

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

MAYOR LEE HARRIS, et al.,
Plaintiffs,

v.

No. 25-1461-I

GOVERNOR BILL LEE, in his official capacity,
et al.,
Defendants.

**BRIEF OF *AMICI CURIAE* AMERICAN CIVIL LIBERTIES UNION OF TENNESSEE
AND LOCAL MEMPHIS COMMUNITY ORGANIZATIONS IN SUPPORT OF
PLAINTIFFS' MOTION FOR TEMPORARY INJUNCTION**

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INTERESTS OF AMICI CURIAE

Amici Curiae are the American Civil Liberties Union of Tennessee (ACLU-TN) and Memphis-based community organizations (listed in Appendix A) with deep roots in protecting the civil rights, political participation, and constitutional freedoms of Memphis residents. ACLU-TN is a statewide, nonprofit, nonpartisan organization dedicated to protecting the principles embodied in the Tennessee and federal constitutions and civil rights laws. Collectively, *amici* serve and represent the very communities whose civil and political rights are threatened by the pretextual military deployment to Memphis. Their work provides them with firsthand knowledge of how the military presence chills political organizing, suppresses voter participation, intimidates immigrant communities, and creates a climate of fear that undermines democratic participation. *Amici* bring a unique perspective to illuminate the constitutional limits on the Tennessee governor's power to deploy state military forces for civilian law enforcement. Drawing on historical materials and their direct experience with affected communities, *amici* provide supplemental authority, argument, and explanation concerning the concrete harms the National Guard deployment inflicts on Memphis residents. *Amici* share a common interest in ensuring the deployment is enjoined and urge the Court to grant the relief Plaintiffs request. The parties have consented to the filing of this brief.¹

¹ No party's counsel authored this brief in whole or in part. No monetary contribution intended to fund the preparation or submission of this brief was made by any party, any party's counsel, or anybody other than amicus or its counsel.

INTRODUCTION

*The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. ... He has affected to render the Military independent of and superior to the Civil power.*²

Americans have long viewed military occupation of their cities as an existential threat to freedom and self-governance. From the nation's founding, resistance to military involvement in civilian law enforcement has been a defining feature of American constitutional tradition. *Laird v. Tatum*, 408 U.S. 1, 15-16 (1972). Because of their personal experience as colonists,³ the Framers understood a military force is “dangerous to liberty if not confined within its essential bounds.” *Reid v. Covert*, 354 U.S. 1, 23–24 (1957). “Our tradition reflects a desire for civilian supremacy and subordination of military power,” a principle rooted in the Declaration of Independence itself. *Laird*, 408 U.S. at 18 (Douglas, J., dissenting). Tennessee has embodied this commitment since statehood, building these principles into the very foundation of its Constitution. *See Aymette v. State*, 21 Tenn. 154, 156-58 (Tenn. 1840) (tracing history of English military abuses that informed both the United States Bill of Rights and the Tennessee Constitution).

Yet today, Governor Bill Lee asserts unilateral authority to deploy the Tennessee National Guard against Memphians for a civil law enforcement mission “that will last forever”—a flagrant

² The Declaration of Independence paras. 2, 14 (U.S. 1776).

³ Samuel Adams was one of many colonists who protested English military occupation:

No man can pretend to say that the *peace* and *good order* of the community is so secure with soldiers quartered in *the body of a city* as without them. Besides, where *military power* is introduced, *military maxims* are propagated and adopted, which are inconsistent with and must soon eradicate every idea of *civil government*.

Samuel Adams, Boston Gazette (Oct. 17, 1768), available at <https://perma.cc/T46W-CQMS> html (emphasis original).

violation of Tennessee's foundational principles prohibiting military intervention in civilian affairs.⁴ *Amici* respectfully request that the Court grant Plaintiffs' motion for a temporary injunction to stop the ongoing violations of Memphians' rights. American and Tennessee history, tradition, and laws strictly limit the Governor's authority to deploy the military to police civilians.

Upholding these checks is particularly vital in Memphis, a city that has endured centuries of systemic racism and the legacies of the early republic's gravest injustices. From its role in the slave trade⁵ to the massacres of Reconstruction⁶ and violence of Jim Crow,⁷ from the assassination of Dr. Martin Luther King Jr.⁸ to the ongoing struggles for equal justice,⁹ Memphis has repeatedly witnessed the harm that flows from governmental power wielded without adequate restraint. The constitutional and historical boundaries on military policing exist precisely to protect communities like Memphis from the unchecked exercise of state power.

⁴ See Sam Stockard, *Tennessee governor predicts lengthy Memphis crime fight*, Tennessee Lookout (Oct. 15, 2025), <https://tennesseelookout.com/2025/10/15/tennessee-governor-predicts-lengthy-memphis-crime-fight/>; and see Restoring Law and Order in Memphis, The White House (Sept. 15, 2025), available at <https://www.whitehouse.gov/presidential-actions/2025/09/restoring-law-and-order-in-memphis/>.

⁵ Sarah W. Eiland, *The Unspoken Demands of Slavery: The Exploitation of Female Slaves in the Memphis Slave Trade*, 10 Gettysburg Coll. J. Civ. War Era art. 6 (2020), available at <https://cupola.gettysburg.edu/gcjwcw/vol10/iss1/6>.

⁶ Frederick T. Wilson, Federal Aid in Domestic Disturbances: 1787-1903, S. Doc. No. 57-209, at 109-11 (2d Sess. 1903), available at https://librarycollections.law.umn.edu/documents/darrow/Federal_Aid_Domestic_Disturbances_1787_1903.pdf.

⁷ Elizabeth Gritter, *Black Politics in the Age of Jim Crow: Memphis, Tennessee, 1865 to 1954*, Univ. of N.C. at Chapel Hill (2010), available at <https://doi.org/10.17615/hkjh-6r11>.

⁸ Memphis Sanitation Workers' Strike, The Martin Luther King, Jr. Rsch. & Educ. Inst., <https://kinginstitute.stanford.edu/encyclopedia/memphis-sanitation-workers-strike>.

⁹ Daja E. Henry, *Long Burdened by Environmental Racism, Activists in Memphis Are Turning the Tide*, The 19th (Feb. 23, 2023), <https://19thnews.org/2023/02/memphis-activists-environmental-racism/>.

ARGUMENT

I. TENNESSEE HISTORY, TRADITION, AND LAW STRICTLY LIMIT THE GOVERNOR'S AUTHORITY TO DEPLOY THE MILITARY AGAINST CIVILIANS

Tennessee's original 1796 Constitution—praised by Thomas Jefferson as "the least imperfect and most republican of the state constitutions"¹⁰—included explicit safeguards against military overreach. It declared that "standing Armies in time of peace are dangerous to freedom" and commanded that "in all cases the military shall be in strict Subordination to the civil authority." Tenn. Const. art. XI, § 24 (1796). The 1870 Constitution, still governing today, strengthened these restrictions further, limiting the governor's power to deploy state military forces in civilian law enforcement: "But the militia¹¹ shall not be called into service except in case of rebellion or invasion, and then only when the General Assembly shall declare, by law, that the public safety requires it." Tenn. Const. art. III, § 5 (1870).

Tennessee courts have consistently enforced these constitutional limits. In 1885, when the General Assembly authorized the governor to "call out the [military] force to suppress riots, insurrections, mobs or breaches of the peace," the Tennessee Supreme Court struck down the statute as unconstitutional, holding that it was "in conflict with section five of article three of the [Tennessee] Constitution." *Green v. State*, 83 Tenn. 708, 709-10 (Tenn. 1885). More than fifty years later, when the General Assembly again attempted to expand the governor's discretion to deploy the National Guard for law enforcement purposes, a federal court invalidated the law as a

¹⁰ J.G.M. Ramsey, *The Annals of Tennessee to the End of the Eighteenth Century*, 657 (1853).

¹¹ Today's state militia is the National Guard when in state service. *Perpich v. Dep't of Def.*, 496 U.S. 334, 347 (1990); 32 U.S.C.A. § 101(4) and (6) (defining "Army National Guard" and "Air National Guard" as "part of the organized militia of the several States...").

violation of the Tennessee Constitution. *Joyner v. Browning*, 30 F. Supp. 512, 515 (W.D. Tenn. 1939).

II. A SIMILAR TENNESSEE PRETEXTUAL NATIONAL GUARD DEPLOYMENT IN MEMPHIS WAS ENJOINED NEARLY A CENTURY AGO

Joyner v. Browning provides a stark illustration from Memphis history of the dangers the constitutional framers foresaw—when "[t]he military state becomes elevated above the civil" and "degrades the condition of the citizen" by "destroy[ing] their civil and political rights." See The Federalist No. 8 (Alexander Hamilton). On August 4, 1938, Governor Gordon Browning attempted to deploy the Tennessee National Guard to Shelby County as part of a coordinated campaign to disenfranchise Black voters and women through state-sanctioned intimidation and violence.

The governor sought to weaponize Jim Crow's apparatus of racial terror by deliberately manufacturing a pretext to "create disorder in Shelby County" and thereby "justify himself in sending troops in the County," where armed military forces would suppress Black political participation through threats of force. *Joyner*, 30 F. Supp. at 514. This deployment specifically targeted Black people and women exercising their constitutional right to vote, subjecting them to military occupation and the very real danger of violence inherent in Jim Crow enforcement.

Recognizing this manufactured emergency for what it was, the court enjoined the deployment. It found that the governor "knew that there was no state of public disorder in Shelby County," that "neither the Sheriff nor any civil authority had requested the use of military officers," that "the peace officers of the County were adequate for any police duty which might arise," and that "the Legislature had not authorized the calling out of armed forces nor declared that any condition of rebellion or invasion was threatened." *Id.* These actions were "plainly void under the state constitution." *Id.* at 517. The decision establishes a critical principle: credible evidence of civil disorder and a complete breakdown of local law enforcement is essential to distinguish

legitimate justifications for military intervention from manufactured ones. Without such evidence, the Tennessee Constitution operates as a bulwark against executive overreach—precisely the protection that saved Shelby County from military occupation in 1938.

III. THE SAME THREATS TO THE CIVIL AND POLITICAL RIGHTS OF MEMPHIANS THAT REQUIRED INJUNCTIVE RELIEF IN 1938 ARE PRESENT TODAY

Nearly nine decades later, Memphis again faces military occupation of its civilian spaces. The current National Guard deployment continues a troubling historical pattern of using military force to control and intimidate predominantly Black communities in Memphis. As in 1938, this action occurs without genuine civil disorder requiring military intervention,¹² without request from local civil authorities,¹³ and without legislative authorization declaring any rebellion or invasion. The harms remain tragically similar: military presence in civilian life creates an atmosphere of intimidation and surveillance that disproportionately burdens communities of color, chills the exercise of constitutional rights, and subordinates local democratic governance to external military authority.

The constitutional infirmities that rendered Governor Browning's actions void—the elevation of military power above civilian authority and the degradation of Memphians' civil and political rights—are equally present today. Memphis history demonstrates that when the National Guard is deployed without genuine emergency and against the will of local authorities, it serves not to protect the community but to control it, perpetuating the same patterns of racialized state violence that *Joyner* condemned.

¹² *Memphis Crime Drops to Historic 25-Year Low Across Major Categories*, Memphis Police Department (Sept. 9, 2025), <https://www.memphispolice.org/news/memphis-crime-drops-to-historic-25-year-low-across-major-categories/>.

¹³ Ana Faguy and Sakshi Venkatraman, *Memphis mayor 'not happy' about Trump's plan to send National Guard*, *BBC* (Sept. 13, 2025), <https://www.bbc.com/news/articles/c9v7ydn7dv1o>.

The Framers who declared independence from military occupation and drafted Tennessee's Constitution understood a truth borne of hard experience: unchecked military power inevitably becomes an instrument of oppression. They embedded protections against that danger not as mere procedural technicalities, but as essential safeguards of human liberty—protections against the exact scenario unfolding in Memphis today. When a governor deploys military forces against his own people without legislative authorization, without genuine emergency, and against the will of local democratic institutions, he does not restore order—he undermines the very foundation of self-governance that distinguishes a free republic from a police state. The people of Memphis deserve better than to be reduced to subjects of indefinite military occupation in their own city. This Court has the power, and the duty, to restore the constitutional boundaries that separate military force from civilian life—boundaries that stand between Memphians' freedom and the "absolute Tyranny" our founders fought to prevent.

CONCLUSION

Amici respectfully urge the Court to grant the Plaintiffs' Motion for Temporary Injunction and conclude that the Defendants' deployment of the Tennessee National Guard to police Memphians without a genuine civil disorder requiring military intervention, without request from local civil authorities, and without legislative authorization declaring any rebellion or invasion likely violates the Tennessee Constitution and Tennessee law.

Dated: October 30, 2025

Respectfully submitted,

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APPENDIX A

Advocates for Immigrant Rights

American Muslim Advisory Council

The Equity Alliance

The Free The 901 Campaign

Just City

Memphis for All

Memphis Interfaith Coalition for Action and Hope

OUTMemphis

Stand for Children Tennessee

Tennessee Immigrant and Refugee Rights Coalition

Transformative Justice Initiative, University of Memphis School of Law