

Contemporary Federal Museum Authorizations in the District of Columbia: Past Practices and Options for Congress

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Summary

Congress has played a role in establishing museums that have become part of the Smithsonian Institution (e.g., the National Museum of the American Indian and the National Museum of African American History and Culture) and museums that operate independently (e.g., the National Gallery of Art and the United States Holocaust Memorial Museum). Historically, for most museums operated in whole or in part by the federal government, congressional authorization has been required.

Congressional action is likely required to authorize a new federal museum. In the 113th Congress (2013-2014), legislation was introduced to authorize the National Museum of the American Latino and to authorize a commission to study the potential creation of a National Women's History Museum. For the National Museum of the American Latino, a commission reported to Congress in 2011 that the museum should be established and made part of the Smithsonian Institution. Since then, proposals to authorize the museum have been introduced, but no further action has been taken either by the committees of jurisdiction or the House or the Senate.

In December 2014, the Commission to Study the Potential Creation of a National Women's History Museum was established in the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (P.L. 113-291). It will report "not later than 18 months after the date of the first meeting of the Commission" on whether the museum should be authorized, how it should be funded, and whether it should be a Smithsonian museum.

If Congress considers creating a new museum in the District of Columbia—either the National Museum of the American Latino, the National Women's History Museum, or another yet-to-be proposed museum—several issues might warrant consideration:

- the museum's subject matter and whether it might conflict with existing federal museums or other local museums;
- the museum's funding and if federal appropriations, private donations, or a combination of both will be used;
- the museum's potential location;
- the museum's proposed management (i.e., Smithsonian, another federal agency, or an independent entity); and
- the Commemorative Works Act's (CWA's) role, if any, on the museum authorization process.

This report examines the contemporary process used to authorize new museums in Washington, DC, and evaluates potential issues for congressional consideration if new museum legislation is introduced, examined by committee, and potentially advanced for consideration on the House or Senate floor.

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Introduction

Congressional involvement in the siting of museums in the District of Columbia began in the early 19th century, when Congress began to receive petitions from constituents to build museums in the nation's capital. For example, in 1816, painter D. W. Boudet asked Congress

for establishing in the city of Washington, a Museum of natural and artificial curiosities, and praying that he may, under such regulations and restrictions as Congress may think proper to prescribe, have permission to collect such of the national trophies, presents, and other articles of curiosity, as are the property of the public, for the purpose of arranging and displaying them in his Museum when established.¹

Since at least the 1840s, the federal government has supported the creation and funding of museums in Washington, DC. After the Patent Office Building—the home of the U.S. Patent Office from 1842 until 1932—was completed, one of its first uses was to display the European art collection of John Varden, a prominent Washingtonian. While not, perhaps, the first display of art in a federal building in the District of Columbia, the display of Varden's collection was significant as he was named the first “‘curator’ of the newly created ‘National Institute’ for government-owned artistic and historic items,” and his collection formed the basis of the new institute's collections.²

Upon his death in 1829, James Smithson—a British scientist—bequeathed his fortune to the United States “to found at Washington, under the name of the Smithsonian Institution, an Establishment for the increase & diffusion of knowledge among men.”³ In 1846, Congress formally accepted Smithson's gift and founded the Smithsonian Institution.⁴ Since then, it has grown to 20 museums in Washington, DC, and New York City.⁵ Further, in creating the

¹ U.S. Congress, *House Journal*, 14th Cong., 2nd sess. (December 26, 1816), pp. 106-107.

² Smithsonian Institution, *Smithsonian American Art Museum*, “Museum History,” at <http://americanart.si.edu/visit/about/history/>. The National Institute was a forerunner to the Smithsonian Institution. When the Smithsonian was founded, Varden's National Institute was disbanded and “the works in the collection were dispersed to various Smithsonian buildings.” See Artstor Digital Library, “Smithsonian American Art Museum Collection,” at <http://www.artstor.org/what-is-artstor/w-html/col-smithsonian.shtml>.

³ Paul H. Oehser, *The Smithsonian Institution* (New York: Praeger Publishers, 1970), p. 15. In his will, Smithson left his fortune first to his nephew Baron Henry James Hungerford, who died six years after Smithson and had no heirs. Smithson's estate was donated to the United States, per his will.

⁴ 9 Stat. 102, August 10, 1846. In December 1835, President Andrew Jackson notified Congress of Mr. Smithson's request. 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.”

⁵ 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 National Air and Space Museum Udvar-Hazy Center (located adjacent to Dulles Airport in Virginia), the Smithsonian American Art Museum, the American History Museum, 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 of the Smithsonian American Art Museum, the Arthur M. Sackler Gallery, and the Smithsonian Institution Building (the Castle). The Smithsonian Institution museums in New York City are the National Museum of (continued...)

Smithsonian, Congress consolidated existing “objects of art, natural history, etc., belonging to the United States in Washington” into a single organization.⁶

Since the creation of the Smithsonian Institution, Congress has used its authorizing statute as a template for establishing other museums. These include museums that have become part of the Smithsonian Institution (e.g., the National Museum of the American Indian and the National Museum of African American History and Culture) and museums that operate independently (e.g., the National Gallery of Art and the U.S. Holocaust Memorial Museum). For most museums operated in whole or in part by the federal government, congressional authorization is required.

In the 113th Congress (2013-2014), legislation was introduced to authorize the National Museum of the American Latino,⁷ and to authorize a commission to study the potential creation of a National Women’s History Museum.⁸ For the National Museum of the American Latino, a commission reported to Congress in 2011 that the museum should be established and made part of the Smithsonian Institution.⁹ Since then, proposals to authorize the museum have been introduced, but no further action has been taken either by the committees of jurisdiction or the House or the Senate.

In December 2014, the Commission to Study the Potential Creation of a National Women’s History Museum was established in the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (P.L. 113-291).¹⁰ It will report “not later than 18 months after the date of the first meeting of the Commission” on whether the museum should be authorized, how it should be funded, and whether it should be a Smithsonian museum.¹¹

This report focuses on contemporary museum creation in the District of Columbia. Using examples from past museum authorizations, the three most common methods of establishing a museum—creation of a museum study commission, donation acceptance, and direct authorization through law—are examined. The report also provides issues for congressional consideration in considering new museum creation. These include the museum’s subject matter, funding, location, management, and the potential role of current laws, such as the Commemorative Works Act (40 U.S.C. §§8901-8909)—which guides the placement of memorials in the District of Columbia and

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the American Indian George Gustav Heye Center and the Cooper-Hewitt National Design Museum.

⁶ Paul H. Oehser, *Sons of Science: The Story of the Smithsonian Institution and Its Leaders* (New York: Henry Schuman, 1949), pp. 24-25.

⁷ S. 568 (113th Congress), introduced March 14, 2013; and H.R. 1217 (113th Congress), introduced March 15, 2013.

⁸ H.R. 863 (113th Congress), passed the House on May 7, 2014; and S. 398 (113th Congress), reported by the Senate Committee on Energy and Natural Resources on December 10, 2014. For more information, see U.S. Congress, Committee on House Administration, *Commission to Study the Potential Creation of a National Women’s History Museum Act of 2013*, report to accompany H.R. 863, 113th Cong., 2nd sess., April 10, 2014, H.Rept. 113-411, Part 1 (Washington: GPO, 2014); U.S. Congress, House, Committee on Natural Resources, *Commission to Study the Potential Creation of a National Women’s History Museum Act*, report to accompany H.R. 863, 113th Cong., 2nd sess., May 6, 2014, H.Rept. 113-411, Part 2 (Washington: GPO, 2014); and U.S. Congress, Senate Committee on Energy and Natural Resources, *National Women’s History Museum Commission Act*, report to accompany S. 398, 113th Cong., 2nd sess., December 10, 2014, S.Rept. 113-290 (Washington: GPO, 2014).

⁹ National Museum of the American Latino Commission, *To Illuminate the American Story for All: Final Report to the President and Congress of the United States*, May 2011, at http://americanlatinomuseum.org/assets/NMAL_FINAL_Report.pdf.

¹⁰ P.L. 113-291, §3056, December 19, 2014.

¹¹ P.L. 113-291, §3056(c).

prohibits construction in certain areas of the nation's capital—for the future of museums on and around the National Mall.

Contemporary Museum Creation Practices

Museums in the District of Columbia can be broadly divided into two groups: private and federal. Private museums are not within the purview of Congress and are not addressed in this report. Federal museums are generally created by statute and may receive appropriations for museum operations. Statutorily created federal museums can be categorized into Smithsonian and non-Smithsonian museums.

Historically, Congress has authorized federal museums in the District of Columbia under one of three circumstances: following the recommendation of an advisory commission, accepting a gift or donation, or directly authorizing a museum. Should Congress choose to authorize a commission to study the potential creation of a new museum or accept a donation, it would need to enact a statute to authorize a museum.

Advisory Commission Recommendation

Both the President and Congress have established commissions to study the potential creation of new museums. When the President has created commissions, it has generally been by executive order. For example, in 1978, President Jimmy Carter created the President's Commission on the Holocaust, which was to "report to the President and the Secretary of the Interior ... its recommendations with respect to the establishment and maintenance of an appropriate memorial to those who perished in the Holocaust,"¹² among other duties.

Congressional commissions are created by statute.¹³ Since 2001, Congress has authorized two commissions to study new museums. In December 2001, P.L. 107-106 established the National Museum of African American History and Culture Plan for Action Presidential Commission.¹⁴ Similarly, in May 2008, P.L. 110-229 established the Commission to Study the Potential Creation of a National Museum of the American Latino.¹⁵

Both commissions were assigned similar duties. The African American Museum Commission was created to make recommendations to the President and Congress "with respect to a plan of action for the establishment and maintenance of the National Museum of African American History and

¹² Executive Order 12093, "President's Commission on the Holocaust," 43 *Federal Register* 51377, November 3, 1978. The creation of the commission followed a May 1, 1978, speech on the 30th anniversary of the state of Israel where President Carter announced that he would create the commission. For more information, see U.S. President (Carter), "30th Anniversary of the State of Israel," *Public Papers of the Presidents of the United States: Administration of Jimmy Carter, 1978*, vol. 1 (Washington: GPO, 1979), p. 813.

¹³ For more information on congressional advisory commissions see CRS Report R40076, *Congressional Commissions: Overview, Structure, and Legislative Considerations*, by (name redacted) and (name redacted) and CRS Report RL33313, *Congressional Membership and Appointment Authority to Advisory Commissions, Boards, and Groups*, by (name redacted).

¹⁴ P.L. 107-106, 115 Stat. 1009, December 28, 2001.

¹⁵ P.L. 110-229, 122 Stat. 784, May 8, 2003.

Culture in Washington, D.C.”¹⁶ Likewise, the American Latino Museum Commission was created to make recommendations to the President and Congress on the “establishment and maintenance of a National Museum of the American Latino in Washington, D.C.”¹⁷

Gift and Donation Acceptance

From time to time, an individual comes forward wishing to donate his or her collection of art or artifacts to the United States. Donations can take one of two forms: to an existing museum or to create a new museum. In the former situation, if the donation is to the Smithsonian, the Board of Regents has the authority to accept gifts and make them a part of the Smithsonian’s collection.¹⁸ In the latter scenario, Congress evaluates the gift offer and decides whether to accept the collection and create a new museum.

Several examples of donations to the United States have resulted in the creation of new museums. For example, Joseph H. Hirshhorn donated his modern art collections to the Smithsonian.¹⁹ In 1966, Congress authorized the acceptance of Hirshhorn’s collection, transferred land on the National Mall to the Smithsonian for a new museum and sculpture gardens, and authorized funds “necessary for the upkeep, operations, and administration of the Joseph H. Hirshhorn Museum and Sculpture Garden.”²⁰

Similarly, in 1937, the National Gallery of Art was created following the donation of artwork and the then to-be-built west building by Andrew W. Mellon.²¹ The legislation authorizing the museum’s creation (H.J. Res. 217, 75th Congress) provided that a third-party group—the A. W. Mellon Educational and Charitable Trust—would construct “for the Smithsonian Institution a building to be designated the National Gallery of Art”²² and “accept for the Smithsonian Institution as a gift from the donor a collection of works of art which shall be housed and exhibited in the National Gallery of Art.”²³

Direct Authorization

In a few cases, Congress has directly authorized a new museum without a gift or donation or the recommendation of an advisory commission. Perhaps the most prominent example was the creation of the National Air Museum (now the National Air and Space Museum). Authorized during the 79th Congress (1945-1946), the National Air Museum was created as a formal bureau within the Smithsonian to “memorialize the national development of aviation; collect, preserve, and display aeronautical equipment of historical interest and significance; serve as a repository

¹⁶ P.L. 107-106, §3(a)(1).

¹⁷ P.L. 110-229, §333(b).

¹⁸ 20 U.S.C. §55.

¹⁹ Smithsonian Institution, Hirshhorn Museum, “The Founding Donor,” at <http://www.hirshhorn.si.edu/collection/home/#collection=history-of-the-hirshhorn&detail=http%3A//www.hirshhorn.si.edu/bio/the-founding-donor/>.

²⁰ P.L. 89-788, 80 Stat. 1403, November 7, 1966.

²¹ 50 Stat. 51, March 24, 1937.

²² Ibid. The joint resolution further provided a specific site location for the National Gallery and provided land for a future addition to be built at a later date. Congress also required that the U.S. Commission of Fine Arts approve all plans and specifications for buildings on the sites (§1).

²³ Ibid., §3.

for scientific equipment and data pertaining to the development of aviation; and provide educational material for the historical study of aviation.”²⁴ General of the Army Henry H. (Hap) Arnold—Commanding General of the Army Air Force—and other aviation experts advocated for authorizing the National Air Museum as a bureau within the Smithsonian.²⁵

In creating the National Air Museum, Congress desired to expand existing Smithsonian aviation collections, which had outgrown display abilities in the Arts and Industries Building and a World War II-era Quonset hut that the War Department had erected on the National Mall.²⁶ In creating the museum, Congress also provided that “the Smithsonian Institution shall operate a national air museum with the advice of a board to be composed of the commanding general of the Army Air Forces or his successor, the Chief of Naval Operations, or his successor, the Secretary of the Smithsonian Institution, and two citizens of the United States appointed by the President from civilian life.”²⁷

Issues for Congress

Since 1980, Congress has authorized four new museums in the District of Columbia—the United States Holocaust Memorial Museum,²⁸ the National Law Enforcement Museum,²⁹ the National Museum of the American Indian,³⁰ and the National Museum of African American History and Culture.³¹ Additionally, legislation has been introduced to authorize the National Museum of the American Latino.³² Regardless of the process employed, if Congress considers authorizing a new museum in the District of Columbia, several issues might warrant consideration. These include the subject matter, management and operations, location, funding, and the role of the Commemorative Works Act (CWA).³³

²⁴ P.L. 79-722, §2, 60 Stat. 997, August 12, 1946.

²⁵ In testimony before the House Committee on the Library, General Arnold stated that the collections of the National Air Museum should start with the “first Wright airplane and carry through every other type of airplane up to and including the very latest—the B-29. It should include all Navy types. It should include all commercial types. It should include the outstanding foreign types.” For General Arnold’s full testimony, see U.S. Congress, House Committee on the Library, *Establishment of a National Air Museum*, hearing on H.R. 5144, 79th Cong., 2nd sess., February 13, 1946 (Washington: GPO, 1946), p. 3.

²⁶ Smithsonian Institution, National Air and Space Museum, “History,” at <http://airandspace.si.edu/about/history/index.cfm>.

²⁷ U.S. Congress, House Committee on the Library, *Establishing a National Air Museum*, report to accompany H.R. 5144, 79th Cong., 2nd sess., July 9, 1946, H.Rept. 2473 (Washington: GPO, 1946), p. 1.

²⁸ P.L. 96-388, 94 Stat. 1547, October 7, 1980; 36 U.S.C. §§2301-2310.

²⁹ P.L. 106-492, 114 Stat. 2210, November 9, 2000.

³⁰ P.L. 101-185, 103 Stat. 1336, November 28, 1989; 20 U.S.C. §80q.

³¹ P.L. 108-184, 117 Stat. 2676, December 16, 2003; 20 U.S.C. §80r.

³² P.L. 110-229, §333; and National Museum of the American Latino Commission, *To Illuminate the American Story for All: Final Report to the President and Congress of the United State*, May 2011, at http://americanlatinomuseum.org/assets/NMAL_FINAL_Report.pdf. Since the 105th Congress (1997-1998), legislation has also been introduced to lease land in the District of Columbia to a privately run museum—the National Women’s History Museum. Past legislation would have designated one of two sites: the Old Post Office Pavilion Annex (S. 1741, 108th Congress; S. 501, 109th Congress; and S. 1841, 110th Congress) or the Cotton Annex (H.R. 6548 and S. 3528, 110th Congress; H.R. 1700 and S. 2129, 111th Congress; H.R. 1269 and S. 680, 112th Congress; and H.R. 2844 and S. 1870, 112th Congress). None of these legislative proposals was enacted.

³³ 40 U.S.C. §§8901-8909.

Subject Matter

When considering the creation of a new museum in the District of Columbia, Congress might evaluate the proposed museum's subject matter to decide whether a new museum is necessary and what impact the potential museum might have on nearby existing museums. For example, when authorizing the National Museum of the American Indian, Congress was aware that the Smithsonian had thousands of Indian artifacts and human remains within its existing collections but that very few Native American items could be put on display at any given time within the confines of existing Smithsonian space.³⁴

Similarly, Congress asked the African American Museum Commission to consider the impact of a new museum on regional African American museums.³⁵ As part of its final report to Congress, the commission recommended that the national museum “develop collections that are complementary to, not competitive, with the holdings of local museums,” with a “continuing exchange of ideas and specialized knowledge” and “reciprocal promotion of mission” among museums.³⁶

Evaluating a proposed museum's subject matter and potential impact on other museums provides Congress with an understanding of how the new museum might fit into the existing landscape. It could also be important for the proposed museum's ultimate success. Congressionally chartered, federal museums could be seen as having an advantage over privately held or nonprofit museums. With the potential backing of the federal government for collections and/or operational expenses, nonfederal museums could feel that a new federal museum might impede their ability to collect material, draw visitors, and educate the public.

For recent authorizations, Congress has authorized commissions to examine these issues in depth. For example, the African American Museum Commission conducted a survey of existing African American museums and found that 87.5% “supported the establishment of a national museum in Washington, DC,” while “12.5% expressed concern that the National Museum would pose competition in terms of attendance, collections, or funding.”³⁷ Information gathered by a commission could be valuable for Congress. Duplication of museum collections or diversion of resources—either federal or nonfederal—for a specific type of collection could restrict visits and the ability to fulfill a new museum's mission.

³⁴ U.S. Congress, House Committee on Public Works and Transportation, *National American Indian Museum Act*, report to accompany H.R. 2668, 101st Cong., 1st sess., November 9, 1989, H.Rept. 101-340, part 1 (Washington: GPO, 1989), pp. 9-12. In addition to authorizing the National Museum of the American Indian, P.L. 101-185 (103 Stat. 1336, November 28, 1989; 20 U.S.C. §§80q-80q-15 et seq.) also formalized an agreement with the Gustav Heye Foundation of New York to accept its collection of Native American artifacts and display them at the new museum site in Washington, DC, and a museum at the Old U.S. Custom House in New York City. The bill also made arrangements for the repatriation of a significant collection of Native American remains that had become part of the Smithsonian's collection over the years.

³⁵ P.L. 107-106, §3(c)(2), 115 Stat. 1009, December 28, 2001.

³⁶ National Museum of African American History and Culture Plan for Action Presidential Commission, *The Time Has Come: Report to the President and to the Congress*, April 2, 2003, pp. 77-78.

³⁷ *Ibid.*, p. 71.

Management and Operations

Past authorization statutes have specified the management and operations of a potential new museum within the federal government. Congress could locate a new museum as a Smithsonian museum or within a non-Smithsonian federal agency, or it could create an independent federal entity. Congress has asked past museum commissions to make recommendations on potential museum management and operations of proposed museums.³⁸ The African American Museum Commission and the American Latino Museum Commission both recommended placement of the museums within the Smithsonian Institution.

Smithsonian

The Smithsonian Institution operates 20 museums located in Washington, DC, its environs, and New York City.³⁹ The Smithsonian Institution has vast experience with museum operations and collections management and could provide those services to future museums. During debate on the legislation authorizing the National Museum of African American History and Culture in the House (H.R. 3491, 108th Congress), Representative Bob Ney described the Smithsonian Institution “as the Nation’s keeper of history and culture” and “an ideal body of inclusion for just such a museum.”⁴⁰

Adding an additional museum to the Smithsonian could add to the administrative burdens of the Board of Regents. With 20 museums currently in the Smithsonian portfolio, adding additional museums could result in the need to expand resources—both financial and physical—to meet the growing demands of additional collections. During testimony in favor of the National Museum of African American History and Culture, Lawrence M. Small, Secretary of the Smithsonian Institution, praised Congress for structuring the museum in a manner similar to other Smithsonian museums:

With respect to governance, I am very pleased to see that the legislation now proposes a museum structure much like that of other Smithsonian museums. We appreciate the work done so far to address the issues we have raised and believe that the majority of these have been addressed.⁴¹

Based on the Secretary’s remarks, it appears that the Smithsonian may have concerns about the addition of new museums that do not conform to the institution’s current structure. If Congress decides to create a new Smithsonian museum, the institution’s previous stance might be considered.

³⁸ P.L. 107-106, §3(c)(5) and P.L. 110-229, § 333 (b)(3)(D).

³⁹ See Footnote 5 for a list of Smithsonian Institution Museums in Washington, D.C. and New York City.

⁴⁰ Rep. Bob Ney, “National Museum of African American History and Culture Act,” remarks in the House, *Congressional Record*, daily edition, vol. 149 (November 18, 2003), p. H11489.

⁴¹ Testimony of Secretary of the Smithsonian Institution Lawrence M. Small, in U.S. Congress, Committee on House Administration, *H.R. 2205, Legislation to Establish Within the Smithsonian Institution a National Museum of African-American History and Culture*, hearing, 108th Cong., 1st sess., July 9, 2003 (Washington: GPO, 2003), p. 35.

Other Federal Agency

A new museum could also be placed within an existing non-Smithsonian federal entity. For example, the Department of the Interior, either directly or through one of its bureaus or offices, administers several museums in Washington, DC, including a museum located in the department's headquarters building at 1849 C Street, NW. The department has a museum policy in place for the management of all museum collections controlled by its bureaus and offices regardless of the collection's location.⁴²

Independent Entity

Some museum sponsors would prefer a new museum to be independent of the Smithsonian or other federal agencies. In the past, Congress has accommodated those preferences and has created at least two independent federal museums. Currently, the U.S. Holocaust Memorial Museum operates as an independent federal entity and is run by a board of trustees that has "overall governance responsibility for the Museum, including policy guidance and strategic direction, general oversight of the Museum operations, and fiduciary responsibility."⁴³ Similarly, the National Gallery of Art is not currently considered part of the Smithsonian Institution. While it was established as a bureau of the Smithsonian in 1937,⁴⁴ it currently operates as an autonomous agency that is administered separately.⁴⁵

Additionally, the National Law Enforcement Museum was authorized during the 106th Congress (1999-2000). The museum's statute (P.L. 106-492) authorized the National Law Enforcement Officers Memorial Fund to construct the museum and operate and maintain it after its dedication.⁴⁶

Creating an independent museum entity could give control over exhibits and fundraising to the new museum without any restrictions that might exist as part of Smithsonian Institution or other agency's protocols. It would also potentially allow the museum to have direct control over museum operations through the appointment of a board of directors and the hiring of staff.

Creating an independent museum, however, could mean that the new entity would be starting from scratch for operations and administration. An independent museum's authorization statute would likely need to provide explicit fundraising and gift acceptance provisions and the authority to hire an executive director and staff. Further, an independent museum might not be able to borrow items from the Smithsonian collections and exhibit management without extensive agreements.

⁴² U.S. Department of the Interior, "Preserving Our Legacy," at <http://museums.doi.gov>. Each bureau or office also has its own museum and collection policies. A link to these policies can be found the Department of Interior museum policy webpage (<http://www.doi.gov/museum/policy.htm>). The bureaus and offices covered by the museum policy are the Bureau of Indian Affairs, the Bureau of Land Management, the Bureau of Reclamation, the Fish and Wildlife Service, the Indian Arts and Crafts Board, the Minerals Management Service, the National Business Center, the National Park Service, the Office of the Special Trustee, and the U.S. Geological Survey.

⁴³ 36 U.S.C. §2302(a).

⁴⁴ 20 U.S.C. §§71-75.

⁴⁵ Telephone conversation between the author and Delia Scott, congressional liaison officer, National Gallery of Art, March 8, 2012.

⁴⁶ P.L. 106-492, §4(a)&(c), 114 Stat. 2211, November 9, 2000.

Museum Location

The location (or siting) of a museum within the District of Columbia is one of the most significant decisions made when authorizing a new museum. Many groups interested in creating a new museum typically prefer a location on or near the National Mall. Placing new structures within that space, however, is restricted by available land and laws and policies that govern the National Mall.⁴⁷

Several potential options exist for designating site locations for future museums. Future museum statutes could continue to directly designate a specific site location or provide choices for site location. Congress could also create a process for designating museum sites, or it could apply the CWA to museums sited on land controlled by the National Park Service (NPS) or the General Services Administration (GSA). In the past, Congress has asked museum advisory commissions to make recommendations about the proposed museum's location. For example, Congress asked both the African American Museum Commission and the American Latino Museum Commission to study potential museum locations on or near the National Mall.⁴⁸

Statutorily Designate Site Location

Congress has chosen to statutorily designate the site locations for the National Museum of the American Indian and the National Museum of African American History and Culture. Both museum statutes provided a specific site location. For the National Museum of the American Indian, Congress designated a specific site pursuant to past public law.⁴⁹ For the National Museum of African American History and Culture, Congress authorized the Smithsonian Board of Regents to choose from a list of four site locations.⁵⁰

For future museums, either option might be used. If a single specific site is determined to be most appropriate for the museum, Congress could directly designate the location. Conversely, if multiple sites were acceptable to Congress, providing the governing body (e.g., the Smithsonian Board of Regents) with a choice might be most practical.

Statutorily designating the site location, however, could exclude expertise developed by the National Capital Planning Commission and the Commission of Fine Arts in placing museums within the master plan for the District of Columbia. By statutorily designating a site location, Congress might inadvertently disregard past work done by these bodies for the siting of new projects.

⁴⁷ For example, the CWA governs the placement of memorials and monuments in the District of Columbia on land administered by the National Park Service and the General Services Administration. Included in this law is a prohibition against placing new commemorative works within the "Reserve"—an area defined as "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" (40 U.S.C. §8902(a)(3)). For more information, see CRS Report R41658, *Commemorative Works in the District of Columbia: Background and Practice*, by (name redacted).

⁴⁸ For example, the American Latino Museum Commission was required to report on "possible location of the Museum in Washington, DC and its environs, to be considered in consultation with the National Capital Planning Commission and the Commission of Fine Arts, the Department of the Interior and the Smithsonian Institution." P.L. 110-229, §333(b)(3)(C).

⁴⁹ 20 U.S.C. §80q-5(a).

⁵⁰ 20 U.S.C. §80r-6(a)(1)(B).

Adopt a Process for Siting Museums

As an alternative to statutorily designating a site in authorization legislation, Congress could create a process to locate museums within the District of Columbia. A formalized process could remove Congress from initial siting decisions and instead allow the agencies charged with approving plans for new buildings on federal land in the District of Columbia—the National Capital Planning Commission and the Commission of Fine Arts—to use their expertise to guide the site selection process. Following their recommendations and approvals, Congress could then approve a site location.

Creating a site selection process might mirror the current process used to select sites for memorials in the District of Columbia. As part of the CWA, Congress created the National Capital Memorial Advisory Committee to aid Congress in the evaluation of potential site locations pursuant to specific criteria on the types of memorials that could be placed in various areas of Washington, DC.⁵¹ A similar set of guidelines could be created for the siting of future museums, thus allowing city planners to make recommendations to Congress on where a museum might be located.

Providing for a process for museum siting could remove control of museum siting from Congress. If, for example, Congress were to cede control over the site selection process and vote only to approve or disapprove a recommended site, individual Members who might otherwise be influential in the congressional debate over a site location might have their influence diminished. If the process is similar to that used under the CWA, individual Members might have to work outside of Congress to influence the recommended site.

Funding

Federal museums in the District of Columbia have historically been completely funded through appropriations. Recent museum authorization statutes, however, have prescribed that design and construction costs be split between federal and nonfederal sources. For example, the National Museum of African American History and Culture statute requires equal cost sharing between federal and nonfederal sources.⁵²

Using a combination of federal and nonfederal funds may provide a museum—regardless of whether it would be located within the Smithsonian—the assurance that at least some of the costs for design and construction are accounted for. Additionally, providing some public funds can serve as an incentive for donors to contribute to the project. In December 2009, G. Wayne Clough, Secretary of the Smithsonian Institution, testified before the House Committee on Appropriations about the creation of the Smithsonian’s Legacy Fund—an appropriation that required the Smithsonian to raise matching funds in order to get access to federal funds—and stated, “I am confident the new language of the Legacy Fund will be a great incentive for donors.”⁵³

⁵¹ 40 U.S.C. §§8904, 8905, and 8908.

⁵² 20 U.S.C. §80r-6(b). The statute reads: “(b) COST SHARING.—The Board of Regents shall pay—(1) 50 percent of the costs of carrying out this section from Federal funds; and (2) 50 percent of the costs of carrying out this section from non-Federal sources.”

⁵³ Testimony of Wayne Clough, Secretary of the Smithsonian Institution, in U.S. Congress, House Committee on Appropriations, Subcommittee on Interior, Environment, and Related Agencies, *Interior, Environment, and Related Agencies Appropriations for 2010*, Part 8: Oversight Hearing on Smithsonian Institution, 111th Cong., 1st sess., (continued...)

Providing federal money as an incentive for donors could reduce the overall federal costs of designing and building a new museum. Relying heavily on private donations can, however, be risky. If donors are not willing to provide continued funding, or if economic situations dictate a change in donation behavior, funding levels could be affected.

In addition to appropriations for construction, Congress has also previously authorized appropriations for operations. The National Museum of African American History and Culture was authorized \$17 million for FY2004 and “such sums as necessary for each fiscal year thereafter.”⁵⁴ Similarly, the National Museum of the American Indian was authorized \$10 million for FY1999 and “such sums as necessary for each succeeding fiscal year.”⁵⁵ Of recently authorized museums, only the U.S. Holocaust Memorial Museum was authorized such sums as necessary for all fiscal years.⁵⁶ Not all funding for museum operations, however, comes from federal sources. For example, in FY2012, the Holocaust Museum received federal appropriations for approximately 56% of its budget and raised 44% from nonfederal sources.⁵⁷

Whether to provide appropriations could be a consideration for future museum authorizations. Without federal funds, the museum sponsor group would likely be responsible for raising the necessary funds. Prohibiting federal funds might make future museum creation difficult, as raising funds sufficient to cover the costs of designing and construction of a new museum could be difficult. For example, the proposed National Women’s History Museum has been estimated to cost approximately \$300 million for design and construction alone.⁵⁸ This does not include annual operation costs.

Role of Commemorative Works Act

In 1986, the Commemorative Works Act (CWA) was enacted to guide the creation of memorials in the District of Columbia.⁵⁹ The CWA codified congressional procedure for authorizing commemorative works when federal land is administered by the National Park Service or the General Services Administration. To date, no museum has been created under the terms of the CWA.⁶⁰ Recently authorized museums have either been exempt from the CWA (e.g., National Museum of African American History and Culture) or have been located on land not under the jurisdiction of the NPS or GSA (e.g., National Museum of the American Indian and the Holocaust Memorial Museum).

(...continued)

December 10, 2009 (Washington: GPO, 2010), p. 64.

⁵⁴ 20 U.S.C. §80r-9(a).

⁵⁵ 20 U.S.C. §80q-15.

⁵⁶ 36 U.S.C. §2310.

⁵⁷ U.S. Holocaust Memorial Museum, *Fiscal Year 2012 President’s Budget Justification*, February 14, 2011, <http://www.ushmm.org/notices/budget/2012.pdf>, p. 8.

⁵⁸ National Women’s History Museum, *Key Facts About the National Women’s History Museum*, p 2.

⁵⁹ 40 U.S.C. §§8901-8909. A commemorative work was defined as “any statue, monument, sculpture, memorial, plaque, inscription, or other structure of 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 a structure which is primarily used for other purposes.” 40 U.S.C. §8902.

⁶⁰ The Vietnam Veterans Memorial Visitor Center’s statue requires that it be sited, designed, constructed, and maintained pursuant to the CWA. P.L. 108-126, §101, 117 Stat. 1348, November 17, 2003.

Whether the CWA applies to museums is an open question.⁶¹ Past statutes suggest that museums are barred more broadly within the District of Columbia—on any lands administered by the NPS or the GSA. The statute that authorized the National Museum of African American History and Culture (P.L. 108-184), for example, specifically exempted the museum from the CWA. As a result of the exemption, the CWA could be interpreted to apply to museums at any District location if they are located on NPS- or GSA-administered land.⁶² The CWA does, however, specifically prohibit the placement of a museum in Area I or East Potomac Park.⁶³

Congress could specifically apply the CWA 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, fundraising, and design of future museums in a manner similar to the CWA for monuments and memorials.

Congress could also exempt future museums from the CWA, as was done for the National Museum of African American History and Culture. Further exemptions would potentially allow museums to be built in almost any agreeable location with the District of Columbia, regardless of statutory prohibitions. Such siting and building would still likely need approval from the agencies tasked with oversight over the District of Columbia—the National Capital Planning Commission and the U.S. Commission of Fine Arts.

Conclusion

Since before James Smithson's gift to the United States, Congress authorized most new federal museums in the District of Columbia. That involvement continues today with current legislative proposals for a new National Museum of the American Latino and a National Women's History Museum. The process used to create new museums has varied historically. In some cases, Congress has accepted donations of collections and buildings from prominent citizens (e.g., the National Gallery of Art and the National Museum of the American Indian). In other instances, Congress has taken the recommendation of presidential and congressional advisory commissions to create new museums (e.g., the Holocaust Museum and the National Museum of African American History and Culture). In authorizing a new museum, Congress could decide whether it should be part of the Smithsonian Institution, part of another agency, or a stand-alone entity. These decisions could be made with or without a private sector donation or a commission's recommendations.

Recent practices suggest that the use of commissions to make recommendations on the potential creation of a new museum has been prevalent over the last 30 years. Using an advisory

⁶¹ 40 U.S.C. §8902(a)(1). 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.”

⁶² For further legal questions on the application of the CWA, please contact CRS Legislative Attorney (name redacted) at 7-.... or #redacted#@crs.loc.gov. Ms. Alexander contributed to this section.

⁶³ 40 U.S.C. §8905(b)(5).

commission to make recommendation on future museums can provide Congress with valuable information, as the commission's members are subject matter experts in the proposed museum's subject and museum management. Following the issuance of a commission's report, which could address virtually any topic Congress believes is relevant, Congress can make a decision about the museum's subject matter, funding, location, management and operations, and whether the CWA should apply.

The desire to continue to build new museums does not seem likely to abate in the coming years. How new proposals might be considered and if any standard process should be applied to the museum evaluation and authorization process could be a useful tool for Congress. Since the number of museum proposals, however, is generally not large in any given Congress, prescribing specific processes for the evaluation of new museum ideas might not be necessary or warranted.

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