

EXHIBIT J

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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 cursive script that reads "Paul R. McAdoo". The signature is written in black ink on a light-colored background.

Paul R. McAdoo
Local Legal Initiative Staff
Attorney (Tennessee)
6688 Nolensville Rd. Ste. 108-20
Brentwood, TN 37027

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April 13, 2020

VIA EMAIL

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

Re: City of Memphis Media Advisory List

Dear Ms. Sink:

On March 16, 2020, I wrote on behalf of my client 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. I have yet to receive a response. In the four weeks since my last letter, the City has continued its refusal to add MLK50 to its media advisory list. The City also has exacerbated the problem by refusing to add MLK50 to the list of journalists who are receiving emails with log-in information for the virtual press conferences being held by the Joint COVID-19 Task Force, despite a request from Shelby County (the “County”) that it do so. This ongoing course of action violates MLK50’s First Amendment rights, its rights under Article 1, Section 19 of the Tennessee Constitution, and the *Kendrick* Consent Decree. I urge you to remedy this situation, which is entirely in the City’s control, immediately.

The City’s conduct toward MLK50 is clearly motivated by a perception that the content of MLK50’s coverage is somehow unfair or “not objective.” Indeed, the City’s Chief Communications Officer, Ursula Madden, expressly told MLK50’s Wendi Thomas in an email that Ms. Thomas had purportedly “demonstrated, particularly on social media, that you are not objective when it comes to Mayor Strickland.” This is not a legal justification for excluding a reporter or news outlet from a press conference or press list. And the City’s recent course of conduct—including its failure to respond to my initial letter regarding its refusal to add MLK50 to the media advisory list, and its refusal of the County’s request to add MLK50 to the list of media given access to the Joint Task Force’s virtual daily press conferences—only reinforce the conclusion that the City is trying to punish MLK50 for the content of past coverage to which the City takes exception.

“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.” *Am. Broad. Cos. v. Cuomo*, 570 F.2d 1080, 1083 (2d Cir. 1977) (emphasis added); *accord Anderson v. Cryovac, Inc.*, 805 F.2d 1, 9 (1st Cir. 1986); *Getty Images News Servs. v. DOD*, 193 F. Supp. 2d 112, 122 (D.D.C. 2002). Thus, “when press access is granted to

some, others have a constitutional right to equal access,” and “particular journalists [may] not be singled out for exclusion but rather [are] entitled to access on the same terms as other journalists.” *Getty Images*, 193 F. Supp. 2d at 122; *Nicholas v. Bratton*, 376 F. Supp. 3d 232, 259 (S.D.N.Y. 2019) (“[W]hen an area is open to . . . some members of the press, the First Amendment restricts the government’s ability to selectively regulate the press’s access to that area.”); *see also Am. Broad. Cos.*, 570 F.2d at 1083 (once NBC and CBS were invited to cover a mayoral debate, ABC could not be excluded).

To be sure, the “right to equal access under the [F]irst [A]mendment is not absolute,” and “the interest to be served by the newsgathering activity at issue must be balanced against the [government’s] interest served by denial of that activity.” *Nicholas*, 376 F. Supp. 3d at 260. But the government has no legitimate interest in restricting access to media outlets based solely on the content or viewpoint of their reporting. *See Sherrill v. Knight*, 569 F.2d 124, 129 (D.C. Cir. 1977) (“[D]enial of a . . . press pass is violative of the first amendment . . . if it is based upon the content of the journalist’s speech or otherwise discriminates against a class of protected speech.”); *Borreca v. Fasi*, 369 F. Supp. 906, 907 (D. Haw. 1974) (enjoining mayor from barring journalist from press conferences where the mayor claimed the reporter “was irresponsible, biased, and malicious in reporting on the mayor and the city administration”); *Quad-City Cmty. News Serv., Inc. v. Jebens*, 334 F. Supp. 8, 13 (S.D. Iowa 1971) (citations omitted) (explaining that “public officials cannot impede the free exercise of speech or press simply because the content is insulting, disturbing or critical”); *cf. JB Pictures, Inc. v. DOD*, 86 F.3d 236, 239 (D.C. Cir. 1996) (rejecting claim that media access policy was “discriminatory” and “viewpoint-based” because it applied “in a uniform fashion to all members of the press and public, regardless of their views on war or the United States military”). Indeed, “[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,” which “is unquestionably at odds with the [F]irst [A]mendment.” *Anderson*, 805 F.2d at 9. Such content-based and viewpoint-based restrictions “are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.” *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2226 (2015).

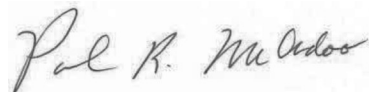
Here, the City created the media advisory list to communicate with journalists regarding government conduct and issues affecting City residents. The list is now also being used to provide press access to the Joint COVID-19 Task Force’s daily virtual press conferences so that members of the press may ask questions during those important briefings. Despite the County’s request to add MLK50 to the media advisory list, the City has continued in its unjustified and unconstitutional viewpoint discrimination against MLK50.

The City’s refusal to add MLK50 to the media advisory list also violates the *Kendrick* Consent Decree. Paragraph (F)(1) of the *Kendrick* Consent Decree provides that “the City of Memphis shall not disrupt, discredit, interfere with or otherwise harass any person exercising First Amendment rights.” Similarly, Paragraph (F)(2) provides that “The City of Memphis shall not engage in any action for the purpose of, or reasonably having the effect of deterring any person from exercising First Amendment rights.” As outlined above, the City’s actions here interfere with MLK50’s exercise of its First Amendment rights, thus violating the *Kendrick* Consent Decree.

The City's ongoing, improper refusal to add MLK50 to its media advisory list ultimately harms City residents. Founded in 2017, MLK50 is part of ProPublica's Local Reporting Network, received the 2019 Best Practices Award from the National Association of Black Journalists, and was one of the first eleven recipients of grants from the American Journalism Project. MLK50's stories are not only carried on its website, but have also been published in *The Guardian*, on NPR, and in *The Commercial Appeal*, the latter of which has numerous journalists on the media advisory list. Both of the individual journalists MLK50 seeks to have included on the media advisory list are accomplished journalists in their own rights. Ms. Thomas has been a reporter or editor at several large daily newspapers, including *The Commercial Appeal*, was a 2016 fellow at the Nieman Foundation for Journalism, and won the 2020 Selden Ring Award for Investigative Reporting. Her colleague, Deborah Douglas, MLK50's managing editor, is likewise an accomplished journalist. Among other things, Ms. Douglas previously served as an editor for the *Chicago Sun-Times* and won the 2019 Studs Terkel Community Media Award. Simply put, by restricting MLK50's ability to engage in the kind of investigative reporting that has won it and its journalists awards and national recognition, the City's actions deprive City residents of important, in-depth reporting by MLK50 about the City.

The City's refusal to add MLK50 to the media advisory list violates MLK50's constitutional rights under both federal and state law and violates the *Kendrick* Consent Decree. MLK50 requests that three of its email addresses be added immediately to the City's media advisory list, including for the Joint Task Force: wendicthomas@mlk50.com, deb@mlk50.com and mlk50@mlk50.com. I request the professional courtesy of a response by Friday, April 17, 2020.

Best regards,



Paul R. McAdoo
Reporters Committee for
Freedom of the Press
Local Legal Initiative
Staff Attorney (Tennessee)
6688 Nolensville Rd. Ste. 108-20
Brentwood, TN 37027



JIM STRICKLAND
MAYOR
CITY ATTORNEY

April 15, 2020

Paul R. McAdoo
Local Legal Initiative Staff
Attorney (Tennessee)
6688 Nolensville Rd. Ste. 108-20
Brentwood, TN 37027
Via Email

Mr. McAdoo:

The City of Memphis has been in a State of Emergency due to the Covid-19 pandemic since March 17, 2020. As a result, I am unable to respond to your letter dated March 16, 2020 in the time requested, but I will respond as soon as able.

Thank you,

/s/ Jennifer Sink

Jennifer Sink, Esq.
Chief Legal Officer/City Attorney