

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

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ACLU OF TENNESSEE, Inc.	)	
	)	
Intervening Plaintiff,	)	
v.	)	No. 2:17-cv-02120-jpm-DKV
	)	
THE CITY OF MEMPHIS,	)	
	)	
Defendant.	)	

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**DEFENDANT’S SEALED MOTION FOR LEAVE TO REPLY AND INCORPORATED  
MEMORANDUM OF LAW**

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The Defendant, the City of Memphis (“the City”), by and through counsel, and pursuant to Local Rule 7.2(c), respectfully submits the following Motion for Leave to file a reply brief in further support of its Sealed Motion for Immediate Modification of the Kendrick Consent Decree.

The Local Rules provide that reply memoranda may be filed only upon court order granting a motion for leave to reply. Local Rule 7.2(c); *see also Spec’s Family Partners, Ltd. v. First Data Merch. Servs. Corp.*, No. 2:14-CV-02995-JPM, 2015 WL 6869206, at \*2 (W.D. Tenn. Nov. 9, 2015). If a party believes that a reply is necessary, it shall file a motion for leave to file a reply within 7 days of service of the response, setting forth the reasons why a reply is required pursuant to Local Rule 7.2(c). *See Fed. Express Corp. v. Caruso*, No. 214CV02337JPMDKV, 2014 WL 12634495, at \*2 (W.D. Tenn. Sept. 18, 2014).

On October 9, 2019, ACLU of Tennessee, Inc. (“ACLU-TN”) filed a Response in Opposition to the City’s Sealed Motion for Immediate Modification of the Kendrick Consent Decree (“Response”) (ECF No. 231). In its Response, ACLU-TN argues, among other things,

that modification of Section I of the Kendrick Consent Decree (“Decree”) is unnecessary because “[t]he obvious purpose of § I was to close any loophole whereby the City might farm out the gathering of political intelligence or other conduct prohibited by the Consent Decree.” (ECF No. 231, p. 17<sup>1</sup>). ACLU-TN further asserts that the Decree does not preclude the City from exchanging information and intelligence with other agencies. (ECF No. 231, p. 17). The ACLU-TN’s understanding of Section I of the Decree, however, does not appear to comport with the positions taken by the Monitor and the rulings of the Honorable Court.

Therefore, the City believes that a Reply Brief is appropriate in order to further address the necessity and propriety of modification in light of the City’s apparent agreement with the ACLU-TN’s expressed interpretation of the “intent” of the Decree and how that “intent” may conflict with positions expressed by the Monitor and the opinions of the Court. The City of Memphis respectfully requests that the Court grant its Motion for Leave to Reply so that it may clarify these issues.

Respectfully Submitted,

BAKER, DONELSON, BEARMAN,  
CALDWELL & BERKOWITZ, P.C.

s/ Mark Glover

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<sup>1</sup> The City is unable to insert the PageID numbers because the file-stamped copy remains under seal, even to the Parties. The City has made several attempts to gain access to the docketed version of ECF No. 231, as well as several other documents filed under seal, but has thus far been unsuccessful.

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**CERTIFICATE OF CONSULTATION**

Pursuant to Local Rule 7.2(a)(B), on October 16, 2019, Jennie Silk communicated with counsel for Intervening Plaintiff, Thomas Castelli, regarding the relief sought in this motion. Mr. Castelli advised that the Intervening Plaintiff does not oppose the relief sought in this Motion.

s/ Mark Glover \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I hereby certify that on the 16th day of October 2019, a copy of the attached pleading was filed electronically. Notice of this filing will be served by operation of the Court's electronic filing system to all counsel of record.

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s/ Mark Glover \_\_\_\_\_