

IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

CARL W. HEWITT and PATSY HEWITT )  
 )  
 Plaintiffs, )  
 )  
 vs. ) Case No.  
 )  
 CITY OF COOKEVILLE, TENNESSEE, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

**VERIFIED COMPLAINT FOR DECLARATORY, PRELIMINARY AND PERMANENT  
INJUNCTIVE RELIEF AND DAMAGES**

COMES NOW the Plaintiffs, CARL W. AND PATSY HEWITT, (hereafter “Plaintiffs,” “Mr. and Mrs. Hewitt” or “The Hewitts”) by and through their undersigned counsel, and respectfully request this Court to issue Declaratory Judgment, Preliminary and Permanent Injunctive Relief and Damages. In support thereof, Plaintiffs show unto the Court as follows:

1. This is a civil action whereby Plaintiffs seek Declaratory Judgment to determine the constitutionality of the City of Cookeville Ordinance 12-210 (hereafter “Ordinance”) and of the actions of Defendant, CITY OF COOKEVILLE, TENNESSEE, (hereafter “Defendant”), in denying Plaintiffs the opportunity to exercise their constitutional rights to demonstrate on public sidewalks in the City, and pray that the Ordinance, both on its face and as applied, be declared unconstitutional under the First and Fourteenth Amendments to the United States Constitution.

2. Plaintiffs also pray for Preliminary and Permanent Injunctive Relief enjoining Defendant, the CITY OF COOKEVILLE, TENNESSEE (hereafter “City”), its agents, servants and

employees and those acting in active concert and with actual notice thereof, from applying City of Cookeville Ordinance 12-210 (hereafter “Ordinance”) against Plaintiffs, from requiring Plaintiffs to obtain a permit 21 days before demonstrating on City sidewalks, from requiring Plaintiffs to pay a \$100 fee in order to demonstrate on City sidewalks and from otherwise denying Plaintiffs the right to demonstrate on the basis of the viewpoint or content of their speech, and from acting in any other such a manner as to violate the Plaintiffs’ rights to Freedom of Speech, Peaceable Assembly, Free Exercise of Religion and Equal Protection, as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

3. Plaintiffs further pray for an award of such damages as are directly and proximately caused by the Defendant’s violations of the Plaintiffs’ rights.

4. An actual controversy exists between the parties involving substantial constitutional issues, in that the Ordinance is unconstitutional on its face and as applied, in violation of Plaintiffs’ rights to Freedom of Speech, Peaceable Assembly, Equal Protection and Free Exercise of Religion of Plaintiffs, as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

### **JURISDICTION AND VENUE**

5. This action arises under the First and Fourteenth Amendments to the United States Constitution, 42 U.S.C. §1983.

6. This Court has jurisdiction of this claim under, and by virtue of, 28 U.S.C. §§1331, 1332, 1345, and 1355.

7. Venue is proper under 28 U.S.C. §1391(b). Each and all of the acts alleged herein were done by Defendant under the color and pretense of the statutes, ordinances, regulations,

customs, and uses of the City of Cookeville, Tennessee.

8. This Court is authorized to grant Declaratory Judgment under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02 implemented through Rule 57 of the Federal Rules of Civil Procedure, and to issue the Preliminary and Permanent Injunctive Relief requested by Plaintiffs under Rule 65 of the Federal Rules of Procedure.

9. This Court is authorized to grant Plaintiffs' prayer for relief regarding costs, including a reasonable attorney's fee, under 42 U.S.C. §1988.

### **PARTIES**

10. Plaintiffs, Carl W. Hewitt and Patsy Hewitt, are and were at all times relevant herein, individuals and residents of the Elmwood, in Smith County, Tennessee.

11. Defendant, City of Cookeville, is a public body corporate and politic established, organized, and authorized under and pursuant to the laws of Tennessee, with the authority to sue and be sued, and was at all times relevant herein, operating within the course and scope of its authority and under color of state law.

### **STATEMENT OF FACTS**

12. Mr. and Mrs. Hewitt live according to their sincerely-held religious beliefs and convictions.

13. Based on these sincerely-held religious beliefs, the Hewitts share their beliefs with others.

14. One of their sincerely-held religious beliefs is their belief that abortion is murder, and thus should not be legal nor condoned by churches and people of faith.

15. The General Assembly of the Presbyterian (USA) Church has publicly stated that

abortion should not be restricted by law, and that abortion can be morally acceptable. *See* <http://www.pcusa.org/101/101-abortion.htm>. On June 21, 2002, the General Assembly also approved a statement regarding the acceptability of late-term abortions. *See* <http://www.pcusa.org/ga214/news/ga02112.htm>.

16. The Hewitts want to inform the general public and the members of the Presbyterian Church about the denomination's position on abortion.

17. In accordance with their sincerely-held religious beliefs, during several Sundays in August the Hewitts have demonstrated on the public sidewalk near the First Presbyterian Church of Cookeville, at 20 North Dixie Avenue, in Cookeville, Tennessee.

18. Mrs. Hewitt carried a sign with a Bible verse, while Mr. Hewitt carried a sign with a picture of a 11-week-old unborn baby.

19. While demonstrating, Mr. Hewitt also passed out literature about the Presbyterian Church's position on abortion.

20. The Hewitts did not have much opposition until September 1, when City police officers insisted they stop demonstrating.

21. Shortly before 10:00 a.m. on or about September 1, 2002, two Cookeville patrol cars arrived at the Presbyterian Church where the Hewitts were demonstrating.

22. Two City police officers, who were later identified as Luke Ward and Scott Winfree, insisted that the Hewitts stop demonstrating and leave unless they had obtained a permit from the City.

23. One of the officers said that someone had complained about the demonstration.

24. When Mr. Hewitt asked the officer for a copy of the City code that required a permit

to demonstrate, the officer radioed Sergeant Gooding at the police station.

25. Sergeant Gooding agreed to meet the Hewitts at the police station to give them a copy of the Ordinance.

26. When the Hewitts walked to the police station they met with to Sergeant Gooding.

27. Sergeant Gooding provided the Hewitts with a copy of Ordinance 12-210, entitled “Parades, demonstrations, competitions, or exhibitions regulated,” and dated September 1993.

28. The Ordinance states as follows:

**It shall be unlawful for any person, club, organization, or other group (applicant) to hold any meeting, parade, demonstration, competition, or exhibition (activity) on the public streets or right-of-ways before securing a permit from the city clerk at least twenty-one (21) calendar days before the activity.** No permit shall be issued by the city clerk unless such activity has been approved in writing by the Cookeville Police Department (police department). The police department may require the application to provide, at the applicant’s expense, traffic control devises such as cones, barricades, directional signs, etc.; proof of ambulatory services; proof of financial responsibility; volunteer traffic control personnel and/or off-duty police officers; sanitary facilities; or other needed material or equipment. Failure to provide any of the police department’s requirements on the day of the activity may result in the suspension of the permit by the ranking officer assigned to the activity. **The applicant shall post a deposit, either cash or surety bond, with the city clerk in the amount of \$100.00** to ensure that all refuse, litter, materials and equipment used in the activity are removed within forty-eight (48) hours after the activity. Said deposit shall be returned to the applicant when all the items have been removed to the satisfaction of the police department. (Emphasis supplied).

29. After reading the Ordinance, the Hewitts expressed concern to Sergeant Gooding that their rights under the United States Constitution were being violated by the Ordinance.

30. The Ordinance imposes a flat ban on demonstrations for at least 21 days.

31. Under the Ordinance, an applicant that is unable to pay the \$100.00 deposit must forfeit the right to demonstrate.

32. Plaintiffs are aware of other instances where demonstrators have not been required to obtain a permit.

33. On May 1, 2002, the National Day of Prayer, several demonstrators gathered at the Putnam County Courthouse in Cookeville, but no permit was required by the City.

34. In 2001, demonstrations were held on South Cedar Street in Cookeville for approximately six months, but no permit was required by the City.

35. Plaintiffs are aware of an instance approximately three years ago where demonstrations were held in Cookeville against an establishment that served alcohol. Those demonstrations involved up to approximately 250 people, but no permit was ever required by the City.

36. The Ordinance has been applied in an arbitrary and discriminatory manner.

37. The Ordinance does not provide any standards to guide the police department in deciding whether to approve a demonstration.

38. Mr. and Mrs. Hewitt fear that they will be arrested for violating the Ordinance if they demonstrate without a permit.

39. Plaintiffs desire to continue to demonstrate on the public sidewalks in the City of Cookeville in the near future.

**COUNT I - VIOLATION OF FREEDOM OF SPEECH UNDER THE FIRST  
AMENDMENT TO THE UNITED STATES CONSTITUTION**

40. Plaintiff hereby reincorporates and adopts each and every allegation in the preceding paragraphs numbered 1 through 39.

41. The First Amendment to the United States Constitution protects freedom of speech.

42. The Ordinance is unconstitutional on its face.

43. The Ordinance is unconstitutional as applied to Plaintiffs.
44. The public sidewalks of the City of Cookeville are traditional public fora.
45. Defendant violated Plaintiffs' First Amendment right to freedom of speech by prohibiting them from demonstrating without obtaining a permit 21 days in advance.
46. Defendant violated Plaintiffs' First Amendment right to freedom of speech by prohibiting them from demonstrating without posting a \$100.00 deposit to obtain a permit.
47. The Ordinance is vague.
48. The Ordinance does not define "parades, demonstrations, competitions, or exhibitions."
49. The Ordinance is overbroad.
50. The Ordinance bans a substantial amount of speech that is protected by the First Amendment.
51. The Ordinance is a content-based restriction on Plaintiffs' speech.
52. The Ordinance is a viewpoint-based restriction on Plaintiffs' speech.
53. The Ordinance is a prior restraint on Plaintiffs' speech.
54. The Ordinance requires Plaintiffs to refrain from their free speech activities for at least 21 days while applying for a permit.
55. The Ordinance is not narrowly tailored.
56. The Ordinance is not the least restrictive means to accomplish any permissible government purpose sought to be served.
57. The Ordinance does not leave open ample alternative channels of communication for Plaintiffs.

58. The Ordinance is irrational and unreasonable, and impose unjustifiable restrictions on speech.

59. The Ordinance unconstitutionally chills and abridges the right of Plaintiffs to freely speak with others.

60. The Ordinance bans more speech than necessary to achieve any conceivable governmental interest.

61. The Ordinance allows Defendant unfettered discretion to grant or deny a permit without narrow, objective and definite standards.

62. The violation of Plaintiffs' right of free speech has caused, and will continue to cause, the Plaintiffs to suffer undue and actual hardship and irreparable injury.

63. Plaintiffs have no adequate remedy at law to correct the continuing deprivations of their most cherished constitutional liberties.

64. As a direct and proximate result of the Defendant's continuing violations of the Plaintiffs' rights, the Plaintiffs have in the past and will continue to suffer in the future direct and consequential damages, including but not limited to, the loss of their ability to exercise their constitutional rights, the loss of reputation, embarrassment, and humiliation.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the declaratory and injunctive relief set forth herein and award such damages to the Plaintiffs as are reasonable, just and necessary.

**COUNT II – VIOLATION OF THE RIGHT TO PEACEABLE ASSEMBLY UNDER  
THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION**

65. Plaintiffs hereby reiterate and adopt each and every allegation in the preceding paragraphs numbered 1 – 39.

66. The First Amendment to the United States Constitution protects Plaintiffs' right to

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peaceable assembly.

67. Plaintiffs assemble to demonstrate on the public sidewalks in the City of Cookeville.

68. Defendant violated Plaintiffs' right to peaceable assembly by requiring Plaintiffs to stop demonstrating without a permit.

69. Defendant violated Plaintiffs' First Amendment right to peaceable assembly by prohibiting them from demonstrating without obtaining a permit 21 days in advance.

70. Defendant violated Plaintiffs' First Amendment right to peaceable assembly by prohibiting them from demonstrating without posting a \$100.00 deposit to obtain a permit.

71. The Ordinance is an unconstitutional abridgement of Plaintiffs' affirmative right to peaceable assembly.

72. There is no compelling government interest sufficient to justify the Ordinance.

73. The Ordinance is not the least restrictive means to accomplish any permissible government purpose sought to be served.

74. The Ordinance is not a narrowly-tailored restriction on peaceable assembly.

75. The Ordinance does not serve a significant government interest.

76. The Ordinance does not leave open ample alternative channels of communication.

77. The Ordinance is an unconstitutional prior restraint on peaceable assembly.

78. The Ordinance allows Defendant unfettered discretion to grant or deny a permit without narrow, objective and definite standards.

79. The Ordinance imposes unjustifiable and unreasonable restrictions on constitutionally protected assembly in a traditional public forum.

80. The Ordinance unconstitutionally chills and abridges the right of Plaintiffs to

peaceable assembly or to engage in group advocacy.

81. Plaintiffs have no adequate remedy at law to correct the continuing deprivation of their most cherished constitutional liberties.

82. Defendant either knew, or should have known, that the Ordinance is a blatant violation of constitutional rights.

83. As a direct and proximate result of the Defendant's continuing violations of the Plaintiffs' rights, the Plaintiffs have in the past and will continue to suffer in the future direct and consequential damages, including but not limited to, the loss of their ability to exercise their constitutional rights, the loss of reputation, embarrassment, and humiliation.

WHEREFORE, Plaintiffs respectfully pray that the Court will grant the declaratory and injunctive relief, as well as damages, set forth herein.

### **COUNT III – VIOLATION OF THE RIGHT TO EQUAL PROTECTION**

84. Plaintiffs hereby reiterate and adopt each and every allegation in the preceding paragraphs numbered 1 - 39.

85. Plaintiffs' right to equal protection under the laws is protected by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

86. The Ordinance is an unconstitutional abridgement of Plaintiffs' affirmative right to equal protection of the laws.

87. The Ordinance, as applied, is unconstitutional because it treats religious speech differently than secular and governmental speech.

88. The Ordinance is an unconstitutional abridgement of Plaintiffs' right to equal protection of the law because Defendant treats Plaintiffs differently from other similarly situated

individuals and organizations on the basis of the content, viewpoint and expression of Plaintiffs' message.

89. Defendant violated Plaintiffs' right to equal protection by prohibiting them from demonstrating without obtaining a permit 21 days in advance, while not requiring others to obtain a permit to demonstrate.

90. Defendant violated Plaintiffs' right to equal protection by prohibiting them from demonstrating without posting a \$100.00 deposit to obtain a permit, while not requiring others to obtain a permit to demonstrate.

91. The Ordinance is not supported by a compelling governmental interest sufficient to justify its enactment or enforcement against Plaintiffs.

92. The Ordinance is not the least restrictive means to accomplish any permissible government purpose sought to be served.

93. The Ordinance does not serve a significant government interest.

94. The Ordinance does not leave open ample alternative channels of communication.

95. The Ordinance is irrational and unreasonable, and imposes irrational and unjustifiable restrictions on constitutionally protected speech.

96. Defendant, in violation of the Equal Protection Clause, has caused, and will continue to cause, Plaintiffs to suffer undue and actual hardship and irreparable injury.

97. Plaintiffs have no adequate remedy at law to correct the continuing deprivations of Plaintiffs' most cherished constitutional liberties.

98. As a direct and proximate result of Defendant's continuing violations of Plaintiffs' rights, Plaintiffs have in the past and will continue to suffer in the future direct and consequential

damages, including but not limited to, the loss of the ability to exercise their constitutional rights.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the declaratory and injunctive relief set forth herein and award such damages to Plaintiffs as are reasonable, just and necessary.

**COUNT IV - VIOLATION OF THE RIGHT TO FREE EXERCISE  
OF RELIGION UNDER THE UNITED STATES CONSTITUTION**

99. Plaintiffs hereby reiterate and adopt each and every allegation in the preceding paragraphs numbered 1 - 39.

100. The Ordinance violates Plaintiffs' right to free exercise of religion, as guaranteed by the First Amendment to the United States Constitution.

101. Plaintiffs' religious beliefs are sincerely-held.

102. The Ordinance substantially burdens Plaintiffs' sincerely-held religious beliefs.

103. There is no compelling government interest sufficient to justify the Ordinance.

104. The Ordinance is not the least restrictive means to accomplish any permissible government purpose sought to be served.

105. The Ordinance is not a narrowly-tailored restriction on Plaintiffs' free exercise of religion.

106. The Ordinance allows for a system of individualized exemptions by allowing the Cookeville Police Department to use unfettered discretion in granting or denying permit applications.

107. The Ordinance, as applied, is not a neutral law of general applicability.

108. Defendant has failed or refused to accommodate Plaintiffs' sincerely-held religious beliefs.

WHEREFORE, Plaintiffs respectfully pray that the Court grant the declaratory and injunctive

relief set forth herein and award such damages to Plaintiffs as are reasonable.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment as follows:

A. That this Court immediately issue a Preliminary Injunction enjoining the City of Cookeville Ordinance 12-210, and enjoining Defendant, Defendant's agents, employees, and all persons in active concert or participation with them, from violating Plaintiffs' constitutional and statutory rights so that:

- (1) Ordinance 12-210 shall not be used to require Plaintiffs to obtain a permit to demonstrate on the public sidewalks of the City of Cookeville;
- (2) Ordinance 12-210 shall not be used in any other manner to infringe upon Plaintiffs' statutory and constitutional rights;
- (3) Defendant shall not interfere in any other manner with Plaintiffs' efforts to demonstrate on the public sidewalks of the City of Cookeville;

B. That this Court issue a Permanent Injunction to enjoin the Ordinance 12-210, and enjoining Defendant, Defendant's agents, employees, and all persons in active concert or participation with them, from violating Plaintiffs' constitutional and statutory rights so that:

- (1) Ordinance 12-210 shall not be used to require Plaintiffs to obtain a permit to demonstrate on the public sidewalks of the City of Cookeville;
- (2) Ordinance 12-210 shall not be used in any other manner to infringe upon Plaintiffs' statutory and constitutional rights;
- (3) Defendant shall not interfere in any other manner with Plaintiffs' efforts to demonstrate on the public sidewalks of the City of Cookeville;

C. That this Court render a Declaratory Judgment:

- (1) Declaring Ordinance 12-210 to be invalid under the First and Fourteenth Amendments to the United States Constitution, on its face and as applied to Plaintiffs;
- (2) Declaring that Defendant, Defendant's officers, agents, employees and other persons acting in active concert with them, unlawfully obstructed Plaintiffs from exercising Plaintiffs' constitutionally protected rights by:
  - (a) Requiring Plaintiffs to obtain a permit before demonstrating on the public sidewalks of the City of Cookeville;
  - (b) Treating Plaintiffs unequally other individuals or organizations that have been allowed to demonstrate without first obtaining a permit.

D. That this Court award to Plaintiffs such damages as are reasonable and just under the circumstances as a direct and proximate result of the Defendant's violations of Plaintiffs' constitutional and statutory rights.

E. That this Court adjudge, decree, and declare the rights and other legal relations with the subject matter here in controversy, in order that such declaration shall have the force and effect of final judgment.

F. That this Court retain jurisdiction of this matter for the purpose of enforcing this Court's order.

G. That this Court award Plaintiffs the reasonable costs and expenses of this action, including attorney's fees, in accordance with 42 U.S.C. §1988.

H. That this Court grant such other and further relief as this Court deems equitable and just under the circumstances.

All the above statements are true to the best of my knowledge. I understand that a false statement in this Verified Complaint may subject me to penalties of perjury.

\_\_\_\_\_  
Patsy Hewitt, Plaintiff

\_\_\_\_\_  
Carl W. Hewitt, Plaintiff

STATE OF TENNESSEE  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2002, by Carl W. Hewitt and Patsy Hewitt who are personally known to me or who have produced identification and who took an oath/affirmed.

\_\_\_\_\_  
Notary Public  
My Commission expires:

Dated this 6<sup>th</sup> day of January, 2003.

Respectfully Submitted,

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