

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

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|---------------------------------------|---|-------------------------|
| ADAM PRITCHARD and | : | |
| EDWARD ROBINSON, both individually | : | |
| and on behalf of a certified class of | : | |
| similarly situated individuals, | : | |
| | : | |
| Plaintiffs, | : | |
| | : | |
| v. | : | No. 04-CV-534 (RJA/HBS) |
| | : | |
| THE COUNTY OF ERIE, <i>et. al.</i> , | : | |
| | : | |
| Defendants. | : | |

**PLAINTIFFS’ SUBMISSION REGARDING THE IMPACT OF THE FLORENCE
DECISION ON THE PENDING CLASS ACTION**

Pursuant to the Court’s instructions, the Plaintiffs and the Certified Class provide the Court with this brief submission regarding the impact of *Florence v. Board of Chosen Freeholders*, 132 S.Ct. 1510 (2012), on the present litigation. The Plaintiffs acknowledge, and are willing to stipulate, that the Supreme Court’s decision in *Florence* has a major effect on this litigation and the claims raised by the certified class. The strip search regimen put in place by the Erie County Sheriff’s Department falls squarely within the confines of the *Florence* decision, with one major exception. Specifically, Erie County only strip searched individuals that were admitted into the Erie County Holding Center (“ECHC”) and Erie County Correctional Facility (“ECCF”) after they had been arraigned and held for a significant period of time to enable them to post bail. The strip searches in question were done when individuals entered the general jail population, similar to those addressed in *Florence*.

The one issue for the Court to address now, however, is not insignificant. Unlike the searches addressed in *Florence*, Erie County's searches were done in a group setting. In the ECHC, class members were searched in groups of three in a shower area. In the ECCF, class members were searched in larger groups in a large common room. One class member deposed in this case was strip searched in front of two other women while she menstruated. Two former Erie County employees admit conducting these searches in groups. Another District Court has found that group strip searches are unconstitutional even after the Ninth Circuit ruled, like *Florence*, that blanket searches of misdemeanor pre-trial detainees were permissible. *See, Roadhouse v. Las Vegas Metropolitan Police Dep't*, No. 2:09-CV-33, 2010 WL 3154550, * 2 (August 6, 2010, D. Nevada) ("The second contention underlying the Fourth Amendment claim states a plausible right to relief. The privacy afforded a detainee during a strip search may be a significant factor in determining the procedure's constitutionality").

The Supreme Court expressly limited its holding to the exact facts addressed in the *Florence* action, and further detailed that the holding did not address "concerns about instances of officers engaging in intentional humiliation and other abusive practices." *Florence*, 132 S.Ct. at 1523. The concurrences from Chief Justice Roberts and Justice Alito further detailed that District Courts should carefully consider the *Florence* holding to "leave open the possibility of exceptions." *Id.* (concurring opinion) (Robert, CJ). The *Florence* decision does not provide corrections officials with *carte blanche* to do as they please. Instead, it is addressed to a limited set of circumstances that did not consider the legality of group strip searches. For most class members, being strip searched legally is bad enough; being forced to disrobe and manipulate your genitals in front of other detainees in the absence of any privacy is the hallmark of unreasonableness – especially when one is charged with a misdemeanor or other minor crime.

The Plaintiffs note for the Court that even state prisons, which house individuals convicted of serious felony offenses, many of which involve violence, provide inmates with privacy when conducting otherwise permissible strip searches.

The Plaintiffs had hoped to work with the Defendants to address the most direct way, procedurally, to get these issues before the Court. Rather than work with the Plaintiffs in this regard, the Defendants chose to make lengthy arguments, many of which are unnecessary, in the absence of an appropriate record or motion practice. The Plaintiffs will not reciprocate. Instead, the Plaintiffs seek a conference with the Court to address procedural issues in this action, and the mechanism by which the remaining issues in this case can be promptly and efficiently considered by the Court. The Plaintiffs respectfully suggest that a short period of discovery, addressed only to group searches, followed by cross-motions for leave to file an amended complaint, for leave to amend the class definition, and for summary judgment is the appropriate course that this action should take going forward.

The Plaintiffs did not consider the Court's request for a brief submission on these issues to be a call for full motion submissions. The Plaintiffs respectfully request that any action taken by the Court be the subject of appropriate motion practice to ensure them a full opportunity to be heard, and a full factual record. The Plaintiffs thank the Court for its consideration of this submission.

Respectfully Submitted By:

/s Elmer Robert Keach, III

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