

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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In the Matter of the Application of

VERIFIED PETITION

Emergency Coalition Organization to Save Washington Square Park;  
Village Independent Democrats; Cooper Square Mutual Housing  
Association; Washington Place Block Association; Ronald Podolsky,  
James Henry Brennan, President of the Servalli Playground; Keen Berger,  
Democratic Party District Leader, Karen Kramer, Jessie McNabb, West  
Village Committee, Inc.; Elizabeth Nichols; Robert Nichols; Margie  
Reubin individually and as founder of Mobility Impaired Artists at  
Westbeth, and Luther Harris,

Petitioners,

For an Order and Judgment Pursuant to Article 78, CPLR,

-against-

THE CITY OF NEW YORK; MICHAEL BLOOMBERG, Mayor of  
the City of New York; ADRIAN BENEPE, Commissioner of the Department  
of Parks and Recreation; ROBERT TIERNEY, Chief Executive officer of  
the Respondent The New York City Landmarks Preservation  
Commission; EMILY LLOYD, Commissioner of the Department of  
Environmental Protection

Respondents.

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TO THE HONORABLE JUSTICES OF THE SUPREME COURT:

The Petitioners as and for a Petition respectfully allege:

1. At all relevant times hereinafter mentioned the Petitioners were and still are the Emergency Coalition Organization to Save Washington Square Park, a committee of persons formed to Petition governmental authority for redress of certain grievances respecting Washington Square Park; Emergency Coalition Organization to Save Washington Square Park; Village Independent Democrats; Cooper Square Mutual Housing Association; Washington Place Block Association; West Village Committee, Inc.; each being voluntary associations formed to address community issues, Ronald Podolsky, James Henry Brennan, President of the Friends of the Servalli Playground; Keen Berger, Democratic Party District Leader, Karen Kramer, filmmaker of documentary Ballad of Greenwich Village; Jessie McNabb.; Elizabeth Nichols of the Lower Manhattan Organization for Parks and Playground; Robert Nichols, architect who previously was retained by Respondents' predecessors in development of Washington Square Park modifications; Margie Reubin individually and as founder of Mobility Impaired Artists at Westbeth, and Luther Harris, author of Around Washington Square, The Johns Hopkins University Press, 2003.
2. All times hereinafter mentioned, the City of New York was and still is a municipal subdivision of the State of New York engaged in state governmental functions; the Respondent Michael Bloomberg was and still is Mayor of the City of New York, and its chief executive officer with the Respondents and other New York City agencies as subordinates; the Respondent Adrian Benepe was and still is the Commissioner of the Respondent Department of Parks and Recreation; the Respondent Robert Tierney was and still is the Chief Executive Officer of the Respondent New York City Landmarks Preservation Commission, Emily Lloyd was and still is Commissioner of the Department of Environmental Protection.

3. Heretofore the Respondent The City of New York did establish, own and maintain and still owns and maintains a certain parcel of land known as Washington Square Park located in the Borough of Manhattan, City of New York, and is located at the southern terminus of Fifth

Avenue.

4. When Washington Square Park was established in 1828 it had been and continues to be hallowed ground serving as a burial ground potters field containing the remains of thousands of persons. During the Civil War the Park was a military encampment for Union forces.

5. Since its creation as a public park, Washington Square Park (Hereinafter "the Park") has been the property of the City of New York, and as such was and continues to be public property, the access to which is by all members of the public who go there for the purpose of relaxation, communal activities with nature, public discussion, and other demonstrations respecting politics, the arts, formal and "jam" performances of music, gymnastic and other activity and other matters of public importance.

6. The Park also is a sanctuary for squirrels, birds. various botanical species and majestic trees of environmental importance..

7. As public officials, the Respondents are charged with compliance with various rules, regulations and laws specifically designed to meet the historical, structural and environmental restrictions upon its private use; proposals respecting renovation are subject to various historical, structural and environmental requirements which must be shown to be necessary, imperative and which will not unreasonably impair the historical nature, environmental congeniality and the unfettered public access to and use of the Park.

8. Heretofore during various eras, and presently the Park has been and is an important and historical venue for free speech, public peaceable assembly in support or in opposition to various issues, which rights are guaranteed by both the state and federal constitutions.

9. Heretofore, in June, 2005 the Landmarks Commission at the request of the Department of Parks & Recreation and other Respondents, or their subordinates approved certain work to be done characterized over substantial community objection as repairs, renovations, redesign and movement of various physical aspects of the Park. The determination of the Respondents and employees of the City of New York, the Petitioners herein contend, was and is not necessary, was and is arbitrary, capricious, unreasonable and was not founded upon the requirements of statutory laws, municipal regulations, full environmental impact consideration, and was made without regard to historical, park usage or other factual imperatives.

10. The municipal Respondents have asserted that the project will take at least two years to complete during which time large portions of the Park will not be accessible to the public.

a. The Project as Contemplated Is Neither Necessary Nor Appropriate.

11. The Petitioners and their members personally know that the contemplated project is not necessary. They gain this knowledge by reason of the fact that many of them regularly visit the Park and know that the historical, environmental, comfort level and accessibility of the Park which appropriately comports with the mission of the Respondents. It provides the residents, visitors including tourists who access the Park a serene, peaceful, rare and much needed commune with nature. No obvious dangerous physical conditions exist.

12. Upon information and belief, the Respondents were not in receipt of sufficient, if any, complaint by either residents or tourists to impel action contemplated to renovate or change the character, design or fitness of use of the Park. The Respondents are possessed of the full basis upon which the determination complained of was based, including opposing views of expert professionals which Petitioners request be provided in the Answer & Return to this Petition.

13. Washington Square Park with its fountain within the Park, the historic Arch at the southern terminus of Fifth Avenue, various statues, pathways, playgrounds, chess and checker tables, meeting locations, and other structures, is owned and maintained by the City of New York. The Park has become an important location of serene enjoyment for those visiting the Park. It is also important to the tourism, financial and cultural integrity of the City of New York.

14. In the Park, South of the Washington Square Arch is a beautiful and historic fountain which, is, as is much of the history, culture and attitude of many of the residents of Greenwich Village wherein the Park exists, out of kilter with and not centered to the Arch.

15. The fountain is below ground level around which a rotunda of paved walkways and stone

abutments exist thereby creating an historic "theater in the round" and which, in fact is the scene of many performances, musical jam sessions and political debates. Based upon the long-term observation of many of the Petitioners, the most used portion of the Park is the depressed area around the fountain.

15. It has been historically asserted that the current fountain is located on the exact spot where the potter's field gallows stood. That, with the fountain plaza's later events, makes it the one of Greenwich Village's most historic spots, which should not be destroyed.

16. It is historically reported that the fountain is purposely off-center from the Washington Square Arch [Hereinafter "the Arch"] in conformity with rational and generally accepted park design requirements. The Park's designers made plazas purposely asymmetrical according to what is known as Olmsted's naturalistic design theory espoused by Frederick Law Olmsted. The firm of McKim, Mead & White including the famous architect Sanford White purposely employed the Olmsted principles when it designed the Arch placing it at the northern edge of the Park at the Southern terminus of Fifth Avenue rather than as a centerpiece of the Park.

17. The present fountain and its circular surroundings are presently depressed approximately one and a half feet below ground level, permitting the stone structures surrounding the fountain to be used as various gathering places where visitors engage in lively discussions; play music and sit with enough leg room to be comfortable in an amphetheater-like defined area of the Park. The contemplated project provides for replacing the paved depressed plaza surrounding the fountain by moving the fountain to be centered on the Arch and to be brought up to ground level. The contemplated fountain relocation will deprive the Park of the current seating space around it, and depriving the Park of a world-widely known tourist attraction, all to the detriment of the Park, the People of the City of New York and its visitors.

18. The plan to destroy the Olmsted naturalistic design is environmentally unsound in the context of a public park, which is in the natural style. The Olmsted design is to make an art of improving the scenery and to display its native beauties to advantage.

19. The asymmetric or off-kilter position of the fountain with the Arch was not the result of a mistake, but was in conformity with the Olmsted theory or naturalistic design. Parks are intentionally structured without geometrically arranged focal points at the end of axis lines. Competent park planners know the basic fact that Olmsted designs are supposed to be asymmetric and contain curvilinear forms or visages. It is a basic tenet of the professionals in the field of park planning that straight lines are deliberately avoided, for "straight is the line of duty, curved is the line of beauty." The goal of the planners of the Park was to intentionally emphasize the site's natural features without imposing geometric formulas on the structure's landscape.

20. The Respondents' apparent view that the present layout of misalignment between the fountain and the Arch in the Park was the result of a mistake that needs to be corrected is arbitrary, capricious, unreasonable and was obviously made without required consideration of the appropriateness of the asymmetric Olmsted layout of the Park.

21. The contemplated project which is estimated to cost \$16,000,000.00 in part calls for the replacement and redesign of the fountain basin and the paved plaza surrounding it. The fountain is to be placed further to the east, believed to be 20 feet, of the present fountain location. The only discernible purpose of such movement appears to be for allowing the people at the proposed fountain location to be able to line up a view north directly through the existing Washington Arch and straight up Fifth Avenue. It has been reported that the contemplated project includes adding a four-foot high fence around the Park, uprooting and removing trees and destroying or relocating various much used features of the Park including dog runs which are to be moved dangerously closer to street traffic, teen plaza, concert stage and playground areas all of which are repairs or renovations are unnecessary, and do not address compelling public needs.

22. There is and has been no discernable outrage or dismay expressed by Park visitors who stand at the fountain because they can not look straight through the Arch and directly up Fifth Avenue. The expenditure of public and privately donated funds to achieve this result which is a rejection of the Olmsted naturalistic objectives is a waste of public money and a catering to the wishes of moneyed private interests and does not address a compelling public need. The contemplated project, if implemented, would unreasonably deprive the public of full and unfettered access to a quiet serene park during the contemplated project activities especially

during the spring summer and fall peak usage seasons. The decision complained of herein is arbitrary, capricious and unreasonable.

23. The Respondents' contemplated project calls for digging out the present fountain and its underground pipes and moving it into position wherein it will be centered on and aligned with the Arch so that one standing at the fountain will be able to look through the arch directly up Fifth Avenue, an objective of no municipal, rational, historical, environmental or beauty importance. The plan calls for the moved fountain to be at ground level instead of providing the amphitheater like rotunda within a depressed area as presently exists.

24. The sordid state of affairs brought about by the rejection of the Olmsted theory is particularly egregious since historical data demonstrates that on April 28, 1858 the Respondents' predecessors accepted a design for part of Central Park, created by the partnership of Frederick Law Olmsted and Calvert Vaux. The Olmsted firm was selected by the Board of Commissioners of Central Park from 33 competing entries. Olmsted was named Architect-in-Chief of the project, thereby verifying his standing and his theories by the Respondents' predecessors as a particularly competent basis for the design and structures Washington Square Park as well. . No competent basis for the rejection of the Olmsted theory has been supported by proof that a change in location of the present fountain, dog runs, pathways, grassy areas, concert areas or other existing structures is appropriate. Upon information and belief, the headquarters of the Respondent Department of Parks and Recreation known as the Olmsted Center Building. Olmsted's fame and honors include a commemorative 33 cent U.S. Postal Service Stamp with his picture appropriately off center.

b. The Project as Contemplated is Not Founded upon the Requirements of Law.

25. The Petitioners contend that the determination complained of was not based upon the requirements of federal state and city regulations which mandate that any renovation, change in structure or other long- term project not unreasonably impact the ability of the public to enjoy the peaceful and quiet use of the Park, and that any real or imagined need for construction, relocation, maintenance or renovation be done in a manner and at such a time as not to unreasonably interfere with the public's access to the quiet enjoyment of the Park. Upon information and belief the Park is 13 acres according to Around Washington Square, Luther Harris, Johns Hopkins University Press, 2003, p. 13 when the adjoining streets, part of the original New York City Common Council acquisition of the Park property.

24. The Petitioners contend that the project as contemplated does not comport with the requirements the federal National Environmental Policy Act (42 USC Sec. 4321 et. Seq) the State Environmental Quality Review Act (Hereinafter "SEQRA") which statutes encourage productive and enjoyable harmony between people and their environment; promote efforts which will prevent or eliminate damage to the environment and enhance human and community resources and to enrich the understanding of the ecological systems, natural, human and community resources important to the people of the state. . The determination of the Respondents also violated the imperatives of the City Environmental Quality Review Procedures and the Uniform Land Use Review Procedures and the New York City Charter and other federal state and municipal laws, regulations and procedures.

25. The Respondents did not incorporate appropriate environmental considerations to mitigate or avoid the significant adverse environmental impact and impediment of public access to the Park foreseeably evident in the determination to undertake the project as contemplated. Petitioners contend that the Respondent Lloyd has not appropriately exercised her oversight authority respecting the plan of the Respondents to remove or relocate trees, grassy areas, which are environmentally unsound and to take steps to preserve the natural aspects of the Park including providing for the protection and maintenance of the habitat of squirrels and birds that live there.

26. The project as announced will take at least two years to complete, during which time large sections of the Park will be fenced off and not accessible to the public; the project, which includes extensive renovation of structure, removal and relocation of an historical fountain, and other work which would require the use of jackhammers, heavy earth removal equipment and other noise producing or other environmentally unfriendly activity will adversely impact public use of the Park, its historical status as a hallowed burial ground and also will impact adversely the squirrels, birds and trees native to the Park.

27. The contemplated project does not provide a reasonable or rational balance for the peaceful, quiet use of the Park by residents and visitors with the imagined need for repairs and renovations to the Park, especially during the spring, summer and fall peak public usage.

28. The Respondents in the determination to undertake the project as contemplated did not fully consider the project's significant adverse impact on the environment by an appropriately prepared environmental impact statement containing factually ascertainable conditions many of which would injure the quiet, peaceful and environmentally sound conditions which presently exist in the Park.

29. The Petitioners contend that determination to undertake the project as contemplated violates inter alia, Section 25-318(a) of the Administrative Code of the City of New York.c. The Project as Contemplated was Made Without

Regard to Historical or Factual Imperatives

30. It has been reported in 1797 the Common Council of New York purchased the land now Washington Square Park as a potters' field burial site. In addition to a potters' field for the poor, portions of the grounds were assigned to the Jewish Congregation Shearith Israel on June 30, 1800; in August 1807 a portion believed to be fifty square feet burial ground was assigned to the African Zion Methodist Episcopal Church (now known as A.M.E. Zion). Upon Information and Belief, the Common Council of the City of New York, in or about 1828 assured the Scotch Presbyterian Church that the City would never sell the ground or any part of it or disturb any of the graves within the grounds nor would there be any necessity to do so.

31. The potters' field and other burial sites on the location contains the remains of thousands of persons, some of whom, upon statistical or reasonable conclusions, and experience in another city with similar background, were veterans of the American Revolutionary War or the War of 1812.

32. It has been historically reported that the Park was created in 1828 as a public park to be owned and maintained by the City of New York for the enjoyment of persons seeking access to park-like environments; during the Civil War the Park was utilized as a parade and campground for federal troops.

33. Heretofore, upon information and belief, it was is and is supposed to remain the policy of the City of New York, and the Department of Parks & Recreation, Landmarks Commission and other City agencies to honor the sanctity of such hallowed ground, the most recent expression of which is the support the municipal Respondents gave to the preservation of the African cemetery discovered in lower Manhattan, which preservation prevented the erection thereon of a contemplated multilevel multi-million dollar office building.

34. The Respondents' or their predecessors' commendable and historically important efforts to preserve otherwise commercially valuable prime property in order to preserve its status as hallowed ground provides a generous abundance of precedent and reason to conclude that the status of hallowed ground of the Park already owned by the City likewise must, for historically, moral, tourism and financial reasons, also must not be disturbed. It is likely that some of the nation's founding fathers and mothers are interred at the Park.

35. Upon information and belief the respondents, including the Landmarks Commission and the Parks Commissioner and the other Respondents did not render appropriate consideration specifically to the moral, and historical imperatives in its determination not to disturb hallowed burial ground, thereby justifying a remand to the Respondents for further action respecting this and the other aspects raised in this Petition.

36. Heretofore, upon information and belief various federal courts have required various states planning to place highways through Native American hallowed burial grounds to divert such public roads based upon the moral and historical importance that hallowed burial grounds not be disturbed.

37. The project as contemplated consists among other things, the digging out of the fountain that currently is inserted into the ground below ground level; digging or removing earth from another location in order to insert a new fountain and its servicing pipes, drains and plumbing from water mains to the newly inserted fountain which foreseeably would not only disturb the is hallowed ground, but would require the area to be fenced off during the project thereby removing the essential and much used area from public access. The Respondents have not have failed to appropriately consider the balance between the public access to the Park especially during the

spring, summer and fall peak usage periods against any real or imagined need for repairs thereto. Petitioners contend that there is no need whatever for any relocation or redesign of the present physical layout of the structures, pathways and facilities presently existing in the Park.

c. Additional Considerations

38. Additional historical factors have not been appropriately addressed by the Respondents in the determination complained-of, including the reputation of the prior architects that the Arch and the Fountain be off kilter, thereby breaking the monotony of bilateralism and providing a unique departure from mundane predictability, which departure is a treasured aspect of the Greenwich Village historical avant-garde and cultural reputation in the arts, sciences, political and social activities engaged therein and is a tourist attraction much accessed by large groups of guided tours and individual tourists so vital to the cultural and financial interests of the Municipal respondents.

39. The Park is accessed from many locations, north, south, east and west. That the existing fountain is not centered on the Arch does not provide a rational basis for the Respondents to remove and replace the existing fountain with one centered on the Arch. No public outcry respecting the fact that the fountain is not centered on the Arch has been made. No protest demonstration respecting that off-kilter condition has been made in Washington Square Park, which happens to be the premier location of mass protests covering the widest spectrum of political, social, artistic, and any other form of expression of pleasure, displeasure and or disinterest many of which have caused governmental action in the exercise of the constitutional right to petition for redress of grievances. The public transportation busses turn on 8th Street and Filth Avenue and hence any imagined complaint respecting the location of the existing fountain by fleeting glimpses by passengers is limited in scope and lacking in substance, even were the busses to turn closer to the Park. Moreover the project as contemplated will unreasonably and capriciously remove trees now visible to pedestrians and motorists traveling to the southern terminus of Fifth Avenue.

40. The Park is accessible to those who are disabled, in that the entranceways that are at street level; the Petitioners assert upon direct observation and experience that the lowered area around the fountain depression is wheel-chair accessible, having observed individuals in wheelchairs thereat; ramps leading to the fountain exist.

41. To the degree that the Respondents may claim that the removal of the fountain and centering it on the Arch and raising it to ground level is somehow necessary to accommodate wheelchairs, the Petitioners allege that there is no impediment to the existing depressed fountain area, and any imagined claim can be addresses by narrowing the angle of the existing wheelchair ramps to a more gradual slope thereby doing by the more economical use of money by repair what need not be done by the massive contemplated renovation and redesign.

42. The Respondents have sought, or are going to accept private partial underwriting of the cost of the project by monied persons who seek to have the Park descend into the mundane realm of the ordinary and rejecting the Olmsted park design elements. One such private money source has demanded that the fountain be moved to ground level, centered on the Arch and that the fountain be re-named in honor of said private source with self-commendative plaques, usually reserved for park bench dedications. The movement of the existing fountain in order to center it on the Arch and to dedicate it to and rename it in honor of a private moneyed family entity provides a generous abundance of reason to have this Honorable Court to enjoin such a gross private usurpation of historic status of the fountain.

43. One would hardly be characterized as imprudent to observe that the catering to the ambitions in the blandness of private moneyed persons or family named organizations at the expense of the historical and structural status of the Park is the arbitrary, capricious, unreasonable and illegal basis upon which to make municipal determinations. The failure of the Landmarks Commission to prevent such usurpation is especially egregious and should be corrected by this Court.

44. The decision of the Respondents to turn what they consider needs for repairs into unneeded major disruptive renovation and redesign is arbitrary, capricious, unreasonable, and will cause disquiet and the fencing off of significant portions of the Park during the spring, summer and fall peak park-use seasons, thereby depriving the public of entitlement to full access to the Park, a result directly contrary to the mission of the Respondents and contrary to the federal, state and

municipal laws and regulations pertinent thereto.

45. In the event any need for repairs are actually shown to exist, such should be conducted during the winter months when the Park is not utilized as much by the public; there exists no discernible need to renovate, redesign or destroy existing facilities, structures, pathways, trees or other vegetation.

46. The determination of the Respondents is arbitrary, capricious, unreasonable and illegal and should be vacated; the Petitioners have no adequate remedy at law; the Petitioners seek a preliminary injunction against commencing work on the contemplated project, leading to a permanent injunction against starting the project in that time is of the essence since work on the contemplated project is expected to begin in or about August, 2005 which not only would interfere with the use of the park as previously enjoyed but could cause irrevocable damage by the permanent replacement or movement of existing structures and facilities as announced before this application on the merits can be achieved, the Petitioners believe they prevail on the merits; no prior application for the relief sought herein has been made by the Petitioners to this or any other court of competent jurisdiction.

BY REASON WHEREOF, it is respectfully requested that an Order and Judgment be issued pursuant to Article 78, CPLR:

(1) Temporarily and preliminarily enjoining the Respondents from commencing work on the contemplated project of repair, renovation, redesign and closing portions of Washington Square Park pending the determination of the Proceeding on the merits;

(2) Declaring the determination of the Respondents to undertake the contemplated project as arbitrary, capricious, unreasonable and/or illegal;

(3) Permanently enjoining the Respondents from undertaking the contemplated project, with such other relief as to the Court may seem just and proper.

Dated: July 22, 2004.  
RONALD PODOLSKY  
Petitioner and Attorney for Petitioners  
400 East 20th Street  
New York, N.Y. 10009  
-212- 460-8218

Respectfully Submitted:

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Ronald Podolsky  
Petitioner.

STATE OF NEW YORK  
COUNTY OF NEW YORK: ss

RONALD PODOLSKY, Attorney for the Petitioners and Petitioner herein being duly sworn deposes and says:

That he has read the foregoing Petition and knows the contents thereof to be true except as to matters asserted to be upon information and belief or historically reported and as to those matters he believes it to be true.

Sworn to before me  
\_\_\_\_\_ day of \_\_\_\_\_ 2005

\_\_\_\_\_  
Ronald Podolsky

\_\_\_\_\_  
Notary Public State of New York