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# **Monuments and Memorials in the District of Columbia: Analysis and Options for Proposed Exemptions to the Commemorative Works Act**

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## Summary

During the course of each Congress, numerous proposals to create new commemorative works (i.e., monuments and memorials) in the District of Columbia are introduced. In evaluating each proposal, Congress considers the subject of the proposed work; whether existing monuments and memorials commemorate similar subjects; and whether the sponsor group has requested an exemption from existing laws that might limit monument and memorial subjects and location within the District of Columbia. This report focuses on options for Congress for four types of exemptions to the Commemorative Works Act (CWA, 40 U.S.C. §§8901-8909): siting works, use of specific materials, memorial completion deadlines, and the placement and status of museums.

The CWA was enacted in 1986 to govern all monuments and memorials to be located on federal land in the District of Columbia under the jurisdiction of the National Park Service (NPS) or the General Services Administration (GSA). Further, the CWA sought to preserve the L'Enfant and McMillan plans for the capital; ensure continued public use and enjoyment of open spaces; and preserve, protect, and maintain the open space. Pursuant to the CWA, Congress statutorily authorizes a sponsor group to design and build a monument or memorial with the approval of regulatory bodies: the National Capital Planning Commission (NCPC) and the U.S. Commission of Fine Arts (CFA). Additionally, the National Capital Memorial Advisory Commission (NCMAC) was created to advise Congress, the Secretary of the Interior, and the Administrator of General Services on the commemorative works process. Unless otherwise stated in law, the sponsor group is responsible for funding the memorial without the use of federal funds.

Since CWA's enactment, 33 commemorative works have been authorized, and numerous others have been proposed. Among the authorized and proposed works, several sponsor groups have sought—and some have received—exemptions from certain CWA provisions.

The CWA divides the District of Columbia into three areas for the siting of monuments and memorials: an area where new commemorative works are prohibited (the Reserve); an area that requires congressional authorization (Area I); and all other NPS or GSA land (Area II). Some sponsor groups have been granted exemptions for siting monuments and memorials, and others have been approved to add new elements to existing commemorative works.

The CWA requires that the NCPC and CFA evaluate a memorial's proposed building materials to ensure they are "suitable to the outdoor environment." Some proposals have been made to require that those materials be American made, a requirement that does not currently exist. Additionally, sponsor groups are granted seven years in which to complete an authorized memorial or receive a construction permit to build the memorial. In many cases, memorials have needed additional time to be completed.

The CWA also prohibits the siting of museums on NPS- or GSA-administered land in the District of Columbia. In 2003, however, Congress provided an exemption to the National Museum of African American History and Culture. The granting of this exemption arguably suggests that Congress believes the CWA applies to museums at any District location, if they are located on NPS- or GSA-administered land. This application of the CWA to a museum would be in contrast to the specific CWA prohibition against the placement of a museum in Area I or East Potomac Park.

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## Introduction

In 1986, the Commemorative Works Act (CWA) was enacted to guide the memorial and monument creation and siting process in the District of Columbia on land under the jurisdiction of the National Park Service (NPS) or the General Services Administration (GSA).<sup>1</sup> As the statute specifies, the CWA was enacted

- (1) to preserve the integrity of the comprehensive design of the L'Enfant and McMillan plans for the Nation's Capital;
- (2) to ensure the continued public use and enjoyment of open space in the District of Columbia and its environs, and to encourage the location of commemorative works within the urban fabric of the District of Columbia;
- (3) to preserve, protect and maintain the limited amount of open space available to residents of, and visitors to, the Nation's Capital; and
- (4) to ensure that future commemorative works in areas administered by the National Park Service and the Administrator of General Services in the District of Columbia and its environs-
  - (A) are appropriately designed, constructed, and located; and
  - (B) reflect a consensus of the lasting national significance of the subjects involved.<sup>2</sup>

Pursuant to the CWA, from time to time Congress will authorize a sponsor group (i.e., an organization, often tax exempt, advocating for the creation of the new work) to design and build a monument or memorial in the District of Columbia without the use of federal funds. Congress contemplates issues of CWA interpretation, enforcement, and the possible setting of precedent when considering potential new commemorative works.

This report addresses four proposed exemptions from the CWA. These are memorial siting, including the addition of new elements to existing commemorative works; requiring the use of American materials during memorial construction; altering the deadline for completing an authorized memorial; and the siting of new museums within the statutorily defined commemorative works areas—where they would otherwise be prohibited pursuant to the CWA.

Each exemption has been discussed in legislative proposals, at congressional hearings, or by one of the federal agencies charged with review and approval of commemorative works: the National Capital Planning Commission (NCPC) and the U.S. Commission of Fine Arts (CFA). Additionally, the National Capital Memorial Advisory Commission (NCMAC) provides Congress, the Secretary of the Interior, and the Administrator of General Services with policy and procedures advice for establishing monuments and memorials.<sup>3</sup> This report discusses each exemption and its attendant policy considerations.

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<sup>1</sup> 40 U.S.C. §§8901-8909. For more information on the Commemorative Works Act, see CRS Report R41658, *Commemorative Works in the District of Columbia: Background and Practice*, by Jacob R. Straus.

<sup>2</sup> 40 U.S.C. §8901.

<sup>3</sup> The National Capital Memorial Advisory Commission (NCMAC) was authorized by the CWA to provide Congress and the Secretary of the Interior and the Administrator of General Services, as appropriate, with advice on “policy and procedures for establishment of, and proposals to establish, commemorative works in the District of Columbia and its environs....” 40 U.S.C. §8904(c).

Since the CWA's enactment, 33 commemorative works have been authorized, and numerous others have been proposed.<sup>4</sup> For the authorized and proposed monuments and memorials, several sponsor groups have sought—and some have received—exemptions from certain provisions of the CWA. The most common exemption requests are from provisions involving the siting of new memorials, mandating the origin of building materials, and extending the deadline for memorial completion. The status and placement of museums under the CWA has also been discussed after the National Museum of African American History and Culture was granted an exemption from the CWA.

Since its enactment, the CWA has been substantively amended three times. First, during the 103<sup>rd</sup> Congress (1993-1994), the CWA was amended to extend the time for monument and memorial completion from five to seven years and to make technical corrections to the act.<sup>5</sup> Second, the CWA was amended during the 108<sup>th</sup> Congress (2003-2004), to limit the placement of monuments and memorials on the National Mall and to designate three distinct areas within the District of Columbia for monument and memorial construction.<sup>6</sup> They and their boundaries are noted below.

- The Reserve is “the great cross-axis of the Mall, which generally extends from the United States Capitol to the Lincoln Memorial, and from the White House to the Jefferson Memorial.”<sup>7</sup>
- Area I is reserved for commemorative works of “preeminent historical and lasting significance to the United States,”<sup>8</sup> and roughly bounded by the West Front of the Capitol; Pennsylvania Avenue, N.W. (between 1<sup>st</sup> and 15<sup>th</sup> Streets, N.W.); Lafayette Square; 17<sup>th</sup> Street, N.W. (between H Street and Constitution Avenue); Constitution Avenue, N.W. (between 17<sup>th</sup> and 23<sup>rd</sup> Streets); the John F. Kennedy Center for the Performing Arts waterfront area; Theodore Roosevelt Island; National Park Service land in Virginia surrounding the George Washington Memorial Parkway; the 14<sup>th</sup> Street Bridge area; and Maryland Avenue, S.W., from Maine Avenue, S.W., to Independence Avenue S.W., at the United States Botanic Garden. An act of Congress is required for Area I placement.<sup>9</sup>

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<sup>4</sup> For a complete list of authorized commemorative works and their status, see CRS Report R43743, *Monuments and Memorials Authorized and Completed Under the Commemorative Works Act in the District of Columbia*, by Jacob R. Straus; and CRS Report R43744, *Monuments and Memorials Authorized Under the Commemorative Works Act in the District of Columbia: Current Development of In-Progress and Lapsed Works*, by Jacob R. Straus.

<sup>5</sup> P.L. 103-321, 108 Stat. 1793, August 26, 1994. The technical corrections provided changes to the National Capital Memorial Commission, including restoring a previously deleted provision that “directed the Secretary of the Interior and the Administrator of the General Services Administration to develop fundraising standards and to suspend a group’s fundraising authority if the Secretary or Administrator . . . determined that the group’s fundraising activities were not in compliance with those standards.” For more information, see U.S. Congress, Senate Committee on Energy and Natural Resources, *Commemorative Works Act Amendments*, report to accompany H.R. 2947, 103<sup>rd</sup> Cong., 2<sup>nd</sup> sess., April 5, 1994, S.Rept. 103-247 (Washington: GPO, 1994), p. 3.

<sup>6</sup> “Authorizing Design and Construction of Visitor Center for the Vietnam Veterans Memorial,” *Congressional Record*, daily edition, vol. 149 (November 5, 2003), p. S14075.

<sup>7</sup> 40 U.S.C. §8902.

<sup>8</sup> 40 U.S.C. §8908(b)(1).

<sup>9</sup> 40 U.S.C. §8908(b)(1). For more information see, CRS Report R41658, *Commemorative Works in the District of Columbia: Background and Practice*, by Jacob R. Straus.

- Area II is reserved for “subjects of lasting historical significance to the American people,”<sup>10</sup> and encompasses all sections of the District of Columbia and its environs not part of the Reserve or Area I.

The area of the Reserve is considered “a substantially completed work of civic art,”<sup>11</sup> and within the Reserve, “to preserve the integrity of the Mall ... the siting of new commemorative works is prohibited.”<sup>12</sup> Additionally, the placement of museums and visitor centers in the Reserve is also prohibited under the CWA.<sup>13</sup>

During the 113<sup>th</sup> Congress (2013-2014), the CWA was amended to allow donor recognition “inside an ancillary structure associated with the commemorative work or as part of a manmade landscape feature at the commemorative work.”<sup>14</sup> Further, donor acknowledgement was applied retroactively to all commemorative works dedicated after January 1, 2010,<sup>15</sup> is to be paid for by the sponsor,<sup>16</sup> and is subject to the permission of the Secretary of the Interior or the Administrator of General Services.<sup>17</sup> The acknowledgment also must

- (A) be limited to an appropriate statement or credit recognizing the contribution;
- (B) be displayed in a form in accordance with National Park Service and General Services Administration guidelines;
- (C) be displayed for a period of up to 10 years, with the display period to be commensurate with the level of the contribution, as determined in accordance with the plan and guidelines described in subparagraph (B);
- (D) be freestanding; and
- (E) not be affixed to—(i) any landscape feature at the commemorative work; or (ii) any object in a museum collection.<sup>18</sup>

## Siting Commemorative Works

All commemorative works legislation must authorize a sponsor group to raise funds to design and build a monument or memorial. Many sponsor groups would like to place their proposed commemorative works on unoccupied land on or near the National Mall or add an element to an existing monument or memorial.

The CWA, however, contains provisions that prohibit the siting of new monuments and memorials around the National Mall; considers monuments and memorials, once dedicated, to be completed; and protects existing works from further additions or intrusions by other memorials.<sup>19</sup>

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<sup>10</sup> 40 U.S.C. §8908(b)(2).

<sup>11</sup> P.L. 108-126, §202(a), 117 Stat. 1348, November 17, 2003.

<sup>12</sup> P.L. 108-126, §202(a); and 40 U.S.C. §8908(c).

<sup>13</sup> 40 U.S.C. §8905(b)(5); and 40 U.S.C. §8908(c). In 2009, the CWA was amended to make technical corrections with the enactment of P.L. 111-11 (§7116(e), 123 Stat. 1203, March 30, 2009).

<sup>14</sup> P.L. 113-291, §3054(c)(2).

<sup>15</sup> P.L. 113-291, §3054(c)(5).

<sup>16</sup> P.L. 113-291, §3054(c)(3).

<sup>17</sup> P.L. 113-291, §3054(c)(4).

<sup>18</sup> P.L. 113-291, §3054(c)(1).

<sup>19</sup> 40 U.S.C. §8906(a).

A commemorative work shall be located so that - (A) it does not interfere with, or encroach on, an existing commemorative work; and (B) to the maximum extent practicable, it protects open space, existing public use, and cultural and natural resources.<sup>20</sup>

Regardless of the CWA provisions against siting new commemorative works in the Reserve and prohibiting the placement of new elements at existing monuments and memorials, sponsor groups continue to request exemptions from these requirements.

## Current Site Location Process

To guide the site selection process, the CWA created a two-step approach. First, following congressional authorization of a monument or memorial, the sponsor group works with the NPS or GSA, NCMAC, NCPC, and CFA to determine which area of Washington, DC, would be the most appropriate location for the monument or memorial.<sup>21</sup>

As part of this initial site selection process, the sponsor group may request the Secretary of the Interior or the Administrator of General Services to approve placement of the monument or memorial in Area I. Following this request, the Secretary or Administrator determines whether the memorial is of “preeminent historical and lasting significance to the United States.”<sup>22</sup> If the Secretary or Administrator determines that an Area I site location is warranted, he or she notifies, in writing, NCMAC, the House Committee on Natural Resources, and the Senate Committee on Energy and Natural Resources.<sup>23</sup>

Second, to place a memorial within Area I, an act of Congress approving the Secretary or Administrator’s recommendation is required within 150 calendar days. Should the Secretary or Administrator not recommend placement in Area I or Congress not act upon the recommendation, the memorial can be placed in Area II without further action.<sup>24</sup>

Some commemorative works legislation has included provisions that would potentially bypass the current commemorative works process and directly designate a site, providing an exemption from the building prohibition within the Reserve. For example, H.R. 222 (113<sup>th</sup> Congress), as introduced, would have authorized a World War I Memorial in the District of Columbia. In addition to authorizing the World War I Memorial Foundation to establish a commemorative work, the bill would exempt the memorial from the CWA prohibition against placement in the Reserve.<sup>25</sup>

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<sup>20</sup> Ibid.

<sup>21</sup> 40 U.S.C. §8905(a). This section states that “The National Capital Planning Commission and the Commission of Fine Arts may develop such criteria or guidelines specific to each site that are mutually agreed upon to ensure that the design of the commemorative work carries out the purposes of this chapter.” Also, see 40 U.S.C. §8905(b)(6).

<sup>22</sup> 40 USC §8908(b)(1). Adopted in 1987, and updated in 2006, the National Park Service’s 24-step outline of the commemorative work process outlines the site selection process. For more information, see CRS Report R41658, *Commemorative Works in the District of Columbia: Background and Practice*, by Jacob R. Straus; and National Capital Planning Commission, “Steps for Establishing a Memorial in the Nation’s Capital,” *Memorials and Museums Master Plan*, September 2001, updated 2006, at [http://www.ncpc.gov/DocumentDepot/Publications/2MPlan/MemorialsandMuseumsMasterPlan\\_PartThree.pdf](http://www.ncpc.gov/DocumentDepot/Publications/2MPlan/MemorialsandMuseumsMasterPlan_PartThree.pdf), pp. 167-168.

<sup>23</sup> Ibid.

<sup>24</sup> 40 U.S.C. §8908(b)(2).

<sup>25</sup> H.R. 222 (113<sup>th</sup> Congress), introduced January 14, 2013. The World War I Memorial was authorized by P.L. 113-291, §3091(b) (128 Stat. 3858, December 19, 2014). The law provides that the memorial will be placed in Pershing Park, which is located in Area I, next to Freedom Plaza between 14<sup>th</sup> and 15<sup>th</sup> Streets, NW at Pennsylvania Avenue, NW.

Further, other legislation authorized the placement of a new element at the site of an existing commemorative work. For example, P.L. 113-123 authorized the placement of a plaque with the text of President Franklin D. Roosevelt’s D-Day prayer within the area of the World War II Memorial.<sup>26</sup>

## Encroachment on Existing Works

The CWA requires that new monuments and memorials be sited to avoid interference with or encroachment on existing works,<sup>27</sup> unless Congress grants a waiver from this provision. Between the passage of the CWA in 1986 and the 105<sup>th</sup> Congress (1997-1998), Congress did not authorize the addition of any new elements at existing commemorative works sites. Since the 106<sup>th</sup> Congress (1999-2000), however, Congress has authorized four new elements to be added at existing monuments and memorials:

- a plaque to veterans who died as a result of service during the Vietnam War at the Vietnam Veterans Memorial;<sup>28</sup>
- a plaque commemorating Reverend Dr. Martin Luther King, Jr.’s “I Have a Dream” speech at the Lincoln Memorial;<sup>29</sup>
- a plaque to honor Senator Robert J. Dole’s leadership “in making the [World War II] Memorial a reality on the National Mall... ”;<sup>30</sup> and
- a plaque with the text of the D-Day Prayer delivered by President Franklin D. Roosevelt at the World War II Memorial.<sup>31</sup>

Additionally, in previous Congresses, legislation to add supplementary elements to existing commemorative works was introduced, but not enacted. For example, in the 111<sup>th</sup> Congress (2009-2010), House and Senate companion proposals were introduced to rededicate and rename the District of Columbia War Memorial as the “National and District World War I Memorial,”<sup>32</sup> and add “an appropriate sculptural or other commemorative element, which shall complement

<sup>26</sup> P.L. 113-123, 128 Stat. 1377, June 30, 2014. For more information on past proposals for the World War II Memorial Prayer Act, see U.S. Congress, Senate Committee on Energy and Natural Resources, *World War II Memorial Prayer Act*, report to accompany S. 1044, 113<sup>th</sup> Cong., 2<sup>nd</sup> sess., March 31, 2014, S.Rept. 113-141 (Washington: GPO, 2014); “World War II Memorial Prayer Act of 2011,” House debate, *Congressional Record*, vol. 158 (January 24, 2012), pp. H131-H132; and U.S. Congress, House Committee on Natural Resources, *World War II Memorial Prayer Act of 2013*, report to accompany H.R. 2070, 112<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 112-368, (Washington: GPO, 2012); and U.S. Congress, Senate Committee on Energy and Natural Resources, Subcommittee on National Parks, *National Parks Legislation*, hearing on S. 1897, S. 2158, S. 2229, S. 2267, S. 2272, S. 2273, S. 2286, S. 2316, S. 2372, S. 3078, and S. 3300, 112<sup>th</sup> Cong., 2<sup>nd</sup> sess., S. Hrg. 112-578 (Washington: GPO, 2012).

<sup>27</sup> 40 U.S.C. §8905(b)(2).

<sup>28</sup> P.L. 106-214, 114 Stat. 335, June 15, 2000.

<sup>29</sup> P.L. 106-365, 114 Stat. 1409, October 27, 2000.

<sup>30</sup> P.L. 111-88, §128, 123 Stat. 2933, October 30, 2009. While the Dole plaque was an addition to a completed commemorative work, it was authorized outside the Commemorative Works Act process.

<sup>31</sup> P.L. 113-123, 128 Stat. 1377, June 30, 2014.

<sup>32</sup> H.R. 482, §3 (111<sup>th</sup> Congress), introduced January 1, 2009; and S. 2097 (111<sup>th</sup> Congress), introduced October 29, 2009. The Senate Committee on Energy and Natural Resources, Subcommittee on National Parks held a hearing on S. 2097 on December 3, 2009. U.S. Congress, Senate Committee on Energy and Natural Resources, Subcommittee on National Parks, *National Parks Legislation*, Hearing on S. 760, S. 1838, S. 2097, S. 2722, S. 2726, S. 2738, H.R. 1849, and H.R. 2689, 111<sup>th</sup> Cong., 1<sup>st</sup> sess., December 3, 2009, S.Hrg. 111-318 (Washington: GPO, 2010).

and preserve the existing memorial and its landscape....”<sup>33</sup> Neither bill was voted on by the House or Senate.

## Analysis and Options for Congress

Pursuant to the site selection process, most legislation authorizing commemorative works neither includes specific location references nor authorizes the addition of new elements to existing monuments or memorials. Instead, site selection is generally left to the sponsor group in consultation with the NPS, NCMAC, NCPC, and CFA—followed by an act of Congress, when necessary.

Further, because the CWA requires that new monuments and memorials be sited to avoid interference with or encroachment on existing works,<sup>34</sup> allowing the placement of additional elements at existing works generally requires an exemption from Congress. CWA provisions prohibiting encroachment are intended not only to protect existing commemorative works, but also to ensure that newly authorized works can be considered as “stand-alone” commemorations. Congress, however, has authorized new elements to existing monuments and memorials, and additional legislation has been introduced that would further that practice.

Should Congress decide to become more involved in the site selection process or provide supplementary guidance on the addition of new elements to existing monuments or memorials, several options exist.<sup>35</sup> These include amending the CWA, granting individual exemptions, or retaining the existing commemorative works process.

## Commemorative Works Act Amendment

If Congress desires more statutory involvement in the monument and memorial site selection process, or if Congress wants to allow the addition of new elements to existing commemorative works, the CWA could be amended to require an act of Congress for the siting of all commemorative works—not just in Area I—or to remove the statutory prohibition against adding new elements or features to existing commemorative works.

### *Siting Commemorative Works*

Currently, the CWA contemplates formal congressional intervention only if the Secretary of the Interior or Administrator of General Services recommends a monument or memorial be sited in Area I. Congress could amend the CWA to require congressional action for siting in Area II. Such an amendment could serve to involve Congress further in the approval of all monument and memorial sites, not just ones to be placed in Area I.

Additionally, in instances where Congress has accepted the Secretary or Administrator’s recommendation for monument or memorial placement in Area I, the accompanying legislation has specified the placement in Area I. It has not, however, provided for a specific site location within the broader area.<sup>36</sup> Future site authorizations could contain more specific information

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<sup>33</sup> H.R. 482, §3(2) (111<sup>th</sup> Congress) and S. 2097, §3(2) (111<sup>th</sup> Congress).

<sup>34</sup> 40 U.S.C. §8905(b)(2).

<sup>35</sup> For more information on the legislative history of the Commemorative Works Act, see CRS Report R41658, *Commemorative Works in the District of Columbia: Background and Practice*, by Jacob R. Straus.

<sup>36</sup> For example, the joint resolution approving the location of the Vietnam Women’s Memorial stated: “Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the location of a commemorative work to honor women who served in the Armed Forces of the United States in the Republic of

about the monument's or memorial's location, thus granting statutory approval for a specific (instead of general) site location. Historically, the exact site location has been left up to the sponsor group in consultation with the federal planning agencies in the District of Columbia.

### *Adding New Elements to Existing Commemorative Works*

Removing the statutory prohibition against adding new elements to existing commemorative works would potentially allow sponsor groups to commemorate an event or group in a manner not contemplated by the original memorial design. For instance, the addition of the plaque to the Vietnam Veterans Memorial site was seen as an opportunity to memorialize a group not originally included when the Vietnam Veterans Memorial was first authorized.<sup>37</sup>

Amending the CWA to allow additional elements to be placed at existing commemorative works could change the nature of commemoration in the District of Columbia. Instead of each monument or memorial being considered a completed work of art upon dedication, potential additions could be included on an individual basis. Adding such elements after the original work is completed, however, could change the intended nature or scope of the monument or memorial. Additionally, NCPC and CFA might consider limitations on the design of future additions to ensure that the new element complements the original design.

### **Individual Exemptions**

Should Congress choose to be involved in the site selection process for some—but not all—commemorative works, or allow additions to specific monuments or memorials, it may recall that past individual authorization statutes have contained exemptions from the CWA.

### *Siting Commemorative Works*

Congress has previously granted exemptions from the CWA to site monuments or memorials at specific locations.<sup>38</sup> Should Congress decide that direct site designation is appropriate for future commemorative works, it could include that designation in the authorization legislation. This specific site location information could be included in either the original statutory language or subsequent legislation authorizing an Area I site location.

Providing an individual exemption to the siting clause of the CWA allows Congress to be involved, when necessary, in siting a monument or memorial. For all other authorized monuments and memorials, the current site selection process would continue to operate. Granting individual

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Vietnam during the Vietnam era, authorized by the Act approved November 15, 1988 (102 Stat. 3922), in the area described in the Act approved November 14, 1986 (100 Stat. 3650), as area I, is hereby approved.” P.L. 101-187, 103 Stat. 1350, November 28, 1989.

<sup>37</sup> P.L. 106-214, 114 Stat. 335, June 15, 2000 added a plaque to Vietnam Veterans Memorial (P.L. 96-297, 94 Stat. 827, July 1, 1980). For more information and a picture of the Veterans Who Died as a Result of Service in the Vietnam War Plaque, see CRS Report R43743, *Monuments and Memorials Authorized and Completed Under the Commemorative Works Act in the District of Columbia*, by Jacob R. Straus; or Vietnam Veterans Memorial Fund, “In Memory Plaque,” at <http://www.vvmf.org/InMemoryPlaque>. The Vietnam Veterans Memorial was originally conceived as a memorial “... to American men and women who served and died in the Vietnam War. For more information, see U.S. Congress, Senate Committee on Energy and Natural Resources, *Vietnam Veterans Memorial*, report to accompany S.J.Res. 119, 96<sup>th</sup> Cong., 2<sup>nd</sup> sess., April 24, 1980, S.Rept. 96-663 (Washington: GPO, 1980), p. 2.

<sup>38</sup> For example, when Congress authorized the plaque to commemorate the Reverend Dr. Martin Luther King, Jr.’s “I Have a Dream Speech,” it specified that the plaque be placed “in the area of the Lincoln Memorial.” P.L. 106-365, 114 Stat. 1409, October 27, 2000.

exemptions to some groups and not others, however, would likely require Congress to continue to decide when an exemption is appropriate.

### ***Adding New Elements to Existing Commemorative Works***

When Congress determines that additions to existing commemorative works are desirable, individual exemptions can continue to be granted on a case-by-case basis. Separate examination of each proposed additional element would continue the past practice of congressional review of such proposals. Moreover, the original sponsor group could be consulted to determine if such additions are consistent with the monument's or memorial's original purpose.

Creating individual exemptions to 40 U.S.C. §8905(b)(2), however, could undermine the commemorative works planning processes that ensure a monument or memorial is reviewed for site location, design, fundraising, construction, and perpetual maintenance. Additionally, since the design of completed commemorative works has been approved by the NCPC and CFA, adding more elements could compromise the original monument or memorial's design and could require renewed review of the work's design.

### **Continue Current Site Selection Process**

Instead of amending the CWA or providing individual exemptions for certain monuments or memorials, Congress could stop allowing new monuments and memorials to be sited in Area I and deny requests to add new elements to existing commemorative works.

### ***Siting Commemorative Works***

Continuing the current site selection process would allow the federal planning agencies to guide sponsor groups through this process. Additionally, since the NCPC approves of planning throughout the National Capital Region<sup>39</sup> and the CFA approves of public art work design and location,<sup>40</sup> these entities can provide a holistic view of monument and memorial placement.

Maintaining the status quo for site selection, however, might not stop individual memorial sponsor groups from requesting that Congress provide exemptions to locate monuments or memorials on specific sites. Such requests could still be considered on an individual basis. Alternately, chamber or committee rules could be written to prohibit the consideration of monument or memorial legislation that includes a specific site location.<sup>41</sup>

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<sup>39</sup> The National Capital Region includes the District of Columbia; Montgomery and Prince George's Counties in Maryland; Arlington, Fairfax, Loudoun, and Prince William Counties in Virginia; and all cities in Maryland and Virginia in the geographic area bounded by the outer boundaries of the combined area of the counties listed above [40 U.S.C. §8702].

<sup>40</sup> 40 U.S.C. §8711; and 40 U.S.C. §§9101-9104.

<sup>41</sup> A comparable prohibition exists in the House of Representatives for commemorative legislation that includes a specific period of time. House Rule XII, clause 5 states: "(a) A bill or resolution, or amendment thereto, may not be introduced or considered in the House if it establishes or expresses a commemoration. (b) In this clause the term 'commemoration' means a remembrance, celebration, or recognition for any purpose through the designation of a specified period of time." U.S. Congress, House, *Constitution, Jefferson's Manual, and Rules of the House of Representatives of the United States, One Hundred Twelfth Congress, 112<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Doc. 112-161* (Washington: GPO, 2013), §823, pp. 620-621. Similarly, the Senate Committee on Environment and Public Works rule prohibits the consideration of legislation naming a public facility after living and most former Members of Congress. Committee Rule 7(d) states: "(d) Naming Public Facilities: The committee may not name a building, structure or facility for any living person, except former Presidents or former Vice Presidents of the United States, former Members of Congress over 70 years of age, former Justices of the United States Supreme Court over 70 years of age, or Federal

### *Adding New Elements to Existing Commemorative Works*

Instead of providing individual exemptions for additions to existing commemorative works, Congress could choose to prohibit these additions. Since commemorative works are considered to be complete upon dedication, a new element added to a completed monument or memorial has been interpreted by some as a new commemorative work. As an example of a congressional prohibition, the House Committee on Interior and Insular Affairs, in its report to accompany the CWA in 1986, specifically discussed its intention that new commemorative works not encroach on open space or other monuments and memorials.

The Committee intends that consideration of site alternatives shall be inclusive of the following: possible conflicts with other activities at that site, the visual impact of the commemorative work on adjacent commemorative works, and the effect on the adjacent parking, transportation, and existing open space.<sup>42</sup>

Further, the committee reiterated that the “commemorative work shall be located to prevent interference with or encroachment upon any existing commemorative work and to protect open space in a manner compatible with existing public use.”<sup>43</sup>

Continuing to prohibit the addition of elements to existing commemorative works, however, would probably not stop interested groups from proposing memorial additions in restricted areas. Should Congress continue to prohibit additions, proposals to add elements would likely be treated as proposals for new commemorative works and would, if authorized, require new site locations. Additionally, authorizing new commemorative works with related or substantially similar topics could create confusion as to the status of each memorial. Under this scenario, more than one monument or memorial to a war, event, or individual could be authorized. Duplicative monuments or memorials might detract from existing commemorative works.

## Use of American Materials

Once Congress authorizes a sponsor group to build a commemorative work in the District of Columbia, the group must work with NCPC, CFA, and either the Secretary of the Interior (through the NPS) or the Administrator of the GSA—depending on who has jurisdiction over the land that would house the proposed memorial—to choose a site and receive design approval for the memorial.<sup>44</sup> As part of this process, the NCPC, CFA, and the Secretary or Administrator evaluate several criteria, including the proposed memorial’s surroundings, location, material, and landscape features.<sup>45</sup>

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judges who are fully retired and over 75 years of age or have taken senior status and are over 75 years of age.” U.S. Congress, Senate, Committee on Environment and Public Works, *Committee Rules*, 114<sup>th</sup> Cong., 1<sup>st</sup> sess., at <http://www.epw.senate.gov/public/index.cfm?FuseAction=CommitteeResources.CommitteeRules&CFID=49269558&CFTOKEN=20594227>.

<sup>42</sup> U.S. Congress, House Committee on Interior and Insular Affairs, *Governing the Establishment of Commemorative Works within the National Capital Region of the National Park System, and for Other Purposes*, report to accompany H.R. 4378, 99<sup>th</sup> Cong., 2<sup>nd</sup> sess., May 5, 1986, H.Rept. 99-574 (Washington: GPO, 1986), p. 6. The Senate Committee on Energy and Natural Resources expressed similar sentiments in its report on H.R. 4378. See, U.S. Congress, Senate Committee on Energy and Natural Resources, *The Placement of Commemorative Works on Federal Lands in the District of Columbia and Its Environs*, report to accompany H.R. 4378, 99<sup>th</sup> Cong., 2<sup>nd</sup> sess., August 15, 1986, S.Rept. 99-421 (Washington: GPO, 1986), p. 9.

<sup>43</sup> *Ibid.*

<sup>44</sup> 40 U.S.C. §8905.

<sup>45</sup> 40 U.S.C. §8905(b).

Pursuant to current law, the only criterion related to materials requires the consideration of the proposed material's durability to ensure it is "suitable to the outdoor environment."<sup>46</sup> In recent Congresses, at least one proposal would have required that all memorials be constructed of material that is mined or produced in the United States or manufactured "substantially ... from articles, materials, or supplies mined, produced or manufactured ... in the United States."<sup>47</sup> The proposal would have further required that construction permits could not be issued by the Secretary or the Administrator without contract documents demonstrating "that material to be used in the construction of the commemorative work complies with [these] criteria ... as determined in accordance with regulations implementing chapter 83 of title 41, *United States Code* (popularly referred to as the 'Buy American Act')."<sup>48</sup>

Should Congress want to mandate the use of American materials for commemorative works in the District of Columbia, there are several options available including statutorily mandating American materials or continuing current policies which do not directly address the origin of construction material. Mandating the use of American materials in the construction of commemorative works could provide assurances that national memorials would be constructed of American materials. Requiring the use of domestic products may have an economic as well as symbolic benefit. Visitors to Washington, DC, would know that the materials used to build national memorials came from the United States.

Mandating the use of American material, however, may not be appropriate for all commemorative works in the District of Columbia. Several recent works—Mahatma Gandhi, Tomas G. Masaryk, and Victims of the Ukrainian Manmade Famine of 1932-1933—were sponsored by foreign governments. Such memorial sponsors might prefer to use material native to their countries when building a memorial. Further, some memorial designers might find inspiration in non-American materials and want to use them as part of the memorial. Such design elements may or may not be appropriate, but would likely need to be reviewed by NCPC and CFA pursuant to the CWA.

Mandating the use of American materials may also have cost implications. American-made materials might be more or less expensive than imported materials. Further, in instances where a new element has been authorized at an existing memorial it might be desirable to match materials to the existing memorial, regardless of the material's origin. For example, if a new element was added to an existing memorial which was built from Italian marble, it might not be possible to match materials, if necessary, from domestic sources. In this case, consideration of an exemption to the American-made requirement might be requested by the memorial sponsor or designer.

Should Congress choose not to amend the CWA to require American-made materials, the decision would likely continue to reside with the federal planning bodies currently charged with approving memorial designs pursuant to the CWA.

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<sup>46</sup> 40 U.S.C. §8905(b)(3).

<sup>47</sup> H.R. 1619 (112<sup>th</sup> Congress), introduced April 15, 2011.

<sup>48</sup> H.R. 1619, §2(a)(2). The Buy American Act (41 U.S.C. §§8301-8305), generally requires federal agencies to purchase "domestic end products" and use "domestic construction materials" on contracts exceeding the micro-purchase threshold (typically \$3,000) performed in the United States. For more information on the Buy American Act and other provisions of federal law that govern restrictions on domestic content for government contracts, see CRS Report R43354, *Domestic Content Restrictions: The Buy American Act and Complementary Provisions of Federal Law*, by Kate M. Manuel et al.

## Deadline for Memorial Completion

In 1986, when the CWA was enacted, sponsor groups were given five years from the date of enactment to complete the memorial or receive a construction permit. If a memorial was not completed and a construction permit was not issued within five years, the group's authority would expire.<sup>49</sup> By 1991, only one of the eight memorials authorized between the 99<sup>th</sup> Congress (1985-1986) and the 101<sup>st</sup> Congress (1989-1990)—the American Armored Force Memorial—had met the five-year deadline.<sup>50</sup> To address this issue, P.L. 102-216 was enacted “to lengthen from five to seven years the expiration period applicable to legislative authority relating to construction of commemorative works on Federal land in the District of Columbia and its environs.”<sup>51</sup>

Even with a seven-year authorization for the completion of the commemorative work or the issuance of a construction permit,<sup>52</sup> several recent memorials have been granted statutory extensions, had their authorizations lapse, or both.<sup>53</sup> In an effort to ensure that memorials are completed in a timely manner, Delegate Eleanor Holmes Norton introduced H.R. 2297 (113<sup>th</sup> Congress), which would have amended 40 U.S.C. §8903 to allow the Secretary of the Interior or the Administrator of GSA to recommend to Congress that a sponsor group's authorization be terminated. H.R. 2297 stated the following:

(b) Recommendations Regarding Termination of Authority To Establish Commemorative Work—Section 8903 of such title is amended by adding at the end the following new subsection:

(f) Recommendations Regarding Termination of Legislative Authority—The Secretary of the Interior or the Administrator of General Services may submit a recommendation to Congress that the legislative authority for a commemorative work be terminated before the expiration date applicable to the work under subsection (e) if the Secretary or the Administrator determines the person authorized to establish the work does not possess the capacity or resources to successfully complete the project before that expiration date.<sup>54</sup>

<sup>49</sup> P.L. 99-652, §10, 100 Stat. 3654, November 14, 1986. For more information on the original provisions of the CWA, see CRS Report R41658, *Commemorative Works in the District of Columbia: Background and Practice*, by Jacob R. Straus.

<sup>50</sup> U.S. Congress, House Committee on Interior and Insular Affairs, *Lengthening the Period for Construction of Commemorative Works on Federal Land in the District of Columbia*, report to accompany H.R. 3169, 102<sup>nd</sup> Cong., 1<sup>st</sup> sess., October 21, 1991, H.Rept. 102-257 (Washington: GPO, 1991), p. 2.

<sup>51</sup> P.L. 102-216, 105 Stat. 1666, December 11, 1991. P.L. 102-216 was introduced as H.R. 3169 (102<sup>nd</sup> Congress), August 1, 1991. See also “Public Bills and Resolutions,” *Congressional Record*, vol. 137, part 15 (August 1, 1991), p. 21069; U.S. Congress, House Committee on Interior and Insular Affairs, *Lengthening the Period for Construction of Commemorative Works on Federal Land in D.C.*, report to accompany H.R. 3169, 102<sup>nd</sup> Cong., 1<sup>st</sup> sess., October 21, 1991, H.Rept. 102-257 (Washington: GPO, 1991); and U.S. Congress, Senate Committee on Energy and Natural Resources, *Lengthening the Period for Construction of Commemorative Works on Federal Land in D.C.*, report to accompany H.R. 3169, 102<sup>nd</sup> Cong., 1<sup>st</sup> sess., November 12, 1991, S.Rept. 102-211 (Washington: GPO, 1991).

<sup>52</sup> 40 U.S.C. §8903(e).

<sup>53</sup> For example, the Women in Military Service for America Memorial's authorization was extended to 10 years from the date of enactment by P.L. 103-321 (108 Stat. 1793, August 26, 1994); the George Mason Memorial received an extension of three years by P.L. 105-182 (112 Stat. 516, June 19, 1998); and the Reverend Dr. Martin Luther King, Jr. Memorial received a total of three extensions, totaling 14 years (P.L. 108-125, 117 Stat. 1347, November 11, 2003; P.L. 109-54, §134, 119 Stat. 527, August 2, 2005; and P.L. 111-88, §129, 123 Stat. 2933, October 30, 2009).

<sup>54</sup> H.R. 2297, §2(b), (113<sup>th</sup> Congress), introduced June 13, 2013.

H.R. 2297 was referred to the House Committee on Natural Resources and its Subcommittee on Public Lands and Environmental Regulation. It did not receive any further action.

Providing the Secretary and the Administrator with the power to recommend the termination of a memorial's authorization raises two potential issues: can a memorial be completed or be issued a construction permit within seven years as required by 40 U.S.C. §8903 and what impact might a recommendation for termination have on congressional decision-making.

## Memorial Completion

Providing the Secretary and the Administrator with the power to recommend the termination of a memorial's authorization could reduce the need to continually extend memorials that have not met the statutory requirement of completion or the issuance of a construction permit within seven years. Several currently authorized memorials have received more than one extension. For example, the John Adams and His Family's Legacy Memorial, which was originally authorized on November 5, 2001, had its initial authorization expire in November 2008.<sup>55</sup> Since then, Congress has granted a series of extensions, first to September 30, 2010,<sup>56</sup> then until December 2, 2013,<sup>57</sup> and most recently until December 2, 2020.<sup>58</sup> While the memorial to John Adams and his family continues to move forward, if it was not making progress, the Secretary or the Administrator could recommend the termination of its authorization and Congress could avoid using legislative time to provide for its extension.

## Congressional Decision Making

Providing explicit power to recommend the termination of a memorial's authorization could potentially lead to a recommendation being made before a sponsor group has exhausted its initial seven-year period. Some memorials take longer to select a site, raise necessary funds, and secure approval from the NCPC and CFA. Under this option, should the Secretary or the Administrator determine that the sponsor group "does not possess the capacity or resources to successfully complete the project before [the] expiration date,"<sup>59</sup> and recommend the project's termination, Congress could find itself under pressure from both proponents and opponents of the memorial to allow the work its initial seven-year authorization or to terminate the project ahead of the statutory deadline. Alternately, a recommendation by the Secretary or the Administrator could serve as a warning to the sponsor group that the project is not on track for completion or the issuance of a construction permit within the seven-year authorization, and that it should redouble its efforts to complete the memorial, as a new authorization may or may not be forthcoming.

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<sup>55</sup> P.L. 107-62, 115 Stat. 411, November 5, 2001.

<sup>56</sup> P.L. 111-88, §130, 123 Stat. 2933, October 30, 2009.

<sup>57</sup> P.L. 111-169, 124 Stat. 1192, May 24, 2010.

<sup>58</sup> P.L. 113-291, §3094, 128 Stat. 3880, December 19, 2014. For more information on the Adams Memorials, see CRS Report R43744, *Monuments and Memorials Authorized Under the Commemorative Works Act in the District of Columbia: Current Development of In-Progress and Lapsed Works*, by Jacob R. Straus.

<sup>59</sup> H.R. 2297, §2(b).

## Museums and the CWA

In 1846, Congress accepted James Smithson’s gift to create the Smithsonian Institution.<sup>60</sup> Since then, the Smithsonian has expanded to include 17 museums in the District of Columbia, most of which are located on or adjacent to the National Mall.<sup>61</sup> In recent years, Congress has authorized a new Smithsonian museum—the National Museum of African American History and Culture,<sup>62</sup> which is under construction—and legislation has been introduced to establish another—the National Museum of the American Latino.<sup>63</sup>

The CWA applies only to land administered by the NPS or GSA in the District of Columbia.<sup>64</sup> Thus, museums sited on non-NPS or -GSA administered land would not be subject to the CWA. Additionally, the CWA does not include museums in its definition of commemorative works. Pursuant to 40 U.S.C. §8902(a)(1),

any statue, monument, sculpture, memorial, plaque, inscription, or other structure or landscape feature, including a garden or memorial grove, designed to perpetuate in a permanent manner the memory of an individual, group, event or other significant element of American history, except that the term does not include any such item which is located within the interior of a structure or structures which is primarily used for other purposes.<sup>65</sup>

Further, the CWA prohibits the siting of museums in Area I or East Potomac Park. Pursuant to 40 U.S.C. §8905(b)(5),

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<sup>60</sup> 9 Stat. 102, ch. 178, August 10, 1846. Upon his death in 1829, James Smithson—a British scientist—bequeathed his estate to the United States (Paul H. Oehser, *The Smithsonian Institution* (New York: Praeger Publishers, 1970), p. 15). In December 1835, President Andrew Jackson notified Congress of Mr. Smithson’s bequest. In his message, President Jackson wrote: “I transmit to Congress a report from the Secretary of State, accompanying copies of certain papers relating to a bequest to the United States by Mr. James Smithson, of London, for the purpose of founding ‘at Washington an establishment under the name of the Smithsonian Institution, for the increase and diffusion of knowledge among men.’ The Executive having no authority to take any steps for accepting the trust and obtaining the funds, the papers are communicated with a view to such measure as Congress may deem necessary.” U.S. Congress, Joint Committee on Printing, *A Compilation of the Messages and Papers of the Presidents, Volume III* (New York: Bureau of National Literature, 1897), p. 1406.

<sup>61</sup> The Smithsonian Institution Museums in Washington, DC, are the National Museum of African American History and Culture, the National African Art Museum, the National Air and Space Museum, the Smithsonian American Art Museum, the National Museum of American History, the National Museum of the American Indian, the Anacostia Community Museum, the Arts and Industries Building, the Freer Gallery of Art, the Hirshhorn Museum and Sculpture Garden, the National Zoological Park, the National Museum of Natural History, the National Portrait Gallery, the National Postal Museum, the Renwick Gallery, the Arthur M. Sackler Gallery, and the Smithsonian Institution Building (the Castle). Additionally, the Smithsonian Institution operates the National Air and Space Museum Udvar-Hazy Center near Dulles Airport in Virginia and two museums in New York City—the National Museum of the American Indian George Gustav Heye Center and the Cooper-Hewitt National Design Museum.

<sup>62</sup> 20 U.S.C. §80r.

<sup>63</sup> H.R. 3459 (112<sup>th</sup> Congress), introduced November 29, 2011; S. 1868 (112<sup>th</sup> Congress), introduced November 15, 2011; S. 568 (113<sup>th</sup> Congress), introduced March 14, 2013; and H.R. 1217 (113<sup>th</sup> Congress), introduced March 27, 2013.

<sup>64</sup> 40 U.S.C. §8903(a). The National Park Service 24-step outline, as provided by the National Capital Memorial Commission, September 2001, is published as Appendix A of the National Capital Planning Commission’s Museum and Master Plan, published December 2001. For more information, see National Capital Planning Commission, “Appendix A: Steps for Establishing a Memorial in the Nation’s Capital,” *Memorials and Museums Master Plan*, (September 2001, updated 2006), at [http://www.npc.gov/DocumentDepot/Publications/2MPlan/MemorialsandMuseumsMasterPlan\\_PartThree.pdf](http://www.npc.gov/DocumentDepot/Publications/2MPlan/MemorialsandMuseumsMasterPlan_PartThree.pdf), pp. 167-168.

<sup>65</sup> 40 U.S.C. §8902(a)(1).

No commemorative work primarily designed as a museum may be located on lands under the jurisdiction of the Secretary in Area I or in East Potomac Park as depicted on the map referenced in section 8902(2).

When authorizing the National Museum of African American History and Culture in 2003, Congress specifically exempted it from the CWA prohibition against the creation of museums on NPS- or GSA-administered land.<sup>66</sup> The granting of this exemption arguably suggests that Congress believes the CWA applies to museums at any District location, if they are located on NPS- or GSA-administered land.<sup>67</sup> This application of the CWA to a museum would be in contrast to the specific CWA prohibition against the placement of a museum in Area I or East Potomac Park.<sup>68</sup> Whether the CWA applies to museums, therefore, is an open question.<sup>69</sup>

To reconcile the application of the CWA to museums, Congress could choose to apply the CWA and its process to museums. This could standardize the process for creating museums in the District of Columbia. Codifying congressional intent could also streamline the museum-creation process; set guidelines for the placement of museums in certain locations within the District of Columbia; and clarify the role of third-party organizations for the creation, funding, and design of future museums in a manner similar to the CWA's requirement for monuments and memorials.

Expanding the scope of the CWA to include non-NPS or non-GSA administered land and museums could put an additional burden on the commemorative works process. In addition to evaluating the site location, design, and progress of monuments and memorials, the NCMAC, NCPC, and CFA could be required to evaluate authorized museums under the same conditions as monuments and memorials. Current commemorative work guidance, however, does not provide direction on museums and interior spaces. The Vietnam Veterans Memorial Visitor Center, however, could provide precedent for the evaluation of "museum" space. The Visitor Center's authorization specifically provides that it is a commemorative work.<sup>70</sup>

## Conclusion

In recent Congresses, several bills have been introduced to authorize new commemorative works in the District of Columbia. As new commemorative works proposals are introduced and new exemptions from the CWA are sought, Congress will face choices on how to commemorate events and individuals. This report provided four proposed exemptions: siting commemorative works, use of American materials, deadlines for memorial completion, and museums under the Commemorative Works Act. For each proposed exemption, congressional options include providing an exemption from the CWA for an individual monument or memorial, amending the CWA and thereby providing changes applicable to all new commemorative works, and continuing the current commemorative works process.

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<sup>66</sup> P.L. 108-184, §8, 117 Stat. 2681, December 16, 2003; 20 U.S.C. §80r-6.

<sup>67</sup> For further legal questions on the application of the Commemorative Works Act, please contact CRS Legislative Attorney Kristina Alexander at 7-8597 or [kalexander@crs.loc.gov](mailto:kalexander@crs.loc.gov). Ms. Alexander contributed to this section.

<sup>68</sup> 40 U.S.C. §8905(b)(5).

<sup>69</sup> 40 U.S.C. §8902(a)(1). As previously noted, the CWA defines a commemorative work as "any statue, monument, sculpture, memorial, plaque, inscription, or other structure or landscape feature, including a garden or memorial grove, designed to perpetuate in a permanent manner the memory of an individual, group, event or other significant element of American history, except that the term does not include any such item which is located within the interior of a structure or structures which is primarily used for other purposes."

<sup>70</sup> P.L. 108-126, 117 Stat. 1348, November 17, 2003. For more information on the creation of museums in the District of Columbia, see CRS Report R43856, *Contemporary Federal Museum Authorizations in the District of Columbia: Past Practices and Options for Congress*, by Jacob R. Straus.

For each proposed exemption, the options available to Congress are not mutually exclusive. It might be possible, for example, both to grant a one-time exemption to a sponsor group and to amend the CWA for future monuments and memorials. Similarly, Congress could choose to be more involved in some aspects of the commemorative works process established by the CWA or delegate additional authority to the NCPC, CFA, or NCMAC, as appropriate.

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