

IN THE CHANCERY COURT FOR DAVIDSON COUNTY
AT NASHVILLE, TENNESSEE

JOSHUA LIPSCOMB,)	
)	
Plaintiff,)	
)	
v.)	Case No. _____
)	
NASHVILLE FIRE DEPARTMENT,)	
A DEPARTMENT OF THE METROPOLITAN)	
GOVERNMENT OF NASHVILLE)	
AND DAVIDSON COUNTY,)	
)	
Defendant.)	

COMPLAINT FOR DECLARATORY JUDGMENT

1. This is an action seeking to declare specific policies of the Nashville Fire Department and the Metropolitan Government of Nashville and Davidson County unconstitutional. Firefighter Joshua Lipscomb was severely disciplined by the Nashville Fire Department based on his exercise of his right to free speech as guaranteed by the Tennessee Constitution. Mr. Lipscomb is a lifelong Nashvillian, a long-time firefighter who risks his life every day for the citizens of Nashville, and an active member of the Nashville community who engages with it as a comedian under the stage name “Josh Black.” As “Josh Black”, Mr. Lipscomb utilizes both the stage and social media to engage in discussions ranging from the trivial (like the idiosyncrasies of East Nashville) to the vital (like his experiences as a Black man living in the South). “Josh Black’s” social media accounts do not identify him either as Joshua Lipscomb or as a firefighter.

2. On February 2, 2022, Mr. Lipscomb took to Twitter as “Josh Black” to exercise his right to free speech. Specifically, he expressed his displeasure with a decision by his elected city

council that he believes will cause harm to the Black community and other communities of color, and urged his peers to become more involved in local elections to prevent such policies in the future. Yet, for reasons that defy both logic, reason, and the well-established requirements of the Tennessee Constitution, Mr. Lipscomb’s foray into the political discourse resulted in a 16-day unpaid suspension from his job.

3. To correct this injustice, Mr. Lipscomb brings this action seeking a declaration that the policies of the Nashville Fire Department and the Metropolitan Government of Nashville and Davidson County under which he was disciplined are unconstitutional restrictions on free speech as guaranteed by the Tennessee Constitution.

PARTIES

4. The Plaintiff, Joshua Lipscomb (“Mr. Lipscomb”), is a citizen of Tennessee and life-long resident of Davidson County. Mr. Lipscomb is a comic, an artist, and a community activist. He is also a dedicated and successful firefighter.

5. The Defendant, the Metropolitan Government of Nashville and Davidson County (“Metro Government”), is a local body politic and municipality and exists under and by virtue of the laws of the State of Tennessee. The Nashville Fire Department (“NFD”) is a part of the Metro Government, and any reference to NFD herein shall refer to Defendant Metropolitan Government of Nashville and Davidson County.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to Tenn. Code Ann. § 29-14-102.

7. This Court is vested with the authority to issue a declaratory judgment with the force and effect of a final decree pursuant to Tenn. Code Ann. § 29-14-102(c).

8. Mr. Lipscomb brings this action pursuant to Tenn. Code Ann. § 1-3-121 as an affected person seeking a declaratory judgment challenging the constitutionality of government policies.

9. The actions giving rise to Plaintiff's Complaint arose in Davidson County, venue is proper pursuant to Tenn. Code Ann. § 20-4-101(a).

**THE TENNESSEE CONSTITUTION PROVIDES
ROBUST PROTECTIONS FOR FREE SPEECH**

10. Since its adoption in 1796, the Tennessee Constitution has provided strong protections for the freedom of speech.

11. The Tennessee Constitution specifically and clearly states: "The free communication of thoughts and opinions is one of the invaluable rights of man and every citizen may freely speak, write, and print on any subject[.]" Tenn. Const. Art. I, § 19.

12. "Article I, § 19 of the [Tennessee] Constitution...provid[es] greater freedom of expression than that provided in the Federal Constitution." *Davis-Kidd Booksellers, Inc. v. McWherter*, 866 S.W.2d 520, 525 (Tenn. 1993).

13. That significant provision has been consistently interpreted as conveying full protection to "[a]ll ideas having even the slightest redeeming social importance, unorthodox ideas, controversial ideas, [and] even ideas hateful to the prevailing climate of opinion[.]" *Leech v. American Booksellers Ass'n, Inc.*, 582 S.W.2d 738, 741 (Tenn. 1979) (quoting *Roth v. United States and Alberts v. California*, 354 U.S. 476, 484 (1957)).

14. As such, the Tennessee Constitution prohibits "broad statutory language that seems to directly sweep protected expression within the scope of its regulation, or which indirectly places an undue burden on such protected expression, can deter the legitimate exercise of First Amendment rights." *Davis-Kidd*, 866 S.W.2d at 525. "In the context of First Amendment cases,

the Supreme Court has imposed a more stringent rule which requires that statutes that impinge on the area of freedom of expression must have a greater degree of specificity than in other contexts, so as to ensure that citizens will not be ‘chilled’ from exercising their constitutional right to free expression.” *Id.* at 531 (citing *Smith v. Goguen*, 415 U.S. 566, 573 (1974); *Buckley v. Valeo*, 424 U.S. 1 (1976)).

NASHVILLE FIRE DEPARTMENT’S UNCONSTITUTIONAL POLICIES

15. This action concerns specific policies from the NFD’s Operational Procedures and Guidelines (“OPG”) which directly regulate the speech of employees, including firefighters like Mr. Lipscomb:

- OPG 11.2 (“Social Media”): “Employees are expected to refrain from social media and online activities that reflect poorly on the Nashville Fire Department. Inappropriate social media and online activities that reflect poorly upon the Nashville Fire Department, its employees, or services, may result in corrective and/or disciplinary action.”
- OPG 1.24 (“Conduct Unbecoming”): “The conduct of department employees, on- or off-duty, may reflect directly or indirectly upon the Department, therefore, a Fire department employee’s ability to perform his or her duties is dependent upon the respect and confidence communities have for the representatives of the agency. Employees shall at all times conduct themselves in a manner which does not bring discredit to themselves, the Department, or the City. Conduct that is inconsistent with the provisions within this policy shall be considered a violation.”
- OPG 1.24 (“Courtesy”): “Employees shall be courteous, civil, and respectful to all persons and shall make every effort to meet the needs of citizens requesting assistance.”
- OPG 1.24 (“Defamation”): “Employees shall not unjustly criticize, ridicule, or otherwise defame any person or any agency of the Metropolitan Government.”
- OPG 1.24 (“Derogatory Notices”): “Employees shall not post or circulate notices of a derogatory nature.”
- OPG 1.24 (“Responsibility”): “Employees shall at all times conduct themselves in a responsible manner.”

16. Mr. Lipscomb was also charged with violating the Civil Service Rules (“CSR”) that incorporate the Fire Department’s policies and guidelines.

17. The OPG’s are vague, overbroad, and content and viewpoint-based restrictions on free speech. They do not contain any definitions of the words used, including what the phrase “reflect poorly” means, what actions or words “bring discredit” to Metro or the NFD, what constitutes “unjust” criticism or ridicule or otherwise defamatory speech, or precisely how a notice would be considered “of a derogatory nature”.

FACTS

Mr. Lipscomb Has Been Punished for Violating the NFD’s Unconstitutional Policies

18. Mr. Lipscomb has been a firefighter with the NFD since December 2017.

19. In his off-duty hours, Mr. Lipscomb is also a stand-up comedian under the stage name “Josh Black.” As part of his comedy act, Mr. Lipscomb operates a number of social media accounts under this stage name, including a Twitter account @SirJoshuaBlack.

20. None of Mr. Lipscomb’s “Josh Black” social media accounts identify his legal name or the fact that he is a firefighter. Josh Black is his alter-ego.

In 2022, Mr. Lipscomb was Disciplined for Exercising his Right to Free Speech

21. On February 1, 2022, Nashville’s Metro council passed a bill approving a six-month license plate reader (LPR) pilot by a vote of 22-14. The vote occurred “after more than a year of intense deliberations,” with “[s]everal council members voic[ing] concerns about LPR technology’s implications for Black and [B]rown people, pointing to instances in other cities where mistakes or misuse put people in danger.”¹

¹ CASSANDRA STEPHENSON, *Nashville license plate reader bill narrowly passes, greenlighting 6-month pilot*, THE TENNESSEAN, Feb. 1, 2022 (updated Feb. 2, 2022), available at:

22. In addition to the concerns expressed by council members, “[p]ublic opposition to the bill mounted in the days leading to the vote,” with numerous community organizations urging council members to vote against the bill, “which they said carried too many risks to individual rights and safety.”² The groups that opposed the bill included the Community Oversight Board, the Nashville Defenders Office, the NAACP, the Tennessee Immigrant & Refugee Rights Coalition, Conexión Américas, Walk Bike Nashville, Open Table Nashville, American Civil Liberties Union of Tennessee, Black Nashville Assembly, Workers’ Dignity, Black Lives Matter Nashville, Community Oversight Nashville, SURJ Nashville, Asian and Pacific Islanders of Middle Tennessee, and the American Muslim Advisory Council.³

23. After the bill’s passage, Josh Black tweeted his support for (and agreement with) these community groups and the various Nashville council members who also voiced their opposition, such as Sharon Hurt, Bob Mendes, and Sandra Sepulveda:

<https://www.tennessean.com/story/news/local/davidson/2022/02/01/nashville-license-plate-reader-pilot-approved-narrow-margin/9303091002/>.

² *Id.*

³ *Id.*



Josh Black
@SirJoehuaBlack

...

The bill passed yesterday allows extra police surveillance in the busiest streets in the city. THE BUSIEST STREETS ARE WHERE BLACK & BROWN PPL LIVE!

Pointing out this prejudice isn't racism, it's our civic duty.

probably why this diverse group of organizations opposed the bill

Community groups that expressed concern or opposition include:

- The Community Oversight Board
- The Nashville Defenders Office
- The NAACP
- The Tennessee Immigrant & Refugee Rights Coalition
- Conexión Américas
- Walk Bike Nashville
- Open Table Nashville
- American Civil Liberties Union of Tennessee
- Black Nashville Assembly
- Workers' Dignity
- Black Lives Matter Nashville
- Community Oversight Nashville
- SURJ Nashville
- American Pacific Islanders of Middle Tennessee
- The American Muslim Advisory Council

4:05 PM · Feb 3, 2022 · Twitter for iPhone



Josh Black
@SirJoehuaBlack

...

License plate readers allow surveillance of immigrants & assistance to ICE for deportation

As well as aggressive surveillance of Black communities.

City Council voted FOR this.

Here's some of the brave council members pointing out the prejudice within the bill



5:42 PM · Feb 3, 2022 · Twitter for iPhone

24. On February 2, 2022, less than a day after the vote, Josh Black also tweeted the following:



25. On February 22, 2022, Mr. Lipscomb was notified in writing by his employer, the NFD, that a disciplinary meeting had been scheduled for February 28, 2022, to address the following:

The department was notified 02/03/2022 that you tweeted "But the majority of Nashville City Council is white supremacists... These folk want us dead".

(A copy of the Feb. 22, 2022, letter is attached as **Exhibit A**):

26. The letter did not include how the NFD was notified about the tweet, nor did it contain the complete tweet sent by Josh Black. Nonetheless, the NFD stated that this particular tweet somehow violated the vague NFD's Conduct Unbecoming, Defamation, and Derogatory Notices policies.

27. On March 10, 2022, the NFD conducted Mr. Lipscomb's disciplinary hearing, before a panel of three supervisory Fire Department personnel, moderated by a non-lawyer employee from the Human Resources section.

28. The NFD introduced its only piece of evidence supporting its contention that Mr. Lipscomb was in violation of the aforementioned policies: the disciplinary letter it sent to him on February 22, 2022.

29. The NFD's characterization of the tweet in its February 22 letter is heavily edited and decontextualized, presenting less-than-a-third of the actual tweet. Josh Black tweeted 47 words. The NFD's February 22, 2022, disciplinary letter pointedly cherry-picked 15 of them, specifically omitting his general feelings on voting and his plea that his peers get involved in local elections.

30. At the hearing, Mr. Lipscomb made clear that he believed that his tweets were protected free speech:

My statement is and was protected speech.... When I took this job, I accepted the risk serving the community as a firefighter may result in injury or death. I do not accept, however, that it also requires me to sacrifice my constitutional rights and in particular my right to speak freely as a private citizen on public political decisions which affect me as a Black man, a Nashvillian, a Tennessean and an American. I ask that you see this for what it is, vast government overreach and reinforce that we don't give up our free speech rights...as Nashville firefighters just because we wear a uniform.⁴

31. It was clear at the hearing that the department believes it can punish Mr. Lipscomb for engaging in core protected political speech, even under an assumed name.

- MR. MCBROOM: I got what you are saying. You have free speech, but it's always consequences to everything we do whether it's good or bad. There are always consequences.⁵
- MR. MCBROOM: He works for Nashville Fire Department, and it has rules and regulations.⁶
- MR. LIPSCOMB: You can't have opinions because you are a fireman? MR. MCBROOM: You can. You can have an opinion, but it's consequences to everything you do whether it's good or bad.⁷

⁴ Hearing Trans., March 10, 2022, at 8:2-3, 8:21-9-7.

⁵ *Id.* at 27:2-5.

⁶ *Id.* at 27:13-14

⁷ *Id.* at 27:20-24.

32. It was also clear that the panel members took issue with the words used by Josh Black in addressing this political issue:

- MR. JORDAN: With doing that, is that the way you feel like—is that the best way you could have done that by saying that, by saying white supremacist? Could it have been another way to get that across without using that term or a more effective way?⁸
- MR. JORDAN: ...I am not arguing in any way about what you are trying to do, but the way you went about it do you feel that was the best way to go about doing that?⁹
- MR. MCBROOM: Do you think you could have used a better choice of words and got the same effect which you were looking for when you called them white supremacists?¹⁰

33. After the hearing, the panel apparently made a recommendation to the Chief of the NFD, but that recommendation was not provided to Mr. Lipscomb. To this day, he does not know how the panel members voted or what they recommended to the Chief.

34. On March 18, 2022, the NFD Chief suspended Mr. Lipscomb without pay for 16 days, with no explanation as to how he had allegedly violated the unconstitutional policies of the NFD.

Mr. Lipscomb’s 2020 Discipline Also Violated His Right to Free Speech

35. Mr. Lipscomb was also previously disciplined by the NFD for protected speech activities in the past. He did not challenge that discipline because he “felt forced to accept...the path of least resistance.”¹¹ He wishes to exercise his free speech rights without fear of repercussions.

⁸ *Id.* at 9:20-25.

⁹ *Id.* at 11:14-16.

¹⁰ *Id.* at 22:10-13.

¹¹ *Id.* at 8:4-6.

36. Mr. Lipscomb's prior discipline was allegedly based on contact made by Josh Black (without reference to Joshua Lipscomb and/or to the NFD) on November 6, 2020, to a controversial small business owner in Nashville.

37. On that date, Josh Black contacted GiGi Gaskins, then the owner and operator of HatWRKS, an apparel company that gained notoriety during the COVID-19 pandemic for selling yellow Star of David patches for individuals who refused to get the vaccine to liken their decision to the persecution of the victims of the Holocaust (which many people, including in Nashville, considered antisemitic).

38. Josh Black recorded his and Ms. Gaskin's telephone conversation, which is legal in Tennessee, during which he asked Ms. Gaskin why she refused to accept the results of the 2020 Presidential Election, and then posted the recording to the Josh Black Facebook page (again with no mention of Joshua Lipscomb and/or the NFD).

39. The Facebook page to which the video was posted did not identify Josh Black by his real name or indicate that he was a firefighter.

40. Ms. Gaskins apparently made a complaint to the NFD on November 9, 2020, and based on that complaint, the Nashville Fire Department disciplined Mr. Lipscomb by suspending him for 8 days without pay alleging that he violated the NFD's Social Media, Courtesy, and Responsibility policies. Notably key terms in that policy were not defined.

41. No hearing into this matter was conducted by the NFD. Mr. Lipscomb "felt forced" to accept discipline¹² and he signed a Disciplinary Agreement which outlined his alleged misconduct and adopted the conclusions of the NFD.

¹² See *id.* at 8:1-10.

42. Other than a Disciplinary Agreement between Mr. Lipscomb and the NFD, which merely notes that a complaint was received and the alleged violations, there is no other documentation or record which explains how Mr. Lipscomb’s speech allegedly violated the stated policies.

43. Mr. Lipscomb is the latest victim of the NFD’s unconstitutional policies. *See, e.g., Turner v. Metropolitan Gov’t of Nashville and Davidson C’nty*, 3:21-cv-00042 (M.D. Tenn. Jan. 19, 2021).

44. Both suspensions violated Mr. Lipscomb’s right to free speech and cost him his pay simply because he exercised his constitutionally protected rights. Josh Black, as an extremely active observer of government activity, has a lot to say about issues of public concern but has been chilled from speaking out fully because of the threat of increasing punishment at his job.

CAUSES OF ACTION

COUNT I

Article I, Section 19 of the Tennessee Constitution The NFD’s Social Media Policy Suppresses Free Speech

45. Mr. Lipscomb reincorporates and realleges the foregoing allegations as if fully set forth herein.

46. The NFD’s Social Media policy states: “Employees are expected to refrain from social media and online activities that reflect poorly on the Nashville Fire Department. Inappropriate social media and online activities that reflect poorly upon the Nashville Fire Department, its employees, or services, may result in corrective and/or disciplinary action.”

47. Neither the Civil Service Rules nor the NFD’s Social Media policy provide any definition of “inappropriate” online activities and/or what “reflect[s] poorly” means in the context of the rule.

48. This policy is vague and overbroad and is an unconstitutional content and viewpoint-based restriction on free speech. It violates the Tennessee Constitution both facially and as applied to Mr. Lipscomb.

COUNT II
Article I, Section 19 of the Tennessee Constitution
The NFD's Conduct Unbecoming Policy Suppresses Free Speech

49. Mr. Lipscomb reincorporates and realleges the foregoing allegations as if fully set forth herein.

50. The NFD's Conduct Unbecoming policy states: "The conduct of department employees, on- or off-duty, may reflect directly or indirectly upon the Department, therefore, a Fire department employee's ability to perform his or her duties is dependent upon the respect and confidence communities have for the representatives of the agency. Employees shall at all times conduct themselves in a manner which does not bring discredit to themselves, the Department, or the City. Conduct that is inconsistent with the provisions within this policy shall be considered a violation."

51. Neither the NFD's Conduct Unbecoming policy nor the Civil Service Rules provide any definition of what might "bring discredit" on the NFD and/or how to define those words in the context of the policy.

52. This policy is vague and overbroad and is an unconstitutional content and viewpoint-based restriction on free speech. It violates the Tennessee Constitution both facially and as applied to Mr. Lipscomb.

COUNT III
Article I, Section 19 of the Tennessee Constitution
The NFD's Courtesy Policy Suppresses Free Speech

53. Mr. Lipscomb reincorporates and realleges the foregoing allegations as if fully set forth herein.

54. The NFD's Courtesy policy states: "Employees shall be courteous, civil, and respectful to all persons and shall make every effort to meet the needs of citizens requesting assistance."

55. Neither the Civil Service Rules nor the NFD's Courtesy policy explains what "courteous, civil, and respectful" mean in the context of the policy.

56. Neither the Metro Government nor the NFD have ever explained to Mr. Lipscomb how he allegedly failed to "meet the needs of citizens requesting assistance," nor is he aware of any complaints ever having been filed against him with such an allegation.

57. This policy is vague and overbroad and is an unconstitutional content and viewpoint-based restriction on free speech. It violates the Tennessee Constitution both facially and as applied to Mr. Lipscomb.

COUNT IV
Article I, Section 19 of the Tennessee Constitution
The NFD's Defamation Policy Suppresses Free Speech

58. Mr. Lipscomb reincorporates and realleges the foregoing allegation as if fully set forth herein.

59. The NFD's Defamation policy states: "Employees shall not unjustly criticize, ridicule, or otherwise defame any person or any agency of the Metropolitan Government."

60. Neither the Civil Service Rules nor the NFD's Defamation policy explain what "unjustly" or "criticize" or "ridicule" or "defame" means in terms of the Rule.

61. This policy is vague and overbroad and is an unconstitutional content and viewpoint-based restriction on free speech. It violates the Tennessee Constitution both facially and as applied to Mr. Lipscomb.

COUNT V

**Article I, Section 19 of the Tennessee Constitution
The NFD's Derogatory Notices Policy Suppresses Free Speech**

62. Mr. Lipscomb reincorporates and realleges the foregoing allegation as if fully set forth herein.

63. The NFD's Derogatory Notices policy states: "Employees shall not post or circulate notices of a derogatory nature."

64. Neither the Civil Service Rules nor the NFD's Derogatory Notices policy explains what "derogatory" means in the context of the rule.

65. This policy is vague and overbroad and is an unconstitutional content and viewpoint-based restriction on free speech. It violates the Tennessee Constitution both facially and as applied to Mr. Lipscomb.

COUNT VI

**Article I, Section 19 of the Tennessee Constitution
The NFD's Responsibility Policy Suppresses Free Speech**

66. Mr. Lipscomb reincorporates and realleges the foregoing allegations as if fully set forth herein.

67. The NFD's Responsibility policy states: "Employees shall at all times conduct themselves in a responsible manner."

68. Neither the Civil Service Rules nor the NFD's Responsibility policy explains what "responsible manner" means in the context of this rule.

69. This policy is vague and overbroad and is an unconstitutional content and viewpoint-based restriction on free speech. It violates the Tennessee Constitution both facially and as applied to Mr. Lipscomb.

COUNT VII
Article I, Section 19 of the Tennessee Constitution
CSR 6.7 Suppresses Free Speech

70. Mr. Lipscomb reincorporates and realleges the foregoing allegations as if fully set forth herein.

71. CSR 6.7 incorporates the NFD’s policies and guidelines by making “any violation of any written rules, policies, or procedures, of the department of which the employee is employed” grounds for disciplinary action.

72. This policy is vague and overbroad and relies on vague and overbroad policies and guidelines that are unconstitutional content and viewpoint-based restrictions on speech. This policy violates the Tennessee Constitution both facially and as applied to Mr. Lipscomb.

PRAYER FOR RELIEF

WHEREFORE, Mr. Lipscomb respectfully requests: that this Court issue a judgment declaring that these policies are unconstitutional restrictions on free speech, as well as any other relief this Court deems just and necessary, including attorneys’ fees and costs.

Dated: April 11, 2022

Respectfully submitted,

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