

**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.	)	

**NOTICE TO ORIGINAL PLAINTIFFS**

Intervening Plaintiff ACLU of Tennessee, Inc ("ACLU-TN"), in accordance with the Court's Order of November 14, 2018 (ECF No. 159) (Exhibit One) serves the following Notice of Order Setting Consent Decree Modification Schedule and Setting Public Comment Period on **Mr. Chan Kendrick** and **Mr. Michael Honey**.

**BACKGROUND AND PROCEDURAL HISTORY**

This case initially involved an action filed on February 22, 2017 by the now-dismissed plaintiffs Elaine Blanchard, Keedran Franklin, Paul Garner, and Bradley Watkins (collectively, "the Blanchard plaintiffs") seeking a finding of contempt and injunctive relief to enforce the provisions of the Order, Judgment and Decree entered by the Court in *Kendrick et al v. Chandler*, No. 2:76-cv-00449 (W.D. Tenn. 1978) (hereafter the "Consent Decree"), to which Mr. Kendrick and Mr. Honey were original parties. ACLU-TN intervened in the case.

On June 30, 2017, the Court entered an Order granting the City's Motion to Dismiss with respect to the Blanchard plaintiffs, holding that they lacked standing because they were not original parties to the *Kendrick* Consent Decree. The Court denied the City's Motion to Dismiss the intervening plaintiff, ACLU-TN.

On August 10, 2018, the Court denied the City's Motion for Summary Judgment and granted, in part, the ACLU-TN's Motion for Summary Judgment. (ECF No. 120 (Exhibit Two)). In this Order, the Court found that City violated portions of the Consent Decree when it engaged in political intelligence as defined and prohibited by the Consent Decree. The Court also found that the City violated the Consent Decree when it failed to review and issue written authorizations for at least some lawful investigations of criminal conduct that “may result in the collection of information about” or “interfere in any way with” the “exercise of First Amendment rights.” These remaining issues raised by the parties were ordered to be resolved at trial.

A non-jury trial was held from August 20 to 23, 2018 to address the issues not resolved by the Court's Summary Judgment Order. On October 26, 2018, the Court issued its Opinion and Order finding that the ACLU-TN had standing to enforce the Consent Decree, and that the City violated certain provisions of the Consent Decree, which were not addressed in the Court's summary judgment ruling. (ECF No. 151) (Exhibit Three). The Court found that the ACLU-TN did not prove that the city harassed anyone or otherwise interfered with the exercise of anyone's First Amendment rights. Additionally, the Court found that the City did not disseminate information for the purpose of political intelligence.

In its Order, the Court imposed certain sanctions on the City in an effort to bring the City into compliance with the terms of the Consent Decree.

#### **THE CITY'S MOTION TO MODIFY OR VACATE THE CONSENT DECREE**

On August 15, 2018, the City filed a Motion for Relief from Judgment or Order requesting that the Court modify or vacate the Consent Decree. (ECF No. 124) (Exhibit Four). ACLU-TN filed a response to this Motion. (ECF No. 149) (Exhibit Five). The City has elected

to defer consideration of the Motion to Vacate the Decree. What is presently before the Court is the City's Motion to Modify.

On November 14, 2018, the Court issued an Order Setting Consent Decree Modification Schedule and Setting Public Comment Period (ECF No. 159) (Exhibit One). In the Order, the Court instructed ACLU-TN to serve official notice of the modification/vacation proceedings on Messrs. Chan Kendrick and Michael Honey, both of whom were plaintiffs in the *Kendrick* action, by First Class Mail or other reliable means no later than November 23, 2018.

### **HOW TO PARTICIPATE IN THESE PROCEEDINGS**

If you wish to participate as a party to these proceedings, the Court requires that you file a motion to join or intervene in the case no later than **December 14, 2018**.

The Court has not ordered that you join or attempt to join this case as a party. The Court has not addressed any substantive or procedural objections to any attempt on your part to join the litigation as a party for any purpose. You are not required to join or attempt to join this case as a party. The case will proceed without your involvement unless the Court, following a Motion to that effect and an opportunity to consider objections by the existing parties, approves your involvement in that capacity.

If you do not seek to join this litigation as a party, you should be prepared to assume that the Court's disposition of the issues raised in the City's Motion to Modify will have preclusive effect and will not be subject to a legal challenge by you at a later date. If you seek to join this case as a party for purposes of addressing the issues raised in the Motion to Modify, and are permitted to join this case as a party, you may be required to provide testimony under oath, to participate in the discovery process, to participate in court ordered conferences or meetings of

counsel, and to attend a hearing on the City's Motion to Modify Decree scheduled for July 8-9, 2019 in this court.

Regardless of whether you join the proceedings as a party, you are entitled to provide written comments reflecting your views on the City's Motion to Modify and the Court's treatment of that Motion, under the terms and conditions of the comment period set forth in the Court's Order attached as Exhibit One.

The Court has expressed no opinion as to whether you should, or should not, seek to join this litigation as a party. The purpose of this Notice is to ensure that you are provided sufficient information to enable you to make an informed decision on this subject.

The ACLU-TN and the City have conferred and agree to the form and substance of this Notice.

NOTICE is hereby given.

Respectfully Submitted,

/s/ Thomas H. Castelli  
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ATTORNEYS FOR PLAINTIFF  
ACLU of Tennessee, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on November 20, 2018, the foregoing will be served by U.S. Mail to:

Mr. Chan Kendrick  
5442 Holbrook Dr.  
Las Vegas, NV 89103-2439

Mr. Michael Honey  
718 North M Street  
Tacoma, WA 98403

I hereby certify that on November 21, 2018, a true and correct copy of the foregoing document and the above-described exhibits has been served via ECF to:

Attorneys for Defendant, City of Memphis

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/s/ Thomas H. Castelli

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