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Sign Rules Overturned By Judge

U.S. Appeals, Says White House Protests Pose Risk

By Stephen J. Lynton
Washington Post Staff Writer

A federal judge has struck down a series of regulations limiting the use of signs and other belongings by demonstrators on the sidewalk in front of the White House.

U.S. District Judge William B. Bryant held that the rules, imposed last year by the National Park Service, violated the First Amendment rights of demonstrators to seek redress of grievances. He termed the rules "oppressive," "unjustified," "overbroad and unreasonable."

The government immediately appealed Bryant's ruling to the U.S. Court of Appeals. Yesterday evening, the appellate court issued a temporary stay, permitting the controversial regulations to remain in effect at least until next Wednesday.

John Vanderstar, a lawyer representing the White House Vigil for the ERA Committee and several other demonstrators, hailed Bryant's decision as a "very strong and important First Amendment ruling."

In asking the appeals court to stay, or temporarily set aside, the effect of Bryant's ruling, government lawyers criticized the federal judge for showing a "casual approach to the security of the president." They contended that the rules are needed to prevent concealment of explosives and use of signs as weapons against police or as devices for scaling the White House fence.

The rules, which took effect on Sept. 2 after an initial series of legal skirmishes, restrict the size of signs used in demonstrations, prohibit wooden signs and hollow metal supporting poles and bar demonstrators from leaving packages on the White House sidewalk.

Federal officials argued that the restrictions on signs and belongings were designed to minimize possible security threats as well as to give tourists a clear view of the White House and maintain access to the White House sidewalk for pedestrians.

Groups that challenged the rules argued that the restrictions did not significantly improve presidential security and appeared to have been drawn up for political aims. They cited a Jan. 13, 1983, memo from former Interior Secretary James G. Watt objecting to demonstrations in front of the White House. The protesters, backed by American Civil Liberties Union lawyers, said the rules would impede lawful demonstrations.

In his ruling signed Thursday, Bryant said: "No one who has lived through the past two decades can doubt the importance of protecting our presidents from those who would do them harm, and no reasonable person can dispute that some restrictions on freedom of expression may be tolerated in pursuit of this pressing public interest."

But the judge, who presided during a seven-day trial in December, added that it "does not seem proper that peaceful demonstrators should be made to forgo their activities in order to allay the fears of security forces which are based on remote possibilities."

Although he upheld three provisions, Bryant rejected nearly all the rules, criticizing them one by one. The requirement that a demonstrator maintain actual physical contact with a sign is oppressive, and has little or nothing to do with security or any other governmental interest. The prohibition against holding a sign in a stationary position less than three feet from the ledge is of similar character.

7.6P



U.S. Department of Justice

file

United States Attorney
District of Columbia

United States Courthouse, Room 2800
Constitution Avenue and 3rd Street N.W.
Washington, D.C. 20001

April 20, 1983

David Waller, Esquire
Senior Associate Counsel
to The President
The White House
Washington, D.C. 20500

Dear Dave:

I thought you might like advance notice that we have coordinated new Park Service regulations for the **White** [redacted] that should help clean up the area as well as improve security. A copy is enclosed.

We've had several meetings with Jerry Parr of the Secret Service, Chief Herring of the Park Police, and Jack Fish of the Park Service, to work these out.

We're providing copies to the American Civil Liberties Union on Friday, when the regulations should appear in the Federal Register. We don't know if they will file suit, but the ACLU has opposed these changes.

Let me know if you'd like any further information.

Sincerely,

STANLEY S. HARRIS
United States Attorney

By:

Royce
ROYCE C. LAMBERTH
Chief, Civil Division

Enclosure

Billing Code: 4310-70

Department of the Interior
National Park Service
36 CFR Part 50
National Capital Parks Regulations
Demonstrations in the White House Area

AGENCY: National Park Service, Interior.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule with requests for comments amends § 50.19 of Title 36 of the Code of Federal Regulations concerning demonstrations and special events in the National Capital Parks to prohibit signs or placards on the White House sidewalk except those that are carried by an individual. The interim rule also amends § 50.19 of Title 36 of the Code of

Federal Regulations and § 50.7(h) of the same title concerning storage of materials in park areas to prohibit the placement or storage of parcels, containers, packages, bundles or other property on the sidewalks surrounding the White House.

DATES: This interim rule is effective [insert date of publication] and will remain in effect until revoked, replaced or modified by a final rulemaking publication. Written comments, suggestions, or objections regarding this interim rule will be accepted until [insert date 30 days after date of publication].

ADDRESSES: Written comments regarding this interim rule should be sent to Manus J. Fish, Jr., Regional Director, National Capital Region, National Park Service, 1100 Ohio Drive, S.W., Washington, D.C. 20242.

FOR FURTHER INFORMATION CONTACT: Sandra Alley, Associate Regional Director, Public Affairs, National Capital Region, National Park Service, 1100 Ohio Drive, S.W., Washington, D.C. 20242, telephone (202)426-6700; Richard G. Robbins, Assistant Solicitor, National Capital Parks, Office of the Solicitor, Department of the Interior, Washington, D.C. 20240, telephone (202)343-4338.

SUPPLEMENTARY INFORMATION: The following persons participated in the writing of this rule: Richard G. Robbins and Patricia S. Bangert, Office of the Solicitor, Department of the Interior.

Background

Recent events in the Memorial Core parks have increased security concerns for the White House and the President. On December 8, 1982, an individual backed a truck up to the Washington Monument and threatened to blow up the structure with 1,000 pounds of dynamite that he allegedly had stored in the truck. The incident, occurring a mere three blocks from the White House, highlighted the threat that could be potentially caused to the White House and the President by one determined individual.

Since the incident, the National Park Service, along with other law enforcement agencies, have reviewed present regulations applicable to the White House area to determine if regulatory changes could aid in minimizing potential threats to the structure and its occupants. Two areas of concern became evident in that review - signs or placards stationed on the White House sidewalk and parcels, containers, packages, bundles and other property placed or stored on the White House sidewalk and other sidewalks surrounding the structure. (The

term White House sidewalk is defined in 36 CFR § 50.19(a)(5) as "the south sidewalk of Pennsylvania Avenue, N.W., between East and West Executive Avenues, N.W.")

Signs or placards leaning against the White House fence, and parcels and other property placed or stored on the sidewalks, especially those left unattended, represent potential threats to the security of the area. For example, both can potentially conceal explosives or other contraband and both can potentially be used to scale the White House fence. In fact, the Secret Service reports a recent incident in which a large sign was used to facilitate the scaling of the fence.

In addition to security concerns, experience with the recent proliferation of signs or placards and parcels and other property stationed and stored on the White House sidewalk has demonstrated that the policy of allowing such activity impedes the free flow of pedestrian and emergency traffic by and through the White House and significantly diminishes the White House experience for park visitors. For example, two individuals who have in the past and are presently maintaining a daily demonstration in front of the White House have had as many as twenty-five signs or placards leaning against the White House fence. In addition to the signs, paper bags, suitcases

and other parcels containing personal belongings obstruct the view of the White House and impede the flow of pedestrian traffic.

It is the judgment of the National Park Service that certain restrictions can be placed upon the stationing of signs or placards and placement or storage of parcels and other property on the White House sidewalk which would enhance the park visitor's experience in viewing the White House and respond to security concerns without impairing the demonstrator's ability to convey a message.

Regulatory Changes

To accomplish the purpose of minimizing potential threats to the White House and the President, and for the other purposes outlined above, the National Park Service is amending present regulations to prohibit signs or placards on the White House sidewalk, except those that are being hand-carried by an individual. The regulation, then, is not applicable to other parks where demonstrations are permitted. (Demonstrations are not permitted on other sidewalks contiguous to the White House. 36 CFR § 50.19(c)(1).)

The interim rule would not prohibit the carrying of a sign or placard during demonstrations on the White House sidewalk. Further, it would not place any restriction on the size of the

sign or placard, as long as it is in fact being held or carried by an individual. The interim rule would prohibit signs or placards that are not held or carried by individuals, for example, signs that are leaned against the White House fence, signs that are left unattended on the White House sidewalk and signs that are supported by other structures. In fact, the interim rule does not dramatically change the present regulatory scheme - temporary structures are presently prohibited on the White House sidewalk under 36 CFR § 50.19(e)(8).

The National Park Service believes that there is a substantial government interest in regulating the use of signs or placards on the White House sidewalk. Signs or placards not hand-carried and those left unattended cannot be easily moved in emergency situations. Signs or placards leaning against the White House fence may conceal dangerous materials, obscure the view of law enforcement personnel and create other security problems. For example, a sign affixed to a large structure caught fire several weeks ago, seriously damaging the fence and granite post in front of the Old Executive Office Building, a few feet from the White House sidewalk and fence.

In addition, signs or placards leaning against the White House fence can obscure the view of the White House for the thousands of park visitors. Signs or placards stationed on the sidewalk also incommode the passageway and sometimes cause difficulty in maintaining smooth pedestrian flow, which may include park visitors and persons having business in the area.

The interim rule also prohibits the placement or storage of parcels, containers, packages, bundles or other property on the White House sidewalk, the west sidewalk of East Executive Avenue, N.W. between Pennsylvania Avenue, N.W. and E Street, N.W., and the north sidewalk of E Street, N.W. between East and West Executive Avenues, N.W. The rule will not interfere with an individual who is carrying a parcel or other property along the sidewalk. In fact, it will not even subject an individual setting a parcel or other property down on the sidewalk or attending structures for up to one hour to law enforcement action unless that individual either refuses law enforcement personnel requests to search the property, or leaves the property unattended.

The National Park Service concludes, however, that when a parcel, container, package, bundle or other property is placed or stored on the sidewalks contiguous to the White House,

potential security problems are created. In addition, the National Park Service concludes that parcels and other property, like signs or placards, may obscure the view of the White House by park visitors and law enforcement personnel, may be difficult to move when the sidewalk must be cleared in an emergency and may incommode the sidewalk and interfere with visitor and business pedestrian traffic.

The National Park Service believes that these minor restrictions on the stationing of signs or placards and the placement or storage of parcels, containers, packages, bundles or other property serve substantial government interests in maintenance of the security of the White House, preservation of the park experience for park visitors, and free passage of pedestrian traffic by and through the White House. The regulation is written in a neutral manner such that all persons are prohibited from stationing signs or placards or storing parcels or other property on the sidewalks surrounding the White House. In addition, it is unrelated to the suppression of free expression and the incidental impact on First Amendment freedoms is only as great as is essential to serve the substantial government interests in security, aesthetics and free passage of pedestrian traffic. Further, the interim rule

applies only to sidewalks contiguous to the White House. A substantial number of alternative forums exist close to the White House sidewalks where these restrictions do not apply.

Public Participation

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the interim rule to the address noted at the beginning of the rulemaking within the time period specified.

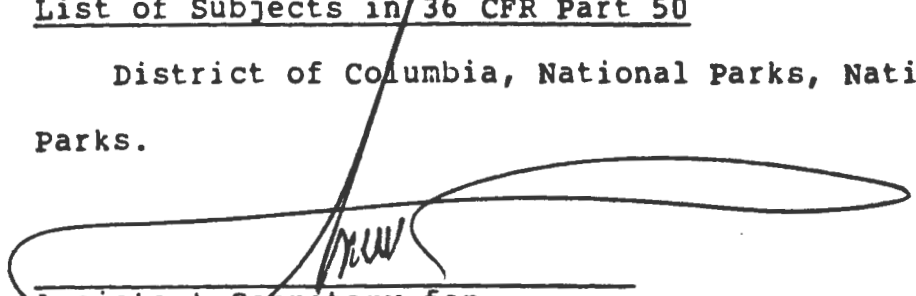
Impact Analysis

The National Park Service has determined that this document is not a major rule requiring preparation of a Regulatory Impact Analysis under Executive Order 12291. The National Park Service has also determined that the interim rule will not have a significant economic impact on a substantial amount of small entities and, therefore, does not require a small entity flexibility analysis under Public Law 96-354. The interim rule merely places restrictions on the stationing of signs or placards and parcels and other property on sidewalks contiguous to the White House. It will have no substantial impact on any aspect of the economy.

The National Park Service has further determined that this interim rule is not a major Federal action significantly affecting the quality of the human environment.

List of Subjects in 36 CFR Part 50

District of Columbia, National Parks, National Capital Parks.



Assistant Secretary for
Fish and Wildlife and Parks

06 APR 83
Date Approved

PART 50 - NATIONAL CAPITAL PARKS REGULATIONS

In consideration of the foregoing, sections 50.19 and 50.7 of Title 36 of the Code of Federal Regulations are accordingly amended.

1. The authority citation for Part 50 reads as follows: Authority: Section 6 of the Act of July 1, 1898 (30 Stat. 571); Sections 1-3 of the Act of August 25, 1916 (39 Stat. 535, as amended); Section 16 of the Act of March 3, 1925 (43 Stat. 1126, as amended);

Act of March 17, 1948 (62 Stat. 81); Act of August 8, 1953 (67 Stat. 495); Act of July 1, 1980 (94 Stat. 872); 16 U.S.C. 1-3; D.C. Code 8-137 (1981); D.C. Code 40-721 (1981).

2. Section 50.19 is amended by redesignating paragraphs (e)(9) through (11) as (e)(11) through (13) and adding new paragraphs (e)(9) and (e)(10) to read as follows:

(9) No signs or placards shall be permitted on the White House sidewalk except those signs or placards that are held or carried by an individual.

(10) No parcel, container, package, bundle or other property shall be placed or stored on the White House sidewalk or on the west sidewalk of East Executive Avenue, N.W. between Pennsylvania Avenue, N.W. and E Street, N.W. or on the north sidewalk of E Street, N.W. between East and West Executive Avenues, N.W.; Provided, however, that a parcel, container, package, bundle or other property, except structures, may be set down on these sidewalks for a maximum of one hour if it is attended at all times within that time period, and law enforcement personnel are permitted to search the property.

3. Section 50.7(h) is amended by redesignating the existing paragraph as paragraph "(1)" and by adding a paragraph "(2)", as follows:

(h) Storage. (1) * * *

(2) No parcel, container, package, bundle or other property shall be placed or stored on the White House sidewalk, as that term is defined in section 50.19(a)(5) of this Part, or on the west sidewalk of East Executive Avenue, N.W. between Pennsylvania Avenue, N.W. and E Street, N.W. or on the north sidewalk of E Street, N.W. between East and West Executive Avenues, N.W.; Provided, however, that a parcel, container, package, bundle or other property, except structures, may be set down on any of these sidewalks for a maximum of one hour if it is attended at all times within that time period, and law enforcement personnel are permitted to search the property.

6397A

U.S. Department of the Interior
National Park Service

Determination of Effects of Rule

Section 1. Description of Rule

This interim rule would amend 36 C.F.R. § 50.19(e) to prohibit signs or placards on the White House sidewalk, except signs or placards that are held or carried by an individual. The interim rule would also amend that section and section 50.7 of 36 C.F.R. to prohibit the placement or storage of parcels, containers, packages, bundles or other property on the sidewalks surrounding the White House.

Section 2. Semiannual Agenda Listing

This interim rule will be published in the April, 1983, semiannual agenda.

Section 3. Purpose

The purpose of this interim rule is to prohibit the stationing of signs or placards on the south sidewalk of Pennsylvania Avenue, N.W., between East and West Executive Avenues, N.W. (commonly known as "the White House sidewalk") and to prohibit the placing or storing of parcels or other property

on the sidewalks surrounding the White House. The authority for this interim rule is Section 3 of the Act of August 25, 1916 (39 Stat. 535, as amended; 16 U.S.C. § 3); Act of July 1, 1980 (94 Stat. 872); D.C. Code § 8-137 (1981); 245 DM 1 (45 FR 23383); and National Park Service Order No. 77 (38 FR 7478), as amended.

Section 4. Need

Recent events occurring in the Memorial Core parks have increased security concerns for the White House and the President. On December 8, 1982, an individual drove a truck up to the Washington Monument and threatened to blow the structure up with 1,000 pounds of dynamite that was allegedly stored in the truck. This incident, occurring a mere three blocks from the White House, highlighted the potential security threat that could be caused by one determined individual.

As a result of that incident, the National Park Service reviewed its regulations relating to the White House area. It was determined that the present regulatory scheme premitting almost unlimited stationing of signs or placards on the White House sidewalk and the placing and storing of parcels or other property on that and other sidewalks surrounding the White House create potentially threatening situations. Signs or parcels stationed on the sidewalk, especially when leaning against the White House fence, and stored parcels or other property,

especially those unattended, could conceal dangerous materials and could obscure the view of law enforcement personnel. Further, signs or placards that are not being hand-carried and parcels or other property, especially those unattended, may be difficult to move in an emergency situation.

In addition to security concerns, stationary signs or placards and stored parcels or other property may impede the flow of pedestrian traffic by and through the White House. Signs, placards, parcels or other property also obscure the view of visitors to the White House.

For these reasons, the National Park Service has determined that there is a substantial government interest in prohibiting signs or placards, except those that are hand-carried, on the White House sidewalk and prohibiting the placing or storing of parcels, containers, packages, bundles and other property on those sidewalks contiguous to the White House.

Section 5. Information Collection and Record-keeping Requirements

The interim rule contains no information collection or record-keeping requirements.

Section 6. Economic Effects

The interim rule has no estimated economic effects and is not expected to result in an increase in costs or prices. The purpose of the rule is simply to prohibit the stationing of signs

or placards and the placing or storing of parcels or other property on sidewalks surrounding the White House. Therefore, no private sector resources will be affected. In addition, the only governmental resources or personnel possibly called into play by the rule would be for law enforcement-type activities. Obviously, the costs, if any, of these potential activities cannot be quantified at present.

Further, since the rule merely prohibits certain individual, private activities in specified areas around the White House, it should have no effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in domestic or export markets.

Section 7. Significant Economic Effects on a Substantial Number of Small Entities

No economic impact on any type of small entity is anticipated since the rule attempts only to regulate individual, private activity on several sidewalks surrounding the White House. No economic interests of any small entities are involved in the activities regulated.

Section 8. Determination of "Major"

Under the definition of a "major rule" as set forth in § 1(b) of Executive Order 12291, the interim rule is not a major rule since it merely prohibits individual, private activities on sidewalks contiguous to the White House.

In accordance with Executive Order 12291, I have determined that the interim rule described above is not major.

Manus J. Felt
Regional Director
National Capital Region 3/22/83

Concur: *Russell E. Dickenson*
Director, National Park Service 3/31/83

Section 9. Certification of Significant Economic Effect on a Substantial Number of Small Entities

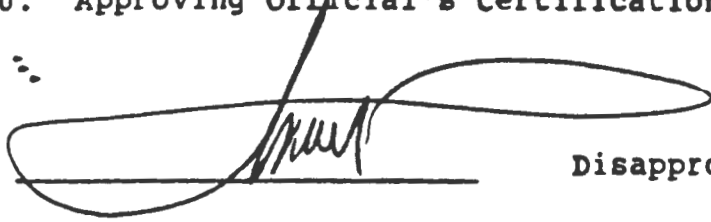
In accordance with the Regulatory Flexibility Act, I certify that the rule described above will not have a significant economic effect on a substantial number of small entities.

Manus J. Felt
Regional Director
National Capital Region 3/22/83

Concur: *Russell E. Dickenson*
Director, National Park Service
3/31/83

Section 10. Approving Official's Certification

Approve: _____

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is cursive and somewhat illegible, but appears to consist of several loops and a long horizontal stroke.

Disapprove: _____

Other: _____

Date: _____

06 Apr 83

Section 11. Distribution

cc:

Office of Policy Analysis, PBA
Division of General Law, SOL
Division of Directives and Paperwork Management, PBA
Office of Small and Disadvantaged Business Utilization, OSDBU
Chief Counsel for Advocacy, Room 1010
Attention: Regulatory Flexibility
1441 L Street, N.W.
Washington, D.C. 20516

DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D. C. 20240

4/21/83

H.P.

Thought you might be interested in our new regs which go into effect Fri. 4/22. These regs require that all signs on the White House Sidewalk be hand held. They also ban the placing of parcels on the White House Sidewalk.

Rich Robbins

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

May 11, 1983

FOR: DAVID B. WALLER
JOHN G. ROBERTS, JR. ✓

FROM: CLAUDIA MCMURRAY

SUBJECT: Regulation of White House Demonstrations

Title 16, United States Code, authorizes the Director of the National Park Service ("NPS") to "have the supervision, management, and control of the several national parks and national monuments . . . under the jurisdiction of the Department of the Interior, . . ." 16 U.S.C. § 2. Included within the Director's jurisdiction, among several other areas, are the "White House area," 1/ the "White House sidewalk," 2/ and Lafayette Park. 3/

Current National Park Service regulations 4/ set forth certain restrictions on demonstrations on the White House sidewalk and in Lafayette Park. 5/ According to the regulations, "demonstrations and special events may be held only pursuant to a permit, . . ." unless such events involve 25 persons or less. 36 C.F.R. § 50.19(c)(1). Demonstrations are limited to 750 persons on the White House sidewalk and 3,000 persons in Lafayette Park. 36 C.F.R. §§ 50.19(e)(1) and (2). In addition, the Director may restrict demonstrations and special events during certain weekday hours, "if it reasonably appears necessary to avoid unreasonable interference with rush hour traffic." 36 C.F.R. § 50.19(e)(6). No structures or sound amplification equipment are permitted on the White House sidewalk. 36 C.F.R. §§ 50.19(e)(8)(i) and (9)(i).

Beginning in the late sixties and early seventies, several groups of demonstrators challenged the constitutionality of various aspects of the NPS regulations. A summary of the applicable case law is set forth below.

Case Law

Historically, public streets and parks have been open to the public for the exercise of first amendment rights of speech and assembly. See Hague v. CIO, 307 U.S. 496 (1939). The exercise of these rights, however, is subject to reasonable time, place and manner restrictions, which take into account a variety of governmental interests: such as control of traffic in the streets, prevention of blockage of entrances to buildings, and prevention of littering. Thus, in "public forum" cases, the courts will engage in a balancing of the first amendment rights of demonstrators against the legitimate interests of the government in regulating conduct in public areas.

The guidelines courts use when balancing these competing interests were first set forth in United States v. O'Brien, 391 U.S. 376, 377 (1968). According to the O'Brien test, restrictions on expression are valid if:

- (1) the regulation furthers an important or substantial governmental interest;
- (2) the governmental interest is unrelated to the suppression of free expression; and
- (3) the incidental restriction on alleged first amendment rights is no greater than is essential to the furtherance of that interest.

Id. Governmental restrictions, then, should be neutrally framed and narrowly tailored to serve the state interest.

Several cases dealing with the use of the area around the White House have utilized these guidelines. In Quaker Action Group v. Morton, 516 F.2d 717 (1975), several groups challenged the Park Service's denial of a permit for planned demonstrations on the White House sidewalk and in Lafayette Park. The D.C. Circuit upheld as constitutional the permit system as a whole, citing the government's interest in the security of the White House area as sufficiently important to justify some kind of prior restraint on demonstrations. Id. at 726. In addition, the court said, the Park Service must be permitted to allocate competing demands on the time and space of the White House, due to its status as a "unique situs." Id.

The court in Quaker Action Group upheld other provisions banning sound amplification equipment on the White House sidewalk and restricting demonstration activities during rush hour. The government has a significant interest, the court found, in assuring quiet for the numerous White House staff members working in the area, as well as the smooth flow of traffic on the streets and sidewalks. Id. at 727. The D.C. Circuit also found, however, that the numerical limitations on groups on the White House sidewalk and in Lafayette Park should be interpreted as minimum, rather than maximum, restrictions. Id. at 731. The court found no evidence that large groups create more of a security risk to the President or the White House complex than do smaller groups. Id. at 730.

In the late sixties, a group called Women Strike for Peace (WSP) repeatedly sought permission to erect a small temporary display on the Ellipse. See Women Strike for Peace v. Morton, 472 F.2d 1273 (1972). The Park Service rejected WSP's requests for permits as contrary to the government's interest in preserving the Ellipse as an unspoiled area. Id. at 1276. Moreover, the Park Service claimed that WSP's display (consisting of 11 styrofoam tombstones intended to commemorate those who died in

Vietnam) would interfere with the Pageant for Peace held on the Ellipse during the Christmas season. Id. The D.C. Circuit rejected the articulation of these interests, finding that the government's action was discriminatory on the basis of the content of the WSP's message. Id. at 1294. According to the court, the Ellipse was large enough to accommodate both activities without preempting the WSP's demonstration entirely. Id.

In 1974, the Vietnam Veterans Against the War challenged the Park Service's refusal to issue a permit for a "symbolic campsite" on the Mall. See Vietnam Veterans Against the War v. Morton, 506 F.2d 53 (D.C. Cir. 1974) (per curiam). According to the Park Service, it could not allow four days of continuous camping, because such activity violated § 50.19(e)(8) of the Park Service regulations, which prohibits camping in certain national park areas. Id. at 57. The court upheld the Park Service's position, finding that cooking and camping overnight were "beyond the pale of first amendment protection." Id. Even if camping did merit first amendment protection, the court accepted the Park Service's claim that camping is too taxing on the government's law enforcement and sanitation resources. Id. at 59.

This year, a case similar to VVW v. Morton awaits the granting of certiorari by the Supreme Court. See Community for Creative Non-Violence v. Watt, No. 82-2445. In this case, the Community for Creative Non-Violence (CCNV) applied for and was granted a renewable seven-day permit to conduct an around-the-clock demonstration, commencing on the first day of winter, on the Mall and in Lafayette Park. Id. at 4. The purpose of the demonstration was to illustrate the plight of the poor and homeless to the President, the Congress and the public at large. Id. The Park Service denied CCNV's request for a permit to sleep, a decision the CCNV challenged as an abridgment of their first amendment right to free expression. Id. The Park Service claimed that allowing the demonstrators to sleep would violate its anti-camping regulations. See 36 C.F.R. § 50.19.

The District Court reached the same result the D.C. Circuit had reached in VVW v. Morton: sleeping, in the form of camping, is not within the first amendment's scope of protection. Id. at 9. The D.C. Circuit overturned the lower court's decision finding that sleep was indeed part of CCNV's message and therefore constitutionally protected. Id. at 15. The court rejected the Park Service's argument that sleeping demonstrators would drain more of the government's resources than they would if awake. Id. at 22. The court did find that the government had an interest in preventing the storage of personal belongings in Lafayette Park but concluded that the Park Service could regulate this activity by less restrictive means than a total ban on sleeping. Id.

On March 15, 1983, the Supreme Court granted a stay of the Court of Appeals decision, pending a decision on a writ of certiorari. The CCNV, therefore, was prohibited from conducting their planned demonstration this year. 6/

Other Situses: The Supreme Court and the Capitol Grounds

Challenges similar to those discussed above have been brought regarding the use of the Supreme Court area and the Capitol Grounds. In Jeannette Rankin Brigade v. Chief of Capitol Police, 342 F. Supp. 575 (1972), a coalition of women against the Vietnam War challenged a law which prohibits "processions or assemblages" on the Capitol Grounds. The Jeannette Rankin Brigade wished to march from Union Station to the Capitol grounds, and then to assemble at the base of the Capitol steps. Id. at 578. Permission for the march was denied. Id. The District Court struck down the law as a clear first amendment. Id. at 585. It said that no governmental interest in "peace," "serenity," and "majesty" around the Capitol grounds could override the fundamental right to petition the government. Id.

The Supreme Court recently handed down a decision in United States v. Grace, No. 81-1863, a case involving the right to picket on the Supreme Court sidewalk. In Grace, the court struck down as a first amendment violation a law prohibiting the "display of any flag, banner or device designed or adapted to bring into public notice any party, organization or movement" in the United States Supreme Court building and on its grounds. Id. at 12. The Court could find no sustainable governmental interest in preventing traffic obstructions or the injury of passersby, which would permit the abridgment of an individual's rights. Id. at 10-11. In classifying the sidewalk area as a public forum, the court concluded "there is nothing to indicate to the public that these sidewalks are part of the Supreme Court grounds or are in any way different from other public sidewalks in the city." Id. at 12.

Interim Regulations

On April 22, interim regulations governing the use of the White House sidewalk went into effect. The new regulations prohibit signs or placards on the White House sidewalk "except those that are carried by an individual." 36 C.F.R. § 50.19(e)(9). In addition, the regulations provide, "No parcel, container, pack-package, bundle or other property shall be placed or stored on the White House sidewalk. . . ." 36 C.F.R. § 50.19(e)(10). Such a parcel or container may, however, be set down on the designated sidewalks for a maximum of one hour "if it is attended at all times within that time period, and law enforcement personnel are permitted to search the property." Id.

The Park Service articulates several purposes for the change in regulations. Primary among those: "Signs or placards leaning against the White House fence may conceal dangerous materials, obscure the view of law enforcement personnel and create other security problems." NPS interim regulations, p. 6. The Park Service cited an incident several weeks ago, when a sign caught fire and seriously damaged the fence and granite post in front of the Old Executive Office Building. Id.

The Park Service also feels that signs left unattended can "obscure the view of the White House for thousands of park visitors." Id. at 7. NPS cited many instances when pedestrian traffic has been impeded by signs left unattended. Id.

In comments attached to the regulations, the Park Service expresses its belief that the regulatory changes place only "minor restrictions on the activities of demonstrators in front of the White House." Id. at 8. The Park Service contends that the regulations are "written in a neutral manner such that all persons are prohibited from stationing signs or placards or storing parcels or other property on the sidewalks surrounding the White House." Id. The Service claims that any incidental impact on speech is outweighed by governmental interests in security, aesthetics, and free passage of pedestrian traffic. Id.

The American Civil Liberties Union has challenged the interim regulations as a violation of the first amendment (they also make a fourth amendment challenge, not addressed here). This week, Judge Bryant heard an ACLU motion for a temporary restraining order to keep the Park Service from implementing the rules. In light of the case law in this area, the Park Service has some strong arguments for upholding the regulations. The restrictions apply to all demonstrators who carry signs, rather than only those with a particular message. (Although, conceivably, it could be argued that the regulation discriminates against those with long messages that cannot be carried by hand.) In addition, the regulations only prohibit leaving a sign or placard unattended. It is well settled in this area of constitutional law that people who want to express their views do not have a constitutional right to do so "whenever and however they please." Adderley v. Florida, 385 U.S. 39 (1966).

Furthermore, the Park Service has articulated two substantial governmental interests in justifying these regulations. It appears that the security of the President and the White House area is a very real concern. Certainly, the D.C. Circuit found such an interest to be significant. See Quaker Action Group at 727. The interest in keeping the White House area clear and unobstructed has also been recognized. See id.

The Supreme Court's granting of a stay in CCNV v. Watt is also significant. Although the Court has not granted certiorari in that case, it appears at least that the Court would be open to reasonable restrictions on demonstrations in the White House area.

FOOTNOTES

1/ The "White House Area" is defined as ". . . all park areas, including sidewalks adjacent thereto, within these bounds: on the south, Constitution Avenue, N.W.; on the north, H Street, N.W.; on the east, 15th Street, N.W.; and on the west, 17th Street, N.W." 36 C.F.R. § 50.19(a)(4).

2/ The "White House Sidewalk" is defined as "the south sidewalk of Pennsylvania Avenue, N.W. between East and West Executive Avenues, N.W." 36 C.F.R. § 50.19(a)(5).

3/ "Lafayette Park" is defined as "the park areas, including sidewalks adjacent thereto, within these bounds: on the south, Pennsylvania Avenue, N.W.; on the east, Madison Place, N.W.; on the north, H Street, N.W.; and on the west, Jackson Place, N.W." 36 C.F.R. § 50.19(a)(6).

4/ "Current regulations" discussed in this section of the memorandum are those in effect prior to the implementation of the interim regulations on April 22, 1983. The interim regulations will be discussed later in this memorandum.

5/ According to National Park Service regulations, no permits are issued for demonstrations in the "White House Area" as defined in footnote 1. See 36 C.F.R. § 50.19(e)(5)(i).

6/ The CCNV was successful in a similar challenge last year. See CCNV v. Watt, 670 F.2d 1213 (D.C. Cir. 1982). The D. C. Circuit, however, construed the NPS regulation in order to avoid the constitutional issue.

endanger the life or limb of other persons.

§ 50.16 Model planes.

No model powered plane shall be flown from any park area unless authorized by an official permit.

§ 50.17 Gambling.

Gambling in any form, or the operation of gambling devices whether for merchandise or otherwise in park areas, is prohibited.

§ 50.18 Hunting and fishing.

(a) *Hunting in park areas prohibited.* The parks are sanctuaries for wildlife of every sort and no person shall at any time or at any place within a park area, trap, catch, kill, injure, or pursue any wild birds or wild animals, except dangerous animals when it is necessary to prevent them from destroying human lives or inflicting personal injury, or destroy, remove or disturb the nest or eggs of any wild bird. The Superintendent is authorized to take necessary action to capture or destroy wildlife which is damaging Government property.

(b) *Unauthorized possession of wildlife.* Unauthorized possession within a park area of any live wild bird or animal, or the dead body or any part thereof, of any wild bird or animal shall be prima facie evidence that the person or persons having the same, are guilty of violating this section.

(c) *Fishing in park areas in Maryland and Virginia.* Persons fishing in areas under the jurisdiction of the National Park Service, lying within the geographical limits of Maryland or Virginia, must be licensed by and comply with the applicable State laws.

(d) *Fishing in park areas in the District of Columbia.* Persons fishing in waters in the District of Columbia controlled by the Secretary of the Interior shall comply with the fishing regulations for the District of Columbia approved by the Secretary of the Interior and adopted by the Commissioners of the District of Columbia.

(e) *Closing of waters.* During a period of emergency, just prior to and during special ceremonial events or competitive aquatic events, adjacent to docks and floats, or to prevent over-

use by fishermen of waters open to fishing in areas administered by National Capital Parks, the Superintendent, in his discretion, may close to fishing all or any part of such open waters for such periods of time as may be necessary. Provided, the notice thereof shall be given by the posting of appropriate signs, notices, and markers. Fishing in Prince William Forest Park shall be prohibited in areas designated for swimming, boating, or other public use, such areas to be designated by posting of signs.

§ 50.19 Demonstrations and special events.

(a) Definitions. (1) The term "demonstrations" includes demonstrations, picketing, speechmaking, marching, holding vigils or religious services and all other like forms of conduct which involve the communication or expression of views or grievances, engaged in by one or more persons, the conduct of which has the effect, intent or propensity to draw a crowd or onlookers. This term does not include casual park use by visitors or tourists which does not have an intent or propensity to attract a crowd or onlookers.

(2) The term "special events" includes sports events, pageants, celebrations, historical reenactments, regattas, entertainments, exhibitions, parades, fairs, festivals and similar events (including such events presented by the National Park Service), which are not demonstration under paragraph (a)(1) of this section, and which are engaged in by one or more persons, the conduct of which has the effect, intent or propensity to draw a crowd or onlookers. This term also does not include casual park use by visitors or tourists which does not have an intent or propensity to attract a crowd or onlookers.

(3) The term "national celebration events" means the annually recurring special events regularly scheduled by National Capital Parks, which are listed in paragraph (d)(1) of this section.

(4) The term "White House area" means all park areas, including sidewalks adjacent thereto, within these bounds: on the south, Constitution Avenue, NW.; on the north, H

Street, NW.; on the east, 15th Street, NW.; and on the west, 17th Street, NW.

(5) The term "White House sidewalk" means the south sidewalk of Pennsylvania Avenue, NW., between East and West Executive Avenues, NW.

(6) The term "Lafayette Park" means the park areas, including sidewalks adjacent thereto, within these bounds: on the south, Pennsylvania Avenue, NW.; on the north, H Street, NW.; on the east, Madison Place, NW.; and on the west, Jackson Place, NW.

(7) The term "Ellipse" means the park areas, including sidewalks adjacent thereto, within these bounds: on the south, Constitution Avenue, NW.; on the north, E Street, NW.; on the west, 17th Street, NW.; and on the east, 15th Street, NW.

(8) The term "Director" means the Director, National Capital Parks, National Park Service, U.S. Department of the Interior, or his authorized representative.

(9) The term "other park areas" includes all areas, including sidewalks adjacent thereto, other than the White House area, administered by National Capital Parks.

NOTE: The darkened portions of the diagrams at the conclusion of this section show the areas where demonstrations or special events are prohibited.

(b) Demonstrations and special events may be held only pursuant to a permit issued in accordance with the provisions of this section except:

(1) Demonstrations involving 25 persons or less may be held without a permit *provided* that the other conditions required for the issuance of a permit are met and *provided further* that the group is not merely an extension of another group already availing itself of the 25-person maximum under this provision or will not unreasonably interfere with other demonstrations or special events.

(2) Demonstrations may be held in the following park areas without an official permit *provided* that the conduct of such demonstrations is reasonably consistent with the protection and use of the indicated park area and the other requirements of this regula-

tion. The numerical limitations listed below are applicable only for demonstrations conducted without a permit in such areas. Larger demonstrations may take place in these areas pursuant to a permit.

(i) *Franklin Park.* Thirteenth Street, between I and K Streets, NW., for no more than 500 persons.

(ii) *McPherson Square.* Fifteenth Street, between I and K Streets, NW., for no more than 500 persons.

(iii) *U.S. Reservation No. 31.* West of 18th Street and south of H Street, NW., for no more than 100 persons.

(iv) *Rock Creek and Potomac Parkway.* West of 23rd Street, south of P Street, NW., for no more than 1,000 persons.

(v) *U.S. Reservation No. 46.* North side of Pennsylvania Avenue, west of Eighth Street and south of D Street, SW., for no more than 25 persons and south of D Street, SE, for no more than 25 persons.

(c) Permit applications may be obtained at the Office of Public Affairs, National Capital Region, 1100 Ohio Drive, S.W., Washington, D.C. 20242, or at the Main Information Desk of the National Visitor Center, Union Station, Washington, D.C. 20240. Permit applications shall be submitted in writing on a form provided by the National Park Service so as to be received by the Director at least 48 hours in advance of any proposed demonstration or special event. This 48 hour period will be waived by the Director if the size and nature of the 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. Forms shall be received only during the hours of 8 a.m.-4 p.m., Monday through Friday, holidays excepted. All demonstration applications, except those seeking waiver of the numerical limitations applicable to Lafayette Park (paragraph (e)(2) of this section), shall be deemed granted, subject to all limitations and restrictions applicable to said park, unless denied within 24 hours of receipt. However, where a permit has been granted, or is deemed to have been granted pursuant to this subsection,

the Director may revoke that permit pursuant to paragraph (f) of this section.

(1) *White House Area.* No permit shall be issued authorizing demonstrations, except for the White House sidewalk, Lafayette Park and the Ellipse. No permit shall be issued authorizing special events, except for the Ellipse, and except for annual commemorative wreath-laying ceremonies relating to the statues in Lafayette Park.

(2) *Other park areas.* No permits shall be issued authorizing demonstrations or special events in the following other park areas:

(i) The Washington Monument, which means the area enclosed within the inner circle that surrounds the Monument's base, except for the official annual commemorative Washington birthday ceremony.

(ii) The Kennedy Center, which means the area under the administration of the National Park Service within the building known as the John F. Kennedy Center for the Performing Arts and includes the roof terrace and outdoor terraces on the north, south, and west portions of the institution as well as the driveways leading to the parking garages. For the purpose of this section, the term "Kennedy Center" does not include the east building sidewalk, outdoor plaza or grassy areas at the Center.

Demonstrations are permitted on those latter areas *provided* entrances to the Center are not obstructed or vehicular traffic in its vicinity is not impeded.

(iii) The Lincoln Memorial, which means that portion of the park area which is on the same level or above the base of the large marble columns surrounding the structure, and the single series of marble stairs immediately adjacent to and below that level, except for the official annual commemorative Lincoln birthday ceremony.

(iv) The Jefferson Memorial, which means the circular portion of the Jefferson Memorial enclosed by the outermost series of columns, and all portions on the same levels or above the base of those columns, except for the

official annual commemorative Jefferson birthday ceremony.

NOTE: The darkened portions of the diagrams at the conclusion of this section show the areas where demonstrations or special events are prohibited.

(d) Permit application for demonstrations and special events shall be processed in order of receipt, and the use of a particular area shall be allocated in order of receipt of fully executed applications, subject to the limitations set forth in this section: *Provided*, That a permit may be denied in writing upon the personal approval of the Director, or, in his absence or unavailability by an authorized delegate of responsible rank and function upon the following grounds:

(1) A fully executed prior application for the same time and place has been received, and a permit has been or will be granted authorizing activities which do not reasonably permit multiple occupancy of the particular area; in that event, an alternate site, if available for the activity, shall be proposed by the Director to the applicant: *Provided, however*, That the following national celebration events shall have priority use of the particular park area during the indicated period, as follows:

(i) *Christmas Pageant of Peace.* In the oval portion of the Ellipse only, during approximately the last three weeks in December.

(ii) *President's Cup Regatta.* In East Potomac Park for approximately two days during the first week in June.

(iii) *Cherry Blossom Festival.* In the Japanese Lantern area adjacent to the Tidal Basin and on the Ellipse and the Washington Monument Grounds adjacent to Constitution Avenue, between 15th & 17th Streets, NW, for six days usually in late March or early April.

(iv) *Fourth of July Celebration.* On the Washington Monument Grounds.

(v) *Festival of American Folklife.* In the areas bounded on the south by Independence Avenue, NW.; on the north by a line running adjacent to the south side of the Reflecting Pool between 17th Street, NW., and Lincoln Memorial Circle; on the east by 17th Street, NW.; on the west by Lincoln Memorial Circle and 23rd Street, NW.,

for two week period in approximately late June and early July.

(vi) *Columbus Day Commemorative Wreath-Laying.* At the Columbus statue on the Union Plaza on Columbus Day.

(vii) *Inaugural Ceremonies.* The White House Sidewalk and Lafayette Park, exclusive of the northeast quadrant, for the exclusive use of the Inaugural Committee on January 20, 1981.

(viii) Other demonstrations or special events shall be permitted in these particular park areas to the extent that they do not significantly interfere with the National Celebration Events listed in this paragraph. No activity containing structures shall be permitted closer than 50 feet to another activity containing structures without the mutual consent of the sponsors of those activities.

(2) It reasonably appears that the proposed demonstration or special event will present a clear and present danger to the public safety, good order, or health.

(3) The proposed demonstration or special event is of such a nature or duration that it cannot reasonably be accommodated in the particular area applied for; in that event, an alternate site, if available for the activity, shall be proposed by the Director to the applicant; in this connection, the Director shall reasonably take into account possible damage to the park, including trees, shrubbery, other plantings, park installations and statues.

(4) The application proposes activities contrary to any of the provisions of this section or other applicable law or regulation.

(e) Issuance of permits shall be subject to the following limitations:

(1) No more than 750 persons shall be permitted to conduct a demonstration on the White House sidewalk at any one time.

(2) No more than 3,000 persons shall be permitted to conduct a demonstration in Lafayette Park at any one time.

(3) The Director may waive the 3,000 person limitation for Lafayette Park and/or the 750 person limitation for the White House Sidewalk upon a showing by the applicant that good faith efforts will be made to plan and

marshal the demonstration in such a fashion so as to render unlikely any substantial risk of unreasonable disruption or violence. In making a waiver determination, the Director shall consider and the applicant shall furnish at least ten days in advance of the proposed demonstration, the functions the marshals will perform, the means by which they will be identified, and their method of communication with each other and the crowd. This requirement will be satisfied by completion and submission of the same form referred to in paragraph (c) of this section.

(4) No permit shall be issued for a demonstration on the White House Sidewalk and in Lafayette Park at the same time except when the organization, group, or other sponsor of such demonstration shall undertake in good faith all reasonable action, including the provision of sufficient marshals, to insure good order and self-discipline in conducting such demonstration and any necessary movement of persons, so that the numerical limitations and waiver provisions described in paragraphs (e) (1) and (2) of this section are observed.

(5) No permit shall be issued authorizing demonstrations or special events in excess of the time periods below provided that these periods shall be extended for demonstrations only, unless another application requests use of the particular area and said application precludes double occupancy:

(i) White House area, except the Ellipse: Seven days.

(ii) The Ellipse and all other park areas: Three weeks.

(6) The Director may restrict demonstrations and special events weekdays (except holidays) between the hours of 7:00-9:30 a.m. and 4:00 to 6:30 p.m. if it reasonably appears necessary to avoid unreasonable interference with rush-hour traffic.

(7) No special event shall be permitted unless approved by the Director. In determining whether to approve a proposed special event, the Director shall consider and base his determination upon the following criteria:

(i) Whether the objectives and purposes of the proposed special event relate to and are within the basic mis-

sion and responsibilities of National Capital Parks, National Park Service.

(i) Whether the park area requested is reasonably suited in terms of accessibility, size, and nature of the proposed special event.

(iii) Whether the proposed special event can be permitted within a reasonable budgetary allocation of National Park Service funds considering the event's public appeal, and the anticipated participation of the general public therein.

(iv) Whether the proposed event is duplicative of events previously offered in National Capital Parks areas or elsewhere in or about Washington, D.C.

(v) Whether the activities contemplated for the proposed special event are in conformity with all applicable laws and regulations.

(8) In connection with permitted demonstrations or special events, temporary structures, may be erected for the purpose of symbolizing a message or meeting logistical needs such as first aid facilities, lost children areas or the provision of shelter for electrical and other sensitive equipment or displays. Temporary structures may not be used outside designated camping areas for living accommodation activities such as sleeping, or making preparations to sleep (including the laying down of bedding for the purpose of sleeping), or storing personal belongings, or making any fire, or doing any digging or earth breaking or carrying on cooking activities. The above-listed activities constitute camping when it reasonably appears, in light of all the circumstances, that the participants, in conducting these activities, are in fact using the area as a living accommodation regardless of the intent of the participants or the nature of any other activities in which they may also be engaging. Temporary structures are permitted to the extent described above, provided prior notice has been given to the Director, except that:

(i) No structures shall be permitted on the White House sidewalk.

(ii) All such temporary structures shall be erected in such a manner so as not to unreasonably harm park resources and shall be removed as soon

as practicable after the conclusion of the permitted demonstration or special event.

(iii) The Director may impose reasonable restrictions upon the temporary structures permitted, in the interest of protecting the park areas involved, traffic and public safety considerations, and other legitimate park value concerns.

(iv) Any structures utilized in a demonstration extending in duration beyond the time limitations specified in paragraphs (e)(4) (i) and (ii) of this section must upon 24 hours notice be capable of being removed and the site restored or the structure secured in such a fashion so as to not unreasonably interfere with use of the park area by other permittees authorized under this section.

(v) Individuals or groups of 25 persons or less demonstrating under the small group permit exemption of § 50.19(b)(1) shall not be permitted to erect temporary structures other than small lecterns or speakers platforms. This provision is not intended to restrict the use of portable signs or banners.

(9) In connection with permitted demonstrations or special events, sound amplification equipment shall be permitted, provided prior notice has been given to the Director, except that:

(i) No sound amplification equipment shall be used on the White House sidewalk, other than hand-portable sound amplification equipment which the Director determines, in the exercise of his judgment, is necessary for crowd-control purposes.

(ii) The Director reserves the right to limit the sound amplification equipment, so that it will not unreasonably disturb nonparticipating persons in, or in the vicinity of, the area.

(10) Authorized permits may contain additional reasonable conditions and additional time limitations, consistent with this regulation, in the interest of protecting the park site, the use of nearby areas by other persons, and other legitimate park value concerns.

(11) Permits issued under this section do not authorize activities outside of areas under administration by National Capital Parks. Applicants may

also require a permit from the District of Columbia or other appropriate governmental entity for demonstrations or special events sought to be conducted either wholly or in part in other than park areas.

(f) A permit issued for a demonstration is revocable only upon a ground for which an application therefor would be subject to denial under paragraph (d) or (e) of this section. Any such revocation, prior to the conduct of the demonstration, shall be in writing and shall be personally approved by the Director, or, in his absence or unavailability, by an authorized delegate of responsible rank and function. During the conduct of a demonstration, a permit may be revoked by the ranking U.S. Park Police supervisory official in charge if continuation of the event presents a clear and present danger to the public safety, good order or health or for any violations of applicable law or regulation. A permit

issued for a special event is revocable, at any time, in the reasonable discretion of the Director or his authorized delegate.

(g) Information Collection. The information collection requirements contained in this section have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1024-0021. The information is being collected to provide notification to park managers, United States Park Police, Metropolitan Police, and the Secret Service of the plans of organizers of large-scale demonstrations and special events in order to assist in the provision of security and logistical support. This information will be used to further those purposes. The obligation is required to obtain a benefit.

(h) Further information on administering these regulations can be found at 47 FR 24299, June 4, 1982.

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