

October 15, 2018

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

via the federal eRulingmaking portal  
<http://www.regulations.gov>

RE: Proposed rule regarding demonstrations and special events in the National Capital Region,  
83 Fed. Reg. 40460 (Aug. 15, 2018)  
Regulation Identifier No. 1024-AE45

Dear Mr. Joyner:

The A.J. Muste Memorial Institute is a nonprofit charitable organization supporting grassroots activism. It was founded in 1974 to further the goals of its namesake, American pacifist leader Abraham Johannes Muste (1885-1967).

A.J. Muste was known by many as “American Ghandi,” and by his contemporaries as the “spiritual chairman of every major pacifist demonstration in the country.” Muste regularly engaged in acts of civil disobedience when he perceived injustice. He protested nuclear testing on the White House lawn, and understood the symbolic import of seeking redress of grievances in the nation's capital. Hundreds of groups have received financial support from the Muste Institute, and hundreds more have traveled to Washington, D.C. over the past several decades to exercise their First Amendment rights to peaceably assemble. While the issues are varied—from the Vietnam War, to women’s rights, to nuclear disarmament—the goal is the same. Americans cherish the practice of speaking directly, on the public’s property, to our elected officials.

History has shown the importance of mass assemblies, especially in the nation’s seat of government. The American tradition of a “march on Washington,” dates to the depression year of 1894. Labor leader Jacob Coxey (dubbed “General Coxey”) from Ohio led an “army” of 500 unemployed men on the capital, demanding that the government assist workers by hiring them to work on public projects such as roads and government buildings.

The 1963 March on Washington for Jobs and Freedom in support of civil rights was the result of decades of grassroots organizing for equal rights. At the time, the nation’s leaders discouraged the gathering. When hundreds of thousands of African Americans and their supporters, led by Dr. Martin Luther King, Jr., peaceably assembled in the sweltering August heat, however, the very display of a united crowd was instrumental in the passage of civil rights legislation.

The Muste Institute's website includes this call to action: **"For those of us who have never attended a rally, joined a picket line, or called for social change, this is the time to get involved – pick something and fight for it."** In that spirit, we fund innovative organizing, often with seed funds that give a necessary boost to bold ideas. Activist organizations we fund focus on raising awareness of such issues as: stopping war and militarism; defending immigrant rights; exposing the dangers of nuclear weapons and nuclear power; supporting women's rights, abolishing the death penalty; and supporting labor organizing.

It is in this spirit of appreciation for the public spaces in Washington, D.C. that the A.J. Muste Institute is moved to comment on just a few of the National Parks Service (NPS) proposed amendments regarding demonstrations in the Northern Capital Region.

### **Proposed Change No. 6 (charging fees for demonstrations)**

The Reverend Martin Luther King, Jr. and "General" Jacob Coxey could not have afforded to pay the proposed protest fees, nor could they have effectively planned their events under the NPS proposed regulations.

The Muste Institute opposes imposition of fees for individuals engaged in First Amendment activities. There is to be no discretion in Park Service issuance of permits for public assemblies and demonstrations. Permits issue to protect governmental interests of enforcing content-neutral limitations on time, place and manner, and in parsing time and space among multiple applicants from across the country. Demonstrations in public are constitutionally protected. Unlike commercial events, they are not "special uses."

The Supreme Court in *Murdock v. Pennsylvania* (319 U.S. 105 (1943)) struck down as unconstitutional local ordinances imposing license fees on individuals canvassing or soliciting in the town.

The National Parks Service is funded to manage public lands for the benefit of the people. It cannot shift its responsibility to the people and in doing so curtail their basic constitutional rights. In fact, the NPS website notes the values, among others, of diversity and inclusion, saying that: "The NPS System must be inclusive of a changing nation in the resources we manage, the stories we tell, and the communities we reach."

Many, if not a majority, of the individuals and communities coming to Washington, D.C. to engage in protected First Amendment activities do not have the financial resources needed to subsidize the expenses incurred during mass assemblies. Even paying for some of the costs would result in a financial hardship. Protest should not be reserved only for those with the ability to shoulder significant expenses. No price-tag can attach to the value of free speech and free assembly.

As you are well aware, members of the general public do not earn the kind of salaries that can match the resources of the NPS. More than 40 million Americans live in poverty according to the U.S. census. In 2016, the median household income for households in the United States was under \$60,000.

### **Proposed Change No. 9A (spontaneous demonstrations should not be diminished)**

The current regulations provide that permit applications must be generally submitted 48 hours before a

proposed demonstration, but that the 48-hour period shall be waived if the size and type of activity “will not reasonably require the commitment of park resources or personnel in excess of that which are normally available or which can reasonably be made available within the necessary time period.”

The new language “are available” implies that the National Parks Service does not have to make an effort to make resources available, no matter how easily that might be accomplished. If that is an accurate interpretation, it seems likely that Parks Service personnel could readily engage in discretionary assessments that might serve as a proxy for content-based determinations. As you know, because content-based assessments are unconstitutional, this would be improper. It would be too easy to merely state that additional efforts are needed by the NPS as justification for limiting spontaneous mass assemblies. That would be an unconstitutional infringement on First Amendment protected activities.

Especially in a time when current events change daily and impact vast segments of the United States population, such a policy shift would be wholly undemocratic.

**Proposed Change No. 9B (permit deemed granted unless denied within 24 hours)**  
**Proposed Change No. 9C (provisionally reserved status)**

Currently a protest permit is deemed to be granted if it is not denied within 24 hours. This is an especially helpful, and much appreciated, regulation for planners of mass assemblies, which require weeks and often months of lead time to organize. The new regulations, if passed, would create a new “provisionally reserved” status. That would allow the NPS to leave the status of a protest in limbo until 40 days before the protest or less.

Eliminating the 24-hour rule will promote much uncertainty in planning protests. Such uncertainty most certainly result in a steep decline in numbers of attendees. For large-scale protests, such as the Women’s March, it will be virtually impossible to organize effectively.

During the 1960s, A.J. Muste was a central organizer in the anti-war movement in response to the Vietnam War. When a reporter asked him about his frequent acts of protest in Washington, D.C.: "Do you really think you are going to change the policies of this country by standing out here alone at night in front of the White House with a candle?" A.J. Muste quietly replied: "Oh I don't do this to change the country. I do this so the country won't change me."

Thank you for the opportunity to share these public comments on the proposed protest regulations. We trust that you will recognize the importance of preserving the public lands in the nation’s capital for Americans to exercise their constitutional rights.

These rights are as meaningful for those standing in the midst of hundreds of thousands of others, as they are for one solitary individual holding a single candle in front of the White House.

Sincerely,

Heidi Boghosian  
Executive Director