

U.S.C.A. - 7th Circuit
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Appeal No. 21-2449

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PROTECT OUR PARKS, INC., *et al.*,
Plaintiffs-Appellants,

v.

PETE BUTTIGIEG, SECRETARY OF THE U.S. DEPARTMENT OF
TRANSPORTATION, *et al.*,
Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Illinois
Hon. Robert Blakey
1:21-cv-02006

**MOTION FOR LEAVE BY PRESERVATION CHICAGO AND JACKSON PARK
WATCH TO FILE A BRIEF AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS'
APPEAL SEEKING THE REVERSAL OF THE DISTRICT COURT'S DECISION
DENYING A PRELIMINARY INJUNCTION**

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**CORPORATE DISCLOSURE STATEMENT AND
NOTIFICATION OF PUBLICLY HELD AFFILIATES**

Preservation Chicago *amici curiae* certifies that it is a non-profit corporation organized under 26 U.S.C. § 501(c)(3), has no parent corporation, does not issue stock, and has no publicly held affiliates.

**CORPORATE DISCLOSURE STATEMENT AND
NOTIFICATION OF PUBLICLY HELD AFFILIATES**

Jackson Park Watch *amici curiae* certifies that it is an Illinois non-profit corporation, has no parent corporation, does not issue stock, and has no publicly held affiliates.

Preservation Chicago and Jackson Park Watch respectfully request leave to file the accompanying *amici curiae* brief attached as Exhibit A in support of the Plaintiffs-Appellants appeal seeking that this Court reverse the District Court's order denying a preliminary injunction. The motion should be granted for the following reasons:

1. *Amici curiae* Preservation Chicago and Jackson Park Watch are local not-for-profit organizations who have strong interests in the case in the same fashion that other *amici* have exhibited and meet both bases for filing an *amicus curiae* brief in this case. First, *amici curiae* have a strong interest in this case. In general, both organizations are deeply involved with preservation issues in the City generally, and with Jackson Park specifically. Second, the background, work and experience of the organizations leaves them in a unique position to provide both information and insights that are not available to the parties, or otherwise have not been raised and which are of import because of the issues raised in this matter. Preservation Chicago has been a preservation and historic preservation advocacy organization for 20 years – working to protect Chicago's built and cultural history. In 2017, Jackson Park Watch incorporated as a neighborhood advocacy group in Hyde Park adjacent to Jackson Park. It has been researching the impacts of private development on the historic landscape of Jackson Park and its negative effect on the historic landscape, quality of life, plant and animal species, and recreational use of Jackson Park.

2. Preservation Chicago and Jackson Park Watch agree with Plaintiffs that a preliminary injunction should be entered and the district's decision in that regard reversed. *Amici curiae*'s proposed brief does not duplicate the arguments made by Plaintiffs as why the Court should reverse the decision of the district court. Instead, the proposed *amici curiae* brief provides

the Court various details and context that have not been discussed and which further support reversal of the district court's opinion.

2. No party or counsel for a party authored this brief in whole or in part, and no person other than *amici curiae* or its counsel contributed any money to fund its preparation or submission. None of the *amici curiae* are a subsidiary or affiliate of any publicly owned corporation.

3. No party would be prejudiced by the filing of this *amici curiae* brief.

4. This brief and all its attachments complies with Federal Rule of Appellate Procedure 29 regarding such amicus filings in the United States Court of Appeals for the Seventh Circuit.

For the foregoing reasons, the Preservation Chicago and Jackson Park Watch's motion for leave should be granted, and the *amici curiae* brief attached as Exhibit A should be filed.

Dated: September 27, 2021

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Mary Lu Seidel, certify that on September 27, 2021, a true and correct copy of the foregoing was sent to the Clerk of the United States District Court for the Northern District of Illinois by Express Mail and sent prior to the close of business on September 27, 2021. A true and correct copy was sent via U.S. Postal Service Priority Mail, and a copy of same was sent via electronic mail.



EXHIBIT A

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Hon. Robert Blakey
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**BRIEF OF *AMICI CURIAE* PRESERVATION CHICAGO AND JACKSON PARK
WATCH IN SUPPORT OF PLAINTIFFS' APPEAL SEEKING THE REVERSAL OF
THE DISTRICT COURT'S DECISION DENYING A PRELIMINARY INJUNCTION**

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INTEREST AND IDENTITY OF AMICI

This *amici curiae* brief is submitted by Preservation Chicago, a 501 (c) (3) non-profit preservation and historic advocacy organization which has for almost two decades worked on issues impacting Chicago's historic landmarks and landscapes,¹ and by Jackson Park Watch, an Illinois non-profit organization devoted to issues related to Jackson Park.² *Amici*, have unique expertise and knowledge arising from their work and experience, and submit this brief to provide important information that is not included in the presentation of the parties or within in the submission from the University of Chicago and Civic Groups who have provided their support for the proposed Obama Presidential Center (the "OPC"). The proposed OPC is to be located and constructed on approximately 20 acres of public parkland in historic Jackson Park, a world-class park designed by perhaps one of world's greatest landscape architects of all time, and certainly the greatest of the 19th century American designers, Frederick Law Olmsted. Additional road closures and road widening planned to support this and future private development plans in Jackson Park will further contribute to the degradation of the historic Jackson Park, will restrict public access to this public park, and will harm the flora and fauna that currently thrive in or migrating through historic Jackson Park.

¹ Preservation Chicago works to protect and create Chicago landmarks and designated districts, structures as well as important parks, boulevards and landscapes. Executive Director Ward Miller has an extensive architectural and historical background and has worked with distinguished organizations and architectural firms in Chicago.

² Jackson Park Watch is a well-respected community-based research and advocacy organization with some 500 regular followers working to ensure community input in major decisions concerning Jackson Park, advocating for prioritization of local uses and users, and creation of a single comprehensive plan for the Park. Co-presidents Brenda Nelms and Jack Spicer are long-time Hyde Park residents with a record of community engagement in preservation and environmental issues and in Jackson Park.

ARGUMENT

With preservation as a guiding principle, we believe that the consequences of granting the Plaintiffs appeal from the denial of their request for a preliminary injunction while the case is heard on its merits are consistent with protecting the public interest. There are legitimate widespread concerns by users, residents, and advocates about loss of resources and open access to those resources in and around Jackson Park.

The Obama Foundation has already clear-cut trees and landscapes in and around the proposed Obama Presidential Center site. This destruction is complete, and it cannot be rectified until the replacement trees have 50-150 years to reach maturity. The destruction of the Women's Garden is complete. Despite any best efforts to recreate this garden, its original context and design will be unrecognizable. Stopping any further damage to Jackson Park and the surrounding areas is imperative until this legal proceeding has been resolved.

History, nature, and public access to parkland are being reduced, removed or eliminated entirely while Chicago has an abundance of vacant land outside of public parkland on the South Side that would be ideal for the Obama Presidential Center. An alternate site west of Washington Park would not unduly restrict public access to Chicago's public parks, would not require massive tree clear-cutting, would not require significant alterations to existing roadways, and it would not require such an assault on Chicago's historic landscapes. That site would also produce similar or greater economic benefits to Chicago's South Side as the Jackson Park site without the unnecessary and egregious destruction.

The swift destruction that has been done to date cannot be reversed, but through this effort by the Plaintiffs we urge the court to halt any additional destruction in and around Jackson Park in support of the Obama Presidential Center and ancillary future planning to build private uses on

public land. This injunction on additional work would stay until this legal proceeding has been fully resolved.

A separate phase of construction work – the altering and closure of roadways around Jackson Park to accommodate the Obama Presidential Center, to be overseen by the Chicago Department of Transportation -- has not yet begun. The work to widen DuSable Lake Shore Drive and Stony Island Avenue would involve the taking of public parkland on the east and west sides of the park, and the destruction of another 350-400 trees is scheduled to begin in the fourth quarter of 2021 or later.³ The closure of Cornell Drive between Midway Plaisance and Hayes Drive/63rd Street cannot occur until after the other roadway work is completed, that is, 2024 or after. We urge the Court to halt all road closure and expansion work until the legal issues raised in this case have been fully resolved. Our land and history are held in high regard by Chicago residents and visitors. Complete and grounded review of this legal matter should be allowed to run its full course before further destruction is permitted.

The Defendants and their supporters put great emphasis on the need to proceed immediately without further delay because of the anticipated economic benefits that will flow to the City and to South Side residents. It is important to note that the anticipated economic benefits are premised on analyses conducted by the Obama Foundation pre-pandemic and that an adjusted forecast has not taken into account changed tourist and museum patterns.⁴ The projected number of visitors that is the basis for those projections was already almost double

³Obama Presidential Center Community Update, August 18, 2018, <https://www.youtube.com/watch?v=rJCYmH3Sq4> (last viewed September 27, 2021); Chicago Department of Transportation 2018 report https://www.chicago.gov/content/dam/city/depts/dcd/supp_info/jackson/CDOTProposedTreeRemovals.pdf (last viewed September 27, 2021)

⁴Deloitte Consulting Economic Impact Assessment, October 2106 https://www.obama.org/wp-content/uploads/Economic_Impact_Assessment_Report_OPC.pdf (last viewed September 27, 2021)

what has been experienced at any other presidential center or library.⁵ That said, it is to be expected and hoped that there will be financial benefits flowing from the OPC, both during construction and beyond. Such benefits will flow regardless of where the OPC is located (in Jackson Park or elsewhere on the South Side) and will flow whenever the project moves forward. The concern that the OPC will be moved away from Chicago is unfounded. President Obama has said that the OPC will be on the South Side of Chicago. It is important then that the site be one that will fulfill his goals for the OPC without potentially marring his reputation and permanently scarring public parklands.

President Obama has not been explicit about why the OPC must be in Jackson Park. The closest thing to an explanation of the chosen site is its proximity to the Museum of Science and Industry, with the implication that visitors will explore both institutions while on the South Side. It is asserted that this spatial proximity fulfills a goal of the City's 2012 Cultural Plan to establish a "Museum Campus South." However, that plan did not envision the development of the OPC (or any other facility) in Jackson Park, but rather envisioned better linkages between existing museums (and those to come) located on the University of Chicago campus and in the communities of Hyde Park, Kenwood, Washington Park and beyond.⁶ The City's Cultural Plan was not a call for concentration of the large institutions in one place, but for marketing and transportation connections for institutions across a wide swath of the South Side. It would seem that a concentration of large museums in Jackson Park is likely to disadvantage the smaller museums on the South Side.

⁵ Washington Post, February 22, 2015 https://www.washingtonpost.com/local/education/presidential-library-museum-attendance-in-the-past-40-years/2015/02/22/7da8b778-bb0d-11e4-b274-e5209a3bc9a9_graphic.html?tid=usw_passupdatepg (last viewed September 27, 2021).

⁶ https://www.chicago.gov/city/en/depts/dca/supp_info/cultural_plan3.html (last visited September 25, 2021)

It is also noteworthy that there is little evidence that current visitors to the Museum of Science and Industry and future visitors to a co-located Obama Presidential Center will venture into the neighboring community to patronize shops or restaurants. The museum campuses as designed are intended to make it easy for cars to get to the site and exit back quickly to the nearest highway. Such a plan does little to improve business growth and economic opportunities throughout the surrounding community. The Foundation's own analyses indicated that siting the OPC in Washington Park would have a greater direct impact on local commerce.⁷

Arguments that any further delay in starting construction on the OPC would delay the influx of funds into the community or hurt Chicago's standing as a major cultural destination or present opportunity costs for the city are baseless. The OPC should and will be in Chicago, no doubt. It will bring long-term economic benefits, but they will emerge slowly. However, the reputation of President Obama and that of the City will be tarnished by the disregard for and destruction of Olmsted's South Parks design and the environmental resources of Jackson Park that serve both humans and wildlife, particularly if the legal process is circumvented. Speed is not the goal; due process is.

The proposed Obama Presidential Center will also establish a precedent encouraging the further taking of public parklands for private use. Since the plan for the OPC was approved, that trend has begun to pick up steam. Plans to replace publicly accessible and affordable golf courses in and around Jackson Park with a PGA-level course have resumed, despite assurances during the federally mandated Section 106 process that they were not imminent and should not be considered when reviewing negative impacts. It is assumed that the extensive roadway modifications in fact are also designed to help accommodate such an invasive use. With taking of

⁷ Obama Presidential Center Economic and Community Development Analysis Final Report [https://www.obama.org/wp-content/uploads/OPC_Final_Report.pdf (last viewed September 27, 2021)].

public land by a private corporation happening across the park, there does not appear to be any barriers to another taking on the east side of the park for such a golf course. That course would further clear-cut trees, alter the landscape, expose our fragile Lake Michigan to additional runoff and pollutants, and destroy the South Shore Nature Sanctuary, a locally managed native landscape that promotes space for local flora and fauna to thrive.

The Chicago Park District has already begun restricting access to areas of Jackson Park in anticipation of the OPC opening, and it is expected such restrictions will continue as the Center is built. Will park visitors have full access to Jackson Park when large events are held at the OPC? Will park visitors have full access to Jackson Park when the former president is on site for fundraising or other programming events? Such limitations are in direct contrast to the free and open access that is the hallmark of Chicago's public parks.

These negative impacts will be minimized significantly by locating the OPC in the Washington Park neighborhood – on land already controlled by the City of Chicago and the University of Chicago. That location, near Garfield and King Drive, would make the OPC imminently more accessible to the very people President Obama spent the earlier parts of his career working for. The Washington Park neighborhood area has a direct line to the CTA – making it possible for more people (especially people without access to a private automobile) to visit and benefit from the amenities of the OPC.

CONCLUSION

For the foregoing reasons, *amici curiae* Preservation Chicago and Jackson Park Watch request that the Court grant Plaintiffs' appeal from the denial of their request for a preliminary injunction while the case is heard on its merits.