

March 29, 2007

BY FACSIMILE

Hon. Lewis A. Kaplan
United States District Judge
United States Courthouse
500 Pearl Street
New York, NY 10007

Five Borough Bicycle Club v. City of New York, No 07 Civ. 2448 (LAK)

Dear Judge Kaplan:

This letter responds to Defendants' Memorandum in Opposition ("Opp. Mem.") to Plaintiffs' Memorandum in Support of Motion for Preliminary Injunction ("Motion"), to be heard today at 2:30 pm.

The thrust of Defendants' argument on the merits is that the burdens imposed by the Parade Rules on group bicycle rides are "minor restrictions" (Opp. Mem. at 9) that "do[] not directly and substantially interfere with the rights of plaintiffs and other bicyclists to exercise their right to freedom of association," travel, or expressive conduct (Opp. Mem. At 11). That is untrue.

It is apparent that the rules impose a direct and substantial burden on Plaintiffs' rights to travel and to associate, by requiring Plaintiffs to obtain NYPD's advance permission of their route and destination before commencing law-abiding travel together in groups of 50 or more. This burden falls on most publicized group bicycle rides in New York City, because organizers generally cannot predict the number of participants in advance. The route restrictions and "Chief Officer" requirements of the Parade Rules impose substantial burdens that directly restrict the very aspects of Plaintiffs' group rides — those dealing with association, expression, and travel — that are protected under the Constitution.

Defendants fail to establish that group bicycle rides of 50 or more persons implicate public safety or disrupt traffic. The Declaration of Lieutenant Joseph S. Caneco in Opposition to Plaintiffs' Motion ("Caneco Decl.") asserts that "[l]arge group bicycle rides (with approximately 50 or more cyclists) may significantly disrupt vehicular

and pedestrian traffic and adversely affect public safety,” but Defendants fail to mention that in previous litigation, Lt. Caneco stated that as to “rides [that] had ***under one hundred participants*** . . . even if the riders did not obey traffic regulations, ***the disruption of regular pedestrian and vehicular traffic was minimal.***” Compare Caneco Decl. ¶ 3 with Affidavit of Joseph S. Caneco in *City of New York v. Times’ Up, Inc., et al.* (Oct. 6, 2005) (No. 400891/05) at ¶ 11 (attached as Ex. 1) (emphasis added).

Comparison of the two Caneco statements reveals a telling lack of specificity in the more recent statement as to (1) the size of the rides that supposedly have involved unlawful or disruptive conduct, and (2) whether any rides involving the more serious unlawful or disruptive conduct have taken place in the last year. The Caneco Declaration appears to be a rehash of old news that has nothing to do with the broad range of 5BBC, Critical Mass and other group bicycle rides scheduled to take place tomorrow and this weekend.

Plaintiffs’ application is timely. During the 60 days since the NYPD published the parade rules, Plaintiffs have worked diligently to gather facts, and to assess the NYPD’s implementation of the Parade Rules. Laches does not apply where, as here, “the record demonstrates that in the time period prior to commencing this action, the plaintiffs conducted an extensive investigation in order to gather the necessary facts required to support [a] complex action.” *Computer Assocs. Int’l, Inc v Application Dev. Tech.*, 784 F. Supp. 982, 987 (E.D.N.Y. 1992); see also *Metlife Inc. v. Metropolitan Nat. Bank*, 388 F. Supp. 2d 233, 237 (S.D.N.Y. 2005). Defendants cannot demonstrate the prejudice necessary to show laches. Their papers show they have briefed and litigated the issues Plaintiffs raise many times, such that they have assembled a detailed response on short notice to Plaintiffs’ application.

An injunction is necessary and appropriate to protect the constitutional rights at stake in Plaintiffs’ group rides. The Court can take judicial notice of statements by Defendants’ counsel yesterday regarding the City’s readiness to use mass arrests and fines up to \$1,000 against participants in bicycle rides beginning this Friday evening. See http://www.villagevoice.com/blogs/runninscared/archives/2007/03/new_yorks_battl.php Such arrests will embroil the Court in litigation over *Younger* abstention issues and are completely unnecessary, as Defendants have managed large group bicycle rides without permits or mass arrests for over a year. The requested injunction therefore should issue.

Respectfully yours,



Steve Vaccaro

cc: Sheryl Neufeld, Esq.

Street and Fifth Avenue while others remained stopped at the light, which in and of itself created a safety problem for the riders. During this time, I was sitting in an unmarked vehicle in the southern lane of the westbound side of 14th Street, near Fifth Avenue. As the Critical Mass bicycle riders proceeded through the light, my vehicle became surrounded. This also presented an extremely dangerous situation as I, and the other officers in the vehicle, would not have been able to exit the vehicle without causing injury to some of the cyclists. The cyclists' behavior at the July Critical Mass ride is a perfect example of the confrontational, antagonistic attitude of the group and their blatant disregard for the City's laws.

10. The Critical Mass ride participants' disregard for the law was again apparent in August when the riders exited Union Square Park in a group of approximately 250 cyclists and proceeded to head south on Broadway, taking up all lanes and immediately running red lights. During the September 30, 2005 ride, in addition to taking up all lanes of traffic and running red lights, Critical Mass participants were also observed riding against traffic on West 4th Street between Washington Place and Broadway, which is a one-way street.

11. The conduct of the Critical Mass bicycle riders during the monthly Manhattan bicycle rides differs significantly from the conduct of participants in other smaller rides that have taken place this summer without a permit. While it is the Police Department's position that many of these smaller rides likewise require a parade permit from the Police Department, the Department has been able to accommodate many of these last-minute rides because of the conduct of the participants. In particular, the participants in these smaller rides have been generally cooperative and willing give the Police Department information about where they intended to ride. In addition, the participants in these rides have been known to observe red light signals and ride near the side of the road. This is in direct contrast to the attitude and

conduct of the Critical Mass participants who regularly antagonize the police. In addition, in most situations, the other rides had under one hundred participants which meant that even if the riders did not obey traffic regulations, the disruption of regular pedestrian and vehicular traffic was minimal.

12. Notably, one of the smaller rides which the Police Department was able to accommodate this past summer was a ride of approximately fifty members of the Freewheels group. Upon information and belief, Freewheels is a group of cyclists who have been arrested during one or more of the Critical Mass bicycle rides. I have been informed that the Freewheels participants provided the Police Department with an itinerary at the start of the ride. Thus, even though a parade permit had not been applied for, the Police Department was able to provide assistance along the route.

13. Finally, it should be noted that in August the bicycle advocacy group known as Transportation Alternatives submitted an application to the Police Department for a permit for portions of the September 11, 2005 New York City Century Bike Tour. The New York City Century Bike Tour is a bicycle ride which takes place each September. Participants have the option of choosing to ride on routes of various size, ranging from a fifteen mile route to a one hundred mile route. It is my understanding that during the Century Bike Tour cyclists occupy the roadway along with vehicles. The cyclists do not get off their bicycles to stop traffic or cork, rather they co-exist on the roadway with vehicles and obey the same traffic signals that the vehicles obey. Nonetheless, due to the increasing size of the event, this year Transportation