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LEGAL BRIEFING

Bulldozing, Building, and "Beautification" in Trump's Washington

The Administration's effort to undermine Section 106 of the National Historic Preservation Act

Cultural Heritage Partners, PLLC | Law, Policy & Strategy for Cultural Heritage

Who We Are

- Cultural Heritage Partners, PLLC is a private law firm with a public mission: protecting cultural heritage as a human right.
- We are experienced Section 106 practitioners — the federal historic preservation program is core to our practice.
- We represent Tribal Nations, local governments, community organizations, and preservation advocates nationwide.
- We are in active litigation against the Trump Administration to stop the President's plans to paint the Eisenhower Executive Office Building and to demolish the Kennedy Center.
- Through our "War Room" initiative, we are actively tracking and responding to the Section 106 regulatory overhaul.



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WHERE WE'RE HEADED

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How the Administration sidesteps, rewrites, and outruns preservation law



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SECTION 106 IN BRIEF

Section 106: An Overview

Section 106 of the National Historic Preservation Act is the federal government's core historic preservation review. It applies to every federal agency, nationwide.

- **What triggers it:** a federal "undertaking" — any project, activity, or program funded, permitted, licensed, or approved by a federal agency.
- **What it requires:** the agency must take into account effects on historic properties — those listed in or eligible for the National Register — and give the ACHP a reasonable opportunity to comment.
- **Who has a seat:** SHPOs, Tribes and THPOs, Native Hawaiian organizations, local governments, applicants, and the public.
- **What it produces:** a public record and, where harm is unavoidable, an agreement to minimize or mitigate it. The process is mandatory; preservation is not.



The Framework

Statute
54 U.S.C. § 306108
Regulations
36 CFR Part 800, issued by the ACHP
Enforcement
APA review in federal court
Enacted
October 15, 1966 — 60 years ago this month

01

SECTION ONE

The Strategy

Across the Capital and the country, the same three moves recur — each designed to keep Section 106 from doing its work:

1



Sidestep the Law

Claim the actor isn’t an “agency” or the work is mere “maintenance”

2



Rewrite the Rules

Emergencies, exemptions, and a new Part 800

3



Build First, Litigate Later

Create facts on the ground before a court can rule

THE LEGAL BASELINE

What Section 106 Actually Requires

Before approving or funding an "undertaking," every federal agency must take into account its effects on historic properties and give the ACHP a reasonable opportunity to comment (54 U.S.C. § 306108). The duty is procedural — but it is not optional.

The four steps under 36 CFR Part 800:

1. **Initiate.** Define the undertaking; identify the SHPO/THPO, Tribes, and consulting parties; plan public involvement (§ 800.3)

2. **Identify.** Set the area of potential effects and find the historic properties within it (§ 800.4)

3. **Assess.** Apply the criteria of adverse effect — including changes to setting, character, and visual integrity (§ 800.5)

4. **Resolve.** Consult to avoid, minimize, or mitigate adverse effects, typically in a binding Memorandum of Agreement (§ 800.6)

WHY WASHINGTON IS DIFFERENT

The Capital's Overlapping Safeguards

1. **40 U.S.C. § 8106.** No building may be erected on federal grounds in D.C. without the "express authority of Congress."

2. **NPS Organic Act.** Park management must conform to the "fundamental purpose" of conserving scenery and historic objects (54 U.S.C. § 100101).

3. **National Capital Planning Commission.** Approves federal projects in the Capital — now chaired by White House aide Will Scharf.

4. **Commission of Fine Arts.** Reviews the design of public buildings and memorials — now filled with Administration allies.

5. **Commemorative Works Act.** New memorials on NPS land in the Capital require authorization by Congress (40 U.S.C. ch. 89).

6. **Site-specific statutes.** E.g., the Kennedy Center Act fixes the building's name and limits what its board may do.

THE PLAYBOOK IN PRACTICE

Eight Recurring Moves

1 Demolish Before Review

East Wing razed in Oct. 2025, months before NCPC or CFA saw plans.

2 Call It “Maintenance”

Reflecting Pool and Kennedy Center work framed as repair, not alteration.

3 Route Around “Agencies”

EEOB project moved into the Executive Office of the President.

4 Invoke an Emergency

No-bid Reflecting Pool contracts; a national “energy emergency.”

5 Cite National Security

Bunker declarations offered to keep ballroom construction going.

6 Capture the Reviewers

Allies lead NCPC and CFA, which approve projects quickly.

7 Attack Standing

Preservationists’ aesthetic injuries recast as mere “disagreement.”

8 Rewrite the Regulations

Section 106 overhaul would make much of this lawful.

Sources and case citations appear on the slides that follow.

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SECTION TWO

Five Fights in the Capital

From the White House to Memorial Circle, five projects show the playbook in action — and how the federal courts are responding.

AT A GLANCE

Five Projects, Five Lawsuits

Project	The Move	The Case	Where It Stands
White House Ballroom	Demolished the East Wing first; claims "maintenance" authority and national security	Nat'l Trust v. NPS (D.D.C.; D.C. Cir. No. 26-5123; S. Ct. No. 26A203)	PI affirmed by D.C. Cir. Aug. 7; Supreme Court stayed it 5–4 Aug. 31 — construction continues
Reflecting Pool	"Streamlined" review as routine maintenance; emergency no-bid contracts	Cultural Landscape Found. v. Dep't of the Interior, No. 26-cv-1593	Work finished in early June before any ruling; coating failed within weeks; case pending
Kennedy Center	Board isn't an "agency"; overhaul framed as "capital repair"; demolition threats	DC Pres. League v. Kennedy Ctr. Bd., No. 26-cv-981; Beatty v. Trump, No. 25-cv-4480	NHPA PI denied May 29; name ordered removed May 30; 30-day demolition notice ordered Sept. 17
EEOB	Project moved to the Office of Administration, claimed exempt from NHPA	Cultural Heritage Partners v. Trump, No. 25-cv-3969	Bid to stop paint tests denied Aug. 18; merits pending
Memorial Circle Arch	Excavation before final approval; relies on a 1925 bridge statute	Veterans' suit, filed Feb. 19, 2026 (Public Citizen)	Notice required before site work (Sept. 4); NCPC final approval and Section 106 pending

Status as of early October 2026. Citations are to the U.S. District Court for the District of Columbia unless noted.

FIGHT 1 · THE WHITE HOUSE BALLROOM

Demolish First, Ask Later

In October 2025 the Administration razed the East Wing to make way for a privately funded, 90,000-square-foot, roughly $400 million ballroom — before any public review.

- **A statutory blind spot.** Section 106 does not reach the White House and its grounds (54 U.S.C. § 307104) — so the Trust's case turned on 40 U.S.C. § 8106, the NPS Organic Act, and Congress's power over federal property.
- **Review after the fact.** CFA (Feb. 19) and NCPC (Mar. 5, 2026) took up the project only after demolition. CFA drew ~2,000 comments (99% opposed); NCPC drew 32,000+ (~98% critical).
- **The legal theory.** Authority to provide for the "care, maintenance, [and] repair" of the Executive Residence (3 U.S.C. § 105(d)), plus NPS's Organic Act powers.
- **Speed as strategy.** By mid-August 2026 the project was ~65% complete, with a 250-person crew working up to 20 hours a day.



Rendering of the proposed ballroom

Sources: National Trust, savingplaces.org/white-house; Nat'l Trust v. NPS, No. 26-5123 (D.C. Cir. Aug. 7, 2026); States Newsroom (Sept. 1, 2026)

FIGHT 1 · THE WHITE HOUSE BALLROOM

National Trust v. National Park Service

1

District Court Denies Early Relief

Dec. 2025 & Feb. 2026 — Judge Leon denies a TRO, then a preliminary injunction on the APA claims.

2

Preliminary Injunction Granted

Mar. 31, 2026 — defendants likely acted ultra vires under § 8106; above-ground work halted, security work allowed.

3

D.C. Circuit Affirms, 2–1

Aug. 7, 2026 — Millett and Garcia (Rao dissenting): § 105(d) covers maintenance, not demolition and replacement.

4

Supreme Court Stays the Injunction, 5–4

Aug. 31, 2026 — the Trust likely lacks standing; Chief Justice Roberts, with three Justices, dissents.



Takeaway for Litigators

The merits arguments are winning; standing is the weak point. Build injury declarations around concrete, regular use and professional stakes.

Sources: Nat'l Trust v. NPS, No. 26-5123 (D.C. Cir. Aug. 7, 2026); NPS v. Nat'l Trust, No. 26A203 (U.S. Aug. 31, 2026)

FIGHT 2 · LINCOLN MEMORIAL REFLECTING POOL

Paint First, Review Never

- April 2026: a $13+ million project to coat the pool in “American flag blue” polyurea, on no-bid contracts justified as an emergency.
- NPS called it routine maintenance under the 2008 Nationwide Programmatic Agreement — no consultation with the DC SHPO.
- The court saw the harm as “reparable and temporary.” Work was finished in early June, before any ruling.
- Within weeks, algae and peeling — and DOJ conceded in a criminal case that the work was “hasty and botched.”



The Lincoln Memorial Reflecting Pool

“[G]iven the direction provided by [NPS], [DOI], and White House leadership … there is no option other than to select Streamlined Review.” — internal NPS record, per TCLF’s filing

FIGHT 3 · THE KENNEDY CENTER

“Down to the Steel”

Congress created the Kennedy Center (Edward Durell Stone, 1971) as the nation’s living memorial to President Kennedy. It is eligible for the National Register.

- **Rename, then close.** The Trump-appointed board added the President’s name to the building and voted to close it for two years from July 4, 2026, for a $200+ million overhaul.
- **The NHPA gap.** As a Smithsonian bureau, the Center is an “odd federal bird” — not an “agency” for Section 106 unless a project needs NCPC approval.
- **Demolition as leverage.** In August, DOJ told the court the Center would otherwise become “an unsafe, decrepit structure that will be required to be taken down.”
- **Closed.** The Center shut in early September 2026, citing structural damage; the President warned it would “end up being ripped down.”



The Kennedy Center from the Potomac

Sources: DC Pres. League v. Kennedy Ctr. Bd., No. 26-cv-981 (D.D.C. May 29, 2026); ABC News (Aug. 26, 2026); Forbes (Sept. 29, 2026)

FIGHT 3 · THE KENNEDY CENTER

Two Cases

Before Judge Christopher Cooper, preservation claims and charter claims have fared differently at the preliminary injunction stage:

DC Preservation League v. Board

Eight-group coalition, CHP co-counsel. PI denied May 29: no § 106 hook; work is "capital repair."

Beatty v. Trump

May 30: "only Congress can change" the name. Closure vote "ill-informed and seemingly preordained."

The Demolition Order

Sept. 17: 30 days' written notice to the court before any demolition or major structural change.

Congress Steps In?

The bipartisan Protecting Presidential Memorials Act (Sept. 29, 2026) would bar demolishing a presidential memorial without express authorization from Congress. Sen. Mike Lee blocked an earlier fast-track vote.

FIGHT 4 · EISENHOWER EXECUTIVE OFFICE BUILDING

Painting a National Historic Landmark

The Plan

Announced Nov. 12, 2025: paint the granite exterior of the 1888 Second Empire landmark white, at a cost the White House puts at $7.5 million or more.

The Science

Mineral silicate paint bonds with porous stone, not dense granite — risking trapped moisture and faster decay of the original fabric.

The Case

CHP & DC Preservation League v. Trump, No. 25-cv-3969 (Judge Friedrich). Filed within 48 hours; on Aug. 18, 2026, the court declined to block test panels.

The Maneuver

Jan. 29, 2026: the project moved from GSA to the Office of Administration, which DOJ says is “not subject to the [NHPA], [NEPA], or judicial review.”

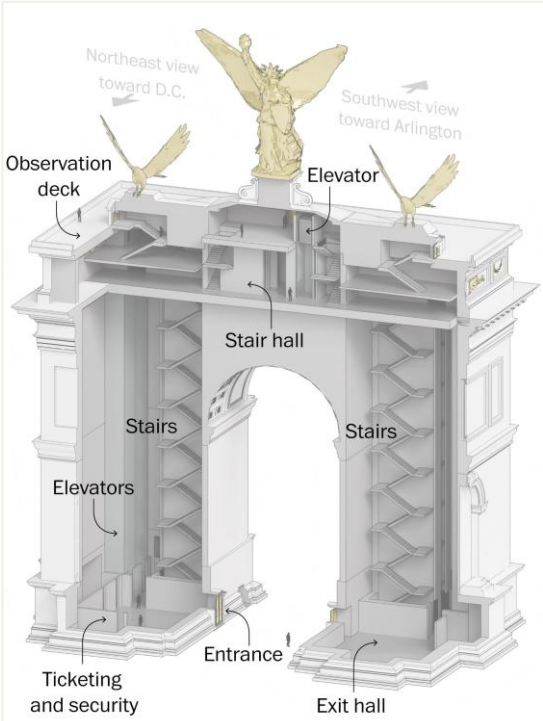


The Eisenhower Executive Office Building

FIGHT 5 · THE MEMORIAL CIRCLE ARCH

A 250-Foot Arch at the Gateway to Arlington

- A triumphal arch — one foot per year of U.S. history — on the ceremonial axis between the Lincoln Memorial and Arlington House.
  - **Fast-tracked design review:** CFA approved May 21; NCPC gave preliminary approval 8–1 on July 9. The 130-foot height limit is unresolved.
  - **Section 106 still open:** NPS found adverse effects on 37 historic properties in August, yet scheduled excavation anyway.
  - **Borrowed authority:** the Administration relies on a 1925 statute for Arlington Memorial Bridge, not new action by Congress.



Based on blueprints by Harrison Design, submitted to The National Capital Planning Commission May, 2026.

Case at a Glance

Plaintiffs

Three Vietnam veterans and an architectural historian (Public Citizen)

Claims

Commemorative Works Act, NEPA, NHPA

Sept. 4 order (Judge Chutkan)

48 hours' notice before site work; no construction without final NPS approval and 14 days' notice

03

SECTION THREE

Beyond the Capital

The same tactics — emergency shortcuts, exemptions, and a regulatory rewrite — now reach every federal project in the country.

NATIONWIDE

Emergency as Exemption

- **Jan. 20, 2025:** Executive Order 14156 declares a “National Energy Emergency” and directs agencies to use emergency procedures — including under the NHPA — to fast-track energy projects.
- **April 2025:** Interior adopts emergency permitting procedures that compress review to weeks, invoking 36 CFR § 800.12, under which SHPOs, THPOs, and the ACHP may get just seven days to comment.
- **May 9, 2025:** fifteen states sue the President, the Army Corps of Engineers, and the ACHP over the emergency procedures.
- **Inside the ACHP:** new Council members, and Tribal and preservation offices merged after staff cuts.
- **Making it permanent:** the draft Part 800 rule keeps the presidential-emergency trigger and lets agencies change deadlines on their own.

Sources: Exec. Order 14156; DOI press release (Apr. 2025); CHP, “War Room for Threats to Section 106”; draft 36 CFR § 800.12

NATIONWIDE

Rewriting the Rulebook: ACHP's Section 106 Overhaul

- **July 24, 2026:** ACHP votes 16–5 (two abstaining) to advance its first comprehensive rewrite of the Section 106 rules in two decades; NCSHPO votes no. Next: OIRA review, Federal Register publication, and public comment.
- **Consultation optional:** agencies decide who consults, and "consultation" means only to "seek and consider" views.
- **Fewer undertakings:** nine specific carve-outs, plus other exemptions
- **Less "historic," less "adverse":** properties must be built and "geographically compact"; indirect, cumulative, and visual effects drop out; Memoranda of Decision replace MOAs.
- **The connection:** what the Administration improvises in Washington, the rule would authorize everywhere.

Sources: draft 36 CFR Part 800 (July 2026); NCSHPO, "Section 106 Rulemaking: What's Next?" (July 24, 2026)

NATIONWIDE · CONGRESS

Worse Than the Rule: The Senate Permitting Bill

The Bipartisan American Affordability and Jobs Act would write much of the ACHP's rewrite into the NHPA itself — and then close the courthouse door.

	ACHP's draft Part 800 rule	The Senate bill
Legal force	A regulation: can be challenged as exceeding the NHPA, and undone by a future Council	A statute: amends the NHPA itself — no "exceeds authority" claim, and only Congress can undo it
What gets reviewed	Nine carve-outs from "undertaking"	Requires "substantial Federal control and responsibility"; nine statutory exclusions
What counts as harm	Drops indirect, cumulative and visual effects	Only effects that "directly" and significantly alter a property; nothing "speculative or attenuated"
Consultation	Optional and agency-directed	Must end when NEPA review ends; agency can close it without SHPO agreement
Time to sue	Six years under the APA	150 days
Who can sue	Ordinary Article III standing	Only parties with "direct harm" who commented or consulted
What a court can do	Vacatur and injunctions available	Remand without vacatur; no injunction for an NHPA violation alone

Status: introduced Sept. 30, 2026 by Sens. Capito, Whitehouse, Lee and Heinrich; Senate cloture vote expected Nov. 9. **The sweeteners:** $200 million a year for the Historic Preservation Fund and a statutory consultation role for Tribes.

Sources: Bipartisan American Affordability and Jobs Act of 2026 (introduced Sept. 30, 2026), Div. B, Title III; Bipartisan Policy Center explainer; Senate ENR fact sheet

04

SECTION FOUR

Lessons for Litigators

What's working in court, what isn't, and how to build cases that survive the Administration's defenses.

WHAT THE COURTS ARE TELLING US

What's Working — and What Isn't

- **Working: Congress's power over property.** Section 8106 and organic-statute claims won the ballroom injunction and the Kennedy Center name ruling.
- **Working: status-quo orders.** Notice requirements (30 days at the Kennedy Center; 48 hours and 14 days at the Arch) keep courts in the loop before irreversible work.
- **Working: the record.** NPS's own documents show reviewers knew the Reflecting Pool did not qualify for streamlined review.
- **Not working: aesthetic standing at the Supreme Court.** Five Justices treated an architectural historian's injury as generalized "disagreement."
- **Not working yet: Section 106 against non-"agencies."** The Smithsonian gap and the EOP strategy leave the NHPA without a hook.
- **Not working: racing the bulldozers.** Finished or mostly built projects let courts call the harm "reparable" or moot.

PRACTICE POINTERS

Building Cases That Survive

- **File before demolition.** Track announcements and contracts; seek a TRO or § 705 stay the moment work is scheduled.
- **Treat standing as the whole case.** Use declarants with regular, concrete use, professional stakes, and specific plans to return.
- **Plead beyond Section 106.** Pair NHPA claims with § 8106, the Commemorative Works Act, the NPS Organic Act, site statutes, NEPA, and ultra vires theories.
- **Find the federal hook.** Map every agency approval, permit, contract, and dollar (NCPC, NPS, GSA, the Corps) to defeat "not an agency."
- **Ask for notice orders.** Even when a PI is denied, advance notice preserves the court's ability to act.
- **Get the record, and comment now.** Press for internal documents, and preserve issues for the coming Part 800 litigation.

Synthesized from the cases discussed in this presentation.

CLOSING REFLECTION

The People’s Places

- The White House, the National Mall, the Kennedy Center, and the EEOB belong to the public — not to any one President. As the D.C. Circuit reminded us, the White House is the People’s House.
- Section 106 exists so that decisions about these places are made in daylight, with the public at the table. Every tactic in this deck is a way of turning off the lights.
- Our job as lawyers is to keep insisting on the process — in comment dockets, before review commissions, and in court.



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Thank You.

Let's protect what matters — together.

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