

STATE OF NEW YORK  
CITY COURT: CITY OF POUGHKEEPSIE

THE PEOPLE OF THE STATE OF NEW YORK,

- against -

CHANDRA RUSSO,

Defendant.

---

MEMORANDUM OF LAW  
IN SUPPORT OF  
OMNIBUS MOTION

CASE NO. 06-41993

HON. JOHN B. GARRITY

The above-referenced defendant in the instant matter submits this Memorandum of Law in support of her Omnibus Motion returnable June 16, 2006 praying for dismissal of the charges against her on constitutional grounds, and because the charging instrument is facially insufficient.

**I. Statement of Facts**

Defendant Chandra Russo (“the defendant”) helped to organize a march and rally that took place on May 1, 2006. (May 19, 2006 Decl. of Daniel Werner (“Werner Decl.”), ¶ 8). The march and rally were part of the “Day Without an Immigrant” events taking place throughout the United States. (Werner Decl. ¶ 9). The events were intended to show the economic and political clout of immigrants as part of national efforts to encourage lawmakers to pass humane immigration reform. (Werner Decl. ¶ 10).

The organizers of the march – an *ad hoc* coalition of business leaders, immigrants, community activists, and college students – applied for a “Parade Permit” under Poughkeepsie

City Code § 14-13(a). (Werner Decl. ¶ 11). The organizers initially wanted the march to proceed from 724 Main Street, down Main Street to Mansion Park. (Werner Decl. ¶ 12). The Poughkeepsie Police Department informed the organizers that a permit was issued for this route. (Werner Decl. ¶ 13). Later, however, the Police Department expressed concerns about this route. (Werner Decl. ¶ 14). Following some negotiations, the organizers agreed to the new route suggested by the Police Department. (Werner Decl. ¶ 15). The organizers were told that a new permit had been granted to march from the intersection of Hamilton Street and Main Street, west on Main Street, and concluding with a rally at Waryas Park. (Werner Decl. ¶ 16). No written permit for either proposed route was delivered to the event organizers, nor was there any written document indicating that the prior permit had been voided. (Werner Decl. ¶ 17).

On the day of the events, a group of several hundred students, faculty, and staff at Vassar College congregated and walked from the college campus to the main march. (Werner Decl. ¶ 18). As the Vassar congregation walked down Main Street towards Hamilton Street, they were joined by local residents who were also going to participate in the main march. (Werner Decl. ¶ 19). This group remained mostly on the sidewalk. (Werner Decl. ¶ 20). The group carried signs shouted chants communicating their political message. (Werner Decl. ¶ 21). The police appeared to supervise the entire Vassar-to-Hamilton Street event once it entered the city limits. (Werner Decl. ¶ 22). There was no order to disburse, and the congregants were never told that they were violating any law. (Werner Decl. ¶ 23).

The May 1 events went very smoothly. (Werner Decl. ¶ 24). Once the main march reached Waryas Park, a rally took place with speakers and music. (Werner Decl. ¶ 25). Near the conclusion of the rally, Poughkeepsie Police Department Sgt. Fox approached the defendant. (Werner Decl. ¶ 26). He issued her an accusatory instrument, labeled an “Information.” (Werner Decl. ¶¶ 27 and 32, Ex. A). The accusatory instrument charged defendant with violating Poughkeepsie City Code § 14-13(a). (Werner Decl. ¶¶ 28 and 32, Ex. A). Following the printed statement indicating “THE FACTS UPON WHICH THIS ACCUSATORY INSTRUMENT IS BASED ARE AS FOLLOWS:”, Sgt. Fox wrote “Def. helped organize a parade w/o a permit that impeded traffic from Vassar College after being asked not to. . . . [remainder illegible].” (Werner Decl. ¶¶ 29 and 32, Ex. A). A pre-printed statement in the accusatory instrument then indicates “aforementioned having occurred within the City of Poughkeepsie.” (Werner Decl. ¶¶ 30 and 32, Ex. A). The accusatory instrument ordered the defendant to appear before this Court on May 8, 2006 at 8:00 a.m. (Werner Decl. ¶¶ 27 and 32, Ex. A).

At her May 8, 2006 arraignment, the defendant entered a plea of not guilty. (Werner Decl. ¶ 33). The Court also set a briefing schedule for the instant motion. (Werner Decl. ¶ 34).

Poughkeepsie City Code § 14-13(a) (“the parade ordinance”), which the defendant is alleged to have violated, states as follows:

*Permit required.* No person shall conduct, address or otherwise participate in any parade, gathering, assemblage or demonstration, upon any street or in any other

public place within the city, unless such parade, gathering, assemblage or demonstration has been authorized by a written permit from the Chief of Police.

(Werner Decl. ¶¶ 35 and 36, Ex. B).

Because the parade ordinance does not itself specify a penalty, Poughkeepsie City Code § 1-8(a) provides in relevant part that the offense

. . . shall constitute disorderly conduct and shall be punished by a fine not exceeding fifty dollars (\$50.) or by imprisonment not exceeding six months, or both, or by a penalty not exceeding one thousand dollars (\$1,000.), to be recovered in a civil action. . . .

(Werner Decl. ¶¶ 37 and 38, Ex. C).

The Application for a City License of the City of Poughkeepsie provides as follows:

The undersigned hereby applies for a City License as required by the Code of Ordinances of the City of Poughkeepsie and will strictly comply with all City Ordinances Police, and Fire regulations, Dutchess County Health requirements, and New York State Laws. The undersigned also agrees and acknowledges that failure to comply will result in revocation of the license by the City of Poughkeepsie.

Check the appropriate box:

- . . .
- Parade Permit – No Fee; must provide detailed route of parade.
  - Demonstration – No Fee; must provide detailed route of demonstration.

***CERTAIN RESTRICTIONS MAY BE IMPOSED. The City reserves the right to deny approval of this application. 15 WORKING DAYS ARE REQUIRED TO PROCESS THIS APPLICATION.***

[Emphasis included]. (Werner Decl. ¶¶ 39 and 41, Ex. D). The City license application also requires an “Organization Name”; a “Representative’s Name”; an address and telephone number;

the date and location of the event; the expected attendance, the begin and end time of the event, and a “Brief description of the activity.” (Werner Decl. ¶¶ 40 and 41, Ex. D).

## **II. Argument**

### **A. The Defendant Has Standing to Mount a Challenge to the Constitutionality of the Parade Ordinance**

The defendant in the instant action seeks to dismiss the charge against her because the underlying parade ordinance is a prior restraint on expression, is overbroad, is vague, and requires association with an organization, thereby violating the First, Fifth, and Fourteenth Amendments to the U.S. Constitution. As a criminal defendant against whom charges have been brought under the offending ordinance, the defendant has standing to mount this constitutional challenge.

A defendant charged with violating a facially void licensing scheme is entitled to contest its validity in answer to the charge(s) against her or him in the context of a criminal action prosecuting her or him for violating it. See Lovell v. City of Griffin, 303 U.S. 444 (1938). Citing, *inter alia*, Lovell at 453-453, the United States Supreme Court held in Freedman v. Maryland that,

[i]n the area of freedom of expression it is well established that one has standing to challenge a statute on the ground that it delegates overly broad licensing discretion to an administrative office, whether or not his conduct could be proscribed by a properly drawn statute, and whether or not he applied for a license. ‘One who might have had a license for the asking may . . . call into question the whole scheme of licensing when he is prosecuted for failure to

procure it.’ . . . Standing is recognized in such cases because of the ‘. . . danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application.’

380 U.S 51 at 56-57 (1965).

Similarly, the New York Court of Appeals has found that a defendant “may challenge a statute as being unconstitutionally vague on its face or as applied.” People v. Stuart, 100 N.Y.2d 412, 421 (2003).<sup>1</sup> It logically follows that a defendant had standing to mount a First Amendment challenge to a statute based on the overbreadth and prior restraint doctrines, even though the case had not yet proceeded to trial. See Id. at n.2; People v. Illardo, 48 N.Y.2d 408, 412-13 (1979).

Therefore, because the defendant is charged with violating the Poughkeepsie parade ordinance, she has standing to mount a constitutional challenge to the charge that she violated the parade ordinance as part of her defense.

---

<sup>1</sup> The defendant’s argument focuses on facial unconstitutionality of the parade ordinance. However, defendant also contends – as is detailed in arguments interspersed throughout the instant Memorandum of Law – that the ordinance is unconstitutional *as applied to her*. She most certainly was injured, and her First Amendment rights continue to be chilled, as the result of the enforcement of the parade ordinance against her.

**B. The Parade Ordinance Violates the First, Fifth, and Fourteenth Amendments to the U.S. Constitution.**

**1. The Parade Ordinance Is Facially Void Because it is an Improper Prior Restraint on Expression.**

The Poughkeepsie parade ordinance – and the unbridled authority it grants the Chief of Police to use it to chill expressive speech in public fora – is an improper prior restraint on speech, and therefore is entirely incompatible with fundamental constitutional guarantees.

Under the parade ordinance, *before* engaging in expressive activity such as a parade, assemblage, or demonstration on a street or other public place, one is required to apply for a permit from the Chief of Police. The permit application proudly states in boldface print, “***CERTAIN RESTRICTIONS MAY BE IMPOSED. The City reserves the right to deny approval of this application.*** [emphasis included].” There are no guidelines for the restrictions that may be imposed, nor are there stated reasons why an application may be denied. Any person who engages in these forms of public expression without police permission faces up to six months in prison and over \$1,000 in fines and civil money penalties. It is hard to imagine a more chilling impediment to speech than the possibility of facing these draconian punishments.

The parade ordinance is not simply a statute governing general conduct. Rather, on its face it governs expressive activities, thus bringing it within the strict scrutiny afforded restrictions on speech under the First Amendment. See *MacDonald v. Safir*, 206 F.3d 183, 189

(2d Cir. 2000); People v. Bezjak, 11 Misc. 3d 424, 430-31 (N.Y. City Crim. Ct. January 9, 2006) (parades are expressive activities).

A rule that conditions the exercise of expressive activity – particularly in a street or park<sup>2</sup> – on official permission constitutes a prior restraint on speech. See Beal v. Stern, 184 F.3d 117, 124 (2d Cir. 1999). The U.S. Court of Appeals for the Second Circuit, drawing on U.S. Supreme Court authority, described prior restraints as follows:

The essence of prior restraints are that ‘they give public officials the power to deny use of a forum in advance of actual expression.’ A regulation may constitute a prior restraint even if it is not content-based. Further, ‘prior restraints on speech and publication are the most serious and least tolerable infringement on First Amendment rights.’ This view reflects ‘a theory deeply etched in our law: a free society prefers to punish the few who abuse rights of speech after they break the law than to throttle them and all others beforehand.’

Id. [internal citations omitted]. Therefore, there is a “heavy presumption against the validity of prior restraint.” Forsyth County v. The Nationalist Movement, 505 U.S. 123, 130 (1992).

---

<sup>2</sup> “Streets and parks” are traditional public fora that “have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.” Hague v. CIO, 307 U.S. 496, 515, 516 (1939); see also Frisby v. Schultz, 487 U.S. 474, 480-481 (1988) (“No particularized inquiry into the precise nature of a specific street is necessary; all public streets are held in the public trust and are properly considered traditional public fora”); Cornelius v. NAACP Legal Defense & Ed. Fund., Inc., 473 U.S. 788, 815 (1985); Perry Ed. Assn. v. Perry Local Educators’ Assn., 460 U.S. 37, 45 (1983). Regulations of speech in traditional public fora are “subject to the highest scrutiny” and “survive only if they are *narrowly drawn to achieve a compelling state interest.*” International Society for Krishna Consciousness v. Lee, 505 U.S. 672, 678 (1992)[emphasis added].

These restrictions on prior restraints do not, however, render all licensing schemes impacting expressive content unconstitutional. An authority may impose “content-neutral time, place, and manner restrictions” so long as they are “narrowly tailored to serve a significant governmental interest, leave open ample alternatives for communication, and do not delegate overly broad licensing discretion to government officials.” Id. Therefore, “a license must contain narrow, objective, and definite standards to guide the licensing authority.” Id.; see also Freedman v. Maryland, 380 U.S. 51, 58-59 (1965) (setting forth requirements for prior review licensing scheme).

Applying these standards, courts have struck down parade ordinances that provided similar or less discretion to the licensing authorities than the Poughkeepsie parade ordinance. See, e.g. Shuttlesworth v. Birmingham, 394 U.S. 147 (1969) (ordinance very similar to Poughkeepsie ordinance, but allowing permit denials based on “public welfare, peace, safety, health, decency, good order, morals, or convenience”); Cox v. Charleston, 416 F.3d 281 (4<sup>th</sup> Cir. 2005) (ordinance provides that “it is unlawful for any person to organize, hold or participate in any parade, meeting, exhibition, assembly or procession of persons and/or vehicles on the streets or sidewalks of the city, unless such activity shall have first been authorized by a written permit.”); Burk v. Augusta-Richmond County, 365 F.3d 1247 (11<sup>th</sup> Cir. 2004) (“There shall be no public demonstration or protest, . . . consisting of five (5) or more persons on any sidewalk, street, public right-of-way or other public property within Augusta unless a permit for same has

been issued for such event by the Sheriff of Richmond County.”); Metropolitan Council, Inc. v. Safir, 99 F. Supp. 2d 438 (S.D.N.Y. 2000) (ban on sleeping or lying on city sidewalks); Million Youth March, Inc. v. Safir, 18 F. Supp. 2d 334 (S.D.N.Y. 1998), *modified on other grounds*, 155 F.3d 124 (2d Cir. 1998) (New York City mass gathering ordinance and regulation providing specific guidelines deemed unconstitutional prior restraint); Invisible Empire Knights of the Ku Klux Klan v. West Haven, 600 F. Supp. 1427 (D. Conn. 1985) (permitting scheme with no applicable guidelines is unconstitutional). Based on the foregoing, the absolute lack of guidelines in the Poughkeepsie parade ordinance offers excessive discretion to the Chief of Police and renders it facially unconstitutional.

The requirement that applicants request a permit 15 days before a parade also is an unconstitutional prior restraint. Courts recognize that rapid or spontaneous response to unfolding political events is a critical component of expression. *See, e.g. Shuttlesworth*, 394 U.S. at 163 (Harlan, J. concurring) (“Timing is of the essence in politics. . . . When an event occurs, it is often necessary to have one's voice heard promptly, if it is to be considered at all.”); NAACP, Western Region v. Richmond, 743 F.2d 1346, 1355-56 (9<sup>th</sup> Cir. 1984). Therefore, courts have struck down statutes requiring 30-days notice, *see American-Arab Anti-Discrimination Comm. v. Dearborn*, 418 F.3d 600 (6<sup>th</sup> Cir. 2005); Sullivan v. Augusta, 406 F.Supp.2d 92, 119 (D. Me. Dec. 22, 2005); York v. City of Danville, 207 Va. 665 (1967), 20-days notice, *see NAACP, Western Region*, 743 F.2d at 1357, 7-days notice, *see Grossman v. Portland*, 33 F.3d 1200 (9<sup>th</sup>

Cir. 1994), 5-days notice, see Douglas v. Brownell, 8 F.3d 1511, 1524 (8<sup>th</sup> Cir. 1996), and 24-hours notice for small groups, see Rosen v. Port of Portland, 641 F.2d 1243, 1249 (9<sup>th</sup> Cir. 1981). Therefore, the Poughkeepsie parade ordinance’s 15-day application process for gatherings of any size is facially unconstitutional.

The Poughkeepsie parade ordinance is also unconstitutional because it lacks a *mens rea* requirement. There is no provision indicating that the ordinance will only be applied to those who knowingly violate it. It therefore allows police officers to sweep into any parade, gathering, assemblage, or demonstration and arbitrarily make arrests, even if the participants in the event have no idea that they are engaged in unlawful conduct.

A strict liability statute impacting First Amendment freedoms may “have the collateral effect of inhibiting the freedom of expression, by making the individual more reluctant to exercise it.” Dearborn, 418 F.3d at 611 (*quoting Smith v. California*, 361 U.S. 147, 151 (1960)). Therefore, if a strict liability statute chills – and therefore is a prior restraint on – First Amendment rights, it “must contain a knowledge element.” Dearborn, 418 F.3d at 611. Such a restriction on marches is particularly offensive. As stated by the Dearborn Court,

There is scarcely a more powerful form of expression than the political march. Unlike stationary demonstrations or other forms of pure speech, the political march is capable of reaching and mobilizing the larger community of citizens. It is intended to provoke emotive and spontaneous action, and this is where the virtue lies. As it progresses, it may stir the sentiments and sympathies of those it passes, causing fellow citizens to join in the procession as a statement of solidarity. Automatically criminalizing participation in a permitless march destroys the spontaneity and enthusiasm which public demonstrations of this

nature are meant to engender. And by placing an unnecessary obstacle before the marchers' access to the public streets and sidewalks, the Ordinance chills a substantial amount of speech related to current events. Yet speech related to current events is the type of speech which is "situated at the core of our First Amendment values.

Dearborn, 418 F.3d at 611-12. The Poughkeepsie parade ordinance automatically criminalizes participation in unpermitted marches and other gatherings. Therefore, it violates the First Amendment.

For the reasons set forth above, the Poughkeepsie parade ordinance is an unconstitutional prior restraint on expression.

## **2. The Parade Ordinance is Facially Void Because it is Overly Broad**

The breadth of the Poughkeepsie parade ordinance is unconstitutionally excessive. An examination of whether an ordinance is overbroad hinges on whether it “vests unbridled discretion in a government official over whether to permit or deny expressive activity.”

Lakewood v. Plain Dealer Pub. Co., 486 U.S. 750, 755-56 (1988). Likewise, “a government regulation that allows arbitrary application is ‘inherently inconsistent with a valid time, place and manner regulation because such discretion has the potential for becoming a means of suppressing a particular point of view.’” Heffron v. International Society for Krishna Consciousness, Inc., 452 U.S. 640, 649 (1981), citing, inter alia, Shuttlesworth v. Birmingham, 394 U.S. 313, 321-325 (1969). Therefore, “if the permit scheme involves appraisal of facts, the exercise of judgment, and the formation of an opinion by the licensing authority, the danger of censorship

and of abridgement of our precious First Amendment freedoms is too great.” Southeastern Promotions Ltd v. Conrad, 420 US 546, 553 (1975).

An “overbreadth” analysis is in many respects closely tied to the “prior restraint” examination set forth in § II(B)(2), *supra*. For the same reasons that the Poughkeepsie parade ordinance unconstitutionally grants unbridled authority to the Chief of Police to prevent expression before it occurs, the fact that this authority is unbridled and *undefined* makes it overbroad.

A statute may also be overbroad if it lacks any minimum number of people in order for an event to fall within its coverage. Directly applicable to this lack of numerical parameters, the U.S. Court of Appeals for the Sixth Circuit stated succinctly,

Permit schemes and advance notice requirements that potentially apply to small groups are nearly always overbroad and lack narrow tailoring. The Ordinance is overly broad because under the Ordinance as written, any procession of people with a common purpose or goal, whether it be a small [\*\*433] group of protesters or a group of senior citizens walking together to religious services are conceivably required to obtain a permit from the city. . . .

American-Arab Anti-Discrimination Committee v. Dearborn, 418 F.3d 600, 608 (6<sup>th</sup> Cir. 2005).

The Poughkeepsie parade ordinance prohibits “*any* parade, gathering, assemblage or demonstration” on any street or other public place without first obtaining a permit from the chief of police. Therefore, two people peacefully holding protest signs on a street corner have violated the ordinance. This absence of guidelines renders the ordinance unconstitutional.

For the reasons set forth above, because the Poughkeepsie parade ordinance lacks any definitions or numerical parameters, it is overly broad.

### 3. The Parade Ordinance is Facially Void Because it is Vague

Aside from being overbroad and lacking the required narrow tailoring, the parade ordinance is unconstitutionally vague.<sup>3</sup> The parade ordinance the defendant challenges in the instant motion contains no definitions of its terms. Indeed, a “gathering” or “assemblage” may apply to practically any group of people coming together for any purpose. For example, the group of approximately 20 supporters who attended the defendant’s arraignment before this Court had technically violated the parade ordinance, as would a group assembled in line to attend a concert at the Bardavan, or friends congregating on a city sidewalk while waiting for a seat at a local restaurant.<sup>4</sup>

In determining whether a statute is unconstitutionally vague, courts apply a two-part test.

First,

To ensure that no person is punished for conduct not reasonably understood to be prohibited, the court must determine whether the statute in question is

---

<sup>3</sup> A “vagueness” analysis is rooted in the Fifth and Fourteenth Amendment due process doctrine, rather than the First Amendment. See Stuart, 100 N.Y.2d at 418. Therefore, a statute may be unconstitutionally vague regardless of whether it restricts expression. See, e.g. Id. at n.8.

<sup>4</sup> The defendant recognizes that the City almost certainly would not enforce the ordinance in the latter two scenarios. However, the fact that the ordinance would not be enforced against non-protesting pedestrians, but it was enforced against the defendant for alleged conduct that clearly was expressive, gives additional credence to the crux the defendants’ defense: that the ordinance gives (and in fact gave) the police unbridled discretion to enforce the ordinance based on or inhibiting expressive content in violation of the First Amendment.

“sufficiently definite ‘to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute. . . . Second, the court must determine whether the enactment provides officials with clear standards for enforcement. This requirement is closely related to the first. If a statute is so vague that a potential offender cannot tell what conduct is against the law, neither can a police officer. A vague statute impermissibly delegates basic policy determinations to the police (and eventually to judges and juries) ‘for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application’. Put differently, if a criminal statute is impermissibly vague, the police will be guided not by clear language but by whim.

Stuart, 100 N.Y. 2d at 420-21 [internal citations omitted].

Without reiterating the parade ordinance’s constitutional shortcomings set forth in §§ II(B)(2) and (3), *supra*, it is axiomatic that an ordinance which is overbroad and an unconstitutional prior restraint also poses a risk of arbitrary and discriminatory enforcement. See Stuart, 100 N.Y.2d at 421-22 (adequate guidelines for law enforcement is “perhaps the more important aspect of the vagueness doctrine.”). Therefore, the Poughkeepsie parade ordinance is unconstitutionally vague.

**4. The License Application Process is Unconstitutional Because it Requires Applicants to be Associated with an Organization**

The Application for a City License requires an “Organization Name” and a “Representative’s Name”. There is no space on the application for events organized by an individual not affiliated with an organization. This violates the First Amendment, as it requires applicants to be associated with an organization in order to apply for a parade permit.

The First Amendment guarantees “the right to refrain from speaking at all.” Wooley v. Maynard, 430 U.S. 705 (1977), (*quoting West Virginia Board of Education v. Barnette*, 319 US 624 (1943) (Murphy, J., concurring), *cited in Burt v. Rumsfeld*, Civil Action No. 3-03-cv-1777 (JCH), 2005 U.S. Dist. LEXIS 1387, \*57 (D. Conn. 2005)). Even where the government does not actually compel an individual to speak, but merely compels her to aid a third party in disseminating the third party’s speech, a First Amendment violation occurs. Id. at \*57-58 (citing cases). Moreover, “[t]hat the governmental action does not restrict an objecting party from communicating its own message does not render that action constitutional. . . . Nor is a violation of the freedom not to speak, or not to aid others in disseminating their speech, cured by the speaker’s ability to effectively or effectively disclaim or controvert the speech it has been forced to disseminate.” Id. at \* 58.

In addition to the freedom to refrain from speaking, the First Amendment “presupposes a freedom not to associate.” Roberts v. United States Jaycees, 468 U.S. 609, 623 (1984) (emphasis added), (*quoted in Carroll v. Blinken*, 957 F.2d 991, 995 (2<sup>nd</sup> Cir. 1992) (regulation making NYPIRG membership automatic in a State University violated the First Amendment)). In other

words, one has a constitutional right to promote something without being forced by the government to “join” a group.

By allowing only a representative of an organization to apply for a parade permit, the city is forcing those engaged in expressive speech to affiliate with an organization. This constitutes forced association, and therefore violates the First Amendment.

### **C. The Accusatory Instrument is Not Facially Sufficient**

The accusatory instrument does not contain sufficient facts or adequately set forth the elements of the alleged offense. Therefore, it may not properly be considered an information and the prosecution of the defendant must not proceed.

An information is only legally sufficient<sup>5</sup> if “the evidence, if unexplained and uncontroverted (without considering the weight or quality of the evidence) would warrant a conviction at trial.” People v. Swamp, 84 N.Y.2d 725, 730 (1995); see also NY CPL § 70.10(2). Therefore, absent non-hearsay allegations that establish each and every element of the offense charged, the acts complained of do not constitute criminal conduct. See People v. Case, 42 N.Y.2d 98 (1977); see also NY CLP § 100.40(1)(a-c).

The elements required for conviction under Poughkeepsie City Code § 14-13(a) are as follows: the defendant must have (1) conducted, addressed, or otherwise participated in (2) a parade, gathering, assemblage or demonstration that (3) occurred in a public place within the city, (4) lacking the required written permit from the Chief of Police.

As set forth in § I, *supra*, the accusatory instrument alleges that the defendant “helped organize a parade w/o a permit that impeded traffic from Vassar College after being asked not to . . . [illegible] aforementioned having occurred within the City of Poughkeepsie.” The only

---

<sup>5</sup> Facial sufficiency is a non-waivable, jurisdictional prerequisite to a valid prosecution. See People v. McNamara, 78 N.Y.2d 626, 629 (1991).

elements of the underlying ordinance stated in the accusatory instrument are that the alleged offending event was a parade,<sup>6</sup> and the alleged parade purportedly took place without a permit. Otherwise, “helping to organize” does not suggest that the defendant actually conducted, addressed, or participated in the actual alleged unpermitted event. Finally – and perhaps most perplexing – the accusatory instrument indicates that the alleged parade “impeded traffic from Vassar College”, which is not within the Poughkeepsie city limits. That Sgt. Fox suggests in his written fact statement that the alleged misconduct took place outside the city limits at the very least contradicts the later pre-printed statement that the events occurred within the City of Poughkeepsie. A factfinder at trial certainly would not convict a defendant for participating in (or “helping organize”) an unpermitted parade if the evidence presented was that it took place from Vassar College – outside the city limits – but occurred within the city limits. See Swamp, 84 N.Y.2d at 730. This, of course, simply does not make sense, and is certainly not of sufficient “weight and persuasiveness” as to convince a person of “ordinary intelligence” (or extraordinary intelligence for that matter), judgment and experience that it is reasonably likely that such offense was committed. See NY CLP § 70.10(2); People v. Dumas, 68 N.Y.2d 729 (1986).

---

<sup>6</sup> Of course, absent a definition of a “parade” it is hard to imagine what facts “of an evidentiary character,” see NY CPL § 100.15(3), sufficient to show that the alleged event was in fact a parade, may be plead. This question, of course, goes to the overbreadth and vagueness doctrines discussed in §§ II(B)(2) and (3), *supra*.

For the reasons set forth above, the accusatory instrument is not sufficient to constitute an information, and therefore the prosecution of the defendant must not proceed.

### **III. Conclusion**

Poughkeepsie City Ordinance § 14-13(a) is facially unconstitutional, and it is unconstitutional as applied to the defendant. Further, the accusatory instrument is severely lacking in the requisite facts to be considered an information. Therefore, this case against the defendant must be dismissed.

DATED: Kingston, New York  
May \_\_, 2006

Respectfully Submitted,

Daniel Werner  
WORKERS' RIGHTS LAW CENTER  
OF NEW YORK, INC.  
101 Hurley Ave., Suite 5  
Kingston, NY 12401  
(845) 331-6615  
Facsimile: (845)331-6617  
dwerner@wnylc.com

ATTORNEYS FOR DEFENDANT

TO: Paul E. Schwerman, Esq.  
Assistant Corporation Counsel  
City of Poughkeepsie  
City Hall  
P.O. Box 300  
Poughkeepsie, NY 12602  
(845)451-4065

Facsimile: (845)451-4070  
[pschwerman@cityofpoughkeepsie.com](mailto:pschwerman@cityofpoughkeepsie.com)

ATTORNEYS FOR THE PEOPLE OF THE  
STATE OF NEW YORK, CITY OF POUGHKEEPSIE