

## **Pritchard v. County of Erie**

Case No.: 1:04-cv-00534-RJA-HBS

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK, BUFFALO DIVISION

October 6, 2017

### **Reporter**

2017 U.S. DIST. CT. MOTIONS LEXIS 102243 \*

Pritchard et al v. The County of Erie et al

**Type:** Motion

### **Judges**

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Richard J. Arcara

### **Title**

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**MOTION TO STAY**

### **Text**

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NOTICE OF MOTION AND AFFIRMATION IN SUPPORT OF PLAINTIFFS' REQUEST FOR A STAY OF SUMMARY JUDGMENT BRIEFING PENDING THE FILING OF A MOTION FOR VOLUNTARY DISCONTINUANCE WITHOUT PREJUDICE UNDER [FED. R. CIV. P. 41\(a\)\(2\)](#) [\*1] AND TO DECERTIFY THE CLASS, OR, IN THE ALTERNATIVE, FOR EXTENSION OF TIME TO RESPOND TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Elmer Robert Keach, IH, Esquire, an attorney duly licensed to practice law before the Courts of the State of New York and before this Honorable Court, hereby affirms as follows under penalty of perjury:

1. I am, together with co-counsel, counsel for Adam Pritchard, Edward Robinson, and the certified class in this action. I serve as lead counsel for the class. By recent order, the Court directed that the Plaintiff respond to the Defendants' Motion for Summary Judgment by today, October 6, 2017.

2. By this motion, the Plaintiffs respectfully request that the Court stay briefing on this Motion pending the Plaintiffs filing a Motion for Voluntary Discontinuance of this action without prejudice pursuant to [Fed. R. Civ. P. 41\(a\)\(2\)](#). Specifically, the Plaintiff acknowledges that their claims, and the claims of the certified class, are no longer [\*2] viable after the United States Supreme Court's decision in *Florence v. Board of Chosen Freeholders*. Furthermore, the Plaintiffs further acknowledge that they cannot sustain a class regarding group strip searches given the factual

1

record in this case, which is inconsistent on this issue. The Plaintiffs have filed a motion for leave to amend their complaint to plead state law claims against Erie County. The Plaintiffs further acknowledge that issues of comity and supplemental jurisdiction counsel against this Court asserting jurisdiction over New York State law constitutional claims that will likely represent issues of first impression for the New York Court of Appeals. Given that the Plaintiffs intend to seek permission from the Court to discontinue this action without prejudice, and will also be seeking to decertify the class in this case with leave to renew before a different forum, the Plaintiffs respectfully suggest that the Court stay briefing on the Defendants' Motion for Summary Judgment so that the Plaintiffs can bring an appropriate motion to resolve this case here.

3. The Plaintiffs will file a Motion for Discontinuance and to Decertify the Class on or before October [\*3] 13, 2017.

4. The Plaintiffs have sought the consent of Defendants for this request, and the Defendants have not provided their consent.

5. Plaintiffs respectfully suggest that good cause exists for this request. In short, it makes little sense to have the Court consider briefing on a case that will likely be discontinued. Should the Court not agree, the Plaintiff requests an extension of time to respond to this motion commensurate with the Court's discretion.

6. The Plaintiffs anticipate that the Court will address this request by way of a text order. Should a proposed order be required, one will be promptly submitted to the Court.

Respectfully Submitted By:

/s Elmer Robert Keach, III

Dated: October 6, 2017 Elmer Robert Keach, III, Esquire

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[SEE ATTACHMENT IN ORIGINAL]