

**Statement of  
Maurice A. Barboza, Founder & CEO  
National Mall Liberty Fund D.C.  
Subcommittee on National Parks, Forests & Public Lands  
House Committee on Natural Resources  
H.R. 1693, National Liberty Memorial Act  
March 6, 2008**

**M**r. Chairman, thank you for scheduling this hearing on H.R. 1693 and for joining Rep. Donald Payne and over 50 other members, including Delegate Donna Christensen and the entire Congressional Black Caucus, in cosponsoring the National Liberty Memorial Act.

I am the founder and CEO of National Mall Liberty Fund D.C. (Liberty Fund D.C.), a District of Columbia Corporation that is recognized as tax exempt under Section 501 (c)(3) of the Internal Revenue Code. The Fund complies with the definition of a memorial sponsor contained in the Commemorative Works Act. Our website address is [www.libertyfunddc.org](http://www.libertyfunddc.org). We are seeking an authorization, as well as the site approvals forfeited in October 2005 by the now-defunct Black Revolutionary War Patriots Foundation. This would authorize us to preserve land already assigned at Constitution Gardens for a memorial to the 5,000 black soldiers and tens of thousands of patriots and freedom seekers of the Revolutionary War.

Liberty Fund D.C. was incorporated on May 2, 2005, six months before the Black Patriots Foundation's authorization expired. We have no legal or informal relationship with that group. The site is not an asset or remnant of that Foundation. It belongs to forgotten and neglected historical figures and to the expectations of the American people by virtue of a process the National Park Service describes as follows: "Area I authorizations are joint resolutions that Congress must pass deeming a subject matter of 'preeminent historical and lasting significance to the Nation.'"

In June 2006, the National Capital Memorial Advisory Commission concluded that, "the Commemorative Works Act could be interpreted to allow Liberty Fund D.C. to assume the site approvals." A member voting in the majority said, "there is enough of a nexus...that would be justification for extending the authorization for this site for the same memorial." (Transcript, National Capital Memorial Advisory Commission, June 27, 2006, page 25) With respect to the change of sponsors, the former chairman, who represented the National Park Service and the Secretary of the Interior, observed, "[T]he reason Congress designates an organization is because the memorial is privately funded. So, there's nothing sacred about keeping the same name or the same organization." (Transcript, page 27) When the National Liberty Memorial Act, S. 1051, was reintroduced by Senator Chris Dodd and Senator Charles Grassley in March 2007, all of the Commission's recommendations were incorporated into that bill and into H.R. 1693.

On September 11, 2007, the Senate National Parks subcommittee conducted a hearing on the bipartisan Dodd/Grassley bill, also cosponsored by Senators Barack Obama and Elizabeth Dole. The Secretary of the Interior rejected the recommendation of the Memorial Advisory Commission and states incorrectly that the Black Patriots Memorial is no longer grandfathered by the 2003 amendments to the Commemorative Works Act. The Secretary claims that this is a new memorial in spite of overwhelming history to the contrary.

On February 19, 2008, Liberty Fund D.C. met with the National Park Service to discuss whether the Secretary would consider reversing his position if the legislation were amended to address the Department's concerns. A copy of the draft amendment and forwarding letter that preceded the meeting are submitted for the Record. Liberty Fund D.C. wants to establish a positive working relationship with the National Park Service. We are willing to accept this amendment because it represents a win-win accommodation for all parties.

Consultations with our sponsors and the Senate staff give us reason to believe the changes achieve the Secretary's intent to uphold the moratorium and the fairness and consistency of the CWA. The memorial's honorees are vindicated. This acknowledges that the effort between 1985 and 1988 to set aside land on the Mall cannot be reconsidered, or the memorial placed elsewhere, without doing harm to the history's credibility and the wisdom of the 100<sup>th</sup> Congress, the Secretary's predecessor and President Reagan.

My testimony addresses this question and others in these five parts: First, the site approvals of the Black Revolutionary War Patriots Memorial remain viable and capable of being assigned to Liberty Fund D.C.. Second, Congress and the Federal agencies appropriated the land at Constitution Gardens after extensive hearings under the provisions of the Commemorative Works Act. Third, the wisdom of Congress in declaring the participation of African Americans in the Revolutionary War to be of "preeminent historical and lasting significance" has been confirmed over the past two decades. Fourth, the American public will contribute to the construction of the memorial. Fifth, there is a compelling nexus between the Black Revolutionary War Patriots Memorial and the National Liberty Memorial prior to 1992.

**1. The site approvals of the Black Patriots Memorial remain viable and capable of being assigned to Liberty Fund D.C.**

The history of African Americans remains vested in the site at Constitution Gardens in spite of the passage of the Clarification and Revision Act of 2003. That law created the "Reserve" and imposed a moratorium on the construction of future memorials on the Mall. Approved by Pub. Law 100-265 on July 28, 1988 in conformity with the Commemorative Works Act, the memorial site was grandfathered to the "preeminent" history by the 2003 amendments. The Department's interpretation of the CWA is incorrect with respect to the language, "upon expiration of the legislative authority, any previous site and design approvals shall also expire."

The provision of the 2003 Act that mandates approved sites and designs to expire simultaneously with the lapse of a sponsor's authorization does not apply to the Black Patriots Memorial. The memorial site was approved before that provision was approved. Moreover, the 2003 Act exempts this memorial from every provision. Section 205 provides that "nothing in this title shall apply to a commemorative work for which a site was approved in accordance with chapter 89 of title 40, United States Code, prior to the date of enactment of this title [Nov. 17, 2003]."

Beginning in 1985, exhaustive hearings were conducted before the Memorial Advisory Commission and multiple agencies. The Secretary's predecessor endorsed the Mall designation for precisely the same purpose as our legislation seeks to use the land. This decision is reversible only by the intervening construction of another memorial on, or close to, the site that would render its use a violation of the Act. Fortunately, the site at Constitution Gardens remains unencumbered, as it had been in 1988. The black patriots memorial would still be located -- (1) in surroundings that are relevant to the subject of the

work and (2) so that it does not interfere with, or encroach on, an existing commemorative work.

The Secretary argues that "the provisions in S. 1051 would designate a specific site for the memorial, rather than allowing for the site selection process under the Commemorative Works Act to determine the appropriate location of the memorial." Rather than designate the site in the legislation, Section 1(a) of the amendment strikes the name of the previous sponsor, "Black Revolutionary War Patriots Foundation," wherever it appears in any grant of authority and substitutes "National Mall Liberty Fund D.C.". This change makes it unnecessary to designate the specific site in H.R. 1693. Further, the name of the commemorative work would remain "Black Revolutionary War Patriots Memorial."

There is an additional reason why the regenerated project is unaffected by the expiration of the previous sponsor's authorization. That grant was not conditioned on only one group having the exclusive right to construct the memorial. The Congress could have decided prior to any of the reauthorizations of the Black Patriots Foundation to transfer the authorization to another qualifying entity if it had been determined to lack the capacity to fulfill the requirements of the Act.

Despite having access to audited financial statements, among other evidence, strongly suggesting that the Black Patriots Foundation was incapable of fulfilling the Congressional mandate, the Secretary recommended to Congress that the group be reauthorized in 2000. Multiple provisions of the CWA imply that the National Park Service is obligated to oversee memorial sponsors, advise Congress of its findings and preclude results that reflect unfavorably on the U.S. government. Had the National Park Service exercised due diligence, it is unlikely that the U.S. Mint would have transferred nearly \$1 million from the proceeds of the minting of the Crispus Attucks Commemorative Coin in 1998. The staff is aware of the Mint's displeasure and recent actions it has taken concerning this matter.

Moreover, Rep. Payne's bill establishes no future precedents that could be used to circumvent the moratorium. There are no other similarly situated memorials with specific site approvals on the Mall. This is a one-time-only request. Only the Black Patriots Memorial and the Dr. Martin Luther King, Jr. Memorial had received specific site approval prior to that date. Coincidentally, over the previous 150-year history of the Mall, no other memorial had been built (or even anticipated) to honor African American historical figures. For that reason alone, the Black Patriots Memorial and King Memorial deserved to be exempted from the 2003 moratorium whether or not they had won specific site approval.

## **2. Congress and the Federal agencies appropriated the land at Constitution Gardens after extensive hearings under the provisions of the Commemorative Works Act.**

The Black Patriots Memorial and the Korean War Memorial were the first projects considered by Congress and the agencies in 1986 under the Commemorative Works Act. Because both memorials sought sites on the Mall, they were required to demonstrate the worthiness of their histories by negotiating this thorough process:

1. Obtain a recommendation of the Secretary of the Interior, via the National Capital Memorial Commission, that the history to be honored is of "preeminent historical and lasting significance to the nation."

2. Obtain within 150 days of such a recommendation the approval of legislation proposed by the Secretary to declare the history eligible to be honored in Area I.

3. Secure the approval of a specific Mall site by the Secretary (as recommended by the National Capital Memorial Advisory Commission), National Capital Planning Commission and Commission of Fine Arts. (There are other agencies with sign-off responsibilities)

The entire site selection process for the Black Patriots Memorial consumed 21 months. This was separate and apart from the authorization of the Black Revolutionary War Patriots Foundation – or the license to construct a memorial. Prior to 1988, no such procedure existed whereby a group seeking a site on the Mall was required to ask the Secretary of the Interior, a land manager, his opinion on the worthiness of a chapter in American history, particularly one in which the U.S. Congress was an integral part in its unfolding – the Revolutionary War and the struggle for liberty 200 years forward.

President Reagan signed the memorial authorization, Pub. Law 99-558, on October 27, 1986. However, it was not until July 28, 1988, that the Secretary of the Interior approved the site at Constitution Gardens. During this period, the clock continued to run during site selection or from authorization to specific site approval, including the designation of an Area I location. That amounts to over one-third of the original 60 months authorized for memorials under the Commemorative Works Act of 1986. (A legislative history is attached for the Record.)

**3. The wisdom of Congress in declaring the participation of African Americans in the Revolutionary War to be of “preeminent historical and lasting significance” has been confirmed over the past two decades.**

There has been a consciousness that the forgotten black patriots of the Revolutionary War deserve a memorial from as early as 1848. Historian William C. Nell and others petitioned the Massachusetts legislature for a memorial to Crispus Attucks that year. Seven years later, Nell authored, “The Colored Patriots of the American Revolution,” the first of many books on the subject. In 1908, Virginians Giles B. Jackson and Webster Davis observed in “The Industrial History of the Negro Race of the United States” that “Monuments innumerable have been erected to white soldiers who fought in the Revolution. Only a few kind words have been said for the colored soldiers....”

Historians and researchers have written scores of books and articles that confirm the memorial’s merit and worthiness of a Mall site. Scholars Gary B. Nash, a prolific colonial historian, and Henry Louis Gates, Jr., author and humanities professor, sent an impressive bibliography to the U.S. Senate in 2006 that said “[T]he nation’s Mall will never be a “completed work of art” until this memorial takes its place across from a memorial to the 56 Signers of the Declaration of Independence.” Most of those 40 books were written in just the past five years.

The descendants of those patriots are beginning to step forward. Perhaps as many as 60 African Americans have joined the Daughters of the American Revolution and the Sons of the American Revolution, since my aunt Lena Santos Ferguson demonstrated it could be done in 1984. (See part 5 below) For example, in 2006, four black men were inducted into the Virginia Society Sons of the American Revolution at Gunston Hall. They are related to a woman who joined the DAR several years ago. She discovered her Revolutionary War ancestor, a free black man from North Carolina, listed in “African American and American Indian Patriots of the Revolutionary War.” Published in 2001, this book was one of several requirements of a settlement agreement that resolved my aunt’s four-year battle for membership in the DAR during the mid-1980s.

During the Memorial Advisory Commission hearing in 2006, the descendants of multiple patriots from Charles City County, Virginia testified in support of the memorial. Two of them were students from the County who are descended from Sgt. Isaac Brown, Joseph Wallace and William Timothy. The other, Dr. Marion Lane of Bucks County, Pennsylvania, is also a descendant of Sgt. Isaac Brown. The national news media has embraced the recent discovery of the Revolutionary war ancestor of Dr. Gates, John Redman of Virginia, through his PBS Series "African American Lives." Dr. Gates was inducted into the SAR in July 2006. Last year, Dr. Lane became a member of the DAR.

There is another unusual story: Cato Mead's name is on a cemetery stone and engraved into a memorial at the Iowa state capitol along with 41 other compatriots who died there. Originally from Connecticut, he made his way west with the Mormons. However, his color had been lost to history until recently. Retired schoolteacher Barbara MacLeish of Minnesota discovered he was black. The Montrose, Iowa community now gathers annually around his gravestone to honor his memory.

In 2005, Liberty Fund D.C. and the SAR announced a cooperative effort to encourage African Americans to trace their heritage. Further, the Sons of the American Revolution and the W.E.B. Du Bois Institute at Harvard University have undertaken a joint project to examine pension files of Revolutionary War soldiers and compare them with census records to identify black soldiers and uncover evidence of living descendants. One of the purposes is to encourage descendants to honor their ancestors by joining the SAR and other hereditary organizations.

In October 2007, the Haitian-American Historical Society dedicated a memorial in Savannah, Georgia to the Chasseurs Volontaires de Saint-Domingue, the 500-man Haitian unit that fought in the October. 9, 1779, battle that decided the Siege of Savannah. (See the attached photographs and article for the Record.)

In January 2008, the Sons of the American Revolution and an ancient African American Congregation, the Elam Baptist Church, dedicated a memorial to the black soldiers who served in the Revolutionary War from Charles City County, Virginia. (See the attached photographs and op-ed by Maurice Barboza for the Record.)

The Black Patriots Memorial will propagate more of these activities.

#### **4. The American public will contribute to the construction of the memorial.**

More than \$4 million was contributed to the Black Patriots Memorial, from 1989 through 2005. A construction management firm estimated the cost of the memorial in 1991 to be just over \$4 million, including the required set-aside for perpetual maintenance. Impressive amounts came from some of the nation's largest corporations. There is no reason to believe that those corporations would not contribute again if there were a realistic chance that the memorial could be built at the site they found so compelling.

The future memorial is estimated to cost about \$7 million. However, federal law requires that an additional 10 percent of the cost be set aside in a permanent maintenance fund. The Foundation's goal is to raise at least \$10 million for construction, maintenance, program costs and possible labor and material price increases. Funds will also be used to promote the history and visitation through public education and outreach. No federal funds are involved. All funds must be raised from private sources.

In April 2007, we sent the staff a Pre-construction Report prepared in September 2006. The document contains, among other things, a Project Schedule Analysis and Conceptual Cost Estimate. The charts contain a description of the funds needed and when they would be disbursed in the construction process.

When this project began 23 years ago, few African Americans ever thought they could have ancestors who served in the American Revolution. Unlike the Vietnam Veterans Memorial and other recent additions to the Mall, those projects had living mothers, fathers, sisters, brothers, husbands and wives to plead the cause. Two decades later, while the memorial project languished, tens of thousands of African Americans read books and articles, watched documentaries and observed their fellow citizens discovering Revolutionary War ancestors. Those descendants are now as emotionally invested in the history as any memorial advocates have been over the past decades since the construction of the Vietnam Veterans Memorial. The construction and fundraising phases of the project will cause more to be inspired to donate, promote the cause and discover their own heritage.

**5. There is a compelling nexus between the Black Revolutionary War Patriots Memorial and the National Liberty Memorial prior to 1992.**

While Liberty Fund D.C. may be a new entity, our purpose and scope mirror the Black Patriots Memorial. Moreover, we have far greater attachments to the land in Area I than the Black Patriots Foundation had after 1992. It is the 12-year period until 2005 that represents the break from the project that Congress approved. We are seeking to continue what began over two decades ago with thousands of volunteers and members of Congress.

Between 1978 and 1980, I traced my ancestry to multiple Revolutionary War patriots. A black genealogist suggested I join the Sons of the American Revolution. In 1980, after being welcomed by the SAR, I suggested to my aunt Lena Santos Ferguson that she join the Daughters of the American Revolution. She said, "Maurice, it won't be easy" and reminded me of how when she was a girl in 1939 the DAR had denied opera singer Marian Anderson an opportunity to perform at Constitution Hall. Sure enough, Lena's application languished for years. A DAR chapter official told one of her sponsors that her membership would "break up the chapter."

My calls to reporters to expose the story often were not comprehended. "Call back when the story matures," some replied. In September 1983, we visited Rep. Nancy L. Johnson. Our hometown of Plainville, Connecticut is in her district. Rep. Johnson agreed to introduce a bill to honor black soldiers and liberty seekers as a way of prodding the DAR. President Ronald W. Reagan signed Pub. Law 99-245 in an Oval Office ceremony in mid-March 1984, just days after Lena became a reluctant celebrity.

On March 9, 1984, the front page of The Washington Post announced, "Black Unable to Join Local DAR Chapter: Race is a Stumbling Block." The D.C. city council threatened to repeal the group's real estate tax exemption. The law firm Hogan and Hartson came to my aunt's defense and remained her pro bono counsel for over 17 years. That morning, and for weeks to come, my telephone rang continuously: Today Show, Good Morning America, JET, AP, UPI, New York Times, The Washington Afro-American, Good Morning America, 60 Minutes, Charlie Rose, Newsweek, the Wall Street Journal. Now, anxious to avoid further scrutiny, the DAR invited Lena to join.

Lena refused the overture, insisting that the group sign a settlement agreement to ensure no other black woman would suffer her fate. The DAR was required to keep track of, and help, minority descendants become members; advise women that they could be eligible

regardless of their race or the race of their ancestor; offer scholarships to graduating seniors in D.C. schools; conduct a seminar on blacks in the Revolutionary war; and identify everyone of African descent who served. She sought no personal consideration except simple respect. Only after 17 years of prodding did the DAR finally publish the compendium of over 2,000 African American and 400 Indian patriots. Many more names await discovery.

In late 1984, I decided those patriots deserve a memorial. Rep. Johnson, Rep. Charles Rangel and Senator Al Gore introduced companion bills in early 1985. On October 27, 1986, President Reagan signed Pub. L. 99-558. On March 25, 1988, the history was declared to be "of preeminent historical and lasting significance to the nation." With that, the memorial was eligible to stand on the Mall.

That history and the attached articles written between 1984 and 1992 suggest the connection between the Black Patriots Memorial before 1992 and Liberty Fund D.C.. (See attached bibliography submitted for the Record.) They reflect the enormous groundwork laid for public education on the forgotten role of African Americans. These more recent articles suggest how I, and my cofounder Lena Santos Ferguson, promoted the black patriots, and were associated with the effort to honor them in multiple ways, for over 22 years. ["Lena Ferguson Dies at 75; Challenged DAR on Race," Sunday, The Washington Post, March 14, 2004](#), ["Black DAR Member Challenges Efforts," Associated Press, April 14, 2000](#); ["Meanwhile, America could learn more about its colorful past," The New York Times, August 4, 2004](#), Maurice A. Barboza and Gary B. Nash; ["Injecting Race Into The Revolutionary War" The Hartford Courant, June 4 2002](#); and ["Thurmond's Biracial Daughter Seeks to Join Confederacy Group" New York Times, July 2, 2004](#).

It was my sense of it in 1985, when I founded the Black Patriots Foundation, and the feeling of the Congressional sponsors as well, that my aunt's nationally-publicized battle to honor her heritage and join the DAR was a force that could unite patriotic Americans of all backgrounds and contribute mightily to the raising of funds for the memorial. That it brought context to the noble history by showing how African Americans could be re-connected to their lost heritage. In fact, almost 90 percent of funds raised up to \$4 million, perhaps, came from donors who were drawn to the project prior to our departure in 1992.

When we left the Black Patriots Foundation, the group lost the living and breathing part of its story with a decade's worth of associations. The group still had the noble history and the memorial site. But it no longer had the wherewithal to understand the connection between the history and how it could motivate Americans. This is one reason why it could not qualify for a building permit before the expiration of re-authorizations in 1994 (Pub. L. 103-321), 1996 (Pub. L. 104-333) and 2000 (Pub. Law 105-345).

Mr. Chairman, we are looking forward to working with you and the staff to report H.R. 1693 to the House for passage.