

# Committee on Resources

## Subcommittee on National Parks and Public Lands

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### Testimony

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Mr. Chairman and members of the Subcommittee:

As Executive Director of the Disabled Veterans' LIFE Memorial Foundation, I am delighted to appear here before you with Mrs. Lois Pope, the Foundation's Chairperson, and Mr. Art Wilson, the Foundation's President.

Our presence here is very simple. We are here to express our strong support for H.R. 1509 and to ask for yours. We want a memorial on the Mall to commemorate the continuous sacrifice and devotion of America's veterans who were in the main disabled as a result of their wartime service. This legislation is the first step toward meeting that goal.

It will and can happen, if we, the custodians of history, have the will to make it so. As we seize this moment in history, we know that it cannot happen without your support and approval. We need your support in order to put a memorial on the Mall so that the American people can say, "thank you" to:

- The 670,000 Americans who were wounded during WWII,
- The 100,000 who were wounded in Korea, and
- The 300,000 of us who were wounded in Vietnam.

My remarks will focus on issues raised during the consideration of our proposal, first by Mr. Parsons and others in the Park Service, and then by the National Capital Memorial Commission, most recently at its September 23, 1999, meeting. I've attached to my statement a chronology of the Foundation's interactions with the Park Service and Memorial Commission and will touch briefly on the character of those interactions at the end of my statement.

There are two general matters from our experience to date that I will address: first, whether the memorial we are proposing conforms with the Commemorative Works Act; and second, the appropriateness of suggested alternative sites for the proposed memorial.

The Park Service and Memorial Commission have taken the position that two provisions of the Commemorative Works Act sections 3(b) and 3(c) operate as bars to a memorial to disabled veterans on land covered by the Act. These two sections deal with "military commemorative works" and memorials commemorating individuals or groups of individuals.

We respectfully disagree with the Park Service and Memorial Commission's interpretation of these provisions and believe that the Congress disagrees as well. In any event, the decision about the meaning of the provisions in general and with specific reference to the memorial we propose is one that the Congress retained for itself under the Commemorative Works Act, and we hope that you will agree with our view on the law.

As set forth in a legal opinion the Foundation submitted to the Memorial Commission, we believe our proposal does comply with the spirit and letter of the Act. However, rather than provide a detailed recital of our arguments now, I have attached our opinion to this testimony, along with an opinion from the Office of the Solicitor in the Department of Interior and a memo from Mr. Parsons to the members of the Memorial Commission on these two opinions.

A key point, discussed in detail in the Foundation's opinion, is that Congress has approved a number of memorials under the Commemorative Works Act that are not in accord with the interpretation given the Act by the Park Service and the Memorial Commission. The Solicitor's opinion, which was rendered with knowledge of both the Foundation's interpretation and the Park Service's position, and which essentially took an admittedly partisan view to support the Park Service's position, made no attempt to rebut this key point. Indeed, the opinion from the Solicitor's Office recognizes this fact expressly, stating, on page 5 of the opinion:

...we also note that through explicit Congressional action, commemorative works which did not conform to NPS' and NCMC's interpretation of the Act have been established on lands covered by the Act.

This recognition by itself should raise questions about the Memorial Commission's understanding of the law. The strongest conclusion the Solicitor could offer about the Park Service's position was that it is supportable, and even that characterization is a stretch when you consider that it necessarily ignores the foregoing key point.

Because our opinion includes a thorough analysis of the meaning of the two sections of the Act which are in dispute, I will make two brief points:

Section 3(b) of the Act, the military commemorative works provision, relates to memorials dealing with specific conflicts or specific units of the Armed Forces, not to any memorial which might have a military theme. If this interpretation is not correct, many memorials authorized by the Congress, including those commemorating Women in Military Service, Women who served in Vietnam, Black Revolutionary War Patriots, African Americans in Union Forces, and Japanese American Patriotism, would not be in accord with the Act. Clearly, the memorial to disabled veterans proposed by the Foundation does not relate to any specific conflict or specific unit of the Armed Forces and thus is not barred by section 3(b) of the Act.

Section 3(c), the provision of the Act relating to memorials to "group of individuals," places limits only on works concerning closed groups of ascertainable individuals, not to ones concerning large classes of persons where it would be difficult or impossible to identify all the members of the class, and the class itself is not closed. Again, if this is not a correct interpretation of the Act, many memorials authorized by Congress, including those commemorating Women in Military Service, Women who served in Vietnam, Japanese American Patriotism, and Victims of Communism, would not be in accord with the Act.

While it is clear that the Park Service and the Memorial Commission have an important advisory responsibility under the Commemorative Works Act, there must be some question about how well they fulfill that role when, in interpreting the Act, they ignore actions by the Congress under the Act. It is obvious that Congress retained authority under the Act to authorize memorials, and, at a minimum, it would seem appropriate for the Park Service and the Memorial Commission, in their efforts to craft advisory opinions on memorials, to take notice of and understand how Congress has acted under its own law.

Now, I will turn briefly to alternative locations for the proposed memorial suggested by Mr. Parsons in a letter to Senator McCain and at the Memorial Commission meeting last month.

The Foundation is seeking to have the memorial placed on the Mall or near the Mall for the express purpose of providing the American people with a place where they can be reminded of the sacrifices of those who were disabled in the defense of the Nation. This will be a place to honor the sacrifices of veterans and to express thanks for their service.

Instead of a location where the memorial would be visible and accessible, Mr. Parsons has suggested locations such as Fort Myer, Arlington National Cemetery, the Washington, D.C., VA Medical Center, or the Pentagon. In our view, these are very undesirable alternatives.

First and foremost, none of these sites would afford the level of access that would be available to a memorial located on the Mall.

There is no possibility that the general public would come to any of these alternative locations in anything like the numbers that would come to the memorial on the Mall. Indeed, if the memorial were located on a military facility, such as Fort Myer or the Pentagon, there might even be limits on access to these locations.

In addition to affording an opportunity for the American people to honor the sacrifices of disabled veterans, the Foundation believes that the memorial could well be an inspiration for younger Americans to enter the military. Seeing how the Nation honors those who served before could help the military reach its recruiting goals. However, a military setting is not an appropriate place for the general public to appreciate and honor the sacrifices of veterans.

For this memorial to fulfill its promise, it must not be hidden away. It needs, it deserves, a place of prominence, where many will see it and come to contemplate the impact of war. It deserves a location on the Mall.

Before closing, let me add a final personal note on my perspective of the Foundation's dealings with the Park Service and the Memorial Commission. In my many years working in and around the Federal Government, I have never experienced such a lack of cooperation indeed, active opposition from a governmental entity as the Foundation has received from the Park Service and Commission. It may well be that the Congress intends for these organizations to set a high bar for any memorial to cross before it comes to the Congress, but the treatment we have received has gone well beyond imposing exacting demands upon us. From our first encounter with Park Service staff to last month's meeting of the Memorial Commission, there has never been any sense of assistance to or cooperation with the Foundation, but rather a sense that they saw their mission as working to thwart us at every turn. Most troubling, after the Commission meeting in April, there emerged a pattern of active non-cooperation from Park Service staff, manifested most directly by a failure to return phone calls to representatives of the Foundation. Abuses are almost always the product of government agencies that seek first and foremost to serve themselves. That is not how I believe government should operate. Had I known of a VA employee who was acting that way when I was Secretary of Veterans Affairs, you can be certain that he or she would have been seeking new employment. I hope that the Subcommittee will look into this matter. Disabled veterans fought to preserve our democratic principles. In a democratic government, its agencies must be accountable.

Mr. Chairman and other members of the Subcommittee, while there are certainly many worthy memorials and ideas for memorials, it is difficult for us at the Foundation to imagine a subject that better meets the test

of "lasting national significance" than those heroes who gave life and limb to protect our freedoms.

I believe that Thomas Paine had it right when he said:

These are the times that try men's souls. The summer soldier and the sunshine patriot will in this crisis shrink from the service of his country. But he that stands it now deserves the love and thanks of man and woman.

The citizen soldiers who were disabled during an act of war have earned and deserve the thanks of the American people. They have served this country and served it well. We ask that you help us make sure the devotion and sacrifices of America's disabled veterans are never forgotten. We ask that you help us seize this moment.

Will you authorize us to build this memorial and to do so on land covered by the Commemorative Works Act?

Thank you so much for allowing us to share our views and observations with you.

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