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United States District Court,
District of Columbia.

A.N.S.W.E.R. COALITION, Plaintiff,
v.
Ken SALAZAR, Secretary, United States Department of the Interior, et al., Defendants.[1]
Civil Action No. 05–0071 (PLF).
|
March 5, 2012.

Attorneys and Law Firms

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OPINION AND ORDER

PAUL L. FRIEDMAN, District Judge.

***1** This matter is before the Court on the motion of plaintiff, A.N.S.W.E.R. Coalition ("ANSWER"), to enforce the injunction issued against defendant, the National Park Service ("NPS"), on March 20, 2008. On that date, the Court granted ANSWER's motion for summary judgment on Count I of its amended complaint; declared that the NPS "policy and practice of exempting itself and/or the Presidential Inaugural Committee from compliance with the generally applicable permitting regulations, 36 C.F.R. § 7.96(g) is unconstitutional"; and enjoined NPS "from exempting itself and/or the Presidential Inaugural Committee from compliance with the generally applicable permitting regulations, 36 C.F.R. § 7.96(g), with respect to events relating to the [Presidential] Inauguration[.]" *A.N.S.W.E.R. Coal. v. Kempthorne ("ANSWER II"),* 537 F.Supp.2d 183, 206 (D.D.C.2008).

In response to the Court's March 20, 2008 Opinion and Order, NPS amended certain parts of 36 C.F.R. § 7.96(g), the federal permitting regulations relating to, among other things, the Presidential Inaugural Parade. *See* 73 FED.REG. 67,739, at 67,739–40 (Nov. 17, 2008); *see generally* 36 C.F.R. § 7.96(g) (2008). The motion now before the Court presents the question whether these amended regulations—specifically, 36 C.F.R. § 7.96(g)(4)(iii)(B) (1)—violate the terms of the Court's injunction. Upon consideration of the parties' papers, the relevant legal authorities, and the entire record in this case, the Court concludes that NPS' amended regulations do not violate the terms of the Court's injunction. The Court therefore will deny ANSWER's motion to enforce.[2]

I. BACKGROUND

The Court previously has described the factual and procedural background of this case, *see ANSWER II,* 537 F.Supp.2d at 186–93; *A.N.S.W.E.R. Coal. v. Kempthorne ("ANSWER I"),* 493 F.Supp.2d 34, 37–41 (D.D.C.2007), and therefore will limit its discussion accordingly.

This case arises from the permitting policy and practice that NPS engaged in on behalf of the Presidential Inaugural Committee ("PIC") with respect to the 2005 Presidential Inaugural Parade. *ANSWER II,* 537 F.Supp.2d at 186. PIC is the private coordinating group of the President-elect, "recognized by statute as 'the committee appointed by the President-elect to be in charge of the Presidential inaugural ceremony and functions and activities connected with the ceremony.' " *Newdow v. Roberts,* 603 F.3d 1002, 1006 (D.C.Cir.2010) (quoting 36 U.S.C. § 501(1)).

ANSWER, an unincorporated grassroots organization that engages in political organizing and activism in opposition to war and racism, Am. Compl. ¶ 1, filed this lawsuit in 2005 to challenge

> the authority of ... [NPS] to disregard the existing

> constitutionally mandated public space permitting system and systematically exclude the public and dissenters from nearly all points of space abutting the Presidential Inaugural Parade route, granting exclusive access to Pennsylvania Avenue only to those who are financial and political supporters of the administration and its representative Inaugural Committee.

***2** *Id.* at 1–2. As ANSWER described it,

> [NPS], the government entity charged with stewardship of the public's lands, ... far exceeded its authority and insists that it may abridge freedom of speech and peaceable assembly along Pennsylvania Avenue ... in connection with the recurring Presidential Inaugural Parades except for those whose speech is by invitation of the [incoming] administration's private advocacy organization, [the PIC].

Am. Compl. at 2. ANSWER's amended complaint sought declaratory and injunctive relief on three claims, all alleging violations of the First Amendment to and the Equal Protection Clause of the United States Constitution. *ANSWER II,* 537 F.Supp.2d at 186.

The Court addressed the justiciability of ANSWER's three claims in an Opinion and Order dated June 13, 2007. *See ANSWER I,* 493 F.Supp.2d at 44–48. NPS then moved for summary judgment on Counts I and III, and ANSWER moved for summary judgment only on Count I. *See ANSWER II,* 537 F.Supp.2d at 192–93.[3] The Court resolved the parties' cross-motions for summary judgment by an Opinion and Order dated March 20, 2008. *See id.* at 206.

II. THE COURT'S MARCH 20, 2008 OPINION AND ORDER

In *ANSWER II,* the Court denied NPS' motion for summary judgment in its entirety and granted ANSWER's motion for summary judgment on Count I. *See ANSWER II,* 537 F.Supp.2d at 206. In granting judgment on Count I, the Court declared that the NPS "policy and practice of exempting itself and/or the [PIC] from compliance with the generally applicable permitting regulations, 36 C.F.R. § 7.96(g), is unconstitutional." *Id.* Furthermore, the Court enjoined NPS "from exempting itself and/or the [PIC] from compliance with generally applicable permitting regulations, 36 C.F.R. § 7.96(g), with respect to events relating to the Inauguration." *Id.* NPS did not appeal the Court's decision. *See* 28 U.S.C. § 1292(a)(1) (the courts of appeals have jurisdiction over appeals from interlocutory orders of district courts granting injunctions).

As the Court described it in *ANSWER II,* there are two types of events that take place on park lands in the National Capital Region, both of which require permits issued by NPS in accordance with its regulations: special events (*e.g.,* the Presidential Inaugural Parade organized by PIC); and demonstrations (*e.g.,* the activities engaged in by ANSWER during Inaugural celebrations). *ANSWER II,* 537 F.Supp.2d at 199–200. The applicable NPS regulations in effect as of March 20, 2008 established a non-discriminatory first-come first-served permit application process; permit applications were deemed granted unless denied within 24 hours of receipt; and permits, when issued, had a maximum duration of three weeks. *See id.* As NPS acknowledged, the agency also employed a strict-but-uncodified policy not to accept any permit applications submitted more than one year in advance of the start date for any event on park land, including the Presidential Inaugural Parade. *Id.* at 186–87.

***3** According to ANSWER, NPS did not enforce its generally applicable permitting system in a uniform manner. *See ANSWER II,* 537 F.Supp.2d at 201. Instead, ANSWER alleged, NPS discriminated in favor of PIC with respect to the 2005 Presidential Inaugural Parade in the following way: NPS, on PIC's behalf, submitted and granted for itself a permit application *more than one year in advance* of the 2005 Presidential Inaugural Parade, and that permit was issued for the entire length of the Pennsylvania Avenue sidewalks (plus additional areas) for the *five month period* from November 1, 2004 to April 1, 2005. *See id.* at 187. ANSWER alleged that NPS' deviation from its strict-but-uncodified policy on the

timing of permit applications, as well as NPS' deviation from its generally applicable permitting regulations abridged ANSWER's free speech, petition, and assembly rights. *See id.* at 191. Thus, in Count I of its amended complaint, ANSWER asserted unconstitutional permitting violations under the First Amendment and the Equal Protection Clause. *See* Am. Compl. ¶¶ 87–97. More specifically, ANSWER asserted that it was "constitutionally impermissible for the NPS to exempt itself or the PIC from the constitutionally mandated permitting system, particularly where such deviation works an abridgement of others' free speech, petition and assembly rights." *Id.* ¶ 89.

As ANSWER made clear, however, its first claim did *"not* challeng[e] the constitutionality of the permitting system as written in the regulations," *ANSWER II,* 537 F.Supp.2d at 201 (emphasis added), which have included, since 1980, a regulatory set-aside of certain parks lands—the sidewalks of the White House and three-quarters of Lafayette Park—for the priority and exclusive use of PIC on Inauguration Day. *See* 73 FED.REG. at 67,741 (citing 45 FED.REG. 84,997, at 84,997 (Dec. 24, 1980)); *see also* 36 C.F.R. § 7.96(g)(4)(i)(F) (2007). ANSWER expressly disclaimed any challenge to that priority and exclusive regulatory set-aside of park land for PIC. *ANSWER II,* 537 F.Supp.2d at 191 n. 14.

Instead, ANSWER's first claim challenged "the *deviation* by NPS from th[e] carefully crafted [permitting] system in order to afford preferential treatment to supporters of the government over those who seek access to a public forum to criticize the government on Inauguration Day." *ANSWER II,* 537 F.Supp.2d at 201 (emphasis in original). The Court agreed with ANSWER and concluded

> that NPS violated its own regulations in its treatment of the special event permit application that NPS submitted to itself on behalf of the PIC, specifically with respect to the duration of the special event and the related timing of the submission of the application. The Court therefore grant[ed] [ANSWER's] motion for summary judgment on Count I.

Id.

III. DISCUSSION

In response to the Court's March 20, 2008 Opinion and Order, NPS amended its regulations relating to, among other things, the Presidential Inaugural Parade. *See* 73 FED.REG. at 67,739–40; *see generally* 36 C.F.R. § 7.96(g) (2008). On August 8, 2008, NPS published proposed amended regulations, *see* 73 FED.REG. 46,215, at 46, 215–16 (Aug. 8, 2008), and, following a comment period and review, NPS published its final amended regulations on November 17, 2008. *See* 73 FED.REG. at 67,739; *see also* Opp. at 7–9. The present dispute between the parties centers on one part of the amended regulations, 36 C.F.R. § 7.96(g)(4)(iii)(B)(1) (2008), that expands on a prior grant of priority and exclusive use of park lands for PIC, as previously set forth in 36 C.F.R. § 7.96(g)(4)(i)(F) (2007).

***4** As of the time of the Court's March 20, 2008 Opinion and Order, NPS regulations provided, in relevant part:

> (g) Demonstrations and special events—....
>
> (4) Permit processing.
>
> (i) Permit applications for demonstrations and special events are processed in order of receipt, and the use of a particular area is allocated in order of receipt of fully executed applications, subject to the limitations set forth in this section. Provided, however, that the following national celebration events have *priority use of the particular park area* during the indicated period....
>
> (F) *Inaugural ceremonies. The White House sidewalk and Lafayette Park, exclusive of the northeast quadrant, for the exclusive use of the Inaugural Committee on Inauguration Day.*

36 C.F.R. § 7.96(g)(4)(i)(F) (2007) (emphasis added).[4] The regulatory set-aside of the White House sidewalk and three-quarters of Lafayette Park for PIC was codified in the regulations in 1980. *See* 73 FEG. REG.. at 67,741 (citing 45 FED.REG. at 84,997). ANSWER's amended complaint made clear that it did not challenge that priority and exclusive regulatory set-aside of park land. *See* Am.

Compl. at 4 ("Plaintiffs do not seek by this lawsuit to disturb the existing and exclusive systems of access ... to Lafayette Park, where the Presidential bleachers and viewing area are located."); *id.* ¶ 104 (Plaintiffs "are not seeking access to the spaces set aside by regulation for the exclusive use of the Inaugural Committee, on the sidewalks of the White House and in three-quarters of Lafayette Park."); *see also ANSWER II,* 537 F.Supp.2d at 191 & n. 14. The Court therefore has never addressed it in this lawsuit.

As the Court noted in its March 20, 2008 Opinion and Order, NPS' regulations did not at that time "mention the sidewalks of Pennsylvania Avenue along the parade route or the other areas at issue in this lawsuit as having exclusive or priority use by the Inaugural Committee during the Inauguration." *ANSWER II,* 537 F.Supp.2d at 200. But now they do—and ANSWER contends that it is that change in the regulations that violates the Court's March 20, 2008 injunction.

The regulations, as amended in 2008, provide:

> (g) Demonstrations and special events—....
>
> (4) Permit processing.
>
> (i) NPS processes permit applications for demonstrations and special events in order of receipt. NPS will not accept applications more than one year in advance of a proposed continuous event (including set-up time, if any). Use of a particular area is allocated in order of receipt of fully executed applications, subject to the limitations in this section.
>
> (ii) Specific national celebration events have priority use of particular park areas as shown in the following table:

The following event ...	**Has priority use of the following area ...**	**At the following time ...**
(F) Presidential Inaugural Ceremonies	See paragraph (g)(4)(iii) of this section.	See paragraph (g)(4)(iii) of this section.

***5** (iii) In connection with Presidential Inaugural Ceremonies the following areas *are reserved for priority use* as set forth in this paragraph.

> (A) The White House sidewalk and Lafayette Park, exclusive of the northeast quadrant for the exclusive use of the Presidential Inaugural Committee on Inaugural Day.
>
> *(B) Portions of Pennsylvania Avenue, National Historic Park and Sherman Park, as designated in the maps included in paragraph (g)(4)(iii)(E) of this section, for the exclusive use of the Presidential Inaugural Committee on Inaugural Day for:*

The Presidential Inaugural Committee may use the following area ...	**During the following period ...**
(1) Ticketed bleachers viewing and access areas, except that members of the public may use a ticketed bleacher seat that has not been claimed by the ticket holder 10 minutes before the Inaugural Parade is scheduled to pass the bleacher's block	

> (D) The Presidential Inaugural Committee may also use portions of its designated areas reasonably necessary for setting up and taking down stands, bleachers, media and parade support structures as show in the following table:

(1) The White House sidewalk and Lafayette Park	November 1 through March 1
(2) Pennsylvania Avenue, National Historic Park and Sherman Park	December 7 through February 10
(3) The National Mall between 14th and 1st Streets	January 6 through January 30

36 C.F.R. § 7.96(g)(4)(i)-(iii) (emphasis added).
As ANSWER sees it, the part of the amended regulations italicized above, specifically, 36 C.F.R. § 7.96(g)(4)(iii)(B)(1), does "precisely what is prohibited: The NPS, by regulation, directly exempts the Presidential Inaugural Committee from compliance with the generally applicable demonstration and special event permitting regulations with respect to events relating to the Inauguration." Mot. at 2. ANSWER therefore requests that the Court enforce its injunction by directing NPS "to rescind 36 C.F.R. § 7.96(g)(4) (iii)(B)(1), which grants the PIC permanent permits for Freedom Plaza and other areas designated on the related maps located at 36 C.F.R. § 7.96(g)(4)(iii)(E)." Mot. at 1.

NPS disagrees with ANSWER. The agency argues that its amended regulations do not violate the terms of the Court's March 20, 2008 injunction, and that ANSWER's motion is an "improper attempt to expand the scope of" the injunction. Opp. at 1. According to NPS, the regulation at issue permissibly grants to PIC additional priority and exclusive use of "only 14% of Pennsylvania Avenue along the Inaugural Parade route." *Id.* at 25; *see id.* at 8. NPS therefore argues that ANSWER's motion should be denied; in order for ANSWER to properly bring its new challenge before the Court, NPS contends, ANSWER "must seek to amend or supplement its current complaint[.]" *Id.* at 12.

A. Judicial Authority to Enforce an Injunction

NPS' papers suggest that there are two separate issues to be addressed: (1) whether ANSWER's motion is the proper procedural vehicle for bringing its objection to the amended regulations before the Court; and (2) whether the amended regulations violate the terms of the Court's injunction. *See* Opp. at 1–2. The only question that the Court need resolve, however, is the latter. If the amended regulations violate the Court's injunction, the Court clearly has the power to grant the relief requested by ANSWER. *See Fund for Animals v. Norton,* 390 F.Supp.2d 12, 15 (D.D.C.2005) ("[D]istrict courts clearly have the authority to enforce the terms of their mandates."); *see also International Ladies' Garment Workers' Union v. Donovan,* 733 F.2d 920, 922 (D.C.Cir.1984) ("The power of an original panel to grant relief enforcing the terms of its earlier mandate is clearly established in this Circuit, both with respect to cases that have been remanded to a District Court for further proceedings, ... as well as in cases that have been remanded directly to an administrative agency.") (internal citations omitted); *id.* at 922 (emphasizing that a court's exercise of its authority to enforce a prior order "is particularly appropriate ... where an administrative agency plainly neglects the terms of a mandate"); *cf. Habitat Educ. Ctr., Inc. v. Kimbell,* 250 F.R.D. 397, 400–01 (E.D.Wis.2008).

B. Amended NPS Regulations

***6** The Court concludes that the amended regulations do not violate the terms of its injunction. In *ANSWER II,* the Court stated that Count I presented the question

> whether the *practices and procedures* engaged in by the NPS to reserve most of the Pennsylvania Avenue sidewalks for the PIC in 2005 were themselves a violation of the First Amendment, insofar as they deviated from the permitting regulations promulgated by NPS and published in the Code of Federal Regulations in order to favor the permit application that NPS submitted on behalf of the PIC (Count I).

ANSWER II, 537 F.Supp.2d at 198–99 (emphasis in original). The Court held unconstitutional NPS' policy and practice of deviating from its regulations and its strict-but-uncodified timing requirements to discriminate in favor of PIC. *See id.* at 201, 204.

NPS' deviation from its generally applicable permitting regulations and its strict-but-uncodified policy on the timing of permit applications to favor PIC were unconstitutional because they were "fundamentally discriminatory," demonstrating a constitutionally impermissible "preference for the government over all other speakers." *ANSWER II,* 537 F.Supp.2d at 203 (citing *Quaker Action Grp. v. Morton ("Quaker Action IV"),* 516 F.2d 717, 727 (D.C.Cir.1975)). So the question ultimately is this: are NPS' amended regulations, as ANSWER contends, *see* Reply at 1–2, a codification of the fundamentally discriminatory policies and procedures held unconstitutional and enjoined by the Court in *ANSWER II?* The Court concludes that they are not.

In *ANSWER II,* the Court held that NPS violated its own regulations "with respect to the duration of ... [PIC's] special event [permit] and the related timing of the submission of [PIC's] application." *ANSWER II,* 537 F.Supp.2d at 201. The duration of the PIC special event permit at issue at the summary judgment stage was five months, from November 1, 2004 to April 1, 2005. *Id.* at 202. Under the regulations in effect at that time, however, permits could not be granted for a duration of more than three weeks. *Id.* As for the timing of the submission of an application, NPS' deviation in favor of PIC from its policy of not accepting any permit applications submitted more than one year in advance of the start date for the Presidential Inaugural Parade had the effect that PIC "would *always* be the first permit application received." *Id.* at 203 (emphasis in original).

The amended regulations do not codify those unconstitutional deviations. With respect to the duration of permits, the amended regulations have created an extended period of time for which permits may be granted during inaugural activities, *see* 36 C.F.R. § 7.96(g)(4)(vi) (2008), and ANSWER does not challenge those changes in its motion to enforce. *See* Reply at 6–7.

As for the timing of submission of applications, the amended regulations expressly provide that "NPS will not accept applications more than one year in advance of a proposed continuous event (including set-up time, if any)." 36 C.F.R. § 7.96(g)(4) (i) (2008). ANSWER argues that under the amended regulations, PIC "doesn't even need to submit an application. It is exempt." Mot. at 5. But as NPS points out, ANSWER cites no language in the amended regulations to support this claim. *See* Opp. at 22 ("[T]here is no evidence that the Park Service's amended regulations waive the permit application requirement or any permit requirements for PIC."); *id.* at 13–14. Nothing in the regulations relieves PIC of its obligation to obtain a permit, like any other applicant, for its inaugural activities. Under the amended regulations, NPS cannot accept an application on behalf of PIC, or any other applicant, more than one year in advance of the Inaugural Parade. *See* 36 C.F.R. § 7.96(g)(4)(i).

***7** As for the new provision in the amended regulations that grants to PIC additional priority and exclusive use of park land along Pennsylvania Avenue, *see* 36 C.F.R. § 7.96(g)(4)(iii)(B)(1), the Court agrees with NPS that this regulatory change does not violate the Court's injunction. The Court's injunction did not preclude NPS from amending its regulations to grant to PIC additional priority and exclusive use of certain parts of Pennsylvania Avenue on Inauguration Day.

As discussed, by regulation in effect since 1980, PIC has been granted priority and exclusive use of the White House sidewalk and three-quarters of Lafayette Park on Inauguration Day. 73 FED.REG. at 67,741; *see* 36 C.F.R. § 7.96(g)(4)(i)(F) (2007). ANSWER has never challenged that regulatory set-aside in this lawsuit, and the Court's March 20, 2008 Opinion and Order therefore did not address it. *See ANSWER II,* 537 F.Supp.2d at 191.

The amended regulations have expanded the reach of that regulatory set-aside: PIC now has been granted additional priority and exclusive use of portions of Pennsylvania Avenue, National Historic Park, and Sherman Avenue on Inauguration Day. *See* 36 C.F.R. § 7.96(g)(4)(iii)(B) (2008). ANSWER argues that this expansion violates the Court's injunction. According to ANSWER, by means of this additional regulatory set-aside of park land, NPS has "directly exempt[ed] the [PIC] from compliance with the generally applicable ... permitting regulations with respect to events relating to the Inauguration." Mot. at 2.

The Court disagrees. If, as ANSWER contends, the additional regulatory set-aside for PIC of portions of Pennsylvania Avenue, National Historic Park, and Sherman Avenue violates the Court's injunction—that is, if it constitutes an exemption from compliance with generally applicable permitting regulations, *see ANSWER II,* 537 F.Supp.2d at 206—then so would the regulatory set-aside for PIC of the White House sidewalk and three-quarters of Lafayette Park. But the Court's injunction plainly did not address, much less enjoin, the regulatory set-aside of the White House sidewalk and three-quarters of Lafayette Park for PIC, because ANSWER never contested it. The Court's injunction therefore cannot fairly be read to preclude the expansion set forth in 36 C.F.R. § 7.96(g)(4)(iii) (B)(1).

That conclusion does not mean that NPS' amended regulations are constitutional; it just means that the Court has not addressed the issue. If the regulatory set-aside of the White House sidewalk and Lafayette Park is constitutionally permissible, then there may an argument that a regulatory set-aside for additional *limited* portions of Pennsylvania Avenue similarly is constitutionally permissible.[5] On the other hand, as ANSWER argues in its reply papers, perhaps the White House sidewalk and Lafayette Park are uniquely ceremonial and are distinguishable from the portions of Pennsylvania Avenue set-aside in the amended regulations. *See* Reply at 11–12; *see also Mahoney v. Babbitt,* 105 F.3d at 1459 ("[I]t cannot rightly be said that all [public] forums are equal."); *Quaker Action IV,* 516 F.2d at 727. Whatever the case may be, the Court's March 20, 2008 Opinion and Order does not does control, and these other constitutional questions are not properly before the Court on ANSWER's motion to enforce. Consequently, ANSWER's motion to enforce the Court's injunction must be denied.

***8** In order to properly challenge the amended regulations on constitutional grounds, ANSWER must seek leave to amend or supplement its complaint, or must file a new lawsuit. Recently, on February 10, 2012, ANSWER filed an unopposed motion for leave to file a supplemental complaint that presents a facial and an as-applied challenge to 36 C.F.R. § 7.96(g)(4)(iii)(B). The Court will grant ANSWER's unopposed motion.

IV. CONCLUSION

For the foregoing reasons, it is hereby

ORDERED that ANSWER's motion to enforce the Court's March 20, 2008 injunction [Dkt. No. 105] is DENIED; it is

FURTHER ORDERED that ANSWER's unopposed motion for leave to file a supplemental complaint [Dkt. No. 132] is GRANTED; and it is

FURTHER ORDERED that the Clerk of the Court shall file the supplemental pleading [Dkt. No. 132–1] on the docket.

SO ORDERED.

All Citations

Not Reported in F.Supp.2d, 2012 WL 8667570

Footnotes

[1] The Court has substituted Ken Salazar, the current Secretary of the Interior, for the former Secretary, Dirk Kempthorne, as a defendant in this case under Rule 25(d) of the Federal Rules of Civil Procedure.

[2] The papers reviewed in connection with the pending motion include: plaintiff's amended complaint ("Am.Compl.") [Dkt. No. 17]; plaintiff's motion to enforce injunction ("Mot.") [Dkt. No. 105]; defendant's opposition to plaintiff's motion to enforce injunction ("Opp.") [Dkt. No. 111]; and plaintiff's reply in support of its motion to enforce injunction ("Reply") [Dkt. No. 115].

[3] Neither side moved for summary judgment on Count II. *See ANSWER II,* 537 F.Supp.2d at 191.

[4] By statute, the "Inaugural Committee" is defined as the PIC—"the committee appointed by the President-elect to be in charge of the Presidential inaugural ceremony and functions and activities connected with the ceremony[.]" 36 U.S.C. § 501(a)(1); *see Newdow v. Roberts,* 603 F.3d at 1006.

[5] All three of these areas—the White House sidewalk, Lafayette Park, and Pennsylvania Avenue—are established as quintessential traditional public forums under First Amendment jurisprudence. *See Mahoney v. Doe,* 642 F.3d 1112, 1117 (D.C.Cir.2011) ("There is little dispute the street in front of the White House is a public form."); *United States v. Doe,* 968 F.2d 86, 87 (D.C.Cir.1992) ("We are ... spared the need for any extended forum analysis in this case, as no one disputes that Lafayette Park is a quintessential public forum[.]") (quotations omitted); *Quaker Action IV,* 516 F.2d at 736 ("[T]he White House sidewalk and Lafayette Park are a unique situs for the exercise of First Amendment rights[.]") (quotations omitted); *ANSWER II,* 537 F.Supp.2d at 194 ("The sidewalks of Pennsylvania Avenue and the other areas at issue in this case are a quintessential public forum, ... and as such occupy a privileged position in the hierarchy of First Amendment jurisprudence.") (quotations and internal citations omitted). In such traditional public forums, "the government's ability to permissibly restrict [speech and] expressive conduct is very limited[.]" *United States v. Grace,* 461 U.S. 171, 177, 103 S.Ct. 1702, 75 L.Ed.2d 736 (1983). NPS concedes, as it must, that under the court of appeals' decision in *Mahoney v. Babbit,* 105 F.3d 1452 (D.C.Cir.1997), "[t]he National Park Service on behalf of the PIC cannot reserve *all* of Pennsylvania Avenue for itself, leaving only the Ellipse and the northern part of John Marshall Park to protesters."*ANSWER II,* 537 F.Supp.2d at 205 (emphasis in original) (citing *Mahoney v. Babbit,* 105 F.3d at 1458).