

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

ELAINE BLANCHARD, et al.)	
)	
Plaintiffs,)	
)	
and)	
)	No. 2:17-cv-02120-jpm-DKV
ACLU of Tennessee, Inc.)	
)	
Intervener-Plaintiff,)	
)	
v.)	
)	
CITY OF MEMPHIS)	
)	
Defendant.)	
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INTERVENING COMPLAINT OF ACLU OF TENNESSEE, INC.

Pursuant to Fed. R. Civ. P. 24(c), Plaintiff-intervener ACLU of Tennessee, Inc. files this Intervening Complaint, showing as follows:

PARTIES

1. The ACLU of Tennessee, Inc. (ACLU-TN) is a nonprofit corporation organized under the laws of the state of Tennessee. ACLU-TN is a statewide organization with thousands of members across the state. Its principal office is located in Nashville, Tennessee.

2. Defendant City of Memphis is a municipality incorporated under the laws of the state of Tennessee.

JURISDICTION

3. The original action was brought to enforce the provisions of Order, Judgement and Decree protecting First Amendment rights issued by this Court on September 14, 1978 in the case *Kendrick v. Chandler*, Civil Action No. C76-449.

4. The original case was brought under 42 U.S.C. § 1983. This court has jurisdiction to hear cases under federal law pursuant 28 U.S.C. § 1331.

5. This court retained jurisdiction “for the purpose of issuing any additional order required to effectuate this Decree.” Order, Judgement and Decree § M [hereinafter, “Decree”].

6. Venue is proper in this court under 28 U.S.C. § 1391 as Defendant may be found in this district, the Decree was issued by this court and all pertinent events occurred in Memphis, Shelby County, Tennessee.

STATEMENT OF THE CASE

7. Since its founding in 1968, the ACLU-TN has been deeply committed to defending Tennesseans’ right to speak out without hindrance or pressure from government actions and to be free from unconstitutional police surveillance that chills that speech.

8. The ACLU-TN, through its then active West Tennessee chapter, brought suit in 1976 styled *Kendrick v. Chandler*, Civil Action No. C76-449 based on evidence that the Memphis Police Department (“MPD”) had a practice of gathering and maintaining political intelligence on individuals engaged in constitutionally protected activity.

9. This suit culminated in the Decree issued on September 14, 1978, which, among other things, prohibits the “The City of Memphis from engaging in law enforcement activities which interfere with any person’s rights protected by the First Amendment to the United States Constitution.” *See* Decree § A.

10. The Decree generally forbids the Defendant from interfering with any person’s right to free speech. Consent Decree § A.

11. The Decree prohibits the Defendant from engaging in “political intelligence,” defined as “the gathering, indexing, filing, maintenance, storage or dissemination of information, or any other investigative activity, relating to any person’s beliefs, opinions, associations or other exercise of First Amendment rights.” *Id.* § B(4), C(1).

12. Electronic surveillance includes intercepting, recording, transcribing or otherwise interfering with any communication by means of electronic surveillance for the purpose of political intelligence. *Id.* § D.

13. Covert surveillance includes employing informants or undercover officers to “infiltrate or pose as a member of any group or organization exercising First Amendment rights.” *Id.* § F.

14. The decree prevents harassing a person exercising First Amendment rights or engaging in any action which is intended to deter, or may have the effect of deterring, any person from engaging in free speech. *Id.* § F(1)(2).

15. As an example, the Decree states:

The City of Memphis shall not, at any lawful meeting or demonstration, for the purpose of chilling the exercise of First

Amendment rights or for the purpose of maintaining a record, record the name of or photograph any person in attendance, or record the automobile license plate numbers of any person in attendance.

Id. § F(2).

16. The Decree also sets forth requirements when police investigations “may result in the collection of information about the exercise of First Amendment rights, or interfere in any way with the exercise of such rights.” *Id.* § G(1).

17. The requirements include the review and authorization by the Director of Police. *Id.*

18. The Director must issue a written authorization for an investigation, not to exceed 90 days. *Id.* § G(2).

19. The written authorization must specifically find that the investigation does not violate the Decree, the expected collection of information about First Amendment rights is unavoidably necessary, every reasonable precaution has been employed to minimize collection of information about First Amendment activities, and the investigation employs the “least intrusive technique available to obtain the information.” *Id.* § G(2)(a) – (d).

20. The Decree prohibits the maintenance and dissemination of “personal information about any person unless it is collected in the course and is relevant to such investigation.” *Id.* § H(1).

21. On February 17, 2017, the Defendant released documents listing people who must be escorted by police when visiting City Hall.

22. Some of those included on the list had participated in protests, rallies or other free speech activities in the city.

23. Some of those listed had no criminal record or history of causing disturbances at City Hall.

24. Part of the escort list was comprised of an authorization of agency, or “no trespass” list, executed by Mayor Jim Strickland listing persons barred from his privately owned real property.

25. The authorization of agency was signed on January 4, 2017.

26. The no trespass list was executed in response to a protest held at the Mayor’s private residence in December 2016, during which certain protestors allegedly trespassed on the property.

27. The list consists of forty-two names.

28. Many of the individuals on the list were not participants at the protest at the Mayor’s residence in December 2016 and had not been accused of trespassing on his real property.

29. Hand written at the top of the no trespass list is “Also have to be escorted while in City Hall.”

30. The handwritten notation was made by an employee of the Memphis Police Department.

31. Based on allegations in the original complaint and new reports, Defendant, through its police department, has video recorded participants at lawful protests for purposes unrelated to a lawful investigation of criminal conduct.

32. Defendant has employed software that surveils social media.

33. The software reportedly has been used to track social media posts related to First Amendment activities or collect information unrelated to a lawful criminal investigation.

**COUNT I
VIOLATION OF THE ORDER, JUDGMENT AND DECREE**

34. Defendant's investigation of individuals included on the escort list who had not participated in the protest at the Mayor's residence and who had not been involved in any criminal act or disturbance at City Hall violates the Decree.

35. Defendant's use of this software to track First Amendment activities or collect information unrelated to a lawful criminal investigation violates the Decree.

36. Defendant's employment of officers, including plain clothes officers, to video record participants at lawful protests or rallies or other free speech events for purposes unrelated to a lawful investigation of criminal conduct violates the Decree.

37. The maintenance of personal information on individuals who participate in free speech activities violates the Decree, including information contained in the escort list or any files compiled on individuals included on the escort list.

38. Any failure to obtain written authorization for investigations into criminal conduct that result in the collection of information about the exercise of First Amendment rights violates the Decree.

39. Actions taken by Defendant to surveil and collect information on individuals engaged in First Amendment activities has the purpose or effect of deterring individuals from exercising their First Amendment rights.

40. Inclusion of individuals on the escort list without justification beyond their participation in First Amendment activities has the purpose or effect of deterring individuals from exercising their First Amendment rights.

41. All of these actions, separately and combined, represent willful and wanton violation of the Decree.

WHEREFORE, ACLU-TN respectfully requests for the following relief:

- a. an order of contempt or violation of this Court's Order Judgment and Decree;
- b. injunctive relief as necessary to ensure the Defendant's future compliance with requirements of the Decree;
- c. an award of costs and attorney fees, as allowed by law; and
- d. such other and further relief that the Court deems just and proper.

Respectfully submitted,

/s/ Thomas H. Castelli
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ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on March 3, 2017, a true and correct copy of the foregoing document and the above-described exhibits has been served via ECF to:

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