centerforconstitutionalrights
on the front lines for social justice

June 23, 2014

VIA ECF
Hon. Analisa Torres
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

RE: *Floyd v. City of New York*, 08 Civ. 1034 (AT)

Dear Judge Torres:

On behalf of the Plaintiffs in the above-captioned case, I write in response to the June 20, 2014 letter to the Court from putative intervenor the Sergeants Benevolent Association (SBA). *Floyd* Dkt # 463. The SBA asserts that the decision by the New York State Supreme Court in *Patrolmen's Benevolent Association, et al. v. City of New York, et al.*, Index No. 652550/13 (N.Y. Co. Sup. Ct. June 18, 2014) (*Floyd* Dkt # 463-1) ("*PBA v City*" or the "Local Law 71 Opinion "), supports their standing to appeal the Liability and Remedies Orders in *Floyd*. However, contrary to the SBA's assertion, because of the vastly different factual circumstances and legal issues involved, the Local Law 71 Opinion provides no support for the SBA and other police unions' standing arguments in *Floyd*. Rather, that Opinion simply underscores the many hurdles that the unions cannot overcome to meet the standing requirements here. Consistent with long-standing legal principles, this Court should find that the SBA and other police unions lack standing to intervene in the present case.[1]

The New York Supreme Court based its holding that the police unions had suffered or were likely to suffer an injury-in-fact on the fact that Local Law 71 itself "unequivocally subjects officers to potential injunctive and declarative relief in addition to the payment of reasonable attorney and expert fees which it had not prior to the enactment of this law," by explicitly creating a private cause of action against individual NYPD officers who violate the law's prohibitions against bias-based profiling. *See PBA v. City* at 10; N.Y. City Admin. Code §14-151(d)(1)-(3), *as amended by* L.L. 71/2013 § 2

[1] In addition to the SBA, intervention motions filed by the Patrolmen's Benevolent Association, Detectives Endowment Association, Lieutenants Benevolent Association, and Captains Endowment Association that also are fatally defective for, *inter alia*, lack of standing, are pending before this Court. So far, only the SBA has submitted anything to this Court regarding the New York Supreme Court's Local Law 71Opinion. In the interest of expedition, Plaintiffs respond at this point to the SBA's submission. Plaintiffs reserve the right, however, to make a further submission responding to anything that the other unions may file with respect to that Opinion.

666 broadway, 7 fl, new york, ny 10012
t 212 614 6464 f 212 614 6499 www.CCRjustice.org

(Nov. 20, 2013).[2] Thus, the New York Supreme Court concluded, "[t]he chain of events that can lead to liability" for individual officers "is immediate and not attenuated." *PBA v. City of New York*, at 10 (emphasis added). The court's finding that the police unions' members had suffered or were likely to suffer an injury-in-fact as result of the Local Law 71 therefore directly turns on the potential for immediate, personal liability for individual police officers created by the law. In stark contrast, the *Floyd* Liability and Remedies Orders by their terms hold only the City -- but not any individual NYPD officers -- liable for violating Plaintiffs' constitutional rights, and, to the extent that injunctive relief is imposed at all, it is imposed only on the City. No individual officer or member of any of the police unions has faced or will face liability of any kind as a result of these two Orders, much less the immediate, direct individual liability contemplated by Local Law 71. Thus, individual members of the SBA and the other police unions are clearly not "subject to" the District Court's Liability and Remedies Orders in the way that they are subject to Local Law 71.

The SBA's letter in turn argues that its members will somehow be "harmed" by having to "implement and comply with in the field" yet-to-be-developed changes to NYPD stop-and-frisk and racial profiling policies, training materials, and supervisory, monitoring and disciplinary systems that the City is required to make under the Remedies Order. *See Floyd* Dkt # 463 at 1. In doing so, the SBA appears to equate attending a new stop-and-frisk training or using new forms to document stops, which, as set forth in Plaintiffs' intervention opposition, NYPD officers have had to do repeatedly over the past decade without protest from the unions, *see Floyd* Dkt # 448 at 2-4, with being sued for racial or other forms of profiling. Neither the New York Supreme Court, nor any other court, has ever made such a comparison, and, as discussed at length in Plaintiffs' intervention opposition, the unions have utterly failed to establish, and could not establish, that they or their members have any legally cognizable interest in the enactment of such reforms that would entitle them to intervene as parties in *Floyd*. *Id.* at 14-16, 20-27.

Moreover, the state court's holding that reputational injury conferred standing upon the unions to challenge Local Law 71, *see PBA v. City*, at 11-12, does not help the SBA or the other unions on their intervention motions in this case. To begin with, as shown in Plaintiffs' intervention opposition, the District Court's Liability Order in *Floyd* did not cause any reputational harm at all to individual NYPD officers, given that the Order clearly lays blame for widespread unconstitutional stops squarely at the feet of City policymakers, not individual officers, and did not hold any individual officers liable for

---

[2] The text of Local Law 71 provides that (1) "[a]n individual subject to bias-based profiling. . . may bring a civil action against. . .(ii) any law enforcement officer who has engaged, is engaging, or continues to engage in bias-based profiling. . .," (2) "[t]he remedy in any civil action [] undertaken pursuant to this section shall be limited to injunctive and declaratory relief," and (3) "[i]n any action or proceeding to enforce this section, the court may allow a prevailing plaintiff reasonable attorney's fees as part of the costs, and may include expert fees as part of the attorney's fees." *See* N.Y. City Admin. Code §14-151(d)(1)-(3), as amended by L.L. 71/2013 § 2 (Nov. 20, 2013).

any constitutional violations. *See Floyd* Dkt # 448 at 13. Conversely, under Local Law 71, individual NYPD officers can be named as defendants and held personally liable in civil lawsuits alleging racial and other forms of discrimination. Moreover, the sole case relied upon by the New York Supreme Court for the proposition that "reputational injury is a cognizable injury in fact," *Meese v. Keene*, 481 U.S. 465, 475 (1987), is, like the cases cited by the unions in their intervention motions, one involving a reputational injury that itself directly harmed or threatened to harm the plaintiff's economic interests and/or ability to pursue his or her livelihood. *See Meese*, 481 U.S. at 474-75 (Department of Justice's classification of films distributed by plaintiff as "political propaganda" threatened to harm his reputation among "members of the general public" which in turn threatened his candidacy for reelection to the California State Senate). Yet, as set forth in plaintiffs' intervention opposition, the unions cannot point to a single NYPD officer who has suffered or is likely to suffer a financial penalty, discipline, or other adverse employment action as a result of the District Court's finding that he or she took part in an unconstitutional stop-and-frisk of a *Floyd* plaintiff or class member. *Floyd* Dkt # 448 at 13-14.

Finally, nothing in the Local Law 71 Opinion negates the SBA and other unions' failure to satisfy the remaining requirements for intervention, especially timeliness. For this and all the other reasons state above, the SBA and other police unions' motions to intervene should be denied.

Thank you for your time and consideration.

Respectfully submitted,

/s/_____
Darius Charney
Counsel for Floyd Plaintiffs

Cc: All Counsel (*Via ECF*)