UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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PEOPLE OF THE STATE OF NEW YORK,
by ELIOT SPITZER, ATTORNEY GENERAL
OF THE STATE OF NEW YORK,

Plaintiffs, 01-Civ-0364 (CM)

--against--

THE TOWN OF WALLKILL,

Defendant.
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DECISION AND ORDER DISMISSING DEFENDANT'S CHALLENGE TO SUBJECT MATTER JURISDICTION

McMahon, J.:

The People of the State of New York commenced this action seeking injunctive relief and a Federal monitor to supervise the activities of the Town of Wallkill's police department – a department described as "out of control" by the Attorney General, the local press, and even members of the Town's own Police Commission. Shortly after suit was filed, the Town decided to enter into a consent decree with the People. The resolution of the lawsuit was the subject of much publicity in late February.

At a pre-trial conference on March 1, 2001, the parties presented the proposed consent decree to the Court. While indicating the Town's grudging acquiescence to its terms, counsel for Wallkill stated that, in the Town's opinion, this Court did not have subject matter jurisdiction over the People's action. After pointing out that the parties could not confer subject matter jurisdiction on me where it was lacking, I directed the parties to brief the issue so I could resolve that question before I turned to the consent decree.

Treating counsel's statement during the pre-trial conference as a motion to dismiss the complaint for lack of subject matter jurisdiction, I deny the motion.

The People describe this as a case about systemic police misconduct and the failure of policy-makers within the Town of Wallkill (the "Town") to curb it. The State

alleges that the Town knowingly maintained a police department (the "Department") many of whose members routinely and openly used their powers to target women, critics, and perceived enemies of the Department, by making traffic stops without having reasonable suspicion to do so and by committing various acts of harassment, all in violation of the federal and state law.[1] The State of New York, acting through its Attorney General, contends that it has standing to seek to remedy these violations under the doctrine of parens patriae.

Parens patriae – from the Latin "parent of the country" – is the legal doctrine under which a state is empowered to bring suit in federal court to vindicate the state's legitimate, quasi-sovereign interests. The doctrine's application in civil rights cases – where the relevant state interest is in combating constitutional violations and eradicating discrimination – is well established, as articulated in the Supreme Court's decision in Alfred L. Snapp & Sons, Inc. v. Puerto Rico, 458 U.S. 592 (1982) ("Snapp") and numerous courts of appeals and district courts cases that followed. (See Argument, Section I, infra.)

The State of New York has a strong quasi-sovereign interest in protecting law-abiding New Yorkers (including especially women) from systemic, unlawful, discriminatory and retaliatory police tactics carried out with official knowledge and sanction.[2] Moreover, where, as the State here contends, a "substantial segment" of the population – including motorists past, present and future, especially female ones, who pass through the Wallkill jurisdiction – may be injured or threatened by such tactics, the State claims it has standing to intervene. Finally, the State argues that it can and indeed must sue to obtain adequate redress for these violations, since Supreme Court precedent precludes individual litigants, in most cases, from suing for broad injunctive relief of the sort achieved by the proposed consent decree.

## I. The State Has Standing to Sue the Town of Wallkill to Remedy Systemic, Officially Sanctioned Civil Rights Violations by Members of the Wallkill

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[1] For the background and factual allegations relevant to this decision, the Court refers interested readers to the complaint dated January 18, 2001 (cited as "Compl.") or to the transcript of the presentation made by the Attorney General in open court on March 1, 2001.

[2] The State contends, in its brief, that it has a quasi-sovereign interest in "protecting law-abiding New Yorkers and others – particularly women" from abusive police tactics. That statement intimates that women do not fall within the category of "law-abiding New Yorkers." Since I doubt that the Attorney General believes that the women of New York are not law-abiding citizens, I have taken the liberty of restating the State's formulation of what its interest is.

**Police Department.**

The doctrine of parens patriae rests upon the proposition that states have the power to vindicate their "quasi-sovereign interest in the health and well-being – both physical and economic – of [their] residents" by resort to the federal courts. Alfred L. Snapp & Sons, Inc. v. Puerto Rico, 458 U.S. at 600, 607. Based on this premise, courts of appeals and districts courts routinely have permitted states to use the basic law enforcement tool of parens patriae litigation to seek remedies for civil rights violations. In the civil rights arena alone, courts in this circuit have upheld the Attorney General's standing to sue under a variety of federal laws (including, inter alia, the Civil Rights Act of 1871, the Civil Rights Act of 1964, and the Fair Housing Act of 1968) in cases seeking protection for a variety of different groups (including, racial and religious minorities,[3] women,[4] and persons with disabilities[5]). Where acts of discrimination and constitutional malfeasance are perpetrated by police officers, state intervention as parens patriae has been deemed even more appropriate.[6]

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[3] See, e.g., People v. Peter & John's Pump House, 914 F. Supp. 809 (N.D.N.Y. 1996) (suit under the Civil Rights Act of 1964 to protect African Americans; standing upheld); People by Abrams v. Merlino, 694 F. Supp. 1101 (S.D.N.Y. 1988)(suit under Fair Housing Act; standing assumed); People by Abrams v. Ocean Club, 82 CV 0790 (E.D.N.Y. Jan. 24, 1984)(suit under the Civil Rights Act of 1964 to protect Jews).

[4] See, e.g., People by Abrams v. Operation Rescue National, 1993 WL 405433 (S.D.N.Y. Oct. 1, 1993)(suit under the Civil Rights Act of 1871, 42 U.S.C. Sec. 1985 to protect women seeking reproductive health services; standing upheld); People by Abrams v. Operation Rescue National, 92 CV 147A (W.D.N.Y. Apr. 17, 1992)(same; standing upheld).

[5] See, e.g., People by Abrams v. 11 Cornwell Co., 695 F.2d 34 (2d Cir. 1982), vacated in part on other grounds, 718 F.2d 22 (2d Cir. 1983)(en banc)(suit to protect people with mental disabilities; standing upheld); People by Vacco v. Mid-Hudson Medical Group, P.C., 877 F. Supp. 143 (S.D.N.Y. 1995) (suit under the Americans with Disabilities Act and the Rehabilitation Act to protect people with hearing impairments; standing upheld); Support Ministries for Persons with AIDS v. Village of Waterford, 799 F.Supp. 272 (N.D.N.Y. 1992)(suit under Fair Housing Act of 1968 to protect people with AIDS; standing upheld); and People by Spitzer v. Delaware County,82 F. Supp.2d 12 (N.D.N.Y. 2000)(suit under the ADA to protect people with ambulatory disabilities) and People by Spitzer v. Schoharie County, 82 F. Supp.2d 19 (N.D.N.Y. 2000), (same).

[6] See Pennsylvania v. Porter, 659 F.2d 306, 316 (3d Cir. 1981)(en banc)(suit against police officer and local officials under the Fourth and Fourteenth Amendment; "any description of the parens patriae remedy, even the narrowest, includes" these facts).

The test for parens patriae standing in the Second Circuit has three prongs: *First*, the State must articulate "a quasi-sovereign interest" -- that is, an interest that is distinguishable from the interests of private parties. 11 Cornwell Co., 695 F.2d at 38-39, citing Snapp, supra. *Second*, the State must "'allege[ ] injury to a . . . substantial segment of the population.'" Id. at 39, quoting Snapp, 461 U.S. at 607. And, *third*, the reviewing court must find that "individuals could not obtain complete relief through a private suit." Id. at 40. On the facts alleged in the State's complaint, all three prongs are readily satisfied.

(A) The State's Quasi-Sovereign Interests

At its core, this case is about three separate categories of official misconduct: (i) widespread "gender profiling" – that is, the unlawful use of police powers to target and harass women, especially on the public highways, *because they are women*; (ii) a pattern of suspicionless stops and other acts of retaliation directed at the Department's critics and perceived enemies; and (iii) the locality's long-standing knowledge of, and acquiescence, in these unlawful practices. Compl., passim. The State has profound quasi-sovereign interests in combating violations of these sorts.

As to the first, plainly the State has a strong interest in combating gender discrimination – an interest that attends the State's responsibility to enforce the Fourteenth Amendment as well as analogous provisions of the New York State Constitution and federal and state civil rights laws. See Mid-Hudson Medical Group, P.C., 877 F. Supp. at 147 ("New York has unmistakably declared its interest in the nondiscriminatory treatment of its citizens in enacting the civil rights statutes"). In Snapp, the Supreme Court recognized states' legitimate interest in "securing residents from the harmful effects of discrimination." Snapp, 458 U.S. at 609. Given the "political, social, and moral damage" visited upon the Nation by historical acts of discrimination, a unanimous Supreme Court held, "we have no doubt that a State could seek, in the federal courts, to protect its residents from such discrimination to the extent that it violates federal law." Id. The State's interest in eradicating gender discrimination is functionally identical to its interests in combating racial, religious and other forms of discrimination, all of which have been held to be "quasi-sovereign" in nature. See notes 2-4, supra.

As to the second and third categories, the State's quasi-sovereign interest is broader, but no less concrete: to "uphold[ ] the rule of law and ensure that police agencies operate within the bounds of the law and do not violate the constitutional rights of citizens they are sworn to protect." Compl., Para. 12. This interest was articulated in Pennsylvania v. Porter, 659 F.2d 306 (3d Cir. 1981)(en banc), a case with facts strikingly similar to the allegations before me. In Porter, the Commonwealth of Pennsylvania sued the Mayor, the Borough Council, the chief of police and a police officer in the Borough of Millvale, a town in Allegheny County, alleging that the officer had engaged in an "extended pattern" of "harassment, illegal detentions, illegal arrests

and illegal searches and seizures." Porter, 659 F.2d at 308. The Commonwealth further alleged that the chief and local governmental officials were fully aware of this pattern, but took no action to discipline the officer or prevent his misconduct. Id. at 309-310.

On these facts, the Court of Appeals identified several "sovereign interests" sufficient to support the Commonwealth's parens patriae standing:

> The Commonwealth is vitally interested in the prevention of lawless exercises of the powers its laws confer upon police officers hired by its subdivisions. . . . [P]atterns or practices of misconduct by local officials in violation of constitutional rights interfere with the performance of the obligation of executive officers of the Commonwealth to uphold and enforce those rights. . . . The Commonwealth is also vitally interested in safeguarding the health and safety of individuals in the territory. The Commonwealth's interest in prevention of physical abuse [by police officers] . . . is no different in kind from [its] interest in preventing poisoning by toxic waste. . . .

Id. at 315. In light of these "vital" state interests, the court upheld the Commonwealth's claims for prospective injunctive relief against all defendants. Id. at 320-325.

Precisely the same interests – the prevention of a pattern of police lawlessness, under official sanction, and protection of the citizenry from abusive practices – are at stake in the case at bar; and precisely the same interests support parens patriae standing for the State here.[7]

Finally, the State's interests in this case are truly quasi-sovereign in that they differ from and are independent of whatever private interests may be at stake. See Snapp, 458 U.S. at 607. This is demonstrated by the scope of the Complaint's coverage, and the sweep of the proposed decree's relief. The State's Complaint is forward-looking: it seeks protection for present and potential *future* victims -- those who "are or *will be* driving," "residents . . . who have spoken out or *in the future will* speak out" against the Department, etc. Compl., Para. 7. Specific victims from the past are relevant only as exemplars of the pattern of misconduct. The Complaint declines even

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[7] As the Porter court concluded, "Any description of a parens patriae remedy, even the narrowest, includes" the facts alleged in that case. Porter, 659 F.2d at 316. Notably, Porter was cited with approval in the leading Second Circuit case on parens patriae, 11 Cornwell Co., 695 F.2d at 39, and in subsequent district court decisions in this circuit. See, e.g., People by Vacco v. Mid-Hudson Medical Group, P.C., 877 F.Supp. at 146.

to name them, and seeks neither damages nor other specific relief on their behalf.[8] Instead, the Complaint prays primarily for prospective injunctive relief that will benefit all citizens, and the proposed decree settles exclusively for such class-wide relief. This broad focus, infused in every aspect of the State's case, proves conclusively that the State's interests here are "interest[s] apart from the interests of the particular private parties". Peter & John's Pump House, 914 F. Supp. at 811.

(B) "Injury to a Substantial Segment of the Population"

Likewise, the State has clearly alleged that the Town's misconduct injures and threatens to injure a "substantial segment of the population." Snapp, 592 U.S. at 607; 11 Cornwell Co., 695 F.2d at 39. The Complaint alleges a pattern of police misconduct directly affecting, at the least, two broad groups of New Yorkers: (i) women who currently use or intend in the future to use highways patrolled by the Wallkill Police Department, or who otherwise have regular contact with members of the Department; and (ii) critics or perceived enemies of the Department, including those who have or may in the future will "speak out on issues of public concern" in a manner critical of the Department. Compl., Para. 7, 13, passim. The Complaint provides numerous examples of illegal police activity targeting each of these groups, and alleges that a far larger number of victims exists than has yet been identified. [9]

Regardless of the specific number of victims involved, what must be shown is a clear indication that the State is acting on behalf of a broad spectrum of the public. See Peter & John's Pump House, 914 F. Supp. at 812 ("no numerical talisman" for the "substantial segment" requirement); Mid-Hudson Medical Group P.C., 877 F. Supp. at 148 ("raw number of individuals directly involved" not determinative). This requirement may be satisfied in a variety of ways. For example, in 11 Cornwell Co., which involved a conspiracy to prevent less than a dozen mentally retarded persons from moving into a single-family home in Long Island, the Court of Appeals found that the "segment" requirement was satisfied, in part, by the fact that an unspecified number of "similar

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[8] The Complaint does seek to recover for damages incurred by the State qua state. Such damages would flow to the state treasury, however, not to specific victims.

[9] Indeed, in the March 1 court conference, the Attorney General's office described several additional victims identified since the Complaint was filed, and informed the Court that, at the time the proposed decree was signed by the parties, dozens of leads and hundreds of potential witnesses and victims remained to be interviewed. Hg. Tr. at 15. That the Complaint does not further quantify the size of each group is irrelevant: under the case law, such quantification is unnecessary. For instance, in Snapp, the Supreme Court held that the "universal sting" brought on by discrimination against relatively few Puerto Rican workers was sufficient to implicate the interests of all residents of the Commonwealth. Snapp, 592 U.S. at 609.

[mentally impaired] people in years to come, . . . other individuals in [mental] institutions, and the members of the [Long Island] community itself" all would be affected by the outcome of the case. 11 Cornwell Co., 695 F.2d at 39.[10]

Similarly, in Peter & John's Pump House, then-District Judge Pooler found this "substantial segment" element satisfied based upon the Attorney General's allegation of a "practice and policy" of denying African Americans admission to a nightclub and eight specific incidents as "exemplars." Peter & John's Pump House, 914 F. Supp. at 813. Though it acknowledged that there was "no accurate method to determine how many African Americans may have been denied access to the Club because of their race," the court nevertheless upheld the State's claim of standing. Id. In so doing, the court found the State's allegation of "discrimination that has a destructive societal effect" sufficient to "justif[y] parens patriae." Id.

The lesson of the case law is clear: the "substantial segment" requirement is not numerical, but conceptual. In determining whether the requirement is met, courts apply a common sense approach that takes into consideration both the direct and the indirect effects of the injury. Snapp, 592 U.S. at 607. Under such an approach, and on the facts alleged here, a "substantial segment of the population" plainly has suffered and, absent court intervention, will continue to suffer at the hands of officers of the Wallkill Police Department.

(C) Inadequacy of Individual Suits

In this case, the Attorney General sought, and the proposed decree provides for, strong, prospective injunctive relief to remedy the constitutional violations uncovered and to professionalize the Wallkill Police Department. Serious legal and practical impediments render it extremely unlikely that an individual private litigant could or would obtain the kind of "complete relief" set forth in the parties' proposed consent decree. See 11 Cornwell Co., 695 F.2d at 40; Mid-Hudson Medical Group, P.C., 877 F. Supp. at 148.[11]

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[10] Accord: Support Ministries, 799 F. Supp. at 277 (upholding parens patriae, where case directly affected 15 people with AIDS, but indirectly affected similarly situated persons in the future); People by Vacco v. Mid-Hudson Medical Group, P.C., 877 F. Supp. at 145-147 (one known victim, but entire state population of deaf persons affected in futuro; parens patriae upheld).

[11] As the court in Peter & John's Pump House noted, People by Abrams v. Holiday Inns, Inc., 656 F. Supp. 675 (W.D.N.Y. 1984) is inapposite. In Holiday Inns, no parens patriae jurisdiction existed because the third prong – inability of private plaintiffs to obtain complete relief – had clearly not been met. Holiday Inns, Inc., 656 F. Supp. at 678. There, ten specific individuals had been discriminated against, and the case

The decree currently under consideration provides exclusively (and extensively) for prospective injunctive relief, rather than seeking damages for individual victims.[12] The first hurdle faced by an individual police misconduct victim who would seek such relief is the Supreme Court's decision in City of Los Angeles v. Lyons, 461 U.S. 95 (1983). In Lyons, plaintiff alleged that, in the course of traffic stop, he was subjected to a chokehold by Los Angeles police officers. Lyons, 461 U.S. at 97. Based on this incident, and ten similar ones involving other persons, the plaintiff sought an injunction sharply curtailing the LAPD's use of the chokehold *in futuro*. Id. at 98, 100. The Supreme Court dismissed the claim, holding that the plaintiff lacked standing to sue for such forward-looking relief. Id. at 105-111. As the Court of Appeals more recently characterized the Lyons ruling, "A plaintiff seeking injunctive or declaratory relief cannot rely on past injury to satisfy the [Art. III] injury requirement but must show a likelihood that he or she will be injured in the future." DeShawn v Safir, 156 F.3d 340, 340 (2d Cir. 1998).

For the ordinary individual litigant, this hurdle is exceedingly difficult to surmount. To meet Lyons' standing requirement of likelihood of future injury, a person would need either to produce evidence of repeated personal victimization. See Lyons, 461 U.S. at 105-106, or evidence to support a "pattern and practice" claim under Monell v. Department of Social Services, 436 U.S. 658 (1978)). The former would be a function of dumb luck, and while the latter is not impossible -- private parties do, after all, bring Monell claims all the time -- individual plaintiffs typically lack the expertise, the resources, and above all the incentive to hold fast for the kind of broad injunctive relief found in the proposed consent decree. Indeed, as the case law recognizes, "[p]rivate litigants . . have a greater incentive to compromise requests for injunctive relief in exchange for increased money damages." Peter & John's Pump House, 914 F. Supp. at 813. For this reason, among others, "the vindication of the rights of New Yorkers to be free from discrimination . . . cannot be made dependent on the actions and limited resources of private parties." Support Ministries, 799 F. Supp. at 278-279; Peter &

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sought damages on their behalf. Indeed, the individuals were co-plaintiffs in the lawsuit. For this reason, the court found that the individuals were capable of fully vindicating their own rights. Id. ("unlike Cornwell wherein the individual plaintiffs' standing was doubtful, the ten named plaintiffs possess the requisite standing to challenge the alleged discriminating practices and to receive complete relief through their private suit").

[12] This answers the principal objection to th exercise of parens patriae jurisdiction propounded by the Town: namely, that the State is really suing on behalf of people who could sue for themselves. The People are not seeking damages on behalf of the already-identified victims of abusive police tactics in Wallkill, and the proposed consent decree does not foreclose those victims – or others yet unknown – from bringing private actions for damages.

John's Pump House, 914 F. Supp. at 813; see also, Porter, 659 F.2d at 315-316.[13] These problems are exacerbated by the fear of retribution that victims of police misconduct so often experience. This fear alone is a "significant deterrent to vigorous private enforcement actions." Porter, 659 F.2d at 316.

Thus, after Lyons, successful individual police misconduct suits for injunctive relief are virtually unheard of. See, e.g., Curtis v. City of New Haven, 726 F.2d 65, 68 (2d Cir. 1984)(dismissing individual claim for injunctive relief against New Haven Police Department, after Lyons); Maxwell v. City of New York, 1995 U.S. Dist. LEXIS 5467, at *13-14 (S.D.N.Y. 1995)(dismissing individual action seeking prospective relief against police department).[14] Therefore, parens patriae litigation is the best and, likely, the only, method for obtaining the sort of systemic, forward-looking relief that the State here seeks.

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[13] See Mid-Hudson Medical Group, P.C., 877 F. Supp. at 149: "If [the individual plaintiff] has the resources and stamina necessary for prolonged litigation . . ., he might be able to obtain relief. [But] the remote possibility that [the individual plaintiff] could obtain relief for himself does not preclude the Attorney General from seeking 'complete relief' for all current and future" victims.

[14] To be sure, advocacy groups and public interest law organizations occasionally make the effort and sometimes survive the Lyons motion to dismiss. See e.g., National Congress for Puerto Rican Rights v. City of New York, 75 F. Supp. 154 (S.D.N.Y. 1999). These are not, however, true "individual suits"; they are organizational suits of the sort that remain rare and rarely successful in obtaining "complete relief."

## Conclusion

On the facts here pleaded, the parens patriae remedy is more than merely appropriate; it is virtually compelled. For the foregoing reasons, I find that the Court does have jurisdiction to enter the proposed consent decree.

I have several comments on the substance of the decree, which will be forwarded to counsel for both sides under separate cover.

Dated: March 16, 2001

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U.S.D.J

BY FAX TO:

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