

**NELSON
DECLARATION**

)
)
)
)
)
)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

FIVE BOROUGH BICYCLE CLUB,
SHARON BLYTHE, JOSH GOSCIAK,)
KENNETH T. JACKSON, MADELINE)
NELSON, ELIZABETH SHURA, LUKE)
SON,)

Plaintiffs,)

- against -)

THE CITY OF NEW YORK; RAYMOND)
KELLY, Police Commissioner of the New)
York City Police Department; JAMES)
TULLER, Commanding Officer, Patrol)
Borough Manhattan South; Lt. John Doe,)
and Captain Jane Doe, New York City)
Police Department,)

Defendants.)

07 Civ. _____

----- x

I, MADELINE NELSON, hereby declare as follows:

1. My name is Madeline Nelson.
2. I reside at 1825 Foster Avenue, Apt. 2G, Brooklyn, NY 11230.
3. I worked as a corporate communications professional for twenty years. In 2004, I retired in order to dedicate myself to volunteer work. Since 2004, I have volunteered with several nonprofit organizations in New York, using my professional skills to help them develop media relations, brochures, and website content.
4. I have lived in New York City for most of my life and continuously since 2001. I have ridden my bicycle for recreational reasons for many years and have used it as my primary means of transportation for the past two and a half years.

5. I ride my bicycle almost every day. When I ride my bicycle I attempt to comply with all traffic rules.
6. I bicycle because I want to make a statement about people-powered transportation. I want to demonstrate that traveling in New York City by bicycle is viable and that bicycles can supplant private cars.
7. I have a placard on the basket at the front of my bike that says "Bicycling, a quiet statement against oil wars." As I ride around the city a lot of people – even motorists – see the placard and smile at me or give me a thumbs up sign, to show that they support the message.
8. When I ride my bicycle alone in the city I feel like I am putting my life at risk. However, I feel so strongly about promoting bicycling and avoiding motor vehicle travel that the risk does not deter me. Cars often do not share the road with bicyclists and I am constantly concerned that I will be rear-ended or side-swiped by a car that does not see me or respect my right to the road.
9. I often use hand signals and eye contact to notify motorists of the need to maintain a safe distance and speed, or otherwise to yield. Occasionally I will have an explicit conversation with a motorist concerning these subjects, the motorist's obstruction of the bicycle lane, or my general right to occupy a traffic lane at a speed appropriate to bicycles.
10. I first rode in the Manhattan Critical Mass ride in October of 2004 and I have participated in the ride almost every month since.

11. I ride in Critical Mass because I believe that bicycles have a right to use the street in the same way as any other traffic and I want to demonstrate that to the people around me. This is the same statement that I make when I ride alone, but when I am with a large group it focuses and strengthens the message.

12. When I ride in the Critical Mass rides I see spectators take notice of us even more than they do when I ride alone. The number of riders passing by at once attracts a great deal of attention. Pedestrians will stop to watch us go by and they will smile and hoot at us in support. Some will say things like, "Look, it's Critical Mass." Or they might ask "What is this?" in which case we will tell them or give them a flier explaining why we ride. The children that we pass get really excited. So many kids love to ride bicycles but their parents understandably are reluctant to allow them to because it can be so dangerous in the city. Kids love to see that it would be possible to have a city where bikes filled the streets.

13. I also ride in Critical Mass because there is safety in riding in a group. When I am with a large group, cars are more respectful of me and my safety. The group also creates a buffer from the exhaust and the noise of the cars, allowing for a very peaceful ride. Amid the quiet, I am able to talk to the bicyclists around me. It allows me to imagine what it would be like if bicycles, rather than private cars, were the dominant mode of transportation on the streets.

14. During rides, the group will often make its message more explicit by chanting slogans such as "More bikes, less cars." We also sometimes sing bike songs to well-

known tunes. For example, someone changed the words of "Row, row, row your boat" and all those around me and I sang it over and over again. The words were: "Ride, ride, ride your bike proudly down the street. Pedaling, pedaling, pedaling, pedaling, powered by your feet." On another occasion we sang a song to the tune of "Let it Snow," using the following words: "Oh, the weather outside is freezing and the car smog has us wheezing, but since we still choose to bike, let us ride, let us ride, let us ride. The earth is slowly dying, but my dear we're not good-byeing. As long as we love to bike, let us ride, let us ride, let us ride."

15. During rides, people often hand out fliers to pedestrians that we pass along the way. In the past riders have handed out fliers explaining what Critical Mass is and fliers explaining the police treatment of Critical Mass. See attached Exhibit A and Exhibit B for examples. During the summer of 2005, one rider had fortune cookies made up and the fortunes inside each cookie related to bike rights.

16. I think most cyclists participating in Critical Mass try to follow traffic rules and avoid being ticketed and arrested. Manhattan Critical Mass participants have corked intersections, particularly in the period after the RNC when the police stopped providing this service. Since February 2006 participants have, through concerted effort, dramatically reduced this practice in order to minimize tensions with police. During the summer of 2006, when some Manhattan Critical Mass rides drew large numbers of participants, I do not recall observing any corking. Most participants, even those in the middle of the mass, stopped at red lights to allow intersecting traffic to proceed. There is

now a concerted effort to ride close and together and the people at the front of the ride seem to understand that they need to stop when a light is about to turn red in order to keep the ride together.

17. Critical Mass has no leaders. Critical Mass participants encourage each other to ride safely and follow applicable traffic rules, but there is no single leader with responsibility to do so, and there is no ride organizer with putative authority to ask a disorderly participant to leave the ride. The absence of hierarchy allows each participant an opportunity to shape the tone and route of the ride. I would not participate in Critical Mass if there was a person that was responsible for the group's strict compliance with any rules or regulations.

18. Critical Mass has no predetermined route. The route is determined by whomever happens to be at the front of the group at the time. Throughout the ride, the front position changes many times as different people take turns leading the way. The riders are telling New York City residents that bicyclists have a right to be a part of traffic. This message is strengthened by the fact that the ride behaves like traffic – spontaneously going in whatever direction it decides along the way. If police were directing Critical Mass rides, the message would be completely different – perhaps, that bicyclists need the police to make their way, or that the police were there to protect the rest of the City from the bicyclists. I would not participate in Critical Mass if it was required to have a fixed route.

19. During the October 2004 Manhattan Critical Mass ride, the New York Police Department (“NYPD”) announced that a route had been established for the bicyclists to use. It was often difficult to tell whether we were on the route or not. At one point, the police blocked off the route heading south, forcing the riders to turn west, leaving the planned route. I did not realize that we had gone off the route until I saw that there were no police officers around us any longer. We continued west for a bit and then headed back south past Houston Street. We then went east and headed back north toward the West Village. In the West Village we found ourselves on a one-way street that the police had blocked off. The police announced that they would arrest anyone with a bicycle. People began walking their bicycles out of the street on the sidewalk and even those people were arrested. I narrowly escaped arrest.

20. During the November 2004 ride, Union Square was practically empty of civilians but there was a massive police presence. People left Union Square in ones or twos and the police announced that riders couldn’t even ride two abreast or they would be arrested. I left the park by myself and rode home alone.

21. On the February 25, 2005 Manhattan Critical Mass ride, I was arrested. I was two or three blocks out of Union Square going west on 17th Street. On 17th Street there were several black police vehicles and officers on foot blocking the street so I took my bike on the sidewalk and walked it past the vehicles and then returned to the roadway and rode off. I approached the corner of 5th Avenue and waited for the light to turn green so that I could turn into the bike lane on 5th Avenue. I was planning to turn because on the other

side of 5th Avenue there was a trap set up and the police were making arrests. As I waited at the light (dismounted and straddling my bike), an officer ran across the street to arrest me before I could turn. He would not even let me get off my bike, but made me cross 5th Avenue straddling my bicycle.

22. Being arrested was an extremely humiliating experience because I was near the building where I worked at the time. I was concerned that my co-workers would see me being placed into handcuffs and think that I had committed a crime.

23. After my arrest, there was debate amongst the police officers about whether or not to let me go. Ultimately I was charged with three counts: one disorderly conduct charge related to the sound truck that was dismissed because the truck did not constitute legal notice; one disorderly conduct charge for failure to disperse; and the third was for parading without a permit. All of the counts were dismissed due to delays in prosecution caused by the City. It was not until April or May of 2006 and after eleven court appearances that the charges were dismissed. I paid \$750.00 for representation at these appearances.

24. I was also arrested on December 30, 2005. At the time, I was participating as a legal observer for World Carfree Network. In that role my responsibilities were to observe the police behavior and to collect the names and contact information of people who were stopped by the police. I was to give this information to World Carfree Network and the National Lawyers Guild. I was wearing an armband that said "legal observer." I was behind the ride, not with it, and I would stop each time someone was

arrested to get their information. At one point, I got off my bike to approach some people who were being arrested and I was told I was under arrest. I was charged with parading without a permit and disorderly conduct. I was acquitted.

25. I was ticketed without being arrested at a subsequent Critical Mass ride held in November 2006. I was stopped by about 8 officers on motor scooters. Initially I was told that I was being stopped for running a red light. I was certain that the light was green when I went through and I vigorously denied running a red light. The officers searched for some other violation and ended up giving me a ticket for having an inadequate rear light. At the time I had a light mounted on the rear of my helmet, but no light mounted on the back of my bike. The ticket was dismissed in traffic court.

26. I participated in the Brooklyn Critical Mass ride in May, August, and September of 2006. The Brooklyn Critical Mass ride starts from two locations: Grand Army Plaza and Williamsburg Bridge. The ride begins with the two groups gradually making their way to each other. When I participated in the Brooklyn Critical Mass rides, I started from Williamsburg Bridge.

27. The Brooklyn Critical Mass ride is smaller than the Manhattan Critical Mass ride at its height, but at least as large as the Manhattan Critical Mass ride during the winter or periods of particularly heavy police activity.

28. On the three Brooklyn Critical Mass rides that I participated in, I believe there were between 50 and 100 other bicyclists by the time the groups from the two starting points converged.

29. There were police officers present at each of the three rides. At the convergence point, the ride would be accompanied by two scooter units that would stay in touch with each other by beeping. The officers accompanied the ride and facilitated by corking intersections to allow all of the bicyclists to go through together. There was no tension or animosity between the police and the bicyclists. I did not see the officers arrest or ticket anyone.

30. Like Manhattan Critical Mass, Brooklyn Critical Mass has no predetermined route. While the bicyclists were behaving in a cooperative manner with the police, there was no agreed-upon route and I am not aware of anyone supplying a route to the officers.

31. The Brooklyn Critical Mass rides that I participated in felt very safe. I have never seen an accident occur during the rides.

32. The Brooklyn Critical Mass rides that I participated in traveled on some of the most heavily-traveled and congested streets in Brooklyn, including Bedford Avenue in Williamsburg and down through Bedford-Stuyvesant, Avenue D, Church, Linden, Grand Street in Williamsburg, and Ocean Avenue.

33. To the extent that these rides caused any disruption to traffic it was brief and cars were able to get around the group at most times. Traffic was affected when the police officers were corking the intersections, but even then, the disruption was brief.

I declare under penalty of perjury that the foregoing is true and correct.



MADELINE NELSON

16th day of March, 2007

000000

¡Viva Critical Mass!

Still We Ride

Still We Ride

By linking up with others and riding together, we create safety bubbles. This encourages new riders to become more comfortable in their daily commutes. It also pushes the city government to create better infrastructure to support safe biking and other nonpolluting transportation.

**WE BIKE
THIS TOWN**

Last Friday of every month, 7pm, at various points throughout Manhattan, including: Union Square Park North, Washington Square Park, Tompkins Square Park, and Madison Square Park.

Automobile accidents are the No. 1 cause of death for ALL Americans—children and adults—to age 44.

Automobiles kill more Americans every seven years than the total U.S. losses in WWII and Vietnam combined.

(Source: U.S. Department of Health and Human Services)

In New York City—the nation's only city where drivers are a minority:

—An average of 684 car crashes are recorded every day of the year
—More than 17,000 pedestrians or cyclists are struck and injured by automobiles each year

—Drivers killed 1,190 pedestrians and 121 bicyclists between 1995 and 2001

—Cars cause 91% of injuries to pedestrians and cyclists and 76% of deaths

—Trucks cause 7% of injuries and 17% of deaths

—Buses account for about 1% of injuries and 6% of deaths

(Source: New York City and New York State Departments of Transportation)

* Automobile accident figures based on verified (more than one source) statistics compiled from 1994 to 2001 and unverified figures (single source) from 2002 to 2004 inclusive.

Vehicle emissions and other environmental hazards lead to high rates of asthma—the leading cause of hospitalization among children from 0 to 14 years of age.

Approximately 300,000 NYC children under age 17 are diagnosed with asthma at some point in their lives.

Asthma is the leading cause of school absenteeism.

Among adults, 40% of New Yorkers with asthma sought emergency care for asthma in 2002.

(Source: NYC Department of Health and Mental Hygiene)



SECRET



What is Going On?

These cyclists are getting issued tickets and/or being arrested for riding their bicycles in the monthly Critical Mass bike ride. Critical Mass is a leaderless movement of bikes in the streets that occurs the last Friday of the month in 415 cities. It does not mean the same thing for all of its participants; it is a spontaneous celebration of public space & bicycles. It occurred peacefully for 10 years in NYC prior to the Republican National Convention in August 2004. Since then, the NYPD has used increasingly aggressive tactics to stop a legal and fun bike ride.

Why Should You Care?

- Because these are **YOUR** tax dollars being spent. Demand that your City Council Member tell you how much and from what budget it comes.
- Because the use of **excessive force** by the NYPD is endangering public safety.
- Because under new rules issued by the NYPD, as few as **TWO** cyclists, pedestrians, protestors — anyone who breaks a traffic regulation with another person — can be arrested by the police for "parading without a permit." And beginning Aug. 24, 2006, cyclists in groups of 20 or more and pedestrian groups of 35 or more will require a **PARADE PERMIT** from the police.

What Can You Do?

- Tell the Mayor, City Council, press, and everyone you know that we must **STOP** this discriminatory rule from going into effect!
Mayor Bloomberg: www.nyc.gov/html/mail/html/mayor.html
City Council: www.nycouncil.info/constituent/index.cfm
- Attend a People's Forum to learn more:
Thurs., Aug. 17, 7 p.m. at St. Marks Church, 10 St. & 2 Ave.
- Speak out at the public hearing at police headquarters:
Wednesday, Aug. 23, 6 p.m. at One Police Plaza (In order to speak, you must send a postcard, stating that you will attend, to: Assistant Deputy Commissioner Thomas P. Doepfner / NYPD / 1 Police Plaza, Room 1406 / NY, NY 10038)
- Attend a rally and press conference outside the hearing:
Wednesday, Aug. 23, 6 p.m., outside One Police Plaza

www.bicycledefensefund.org