
New York Supreme Court

Appellate Division—Fourth Department

EAST SIDE PARKWAYS COALITION, TERRENCE ROBINSON, MARCIA E. LADIANA, TENDAJI YA'UKUU, DAVID RICHARDSON, EMERE NIEVES, SOLOMON MYREE SR., BERNADETTE M. LADIANA, TIFFANY GRACE HILL, BOBBIE HICKS, ELISA ALEX GILBERT, CHARLENE FUQUA'-MILES, SCOTT BREWER, WAYNE BLASSINGAME, DENNICE BARR, PATRICK A. CRAY SR., LESLIE GARDNER, VALENCIA SCALES, LINDA ANDERSON, EVE SHIPPENS, FREDDIE MILLS, CLAUDIA N. BIGHAM, MATTHEW D. CHASE, TERRY ANN PATTERSON, KIMBERLY SMILEY, DENISE B. WILSON-SHANNON, STEPHEN RUTHERFORD
and JUSTIN COLVIN,

Docket No.:
CA 25-00828

Plaintiffs-Appellants,

(For Continuation of Caption See Inside Cover)

BRIEF OF AMICI CURIAE THE OLMSTED NETWORK AND OTHER ORGANIZATIONS AND INDIVIDUALS

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DAN EVANS and LORRAINE EADS,

Plaintiffs,

– against –

NEW YORK STATE DEPARTMENT OF TRANSPORTATION,
MARIE THERESE DOMINGUEZ, in her official capacity as Commissioner of
New York State Department of Transportation, and STEPHANIE
WINKELHAKE, P.E., in her official capacity as Chief Engineer of the
New York State Department of Transportation, THE STATE OF NEW YORK
and CITY OF BUFFALO,

Defendants-Respondents.

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INTEREST OF THE AMICUS CURIAE

The amicus curiae include a broad and diverse group of organizations and individuals with keen interest in parks and parkland as public spaces and in the work and legacy of Frederick Law Olmsted, America's foremost park designer. These organizations range from national to local and include the Olmsted Network, the pre-eminent national organization dedicated to advancing advocacy, education and stewardship of Olmsted's legacy. The Network has numerous partners from across the country that support the preservation of Olmsted's legacy, including the benefits of siting parkland in urban areas. Partners include among others, Brooklyn Botanic Garden, Buffalo Olmsted Parks Conservancy, Central Park Conservancy, Central New York Conservancy, Riverside Park Conservancy, Charleston Parks Conservancy (SC), Olmsted Linear Park Alliance (GA), and Friends of Seattle's Olmsted Parks (WA). The full list of the Network's partners may be found at: <https://olmsted.org/partner-directory/>.

Another amicus curiae is POPP!, which includes individuals who are former members of the Board of Trustees of the Buffalo Olmsted Parks Conservancy, as well as volunteers, contributors, park users, and Olmsted scholars, who have come together to promote and to advocate for the preservation and restoration of Buffalo's Olmsted Parks and Parkways for the enjoyment and benefit of current and future generations.

STATEMENT OF THE QUESTION

Did the Trial Court improperly determine that Humboldt Parkway was merely a street, and not parkland? We respectfully submit that the Trial Court decision was in error.

PRELIMINARY STATEMENT

The amicus curiae, as friends of the Court, submit this brief in support of the appeal by Plaintiffs-Appellants, East Side Parkways Coalition, et al. (“Plaintiffs”) seeking reversal of the Order and Judgment of the Supreme Court, Erie County, Emilio Colaiacovo, J.S.C. dated March 12, 2025 (the “Judgment”) which dismissed the Amended Complaint in this action which alleged, *inter alia*, a breach of the public trust doctrine.

The Judgment was based upon misapprehensions of law and fact and, as such, are in error and subject to reversal and reinstatement of Plaintiffs’ claims. Specifically, the Court failed to accept the allegations in the Complaint as true, disregarded evidence sufficient to defeat a motion to dismiss, disregarded the status of Humboldt Parkway as parkland by its acquisition by the City of Buffalo for parkland, its status as an integral part of the Buffalo Olmsted Park and Parkway System, its size and longstanding use as parkland, and a 1909 decision of this Court which characterized Humboldt Parkway as “parkland.”

Importantly, the Court failed to recognize Humboldt Parkway as an essential part of the Buffalo Olmsted Park and Parkway System, which is parkland comprised of parks, parkways and circles. Further, the Court went outside of the record of proceedings and, in reliance on that research, reached an erroneous conclusion as to the definition of “parkway.”

STATEMENT OF FACTS

While the briefs of the parties to this action contain the relevant facts, which will not be repeated here, additional facts are necessary to support the determination that Humboldt Parkway is indeed parkland for purposes of the public trust doctrine.

In 1869, the New York State Legislature passed the Park Act, which authorized “the selection and location of certain grounds for public parks in the City of Buffalo, and to provide for the maintenance and embellishment thereof.”¹ The Act also created Parks Commissioners and stated that “the tracts, pieces, and parcels of land which may be described in the said report, are hereby declared to be public places, and shall be deemed to have been taken by the City of Buffalo for

¹ 1869 vol. I 293.

public use, as and for a public park or parks, and approaches thereto, and public streets connecting the same.”²

Even before enactment of the Park Act, plans were underway for the planning and construction of Buffalo’s Olmsted Parks System. Olmsted’s initial visit to Buffalo in August, 1868, gave rise to the outline of the park system including the role of Humboldt Parkway.³

The revised City Charter of 1885 addressed parks, identified parkways (Chapin, Bidwell, Lincoln and Humboldt) on a like basis, including strict limitations on the intrusion of commercial traffic into the parks and parkways. The Park Commissioners were placed in full control of all parks and parkways, including laying out bridle paths and issuing permits for restaurants. Section 5 of the revised Park Ordinances provided that:

No cart, wagon, dray, truck or other vehicle carrying stone, brick, manure, soil, goods, merchandise or other articles, shall be allowed to enter or drive in the parks, or upon any drive therein, *nor to pass along or through Chapin, Bidwell, Lincoln or Humboldt parkways*, except when carrying material or supplies for the use of the owners or

² Id.

³ Schuyler, David and Jane Turner Censer, *The Papers of Frederick Law Olmsted, Vol. VI: The Years of Olmsted, Vaux & Company, 1865-1874* (Baltimore and London: The Johns Hopkins University Press, 1992), 411 Report of the Landscape Architects and Superintendents, 1871, p. 271 attached as Exhibit A to the Addendum.

occupants of property adjoining said parkways."⁴
(emphasis added)

The Annual Report of the Buffalo Park Commissioners in 1875 reported concerning Fillmore Avenue, and its incorporation into the park system stating:

issue the bonds of this city, not exceeding in amount the sum of one hundred thousand dollars to defray the expense of taking the lands and improving and embellishing the same. In accordance with this law, the lands designated have been acquired by the city. *By the terms of the act these lands constitute "one of the Chapter 540 of the Laws of 1873, authorized the city "to take for the purpose of a public avenue a strip of land one hundred feet in width running from the Parade southerly" to Seneca street, and empowers the Common Council to approaches or connections to said Park, and may be controlled, improved and embellished in the same manner, in all respects as lands heretofore taken" for park purposes.*⁵ (emphasis added)

A communication from Olmsted was appended to the Report. In it, Olmsted noted that "it was estimated that a total area of five hundred acres of land would be required" for the planned park and parkway system.⁶

⁴ <https://babel.hathitrust.org/cgi/pt?id=umn.31951002583392s&seq=342&q1=parkway>

⁵ [#204 - Annual report of the Buffalo Park Commissioners ... 1871-1892. - Full View | HathiTrust Digital Library](#)

⁶ *Id.*

Olmsted wrote about the significance of parkways to his overall vision and philosophy of urban parks. He wrote:⁷

A park fairly well managed near a large town, will surely become a new centre of that town. With the determination of location, size, and boundaries should therefore be associated the duty of arranging new trunk routes of communication between it and the distant parts of the town existing and forecasted.

These may be either narrow informal elongations of the park, varying say from two to five hundred feet in width and radiating irregularly from it, or . . . formal parkways. They should be so planned and constructed as never to be noisy and seldom crowded, and so also that the straightforward movement of pleasure carriages need never be obstructed, unless at absolutely necessary crossings, by slow-going heavy vehicles used for commercial purposes. If possible, also, they should be branched or reticulated with other ways of a similar class, so that no part of the town should finally be many minutes' walk from some of them; and they should be made interesting by a process of planting and decoration, so that in necessarily passing through them, some substantial recreative advantage may be incidentally gained. It is a common error to regard a part as something produced complete in itself, as a picture to be painted on canvas. It should rather be planned as one to be done in fresco, with constant consideration of exterior objects, some of them quite at a distance and even existing as yet only in the imagination of the painter.

What is clear from a review of the facts is that the entirety of the Buffalo Park and Parkway System, as designed by Olmsted and as maintained by the City

⁷ *Public Parks and the Enlargement of Towns*, Cambridge MA, 1870, reprinted in S.B. Sutton, ed., *Civilizing American Cities: A Selection of Frederick Law Olmsted's Writings on City Landscapes*, Cambridge, MA, 1971, p. 83.

of Buffalo, was conceived, planned, and implemented as an integrated whole parkland entity.

The trial court in error rejected application of the public trust doctrine and dismissed that claim before the merits of it were presented. Thus, the record does not contain the quotidian evidence of the use of Olmsted's parkway for park purposes as part of everyday life in Buffalo. Judicial notice may be taken that Humboldt Parkway's surviving twins, Bidwell Parkway and Chapin Parkway, see regular use of their greenswards by joggers, walkers and picnickers, as well as concerts by the Buffalo Philharmonic Orchestra and farmers markets. By anyone's definition, the parkways designed by Olmsted for park use, and so-used by generations of Buffalo's residents, deserves recognition as parkland within the meaning of the public trust doctrine.

ARGUMENT

POINT ONE

HUMBOLDT PARKWAY WAS CREATED AS PARKLAND BY THE NEW YORK STATE LEGISLATURE

As land both dedicated and consistently used as parkland, Humboldt Parkway could not be alienated without the Legislature's express approval. Such approval was never granted. Respondents' reliance on enactment of the

Legislature's Article 12-B of the Highway Law, L 1947, ch. 765 is unavailing as the Legislature did not in fact expressly approve of the alienation of parkland, nor did it provide Respondents authority to alienate parkland for non-park purposes. Without such explicit legislative authority, the alienation of Humboldt Parkway was and remains to this day, illegal.

The New York State Attorney General has spoken to this specific issue.

Alienation of parkland is held in the public trust and may not be diverted to other uses or sold without authorization of the State legislature.⁸

Significantly, no such authorization was plainly conferred by the Legislature to alienate Humboldt Parkway.

POINT TWO

HUMBOLDT PARKWAY IS AN INTEGRAL PART OF OLMSTED'S FIRST PARK AND PARKWAY SYSTEM AND IS WORTHY OF RESTORATION

The dispute before the Court arises from a generational opportunity to rectify a longstanding error which occurred when Humboldt Parkway was demolished in favor of a limited access, multi-laned highway. That project rejected

⁸ 1981 N.Y. Op. Atty. Gen. (Inf.) 242 (1981); 1984 N.Y. Op. Atty. Gen. (Inf.) 93 (1984) R. 90, 94.

visionary planning and landscape art in favor of the car culture of post-World War II era.

The historic significance of Humboldt Parkway, now the Kensington Expressway, represents a pattern of bad decisions made in and for Buffalo, including the demolition of Frank Lloyd Wright's Larkin Office Building, demolition of the 1901 Pan American Exposition structures. Some of these bad decisions are irreversible, others, specifically restoring Humboldt Parkway, remain attainable. It is the loss of these treasures that amplifies the need to preserve and promote those resources of unique beauty and historic significance. The Buffalo Olmsted Park and Parkway System is legacy treasure we enjoy and which we are civically, legally, and morally obligated to protect and restore.

Olmsted's work came at a time of rapidly increasing urbanization and industrialization. Influenced by Baron Georges-Eugène Haussmann, whose work included the iconic Parisian boulevards and urban parks, Olmsted and his partner, Calvert Vaux, saw urban parks as public spaces to provide common ground and relief from urban life.⁹

⁹ David Schuyler and Jane Turner Censer, *The Papers of Frederick Law Olmsted, Vol. VI: The Years of Olmsted, Vaux & Company, 1865-1874*. (Baltimore and London: The Johns Hopkins University Press, 1992), 411 Report of the Landscape Architects and Superintendents, 1871.

In addition to its legislative designation as parkland, Humboldt Parkway fits within the definition of parkland as that term has been determined by New York courts.

A park is a pleasure ground set apart for recreation of the public, to promote its health and enjoyment. *Perrin v. New York Cent. R. Co.*, 36 N.Y. 120, 124 (1867). It need not, and should not, be a mere field or open space. * * * Differences naturally arise as to the meaning of the phrase 'park purposes.' * * * Monuments and buildings of architectural pretension which attract the eye and divert the mind of the visitor, floral and horticultural displays, zoological gardens, playing grounds, and even restaurants and rest houses, and many other common incidents of a pleasure ground, contribute to the use and enjoyment of the park. The end of all such embellishments and conveniences is substantially the same public good. They facilitate free public means of pleasure, recreation, and amusement, and thus provide for the welfare of the community. The environment must be suitable and sightly or the pleasure is abated. Art may aid or supplement nature in completing the attractions offered.'

Williams v. Gallatin, 229 N.Y. 248, 253, 254 (1920). As originally designed, and as used and enjoyed by generations, Humboldt Parkway met all of these criteria.

Olmsted's park and parkway design also holds particular significance and relevance to our modern situation. Its design unites the city of Buffalo with green space, providing recreation and gathering space for the benefit of the community as a whole as well as for individual neighborhoods.

As illustrated by original design plans, Humboldt Parkway was originally designed as a linear park connecting The Park [now Delaware Park] to the Parade [now Martin Luther King Jr. Park]. These plans reinforce the essential role of the parkways as regards the entire Olmsted Park System.



These maps, referenced in the Appellants' opening brief, illustrate the landscaped "drives" and their separation and distinction from the city streets.



The photograph to the side and below from 1951, with its parkland and park drives (as opposed to streets) dramatically illustrates the function and role of Humboldt Parkway as a linear park connecting Delaware Park via Agassiz Circle, to Humboldt Park, now Rev. Martin Luther King, Jr. Park:

The Buffalo Park and parkway system is not the only example of Olmsted's use of



linear parks. Atlanta, Georgia is home to Druid Hills¹⁰, an Olmsted-planned residential community which features a 45 acre greenspace and old growth forest comprising a linear park and parkway, which is a major design feature of the project. Similarly, in Louisville, Kentucky, Olmsted’s design features 17 parks connected by nearly 15 miles of linear parkways. Known as the “Louisville Loop,” it features three original parks connected by “ribbons of green” that became the parkways.¹¹ There are several similarities to Humboldt Parkway in addition to their linear park components. The linear parks of Louisville’s Park system and Druid Hills were intended to extend the park experience as one traveled through them between larger parks. While Druid Hills’ linear park was also threatened by a proposed roadway in the post-WWII era, luckily, massive protests and grassroots efforts secured this historic greenspace for continued park use.

Visitors to Boston, Massachusetts are familiar with Olmsted’s “Emerald Necklace,” a chain of parks and waterways connecting twelve larger parks including but not limited to Boston Common, The Public Garden, Commonwealth Avenue Mall, The Fens, the Arnold Arboretum, and ultimately Franklin Park.

¹⁰ <https://www.tclf.org/sites/default/files/microsites/landslide2024/locations/druidhills.html>

¹¹ <https://louisvilleky.gov/government/louisville-loop/olmsted-parkways>



What has been lost of Buffalo's historic infrastructure is immense; what can be regained is of even greater significance. The history of Humboldt Parkway need not end with this progression:

From this:¹³



¹² Olmsted, Olmsted & Eliot - [Norman B. Leventhal Map Center](#), Original plan of the necklace from 1894.

¹³ Photo is of Humboldt Parkway in 1935 Buffalo and Erie County Historical Society.

And this: ¹⁴



To this: ¹⁵



And now the once majestic Humboldt Parkway looks like this:

¹⁴ Photo is of Lincoln Parkway, which is Humboldt Parkway's surviving twin.

¹⁵ Photograph depicts Humboldt Parkway in 1960 Buffalo and Erie County Historical Society.



In addition to its legislative designation as parkland, Humboldt Parkway fits within the definition of parkland as that term has been determined by New York courts. As originally designed, and as used and enjoyed by generations, Humboldt Parkway met all of these criteria.

POINT THREE

THE TRIAL COURT DETERMINATION THAT HUMBOLDT PARKWAY WAS NOT A PARK WAS IN ERROR

Land can achieve “parkland” status in many ways such as:

passage of a law or ordinance formally establishing a park followed by its improvement and extensive use by the

public. In other cases the dedication may be less clear but may arise by implication based upon a variety of factors. Included among those factors which have been considered by the courts are the following: the purpose for which the property was originally acquired by the municipality; the extent and duration of public use; and the extent to which municipal funds may have been expended to improve the property. (internal citations omitted)

R.95

Olmsted scholars have recognized Buffalo parkways as “ribbons of public space ...that facilitated movement through the city and served as neighborhood outdoor resting places” [R.108] and the Buffalo Olmsted Park and Parkway system as “a Principal Park System in the United States” [Id.] Further, within this significant public space, Humboldt Park is recognized by scholars as a “landscaped, linear park” [R. 107].

The purpose of the parkways was to have parkland connecting Delaware Park with Martin Luther King, Jr. Park. As affirmed by Francis R. Kowsky, SUNY Distinguished Professor Emeritus and Olmsted scholar:

From the park [now Delaware Park] to the east side pleasure ground, Olmsted and Vaux now proposed laying out another parkway two hundred feet wide. Leaving the park at its south east corner, this parkway turned southward in a “noble curve” before straightening out and proceeding south parallel to Jefferson Street. [R.112]

Evidence supports the conclusion that Humboldt Park was, from the onset, intended to be a linear park. In 1868, Olmsted wrote to William

Dorsheimer, a Buffalo attorney involved in the establishment of the Buffalo Park and Parkway system, saying:

Through these strips a series of roads and walks adapted exclusively for pleasure travel should eventually be formed and *outside of them roadways to answer the purpose of streets, for ordinary traffic, which could thus be disassociated from the movement to and from the park.* So much of these strips as would not be wanted for passage-ways should be occupied by turf, trees, shrubs and flowers; they should follow existing lines of streets as far as practicable...and they should be laid out as to connect the two subordinate grounds [Front Park And the Parade, the present Martin Luther King Jr. Park] (emphasis added) [R. 113]

This passage directly contradicts the conflation by the Trial Court of the roadways and the linear park which was the parkway. Olmsted's vision was clear – the parkways were a part of the park system but were also to function as parkland in their own right. They were to be adjacent to the roadways but separate and distinct from the roadways.

Olmsted continued, stating:

Thus, at no great distance from any point of the town, a pleasure ground will have been provided for, *suitable for a short stroll, for a playground for children, and an airing ground for invalids*, and a route of access to the large common park of the whole city of such a character that most of the steps on the way to it would be taken in the midst of a scene of sylvan beauty and with the sounds and sites of the ordinary town business, if not wholly shut out, removed to some distance and placed in obscurity. *The*

way itself would thus be more park-like than town-like.
(emphasis added) [Id]

Again, the intent was clear from the start that the parkways were not a part of the city streets but rather were separate and shielded from them to maintain the park experience on the parkways and as one moved between the component elements of the park and parkway system.

In addition, the remaining parkways are recognized by the United States Department of the Interior as parkland and the National Register of Historic Places lists them as parkland equally with the parks. [R.114] The City of Buffalo also implicitly recognized Humboldt Parkway as parkland as it was continuously maintained by the Buffalo Park Commissioners and then by the Buffalo Department of Parks [*Id.*]. Extensive use of Humboldt Parkway over a substantial period of time was for recreational purposes, including horseback riding, strolling, picnicking, community events, and children's games [R. 116-117, 119].

The Trial Court's decision recognizes that roads were properly part of parkland when Humboldt Parkway was designed by Olmsted in the latter part of the nineteenth century:

In the latter part of the nineteenth century and early part of the twentieth century the question of whether there should even be roads in parks was quite clear. "[It] had therefore been important to insure that ... families had the most pleasant surroundings possible to drive through, and within the

city's limits the most pleasant surroundings were those provided by parks. *The provision of pleasant scenery for drivers to enjoy was, in fact, a primary function of parks ...*” Caro, Robert, *The Power Broker, Robert Moses and the Fall of New York*, 1974, Vintage Books Edition, p. 483 (emphasis supplied).

(R. 787) Thus the Trial Court acknowledged that when Humboldt Parkway was built, its drives were used for a park purpose: providing for pleasure drives, and this was a “primary function” of roads within parkland. *See, e.g., Buffalo, L. & R. Ry. Co. v Hoyer*, 214 N.Y. 236, 248 (1915).

The Trial Court appears to have been persuaded that parkland could be alienated by intrusions of non-park use. The Trial Court discovered evidence in the historical record on the internet that automobiles were “traveling on the street and parked along curbs next to driveways” in Humboldt Parkway in the 1940s. But even if there was non-park traffic on the historic drives of Humboldt Parkway, this later development was because of the continuous park use of the greenswards by the public, and immaterial because “once a dedication has become complete, it is irrevocable.” *See Gewirtz v. City of Long Beach*, 69 Misc. 2d 763, 773 (Sup. Ct. Nassau Cnty. 1972), *aff’d*, 45 A.D.2d 841 (2d Dep’t 1974).

Examination of the factors considered to determine parkland leads to the inevitable conclusion that Humboldt Parkway was, in fact, parkland. It was acquired to be parkland, it was designed from inception to an integral piece of the Olmsted Park and Parkway System, designed to be separate and

distinguished from adjacent roadways, has been recognized by the United States government and by Olmsted scholars as parkland. Finally, it was consistently and uninterruptedly used as parkland and was so maintained by the City of Buffalo.

POINT FOUR

THE PASSAGE OF TIME DOES NOT CORRECT OR LEGITIMIZE AN ERROR

The concept of public trust is to “protect certain property so people may use and enjoy it.”¹⁶ New York courts have held that “dedicated parkland cannot be converted to a nonpark purpose for an extended period of time absent the approval of the State Legislature. *Union Sq. Park Community Coalition, Inc. v New York City Dept. of Parks & Recreation*, 107 AD3d 525, (First Dept. 2013) aff’d 22 N.Y.3d 648 (2014).¹⁷

¹⁶ Fink, Steven (2018) “The Public Trust Doctrine: The Development of New York’s Doctrine and How it Can Improve,” *Touro Law*, Vol. 34, No. 4, Article 16, p. 1205. Available at: <https://digitalcommons.tourolaw.edu/lawreview/vol34/iss4/16> and a copy is attached as Exhibit B in the Appendix.

¹⁷ See, also, *Matter of Raritan Baykeeper Inc. v. City of New York* 42 Misc. 3d 1208 (Supreme Court, Kings County, 2013 (“The long recognized “Public Trust Doctrine” prohibits the diversion of parkland to any use which is not consistent with public use and enjoyment of a park unless the use has been authorized by the State Legislature... There is a formidable body of case law which stands for the proposition that any “non-park use” of a park requires legislative approval”

The judiciary is not bound to uphold the status quo where it violates constitutional or statutory requirements. Courts have the authority—and the responsibility—to intervene where a historic wrong has occurred, including in cases where parkland has been used or conveyed in violation of the public trust doctrine. As the court noted in *Brown v. Board of Education*, “antiquity does not make a practice constitutional.” *Brown v. Board of Education*, 347 U.S. 483 (1954) Similarly, in *People v. Hobson*, 39 N.Y.2d 479 (1976), the New York Court of Appeals emphasized that precedent must be based on sound reason, and that age alone is no defense to continued injustice. More recently and more locally, the posthumous admission to the Bar of the State of New York of Ely Samuel Parker. Parker, an engineer and veteran who, although law trained, was denied admission to the Bar based on his Native American status for over one hundred years.¹⁸ Mr. Parker’s recent admission to the Bar emphasizes the power of the Courts to correct longstanding errors and wrongs, such as this. Here, the fact that the Legislature did not act to alienate Humboldt Park remains a glaring omission which requires recognition and present-day action.

One need not rely on imagination to conjure an image of the grandeur of Humboldt Parkway and its vital role as a place for recreation and community

¹⁸ See: The New York Times, November 19, 2025, p. A 18, a copy of which appears in the Addendum as Exhibit B.

events and, but merely to consider its more fortunate sisters of Chapin, Lincoln, and Bidwell Parkways as they still exist and which are used for concerts, farmers' markets, open air yoga classes, sunbathing, birthday parties, and myriad other park uses.

CONCLUSION

The passage of time does not correct a wrong, nor does an unwillingness to acknowledge that an injustice was done. For all of the above-stated reasons, it is respectfully requested that this Court declare Humboldt Parkway to be parkland, to acknowledge that the alienation of Humboldt Parkway was performed without an action of the State Legislature, and to determine that this alienation was a violation of the public trust and restoration of Humboldt Parkway is the only lawful and just path to remedy this historic wrong.

Dated: Buffalo, New York
January 2, 2026

HURWITZ & FINE, P.C.

By: 

Counsel for Amicus parties

PRINTING SPECIFICATIONS STATEMENT

I hereby certify pursuant to 22 N.Y.C.R.R. § 1250.8(j) that the foregoing brief was prepared on a computer using Microsoft Word.

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Dated: January 2, 2026

ADDENDUM

EXHIBIT A

- of the numerous species of evergreen oak he had mentioned to Olmsted. Most grow in tropical or semitropical areas (Liberty Hyde Bailey, *The Standard Cyclopedia of Horticulture*, 3 vols. [New York, 1939], 3: 2881, 2890–91).
5. Battle Pass, site of an engagement during the battle of Long Island (1776), was located in the Ravine area of Prospect Park. Like the Ramble in Central Park, the Ravine had a rocky, rugged topography suitable for picturesque arrangement (Clay Lancaster, *Prospect Park Handbook* [1967; rpt. ed., New York, 1972], pp. 22–23).
 6. Olmsted is referring to the initial stages of the planning of a new suburban community at Riverside, Illinois.
 7. Emery E. Childs, president of the Riverside Improvement Company, wanted to pay the firm of Olmsted, Vaux & Company in stock or with lots in the subdivision (FLO to MPO, Aug. 23, 1868, above).
 8. James Colwell Aldrich (1838–1900), an engineer, did prepare the topographical survey of the Riverside property. He later was an engineer for the Riverside park and parkway operations in New York City (FLO, checkbook entry, Sept. 2, 1868; FLO, patronage journal, Dec. 1876).
 9. John Bogart.
 10. Charles Cyril Martin (1831–1903), a civil engineer, graduated from Rensselaer Polytechnic Institute in 1856. His early career included work on the Brooklyn water system and at the Trenton Locomotive and Machine Manufacturing Company. During the Civil War he, as an engineer in the Union army, built bridges and manufactured arms. He was chief engineer of Prospect Park during the period of most intensive construction, leaving in 1870 to become first assistant engineer of the Brooklyn Bridge (NCAB).
 11. Olmsted had been in Buffalo on August 16 and 17, where he met with William Dorsheimer and examined potential sites for a park system for that city. He left for Chicago the morning of the seventeenth, and when he returned to Buffalo on August 23 found to his surprise that he was the featured speaker at a meeting, chaired by former president Millard Fillmore, to promote park development. A newspaper account of that meeting indicates that Olmsted conceived of the Buffalo park system in its entirety during this visit. According to the *Commercial Advertiser*, Olmsted suggested that, commencing with the base ball lot and grounds in the vicinity, a small auxiliary Park might be constructed, giving a beautiful river front; from this a Boulevard could be laid out, with roads for business and pleasure travel, leading to the land on either side of Delaware street north of the cemetery, where the Central Park would be located. Thence, by another roadway or Boulevard similar to the one first mentioned, to the elevated land in the neighborhood of High and Jefferson streets, where another small Park of thirty acres, more or less, for the accommodation of citizens in that vicinity, might be established, and in which, if the city carried out the plan of enlarging the Water Works, the tower could be erected.
The territory suggested for the Central Park Mr. Olmstead thought peculiarly adapted to the purpose. The soil was of a desirable character: there were groves of splendid forest trees upon it; the land was undulating, and would require less labor in beautifying and improving; and a lake could be formed from Scajawaqua creek, which runs through it.
The park and parkway development Olmsted outlined at this meeting became the Front, the Park, and the Parade, as well as Lincoln and Humboldt parkways (FLO to MPO, Aug. 16, 1868; FLO to MPO, Aug. 23 and 25, 1868, both above; *Buffalo Commercial Advertiser*, Aug. 26, 1868, p. 3).
 12. Frederick Clarke Withers (1828–1901), an English-born architect best remembered for his Gothic Revival churches, had immigrated to the United States in 1852 to

EXHIBIT B

Seneca Soldier and Statesman Can Finally Add Lawyer to His Legacy

The New York Times

November 14, 2025 Friday 23:28 EST

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Section: NYREGION

Length: 872 words

Byline: Justin Murphy and Tony Cenicola

Highlight: Ely Samuel Parker, a Native American who served as an aide to Ulysses S. Grant during the Civil War, was kept from practicing law during his lifetime.

Body

Even more than a century after his death, Ely Samuel Parker, an aide to Ulysses S. Grant during the Civil War and an official in the federal government, is still adding to his achievements.

On Friday, Parker was admitted to the New York State Bar, 176 years after he was denied entry because of his race, becoming the first Native American to be admitted to a state bar posthumously, according to legal experts.

Parker was a member of the Senecas, one of the nations of the Haudenosaunee (or Iroquois) Confederacy that had called western and central New York home for centuries. The law, however, did not consider most Native Americans U.S. citizens when Parker first attempted to become a lawyer at about 21 years old.

"His identity should never have been in question," Melissa Parker Leonard, a descendant of Parker's, said during the ceremony at a Buffalo courthouse. "The failure was never his; it was the law itself."

Parker, who rose to become a high-ranking officer in the U.S. Army, is best known for his service during the Civil War. He helped draft, and then wrote out by hand, the terms of surrender that Robert E. Lee signed in April 1865.

"I am glad to see one real American here," General Lee said, noting Parker's presence.

But that acknowledgment was not shared by the legal system. Most Native Americans did not qualify for citizenship until the 1924 Indian Citizenship Act, almost 30 years after Parker's death.

Parker was born as Hasonoanda, or "Leading Name," on the Tonawanda Seneca Reservation near Buffalo in 1828.

At 19 he moved to Ellicottville, in western New York, to "read the law" under William P. Angel, a local district attorney. At the time, such apprenticeships were the most common way to train as an attorney.

When he was blocked from admission to the bar in 1849, he instead went on to become a civil engineer. It was in that role, on a federal construction project in Illinois, that he met Grant in 1860. After the war, the general named Parker the federal Commissioner of Indian Affairs, making him the first Native American to fill that office.

Despite having been denied credentials as an attorney, Parker was instrumental in the Senecas' decades-long fight to reclaim their territory at Tonawanda. He worked alongside a white attorney, John Martindale, on a series of lawsuits that culminated in a pair of victories at the U.S. Supreme Court in the late 1850s.

Seneca Soldier and Statesman Can Finally Add Lawyer to His Legacy

"Even without a license, Ely never stopped serving his people," Ms. Parker Leonard said. "The land he helped protect remains Tonawanda territory today."

He died in 1895 without ever having the question of his U.S. citizenship settled.

"Today is Ely's triumph, but it is also all of ours, too, because we stand victorious over the prejudice of the past," said Lee Redeye, deputy counsel for the Seneca Nation of Indians.

Posthumous bar admissions, while rare, have gained some traction in recent years as a way to acknowledge past injustices in the legal profession.

John Browning, a retired federal judge in Texas and professor at Faulkner University Law School in Montgomery, Ala., has studied the trend and helped advance several cases, including that of Parker.

In a [2021 law review article](#), he surveyed instances where bar applicants were initially rejected on racial grounds — they were all either Asian immigrants or Black — and then posthumously admitted. The first was the [2001 case of Takui Yamashita](#), a Japanese immigrant who was denied admission in Washington state in 1902.

At least six other men across the country have been posthumously admitted since Yamashita, including one in New York: William H. Johnson, the first Black graduate of Syracuse University College of Law, who was recognized in 2019.

"This for me is a way to let society know that there is no expiration date on justice," Mr. Browning said.

Mark Montour, the first Native American to serve in a state-level judgeship in New York, was among the justices present during Parker's formal admission ceremony on Friday.

Mr. Montour wore a *gustoweh*, or ceremonial headdress, and recited a version of the traditional Haudenosaunee Thanksgiving address in the Mohawk language.

"I'm honored and humbled to have this position, but it comes with a responsibility to educate people and to make them aware of sovereignty, tribal culture and tribal history," he said.

Native Americans today make up about half of one percent of the attorneys in the United States, according to the American Bar Association.

Mr. Montour and Mr. Redeye said they hoped the posthumous recognition will encourage other young Native Americans to follow in Parker's footsteps.

"Ely's story is an inspirational one; it inspired me when I was in college, to aspire to something higher," Mr. Redeye said. "I hope there's at least one young Native who hears about Ely and is inspired to go into the law and help our people."

ENLARGED PHOTOS



PLATE 27













