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Federal Court Rebukes National Park Service for Legal Violation In Aid Of New York City's Development Plans

Court Halts Bloomberg Plan to Cede Landmark Structures In Brooklyn Bridge Park for Private Development; Judge Calls Justifications for Federal Giveaway A "House Of Cards"

Brooklyn, New York – In a sweeping decision, **United States District Judge Eric N. Vitaliano** ruled that the **National Park Service ("NPS")** violated federal law by removing two historic landmarks from federally protected parkland. With this decision granting a preliminary injunction, the Court ordered NPS to protect these Civil-War era structures – the Tobacco Warehouse and the Empire Stores – from the current development plans of the **Bloomberg Administration**. The decision, released late Friday evening, follows a hearing held in Brooklyn Federal Court on March 21, 2011. The lawsuit was filed by the **Brooklyn Heights Association**, the **Fulton Ferry Landing Association**, the **New York Landmarks Conservancy**, and the **Preservation League of New York State (together, "Plaintiffs")**.

According to the lawsuit, NPS capitulated to pressure from the Bloomberg Administration by allowing the Tobacco Warehouse and Empire Stores to be removed from the map of a federally protected park. The City had planned to turn over both structures to private developers. To justify the removal, the **Commissioner of the New York City Parks Department, Adrian Benepe**, and other officials filed letters with NPS, declaring that the structures had been "mistakenly" included on the federal map in 2001 and that the Tobacco Warehouse, a roofless structure enjoyed by the public for free outdoor programming between 2003 and 2008, was "not intended" to be used for public recreation.

In their lawsuit, Plaintiffs demonstrated that these statements were false. Even NPS's own administrative record proved, as Plaintiffs long believed, that high-level City officials were secretly lobbying NPS and the U.S. Department of the Interior to render a decision in violation of federal law.

In a strongly worded opinion, Judge Vitaliano rejected the arguments from NPS, the City, and the other defendants. "**The house of cards erected by the defense cannot withstand the gentlest breeze,**" Judge Vitaliano wrote. Addressing the claim that the structures were included on the federal map "by mistake," the Judge labeled it as "**revisionist,**" and flatly rejected it, saying, "**there is . . . not a shred of evidence [to suggest a mistake].**" The Court criticized NPS's decision to rely on information from the City and State agencies "**without**

confirming or even investigating them or requesting any additional information or public comment.” The Court also rejected the defendants’ assertion that the Tobacco Warehouse was “unsuitable” for outdoor public recreation. The Court found the assertion was based on an “**invisible record**,” and accused NPS of using “**cherry-picked**” information to support it.

On an issue of first impression, the Court also rejected NPS’s argument that it had power at all to remove parkland in these circumstances: “**the record**,” **according to the Court**, “**unmasks the NPS decisions as contrary to its own regulations.**” The Court concluded as follows: “**The [applicable] statute is not silent about revisions; it flatly contradicts the NPS claim of power to correct ‘oversights’ after a [federal] grant closes.**” Although NPS claimed it had the “inherent authority” to correct mistakes on federal park maps, the Court called this “**a last gasp argument**” that “**holds no water.**” The Court also declared that NPS’s central determination of a “mistake” was “**flawed both substantively and procedurally.**”

Elizabeth Merritt, Deputy General Counsel of the **National Trust for Historic Preservation**, who attended the March 21st hearing, praised the decision as “an important national precedent.” She continued, “The Court sent a clear message that NPS cannot evade a mandatory public-review process by secretly altering documents.” **Peg Breen**, President of the **New York Landmarks Conservancy**, said: “This ruling reaches far beyond Brooklyn. If the National Park Service could choose when to enforce the law, historic buildings and parks across the country would suffer.” **Daniel Mackay**, Director of Public Policy for the **Preservation League of New York State**, said: “We hope this decision re-establishes the highest standards of review and protection at the National Park Service for public parklands in New York State and across the nation. This injunction is a critical first step in protecting this and other federally funded parkland from rash actions and incomplete public process.”

Although preservation groups described the lasting and far-reaching implications of Friday’s decision, two neighborhood civic associations that have fought to save the Tobacco Warehouse from demolition or development for more than 40 years – the **Brooklyn Heights Association** and the **Fulton Ferry Landing Association** – also heralded the decision. **Jane McGroarty**, President of the Brooklyn Heights Association, said: “We are gratified by Judge Vitaliano’s clear decision. The National Park Service and the State Parks Department acted illegally by removing the Tobacco Warehouse from the public domain. It belongs to the park, where it can be enjoyed by all.” **Joan Zimmerman**, President of the Fulton Ferry Landing Association agreed, saying: “The decision was a resounding rejection of arguments made to justify backroom deals between the City and NPS, and a strong affirmation of the principle that parks are to serve the public, not private interests.”

Gibson, Dunn & Crutcher represented the plaintiffs. “The Court’s decision recognized clear illegality. We hope today’s landmark ruling deters the National Park Service from future ‘giveaways’ of our national treasures,” said **Jim Walden**, who litigated the case with Gibson Dunn attorneys **James Hallowell**, **Richard Falek**, **Adam Cohen**, **Matthew Menendez**, **Kimberly Yuhás**, **Adam Jantzi**, **Lloyd Kim**, **Vikram Kumar**, and **Yara Mansour**.