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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FIVE BOROUGH BICYCLE CLUB, SHARON)
BLYTHE, JOSH GOSCIAK, KENNETH T.)
JACKSON, MADELINE NELSON, ELIZABETH) 07 Civ. _____ (_____)
SHURA, and LUKE SON,)

Plaintiffs,)

COMPLAINT

- against -)

THE CITY OF NEW YORK, RAYMOND)
KELLY, Police Commissioner of the New York)
City Police Department, JAMES TULLER,) **ECF Case**
Commanding Officer, Patrol Borough Manhattan)
South, and LT. JOHN DOE and CAPTAIN JANE)
DOE, New York City Police Department,)

Defendants.)

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Plaintiffs, by their attorneys, Debevoise & Plimpton LLP, for their Complaint against Defendants, allege as follows:

Preliminary Statement

1. This action concerns Plaintiffs' rights to engage in group bicycling activity that is constitutionally protected as speech, expressive conduct, association and travel. Plaintiffs seek to vindicate their right to bicycle in groups of 50 or more persons free from Defendants' burdensome new permitting requirements, unnecessary route restrictions, discriminatory prosecution and retaliation, and unlawful surveillance and undercover infiltration by police. As described in further detail below, each of Plaintiffs have been subjected to one or more of these violations of their rights under the U.S. Constitution.

2. Five Borough Bicycle Club ("5BBC") and Kenneth T. Jackson ("Jackson," and together with 5BBC, the "Organizer Plaintiffs"), organize group bicycle rides in New York City. 5BBC is a bicycling club that organizes approximately 250 group bicycle rides that take place at least in part within New York City each year, several of which include 50 or more participants. Jackson is a Professor of History at Columbia University and a preeminent scholar of New York City history. Jackson organizes one group bicycle ride each year, on which he conducts a nighttime tour of New York City for approximately 250 of his students and others.

3. Plaintiffs Sharon Blythe ("Blythe"), Josh Gosciak ("Gosciak"), Madeline Nelson ("Nelson"), Elizabeth Shura ("Shura"), and Luke Son ("Son," and together with

Blythe, Gosciak, Nelson, and Shura, the “Individual Plaintiffs”), bicycle daily in New York City. The Individual Plaintiffs have each participated, and each intend to participate, in many of the approximately 1,000 group bicycle rides that take place in New York City each year.

4. Since 1993, bicyclists in New York City have participated in a group ride known as “Critical Mass.” Critical Mass is a worldwide event held each month, in which bicyclists ride together without a fixed route or designated leaders in celebration of bicycling. Critical mass has no organizers or standing organization associated with it. In New York City, bicyclists gather on the last Friday of each month at Union Square Park at approximately 7 p.m. and then proceed together for their Critical Mass ride. There is also another, smaller Critical Mass ride held on the second Friday of each month in Brooklyn. The Individual Plaintiffs each have participated in Manhattan and Brooklyn Critical Mass rides, and desire to participate in future Critical Mass rides.

5. Courts have found that Critical Mass and other group bicycle rides involve expression protected under the First Amendment to the United States Constitution. *See, e.g., Bray v. City of New York*, 346 F. Supp. 2d 480, 488 (S.D.N.Y. 2004); *Transportation Alternatives, Inc. v. City of New York*, 340 F.3d 72; 2003 (2d Cir 2003).

6. Between 2000 and the summer of 2004, a small number of officers from the New York Police Department (“NYPD”) typically was present at Manhattan Critical Mass rides, and would escort the bicyclists by scooter, block intersections for them to

allow the group to stay together (known as “corking” an intersection), and allow bicyclists to cork intersections. Prior to the summer of 2004, there were few if any arrests or summonses issued to Manhattan Critical Mass participants, although the rides on some occasions included 1,000 or more participants.

7. In August 2004, immediately prior to the Republican National Convention (“RNC”) about to be held in New York City, large numbers of Manhattan Critical Mass participants joined in with other persons engaged in political demonstrations against the RNC. More than 300 bicyclists were arrested in connection with the RNC, and charged with parading without a permit in violation of New York City Administrative Code § 10-110 (“Section 10-110” of the “NYCAC”) and other offenses.

8. In subsequent months, the Defendants and their predecessors attempted to compel Manhattan Critical Mass to obtain a parade permit from NYPD pursuant to Section 10-110. NYPD will not issue a permit for a procession unless the route and the “Chief Officer” of the procession are proposed and approved in advance. Because the route of a Critical Mass ride is determined extemporaneously by whomever happens to be at the front of the ride, and because it has no organization or organizers, Critical Mass cannot comply with these requirements. No application for a parade permit has been submitted for any Critical Mass ride.

9. In response to the failure of Manhattan Critical Mass to obtain a parade permit, Defendants have attempted to suppress it using a variety of methods, most of which have been rejected by courts:

- Mass Arrests. From September 2004 through December 2005, Police have arrested approximately 300 bicyclists in connection with Manhattan Critical Mass rides on charges of parading without a permit and disorderly conduct. More than 90% of these charges have been dismissed, many for lack of merit and/or based on constitutional concerns. *See, e.g., People v. Barrett*, 821 N.Y.S.2d 416 (N.Y. City Crim. Ct., N.Y. Cty. 2006).
- Aggressive Containment and Pursuit Tactics. NYPD has engaged in dangerous motorized pursuit of Manhattan Critical Mass participants, which include pursuing bicyclists against the flow of traffic and on bicycle paths, and suddenly cutting across the paths of moving bicyclists without warning. Several injuries have resulted from these tactics.
- Unlawful Surveillance. NYPD personnel have engaged in extensive video surveillance of Manhattan Critical Mass and other group bicycle rides. On February 15, 2007, Judge Haight found that NYPD's surveillance of bicyclists was unauthorized and unlawful, and directed NYPD to cease. *See Handschu v. Special Svces. Div.*, No. 71 Civ. 2203, slip op. at 34 (S.D.N.Y. Feb. 15, 2007).
- Undercover Infiltration. NYPD undercover personnel have participated in Manhattan Critical Mass and other group bicycle rides, posing as civilian bicyclists for surveillance and other purposes.
- Mass Ticketing. Beginning in February 2006, NYPD officers began to issue large numbers of summonses to Manhattan Critical Mass participants, including for violations of New York Vehicle & Traffic Law § 1234(b) — a law that is not in effect in New York City. NYPD has since agreed to dismiss those summonses, on that ground. NYPD continues to issue large numbers of summonses to Manhattan Critical Mass participants for equipment violations, such as missing or improperly mounted lights or bells.
- Attempted Injunctions. NYPD has sought, twice, to obtain an injunction against Manhattan Critical Mass. Judge Pauley of the Southern District of New York and Justice Stallman of New York Supreme Court each refused

to issue such an injunction, in part based on constitutional concerns. See *Bray v. City of New York*, 346 F. Supp. 2d 480 (S.D.N.Y. 2004); *Bray v. City of New York*, 356 F. Supp. 2d 277 (S.D.N.Y. 2004); *City of New York v. Times' Up, Inc.*, 814 N.Y.S.2d 890 (Sup. Ct. N.Y. Cty. 2006).

10. Unable to compel Manhattan Critical Mass to obtain a parade permit using the methods described above, Defendants now have used their rulemaking power to change the law, so that any “recognizable group” of 50 bicyclists — whether or not associated with Critical Mass — is by definition a “parade” subject to arrest unless it is proceeding pursuant to a parade permit issued by NYPD. See 8 Rules of the City of New York § 19-02(a) (effective Feb. 25, 2007) (together with Section 10-110, the “Parade Rules”).

11. Defendants’ enforcement practices are hopelessly and unconstitutionally inconsistent. Despite NYPD’s two-year campaign since the RNC to suppress or force Manhattan Critical Mass to obtain a parade permit, NYPD has not required or asked Brooklyn Critical Mass participants to obtain a parade permit. Since September 2004, Brooklyn Critical Mass has proceeded on a monthly basis without a fixed route or designated leaders, its course determined extemporaneously by whomever happens to be at the front of the ride. During the period of September 2004 through the present, Brooklyn Critical Mass has ranged in size from approximately 10 to 100 participants. NYPD officers on scooters often escort Brooklyn Critical Mass, sometimes corking intersections for them, as NYPD officers escorted Manhattan Critical Mass prior to the RNC.

12. On information and belief, Defendants have engaged in a systematic campaign to retaliate and selectively prosecute the laws against the Individual Plaintiffs, based upon their association with Manhattan Critical Mass and their other exercises of constitutionally protected rights. As part of that campaign, Defendants have promulgated the Parade Rules, which violate the constitutional rights not only of the Individual Plaintiffs, who have participated in Critical Mass, but also of the Organizer Plaintiffs, which are not associated with Critical Mass.

13. The Parade Rules impose an unwarranted and unconstitutional burden on all group bicycle rides including 50 or more participants. Under the rules, participants in 50-person bicycle rides are required to *(a)* obtain advance approval from the NYPD of their route and destination; *(b)* appoint a “Chief Officer” to be held responsible for the conduct of the group; and *(c)* exclude from their planned route most of 5th Avenue, and most streets “ordinarily subject to great congestion or traffic congestion.” *See* Section 10-110. Because NYPD has failed to provide a reasonable process for obtaining a permit, completing and submitting a parade permit application can take 6 hours.

14. Plaintiffs therefore bring this action to vindicate their rights under the First and Fourteenth Amendments of the Constitution of the United States, and under the Civil Rights Act, 42 U.S.C. Section 1983. Plaintiffs seek a declaration that Defendants’ new Parade Rules are unlawful, and a preliminary and a permanent injunction against the enforcement of the rules. With the instant Complaint, Plaintiffs file their Motion for a Preliminary Injunction against enforcement of the rules. In addition, the Individual

Plaintiffs seek an injunction against Defendants' retaliation and selective prosecution of the laws against them based on their past and future participation in Critical Mass.

Plaintiffs also seek an award of attorney's fees.

Parties

15. Plaintiff 5BBC is a not-for-profit corporation organized under the laws of the State of New York with its headquarters at New York International HI-AYH Hostel, 891 Amsterdam Avenue, New York, NY 10025-4403. 5BBC is a bicycle club that promotes group bicycling trips in New York City through group bicycle trips it organizes and other activities.

16. Plaintiff Blythe is a resident of New York, New York.

17. Plaintiff Gosciak is a resident of New York, New York.

18. Plaintiff Jackson is a resident of Mt. Kisco, New York.

19. Plaintiff Nelson is a resident of Brooklyn, New York.

20. Plaintiff Shura is a resident of Brooklyn, New York.

21. Plaintiff Son is a resident of New York, New York.

22. Defendant The City of New York (the "City") is a municipal entity organized and existing under the laws of the State of New York. It is authorized by law to maintain a police department, which acts as its agent in the area of law enforcement

and for which it is ultimately responsible. The defendant assumes the risks incidental to the maintenance of a police force and the employment of police officers as said risks attach to the public consumers of the services provided by NYPD.

23. Defendant Raymond Kelly ("Kelly") has been the Police Commissioner of the New York City Police Department since January 2002, and was acting in his official capacity at all relevant times herein. He is sued in his official capacity.

24. Defendant James Tuller ("Tuller") has been an Assistant Chief in the New York City Police Department and the Commanding Officer of Patrol Borough Manhattan South since February 2007, and was acting in his official capacity at all relevant times herein. He is sued in his official capacity. Tuller's predecessor was Bruce Smolka ("Smolka"), who served as Assistant Chief in the New York City Police Department and the Commanding Officer of Patrol Borough Manhattan South from May 2004 until February 2007.

25. Defendants Lt. John Doe and Captain Jane Doe ("John Doe" and "Jane Doe," respectively) were, at all times relevant hereto, supervisory employees of NYPD, acting in such capacity as agents, servants, and employees of the City. John Doe and Jane Doe act under the supervision of Tuller and supervise NYPD personnel assigned to surveil and police Critical Mass participants. They are sued in their respective official capacities.

Jurisdiction And Venue

26. This action is brought pursuant to 42 U.S.C. § 1983 and 1988 and the First and Fourteenth Amendments to the Constitution of the United States.

27. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and § 1343(a)(3-4). This Court has jurisdiction to grant declaratory relief pursuant to 28 U.S.C. § 2201 and § 2202. An award of costs and attorney's fees is authorized pursuant to 42 U.S.C. § 1988.

28. Venue is proper pursuant to 28 U.S.C. § 1391(b) in that Plaintiffs' claims arose in the Southern District of New York.

The Rules And Statutes At Issue

29. NYCAC Section 10-110 requires a permit for a "procession, parade, or race . . . upon any street or in any public place."

30. Acting under delegated rulemaking authority, the NYPD modified chapter 19 of title 38 of the Rules of the City of New York, which sets certain definitions and rules for processions and parades regulated under NYCAC § 10-110. The modifications affected the definitions of the terms "parade," "Fifth Avenue," and "applicant," as shown in underscoring (additions) below:

- a. A "parade[or procession]" is any [march, motorcade, caravan, promenade, foot or bicycle race, or similar event of any kind,] procession or race which consists of a recognizable group of 50 or more pedestrians, vehicles, bicycles or other devices moved by human power, or ridden, or herded animals proceeding together upon any public street or roadway.

b. “Fifth Avenue” shall mean Fifth Avenue in the borough of Manhattan south of 114th Street and north of 15th Street.

c. “Applicant” shall mean the person or entity that applies for a permit authorizing a parade. Any person or entity responsible for organizing a parade, or any person or entity that publicizes a parade through advertisements of other means of mass communication, is authorized to act as applicant.

31. As a result of these modifications, a “recognizable group” of 50 or more bicycles now constitutes a “parade” subject to various restrictions and requirements set forth in 38 RCNY § 19-00 *et seq.* and NYCAC Section 10-110, including:

- A ban on “parades” on most of 5th Avenue, except for those parades conducted there prior to the passage of Section 10-110 in 2001, *see* 38 RCNY § 19-04(d).
- A ban on “parades” conducted on “any street or any public place, or material portion thereof, which is ordinarily subject to great congestion or traffic and is chiefly of a business or mercantile character,” except on Sundays, holidays, or after 6:30 pm, or with special permission from the Mayor for “events of extraordinary public interest,” *see* NYCAC § 10-110(a)(2); 38 RCNY § 19-01(a) (setting forth definition of “events of extraordinary interest”);
- The requirement that an applicant obtain a written permit prior to conducting a “parade” *see* NYCAC § 10-110(a); and
- The requirement that the “chief officer of any [“parade”] . . . for which a permit may be granted by the police commissioner, shall be responsible for the strict observance of all rules and regulations included in said permit”, *see* NYCAC § 10-110(5).

32. The Parade Rules do not define the core term “recognizable group.” The Parade Rules also do not define streets “ordinarily subject to great congestion or traffic.”

33. 38 RCNY Chapter 19 sets forth additional rules regulating the permit process, including:

- An application for a parade permit must be notarized and filed with the precinct in which the parade formation area is located, or with the office of the Chief of the Department if the parade route includes any portion of 5th Avenue in the borough of Manhattan or the parade includes 1,000 or more participants. 38 RCNY § 19-03(b).
- An application for a parade permit must include, among other things, the route of the parade; the locations and approximate times for the formation and dismissal of the parade; the number of participants or vehicles which will constitute the parade and a description of such vehicles; the width of the roadway to be occupied by the parade; and the identity of any grand marshal or chief officer of the parade and his or her name, address and telephone number. 38 RCNY §19-03(b)(2).

34. NYCAC Section 10-110(3)(c) authorizes the imposition of a fine and/or imprisonment on “every person participating” in a “procession, parade or race, for which a permit has not been issued.” Any such person who refuses to comply with a lawful order of the police to disperse is also liable for a misdemeanor. NYCAC Section 10-110 does not require intent or knowledge as an element of such violation. NYCAC Section 10-110 also does not contain a good faith exception.

35. Bicyclists are subject to specific provisions of the New York State Vehicle and Traffic Law. Under New York State law, “[e]very person riding a bicycle . . . upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle, . . . except as to special regulations . . . and except as to those provisions . . . which by their nature can have no application.” N.Y. Veh. & Traf. Law § 1231.

Rationales for Group Bicycling

36. New York City is home to more than 120,000 regular daily bicyclists, the largest such population of any North American city. Through dozens of clubs and associations, these bicyclists organize or participate in approximately 1,000 group bicycle rides in New York City offered to the general public each year. Plaintiffs ride in groups for several reasons, including to share bicycling and otherwise associate with others, the enhanced safety of group bicycling, and to advocate for and promote bicycling over motor vehicle use.

37. Plaintiffs organize and participate in group bicycle rides because they afford bicyclists the opportunity to converse, cooperate and otherwise associate with each other. Further, group bicycling is uniquely suited to urban exploration because bicyclists are directly exposed to sights and sounds and can interact directly with people they encounter, as well as having a superior opportunity to appreciate context and detail.

38. For these reasons, since 1975, Plaintiff Jackson has incorporated an extensive bicycle tour of Manhattan into the “History of the City of New York” class he teaches at Columbia University. Each year, Jackson takes a group of approximately 250 of his students and others on a bicycle tour of Manhattan and Brooklyn.

39. Similarly, Plaintiff 5BBC conceives its group bicycle rides as urban explorations. For example, 5BBC organized a “Queens Brooklyn Mosaic” ride which toured various neighborhoods including Hunters Point, Greenpoint, Williamsburg, Fort Greene and the waterfront.

40. The group bicycle rides organized by Jackson and 5BBC constitute expressive associations protected against governmental interference by the First Amendment of the Constitution.

41. Bicyclists are safer proceeding in a group than riding alone. Group bicyclists warn each other of approaching dangers, such as vehicles, potholes, and pedestrians, and assist each other with necessary repairs. Bicyclists in a group are also more visible, and hence less likely to be accidentally hit by a motorist, than an individual bicyclist. Group rides offer a “safe haven” for bicyclists who are young, elderly or inexperienced in urban cycling.

42. Group bicyclists also help each other avoid dangerous encounters with motor vehicles. Although bicyclists have an equal legal right to occupy most roadways to that of motor vehicles, some motorists object to bicyclists occupying a lane of traffic. These motorists will attempt to force bicyclists to the margin of the roadway by honking or tailgating so that the motorist can pass without changing lanes. Bicyclists proceeding at the margin rather than towards the middle of a clear traffic lane face various hazards, such as opening car doors, pedestrians, potholes, ice, and debris. Group bicyclists are able to more effectively communicate to motorists the need to maintain a safe speed and distance. Motorists consequently are less likely to attempt to force a group of bicyclists out of a traffic lane and toward the more hazardous margin of the roadway.

43. All of the group bicycle rides in which the Individual Plaintiffs participate are a form of expressive association protected against governmental interference by the First Amendment to the U.S. Constitution, because group members keep each other safe and communicate to motorists the need to respect bicyclists' right to the road.

44. Plaintiffs further believe that through group bicycling, they demonstrate the viability and advantages of bicycling as an urban transportation mode, and raise motorists' awareness of and respect for bicyclists as equal partners sharing city roadways. Group rides, particularly larger ones, are more effective in getting these messages across to pedestrians and motorists, because large groups are more visible and unusual, and are therefore more effective in asserting a right to the road. Plaintiffs regularly enjoy interactions with both pedestrians and motorists, to whom they convey their pro-bicycling message.

45. All of the group bicycle rides in which Plaintiffs participate constitute speech protected against governmental interference by the First Amendment of the Constitution, because they convey a general pro-bicycling message that is consistently interpreted as such by pedestrians and motorists.

46. Some group rides incorporate formalized advocacy. For example, a 5BBC ride entitled "Raiders of the Lost Greenway" was designed as an exploration of large portions of Manhattan's Greenway perimeter bike path that have fallen into disrepair.

Participants investigated and documented conditions and called on city officials to address them.

47. 5BBC also uses group rides as an opportunity to raise funds for the promotion of group bicycling. 5BBC raises significant income from its “Montauk Century” ride, the oldest annual group bicycling ride in New York City. Net revenue from the ride is used to promote group bicycling through various means, including through 5BBC’s newsletter and other forms of public advocacy.

48. Critical Mass participants chant political messages such as “More Bikes, Less Cars” or “Whose Streets? Our Streets” as they ride. Riders sometimes wear or carry signs with political messages about the environment, the Iraq war, or other issues affecting the community. At times, participants have handed out flyers or fact sheets about Critical Mass or other political issues. The riders often interact with passersby, answering questions about who they are and why they are riding bicycles together.

49. Critical Mass and a number of 5BBC’s group bicycle rides, including the Montauk Century Tour, constitute speech protected against governmental interference by the First Amendment of the Constitution, because they involve or raise funds for explicit advocacy in favor of group bicycling.

How Plaintiffs’ Group Bicycle Rides are Organized and Conducted

50. Group bicyclists in New York City generally proceed in accordance with applicable traffic laws and rules, but may take a variety of forms.

51. 5BBC's rides typically are open to 5BBC members and the general public. Most of 5BBC's group rides are part of its "Day Trips Program." Day trips have a fixed destination and often will follow a fixed route. Participants often receive a set of printed directions known as a "cue sheet" to help participants stay with the ride and encourage them to join the club. However, day trips may detour from the specified route to make the ride more safe and enjoyable. Some 5BBC day trips do not have a specified route. Participants in 5BBC day trips generally proceed single file or two abreast. Trained leaders and participants cooperate and use a variety of techniques to keep the group together. 5BBC, and its ride leaders encourage ride participants to ride safely and follow applicable traffic rules, although they do not have the ability to force an uncooperative participant to change behavior or leave the ride.

52. 5BBC does not pre-register participants for its day trips. Those wishing to participate simply show up. A pre-registration requirement would likely reduce participation in the Day Trips Program. 5BBC cannot predict with certainty the number of participants for a particular group ride, because weather is the primary factor determining the number of participants. Based on past participation, 5BBC estimates that it will have several group rides with 50 or more participants during the next 12 months. This estimate includes the Montauk Century Tour, scheduled to take place on Sunday May 20, 2007, which typically draws several hundred participants to the portion of the ride conducted within New York City.

53. Jackson's annual history of New York City bicycle tour is always conducted in the fall, at night, in order to avoid vehicular traffic. The group proceeds in a relatively compressed formation of 3 or more bicyclists abreast so that they can investigate and discuss the various sites they visit as a group. Jackson leads the ride and follows a predetermined route. The ride has included approximately 250 participants in recent years.

54. Manhattan Critical Mass rides have been held in Manhattan since 1993. The ride originates at Union Square Park at 7 p.m. on the last Friday of every month. Critical Mass rides have been held in Brooklyn since September 2004. Participants meet at Grand Army Plaza and at the Williamsburg Bridge at 7 p.m. on the second Friday of every month.

55. Critical Mass rides are a unique form of expression characterized by having no organizer, no fixed route or destination and no ride leader. Individual riders take turns being at the front of the ride and determining the route through an extemporaneous, collective decision-making process. This results in the ride splintering into many smaller groups, which each proceeding in the same manner in different directions, sometimes reuniting by chance. Critical Mass rides in all cities throughout the world are conducted in the same way. The lack of hierarchy within a Critical Mass ride allows each participant an opportunity to meaningfully affect the tone and route of the ride. Participants believe that this format, which emphasizes spontaneity and egalitarianism, is essential to their expressive association and the message conveyed by

Critical Mass rides that bicyclists have a right to be a part of city traffic. Critical Mass participants encourage each other to ride safely and follow applicable traffic rules, but there is no ride organizer.

Defendants' Crackdown on Group Bicycle Rides

56. Prior to August 2004, Defendants (and their predecessors) had a long history of accommodating group bicycling in New York City, without requiring ride organizers to obtain parade permits. Plaintiffs 5BBC and Jackson, as well as a number of other City bicycling organizations and clubs, have conducted rides in excess of 50 participants for many years without any alleged violations of law or requirement that a permit be obtained. Defendants not only accommodated but actively facilitated Critical Mass rides. The NYPD supplied officers on scooters who escorted the rides and blocked oncoming traffic at intersections to prevent the ride from being divided at traffic signals. Occasionally, NYPD would allow bicyclists to perform this "corking" function.

57. In August 2004, several hundred Critical Mass bicyclists participated in protests at the Republican National Convention ("RNC"), held in New York City. The NYPD arrested hundreds of protestors, including a number of Critical Mass participants, and charged them with disorderly conduct, parading without a permit, and a variety of other violations.

58. Upon information and belief, following the RNC, the NYPD has engaged in a systematic attempt to suppress Manhattan Critical Mass. At the September 2004 Critical Mass ride, police officers on scooters, in vans and in helicopters surveilled riders.

Police on scooters escorted the ride for a brief period and then suddenly and without warning blocked the ride at Broadway and then at 5th Avenue, trapping riders on 36th Street. Officers grabbed people from the crowd, arresting bicyclists and charging them with disorderly conduct and obstruction of traffic. The NYPD also seized bicycles, using power saws to cut the chains securing bikes to sign posts, despite the protests of their owners, who offered to unlock them.

59. In subsequent months, Defendants' efforts to suppress expanded. During the period of October 2004 through December 2005, Defendants arrested an average of 20 Critical Mass participants per ride. Most of these arrests were for traffic violations that under ordinary circumstances would result only in a summons or a warning. The arrests were often accomplished by sealing off intersections with netting and then arresting all bicyclists found within the netted off area. Using this "dragnet" method, NYPD has arrested and detained a number of bicyclists that had nothing to do with Critical Mass, but were simply "in the wrong place at the wrong time." NYPD's dragnet and other tactics has led some residents of the Union Square area to refrain from leaving their homes with bicycles on the last Friday of each month, out of fear that they will be falsely detained, arrested or ticketed.

60. NYPD's mass arrest techniques have included assignment of arrestees to officers who did not observe the conduct on which the arrest was based, who then attest to conduct they did not witness in support of charges that they determine should be brought against the arrestee.

61. NYPD also used aggressive motorized pursuit and containment tactics, such as suddenly hooking in front of the path of bicyclists, and driving against the flow of traffic and on segregated (bicycles and pedestrians only) bicycle paths in pursuit of bicyclists. These tactics have resulted in a number of unnecessary injuries to both bicyclists and NYPD personnel.

62. Since at least September 2006, NYPD personnel have conducted regular video surveillance of Critical Mass participants, both before and during the ride. On information and belief, undercover NYPD officers posing as bicyclists participated in Critical Mass rides while wearing hidden recording devices, sometimes appearing to lead other Critical Mass bicyclists or to deliberately provoke conflicts between Critical Mass participants and NYPD personnel. NYPD undercover officers have infiltrated and surveilled group bicycle rides other than Critical Mass, including a "Ride of Silence" involving approximately 20 participants.

63. In February 2006, following the injury of two scooter-mounted officers who collided with each other during a previous Critical Mass ride, Critical Mass participants began an effort to eliminate all arguably unlawful conduct among ride participants. This effort was successful.

64. In response to this development, at the Critical Mass rides held after February 2006, NYPD stopped its mass arrests and instead began issuing large numbers of tickets to Critical Mass participants. These "ticket blitzes" often involved sealing off a

group of Critical Mass participants within a roadway by blocking them at both intersections with scooter-mounted officers, and then ticketing the riders thus trapped. Many of these tickets charged violation of New York Vehicle & Traffic Law § 1234(b), which the City has since admitted does not apply in New York City (these charges have been dismissed). Many are issued for equipment violations, such as a missing or improperly-mounted light or bell. Others were issued for parading without a permit in violation of NYCAC 10-110, and were dismissed by courts based on constitutional concerns. The manner in which these “ticket blitzes” are conducted is no less disruptive to Critical Mass rides than the mass arrests conducted by NYPD previous to February 2004. On information and belief, the goal of these “ticket blitzes” is to suppress Critical Mass.

65. Defendants are estimated to have spent at least \$1.3 million in their attempt to suppress Critical Mass.

66. The NYPD’s actions have resulted in a sharp decrease in Manhattan Critical Mass ride participation. Plaintiffs Blythe, Gosciak and Shura no longer participate in Manhattan Critical Mass because they fear arrest and/or ticketing.

67. The difference in police treatment of Manhattan Critical Mass rides before and after the RNC demonstrates that Defendants are selectively enforcing traffic and other laws against participants in post-RNC Critical Mass rides as a form of retaliation

against (a) protest activity by participants in Critical Mass at the RNC, and (b) bicyclists, including the Individual Plaintiffs, who have associated with Critical Mass.

68. The NYPD has not engaged in a similar crackdown against Brooklyn Critical Mass rides, which operate on an open-route, leaderless basis identical to Manhattan Critical Mass. There have been little if any arrests or ticketing at Brooklyn Critical Mass rides since August 2004. The difference in NYPD treatment of Manhattan Critical Mass rides and Brooklyn Critical Mass rides demonstrates that Defendants are selectively enforcing traffic and other laws against participants in post-RNC Critical Mass rides as a form of retaliation against (a) protest activity by participants in Critical Mass at the RNC, and (b) bicyclists, including the Individual Plaintiffs, who have associated with Critical Mass.

Burdens Imposed by the Parade Rules

69. The Parade Rules impose a number of burdens on Plaintiffs' constitutional rights of travel, association and expression.

70. Under the Parade Rules, Plaintiffs are not permitted to travel on the public roadways in groups of 50 without advance approval of their route and destination by NYPD. The Parade Rules in effect prohibit open-route rides, such as Critical Mass and certain 5BBC rides, because the rides by their very nature cannot satisfy the requirements for a parade permit. This provision of the Parade Rules violates Plaintiffs' fundamental right to travel.

71. Under the Parade Rules, Plaintiffs are not permitted to associate and travel on public roadways in groups of 50 without obtaining a “parade” permit from the NYPD. The process by which a parade permit is obtained from the NYPD violates Plaintiffs’ rights because it is hopelessly cumbersome and disorganized. NYPD has failed to adequately train its personnel to handle applications for parade permits in a reasonable manner. A 5BBC ride leader who sought a parade permit in connection with a recent group bicycle ride was misdirected by various NYPD sources six times and actually had to persuade the NYPD employee responsible for accepting his application to do so. The process of completing and submitting a permit application can take 6 or more hours, and imposes an undue burden on the rights of Plaintiffs to organize and/or associate with group bicycle rides of 50 or more persons.

72. Under the Parade Rules, a bicycle ride of 50 or more persons is prohibited unless the group appoints a “Chief Officer” who will be responsible for the “strict observance of all rules and regulations,” presumably by group members. Plaintiffs associate with others in group bicycling based upon principles of mutual cooperation, not hierarchy. Imposition of a “Chief Officer” upon 50-person group bicycle rides, who would be responsible for the conduct of others (and therefore likely to try to direct and control such conduct), directly and substantially interferes with the nature of Plaintiffs’ expressive association, violating Plaintiffs’ First Amendment Rights.

73. The Parade Rules prohibit 50-person group rides on most of 5th Avenue, even though it is a roadway that is designated as a bicycle route north of 59th Street and

south of 23rd Street, excludes commercial traffic, and is safer for bicyclists for these and other reasons. Excluding bicyclists from 5th Avenue also restricts their ability to explore a roadway of enormous cultural and historical significance. The Parade Rules further exclude 50-person group bicycle rides from roadways that are “chiefly of a business or mercantile character” and are “ordinarily subject to great congestion or traffic,” on all days except Sundays and holidays. This provision would force Plaintiff 5BBC and other clubs to extensively reroute many Saturday group rides. The exclusion of 50-person group bicycle rides from 5th Avenue and potentially many other routes violates Plaintiffs right to associate for the purpose of exploring these routes by bicycle. These route restrictions also diminish bicyclists’ safety.

The Vagueness of the Parade Rules

The Parade Rules contain three provisions that are vague on their face, failing to provide adequate guidance to the public officials responsible for interpreting them, and therefore are unreasonably susceptible to arbitrary and discriminatory enforcement. Those provisions are: (1) the “recognizable group” standard of 38 RCNY § 19-02(a); (2) the “events of extraordinary interest” standard of NYCAC § 10-110(a)(4) and 38 RCNY § 19-01(b); and (3) the “ordinarily subject to great traffic and congestion” standard of NYCAC § 10-110(a)(2).

74. The “recognizable group” standard of § 19-02(a) is unconstitutionally vague on its face, because it relies upon a determination by NYPD personnel as to what constitutes a “recognizable group” of bicyclists. Such determinations necessarily are

arbitrary because they turn entirely on the subjective viewpoint of a police officer. The subjective viewpoint of the officer making the determination of group membership can vary widely, based on that officer's familiarity with bicycling as an element of New York City traffic, or whether the officer is observing the group from street level or by helicopter (a form of surveillance used repeatedly at Critical Mass rides). NYPD's "dragnet" mass arrest technique has repeatedly ensnared bicyclists that have no connection with Critical Mass, simply because possession of a bicycle in the "wrong place at the wrong time" was deemed sufficient basis to include the individual in the group. Moreover, NYPD has regularly deployed undercover personnel in group bicycle rides, some of whom have actually been arrested in error by uniformed officers who mistook them for civilian bicyclists. The ease with which any person with a bicycle may be deemed a member of a "recognizable group" of bicyclists invites arbitrary and discriminatory enforcement of the Parade Rules, in violation of the Individual Plaintiffs' right to due process.

75. The exception to the ban on "new" parades on 5th Avenue for "events of extraordinary interest" also is unconstitutionally vague, even though this phrase is clarified in 38 RCNY § 19-01(b) to mean "celebrations organized by the City honoring the armed forces; sports achievements or championships; world leaders and extraordinary achievements of historic significance." Defendants have applied this "extraordinary events" standard in an arbitrary and discriminatory way. For example, NYPD allowed protesters alleging police misconduct in the Sean Bell shooting to occupy 5th Avenue on

December 16, 2006, and allowed an “Olympic Relay” to be run on 5th Avenue in connection with the 2004 Olympics that were held in Greece. Because NYCAC § 10-110(a)(4), even as clarified by 38 RCNY § 19-01(b), does not provide adequate guidance to public officials interpreting the ban on 5th Avenue parades, it invites arbitrary and discriminatory enforcement of the Parade Rules in violation of the Individual Plaintiffs’ right to due process.

76. The route restrictions for parade set forth in NYCAC § 10-110(a)(2), relating to “any street or any public place, or material portion thereof, which is ordinarily subject to great congestion or traffic and is chiefly of a business or mercantile character,” also is vague on its face. Interpreted as “any street . . . which is ordinarily subject to great . . . traffic and is chiefly of a business . . . character,” this standard describes almost any avenue in Manhattan, and many other roadways throughout New York City, including many with bicycle lanes. These route restrictions, which apply every day between 9 a.m. and 6:30 p.m. except Sundays and holidays, invite arbitrary and discriminatory enforcement of the Parade Rules, in violation of the Individual Plaintiffs’ right to due process.

Claims for Relief

First Cause Of Action – All Plaintiffs (United States Constitution – Right to Travel)

77. Plaintiffs repeat and reallege the allegations of the foregoing paragraphs as if fully set forth herein.

78. Plaintiffs' group bicycle rides constitute a form of intrastate travel protected by the United States Constitution.

79. The Parade Rules, which impose a permit requirement and other restrictions on group bicycle rides, act as a prior restraint on Plaintiffs' exercise of their fundamental right to intrastate travel. Defendants, through the implementation of the Parade Rules, have placed undue burdens on Plaintiffs' ability to engage in intrastate travel through group bicycle rides.

80. By the actions described above, Defendants imposed prior restrictions on protected intrastate travel that are not necessary to achieve a compelling government interest, and therefore violate Plaintiffs' rights under the United States Constitution.

Second Cause Of Action – All Plaintiffs
(First Amendment – Right to Freedom of Speech)

81. Plaintiffs repeat and reallege the allegations of the foregoing paragraphs as if fully set forth herein.

82. Group bicycle rides, including, but not limited to, Critical Mass and group rides organized by 5BBC rides, constitute expressive conduct protected by the free speech guarantee of the First Amendment.

83. The Parade Rules, which impose a permit requirement and other restrictions on group bicycle rides, act as a prior restraint on Plaintiffs' exercise of their First Amendment rights to freedom of speech. Defendants, through the implementation

of the Parade Rules, have placed undue burdens on Plaintiffs' ability to engage in protected expressive conduct through group bicycle rides.

84. By the actions described above, Defendants imposed prior restrictions on protected free speech activity that are not narrowly tailored to serve a significant government interest, and therefore violate Plaintiffs' rights under the First and Fourteenth Amendments of the Constitution.

Third Cause Of Action – All Plaintiffs
(First Amendment – Right of Association)

85. Plaintiffs repeat and reallege the allegations of the foregoing paragraphs as if fully set forth herein.

86. Plaintiffs engage in expressive activity through group bicycle rides. The First Amendment guarantees Plaintiffs the right to associate with other individuals in furtherance of their expressive group bicycling activity.

87. The Parade Rules, which impose a permit requirement and other restrictions on group bicycle rides, act as a prior restraint on Plaintiffs' exercise of their First Amendment rights to engage in expressive association and directly, substantially, and significantly interfere with the associational rights of Plaintiffs.

88. By the actions described above, Defendants have imposed prior restrictions on protected associational activity that are not narrowly tailored to serve a

significant government interest, and therefore violate Plaintiffs' rights under the First and Fourteenth Amendments of the Constitution.

**Fourth Cause Of Action – All Plaintiffs
(Fourteenth Amendment – Due Process)**

89. Plaintiffs repeat and reallege the allegations of the foregoing paragraphs as if fully set for the herein.

90. The Parade Rules do not define essential and vague terms, thereby endowing Defendants with unfettered discretion to:

- a. impose liability based upon membership in a “recognizable group” of 50 bicyclists;
- b. prohibit 50-person bicycle rides on 5th Avenue except for events “of extraordinary public interest;” and
- c. prohibit 50-person bicycle rides on streets “ordinarily subject to great traffic or congestion and chiefly of a businesses or mercantile character,” between 9 am and 6:30 pm on all days except Sundays and holidays.

91. These provisions do not adequately limit the discretion of city officials responsible for granting and enforcing parade permits. They are, therefore, too vague to survive the constitutional due process requirement under the Constitution's First and Fourteenth Amendments that regulations, particularly those affecting protected speech, must be sufficiently clear to prevent arbitrary and discriminatory enforcement.

92. The Parade Rules impose criminal sanctions on alleged violators with no required finding of knowledge or intent. This imposition of strict criminal liability

violates Plaintiffs' rights to due process under the Fourteenth Amendment of the Constitution.

Fifth Cause of Action – Individual Plaintiffs Only
(First Amendment – Retaliation)

93. The Individual Plaintiffs repeat and reallege the allegations of the foregoing paragraphs as if fully set forth herein.

94. Participation in Critical Mass rides constitutes expressive activity protected by the free speech guarantee of the First Amendment.

95. The Individual Plaintiffs, who have participated in Critical Mass rides, have suffered adverse action by Defendants. Blythe, Nelson and Shura were arrested during Critical Mass rides. Nelson and Son received tickets during Critical Mass rides. At the time of their arrests and/or receipt of these summonses, these Plaintiffs were not violating any law. Gosciak was chilled from exercising his right to associate with Critical Mass by unlawful police conduct.

96. The NYPD arrested the plaintiffs because of their association with Critical Mass rides and in retaliation against the protected expression of Critical Mass participants during the 2004 Republican National Convention ride.

97. Blythe, Gosciak and Shura have stopped participating in Manhattan Critical Mass for fear of further retaliation by the police. They intend to resume

participation in Manhattan Critical Mass if participants in it are no longer subject to unlawful retaliation by Defendants.

98. By the actions described above, Defendants have violated the Individual Plaintiffs' First Amendment right to be free of governmental retaliation for protected First Amendment conduct.

Sixth Cause Of Action – Individual Plaintiffs Only
(Fourteenth Amendment – Selective Enforcement)

99. Plaintiffs repeat and reallege the allegations of the foregoing paragraphs as if fully set forth herein.

100. For more than two years, the NYPD has selectively enforced the traffic and other laws against Critical Mass participants by targeting them for “zero-tolerance” enforcement of the traffic and other laws. Plaintiffs Blythe, Nelson, Shura, and Son have been ticketed and/or arrested as part of the NYPD’s selective enforcement. Gosciak has been chilled in the exercise of his First amendment rights by the selective enforcement of the laws against Critical Mass participants.

101. Defendants have engaged in selective enforcement of the traffic and other laws against Critical Mass participants in an attempt to suppress Critical Mass, an expressive activity protected by the First Amendment’s free speech guarantee, and in retaliation for the ride’s expressive activity during the RNC.

102. By the actions described above, Defendants have engaged in unequal treatment of the Individual Plaintiffs in violation of the Fourteenth Amendment's guarantee of equal protection.

Relief Sought

WHEREFORE, Plaintiffs respectfully request:

1. That the Court enter a judgment declaring that the Parade Rules violate the First and Fourteenth Amendments to the Constitution of the United States;
2. That Defendants and all those acting in concert or participation with them be preliminarily and then permanently enjoined and restrained from:
 - a. enforcing the Parade Rules against group bicycle rides of fifty people or more, including, but not limited to: (1) requiring group bicycle rides to obtain a permit from the NYPD and designate to a "Chief Officer"; (2) prohibiting groups of bicyclists from riding on 5th Avenue between 15th and 114th Streets, and (3) prohibiting groups of bicyclists from riding on any street or any public place, or material portion thereof, which is ordinarily subject to great congestion or traffic and is chiefly of a business or mercantile character on all days except Sunday; and
 - b. retaliating and selectively prosecuting the laws against the Individual Plaintiffs based on their participation in group bicycle rides, including

without limitation Critical Mass, in violation of the Individual Plaintiffs' rights under the First and Fourteenth Amendments of the Constitution;

3. That the Court order Defendants to pay Plaintiffs' costs, including attorneys' fees and expenses, pursuant to 42 U.S.C. § 1988; and

4. That the Court award Plaintiffs such other and further relief as the Court
deems just and proper.

Dated: New York, New York
March 27, 2007

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