

Certification of Service

I certify that on October 18, 2005, I served copies of the within Notice of Motion, Certification, Letter Brief and proposed form of Order upon the Municipal Prosecutor by hand delivery to 56 Fayette Street, Perth Amboy, New Jersey and by regular mail to the four defendants at their addresses listed above.

I certify that the foregoing statements made by me are true and am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: October 18, 2005

John Paff, Movant

John Paff
PO Box 5424
Somerset, NJ 08875
Telephone 732-873-1251
Movant

	:	
	:	
STATE OF NEW JERSEY	:	Municipal Court of
	:	City of Perth Amboy
	:	Middlesex County
Plaintiff	:	
	:	
	:	Docket no: SC-2005-023407
vs.	:	SC-2005-022549
	:	SC-2005-022275
	:	SC-2005-021689
CHARLENE COY, ANA VARGAS	:	
TORRIES THOMAS and	:	Criminal Action
FREDDY GUZMAN	:	
	:	CERTIFICATION OF JOHN PAFF
Defendants	:	

1. I am a long-time member of the Libertarian Party and subscribe to that party's strong opposition to loitering, vagrancy, curfew and similar laws that prohibit a person from sitting on a park bench, strolling around a city block or engaging in other peaceful activity because of what the person, in a police officer's judgment, *might* do. I find such laws, which purportedly are enacted to "nip crime in the bud,"¹ repugnant to a free society and "leave the citizen at the mercy of [the law's] enforcers."²

2. The within four defendants are all charged under the City's Loitering Ordinance, a

¹ "A presumption that people who might walk or loaf or loiter or stroll or frequent houses where liquor is sold, or who are supported by their wives or who look suspicious to the police are to become future criminals is too precarious for a rule of law. The implicit presumption in these generalized vagrancy standards -- **that crime is being nipped in the bud** -- is too extravagant to deserve extended treatment. Of course, vagrancy statutes are useful to the police. Of course, they are nets making easy the roundup of so-called undesirables. But the rule of law implies equality and justice in its application. Vagrancy laws of the Jacksonville type teach that the scales of justice are so tipped that even-handed administration of the law is not possible. The rule of law, evenly applied to minorities as well as majorities, to the poor as well as the rich, is the great mucilage that holds society together." Papachristou et al. v. City of Jacksonville, 405 U.S. 156, 171; 92 S. Ct. 839; 31 L. Ed. 2d 110 (1972) (Emphasis added).

² Guidi v. City of Atlantic City, 286 N.J. Super. 243, 245 (App. Div. 1996)

copy of which is attached as Exhibit A1 through A2.

3. I appeared at the Perth Amboy City Council meeting of December 10, 2003, and during the public portion of that meeting, I called the Council's attention to a December 4, 2003 letter I drafted and mailed to the Mayor and Council and other city officials, arguing that Perth Amboy's loitering ordinance, which was and is being enforced by the Perth Amboy Police Department, was unenforceable because it was preempted by the New Jersey Criminal Code. The letter and its attachments are attached as Exhibits B1 through B15.

4. I was informed at the December 10, 2003 meeting that the City Attorney would research the loitering ordinance and that I would be told of the results of the City Attorney's analysis after it was complete.

5. Since the December 10, 2003 meeting, both the LPSMC and I have tried unsuccessfully to get the City to disclose the outcome of the City Attorney's review of the loitering ordinance. Further, our letters to Judge Boyd and Prosecutors Papp and Cassese were never responded to.

6. Our efforts have attracted the attention of the media, including the Star Ledger, as evidenced by an August 8, 2004 article entitled "Reluctant Perth Amboy to Scrap Loitering Ordinance" by Sue Epstein. The article is attached as Exhibit C1 through C3.

7. The August 8, 2004 article quotes the mayor as saying that the City Council "will probably repeal the ordinance" in September 2004. Yet, my October 12, 2004 request to the Mayor's office (attached as Exhibit D) has not been answered and the loitering ordinance remains on the books today.

8. The Borough of Elmwood Park also had a loitering ordinance that is nearly identical to Perth Amboy's. After I contacted that Borough, the Borough Council repealed its loitering

ordinance. (Copies of Elmwood Park's loitering ordinance, a May 18, 2005 article in the Record and the Borough's repeal of its loitering ordinance are attached as Exhibits E1 through E4)

9. According to my October 17, 2005 conversation with the Highland Park Borough Clerk, an ordinance to repeal that Borough's loitering ordinance is scheduled to be introduced at the Borough Council meeting of October 18, 2005.

I certify that the foregoing statements made by me are true and am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: October 18, 2005

John Paff, Movant

**MUNICIPAL CODE
CITY OF PERTH AMBOY, MIDDLESEX COUNTY**

§ 279-1. The following definitions shall apply in the interpretation and enforcement of this chapter unless a different meaning clearly appears from the context:

LOITERING – Means remaining idle in essentially one location and includes the concepts of spending time idly, loafing or walking about aimlessly, and also includes the colloquial expression “hanging around.”

PARENT or GUARDIAN — Means and includes any adult person having the care or custody of a minor, whether by reason of blood relationship, the order of any court or otherwise.

PUBLIC PLACE — Means any place to which the public has access and includes any street, highway, road, alley or sidewalk. It shall also include the front or the neighborhood of any store, shop, restaurant, tavern or other place of business, and public grounds, areas, parks, as well as parking lots or other open or vacant private property not owned by or under the control of the person charged with violating this chapter, or, in the case of a minor, not owned by or under the control of his parent or guardian.

§ 279-2. Certain types of loitering prohibited.

- A. It shall be unlawful for any person to loiter in a public place in such manner as to:
- (1) Clearly cause an immediate, actual, physical violent reaction from any person of ordinary sensibilities, which reaction will cause or create a threat to the peace and good order of the public.
 - (2) So disturb a person of ordinary sensibilities as to cause such person to react immediately in such a way as to threaten by physical violence the peace and good order of the public.
 - (3) Obstruct the free passage of pedestrians or vehicles.
 - (4) Obstruct, molest or interfere with any person lawfully in a public place as defined in § 279-1. This provision shall include the making of unsolicited remarks of an offensive, disgusting or insulting nature or which are calculated to annoy or disturb a person of ordinary sensibilities so as to cause such person to react immediately in such a way as to threaten by physical violence the peace and good order of the public.
- B. No person shall be convicted of loitering in a public place in violation of this section unless a police officer at the time determined that such person was causing or was likely to cause any of the conditions enumerated hereinabove and such police officer at that time ordered the person to cease the enumerated conduct, which police order the person refused to obey.

§ 279-3. Loitering by minors.

No parent or guardian of a minor under the age of eighteen (18) years shall knowingly permit the minor to loiter in violation of this chapter.

§ 279-4. Notice of violation.

Whenever any minor under the age of eighteen (18) years is charged with a violation of this chapter, his parent or guardian shall be notified of this fact by the Chief of Police or any other person designated by him to give such notice.

§ 279-5. Presumption.

If at any time within thirty (30) days following the giving of notice as provided in § 279-4, the minor to whom such notice relates again violates this chapter, it shall be presumed in the absence of evidence to the contrary that the minor did so with the knowledge and permission of his parent or guardian.

§ 279-6. Violations and penalties.

Any person who shall violate this chapter shall, upon conviction, be punished by a fine not exceeding five hundred dollars (\$500) or by imprisonment in the county jail for a period not to exceed ninety (90) days, or by both such fine and imprisonment.

§ 279-7. Jurisdiction of Bureau of Youth Services.

Notwithstanding the provisions of § 279-3, 279-4 and 279-5, the Bureau of Youth Services shall have the jurisdiction and authority, as provided by law, to sign a complaint against a minor for loitering as provided in § 279-2.

Libertarian Party of Somerset and Middlesex Counties

*Howard Schoen, Chair
P.O. Box 11853
New Brunswick, NJ 08906-1853
Phone: 732-572-0207
December 4, 2003*

Mayor and Council
City of Perth Amboy
260 High St
Perth Amboy, NJ 08861

RE: Loitering Ordinance § 279

Dear Mayor Vas and Members of the City Council:

On behalf of the people who reside in and visit your City, we ask that you instruct Law Department Director Alberto Rivas, Esq. to review the City's Loitering Ordinance. If Mr. Rivas finds, as we do, that the ordinance is unenforceable, we ask that you repeal it. Further, we ask that you direct the Police Department to suspend enforcement of this ordinance during Mr. Rivas' review.

Enclosed are the following documents:

- A. Perth Amboy's Loitering Ordinance § 279 (2 pages)
- B. Flemington Borough's Loitering Ordinance § 3.2 (1 page)
- C. September 23, 2003 letter from Flemington Borough Attorney Peter A. Buchsbaum, Esq. in which he "concluded that [the Loitering Ordinance] is preempted by the New Jersey Criminal Code." (2 pages)
- D. Ordinance adopted by Flemington on October 27, 2003 repealing its Loitering Ordinance in "its entirety as it is preempted by NJ Criminal Code." (1 page)
- E. Peter A. Buchsbaum's professional credentials. (1 page)
- F. Our July 25, 2003 letter to Mr. Rivas and our accompanying July 23, 2003 report in which we assert that Perth Amboy's Loitering Ordinance is preempted by state law and thus unenforceable, without attachments. (5 pages)
- G. Our September 2, 2003 letter to Municipal Prosecutors Allen N. Papp, Esq. and John J. Cassese, Esq., without attachments, with a copy to Hon. George M. Boyd, P.J.M.C., in which we 1) note that they are regularly prosecuting people for violating the Loitering Ordinance, and 2) ask them to suspend prosecutions under the Loitering Ordinance until after they have

discussed the continued validity of it with either the County Prosecutor or the Division of Criminal Justice.
(1 Page)

To date, we have received no response to our correspondence from any Perth Amboy official.

A recent visit to your Municipal Court verifies that despite our efforts, people are still being prosecuted under the Loitering Ordinance. In fact, we found the following cases, all of which were loitering ordinance violations, on the Court's November 26, 2003 calendar: SC-2003-017606, SC-2003-015417, SC-2003-014836, SC-2003-014834, SC-2003-001478, SC-2003-011160, SC-2002-014622, SC-2002-011750, SC-2002-010264 and SC-2001-009553.

Since Flemington's attorney and municipal council have determined that their Loitering Ordinance—which is nearly identical to Perth Amboy's—is invalid, we feel that our position concerning the Loitering Ordinance is well supported.

Because people are currently being prosecuted, fined and perhaps jailed under an ordinance that is very likely invalid, we ask that you act quickly on this request and announce your intentions at the December 10, 2003 City Council meeting.

Thank you for your attention to this matter.

Sincerely,

**LIBERTARIAN PARTY OF
SOMERSET AND MIDDLESEX COUNTIES**

/s/ John T. Paff
Secretary

cc. Donald H. Perlee, Business Administrator (w/ enc.)
Michael Kohut, Police Department Director (w/ enc.)

**MUNICIPAL CODE
CITY OF PERTH AMBOY, MIDDLESEX COUNTY**

§ 279-1. The following definitions shall apply in the interpretation and enforcement of this chapter unless a different meaning clearly appears from the context:

LOITERING – Means remaining idle in essentially one location and includes the concepts of spending time idly, loafing or walking about aimlessly, and also includes the colloquial expression “hanging around.”

PARENT or GUARDIAN — Means and includes any adult person having the care or custody of a minor, whether by reason of blood relationship, the order of any court or otherwise.

PUBLIC PLACE — Means any place to which the public has access and includes any street, highway, road, alley or sidewalk. It shall also include the front or the neighborhood of any store, shop, restaurant, tavern or other place of business, and public grounds, areas, parks, as well as parking lots or other open or vacant private property not owned by or under the control of the person charged with violating this chapter, or, in the case of a minor, not owned by or under the control of his parent or guardian.

§ 279-2. Certain types of loitering prohibited.

- A. It shall be unlawful for any person to loiter in a public place in such manner as to:
- (1) Clearly cause an immediate, actual, physical violent reaction from any person of ordinary sensibilities, which reaction will cause or create a threat to the peace and good order of the public.
 - (2) So disturb a person of ordinary sensibilities as to cause such person to react immediately in such a way as to threaten by physical violence the peace and good order of the public.
 - (3) Obstruct the free passage of pedestrians or vehicles.
 - (4) Obstruct, molest or interfere with any person lawfully in a public place as defined in § 279-1. This provision shall include the making of unsolicited remarks of an offensive, disgusting or insulting nature or which are calculated to annoy or disturb a person of ordinary sensibilities so as to cause such person to react immediately in such a way as to threaten by physical violence the peace and good order of the public.
- B. No person shall be convicted of loitering in a public place in violation of this section unless a police officer at the time determined that such person was causing or was likely to cause any of the conditions enumerated hereinabove and such police officer at that time ordered the person to cease the enumerated conduct, which police order the person refused to obey.

§ 279-3. Loitering by minors.

No parent or guardian of a minor under the age of eighteen (18) years shall knowingly permit the minor to loiter in violation of this chapter.

§ 279-4. Notice of violation.

Whenever any minor under the age of eighteen (18) years is charged with a violation of this chapter, his parent or guardian shall be notified of this fact by the Chief of Police or any other person designated by him to give such notice.

§ 279-5. Presumption.

If at any time within thirty (30) days following the giving of notice as provided in § 279-4, the minor to whom such notice relates again violates this chapter, it shall be presumed in the absence of evidence to the contrary that the minor did so with the knowledge and permission of his parent or guardian.

§ 279-6. Violations and penalties.

Any person who shall violate this chapter shall, upon conviction, be punished by a fine not exceeding five hundred dollars (\$500) or by imprisonment in the county jail for a period not to exceed ninety (90) days, or by both such fine and imprisonment.

§ 279-7. Jurisdiction of Bureau of Youth Services.

Notwithstanding the provisions of § 279-3, 279-4 and 279-5, the Bureau of Youth Services shall have the jurisdiction and authority, as provided by law, to sign a complaint against a minor for loitering as provided in § 279-2.

FLEMINGTON BOROUGH, HUNTERDON COUNTY
BOROUGH OF FLEMINGTON ORDINANCES

3.2 Loitering.

3-2.1 *Definitions.* As used in this section:

a. “Loitering” shall mean remaining idle or walking aimlessly about in essentially one location.

b. “Public place” shall mean a place to which the public has access and shall include any public building and grounds, street, highway, road, alley, boardwalk or sidewalks. It shall also include the front or the neighborhood of a store, shop, restaurant, tavern or other place of business, and public grounds, areas, parks and marinas, as well as parking lots or other vacant private property not owned by or under the control of the person charged with violating this section or, in the case of a minor, not owned or under the control of his parent or guardian.

c. “Parent” or “guardian” shall mean and include any adult person having care or custody of a minor, whether by reason of blood relationship, the order of any court or otherwise.

3-2.2 *Certain types of Loitering Prohibited.* No person shall loiter in a public place in such a manner as to:

a. Create or cause to be created a danger of a breach of the peace.

b. Create or cause to be created any disturbance or annoyance to the comfort and repose of any person.

c. Obstruct the free passage of pedestrians or vehicles.

d. Obstruct, molest or interfere with an person lawfully in a public place. This paragraph shall include the making of unsolicited remarks of an offensive, disgusting or insulting nature or which are calculated to annoy or disturb the person to, or in whose hearing, they are made.

3-2.3 *Discretion of Police Officer.* Whenever any police officer shall, in the exercise of reasonable judgment, decide that the presence of any person in any public place is causing or is likely to cause any of the conditions enumerated in subsection 3-2.2, if he deems it necessary for the preservation of the public peace and safety, order that person to leave that place. Any person who shall refuse to leave after being ordered to do so by police officer shall be guilty of a violation.

3-2.4 *Loitering by Minors; Notice; Presumption.* No parent or guardian of a minor under the age of 18 years shall knowingly permit that minor to loiter in violation of this section. Whenever any minor under the age of 18 years is charged with a violation of this section, his parent or guardian shall be notified of this fact by the chief of police or any other person designated by the chief of police to give such notice. If at any time within 30 days following the giving of notice, the minor to whom such notice relates again violates this section, it shall be presumed in the absence of evidence to the contrary that the minor did so with the knowledge and permission of his parent or guardian.

GREENBAUM, ROWE, SMITH, RAVIN, DAVIS & HIMMEL LLP

COUNSELLORS AT LAW
METRO CORPORATE CAMPUS ONE
P.O. BOX 5600
WOODBIDGE, N.J. 07095-0988
(732) 549-5600
FAX (732) 549-1881
WWW.GREENBAUMLAW.COM

September 23, 2003

Florence Schreiber Powers, Assistant Chief
Judicial Services Unit
Administrative Office of the Courts
State of New Jersey
Richard J. Hughes Justice Complex
P.O. Box 037
Trenton, NJ 08625-0037

Re: Flemington Ordinances #3-2, #3-7 and
#3-9

Dear Ms. Powers:

I have conducted further research with regard to the issue as to whether Flemington Borough Ordinance Nos. 3-2 and 3-7 are preempted by the New Jersey Criminal Code. We note also that we have reviewed 3-9.

After reviewing the ordinances, along with their statutory counterparts, we have concluded that Ordinance No. 3-2 is preempted by the New Jersey Criminal Code. We have also reviewed Ordinance Nos. 3-7 and 3-9 and cannot conclude that they are preempted.

Florence Schreiber Powers
September 23, 2003
Page 2

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

/s/ Peter A. Buchsbaum

PAB /pas

BOROUGH OF FLEMINGTON COUNTY OF HUNTERDON

ORDINANCE 2003 - 31

**AN ORDINANCE TO AMEND SUBSECTION 3-2
“LOITERING”
OF THE POLICE DEPARTMENT OF THE
BOROUGH OF FLEMINGTON**

BE IT ORDAINED by the Mayor and Common Council of the Borough of Flemington that subsection 3-2 “Loitering” of the Police Department be deleted in its entirety as it is preempted by NJ Criminal Code.

BE IT FURTHER ORDAINED that this Ordinance shall take effect immediately after final passage and publication according to law.

Introduced: October 13, 2003

Adopted: October 27, 2003

/s/ Austin H. Kutscher, Jr. Mayor

Attest:

/s/ Diane L. Schottman, Clerk

Peter A. Buchsbaum, Esq.

Partner, Real Estate Department
Chair, Land Use Practice Group
Greenbaum, Rowe, Smith, Ravin, Davis & Himmel LLP
99 Wood Avenue South
Iselin, NJ 08830
732-549-5600
pbuchsbaum@greenbaumlaw.com

Peter A. Buchsbaum is a partner of the firm in its Real Estate Department, and is chair of the firm's Land Use Practice Group. Mr. Buchsbaum concentrates his practice in land use planning and related environmental, municipal and real estate issues.

Mr. Buchsbaum is a graduate of Cornell University (1967). He obtained his J.D. from the Harvard Law School in 1970. He began his legal career as law secretary to the Honorable Joseph Weintraub, then Chief Justice of the New Jersey Supreme Court.

A great deal of his work has involved Mt. Laurel cases and other efforts to obtain rezoning and regulatory approvals for private development. He has also represented public sector clients as general municipal counsel and also on specific issues which include formulation of redevelopment plans in Long Branch and Atlantic City, New Jersey. His work encompasses motion, trial and appellate litigation; development applications before local boards; and representation, and participation in advisory committees involving state agencies such as the New Jersey Council on Affordable Housing (COAH), the State Planning Commission; and the New Jersey Department of Environmental Protection.

He has served as a member of the legislative and appellate practice committees and as chair of the Land Use Section of the New Jersey State Bar Association. He has been a member of the Council of the American Bar Association's (ABA) State and Local Government Law Section and chaired its largest committee, the Land Use, Planning and Zoning Committee. He also is an adjunct professor at the Rutgers School of Law - Camden and a faculty associate of the Lincoln Institute of Land Policy in Cambridge, Massachusetts.

Mr. Buchsbaum has written an award-winning Courts column for New Jersey Reporter magazine and a column on recent developments in state and local government law for the ABA section newsletter. He has written articles on land planning law in such periodicals as the Urban Lawyer, the Real Estate Law Journal and the New Jersey Law Journal, and has authored papers on innovative planning techniques for the American Planning Association and the National Endowment for the Arts. He co-edited a book on state growth management planning throughout the United States and has contributed to a Matthew Bender text on New Jersey land use law and ABA books on the trial of a land use case and hot topics in land use law.

Mr. Buchsbaum has served as First Vice President of the ARC of NJ (formerly Association for Retarded Citizens) and is on the Board of COSAC, which advocates for the autism community. He is a Trustee of the Hunterdon County Housing Corp. and the Hunterdon County United Way. In November 2000, he was elected to the West Amwell Township Committee and now serves as Deputy Mayor.

He has spoken before the ABA, the American Planning Association, the New Jersey Judicial Conference, the New Jersey Institute for Continuing Legal Education and other groups. In 1994, he was appointed by Senate President Donald DiFrancesco to the New Jersey Law Revision Commission on which he still serves. In 2001, he was elected to the American College of Real Estate Lawyers and was named in Who's Who In America.

Libertarian Party of Somerset and Middlesex Counties

*Howard Schoen, Chair
P.O. Box 11853
New Brunswick, NJ 08906-1853
Phone: 732-572-0207
July 25, 2003*

Alberto Rivas, Esq., Attorney
City of Perth Amboy
260 High St
Perth Amboy, NJ 08861

RE: Preemption of Municipal Ordinance §279 and §386

Dear Mr. Rivas:

Enclosed is a report prepared by John Paff, one of our members, which provides an analysis the captioned ordinance. The report concludes that the captioned sections are at least partially preempted by the New Jersey Criminal Code. We ask that you please advise the City Council to repeal the preempted provisions.

By copy of this letter to Carol A. Welsch, Esq. of the Administrative Office of Courts, we ask that she remove these ordinance sections from Perth Amboy's ACS Local Offense List unless she receives an opinion from your offices that those sections are not preempted.

Thank you for your attention to this matter.

Sincerely,

**LIBERTARIAN PARTY OF
SOMERSET AND MIDDLESEX COUNTIES**

Howard Schoen
Chair

cc. Carol A. Welsch, Esq.
Municipal Court Services
P.O. Box 986
Trenton, NJ 08625-0986

REPORT TO THE LIBERTARIAN PARTY OF SOMERSET
AND MIDDLESEX COUNTIES

Analysis of the Ordinances of the City
of Perth Amboy in Middlesex County

July 23, 2003

By John Paff - 732-873-1251

Attached as Exhibit A are §279 and §386 of Perth Amboy's municipal ordinances. Attached as Exhibit B is Perth Amboy's Automated Complaint System Local Offense List.

I believe that these ordinances are at least partially preempted by the New Jersey Criminal Code and should be removed from the Local Offense List and repealed by the City Council.

§ 279

This ordinance, described as "Loitering Prohibited" in three places on the City's Local Offense List (C-279-2A+B, C-279-2A and C-279-2B) and also as "Disorderly Person Offense" (C-279-2A2), prohibits loitering in connection with one or more of four designated activities set forth in § 279-2(A)(1) through (4).

In State v. Crawley, 90 N.J. 241, 250-51 (1982) the Supreme Court invalidated Newark's loitering ordinance. In so doing, the Court held that "[t]he Legislature's central purpose in enacting the Penal Code was to create a consistent, comprehensive system of criminal law" intended to "eliminate inconsistencies, ambiguities, outmoded and conflicting, overlapping and redundant provisions and to revise and codify the law in a logical, clear and concise manner." (quoting from the statute that established the New Jersey Criminal Law Revision Commission.) According to the Court, "[t]his policy, then, implies a general legislative intent to exclude local legislation from areas covered by the Code of Criminal Justice." The principles set forth in Crawley were recently applied by the Appellate Division in State v. Paserchia, 356 N.J. Super. 461, App.Div. 2003).

Since the subject ordinance seeks to legislate in areas already covered by the Penal Code, it is preempted and should be removed from the Local Offense List and repealed.

To the extent that it purports to prohibit loitering *per se* and loitering by minors, it should be invalidated for essentially the same reasons the Supreme Court set forth in Crawley. To the extent that it seeks to prohibit loitering done in connection with other types of conduct, it should be invalidated because each of the four types of conduct set forth in § 279-2(A)(1) through (4). are already covered by provisions of the Penal Code:

- a. § 279-2(A)(1) prohibits loitering to "clearly cause" what is in effect a breach of the peace." Breaches of the peace are already covered by N.J.S.A. 2C:33-2¹ (disorderly conduct) and other provisions of the Penal Code.
- b. § 279-2(A)(2) prohibits loitering in a manner such as to "disturb a person of ordinary sensibilities" so as to cause that person to react immediately and violently. Such activity is already covered by statutory provisions such as N.J.S.A. 2C:33-2 (disorderly conduct) and N.J.S.A. 2C:33-4² (harassment).
- c. § 279-2(A)(3) prohibits loitering in a manner such as to obstruct the free passage of pedestrians and vehicles." This conduct is already covered by N.J.S.A. 2C:33-7³ which is discussed in further detail under § 386.
- d. § 279-2(A)(4) prohibits "loitering in a public place in a manner such as to obstruct, molest or interfere with any person lawfully in a public place [including] . . . the making of unsolicited remarks or an offensive, disgusting or insulting nature . . ." This type of behavior is already prohibited by N.J.S.A. 2C:33-2 (disorderly conduct) and N.J.S.A. 2C:33-4(a) (harassment).

It is also important to note that provisions (1) through (4) of § 279-2(A) do not burden the prosecution with proving that the prohibited conduct was done purposefully or at any particular standard of culpability. The corresponding statutes, however, require proof of a specified standard of culpability. "The inconsistency between the culpability standards of [the statutes] and the . . . [o]rdinance only underscores the point that the Code and the local ordinance deal with the same criminal conduct in a different manner, and consequently the ordinance is preempted." State v. Felder, 329 N.J. Super. 471, 475 (App. Div. 2000).

"The requirement of purposeful conduct may have been included by the Legislature in recognition of the difficult constitutional problems posed by prohibitions against offensive speech. Whatever the reason, purposeful conduct is an integral

part of the Code's prohibition against disorderly conduct and N.J.S.A. 2C:33-2 overrides any local ordinance that addresses the same subject matter." Paserchia, supra.

§ 386

This ordinance is described as "Obstruction of a Sidewalk" in two places on the City's Local Offense List (C-386-3 and C-386-03). Subsection A, which generally prohibits the placing of goods, wares and other objects on sidewalks and streets, does not appear to be preempted by the Code. Subsection B however, enumerates fifteen separate types of prohibited conduct. Notable are §§B(9) which prohibits standing on the sidewalk so as to "unreasonably and significantly impede or obstruct the free passage of pedestrians" and §§B(15) which prohibits distributing handbills on the sidewalk within eight feet of a building entrance. Both of these subsections, and maybe others as well, are preempted by N.J.S.A. 2C:33-7.

"Chapter 33 of the Code reveals a policy to comprehensively address street behavior and other conduct in public places which may disturb citizens and disrupt peaceful society." Paserchia, supra. Clearly, therefore, §§B(9), which seeks to govern the same behavior, is preempted.

§§B(15) also improperly intrudes upon Chapter 33 by attempting to ban handbill distribution on sidewalks within eight feet of a building entrance. "Succinctly stated, the purpose behind [N.J.S.A. 2C:33-7] is to prohibit the offense of obstruction while balancing First Amendment guarantees of freedom of speech and assembly against the need for public safety measures under appropriate circumstances." State v. Greenberg, 179 N.J.Super. 565, 570 (Law Div. 1980). Enforcement of §§B(15) upsets this balance and is therefore preempted.

¹ 2C:33-2 Disorderly Conduct

a. Improper behavior. A person is guilty of a petty disorderly persons offense, if with purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof he

(1) Engages in fighting or threatening, or in violent or tumultuous behavior; or

(2) Creates a hazardous or physically dangerous condition by any act which serves no legitimate purpose of the actor.

b. Offensive language. A person is guilty of a petty disorderly persons offense if, in a public place, and with purpose to offend the sensibilities of a hearer or in reckless disregard of the probability of so doing, he addresses unreasonably loud and offensively coarse or abusive language, given

the circumstances of the person present and the setting of the utterance, to any person present.

"Public" means affecting or likely to affect persons in a place to which the public or a substantial group has access; among the places included are highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, or any neighborhood.

² **2C:33-4 Harassment**

Except as provided in subsection e., a person commits a petty disorderly persons offense if, with purpose to harass another, he:

- a. Makes, or causes to be made, a communication or communications anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm;
- b. Subjects another to striking, kicking, shoving, or other offensive touching, or threatens to do so; or
- c. Engages in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy such other person.

A communication under subsection a. may be deemed to have been made either at the place where it originated or at the place where it was received.

d. (Deleted by amendment, P.L.2001, c.443).

e. A person commits a crime of the fourth degree if, in committing an offense under this section, he was serving a term of imprisonment or was on parole or probation as the result of a conviction of any indictable offense under the laws of this State, any other state or the United States.

³ **2C:33-7. Obstructing highways and other public passages**

a. A person, who, having no legal privilege to do so, purposely or recklessly obstructs any highway or other public passage whether alone or with others, commits a petty disorderly persons offense. "Obstructs" means renders impassable without unreasonable inconvenience or hazard. No person shall be deemed guilty of recklessly obstructing in violation of this subsection solely because of a gathering of persons to hear him speak or otherwise communicate, or solely because of being a member of such a gathering.

b. A person in a gathering commits a petty disorderly persons offense if he refuses to obey a reasonable official request or order to move:

- (1) To prevent obstruction of a highway or other public passage; or
- (2) To maintain public safety by dispersing those gathered in dangerous proximity to a fire or other hazard.

An order to move, addressed to a person whose speech or other lawful behavior attracts an obstructing audience, shall not be deemed reasonable if the obstruction can be readily remedied by police control of the size or location of the gathering.

Libertarian Party of Somerset and Middlesex Counties

*Howard Schoen, Chair
P.O. Box 11853
New Brunswick, NJ 08906-1853
Phone: 732-572-0207
September 2, 2003*

Allen N. Papp, Esq.
John J. Cassese, Esq.
530 Rahway Avenue
Woodbridge, NJ 07095

RE: Enforcement of Perth Amboy's Loitering Ordinance

Dear Messrs. Papp and Cassese:

We write to you in your capacity as Municipal Prosecutors for the City of Perth Amboy. We believe that the Perth Amboy' Loitering Ordinance §279-2, which is regularly¹ enforced in the municipal court, is preempted by state law. We ask that you immediately stop prosecuting defendants for violating it.

Enclosed please find a copy of our July 25, 2003 letter to Alberto Rivas, Esq., the City Attorney, with enclosures, in which we make our case that the loitering ordinance is preempted and thus unenforceable. Also enclosed is a copy of a January 8, 2003 memo from Deputy Attorney General Stephen H. Monson attached to a November 18, 1998 memo by former Attorney General Peter Verniero which also addresses the preemption issue.

If you have any doubt that §279 is preempted, we ask that you suspend prosecutions until you have discussed the matter with the Middlesex County Prosecutor or the Division of Criminal Justice, as Mr. Verniero suggests on the second page of his 1998 memorandum.

Thank you for your attention to this matter. We look forward to hearing from you on this matter.

Sincerely,

John T. Paff
Secretary

cc. Hon. George M. Boyd, P.J. w/ encl.
Mary Pasacano, C.M.C.A., Administrator, w/ encl.

¹ For example, on August 27, 2003, the ordinance was enforced twice against defendant David Lopez (for violations on June 25, 2003 (#SC-2003-017273) and July 1, 2003 (#SC-2003-017329). On August 28, 2003, the ordinance was enforced at least three times (Shawn Barfield, #SC-2003-013872; Edward Bright, #SC-2003-015491 and Victor Cruz, #SC-2002-012921).

NewsBank InfoWeb

Star-Ledger, The (Newark, NJ)

Star-Ledger, The (Newark, NJ)

August 8, 2004

Reluctant Perth Amboy to scrap loitering ordinance

Author: SUE EPSTEIN; STAR-LEDGER STAFF

Edition: MIDDLESEX

Section: MIDDLESEX

Page: 33

Estimated printed pages: 3

Article Text:

The Perth Amboy City Council will take up the legality of the city's loitering ordinance during a meeting next month.

Mayor Joseph Vas said the council will probably repeal the ordinance as it is currently on the books to conform with a state Supreme Court decision in 1982 that ruled that local loitering ordinances were preempted by the New Jersey criminal code.

Vas said the decision to repeal the ordinance was made reluctantly because "it means that anyone arrested will now have to be charged with a criminal offense and now face having a criminal record if convicted."

"We kept our ordinance all these years because we didn't think an 18-year-old with his or her life ahead of him should be branded for life with a criminal record for doing something that is just a nuisance," the mayor said.

The question of the ordinance's legality was first raised in July 2003 in a letter to Alberto Rivas, the city attorney, from John Paff, the secretary of the Libertarian Party of Somerset and Middlesex Counties, who has been campaigning around the state to repeal loitering ordinances.

In September 2003, the party sent a letter to the city's two municipal prosecutors and the municipal judge, asking them to stop prosecuting people under the ordinance until they have discussed its validity with the Middlesex County prosecutor or with the state Division of Criminal Justice.

Paff said he received no reply to either letter, so he sent a third on Dec. 4, asking the mayor and council to instruct Rivas to review the loitering ordinance and repeal it if Rivas finds it is unenforceable. The two-page letter also asked Vas to order the police not to enforce the ordinance until Rivas finishes his review.

Paff said he also attended a council meeting Dec. 8 and spoke to the validity of the ordinance.

"I pointed out that the city's ordinance was almost identical to one in Flemington that had recently been invalidated, and I suggested the city do the same thing, Paff said.

The council ordered Rivas to review the matter and discussed it with him in several closed sessions, but no decision was announced.

Paff said he began looking into the Perth Amboy ordinance after receiving complaints from residents.

One of those who contacted Paff was William Lankford, who retired several years ago after working 20 years at East Jersey State Prison.

Lankford, who is in his 70s and has lived in Perth Amboy for 61 years, said one of his favorite activities is to walk down to the waterfront and sit and watch people.

He said the police don't bother him because they know him and they know why he's there, but he feels sorry for the people who aren't as lucky as he is.

"I think it's wrong," Lankford said. "I see what they're doing."

He said the places where the police, in particular the auxiliary police officers, crack down on people hanging out, are the ones that have been redeveloped or are close to areas undergoing redevelopment, like the waterfront and all along Smith Street to the train station.

"I've seen them arresting young people for just being there," Lankford said. "I don't think it's right what they're doing to the younger generation."

He said most of those arrested don't want to complain because "they're afraid."

"I tell them, 'If you're clean, you have nothing to worry about,'" Lankford said.

In January 1982, the state Supreme Court threw out Newark's loitering ordinance, stating it was preempted by the New Jersey Code of Criminal Justice, which took effect in September 1978.

The high court argued that the Legislature, in devising the new criminal code, considered including a loitering statute, but it "made a conscious decision to exclude a general loitering provision from the code."

Instead, the code breaks down all of the different types of loitering and includes them in several other charges, including "riot: failure to disperse," "obstructing highways or public passages," "possession of alcohol in public places by minors," "interference with transportation," "failure to disperse on order of a peace officer," and disorderly conduct.

Conviction on the charge of "riot: failure to disperse" gives the defendant a criminal record. All of the other charges are either disorderly person offenses or petty disorderly person offenses, which usually carry fines and do not go on someone's record.

The justices said they believed it was the Legislature's intent to decriminalize loitering.

The new criminal code includes a section, titled, "Abolition of Common Law Crimes," in which there is a subsection that states, "Notwithstanding any other provision of law, the local government units of this

state may neither enact nor enforce any ordinance or other local law or regulation conflicting with, or pre-empted by, any provision of this code or with any policy of this state expressed by this code, whether that policy be expressed by inclusion of a provision in the code or by exclusion of that subject."

_____ Sue Epstein covers Middlesex County. She can be reached at sepstein@starledger.com or (732) 404-8085.

Copyright 2004 The Star-Ledger. All Rights Reserved. Used by NewsBank with Permission.
Record Number: sl200441167871de

Article Bookmark(OpenURL Compliant): [Star-Ledger, The \(Newark, NJ\): Reluctant Perth Amboy to scrap loitering ordinance](http://docs.newsbank.com/openurl?ctx_ver=z39.88-2004&rft_id=info:sid/iw.newsbank.com:STLB&rft_val_format=info:ofi/fmt:kev:mtx:ctx&rft_dat=1045A9801367DC18&svc_dat=InfoWeb:current&req_dat=0FE05D97DDD26ACE)
http://docs.newsbank.com/openurl?ctx_ver=z39.88-2004&rft_id=info:sid/iw.newsbank.com:STLB&rft_val_format=info:ofi/fmt:kev:mtx:ctx&rft_dat=1045A9801367DC18&svc_dat=InfoWeb:current&req_dat=0FE05D97DDD26ACE

Libertarian Party of Central New Jersey

John Paff, Secretary
P.O. Box 11853
New Brunswick, NJ 08906-1853
Phone: 732-873-1251
October 12, 2004

Mel Ramos, Aide to Mayor Vas
City of Perth Amboy
260 High Street
Perth Amboy, NJ 08861

RE: Loitering Ordinance § 279

Dear Mr. Ramos:

Enclosed is a copy of an August 8, 2004 Star Ledger article quoting Mayor Vas as stating that "the legality of the city's loitering ordinance" would be addressed in September 2004.

Has this issue been addressed? If not, when do you think it will be?

Thank you for your attention to this matter. We look forward to hearing from you.

Sincerely,

**LIBERTARIAN PARTY OF
CENTRAL NEW JERSEY**

John T. Paff
Secretary

the Municipal Court shall have the authority to order that the offender make the necessary monetary restitution to restore the property to its original condition. (Ord. No. 95-6 § 3)

3-6.4 Parental Liability.

Pursuant to N.J.S.A. 2A:53A-15, any parent, guardian or other person having legal custody of minor under eighteen (18) years of age who fails or neglects to exercise reasonable supervision and control of the conduct of such minor, shall be liable in a civil action for any destruction or damage caused by such offender under the legal age under subsection 3-6.1, (Ord. No. 95-6 § 4)

3-7 LOITERING.

3-7.1 Definitions.

As used in this section:

Loitering shall mean remaining idle in essentially one location and shall include the concept of spending time idly, loafing or walking about aimlessly.

Parent and guardian shall mean and include *any* adult person having care or custody of a minor, whether by reason of blood relationship, the order of any Court or otherwise.

Public place shall mean any place in which the public has access and shall include any street or sidewalk. It shall also include the front or the neighborhood of any store, shop, restaurant, tavern or other place of business and the public grounds, areas, parks, as well as parking lots or other vacant *private* property not owned by or under the control of the person charged with violating this section, or in the case of a minor, not owned or under control of his parents or guardian.

(1969 Code § 55-8; Ord. No. 78-15)

3-7.2 Prohibited Acts.

No persons shall loiter in a public place in such a manner as to:

- a. Create or cause to be created a danger of a breach of the peace.
- b. Create or cause to be created any disturbance or annoyance to the comfort and repose of any persons.
- c. Obstruct the free passage of pedestrians or vehicles.
- d. Obstruct, molest or interfere with any person lawfully in any public place as defined in subsection 3-7.1. This paragraph shall include the making of unsolicited

remarks of an offensive, disgusting or insulting nature or which are calculated to annoy or disturb the person to, or in whose hearing, they are made. (1959 Code § 55-8; Ord. No. 78-15)

3-7.3 Failure to Obey Order of Police Officer.

Whenever any Police Officer shall, in the exercise of reasonable judgment, decide that the presence of any person in any public place is causing or is likely to cause any of the conditions enumerated in subsection 3-7.2, the Officer may, if he deems it necessary for the preservation of the public peace and safety, order that person to leave that place. Any person who shall refuse to leave after being ordered to do so by a Police Officer shall be guilty of a violation of this section. (1969 Code § 55-8; Ord. No. 78-15)

3-7.4 Loitering by Minors.

No parent or guardian of a minor under the age of eighteen (18) years shall knowingly permit that minor to loiter in violation of this section. (1969 Code § 55-8; Ord. No. 78-15)

3-7.5 Notice of Violation.

Whenever any minor under the age of eighteen (18) years is charged with a violation of this section, his parent or guardian shall be notified of this fact by the Chief of Police or any other person designated by him to give such notice. (1969 Code § 55-8; Ord. No. 78-15)

3-7.6 Presumption.

If at any time within thirty (30) days following the giving of notice as provided in subsection 3-7.5, the minor to whom such notice relates again violates this section, it shall be presumed in the absence of evidence to the contrary that the minor did so with the knowledge and permission of his/her parent or guardian. (1969 Code § 55-8; Ord. No. 78-15)

3-7.7 Violation and Penalty.

Any person violating any of the provisions of this section shall, upon conviction, be liable to the penalty stated in Chapter L Section 1-5. (1969 Code § 55-8; Ord. No. 78-15; New)

Loitering law may not have leg to stand on

Wednesday, May 18, 2005

By HEATHER KAYS
HERALD NEWS

ELMWOOD PARK - Borough Attorney Louis Mangano wants to take a longstanding loitering ordinance off the books, after Police Chief Don Ingrasselino recently questioned its legality.

During an April meeting on the proposed building of a convenience store, Ingrasselino said the loitering law is unconstitutional and could not be enforced.

After learning of the dispute, John Paff, an attorney in Somerset who has fought loitering ordinances in several municipalities contacted Mangano, the mayor and the council.

Paff, a Libertarian Party member who fought and won a case against Flemington's loitering ordinance, agrees with Ingrasselino and is urging the borough to remove the ordinance from its books.

"While I am not sure about Police Chief Ingrasselino's reported statement that Elmwood Park's loitering ordinance is unconstitutional, I do believe that it is unenforceable because it has been preempted by the New Jersey Criminal Code," Paff wrote in a letter to local officials. Paff wrote that the court decision overturning Flemington's ordinance - which he called "virtually identical" to Elmwood Park's - supported his contention.

At Thursday's meeting, Mangano said that the ordinance, which has been around since the 1960s, should be removed.

"The borough cannot have ordinances that are different from what the state is legislating," Mangano said in a phone interview Tuesday. "The state preempts anything that the borough does."

For the most part, members of the council agreed.

"The chief was right on the money," said Democratic Councilman Jack McLaughlin. "We don't want laws on the books that can't be enforced, and we certainly don't want laws on the books that could come back to bite us."

McLaughlin and Ingrasselino both said that if a police officer attempted to use the loitering ordinance to arrest someone, in the end, the borough could be sued and held liable.

"If you are going to stop someone, there should be a distinct reason," said McLaughlin. "A loitering ordinance is too generic."

But according to Republican Mayor Richard Mola, the ordinance should be left alone.

"Personally, I think we should just leave it there," said Mola. "If it doesn't have any bearing, what's the difference?"

The borough would be setting itself up by removing the ordinance, he said.

"I'm just afraid that if we have nothing on the books, then we'll just be standing there naked," said Mola.

The ordinance will be discussed again at this Thursday's meeting.

"The ordinance has to be repealed," said Mangano. "It's going to be done. That's all there is to it."

E-mail: kays@northjersey.com

Ord. # 05-17

**AN ORDINANCE REPEALING ORDINANCE 3-7,
(1969 Code § 55-8; Ord. No. 78-15), LOITERING,**

BE IT ORDAINED, by Mayor and Council of the Borough of Elmwood Park as follows:

WHEREAS, the Mayor and Council of the Borough of Elmwood Park desires that . Ordinance 3-7 (1969 Code § 55-8; Ord. No. 78-15), Loitering, be repealed; and

WHEREAS, Ordinance 3-7 (1969 Code § 55-8; Ord, No. 78-15), Loitering, has been preempted and rendered unenforceable by the New Jersey Code of Criminal Justice, N.J.S.A. 2C:1-1 to 98-4.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE BOROUGH OF ELMWOOD PARK, BERGEN COUNTY, NEW JERSEY, AS FOLLOWS:

SECTION 1. That Ordinance 3-7 (1969 Code § 55-8; Ord. No. 7845), Loitering, is hereby repealed.

SECTION 2. The repeal of Ordinance 3-7 (1969 Code § 55-8; Ord. No. 78-15), Loitering, shall . not effect any duty imposed, any penalty incurred, nor any action or proceeding as commenced under or by, virtue of the ordinance repealed.

SECTION 3. That this Ordinance shall take, effect and be in full force from and after the date of its passage and approval pursuant to law,

Richard A. Mola.
Richard A. Mola, Mayor Date

ATTEST:

Dolores Camlet
Dolores Camlet, Borough Clerk

(2)

1st Reading - June 2, 2005
2nd Reading - June 16, 2005

Exhibit E4

John Paff

PO Box 5424

Somerset, New Jersey 08875-5424

Telephone – 732-873-1251

E-mail – paff@pobox.com

Fax – 908-325-0129

October 18, 2005

Hon. Jose M. Cameron, J.M.C.
Perth Amboy Municipal Court
56 Fayette St
Perth Amboy, New Jersey

(Hand Delivered)

RE: State v. Coy, Docket No. SC-2005-023407
State v. Vargas, Docket No. SC-2005-022549
State v. Thomas, Docket No. SC-2005-022275
State v. Guzman, Docket No. SC-2005-021689

Dear Judge Cameron:

Enclosed please find my Notice of Motion to Appear as Amicus Curiae (friend of the court) in the captioned matters, Certification, proposed form of Order and a self-addressed prepaid envelope. Please accept this letter in lieu of a more formal brief in support of my application.

SUMMARY

This motion arises out of my belief that Perth Amboy Ord. Chapter 279, a loitering ordinance, under which the captioned defendants are charged, is clearly invalid in that it has been preempted by the state's criminal code. The legal arguments supporting my belief are set forth in full in Exhibits B11 through B13 attached to my certification.

As also shown in my certification, I have tried to get the Mayor and Council to repeal, or at least stop enforcing, the ordinance but have been ignored. I have also written to this Court and its prosecutors and have also been ignored. Left with no other apparent options, I seek to have ordinance invalidated by being admitted as amicus curiae.

ARGUMENTS IN SUPPORT OF AMICUS CURIAE PARTICIPATION

R.1:13-9, the Court Rule that governs amicus curiae applications, states:

An application for leave to appear as amicus curiae in any court shall be made by motion in the cause stating with specificity the identity of the applicant, the issue intended to be addressed, the nature of the public interest therein and

the nature of the applicant's special interest, involvement or expertise in respect thereof. The court shall grant the motion if it is satisfied under all the circumstances that the motion is timely, the applicant's participation will assist in the resolution of an issue of public importance, and no party to the litigation will be unduly prejudiced thereby. The order granting the motion shall define with specificity the permitted extent of participation by the amicus and shall, where appropriate, fix a briefing schedule. An amicus curiae who has been granted leave to appear in a cause may, without seeking further leave, file a brief in an appeal taken to any court from the judgment therein entered. Briefs filed by an amicus curiae in any court shall comply with all applicable rules.

My special interest in the outcome of this matter is evident from my Certification. As shown, I have tried repeatedly to get someone in the Perth Amboy government to consider the merits of my arguments against the loitering ordinance. Also shown is my success in accelerating the repeal of similar ordinances in Highland Park, Elmwood Park and Flemington Boroughs.

The public interest at stake is that people are being charged with, and apparently convicted by this Court for, violating an invalid ordinance. I cannot fathom a more important public interest.

Accordingly, I believe that I have satisfied the provisions of R.1:13-9 and should be permitted to appear as amicus curiae.

For all of the above reasons, I request that this Court grant my application.

Respectfully,

John Paff

John Paff
PO Box 5424
Somerset, NJ 08875
Telephone 732-873-1251
Movant

STATE OF NEW JERSEY

Plaintiff

vs.

**CHARLENE COY, ANA VARGAS
TORRIES THOMAS and
FREDDY GUZMAN**

Defendants

Municipal Court of
City of Perth Amboy
Middlesex County

Docket no: SC-2005-023407
SC-2005-022549
SC-2005-022275
SC-2005-021689

Criminal Action

**ORDER GRANTING APPLICATION
TO APPEAR AS AMICUS CURIAE**

This matter having been opened to the Court by John Paff and the municipal prosecutor and defendants having been noticed and appearing and the Court having heard oral argument and for good cause shown it is on this _____ day of _____ 2005 ORDERED that

1. John Paff is granted leave to appear as amicus curiae in the four captioned matters for the specific purpose of challenging the validity of Perth Amboy Ord. Chapter 279.
2. Movant shall serve a copy of this order upon all parties by regular mail within _____ days after its entry and return.

J.M.C.

Summary of Proceedings: Perth Amboy Municipal Court on October 20, 2005

By John Paff

Defendants Coy and Guzman were present and, during the initial calendar call, indicated that they wished to plead guilty. Defendant Vargas' name, to my recollection, was not called during the calendar call. Someone indicated, when Defendant Thomas' name was called, that he was incarcerated at the county jail. When each name was called, I stood up and announced my presence as an amicus applicant.

Coy and Guzman, since they pled guilty, were called before the court early in the evening. I went with them and stood next to them before the court. I informed Judge Cameron that I had filed a motion to appear as amicus curiae, for the specific purpose of challenging the validity of the loitering ordinance. Judge Cameron had not seen my written motion that was delivered to the Administrator on Tuesday, October 18, 2005. I handed him my copy of the motion, certification, brief and form of proposed Order. He took a recess of about twenty minutes to review this paperwork.

After Judge Cameron returned from recess, Coy, Guzman, Prosecutor Allen N. Papp and I stood before him. Papp argued that I should not be permitted to even apply as an amicus since I am not an attorney. I responded that Court Rule 1:13-9 does not limit amicus applications to attorneys. Judge Cameron explained my application to Coy and Guzman and ask them if they intended to plead guilty to the loitering charge. Both responded that they would. Based on that, Judge Cameron, apparently believing that the guilty pleas mooted my application, stated to me that "your application is denied." I asked the judge to reconsider his decision, stating that the since the loitering issue is continually being enforced, the issues raised are "capable of repetition but could constantly evade judicial review." Judge Cameron stayed by his original ruling.

I returned to my seat and watched the remainder of the proceeding. Judge Cameron read the loitering ordinance to Coy and carefully explained that it required the state to prove the existence of certain types of prohibited conduct in addition to the defendant just "hanging around." She maintained her guilty plea. He then attempted to establish a factual basis for Coy's guilty plea. She kept denying, however, that she engaged in any of the conduct proscribed by the ordinance. I could see that Judge Cameron was frustrated because despite her apparent innocence, Coy still insisted upon pleading guilty. Judge Cameron then abruptly declared that Coy was **not** guilty and dismissed her from the courtroom.

Defendant Guzman had been charged with both the loitering ordinance and the statutory offense of disorderly conduct. After Guzman admitted that he did curse at his girlfriend, Judge Cameron found him guilty of the loitering offense but not the statutory offense. Judge Cameron remarked that this result was favorable to Guzman as the loitering conviction would not burden him with a criminal record while conviction of the statutory offense would.

I then left a note with the Administrator, addressed to the Court and the prosecutor, indicating that I would be filing a request for clarification of the Court's ruling. It wasn't clear if Judge Cameron denied my application in its entirety or just as it pertained to the two defendants who were present.

John Paff

PO Box 5424

Somerset, New Jersey 08875-5424

Telephone – 732-873-1251

E-mail – paff@pobox.com

Fax – 908-325-0129

October 21, 2005

Hon. Jose M. Cameron, J.M.C.
Perth Amboy Municipal Court
56 Fayette St
Perth Amboy, NJ 08861-4215

(via Fax to 732-442-0774 and regular mail)

RE: State v. Coy, Docket No. SC-2005-023407
State v. Vargas, Docket No. SC-2005-022549
State v. Thomas, Docket No. SC-2005-022275
State v. Guzman, Docket No. SC-2005-021689

Dear Judge Cameron:

I seek clarification¹ of Your Honor's denial of my Amicus Curiae motion. I am not sure if the denial was intended to apply to all four of the captioned cases or only to the two—Coy and Guzman—in which the defendants were present. Since the basis for the denial was that the cases were mooted by Coy's and Guzman's guilty pleas, I would think that my motion, as it applies to Thomas and Vargas, is still pending.

I have enclosed two forms of Order. One denies my application in its entirety and the other denies my application only as it pertains to Coy and Guzman. I ask that the appropriate Order be entered and a copy returned to me in the enclosed prepaid envelope.

Thank you for your attention to this matter.

Respectfully,

John Paff

cc. Allen N. Papp, Esq., Prosecutor w/ enc. *(via Fax to 732-634-3383 and mail)*
All defendants, via regular mail only

¹ I left a handwritten note at the Administrator's window last night informing that I would be seeking clarification.

John Paff
PO Box 5424
Somerset, NJ 08875
Telephone 732-873-1251
Movant

STATE OF NEW JERSEY

Plaintiff

vs.

**CHARLENE COY, ANA VARGAS
TORRIES THOMAS and
FREDDY GUZMAN**

Defendants

Municipal Court of
City of Perth Amboy
Middlesex County

Docket no: SC-2005-023407
SC-2005-022549
SC-2005-022275
SC-2005-021689

Criminal Action

**ORDER DENYING MOTION
TO APPEAR AS AMICUS CURIAE**

This matter having been opened to the Court by Movant John Paff and on notice to Allen N. Papp, Esq. Municipal Prosecutor and the defendants, and after hearing oral argument on October 20, 2005 at which Movant Paff, Prosecutor Papp and Defendants Coy and Guzman were present, and for good cause shown it is on this _____ day of _____ 2005 ORDERED that

1. Movant Paff's motion for leave to appear as amicus curiae in the four captioned matters is denied in its entirety.
2. Movant shall serve a copy of this order upon Prosecutor Papp and the defendants by regular mail within ____ days after its entry and return.

Jose M Cameron, J.M.C.

John Paff
PO Box 5424
Somerset, NJ 08875
Telephone 732-873-1251
Movant

STATE OF NEW JERSEY

Plaintiff

vs.

**CHARLENE COY, ANA VARGAS
TORRIES THOMAS and
FREDDY GUZMAN**

Defendants

Municipal Court of
City of Perth Amboy
Middlesex County

Docket no: SC-2005-023407
SC-2005-022549
SC-2005-022275
SC-2005-021689

Criminal Action

**ORDER PARTIALLY DENYING
AMICUS CURIAE MOTION**

This matter having been opened to the Court by Movant John Paff and on notice to Allen N. Papp, Esq. Municipal Prosecutor and the defendants, and after hearing oral argument on October 20, 2005 at which Movant Paff, Prosecutor Papp and Defendants Coy and Guzman were present, and for good cause shown it is on this _____ day of _____ 2005 ORDERED that

1. Movant Paff's motion for leave to appear as amicus curiae is denied only as to Defendants Charlene Coy and Freddy Guzman.
2. Movant Paff's motion for leave to appear as amicus curiae is still pending as to Defendants Thomas and Vargas.
3. Movant shall serve a copy of this order upon Prosecutor Papp and the defendants by regular mail within ____ days after its entry and return.

Jose M Cameron, J.M.C.