

MEDIA ALLIANCE



Department of the Interior
National Park Service
Proposed Rule #83 FR 40460
Via Federal Register
Docket Number: NPS-2018-000

Summary: *The National Park Service proposes to revise special regulations related to demonstrations and special events at certain national park units in the National Capital Region. The proposed changes would modify regulations explaining how the NPS processes permit applications for demonstrations and special events. The rule would also identify locations where activities are allowed, not allowed, or allowed but subject to restrictions.*

Comments

Media Alliance is a Northern California-based democratic communications advocate. Our members include professional and citizen journalists and community-based communications professionals who work with the media. Our mission is to advocate for a communications system that works for the interests of peace, justice and social responsibility.

Oakland Privacy is a citizen's coalition that works regionally to defend the right to privacy and enhance public transparency and oversight regarding the use of surveillance techniques and equipment.

As experts on municipal privacy reform, we have written use policies and impact reports for a variety of surveillance technologies, conducted research and investigations, and developed frameworks for the implementation of equipment with respect for civil rights, privacy protections and community control.

We write today in strong opposition to several of the proposed rule changes related to demonstrations and public events in the Capitol Region, and to urge the NPS to reconsider. Several of the new regulations that are being proposed suppress fundamental democratic rights and burden Americans' liberty and freedom of expression to an unacceptable degree. The protections of our Constitutional rights must always outweigh bureaucratic concerns. Some of these proposed regulations fail that test.

Specifically:

- The ban on protests on the White House lawn and most of the surrounding sidewalks.
- The addition of fees to event organizing for monitoring of protests, demonstrations and rallies
- The reversal of the granted if not denied within 24 hours permitting protocol

The first problematic proposed regulation is the ban on protests on the majority of the public property abutting the White House, including the lawn area. The change runs counter to almost 200 years of White House history as the people's house, and a potent symbol of our democratic system where our leader is freely chosen, not imposed by military force.

The First Amendment to the United States Constitution particularly cites the right to petition the government, which in its most simple and basic form, means to gather at the location of government and state our desires.

As the website www.whitehousehistory.org, operated by the White House Historical Association, states:

Lafayette Park is a place where many influential protests have taken place. It has been, and continues to be, a focal point for the expression of American ideals. Inspired by the First Amendment, citizens continue to exercise their rights of free speech here, using Lafayette Park as their stage and the White House as their valued audience. This park currently serves as a safe place for congregation and the demonstration of grievances. Advocates of a wide variety of causes understand the relevance of the location and use it to try to affect change. Their campaigns sometimes change the views of fellow citizens and, they hope, government decision makers.

Demonstrations here take the form of nighttime vigils, marches, picketing, and other peaceful means of conveying wants and needs. The hundreds of annual protests in Lafayette Park are regulated by the National Park Service, the agency that monitors First Amendment activities in the park while aiming to preserve this historic area and make it available for citizens' enjoyment.

Attempts to prevent those petitioning the government for redress from visibility and to a position of secondary importance to the 6,000 daily tourism visits to the White House constitutes a prejudicial level of discrimination against one particular kind of visitor, when their activities, like those of the tourists, are sanctioned, fully legal and protected in our government's founding documents.

The second problematic proposed change is one that increases fees to protest organizers for monitoring, barricades and other discretionary law enforcement costs. These fee increases are wrong, partly because they potentially increase expenses so substantially that many grassroots organizers will no longer be able to afford demonstrations on the White House lawn. The importance of a cause is not directly proportionate to the amount of money its advocates have to work with. In fact the opposite is often true.

But the new proposed fees are also problematic because they transfer a discretionary cost to the object of the exercise who has little control over the amount of the expense. In other words, the amount of monitoring or surveillance activity a demonstration and its attendees are exposed to, and the costs thereby incurred, are not a decision made by the protest organizers. It is a decision made by local law enforcement about how to use public resources.

Sometimes such decisions may be wisely made, and on other occasions, they may represent skewed priorities and the relative waste of monies in over-monitoring. Since such decisions are discretionary, they are not predictable costs, organizers cannot project them accurately in advance, and demonstrations may be subject to monitoring overreach designed not to monitor the protests for legitimate reasons, but to cause them to be cancelled altogether due to unaffordability. The transfer of public costs, many of which are similarly incurred by the ongoing visitation and tourism program operated by NPS at no cost to the visitor, cannot be carried out in a way that excessively burdens the First Amendment activities that are being engaged in. Non-fixed and ambiguous "monitoring" costs do not pass that test and should not be implemented.

The final significant problem with the new rules that we would like to draw your attention to, is the permitting change to add a category called provisionally reserved, which would put a demonstration request in a limbo status until as little as 40 days before the planned demonstration date. This proposed rule change shows a lack of understanding about how large demonstrations in the nation's capital are organized. Many people buy airline tickets to participate and may buy them 60 or 90 days in advance. In some cases, buses may be chartered and that must be done substantially in advance. Many individuals take vacation time from their jobs that must be scheduled in advance. Hotel reservations may need to be made. And all of this by many thousands of people.

Holding a demonstration in doubt until as late as 40 days prior means that promotion cannot occur in a timely fashion, contracts that provide for financial penalties if cancelled cannot be signed, and individuals wishing to participate face disadvantageous logistics and increased difficulties. Again burdens are being transferred from the public sector to private individuals choosing to exercise their constitutional rights and being excessively burdened as they attempt to do so. This is contrary to the spirit and intentions of the First Amendment to the United States Constitution.

In conclusion, we ask you to continue America's tradition of permitting robust and energetic expressions of dissent on the White House lawn and surrounding sidewalks, to desist from charging these events for surveillance costs, and maintain the "granted if not denied within 24 hours" permitting protocol.

Sincerely,

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