

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

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

**CITY OF MEMPHIS’S WRITTEN COMMENTS
REGARDING PROPOSED SOCIAL MEDIA POLICY**

The Defendant, the City of Memphis (“the City”), hereby submits these written comments regarding the City’s Proposed Social Media Policy as a supplement to its Notice of Filing City of Memphis’s Proposed Social Media Policy, ECF No. 268, PageID 8662-64, which attached the aforementioned proposed policy. The City previously filed its Notice to provide further context to the Court regarding the sequence of events and efforts relating to the City’s compliance with the City’s development of written guidelines for the use of social media. Pursuant to the Court’s Order Expanding Scope of the January 2, 2020 Conference, ECF No. 269, PageID 8676, the City respectfully provides these additional written comments for further consideration by the Court regarding the competing versions of the proposed Social Media Policy.

Specifically, Footnote 3 of the City’s Notice, ECF No. 268, PageID 8664, discussed the Monitor’s proposed change to a definition of “legitimate law enforcement purpose” in his version, to which the City disagrees. The City voiced its objection to that definition with the Monitor shortly after receiving the proposed edited version of the Social Media Policy, but the

Monitor submitted that version to the Court, and while attaching both proposed policies by the City and the Monitor, the Monitor referenced its proposed Policy as “the version of the City’s proposed social media policy that my team has approved.” The City respectfully requests that the Court consider the original definition of “legitimate law enforcement purpose” found on Page 2 of the City’s proposed Policy.

To the extent, however, that the Court is inclined to adopt the Monitor’s definition of “legitimate law enforcement purpose,” the City respectfully requests that the Monitor’s definition be interpreted or clarified such that it does not prohibit those legitimate functions and activities of a law enforcement agency that are designed to prevent future crimes or to further public safety planning that takes place before any unlawful conduct may have been committed. The Monitor’s edited definition of a legitimate law enforcement purpose, found on Page 3 of his approved Policy, is:

The detection, investigation, deterrence, or prevention of unlawful conduct— either past, present, or future; the apprehension and prosecution of a suspected criminal; or the addressing of public-safety issues, whether these issues amount to criminal conduct or not, provided that a person shall not be considered to be pursuing a legitimate law enforcement objective if the person is acting based upon the race, ethnicity, religion, national origin, lawful political affiliation or activity, or lawful news-gathering activity of an individual or group.

(Letter from Monitor dated December 20, 2019, p. 3.) The City’s primary concern is that the Monitor’s definition may be read too narrowly so that a legitimate law enforcement purpose is only present when there has been unlawful conduct. If that is the case, in instances of spontaneous protests, parades, or marches, or any otherwise lawful activities, the Memphis Police Department (“MPD”) would be severely limited in its ability to do real-time planning for public safety or crowd control. The MPD would not be able to utilize generally public information on social media to discover how many more people may be expected to gather,

whether the event is likely to turn mobile, and whether there may be any counter-protests as a reaction to such events. This would affect the MPD's ability to properly staff and station its officers to adequately address public safety concerns.

The Monitor's definition also removes all references to the sharing of intelligence as a legitimate law enforcement purpose. The City respectfully submits that this Court's Order Denying the City's Sealed Motion for Immediate Modification, ECF No. 250, PageID 8382-8430, suggests a broader definition, which would allow the kind of information sharing which is involved in such programs as the CrimeStoppers program.

As outlined in its Notice, the City acknowledged the fact that the Social Media Policy preferred by the Monitor, with the exception of the changed definition of "legitimate law enforcement activities" was indeed the version which had been under discussion prior to November 21. The City, however, respectfully requests that the Court consider its preferred version of the proposed Social Media Policy (reflecting best practices similar to those utilized by Federal law enforcement agencies), either for adoption now as part of the sanctions, or alternatively for consideration during the modifications proceedings. At the very least, the City requests that the Court consider these written comments regarding the City's suggested definition of a "legitimate law enforcement activity."

Respectfully Submitted,

BAKER, DONELSON, BEARMAN,
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CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of December 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/ R. Mark Glover

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