

No. 07-665

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IN THE  
SUPREME COURT OF THE UNITED STATES

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PLEASANT GROVE CITY, JIM DANKLEF,  
MARK ATWOOD, CINDY BOYD, MIKE  
DANIELS, DAROLD McDADE, JEFF WILSON,  
CAROL HARMER, G. KEITH CORRY, and  
FRANK MILLS,

Petitioners,

-against-

SUMMUM, a corporate sole and church,

Respondent.

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*On Writ of Certiorari to the United States Court of  
Appeals for the Tenth Circuit*

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**BRIEF AMICUS CURIAE OF THE CITY OF  
NEW YORK IN SUPPORT OF PETITIONERS**

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## INTEREST OF THE AMICUS CURIAE

This year marks the 150<sup>th</sup> anniversary of the great plan, by Frederick Law Olmsted and Calvert Vaux, to turn a tract of swampy, muddy, and rocky land into New York City's Central Park. The plan was named "Greensward," after the English term for a vast lawn dotted with shade trees. That vision not only became the first public park ever built in America, but also may well be one of the most significant works of American art ever created. Declared a National Historic Landmark in 1965, Central Park was also named New York City's first Scenic Landmark in 1974.<sup>1</sup>

While Central Park is the City's best-known park, the City contains approximately 29,000 acres of public parks -- valuable open spaces preserved for both passive and active recreation, as natural areas, and as designed historical landscapes. Situated within our parks are some 1,200 monuments, including commemorative tablets, historic markers, decorative fountains, memorial

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<sup>1</sup> Unless otherwise indicated, these facts are from the websites of the City's Parks Department, the City's Art Commission, and the Central Park Conservancy, a non-profit organization founded in 1980 that, under contract with the Parks Department, manages Central Park. [http://www.nycgovparks.org/sub\\_things\\_to\\_do/attractions/public\\_art/art\\_guidelines/pa\\_donation\\_guidelines.html](http://www.nycgovparks.org/sub_things_to_do/attractions/public_art/art_guidelines/pa_donation_guidelines.html) (last accessed June 10, 2008); <http://nyc.gov/html/artcom/html/review/procedures.shtml> (last accessed June 10, 2008); and [http://www.centralparknyc.org/site/PageNavigator/aboutpark\\_history\\_ataglance](http://www.centralparknyc.org/site/PageNavigator/aboutpark_history_ataglance) (last accessed June 19, 2008).

flagstaffs, statuary, and architectural ornaments. Most of these have been acquired as gifts over the last 150 years.

The oldest sculpture still standing in a City park was dedicated in 1856, when Henry Kirke Brown's bronze equestrian statue of George Washington was unveiled in Union Square. Sponsored entirely by public contributions, it was the first piece of what would become a vast civic outdoor museum that would reflect the shifting interests and styles of the generations that followed.

Today, the sculpture collection in the City's parks constitutes the greatest outdoor public art museum in the United States. The collection is a veritable "Who's Who" of American art, and includes the work of nineteenth-century masters such as Augustus Saint-Gaudens, Daniel Chester French, and John Quincy Adams Ward, as well as contemporary pieces from Louise Nevelson, George Segal, Alice Aycock, and Robert Graham.

There are 52 fountains, monuments, and sculptures in Central Park alone, along with 36 bridges and arches, no two of which are alike. The "Angel of the Waters" fountain at Bethesda Terrace (A1) was the only sculpture included in the original plan and has become a defining feature of the park. Others commemorate "Alice in Wonderland" (A2), Teddy Roosevelt (A3), Alexander Hamilton, Shakespeare, the Pilgrims, Hans Christian Andersen, the Civil War, the sinking of the U.S.S. Maine, and the 1925 dog-sled race that brought an urgently needed supply of antitoxin to Nome, Alaska, during a diphtheria outbreak there.

Central Park hosts an authentic, 71-foot Egyptian Obelisk from c.1450 B.C. that was installed in 1881, a fortification built for the War of 1812, and a turn-of-the-century carousel that is considered a masterwork of folk art from renown artisans Sol Stein and Harry Goldstein. Dotted throughout the park are decorative tiles, exquisite carvings, whimsical gates and arches, and bridges made of cast iron, stone, and unmilled timber.

The 843 acres of Central Park also include 136 acres of woodlands, 250 acres of lawns, and seven different bodies of water. There are 58 miles of pedestrian paths, 4.5 miles of bridle paths, 6.5 miles of Park drives, and 9,000 benches. There are 21 playgrounds, six designated quiet zones, and more than 26,000 trees, including 1,700 American Elms. Over 275 species of migratory birds have been spotted in the park, which is a major stopping point on the Atlantic flyway.

Since 1967, when the City debuted its first major outdoor group exhibition of contemporary sculpture, entitled "Sculpture in Environment," the Parks Department has also hosted more than 1,000 temporary installations in the City. CITY OF NEW YORK PARKS & RECREATION, 40 YEARS OF PUBLIC ART IN NEW YORK CITY PARKS, at 3 (2007). In 2005, Central Park became the canvas for Christo and Jeanne-Claude's "The Gates," an installation of 7,503 metal "gates" that created a 23-mile passageway of thousands of sheets of undulating deep saffron fabric (A4). <http://www.christojeanneclaude.net/tg.shtml> (last accessed June 19, 2008).

Some 1,200 monuments, 300 of which are sculptures, grace the City's most prominent civic spaces as well as the many localities in all five boroughs. Ranging in size from commemorative tablets to triumphal arches, they honor people and events that helped shape our city, nation, and the international community. It is a cultural and aesthetic legacy that the City has, since at least 1873, applied formal rules and standards to preserve.

With a limited number of available sites, subject to a variety of competing uses, not every proposed project is or can be approved. The City takes into account many factors when it considers the acceptance of a new permanent work of art. The process is two-fold and involves extensive review by both the Department of Parks and the City's Art Commission, a non-partisan design review board established in 1898.

The original park board accepted only five of 25 statues offered to the City. ROY ROSENZWEIG AND ELIZABETH BLACKMAR, *THE PARK AND THE PEOPLE, A HISTORY OF CENTRAL PARK*, at 332 (1992) ("ROSENZWEIG AND BLACKMAR"). Ten more were added in the 1880s, and by the turn of the century, the park had 25 permanent pieces. *Id.* The park's growing statuary collection reflected the City's growing heterogeneity. More than half of the 15 statues of individuals accepted for placement in the park in the 19<sup>th</sup> century were financed and promoted by ethnic organizations. *Id.*, at 328-329.

In connection with the country's centennial anniversary in 1876, Gordon Webster Brunham proposed to give the City a massive, 34-foot-high

monument atop a 30-foot pedestal to honor Daniel Webster, the esteemed Massachusetts Senator. Olmsted and Vaux, however, opposed the proposed site -- an oval bed at the south end of the Central Park Mall -- as inappropriate to the size and scale of the monument, and as a "direct repudiation of the primary motive of the general design." FREDERICK LAW OLMSTED, SR., 40 YEARS OF LANDSCAPE ARCHITECTURE: CENTRAL PARK, at 495 (1973)("OLMSTED"). The men prevailed, and the monument was instead placed at the junction of West Drive and 72d Street. SARA CEDAR MILLER, CENTRAL PARK, AN AMERICAN MASTERPIECE, at 196-197 (2003)("MILLER").

As a result of that controversy, however, New York adopted its first set of rules governing the acceptance of artwork for permanent placement in the City's parks. Those rules, presented in a Committee Report dated April 25, 1873, to the City's Department of Public Parks, were drafted by Calvert Vaux and others. OLMSTED, at 488-493. They established a framework that is, in large measure, still in place today.

Even back then, any proposed gift of art had to be viewed either in its finished condition or as a model before acceptance. A judgment as to its merits "as a work of art" was sought from the respective presidents of the American Academy of Design, the American Museum of Art, and the American Institute of Architects. Olmsted urged that statues not "dominate a landscape or . . . divide the view over an expanse, lawn, or glade." OLMSTED, at 492-493.

The City soon promulgated those rules in the New York City Charter, which, in 1897 incorporated the five boroughs into greater New York and established the Art Commission of the City of New York as the City's design review agency. For the first time, decisions regarding the placement of art on public property would be made by representatives of the art world. ROSENZWEIG AND BLACKMAR, at 332.

Today, works of art are still assessed as they relate to the proposed site, the compatibility of the piece with the landscape, its impact on the park and its use, aesthetic merit, as well as safety and maintenance issues.

The Art Commission reviews all permanent works of art, architecture and landscape architecture proposed for City-owned property. This includes the design, installation and conservation of artwork, whether on long-term loan (more than one year) or in connection with a gift or acquisition. *See generally* N.Y.C. Charter section 851 *et. seq.* Each year, the Commission reviews approximately 300 proposals.

The Commission is composed of eleven members, who serve *pro bono*, and includes an architect, landscape architect, painter and sculptor, as well as representatives of the Brooklyn Museum, the Metropolitan Museum of Art and the New York Public Library. The Commission also acts as caretaker and curator of the City's public art collection and maintains an extensive archive documenting the history of New York City's collection.

Under the New York City Charter, the City agency with jurisdiction over the property for which the project is proposed must make the formal submission to the Art Commission. N.Y.C. Charter §854(d). For example, if an artist proposed to install a work of art in a City park, the application to the Art Commission must come from the Department of Parks & Recreation. If a project requires review by the Landmarks Preservation Commission, a written report from Landmarks must accompany the Art Commission submission.

Works of art are submitted for conceptual review early in the process when designs are at the schematic level. All works of art at the conceptual stage are required to be reviewed at an Art Commission committee meeting prior to submission to a public hearing. Preliminary review occurs once the design has been developed, and approval at this stage means that a work of art can be fabricated and installed. Final approval is given after a work of art has been installed.

Gifts of existing works of art must also be approved by the City agency on whose property the work of art will be sited and submitted by that agency for review by the Art Commission. There is no guarantee that a work of art will be approved by either the agency or the Art Commission, so artists are discouraged from fabricating a work of art with the expectation that approval of existing works of art is a certainty.

Gifts of works of art are not accepted unless there are appropriate funds committed by the donor for ongoing maintenance.

As the foregoing demonstrates, the City acts as a traditional curator of its public art collection in its parks, and all proposed additions to it. Thus, pursuant to Supreme Court Rule 37.4, the City of New York submits this brief in support of the petitioners in this case in order to explain to the Court how the City, when it accepts works of art for display in its parks, engages in a classic form of government speech, and why that traditional and profoundly important public benefit could be threatened should the Tenth Circuit's decision be affirmed.

### SUMMARY OF THE ARGUMENT

This brief *amicus curiae* will show that when government accepts a donated work of art for public display in a public park, it engages in government speech and functions as a curator for the public good. The court of appeals therefore erred in applying a traditional First Amendment forum analysis in resolving this issue.

## ARGUMENT

WHEN GOVERNMENT EXERCISES DISCRETION TO ACCEPT A DONATION OF A STATUE OR MONUMENT FOR DISPLAY ON PUBLIC PROPERTY, IT ACTS AS A CURATOR AND EXPRESSES EDITORIAL CONTROL, AND THE RESULTING DISPLAY OF PUBLIC ART IS GOVERNMENT SPEECH THAT DOES NOT IMPLICATE THE DONOR'S FIRST AMENDMENT RIGHTS.

- A. The rigid application by the court of appeals of the public forum doctrine ignored the way in which monuments in public parks are selected and displayed, and as a result, the court applied the wrong legal analysis here.

It is undeniably true that streets and public parks "have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Perry Education Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983), citing *Hague v. C.I.O.*, 307 U.S. 496, 515-516 (1939). Thus, a person "who is rightfully on a street which the state has left open to the public carries with him there as elsewhere the constitutional right to express his views in an orderly fashion. This right extends to the communication of ideas by handbills and literature as well as by the spoken word." *Jamison v. Texas*, 318 U.S. 413, 416 (1943).

The inquiry, however, does not end there. While there is a presumption that certain public property is a traditional public forum, subject to the public forum doctrine, that presumption is a rebuttable one. *United States v. Kokinda*, 497 U.S. 720, 728-729 (1990) (“the location and purpose of a publicly owned sidewalk is critical to determining whether such a sidewalk constitutes a public forum”). Rather than apply the public forum doctrine in a rigid fashion, a court must analyze the parties’ competing interests, informed by such factors as the property’s physical characteristics, “the objective ways in which it is used, and the City’s intent in constructing and opening it to the public.” *Hotel Emples. & Rest. Emples. Union, Local 100 v. City of N.Y. Dep’t of Parks & Rec.*, 311 F.3d 534, 546-547 (2d Cir. 2002) (“we examine the forum’s physical characteristics and the context of the property’s use, including its location and purpose. Also relevant is the government’s intent in constructing the space and its need for controlling expressive activity on the property, as evidenced by its policies or regulations”). See also *International Soc’y for Krishna Consciousness v. Lee*, 505 U.S. 672, 680-681 (1992) (this Court describing “the tradition of airport activity” and its historical unavailability for speech activity to determine “there can be no argument that society’s time-tested judgment, expressed through acquiescence in a continuing practice” resolved the issue as to the nature of the forum); *Kaplan v. Burlington*, 891 F.2d 1024, 1029 (2d Cir. 1989) (even where park “is indisputably a traditional public forum,” city had still not created a forum “open to the unattended, solitary display of religious symbols” and there was therefore not “an

absolute constitutional right to engage in symbolic expressive conduct”).

Thus, a public forum is not created merely because “members of the public are permitted freely to visit a place owned or operated by the Government.” *International Soc’y for Krishna Consciousness v. Lee*, 505 U.S., at 680. Indeed, “forum analysis is not completed merely by identifying the government property at issue.” *Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 801 (1985). Rather, in defining the forum, this Court has “focused on the access sought by the speaker.” *Id.* Thus, “[w]hen speakers seek general access to public property, the forum encompasses that property.” *Id.* But where “limited access is sought, our cases have taken a more tailored approach to ascertaining the perimeters of a forum within the confines of the government property.” *Id.*

Indeed, “the location of property also has bearing because separation from acknowledged public areas may serve to indicate that the separated property is a special enclave, subject to greater restriction.” *International Soc’y for Krishna Consciousness v. Lee*, 505 U.S., at 680-681 (“the tradition of airport activity does not demonstrate that airports have historically been made available for speech activity. Nor can we say that these particular terminals, or airport terminals generally, have been intentionally opened by their operators to such activity; the frequent and continuing litigation evidencing the operators’ objections belies any such claim. In short, there can be no argument that society’s time-tested judgment, expressed through acquiescence

in a continuing practice, has resolved the issue in petitioners' favor").

Thus, the threshold error here was the rigid application by the court of appeals of the public forum doctrine simply because a public park is involved. *Sumnum v. Pleasant Grove City*, 483 F.3d 1044, 1052 (10th Cir. 2007). As explained below, that initial error sent the court down an analytical path that was wholly inapplicable to the circumstances presented here.

**B. When government accepts a monument for display in a public park, it acts as a curator in expressing government speech, and that does not implicate private speech or a donor's First Amendment rights.**

"Government is not restrained by the First Amendment from controlling its own expression." *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. 94, 139. n.7 (1973)(Stewart, J., concurring); *Serra v. United States General Services Admin.*, 847 F.2d 1045, 1048 (2d Cir. 1988). Indeed, "when the State is the speaker, it may make content-based choices." *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 833 (1995). Thus, because courts treat private speech and government speech very differently, the determination of who, precisely, is speaking, is a critical if not dispositive one.

That is because "the First Amendment does not preclude the government from exercising editorial control over its own medium of expression." *Muir v. Alabama Educational Television Comm'n*, 688 F.2d 1033, 1044 (5th Cir.

1982) (*en banc*), *cert. denied*, 460 U.S. 1023 (1983). Government “may advance or restrict its own speech in a manner that would clearly be forbidden were it regulating the speech of a private citizen.” *Serra v. GSA*, 847 F.2d, at 1049. See also *Rust v. Sullivan*, 500 U.S. 173, 193 (1991)(“Government can, without violating the Constitution, selectively fund a program to encourage certain activities it believes to be in the public interest, without at the same time funding an alternative program which seeks to deal with the problem in another way. In so doing, the Government has not discriminated on the basis of viewpoint; it has merely chosen to fund one activity to the exclusion of the other”); *KKK v. Curators of the Univ. of Mo.*, 203 F.3d 1085, 1094 (8th Cir.), *cert. denied*, 531 U.S. 814 (2000)(public broadcaster that airs underwriting acknowledgements “exercises control not only over the decision to accept or reject the donations, but also over the form and content of the announcements themselves” and therefore engages in government speech).

When Pleasant Grove accepted the donated monument at issue now, just as when New York City has accepted sculpture and other works of art for public display, it engaged in government speech. *County of Allegheny v. ACLU*, 492 U.S. 573, 598 (1989)(this Court finding that, notwithstanding express disclaimer, display at county courthouse of a privately donated creche was “the county’s creche display” that “has the effect of endorsing a patently Christian message”); *Serra v. GSA*, 847 F.2d, at 1045; *ACLU Neb. Found. v. City of Plattsmouth*, 419 F.3d 772, 778 (8th Cir. 2005)(analyzing display of donated monument as government speech);

*People for the Ethical Treatment of Animals, Inc. v. Gittens*, 414 F.3d 23, 28 (D.C. Cir. 2005) (“The curator of a state-owned museum, for example, may decide to display only busts of Union Army generals of the Civil War, or the curator may decide to exhibit only busts of Confederate generals. The First Amendment has nothing to do with such choices”). Cf. *Freedom from Religion Found., Inc. v. City of Marshfield*, 203 F.3d 487, 491 (7th Cir. 2000) (“we recognize the effect of formal transfer of legal title to property as a transfer of imputed expression from a public seller onto a private buyer”).

Whenever government is “in the business of speech,” such as when it is operating a museum, “the exercise of editorial judgment is inescapable.” *Chicago Acorn, SEIU Local No. 880 v. Metropolitan Pier & Exposition Auth.*, 150 F.3d 695, 701 (7th Cir. 1998); *PETA v. Gittens*, 414 F.3d, at 28-29 (“the authorities in charge of a city park must make content-neutral and viewpoint-neutral decisions when passing on applications for demonstrations in the park. . . . But those First Amendment constraints do not apply when the same authorities engage in government speech by installing sculptures in the park. If the authorities place a statue of Ulysses S. Grant in the park, the First Amendment does not require them also to install a statue of Robert E. Lee”).

Thus, content-based considerations that arise, for example, in the context of the grant-making process, do not violate the First Amendment but are, instead, “a consequence of the nature of arts funding,” even where government “must deny the majority of the grant applications

that it receives, including many that propose 'artistically excellent' projects." *Nat'l Endowment for the Arts v. Finley*, 524 U.S. 569, 585 (1998).

That is because with arts funding, the Government does not "indiscriminately 'encourage a diversity of views from private speakers,' but rather, makes "aesthetic judgments," and that "inherently content-based 'excellence' threshold . . . sets it apart from" the subsidy issues that typically arise in First Amendment forum analysis cases. *Nat'l Endowment for the Arts v. Finley*, 524 U.S., at 586. "As a speaker, and as a patron of the arts, the government is free to communicate some viewpoints while disfavoring others, even if it is engaging . . . in 'utter arbitrariness' in choosing which side to defend and which side to renounce. The First Amendment's Free Speech Clause does not apply to the government as communicator." *PETA v. Gittens*, 414 F.3d, at 30-31.

Thus, the content-based decisions made here are wholly within Pleasant Grove's prerogative and discretion as government speech, and are not subject to the strict scrutiny incorrectly applied by the court of appeals. 483 F.3d, at 1052-1053.

**C. The court of appeals further erred by presuming that once any type of private speech is permitted in a public park, government is required to permit all kinds of private speech on an equal basis.**

The "guarantees of the First Amendment have never meant "that people who want to propagandize protests or views have a constitutional right to do so whenever and however

and wherever they please.” *Greer v. Spock*, 424 U.S. 828, 836 (1976). “The State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated.” *Id.* Government “need not permit all forms of speech on property that it owns and controls.” *International Soc’y for Krishna Consciousness v. Lee*, 505 U.S., at 678.

Indeed, “[e]ach medium of expression . . . must be assessed for First Amendment purposes by standards suited to it, for each may present its own problems.” *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 557 (1975); *see also FCC v. Pacifica Found.*, 438 U.S. 726, 748 (1978) (“We have long recognized that each medium of expression presents special First Amendment problems”); *Ark. Educ. TV Comm’n v. Forbes*, 523 U.S. 666, 672-673 (1998) (“the public forum doctrine should not be extended in a mechanical way to the very different context of public television broadcasting”); *Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S., at 801 (defining “forum” as nonpublic Combined Federal Campaign, an annual fundraising drive, rather than more general federal workplace, a traditional public forum, because “respondents seek access to a particular means of communication”).

Government also has a “substantial interest” in maintaining its parks “in an attractive and intact condition, readily available to the millions of people who wish to see and enjoy them by their presence.” *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 296 (1984). It has the discretion to deny a use that would be “totally inimical” to these purposes. *Id.* *See also Ward v.*

*Rock against Racism*, 491 U.S. 781, 797 (1989) (“The city enjoys a substantial interest in ensuring the ability of its citizens to enjoy whatever benefits the city parks have to offer, from amplified music to silent meditation”).

Thus, courts “have generally refused to protect on First Amendment grounds the placement of objects on public property where the objects are permanent or otherwise not easily moved.” *Tucker v. City of Fairfield*, 398 F.3d 457, 462 (6th Cir.), *cert. denied*, 546 U.S. 929 (2005), *citing* *Graff v. City of Chicago*, 9 F.3d 1309, 1314 (7th Cir. 1993), *cert. denied*, 511 U.S. 1085 (1994) (“no person has a constitutional right to erect or maintain a structure on the public way”) and *Lubavitch Chabad House, Inc. v. Chicago*, 917 F.2d 341, 347 (7th Cir. 1990) (“We are not cognizant of . . . any private constitutional right to erect a structure on public property”).

Consequently, the state may regulate the display and location of public art based on its aesthetic qualities and suitability for the viewing public without running afoul of the First Amendment. *Serra v. GSA*, 847 F.2d, at 1048; *Piarowski v. Illinois Community College*, 759 F.2d 625, 630-23 (7th Cir.), *cert. denied*, 474 U.S. 1007 (1985).

Therefore, the court of appeals also erred when it found that “the particular means of communication (i.e. the display of a monument)” is relevant only to the extent of “defining the forum.” 483 F.3d, at 1051. In doing so, the court of appeals failed to heed this Court’s admonition that each medium of expression presents special First

Amendment problems and that all media cannot and should not be analyzed in an identical fashion.

**D. The court of appeals has applied an analytical standard that impermissibly infringes on government speech, erodes government's incentive to display art in its parks, and endangers a richly unique cultural legacy of publicly accessible art.**

Central Park has been described as the "living embodiment of nineteenth-century American landscape paintings, particularly those of the Hudson River, or New York, School." MILLER, at 11. Whether it is a Greco-Roman mosaic with the single word "Imagine" at its center (a 1985 gift of the Italian government in honor of the late John Lennon)(A5), the Park's folk art carousel, or the whimsical sight of 7,503 identical saffron-colored gated flags winding along the park's passageways, each piece of art displayed on public property has been scrupulously vetted by the Parks Department and the Art Commission in a statutorily created mission to curate an artistic and historical legacy that actively engages those who live in, work in, and visit New York City.

In recently celebrating 40 years of temporary public art installations in New York City parks -- what it called "The Outdoor Gallery" -- the City's Parks Department wrote that, "in a city of virtually limitless visual competition, the display of public art holds the power to surprise, stir debate, and cause the occasional scandal. And whether we stop to stare or accept them as part of our daily rounds, these public artistic expressions encourage us to rethink our physical and cultural surroundings,

and our place within this complex landscape.” 40 YEARS OF PUBLIC ART IN NEW YORK CITY PARKS, at 30. What began in the 1800s with commemorative public statuary has become a sustained expression of the City’s support of public art for art’s sake.

And that is precisely why “we encourage the government to open its property to some expressive activity in cases where, if faced with an all-or-nothing choice, it might not open the property at all.” *Ark. Educ. TV Comm’n v. Forbes*, 523 U.S., at 679. Not everyone will agree with the choices a city makes when it selects art for display in its public parks -- and maybe that is even the point -- but compelling a city to display art it does not want and deems contextually inappropriate infringes on that city’s right of self expression. That is what the court of appeals has done here, and why its decision should be reversed.

**CONCLUSION**

**II. THIS TENTH CIRCUIT'S JUDGMENT  
SHOULD BE REVERSED.**

Respectfully submitted,

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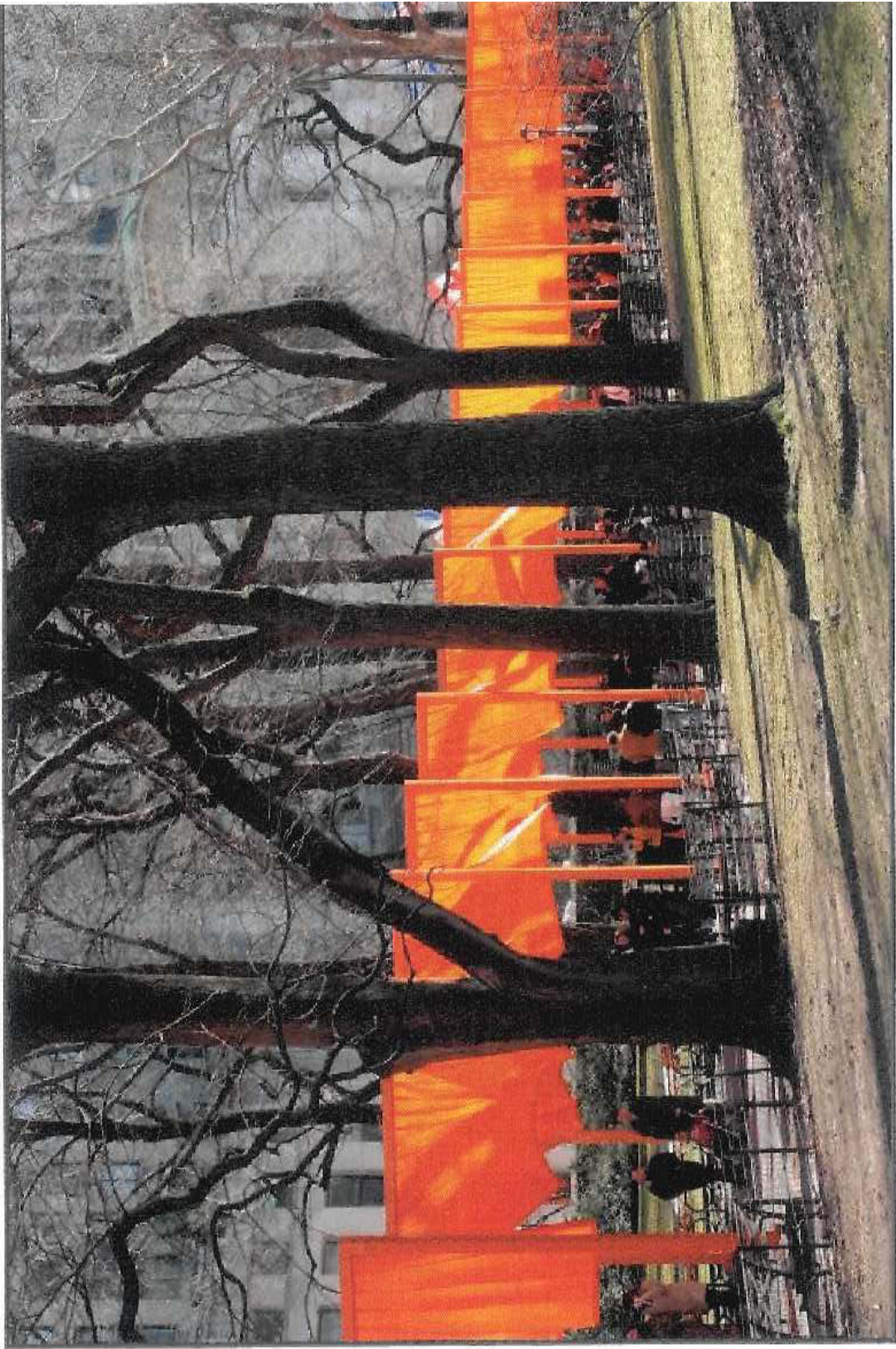
**A1**



A2



**A3**



A4



**A5**