

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**NATIONAL COALITION TO SAVE OUR MALL,**  
c/o 9507 Overlea Drive  
Rockville, MD 20850

**WORLD WAR II VETERANS TO SAVE THE MALL,**  
c/o 725 24th Street, N.W. #517  
Washington, D.C. 20037

**COMMITTEE OF 100 ON THE FEDERAL CITY,**  
1800 Massachusetts Ave., N.W., Suite 600  
Washington, D.C. 20036

and

**D.C. PRESERVATION LEAGUE ,**  
1815 Pennsylvania Ave., N.W., Suite 200  
Washington, D.C. 20006

Plaintiffs,

v.

**BRUCE BABBITT,,** in his official capacity as  
Secretary of the Interior,

**U.S. DEPARTMENT OF THE INTERIOR,,**  
an Agency of the United States,  
1849 C Street, N.W.  
Washington, D.C. 20240

**ROBERT STANTON,,** in his official capacity as  
Director, National Park Service,  
1849 C Street, N.W.  
Washington, D.C. 20240

and

**J. CARTER BROWN**, in his official capacity as  
Chairman, Commission of Fine Arts,  
441 F Street, N.W., Suite 512  
Washington, D.C. 20001-2728 <

**COMMISSION OF FINE ARTS**, an Agency of the United States,  
441 F Street, N.W., Suite 512  
Washington, D.C. 20001-2728

**HARVEY GANTT**, in his official capacity as  
Chairman, National Capital Planning Commission,  
1325 G Street, N.W. 10th Floor  
Washington, D.C. 20576,

**NATIONAL CAPITAL PLANNING COMMISSION**,  
an Agency of the United States,  
801 Pennsylvania Avenue, N.W. - Suite 301  
Washington, D.C. 20004-2682

and

**AMERICAN BATTLE MONUMENTS COMMISSION**,  
an Agency of the United States,  
20 Massachusetts Avenue, N.W., Suite 5127  
Washington, D.C. 20314,

Defendants.

## **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

### **INTRODUCTION**

1. The National Coalition to Save Our Mall, World War II Veterans to Save the Mall, Committee of 100 on the Federal City, and D.C. Preservation League ("Plaintiffs") file this complaint for declaratory and injunctive relief challenging the lawfulness of the actions of Defendants Department of the Interior and National Park Service ("NPS"), the Commission of Fine Arts ("CFA"), the National Capital Planning Commission ("NCPC"), and the American Battlefield Monuments Commission ("ABMC"), in approving or recommending the approval of the location and design of a new World War II Memorial in Washington, D.C., to be sited at the historic Rainbow Pool at the

eastern end of the Lincoln Memorial Reflecting Pool, between the Lincoln Memorial and the Washington Monument, in West Potomac Park on the great east-west axis of the National Mall.

2. The memorial design approved by Defendants calls for the destruction of the historic Rainbow Pool, and the creation of a new memorial plaza lowered six feet below grade and filling the central panel of the Mall from tree line to tree line. The memorial will include 56 seventeen-foot-high granite pillars on top of the 6-foot walls that enclose the plaza, and two 41-foot-high triumphal arches. The design will encroach within and impair the important east-west axial vista along the National Mall and will block the public passageway through this area between the Lincoln Memorial and the Washington Monument, and limit the public's use of this historically open space for significant national social demonstrations and gatherings. As a result, the federal Advisory Council on Historic Preservation, the independent agency created by Congress to enforce and implement the nation's historic preservation policies, has determined that the memorial will have serious and unresolved adverse effects on the National Mall and the Lincoln Memorial Grounds, which are exceptionally significant American landmarks.

3. The Defendants have violated their congressionally mandated responsibilities under the Commemorative Works Act in their respective reviews and approvals of the design of memorial by failing to ensure that the memorial is "located as to prevent interference with, or encroachment upon, any existing commemorative work," by failing to protect the Mall's historic open space, existing public use, and integrity of the design of the 1901-02 McMillan Plan for the Nation's Capital. 40 U.S.C. §§ 1001, 1007(b)(2) .

4. Defendants violated the National Environmental Policy Act ("NEPA"), 42 U.S.C. §4332(2)(C), and applicable implementing regulations, see 40 C.F.R. Part 1500; NPS-12, National Environmental Policy Act Guidelines (1997), by failing to evaluate the impacts of the design for the World War II Memorial that was actually approved, and instead evaluating a different design that involved less harmful impacts on nationally significant historic and cultural resources, and by failing to give any consideration to the impacts of "ancillary elements," including the proposed "contemplative area," a new road and parking and bus drop-off areas, and the construction of a ranger station and a comfort stations, prior to deciding that the project would have no significant impact on the environment, and by failing to prepare an Environmental Impact Statement ("EIS").

5. Defendants violated Section 106 and Section 110(a) of the National Historic Preservation Act, 16 U.S.C. §§470f, 470h-2(a), by failing to give the Advisory Council on Historic Preservation an opportunity comment on either the selection of the Rainbow Pool site on the National Mall, or the design criteria guiding the memorial's design, and by failing to take into account the effect of the memorial, prior to approving its location and design, on the important characteristics of the National Mall that contribute to its national historic significance, including the adverse effect of the memorial on the Lincoln Memorial Grounds and the nationally significant historic vistas between the Reflecting and Rainbow Pools and the Washington Monument.

6. Defendants have failed to give the public notice or an opportunity comment on either the selection of the Rainbow Pool site or the design criteria guiding the memorial's design, in violation of the of the Advisory Council's regulations implementing Section 106, 36 C.F.R. Part 800, and, in the case of Defendant American Battlefield Monuments Commission ("ABMC"), in violation of the Federal Advisory Committee Act ("FACA"), 5 U.S.C. App. II, Sec. 10(a).

## JURISDICTION AND VENUE

7. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1361, 2201, and 2202. Venue is proper in this district under 28 U.S.C. §§1391(b) and (e) and 5 U.S.C. § 703.

## PARTIES

8. The National Coalition to Save Our Mall is a nonprofit corporation representing a coalition of professional and civic organizations, concerned artists, historians, and citizens, formed in opposition to the proposed design for the World War II Memorial on the National Mall. The mission of the National Coalition is to protect and preserve the National Mall as our national gathering place and symbol of Constitutional principles and ensure that proposals for new memorials, security barriers, service buildings and roads do not encroach on and detract from the Mall's historical and cultural integrity, its open spaces and sweeping vistas, and its significance in American public life. The National Coalition and its individual and organizational members use, enjoy, and derive benefit from the historic and cultural resources of the National Mall. Their use, enjoyment, and appreciation of the Mall will be threatened and adversely affected by the Defendants' actions complained of herein, absent relief from this Court.

9. World War II Veterans to Save the Mall is an unincorporated association formed to represent the voice of the millions of "citizen soldiers" of World War II who actually fought in that war and who oppose the location and design of the proposed World War II Memorial at the Rainbow Pool site on the National Mall. World War II Veterans to Save the Mall and its members use, enjoy, and derive benefit from the historic and cultural resources of the National Mall. Their use, enjoyment, and appreciation of the Mall will be threatened and adversely affected by the Defendants' actions complained of herein, absent relief from this Court.

10. The Committee of 100 on the Federal City, formed in 1922, is the District's oldest planning and advocacy organization. Its mission is to safeguard and advance the fundamental planning, environmental and aesthetic values inherited from the L'Enfant Plan and the McMillan Commission that give our nation's capital its historic distinction, natural beauty and overall livability. The Committee of 100 and its individual members use, enjoy, and derive benefit from the historic and cultural resources of the National Mall. Their use, enjoyment, and appreciation of the Mall will be threatened and adversely affected by the defendants' actions complained of herein, absent relief from this Court.

11. D.C. Preservation League ("DCPL") is a private, nonprofit organization whose mission is to preserve, protect, and enhance the historic and built environment of Washington, D.C. through advocacy and education. D.C. Preservation League and its individual members use, enjoy, and derive benefit from the historic and cultural resources of the National Mall. Their use, enjoyment, and appreciation of the Mall will be threatened and adversely affected by the Defendants' actions complained of herein, absent relief from this Court.

12. Defendant Bruce Babbitt is sued in his official capacity as the U.S. Secretary of the Interior. In that capacity, defendant Babbitt is responsible for the administration, operations, and activities of the Defendant Department of the Interior, including the administration, operations, and activities of the National Park Service, an agency within the Department of the Interior. He is responsible for ensuring that the Department of the Interior and the NPS complies with the requirements of the Commemorative Works Act, NEPA, and the NHPA.

13. Defendant Department of the Interior is an agency of the United States and is responsible for the proper and lawful management of the federal public lands committed to its control, including the lands administered by the National Park Service.

14. Defendant National Park Service is an agency within the Department of the Interior directly responsible for the proper and lawful management of the national park system lands committed to its control, including the National Mall and the Lincoln Memorial Grounds.

15. Defendant Robert Stanton is sued in his official capacity as the Director of the National Park Service. In that capacity, defendant Stanton is responsible for the administration, operations, and activities of the National Park Service. He is responsible for ensuring that the NPS complies with the requirements of the Commemorative Works Act, NEPA, and the NHPA.

16. The Commission of Fine Arts ("CFA") is a federal agency established by Congress in 1910, with responsibility for reviewing the design of public buildings erected within the limits of Washington and private and semi-public buildings erected within certain designated areas, including the monumental core, and approving the location and design of statues, fountains, and monuments in public squares, streets, and parks in the District of Columbia. 40 C.F.R. §§ 104, 121. As part of its statutory duties, the CFA is also charged with responsibility for reviewing and approving proposed commemorative works in the District of Columbia and its environs. 40 U.S.C. § 1007(a).

17. Defendant J. Carter Brown is sued in his official capacity as Chairman of the Commission of Fine Arts. He is responsible for ensuring that the CFA complies with the requirements of the Commemorative Works Act, NEPA, and the NHPA.

18. Defendant National Capital Planning Commission ("NCPC") is the federal agency responsible for land use planning in the Nation's Capital in accordance with the National Capital Planning Act, 40 U.S.C. §71a(a)(1). As part of its statutory duties, NCPC is responsible for reviewing and approving proposed commemorative works within the District of Columbia and its environs. Id. § 1007(a).

19. Defendant Harvey Gantt is sued in his official capacity as Chairman of the NCPC. He is responsible for ensuring that the NCPC complies with the requirements of the Commemorative Works Act, NEPA, and the NHPA.

20. The American Battlefield Monuments Commission ("ABMC") was created by Congress in 1922 to, among other things, prepare plans and estimates for the erection of suitable memorials to commemorate the services of the American Armed Forces. 36 U.S.C. §§ 121, 123. The ABMC "shall consist of not more than eleven members who shall be appointed by the President, who shall also appoint one officer of the regular Army to serve as its secretary. The members and secretary shall serve at the pleasure of the President, who shall fill any vacancies that from time to time occur. 40 U.S.C. 121.

## **FACTS**

In 1993, Congress authorized the construction of a memorial on Federal land in the District of Columbia or its environs to honor members of the Armed Forces who served in World War II and to commemorate the United States participation in the war. *See* Pub. L. 103-32, 107 Stat. 90 (May 25, 1993). The American Battle Monuments Commission ("ABMC"), with the advice and assistance of a 12-member World War II Memorial Advisory Board ("MAB") was charged with responsibility for selecting a location for the memorial, developing a design, and raising private funds to support the memorial's construction. *Id.* The legislation directed that the memorial be established in accordance with the Commemorative Works Act, 40 U.S.C. §1001 et seq., which requires that the National Park Service submit the site and design for review and approval by the National Capital Planning Commission ("NCPC") and the Commission of Fine Arts ("CFA"), and consultation by the National Capital Memorial Commission ("NCMC"). *Id.* § 1007.

In October 1994, Congress approved the location of the World War II Memorial in the capital's monumental core area, an area generally encompassing the cross axes of the Mall extending from the U.S. Capitol to the Lincoln Memorial, and from the White House to the Jefferson Memorial and adjacent areas. Pub. L. No. 103-422, 108 Stat. 4356 (Oct. 25, 1994).

On January 20, 1995, the ABMC and the MAB held a joint site-selection session attended by representatives from the CFA, the NCPC, the NCMC, the NPS, and the U.S. Army Corps of Engineers, to consider potential sites for the World War II Memorial. Seven sites were considered at this meeting: the Capitol Reflecting Pool area (between Third Street and the Reflecting Pool); the Tidal Basin (northeast side, east of the Tidal Basin parking lot and west of the 14th Street Bridge access road); West Potomac Park (between Ohio Drive and the northern shore of the Potomac River, northwest of the FDR Memorial site); Constitution Gardens (east end, between Constitution Avenue and the Rainbow Pool); the Washington Monument grounds (at Constitution Avenue

between 14th and 15th Streets, west of the National Museum of American History); Freedom Plaza (on Pennsylvania Avenue between 14th and 15th Streets); and Henderson Hall, adjacent to Arlington National Cemetery (Henderson Hall was dropped from consideration because of its unavailability). No consideration was given to a location at the site of the Rainbow Pool on the National Mall at this meeting..

On March 2, 1995, the ABMC and the MAB unanimously selected the Constitution Gardens site on the National Mall as the most appropriate site out of the six remaining alternatives.

At the May 9, 1995, meeting of the NCMC, and again at the June 20, 1995 meeting, following consultation with the National Park Service, the ABMC and the MAB made their recommendation to the NCMC, and the NCMC approved, the selection of Site 4 (Constitution Gardens), with Site 1 (Capitol Reflecting Pool) as the second choice. No consideration was given to a location at the site of the Rainbow Pool on the National Mall at these meetings.

In the morning of July 27, 1995, at a public meeting of the Commission of Fine Arts, the ABMC recommended the selection of Site 4 (Constitution Gardens) as the site of the World War II Memorial. The CFA concluded that the Constitution Gardens site would not be commensurate with the historical significance of World War II, and requested that further consideration be given to Freedom Plaza (Site 6), along with several sites near a new alternative, the Columbia Island site and the traffic circle at the west end of the Arlington Memorial Bridge (Site 7).

That afternoon, on July 27, 1995, at a public meeting of the National Capital Planning Commission, the NPS and the ABMC recommended the selection of Site 4 (Constitution Gardens) as the site of the World War II Memorial. The NCPC approved the Site 4 (Constitution Gardens) as the most appropriate site for the memorial.

Subsequently, the ABMC and the MAB reviewed both the Columbia Island site and other sites along Memorial Drive, and a new site: the Rainbow Pool site at the east end of the Lincoln Memorial Reflecting Pool on the major east-west axis of the National Mall. By letter dated August 6, 1995, the ABMC proposed to the CFA, NCPC, and NCMC, that the World War II Memorial be re-located to the Rainbow Pool site on the major east-west axis of the National Mall in lieu of the Constitution Gardens site previously approved by the NCPC. The public was provided with no notice of any meeting at which the ABMC arrived

at this decision to endorse the Rainbow Pool site, nor did the ABMC consult with the NCMC about this site.

The National Mall is the 2.25-mile-long expanse of landscape stretching from the U.S. Capitol to the Memorial Bridge, as conceived by Pierre L'Enfant in 1791 and extended to to the Lincoln Memorial by the McMillan Commission Plan of 1901-02. The vistas along the east-west axis of this greensward are some of the oldest, most symbolic, and most majestic in the Nation, extending from the U.S. Capitol to the Washington Monument and the Lincoln Memorial and Memorial Bridge. The open space and vistas from the Lincoln Memorial to the Washington Monument are some of the most important elements of the McMillan Plan of 1901-02, and its important features include the double rows of elm trees on each side of the Reflecting and Rainbow Pools and the reflections of the monuments in the clear water of the pools. The National Mall is listed as a historic site in the National Register of Historic Places and is also a contributing feature of the historic L'Enfant Plan of the City of Washington. The cultural significance of the National Mall has increased in the last 40 years as a result of the Mall's associations with the social and political activities of the twentieth century, and especially its association with events important to the civil rights movement.

The Rainbow Pool is the oval-shaped pool located at the eastern end of the Lincoln Memorial Reflecting Pool. The Rainbow Pool and the Reflecting Pool are integral components of the designed historic landscape of the Lincoln Memorial Grounds. The McMillan Plan of 1901-02 called for a long Reflecting Pool to provide a formal water element connecting the Washington Monument and the Lincoln Memorial. This element, as implemented by the Reflecting and Rainbow Pools, is one of the singularly important features of the extended vista that the McMillan Plan created on the grand east-west axis between the Lincoln Memorial and the Washington Monument.

The Rainbow Pool is presently the location for ceremonial arrivals of visiting Heads of State by helicopter, and it is also the location where the annual Fourth of July fireworks display are launched.

On August 19, 1995, the Commission of Fine Arts published a generic notice in the Federal Register of a September 19, 1995 meeting of the CFA to consider various matters, including "memorials." The public was not provided any notice that the Rainbow Pool would be considered as an alternate site for the World War II Memorial at the CFA's September 19, 1995 meeting.



At its September 19, 1995, meeting, the ABMC recommended re-locating the World War II Memorial to the Rainbow Pool site, and the CFA granted final approval of the Rainbow Pool site on the major east-west axis of National Mall. No member of the public testified before the Commission on this agenda item.

The National Capital Planning Commission's advance Tentative Agenda, issued on September 14, 1995, indicated the following agenda item for the NCPC's October 5, 1995 meeting: "File 2874, World War II Memorial - Alternative Site Study." By letter dated September 22, 1995, the ABMC and the National Park Service requested that the NCPC reconsider its prior decision approving the Constitution Gardens Site, and instead give final approval to the Rainbow Pool site for the World War II Memorial at the NCPC's meeting scheduled for October 5, 1995. The public was not provided any notice that a new site for the World War II Memorial would be considered at the NCPC's October 5, 1995 meeting.

On October 5, 1995, the NCPC rescinded its July 27, 1995 approval of the Constitution Gardens site and approved the location for the World War II Memorial at the Rainbow Pool site on the Mall's primary east-west axis, with the proviso that design elements or sculptural features associated with the new memorial should not visually intrude upon the open area between the parallel tree lines of the east-west axis containing the Lincoln Memorial Reflecting Pool as viewed from the Lincoln Memorial and the Washington Monument.

The National Capital Memorial Commission was never consulted about the selection of the Rainbow Pool as a site for the World War II Memorial prior to the CFA and NCPC's approval of this site.

None of the federal agencies that were required to approve the site of the World War II Memorial (the NPS, the NCPC, and the CFA) consulted with the Advisory Council on Historic Preservation or the District of Columbia State Historic Preservation Officer ("DC SHPO") prior to final approval of the Rainbow Pool site for the memorial.

The public was never provided notice that the Rainbow Pool site was being considered as a site for the World War II Memorial prior to final approval of the site by the CFA and the NCPC. As a result, members of the public never had an opportunity to provide their views on the selection of this site by the two agen

cies. In October, 1995, the ABMC, in consultation with the NCMC, developed design guidelines and restrictions governing the submission of proposed designs for the World War II Memorial. Neither the federal Advisory Council on Historic Preservation nor the D.C. Historic Preservation Review Board were provided with an opportunity to review and comment prior to the adoption of these design guidelines, or on the structure of the design competition. The guidelines stated that design submissions should include approximately 78,000 square feet devoted to "special rooms or halls of honor and remembrance, multimedia interactive educational facilities, an auditorium theater, and a visitor information center." These guidelines also included the requirements that the memorial not detract from the vista framed by the row of elms along the Reflecting and Rainbow Pools, and that the design be respectful and compatible in configuration and quality with its historic surroundings.

By letter dated February 21, 1998 to the DC SHPO, with a copy to the Advisory Council on Historic Preservation, the NPS advised the SHPO that the NPS had selected, and the NCPC, CFA, and NCPC had approved, the Rainbow Pool site as the site for the World War II Memorial. Despite the fact that neither the SHPO nor the Advisory Council had been consulted prior to the selection of this site, the NPS requested that the DC SHPO to concur in the NPS' a determination that "the designation of the Rainbow Pool site would have no adverse effect on the National Register qualities of the Mall, the Washington Monument Grounds or the surrounding monumental Area." On information and believe, the DC SHPO and the Advisory Council refused to concur in this determination in the absence of any design or design concept for the memorial.

In April, 1996, the ABMC and the General Services Administration announced a national competition to select the design for the World War II Memorial. The design competition was conducted in two stages. The first step was the submission of qualifications and letters of interest in response to an April 19, 1996 announcement in "Commerce Business Daily," by candidates whose qualifications and design concepts were reviewed by a panel of architects, engineers, landscape architects, and other professionals.

In August 1996, six finalists were selected and paid a \$75,000 stipend each to assemble a full design team and to submit a design concept to a panel of reviewers.

On January 17, 1997, President Clinton announced that the winner of the design competition was Architect Friedrich St. Florian. The winning design

consisted of a paved plaza, lowered 15-feet below grade, enclosed at the north and south by semi-circular structures consisting of 25 40-foot high columns and 50-foot high walls and sloping earthen berms, inside of which would be housed 43,000 square feet of educational and exhibition space.

By letter dated April 23, 1997 to the NCPC, Richard Moe, President of the National Trust for Historic Preservation, urged that the NCPC give additional consideration to alternative sites for the World War II Memorial other than the National Mall, Rainbow Pool site, stating "A modest memorial on this site is almost sure to be overwhelmed by the sweeping grandeur of the Mall; on the other hand, a memorial that is too grand will compromise the integrity of a landscape that is such an important part of the cultural heritage of all Americans."

By letter dated July 21, 1997, the NPS submitted the winning design concept to the D.C. Historic Preservation Review Board and the federal Advisory Council on Historic Preservation, for their review and comment, pursuant to Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f.

At a meeting on July 24, 1997, the Commission of Fine Arts reviewed the design concept presented by St. Florian, and specifically requested that the "cavernous and unpromising" underground interior space as well as the stone columns be eliminated, and that the earth berms be lowered or removed. The CFA refused to consider any public comments about the selection of the Rainbow Pool site at that meeting.

At a meeting on July 31, 1997, the NCPC rejected the general design concept, and requested that the ABMC and the NPS submit a revised design concept that, among other things, would reduce the mass and scale of the memorial, and would better integrate the design into the historic and park-like setting of the National Mall. The NCPC refused to consider any public comments about the selection of the Rainbow Pool site at that meeting.

By letter dated September 18, 1997, the Advisory Council on Historic Preservation agreed to defer its review of the design for the World War II Memorial, after being advised by the NPS that changes to the design were in progress. The Advisory Council also requested additional documentation from the NPS concerning the characteristics of the affected historic properties that qualify these properties for the National Register of Historic Places.

On May 13, 1998, the National Park Service made available for a 30-day public review an Environmental Assessment ("EA") for the World War II Memorial.

The EA listed the seven original alternatives that had been considered and rejected by the ABMC in 1995, but the EA only evaluated two alternatives: constructing a memorial at the Rainbow Pool site, and taking "no action."

The EA evaluated the impacts of a new design concept for the World War II Memorial at the Rainbow Pool site, which had not yet been reviewed or approved by the CFA or the NCPC. This new design concept eliminated the underground interior space featured in the original design concept, and instead consisted of a lowered plaza surrounding a pool, enclosed by parapet walls surmounted by a wrought iron fence, and flanked to the north and south by 36-foot tall granite memorial arches marking the entry to the memorial. The EA noted that the final design would include as-yet-undetermined iconography, inscriptions, and sculptural elements, as well as the following roadway modifications: construction of a new road cutting through the all between 17th Street and Independence Avenue, visitor drop-off and pick-up points, and handicapped parking. EA, at 26.

The EA acknowledged that the proposed memorial would have an adverse effect on the significant National Register-listed qualities of the Rainbow Pool itself, which would be demolished as part of the memorial; on the Reflecting Pool and Lincoln Memorial complex, by altering the designed elements of the formal landscape, and by altering and destroying open green space for the construction of the new roadway and parking, as well as by the alterations to Constitution Avenue. However, the EA determined that this revised design concept would not result in any adverse impacts to the Mall's significant vistas in the environs of the Rainbow Pool, based on the transparency of the memorial's metal architectural screen (*i.e.*, the wrought iron fence), which permitted views beneath the tree canopy. The EA also noted that the memorial would result in environmental impacts, due to the fact that the Rainbow Site was constructed in a floodplain, and on landfill containing high levels of soil contaminants, including petroleum, benzene, and benzoic acid.

On May 21, 1998, the Commission of Fine Arts approved the revised design concept for the World War II Memorial, but requested that additional consideration be given to a number of the design elements, including the metal perimeter screen, and the mass of the gateway arches, and to providing access through the plaza on the west side.

On May 28, 1998, the D.C. Historic Preservation Review Board reviewed the revised design concept pursuant to its responsibilities under Section 106 of the National Historic Preservation Act. The Review Board agreed with the NPS that the destruction of the historic Rainbow Pool to create the new plaza and

pool would constitute an adverse effect on the National Register characteristics of the National Mall, as would the construction of a new roadway through the existing open space south of the memorial. Based on the vista analysis of the design reviewed in the EA, the Review Board agreed that the revised design concept would not detract from the vista between the Lincoln Memorial and Washington Monument because the transparency of the wrought iron fence would permit views under the elms.

By letter dated June 9, 1998, the NCPC transmitted its comments to the NPS on the draft EA for the World War II Memorial. In its comments, the NCPC requested additional analysis of the various alternatives for establishing a new helicopter landing area, and additional information about daily visitation, flood control management, impacts on the rows of elm trees, traffic, construction, noise, and visual impacts.

Despite the fact the NCPC had not yet reviewed or approved this revised design concept evaluated in the EA, and despite the fact that the CFA had requested modifications to this revised design, the NPS, on July 2, 1998, issued a formal "Decision Notice and Finding of No Significant Impact on Environmental Assessment For the National World War II Memorial." That document stated that "NPS has selected the preferred alternative which is . . . the establishment of a National World War II Memorial on a 7.4-acre site at the Rainbow Pool consistent with the design concept presented as the preferred alternative in the EA." Decision Notice, at 1-2. The Decision Notice stated that "*this* design concept will not result in any adverse impacts to the significant vistas in the environs of the Rainbow Pool." *Id.* at 5. The Decision Notice acknowledged that the NPS had not completed the required reviews and consultations under Section 106 of the NHPA, stating instead that "a Section 106 Memorandum of Agreement . . . will be finalized before the NPS issues . . . the construction permit called for by the Commemorative Works Act." *Id.* at 8. The Decision Notice acknowledged that the impacts of constructing a new helicopter landing area on the historic Washington Monument grounds, and associated roads and parking, had not been analyzed. *Id.* at 4. The Decision Notice then concluded that the project would not have a significant impact on the human environment, and thus would not require the preparation of an Environmental Impact Statement ("EIS"). *Id.* at 9.

On July 9, 1998, the NCPC reviewed and approved the revised design concept presented in the EA, subject to further NCPC review of the complete program and design for all embellishments, including sculpture, emblems, plaques, inscriptions, and seals, and the clarification of pedestrian gathering places and

circulation patterns within the memorial plaza. NCPC requested that the ABMC, in preparing preliminary site and building plans, provide direct pedestrian access to the memorial plaza from the west, define the landscape treatment, and provide additional seating areas in the memorial plaza.

In May, 1999, the NPS and the ABMC submitted preliminary site and building plans containing a third revision of the design concept of the memorial to the NCPC and the CFA. This third revised design concept made substantial changes in the design concept which exacerbated the memorial's adverse effect on the National Mall. Specifically, the third revised design increased the height of the memorial arches from 36 to 41 feet, as well as their width, replaced the wrought iron fence surrounding the plaza with 56 17-foot high granite pillars forming two semi-circles between the edges of the Reflecting Pool and the rows of trees lining the Reflecting and Rainbow Pools, and added a "sacred precinct" sunk six feet below the existing grade and enclosed by a ten-foot wall and flanking waterfalls on the west. This third revised design completely blocked pedestrian access through the memorial, and obstructed the historic open vistas between the Reflecting Pool and the flanking double rows of elms.

On May 20, 1999, the CFA reviewed and approved the preliminary site and building plans for the second revised design concept. The CFA again refused to consider any public comments about the selection of the Rainbow Pool site.

On June 3, 1999, the NCPC reviewed and approved the preliminary site and building plans for the second revised design concept. The NCPC again refused to consider any public comments about the selection of the Rainbow Pool site.

In July, 2000, the NPS and the ABMC submitted the final site and building plans to the NCPC and CFA for review. Design elements never present in prior design iterations included a new "Field of 4000 Gold Stars" on the wall enclosing the memorial plaza on the west, the relocation of an as-yet-undecided sculptural element (the "Light of Freedom") to the center of the pool in the memorial plaza, a proposed "contemplative area" to the north of the memorial, and proposed ranger station and comfort station.

On July 14, 2000, the NPS forwarded to the Advisory Council on Historic Preservation a draft Memorandum of Agreement ("MOA"), by which the NPS proposed to take into account the effects of the World War II Memorial on historic properties.

The NPS also forwarded to the Advisory Council a completed National Register nomination for East and West Potomac Parks and a final Cultural Landscape Report for the Lincoln Memorial Grounds. These reports show that the Rainbow Pool and the Reflecting Pool are "integral components of the designed historic landscape of the Lincoln Memorial," and that the "Lincoln Memorial Grounds contribute to the East and West Potomac Parks Historic District, based on National Register Criteria A and C in the areas of Architecture, Art, Landscape Architecture and Commemoration." NPS, East and West Potomac Parks Historic District - Revised National Register Nomination, at Section 7, page 15 (July 16, 1999) (emphasis added). The Cultural Landscape Report describes the Lincoln Memorial Grounds as an "important commemorative landscape." NPS, Cultural Landscape Report: West Potomac Park - Lincoln Memorial Grounds, at 8 (August, 1999)(emphasis added). According to this report, the Lincoln Memorial Grounds have gained added national cultural significance based on their role as a forum for public demonstrations for racial and social justice on a national scale, from the 1939 Marion Anderson concert, to Martin Luther King's "I Have A Dream" speech in 1963, and continuing into the 1990's. Id. at 168. These NPS studies were dated July and August, 1999, but were withheld from the public for a full year, as well as from the Advisory Council of Historic Preservation and the D.C. Historic Preservation Review Board, despite the Advisory Council's specific request for this documentation in September, 1997.

On July 20, 2000, the CFA reviewed and approved the final site and building plans for this third revised design concept, and requested additional study of the proposed lighting plan, the stars on the "wall of freedom," and requested more information on the proposed ranger station, the comfort station, and the new contemplative area.

On July 25, 2000, the Advisory Council on Historic Preservation notified the National Park Service that, due to the high level of public interest, the exceptional values at stake, and the short time remaining for the NPS to complete its various reviews, the Council had decided to terminate consultation under Section 106. The Advisory Council stated that it would convene a panel of Council members, who would conduct a public hearing to receive testimony from the proponents and the public on the project, and then the Advisory Council would provide formal comments to the NPS in accordance with 36 C.F.R. § 800.7.

On August 2, 2000, the D.C. State Historic Preservation Officer ("DC SHPO"), the ABMC, and the National Park Service, executed an agreement identifying certain measures that will be carried out by the NPS during the design and

construction process for the World War II Memorial. The Advisory Council on Historic Preservation did not sign this agreement.

By letter dated September 5, 2000, Cathryn Slater, Chair of the Advisory Council on Historic Preservation, issued the Advisory Council's formal comments on the proposed the World War II Memorial. First, the Council expressed concern about the NPS's "approach to the requirements of Section 106 and the limited nature of public involvement in the site and design selection process," stating:

As this case demonstrates, among the most critical issues faced by NPS and its partners under the Commemorative Works Act is that of site selection. For many years, the Council has encouraged the NPS to involve the Council in the early stages of memorial development when there can be meaningful consideration of alternatives. Regrettably, such early consultation on the World War II Memorial did not occur. The NPS did not consult with the Council on either site selection or the design competition. When the NPS did bring the Council into the process in July 1997, the most critical aspects of the memorial proposal were firmly set. Consequently, only limited opportunity has existed under Section 106 to consider alternative sites or designs.

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When major changes to an exceptionally significant American Landmark are contemplated, it is essential that citizens be given an opportunity both to understand these changes and to express their views on them.

The Advisory Council also made specific findings that the World War II Memorial would have "serious and unresolved adverse effects on the preeminent historic character of the National Mall," stating:

The National Mall is a site unique in American history. It is an architectural and landscape expression of great beauty, rich with historical association. But more than that, it has come to symbolize our Nation's democratic ideals. Its open vistas and traditional uses have enabled it to serve as truly common ground for all Americans. . . . Certain adverse effects of this proposal became inevitable upon its selection: the demolition and reconstruction of the Rainbow Pool, the dedicated use of existing open spaces in the premier historic landscapes, and permanent alteration of significant vistas and views of the McMillan Plan, in particular the axial vista from the Washington Monument to the Lincoln Memorial.

On September 13, 2000, Defendant Bruce Babbitt, Secretary of the Interior, wrote to the Advisory Council. The Secretary's letter did not respond to the Advisory Council's comments, but instead, enclosed a memorandum from Robert Stanton, Director of the National Park Service, expressing the NPS's disagreement with the Advisory Council's findings.

On September 21, 2000, the NCPC approved the final site and building plans for the World War II Memorial, including the location of the "Light of Freedom" sculptural element in the center of the memorial plaza. The NCPC requested that the final plans for design of this sculptural element and the final lighting plan for the memorial be submitted for later review, due to concerns that the sculptural element could obstruct the views between the Lincoln Memorial and the Washington Monument, and that the nighttime lighting reflecting off the gold stars could adversely affect the existing lighting of the Lincoln Memorial and the Washington Monument. The NCPC also deferred its review of the new roadway and handicapped parking area to be cut through the Mall south of the memorial; the revised bus turn-outs north of the memorial adjacent to Constitution Gardens for Tourmobile and bus pick-up; the new



"contemplative area" north of the memorial; and the new ranger station and comfort station south of the memorial.

On September 22, 2000, the NCPC notified the public that these "ancillary elements" (contemplative area, roadway additions, ranger station, and comfort station) would be reviewed at the NCPC's meeting scheduled in less than two weeks for October 5, 2000.

## **COUNT I**

### **(The Commemorative Works Act of 1986, 40 U.S.C. § 1001 *et seq.*)**

Plaintiffs repeat and reallege the foregoing allegations.

The Commemorative Works Act was enacted by Congress in 1986 for the following purposes:

(a) to preserve the integrity of the comprehensive design of the L'Enfant and McMillan plans for the Nation's Capital;

(b) to ensure the continued public use and enjoyment of open space in the District of Columbia;

(c) to preserve, protect and maintain the limited amount of open space available to residents of, and visitors to, the Nation's Capital; and,

(d) to ensure that future commemorative works in areas administered by the National Park Service and the General Services Administration in the District of Columbia and its environs (1) are appropriately designed, constructed, and located and (2) reflect a consensus of the lasting national significance of the subjects involved.

### **40 U.S.C. § 1001.**

The Commemorative Works Act provides for specific criteria governing site and design approval of proposed commemorative works, as follows:

(a) Any person authorized by law to establish a commemorative work in the District of Columbia and its environs shall comply with each of the following requirements before requesting the permit for the construction of the commemorative work:

(1) Such person *shall consult with the National Capital Memorial Commission regarding the selection of alternative sites and designs for the commemorative work.*

(2) Following consultation in accordance with paragraph (1), the Secretary [of the Interior] or Administrator [of GSA] (as appropriate) shall submit, on behalf of such person, site and design proposals to the Commission of Fine Arts and the National Capital Planning Commission for their approval.

(b) In considering site and design proposals, the Commission of Fine Arts, the National Capital Planning Commission and the Secretary and Administrator shall be guided by (but not limited by) the following criteria:

(1) to the maximum extent possible, a commemorative work shall be located in surroundings that are relevant to the subject of the commemorative work;

(2) *a commemorative work shall be so located as to prevent interference with, or encroachment upon, any existing commemorative work and to protect, to the maximum extent practicable, open space and existing public use;* and

(3) a commemorative work shall be constructed of durable material suitable to the outdoor environment. Landscape features of commemorative works shall be compatible with the climate.

#### 40 U.S.C. §1007 (emphasis added).

The NPS' Cultural Landscape Report for the Lincoln Memorial Grounds identified the Rainbow Pool and its vistas as integral components of the Lincoln Memorial Grounds, an existing commemorative work, as well as important contributing elements of the design of the McMillan Plan for the National Capital.

The design of the World War II Memorial, as approved by Defendants, will encroach upon the grounds of the Lincoln Memorial and obstruct the important axial vista from the steps of the Lincoln Memorial across the length of the Reflecting Pool and the Rainbow Pool, to the Washington Monument, both of which are important parts of existing commemorative works.. Further, the memorial's 56 17-foot granite columns, monumental arches, and stone walls will enclose the Mall's historically significant open space, impede pedestrian access, and interfere with existing public use of the National Mall. The memorial, as designed, will also undermine the integrity of the design of the McMillan Plan for the Nation's Capital.

The Defendants failed to ensure that the design and location of the World War II Memorial would not encroach upon an existing commemorative work, and failed to protect the Mall's open space and the public's continued access to and use of the area that will be cut off by the memorial, and the integrity of the design of the McMillan Plan for the National Capital, in violation of the Commemorative Works Act, 40 U.S.C. §§1001, 1007(b)(2).

The ABMC failed to consult with the National Capital Memorial Commission regarding the selection of the Rainbow Pool site, in violation of the Commemorative Works Act, 40 U.S.C. §1007(a)(1).

Defendants' disregard of the mandatory location and design criteria and consultations required by the Commemorative Works Act was unreasonable, arbitrary and capricious, an abuse of discretion, and not in accordance with law.

Plaintiffs will be immediately, actually, and irreparably harmed unless this Court immediately enjoins Defendants from authorizing or proceeding with construction of the World War II Memorial, until such time as Defendants comply with the consultation requirements and criteria set forth in the Commemorative Works Act. Unless Defendants are so enjoined, Plaintiffs and their members will be irreparably harmed and Plaintiffs have no adequate remedy at law.

## **COUNT II**

### **(National Environmental Policy Act, 42 U.S.C. § 4332(2)(C))**

Plaintiffs repeat and reallege the foregoing allegations.

The National Environmental Policy Act ("NEPA") requires federal agencies to prepare a detailed statement evaluating the environmental impacts of and

alternatives to any proposed "major Federal action significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C).

In accordance with the mandate of NEPA, the Council on Environmental Quality ("CEQ") has adopted regulations implementing NEPA, which are found in 40 C.F.R. Part 1500. These regulations are binding on all federal agencies. *Id.* § 1500.1(a).

The "detailed written statement" required by NEPA is known as an "Environmental Impact Statement" ("EIS"). *Id.* §1508.11.

The CEQ regulations further provide that an agency shall prepare an Environmental Assessment (EA) to determine whether to prepare an EIS. *Id.* §§ 1501.3, 1501.4. An EA is a "concise public document for which a Federal agency is responsible that serves to: . . . [b]riefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact." *Id.* § 1508.9(a).

The CEQ regulations define "effects" as including aesthetic, historic, and cultural effects. *Id.* §1508.8.

The CEQ's regulations specifically provide that each Federal agency shall prepare its own regulations to supplement the CEQ's NEPA regulations. *Id.* §1507.3.

Pursuant to 40 C.F.R. § 1507.3, the NPS has promulgated its own NEPA procedures, which are contained in NPS-12, National Environmental Policy Act Guidelines, (1997). These guidelines are "binding on all NPS personnel" and have "the force of law." *Id.* at 6.

The NPS's regulations provide that the NPS "must always prepare an EIS for any NPS proposed action that has the potential for significant impacts to the human environment," and specifies that a key factor in assessing the significance of impacts is "[t]he degree to which the action may adversely affect historic properties in or eligible for listing in the National Register of Historic Places," and "[t]he degree to which impacts are likely to be highly controversial." *Id.* at 49, 51.

The NPS's regulations state that "The information and mitigation gathered as part of the [Section] 106 review must be included in the NEPA document, and the 106 process must be completed before a Finding of No Significant Impact

(FONSI) or Record of Decision can be signed on a proposal that affects historic properties." *Id.* at 33-34.

The NPS's July 2, 1998 "Decision Notice and Finding of No Significant Impact on Environmental Assessment For the National World War II Memorial" represents the NPS's FONSI and Record of Decision for purposes of NEPA.

The NPS failed to complete the Section 106 process prior to issuing its FONSI and Record of Decision for the World War II Memorial, in violation of its own regulations implementing NEPA, *Id.* at 33, 34.

The EA and FONSI failed to evaluate the impacts on historic and cultural resources of the design that was ultimately approved by the CFA and the NCPC, but instead evaluated a prior design that had less severe impacts on historic and cultural resources. The design that was submitted to and approved by the CFA and the NCPC after the issuance of the EA and FONSI was determined by the federal Advisory Council on Historic Preservation to have "serious and unresolved" adverse effects, including the "permanent alteration of significant vistas and views of the McMillan Plan."

The EA and FONSI failed to evaluate certain "ancillary" elements of the World War II Memorial, including the impacts of constructing a "contemplative area" north of the memorial; a ranger station and a comfort station; a new roadway cutting through the Mall between 17th Street and Independence Avenue, N.W.; a bus drop-off and handicapped parking area; and alternative locations for a new helicopter launching area.

The EA failed to take the required "hard look" at the environmental impacts of the World War II Memorial, including the full range of impacts associated with sinking the plaza six feet below grade within a floodplain area, and the fact that the Rainbow Pool site includes landfill containing high levels of soil contaminants, including petroleum, benzene, and benzoic acid.*Id.*

The finding of the Advisory Council on Historic Preservation that the World War II Memorial will have "serious and unresolved" adverse effects on the National Mall, an exceptionally significant American landmark, and the NPS's subsequent disagreement with that finding, demonstrates that the impacts of the World War II Memorial are "highly controversial."

As a result of these impacts, the World War II Memorial will have a significant negative impact upon the quality of the human environment. The Defendants failed to identify or take a hard look at these impacts, and further failed to

make a reasonable explanation or justification for approving the location and final design of the World War II Memorial without the benefit of a full EIS. As a result, Defendants' Finding of No Significant Impact was arbitrary and capricious, an abuse of discretion, and contrary to law.

Plaintiffs will be immediately, actually and irreparably harmed unless this Court immediately enjoins Defendants from proceeding with construction of the World War II Memorial, until such time as Defendants comply with NEPA, and its implementing rules and regulations. Unless Defendants are so enjoined, Plaintiffs and their members will be irreparably harmed, and Plaintiffs have no adequate remedy at law.

### **COUNT III**

#### **(Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f)**

Plaintiffs repeat and reallege the foregoing allegations. The National Historic Preservation Act ("NHPA") contains congressional findings, among others, that the nation's historic resources should be preserved; that the preservation of this irreplaceable heritage is in the public interest; that encouragement of preserving our historic resources will improve the planning and execution of federal projects and will assist economic growth and development; and that it is necessary and appropriate for the federal government to accelerate its preservation programs and activities. 16 U.S.C. § 470(b). The NHPA further provides that it shall be the policy of the federal government to provide leadership in the preservation of America's historic resources and to "administer federally owned, administered, or controlled . . . historic resources in a spirit of stewardship for the inspiration and benefit of present and future generations." *Id.* § 470-1.

The Advisory Council on Historic Preservation is an independent federal agency responsible for the implementation and enforcement of the NHPA in its entirety. 16 U.S.C. § 470s. The Advisory Council has promulgated regulations implementing the requirements of the NHPA. 36 C.F.R. Part 800 (1999). These regulations are binding on all federal agencies, including Defendants.

Section 106 of the NHPA prohibits federal agencies from engaging in any federal undertaking (or federally assisted or licensed undertaking) unless the agency first (1) takes into account the effects of the undertaking on historic properties; and (2) affords the Advisory Council on Historic Preservation a

reasonable opportunity to comment on the undertaking. Section 106 of the NHPA provides as follows:

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State . . . shall, prior to the . . . the issuance of any license . . . take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation a reasonable opportunity to comment with regard to such undertaking.

16 U.S.C. § 470f (emphasis added).

The approval of the location and design of the World War II Memorial by Defendants pursuant to their respective responsibilities under the Commemorative Works Act, 40 U.S.C. §1007, is an "undertaking" subject to the requirements of Section 106 of the NHPA and the Advisory Council's regulations.

The Advisory Council's implementing regulations explicitly require that "[t]he Agency Official shall ensure that the section 106 process is initiated early in the undertaking's planning, so that a broad range of alternatives may be considered during the planning process for the undertaking." 36 C.F.R § 800.1(c)(1999).

The NPS has developed Cultural Resource guidelines implementing its NHPA responsibilities. These guidelines state that "[i]n planning and budgeting, the *Section 106 process should be factored into NPS project schedules and coordinated with any required NEPA consultation. Consultation must not be delayed until a proposal has become unalterable, thus foreclosing the [Advisory] Council's and [State Historic Preservation Officer's] opportunity to provide effective comment, . . .*" NPS-28, Cultural Resource Management Guidelines, at 57 (1997) (emphasis added).

The Advisory Council on Historic Preservation is a participant in the Section 106 process for the World War II Memorial, pursuant to 36 C.F.R. §§ 800.2(b)(1). As a result, the Section 106 process for the World War II Memorial can only be concluded by either the execution of a Memorandum of Agreement (MOA) by the Advisory Council, the State Historic Preservation Officer, and the agency, or by the issuance of formal comments by the Advisory Council. Id. §§ 800.6(b)(2), 800.7(a)(4) (1999). As a result of the Advisory Council's decision to terminate consultation and issue formal

comments, the Section 106 process was not concluded by the execution of an MOA, but instead, could only be concluded upon the Secretary of the Interior's response to the Council's formal comments. *Id.* § 800.7(c)(4).

Defendant CFA failed to provide the Advisory Council with an opportunity to comment on the World War II Memorial "prior to" approving the location and design of the memorial, in violation the plain language of Section 106, and the NPS' own cultural resource guidelines.

Defendant NPS failed to provide the Advisory Council with an opportunity to comment on the World War II Memorial "prior to" issuing its Decision Notice on July 2, 1998.

Defendants failed to take into account the effects of the World War II Memorial at the Rainbow Pool site on the historic character and defining features of the National Mall and the Lincoln Memorial Grounds "prior to" approving the location and design of the memorial, in violation of Section 106 of the NHPA, 16 U.S.C. § 470f.

Plaintiffs will be immediately, actually and irreparably harmed unless this Court immediately enjoins Defendants from authorizing or proceeding with construction of the World War II Memorial, until such time as Defendants comply with Section 106 of the NHPA, and its implementing rules and regulations. Unless Defendants are so enjoined, the public interest and the interests of Plaintiffs and their members in the protection of these federally owned historic properties will be irreparably harmed.

#### **COUNT IV**

#### **(Public Participation Requirements of Section 106 of the NHPA, 36 C.F.R. Part 800)**

Plaintiffs repeat and reallege the foregoing allegations.

The binding regulations of the Advisory Council on Historic Preservation contain specific requirements governing public participation in the Section 106 process. These regulations provide:

(1) *Nature of involvement.* The views of the public are essential to informed Federal decisionmaking in the section 106 process. The Agency Official shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, the

likely interest of the public in the effects on historic properties, confidentiality concerns of private individuals and businesses, and the relationship of the Federal involvement to the undertaking.

(2) *Providing notice and information.* The Agency Official must, except where appropriate to protect confidentiality concerns of affected parties, provide the public with information about an undertaking and its effects on historic properties and seek public comment.

36 C.F.R. § 800.2(d).

Neither the Commission of Fine Arts nor the NCPC ever provided specific notice to the public that the Rainbow Pool site on the National Mall was under consideration as the location for the World War II Memorial prior to making their respective decisions in 1995 to give final approval to the location of the memorial on that site.

Defendants violated Section 106, as interpreted by the Advisory Council's regulations, by failing to provide specific notice to the public that the Rainbow Pool site on the National Mall was under consideration as the location for the World War II Memorial, prior to giving final approval to the location of the memorial on this site.

Plaintiffs will be immediately, actually and irreparably harmed unless this Court immediately enjoins Defendants from authorizing or proceeding with construction of the World War II Memorial, until such time as Defendants comply with the public participation requirements of Section 106 of the NHPA, as implemented by the Advisory Council's regulations. Unless Defendants are so enjoined, the public interest and the interests of Plaintiffs and their members in the protection of these federally owned historic properties will be irreparably harmed.

## **COUNT V**

### **(Public Participation Requirements of Section 106 of the NHPA, 36 C.F.R. Part 800)**

Plaintiffs repeat and reallege the foregoing allegations.

The Federal Advisory Committee Act ("FACA") provides that "(1) each advisory committee meeting shall be open to the public" and "(2) Except when the President determines otherwise for reasons of national security, time notice of each such meeting shall be published in the Federal Register, . . ." 5 U.S.C. App. II, Sec. 10(a).

The American Battlefield Monuments Commission ("ABMC") is an "advisory committee" within the meaning of FACA. *Id.*, Sec. 3(2).

The ABMC failed to provide to publish notice in the Federal Register or to publicize in any other manner meetings at which the ABMC considered and endorsed the Rainbow Pool site as its recommended site for the World War II Memorial, and adopted design guidelines and restrictions for the World War



II Memorial, in violation of FACA, *Id.*, Sec. 10(a). As a result, members of the public were deprived of opportunity to be informed about the ABMC's deliberations and decisions.

Plaintiffs will be immediately, actually and irreparably harmed unless this Court immediately enjoins Defendants from authorizing or proceeding with construction of the World War II Memorial, until such time as Defendants comply with FACA. Unless Defendants are so enjoined, the public interest and the interests of Plaintiffs and their members in being informed about the ABMC's deliberations and decisions on a matter of the intense public concern will be irreparably harmed.

## **COUNT VI**

### **(Section 110(a) of the National Historic Preservation Act, 16 U.S.C. § 470h-2(a))**

Plaintiffs repeat and reallege the foregoing allegations.

Section 110(a)(1) of the National Historic Preservation Act provides as follows:

*The heads of all Federal agencies shall assume responsibility for the preservation of historic properties which are owned or controlled by such agency. . . . Each agency shall undertake, consistent with the preservation of such properties and the mission of the agency and the professional standards established pursuant to section 470a(f) of this title, any preservation as may be necessary to carry out this section.*

16 U.S.C. § 470h-2(a)(1) (emphasis added).

Section 110(a)(2)(B) of the NHPA provides as follows:

Each Federal agency shall establish . . . a preservation program for the identification, evaluation, . . . and protection of historic properties. Such program shall ensure--

\* \* \* \* \*

[B] that such properties under the jurisdiction or control of the agency as are listed in or may be eligible for the National Register are managed and maintained in a way that considers the preservation of their historic, archaeological, architectural, and cultural values in compliance with section 106 and gives special consideration of the preservation of such values in the case of properties designated as having National significance.

### ***Id.* § 470h-2(a)(2)(B).**

The NPS's ownership, jurisdiction, and control over the National Mall requires compliance with Section 110(a) of the NHPA.

The NPS has violated Section 110(a) by failing to assume responsibility for, and to undertake any necessary preservation of the National Mall and the Lincoln Memorial Grounds, which are landmark sites of preeminent national significance.

Plaintiffs will be immediately, actually and irreparably harmed unless this Court immediately enjoins Defendants from authorizing or proceeding with construction of the World War II Memorial, until such time as Defendants comply with Section 110(a) of the NHPA. Unless Defendants are so enjoined, the public interest and the interests of Plaintiffs and their members in the protection of these federally owned historic properties will be irreparably harmed.

## **RELIEF**

WHEREFORE, Plaintiffs respectfully request this Court to grant the following relief:

1. Adjudge and declare that Defendants have violated their obligations and duties to comply with the requirements of the Commemorative Works Act, NEPA, Section 106 and Section 110(a) of the NHPA, and FACA.
  2. Enjoin the NPS from issuing any permits or approvals authorizing construction of the World War II Memorial until such time as Defendants comply with the Commemorative Works Act, NEPA, Section 106 and Section 110(a) of the NHPA, and FACA.
  3. Enjoin the Defendants, their officers, agents, servants, employees, and those in active concert or participation with them, to cease and desist any and all actions to begin or plan for construction of the World War II Memorial, until such time as Defendants comply with the Commemorative Works Act, NEPA, Section 106 and Section 110(a) of the NHPA, and FACA.
  4. Award Plaintiffs their attorneys' fees, costs, and disbursements, pursuant to 16 U.S.C. § 470w-4, and other applicable laws.
  5. Award such other and further relief as the Court may deem appropriate.
- Respectfully submitted,

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