October 15, 2018

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

Attention: RIN 1024-AE45

Submitted electronically

Re: Proposed rule regarding demonstrations and special event in the National Capitol Region, 83 Fed. Reg. 40460, published August 15, 2018

Dear Mr. Joyner:

Party Majority PAC is a political action committee which seeks to empower citizens to become voters and to encourage the participation in our democracy of otherwise overlooked individuals. We are very concerned that the proposed rule, RIN 1024-AE45, seeks to and would result in unconstitutional impositions upon the First Amendment's guarantee that "Congress shall make no law abridging…the right of the people peaceably to assemble, and to petition the Government for a redress of grievances".

Party Majority PAC is the proud supporter and organizer of a nightly gathering at 1600 Pennsylvania Avenue, NW, also known as the "Kremlin Annex" between Lafayette Square and the White House, in and near the area the National Park Service (NPS) refers to as the White House sidewalk. Since July 16, 2018, a group of people have been peaceably assembling, demonstrating, picketing, and speechmaking each night in order to communicate and express views and grievances in response to President Trump and Russian President Vladimir Putin's summit in Helsinki, Finland. We have since been inspired to include challenges and criticism of other issues and current events.

By gathering to demonstrate and deliver a loud and clear message of dissent to the President's doorstep, we are exercising our Constitutional right to freely assemble and speak freely. We are suspicious of the timing of the proposed regulatory changes as they were issued on August 15th, perhaps triggered by our demonstration within visual distance of the White House which was

well documented by the press and has garnered significant attention and followers on social media as well. It appears as if elements of this proposed rule are in direct response to our protest and are intended to chill our First Amendment rights of free speech and assembly.

Our demonstrations are not for the purpose of entertainment or exhibition. Instead, we gather to air our grievances. This takes many forms, including the use of music, chanting, song, performance art, and dance. Music holds a ubiquitous role in our society[1] and the creation and consumption of music represents a universal human activity.[2] Our great nation has long tradition of using music during times of oppression and demonstrations—from slavery to the civil rights movement. Music is known to add a direct social benefit of helping protests remain peaceful, unite gatherers, and support a calm presence, as well as having positive psychological impacts. Group music making has been shown to help solidify an individual's sense of identity within their perceived social group.[3] These historical accounts of healing with music are complimented by research demonstrating that emotional responses to music are neurally mediated, such that listening to music activates brain structures involved in reward, pleasure, and emotional processing.[4]

Using song, chant, spoken word, and other forms of verbal and non-verbal communication, the "Kremlin Annex" protest in Lafayette Square is a perfect example of a type of demonstration which has been recognized by *Riley v. National Federation of the Blind*, 487 U.S. 718, 790-91 (1998) as protected speech; "[t]he First Amendment mandates that we presume that speakers, not the Government, know best both what they want to say and how to say it." It is in clear violation of the law for the NPS to propose to treat demonstrations that include such "elements" as expressive singing or dancing, or costumes or props, as less than fully protected by the First Amendment.[5]

The public lands administered by the NPS in the National Capitol Region constitute a "unique

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[1] McDermott J, Hauser M. The origins of music: Innateness, uniqueness, and evolution. Music Perception: An Interdisciplinary Journal. 2005;23(1):29–59, "Music Therapy for Posttraumatic Stress in Adults: A Theoretical Review", Landis-Shack, Heinz, and Bonn-Miller, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5744879/#!po=7.74648, accessed October 13, 2018.

[2] Rentfrow PJ, Gosling SD. The do re mi's of everyday life: The structure and personality correlates of music preferences. Journal of Personality and Social Psychology. 2003;84:1236–1256. [PubMed], "Music Therapy for Posttraumatic Stress in Adults: A Theoretical Review", Landis-Shack, Heinz, and Bonn-Miller, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5744879/#!po=7.74648, accessed October 13, 2018.

[3] Gregory AH. The roles of music in society: The ethnomusicological perspective. In: Hargreaves David J, North Adrian C., editors. The social psychology of music. New York, NY, US: Oxford University Press; 1997. pp123-140. "Music Therapy for Posttraumatic Stress in Adults: A Theoretical Review", Landis-Shack, Heinz, and Bonn-Miller, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5744879/#!po=7.74648, accessed October 13, 2018.

[4] Koelsch S. A neuroscientific perspective on music therapy. Annals of the New York Academy of Sciences. 2009;1169(1):374–384. [PubMed], "Music Therapy for Posttraumatic Stress in Adults: A Theoretical Review", Landis-Shack, Heinz, and Bonn-Miller, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5744879/#!po=7.74648, accessed October 13, 2018.

[5] See e.g. *Ward v. Rock Against Racism*, 491 U.S.781, 790 (1989) (music); *City of Erie v. Pap's A.M.*, 529 U.S.277,289 (2000) (dance); Schacht v. United States, 398 U.S. 58, 62-63 (1970) (skits using military uniforms); *Woman Strike for Peace v. Morton*, 472 F.2d 1273 (D.C. Cir. 1972) (styrofoam tombstones).

situs for the exercise of First Amendment rights."[6] Furthermore, the NPS' Foundation Document for the National Mall and Memorial Parks issued in 2017[7] recognizes that the areas are the "National Stage of Public Expression" which "serves as the premier national civic space for public gathering including First Amendment activities…It is at National Mall and Memorial Parks that the constitutional rights of speech and peaceful assembly find their fullest expression."

Party Majority PAC requests that the NPS take the following feedback into consideration as it drafts the final rule:

Defining a demonstration (proposed change 2)
The right to gather for a spontaneous demonstration in response to unfolding events is a key aspect of First Amendment freedoms of speech and assembly. As Judge J. Skelly Wright recognized in the ACLU-DC lawsuit against the 1967 restrictions, "Timeliness is essential to effective dissent. Delay may stifle protest as effectively as outright censorship."

Historically the NPS has treated "demonstrations" and "special events" as distinct, separate, and exclusive categories. With this proposed rule, NPS seeks to define the term "events" to "mean both demonstrations and special events". It is inappropriate to treat all gatherings of people for First Amendment purposes as both a demonstration and an event. Special events always require permits and are charged fees. In contrast, small demonstrations anywhere and larger demonstrations in certain areas require no permits, nor are demonstrations charged fees to gather. These two distinct types of gatherings should remain separate and distinct from one another, and be clearly defined as such in regulation.

Threshold of demonstration size (proposed change 4)
The NPS has requested input on rules governing the size and location of non-permitted demonstrations. Current regulations state that small groups of 25 or fewer may demonstrate at any NPS location without requiring a permit.[8] Party Majority PAC suggests that the baseline "small group exception" be increased to 60 persons. This revised lower-limit for small groups would more closely align with the approximate capacity of a typical school or tourist bus. For reference, the District of Columbia law requires no notice for demonstrations of fewer than 50 persons that will not occupy a public street.[9] Most small demonstrations have not drawn significant numbers of onlookers nor required any pre-arranged management or public safety response.

Party Majority PAC would also like to remind the NPS that the First Amendment's guarantee that "Congress shall make no law…abridging…the right of the people peaceably to assemble, and to petition the Government for a redress of grievances" makes clear that in traditional public forums, such as the areas governed by 36 C.F.R. § 7.96, "permitting" a demonstration is not a

[6] *Quaker Action Group v. Morton,* 516 F.2d 717, (D.C. Cir. 1975).
[7] National Park Service, *Foundation Document: National Mall and Memorial Parks*, available at https://www.nps.gov/nama/learn/managment/upload/NAMA_FD_SP2.pdf.
[8] 41 Fed. Reg. 12879 (Mar. 29, 1976)
[9] D.C. Code § 5-331.05(d)(2)

discretionary act, instead peaceable assembly is a constitutional right that must be acknowledged, respected, and ensured. As found in *Meyer v. Grant*,[10] "the First Amendment protects [speakers'] right not only to advocate their cause but also to select what they believe to be the most effective means for so doing". Citizens do not need the government's permission to demonstrate on public streets, sidewalks, or parks. Indeed, a requirement that a person obtain a permit before speaking is an impermissible prior restraint on speech.[11] Permit systems are constitutionally permissible so long as they are "no more restrictive than necessary" to protect the government's legitimate interest in enforcing appropriate content-neutral limitations of time, place, and manner, allocating time and space among competing applicants, and assigning appropriate resources to an event.

"Kremlin Annex" protests have not resulted in, nor caused, any crowd dispersal issues. Instead, every "Kremlin Annex" gathering begins with publicly reiterating our support for the Park Police, United States Secret Service (USSS), and other supporting law enforcement agencies while encouraging all protestors to engage in a peaceful demonstration. There are times when law enforcement agents have asked us to move our gathering to Lafayette Park due to security concerns such as the take-off or landing of Marine One. We have readily and quickly responded to those requests. Similarly, we make sure not to leave any trash or debris, and no protesters supporting the message of the "Kremlin Annex" have been arrested; therefore, our presence cannot be considered unduly burdensome to the Park Police nor the USSS. The few incidents that have occurred were caused by two non-affiliated protestors who exhibited signs of public intoxication and who were removed by law enforcement, peacefully. There has not been a single reported incidence of violence or threat of violence from a "Kremlin Annex" protestor.

While demonstrating, we are often surrounded by national and international visitors to the White House who happen upon our gathering. In many cases, they are just there to take pictures of the White House and see the place in person. Our presence does not interfere with their tourist experience. In many instances, people visiting the White House area also appreciate experiencing it as a forum for vibrant expression and the embodiment of the First Amendment freedoms of speech and assembly that the United States is known for the world-over. It is not uncommon for those same tourists to take pictures of our demonstration and to ask us about what it is like to be able to freely air our grievances with the Government. We take pride in showing visitors from other countries what it is like to be able to exercise freedom of speech and assembly without fear of reprisal. We urge the NPS to not interfere by finalizing these proposed regulatory changes.

Party Majority PAC notes that some locations in the National Capitol Region such as the Ellipse and Lafayette Park are especially suitable and important symbolic venues for public assembly. Furthermore, these locations have a regular presence of large numbers of Park Police, USSS, and Metropolitan Police officers which make it easy to accommodate large groups without the need for advance permits. Spontaneous demonstrations—which necessarily means demonstrations without advance permits—are often triggered by Presidential, Congressional, or Supreme Court

[10] 486 U.S. 414, 424 (1993).

[11] *See Forsyth County v. Nationalist Movement*, 505 U.S. 123, 130 (1992).

actions and are specifically protected by the First Amendment. The "Kremlin Annex" gatherings, like many other spontaneous demonstrations that have taken place in Lafayette Park and in front of the White House do not rise to the level in which they require additional resources to be allocated by the Park Police or the USSS. In fact, they have already been easily accommodated by the relevant law enforcement entities. Staffing levels of the government agencies do not need to be increased or changed in response to spontaneous demonstrations such as the "Kremlin Annex" protests. The constitutionally required protection of and permission for non-permitted demonstrations ought to be codified as such and not restricted as the proposed rule seeks.

Sound Amplification (proposed change 4)

The proposed rule seeks to prohibit the use of sound amplification equipment for non-permitted events, and that prior notice of sound amplification use should be given to the Regional Director of NPS in the case of permitted demonstrations or special events. Party Majority PAC can imagine no good reason to limit the use of sound amplification to only permitted events. Non-permitted events, even small gatherings, benefit from sound amplification, and its use is constitutionally protected. As found in *Sais v. New York*,[12] "loud-speakers are today indispensable instruments of effective public speech."

Portable, battery-operated loud-speakers or sound amplification equipment used in small demonstrations are used to communicate with the fellow attendees of the gathering, and are functionally unable to project sound over long distances. The "Kremlin Annex" nightly protests occur from 7:30-9:00 p.m. (6:00-7:30 on weekends and special occasions) when the majority of White House staff have left for the evening. The Court in *Quaker Action Group* found that there is a "legitimate asserted interest in keeping the White House staff free of undue distractions from their work;" however, "Kremlin Annex" protestors have observed the White House in nearly complete darkness most nights except for the front right window (the kitchen) having lighting. This would imply that very few staff are present in the evening.

Furthermore, the sound amplification used by "Kremlin Annex" in the form of two or three battery-operated portable speakers and microphones is capable of projecting no more than 200 feet. The amplification of our voices and musical instruments is for the benefit of those joining or observing our protests and are likely not heard by anyone in the White House complex. Even where courts have restricted the use of sound amplification equipment, they have done so narrowly. While Party Majority PAC understands reasonable restrictions on volume and perhaps time of day, the proposal should be changed in the final rule to allow for portable sound amplification at non-permitted events.

Limitations on the use of a Temporary Platform (proposed changes 5)

The proposed rule also seeks to "require a permit in order to erect structures, other than small lecterns or speakers' platforms"—regardless of whether or not the demonstration requires a permit. Party Majority PAC is concerned about the definition what is considered to be a small structure.

[12] 334 U.S. 558, 561 (1948).

On the occasions that the "Kremlin Annex" protesters do bring a small riser to Lafayette Park, it is smaller than the three feet cubed dimensions suggested by the proposed rule. It is placed on the hardscape panels on the White House sidewalk or 1600 Pennsylvania Ave NW and does not harm or add wear-and-tear to any surfaces as a result of its use in that location. It is assembled in a mere matter of minutes, in use for no more than 2 hours at a time, and is taken down each evening. The NPS' proposed three-foot cube is unnecessarily restrictive. In the final rule, the NPS should amend the definition of "small" structures that do not require permits to allow a speaker's platform of any size which does not weigh more than a specified, reasonable amount, is functionally temporary in that is not anchored into the ground and is not used in one location for more than a specified number of hours or days. The regulations could reasonably exclude those structures whose weight, dimensions and location might actually damage turf, paving, or underground waterlines.

Finally, any short-term use objects and those that tourists and picnickers are free to use on NPS properties certainly should not be banned for demonstrators. The NPS bears the burden of demonstrating the need for restrictions on First Amendment activities in these traditional public forums. The NPS' general statements that some structures cause harms to park land fail to meet that burden and do not justify the proposed restrictions.

Charging Fees (proposed change 6)
Gatherings such as "Kremlin Annex" are constitutionally guaranteed. Fees cannot be used to chill First Amendment rights to free speech and assembly. The implementation of fees could functionally deter and act as an impediment to the vast majority of Americans. It is a primary understanding of American rights that in addition to being able to voice one's opinion freely that one does not have to incur a cost or pay a fee in order to share those opinions and perspective with others. A NPS park is just one example of a protected public forum. "Public assembly for First Amendment purposes is as surely a 'park use' as any tourist or recreational activity."[13] NPS may choose to label a First Amendment demonstration or assembly as "special use" for its own internal administrative purposes, but that administrative label cannot be used to manufacture a statutory authorization to charge Americans a fee to exercise their constitutional rights.

Restrictions at Lafayette Park and the White House Sidewalk (proposed change 7)
NPS proposes to close certain areas where demonstrations are currently allowed, most notably the White House sidewalk.[14] We strongly oppose that proposal.

The 1600 block of Pennsylvania Avenue has been closed to vehicular traffic since 1995. In 2002 the National Planning Commission sought proposals to create a more welcoming public space which would also allow it to incorporate stronger security measures. In 2004 the former streetscape was transformed into a pedestrian plaza which has been used since by tourists, locals, and demonstrators alike. In its notice, NPS discusses closing "certain park areas in the vicinity of the south fence line of White House and in and around First Division Memorial Park and

[13] A *Quaker Action Group v. Morton,* 516 F.2d 717, (D.C. Cir. 1975).
[14] 83 Fed.Reg.40465.

Sherman Park.[15] The White House area map at 83 Fed. Reg. 40476 shows the closed areas, including the closure of E Street, NW and its sidewalk adjacent to the south fence line of the White House. However, the actual proposed regulations state that public access is not allowed on the south sidewalk of Pennsylvania Avenue NW, adjacent to the north fence line of the White House Complex.[16] The proposal later clarifies that only a five-foot portion of the sidewalk adjacent to Pennsylvania Avenue will remain open for pedestrian access. This proposed change was not discussed in the Federal Register notice and would violate the Administrative Procedure Act as well as the First Amendment.

There is a unique First Amendment value to being able to gather and use the space in front of the White House. The area proposed to be closed has long been recognized as perhaps the most iconic public forum in the nation and has become the de-facto "speaker's corner" in our nation's Capitol.[17] Historically significant gatherings seeking to garner the attention of the President and the Administration have taken place there—including the Women's Suffrage demonstrations which lead to the enfranchisement of half of the nation's citizens. Furthermore, in 2017 the National Capitol Planning Commission stated that with the upgrade of security measures, including a taller fence with anti-climbing measures, that its "priority is to maintain the public's access and their enjoyment of the residence because of the democratic connotations…It is in fact a quintessential First Amendment site."[18]

A federal court in *Quaker Action Group* could not "ignore the unique quality of demonstrations in front of the White House from the viewpoint of First Amendment interests." Because of the unique symbolism of the White House, there is no equal alternative location for the purposes of our message or our means of communications. The "Kremlin Annex" demonstrations take place on the White House sidewalk for a very particular reason—the triggering event for the gatherings was the summit between President Trump and Russian President Vladimir Putin. Indeed, the name of our protest, "Kremlin Annex" directly references the White House itself and the iconic image of the side of the building which faces Lafayette Park. The gathering not only references the White House and its inhabitants, but the location is a key element of the grievances being aired to our nations' Chief Executive. Furthermore, the words selected each night by the group holding the lighted letters in front of the iconic facade of the White House changes daily and directly reflects the concerns of those gathered in protest. The proposed restrictions would have a chilling effect on the organic nature of demonstrations like "Kremlin Annex" where the subject matter of the protest changes daily and is determined by rapidly changing events related to the Government.

As stated above, there are times when law enforcement agents have asked us to move our

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[15] 83 Fed.Reg.40465.

[16] 83 Fed.Reg.40475.

[17] Milbank, Dana (22 September 2014). *"Dana Milbank: The White House fence jumper and the consequences of budget cuts". Retrieved 1 January 2018 – via www.WashingtonPost.com.*

[18] ABC News, White House Fence Re-Design Proposal Unveiled by Secret Service and National Park Service, Apr. 21, 2016) available at https://abcnews.go.com/US/white-house-fence-design-proposal-unvieled-secret-service/story?id=38585939.

gathering to Lafayette Park due to temporary security concerns. We respect those temporary, short-term concerns and have readily and quickly responded to those requests. However, a permanent closure is unacceptable. Moreover, the final order entered against the Secretary of the Interior in the *Quaker Action Group* litigation required the Secretary to issue regulations permitting demonstrations by no less than 750 people on the White House sidewalk, and declaring that any smaller limitation is "invalid and void as on unconstitutional infringement of the plaintiff's rights to freedom of speech and to assemble peaceably and to petition the Government for a redress of grievances."[19] Reducing the space to a five-foot sliver would be in direct violation of this order.

The NPS has provided no justification of any kind for the proposed closure, nor does it have the authority to destroy the "public forum status of streets and parks which have historically been public forums".[20] "Nor, the Court explained in *United States v. Grace*, "may the government transform the character of the property by the expedient of including it within the statutory definition of what might be considered a nonpublic forum parcel of property."[21] If Congress is forbidden to do this by statute, the NPS has no authority to do it by mere regulation, therefore the proposed rule must be revised.

We respectfully request that the proposed rule not be implemented as drafted. Doing so would impede and erode our First Amendment right to gather and voice opposition in iconic public spaces. We appreciate the NPS' attention to and consideration of our comments.

Sincerely,



Alpha Lillstrom
Executive Director
Party Majority PAC

[19] Order on Mandate at 1-2, A *Quaker Action Group v. Kleppe*, Civ. No. 688-69 (D.D.C. Nov. 21, 1975) (reproduced at 40 Fed. Reg. 58651 (Dec. 18, 1975).
[20] *United States v. Grace*, 461 U.S. 171, 180 (1983) (quoting *United States Postal Service v. Greenburgh Civic Associations*, 453 U.S. 114, 133 (1981).
[21] *Ibid*.