

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

PROTECT OUR PARKS, INC., *et al.* )  
)  
)  
Plaintiffs, )  
)  
v. )  
)  
PETE BUTTIGIEG )  
SECRETARY OF THE U.S. )  
DEPARTMENT OF TRANSPORTATION, )  
*et al.* )  
)  
Defendants. )

Case No. 21 CV 2006

Judge John Robert Blakey

**MEMORANDUM OF LAW OF DEFENDANT  
THE BARACK OBAMA FOUNDATION IN OPPOSITION TO  
PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

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## INTRODUCTION

Seven years ago, The Barack Obama Foundation (the “Foundation”) was formed with a core purpose to build and operate the Obama Presidential Center (the “Presidential Center”), the Nation’s fourteenth presidential center. In July 2016, after a nationwide search, the Foundation announced its intention to build the Presidential Center in Jackson Park—blocks from where Mrs. Obama grew up, President Obama began his career, and they began their family. With this choice, the Foundation sought to bring long-term benefits to the South Side of Chicago.

In October 2018, after study by the City of Chicago’s Department of Planning and Development and multiple public hearings, the Chicago City Council unanimously approved development of the Presidential Center in Jackson Park based on detailed findings about the project’s benefits for the South Side, Jackson Park, and Chicago as a whole. And on February 1, 2021, after years of agency analysis and public comment, three federal agencies concluded their review of the City and Chicago Park District’s requests related to the Presidential Center project, issuing a “Finding of No Significant Impact.”

Now, at last, the Foundation stands ready to break ground. On August 16, construction of the Presidential Center—the \$700 million cost of which will be borne entirely by the Foundation—is scheduled to begin. Dozens of contractors have committed staff and resources to meet the Foundation’s tightly planned construction schedule. If construction stays on schedule, the Presidential Center will open in fall 2025, approximately nine years after the conclusion of the Obama presidency and the selection of the Jackson Park site.

Yet, at this eleventh hour, Plaintiffs ask the Court to enjoin construction while they litigate state and federal claims challenging the Presidential Center. What Plaintiffs seek “is an extraordinary remedy.” *Tully v. Okeson*, 977 F.3d 608, 612 (7th Cir. 2020). The request is

particularly extraordinary given that Plaintiff Protect Our Parks unsuccessfully litigated identical state law challenges to the Presidential Center in a suit filed three years ago, but never once sought preliminary injunctive relief until this moment, nearly five months after the federal reviews concluded, but just a matter of weeks before the scheduled groundbreaking. Plaintiffs cannot establish any of the factors necessary for a preliminary injunction, and their belated request should be swiftly rejected.

First, they cannot show a likelihood of success on the merits. As demonstrated in the Oppositions filed by the federal agency and municipal government Defendants, Plaintiffs' federal law claims largely contend that the federal agencies should somehow have displaced municipal decision-making processes and forced relocation of the Presidential Center despite the limited scope of the federal review. These claims are meritless.

Nor can Plaintiffs establish that they will suffer irreparable harm while this Court adjudicates their claims. Plaintiffs fail to substantiate any supposed harm that *they themselves* will actually suffer, much less anything irreparable. And Plaintiffs' contention that Jackson Park or the general public will be irreparably harmed by construction of the Presidential Center falls flat. Each form of supposed "harm" to Jackson Park that Plaintiffs point to was thoroughly considered during the federal reviews—which exhaustively analyzed the construction's impact on Jackson Park's trees, the Olmsted design, wildlife, recreational opportunities, roadways, and every other point Plaintiffs re-raise here. Plaintiffs identify no evidence of harms that the agencies failed to consider, nor do they identify any errors in the agencies' analysis of these alleged harms. Instead, Plaintiffs simply ask this Court to substitute their subjective weighing of these purported harms over the agencies' careful, fully-articulated decisions. Plaintiffs' request misunderstands the judicial role, which "is to insure that this weighing of competing interests

takes place” in federal reviews, as it did here, but not to substitute its own judgment (or that of Plaintiffs) for the federal agencies’. *Wisconsin v. Weinberger*, 745 F.2d 412, 426 (7th Cir. 1984).

In sharp contrast, a judicial order blocking construction will impose substantial and irreparable harms on the Foundation. The Foundation has devoted many tens of millions of dollars and countless staff hours to planning for the Presidential Center, engaging with the neighboring communities, participating in the robust local and federal review processes, and raising hundreds of millions of dollars in private donations necessary to construct the Presidential Center. These investments have been dedicated to building the Presidential Center *in Jackson Park*—and cannot be transposed to any other site. The Foundation has, for example, carefully designed the Presidential Center to fit and complement the Jackson Park site and the surrounding environment, while satisfying the specific security requirements necessary for a site that will be regularly visited by a former United States President. To comport with this design—and to accommodate seasonal weather and bird migration patterns—the Foundation has adopted a compact and carefully spaced construction schedule. Thus, an injunction causing a sudden, unplanned work stoppage would necessarily generate cascading delays, substantially increased costs for the Foundation, and massive uncertainty—devastating effects that are unavoidable even if the injunction were to ultimately last only a short amount of time.

What is more, putting off construction will frustrate the Foundation’s mission to promote economic development on the South Side. First, it would impose irreparable harm on many contractors who have committed to working on the Presidential Center’s precise schedule. The Foundation has deliberately selected smaller, minority- and woman-owned contractors for much of the work. These companies do not have the scale to bid or work on multiple large projects at once and have thus passed up other projects to bid and work on this one. An injunction would be



devastating to these firms. An injunction would also cripple the Foundation's mission to draw economic investment to the communities surrounding the Jackson Park site, because any uncertainty as to the Presidential Center's opening may drive investment away. And an injunction would severely hamper the creation of much-needed new jobs, many of which would go to residents of Chicago's South and West Sides pursuant to the Foundation's workforce development plans and its commitment to use the project to help the Chicago areas most in need.

Blocking construction will impose even greater harms on the public, delaying indefinitely the benefits that the Presidential Center will bring to the South Side and the rest of Chicago. Any new cultural institution can benefit a city's residents, but only a handful of cities have been selected to house presidential centers and museums. And this Presidential Center—honoring the first President elected from Chicago and the Nation's first African-American President and First Lady—is of singular significance. It will also substantially enhance Jackson Park—re-connecting the Presidential Center site to the rest of Jackson Park, expanding the overall parkland space, and providing new indoor and outdoor recreational facilities for community residents. In addition, by generating many new jobs and catalyzing investment in the surrounding communities, development of the Presidential Center will bring both immediate and long-term economic resources to communities that have been severely impacted by the pandemic. All these benefits are why Chicago residents, through their elected representatives, democratically chose to welcome the Presidential Center to their City. Plaintiffs' subjective preferences for an unchanged Jackson Park site are overwhelmed by these immense public benefits.

After seven long years, the Foundation is ready to make the Presidential Center a reality. The work is about to begin. The Foundation respectfully asks this Court not to stop it. The motion should be denied.

## BACKGROUND

President Obama's presidency was a historic occurrence. In 2009 he became the nation's first African American president, and, as an adopted son of Chicago's South Side, the first president elected from Chicago. Founded in 2014, the Foundation is a 501(c)(3) nonprofit organization. The Foundation oversees planning for the future Presidential Center, dedicated to telling the story of President Obama and First Lady Michelle Obama's journey to the White House, and creating programming to advance the goals of empowering future leaders and building stronger communities. Compl., Ex. 2, Ex. D thereto (Use Agreement) at 85891–92, Sub-Ex. C thereto (OPC Mission Statement) at 85935 & Sub-Ex. E thereto (Statement of OPC Uses) at 85937. With the agreement of the City of Chicago, the Foundation will construct the Presidential Center, fittingly, on the South Side of Chicago in Jackson Park, which was selected from several potential sites in Chicago proposed by third parties.

The Foundation intends to build the Presidential Center on a 19.3-acre site on the western edge of Jackson Park, the 551-acre park that hosted the 1893 Columbian Exposition World's Fair and that currently contains the Museum of Science and Industry. *See* Compl., Ex. 2 thereto (Operating Ordinance), at 85877–79. The Presidential Center will consist of a museum full of official artifacts and records telling the story of President Obama; spaces for cultural enrichment, public outreach, and educational programs; a Chicago Public Library branch; and numerous expansive public spaces including acres of restored and improved green space reconnected to Jackson Park. *See id.*, Ex. D thereto (Use Agreement), at 85891–92, Sub-Ex. C thereto (OPC Mission Statement) & Sub-Ex. E thereto (Statement of OPC Uses). The City of Chicago found that the Presidential Center will be a local, national and global destination for those interested in the Obama Presidency and the Foundation's mission. *Id.* at 85878. The City found that the Presidential Center will connect major institutions on the South Side and create new

opportunities for collaboration and growth. And the City’s Department of Planning and Development expressly found that the Presidential Center will increase recreational opportunities on the South Side of Chicago, bring more visitors to Jackson Park and the surrounding communities, increase the use of surrounding open space, and improve safety. *See* Ex. 16<sup>1</sup> (DPD Section 106 Consulting Party Comments) at pgs. 35–56 of PDF (DPD Study).

There was a national search to determine where to build the Presidential Center. The path to the construction of the Presidential Center in Jackson Park has been the result of an interactive process with the City. Ex. A, Declaration of Robbin Cohen (“Cohen Decl.”) ¶¶ 10–14. After the Foundation announced that it had selected the South Side of Chicago as the future home of the Presidential Center, the Foundation applied to the City for various approvals needed to move the project forward in Jackson Park and negotiated with the City a detailed agreement to do so. *Id.* Extensive public discussion, review, and hearings followed, and the City determined that Jackson Park was the appropriate site for the Presidential Center. *See id.* ¶ 11; *Protect Our Parks, Inc., et al. v. Chicago Park District, et al.*, 385 F. Supp. 3d 662, 670–73 (N.D. Ill. 2019), *aff’d in part, vacated in part, remanded*, 971 F.3d 722 (7th Cir. 2020) (“*Protect Our Parks I*”).

The City’s decision to approve the construction of the Presidential Center in Jackson Park resulted in the need for federal agency review of certain actions within the scope of those agencies’ statutory authorities. For example, the City has planned transportation and pedestrian and bike improvements in and around Jackson Park for which the City has sought eligibility for federal funding. The Federal Highway Administration (“FHWA”) needed to approve the potential funding of the transportation improvements. The City must also obtain approval from the National Park Service (“NPS”) for the conversion of certain spaces within Jackson Park—4.6

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<sup>1</sup> All Exhibits cites, unless otherwise noted, are to the Federal Defendants’ Appendix of Administrative Record Documents and Exhibits.

acres of the Center’s site, as well as acreage impacted by the roadway improvements—from recreational to non-recreational use, and the associated provision of replacement recreational space. 54 U.S.C. §§ 200501, 200507. Ex. 17 (Environmental Assessment (“EA”)) at 53.

The federal agencies’ reviews lasted more than three years. Pursuant to the National Historic Preservation Act (“NHPA”), the agencies reviewed the effects that the Presidential Center construction, recreational use conversion, and transportation improvements would have on the historic Jackson Park. When the NHPA process determined that there would be adverse effects on select historic properties, the agencies and numerous citizen groups and interested private parties negotiated a Memorandum of Agreement that included mitigation for the effects. Ex. 20 (MOA) at 59–61 (Consulting Parties). The agencies also reviewed the impact that the Jackson Park plans may have on environmental resources pursuant to the National Environmental Policy Act. The Agencies issued an environmental assessment (the “Environmental Assessment” or “EA”) after extensive public review, and then issued a finding that the proposed federal actions would have no significant impact on the environmental resources (the “Finding of No Significant Impact” or “FONSI”). *See* Ex. 17 (EA); Ex. 24 (FONSI). The entire federal review process involved substantial public review and participation, including forums and open houses, webinars, internet chats, and presentations.<sup>2</sup>

As these federal reviews were ongoing, Plaintiffs filed a lawsuit in 2018 against the City and the Chicago Park District, seeking to stop the construction of the Presidential Center. Plaintiffs alleged violations of the state law public trust doctrine and federal due process and takings law. *See Protect Our Parks I*, Case No. 18-cv-03424 (N.D. Ill., filed May 14, 2018). This Court in *Protect Our Parks I* found that constructing the Presidential Center in Jackson Park was

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<sup>2</sup> *See also* Ex. 21 (Final Section 4(f) Evaluation); Ex. 23 (404 Permit); Ex. 27 (408 Permit).

a public benefit and did not violate state law or the plaintiffs' federal due process rights. *See Protect Our Parks I*, 385 F. Supp. 3d at 682–88. The Seventh Circuit affirmed the district court's denial of the federal law violations but held that Plaintiffs did not have standing to pursue their public trust claim. *Protect Our Parks, Inc. v. Chicago Park Dist.*, 971 F.3d 722 (7th Cir. 2020), *cert. denied*, 2021 WL 1602736 (U.S. Apr. 26, 2021) (“*Protect Our Parks II*”).

While the federal reviews and the *Protect Our Parks* lawsuit were ongoing, the Foundation continued to make significant investments in the planning and design of the Presidential Center. The Foundation has devoted time and resources into fundraising for the Presidential Center construction and operation. The Foundation has raised hundreds of millions of dollars in donations to date, much of which is dedicated solely for use in development of the Presidential Center. The Foundation has spent at least \$70 million to plan and design the Presidential Center and retain staff to oversee construction, in addition to significant additional amounts to retain dozens of staff who support the Presidential Center effort, including those who have begun the curation of the planned exhibits of the museum. *See* Cohen Decl. ¶¶ 18-19. Now, with all federal and local approvals in place, the Foundation stands ready to break ground on August 16, 2021, *id.* ¶ 5—taking the next critical step in its mission to bring the Presidential Center, with its many cultural, recreational, and economic benefits, to the people of Chicago.

## ARGUMENT

“A preliminary injunction is an extraordinary remedy.” *Tully*, 977 F.3d at 612 (quoting *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1044 (7th Cir. 2017)). “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The movant must make a showing on each of

the four factors. *Id.* at 23–24.

In the Seventh Circuit, the movant “must make a threshold showing that: (1) absent preliminary injunctive relief, he will suffer irreparable harm in the interim prior to a final resolution; (2) there is no adequate remedy at law; and (3) he has a reasonable likelihood of success on the merits.” *Tully*, 977 F.3d at 612–13 (quoting *Turnell v. CentiMark Corp.*, 796 F.3d 656, 662 (7th Cir. 2015)). “Then, if the movant makes this threshold showing, the court proceeds to consider the balance of harms between the parties and the effect of granting or denying a preliminary injunction on the ‘public interest.’” *Id.* at 613 (quoting *Turnell*, 796 F.3d at 662). Here, all factors weigh against a preliminary injunction.

#### **I. Plaintiffs Are Unlikely to Succeed on the Merits.**

Plaintiffs cannot meet their “significant burden” of demonstrating the necessary likelihood of success on the merits of their federal claims under the Administrative Procedure Act (“APA”).<sup>3</sup> *Illinois Republican Party v. Pritzker*, 973 F.3d 760, 763 (7th Cir. 2020). While Plaintiffs do not need to show that they “definitely will win,” they must make a “strong showing.” *Id.*; *see also id.* at 762 (“[A] mere possibility of success is not enough.”). And a “strong showing” requires that plaintiffs provide at least a “a demonstration of how [they] propose[] to prove the key elements of [their] case.” *Id.* at 763.

Plaintiffs cannot meet this high bar. For the reasons set forth in the Federal Defendants’ Opposition to Plaintiffs’ Motion, Plaintiffs are unlikely to establish that the federal Defendants’ actions were arbitrary and capricious or otherwise in violation of federal law. *See* Dkt. 46 (Federal Ds’ Opp. To Ps’ PI Mot.). To avoid duplication, the Foundation joins the arguments of

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<sup>3</sup> Plaintiffs do not argue that they are likely to succeed on the merits of their state law claims. *See* PI at 2 n.1. For the reasons the Foundation, City, and Park District have set forth in their Motion to Dismiss the state law claims, Dkt. 29, Plaintiffs are unlikely to succeed on the merits of those claims—which were largely resolved by the Court’s prior ruling in *Protect Our Parks I*.

the federal Defendants and incorporates them herein.

In addition, there is no likelihood that Plaintiffs can succeed on their federal claims against the Foundation because each of the federal authorities under which Plaintiffs sue constrains actions *by the federal government*—and the Foundation as a private entity is not a proper defendant as to these claims. *See, e.g., Churchill Cty. v. Babbitt*, 150 F.3d 1072, 1082 (9th Cir. 1998) (“[B]ecause NEPA requires action only by the government, only the government can be liable under NEPA. A private party cannot ‘comply’ with NEPA, and, therefore, a private party cannot be a defendant in a NEPA compliance action.”), *opinion amended and superseded on denial of reh’g*, 158 F.3d 491 (9th Cir. 1998), and *abrogated on other grounds, Wilderness Soc. v. U.S. Forest Serv.*, 630 F.3d 1173 (9th Cir. 2011).

## **II. Plaintiffs Cannot Establish Irreparable Harm.**

Plaintiffs must make a “clear showing” “that irreparable injury is *likely* in the absence of an injunction.” *Winter*, 555 U.S. at 22. Irreparable harm is harm that “cannot be repaired.” *Orr v. Shicker*, 953 F.3d 490, 502 (7th Cir. 2020) (citation omitted). Temporary harm—*i.e.*, harm that can be repaired—does not qualify as irreparable. *E.g., Bill Barrett Corp. v. U.S. Dep’t of Interior*, 601 F. Supp. 2d 331, 336 (D.D.C. 2009) (plaintiff failed to show irreparable injury from exploratory drilling because any contamination could be remedied after a short time). Plaintiffs do not come close to making this “clear showing.” Their claims of irreparable harm come too late, and lack legal and evidentiary support.

### **A. Plaintiffs’ Delay Undermines Their Claims of Irreparable Harm.**

At a minimum, Plaintiffs unnecessarily delayed for four and a half months before filing their preliminary injunction motion. The federal Section 106 and 4(f) reviews concluded by the end of December 2020, and the NEPA process concluded by February 1, 2021. Compl. ¶¶ 94, 106; Ex. 20 (MOA); Ex. 21 (Final Section 4(f) Evaluation). It was public knowledge by February

3, 2021, that pre-construction work would begin at the site in April 2021, and that groundbreaking would take place as early as August 2021.<sup>4</sup> Yet Plaintiffs waited more than two months to file their complaint (April 14), and two-and-a-half *more* months to seek preliminary injunctive relief (June 15). Dkts. 1, 22, 31. Plaintiffs' conduct is "inconsistent with a claim of irreparable injury." *Shaffer v. Globe Prot., Inc.*, 721 F.2d 1121, 1123 (7th Cir. 1983); *Jones v. Markiewicz-Qualkinbush*, 842 F.3d 1053, 1060 (7th Cir. 2016) (delay in bringing suit weighed heavily against finding irreparable harm, when delay increased potential harm to defendant who continued with preparations for the action plaintiff sought to enjoin and "created significant harm for the public at large"); *Ixmation, Inc. v. Switch Bulb Co., Inc.*, 2014 WL 5420273, at \*7 (N.D. Ill. Oct. 23, 2014) ("[U]nexcused delay on the part of parties seeking extraordinary injunctive relief is grounds for denial of a motion because such delay implies a lack of urgency and irreparable harm.") (citation and internal quotation marks omitted).

Here, Plaintiffs' delay is especially egregious because the key facts (the plans for the Presidential Center on the Jackson Park site) have been public for years, as Plaintiffs are well aware. Plaintiffs' essential complaint is that the Presidential Center should not be built in Jackson Park, and that the project will harm trees, other parts of the existing site and Jackson Park as a whole, and the nearby asphalt roadways. *E.g.*, Compl. ¶¶ 1, 8, 52. Protect Our Parks has been litigating that point for years, beginning with their initial suit in 2018. Yet Plaintiffs failed to seek a preliminary injunction at any point until two months before the scheduled groundbreaking. Plaintiffs' very belated attempt to do so now is a prime example of litigant

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<sup>4</sup> See, e.g., Alice Yin, *Obama Presidential Center groundbreaking could happen in August, after 4 years of delays*, Chicago Tribune, Feb. 3, 2021, available at <https://www.chicagotribune.com/politics/ct-obama-presidential-center-groundbreaking-august-2021-20210203-ujj7n7jitnbxzh3hkcdtzgy4-story.html> (last accessed July 14, 2021); Lynn Sweet, *Obama Presidential Center groundbreaking set for early fall*, Chicago Sun Times, Feb. 3, 2021, available at <https://chicago.suntimes.com/2021/2/3/22264869/obama-presidential-center-groundbreaking-set-early-fall-jackson-park> (last accessed July 14, 2021).



delay, exposing their current claims of “irreparable harm” as falsely manufactured.

**B. Plaintiffs’ Claim of Procedural Harm Is Insufficient as a Matter of Law.**

The first of Plaintiffs’ three claimed “irreparable harms” is “procedural harm,” on the theory that the federal agencies have supposedly “failed to discharge their numerous NEPA, NHPA, and Department of Transportation review obligations.” Plts. Mot. for Preliminary Injunction (“PI”) at 36. But Plaintiffs themselves concede, as they must, that such “procedural harm” does not satisfy the requirement to establish actual irreparable harm. *Id.*; *see also Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 157–58 (2010) (established NEPA violation does not support even a “thumb on the scales” in favor of injunctive relief); *Winter*, 555 U.S. at 20–22 (vacating preliminary injunction, even though plaintiffs were likely to succeed on the merits of NEPA claim, because district court had not adequately found irreparable injury); *Nat’l Wildlife Fed’n v. U.S. Army Corps of Eng’rs*, 2014 WL 6685235, at \*14 (S.D. Ill. Nov. 25, 2014) (“[A]n alleged NEPA violation does not create a presumption of irreparable injury. . . . Instead, Plaintiffs must show actual imminent irreparable injury.”). Thus, Plaintiffs’ procedural harm arguments add nothing; they can satisfy the irreparable harm requirement only if they adequately establish *actual* irreparable injury.

**C. Plaintiffs Fail to Support Their Claim of Organizational Harm.**

Next, while two Plaintiffs claim “organizational harm,” they offer no evidence showing how the Presidential Center will “perceptibly impair” their organizations’ programs, as required by the authorities Plaintiffs cite (none of which are from courts within the Seventh Circuit). *See* PI at 35–36; *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 8 (D.C. Cir. 2016). As the D.C. Circuit has explained, to establish organizational injury, a plaintiff must show that “defendant’s conduct has made the organization’s *activities* more difficult,” *id.* (citation omitted), not merely that the organization disagrees with the conduct, *Nat’l Treasury Emps.*

*Union v. United States*, 101 F.3d 1423, 1430 (D.C. Cir. 1996) (no organizational injury where “Plaintiffs allege only that they have expended more money lobbying” to change government actions).

Here, Plaintiffs’ two declarations fail to identify any organizational *activity* that will be disrupted (much less irreparably so) by the Presidential Center. *See* Franklin Decl.; Caplan Decl. They do not, for example, contend their organizations use the Presidential Center site for organizational activities that cannot take place elsewhere in the park. *Compare League of Women Voters*, 838 F.3d at 8 (organizational injury existed where plaintiff regularly held voter registration drives that were largely precluded by challenged state proof-of-citizenship law). Indeed, the only reference to “programs” of any kind relates to Protect Our Parks’ advocacy efforts to block the Presidential Center. Caplan Decl. ¶ 4 (asserting that Protect Our Parks has engaged in “educational outreach programs to protect this Jackson Park”). Even if the organizational Plaintiffs’ public policy desires may be thwarted by the Presidential Center’s construction, such political frustration does not constitute actual irreparable injury. *League of Women Voters of U.S.*, 838 F.3d at 8 (focusing on impairment to an organization’s *activities* in assessing irreparable organizational injury).

**D. Plaintiffs Fail To Support Their Claims of Environmental or Aesthetic “Harms.”**

Finally, Plaintiffs declare it a “truism” that they will be injured by the supposed “destruction” of “[t]he historical, cultural and environmental resources in Jackson Park” once the Presidential Center is built. PI at 35. But the extraordinary relief of a preliminary injunction may not be granted based on a self-declared “truism.” Instead, Plaintiffs must present evidence—and they have not.

First, Plaintiffs' three declarations regarding the declarants' actual individual uses of Jackson Park are wholly insufficient. Indeed, Plaintiffs Mitchell and Caplan state only that they use the *551-acre Jackson Park* for activities such as walking, biking, golfing, and tennis, but say nothing about any use of the *19.3-acre site* along the Park's western edge where the Presidential Center will be constructed. Mitchell Decl. ¶ 5; Caplan Decl. ¶ 6. However, more than 96% of Jackson Park will be unchanged by construction of the Presidential Center, and the existing golf course and tennis courts (which are not even near the Presidential Center site) assertedly used by Mitchell and Caplan will not be impacted. Ex. 19 (Foundation EA Comment 10.30.20); Ex. 16 (DPD Section 106 Consulting Party Comments), at pgs. 35–36 of PDF (DPD Study) at 2. These declarations thus fail to establish that either Mitchell's or Caplan's use of Jackson Park will be actually injured (much less irreparably) by the construction.

Only Plaintiff Franklin even suggests that she uses any part of the Presidential Center site, declaring that she “use[s] Jackson Park for walks and [has] enjoyed its aesthetic beauty, including its trees and gardens, among which is the Woman's [sic] Garden.” Franklin Decl. ¶ 2. The Women's Garden is within the Presidential Center site—but, as described below, the Women's Garden will be fully available after construction (in fact, with even greater access). Thus, Franklin's use of the Women's Garden will not be irreparably injured, but at most temporarily affected. Nor will her ability to “use Jackson Park for walks” face irreparable harm, as the overwhelming majority of Jackson Park will be unaffected. If anything, her Jackson Park walks will be enhanced by the Presidential Center project, which will restore the ability of Franklin and other citizens to walk uninterrupted from the western edge of Jackson Park to the nearby lagoons and all the way to the lakeshore.

Unable to point to actual injuries to the individual Plaintiffs, Plaintiffs' claims of irreparable harm can only be understood as "harms" that will supposedly be experienced by the public in general. *E.g.*, PI at 34–35 (asserting generic interest in "protecting the wildlife, flora, scenery, peace and solitude and historical and cultural resources of the Jackson Park and its historic surrounds"). This is legally insufficient. The Seventh Circuit has made clear that irreparable injury *to the movant* is a "threshold factor[]," which must be independently established before the Court even reaches the question of the public interest. *Cassell v. Snyders*, 990 F.3d 539, 545 (7th Cir. 2021); *see also Immigrant Legal Res. Ctr. v. City of McFarland*, 827 F. App'x 749, 751–52 (9th Cir. 2020) ("[T]he district court focused its irreparable harm analysis on the prospect of harm to third parties. The standard for preliminary injunctions, however, requires irreparable harm to the plaintiffs themselves.").

In any event, the purported public harms that Plaintiffs cite likewise lack evidentiary support: the federal review processes demonstrated that neither the public nor Jackson Park would endure the alleged irreparable harms that Plaintiffs claim. As detailed below, each of these issues was fully weighed by the federal agencies during a multi-year process involving extensive submissions from numerous groups and individuals, for and against the project, and discussed in multiple public forums before issuance of several long, highly detailed reports, including the Findings of No Significant Impact. Without citing any new evidence that was not before the agencies, Plaintiffs now ask the Court to substitute *their* subjective views and vague irreparable harm contentions about the Presidential Center construction for the considered determinations of the agency experts that these same issues will not have long-term significant impact. Their efforts are inadequate to make the clear showing necessary for a preliminary injunction. *Michigan v. U.S. Army Corps of Eng'rs*, 667 F.3d 765, 790 (7th Cir. 2011) (where "[t]here is a

powerful array of expert federal and state actors,” including “the defendants and the public interests they represent,” “[t]he last thing we need is an injunction operating at cross-purposes with their efforts,” because, “from an institutional perspective[,] courts are comparatively ill situated to solve this type of problem”); *Bill Barrett Corp.*, 601 F. Supp. 2d at 336 (rejecting plaintiffs’ evidence of possible irreparable harm where agency had found irreparable harm unlikely, and the matter was “within the agency’s technical expertise”).

*Trees.* Plaintiffs allege irreparable harm from the removal of trees during construction of the Presidential Center and transportation improvements, even though the project will plant hundreds of new trees at the same site, and even though approximately 83% of the trees from the tree survey will remain untouched, along with the remainder of the trees in the park. PI at 11–12, 35; Ex. 17 (EA), App’x D (EA Trees Tech. Mem.) at 3, 19–20. As Plaintiffs concede, the agencies fully recognized that trees would be cut in connection with the construction. *Id.* at 11. Indeed, the impact of the project on trees was reviewed in painstaking detail in a study of each tree on the site by tree experts—including the species, height class, and age class of every impacted tree, as well as the effects of efforts to replace or move impacted trees. Ex. 17 (EA), App’x D, Attach. D-1 (Preliminary Tree Impact Evaluation Tech. Mem.) at 1-14 (finding that less than 20% of the trees on the site are “mature” and in good condition). Upon consideration of the full record, the agencies concluded that although the construction process will “result in short-term negative impacts to the existing tree population and tree canopy upon initial removal,” the planned tree replacement will ultimately “result in long-term beneficial impacts to the overall tree population, tree species diversity, and anticipated tree canopy when the replanted trees reach maturity.” *Id.*, App’x D at 12. In other words, as the agencies’ thorough review determined, the Presidential Center’s construction will at most have temporary effects on the tree population, and

will not create irreparable harm. *E.g.*, *Save Our Parks v. Kempthorne*, 2006 WL 3378703, at \*19 n.11 (S.D.N.Y. Nov. 15, 2006) (rejecting argument that “losing mature trees” in a park constituted irreparable harm in light of prior finding that any harm would be ameliorated “by the planting of replacement trees larger than saplings”) (citation omitted).

Nothing in Plaintiffs’ motion calls this conclusion into doubt. Plaintiffs suggest that the agencies misunderstood the harm because they supposedly “pretend[ed] that one-to-one planting of a single sapling after the fact makes up for the loss of a mature tree 1000 times its size.” PI at 11–12. That mischaracterizes the agencies’ analysis. Rather than “pretend” anything, the agencies noted that (1) the project was designed to minimize impacts to existing trees; (2) approximately 40% of the trees on the Presidential Center site were in declining condition; (3) few of the approximately 350 trees to be removed for the Presidential Center were planted in Olmsted’s original landscape; (4) replacements will include native species, selected to be complementary to Jackson Park’s historic landscape, including aesthetics, shade, sightlines, and access; (5) new plantings will reflect Olmsted’s goals as “[l]etters written about Jackson Park dating from the Olmsted era” will be “used as guidance in species selection”; and (6) healthy and desirable smaller trees will be *relocated* to other areas of the Park. Ex. 17 (EA), App’x D at 6–18; *id.*, Attach. D-5; *id.* at 29–30; Ex. 24 (FONSI) at B-14; Ex. 19 (Foundation EA Comment 10.30.20) at 7–8; Ex. 16 (DPD Section 106 Consulting Party Comments), at pgs. 35–56 of PDF (DPD Study) at 10. On this evidence, the agencies concluded the approach “will achieve simultaneous goals of rehabilitation of the historic park, and the ecological restoration of habitat.” Ex. 17 (EA), App’x D at 18.

The only evidence Plaintiffs cite in response is the declaration from Plaintiff Mitchell, an English and art history professor, PI at 12, who asserts the trees to be cut are substantially more

“magnificent” than the trees with which they will be replaced. Mitchell Decl. ¶¶ 8–11, 15. But Mitchell’s subjective opinions on magnificence cannot overcome the agencies’ careful determination that the Presidential Center construction will *not* irreparably harm—but instead will ultimately benefit—Jackson Park’s trees.

*The Olmsted Design.* Plaintiffs contend that the Presidential Center will “destroy[] an important part of Olmsted’s original plan” for Jackson Park, pointing primarily to the planned closure of the six lanes of modern asphalt road that constitute Cornell Drive. *E.g.*, PI at 5 (citing Mitchell Decl. ¶¶ 6–9, 13 (characterizing Cornell Drive as a “key feature” of Olmsted’s plan)). Once again, the effect of the Presidential Center construction and roadway changes on the Olmsted design was a major topic of the federal reviews, involving the Illinois State Historic Preservation Office, the federal Advisory Council on Historic Preservation, federal, state and local agencies, and the public. As a result, a 135-page Historic Properties Identification Report (“HPI”) with a 20-page bibliography citing Olmsted’s original papers and various Olmsted studies was prepared by historic preservation experts, specializing in landscape architecture, urban planning, etc. Ex. 5 (HPI). The report exhaustively reviewed the development of Jackson Park and Midway Plaisance and the associated historic context. During the Section 106 process, the federal agencies concluded that the Presidential Center design “reflects extensive minimization efforts to address the historic resources and character of the historic property, including specifically Olmsted’s designs for Jackson Park,” based in part on their review of the HPI, as well as extensive input from the public and consulting parties. Ex. 11 (Assessment of Effects (“AOE”)) at 73, 77–79; *Id.*, App’x E & F. In addition, the EA found that changes to the “historic resource[]” would be “small in scale”—less than 3 percent of the 683 acre Jackson Park Historic Landscape District & Midway Plaisance would be altered—and those changes would be

“compatible with the existing character of the area.” Ex. 17 (EA) at 51–54. Thus, the agencies concluded that the Presidential Center would have no significant impact on any aspect of the historic character of Jackson Park: “[a]fter implementation of the [Presidential Center and roadway improvements], the historic properties will retain enough historic integrity to remain eligible for and listed on the National Register of Historic Places. Therefore, the impact on cultural resources (historic properties) would not be significant.” Ex. 24 (FONSI) at 7; *see also* Ex. 11 (AOE) at 40.

Plaintiffs do not provide any evidence to refute the deliberate determinations made by the several agencies which relied on extensive expert study. Plaintiff Mitchell offers a so-called “professional opinion,” Mitchell Decl. ¶¶ 6, 15, but he offers no substantiation for his opinion. The only Olmsted feature in or around Jackson Park that Mitchell identifies as impacted by the Presidential Center construction is a six-lane asphalt highway that makes it difficult and dangerous to walk from one part of Jackson Park to another—Cornell Drive. *Id.* ¶ 9. But the plan to close Cornell Drive to car traffic and replace it with a bicycle and pedestrian promenade revitalizes important characteristics of Olmsted’s plan and enhances safety and tranquility by reconnecting the site to the rest of Jackson Park, which Mitchell ignores. Ex. 19 (Foundation EA Comment 10.30.20) at 15; Ex. 16 (DPD Section 106 Consulting Party Comments) at 7–8; Ex. 11, Part 4 (AOE), App’x F at PDF pg. 181 (Foundation AOE Final Comment Letter 8.29.19) at 2–3; Ex. 5 (HPI) at 49 (1895 Olmsted Plan). Indeed, even Mitchell agrees that Cornell Drive in its current form is “too large.” Mitchell Decl. ¶ 9.

In fact, there are many aspects of the Presidential Center plans that incorporate and advance Olmsted’s vision. For example:

- The surrounding public campus landscape “honors Olmsted and Vaux’s plan by restoring access to the Lagoon and Lake Michigan as well as the Museum of Science and



Industry.” Ex. 16 (DPD Section 106 Consulting Party Comments), at pgs. 35–56 of PDF (DPD Study) at 4–5.

- The future view of the Presidential Center from the Wooded Island reflects the original design principle of emphasizing the stark contrast between the natural landscape and the highly visible adjacent formal structures of the Columbian Exposition. *Id.* at 7–8; Ex. 11, Part 4 (AOE), App’x F at PDF pg. 181 (AOE Final Comment Letter 8.29.19) at 3.
- Stone and glass building materials were selected to echo the buildings that made up the World’s Columbian Exposition, including the material palette of the nearby Museum of Science and Industry. Ex. 11, Part 4 (AOE), App’x F at PDF pg. 181 (AOE Final Comment Letter 8.29.19) at 3.
- The Program, Athletic and Activity Center provides recreational athletic features in keeping with the original design for the proposed but never constructed gymnasias within the Park’s western perimeter. *Id.*
- “[T]he Presidential Center will be a local, national and even global destination. This is consistent with the unique history of Jackson Park” as Olmsted was hired “to design the original South Park system” and “redesign the original plan to accommodate the World’s Columbian Exposition of 1893.” Ex. 16 (DPD Section 106 Consulting Party Comments), at pgs. 35–56 of PDF (DPD Study) at 13–15.

In sum, the impact on the Olmsted design was exhaustively evaluated during the federal agencies’ review process—and Plaintiffs have offered no evidence to call into question the agencies’ conclusion that “the impact on cultural resources (historic properties) would not be significant.” Ex. 24 (FONSI) at 7. Plaintiffs’ subjective views on how best to implement the Olmsted plan are insufficient to overcome this detailed process and carefully considered outcome.

*The Women’s Garden.* Plaintiffs contend the public will be irreparably injured by removal of the Women’s Garden. PI at 5–6, 34–35. Plaintiffs’ concern is misguided: Although the garden will be temporarily removed during construction, it will be reinstated and improved, and will be fully available to the public in the same location where it currently exists. As the federal agencies determined, plantings, pathways, and seating of the reinstated garden will “incorporate [the] design and material elements of the existing garden,” including the sunken

circular lawn, stratified limestone retaining wall, and perimeter planting beds, which will include a mix plants similar to those featured in the existing garden. Ex. 17 (EA) at 52; Ex. 11 (AOE) at 51–52; Ex. 19 (Foundation EA Comment 10.30.20) at 15–16. Importantly, the reinstated garden will be made universally accessible consistent with federal law. Ex. 11 (AOE) at 5, 51. *E.g.*, *Tillman v. City of St. Louis*, 2021 WL 1080686, at \*4 (E.D. Mo. Mar. 18, 2021) (citing the public’s interest in “effectuating the ADA’s accessibility mandate” in balance of harms analysis). Because the Women’s Garden will be fully available—with enhanced accessibility—after the construction, its temporary removal is not irreparable injury. *Bill Barrett Corp.*, 601 F. Supp. 2d at 336.

Plaintiffs’ position on the Women’s Garden underscores why their Olmsted design arguments are meritless. The Women’s Garden was not part of Olmsted’s original design, and the Foundation originally planned to replace the Women’s Garden with a water feature that Olmsted had proposed but was never built. Ex. 16 (DPD Section 106 Consulting Party Comments) at 7. Upon hearing comments about the importance of the Women’s Garden to the community (which Plaintiffs now echo), the Foundation eliminated the water feature and agreed to restore the Women’s Garden in its current form and location. *Id.* Thus, Plaintiffs’ own position—advocating for a Park feature that Olmsted never planned for—demonstrates that fealty to the overall Olmsted design does not compel any single, rigid use of Jackson Park. Instead, Olmsted’s design can be implemented in new and different ways, as the community’s needs evolve.

**Wildlife.** Plaintiffs erroneously claim the project will harm wildlife, particularly migratory birds, and make vague, unsupported statements about potential loss of birding. PI at 6, 35. After extensive review, the federal agencies concluded there would be no irreparable harm to

wildlife in Jackson Park, particularly “[b]ecause Jackson Park is an urban park” and wildlife within the park “is acclimated to human activity and development.” Ex. 17 (EA) at 29–30; Ex. 24 (FONSI) at B-16–17. The agencies determined that potential impacts to the Yellow-crowned and Black-crowned Night Herons’ nesting season will be adequately mitigated by the City’s commitment not to remove trees during the herons’ nesting season, from March 1 through August 31. Ex. 17 (EA) at 29–30; Ex. 24 (FONSI) at B-16–17. Although Plaintiffs assert in conclusory fashion that the tree-cutting moratorium “only delays the inevitable destruction,” PI at 6, the agencies found the opposite, concluding that with the commitment not to remove trees during nesting season, “there would be no effect on the nesting activity of migratory bird species,” and any impact of tree clearing would be “temporar[y]” at worst. Ex. 17 (EA) at 30. Moreover, in addition to the many new trees that will be planted at the completed Presidential Center, the Center will also include bird-friendly plant selections and vegetative layering strategies that both serve an aesthetic function and can also provide benefits to these migratory birds. Ex. 19 (Foundation EA Comment 10.30.20) at 8. Thus, as the agencies found, “any temporary impacts to wildlife habitat due to tree removal within [the] Park would be minor, with ample habitat remaining throughout the property.” Ex. 17 (EA) at 30. *Accord All. for the Wild Rockies v. Bradford*, 979 F. Supp. 2d 1139, 1141 (D. Mont. 2013) (no irreparable harm where “temporary ... displacement due to project activities will not result in complete exclusion of the bear from its habitat”).

***Museum Building.*** Plaintiffs refer to the “mammoth size of the main OPC building” and its “awkward placement on the Midway Plaisance.” PI at 13. These allegations do not rise to a showing of irreparable harm as they represent little more than Plaintiffs’ subjective opinions on design. Considering the proposed design as it relates to federal statutory requirements to examine

impacts on the environment, the federal agencies found the Museum Building will have minimal impact on Jackson Park. The Foundation’s plans for the building “will be distinctive but not dominant.” Ex. 24 (FONSI) at B-29. The building is designed to minimize transparent or reflective glass and window-to-window corners and will target Light Pollution Reduction LEED Credit, which all minimize impacts on migratory birds. *Id.* at B-17. Even the buildings’ shadow will “generally be confined to the OPC site” and any other shadows will be “temporary” and “consistent with natural shading provided by trees and clouds.” *Id.*

***Recreational Space.*** Plaintiffs contend in conclusory fashion that construction of the Presidential Center will create “adverse impacts” to “recreational resources” and open spaces, PI at 3–4, but their argument misrepresents the recreational impacts and fails to account for the many enhancements to recreational resources the Presidential Center will provide. The Presidential Center site occupies only 19.3 acres—approximately 3.5 percent of the 551-acre Jackson Park—with the plaza, forum, library, and museum buildings occupying less than one quarter (no more than 4.6 acres) of the site. Ex. 19 (Foundation EA Comment 10.30.20) at 5, 9. The majority of the site will remain green space, generally accessible to the public when the park is open, and will create diverse and welcoming spaces for the community. *Id.*; Ex. 17 (EA) at 6–7; *see also id.*, App’x G (Rec Tech Memo); *Clement v. O’Malley*, 420 N.E.2d 533, 541 (Ill. App. Ct. 1981), (“[D]esignation of 11 acres as a driving range is small” compared to the “total acres in Jackson Park, and the public uses of the original area have not been destroyed or greatly impaired since picnicking, casual play activities, jogging, and meadow bird nesting are still possible elsewhere in the park.”) (citation omitted) *aff’d sub nom. Clement v. Chicago Park Dist.*, 449 N.E.2d 81 (Ill. 1983).

Any discrete recreational losses will be reconfigured or offset with replacement

properties and opportunities. The track and field, which is nearing the end of its useful life, is being moved farther south; the Women’s Garden will be reinstated with improved accessibility; and the playground will be relocated and vastly improved and expanded with all new equipment. Ex. 11 (AOE) at 5–6; Ex. 17 (EA) at 38, 40; Ex. 24 (FONSI) at 5. The completed Presidential Center will also enhance recreational opportunities in the Park. Ex. 11 (AOE) at 5–7. The site will include informal picnicking areas, a great lawn (including a sledding hill), a nature trail and a woodland walk. *Id.*; Ex. 17 (EA) at 38, 40; Ex. 19 (Foundation EA Comment 10.30.20). New buildings, including the museum, library, forum, and PAAC, will provide spaces open to the public for exhibitions/events as well as spaces to enjoy the Park such as the museum’s top floor Lake Michigan views and the library’s fruit and vegetable garden. Ex. 17 (EA) at 38, 40. And perhaps most importantly, the noise and pollution from Cornell Drive will no longer lie next to and disturb the Presidential Center site, and will no longer prevent citizens from walking on natural surfaces to the rest of Jackson Park for other recreational opportunities—at the lagoons, Wooded Island, the tennis courts, the Museum of Science and Industry, or the lakeshore. Ex. 19 (Foundation EA Comment 10.30.20).

**Roadways.** Curiously, while Plaintiffs claim to protect parks, they allege they are harmed from the “destruction” of large, busy roads that run through and interrupt the park. PI at 3, 13. Championing the preservation of a highway through a park can hardly be categorized as promoting environmental interests. To the contrary, planned roadway improvements will enhance Jackson Park by beautifying and reconnecting important features of the park with the neighboring communities to the west, which are currently separated by the busy, six-lane Cornell Drive. Similarly, the closure of a partial block on the eastern end of the Midway Plaisance between Stony Island and Cornell can hardly be said to destroy the “essential function” of the

entire “Midway Plaisance,” as Plaintiff Mitchell claims. Mitchell Decl. ¶ 12; *see* Ex. 21 (Final Section 4(f) Evaluation), App’x A-3. Ultimately, the roadway closures will allow for continuous parkland in Jackson Park. Park visitors will be able to use new bicycle/pedestrian paths to safely access other parts of the Park from the site, connecting to the lagoons, and the lakeshore, more closely aligning with the original Olmsted design. Overall, the new trail system for pedestrians and bikes will change the emphasis of the paths from speeding cars to strolling pedestrians. Ex. 17 (EA) at 8, 22–23, 26, 47; Ex. 24 (FONSI) at 3–4. The EA’s detailed traffic analysis determined the roadway improvements will successfully address redistributed mobility patterns and redirected traffic resulting from planned roadway closures. Ex. 17 (EA) at 49, App’x H (Traffic Tech. Mem.). Plaintiffs’ unfounded and unsupported concerns about traffic cannot replace the reasoned study of federal, state, and City experts.<sup>5</sup>

### **III. The Balance of the Equities Weighs in the Foundation’s Favor.**

Plaintiffs grossly underestimate the harm a preliminary injunction—sought by Plaintiffs at the eleventh hour—would cause the Foundation. After at least five years of extensive and costly preparations by the Foundation—including at least \$70 million in costs just to design and plan the Presidential Center—and years of waiting for all the necessary governmental approvals, the Foundation finally can proceed to fulfill its initial, core mission. As demonstrated in the attached declaration from the longtime leader of the Presidential Center project and summarized below, prohibiting this project from proceeding as scheduled would cause cascading delays in the construction schedule. That is because the schedule for this complex project is carefully timed to account for many limitations, including those imposed by the Chicago winter,

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<sup>5</sup> To the extent Plaintiffs allege harm from traffic during construction, those sorts of temporary disruptions are not irreparable. *W. Al. Quality of Life Coal. v. U.S. Fed. Highway Admin.*, 302 F. Supp. 2d 672, 684–85 (S.D. Tex. 2004) (inconvenience from traffic caused by road reconstruction was neither permanent nor of long duration).

contractor availability, the need to protect migratory birds, and federal museum requirements. The many interlocking, sequential pieces of this complex project are finally in place. Contracts of \$150 million have now been awarded to over 40 contractors and subcontractors who have set up their businesses to do the Presidential Center work on schedule. Saying “halt” now, on the project’s eve, would be devastating to the Foundation’s ability to complete the Presidential Center in anything close to the current time frame. This is not a project that can be paused and restarted at will. A sudden, unplanned stoppage of uncertain duration would result in exponential delays that would lead to massive, irreparable financial losses for the Foundation.

Courts frequently find that construction delays and related costs outweigh asserted harms from plaintiffs, including asserted environmental harms beyond anything Plaintiffs here claim. *See, e.g., Sierra Club v. U.S. Army Corps of Eng’rs*, 990 F. Supp. 2d 9, 42 (D.D.C. 2013) (balance favored defendant when an injunction would significantly increase construction costs because defendant would be required “to ‘de-mobilize’ and then ‘re-mobilize’ its construction efforts”).<sup>6</sup> The balance is especially lopsided against Plaintiffs in this case. The Foundation will suffer concrete, actual, irreparable injuries that would impact the Foundation if construction of the Presidential Center were enjoined. Plaintiffs’ alleged “harms” pale in comparison (removed trees that will be replaced with other trees and an increase of green space; removed or reshaped roadways to allow disconnected parts of the park to be reconnected with natural paths and plants that will reduce safety hazards and pollutants in the park; and alterations to a small, isolated

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<sup>6</sup> *See also Montrose Parkway Alternatives Coal. v. U.S. Army Corps of Eng’rs*, 405 F. Supp. 2d 587, 600 (D. Md. 2005) (balance favored defendant when halting construction would cause exponential delays and increased costs, including thousands of dollars for “each day the contractor sits idle”); *Sw. Williamson Cty. Cmty. Ass’n, Inc. v. Slater*, 67 F. Supp. 2d 875, 886 (M.D. Tenn. 1999) (balance favored defendant when many millions had been spent on the project and “the cost of halting construction ... would be substantial”), *aff’d and remanded*, 243 F.3d 270 (6th Cir. 2001); *Nw. Bypass Grp. v. U.S. Army Corps of Eng’rs*, 470 F. Supp. 2d 30, 66 (D.N.H. 2007) (defendant-intervenor’s harm from delayed construction exceeded harm to plaintiffs).

fragment of Jackson Park that has already been altered over the years and is currently underutilized and in need of new life).

**A. The Foundation Has Invested Heavily in the Presidential Center in Jackson Park.**

The “time and effort that [the Foundation] has already put in to the project” as well as the “major resources” it has committed to the project shows that the Foundation “will suffer harm if the [Presidential Center] is indefinitely delayed.” *Sierra Club*, 990 F. Supp. 2d at 42–43.

The Foundation has been working toward the opening of the Presidential Center since 2014, when it launched a nationwide search for the Presidential Center’s home. Cohen Decl. ¶¶ 9–14; Compl., Ex. 1 thereto (1/21/2015 City Ordinance) at 1. The University of Chicago proposed the western edge of Jackson Park as a potential site for the Presidential Center, and, after careful analysis, the Foundation in July 2016 announced that it had chosen that site. Cohen Decl. ¶¶ 3, 10; Ex. 16 (DPD Section 106 Consulting Party Comments) at 2–4; Compl., Ex. 1 thereto (1/21/2015 City Ordinance) at 2. Even before making that selection, the Foundation began engaging with the City of Chicago and its residents to ensure the project was feasible and welcome at the Jackson Park site. Ex. 16 (DPD Section 106 Consulting Party Comments). The Foundation has obtained governmental approvals from the Park District’s Board of Commissioners (twice), the Chicago Plan Commission (twice), and the City Council (in four separate ordinances). *Id.* at 2–5; *see also* Cohen Decl. ¶¶ 11–12. Throughout, thousands of community members participated in approximately 60 open meetings and hearings hosted by City bodies and dozens of additional meetings hosted by the Foundation. Ex. 16 (DPD Section 106 Consulting Party Comments) at 2–5.<sup>7</sup> And for the last four years, the Foundation has spent a

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<sup>7</sup> *See* OPC Community Engagement Meetings, Obama.org, <https://www.obama.org/designed-with-you-bak/meetings/> (last visited July 4, 2021).



great deal of time and effort participating in the federal agency review process. After this extensive process, even without an injunction, the time between the end of President Obama's presidency and the opening of the Presidential Center will be longer—about twice as long—than the time before the opening of any other modern presidential library.<sup>8</sup>

The Foundation has also already invested many millions of dollars in the Presidential Center in Jackson Park. Since selecting the site in 2016, the Foundation has spent more than \$70 million to plan and design the Presidential Center based on the unique characteristics of the site. Cohen Decl. ¶¶ 7, 16–19. In addition, the Foundation has built a team of more than 25 full-time employees dedicated to the Presidential Center's construction of and planning, and has engaged in massive fundraising efforts which have raised hundreds of millions of dollars for the Presidential Center. *Id.* ¶¶ 19–20, 39–40. Throughout 2021, the Foundation has been selecting contractors in a tightly planned sequence to ensure that tradespeople, equipment, and other elements will all be in place for the mid-August 2021 groundbreaking, and has already awarded construction contracts totaling approximately \$150 million. *Id.* ¶¶ 21–24.

The Presidential Center plan has been specifically designed for the Jackson Park site, in the community where Mrs. Obama grew up, President Obama began his career, and the two of them began their family together. *Id.* ¶¶ 10, 16. Federal and local reviews have granted approvals specific to that location. Compl., Ex. 2 thereto (2018 Ordinance); Ex. 24 (FONSI); Ex. 20 (MOA). And contractors are lined up to complete work specifically tailored to that site. Cohen Decl. ¶¶ 16, 21–23. The project cannot simply be transposed to another site. *Id.* ¶ 16. The Foundation's investment in the project weighs heavily against a preliminary injunction. *Sierra*

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<sup>8</sup> John McCormick, *Obama Presidential Center Delay to Set Modern Record*, Wall Street J., June 16, 2021, available at <https://www.wsj.com/articles/obama-presidential-center-to-set-modern-record-for-timetable-to-opening-11623848401>.

*Club*, 990 F. Supp. 2d at 42–43; *Sw. Williamson Cty. Cmty. Ass’n, Inc.*, 67 F. Supp. 2d at 886.

**B. Even a Short Injunction Would Significantly Delay the Presidential Center.**

A sudden, unplanned stoppage of the Presidential Center project caused by an injunction would be devastating to the planned construction schedule, creating massive uncertainty and long delays. First, the injunction Plaintiffs request would not merely result in a “delay of weeks or months” as Plaintiffs claim. PI at 37. Plaintiffs have asked that an injunction remain in place until the full case—pled in 15 separate causes of action over 82 pages—is resolved on the merits. PI at 4. And as explained above, *supra* Section II.A., Plaintiffs have made no effort to move quickly.

Regardless, however long an injunction were in place, the delay to the construction schedule would be significantly longer. Preparing for construction on the unique Jackson Park site has involved careful planning and extensive engagement with contractors and the broader community. Cohen Decl. ¶¶ 16, 24. This is a long, complex project that requires precise sequencing and an intricately-planned schedule. *Id.* ¶¶ 25–31. The schedule must account for interlocking constraints created by seasonality, contractor availability, security standards, the need to avoid tree-cutting during six months of the year to protect migratory birds, and federal requirements for a museum housing significant artifacts. *Id.* ¶¶ 25–31. For example, the schedule calls for excavation to occur after September 1, once the six-month moratorium on tree-cutting is over, but to be completed in time for the initial below-grade and foundational work to begin before Chicago winter hits; attempting to do that work when the ground is frozen would, at a minimum, create very substantial delay and be much more costly. *See id.* ¶¶ 21–22, 28, 33.

This type of delay has a cascading effect, since, among other things, later work cannot necessarily occur at the new date necessitated by delays earlier in the project. *Id.* at ¶¶ 33–34. It is not reasonable to assume that the large number of contractors of varying specialties the

Foundation has contracted with will be available if their scheduled work is put on hold because of an injunction of uncertain duration, and then, at some unknown time in the future, put back on the schedule. *See id.* ¶¶ 34–36, 38.

**C. An Injunction Would Result In Massive, Irreparable Harms to the Foundation.**

Estimating the extent of the devastating impact and cost to the Foundation from a sudden, unplanned delay of uncertain duration imposed on the eve of groundbreaking is very difficult. But it is safe to say the cost would be many millions of dollars.

First, the cost of constructing the Presidential Center would increase by, at a minimum, an estimated \$2.2 million for every month that construction is delayed or extended. Cohen Decl. ¶ 37. Steadily rising construction costs, such as costs for materials, would substantially increase the cost of the Presidential Center each month. *Id.* And because a sudden, indefinite halt to the project would create an immediate risk that the Foundation’s team of professional services contractors (architects, engineers, etc.) would leave the project, the Foundation would need to continue paying to keep them in place, in addition to continuing to pay the salaries of Foundation staffers who are dedicated to the planning, design and construction of the Presidential Center. *Id.* ¶¶ 36–37. The Foundation’s alternative—winding down the project indefinitely and hiring, retaining, and training a new team when an injunction is lifted at some uncertain future time—would be no less costly. *Id.* ¶ 38.

Second, this \$2.2 million in monthly costs does not include perhaps the most significant increased costs, from unavoidable increases based on changes in the construction schedule. *Id.* ¶ 37. If the carefully-planned schedule is altered, the Foundation will very likely lose contractors, be unable to perform work when it is most cost-effective to do so, and need to pay for premium time labor and expedited manufacturing and delivery costs, among other things. *Id.* ¶ 34. For

example, if below-grade and foundational work is pushed back into the winter months, that work will become significantly more expensive—and take longer, causing further delays to later work. *Id.* ¶¶ 28, 37. Nor does the \$2.2 million take into account many additional Foundation employees who support the Presidential Center project. *Id.* ¶ 37.

Third, an injunction would also negatively impact the project's revenue. The entire cost of the \$700 million Presidential Center will be funded by private donations. *Id.* ¶ 39. Donations would be chilled by the uncertainty an indefinite injunction would cause. *Id.* Further, there is a serious risk that already pledged donations would be rescinded. *Id.* ¶ 40. To date, the Foundation has raised over \$200 million in donations and pledges explicitly dedicated for use in the development of the Presidential Center as it has been planned and publicly described. *Id.* Delay and uncertainty from an injunction would create the significant risk that the Foundation could lose some of these donations and pledges as donors worry about the impact on the viability of the project. *Id.*

**D. An Injunction Would Block the Foundation From Achieving Its Mission To Promote the Economic Interest of Surrounding Communities.**

The Foundation chose the Jackson Park site for the Presidential Center with the goal of bringing significant benefits to the surrounding communities. *See id.* ¶ 10. Since then, the Foundation has worked hard to ensure the Presidential Center achieves that goal. The Presidential Center—from its groundbreaking forward—is now poised to infuse new life into Chicago's South Side. Delay would be devastating to the Foundation's ability to have the immediate and significant impact it wants to have on neighboring communities.

First, the Foundation has prioritized awarding a large percentage of its construction contracts to smaller Chicago companies that are certified as historically underrepresented contractors—mostly companies owned by women or minorities. *Id.* ¶¶ 23, 35. Many such

companies do not have the scale to bid on other jobs in addition to the Presidential Center. *Id.*

¶ 35. Putting the project on hold would therefore mean that these companies would not be working during this period. *Id.* For example, more than half of the concrete work that will be performed during construction of the Presidential Center will be performed by II in One Contractors, Inc. (a minority-owned business led by President Robert J. McGee, Jr.), and Trice Construction Company (a woman- and minority-owned business headed by President and CEO Stephanie Hickman). *Id.* The value of the contracts these firms have been awarded is approximately \$50 million. *Id.* In order to bid on and prepare for the Presidential Center project, the firms have forgone bidding on alternate projects. *Id.* Now, an indefinite pause in the project would be disastrous for both firms. *Id.* The loss of tens of millions of dollars of income for local companies who need and deserve the work hurts the community and the Foundation. *Id.* And, if the construction schedule is disrupted and the Foundation's chosen contractors are not able to adjust to an indefinite delay, the chances that the Foundation will be able to replace these contractors with other small minority- and women-owned contractors in the future is miniscule. *Id.* ¶¶ 38, 47.

Second, an injunction would make it impossible for the Foundation to inspire concurrent investments in the community. One of the Foundation's core missions is to be a catalyst for investment in the local community, including by drawing new businesses to the area. *Id.* ¶ 47. If it becomes uncertain when the Presidential Center will open, others who are interested in investing in the local community will be unable to plan and prepare accordingly. *Id.*

Finally, the Foundation has always prioritized creating jobs in Chicago and particularly in communities surrounding Jackson Park. *See* Cohen Decl. ¶¶ 41–46. The need for that jobs boost is now critical. Chicago's unemployment rate—7.3%—is well over the national average of 5.5%,

and Chicago ranks 47th worst out of 51 large metropolitan areas nationwide for unemployment.<sup>9</sup> The pandemic concentrated unemployment in the South Side “to a breathtaking degree”; unemployment there has been estimated at over 30%.<sup>10</sup> Construction of the Presidential Center will mitigate these harms. Throughout the project, construction of the Presidential Center is expected to create 3,682 jobs, approximately 40% of which (or 1,407 jobs) are expected to go to South Side residents. *Id.* ¶ 42. On-site construction jobs will begin immediately. Nearly 150 personnel will be working on site within the first five months of the project—a number that will rise as construction moves to different phases. *Id.* ¶ 43. And 35% of the total on-site construction work hours are expected to be performed by residents of the City’s South and West side neighborhoods, as a result of the Foundation’s workforce development plan. *Id.* ¶ 45. An injunction will keep unemployed indefinitely those who would be put to work imminently by the project.

In cases like this one, where the challenged project will create jobs and revitalize local economies, courts routinely reject preliminary injunctions. *See, e.g., Coal. of Concerned Citizens to Make Art Smart v. Fed. Transit Admin. of U.S. Dep’t of Transp.*, 843 F.3d 886, 913 (10th Cir. 2016) (denying injunction that would delay a “project to revitalize the area and address pedestrian safety and improve transit efficiency” and “lead to increased construction costs” while contractors idled); *Stand Up for California! v. U.S. Dep’t of Interior*, 919 F. Supp. 2d 51, 84

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<sup>9</sup> U.S. Bureau of Labor Statistics, *Chicago Area Economic Summary* (last modified July 7, 2021); [https://www.bls.gov/regions/midwest/summary/blssummary\\_chicago.pdf](https://www.bls.gov/regions/midwest/summary/blssummary_chicago.pdf).

<sup>10</sup> Quoc Trung Bui and Emily Badger, *In These Neighborhoods, the Jobless Rate May Top 30 Percent*, N.Y. Times, Aug. 5, 2020, available at <https://www.nytimes.com/interactive/2020/08/05/upshot/us-unemployment-maps-coronavirus.html>; see also Esther Yoon-Ji Kang, *Unemployment Claims Are the Tip of the Iceberg of the Pandemic’s Impact on Black Chicago*, WBEZ (Mar. 31, 2021) (describing analysis of unemployment claims and other indicia of economic distress by zip code within the City), available at <https://www.wbez.org/stories/unemployment-claims-are-the-tip-of-the-iceberg-of-pandemics-impact-on-black-chicago/4d70df1f-17e3-4ad3-af5b-9f7b46ae2975>.

(D.D.C. 2013) (denying injunction that would delay a project which would bring economic benefits to an area with 16% unemployment rate).<sup>11</sup>

#### **IV. An Injunction Would Harm the Public Interest.**

A preliminary injunction should be denied because blocking the construction of this historic institution on Chicago's South Side will harm the public interest. "In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Winter*, 555 U.S. at 24 (citation omitted). The public interest can override other factors in determining whether an injunction should issue, even in circumstances where the court believes that a NEPA violation has occurred. *See Weinberger*, 745 F.2d at 426 ("Although the goal of NEPA is to force agencies to consider the environmental consequences of major federal actions, that goal is not to be achieved at the expense of a total disregard for countervailing public interests.") (internal citation omitted). If a proposed injunction substantially harms the public interest, then the injunction should not issue. *See Wemhoff v. Bush*, 31 F. App'x 204, 204–05 (D.C. Cir. 2002) (per curiam) (affirming denial of preliminary injunction against construction of World War II memorial on National Mall where the asserted "public interest in preserving space on the National Mall" was overcome by the "competing public interest in the memorial's expeditious construction").

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<sup>11</sup> *See also W. Watersheds Project v. Bureau of Land Mgmt.*, 774 F. Supp. 2d 1089, 1103 (D. Nev. 2011) (denying injunction of project that would create tax revenue, jobs, wages, and other investments in local economy), *aff'd*, 443 F. App'x 278 (9th Cir. 2011); *Desert Protective Council v. U.S. Dep't of the Interior*, 2012 WL 13175866, at \*5 (S.D. Cal. Sept. 28, 2012) (denying "the grant of an injunction halting construction [that] would have [an] immediate negative impact on funding to complete the project and immediate negative economic impact on jobs in the local economy and revenue for the government"); *Lee v. Commissioners' Ct. of Jefferson Cty.*, 81 F. Supp. 2d 712, 717–18 (E.D. Tex. 2000) (denying injunction that would delay "construction jobs and permanent jobs" and other "contribut[ions] to the growth of the local economy"), *aff'd, sub nom., Lee v. Jefferson Cty.*, 252 F.3d 434 (5th Cir. 2001).

**A. The Presidential Center’s “Multitude of Benefits” Would Be Delayed Indefinitely by an Injunction.**

It is beyond dispute that the Presidential Center “surely provides a multitude of benefits to the public.” *Protect Our Parks I*, 385 F. Supp. 3d at 682. As this Court has already recounted, the Presidential Center “will offer a range of cultural, artistic, and recreational opportunities—including an educational museum, branch of the Chicago Public Library, and space for large-scale athletic events.” *Id.* at 673–74, 682. All of these many benefits remain as important and indisputable now as they were when this Court and the Seventh Circuit rejected Protect Our Parks’ last attempt to block the Presidential Center. *See Protect Our Parks II*, 971 F.3d at 737 (“It’s hard to see ... how we could second-guess the City’s determination that building the Center—with its museum, public library branch, auditorium, athletic center, gardens, and more—is a use with public benefits.”) (internal quotation marks, brackets and citation omitted).

Indeed, the Presidential Center is not just any cultural institution. There are only 13 presidential museums and centers in the United States. Unlike other museums, a local government cannot just choose to have one. The President of the United States must choose and be connected to that place. There has never before been a United States President from Chicago, or a First Lady from Chicago, much less one who grew up on the South Side (eight blocks south of Jackson Park). This is Chicago’s first chance to build a presidential center, and the City has been waiting for years to move forward, following legislation enacted by its elected representatives.

And this particular presidential center has particular significance for Chicago. Its museum will tell the story of our nation’s first African-American President and First Lady in a city—and in a portion of the city—that is one of the great, historic centers of African-American culture in America. Cohen Decl. ¶ 26. Delaying the opening of this unique, historic place is a substantial



harm in and of itself. *Accord George Washington Home Owners Ass'ns, Inc. v. Widnall*, 863 F. Supp. 1423, 1428 (D. Colo. 1994) (alleged harms from NEPA violation were outweighed by harm that would flow from preventing defendant and intervenor from using property to fulfill mission of housing homeless).

That the public interest will be advanced by construction of the Presidential Center is exemplified by the remarkable and diverse set of *amici* who are submitting briefs opposing Plaintiffs' requested injunction. In one, over 60 community organizations, leaders, and members have joined together to describe the overwhelming community support for the Presidential Center. In another, three of the City's leading century-old institutions—the Civic Committee of the Commercial Club of Chicago, the Chicago Urban League, and the Chicago Community Trust—jointly describe how beneficial the Presidential Center will be to Chicago and its future, speaking from their unique historical perspective. In a third, the leading 16 Chicago museums and cultural institutions articulate how existing museums will benefit from the development of another major museum in Jackson Park, consistent with the longstanding Chicago tradition of siting museums in parks. Finally, a brief submitted by the University of Chicago explains how important and beneficial the Presidential Center will be, and why the University has strived for years to bring it to Chicago's South Side.

Plaintiffs baldly assert that the harm from a preliminary injunction would be only a “delay of weeks or months” in the Presidential Center's construction schedule. PI at 37. But even a “delay of weeks or months” would weigh heavily against an injunction: At a minimum, it would mean depriving the people of Chicago's South Side of cultural, educational, community, and economic enrichment—which local, state, and federal authorities have all found to be both lawful and in furtherance of the public interest—for as long as Plaintiffs may take in litigating

this second attempt to block the outcome of the democratic process that will culminate in the August groundbreaking. *See Wemhoff*, 31 F. App'x at 204–05 (citing the public interest in “expeditious construction” of the World War II memorial that Congress had authorized). But it is far worse than this, because Plaintiffs’ “weeks or months” estimate ignores the reality that delay now means multiplied delay later, due to the unique constraints of this unique construction project. Cohen Decl. ¶¶ 32–35. As demonstrated in careful detail in the Cohen declaration, the concept of a “harmless” brief delay is fanciful and completely at odds with the reality of constructing a project of this magnitude. Thus, however long Plaintiffs may take in litigating their challenge now would mean delaying the opening far longer, pushing the benefits of the institution’s placement on the South Side off into the indefinite future. Cohen Decl. ¶¶ 32–35.

**B. An Injunction Would Deprive Chicago Residents of Improvements to Jackson Park.**

An injunction would also keep from the public the benefits of the extensive improvements to the Park that the Presidential Center will provide. First, by replacing Cornell Drive with a pedestrian walkway, the Presidential Center project will reconnect the site to the rest of Jackson Park, allowing safe and unimpeded access on natural surfaces from the western edge to the rest of Jackson Park—including the Wooded Island, the lagoons, the Museum of Science Industry, all the way to the shore of Lake Michigan. Though Plaintiffs evidently prefer the Park to be dissected by a busy street congested with automobile traffic, others who represent the public interest have determined that this change will provide enormous benefits. As this Court earlier explained, the Chicago Department of Planning and Development (“DPD”) found that “by closing certain streets within Jackson Park, and by expanding or reconfiguring other streets in and around Jackson Park,” development of the Presidential Center will “(1) improve access by pedestrians through the park, across the lagoons to the lake; (2) offer unimpeded

pedestrian and bike access to the Museum of Science and Industry from the South Side; (3) replace some of the land currently occupied by Cornell Drive with a ‘restful Woodland Walk’; (4) create new pedestrian access points and ADA compliant design features; and (5) reduce air and noise pollution, improve existing bird habitats, and attract new wildlife to the OPC site area.” *Protect Our Parks I*, 385 F. Supp. 3d at 674 (quoting DPD Study ¶¶ 39–53) (internal citations omitted). In addition, the DPD found that conversion of the roads to parkland will have environmental benefits, reducing the volume of stormwater runoff entering the park’s lagoon, reducing road pollutants from entering the park’s stormwater system, and improving park-like acoustics for the area. Ex. 16 (DPD Section 106 Consulting Party Comments), at pgs. 35–56 of PDF (DPD Study) at 9–10, 15–16.

In addition, the planned construction will enhance recreational opportunities for South Side residents. “In total, the DPD Study found that the roadway work conducted in connection with the [Presidential Center] will create a net gain of an additional 4.7 acres of publicly available park space throughout Jackson Park.” *Protect Our Parks I*, 385 F. Supp. 3d at 674. The Presidential Center’s greenspace will offer new recreational facilities, including picnicking areas, a great lawn (including a sledding hill), a nature trail, a woodland walk, and a new playground with all new equipment. Ex. 11 (AOE) 5–7; Ex. 17 (EA) at 38–40; Ex. 19 (Foundation EA Comment) 10.30.20. The Presidential Center’s buildings will also offer indoor gathering spaces, as well as smaller spaces for study and reflection, for the public to use without an admission fee—providing a vibrant hub and gathering place for the local community. Cohen Decl. ¶¶ 54–55. All of these interior and exterior spaces will generally be made available, at the Foundation’s sole expense, to residents in the same way as other grounds and other museums in Chicago’s

parks. *Id.* ¶ 50.<sup>12</sup>

**C. An Injunction Would Block Jobs and Economic Benefits Needed in Chicago Neighborhoods Recovering from the Pandemic.**

As explained above, delaying construction of the Presidential Center would mean depriving Chicagoans of much-needed jobs and other economic benefits that the Presidential Center will create. According to the federal agencies' Environmental Assessment, the Presidential Center is expected to create 3,682 full- and part-time jobs in Illinois, with approximately 1,407 jobs to be on the City's South Side. Cohen Decl. ¶ 42; Ex. 17 (EA), App'x I (Soc. Tech. Memo) at 29, 31. Approximately 150 on-site construction jobs will be created within months of groundbreaking, Cohen Decl. ¶ 43, and the Foundation's commitment to working with local, minority-owned, and woman-owned contractors will generate major economic benefits to Chicago residents, *id.* ¶¶ 34–36, 45–47. In addition, the Foundation is committed to developing a strong small business corridor around the Presidential Center and beyond, which will serve as a catalyst for investment in the local community. *Id.* ¶ 47. An injunction would delay or even threaten these substantial economic benefits. *See supra* Section III.D.

**D. An Injunction Would Block Chicago Citizens From Receiving the Benefits of Their Choice, Made Through their Democratically Elected Representatives.**

The elected representatives of Chicago residents in the Chicago City Council voted unanimously to approve development of a new institution—one dedicated not only to the nation's first African-American President, but also to furthering the principles of community-building and civic engagement, and designed to provide new spaces and means to bring together residents of the surrounding neighborhoods, the City, and the nation as a whole. Allowing this democratically validated project to be derailed due to seven Plaintiffs' preferences for a different

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<sup>12</sup> The City Council recounted these same benefits in its findings in support of authorizing development of the Presidential Center. *See* Compl., Ex. 2 thereto (2018 Ordinance).

site would call into question far more than the date on which the Presidential Center will open its doors to the public. It would call into question the power of the people of Chicago to choose, through their duly elected representatives, to welcome a historic institution to their City, and to enjoy the “multitude of benefits” that that institution will bring.<sup>13</sup>

After several years of public hearings, public comments, public votes, and detailed agency analyses, the consensus of all governmental authorities involved is that the Presidential Center should be built, without delay, for the benefit of Chicago’s South Side, the broader City, and the Nation. To be sure, not every resident of every neighborhood agrees—but all members of the public have had ample opportunity to present their views, and all legislative and agency weighting has now concluded. These seven Plaintiffs should not be allowed, by means of a federal lawsuit, to block the outcome of this extensive democratic process, even temporarily.

### CONCLUSION

The Presidential Center will usher in a new era for Jackson Park and its enjoyment by South Siders, other Chicagoans, and visitors from around the country and the globe. This is the vision the City and its elected representatives have chosen. Plaintiffs seek to stop this progress because they would prefer that the Presidential Center be located elsewhere. But Plaintiffs’ preference cannot support injunctive relief. The Foundation respectfully requests that the Court deny Plaintiffs’ motion for a preliminary injunction.

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<sup>13</sup> Plaintiffs attempt to gain support for their public interest argument from *Sierra Club v. U.S. Army Corps of Eng’rs*, 645 F.3d 978 (8th Cir. 2011), PI at 39, but that case is easily distinguishable. There, a power company had violated the law by intentionally starting construction of a new power plant in an environmentally sensitive region *without* obtaining necessary federal or state approvals and before any analysis under NEPA was done. After the project was completed, the Corps of Engineers issued a final permit *retroactively* allowing the construction without addressing numerous adverse environmental impacts including harms to endangered species established through expert testimony. *Sierra Club*, 645 F.3d at 991–92. By contrast, the facts of this case—where the Foundation is set to begin construction only after obtaining comprehensive local and federal approvals, and with the benefit of extensive community engagement—are 180 degrees from *Sierra Club*.

Date: July 15, 2021

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 15th day of July, 2021, a true and complete copy of the foregoing **Memorandum of Law of Defendant The Barack Obama Foundation in Opposition to Plaintiffs' Motion for a Preliminary Injunction** has been filed with the Clerk of the Court pursuant to the Court's CM/ECF procedures, and served on counsel of record via the Court's CM/ECF system.

*/s/ Rachel L. Hampton* \_\_\_\_\_  
Rachel L. Hampton