

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
(Southern Division)**

**CANOE CRUISERS ASSOCIATION OF  
GREATER WASHINGTON DC**  
1105 Highwood Road  
Rockville, MD 20851

Plaintiff,

v.

Case No. 8:18-cv-2914

**KARL L. SCHULTZ**, Commandant of the United  
States Coast Guard, in His Official Capacity  
2703 Martin Luther King Jr. Avenue, SE  
Washington, DC 20593-7000

**UNITED STATES COAST GUARD**,  
2703 Martin Luther King Jr. Avenue, SE  
Washington, DC 20593-7000

**KIRSTJEN M. NIELSEN**, Secretary of Homeland  
Security, in Her Official Capacity  
3801 Nebraska Avenue, NW  
Washington, DC 20016

**UNITED STATES DEPARTMENT OF  
HOMELAND SECURITY**  
3801 Nebraska Avenue, NW  
Washington, DC 20016

Defendants.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff Canoe Cruisers Association of Greater Washington, D.C. hereby sues  
Defendants Karl L. Schultz, Commandant of the U.S. Coast Guard, and Kirstjen M. Nielsen,  
Secretary of Homeland Security, in their official capacities, and the U.S. Coast Guard and U.S.  
Department of Homeland Security, and allege as follows.

## INTRODUCTION

1. On July 10, 2017, without any prior notice, in order to facilitate President Donald Trump’s frequent visits to the Trump National Golf Club (“Trump National” or “Golf Club”), a private club located in Loudoun County, Virginia, the U.S. Coast Guard, a component of the U.S. Department of Homeland Security (“DHS”), issued an interim final rule establishing a “permanent security zone” encompassing the entire width of a two-mile stretch of the Potomac River in an area in Montgomery County, Maryland, near Trump National. Ex. A at 2, 82 Fed. Reg. 31,719 (July 10, 2017) (“the Rule”). During those times when the permanent security zone is being enforced, “entry into or remaining in the security zone . . . is prohibited unless authorized by the Coast Guard Captain of the Port Maryland-National Capital Region.” *Id.* This action challenges the Rule, which revokes the public’s legal right to access and enjoy a popular section of the Potomac River whenever President Trump visits Trump National.

2. The Coast Guard has publicly acknowledged that recreational River traffic poses no security threat when it passes Trump National on the side of the River adjacent to the Maryland shore. Nevertheless, the Coast Guard has refused to revise the rule to accommodate recreational River traffic while also addressing legitimate national security interests.

3. Previous Presidential Administrations—and this Administration, prior to enacting the Rule—addressed Presidential security during leisure travel by enacting temporary, time-limited security zones that only lasted for the duration of the travel, and that required publication in the Federal Register for each instance in which the security zone was activated.

4. The Rule was effective immediately upon providing actual notice to affected persons, without actual notice upon publication in the Federal Register, and with no end date.

The Coast Guard failed to provide the public with notice and an opportunity for comment prior to implementing its Rule.

5. In an after-the-fact comment period, hundreds of local citizens, nonprofit groups, and businesses expressed concerns with the Rule. Among the commenters was Plaintiff Canoe Cruisers Association of Greater Washington DC (“Canoe Cruisers”), a nonprofit organization that, since 1956, has promoted and fostered recreational use of this very section of the River. The comments noted that the closure area is popular and important for recreational River users and suggested an alternative approach—closing the half of the River closer to the Virginia shore and adjacent to the Golf Club, while leaving the Maryland shore side open for recreational traffic—that would permit continued recreational River use while also addressing national security needs.

6. DHS was legally required to address these comments and revise the rule—and it promised that it would do so. Nevertheless, the Rule has been in place for well more than one full year and DHS has taken no steps to revise the Rule or otherwise respond to comments in any way. Meanwhile, the Rule continues to harm many River users, including Plaintiff and its Members.

### **NATURE OF ACTION**

7. This action challenges the Rule under the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-706.

8. The Rule is unlawful because DHS did not provide notice or solicit comment prior to issuing the Rule, and DHS lacked good cause to dispense with the APA’s notice-and-comment requirements. It is also unlawful because DHS failed to establish and follow a public process required by 33 U.S.C. § 1231(b). The Rule is arbitrary and capricious because it does not meaningfully consider and respond to comments received from the community. It is also

arbitrary and capricious because it is overbroad, fails to provide adequate notice to the affected community regarding when it will be in force, lacks an end date, and exceeds the scope of DHS's statutory authority. DHS's continued enforcement of the Rule more than one year after its issuance further underscores the absence of good cause to proceed without notice and comment. And DHS's failure to implement a new rule addressing community concerns for more than a year constitutes agency action unlawfully withheld or unreasonably delayed.

9. Accordingly, DHS is required by law to rescind the Rule, or, in the alternative, to promptly replace the Rule through a new rulemaking that considers and meaningfully addresses the concerns raised by hundreds of concerned groups and citizens.

#### **JURISDICTION AND VENUE**

10. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the claims arise under the laws of the United States.

11. Venue is proper under 28 U.S.C. § 1391(e). Defendants are agencies of the United States and officials of those agencies sued in their official capacities. A substantial part of the events or omissions giving rise to the claims occurred within the District of Maryland. In addition, Plaintiff resides within the District of Maryland.

#### **PARTIES**

12. Plaintiff Canoe Cruisers Association of Greater Washington, D.C. ("Canoe Cruisers") is a nonprofit organization founded in 1956. Canoe Cruisers is based in Montgomery County, Maryland, and is the leading canoe and kayak club in the Greater National Capital Region. Its mission is to unite and serve people interested in canoeing and kayaking (together referred to as "paddling") in the Potomac River Basin. Canoe Cruisers organizes paddling trips, provides instruction on canoeing, kayaking, and swift water rescue, and engages in conservation

outreach and advocacy. Many of these activities take place on the very section of the Potomac River between Sharpshin Island and Pond Island that is the subject of the Rule.

13. Canoe Cruisers has more than two hundred and fifty dues-paying members who reside throughout Maryland, Virginia, and the District of Columbia (“Members”). The Members are active paddlers who frequently canoe and kayak on the Potomac River, including the section of the River that is subject to the Rule. Members participate in Canoe Cruisers’ organized outings, educational activities, and conservation efforts.

14. Members elect Canoe Cruisers’ Chairperson, Secretary, Membership Chair, and Treasurer, who are primarily responsible for governance and other decisions on behalf of the organization. The Chairperson appoints a five-member Steering Committee, which also participates in governance decisions. The Chairperson also appoints Committee Chairs as needed to coordinate and manage Canoe Cruisers activities.

15. Defendant Karl L. Schultz is Commandant of the U.S. Coast Guard. His principal place of business is 2703 Martin Luther King Jr. Avenue, SE, Washington, D.C. 20593-7000.

16. Defendant U.S. Coast Guard is a component of the U.S. Department of Homeland Security and is an agency within the meaning of 5 U.S.C. § 551(1). Its principal place of business is 2703 Martin Luther King Jr. Avenue, SE, Washington, D.C. 20593-7000.

17. Defendant Kirstjen M. Nielsen is the Secretary of Homeland Security. Her principal place of business is 3801 Nebraska Avenue, NW, Washington, D.C. 20016.

18. Defendant U.S. Department of Homeland Security is an agency within the meaning of 5 U.S.C. § 551(1). Its principal place of business is 3801 Nebraska Avenue, NW, Washington, D.C. 20016.

## **FACTUAL ALLEGATIONS**

### **Background**

19. The section of the Potomac River between Sharpshin Island and Pond Island is one of the most popular canoeing and kayaking sites, both for adults and children, in the entire Potomac River Basin. *See Ex. C at 2 (map).*

20. This section of the Potomac River is within the State of Maryland to the low-water mark on the River's southern shore.<sup>1</sup>

21. This section consists primarily of an area of the River commonly called "Seneca Lake" in recognition of its unusually tranquil waters, and is unique in providing large areas of calm waters and in being bordered on the downstream side by moving water features that make it an ideal area for recreational boating as well as teaching and training basic whitewater skills. Accordingly, it is extremely popular with beginning paddlers and for instructional classes.

22. Seneca Lake is formed by an earthen dam commonly referred to as the Seneca Breaks rapids. The Seneca Breaks are navigable by experienced whitewater paddlers, but not by motorized boats.

23. The Seneca Breaks also direct water flow into a feeder lock at Violette's Lock, which then flows downstream through the Chesapeake & Ohio Canal, commonly called the C&O Canal.

24. This section of the River features two points of access on its Maryland shore, which are unique for the features they possess and benefits they offer the recreational public. Riley's Lock is named for an historic C&O Canal lift lock and aqueduct; there, a boat launch provides access to the gentle waters of Seneca Creek, perfect for beginner instruction and

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<sup>1</sup> *See Virginia v. Maryland*, 540 U.S. 56, 62-63 (2003).

paddling. The access area is part of Seneca Landing Special Park, which is administered by Montgomery County; it offers ample parking and is the headquarters of a popular recreational youth camp. Violette's Lock is the next lock downstream from Riley's Lock and its premises include parking and a picnic area. Both sites provide convenient launching points for access to Seneca Lake, the Seneca Breaks rapids, and the Potowmack Canal, also called the George Washington Canal, on the Virginia side.

25. The George Washington Canal is a uniquely aesthetically pleasing and historic passageway that is frequently used for moving water skills training, swift water rescue training, and recreational family day trips. It is known for its abundant wildlife, including turtles and birds.

26. The public has enjoyed its legal right to access, use, and enjoy the River for recreational purposes for many decades.<sup>2</sup>

27. Since its founding in 1956, Plaintiff Canoe Cruisers has played an instrumental role in facilitating paddling and other recreational activities on this very segment of the Potomac River. Canoe Cruisers and its members use this segment of the River on a weekly basis. Canoe Cruisers offers weekly paddling trips; kid- and family-friendly outings; classes for beginner, intermediate, and advanced paddlers; instructor training courses; and swift water rescue and safety classes. Canoe Cruisers also coordinates conservation and River clean-up efforts.

28. Many of Canoe Cruisers' Members have frequented this section of the River for many years.

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<sup>2</sup> See *Anne Arundel County, Md. v. City of Annapolis, Md.*, 721 A.2d 217, 224-24 (Md. 1998) (“The navigable waterways within Maryland’s boundaries and the lands beneath them generally are ‘held’ by the State for the benefit of the inhabitants of Maryland.”).

29. This segment of the River is extremely important to other organizations and individuals as well. A nonprofit organization that operates educational outdoor summer camp programs for youths runs its paddling programs from Riley's Lock. Another nonprofit organization that provides veterans and their families with opportunities to find health, healing, community purpose, and new challenges through adventure and adaptive paddle sports on this section of the River.

30. This segment of the River is adjacent to two golf courses that are part of Trump National.

31. Trump National is an 800-acre private golf club in Loudoun County, Virginia.

32. Trump National was previously known as the Lowes Island Club. Lowes Island Club originally opened in 1999. It was purchased by a corporate entity affiliated with President Trump in 2009 for approximately \$13 million and thereafter given its current name.

33. Membership in Trump National requires payment of an initiation fee, which, according to published reports, can amount to \$10,000 to \$300,000, as well as hundreds of dollars per month in continuing fees.<sup>3</sup>

34. Trump National features two eighteen-hole golf courses; a brand-new indoor tennis center; an aquatics facility; a fitness center; and a newly renovated indoor clubhouse that offers event space for up to three hundred guests.

35. Trump National is currently managed by Eric Trump, one of President Trump's sons.

36. Although some of the holes on two of Trump National's golf courses abut the River, the clubhouse and other facilities are several hundred yards from shore.

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<sup>3</sup> Eric Lipton & Susanne Craig, *With Trump in White House, His Golf Properties Prosper*, N.Y. Times, Mar. 9, 2017, <https://www.nytimes.com/2017/03/09/us/politics/trump-golf-courses.html>.

### **The Rule**

37. In past Presidential Administrations, when it was necessary for the Coast Guard to implement a security zone for purposes of Presidential security, the Coast Guard would establish a temporary, time-limited security zone for the particular duration of time that the President would be visiting the given area. Notice of the establishment of the temporary security zone would be published in the Federal Register.<sup>4</sup>

38. The Trump Administration followed the same practice until June 22, 2017. Until that date, when President Trump visited his Golf Club, the Coast Guard established a temporary security zone encompassing the waters adjacent to Trump National. It published notice in the Federal Register for each occasion on which the temporary security zone was established.

39. On June 22, 2017, without any advance notice, the Coast Guard implemented the Rule, which was subsequently published in the Federal Register on July 10, 2017. *See Ex. A.*

40. The Rule adds a new provision to the Code of Federal Regulations at 33 C.F.R. § 165.557, establishing a “permanent security zone” on the entire width (“shore to shore”) of the River in the area between Sharpshin Island and Pond Island, a distance of approximately two miles. The Rule provides that “entry into or remaining in the security zone . . . is prohibited” without the authorization of the Coast Guard Captain of the Port Maryland-National Capital Region.

41. As authority, the Rule cites 33 U.S.C. § 1231; 50 U.S.C. §§ 191 and 195; 33 C.F.R. §§ 1.05-1, 6.04-1, 6.04-6, and 160.5; and Department of Homeland Security Delegation No. 0170.1.

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<sup>4</sup> *See, e.g.*, 81 Fed. Reg. 88,115 (Dec. 7, 2016) (establishing temporary security zone in waters of Kailua Bay, Oahu, Hawaii, during President Obama’s holiday vacation).

42. The Rule acknowledges that notice and comment would ordinarily be required for the Rule, but asserts that good cause exists to bypass those requirements with respect to the Rule.

43. Accordingly, the Rule effectively rescinds the public's long-held and continuously exercised legal right to access the section of the River subject to the Rule during those times the "permanent security zone" is in effect. In enacting the Rule, the Coast Guard revoked the public's legal right to access a public, navigable waterway with no notice and with no public process, including an opportunity for the public to comment or provide input. And it provided no end date for the restoration of the public's legal right to access the River.

#### **The Comment Period**

44. Concurrently with publication of the Rule, the Coast Guard opened a one-month comment period.

45. The Coast Guard received 636 comments during the comment period.

46. Every comment expressed concern with the Rule.

47. A commenter who is a Canoe Cruisers Member noted that he "lead[s] an outing across these waters every Sunday morning that attracts about a dozen kayakers and canoeists." He stated that the "proposed zone is too wide" and "need be no wider than mid-river." The commenter further requested advance notice and improvements in the Coast Guard's proposed manner of informing recreational River users of closures.

48. Another Canoe Cruisers Member commented that the Rule "will have a major impact on paddlers and fishermen in the DC area." The commenter noted the importance of Violette's Lock for access to the George Washington Canal and the Seneca Breaks.

49. Another Canoe Cruisers Member stated, "Over the years I have joined countless boaters in enjoying the natural beauty around the Seneca Dam area and in navigating the George

Washington Canal.” The commenter proposed closing the portion of the River closest to the Virginia shore and allowing continued access along the Maryland shore.

50. One commenter noted that his son has “gained skills in leadership, outdoor work, and collaboration” through the summer camp that operates on that segment of the River, and noted that the Rule would require the camp to relocate a large number of their campers.

51. Another commenter noted that the River closure “will have a serious impact on paddling schools, children’s summer camps that teach paddling, members of the US Whitewater Team who are training for the Olympics, disabled veterans who paddle with Team River Runner, fishermen, and recreational canoeist[s], kayakers, and paddle boarders.”

52. A commenter noted that the “Riley’[s] Lock area is a great favorite with kayakers and fishing persons living near the adjacent shores,” and proposed “to set the boundary of the security zone in the middle of the river.”

53. Another commenter stated:

Our children have enjoyed attending summer camps and having use of the Potomac in this area for years. It is a quintessential Washington DC experience that promotes some of the singular benefits our region has to offer in terms of beauty, nature and recreation. PLEASE do not limit access to this area from multitudes of DC/MD/VA area residents and tourists to accommodate the occasional use of a nearby golf course. There are so many options for golf courses and only a unique and treasured handful of options for Potomac River access for kayaking, paddling, rapids swimming, boating, summer camps, and general river appreciation.

54. Another commenter noted that he has accessed this part of the River at Violette’s Lock many times. He noted that “[t]his is a very popular spot for paddlers,” and asked, “How will kayakers and canoeists reach the GW Canal or the Seneca Breaks?”

55. A commenter noted that “[t]he river is very wide here and heavily used by a variety of recreational (including me) and commercial groups such as [Camp] Calleva. One

consequence is that you would be interfering with the rehabilitation of wounded veterans (who are learning to use kayaks there) in order to allow politicians to play golf.”

56. Another commenter stated: “Boaters drive hours to use the boat ramp at Riley’s Lock and it is ridiculous that you would close the river without notice. If you closed the river at the midpoint, you would still have multiple times the exclusion zone in front of the White House and boaters wouldn’t be turned away.”

57. A commenter noted that although the Coast Guard had stated in congressional testimony that it would “accommodate” boaters in the area, no such accommodation was included in the Rule. “Any allowance to use of boaters to be in the river during any closures MUST BE PART OF THE INTERIM OR FINAL RULE. Otherwise, there is no legal authority to prevent the U.S. Coast Guard from closing the river and creating significant harm to small businesses that operate within the Closure Area.”

58. The great majority of comments proposed that the Rule be revised to accommodate recreational River users on the side of the River closest to the Maryland shore.

#### **Canoe Cruisers’ Comment**

59. Canoe Cruisers submitted a comment to the Coast Guard during the comment period. *See* Ex. B (“Comment”).

60. The Comment explains that the area of the River subject to the Rule “has been used for . . . both recreational and instructional purposes by CCA members, members of other paddling clubs and small business entities focused primarily on paddling instruction in this area, for over sixty years.”

61. The Comment further notes that Canoe Cruisers “is actively engaged in activities on a daily and weekly basis that use the section of the Potomac River that is affected by this interim rule.”

62. In the Comment, Canoe Cruisers noted that it shares the Coast Guard’s concern with the safety and security of the President and those traveling with him.

63. Canoe Cruisers stated that by restricting access to the entire width of the Potomac River at that site, the Rule is too broad.

64. Canoe Cruisers instead proposed that the Rule be revised to restrict access to the one hundred to two hundred yards of the River closest to Trump National, and that recreational River users be allowed free access to the portion of the River closer to the Maryland shoreline.

65. The Comment states that the Rule threatens boater safety by forcing them to attempt to cross the River to the side closest to the Virginia shore just below the Seneca Dam, in the challenging Seneca Breaks area.

66. The Comment notes that the George Washington Canal and Seneca Breaks “have provided irreplaceable locations, within easy reach of Washington DC, for instructing new paddlers in the skills of maneuvering different types of rapids,” as well as practicing swift water rescue operations.

67. The Comment notes that commercial enterprises, including camps and kayaking entities, as well as nonprofits such as Team River Runner, will be adversely affected by the Rule.

68. The Comment notes that the Rule will not provide the public with adequate notice of impending security zone enforcement. By only using VHF Channel 16, river paddlers and recreational boaters (unlike sea kayakers) would not hear the announcement. Accordingly, the

Comment requests that the Coast Guard revise the Rule to provide for better public notice of enforcement.

69. The Comment further notes that the Rule denied Canoe Cruisers and other affected members of the public adequate notice and an opportunity to comment.

### **The Coast Guard's Failure to Act**

70. The Coast Guard promised, on various occasions, that it would consider the comments and revise the Rule as needed (and as required by law).

71. In the Rule, the Coast Guard stated that it “will consider all comments and material received during the comment period.” *See* Ex. A at 3.

72. Similarly, in a response to a Congressional inquiry raising concerns about the Rule, the Coast Guard stated that it would “carefully evaluate each comment in the docket, and may modify our rule in response to issues raised by the public.” *See* Ex. D at 4.

73. In responses to congressional inquiries, in media reports, and in other public statements, the Coast Guard has conceded that national security needs do not require that the River be closed from shore to shore, and that allowing recreational River traffic to continue to pass on the Maryland side of the River does not pose national security concerns.<sup>5</sup>

74. Nevertheless, in the year-plus that has passed since the Rule was issued, the Coast Guard has failed to respond in any way to the hundreds of comments it received or to modify the Rule to restore River users' legal right of access to this vital public resource.

### **President Trump's Frequent Visits to His Golf Club**

75. President Trump has visited Trump National frequently.

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<sup>5</sup> Avantika Chilkoti, *Coast Guard Shelves Plans to Shut Down Potomac Near a Trump Resort*, N.Y. Times, July 26, 2017, <https://www.nytimes.com/2017/07/26/us/politics/coast-guard-trump-resort-potomac-security.html>.

76. His visits are most common during days and times of peak recreational River use, particularly weekends and holidays.

77. Each time President Trump has visited his Golf Club since the Rule took effect, the Coast Guard has activated the security zone pursuant to the Rule, to the detriment of Canoe Cruisers, its Members, and other recreational River users.

78. President Trump visited his Golf Club on Saturday, June 24, 2017.

79. President Trump visited his Golf Club on Sunday, June 25, 2017.

80. President Trump visited his Golf Club on Tuesday, July 4, 2017.

81. President Trump visited his Golf Club on Sunday, July 9, 2017.

82. President Trump visited his Golf Club on Saturday, July 22, 2017.

83. President Trump visited his Golf Club on Sunday, July 23, 2017.

84. President Trump visited his Golf Club on Sunday, July 30, 2017.

85. President Trump visited his Golf Club on Saturday, October 7, 2017.

86. President Trump visited his Golf Club on Sunday, October 8, 2017.

87. President Trump visited his Golf Club on Monday, October 9, 2017.

88. President Trump visited his Golf Club on Saturday, October 14, 2017.

89. President Trump visited his Golf Club on Sunday, October 15, 2017.

90. President Trump visited his Golf Club on Saturday, October 21, 2017.

91. President Trump visited his Golf Club on Sunday, October 22, 2017.

92. President Trump visited his Golf Club on Saturday, October 28, 2017.

93. President Trump visited his Golf Club on Sunday, March 18, 2018.

94. President Trump visited his Golf Club on Sunday, April 15, 2018.

95. President Trump visited his Golf Club on Saturday, April 28, 2018.

96. President Trump visited his Golf Club on Saturday, May 12, 2018.
97. President Trump visited his Golf Club on Sunday, May 13, 2018.
98. President Trump visited his Golf Club on Saturday, May 26, 2018.
99. President Trump visited his Golf Club on Sunday, May 27, 2018.
100. President Trump visited his Golf Club on Saturday, June 16, 2018.
101. President Trump visited his Golf Club on Sunday, June 17, 2018.
102. President Trump visited his Golf Club on Saturday, June 24, 2018.
103. President Trump visited his Golf Club on Wednesday, July 4, 2018.
104. President Trump visited his Golf Club on Saturday, August 25, 2018.
105. President Trump visited his Golf Club on Sunday, August 26, 2018.
106. President Trump visited his Golf Club on Saturday, September 1, 2018.
107. President Trump visited his Golf Club on Sunday, September 2, 2018.
108. President Trump visited his Golf Club on Saturday, September 8, 2018.
109. President Trump also visited his Golf Club on several occasions prior to the Rule taking effect:
  110. President Trump visited his Golf Club on Saturday, March 11, 2017.
  111. President Trump visited his Golf Club on Sunday, March 26, 2017.
  112. President Trump visited his Golf Club on Sunday, April 2, 2017.
  113. President Trump visited his Golf Club on Sunday, April 30, 2017.
  114. President Trump visited his Golf Club on Sunday, May 14, 2017.
  115. President Trump visited his Golf Club on Saturday, June 3, 2017.
  116. President Trump visited his Golf Club on Sunday, June 4, 2017.

**Injuries Suffered by Canoe Cruisers and Its Members**

117. The Rule strips Canoe Cruisers and its members of their legal right to access the River to promote outdoor recreation; engage the public in educational and conservation activities; develop skills to understand and safely operate human powered watercraft; and engage in important recreational, educational, and conservation activities.

118. As described above, the section of the River subject to the Rule is among the most popular stretches of the entire Potomac River for canoeists, kayakers, and other recreational users, due in part to its width, breadth, mixture of moving and still waters, outstanding access points, and proximity to popular features including the C&O Canal, the Seneca Breaks rapids, and the George Washington Canal.

119. For decades, Canoe Cruisers has planned organized outings and educational activities on the section of the River subject to the Rule. During paddling season, these outings have routinely occurred on a weekly or near-weekly basis on the section of the River subject to the Rule.

120. As a direct result of the Rule, Canoe Cruisers has been forced to revise or cancel its planned organized outings, education, stewardship, and conservation programs due to the significant possibility that the security zone authorized by the Rule will be in effect on a given day and that their legal right of access to the River will therefore be restricted.

121. Canoe Cruisers has expended organizational time and resources on educating the paddling community about the Rule's limitation on River access and alternative paddling sites.

122. Canoe Cruisers has devoted extensive space in its regular newsletter and on its website to discuss the Rule and the river access problems it creates, and informing the paddling public about how to determine whether the River is open.

123. Canoe Cruisers and its Members have been and are deterred from paddling on the River because of the significant possibility that River access will be restricted on the day of a planned outing because of the Rule.

124. Because of the unique qualities and nature of this particular section of the River, the changes in plans and cancellations that have been necessitated by the Rule have diminished the quality and value of Canoe Cruisers' and its Members' activities.

125. Canoe Cruisers and its Members have had to travel significantly further away from the Greater Washington, D.C. area, at substantial time and expense, to find alternative waters to conduct the same activities that would otherwise be conducted on the River.

126. Members attempting to paddle on the River have been diverted by law enforcement authorities over the lip of a rubble dam located at the Seneca Breaks. This has caused serious risk to life, limb, and property.

### **CLAIMS FOR RELIEF**

#### **Count One**

#### **(Administrative Procedure Act, 5 U.S.C. § 706(2)(D))**

127. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

128. The Administrative Procedure Act, 5 U.S.C. § 706(2)(D), provides that a court “shall . . . hold unlawful and set aside agency action . . . found to be . . . without observance of procedure required by law.”

129. The Rule was issued “without observance of procedure required by law” and therefore should be held unlawful and set aside for the following reasons:

130. The Coast Guard failed to provide notice of the proposed rule “not less than 30 days before its effective date.” 5 U.S.C. § 553(d).

131. The Coast Guard failed to provide “interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments.” 5 U.S.C. § 553(c).

132. The Coast Guard’s invocation of the “good cause” exception was legally deficient, and it did not then, and certainly does not now, justify the Coast Guard’s failure to adhere to required procedures for issuing the Rule.

133. The Coast Guard failed to establish and adhere to “procedures for consulting with, and receiving and considering the views of all interested parties, including— (1) interested Federal departments and agencies, (2) officials of State and local governments, (3) representatives of the maritime community, (4) representatives of port and harbor authorities or associations, (5) representatives of environmental groups, (6) any other interested parties who are knowledgeable or experienced in dealing with problems involving vessel safety, port and waterways safety, and protection of the marine environment, and (7) advisory committees consisting of all interested segments of the public when the establishment of such committees is considered necessary because the issues involved are highly complex or controversial.” 33 U.S.C. § 1231(b).

**Count Two**  
**(Administrative Procedure Act, 5 U.S.C. § 706(2)(A))**

134. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

135. The Administrative Procedure Act, 5 U.S.C. § 706(2)(A), provides that a court “shall . . . hold unlawful and set aside agency action . . . found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”

136. The Rule is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” and therefore should be set aside for the following reasons:

137. The Rule does not reflect a logical outgrowth from, or meaningfully respond to, the hundreds of comments expressing significant concerns with the overbreadth of and other aspects of the Rule.

138. The Rule is overbroad, insofar as it restricts legal access to the River beyond that which is reasonably necessary for the Rule’s stated purpose.

139. The Rule fails to provide the affected community with adequate notice of the times when the security zone established by the Rule is in effect.

140. The Rule’s lack of an end date is arbitrary and capricious.

141. The Rule is not authorized by 50 U.S.C. § 191, on which the Coast Guard relies.

**Count Three**  
**(Administrative Procedure Act, 5 U.S.C. § 706(1))**

142. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

143. The Administrative Procedure Act, 5 U.S.C. § 706(1), provides that a court shall “compel agency action unlawfully withheld or unreasonably delayed.”

144. Defendants have violated 5 U.S.C. § 706(1) by failing to issue a permanent final rule, or otherwise rescinding the interim final Rule, as required by law.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that this Court:

1. declare the Rule unlawful;
2. order Defendants to rescind the Rule;
3. enjoin Defendants from enforcing the Rule against Plaintiff;

4. direct Defendants to issue any new notice of proposed rulemaking reflecting and meaningfully addressing Plaintiff's comments on the Rule within ninety days;
5. award Plaintiff costs, attorneys' fees, and other disbursements for this action; and
6. grant any other relief this Court deems appropriate.

Dated: September 20, 2018

Respectfully submitted,

**LERCH, EARLY & BREWER, CHARTERED**

By: /s/ Stanley J. Reed

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**DEMOCRACY FORWARD FOUNDATION**

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