENKE v. DEPARTMENT OF THE INTERIOR
Assigned to: Judge James E. Boasberg
Cause: 42:1981 Civil Rights

Date Filed: 12/05/2011
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: U.S. Government
Defendant

Plaintiff

BRETT EUGENE HENKE

represented by **Jeffrey Louis Light**
LAW OFFICE OF JEFFREY LIGHT
1712 Eye Street, NW
Suite 915
Washington, DC 20006
(202) 277-6213
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Email: jeffrey.light@yahoo.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

**DEPARTMENT OF THE
INTERIOR**

Date Filed	#	Docket Text
12/05/2011	<u>1</u>	COMPLAINT against DEPARTMENT OF THE INTERIOR (Filing fee \$ 350, receipt number 4616044278) filed by BRETT EUGENE HENKE. (Attachments: # <u>1</u> Civil Cover Sheet)(td,) (Entered: 12/05/2011)
12/05/2011		SUMMONS (3) Issued as to DEPARTMENT OF THE INTERIOR, U.S. Attorney and U.S. Attorney General (td,) (Entered: 12/05/2011)
12/05/2011	<u>2</u>	MOTION for Temporary Restraining Order by BRETT EUGENE HENKE (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Text of Proposed Order)(td,) (Entered: 12/05/2011)

PACER Service Center
Transaction Receipt

12/05/2011 16:03:23			
PACER Login:	du2319	Client Code:	
Description:	Docket Report	Search Criteria:	1:11-cv-02155-JEB
Billable Pages:	1	Cost:	0.08

action, Plaintiff seeks a temporary restraining order followed by declaratory and injunctive relief, in order to prevent unconstitutional governmental interference with their First and Fourth Amendment rights.

2. This action seeks to vindicate rights protected by the First and Fourth Amendments to the United States Constitution and is brought pursuant to the inherent authority of the federal judiciary to restrain unlawful acts of the government. The Court has jurisdiction over this action under 28 U.S.C. §1346.

3. Venue is proper in the District of Columbia because it is the forum in which the injury is occurring and where the Plaintiff and Defendant can be found.

4. Plaintiff is a member of Occupy DC, an unincorporated nonprofit association, members of which have gathered to protest and to petition the government in order to bring awareness to the concerns about United States economic policy, wealth disparity and the political process, through the peaceful, symbolic, round-the-clock occupation of McPherson Square in Washington, DC. Occupy DC participants came together on October 1, 2011, to begin physically occupying McPherson Square on that day and have continuously and peacefully occupied McPherson Square since that date. The location, bordering K Street, is integral to the expression of the Occupy DC message of the possibility that government will hear the voices of the people and will move, with the people, towards a more democratic, just and economically egalitarian society.

5. The Occupy Movement is a people-initiated movement that commenced with Occupy Wall Street in Zucotti Park, now called Liberty Square, in Manhattan's Financial District in New York City on September 17, 2011. Occupy has spread to hundreds of cities, towns and states in the United States and to more than 1500 locations worldwide. The movement seeks to expose how the wealthiest 1% of society are promulgating an unfair global economy that is harming people, and destroying

communities worldwide. The Occupy protestors have come out to protest and to petition the government for more economic equality through societal and governmental changes.

6. A key purpose of the Occupy Movement is to raise awareness about issues with the United States political process and the country's extreme economic inequality by participating in symbolic, round-the-clock, peaceful protests, or "occupations."

7. The protests in the states, cities and towns across the country use the "Occupy" identifier, first used by Occupy Wall Street, and the same slogan, "We are the 99%," referring to the extreme wealth disparity between the wealthiest 1% of Americans and the rest of the populace.

8. Occupy participants utilize a "general assembly" form of direct democracy, which aims to equalize the power of individual voices. The general assembly is not only functional, but is also symbolic of what form a more just and egalitarian society might take. Collective decision-making is made in an open, participatory and non-binding manner.

9. The Occupy protestors' 24 hour-a-day physical occupation of the portion of the city or town which they occupy is a core component of the message of the Occupy movement, and is expressed through the establishment of a tent city, which remains in place around-the-clock. The tents are not only a means of shelter, but are, more importantly, a key component of protestors' actual "occupation" of the city or town and, therefore, a key component of the Occupy protestors' political statement and petitioning conduct. It expresses the Occupy protestors' statement of the 99% taking back the city or town and of hope for a more just and equal society in a way that other forms of protest could not express.

10. A group of participants, including the named plaintiff, set up tents in McPherson Square, and began making plans for occupying the site for an indefinite period of time.

11. Carol Johnson, a spokeswoman for the National Park Service, a subagency of Defendant Department of the Interior, stated to a reporter from the Huffington Post, in reference to the occupiers at McPherson Square, “[T]ents are allowed there. And a 24-hour vigil is allowed there.”

12. Occupy DC is now an established tent city located in McPherson Square. Like the tent cities in other locations across the country, literal occupation of McPherson Square 24 hours-a-day is a core component of the Occupy DC movement and a key message the Occupy DC protestors seek to communicate to the government and the world. The tent city is not merely a symbol, but functions as a model community demonstrating the protesters' vision of a more just and equal society. Physically occupying D.C., including sleeping overnight in the tent city, is the only effective manner in which Occupy DC members can express their message of taking back the city to create a more just, economically egalitarian society.

13. The McPherson Square tent city expresses the Occupy DC protestors' statement of the 99% taking back the City of Washington, and of hope for a more just society and more egalitarian economic policies in a way that other forms of protest could not. It also clearly identifies Occupy DC as part of the larger Occupy movement in a manner that other forms of protest could not accomplish. Occupy DC, along with the entire Occupy movement, seeks to begin an ongoing discussion about reforming Wall Street and removing special interests from government. Marching, making speeches, holding up signs, or other forms of protests cannot communicate the message of taking back the City of Washington, and demonstrating the possibility of a more just and equal

society, in the manner that Occupy DC's tent city and around-the-clock protest communicates that message.

14. The tent city also symbolizes a permanent occupation and this is central to the Occupy DC message that challenges corporations' permanent occupation of the government.

15. The McPherson Square location is also fundamental to the Occupy DC message. Locating the Occupy DC tent city directly on K Street communicates a message to about the disproportionate influence of corporate lobbyists, and that message could not be communicated as effectively in another location.

16. There is no alternative location in Washington at which Occupy DC members can effectively communicate their message or petition the government.

17. Like all of the Occupy locations, Occupy DC utilizes the slogan "We are the 99%," as part of its political message and petitioning activity to highlight the difference in the United States between the wealthiest 1% and the rest of the population.

18. Occupy DC utilizes direct democracy with the aim of equalizing the power of individual voices. This direct democracy is not only functional, but is itself symbolic of the more just and egalitarian society that the protestors' envision. Occupy DC utilizes a "general assembly" to facilitate collective decision making in an open, participatory and non-binding manner. General assembly is an open forum held on most days and Occupy DC welcomes anyone to participate in general assembly, both occupiers and passersby.

19. Since October 1, 2011, the Occupy DC tent city has continuously occupied McPherson Square and has averaged approximately 100 participants staying overnight at the tent city, with fewer during the day, since many of the regular participants work and/or attend school during the day.

20. The Occupy DC protestors have continued to be vigilant about health and safety issues and have continued to protest peacefully through the tent city.

21. On Sunday, December 4, 2011, the United States Park Police, a subagency of Defendant Department of the Interior, closed off an area of McPherson Square which contained numerous tents, including one belonging to Plaintiff. Until the Park Police were informed that Plaintiff would be seeking a temporary restraining order to reopen the closed off portion of the park, no occupiers were allowed to enter the area to retrieve their personal belongings or to protest in that area.

22. The United States Park Police has jurisdiction over McPherson Square because it is federal park property.

23. On Sunday, December 4, 2011, a member of Occupy DC, Amber Jamil, spoke with Sergeant David C. Tolson, Jr. (#796) of the United States Park Police. Sergeant Tolson told the Occupy DC member that the portions of McPherson Square which had been sectioned off with yellow police tape were to be cleared and all tents and property removed.

24. Plaintiff objects to not being allowed, during the evening of December 4, 2011, to continue to occupy his tent, expressive conduct protected under the First Amendment. Plaintiff reasonably fears that Defendant's conduct will be repeated in the imminent future because the Park Police did not desist from their unlawful conduct until they were informed that Plaintiff would be seeking a temporary restraining order.

25. The Plaintiff further objects to not being allowed to retrieve his personal belongings or to protest in the sectioned off area during the evening of December 4, 2011. Plaintiff reasonably fears that Defendant's conduct will be repeated in the imminent future because the Park Police did not desist from their unlawful conduct until they were informed that Plaintiff would be seeking a temporary restraining order.

26. The Plaintiff still further objects to the threatened removal of his tent and personal property by Defendant.

27. The closing of a large section of McPherson Square fails to meet the constitutional scrutiny for the creation of police lines and for closing of a public forum to members of the public for the following reasons:

The closing of the section of McPherson Square is not a valid time, place and manner restriction because it serves no legitimate governmental interest, or in the alternative is not narrowly tailored because it forecloses all First Amendment activity in that portion of the park.

The threatened removal of Plaintiff's tent and personal property is an unconstitutional warrantless search and seizure, which is presumptively unreasonable, and no special circumstances or exceptions to the warrant requirement justify the search and seizure.

28. Plaintiff will suffer irreparable harm to his First Amendment rights to free expression and association if he is evicted from the tent in which he has been staying at Occupy DC, which is a round-the-clock tent city.

29. Plaintiff will suffer irreparable harm to his Fourth Amendment right to be free from unreasonable search and seizure as a result of having his tent and personal belongings removed from Occupy DC.

30. Plaintiff has no adequate remedy at law for these violations.

CLAIMS

31. Plaintiffs repeat and reallege the allegations of each of the preceding paragraphs as if set forth fully herein.

32. An actual claim or controversy exists between Plaintiff and Defendant as to whether Plaintiff is entitled to continue to peacefully maintain and occupy the portion

of McPherson Square which was sectioned off the evening of December 4, 2011, in the manner in which he had been continuously occupying that location.

33. Defendant has violated Plaintiff's First Amendment rights and will do so again in the immediate future unless enjoined by this Court.

34. Defendant has violated Plaintiff's Fourth Amendment rights and will do so again in the immediate future unless enjoined by this Court.

PRAYER FOR RELIEF

35. Declare that Plaintiff's peaceful occupation of his tent in McPherson Square is protected freedom of speech, assembly, association, and the right to petition the government under the First Amendment.

36. Temporarily, preliminarily, and permanently enjoin Defendant and its employees, agents, assigns, and others acting in concert with it, from closing off sections of McPherson Square to Plaintiff and to the public except in an actual emergency.

37. Temporarily, preliminarily, and permanently enjoin Defendant and its employees, agents, assigns, and others acting in concert with it, from searching and seizing Plaintiff or other occupiers' personal property.

38. Grant all other such relief at this Court may deem just and appropriate.

I certify under penalty of perjury that the foregoing is true and correct.

/s/ Jeffrey Light

Jeffrey L. Light
D.C. Bar #485360
1712 Eye St., NW
Suite 915
Washington, DC 20006
(202)277-6213

Counsel for Plaintiff

CIVIL COVER SHEET

D 11-2155 JEB

JS-44
(Rev. 2/11 DC)

<p>I (a) PLAINTIFFS BRETT EUGENE HENKE, 141 Fox Road Mars Hill, NC</p>	<p>DEFENDANTS DEPARTMENT OF THE INTERIOR, 1849 C St, NW Washington, DC 20240</p>
<p>(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____ 88888 (EXCEPT IN U.S. PLAINTIFF CASES)</p>	<p>COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____ (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF _____</p>
<p>(c) ATTORNEY'S (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Jeffrey Light Law Office of Jeffrey Light 1712 Eye St., NW Suite 915 Washington, DC 20006 202-277-6213</p>	<p>Case: 1:11-cv-02155 Assigned To : Boasberg, James E. Assign. Date : 12/5/2011 Description: TRO/PI</p>

<p>II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)</p> <p><input type="radio"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="radio"/> 2 U.S. Government Defendant</p> <p><input type="radio"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) FOR DIVERSITY CASES ONLY!</p> <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th>PTF</th> <th>DFT</th> <th></th> <th>PTF</th> <th>DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td><input type="radio"/> 1</td> <td><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td><input type="radio"/> 4</td> <td><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="radio"/> 2</td> <td><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="radio"/> 5</td> <td><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="radio"/> 3</td> <td><input type="radio"/> 3</td> <td>Foreign Nation</td> <td><input type="radio"/> 6</td> <td><input type="radio"/> 6</td> </tr> </tbody> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
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Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6																				

IV. CASE ASSIGNMENT AND NATURE OF SUIT
(Place a X in one category, A-N, that best represents your cause of action and one in a corresponding Nature of Suit)

<p><input type="radio"/> A. Antitrust</p> <p><input type="checkbox"/> 410 Antitrust</p>	<p><input type="radio"/> B. Personal Injury/Malpractice</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Federal Employers Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Medical Malpractice</p> <p><input type="checkbox"/> 365 Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Product Liability</p>	<p><input type="radio"/> C. Administrative Agency Review</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><u>Social Security:</u></p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p><u>Other Statutes</u></p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 892 Economic Stabilization Act</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 894 Energy Allocation Act</p> <p><input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)</p>	<p><input checked="" type="radio"/> D. Temporary Restraining Order/Preliminary Injunction</p> <p>Any nature of suit from any category may be selected for this category of case assignment.</p> <p>*(If Antitrust, then A governs)*</p>
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<p><input type="radio"/> E. General Civil (Other)</p> <p><u>Real Property</u></p> <p><input type="checkbox"/> 210 Land Condemnation</p> <p><input type="checkbox"/> 220 Foreclosure</p> <p><input type="checkbox"/> 230 Rent, Lease & Ejectment</p> <p><input type="checkbox"/> 240 Torts to Land</p> <p><input type="checkbox"/> 245 Tort Product Liability</p> <p><input type="checkbox"/> 290 All Other Real Property</p> <p><u>Personal Property</u></p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p style="text-align: center;">OR</p> <p><input type="radio"/> F. Pro Se General Civil</p> <p><u>Bankruptcy</u></p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p><u>Prisoner Petitions</u></p> <p><input type="checkbox"/> 535 Death Penalty</p> <p><input type="checkbox"/> 540 Mandamus & Other</p> <p><input type="checkbox"/> 550 Civil Rights</p> <p><input type="checkbox"/> 555 Prison Condition</p> <p><u>Property Rights</u></p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p><u>Federal Tax Suits</u></p> <p><input type="checkbox"/> 870 Taxes (US plaintiff or defendant)</p> <p><input type="checkbox"/> 871 IRS-Third Party 26 USC 7609</p>	<p><u>Forfeiture/Penalty</u></p> <p><input type="checkbox"/> 610 Agriculture</p> <p><input type="checkbox"/> 620 Other Food & Drug</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 630 Liquor Laws</p> <p><input type="checkbox"/> 640 RR & Truck</p> <p><input type="checkbox"/> 650 Airline Regs</p> <p><input type="checkbox"/> 660 Occupational Safety/Health</p> <p><input type="checkbox"/> 690 Other</p> <p><u>Other Statutes</u></p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 430 Banks & Banking</p> <p><input type="checkbox"/> 450 Commerce/ICC Rates/etc.</p> <p><input type="checkbox"/> 460 Deportation</p>
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<p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p> <p><input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Satellite TV</p> <p><input type="checkbox"/> 810 Selective Service</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 875 Customer Challenge 12 USC 3410</p> <p><input type="checkbox"/> 900 Appeal of fee determination under equal access to Justice</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p> <p><input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)</p>	<p style="font-size: 2em; border: 1px solid black; padding: 5px; display: inline-block;">34</p>
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<input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus-General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights-Employment (criteria: race, gender/sex, national origin, discrimination, disability age, religion, retaliation) *(If pro se, select this deck)*	<input type="radio"/> I. FOIA/PRIVACY ACT <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights <input checked="" type="checkbox"/> 445 American w/Disabilities-Employment <input type="checkbox"/> 446 Americans w/Disabilities-Other	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights-Voting (if Voting Rights Act)

V. ORIGIN

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multi district Litigation
 7 Appeal to District Judge from Mag. Judge

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)
 *Inherent authority of federal court to restrain constitutional violations

VII. REQUESTED IN COMPLAINT CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** _____ Check YES only if demanded in complaint
JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See instruction) YES NO If yes, please complete related case form

DATE 5 December, 2011 **SIGNATURE OF ATTORNEY OF RECORD** [Signature]

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the Cover Sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF DEFENDANT (b) County of residence. Use 11001 to indicate plaintiff is resident of Washington, D.C., 88888 if plaintiff is resident of the United States but not of Washington, D.C., and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES. This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT. The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of case.
- VI. CAUSE OF ACTION. Cite the US Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASES, IF ANY. If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

Plaintiff incorporates herein by reference the facts alleged in the Verified Complaint.

Plaintiff also incorporates herein by reference the legal arguments contained in the Memorandum in Support of Motion for Temporary Restraining Order. Plaintiff has satisfied the four-part test for granting a temporary restraining order.

Respectfully submitted,

/s/ Jeffrey Light

Jeffrey L. Light
D.C. Bar #485360
1712 Eye St., NW
Suite 915
Washington, DC 20006
(202)277-6213

Counsel for Plaintiff

CERTIFICATE PURSUANT TO LOCAL RULE 65.1

Undersigned counsel hereby certifies that he has provided actual notice of the time of making the application for a Temporary Restraining Order to the Office of the United States Attorney for the District of Columbia by hand-delivering a copy of the Verified Complaint, and Motion for a Temporary Restraining Order together with a Notice of Intent to File for a Temporary Restraining Order to 501 3rd St, NW, 4th Floor, Washington, DC 20001.

/s/ Jeffrey Light

Jeffrey L. Light
D.C. Bar #485360
1712 Eye St., NW
Suite 915
Washington, DC 20006
(202)277-6213

Counsel for Plaintiff

Square is a uniquely appropriate venue for their protest since it is both a traditional public forum and a locale in close proximity to K Street.

As the name Occupy DC makes clear, the occupation of McPherson Square is not just integral to the protesters' expression of their grievances; it is their protest. The individual plaintiff and other participants in Occupy DC intend to continue their protest. Through this action, he seeks a temporary restraining order and, after a full hearing, a permanent injunction, to prevent the Defendant from removing the protesters from McPherson Square and from taking actions against the Occupy DC participants and their property at McPherson Square which unconstitutionally interfere with or abridge Occupy DC participants' exercise of their free speech, assembly, association, petitioning, property, and privacy rights.

FACTS

Plaintiff incorporates by reference the factual allegations contained in the Verified Complaint.

ARGUMENT

A plaintiff is entitled to a temporary restraining order upon a showing (1) that it is likely to succeed on the merits, (2) that it is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in its favor, and (4) that an injunction is in the public interest. *Sherley v. Sebelius*, 644 F.3d 388, 392 (D.C. Cir. 2011); *Hall v. Johnson*, 599 F. Supp. 2d 1, 6 n.2 (D.D.C. 2009) (“[t]he same standard applies to both temporary restraining orders and to preliminary injunctions.”) Although it remains unclear whether a strong showing on one factor allows a plaintiff to make a

weaker showing on other factors, *Sherley*, 644 F.3d at 392-93, the Court need not address this issue because Plaintiff here meets all four requirements.

Balancing the factors in a case involving constitutional rights constitutes sufficient irreparable harm to warrant injunctive relief. *See e.g., Elrod v. Burns*, 427 U.S. 347 (1976) (noting that First Amendment violation imposes irreparable harm on the silenced speaker); *see also Planned Parenthood v. Citizens for Com. Action*, 558 F.2d 861, 867 (8th Cir. 1977); *Henry v. Greenville Airport Comm'n*, 284 F.2d 631, 633 (4th Cir. 1960). In this matter, a consideration of each of the four traditional factors weighs decidedly in favor of granting the preliminary injunctive relief that Plaintiff seeks.

I. PLAINTIFF IS LIKELY TO PREVAIL ON THE MERITS OF HIS FIRST AND FOURTH AMENDMENT CLAIMS.

A. The government bears the burden of proof and persuasion in this case.

In this action, Defendant carries the burden of proof and persuasion. *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 816 (2000) (“When the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions”); *United States v. Beal*, 810 F.2d 574, 577 (6th Cir. 1987) (stating that the “government . . . has the burden of proving the propriety of a warrantless seizure”).

B. Plaintiff is engaging in protected, expressive First Amendment activity.

Streets and parks are the quintessential traditional public fora, because those areas “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 Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983) (quoting *Hague v. Committee for Indus. Org.*, 307 U.S. 496, 515 (1939)); see also *United States v. Grace*, 461 U.S. 171, 177 (1983) (“[P]ublic places historically associated with the free exercise of expressive activities, such as ... parks, are considered without more, to be public forums.”)

Occupy DC participants are occupying such a traditional public forum and their symbolic expressions of the possibility of a more democratic, just, and economically egalitarian society in this forum exemplify political speech, and fall squarely within the guarantees of freedom of speech, assembly, association and the right to petition the government protected by the First Amendment to the United States Constitution. See *Shuttleworth v. City of Birmingham*, 394 U.S. 147, 152 (1969) (describing privilege of citizens to assemble, parade, and discuss public questions in streets and parks); *Roth v. United States*, 354 U.S. 476, 484 (1957) (explaining that the broadest protection is afforded to political expression in order “to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.”) Likewise, “there is practically universal agreement that a major purpose of the [First] Amendment was to protect the free discussion of governmental affairs.” *Mills v. Alabama*, 384 U.S. 214, 218 (1966).

As the First Circuit Court of Appeals reasoned, freedom of speech:

is designed and intended to remove governmental restraints from the arena of public discussion, putting the decision as to what views shall be voiced largely into the hands of each of us, in the hope that use of such freedom will ultimately produce a more capable citizenry and more perfect polity and in the belief that no other approach would comport with the premise of individual dignity and choice upon which our political system rests. *Bl(a)ck Tea Soc'y v. City of Boston*, 378 F.3d 8, 11-12 (1st Cir. 2004) (quoting *Cohen v. California*, 403 U.S. 15, 24 (1971)).

This conclusion reflects the “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.” *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

As the U. S. Supreme Court has observed, advocacy of a politically controversial viewpoint is the essence of First Amendment expression. *See e.g., Citizens United v. Fed. Election Comm'n*, ___ U.S. ___, 130 S.Ct. 876, 892 (2010) (noting that political speech is “central to the meaning and purpose of the First Amendment”); *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 347 (1995) (“[T]he advocacy of a politically controversial viewpoint is the essence of First Amendment expression.”). Given the fundamental nature of the right to unrestrained political dialogue, actions burdening core political speech are viewed with “extra scrutiny” and may be upheld only if narrowly tailored to serve an overriding state interest. *McIntyre*, 514 U.S. at 347.

The protections of the First Amendment also includes symbolic and expressive conduct designed to communicate a message, including the types of expression used by Plaintiff, who has maintained a vigil in the park, as part of a tent city. *See Spence v. Washington*, 418 U.S. 405, 409-410 (1974) (holding conviction of student for affixing a peace symbol to an American flag violated the First Amendment); *Univ. of Utah Students Against Apartheid v. Peterson*, 649 F. Supp. 1200, 1207 (D. Utah 1986) (holding shanties erected by students to protest apartheid “are symbolic expression protected under the first amendment”); *United States v. Abney*, 534 F.2d 984, 985-86 (D.C. Cir. 1976) (overturning defendant-protector's conviction because “a round-the-clock vigil” in a park to protest lack of sufficient disability benefits constituted symbolic expression protected under the First Amendment).

In considering whether a form of symbolic expression is protected by the First Amendment, the courts consider two factors, the first of which is whether there is intent on the part of those engaging in the conduct to communicate a message through the conduct. The second factor is whether it is likely that those observing the conduct will understand the message. *Spence*, 418 U.S. at 409-10; *Univ. of Utah Students Against Apartheid*, 649 F. Supp. at 1207. For example, in *Univ. of Utah Students Against Apartheid*, the court found that the basis for the court's holding that the shanties were protected symbolic expression was the fact that the shanties were a functional replica of the shanties in South Africa and, as such, the shanties "effectively serve as the speech itself." *Id.* And, given that shanties had become symbolic of the anti-apartheid movement, the court found that it was likely that observers would understand the protestors' message. *Id.* In *United States v. Abney*, the United States Court of Appeals for the District of Columbia found that sleeping in a public park to protest a controversy regarding disability benefits constituted symbolic speech worthy of First Amendment protection. *United States v. Abney*, 534 F.2d at 985-86.

The Occupy DC protest falls clearly within the protection of the First Amendment. As did the students in the *Univ of Utah Students Against Apartheid* (649 F. Supp. at 1204), and the protestor in *Abney* (534 F.2d at 985-86), the Occupy DC protestors erected tents and keep a round-the-clock vigil at the encampment. These tents and the consensus-based, non-hierarchical governance of the encampments is symbolic of the protestors' message that it is possible to create a more democratic, egalitarian and economically just society. Such tent cities have been built throughout the country, including two in D.C., in order to communicate this message, and Plaintiff is expressing a

political message in a manner that the courts have consistently recognized as speech that is protected under the First Amendment.

Tent cities have become symbolic of the Occupy movement. Occupy DC has hosted numerous visitors at the tent city, including many from other countries who are visiting D.C. and choose to stop by McPherson Square. Given the publicity that the Occupy movement has gotten, the number of visitors to the tent city and the almost constant honking of horns of vehicles driving along K Street, observers are aware of the tent city and the message that the participants seek to convey.

Courts around the country have recognized the tent cities constructed by the Occupy movement as protected expressive activity. In *Occupy Ft. Myers v. City of Ft. Myers*, No. 11-cv-608(JES) (M.D. Fla., Nov. 15, 2011), the court stated:

The Court finds that in the context of this case the tenting and sleeping in the park as described by plaintiffs' counsel is symbolic conduct which is protected by the First Amendment. The conduct of tenting and sleeping in the park 24 hours a day to simulate an occupation is intended to be communicative and in context is reasonably understood by the viewer to be communicative. This expressive conduct relates to matters of public concern because it can be fairly considered as relating to matters of political, social, or other concern to the community and is a subject of general interest and of value and concern to the public.

Likewise, in *Occupy Minneapolis v. County of Hennepin*, 11-cv-3412 (RHK)(D. Minn. Nov. 21, 2011), the court stated:

The Court disagrees with the County, however, that precluding Plaintiffs from sleeping on the Plaza or erecting tents or other structures does not implicate First Amendment concerns. Plaintiffs correctly note that tent cities and temporary shanties built on public property can be a form of expressive symbolic communication.

In summary Plaintiff in this matter meets the standard set out in *Spence* – he knows the message that his conduct communicates and observers of his conduct are

likely to understand the message. Plaintiff's conduct is therefore protected expressive speech under the First Amendment. *See Spence*, 418 U.S. at 409-10.

C. The government must meet the *Madsen* test for constitutionality, or alternatively must prove that the restriction is narrowly tailored to serve a compelling government interest.

Defendant's actions are subject to *Madsen* scrutiny because they are applied solely or differently to Occupy D.C. *Madsen v. Women's Health Ctr.*, 512 U.S. 753 (1994). While Defendant's actions are not injunctions, they have the characteristics of an injunction which the Supreme Court found relevant to determining the level of scrutiny to apply to a restriction on expressive conduct. Unlike an ordinance, Defendant's actions do not "represent a legislative choice regarding the promotion of particular societal interests." *Id.* at 764. The actions did not "emanate from deliberative, democratic decisionmaking processes." *McTernan v. City of York*, 564 F.3d 636, 654 (3rd Cir. 2009). They do not "embody the popular will," but were conceived "without meaningful public input and without reference to formal policy or administrative channels." *Id.* at 655. Additionally, to the extent that Defendant's actions are not generally applicable to all parks, they carry a "greater risk[] of censorship and discriminatory application than do[es a] general ordinance[]." *Madsen*, 512 U.S. at 764. The fact that the actions apply to a portion of a single park also suggests a higher level of scrutiny because it increases the likelihood that the policy "will escape public condemnation." *McTernan*, 564 F.3d at 655. Finally, the fact that the actions are not written policies means that they are more likely to be arbitrary. *Id.* Whereas injunctions are written, Defendant's actions here lack the

precision and specificity required of federal injunctions. Moreover, because the actions are unwritten they are “less amenable to judicial, executive, and public oversight.” *Id.*

Under an alternative test applicable to ordinances, the government must prove that its actions are narrowly tailored to serve a compelling government interest. The Supreme Court has been critical of those restrictions that target much more than is necessary, stating that “[i]n order to be narrowly tailored, the regulations must ‘target[] and eliminate[] no more than the exact source of the ‘evil’ [they] seek to remedy.’” *Boardley v. U.S. Dep’t of Interior*, 615 F.3d 508, 523 (D.C. Cir. 2010), citing *Frisby v. Schultz*, 487 U.S. 474, 485 (1988).

Under either standard, the government’s threatened actions do not pass constitutional muster. There is no compelling government interest in preventing individuals from entering the restricted portion of McPherson Square. Further, whatever interest the government may assert, a total prohibition on not only expressive activity, but mere presence in a section of McPherson Square, is by definition not narrowly tailored.

The tent city is an integral, and necessary, part of the Occupy message and the fact that Plaintiff may protest in other portions of the park does not save an otherwise invalid restriction. As the Supreme Court stated in *Reno v. ACLU*, “[O]ne is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place.” *Reno v. ACLU*, 521 U.S. 844, 880 (1997).

D. The removal of tents and their contents without a warrant would constitute an unreasonable search and seizure in violation of the Fourth Amendment.

Warrantless searches and seizures of a person's home or effects are presumptively unreasonable, subject to a few narrow exceptions.¹ See *United States v. Jacobsen*, 466 U.S. 109, 114 (1984) (warrantless search of effects presumptively unreasonable); *Payton v. New York*, 445 U.S. 573, 586 (1980) (warrantless searches and seizures inside residences are presumptively unreasonable).

Whether classified as a residence or a personal effect, an individual has a reasonable expectation of privacy in a tent, even on public property. *United States v. Gooch*, 6 F.3d 673, 677-78 (9th Cir. 1993).

Defendant's threatened removal of tents from McPherson Square is unsupported by either probable cause or special circumstances unrelated to general law enforcement.

E. Issuance of a Temporary Restraining Order would maintain the status quo until a preliminary injunction hearing.

A temporary restraining order is "ordinarily issued to preserve the status quo." *Beattie v. Barnhart*, 663 F. Supp. 2d 5, 9 (D.D.C. 2009). This underlying purpose for issuing a temporary restraining order would be served here by preserving Plaintiff's ability to remain in McPherson Square with his tent until a hearing on a motion for a preliminary injunction can be filed.

Should Plaintiff's tent be removed from McPherson Square in the interim, there is a possibility that this Court would be unable to afford him any relief because the case would be moot. See *Katherine Knox-Davies v. City of Los Angeles*, No. 11-cv-9792

¹ These exceptions, none of which apply here, include consent, search incident to arrest, investigative stops, exigent circumstances, border searches, airport searches, and administrative searches.

(GHK), Minute Order (C.D. Calif. Nov. 30, 2011)(denying as moot application for TRO by Occupy Los Angeles because police had already removed protesters from park.)

F. Plaintiff has standing to seek a temporary restraining order even if Defendant disclaims a present intention to remove Plaintiff's tent.

Even if Defendant asserts that it has decided not to remove Plaintiff's tent at present, there is no reason to believe that Defendant will allow the protest to continue indefinitely without intervention from this Court. The situation on the ground is fluid and Plaintiff's tent is in danger of being removed at any time, without notice to Plaintiff or the Court. *See Occupy Boston v. City of Boston*, No. 11-4152-G, Order on Plaintiff's Motion for a Temporary Restraining Order (Sup. Ct. Mass. Dec. 1, 2011).

G. This Court has inherent authority to issue an injunction to prohibit constitutional violations.

A federal court has inherent authority to issue an injunction to remedy a violation of constitutional rights. *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1097 (11th Cir. 2004).

II. Plaintiff will suffer irreparable harm if the Court does not issue a temporary injunction.

The Supreme Court has stated: "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373-74 (1976). *See also* CHARLES ALAN WRIGHT, ARTHUR R.

MILLER, MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE § 2948.1 (2d. ed. 1995) (“When an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.”) Even a brief disruption of the occupation will result in, as the Supreme Court has noted, irreparable injury.

A violation of the Fourth Amendment may also suffice to establish irreparable harm. *Covino v. Patrissi*, 967 F.2d 73, 77 (2d Cir. 1992) (holding that plaintiffs may establish irreparable harm based on an alleged violation of their Fourth Amendment rights).

III. The irreparable harm which Plaintiff would suffer if the injunction does not issue far outweighs any harm to the Defendant should the temporary injunction issue.

The requested order will not impair or prejudice the Defendant’s ability to maintain public safety, and to protect the health and safety of the surrounding area. Any claim of prejudice to Defendant that would accrue in the short period of time before the Court could hold a hearing on a preliminary injunction is undermined by the fact that Occupy DC has maintained a presence in McPherson Square for over two months without any attempt by Defendant to evict the protesters.

On the other hand, Plaintiff will suffer serious harm from abridgment of his constitutional rights. On balance, the equities favor Plaintiff. *See Phelps-Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008) (“The balance of equities [] generally favors the constitutionally-protected freedom of expression.”)

IV. Granting the injunction will serve the public interest.

"[I]t is always in the public interest to protect First Amendment liberties." *Joelner v. Village of Wash. Park*, 378 F.3d 613, 620 (7th Cir. 2004); *see also Phelps-Roper*, 545 F.3d at 694("the public is served by the preservation of constitutional rights.")

CONCLUSION

WHEREFORE, Plaintiff respectfully requests this Court issue a Temporary Restraining Order.

Copies to:
Jeffrey L. Light
Counsel for Plaintiff

U.S. Attorney's Office, Civil Division
Counsel for Defendant



Lisa
Mendelson-Ielmini/NCR/NPS
12/05/2011 07:29 PM

To Steve Whitesell/WASO/NPS@NPS
cc
bcc
Subject Re: May I cancel National Leadership Council call for tomorrow?

Gracias

Lisa A Mendelson, AICP
Deputy Regional Director
National Capital Region NPS
202 619 7023 office
[REDACTED]

Steve Whitesell

----- Original Message -----

From: Steve Whitesell
Sent: 12/05/2011 06:34 PM EST
To: Lisa Mendelson-Ielmini
Subject: Re: May I cancel National Leadership Council call for tomorrow?

Cancel

Sent from my BlackBerry Wireless Device
Lisa Mendelson-Ielmini

----- Original Message -----

From: Lisa Mendelson-Ielmini
Sent: 12/05/2011 06:02 PM EST
To: Steve Whitesell
Subject: Re: May I cancel National Leadership Council call for tomorrow?
Yes cancel or yes you did want brief call? Guess my question was clear as mud ;)

Lisa A Mendelson-Ielmini, AICP
Deputy Regional Director
National Capital Region NPS
202 619 7023 office
[REDACTED]

Steve Whitesell

----- Original Message -----

From: Steve Whitesell
Sent: 12/05/2011 05:50 PM EST
To: Lisa Mendelson-Ielmini
Subject: Re: May I cancel National Leadership Council call for tomorrow?

Yes

Sent from my BlackBerry Wireless Device
Lisa Mendelson-Ielmini

----- Original Message -----

From: Lisa Mendelson-Ielmini
Sent: 12/05/2011 05:40 PM EST
To: Steve Whitesell

Subject: May I cancel National Leadership Council call for tomorrow?
We saw all @ Regional Leadership Council last week and there was no National Leadership Council call on Thurs..... Otherwise I suppose we can do a brief update on Terry and Occupy and you can send holiday wishes and congrats to PRPA for Tree Lighting. I can send out a msg tonite, just let me know, Thanks so much, Lisa.

Lisa A Mendelson-Ielmini, AICP
Deputy Regional Director
National Capital Region NPS
202 619 7023 office
[REDACTED]



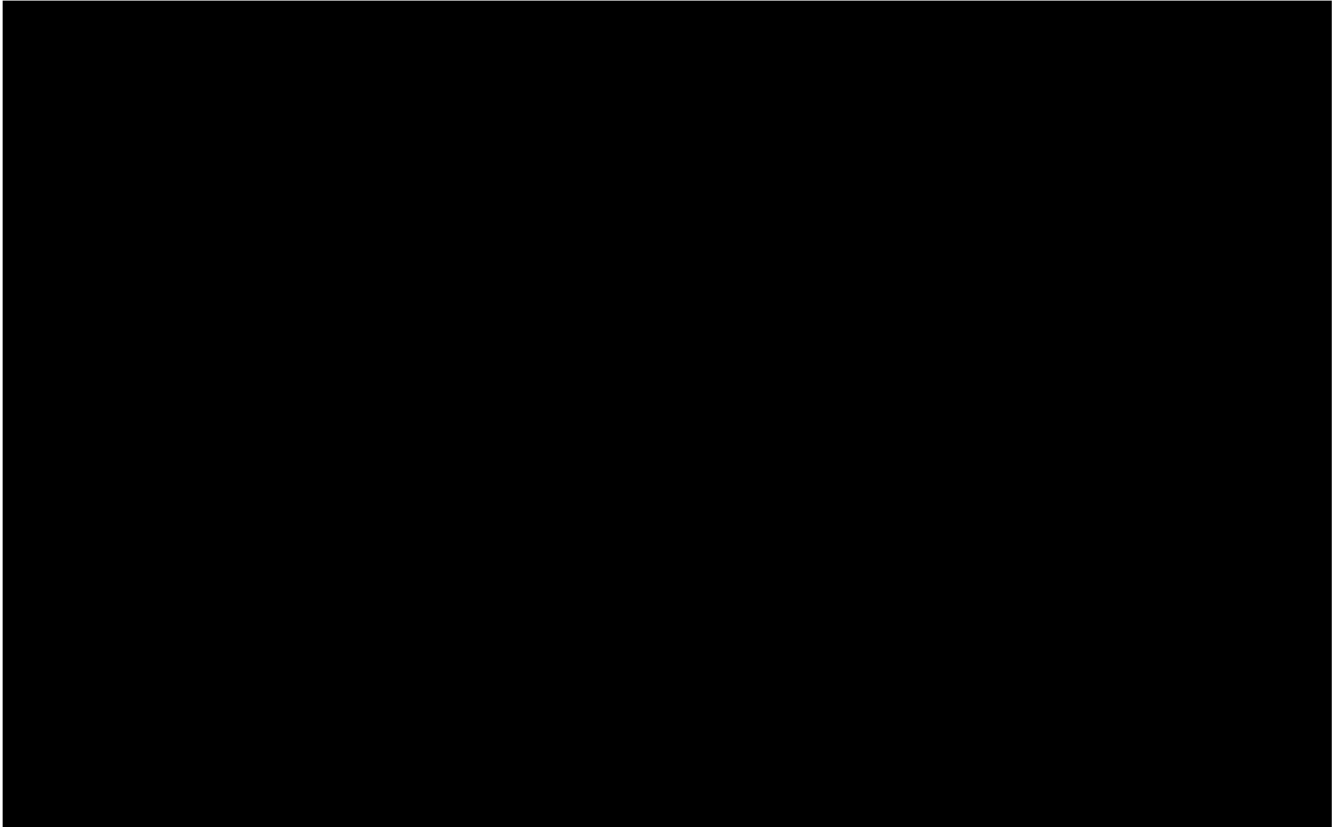
"Myers, Randolph"
<RANDOLPH.MYERS@sol.doi.gov>

12/06/2011 02:30 PM

To "Whitesell, Steve E." <Steve_Whitesell@nps.gov>,
"Mendelson, Lisa" <Lisa_Mendelson-Ielmini@nps.gov>,
"Vogel, Bob A." <Bob_Vogel@nps.gov>,
cc "Fondren, Kimberly" <Kim.Fondren@sol.doi.gov>

bcc

Subject Attorney-Client Privileged: Update on the Henke v DOI
(DDC) "Occupy DC" Litigation



Randy Myers

Randolph J. Myers
U.S. Department of the Interior, Office of the Solicitor
DPW Branch of National Parks
1849 C Street, NW, Room 5320
Washington, D.C. 20240
w (202) 208-4338 fax (202) 208-3877
Randolph.Myers@sol.doi.gov

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Christopher Niewold/NCR/NPS
12/06/2011 03:02 PM

To Steve Whitesell/WASO/NPS@NPS, Lisa Mendelson-Ielmini/NCR/NPS@NPS, Wendy O'Sullivan/WASO/NPS@NPS
cc Cynthia Salter-Stith/NCR/NPS@NPS
bcc

Subject Fw: Outdoor Nation newsletter

hi all,

just a follow up fyi.....you may recall an email from me several weeks ago that described the Outdoor Foundation Campus Club program here in DC. Follow the link below to see the latest newsletter from Outdoor Nation which includes a link to a youtube video of DC's local Campus Club program as they enjoy a recent Potomac River kayak outing. I'd urge you to watch the video when you get a chance. Seeing a local on the ground example of how the NPS, through our partners, can play a role in connecting young people to the out-of-doors through "fun" may help provide an element of balance to the Occupy DC structure dismantling, partner negotiations, earthquake repair and PMIS entry of our regular professional lives. The Outdoor Foundation through their Outdoor Nation program gets the credit for making this program available to the young people of DC.

best

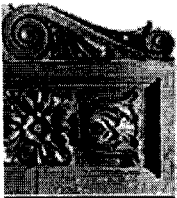
chris

Chris Niewold
Rivers, Trails, and Conservation Assistance
National Park Service - National Capital Region
Ph (202)-690-5153
Cell (202) 690-7025
fax (202)690-1425

The National Park Service cares for special places saved by the American people so that all may experience our heritage.

EXPERIENCE YOUR AMERICA

----- Forwarded by Christopher Niewold/NCR/NPS on 12/06/2011 02:36 PM -----



Julie Isbill/BOSTON/NPS
Sent by: Julie Isbill

12/06/2011 01:32 PM

To NPS RTCA National Staff
cc ilevin@outdoorfoundation.org
Subject Outdoor Nation newsletter

Greetings RTCA,

I think you will enjoy the Outdoor Nation newsletter - follow the link. And pass it along to any of your partners who might want to connect to this organization that is all about empowering young people to take the lead in getting outside!

http://campaign.r20.constantcontact.com/render?llr=qmcxmrdb&v=001aqkzoXHU1G1uY5jRR6sjCTfG4CxH8512s-dyFLIEwaBh-PJa40r-1_h0j1YZBwcDCZak7_1q-tpVtPJKQUKNN-

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iWmP9033tYOX1HNI5MmBK5A1R5CvRoJFjrM-IDKw%3D%3D

All the Best,
Julie

Julie Isbill
National Park Service Rivers & Trails
14 Maine Street, Suite 302
Brunswick, Maine 04011
207.725.5028



Sean Kennealy/NACC/NPS
12/06/2011 03:50 PM

To Philip Selleck/NCR/NPS@NPS
cc Carol B Johnson/NACC/NPS@NPS, Doug
Jacobs/NCR/NPS@NPS, Lisa
Mendelson-Ielmini/NCR/NPS@NPS, Stanley A
bcc
Subject Re: Fw: Question about building codes in National Parks

Most NPS assets are designed to the International Codes (building, mechanical, electrical etc...). Federal agencies are encouraged to comply with local codes where feasible. DC uses the International Code with local supplements that largely govern procedural matters. Here is a link to the Denver Service Center where all the various aspects of NPS design are listed. They do specify the International codes.

<http://www.nps.gov/dscw/dsarch.htm>

Thanks, Sean

Sean Kennealy
Chief, Division of Facility Management
National Mall and Memorial Parks
202-245-4685 (office)
202-426-0099 (fax)

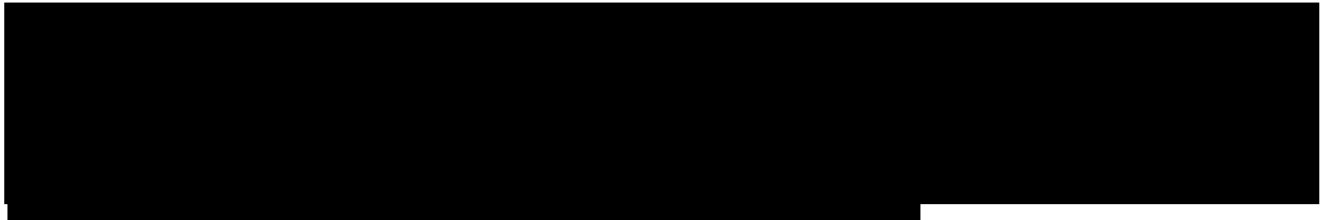
Philip Selleck Bill, As far as the question of codes go for the M... 12/06/2011 02:44:19 PM



Philip Selleck/NCR/NPS
12/06/2011 02:42 PM EST

To William Line/NCR/NPS@NPS
cc Carol B Johnson/NACC/NPS@NPS, Doug
Jacobs/NCR/NPS@NPS, Lisa
Mendelson-Ielmini/NCR/NPS@NPS, Sean
Kennealy/NACC/NPS@NPS, Stanley A
Briscoe/NCR/NPS@NPS, Steve
Lorenzetti/NACC/NPS@NPS, Steve
Whitesell/WASO/NPS@NPS
Subject Re: Fw: Question about building codes in National Parks

Bill,



§ 2.10 Camping and food storage.

- (a) The superintendent may require permits, designate sites or areas, and establish conditions for camping.
- (b) The following are prohibited:

- (1) Digging or leveling the ground at a campsite.
 - (2) Leaving camping equipment, site alterations, or refuse after departing from the campsite.
 - (3) Camping within 25 feet of a water hydrant or main road, or within 100 feet of a flowing stream, river or body of water, except as designated.
 - (4) Creating or sustaining unreasonable noise between the hours of 10:00 p.m. and 6:00 a.m., considering the nature and purpose of the actor's conduct, impact on park users, location, and other factors which would govern the conduct of a reasonably prudent person under the circumstances.
 - (5) The installation of permanent camping facilities.**
 - (6) Displaying wildlife carcasses or other remains or parts thereof, except when taken pursuant to §2.2.
 - (7) Connecting to a utility system, except as designated.
 - (8) Failing to obtain a permit, where required.
 - (9) Violating conditions which may be established by the superintendent.
 - (10) Camping outside of designated sites or areas.
- (c) Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.
- (d) *Food storage.* The superintendent may designate all or a portion of a park area where food, lawfully taken fish or wildlife, garbage, and equipment used to cook or store food must be kept sealed in a vehicle, or in a camping unit that is constructed of solid, non-pliable material, or suspended at least 10 feet above the ground and 4 feet horizontally from a post, tree trunk, or other object, or shall be stored as otherwise designated. Violation of this restriction is prohibited. This restriction does not apply to food that is being transported, consumed, or prepared for consumption.

§ 2.61 Residing on Federal lands.

- (a) Residing in park areas, other than on privately owned lands, except pursuant to the terms and conditions of a permit, lease or contract, is prohibited.
- (b) Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

William Line

Everyone:

12/06/2011 02:05:14 PM



Steve Whitesell/WASO/NPS
12/06/2011 03:57 PM

To Carol B Johnson/NACC/NPS@NPS, Philip
Selleck/NCR/NPS@NPS
cc Doug Jacobs/NCR/NPS@NPS, Lisa
Mendelson-Ielmini/NCR/NPS@NPS, Sean
Kennealy/NACC/NPS@NPS, Stanley A
bcc

Subject Re: Fw: Question about building codes in National Parks



Sent from my BlackBerry Wireless Device
Carol B Johnson

----- Original Message -----

From: Carol B Johnson
Sent: 12/06/2011 03:13 PM EST
To: Philip Selleck
Cc: Doug Jacobs; Lisa Mendelson-Ielmini; Sean Kennealy; Stanley Briscoe;
Steve Lorenzetti; Steve Whitesell; William Line
Subject: Re: Fw: Question about building codes in National Parks
I agree that it is a moot point given the regs, but there have been questions about why someone from DC
was there to inspect the structure.

Carol Bradley Johnson
Communications Officer
National Park Service
National Mall and Memorial Parks
900 Ohio Drive, SW
Washington, D.C. 20024
Phone: 202-245-4700

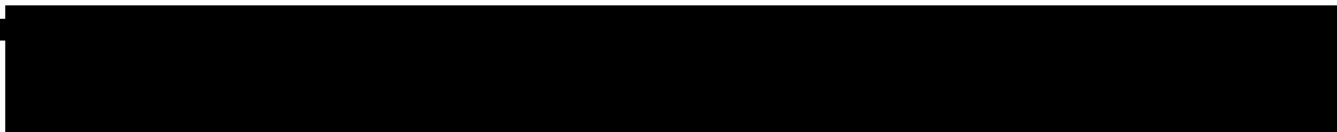
Philip Selleck Bill, As far as the question of codes go for the M... 12/06/2011 02:44:19 PM



Philip Selleck/NCR/NPS
12/06/2011 02:42 PM

To William Line/NCR/NPS@NPS
cc Carol B Johnson/NACC/NPS@NPS, Doug
Jacobs/NCR/NPS@NPS, Lisa
Mendelson-Ielmini/NCR/NPS@NPS, Sean
Kennealy/NACC/NPS@NPS, Stanley A
Briscoe/NCR/NPS@NPS, Steve
Lorenzetti/NACC/NPS@NPS, Steve
Whitesell/WASO/NPS@NPS
Subject Re: Fw: Question about building codes in National Parks

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- (b) Violation of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the suspension or revocation of the permit.

William Line

Everyone:

12/06/2011 02:05:14 PM



William Line/NCR/NPS

12/06/2011 02:05 PM

To Doug Jacobs/NCR/NPS@NPS, Steve Lorenzetti/NACC/NPS@NPS, Philip Selleck/NCR/NPS@NPS, Sean Kennealy/NACC/NPS@NPS, Stanley A Briscoe/NCR/NPS@NPS, Carol B Johnson/NACC/NPS@NPS
 cc Steve Whitesell/WASO/NPS@NPS, Lisa Mendelson-Ielmini/NCR/NPS@NPS

Subject Fw: Question about building codes in National Parks



Everyone:

Per the question raised below, does any one know the answer to what building code applies in NCR Parks? As noted, the question is raised over the structure that was partially put up in McPherson Square Saturday evening.

If we can get an answer today, that would be great.

Thanks!

Bill Line

Communications, FOIA & Tourism Officer

National Park Service

National Capital Region

1100 Ohio Drive, SW

Washington, D.C. 20242

Main office: (202) 619-7222; direct dial: (202) 619-7177; [REDACTED]; Fax: (202) 619-7302

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----- Forwarded by William Line/NCR/NPS on 12/06/2011 01:45 PM -----



Lydia DePillis

<ldepillis@washingtontypaper.com>

12/06/2011 11:25 AM

To william_line@nps.gov

cc

Subject Question about building codes in National Parks

Hi Bill,

In light of this weekend's events at McPherson Square, I'd like to know: What building code applies in National Parks? D.C.'s regulations do not apply, but someone's must.

I'd like to know by the end of the day if possible.

Thanks very much,

Lydia

--

Staff Writer / Washington City Paper

(c) 206-399-5876 / (o) 202-650-6928 / @housingcomplex

<http://www.washingtontypaper.com/blogs/housingcomplex/>



William Line/NCR/NPS
12/06/2011 05:38 PM

To Lisa Mendelson-Ielmini/NCR/NPS@NPS
cc Steve_Whitesell@nps.gov
bcc
Subject Re: Fw: Question about building codes in National Parks

Lisa:

Will do. You'd be surprised at the number of staff who've responded, and much of it is "all over the map," so to speak.
Thanks!

Bill Line
Communications, FOIA & Tourism Officer
National Park Service
National Capital Region
1100 Ohio Drive, SW
Washington, D.C. 20242
Main office: (202) 619-7222; direct dial: (202) 619-7177; [REDACTED]; Fax: (202) 619-7302

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<http://www.youtube.com/gwnppublicaffairs1>
<http://www.flickr.com/photos/gwnppublicaffairs>

Lisa Mendelson-Ielmini Bill, I'd suggest you coordinate response w/... 12/06/2011 03:45:08 PM



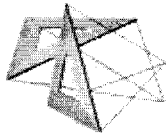
Lisa Mendelson-Ielmini/NCR/NPS
12/06/2011 03:48 PM

To William_Line@nps.gov
cc Steve_Whitesell@nps.gov
Subject Fw: Question about building codes in National Parks



Lisa A. Mendelson-Ielmini, AICP
Deputy Regional Director
National Park Service, National Capital Region
202-619-7000 office
202-297-1338 cell

----- Forwarded by Lisa Mendelson-Ielmini/NCR/NPS on 12/06/2011 03:47 PM -----



Stanley A Briscoe/NCR/NPS
12/06/2011 03:39 PM

To William Line/NCR/NPS@NPS
cc Carol B Johnson/NACC/NPS@NPS, Doug Jacobs/NCR/NPS@NPS, Lisa Mendelson-Ielmini/NCR/NPS@NPS, Philip Selleck/NCR/NPS@NPS, Sean Kennealy/NACC/NPS@NPS, Steve Lorenzetti/NACC/NPS@NPS, Steve Whitesell/WASO/NPS@NPS
Subject Re: Fw: Question about building codes in National Parks



"International Building Code" in general but there are other codes and standards that also apply; National Fire Protection Association's "Life safety Code", "Architectural Barriers Act Accessibility Standards" and in certain areas the local jurisdiction has some authority given to them by Congress / GSA: water distribution systems. Also, from time to time in the past we have invited D.C. inspectors to inspect certain facilities on NPS land in D.C. and I know there are NPS sanitation regs. that apply.

Stan

Stanley A. Briscoe
Chief, Design Services Division
Architect / Regional Accessibility Coordinator
Acting, Regional Dam Safety / Flood Coordinator
National Capital Region / National Park Service
(202) 619-6391

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William Line Everyone: Per the question raised below, does a... 12/06/2011 02:05:14 PM



William Line/NCR/NPS
12/06/2011 02:05 PM

To: Doug Jacobs/NCR/NPS@NPS, Steve Lorenzetti/NACC/NPS@NPS, Philip Selleck/NCR/NPS@NPS, Sean Kennealy/NACC/NPS@NPS, Stanley A Briscoe/NCR/NPS@NPS, Carol B Johnson/NACC/NPS@NPS
cc: Steve Whitesell/WASO/NPS@NPS, Lisa Mendelson-Ielmini/NCR/NPS@NPS
Subject: Fw: Question about building codes in National Parks

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Thanks!

Bill Line

Communications, FOIA & Tourism Officer

National Park Service

National Capital Region

1100 Ohio Drive, SW

Washington, D.C. 20242

Main office: (202) 619-7222; direct dial: (202) 619-7177; cell: [REDACTED] Fax: (202) 619-7302

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<http://www.flickr.com/photos/gwnppublicaffairs>

----- Forwarded by William Line/NCR/NPS on 12/06/2011 01:45 PM -----



Lydia DePillis

<ldepillis@washingtontypaper.com>

12/06/2011 11:25 AM

To william_line@nps.gov

cc

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I'd like to know by the end of the day if possible.

Thanks very much,

Lydia

--

Staff Writer / Washington City Paper

(c) 206-399-5876 / (o) 202-650-6928 / @housingcomplex

<http://www.washingtontypaper.com/blogs/housingcomplex/>



Steve Whitesell/WASO/NPS

12/08/2011 10:53 AM

To Judy Bowman/NCR/NPS@NPS

cc Lisa_Mendelson-ielmini@nps.gov

bcc

Subject Fw: Occupy DC call/meeting on Mondays at 4:30pm

Please block out on my calendar. Lisa's attendance is voluntary.

Steve Whitesell
National Park Service
Regional Director
National Capital Region

----- Forwarded by Steve Whitesell/WASO/NPS on 12/08/2011 10:52 AM -----



Claire Rozdilski/WASO/NPS

12/08/2011 09:32 AM

To RANDOLPH_MYERS@sol.doi.gov, Teresa

Chambers/USPP/NPS@NPS, Steve

Whitesell/WASO/NPS@NPS, Bob Vogel/NAMA/NPS@NPS,

Polly_Hanson@ios.doi.gov, ROBERT_EATON@sol.doi.gov,

Maureen Foster/WASO/NPS@NPS, Alexa Viets/ROCR/NPS

cc Pamela Blyth/USPP/NPS@NPS, Judy

Bowman/NCR/NPS@NPS, Tasha

Robbins/WASO/NPS@NPS, Tonya

Thomas/NACC/NPS@NPS

Subject Occupy DC call/meeting on Mondays at 4:30pm

Good morning,

I believe after Monday's meeting, it was agreed that everyone would meet weekly on Mondays at 4:30pm, either in person or on a conference call.

I have reserved the Director's conference room for this, Room 3121.

If you are calling in, please use this call-in number:

866-767-0316

Passcode: 9312232

Please pass this on to anyone who needs to be included and I missed in this email.

Best,
Claire

Claire C. Rozdilski
National Park Service
Staff Assistant to the Deputy Director, Operations
1849 C Street NW
Washington, DC 20240
202-208-3818(Office)

████████████████████
202-208-7889 (Fax)



William Line/NCR/NPS
12/12/2011 03:19 PM

To David Barna/WASO/NPS@NPS
cc Sue Waldron/WASO/NPS@NPS, Steve Whitesell/WASO/NPS@NPS, Lisa Mendelson-Ielmini/NCR/NPS@NPS
bcc
Subject Fw: Occupy DC

Dave:

Thanks for taking my call. Please see the email below from WPost reporter Annie Gowen. Gowen called me and asked to speak to "whoever is making all the decisions about Occupy DC and we want to talk to as high up the ladder or as low down the ladder as to who or which persons are making the decisions about Occupy DC." Gowen directly mentioned Jon Jarvis' name, directly mentioned Secretary Salazar's name, and directly mentioned U.S. Park Police Chief Teresa Chambers' name. As you can see, Gowen wants to talk this week, as she is writing for next Sunday.

Also please note that Gowen is working closely with WPost reporter Tim Craig, who filed a Freedom of Information (FOIA) Request today, asking for copies of emails and other correspondence between Steve Whitesell, Bob Vogel (NAMA), Ann Bowman Smith (Presidents Park) and me on the issue of Occupy DC. Craig asked for both Expedited Processing of the Request AND for a Request for a Fee Waiver in regard to his FOIA.

Please let me know if you have any questions.

Thanks!

Bill Line

Communications, FOIA & Tourism Officer

National Park Service

National Capital Region

1100 Ohio Drive, SW

Washington, D.C. 20242

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----- Forwarded by William Line/NCR/NPS on 12/12/2011 03:12 PM -----



Annie Gowen
<gowena@washpost.com>
12/12/2011 02:23 PM

To william_line@nps.gov
cc
Subject Occupy DC

Mr. Line:

Thanks for all your help today. As we discussed, I am working on a story for Sunday's paper about the

future of the Occupy encampments in D.C. We're hoping to speak to someone within your agency who is overseeing the matter to discuss how long they will be allowed to stay, if there have been any significant problems with either encampment and other issues. As I said, I'm available this week for any interviews you may be able to arrange.

Thanks.

Annie
Annie Gowen
Reporter, Wealth Class & Income
The Washington Post
O(202) 334-9599
C(202) 621 3315



William Line/NCR/NPS
12/12/2011 06:31 PM

To randoph.myers@sol.doi.gov
cc Steve Whitesell/WASO/NPS@NPS, Lisa Mendelson-Ielmini/NCR/NPS@NPS, Judy Bowman/NCR/NPS@NPS, Bob Vogel/NAMA/NPS@NPS,
bcc
Subject Fw: NEW FOIA REQUEST -- Please read thoroughly; many of you (and me) are directly mentioned in this FOIA request from the Washington Post

Randy:

Please see a new, incoming FOIA letter from Washington Post reporter Tim Craig. Craig has asked both a **Request for Expedited Processing** and a **Request for a Fee Waiver** regarding this FOIA request.

[Redacted] If you could please respond to all, with your reply, that would be most appreciated.

Thanks!

Bill Line
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----- Forwarded by William Line/NCR/NPS on 12/12/2011 06:23 PM -----



William Line/NCR/NPS
12/12/2011 03:08 PM

To Steve Whitesell/WASO/NPS, Lisa Mendelson-Ielmini/NCR/NPS, Judy Bowman/NCR/NPS, Bob Vogel/NAMA/NPS, Carol B Johnson/NACC/NPS, Tonya Thomas/NACC/NPS, Ann Bowman Smith/NCR/NPS, John Stanwich/WHVIS/NPS, David Krause/NCR/NPS
cc Margie Ortiz/NCR/NPS@NPS
Subject NEW FOIA REQUEST -- Please read thoroughly; many of you (and me) are directly mentioned in this FOIA request from the Washington Post

Everyone:

Please see the Freedom of Information Act (FOIA) request received about 45 minutes ago from Washington Post reporter Tim Craig. Please note the FOIA request mentions four of us directly (I've increased the font size to bring this to your attention. Please note that despite the fact Craig is asking for "any and all emails or other electronic communication" this is to be broadly defined as any documents you (or I) may have on this subject matter.

PLEASE also note there are **TWO** requests that Tim Craig asks for that we **MUST** respond to. These are:

1) Request for Expedited Processing. The Regulations to be relied upon when making a decision to grant or deny a **Request for Expedited Processing** are whether the requester has the ability and the proven history of helping to "significantly contribute to the public understanding of the operations and activities of the federal government." While we certainly can have a discussion with one of the Solicitors, I would strongly suggest (and would expect the Solicitors to say the same) that we go ahead and **grant the Request for a Fee Waiver**, as the Washington Post certainly has a long history of "significantly contribut[ing] to the public understanding of the operations and activities of the government." When granting a **Request for Expedited Processing**, that means we all must move "with all deliberate speed" to find/search/locate responsive documents to this request and to release those responsive documents to the requester as soon as we possibly can. Said differently, the FOIA says we must respond within 20 working days of the receipt of a FOIA request. When **granting a Request for Expedited Processing**, we need to move **quicker, faster** than the 20 working day deadline.

2) Request for a Fee Waiver. The Regulations to be relied upon when making a decision to grant or deny a **Request for Expedited Processing** are similar to those to be consulted when making a decision about granting or denying a **Request for Expedited Processing**. The commercial interest or the commercial status of any requester is irrelevant in determining a **Request for a Fee Waiver**. Again the Regulations direct the agency to make a determination as to whether "the requester has the ability to **broadly** disseminate information that will increase the public's understanding of the operations and activities of the federal government." Federal Courts have said that websites or blogs are **NOT** sufficient to meet the "broadly disseminate information" when making a decision on granting or denying a **Request for a Fee Waiver**. Again, we certainly can talk to the Solicitors, but my recommendation would be to grant the **Request for a Fee Waiver**. And, I would suspect the Solicitors would recommend the same.

William Line
National Park Service, National Capital Region
1100 Ohio Drive, SW
Washington, DC 20242
202-619-7177
Fax: 202-619-7302

Dear Mr. Line.

This is a request under the Freedom of Information Act, 5 U.S.C. § 552, for access to and copies of the following records:

1) Any and all emails or other electronic communication to or from Steve Whitesell, regional director, National Park Service, between October 1 2011 and December 15 2011 containing the words "McPherson Square" and/or "Occupy DC" and/or "Occupy Wall Street" and/or "protesters."

2) Any and all emails or other electronic communication to or from Bob Vogel, Superintendent, National Mall and Memorial Parks, between October 1 2011 and December

15 2001 containing the words "McPherson Square" and/or "Occupy DC" and/or "Occupy Wall Street" and/or "protesters."

3) Any and all emails or other electronic communication to or from **Ann B. Smith**, National Park Service liaison to the White House, White House President's Park, between October 1 2011 and December 15 2011 containing the words "McPherson Square" and/or "Occupy DC" and/or "Occupy Wall Street" and/or "protesters."

4) Any and all emails or other electronic communication to or from **Line**, associate regional director for communication and tourism, National Park Service, between October 1 2011 and December 15 2011, containing the words "McPherson Square" and/or "Occupy DC" and/or "Occupy Wall Street" and/or "protesters."

If you regard any of these records as exempt from disclosure under the Act, I hereby request that you exercise your discretion to disclose them (unless otherwise prohibited from doing so). If you deny this request in whole or in part, I ask that you justify all deletions by reference to specific exemptions of the Act, and that you provide all non-exempt portions that are reasonably segregable.

I further request that you disclose the listed documents, **as they become available to you**, without waiting until all the documents have been assembled.

If expedited processing is sought include the following paragraph, if not, DELETE

*I further **request expedited processing** of this request for records. As a journalist, I am primarily engaged in disseminating information. The public has an urgent need for information about [insert general brief description of the government activity involved] because [insert language establishing the need for bringing information on this subject matter to the public's attention now. For example, the need may involve an impending decision to which informed members of the public might contribute through lobbying or other contacts with public officials and in these instances delay would deprive the public of its ability to make known its views in a timely manner. Another need could be that possible questions exist about the government's integrity which could affect public confidence]. I certify that my statements concerning the need for expedited processing are true and correct to the best of my knowledge and belief.*

PLEASE NOTE: If your request is to the Department of Justice or any of its components such as the FBI or the INS your request for expedited processing must be sent in a separate letter addressed to the Director of Public Affairs, U.S. Department of Justice, Room 1128, 950 Pennsylvania Avenue, N.W., Washington D.C. 20530-0001. A sample letter is located on The Source.

I am making this request on behalf of The Washington Post, a newspaper of general circulation in the Washington, D.C. metropolitan area. The records disclosed pursuant to this request will be used in the preparation of news articles for dissemination to the public. For purposes of FOIA **fee assessments**, I request that you **waive all fees** in the public

interest. The furnishing of the information sought by this request is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester. **If, however, you decline to waive all fees, I am prepared to pay your normal fees for news media requesters. Please notify me if you expect the processing fees to exceed \$100.**

I would appreciate your communicating with me by telephone or e-mail, rather than mail, if you have questions regarding this request. As the FOIA requires, I look forward to your response within the twenty (20) working days.

Sincerely,
/s/ Tim Craig

Please let me know if you have any questions about this FOIA request. In short, we need to begin the search/review/"look for" process immediately.

Thanks!

Bill Line

Communications, FOIA & Tourism Officer

National Park Service

National Capital Region

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