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Why the law favors the Obama Presidential Center

By Lior Strahilevitz

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On Nov. 4, 2008, hundreds of thousands of Americans gathered near the shores of Lake Michigan to watch Barack Obama, Chicago's favorite son, thank his supporters for helping him become the first African-American president of the United States. Maybe you were there or perhaps you watched on television. The mood was electric that night, though tinged with concern about the scope of the challenges the new leader would soon face.

Almost a decade later, our city and state have developed a plan for a more enduring commemoration on the lakefront, working hand-in-hand with the now former-President Obama and the foundation that bears his name. Jackson Park would host the Obama Presidential Center, a museum and library that will house mementos and informative displays commemorating a historic presidency. On Oct. 11, the City Council's Committee on Housing and Real Estate unanimously approved a proposed ordinance to greenlight the center. Yet a lawsuit by Protect Our Parks threatens to halt construction before it starts.

The lawsuit's central claim is that public trust doctrine prevents the city from permitting the construction of the presidential center on the lakefront. It's a weak argument. For 16 years I have taught and written about real estate law as a professor at the University of Chicago. The public trust doctrine is a subject I have always relished teaching my students about, in part because that doctrine and Chicago's history are so intertwined. After all, the United States Supreme Court invoked the doctrine to spare our lakefront after corrupt state legislators sold it off to a private railroad company in 1869. The Supreme Court voided the arrangement because it did not serve the public's interest. The question now before the courts is whether the Obama Presidential Center deserves the same fate.

The key modern legal precedent is a 2003 decision of the Illinois Supreme Court. In that case, the court considered the legality of an agreement between the Chicago Bears and the government involving Soldier Field's renovation. Under that deal, the Bears secured until 2053 the exclusive rights to use Soldier Field during football season. An organization called Friends of the Parks challenged the agreement, arguing that a for-profit entity, the Bears, rather than the public, were the main beneficiaries of the deal, which meant it violated the public trust doctrine. The Illinois Supreme Court rejected those claims. While conceding that the Bears would benefit financially from the renovation, and that only those who could afford Bears tickets would be able to access Soldier Field during the season, the court emphasized that the stadium would be used "for athletic, artistic, and cultural events" that would entertain and educate the public.

If the lakefront's renovated Soldier Field produces enough public benefits to satisfy the public trust doctrine, it is hard to imagine how a museum examining the Obama presidency would fail to do so. The nonprofit presidential center will include a museum, meeting spaces, venues for lectures and concerts, a Chicago Public Library branch and athletic facilities open to all. The grounds will include a playground, a sledding hill and a picnic area. The center stacks up very well against the Shedd Aquarium and the Field Museum, let alone Soldier Field and Navy Pier, all of which were built on public trust lands.

So what is Protect Our Parks thinking? Most likely, they were emboldened by the Lucas Museum of Narrative Art saga, where plaintiffs who probably would have lost on appeal managed to slow down the construction process enough to persuade an exasperated George Lucas to take his money and museum to Los Angeles. The Lucas ruling shouldn't have much impact on the presidential center litigation—it was a ruling by a federal trial court judge on a motion to dismiss, and it's the Illinois state courts, not the federal courts, whose judgment about the public trust doctrine's contours are decisive.

But when we put the Lucas and Obama museums side by side, the comparison starkly favors the presidential center. The Lucas Museum was going to own and control the newly constructed buildings for up to 297 years, whereas the Obama Foundation has agreed to transfer ownership over the presidential center building to the city as soon as construction is complete. And even the biggest fans of "Star

Wars” have to recognize Chicago’s greater interest in having its children learn Barack and Michelle Obama’s story.

If the Lucas Museum presented a close call under the public trust doctrine, the Obama Presidential Center should win in a landslide. Unfortunately, skillful lawyers can sometimes gum up the works with flimsy arguments that pervert important doctrines. The sooner the district court reaches the merits, the better.