IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 21-0442

WILLIAM SCOTT ROGERS, individually and on behalf of all others similarly situated,

Plaintiffs/Appellees,

v.

LEWIS & CLARK COUNTY,

Defendants/Appellant.

REPLY BRIEF OF APPELLANT LEWIS & CLARK COUNTY

On Appeal from the First Judicial District Court,
Lewis and Clark County, Montana
Cause No. DDV-2018-1332

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I. STATEMENT OF ISSUE

Appellant Lewis & Clark County (the "County") sets forth its statement of issues, as the Respondents (the "Detainees") have restated the issues on appeal in a manner that fails to address the District Court's errors:

1. *Did the District Court clearly err in finding and concluding that the Detention Center's booking records—rather than actual search records—could be substituted and used to analyze commonality, numerosity, and typicality criteria for class certification*?

2. *Did the District Court abuse its discretion in its class certification order by determining that common questions predominate over the individualized determinations required by the statute, namely the particularized inquiry whether a misdemeanant is searched without a reasonable suspicion of concealing a weapon, contraband, or evidence of a commission of a crime?*

II. ARGUMENT ON REPLY

A. The District Court failed to engage a rigorous analysis when it relied on the Detention Center's Intake Form to define the putative class, an approach that results in a far broader class than the plain language of the statute and even broader than that proposed by Detainees.

The First Judicial District Court's order, subject of this appeal, certifies a class described as follows:

> Each person arrested or detained for a non-felony offense from October 31, 2015, to the present who has been subjected to a strip search or visual body cavity search by a law enforcement officer or employee of the Lewis and Clark County Detention Center *pursuant to a Detention Center policy or practice of conducting strip searches or visual body cavity searches of detainees who may be placed into general custody.*

Order Pl.'s Mot. Cert. Class Action, 20-21, Aug. 5, 2021, ("Order") (emphasis added). The County's appeal, here, challenges not only the District Court's description of the class, which overbreadth exceeds the plain language of the statute, but also the appropriateness of certification altogether, given the individualized assessment that is a prerequisite of any potential statutory violation.

The District Court's certification order extends far broader than that proposed by Detainees. Detainees' proposal at least tracked the statutory language:

> Each person arrested or detained for a traffic offence or an offense that is not a felony who, with the three years preceding the filing of this action and up until the date this case is concluded, has been or will be subjected to a strip search as defined under Montana law, by a peace officer or law enforcement employee at the Lewis & Clark County Detention Center *without suspicion to believe that the person was concealing a weapon, contraband, or evidence of commission of a crime*.

Am. Compl. Damages, Inj. Relief, Class Relief Demand for Jury Trial ¶17, Sept. 16, 2019; *see* Pls.' Reply Br. Support Supp. Mot. Cert. Class Action, Feb.

23, 2021 (Dkt. 113) ("Reply Br.") (emphasis added). The District Court characterized its broadening of the putative class as the "proper focus" and solving a "problem." Order 14-15. However, in doing so, the District Court erroneously assumed that the Detention Center employed a "blanket policy" that is simply memorialized by a checked box on the Intake Form. Order 15-16. In fact, and as the officers testified, the Detention Center employs a multi-factored approach to assess potential risks on the booking floor. *See, eg.*, Appellant's Opening Br. 11-12, 14-16, Dec. 21, 2021; Pls' Statement of Undisputed Facts, Oct. 7, 2019 (Dkt. 44) ("SUF"), Ex. 5: Dep. Transcript Capt. Alan Hughes 19-20, 44-45, 65-66, May 3, 2019; SUF, Ex. 8: Dep. Sgt. Troy Christensen 37-38, June 4, 2019 ("Dep. Christensen").

The District Court's refocusing was factual and legal error. The record testimony demonstrates that the Detention Center officers employed a decision tree evaluation of multiple factors, not a blanket policy. Order 15-16. The record also demonstrates that the processing of detainees may have varied among the officers. *Id*. The rigorous review of the class certification factors cannot occur without a class description that circumscribes those members who may actually have a *prima facie* claim. The District Court's overbroad definition – by "refocusing" to rely solely on the Intake Form – departed from the rigorous review required for class certification.

The County raised this issue on appeal, Appellant's Opening Brief 22-28, yet Detainees failed to respond directly, other than to defend the class certification generally. Detainees' response, if any, accuses the County of failing to file "additional evidence supporting its position", Appellee's Answer Brief at 3, February 14, 2022 ("Response Brief") or to "show those records to the District Court", Response Brief at 39. Given the Detainees did not even ask for the overbroad class description certified, the County had no reason to believe that the District Court would substitute the Intake Form to define eligibility for class membership. Consequently, the County makes its objection by this appeal, raising the erroneous, overbroad and misunderstood Intake Form for assessment of class eligibility. Other than the rejoinder that the County failed to provide evidence, Detainees do not address or defend the massive overbreadth and inconsistencies created by the District Court's "refocusing" of the putative class. At a minimum, the District Court must be reversed to correct the overbroad class description.

The County insists on corrected class description because (1) it would be inappropriate and unfair to require the County to defend against such an inflated class of persons that includes persons properly searched, and, even more importantly, (2) a proper class description brings to light the error in the District

Court's substitution of the Intake Form to certify a class for the alleged statutory violation here.

Here, the District Court's certification analysis rests on clearly erroneous factual determinations related to the Intake Form, all of which results in a reversible abuse of discretion. *Kramer v. Fergus Farm Mut. Ins. Co.*, 2020 MT 258, ¶ 12, 401 Mont. 489, 474 P.3d 310 (citing *Mattson v. Mont. Power Co.*, 2012 MT 318, ¶ 17, 368 Mont. 1, 291 P.3d 1209). Specifically, the District Court errored when it defined the class regardless of whether the person was searched and regardless of whether reasonable suspicion was indicated. The Detainees obtained booking records only and tabulated the total number of misdemeanants booked. SUF ¶¶127-129. The Detainees then excluded some categories of misdemeanants based on the coding system used in those records. SUF ¶ 129 n.9. The Detainees' final tally included 3,572 class members, who were booked under the coding system of "Misdemeanor Offense" or "Warrant Misdemeanor." The Detainees provided no evidence how many or whom of these 3,572 persons were (1) searched or (2) searched without reasonable suspicion of drugs, crimes, or contraband.

The Detainees did not use search records to tabulate and define their class. The Detainees' approach requires the unsupported assumption that every misdemeanant booked on a "Misdemeanor Offense" and "Warrant

Misdemeanor" was strip searched. The testimony shows that only persons entering the general population were strip searched, whereas those posting bond, held in isolation, or transferred without entering the general population were not searched. (*See* testimony collected under Section III(c) of the County's Opening Brief.) In other words, the critical nexus between a statutory violation and the certified class is entirely absent.

The District Court's certified class includes members who could not have suffered a statutory violation; the District Court's overbroad class certification is a legal error requiring reversal.

B. The Detention Center did not employ a "blanket policy"; rather the Detention Center officers testified to a complex decision tree of considerations more appropriate for assessing reasonable suspicion and protecting facility safety.

Detainees repeatedly characterize the County's process as a "blanket policy" that would cover every arrestee, but the evidence in the record establishes that the policy and practice is actually a complex decision tree. Only a much narrower sub-class of the persons identified could potentially come within a class of persons who were subjected to a suspicionless search in violation of Montana Code Annotated § 46-5-104 and *Rogers v. Lewis & Clark*

Cty., 2020 MT 230, 401 Mont. 228, 472 P.3d 171.[1] But, even to get to that potential narrow class, it would require significant individualized review of claims not appropriate for class resolution. *See* Predominance Argument, Section 3(D) infra. The Detainee's grossly over-inclusive approach would encompass a huge class of persons—effectively every person booked within the statute of limitations—as having had their rights violated as articulated in *Rogers I*. Neither the statute nor *Rogers I* dictates such an extremely broad class; quite the opposite, such a class would include a great deal of persons searched for whom there was reasonable suspicion.

Detainees have alleged that 3,572 strip searches occurred comprising the class. SUF ¶129. Detainees obtained the complete booking records (not search records) from the Detention Centers from October 31, 2015 to October 31, 2018. SUF ¶127. The complete booking records were over 287 pages long and recorded 8,202 total bookings, which included felonies and other bookings. SUF ¶127, Ex. 19: Booking Records, Oct. 31, 2015-Dec. 31, 2018. Detainees' attorney "combed through" the records to identify those "arrested with a

[1] Though not directly on point here, the County maintains its position that application of the statute in this narrow context violates constitutional protections of detainees in the custody of the state. See County's Pet. For Writ of Sup. Control (dismissed on standing grounds only); OP 21-0443, Order of Sept. 21, 2021.

misdemeanor, non-felony offense." SUF ¶128, Ex. 20: Aff. Keif Storrar, Aug. 6, 2019 ("Aff. Storrar"). Detainees did a "key word search" to tally their proposed class, supposedly comprised of those booked for "Arrest Misdemeanor: 2,328" and "Warrant Misdemeanor: 1,294." Aff. Storrar, ¶¶ 128-129. Detainees' approach would have this Court shortcut any analysis of appropriate class inclusion by substituting the "Intake form" for actual consideration of whether a person meets threshold considerations for class membership – namely whether a reasonable suspicion justified the strip search. The Intake Form is a flawed tool for this purpose and cannot serve to substitute for an actual determination of the assessment undertaken by the officers as to the search.

There exists no "blanket policy" to strip search. In fact, the written policy for the Detention Center states that persons are not to be strip searched unless there exists a reasonable suspicion of some risk or harm. SUF, Ex. 16: 2002 Detention Center Policies ¶ 3.7, July 8, 2002. The testimony of the officers establishes that the actual practice varies among the officers, but all the testimony consistently establishes that booking officers undertake a complex decision tree before strip searching a person upon entry into the general population. Many factors go into the determination, including but not limited to: circumstances of arrest, reputation of detainee, potential charges of the

detainee, physical, mental or medical condition of the detainee, reason for appearance on booking floor, physical appearance of detainee, to include clothing, tattoos, piercings, etc. It remains these many factors that must be considered—on a case-by-case basis—before a person, or a class of persons, could be adjudged to have their statutory right violated. *See* Opening Br. 9-12; SUF, Ex. 5: Dep. Leo C. Dutton 19-20, 44-45, 65-66, May 3, 2019; Dep. Christensen, 37-38.

Without analyzing the officers' decision tree assessment for each detainee, that is, all the facts and circumstances that go into a reasonable suspicion analysis, there cannot be liability to the County. This threshold issue preempts the entirety of the District Court's certification order: 1) numerosity cannot be adjudged without the analysis, 2) commonality cannot be conflated across the varied circumstances, 3) typicality between the petitioners and other putative class members cannot be assessed, and so on. Without threshold evidence of eligibility for membership in the class, the Court cannot engage the requisite rigorous analysis.

C. Federal cases relied on by the District Court are neither authoritative nor persuasive; Montana law sufficiently provides the analytic structure to decide this case.

This Court's recent class certification jurisprudence, which applies a rigorous analysis standard, aligns with the United States Supreme Court's *Wal-*

Mart Stores, Inc. v. Dukes, 564 U.S. 338, 348-49 (2011) decision. The Detainees rely on a host of federal cases from "the early 2000s". *See* Def.'s & Appellee's Answer Br. 20-25, May 29, 2020 ("Resp. Br."). Detainees fault the County for not addressing these cases. *Id*. at 24. The County did not address these federal cases – which range from 1996 to 2010 – because they are factually distinguishable and, maybe more importantly, they were all decided before the seminal cases of *Bull* (2010), *Florence* (2012), and *Wal-Mart* (2011).

Consequently, the Detainees' reliance on these case, and the District Court's reliance on them, is misplaced and distraction. The two cases in this series that Detainees try to distinguish—*Roadhouse* and *Woodall*—were both decided after *Wal-Mart* and *Florence*, and both concluded that the class certification was inappropriate. Compare County's prior discussion in Opening Br., 42-43 with Resp. Br., 24-25; *see Roadhouse v. Las Vegas Metro. Police Dep't*, 290 F.R.D. 535, 546 (D. Nev. 2013) (denying class certification in strip search litigation because there existed no "common nucleus of facts" and "[t]oo many individual questions and answers predominate over the common questions and answers," and further listing the numerous, varied circumstances for inquiry surrounding searches in detention centers).

This Court's recent jurisprudence employs a rigorous analysis standard to determine whether the prerequisites of Rule 23(a) have been satisfied.

Jacobsen v. Allstate Ins. Co., 2013 MT 244, ¶ 37 371 Mont. 393, 310 P.3d 452; *Wal-Mart*,at 350-51. The "rigorous" analysis requires specific findings by the Court that each Rule 23(a) requirement has actually been satisfied, and it may require the Court to "probe beyond the pleadings and touch aspects of the merits to make this determination." *Jacobsen*, ¶ 37 (citing *Wal-Mart*, 564 U.S. at 350).

This Court consistently places on the "party seeking certification […] the burden of showing the proposed class satisfies all four prerequisites of Rule 23(a)." *Byorth v. USAA Cas. Ins. Co.*, 2016 MT 302, ¶ 16, 385 Mont. 396, 384 P.3d 455. The District Court's conclusion that the burden should be shifted to the County to prove reasonable suspicion, Order 16-17, is legal error. The federal cases relied upon by the District Court only employed burden-shifting *after* the class made out sufficient claims for constitutional violations – which were characterized as blanket policies, and which are fundamentally different than the potential individual statutory claim under Montana Code Annotated § 46-5-105. The only other case relied on by the District Court and the Detainees in this appeal recites the criminal law standard for search and seizure jurisprudence. *See* Order 16 (citing *Weer v. State*, 2010 MT 232, ¶ 10, 358 Mont. 130, 244 P.3d 311). Though *Weer* illustrates the County's point about the fact intensive nature of a reasonable suspicion analysis, it is entirely

inapposite to who bears the burden in class action litigation. In class litigation, the Detainees definitively bear the burden to prove the putative class suffered a statutory violation. *Byorth*, ¶ 16.

If the prerequisites cannot be met, then class action litigation—which serves a specialized purpose and countervails the general policy that litigation be maintained by the actual party in interest—cannot and should not be maintained. *Kramer*, ¶ 2; *Wal-Mart*, 564 U.S. at 348-49. Class litigation is the exception. *Sangwin v. State*, 2013 MT 373, ¶ 12, 373 Mont. 131, 315 P.3d 279 (class action is a departure from the usual rule). The prerequisites tease out whether class litigation is an appropriate vehicle for resolution; where the very nature of the alleged statutory violation turns on a highly factualized determination, class litigation by its nature will be unlikely to be appropriate. *See, e.g., Sangwin*, ¶ 37. Consideration of the prerequisites here easily demonstrates why class action here cannot be substituted for litigation by the actual party in interest.

Here, the assessments for Numerosity, Commonality, Typicality, Predominance, and Superiority cannot be rigorously reviewed for two principal reasons (1) the erroneous use of the Intake Form as evidence of a blanket policy does not circumscribe persons facially eligible under the statute for a claim, and (2) the "reasonable suspicion" analysis—a statutory prerequisite to class

membership—is necessarily individualized and based on a totality of circumstances analysis. The fallacy and deficiency of each prerequisite assessment is more fully describes, as follows:

1. Numerosity

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impractical." *McDonald v. Wash.*, 261 Mont. 392, 400, 862 P.2d 1150, 1155 (1993). A reasonable estimate is sufficient, but a conclusory allegation is not a reasonable estimate. *Byorth* (citations omitted).

Byorth is the critical case here. As in *Byorth,* the Detainees here have not provided evidence of the number of persons with alleged claims, i.e., the number of persons who were searched without a reasonable suspicion. *Byorth*, ¶ 44 (reversing on numerosity for Detainees' failure to submit discernable evidence of class size when Detainees submitted evidence of insurance claims submitted, but not evidence of the number of claims denied). Detainees here have offered only booking records, which are akin to the deficient claims information in *Byorth,* found deficient for not having a nexus to the alleged violation. *Byorth*, ¶ 18 (stating that while "we are deferential to a trial court's determinations regarding satisfaction of the Rule 23 requirements, we cannot affirm certification of a class when the record lacks evidence supporting a determination on a Rule 23 requirement. To hold otherwise would reduce the

concept of 'rigorous analysis' to a nullity. It would also mean the proposed class' 'burden' to satisfy the requirements of Rule 23 is no burden at all." (internal citations omitted)).

Numerosity does not require a specific threshold number, but it does require a reasonable estimation of class size to ascertain "whether joinder of all members is impracticable." This requires the class proponent to submit "at least some evidence" of the size of the purported class. *Byorth*, ¶ 19. Here, Detainees have only submitted booking records of all persons booked, which does not evidence persons properly searched, or conversely, those who may have a claim under the statute. Without evidence of the number of persons searched without reasonable suspicion, numerosity cannot be reviewed and anything otherwise would be "pure speculation". *Byorth*, ¶ 23.

2. Commonality

Rule 23(a)(1) requires that there be "questions of law or fact common to the class." *See also Diaz v. Blue Cross & Blue Shield*, 2011 MT 322, ¶ 40, 363 Mont. 151, 267 P.3d 756; *Jacobsen*, ¶ 129; *Ferguson v. Safeco Ins. Co. of Am.*, 2008 MT 109, ¶ 16, 342 Mont. 380, 180 P.3d 1164. The Court in *Byorth*, ¶ 26, noted that *Wal-Mart* "significantly tightened" the commonality requirement. *Id.* Here, Detainees and the District Court have failed to identify a "common issue" of law or fact justifying class commonality. Rather, the District Court

relied on a "superficial question that fails to demonstrate a common injury." *Byorth*, ¶ 29. Namely, the District Court found commonality in the "alleged injury suffered by each class member—invasion of their statutory privacy rights—is the same." Order 8.

The District Court's commonality finding is an abuse of discretion. A broadly cast allegation of *each member's* privacy rights does not present a "common question" susceptible to class resolution. This broad "privacy invasion" theory is precisely the type of superficial approach rejected upon a rigorous analysis. Further, inherent in this characterization is the truth that adjudication turns on *each member's* circumstances, potentially giving rise to a claim. This truth lays bare, again, the individualized – not common – nature of these claims, which precludes appropriateness for class certification.

A rigorous analysis requires that the allegedly "common question" justifying class certification be one that the answer to which "will resolve an issue that is central to the validity of each one of the claims in one stroke." *Sangwin*, ¶ 18 (quoting *Wal-Mart*, 564 U.S. at 350). Detainees and the District Court fail to identify such a common question of law and fact. There is none. What remains in the wake of *Rogers I* is an individualized assessment of whether any individual detainee was searched without reasonable suspicion in violation of the statute. This is appropriately individual litigation – not class

litigation.

The unique nature of each alleged claimant's detention makes these claims unsusceptible for finding or concluding any common issue that overarches a class that will "efficiently drive the resolution," *Jacobsen*, ¶ 40, or lead to "classwide resolution […] in one stroke," *Sangwin*, ¶ 18 (quoting *Wal-Mart*, 564 U.S. at 338). The question for continued litigation is the individual question of whether each litigant was searched, and if so, whether the search was supported by reasonable suspicion. These inquiries are factual in nature, individual in nature, and not susceptible to classwide resolution. The District Court, nor the Detainees, identified a common issue of fact or law that requires class proceedings.

3. Typicality

Typicality requires that the named plaintiff's claim "stems from the same *event*, *practice*, or *course of conduct* that forms the basis of the class claims and is based upon the same legal or remedial theory." *McDonald*, 862 P.2d at 1156 (quoting *Jordan v. Cty. of L.A.*, 669 F.2d 1311, 1321 (9th Cir. 1982)) (emphasis added); *Diaz*, ¶ 35. The District Court's typicality conclusion is in error because the certified class includes persons admittedly booked under broadly varied circumstances. Detainees proposed 96 class representatives assumedly represent a wide and varying set of fact circumstances as related to each's

search and detention, and likely demonstrate fact-specific variations even among themselves. *See* Order 10, n. 2 (District Court recommending reduction of the number of class representatives). However, the record contains only evidence relating to lead class representative, Mr. Rogers, whose circumstance varies in a distinguishable way from those other putative class members, insofar as the evidence demonstrates that each detainee at the Detention Center presents unique and individual circumstances that could give rise to a reasonable suspicion.

4. Predominance and Superiority – Rule 23(b)(3) additional requirements

Predominance is the principal reason to deny class certification; *Sangwin* is directly on point. The District Court identified the predominance issue as the "most substantial dispute between the parties," Order 12, but then proposed to solve "this problem" by adapting the erroneous definition of the class "to those who were searched pursuant to the blanket search policy." Order 15. Just as in *Sangwin,* individualized determinations must be made *before* class admission, rendering class proceedings useless and inappropriate. *Sangwin,* ¶ 37 (the question certified "cannot be answered until after individual assessments are made; therefore, the certified question is incapable of being resolved on a classwide basis.")

Generally, the "central concern of the Rule 23(b)(3) predominance test is whether adjudication of common issues will help achieve judicial economy." *Sangwin*, ¶ 31 (citations omitted). "Rule 23(b)(3)'s predominance and superiority requirements were added to cover cases in which a class action would achieve economies of time, effort, and expense, and promote uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results." *Kramer*, ¶¶ 18-19 (quoting *Mattson*, ¶ 39 (citing *Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d 935, 944 (9th Cir. 2009))).

Additionally, the predominance inquiry is more stringent than the commonality criteria under Rule 23(a)(2) and "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Id.*; *see also Byorth v. USAA Cas. Ins. Co.*, 333 F.R.D. 519, 530-31 (D. Mont. 2019) (citing *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623-24 (1997)). "Cohesiveness rests on the dominance of common questions over individual interests in the case." *Byorth*, 333 F.R.D. at 530-31 (citing *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 452 (2016)). "Common issues must be more prevalent than individual issues." *Sangwin*, ¶ 37. Common questions are those where "the same evidence will suffice for each member to make a *prima facie*

showing or the issue is susceptible to generalized, class wide proof[,]" while individual questions require class members "to present evidence that varies from member to member." *Byorth*, 333 F.R.D. at 530-31 (quoting 2 William B. Rubenstein, *Newberg on Class Actions* § 4:50 (5th ed. 2012)).

The predominance requirement under Rule 23(b)(3) is not met when "factual questions must be answered on an individual basis before the plaintiffs will be in a position to establish liability." *Sangwin*, ¶ 37 (citation omitted) (holding that a common question of contractual breach could not be answered unless individual assessments were first made to determine whether an individual's claims were properly denied and, thus, the common question was not predominant). The present situation is on all fours with *Sangwin*: factual determinations of particularized suspicion must be answered on an individual basis *before* class membership can be ascertained or liability can be established. *See* similar superiority prerequisite analysis: *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1189-92 (9th Cir. 2001) (citation omitted) (stating that if "the main issues in a case require the separate adjudication of each class member's individual claim or defense, a Rule 23(b)(3) action would be inappropriate … [and if] each class member has to litigate numerous and substantial separate issues to establish his or her right to recover individually, a class action is not "superior.")

D. The District Court erred in certifying a class under Rule 23(b)(2).

For the stated reasons above under the Rule 23(a) analysis, the District Court's certification under Rule 23(b)(2) is also in error and requires reversal. *See Houser v. City of Billings*, 2020 MT 51, 399 Mont. 140, 458 P.3d 1031. Certification under Rule 23(b)(2) is proper when "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). Rule 23(b)(2) may be satisfied if "class members complain of a pattern or practice that is generally applicable to the class as a whole." *Rodriguez v. Hayes*, 591 F.3d 1105, 1125 (9th Cir. 2010). "The key to the Rule 23(b)(2) class is the indivisible nature of the injunctive or declaratory remedy warranted — the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them." *Wal-Mart*, 564 U.S. at 360 (internal quotations omitted). Here, not only are the Rule 23(a) prerequisites lacking, but also there exists no "pattern or practice generally applicable to the class as a whole." Mont. R. Civ. P. 23(b)(2).

III. CONCLUSION

The statute allegedly violated—Montana Code Annotated § 46-5-105—

requires "reasonable suspicion to believe the person is concealing a weapon, contraband, or evidence of the commission of a crime" prior to the strip search of a misdemeanant. Whether there exists "reasonable suspicion" is a traditionally fact-intensive assessment by trained officers who must consider the totality of circumstances. Individual claims under the statute are not susceptible to class resolution, and given their very nature, individual questions will always predominate.

DATED this 14th day of March, 2022.

/s/ Nicholas J. Lofing
Attorney for Lewis & Clark County

CERTIFICATE OF COMPLIANCE

Pursuant to Montana Rule of Appellate Procedure 11(4)(e), I certify that this Brief is printed with proportionately spaced Times New Roman text typeface of 14 points; is double-spaced; and the word count, calculated by Microsoft Office 365 is 4,412 words, excluding Certificate of Service and Certificate of Compliance.

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CERTIFICATE OF SERVICE

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