

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

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

**THE CITY’S MOTION TO PARTIALLY WITHDRAW ITS MOTION FOR RELIEF
FROM JUDGMENT OR ORDER**

Defendant, the City of Memphis ("the City"), respectfully moves this Court to partially withdraw its Motion for Relief from Judgment or Order (“Motion for Relief”) (ECF 124.) The City no longer seeks to vacate the consent decree entered on September 14, 1978, in the case styled *Kendrick, et al v. Chandler, et al*, No. 2:76-cv-00449 (W.D. Tenn. 1978) (hereafter, “Consent Decree”) (Consent Decree, ECF 9-1.) Rather, the City intends to limit its Motion for Relief to modification of the existing Consent Decree.

In August 2018, on the eve of trial, the City filed its Motion for Relief seeking to vacate the provisions of the Consent Decree entirely or alternatively, modify its provisions. (ECF No. 124, PageID 5013.) Since that time, the parties worked extensively together to come to an agreement on certain areas of conduct both parties deem permissible under the Consent Decree. In an effort to memorialize those agreements within the language of a Proposed Modified Consent Decree, the City requested, and the Court granted, that the parties mediate in order to develop language for the Consent Decree that clarified those agreed-upon areas of permissible conduct. (*See* ECF No. 309, ECF No. 311.) The Court noted that it granted the City’s request

for mediation with the Independent Monitor “in order to aid in the resolution of outstanding issues between the Parties and to narrow the issues in advance of the Modification Hearing.” (ECF No. 311, PageID 9293.)

After several sessions of mediation with the Independent Monitor, the parties substantially agreed to proposed modified language of the Consent Decree. On June 8, 2020, the parties submitted a Proposed Modified Consent Decree to the Court, which explained that the parties agreed on all but one section of modification for the Consent Decree.¹ (*See* Joint Notice of Filing Proposed Modified Consent Decree, ECF No. 327.)

After approximately eighteen months of working with the ACLU-TN and the Independent Monitor to comply with the provisions of the Consent Decree, and in light of the parties’ agreements on the proposed modifications to the Consent Decree, the City no longer seeks to vacate the Consent Decree at this time. The City believes that through clarification and updating of the Consent Decree, as outlined in the parties’ Proposed Modified Consent Decree (ECF No. 327-1), it will be better able to understand, train, and comply with the original intent of the Consent Decree, which is to protect the First Amendment rights of individuals, while adequately maintaining public safety. Additionally, by withdrawing its effort to vacate the Consent Decree, the issues at the upcoming hearing on the City’s Motion for Relief will be narrowed even further.

Therefore, the City respectfully submits that the Court grant its request to withdraw the portion of the City’s Motion for Relief seeking vacation of the Consent Decree and grant the instant Motion.

¹ The parties were unable to reach an agreement on modified language for Section I: Restriction on Joint Operations, and that issue will be litigated at the upcoming trial.

Respectfully Submitted,

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

s/ Bruce McMullen

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CERTIFICATE OF CONSULTATION

Pursuant to Local Rule 7.2(a)(B), on June 11, 2020, counsel for the City 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/Bruce McMullen

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of June 2020, 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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