

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 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.

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**PLAINTIFFS’ MOTION TO  
COMPEL COMPLIANCE  
WITH PLAINTIFFS’  
REQUEST FOR  
DOCUMENTS**

07 Civ. 2448 (LAK)

After extensive correspondence and discussion between the parties, Defendants refuse to produce four categories of documents responsive to Plaintiffs’ Initial Request for Documents dated May 4, 2007 (the “Requests”). Plaintiffs therefore move this Court to compel Defendants to produce documents as set forth below. True and correct copies of documents supporting the Motion are attached as Exhibits A through E.

In this action, Plaintiffs challenge the constitutionality of 8 RCNY § 19-02(a) (effective Feb. 25, 2007) (together with NYCAC § 10-110, the “Parade Rules”) and NYPD’s policies and practices with respect to certain group bicycle rides. Defendants have refused to produce four categories of relevant documents, responding to Plaintiffs’ Requests 4, 5, 6, 7(g), 7(h), 7(i), and 11: (1) specified NYPD records customarily created in managing certain group bicycle rides; (2) documents concerning arrests, detainers and summonses involving non-Plaintiffs; (3) documents concerning NYPD undercover surveillance and infiltration of group bicycling events; and (4) documents concerning non-bicycling events regulated under the Parade Rules.

Request 7(i). This request seeks records routinely created by NYPD in managing group bicycle rides, including log sheets, activity log forms, log books, memo books, duty rosters, assignment sheets, and descriptions of vehicles used. Defendants do not dispute the relevance of these documents but claim that the documents are too burdensome to produce. Defendants thus far have produced only summary reports listing some NYPD personnel and activity involved in a subset of Critical Mass rides. Defendants have produced such documents in other litigation and have offered no specific reasons why they cannot do so here. Plaintiffs' ability to explore the procedures used by NYPD to manage group bicycles rides depends upon these documents.

Requests 7(c) and 11. These Requests seek documents concerning investigation or surveillance of group bicycle rides. Plaintiffs have presented prima facie evidence that NYPD fields undercover agents at group bicycle rides and has engaged in indiscriminate mass electronic surveillance at most Manhattan Critical Mass rides. *See* Ex. B. The evidence gathered by NYPD using these means is directly relevant to whether group bicycling tends towards lawlessness — a key contention underlying Defendants' claim that the Parade Rules are narrowly tailored. This evidence also is relevant to Plaintiffs' allegations that NYPD engages in retaliation and selective prosecution during Manhattan Critical Mass rides.

Plaintiffs also need this evidence to establish that NYPD undercover participation in group bicycle rides violates Plaintiffs' freedom of association and right of due process. The presence of undercover NYPD agents in group bicycle rides can push rides over the 50-person threshold, creating liability for an un-permitted group and deterring onlookers from joining. *See* Ex. C. Plaintiffs have produced a digital videotape recording demonstrating a bike-mounted undercover NYPD agent at a Critical Mass ride riding on the sidewalk and the wrong way down a one-way street. Ex. B. Because NYPD undercover personnel may be responsible in part for

the alleged unlawful activity that Defendants invoke to justify the Parade Rules, documents regarding undercover activities clearly are relevant. Public safety concerns may justify a protective order, but Defendants have not raised such concerns.

Requests 7(g) and 7(h). These Requests seek documents concerning non-Plaintiff arrests, detainers and summonses. These documents are fundamental to Plaintiffs' First Amendment retaliation claim because they will show that participation in protected activity was a factor motivating adverse action by the Defendant. *Beechwood Restorative Care Ctr. v. Leeds*, 436 F.3d 147, 153 (2d Cir. 2006). The dramatic change in police behavior toward Critical Mass immediately after the August 2004 Republican National Convention ("RNC") protests raises an inference that the change was motivated by Critical Mass's involvement in protected expression at the RNC. *Id.* at 154. To demonstrate this change Plaintiffs need discovery concerning how NYPD enforced the laws against non-Plaintiff bicyclists, both before and after the RNC.

The documents sought in Requests 7(g) and 7(h) also are relevant to Plaintiffs' equal protection claim, which requires a showing that (a) Plaintiffs, compared with others similarly situated, have been selectively treated; and (b) that such selective treatment was based on the impermissible consideration of the exercise of constitutional rights. *LaTrieste Rest. & Cabaret Inc. v. Vill. of Port Chester*, 40 F.3d 587, 590 (2d Cir. 1994).

Finally, documents concerning non-Plaintiffs are relevant to Plaintiffs' narrow tailoring claim. They would demonstrate that virtually all large group bicycle rides, other than post-RNC Manhattan Critical Mass rides, proceed without significant unlawful conduct or arrests, disproving Defendants' contention that group riding inherently tends toward lawlessness.

Requests 4, 5 and 6. These Requests seek documents relating to NYPD treatment of non-bicycling group processions of 50 or more. Plaintiffs believe these documents will demonstrate

systematic differences between NYPD treatment of group bicycle rides and other events regulated under the Parade Rules. These differences are relevant given the Court's determination that Plaintiffs were not entitled to a preliminary injunction in part because under the Parade Rules they are treated in the same manner as motorists. *Five Borough Bicycle Club v. City of New York*, 483 F. Supp. 2d 351, 367 (S.D.N.Y. 2007). Plaintiffs have information that NYPD repeatedly has declined to enforce the Parade Rules against processions of 50 or more pedestrians, in-line skaters, and motorists.<sup>1</sup> To establish their Equal Protection claims, Plaintiffs require discovery of these documents to show the differences in enforcement of the Parade Rules against similarly situated bicycling and non-bicycling processions. *LaTrieste* at 590.

For the reasons above, Plaintiffs request that this Court compel Defendants to produce documents responsive to Plaintiffs' Requests 4, 5, 6, 7(g), 7(h), 7(i), and 11.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: New York, New York  
November 9, 2007

Respectfully submitted,

BY: DEBEVOISE & PLIMPTON LLP  
/s/ Steve Vaccaro

Steve Vaccaro  
919 Third Avenue  
New York, New York 10022  
(212) 909-6000

*Attorneys for Plaintiffs*

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<sup>1</sup> For example, NYPD personnel reportedly advised representatives of the Empire Skate Club of New York that, so long as the group obeyed traffic rules, no permit was required for the "Big Apple Roll," an annual in-line skating event with about 200 registered participants.