UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Linda DeVooght, Tressa Sinha, Jennifer Piper, Donna Tripi, Suzanne Chaffin, and Cheryl Osowski, Plaintiffs, v. City of Warren, Defendant.	Case: 20-10812 Hon. George Caram Steeh United States District Judge Hon. David R. Grand United States Magistrate Judge

MOTION FOR PRELIMINARY INJUNCTIVE RELIEF AND TEMPORARY RESTRAINING ORDER AND BRIEF IN SUPPORT OF MOTION

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MOTION FOR PRELIMINARY INJUNCTIVE RELIEF AND TEMPORARY RESTRAINING ORDER

This is a lawsuit brought by six women who have each worked for many years—ranging from five to over 28 years—as dispatchers for the City of Warren's Police Department. Plaintiffs bring this emergency action requesting a Temporary Restraining Order and Preliminary Injunction to bring an immediate end to Defendant's ongoing violation of their Equal Protection rights and rights under the Elliott-Larsen Civil Rights Act.[1] Specifically, Plaintiffs, are suffering ongoing violations of their rights as follows:

1. Plaintiffs, solely because of their sex, are required by General Order of the City of Warren's Police Department to perform the extremely dangerous and noxious task of conducting custodial searches of the female prisoners arrested by male police officers.

2. Male dispatchers are never under any circumstances required or asked to perform such searches.

3. The City of Warren has other means of accomplishing its objectives—safely processing arrestees—yet, instead orders Plaintiffs, civilian

[1] Plaintiffs have also filed charges under Title VII of the Civil Rights Act of 1964 with the EEOC arising out of the same core operative facts and will amend their Complaint once they have exhausted their administrative requirements with the EEOC.

employees whom it has not adequately trained or equipped, to conduct searches of prisoners.

4. These searches require direct contact with the prisoners, including when necessary strip searches, and in performing these searches, Plaintiffs are exposed to body fluids, belligerent and intoxicated conduct, foul odors, and highly toxic drugs and dangerous weapons concealed within these prisoners' body and garment folds.

Plaintiffs bring their lawsuit now and seek emergency relief because they are being exposed to a vastly heightened risk of COVID-19 solely because of their sex.

Preliminary injunctive relief and a Temporary Restraining Order are warranted because (A) Plaintiffs are likely to succeed on the merits of their Constitutional and ELCRA claims listed above, (B) absent this immediate relief Plaintiff will continue to suffer irreparable harm—namely, the risk of death or grave illness from exposure to COVID-19—(C) no harm to others will result from entry of the Preliminary Injunction and Temporary Restraining Order, and (D) this relief is in the public interest.

Plaintiffs specifically request the following Preliminary Injunctive relief and Temporary Restraining Order:

1. An ORDER requiring Defendant City of Warren immediately to end its policy and practice of directing female dispatchers to perform custodial searches of female prisoners.
2. An ORDER that Defendant City of Warren protect Plaintiffs from any and all forms of retaliation by any members of Defendant's Police Department.
3. An ORDER requiring Defendant City of Warren to submit to the Court, within 14 days, a detailed report documenting its steps taking and ongoing plan to ensure that no female dispatchers or dispatch supervisors are ever again called upon to conduct custodial searches of prisoners.

In support of this motion, Plaintiffs refer the Court to their accompanying brief and exhibits.

As required by Local Rule 7.1, Plaintiffs have sought concurrence from Defendant in the relief sought. On March 26, 2020, Plaintiffs' counsel contacted the City of Warren Attorney and presented him with draft copies of their Complaint and this Motion and Brief in Support for a Preliminary Injunction and Temporary Restraining Order. On March 27, 2020, the City's attorney offered concessions that did not adequately address Plaintiffs' concerns because the City only offered to provide safety gear and training to those who

request it. Plaintiffs countered with demands that would satisfy their immediate concerns—suspension of search duties until there was independent confirmation that there had been training equivalent to what sworn officers receive for searching arrestees and adequate protective gear, protection of the Women Dispatchers against retaliation, and a provision that anyone who herself or a household member was in a high-risk group for COVID-19 would be exempted from the search duties until conclusion of the state of emergency; however, Defendant rejected these demands.

BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTIVE RELIEF AND TEMPORARY RESTRAINING ORDER

INTRODUCTION

This is a civil rights action in which Plaintiffs seek relief for the violation of their rights as secured by 42 U.S.C. § 1983, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and the Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq*.[2]

Plaintiffs seek emergency relief from the Court because they have been and continue to be subjected to the potentially deadly and heightened risk of exposure to COVID-19. Plaintiffs are women who are employed by the City of Warren's Police Department as dispatchers and dispatch supervisors. Solely because of their sex, Defendant requires these women to perform the highly dangerous and odious task of conducting custodial searches on female prisoners upon intake to the City of Warren Police Department. Male dispatchers are never under any circumstances required to conduct such prisoner searches.

[2] Plaintiffs have concurrently filed charges with the EEOC arising out of the same core of operative facts, alleging violations of Title VII of the Civil Rights Act of 1964, and will amend their Complaint once that process has been completed and they have been issued a Notice of their Right to Sue.

Plaintiffs are not provided any additional remuneration or compensation for assuming this dangerous work, which exposes them to body fluids, belligerent and intoxicated conduct, foul odors, and highly toxic drugs and dangerous weapons concealed within these prisoners' body and garment folds. Furthermore, the City of Warren has neither adequately trained Plaintiffs nor provided them with adequate protection to conduct these intimate searches of prisoners. At least one of the Plaintiffs is scheduled to work on each day from now going forward and thus faces a continuing and heightened risk of exposure to the deadly COVID-19 virus.

For the following reasons, Plaintiffs respectfully request an Order from this Court issuing a Preliminary Injunction and Temporary Restraining Order enjoining Defendant from continuing its practice of imposing dangerous conditions and terms of employment on Plaintiff because of their sex, in violation of the Equal Protection Clause and the ELCRA.

Statement of Relevant Facts:

Plaintiffs Linda DeVooght, Tress Sinha, Jennifer Piper, Donna Tripi, Suzanne Chaffin, and Cheryl Ostrowski are all women who are employed as dispatchers by Defendant City of Warren's Police Department. (Complaint ¶¶ 13-18). The City of Warren employs 22 dispatchers and dispatch supervisors, of whom 17 are female. (*Id*. at ¶ 11.) These dispatchers are paid according to

two collective bargaining agreements—one for the dispatchers and one for the supervisors—and these agreements contain no distinctions in pay or terms of employment based on whether a dispatcher is a male or a female. (*Id.* at ¶ 12.)

General Order 17-10 of Defendant's Police Department governs Arrest Procedures for prisoners taken into custody. (Ex. 1: General Order 17-10.) According to Section G of this General Order, "Prisoner Searches," "the arresting/transporting officers will conduct an initial search for weapons and contraband." (*Id*. at 9.) The General Order continues, that "If a male prisoner is arrested by a female officer, an available male officer who is on duty and in the station when the arrest is made shall be called upon to conduct the search." (*Id*..) By contrast, "If a female prisoner is arrested by a male officer, an available officer who is on duty and in the station when the arrest is made shall be called upon to conduct the search prior to calling upon a dispatcher to perform the search." (*Id*.) This General Order further directs that "A female dispatcher will conduct the search of a female prisoner in the detention facility when: 1) a female is arrested by a male officer; and 2) there are no female officers on duty and in the station at the time of booking." (*Id*. at 10.) There is no provision for male dispatchers to ever search a prisoner.

The job descriptions for dispatchers and dispatch supervisors are governed by Defendant's Police Department General Order 02-01. (Ex. 2:

General Order 02-01.) This General Order does not mention prisoner searches. (*Id.*) Neither does the collective bargaining agreement governing the terms of employment for the dispatchers and dispatch supervisors mention prisoner searches. (Ex. 3: Collective Bargaining Agreement.)

Nonetheless, Plaintiffs and their fellow female dispatchers conduct custodial searches of female prisoners on a regular, frequent basis. According to a log begun in late May of 2019 and recording most, but not all, of the custodial searches Plaintiffs and some of their fellow female dispatchers were ordered to perform, no less than 180 such searches were performed the past ten months. (Ex. 4: Search log.) This amounts to 4-5 searches each week. (Complaint ¶ 31.) Even though the General Order 17-10 calls for a female officer who is on duty and in the station to conduct the search, as a practice and policy of the department and its commanding officers, female officers are not ordered to perform these searches, even when they are on duty and in the station. (Complaint ¶ 32.) Rather, it is nearly always the case that when a male officer brings in a female prisoner, a female dispatcher is ordered to report to the intake area and conduct the search. (Complaint at ¶ 33.)

The General Order No. 17-10 on Arrest Procedures defines the full custodial search that must be conducted of a prisoner being arrested as requiring the person conducting the search to remove and inventory all

personal property, check the prisoner's garments, remove all medications, contraband, and potential weapons, and remove and inspect all headwear such as wigs, toupees, weaves, or barrettes. (Ex. 1 General Order No. 17-10 at 6.) When a female dispatcher is performing the search, the arresting/assisting officer is required by the General Order No. 17-10 to "stand by in close proximity in the booking area until the search has been completed and the prisoner has been turned over to detention personnel." (*Id*. at 10.) However, in practice, the arresting/assisting officer will commonly leave the proximity of the female dispatcher and the prisoner she has been ordered to search. (Complaint ¶ 38.)

Sworn police officers receive extensive training to perform all parts of their job requirements, including how to safely conduct a custodial search of a prisoner, disarm prisoners, and remove contraband. (Complaint ¶ 40.) However, the City of Warren's Police Department has failed to provide any training in five years for the female dispatchers to conduct a custodial search of a prisoner, disarm prisoners, or remove contraband from a prisoner. (Complaint ¶ 41.) Approximately once a year, the City of Warren's Police Department has its female dispatchers watch a training video regarding custodial searches of prisoners. (Complaint ¶ 42.) Watching a training video is woefully inadequate training for conducting a search that can expose the

person conducting the search to infectious diseases such as COVID-19, potential weapons the prisoner is holding that evaded the original pat-down, highly toxic narcotics the prisoner may yet have concealed on her person, as well as lice, scabies, fleas and other pests that may have infested a prisoner. (Complaint ¶ 43.) Ironically, this training video even demonstrates a male officer conducting the custodial search of a female prisoner—a practice that the Defendants do not allow. (Complaint ¶ 44.) Male dispatchers, unlike their female counterparts, are never asked or ordered to perform custodial searches of prisoners; therefore, the male dispatchers are never subjected to the risks associated with conducting custodial searches of prisoners. (Complaint ¶ 45.)

Plaintiffs face Heightened Risks of COVID-19 Exposure

On March 10, 2020, the first COVID-19 case in Michigan was confirmed and Governor Whitmer declared a State of Emergency directing that steps be taken to prevent the spread of the disease.[3] Since March 10, 2020, Plaintiffs and their fellow Female Dispatchers have been ordered to conduct custodial searches of female prisoners on no fewer than 12 separate occasions. (Ex. 4: Log of Searches.) The United States Centers for Disease Control and Prevention

[3] Executive Order No. 2020-4 – Declaration of State of Emergency, available at https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-521576--,00.html (last visited March 25, 2020.)

("CDC") has issued guidance regarding the measures to be taken at workplaces to avoid and protect against transmission of COVID-19. [4] Among the recommendations provided for law enforcement personnel is maintain a distance of 6 feet from individuals whenever possible.[5] Additionally, the CDC has proscribed the following as minimally acceptable Personal Protective Equipment to Wear when one must be within 6 feet of another individual to perform operational duties[6]:

a. A single pair of disposable examination gloves,

b. Disposable isolation gown or single-use/disposable coveralls,

c. Any NIOSH-approved particulate respirator (i.e., N-95 or higher-level respirator); Facemasks are an acceptable alternative until the supply chain is restored, and

d. Eye protection (i.e., goggles or disposable face shield that fully covers the front and sides of the face)

[4] "What Law Enforcement Personnel Need to Know About Coronavirus Disease 2019 (COVID-19)," CDC, available at https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-law-enforcement.html (Last visited 3-23-2020).
[5] *Id*.
[6] *Id.*

While disposable gloves and face masks have been made available to Plaintiff and their fellow Female Dispatchers, at no time has Defendant provided isolation gowns or eye protection to them. (Complaint ¶50.) Indeed, on March 22, 2020, Plaintiff Cheryl Osowski expressed her grave concerns about performing a custodial search without such protective equipment because she lives with three family members who are in high-risk categories for COVID-19 exposure—diabetes, cancer treatment, and asthma. (Complaint ¶51.) The Watch Commander told Osowski that all she needed was the mask and the gloves. He denied her a protective gown and eye protection. (Complaint ¶52.) Osowski was required to perform the custodial search on this female prisoner notwithstanding her concerns and the lack of proper protective equipment, and the fact that a female officer was due to come on duty at the station in 15 minutes. (Complaint ¶53.) By stark contrast, Defendant provides its police officers are provided with eye protection and protective gowns to perform custodial searches. (Complaint ¶54.)

Of its nearly 200 sworn officers, Defendant City of Warren's Police Department employs 13 female police officers, which is approximately 7% of the sworn officers. (Complaint ¶79.) Nationally, women represent 14 percent

of all police officers.[7] Defendant has failed to consider or adopt other procedures, such as recruiting and hiring more female police officers, scheduling their female police officers to ensure that one is available to perform searches if female prisoners, or compensating the female dispatchers with hazard pay. (Complaint ¶77-81.)

From today and ongoing into the foreseeable future, at least one of the Plaintiffs is scheduled to work on each day at Defendant's Police Department. Therefore, Plaintiffs' risk of a heightened exposure—that is, far in excess of their male counterparts who work in dispatch and are never required to conduct prisoner searches—to the deadly COVID-19 virus solely on the basis of their sex.

Preliminary Injunction and TRO Standard

"The court analyzes four factors when considering a motion for preliminary injunction: (1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury without the injunction; (3) whether issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served

[7] Data USA, "Police Officers", available at https://datausa.io/profile/soc/333050/#demographics (last visited March 24, 2020).

by issuance of the injunction." *Mayerova v. E. Michigan Univ*., 346 F. Supp. 3d 983, 991 (E.D. Mich. 2018)(Steeh, J.)(citation omitted); see also *City of Pontiac Retired Employees Ass'n v. Schimmel*, 751 F.3d 427, 430 (6th Cir. 2014) (en banc)). "The four considerations applicable to preliminary injunction decisions are factors to be balanced, not prerequisites that must be met." *Hamad v. Woodcrest Condo. Ass'n*, 328 F.3d 224, 230 (6th Cir. 2003)(quoting *Michigan Bell Telephone Co. v. Engler*, 257 F.3d 587, 592 (6th Cir. 2001)).

The same standard applies to a motion for temporary restraining order as to a motion for preliminary injunction. *W. Michigan Family Homes LLC v. United States Dep't of Agric.*, 2013 WL 12109437, at *1 (W.D. Mich. Nov. 26, 2013) (citing *Summit County Democratic Central and Executive Committee v. Blackwell*, 388 F.3d 547, 550 (6th Cir. 2004)).

ANALYSIS

This case satisfies all four factors for requiring preliminary injunctive relief.

Likelihood of Success

Defendant's practice of intentional gender discrimination is enshrined in its own policies. "When a party seeks a preliminary injunction on the basis of a potential constitutional violation, the likelihood of success on the merits often

will be the determinative factor." *Obama for America v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012).

Plaintiff will likely succeed on the merits of both their Equal Protection and ELCRA claims.

Plaintiffs Will Succeed on their Equal Protection Claim

It is well established law that in cases arising under the Equal Protection Clause of the Fourteenth Amendment, the actions of the governmental entity that discriminates on the basis of sex are subjected to heightened scrutiny. *Craig v. Boren*, 429 U.S. 190, 197 (1976). The Supreme Court has held that

> a party seeking to uphold government action based on sex must establish an 'exceedingly persuasive justification' for the classification. *Mississippi Univ. for Women,* 458 U.S. [718, 724 (1982)]. To succeed, the defender of the challenged action must show 'at least that the classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives.' *Ibid.* (internal quotation marks omitted*).*

United States v. Virginia, 518 U.S. 515, 524 (1996). "The justification must be genuine, not hypothesized or invented *post hoc* in response to litigation. And it must not rely on overbroad generalizations about the different talents, capacities, or preferences of males and females." *Id.* at 533 (citing cases). The analysis of claims regarding sex discrimination under the Equal Protection

Clause and Title VII of the Civil Rights Act of 1964 is largely the same. *Gen. Elec. Co. v. Gilbert*, 429 U.S. 125, 133 (1976).

Here, Defendant's express policy, General Order 17-10, commands female dispatchers, but never male dispatchers, to conduct custodial searches of prisoners brought in by a male arresting or assisting officer. Additionally, it is Defendant's pattern and practice to bypass an available female officer—even though she is appropriately trained, equipped, and compensated to take on the risks of close contact with prisoners—and instead call upon Plaintiffs, whom the City of Warren has inadequately trained, failed to provide with appropriate protective gear, and paid far less than police officers, to conduct these dangerous searches.

The harm to Plaintiffs is exceedingly and intolerably high now, given the state of emergency regarding the highly contagious COVID-19 virus. Solely because of their sex, Plaintiffs are being forced by Defendant's express policy and practice to come into close physical contact with persons who have been arrested; whereas, their similarly situated male colleagues are spared this grave danger. Even without the immediate COVID-19 crisis, Plaintiffs can establish that the terms and conditions of their employment are far more dangerous and odious than those of the male dispatchers. Only female dispatchers are ordered to conduct custodial searches and these searches

expose them to prisoners' body fluids, pest infestations, and concealed dangerous contraband, among other dangers.

The City of Warren cannot provide a genuine, "exceedingly persuasive justification" that its intentionally discriminatory policy is substantially related to important government objectives. The City of Warren has no legitimate need to discriminate between male and female dispatchers in the terms and conditions of their work assignments in order to accomplish the admittedly important objective of searching prisoners. First, the City of Warren uses a video to "train" the female dispatchers on custodial searches that shows a male police officer searching a female prisoner. This alone demonstrates that male officers could search their own arrestees, as the policy requires when an officer arrests a prisoner of the same sex. Second, Defendant could organize and schedule its female officers so that one is available at the station or easily recalled to the station to conduct a prisoner search. Third, the City of Warren has failed to recruit and employ numbers of female police officers commensurate with national averages, and it is neither "genuine" nor "exceedingly persuasive" that inadequately protected and trained civilian employees like Plaintiffs should be called upon to perform the dangerous work of a police officer merely because their employer has not taken seriously its responsibility to expand the ranks of female sworn officers.

Plaintiffs are likely to prevail on the merits of their Equal Protection claim that Defendant's policy and practice of requiring them to conduct the highly distasteful work of prisoner searches—at great personal risk—while their male counterparts have no such requirement.[8]

Plaintiffs will also prevail on their ELCRA claims

The Elliott-Larsen Civil Rights Act prohibits discrimination in the terms and conditions of employment on the basis of sex. M.C.L. § 37.2202(1)(a). Claims brought under Michigan's ELCRA "involve the same analysis as Title VII claims." *McDaniels v. Plymouth-Canton Comm. Sch*., 755 Fed. App'x 461, 469 n.3 (6th Cir. 2018)(citing *Sutherland v. Mich. Dep't of Treasury*, 344 F.3d 603, 614 n.4 (6th Cir. 2003)).

When a facially discriminatory employment policy is challenged, as is the case here, "the systemic discrimination is in effect 'admitted' by the employer, and the case will turn on whether such overt disparate treatment is for some reason justified under Title VII." *Reed v. County of Casey*, 184 F.3d 597, 599 (6th Cir. 1999). Defendant bears the burden of establishing that a legally permissible reason or BFOQ justifies the disparate treatment. *Id*. at 600. "Our cases have

[8] Under similar reasoning, once Plaintiffs amend their Complaint to add unlawful and intentional discrimination in the terms and conditions of employment because of sex in violation of Title VII, Plaintiffs will also prevail because of the largely similar analysis applied. *See Gilbert*, 429 U.S. at 133.

stressed that discrimination on the basis of sex because of safety concerns is allowed only in narrow circumstances." *Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am., UAW v. Johnson Controls, Inc.*, 499 U.S. 187, 202, 111 S. Ct. 1196, 1205, 113 L. Ed. 2d 158 (1991).

The City of Warren cannot provide a bona fide justification for discriminating between male and female dispatchers in a way that subjects female dispatchers—civilian employees whom the City of Warren has neither adequately trained nor properly protected—to the extremely dangerous and noxious task of conducting prisoner searches, while male dispatchers have no such expectation. What is most apparent about the failure of any BFOQ defense is that there is no bona fide occupational qualification here at all, given that 1) all Plaintiffs are qualified for the job of dispatcher, but not police officer, 2) there is no distinction based on sex among dispatcher duties laid out in their job descriptions, and 3) prisoner searches are not part of the General Order laying out dispatcher job duties. The order for women dispatchers to conduct prisoner searches falls entirely outside their duties and is imposed on them solely because of their sex. Male dispatchers are never required to do these searches.

The City of Warren has not and cannot show that its operations demand such a facially discriminatory policy imposed on female dispatchers, given that

there exist reasonable and rational means of accomplishing its goal of searching prisoners. The City of Warren could have the male arresting officer conduct the search—excluding the rare instances when a strip search is necessitated. But even granting a legitimate policy need to have searches carried out by an individual of the same sex as the prisoner, the City of Warren could address this by scheduling the female officers' assignments and duties so that one is available or can be called upon with only a minor delay to perform these searches. Finally, the fact that a scant 7% of the Warren police force is female begs the question of why Defendant has not sought to recruit and employ women to serve as sworn officers in numbers more commensurate with national averages.

For the above reasons, Plaintiff have demonstrated that they are likely to prevail in their ELCRA claim because they have established a facially discriminatory policy for which the City has no defense.

Plaintiffs will Suffer Irreparable Injury Absent Injunctive Relief

Defendant's job requirements for women dispatchers, including Plaintiffs, puts Plaintiff directly in harm's way and subjects them to ongoing legal and physical injury. "[T]here is 'a presumption of an irreparable injury when a plaintiff has shown a 'violat[ion] [of] a civil rights statute.'" *Mayerova*, 346 F. Supp. 3d 983, 998 (E.D. Mich. 2018)(citations omitted). Thus, with

regard to the irreparable-harm inquiry, the Sixth Circuit has held that "when reviewing a motion for a preliminary injunction, if it is found that a constitutional right is being threatened or impaired, a finding of irreparable injury is mandated." *ACLU of Kentucky v. McCreary County*, 354 F.3d 438, 445 (6th Cir. 2003). Irreparable harm must be "both certain and immediate, rather than speculative or theoretical." *Mich. Coal. of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 154 (6th Cir. 1991).

Because of Defendant's discriminatory policy, which requires women dispatchers to perform custodial searches of women arrestees, Plaintiffs will continue to experience two discrete forms of ongoing, concrete, and irreparable injury: (1) continuing violations of their right to be free from intentional gender discrimination in the workplace; and (2) continuing exposure to the dangers of conducting custodial searches without proper training or protective equipment, which includes continuing exposure to physical violence and injury, unsanitary conditions, and—above all other considerations as a grave and imminent danger—exposure to infection by contagious diseases such as COVID-19.

The Supreme Court has recognized the inherent dangers at this stage of taking an arrestee into custody:

> Correctional officials have a significant interest in conducting a thorough search as a standard part of the intake process. The admission of inmates creates numerous risks for facility staff, for the existing detainee population, and for a new detainee himself or herself. The danger of introducing lice or contagious infections, for example, is well documented. See, e.g., Deger & Quick, The Enduring Menace of MRSA: Incidence, Treatment, and Prevention in a County Jail, 15 J. Correctional Health Care 174, 174–175, 177–178 (2009); Bick, Infection Control in Jails and Prisons, 45 Healthcare Epidemiology 1047, 1049 (2007). The Federal Bureau of Prisons recommends that staff screen new detainees for these conditions. See Clinical Practice Guidelines, Management of Methicillin–Resistant Staphylococcus aureus (MRSA) Infections 2 (2011); Clinical Practice Guidelines, Lice and Scabies Protocol 1 (2011). Persons just arrested may have wounds or other injuries requiring immediate medical attention. It may be difficult to identify and treat these problems until detainees remove their clothes for a visual inspection. See Prison and Jail Administration: Practice and Theory 142 (P. Carlson & G. Garrett eds., 2d ed.2008) (hereinafter Carlson & Garrett).

Florence v. Bd. of Chosen Freeholders of Cty. of Burlington, 566 U.S. 318, 330–31 (2012).

These injuries are irreparable and cannot be addressed through money damages alone. Indeed, by the time any of the Plaintiffs were to know that they have been injured, for example, through COVID-19 infection, it would likely be impossible and too late for them to obtain an adequate remedy in court. An injunction, and only an injunction, can stop the practice from continuing to injure Plaintiffs.

Defendant will suffer no Harm under this Injunction; Whereas, Plaintiffs will Suffer Great Harm without it

As a matter of law, Defendant will suffer no harm from the enjoinment of its unlawful policy because it has no right to apply an unconstitutional job requirement to Plaintiffs. See *Tyson Foods v. McReynolds*, 865 F.2d 99, 103 (6th Cir. 1989) ("[Defendant] has suffered no injury as a result of the preliminary injunction [because it] has no right to the unconstitutional application of state laws."). Thus, the Sixth Circuit has held that "if the plaintiff shows a substantial likelihood that the challenged law is unconstitutional, no substantial harm to others can be said to inhere in its enjoinment." *Deja Vu of Nashville, Inc. v. Metro. Gov't of Nashville & Davidson County*, 274 F.3d 377, 400 (6th Cir. 2001). And, as demonstrated above, Defendant has other means of accomplishing its objectives—safely processing arrestees—yet, instead orders Plaintiffs, civilian employees whom it has not adequately trained or equipped, to conduct searches of prisoners.

On the other hand, Plaintiffs face imminent and irreparable injury if Defendant is not enjoined from forcing them to conduct custodial searches of arrestees. Plaintiffs are currently working under unconstitutional terms and conditions of employment because Defendant imposes on them the duty to perform custodial searches, without imposing any such requirement on

Plaintiffs' male counterparts. Consequently, because of this intentionally discriminatory practice, Plaintiffs are currently exposed and will continue to be exposed to the dangers and risks of conducting physical searches of arrestees without proper training and equipment.

The Public Interest is Served by Granting Injunctive Relief to Plaintiffs

Just as the likelihood of a constitutional violation mandates a finding of irreparable harm, the public-interest factor is also automatically satisfied when a constitutional violation is likely. The Sixth Circuit has held that "it is always in the public interest to prevent violation of a party's constitutional rights." *Deja Vu of Nashville*, 274 F.3d at 400; accord *Bays v. City of Fairborn*, 668 F.3d 814, 825 (6th Cir. 2012). Here, since Defendant's policy is facially discriminatory and unconstitutional, it is in the public interest to order Defendants to simply end the ongoing constitutional violations.

Furthermore, Plaintiffs are dispatchers for all the City's police, fire, and emergency medical services. The public is harmed if the City of Warren subjects its civilian employees to needless risk of injury or infection by requiring them to perform physical custodial searches of arrestees. First, Plaintiffs and their co-workers could be exposed to infection, further accelerating and spreading infectious disease. Second, the public is harmed if Plaintiffs and their co-workers are sickened or disabled from working as dispatchers and in other

capacities, which could jeopardize the full and effective operation of the City of Warren police, fire, and emergency medical functions. Third, the public is harmed if Plaintiffs are injured or infected and take those infections home with them, resulting in irreparable harm to their friends, family, and the public.

CONCLUSION AND RELIEF REQUESTED

For the foregoing reasons, the Court should grant Plaintiffs the Preliminary Injunction and Temporary Restraining Order as requested in the form of:

- An ORDER requiring Defendant City of Warren immediately to end its policy and practice of directing female dispatchers to perform custodial searches of female prisoners.
- An ORDER that Defendant City of Warren protect Plaintiffs from any and all forms of retaliation by any members of Defendant's Police Department.
- An ORDER requiring Defendant City of Warren to submit to the Court, within 14 days, a detailed report documenting its steps taking and ongoing plan to ensure that no female dispatchers or dispatch supervisors are ever again called upon to conduct custodial searches of prisoners.

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Dated: March 27, 2020

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document And Verified Complaint was served upon all Ethan Vinson, City of Warren attorney via e-mail to his e-mail address of evinson@cityofwarren.org on March 27, 2020.

/s/ Kathy Prochaska

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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