

P. DANIEL SMITH
NATIONAL PARK SERVICE
Department of Interior
1849 C Street, NW
Washington, DC 20240

September 1, 2018

Dear Director P. Daniel Smith,

The International Center for Not-for-Profit Law works in over one hundred countries to promote the rights to freedom of peaceful assembly, association, and expression. Our lawyers regularly provide technical assistance to governments and organizational partners around the world on laws that regulate peaceful protest and assembly.

We write to express our concern about the National Park Service's proposal to charge protest organizers fees to recover costs associated with protests on the National Mall and Memorial Parks. Introducing such fees would chill individuals' right to protest in Washington DC, violate the US's international commitments, undercut US foreign policy, and make it more difficult for ICNL and our partner organizations to advocate for the freedom of peaceful assembly abroad.

The US has historically been both a fierce defender and global model of the right to peaceful assembly and protest. Demonstrations in Washington DC, such as those on the National Mall, often serve as the most visible example of the fulfillment of this right for the rest of the country and the world.

On August 15, 2018, the National Park Service proposed a number of changes to regulations governing the management of permitted demonstrations and special events on the National Mall and Memorial Parks (RIN 1024-AE45). Change 7.96(g)(3) would "consider requiring permit applicants to pay fees to allow the NPS to recover some of the costs of administering permitted activities that contain protected speech." As the proposal recounts:

These categories could include direct costs associated with event management (other than costs for law enforcement personnel and activities), set up and take down of structures; material and supply costs such as barricades and fencing needed for permitted activities; costs for the restoration, rehabilitation, and clean-up of a permitted area such as sanitation and trash removal; permit application costs;

and costs associated with resource damage such as harm to turf, benches, poles, and walkways.

This proposal, if enacted, would chill peaceful protest activity in the nation's capital. As the NPS points out, protests and demonstrations—especially when attended by large numbers of people—can entail certain direct and indirect costs associated with preparation, management, and cleanup. Charging protest organizers to help cover such costs, however, discourages individuals from exercising their constitutionally protected rights.

Indeed, other countries criticized by the US government as anti-democratic have used similar policies to undermine dissent. For example, in April 2018 the US State Department criticized the government of Belarus for requiring organizers of protests to pay for clean-up services during and after a protest. The State Department rightfully noted that this had a “chilling effect” on potential protest organizers.¹

The US helped create and has endorsed the international framework that enshrines individuals' right to assemble. Article 20 of the Universal Declaration of Human Rights, which the US helped to draft, proclaims that “[e]veryone has the right to freedom of peaceful assembly.” Article 21 of the International Covenant on Civil and Political Rights, likewise drafted in part and ratified by the US, reaffirms this right and clarifies that governments must recognize it. The UN Special Rapporteur charged with articulating best practices in fulfilling the government's obligation has specifically found that protest organizers should not be charged for demonstration-related government services:

The State's obligation to facilitate [the freedom of peaceful assembly] includes the responsibility to provide basic services, including traffic management, medical assistance, and clean-up services. *Organizers should not be held responsible for the provision of such services, nor should they be required to contribute to the cost of their provision.*² (Emphasis added)

The principle that protesters should not have to pay for costs associated with peaceful protests is affirmed by the laws in other advanced democracies as well as by regional and international human rights bodies.³

¹ US Department of State, 2017 Country Reports on Human Rights Practices: Belarus (April 20, 2018), *available at* <https://www.state.gov/j/drl/rls/hrrpt/2017/eur/277143.htm>.

² UN Human Rights Council doc. A/HRC/31/66, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies (February 4, 2016), para. 40, *available at* https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx.

³ UN Human Rights Council doc. A/HRC/20/27, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai (May 21, 2012), para. 31, *available at* https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf.

If the National Park Service were to charge protest organizers in an attempt to recoup costs, it would not only chill protest activity in Washington DC, but it would set a negative global example and undermine US foreign policy. The US government routinely calls on other countries to fully respect individuals' right to freedom of assembly, including through the State Department's annual Human Rights Reports. Restrictive measures that constrain protest rights at home undercut the US government's ability to defend these rights elsewhere.

ICNL engages with local organizations and government officials around the world to develop appropriate laws and regulations for public assemblies. In these conversations, the US is often discussed as a model of best practices. If a fee-charging scheme were instituted in Washington DC, it would make it more difficult to defend human rights around the world.

The freedom to peacefully assemble and protest is a basic human right, not a privilege only to be enjoyed by those who can pay. Just as someone should not be charged to vote in order for the government to recoup the cost of holding an election, protest organizers should not be charged for the government to recoup protest-related costs. We urge the National Park Service to continue not charging cost recovery for protests, in order to ensure that all individuals have free and equal access to this fundamental right.

Sincerely,

Nick Robinson and Elly Page

LEGAL ADVISORS, US PROGRAM

"With regard to the responsibilities of organizers, the Special Rapporteur is of the opinion that 'organizers should not incur any financial charges for the provision of public services during an assembly (such as policing, medical services and other health and safety measures)'."

See also, Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights, Guidelines on Freedom of Peaceful Assembly (2010), para. 32, *available at* <https://www.osce.org/odihr/73405>: "In this light, the costs of providing adequate security and safety measures (including traffic and crowd management, and first-aid services) should be fully covered by the public authorities. The state must not levy any additional financial charge for providing adequate and appropriate policing. Furthermore, organizers of public assemblies should not be required to obtain public-liability insurance for their events. Similarly, the responsibility to clean up after a public assembly should lie with the municipal authorities. To require assembly organizers to pay such costs would create a significant deterrent for those wishing to enjoy their right to freedom of assembly and might actually be prohibitive for many organizers. As such, imposing onerous financial requirements on assembly organizers is likely to constitute a disproportionate prior restraint."