SUPERIOR COURT OF THE STATE OF RIDGEWAY

WILFORDSHULMAN, *Petitioner,* v. JAMESGARDAI, in his official and quasi-official capacities as Sergeant in the Ridgeway National Guard. *Respondent.*	Civil Action No. RSC-CV-3172

PETITIONER WILFORDSHULMAN'S RESPONSE BRIEF IN OPPOSITION TO MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Petitioner WilfordShulman, by and through undersigned counsel, hereby files this reply in opposition to Respondent JamesGardai's Motion to Dismiss under Rid. R. Civ. P. 12(a)(5).

A memorandum of law in opposition is attached hereto.

Respectfully submitted.

DATED: JULY 13, 2024
Palmer County Hall

CENTER FOR INDIVIDUAL RIGHTS

BY: /s/BrendaPopplewell

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MEMORANDUM OF LAW IN OPPOSITION TO
MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

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STANDARD OF REVIEW

In reviewing a petition for habeas corpus, a court of competent jurisdiction "shall either grant or deny review of the petition based on its merits." 1 R. Stat. § 2211. Accordingly, "[t]he Court may...deny or grant a petition..." Id. If habeas corpus is issued, courts will next determine "whether the police were lawfully entitled to make [the] arrest." In re Zachcasisbeast, 1 R. Supp., at 12 (2022). That is, if the police officer "had probable cause that a crime was committed." Id. If the arrest was unlawful, "the inquiry ends there; the record must be removed." Id. But if the arrest was lawful, the next question is whether the applicant is "actually innocent of the charge or charges for which they were arrested." Id.

ARGUMENT

I. PETITIONER DID NOT VIOLATE THE UNLAWFUL ASSEMBLY STATUTE

The court is called to consider the meaning of a penal statute which makes it unlawful for "a group of 4 or more individuals ***with bats on their persons*** who are acting in a violent manner or rallying without a valid permit." Rid. Crim. C. § 2.14 (emphasis added). On its face, the language of § 2.14 is plain and unambigious—it prohibits 4 or more persons with bats on their persons from either acting in a violent manner or rallying without a valid permit. So much is clear from the statute's text. The Solicitor General, however, argues for a different construction—he claims the statute partially applies regardless of whether one carries a bat. According to his interpretation, it is unlawful for a group of 4 or more persons with bats on their persons to act in a violent manner ***and*** for a group of 4 or more persons, with or without bats on their persons, to rally without a valid permit. This interpretation is wrong—egregiously so.

The Solicitor General fails to consider that the word "any," when used in a statute, does not normally mean "any in the universe." See FCC v. NextWave Personal Communications Inc., 537 U. S. 293, 311 (2003) (Breyer, J., dissenting) ("'Tell all customers that . . .' does not refer to

every customer of every business in the world"). Instead, "[g]eneral terms as used on particular occasions often carry with them implied restrictions as to scope," ibid., and so courts must interpret the word "any," like all other words, in context. The Solicitor General's interpretation of § 2.14 disregards the specific context of the statute's, which ties the presence of bats to both violent behavior and the requirement for a valid permit to rally.

The Solicitor General's interpretation of § 2.14, if adopted by the court, would grossly undermine the legislative intent behind the statute. Indeed, the legislature did not randomly decide to insert into § 2.14 the phrase ***"with bats on their persons"***—nor did it do so by typographical error or accident. Rather, in creating a connection between bats and rallying, the legislature makes clear that its intent is to target only those rallies which may later evolve into a violent exchange. Criminal liability imports a condemnation, "the gravest we," as a State, "permit ourselves to make." H. Wechsler, American Law Institute II–A Thoughtful Code of Substantive Law, 45 J. Crim. L. & C. 524, 528 (1955) (Wechsler). Petitioner's peaceful act of standing on a sidewalk with a sign in his hands cannot be said to be deserving of this grave condemnation. Such a bizarre outcome is not befitting a greater government.

Take for instance the following provision of the Illinois Criminal Code which makes it unlawful for "[a]ny person ***under the age of 18*** who falsely states *** that he or she is not under the age of 18, ***or*** who presents or offers to any person any evidence of age and identity that is false or not actually his or her own with the intent of ordering, obtaining, viewing, or otherwise procuring or attempting to procure or view any harmful material ***" 720 I.L.C.S. § 5/11-21(f) (emphases added). The phrasing of this penal statute—similarly to the phrasing of § 2.14—is clear and unambigious. It needs no interpretation beyond its plain text. It prohibits the act of any person ***"under the age of 18"*** from either making a false statement that he or she is not under the

age of 18 or presenting or offering evidence of age and identity that is false or not actually his or her own with the intent of procuring or attempting to procure harmful material.

This Illinois statute applies only to persons under the age of 18. So much is similarly clear from the words employed by its framers. However, if we were to follow the formula of construction used by the Solicitor General in interpreting § 2.14, the Illinois statute would suddenly come to carry a completely different meaning than that meaning obviously reflected by its text—the statute would instead prohibit the act of any person under the age of 18 from making a false statement ***or*** any person, ***regardless of their age***, from procuring or attempting to procure harmful material. The Solicitor General's construction of § 2.14 is just as wrong as his would-be construction of the Illinois statute. It discards "the plain, obvious, and rational meaning of a statute" in lieu of a "curious, narrow, hidden sense" that nothing but the "acute study" of a powerful intellect "would discover." Im_Thunderr v. Nephral, 3 Rid. ____ (2022) (slip op. at 3).

II. CONSTITUTIONAL AVOIDANCE DOCTRINE WARRANTS DEFERENCE TO PETITIONER'S INTERPRETATION

A. The Solicitor General's Interpretation Would Quell Free Speech and Assembly

The right to assembly is among the most fundamental liberties present in a free society. The State of Ridgeway is no exception. The people of the State of Ridgeway enjoy an incorporated right under the U.S. Constitution to freely speak and assemble. U.S. CONST. AMEND. I; see e.g. Smith v. Highway Employees, 441 U.S. 464 (1979). And the people are just as equally constitutionally protected "from retaliation for doing so." Id. Under the Solicitor General's sordid view of the law, benign conduct, usually constitutionally protected under the First Amendment, would become outright criminal. Imagine, for instance, a group of parents gathered in a public park to discuss school board policies. If this gathering happens to be more than four individuals and they do not have a ***"valid permit"***—they too could be swept under the

statute's reach. The Solicitor General's construction of the statute is without limitations—and so too unlimited is the amount of wrongful applications which would happen under it.

B. The Solicitor General's Interpretation Would Be Partially Void For Desuetude

Under the Fourteenth Amendment to the U.S. Constitution, a person has an incorporated right under due process to fair notice of a penal statute. U.S. CONST AMEND. V, XIV. While it is known to any prudent jurist that a law that is so linguistically vague so as to fail to provide notice of its proscriptions may be considered void under the fair notice requirements of due process, it is lesser known—though just as equally established—that a penal enactment, which has been neglected by its framers, also fails to impart notice of its proscriptions because it has been disused—or "neglected"— for a long period of time. Indeed, courts may reject a charge brought under such a statute. See United States v. Elliott, 266 F. Supp. 318, 325 (S.D.N.Y. 1967). Although originally a civil law doctrine, courts have acknowledged that a desuetudinal statute could present "serious problems of fair notice" in a criminal case. Id. at 326.

"A penal enactment which is linguistically clear, but has been notoriously ignored by both its administrators and the community for an unduly extended period, imparts no more notice of its proscriptions than a statute which is phrased in vague terms." See United States v. Jones, Dist. Court, ED Wisconsin 2004, quoting NORMAN J. SINGER, SUTHERLAND'S STATUTORY CONSTRUCTION, § 34:6 at 44 (6th ed. 2001); Bonfield, The Abrogation of Penal Statutes by Nonenforcement, 49 IOWA L. REV. 389, 416 (1964). According to the Solicitor General, a group of 4 or more individuals who rally without a ***"valid permit"*** are guilty of Unlawful Assembly under § 2.14. However, State law is silent on what constitutes a "valid permit" and is equally silent on how to obtain a valid permit. Because the legislature has neglected its duty in defining permits under § 2.14 and how to obtain them, § 2.14 is in a state of disuse. The Solicitor General's interpretation thus raises doubts as to § 2.14's constitutionality under due process.

C. Petitioner's Interpretation Is Preferable Under Constitutional Avoidance

The doctrine of constitutional avoidance discourages the court from interpreting statutes in a way that raises severe doubts concerning their constitutionality. See Clark v. Martinez, 543 U.S., at 396 (2005). This is based on the general assumption that a legislature would never "intend the alternative which raises serious constitutional doubts," Clark v. Martinez, supra, 543 U.S., at 381, but instead "intends statutes to have effect to the full extent the Constitution allows." See United States v. Booker, ante, at 320 (THOMAS, J., dissenting in part). The Solicitor General's interpretation of § 2.14 creates needless constitutional issues—for instance, the statute under the Solicitor General's interpretation is, at a minimum, likely to be declared unconstitutional for quelling free speech and assembly and/or being declared void for desuetude. On the other hand, Petitioner's interpretation of § 2.14 is free from such defects.

CONCLUSION

For the reasons stated above, Respondent's Motion to Dismiss should be denied and the Petition for Writ of Habeas Corpus should be granted.

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