

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

PRO-LIFE MISSISSIPPI, DANA CHISHOLM, ESTER)
MANN, JOHN BREKEEN, LAURA DURAN, DOUG)
LANE, RONALD NEDERHOED, BERKELEY)
OSTRANDER, and CALVIN ZASTROW,)

Plaintiffs,)

v.)

Case No.: 3:14cv568 CWR-FKB

LINDSAY HORTON, individually and in his official)
capacity as Chief of Police for the City of Jackson,)
Mississippi; JESSE ROBINSON, individually and in his)
official capacity as an officer for the City of Jackson)
Mississippi Police Department; JAMES McGOWAN,)
individually and in his official capacity as an officer for the)
City of Jackson Mississippi Police Department; MARY)
JAMES, individually and in her official capacity as an officer)
for the City of Jackson Mississippi Police Department;)
MARIE HAMPTON, individually and in her official capacity)
as an officer for the City of Jackson Mississippi Police)
Department; JAMES ROSS, individually and in his official)
capacity as an officer for the City of Jackson Mississippi)
Police Department; WILLIS THOMAS, individually and in)
his official capacity as an officer for the City of Jackson)
Mississippi Police Department; UNKNOWN OFFICERS 1 -)
10, individually and in their official capacity as officers for)
the City of Jackson Mississippi Police Department; and the)
CITY OF JACKSON, MISSISSIPPI,)

Defendants.)

CONSENT DECREE

Whereas all Defendants have been served and appeared herein;

Whereas the parties have reached agreement on all issues between them on the following terms and conditions, without adjudication of any issue or law and without Defendants admitting liability for any of the matters alleged; and

Whereas this Consent Decree resolves all issues raised in the Complaint and the parties accept this Consent Decree as final and binding among them as to the issues resolved herein;

Therefore, on joint motion of the Plaintiffs and the Defendants,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED:

1. This Court has jurisdiction over the subject matter and the parties.
2. The Complaint states a claim upon which relief can be granted against the Defendants.
3. The City of Jackson, by and through its officials, agents, employees, successors and all persons in active concert or participation with it (hereinafter the “City”) shall not engage in any act or practice that has the purpose or effect of unlawfully inhibiting the exercise of any person’s First Amendment rights on public sidewalks and right-of-ways.
4. The City shall enforce the laws, statutes, and ordinances in an even-handed manner, not favoring or disfavoring any person or group because of his, hers, or its political, religious, or philosophical positions on any issue.
5. The City shall not enforce or threaten to enforce its noise ordinance, Jackson Municipal Code ¶¶ 54-86 through 54-92, unless and until it does so by means of properly calibrated decibel meters employed by officers trained in the use of such machines.
6. The City shall not enforce or threaten to enforce Mississippi Code Ann. Section 97-35-25 or Jackson Municipal Code 110-61 or 102-29 so as to interfere with, threaten, charge, or punish the free speech activities on public sidewalks and right-of-ways.

7. The City shall not seize signs, literature, or other expressive materials from those involved in the exercise of First Amendment rights, whether needed as evidence or otherwise, unless all other means short of seizure have been exhausted, including but not limited to photographing or describing them in written form. In the event seizure of such expressive materials is deemed necessary, the City shall seize only so many of the materials as is absolutely essential to establish the type or size of the materials, and shall promptly submit the matter to a court of appropriate jurisdiction for determination of the propriety of seizure and/or retention of the materials, and shall return the materials as soon as practicable, recognizing that they are presumptively protected by the First, Fourth, and Fourteenth Amendments to the United States Constitution.

8. The City shall implement a program of mandatory annual training in First Amendment rights and the response to the exercise of those rights for the City's law enforcement personnel. The City recognizes and agrees to adopt as its overriding philosophy that tolerance of such rights is its primary goal.

9. The City shall conduct training so as to teach all its law enforcement officers the terms of this Consent Decree.

10. Within thirty (30) days after the entry of this Consent Decree, the City shall dismiss all charges in the following cases, shall join in petitioning the County Court to return all bonds posted, and release all property seized in connection with the underlying arrest and prosecution of such cases, which property shall be available for pick-up by the owner of such property at the Jackson Police Department:

- City of Jackson v. Harriett Ashley, County Court of the First Judicial District of Hinds County, Mississippi Criminal Case No. 14-735.
- City of Jackson v. Chester Gallagher, County Court of the First Judicial District of Hinds County, Mississippi Criminal No. 14-736. Additionally, the City shall return the bond posted by Mr. Gallagher in Jackson Municipal Court Case No. 2013-073222.
- City of Jackson v. Ester A. Mann, County Court of the First Judicial District of Hinds County, Mississippi Criminal Case No. 13-841.
- City of Jackson v. Charles Roy McMillan, County Court of the First Judicial District of Hinds County, Mississippi Criminal Case No. 14-737.
- City of Jackson v. Calvin Zastrow, County Court of the First Judicial District of Hinds County, Mississippi Criminal Case No. 14-733.

11. The City shall, within thirty (30) days after the entry of this Consent Decree, assure and confirm that its records reflect that all charges and all cases against each of the following persons have been fully and finally disposed or otherwise all charges shall be dropped:

Harriet Ashley	Ester Mann
Johnny Brekeen	Ronald Nederhoed
Dana Chisholm	Berkeley Ostrander,
Laura Duran	Calvin Zastrow
Doug Lane	Eva Zastrow

Within thirty (30) days after the entry of this Consent Decree, all property (specifically including but not limited to signs) seized or held by the City in relation to any past cases against anyone of these persons shall be released and made available for pick-up by the owner of such property at the Jackson Police Department.

12. The City shall not arrest, threaten of arrest, cite, charge, threaten to charge, or pursue similar enforcement action against persons exercising First Amendment rights, where such persons are:

- (a) holding signs and speaking and/or preaching on the public sidewalks and right-of-ways in the City of Jackson (specifically including but not limited to the public sidewalks and right-of-ways along Fondren Place and State Street) while walking or standing;
- (b) speaking and/or preaching and holding signs on the public sidewalks and right-of-ways in the City of Jackson (specifically including but not limited to the public sidewalks and right-of-ways along Fondren Place and State Street) while letting the held signs rest on the sidewalk or right-of-way next to the speaker who is holding the sign upright, provided that the sign does not cover the entire width of the sidewalk but leaves room for other persons to use the sidewalk by walking or otherwise being able to get around the sign;
- (c) speaking and/or preaching on the public sidewalks and right-of-ways in the City of Jackson (specifically including but not limited to the public sidewalks and right-of-ways along Fondren Place and State Street) and holding signs while sitting on a portable box, chair, or similar portable stool on the public sidewalks and right-of-ways and letting the held signs rest on the sidewalk or right-of-way next to the speaker who is holding the sign upright, provided that the person sitting in the chair is handicapped, being treated for a medical condition, or elderly, and also provided that neither the sign or stool or combination cover the entire width of the sidewalk but leaves room for other persons to use the sidewalk by walking or otherwise being able to get around the chair and sign.

13. The City shall, within thirty (30) days after the entry of this Consent Decree, deliver a certified check in the amount of \$2,500.00 to Pro-Life Mississippi in full settlement of all claims for damages herein.

14. Plaintiffs' counsel hereby waives all claims for attorney fees herein.

15. Six months after the entry of this Consent Decree, counsel for the parties shall meet and review the performance of the parties in the implementation of the requirements of this Consent Decree. The parties shall attempt to resolve informally any disputes that may occur under this Consent Decree. If the parties are unable to reach agreement within thirty (30) days after a matter has been brought to the attention of one of the parties by another party, the issue may be submitted by either party to the Court for resolution.

16. The Court shall retain jurisdiction of this Decree for one (1) year from the date of its entry to enforce the terms of the consent judgment, at which time the case shall be dismissed with prejudice and without prior notice to the parties.

SO ORDERED this 4th day of October, 2016.

s/ Carlton W. Reeves
UNITED STATES DISTRICT JUDGE

Agreed and consented to:

For the Plaintiffs:

/s/ Steve C. Thornton
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