

IN THE CHANCERY COURT FOR DAVIDSON COUNTY  
AT NASHVILLE, TENNESSEE

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JOSHUA LIPSCOMB, )  
                        )  
Plaintiff,           )  
                        )  
v.                     )      Case No. 22-0501-I  
                        )      JURY DEMAND  
NASHVILLE FIRE DEPARTMENT,       )  
A DEPARTMENT OF THE METROPOLITAN )  
GOVERNMENT OF NASHVILLE       )  
AND DAVIDSON COUNTY,          )  
                        )  
Defendant.             )

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**FIRST AMENDED COMPLAINT**

## **INTRODUCTION**

1. Joshua Lipscomb is a Nashville firefighter, who risks his life every day to protect and help the people of Nashville. When Joshua Lipscomb accepted employment with the Nashville Fire Department (NFD), he willingly accepted the risks inherent in his job and dedicated himself to serving the people of Nashville. In committing himself to serve as a firefighter, he did not forfeit his fundamental right to freedom of speech in his private life.

2. Nevertheless, in direct violation of the First Amendment, the Fire Department has punished Mr. Lipscomb multiple times for engaging in core political speech when he is off duty, making no reference to the Fire Department, and using a pseudonym. The Fire Department issued punishment under a set of broad policies that are flagrantly unconstitutional in every conceivable respect. Those policies purport to regulate the speech of NFD employees in every aspect of their lives, 24/7 – no matter where they are, who they are talking to, or what they are talking about.

3. The Fire Department policies under which Joshua Lipscomb has been punished state that NFD employees are prohibited from “unjustly” “ridiculing” or “criticizing” ***anyone in the Metro Government***, words that are not defined anywhere in the policies, and then leave it to a three-person NFD panel to determine what “ridicule” or “criticism” they determine was “just” as opposed to “unjust.”

4. Those panels, which are composed of senior Fire Department officers with no requirement of legal training, operate without due process (including considering supposed “evidence” that is not required to be shown to the person being charged), acts arbitrarily without reference to (or consideration of) legal standards or the First Amendment, and then issues a secret recommendation to NFD’s Chief, who metes out punishment without explanation.

5. Essentially, NFD appears to believe that it operates free from Tennessee and federal constitutional constraints. That belief is incorrect. In this action, Mr. Lipscomb therefore seeks a declaration that these policies are unconstitutional and monetary damages for the harms he has suffered from NFD's enforcement of them against him.

### **PARTIES**

6. 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 firefighter.

7. The Defendant, the Metropolitan Government of Nashville and Davidson County ("Metro Government"), is a local body politic 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 Metro Government.

### **JURISDICTION AND VENUE**

8. This Court has jurisdiction over this action pursuant to Tenn. Code Ann. § 16-11-101 *et seq.*, Tenn. Code Ann. § 29-14-102

9. 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, Tenn. Code Ann. § 29-1-106, and 42 U.S.C. § 1983.

10. Mr. Lipscomb also 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 and proceedings.

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

## **FACTS**

12. Mr. Lipscomb is a lifelong Nashvillian and a career firefighter who risks his life every day for the citizens of Nashville. In his personal time, he is also 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—and have not identified—him either as Joshua Lipscomb or as a firefighter.

13. 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. He also urged his peers to become more involved in local elections to prevent such policies in the future. Yet, for reasons that defy logic, reason, and both the United States and Tennessee constitutions, Mr. Lipscomb’s foray into basic political discourse resulted in a 16-day unpaid suspension from his job.

14. The Nashville Fire Department then continued its retaliation against Mr. Lipscomb for his exercise of his constitutionally protected right to free speech. On April 14, 2022, three days after the 16-day suspension, the NFD charged him with violating sick leave policy for taking sick leave (which he had accrued) without a doctor’s note. On May 2, 2022, the department slapped him with an additional 11-day unpaid suspension. This time the suspension was recommended after another disciplinary “hearing” in front of a 3-person panel during which the department offered zero proof and concealed from Mr. Lipscomb whatever alleged evidence they had of his purported misconduct.

15. By suspending Mr. Lipscomb, the Nashville Fire Department unlawfully retaliated against him for engaging in constitutionally protected speech and discriminated against him.

### **The NFD's Unconstitutional Policies**

16. Mr. Lipscomb was wrongfully punished for allegedly violating the following vague NFD policies:

- 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.”

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

### **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 simply his alter ego.

**In 2022, Mr. Lipscomb was Disciplined in Retaliation 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.”<sup>1</sup>

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.”<sup>2</sup> Significant groups that opposed the bill included the Metro 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,

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<sup>1</sup> CASSANDRA STEPHENSON, *Nashville license plate reader bill narrowly passes, greenlighting 6-month pilot*, THE TENNESSEAN, Feb. 1, 2022 (updated Feb. 2, 2022), available at: <https://www.tennessean.com/story/news/local/davidson/2022/02/01/nashville-license-plate-reader-pilot-approved-narrow-margin/9303091002/>.

<sup>2</sup> *Id.*

Black Lives Matter Nashville, Community Oversight Nashville, SURJ Nashville, Asian and Pacific Islanders of Middle Tennessee, and the American Muslim Advisory Council.<sup>3</sup>

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:



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



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



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

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

<sup>3</sup> *Id.*

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



25. Three weeks later, 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 state how the NFD was notified about the tweet or how the NFD knew the Josh Black tweet was related to Mr. Lipscomb or the NFD. It did not even 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 – it did not even introduce the entire tweet or any evidence that the tweet was from a firefighter or that it in any way referenced the Fire Department.

29. The NFD's characterization of the tweet in its February 22 letter was 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 cherry picked 15 of them—specifically omitting the author's genuine feelings on voting and his civic 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.

31. Comments made at the hearing by panel members established that the Fire Department believes it can punish Mr. Lipscomb for engaging in core protected political speech at any time, whether or not on duty, and even under an assumed name with no reference to the NFD or to the author's real name:

- a. 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.
- b. MR. MCBROOM: He works for Nashville Fire Department, and it has rules and regulations.
- c. MR. LIPSCOMB: You can't have opinions because you are a fireman?
- d. MR. MCBROOM: You can. You can have an opinion, but it's consequences to everything you do whether it's good or bad.

32. Specific comments from panel members at the hearing also made clear that the panel members took issue with the choice of words used by Josh Black in addressing this significant political issue:

- a. 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?
- b. 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?
- c. 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?

33. Comments from panel members at the hearing also made clear that the panel decision would be based on purported complaints allegedly made to the NFD, but which had not been provided to Mr. Lipscomb or his attorneys in advance of the hearing and that still have not been provided to them. The moderator of the panel, Jamie Summers, the NFD's non-lawyer human resources director, made several references to these supposed complaints during the hearing, and explained:

MS. SUMMERS: I think...one of the reasons why this has brought so much attention to this and so much—we have close to probably 75 more comments since this on the department because the department are being called racist.... The charge is there, which were any failure of good behavior which reflects discredit upon himself, the department, or the metropolitan government. So when employees, citizens, council members call up here complaining or questioning what our employees do, it tends to bring discredit on the department based on their feelings.

Ms. Summers added that she herself didn't "even have a copy of these 70 complaints." The content, nature, authors, and even actual existence of these alleged complaints still remain unknown to Mr. Lipscomb and his attorneys.

34. After the hearing, the panel apparently made a recommendation to the Chief of the NFD, but that recommendation was not provided to Mr. Lipscomb – despite repeated requests from his attorneys. To this day, it remains a secret how the panel members voted or what they recommended to the Chief or on what they based their recommendation.

35. On March 18, 2022, the NFD Chief suspended Mr. Lipscomb without pay for 16 days, with no explanation as to how Mr. Lipscomb had allegedly violated the vague policies of the NFD and/or the rationale or basis for the suspension.

#### **Mr. Lipscomb's 2020 Discipline Also Violated His Right to Free Speech**

36. In 2020, Mr. Lipscomb had also been disciplined by the NFD for protected speech activities, but that time, he did not challenge the discipline because he “felt forced to accept...the path of least resistance.”

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

38. On that date, Josh Black contacted GiGi Gaskins, the then 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 COVID vaccine, apparently to wrongfully compare their decision to the persecution of the Holocaust victims (which many people, including in Nashville, considered antisemitic).

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

40. 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.

41. Ms. Gaskins apparently made a complaint to the NFD on November 9, 2020. 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 – other policies with notably key terms that are not defined.

42. Mr. Lipscomb "felt forced" to accept discipline and he signed a Disciplinary Agreement which outlined his alleged misconduct and adopted the conclusions of the NFD.

43. 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 document that explains how Mr. Lipscomb's speech allegedly violated the stated policies.

44. Both suspensions violated Mr. Lipscomb's right to free speech and cost him his pay simply because he exercised his constitutionally protected rights while off duty and under a pseudonym with no mention of his real name or his employment at the Fire Department. 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.

#### **Mr. Lipscomb was Disciplined by the NFD Just Three Days After He Filed His Initial Complaint for Declaratory Judgment**

45. On April 14, 2022, just **three days** after filing his initial Complaint in this matter, Mr. Lipscomb was again charged with violating the NFD's policies and procedures. The NFD charged him this time for leaving his home while on sick leave and for failing to provide a doctor's note to excuse his absence. The absence was on March 18, 2022 (the same day the NFD suspended him for 16 days for his tweet).

46. On April 26, 2022, another disciplinary hearing was conducted in front of another panel of three supervisory Fire Department personnel. Mr. Lipscomb was told that again the only evidence the panel was relying on was contained in the charging letter. The letter contained nothing more than the mere allegations that Mr. Lipscomb called into work without a doctor's note and also left his home without NFD permission while on sick leave.

47. The panel members stated that they became aware of Mr. Lipscomb's conduct via multiple emails they received. These emails were not provided to Mr. Lipscomb or his attorneys prior to the hearing and were not made a part of the record. They have still not been provided to him.

48. Based on comments made at the hearing, one of the panel members who sat in judgment of Mr. Lipscomb amazingly was directly involved in reporting the supposed violation to management. The same panel member had also been a member of Mr. Lipscomb's previous disciplinary panel.

49. Again, responding to another secret recommendation from the panel which was not shared with Mr. Lipscomb, on May 2, 2022, Fire Chief William Swann suspended Mr. Lipscomb for an additional 11 days without pay.

50. This additional discipline is neither coincidental nor ancillary: it represents yet another action by the NFD to retaliate against Mr. Lipscomb for engaging in constitutionally protected speech.

51. As a result of these biased, surreptitious, and fundamentally unfair proceedings, Mr. Lipscomb has been suspended a total of 27 days without pay and has been deprived of any accrued vacation and/or sick time as punishment for exercising his right to free speech.

**The NFD has a history of applying its policies in a manner that violates the constitutional rights of its firefighters**

52. The policies, customs, and practices of the NFD are enforced by Chief Swann, the policy maker and final decision maker for the NFD.

53. The policies, customs, and practices of the NFD, as written and as enforced by Chief Swann, reveal a history of applying and interpreting these policies such that they violate the constitutional rights of its firefighters, including the right to free speech.

54. The Metro Government has failed to train and supervise the employees of the NFD on the constitutional rights of its firefighters to free speech, due process, and equal protection. As a result of the failure to train, failure to supervise, and the direct actions of the NFD, Mr. Lipscomb and many other firefighters have had their constitutional rights violated by the department they serve and have suffered damage thereby.

## **CAUSES OF ACTION**

### **COUNT I**

#### **The NFD's Policies and Procedures Violated Mr. Lipscomb's Rights to Freedom of Speech and Expression as Guaranteed by the United States and Tennessee Constitutions**

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

56. The off-duty tweets sent by Mr. Lipscomb as "Josh Black", with no mention of his real name and/or of the Nashville Fire Department, are constitutionally protected political speech by a private citizen on a matter of public concern.

57. The NFD's policies that have been used to punish Mr. Lipscomb violate Mr. Lipscomb's constitutionally protected rights to freedom of speech and expression. The policies are vague and overbroad. They are also unconstitutional content and viewpoint-based restrictions of free speech. They violate the United States and Tennessee constitutions both facially and as applied to Mr. Lipscomb.

58. As a result of the NFD's actions to suppress his speech, Mr. Lipscomb has been chilled from enjoying his protected political activities.

59. Also, Mr. Lipscomb has suffered and continues to suffer economic damages, nominal damages, and non-economic damages including but not limited to loss of earnings, emotional suffering, and humiliation.

## COUNT II

### **The NFD Unlawfully Retaliated Against Mr. Lipscomb for Exercising his First Amendment Rights Guaranteed by the United States and Tennessee Constitutions**

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

61. The off-duty tweets sent by Mr. Lipscomb as "Josh Black", without reference to his real name and/or to the Fire Department, are core protected political activity composed in his private capacity under a pseudonymous identity.

62. The NFD retaliated against Mr. Lipscomb because he spoke out on matters of public concern and suspended him without pay on numerous occasions (first for 8 days, then for 16 days, and then for 11 days).

63. The NFD's actions infringed upon (and continue to chill) Mr. Lipscomb's protected rights of freedom of speech and expressions as guaranteed by the United States and Tennessee Constitutions.

64. As a result of the NFD's actions, Mr. Lipscomb has suffered and continues to suffer economic damages, nominal damages, and noneconomic damages including but not limited to loss of earnings, emotional suffering, and humiliation.

## COUNT III

### **The NFD's Disciplinary Proceedings Violated Mr. Lipscomb's Right to Procedural Due Process as Guaranteed by United States and Tennessee Constitutions**

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

66. The three NFD's disciplinary proceedings against Mr. Lipscomb described in this action were procedurally defective and violated his rights to due process.

67. Mr. Lipscomb has a liberty interest in his constitutional right to engage in core political speech. He also has a protected property interest in his employee benefits, including but not limited to accrued vacation and sick leave days.

68. The NFD deprived him of these rights by suspending him repeatedly: for 8 days, then for 16 days, and then for 11 more days and chilling his ability to speak freely.

69. The NFD consistently failed to comply with the due process requirements of the United States and Tennessee constitutions before depriving Mr. Lipscomb of his protected interests.

70. The panel members at Mr. Lipscomb's disciplinary hearings were not impartial arbiters. Chief Eric McBroom served as a panel member for both the March and April disciplinary hearings and was not neutral and unbiased in his conclusions. Additionally Chief McBroom was involved in initiating the disciplinary charges that were the subject of the April hearing.

71. The only evidence provided by the NFD at Mr. Lipscomb's disciplinary hearings to substantiate its allegations that Mr. Lipscomb had violated its policies and procedures were the letters informing Mr. Lipscomb of the violations attributed to "Josh Black" and the date of the hearing.

72. At these hearings, however, panel members and moderators made multiple references to extrinsic documents and communications upon which the NFD was basing the

alleged disciplinary violations, and which were important to the panel's decisions. These documents and communications have never been provided to Mr. Lipscomb.

73. Additionally, Mr. Lipscomb was not provided with the panels' recommendations or reasoning prior to the Chief's three disciplinary decisions.

74. Mr. Lipscomb was denied a fair disciplinary process because he was not given notice and an opportunity to be heard on the evidence that was the basis of the discipline at multiple stages of the process and because the disciplinary board was not at all independent.

75. As a result of the NFD's actions, Mr. Lipscomb has suffered and continues to suffer economic damages, nominal damages, and noneconomic damages including but not limited to loss of earnings, emotional suffering, and humiliation.

#### COUNT IV

#### The NFD's Enforcement of its Policies Violated Mr. Lipscomb's Substantive Due Process Rights as Guaranteed by the United States and Tennessee Constitutions

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

77. A person's substantive due process rights are violated if (1) they have a constitutionally protected property or liberty interest and (2) that interest has been deprived through arbitrary and capricious action.

78. Mr. Lipscomb had both constitutionally protected property and liberty interests in his protected speech and his employment compensation and benefits.

79. The NFD acted arbitrarily and capriciously by manipulating its policies and procedures to silence Mr. Lipscomb's protected speech because it disagreed with what he was saying. The NFD's intentional deprivation of Mr. Lipscomb's constitutional liberties shocks the conscience.

80. As a result of the NFD's actions, Mr. Lipscomb has suffered and continues to suffer economic damages, nominal damages, and noneconomic damages including but not limited to loss of earnings, emotional suffering, and humiliation.

**COUNT V**

**The NFD's Enforcement of its Policies Violated Mr. Lipscomb's Rights under the Equal Protection Clause of the United States and Tennessee Constitutions**

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

82. The Equal Protection Clause of the Fourteenth Amendment protects each person against intentional, arbitrary government discrimination on the basis of race, whether based on a policy's express terms or improper implementation by government agents.

83. The NFD has selectively enforced its policies against Mr. Lipscomb, a Black man who is a member of a protected class. The implementation of the NFD's practices, customs, and policies discriminated against Mr. Lipscomb based on his race. The NFD has no compelling interest in treating firefighters differently based on their race.

84. As a result of the NFD's actions, Mr. Lipscomb has suffered and continues to suffer economic damages, nominal damages, and noneconomic damages including but not limited to loss of earnings, emotional suffering, and humiliation.

**PRAYER FOR RELIEF**

**WHEREFORE**, Mr. Lipscomb respectfully requests:

1. Compensatory and nominal damages for the NFD's violation of Mr. Lipscomb's federally protected constitutional rights in an amount to be determined at trial;

2. That this Court issue a judgment declaring that the NFD's policies are unconstitutional restrictions on free speech, that the NFD retaliated against Mr. Lipscomb because

of his protected speech, that the NFD's disciplinary hearings violated Mr. Lipscomb's constitutional rights to procedural due process, and that the NFD's enforcement of its policies violated Mr. Lipscomb's constitutional rights to substantive due process and equal protection;

3. An award of attorney's fees and costs pursuant to 42 U.S.C. § 1988;
4. Any other relief this Court deems just and necessary.

Dated: May 10, 2022

Respectfully submitted,

*/s/ Tricia R. Herzfeld*

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Tricia R. Herzfeld (BPR #26014)  
BRANSTETTER, STRANCH  
& JENNINGS, PLLC  
223 Rosa L. Parks Ave. Ste 200  
Nashville, TN 37203  
Phone: 615-254-8801  
Fax: 615-255-5419  
[triciah@bsjfirm.com](mailto:triciah@bsjfirm.com)

Abby R. Rubenfeld (BPR #6645)  
RUBENFELD LAW OFFICE, PC  
202 South Eleventh Street  
Nashville, TN 37206  
Phone: 615-386-9077  
Fax: 615-386-3897  
[arubenfeld@rubenfeldlaw.com](mailto:arubenfeld@rubenfeldlaw.com)

*Counsel for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was served via electronic mail and/or US Mail on this the 10<sup>th</sup> day of May 2022:

Mallory S. Ricci

John W. Ayers

Assistant Metropolitan Attorneys

108 Metropolitan Courthouse

P.O. Box 196300

Nashville, TN 37219

(615) 862-6341

[Mallory.ricci@nashville.gov](mailto:Mallory.ricci@nashville.gov)

[Will.ayers@nashville.gov](mailto:Will.ayers@nashville.gov)

***Attorneys for Metro Government of Nashville and Davidson County***

/s/ Tricia R. Herzfeld

Tricia R. Herzfeld

# **EXHIBIT A**

JOHN COOPER  
MAYOR



## METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

WILLIAM SWANN  
DIRECTOR-CHIEF

NASHVILLE FIRE DEPARTMENT  
P.O. Box 196332  
NASHVILLE, TN 37219-6332  
(615) 862-5421

February 22, 2022

Joshua L. Lipscomb  
2717 Deerfield Dr  
Nashville, TN 37208

Mr. Lipscomb,

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".

Prior to this, on November 20, 2020, you accepted an eight (8) day suspension for improper conduct and Social Media violations after the department received an email complaint that you harassed and belittled a local business owner in a phone conversation, which you then posted to social media. This follows a series of counseling you have received regarding your conduct and comments towards the public in the past that is unprofessional and unbecoming a Nashville Firefighter and Metro employee.

Based on this information, you are alleged to have violated the following rules:

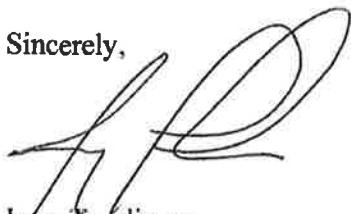
- Civil Service Rule 6.7 Grounds for Disciplinary Action
  - #11 Violation of any written rules, policies or procedures of the department of which the employee is employed:  
OPG 1.24 Adherence to Policy and Rules of the Metropolitan Government  
Conduct Unbecoming, #1 & 2  
Defamation  
Derogatory Notices  
Responsibility
  - #32 Any failure of good behavior which reflects discredit upon himself, the department and/or the Metropolitan Government.
  - #33 Conduct unbecoming and employee of the Metropolitan Government

A disciplinary meeting is scheduled for February 28, 2022 at 8:30 a.m. in the Gold Conference Room, located at Nashville Fire Headquarters. The purpose of this meeting is to allow you or your representative to present your account of the events and review the information regarding this incident. The meeting is informal. You may present statements, witnesses, or any other information regarding the charges. Attendance and participation by persons other than the panel members, you, your representative, and witnesscs shall be at the discretion of the

panel chairperson. You can obtain any documents and/or statements made by witnesses regarding the charges prior to the meeting, unless prohibited by law.

If you wish to waive your right to this meeting, you must notify Jamie Summers of the Nashville Fire Human Resources Division (615-862-5242) prior to the meeting and no later than February 25, 2022. A decision will be made within ten (10) calendar days after the meeting or after receiving notification of your request to waive the meeting.

Sincerely,



Jerry Tomlinson  
Deputy Director of Fire Operations

cc:     Jamie Summers, Human Resources Manager  
         Personnel File

# **NASHVILLE FIRE DEPARTMENT**

## **OPERATIONAL PROCEDURES AND GUIDELINES**

### **CHAPTER 1 - ADMINISTRATION**

**EFFECTIVE:** June 25, 2015

<b>APPROVED:</b> RTW (SIG. ON FILE)	<b>RESCINDS:</b> EXISTING DEPT. MEMOS & POLICIES	<b>AMENDS:</b>	<b>REFERENCE:</b>
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#### **Section 1.24 Adherence to Policy & Rules of the Metropolitan Government**

##### **PURPOSE**

It is the intent of this document to provide clear mandatory guidelines for the adherence to policy & rules of the Metropolitan Government and to describe expectations of conduct.

##### **GENERAL INFORMATION**

The Nashville Fire Department is committed to providing its employees with a safe, productive, professional work environment maintained through effective working relationships. Therefore employees shall adhere to all policies, procedures, rules, regulations, ethical codes, and administrative or executive orders as established by the department or Metropolitan Government.

##### **Adherence to Law**

1. Employees are prohibited from violating any law or ordinance.
2. An employee shall provide written notification within three (3) business days or upon return to work (whichever occurs first) to their Division Chief, via the chain of command, any arrest, service of process, summons, detention, or related action taken against the employee in regards to a criminal matter. Such report shall include information relating to the alleged offense, date, time, location, and a copy of any relevant documents.
3. An employee shall provide written notification within three (3) business days or upon return to work (whichever occurs first) to their Division Chief, via the chain of command, any service of process, summons, or related action taken in regards to a civil matter which may affect or impair the employee's performance, ability to carry out their assigned duties, or may bring discredit upon the employee or the department (e.g., restraint or protective orders, citations, etc.). Such report shall include information relating to the alleged incident, date, time, location, and a copy of any relevant documents.
4. An employee shall provide written notification within three (3) business days or upon return to work (whichever occurs first), to their Division Chief, via the chain of command, of a D.U.I., D.W.I. citation, conviction, or any other charge related to moving violations that could impact the status of an employee's driver's license.
5. An employee shall immediately provide written notification regarding the loss, suspension, revocation, etc. of their driver's license.

6. An employee required to attend any judicial proceeding relating to matters as described in 2, 3 and 4 above shall not be attired in or otherwise display any departmental uniform, insignia, or credentials.

### **Conduct Unbecoming an Employee of the Department**

1. 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.
2. 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.

### **Courtesy**

Employees shall be courteous, civil, and respectful to all persons and shall make every effort to meet the needs of citizens requesting assistance.

### **Honesty & Truthfulness**

Employees shall be honest and truthful. Truthfulness shall apply when an employee makes a materially false statement with the intent to deceive. A statement is material when, irrespective of its admissibility under the rules of evidence, it could have affected the course or outcome of an investigation or an official proceeding.

### **Responsibility**

Employees shall at all times conduct themselves in a responsible manner.

### **Discrimination**

All employees shall perform their duties in a manner that is fair, impartial, and without prejudice toward any person or group.

### **Abusive Treatment**

Employees shall not treat any person or animal cruelly by the use of excessive force or failing to act in a humane manner when circumstances justify such action.

### **Defamation**

Employees shall not unjustly criticize, ridicule, or otherwise defame any person or any agency of the Metropolitan Government.

### **Derogatory Notices**

Employees shall not post or circulate notices of a derogatory nature.

### **Disruptive Job Actions**

Employees shall not participate in strikes, work slow-downs, boycotts, sick-ins, picketing or other similar job actions for the purpose of disrupting the workplace or preventing others from coming to work.

### **Solicitation**

Employees shall not solicit anything of value for any service rendered in their official capacity or as a condition for not performing their duties.

**Bribery**

An employee shall not offer or accept anything of value to/from another person intended to influence or persuade a personal or professional gain for the employee or otherwise influence his/her performance of duty.

**ENFORCEMENT**

Any members found in violation of these provisions will be held accountable by the Director-Chief of the Nashville Fire Department and is subject to disciplinary action up to and including termination.