

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 BUTTIEGIEG, 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 BY NATIONAL ASSOCIATION FOR OLMSTED PARKS FOR LEAVE
TO FILE A BRIEF AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFFS'
APPEAL FROM THE DENIAL OF THEIR REQUEST FOR A PRELIMINARY
INJUNCTION**

NATIONAL ASSOCIATION FOR
OLMSTED PARKS
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Pro Se

The National Association for Olmsted Parks (NAOP) respectfully requests leave to file the accompanying *amicus curiae* brief attached as Exhibit A in support of Plaintiffs' appeal of the denial of their request for a preliminary injunction ruling. Information regarding NAOP is included in the brief. The motion should be granted for the following reasons:

1. The Court has previously allowed *amici curiae* when addressing an earlier motion before this Court. Consistent with the allowance of these *amici*, the Court should exercise its discretion and permit NAOP to submit the attached *amicus* in support of the Plaintiffs' appeal from the denial of the Plaintiffs' motion for preliminary injunction.

2. *Amicus curiae* has strong interests in the case in the same fashion that other *amici* have exhibited, and meets the bases for filing an *amicus curiae* brief. The NAOP is the only national organization dedicated solely to promoting and protecting the life and legacy of Frederick Law Olmsted and the Olmsted firm. For more than 40 years, NAOP has devoted itself to the study of, education about and advocacy for Olmsted parks and landscapes. Through such efforts, NAOP provides unique knowledge on matters specifically associated with Olmsted landscapes in Chicago and around the country including the import of Olmsted's values and design principles, including circulation.

3. The NAOP agrees with Plaintiffs that their request for a

preliminary injunction should have been granted and the trial court's decision should be reversed. *Amicus curiae's* proposed brief does not duplicate the arguments made by Plaintiffs as why the Court should reverse the decision by the District Court denying the injunction. Instead, the proposed *amicus curiae* brief provides the Court various details and context that that have not been discussed and which further support the reversal of the decision by the district court.

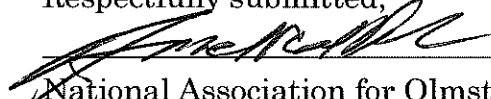
4. No party or counsel for a party authored the attached brief in whole or in part, and no person other than *amicus curiae* contributed any money to fund its preparation or submission. The *amicus curiae* is not a subsidiary or affiliate of any publicly owned corporation.

5. This motion and attached brief are timely, as it is filed "not later than 7 days after the principal brief of the party being supported is filed." *See* Fed. R. App. P. 29(a)(6)

6. No party would be prejudiced by the filing of this *amici curiae* brief. For the foregoing reasons, NAOP's motion for leave should be granted, and the *amicus curiae* brief attached as Exhibit A should be filed.

Dated: 9-27-2021


Respectfully submitted,



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CORPORATE DISCLOSURE STATEMENT

Amicus 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.

A handwritten signature in black ink, appearing to read "Anne Neal Petri", written over a horizontal line.

Anne Neal Petri, President and CEO
National Association for Olmsted Parks

Exhibit A

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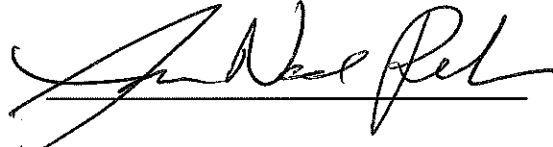
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BRIEF AS *AMICUS CURIAE* BY NATIONAL ASSOCIATION FOR OLMSTED
PARKS IN SUPPORT OF PLAINTIFFS' APPEAL FROM THE DENIAL OF
THEIR REQUEST FOR A PRELIMINARY INJUNCTION

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NATIONAL ASSOCIATION FOR OLMSTED PARKS
Anne Neal Petri, President and CEO

Date: September 27, 2021

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that:

This motion complies with the type-volume limitation of Fed. R. App. P. 27(d) because this brief contains 4664 words; and

The motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and Cir. R. 32(b) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionately-spaced typeface using Microsoft Pages in 12-Point Century typeface for text and in a 12 point Century typeface for footnotes.

NATIONAL ASSOCIATION FOR OLMSTED PARKS
Anne Neal Petri
President and CEO
Pro Se
Dated: September 26, 2021

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TABLE OF AUTHORITIES

The Papers of Frederick Law Olmsted, (Papers of FLO), published by Johns Hopkins University Press.....1

Creating Central Park, 1857-1861. Volume 3, edited by Charles E. Beveridge and David Schuyler. 1983.....15

Parks, Politics, and Patronage, 1874–1882. Volume 7, edited by Charles E. Beveridge, Carolyn F. Hoffman, and Kenneth Hawkins. 2007, containing the *Spoils of the Park*.....16

The Last Great Projects, 1890–1895. Volume 9, edited by David Schuyler and Gregory Kaliss. 2015.....6, 9, 11, 19

Writings on Public Parks, Parkways, and Park Systems. Supplementary Series Volume 1, edited by Charles E. Beveridge and Carolyn Hoffman. 1997, including Report to the Chicago South Park Commission Accompanying Plan for Laying Out the South Park, by Olmsted, Vaux and Co. (March 1871).....3, 16

Frederick Law Olmsted: Plans and Views of Public Parks. Supplementary Series Volume 2, edited by Charles E. Beveridge. 2015.....4,5,7

Other Sources

Bachrach, Julia (text), Bill, Kurtis (foreword). *The City in a Garden: A Photographic History of Chicago’s Parks*. Placitas and Santa Fe, NM: The Center for American Places in association with the Chicago Park District. 2001.....3, 5

Beveridge, Charles E., and Paul Rocheleau. *Frederick Law Olmsted: Designing the American Landscape*. New York: Universe, 1998.....3, 4, 5.

Lawliss, Lucy, Caroline Loughlin, and Lauren Meier, eds. *The Master List of Design Projects of the Olmsted Firm 1857–1979*. 2nd ed. Washington, DC: National

Association for Olmsted Parks and National Park Service,
2008.....

Library of Congress. "Frederick Law Olmsted Papers." Digital Collections.
<https://www.loc.gov/collections/frederick-law-olmsted-papers/>. Letter from Olmsted
to South Park Board president Joseph Donnersberger, May 7, 1894.....7

National Association for Olmsted Parks, <https://www.olmsted.org>;
www.olmsted200.org; www.olmstedonline.org, Project Number 01902,
<https://olmstedonline.org/Job/Details/01902?jobName=Jackson+Park&location=&jobNumber=&jobType=>.....1

New York Times, Egan, Dan, The Climate Crisis Haunts Chicago's Future: A Battle
Between a Great City and a Great Lake, July 7, 2021,
[https://www.nytimes.com/interactive/2021/07/07/climate/chicago-river-lake-
michigan.htmlfront](https://www.nytimes.com/interactive/2021/07/07/climate/chicago-river-lake-michigan.htmlfront).....20

Park and Cemetery, Vol. 5, No. 2 (April 1895), s.v. "Jackson Park, Chicago."6

Rybczynski, Witold. *A Clearing in the Distance, Frederick Law Olmsted and
America in the 19th Century*. New York: Scribner, 1999.9

The Trust for Public Land, Parks and an Equitable Recovery, A Special Report,
<https://www.tpl.org/parks-and-an-equitable-recovery-parkscore-report> (May 27,
2021).17

Twin Embraces, An Inclusive Vision for the Obama Presidential Center,
Washington Park, Chicago, <https://opcwashpark.us/>.....13

Statutory and other Sources

Section 106 Memorandum of Understanding,
[https://www.chicago.gov/content/dam/city/depts/dcd/supp_info/jackson/2020-07-
09%20-%20Draft%20MOA%20-%20JACKSON%20PARK-consulting%20parties.pdf](https://www.chicago.gov/content/dam/city/depts/dcd/supp_info/jackson/2020-07-09%20-%20Draft%20MOA%20-%20JACKSON%20PARK-consulting%20parties.pdf)
.....12

Letter, Dec. 10, 2012, from Deputy State Historic Preservation Officer Anne E.
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National Historic Preservation Act of 1966, 54 USC Sec. 306108 (Sec. 106)..... 2, 3

National Environmental Policy Act, 42 USC Sections 4321-4347.2

1972 National Register of Historic Places, Nomination of Jackson Park Historic Landscape District and Midway Plaisance Site of the World’s Columbian Exposition.<https://olmstedonline.org/RelatedDocument/WebLink/38>,8, 14

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Secretary of Interior’s Standards of Treatment for Historic Properties, with Guidelines for the Treatment of Cultural Landscapes..... 14

The Chicago Tribune, Editorial, Aug. 9, 2021, <https://www.chicagotribune.com/opinion/editorials/ct-editorial-obama-presidential-center-lawsuit-construction-20210809-hiagkie2nvfa5doouij2j3xltq-story.html>.....9

The Lakefront Protection District Ordinance, Sec. 16-4-030.11

University of Chicago Response to Request for Proposal..... 13

INTEREST OF *AMICUS CURIAE*

The National Association for Olmsted Parks (NAOP), a 501c3 nonprofit corporation, is the only organization in the country solely dedicated to advancing the legacy, vision and values of Frederick Law Olmsted (Olmsted) and the Olmsted firm. Founded in 1980, we are a coalition of design and preservation professionals, historic property and park managers, scholars, municipal officials, and citizen activists. Our Olmsted Network includes over 70 conservancies and friends groups, dedicated to the protection and stewardship of landscapes designed by Olmsted and successor firms. www.Olmsted200.org; www.olmsted.org. Currently NAOP serves as the managing partner of Olmsted 200, the national bicentennial celebration in 2022 of Olmsted's birth.

Over the last four decades, NAOP has helped foster the emergence of park conservancies, friends' groups and citizen volunteers to preserve their neighborhood parks. It has created a permanent scholarly record, overseeing the research and publication of the Papers of Frederick Law Olmsted.

NAOP has also produced hundreds of publications including Reprints of Key Olmsted papers; regular Field Notes and Workbooks. It has raised awareness through educational outreach via conferences and timely publications. Over many years, NAOP has engaged in rapid-response advocacy, submitting testimony to

public officials about Olmsted designs and serving as a consulting party on federal-level reviews under the National Historic Preservation Act and the National Environmental Policy Act. NAOP was a consulting party with regards to plans for Jackson Park. In our role as a national advocate for Olmsted and his legacy, we have heard from people across the country dismayed by decisions in Chicago that may lead to the destruction of Olmsted's masterpiece Jackson Park.

No party to this case or its counsel authored any part of this brief or contributed money that was intended to fund the preparation or submission of this brief. No person, other than amicus, contributed money that was intended to fund the preparation or submission of this brief.

SUMMARY OF ARGUMENT

In the following pages, NAOP will outline the historic and ecological importance of Jackson Park in order to underscore the public interest in saving this masterpiece. The Historic Preservation Act and National Environmental Policy Act mandate serious examination of alternative locations and Areas of Potential Effect when historic public assets are at risk. Since alternative locations have been identified by numerous organizations including the University of Chicago to allow a vibrant presidential center and to save historic Jackson Park, the court should impose an injunction immediately to preserve the status quo and insist that alternatives be seriously examined.

DISCUSSION

I. The Significance of Jackson Park – Olmsted and Vaux in Chicago

In the late 1830s, Chicago adopted the motto, *Urbs in horto*, meaning City in a Garden. The motto was aspirational since Chicago was known for its swamps, indeed its name comes from an Algonquin word meaning “onion place.” To earn that name, city leaders advanced over many years a wide array of parks and greenspaces. See Bachrach, *City in the Garden*, pp. ix, x, 3.

As part of this “greening,” in 1870, city officials called on Olmsted and Calvert Vaux (Vaux) – the most famous landscape architects of the day -- to help develop a great metropolitan park that would rival Central Park in its importance to the city. This was the birth of Jackson Park.

William Bross, senior editor of the *Chicago Tribune*, recounted that “nothing was needed to make Chicago the principal city of the Union but a great public improvement of similarly gigantic character.” Beveridge and Rocheleau, *Designing the American Landscape*, p. 85, cited in the FLO Papers, Supplementary Series 1, p. 19.

Olmsted and Vaux designed a grand plan for a thousand-acre single and integrated South Park System: three parks in one. The inland park, later called Washington Park, would include a refectory, courts, garden and galleries with a carriage concourse and deer paddock. The Lake Park, now known as Jackson Park, would have a mile of lakefront; Olmsted and Vaux proposed dredging the swampy land to create a system of lagoons and waterways with boat landings and shelters. In their design, they included “a formal concourse where the Midway meets the lagoon, a long pier on the lakeshore with adjoining concourse, an extensive promenade and concert grove.” Beveridge and Rocheleau, p. 85. The two parks were to be connected by a narrow strip of land, now known as the Midway Plaisance, which would serve as both a boulevard and canal.

The South Park design also included an elaborate circulation system with fourteen miles of interior drives and thirty miles of paths designed to orchestrate the visitor’s experience. Beveridge and Rocheleau, p. 85. There were three parkways designed to approach the park – South Open Parkway (now Martin Luther King Jr. Drive) was designed for rapid movement of visitors; South Grove Parkway (now Drexel) was for more leisurely walks and Pavilion Parkway (now Garfield Boulevard) ran westward from Washington Park. FLO Papers, Supplementary Series 2, p. 202.

Although there were a variety of constructed elements, Olmsted scholar Charles Beveridge notes that Jackson Park's "central purpose was to provide scenery for the enjoyment of Chicagoans" and to feature Lake Michigan through extended open vistas. Beveridge and Rocheleau, p. 85. According to historian Julia Bachrach, "Interpreting the lake as a tremendous object of sublime scenery, Olmsted and Vaux used water as the plan's guiding theme." Bachrach, *City in a Garden*, p. 7.

While the ambitious plans for South Park were largely scuttled because of the devastation of the Chicago fire, in 1893, Olmsted returned to Chicago to assist in the planning of the World's Columbian Exposition. The Windy City had out-competed other cities to win Congressional approval for the Exposition and hoped to show its standing in the world. Acknowledging the site to be soggy and marshy, Olmsted took on the challenge. In a letter to plantsman Rudolph Ulrich, Olmsted wrote: "let us show the possible beauty of a swamp, even without trees." Letter from FLO to Rudolph Ulrich, March 24, 1891, cited in FLO Papers, Supplementary Series 2, p. 180. From this promise grew Jackson Park—and a City that has been called "the nation's most influential city of parks." ¹ Bachrach, p. 3.

¹"Indeed, nearly a quarter of Chicago's existing 555 parks were created or shaped by some of the nation's most significant architects, landscape designers, and artists such as Frederick Law Olmsted, Daniel H. Burnham, Jens Jensen, Alfred Caldwell, and Loreda Taft." Bachrach, *City in a Garden*, p. 3.

Siting the Columbian Exposition, Olmsted adapted his earlier plans for Jackson Park and the Midway Plaisance to accommodate an international event. And 27.5 million visits later –representing almost half the U.S. domestic population at the time– he had. FLO Papers, Vol. 9, p. 28.

The fair included about 200 buildings and exhibits. At its core was a collection of buildings –a “White City” – comprised of a vast array of glistening white buildings devised to house the exhibitions. Over a period of months, Olmsted converted swamp into lagoons and created a glorious wooded island, devoid of structures, with lush verdure to be enjoyed from the water. The Wooded Island was to be a refuge from the city, planted heavily with natural shrubs and a home to birds and wildlife.

At the close of the Exposition in 1895, the temporary exhibition buildings were removed, and Olmsted and his son John Charles, returned to revise and perfect the landscape, retaining “many of the features characteristic of the landscape design of the World’s Fair.” *Park and Cemetery*, Vol 5, No 2. They were dedicated to returning Jackson Park to a real park – to ensure open vistas to the lakeshore and a pristine experience of nature for future generations. Indeed, the City had promised that the parks would be returned to the status quo ante after the fair was over.

The Olmsted Firm was explicit that the one and only building remaining after the fair – the Museum of Science and Industry (formerly Palace of Fine Arts) was to be the highest and only structure (“the only dominating object of interest”) so that building would not overpower the landscape: “All other buildings and structures to be within the park boundaries are to be placed and planned exclusively with a view to advancing the ruling purpose of the park. They are to be auxiliary to and subordinate to the scenery of the park.” May 7, 1894, Letter from Olmsted to South Park Board president Joseph Donnersberger.

The landscape architects sought to ensure that Jackson Park would provide an exceptional amenity and pristine experience of nature – for the city. Indeed, they hoped it would become the “finest domestic boating park in the world.” FLO to Joseph W. Donnersberger, April 20, 1894, cited in FLO Papers, Supplementary Series 2, p. 184.

While a few aspects of the park have been modified since 1895, the major parts of the Olmsted plan have endured. For over one hundred years, the lake, lagoons, fields and integrated system of roadways (including Cornell Drive) have offered visitors the visual and spatial experience Olmsted envisioned.

II. Jackson Park Is An Irreplaceable Historic and Ecological Landmark

Jackson Park offers a unique public benefit to the American people. Listed on the National Register of Historic Places in 1972², Jackson Park is one of the most iconic and beautiful parks ever created by famed landscape architects Olmsted and Vaux. Sited on the edge of Lake Michigan – a natural feature that Olmsted considered sublime – Jackson Park transformed a fetid wetland into a magical space that invited wildlife, birds and people into its picturesque, pastoral and restorative setting. In 1893, Jackson Park literally introduced Chicago to the world -- welcoming millions to the site of the World's Columbian Exposition. Harvard historian Charles Eliot Norton called Jackson Park "a work of fine art." "Of all American artists," said Norton, "Frederick Law Olmsted, who gave the design... stands first in the production of great works which answer the needs and give

² The Nomination states: "Jackson Park and the Midway Plaisance are significant because their original arrangement was the work of America's famous nineteenth-century landscape architect, Frederick Law Olmsted. Jackson and Washington Parks and the Midway connecting them are of special interest because of the early date, 1871, of their design, contemporary with Olmsted's work at the Capitol in Washington and following directly his plan for Riverside, Illinois, and Central Park, New York. Although somewhat altered today because of the Columbian Exposition, the Park and Midway retain the general features and arrangement as envisioned by Olmsted in his plan of 1871. Jackson Park and the Midway are also significant as the sites of the World's Columbian Exposition of 1893. ..." This significance has not changed.

expression to the life of our immense and miscellaneous democracy.” Cited in Papers of FLO, Vol. 9, p. 30.

Today the South Park plan (including Jackson Park) is the only intact system designed by Olmsted and Vaux outside the state of New York. Jackson Park is the first aquatic park ever designed -- with unmatched and unique vistas to the lakeshore. See Rybczynski, *Clearing in the Distance*, p. 301. And it is also the last natural vestige of the Columbian Exposition. For more than 150 years, it has been a widely visited and beloved Chicago landmark, offering a unique public benefit – both natural and historical – to the American people. It is a nationally significant and irreplaceable landmark that protects and showcases “some of the rarest, most valuable public real estate on Earth.” *Chicago Tribune*, August 10, 2021.

Yet, for 10 dollars, the City of Chicago has given to the Obama Foundation (Foundation) a ninety-nine-year lease for 20 acres of this historic park. The Foundation proposes to build the Obama Presidential Center (OPC) -- four new buildings, a new parking garage that will hold 400 cars, and a new active recreation area in the Midway Plaisance. The main building will be a 235-foot, 20 story tower projecting shadow and shade. The project will remove 24 acres of well-designed roads, including Marquette Drive, Cornell Drive and the eastbound Midway

Plaisance. It will destroy thousands of heritage trees in the migratory pathway and involve construction on a massive marshy wetland.³

III. Until now, Chicago officials have recognized Jackson Park's unique historic and ecological value.

For over a century, City officials have worked intently to preserve this park as free and open. They have protected Jackson Park from development by private parties who have threatened airports, railroads, stadiums, landfills and expanded museum buildings. In 1999, the City of Chicago in its Lakefront Framework Plan explicitly recognized the "historic significance" of the park and need to "maintain open space" while "seeking opportunities to decrease inappropriate structures": "the original Olmsted design has served [Jackson] park well over time and should not be compromised by future plans." City of Chicago 1999 South Lakefront Framework Plan, p. 13.

In 2012, the State Historic Preservation Office, responsible for protecting Illinois' great history, wrote that the "defining characteristicsmust be respected." Letter,

³ Plans call for the reconfiguration of the adjoining golf course. Although the exact details of this plan are unknown, what is known is that more trees will be lost. The existing football field, which echoed the original outdoor gymnasium in the Olmsted-Vaux Plan, will also entirely disappear, guaranteeing even more irrevocable changes to this historic park.

Dec. 10, 2012, from Deputy State Historic Preservation Officer Anne E. Haaker to the U.S. Army Corps of Engineers.

The Lakefront Protection District Ordinance, Section 16-4-030, in turn states that its purpose is to preserve access and “insure that the lakefront parks and the lake itself are devoted only to public purposes and to insure the integrity of and expand the quantity and quality of the lakefront parks.”

Just as no one would suggest that a great painting or a great sculpture can be trimmed or easily reduced in size, so too, it is wrong to suggest that Olmsted’s unique Jackson Park can be drastically modified and remain a designed masterpiece. Indeed, Olmsted was clear that an essential part of his design was the comprehensive whole: “...every part of all the park must be planned subordinately to and dependently upon every other part... In this interdependence of parts lies the difference between landscape gardening and gardening. It is as designers, not of scenes but of scenery, that you employ us.” May 7, 1894 letter to Joseph Donnersberger, cited in FLO Papers, Vol. 9, p. 778.

The proposed Obama Presidential Center (OPC) will destroy historic sight-lines, impose a 20-story building (and attendant shade) and significantly and negatively impinge on the amount of park space, ending broad open vistas to the lakeshore.

The tower and buildings will obstruct views into the park and to Lake Michigan from both the Hyde Park and Woodlawn Neighborhoods. In the future, those with an unobstructed lake view will be those admitted for a fee to the Obama Presidential Center.

The OPC will add new structures in a landscape which Olmsted and the City historically wanted devoid of intrusive architecture. At the same time, the planned design will ensure more cars and the removal of open space. Thousands of trees are being clear cut and even more are expected to be lost. The tower will loom large over the Wooded Island and be reflected in the lagoons, utterly destroying Olmsted's intent to provide Chicagoans and visitors relief from the cares of the city.

Given these undisputed facts, it is no wonder that the project has been found to have an adverse effect on (1) the Jackson Park Historic Landscape District and Midway Plaisance and (2) the Chicago Park Boulevard System Historic District, which are listed in the National Register of Historic Places." See Memorandum of Understanding, Section 106.

IV. Adverse Impacts Caused by Proposed Construction of the Obama Presidential Center Cannot Be Mitigated

The City and the Obama Foundation have been informed by numerous groups, consulting parties and others about alternative locations that would allow for a new Center with all its amenities, without radically altering Jackson Park and the Plaisance.⁴ The fact that appropriately expansive Areas of Potential Effect and alternative locations were never genuinely explored characterizes the process that has produced the Section 106 Memorandum of Understanding. Indeed, the process bears little resemblance to the Section 106 mandate to “develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize or mitigate adverse effects on historic properties.” 36 C.F.R. § 800.6(a).

From the beginning, the process has been fundamentally flawed by the failure to appreciate the immense historic importance of this park and its holistic design. As outlined above, the South Park System was an integrated whole, designed with the

⁴The University of Chicago Response to Request for Proposal, p 112: “Of all the proposed sites, the Washington Park neighborhood is the one with the greatest potential for economic growth and development. The neighborhood has nearly 270 acres of vacant land and limited existing retail, recreational and food amenities. The influx of new demand from Presidential Center visitors and the affordability of local properties could spur a significant amount of development near the site to the scale of up to 2000 new residences and 1.5 million square feet of commercial and community development potential.” Twin Embraces, an enlightened and visionary proposed Master Plan for the Obama Presidential Center offers a similarly exciting alternative, siting the OPC aside Washington Park. This proposal would mean no damage to the existing park, no harm to the environment, no need to ignore great history or to interrupt the Boulevard system. There is an eleven acre parcel adjacent to Washington Park which could be used and is conveniently located near mass transit. Not only would this location preserve historic Jackson Park, it would expand public space and provide for the flourishing of diverse natural ecosystems.

inherent connectivity of Washington and Jackson Parks, via the Midway. No review of the OPC can be proper without taking into account the larger infrastructural and design characteristics of the Chicago South Park System – including the existing interconnected system of walks, paths, drives and view relationships. Even after the lakefront site had been modified to accommodate the Chicago World's Fair, this comprehensive landscape vision was continued with the 1895 Olmsted, Olmsted & Eliot General Plan for Jackson Park and its implementation, which now added the golf course. Subsequent projects over the decades have, for the most part, respected the historic integrity of these linked parkscapes, as noted in their listing on the National Register of Historic Places in 1972 and the updated nomination documentation from the 1995 study produced by the Chicago Park District.⁵

Because of the many flaws of the regulatory process, it is incumbent that the Court enjoin further action by the Foundation to allow more deliberate assessment of the affected area and viable alternatives according to law and regulation. If the Foundation is allowed to proceed, its actions will destroy this important piece of

⁵ This study reflected new research into materials not available in the 1972 document, as well as the Secretary of Interior's Standards of Treatment for Historic Properties, with Guidelines for the Treatment of Cultural Landscapes, the standard protocols used to assess and protect historic landscapes against destructive alternatives. In this proceeding, the OPC, its ancillary structures, and the golf course amalgamation have been considered in a piecemeal approach, resulting in the potential of irrevocable damage to the unity of these major components of our national cultural patrimony.

Chicago history—when other outcomes should have been dictated by governing law and precedent.

V. Jackson Park Embodies Key Olmstedian values that must be preserved for the benefit of the American people.

Olmsted was the first to make the connection between the built environment and public health. He understood that thoughtful design could have positive social, cultural and health impacts – bringing people together and advancing human well-being.

- a. **Parks are not empty spaces – in search of a building. They are democratic spaces that contribute to social cohesion as well as mental, physical and ecological health.**

For most of history, parks had been private property, available only to the wealthy and powerful. Because of Olmsted, parks became public assets – free and open to all.

The creation of Central Park was hailed as a “democratic development” of the highest significance. Thanks to Olmsted, parks became places where all people could come together – of every race, class and gender. The purpose of a park, Olmsted opined, was “a ground to which people may easily go after their day’s work is done, and where they may stroll for an hour, seeing, hearing and feeling nothing of the bustle of the streets, where they shall, in effect, find the city put far away

from them.” Papers of FLO, Supplementary Series 1, Parks and City Planning, p. 189.

In his passionate essay, *The Spoils of the Park*, Olmsted railed at politicians and public officials who viewed parks as simply places to build. “The very ‘reason for being’ of the Park,” said Olmsted, is “the importance to the city’s prosperity of offering to its population ... opportunity for pleasurable and soothing relief **from building Building can be brought within the business of the park proper only as it will aid escape from buildings. Where building for other purposes begins, then the Park ends.** The reservoirs and the museum are not part of the Park proper: they are deductions from it.” FLO Papers, Vol. 7, *Spoils of the Park*, p. 608. (emphasis supplied).

If the Foundation is allowed to commandeer this space for a privately owned and operated facility, it will effectively reverse centuries of American practice – that public parks belong the public. The message will be that public lands are up for grabs by powerful political interests.

Given the flat topography of the site, it is clear that any structural additions to this heritage park should give critical attention to protecting the original design intent. In particular, this includes not obstructing planned views, nor creating destructive

shadow patterns which will affect both vegetative health and the intended artistry of diverse vistas. Yet this is exactly what the proposed OPC will do.

- b. If the proposed Obama Presidential Center is allowed to proceed, South Chicago will be deprived of the healthful benefits of open, restorative public space.**

To confiscate public park space for private purposes is especially grievous in the face of the pandemic. Over the last 18 months, we have seen the devastating impact of Covid 19 on communities of color and those with lower economic status. These very communities are already suffering from negative health outcomes, such as higher obesity rates and premature mortality from cardiovascular disease.

As Olmsted understood, these are the very communities that deserve open green space, parks, trails and natural resources. Studies consistently show that access to expansive outdoor space is restorative and leads to less obesity, reductions in stress and violence and improved quality of life. But studies also consistently show that communities of color and those with lower and economic status have fewer parks, trails and natural resources. According to the Trust for Public Land, more than 100 million people in the U.S., including 28 million children, do not have a park or green space close to home.

Access to safe, quality open space has never been more important. And yet in city after city — Chicago, Brooklyn and Boston, to name a few — our parks and green spaces are being threatened by structures for private purposes. As Olmsted knew, the value of a park is the **absence of structure** and its ability to reduce the stresses of city life by transporting urban dwellers to a cooler and restorative space. Once gone, open space is lost forever.

South Park was conceived of as a democratic landscape, designed to provide access to beneficial fresh air, recreational opportunities and encounters with nature for all the citizens in a crowded industrial city. The Park continues to provide that essential function for the underserved populations in their surrounding communities.

While the OPC will certainly be an asset for Chicago and particularly for this South Side neighborhood, setting such a precedent--the appropriation of public parkland for such a specialized privatized use--seems tragic, when alternatives are available. By allowing the OPC to proceed and diminish public space, the South Chicago neighborhood – and the public generally -- will be the poorer.

- c. **If the proposed Obama Presidential Center is allowed to proceed, Chicago residents will be deprived of the resilient green infrastructure that Olmsted intended for the lake shore.**

Olmsted knew that thriving parks and landscapes are essential to the ecological health of the planet. Long before climate change was a term, Olmsted understood the need for thoughtful and resilient design and he argued for city leaders to realize that parks are not private spaces for development, but critical green infrastructure.

Jackson Park is positioned between the Lake and dense urban areas to the north, east and west. As temperatures increase, the park is an antidote to both heat islands and degraded air that challenge human health and productivity.

Situated along the South Side's Lake Michigan waterfront, the Park also addresses periodic flooding through the creative use of plant masses with native dune grasses, sages and sedges. Olmsted's correspondence in the 1890s reflect his persistent concern about frequent flooding and varying fluctuations in the level of the lake: "Olmsted was so concerned about how changing water levels ... would affect plantings in the redesign of South Park that he had assistants compile a list of annual water levels on Lake Michigan from 1859 through 1892," finding that the water levels varied as much as three feet. FLO Papers, Vol 9, p. 781, footnotes 4 and 5. His design, therefore, used thickly-planted sites to protect park edges when flooded during storms. By helping soak up water from the sky and the lake, the park operated like a green sponge helping to address the inevitable challenges of storms and water runoff, now only worsened by climate change.

If allowed to proceed, the OPC will significantly increase hardscape while reducing the amount of open and public green space available on the Lakeshore. As many have argued, the impending construction of multiple buildings and an underground parking garage will also exacerbate water problems-- increasing the amount of impermeable surface and converting open parkland, now on fill, to hardscape. This is an avoidable situation with serious implications beyond the park boundaries as the *New York Times* suggested in a recent front-page article. *New York Times*, "A Battle Between a Great City and a Great Lake," p. 1 et alia (July 7, 2021).

As outlined by plaintiffs, there has been no serious and comprehensive Environmental Impact study of the project. This should be rectified by enjoining further action by the Foundation.

- d. If the proposed Obama Presidential Center is allowed to proceed, it will alter Olmsted's historic roadways and severely disrupt accessible and workable circulation.**

An integral part of Olmsted design is the thoughtful orchestration of visitors' passage through the landscape. As a matter of user experience, Cornell Drive and the Jackson Park circulation system are not merely roads, but essential to the historic park's enjoyment.

In designing Jackson Park and other parks around the country, Olmsted focused on both functional and aesthetic concerns. This meant not only providing real access to and through linked park sites, but visually and spatially reinforcing the varied characteristics of the diverse areas of the parks. Both the curvilinear form and the accompanying vegetation associated with these drives were essential and thus contributing and character-defining factors of his design. By separating conflicting or incompatible uses, Olmsted intended to give users a safe, efficient and restorative experience.

The walks, drives and bridle paths that were designed for Jackson Park, the Midway and Washington Park were an essential and integral part of the South Park experience, created with “passages of scenery” in mind. Here, as in other parks, they constitute a significant and important part of Olmsted’s park design and engineering.

The drives and avenues designed for “pleasure carriages” continue to inform the circulation pattern of the parks today. While many have been repurposed for different uses, including non-pleasure through-traffic, they are no less significant to the historic design of the parks than the land, plant, water and architectural features. The argument that closing the drives will add parkland negates the historic roll of the drives as a desirable park feature.

As Olmsted intended, the circulation system through Jackson Park helps more fully achieve his vision of an accessible democratic space –one where residents of different neighborhoods and from different backgrounds meet. As Olmsted knew, a functioning roadway system is not a luxury. It is essential to ensuring that urban dwellers enjoy the benefits of connecting with nature – and its restorative features.

As planned, the OPC will irrevocably alter historic roadways that are an essential piece of Olmsted's landscape design and key to the efficient movement of traffic in and around Jackson Park. By closing Cornell Drive and other internal roadways to an expected 800,000 new visitors, the OPC will cut off acres of travel routes intentionally designed to facilitate access, passage and pleasurable circulation.

By any calculation, the area will be inundated by more traffic, more parking, and more cars in a section of the City that is seriously underserved by public transportation. The proposed reconfiguration will potentially separate communities rather than bringing them together – undermining a fundamental purpose of Olmsted's parks.

While the City and OPC plan to expand Lake Shore Drive and Stony Island Avenue to respond to expected congestion, in fact, this will create more disruption, further impact the aesthetic of the park, and reduce the size of the park by as much as 10

additional acres. To understand the immense impact of these closures, the parties should examine closely the Circulation System within Jackson Park, the Midway and Washington Park in conjunction with the larger circulation system of Chicago.

CONCLUSION

Like President Obama in our generation, Olmsted explored the themes of urbanization, civic infrastructure, and social justice as a foundation for the enrichment and empowerment of American society. He believed, fundamentally, in the democratic nature of parks and the capacity of nature to improve health and bring people together. Before Olmsted, parks were private property -- reserved for the most wealthy. Thanks to Olmsted's work and designs, parks in America became public spaces, open to all people.

If allowed to proceed, the Obama Foundation will turn Olmsted's vision of reform and social justice on its head. Instead of ensuring parks for all people, much of Jackson Park will become a private monument – requiring an entry fee—limiting the ability of Chicagoans and the broader public to enjoy the unique Chicago lakefront as Olmsted had passionately hoped. The National Association for Olmsted Parks respectfully asks the Court to enjoin further action so that this unique historic and ecological resource may be saved for all Americans. To

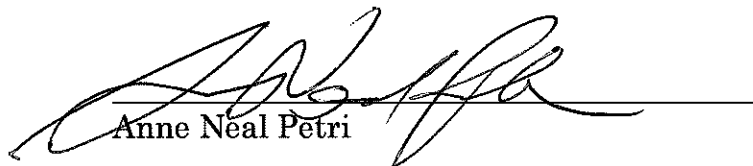
celebrate America's 44th president with an inspiring center is desirable and necessary. But sacrificing Jackson Park is not the answer.

Dated: ~~September~~ *September 27, 2021*

Respectfully submitted,

NATIONAL ASSOCIATION FOR OLMSTED PARKS

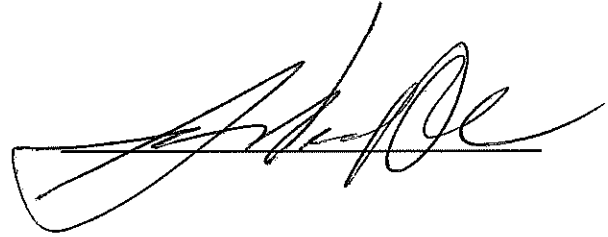
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**CERTIFICATE OF
SERVICE**

I certify that a true and correct copy of the foregoing was filed on September 26, 2021 with the Clerk of the United States Court of Appeals for the Seventh Circuit via Federal Express. Copies were served upon those on the attached service list by Fed Ex as noted.

Date: September 27, 2021



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