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March 16, 2020

VIA EMAIL

Jennifer A. Sink
Chief Legal Officer
City of Memphis
N. Main St. Room 336
Memphis, TN 38103

Re: City of Memphis Media Advisory List

Dear Ms. Sink:

I represent MLK50: Justice Through Journalism (“MLK50”), a non-profit, award-winning, Memphis-based online news organization, regarding the City of Memphis’s (the “City”) refusal to include MLK50 on the City’s media advisory list. On at least six occasions, including in-person, via email, and by text, from October 2019 until January 2020, MLK50’s publisher, Wendi Thomas (“Thomas”) has requested that MLK50 be added to the City’s media advisory list, but the City has, inexplicably and repeatedly, refused to even respond to her requests, let alone add MLK50 to the list. I write to you in the hope that you can remedy this infringing, discriminatory, and possibly retaliatory decision by the City.

The media advisory list is an email list that the City uses to communicate with members of the media regarding things like upcoming City events and statements by the Mayor. Thomas (using her gmail account) was previously on the media advisory list. The last media advisory list email Thomas received was on January 18, 2018. Thomas became aware that she was no longer on the City’s media advisory list when a peer at another media entity informed her about the City’s October 23, 2019 email that attached a “Media Advisory” regarding the City’s demonstration of a new data hub. While Thomas was able to attend and report on the demonstration, it is only because of the assistance of a fellow journalist. MLK50 is informed and believes that it has not received other newsworthy communications from the City that were shared with other members of the media.

The City’s refusal may be motivated by its apparent dislike of MLK50’s coverage of the City. In June 2017, the City’s Chief Communications Officer, Ursula Madden said to Thomas in an email that Thomas had “demonstrated, particularly on social media, that you are not objective when it comes to Mayor Strickland.” Regardless of the City’s motivation for its refusal, the City’s actions violate MLK50’s First Amendment and Tennessee Constitutional rights.

Both the federal and Tennessee Constitutions provide protections for the newsgathering activity of journalists and news organizations, like MLK50. The First Amendment reflects our country's "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *N.Y. Times v. Sullivan*, 376 U.S. 254, 270 (1964). In fact, the U.S. Supreme Court has explained that the First Amendment protects "a 'right to gather information'" because, "without some protection for seeking the news, freedom of the press could be eviscerated." *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 576 (1980) (quoting *Branzburg v. Hayes*, 408 U.S. 665, 681 (1972)). The Sixth Circuit has similarly held that "[t]he protected right to publish the news would be of little value in the absence of sources from which to obtain it." *CBS, Inc. v. Young*, 522 F.2d 234, 238 (6th Cir. 1975). As such, "[n]ews gathering ... qualifies for First Amendment protections." *Id.* (citing *Branzburg*, 408 U.S. at 681, 707).

Courts have found that a refusal to include a media entity on lists similar to the City's media advisory list violated the excluded media entity's First Amendment rights. In *Times-Picayune*, the local sheriff, among other things, instructed his PIO's to "not provide The Times-Picayune with notification of newsworthy events ... notwithstanding that the officers routinely and systematically notify other news organizations which cover" the sheriff. *Times-Picayune Publ'g Corp v. Lee*, No. 88-1325, 1988 WL 36491, at *2 (E.D. La. Apr. 15, 1988). The sheriff's policies "materially and adversely impair[ed] the newspaper's ability to gather and report the news in a timely, comprehensive and informative manner." *Id.* at *8. The First Amendment right to gather news "includes, at a minimum, a right of access to information made available to the public or made available generally to the press." *Id.* at *9 (citations omitted); *see also Citicasters Co. v. Finkbeiner*, No. 07-CV-00117, 2007 WL 9753682, at *2-4 (N.D. Ohio Jan. 31, 2007) (finding "a strong likelihood of success on the underlying merits with regard to the Defendants' unilateral refusal to notify an established media outlet that press conferences are going to be held is a violation of the First Amendment").

Other courts have reached similar conclusions in analogous situations. For example, the Second Circuit has explained that "[w]e think that once there is a public function, public comment, and participation by some of the media, the First Amendment requires equal access to all of the media or the rights of the First Amendment would no longer be tenable." *American Broadcasting Companies, Inc. v. Cuomo*, 570 F.2d 1080, 1083 (1977). Similarly, the First Circuit has held that "[t]he danger in granting favorable treatment to certain members of the media is obvious: it allows the government to influence the type of substantive media coverage that public events will receive. Such a practice is unquestionably at odds with the First Amendment." *Anderson v. Cryovac, Inc.*, 805 F.2d 1, 9 (1st Cir. 1986).

Tennessee’s constitutional protections for speech and the press are generally stronger than the First Amendment’s. The Tennessee Supreme Court has explained that Article 1, Section 19 of “Tennessee’s Constitution requires that any infringement upon the ‘free communication of thoughts’ and any stumbling block to the complete freedom of the press ‘to examine [and publish] the proceedings ... of any branch or officer of the government’ is regarded as constitutionally suspect, and at the very threshold there is a presumption against the validity of any such impediment.” *Press, Inc. v. Verran*, 569 S.W.2d 435, 442 (1978).

The First Amendment “presupposes that right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection.” *U.S. v. Associated Press*, 52 F. Supp. 362, 372 (S.D.N.Y. 1943). And the City’s refusal to add MLK50 to the media advisory list appears to be the very type of “authoritative selection” that Judge Hand warned against. The City’s actions have impaired MLK50’s ability to gather news regarding the City and have infringed MLK50’s First Amendment and analogous rights under the Tennessee Constitution. As such, MLK50 requests that three of its email addresses: wendicthomas@mlk50.com, deb@mlk50.com and mlk50@mlk50.com, each be added to the media advisory list to end this infringing, discriminatory, and possibly retaliatory practice by the City. Thank you for your prompt attention to this matter. I look forward to your response.

Best regards,

A handwritten signature in blue ink that reads "Paul R. McAdoo". The signature is written in a cursive, flowing style.

Paul R. McAdoo
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