

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION



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ROBERT EUGENE CRAIN, ET AL.,

Plaintiffs,

VS.

No. 90-2292-TUB

CITY OF MEMPHIS, ET AL.,

Defendants.

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AMERICAN CIVIL LIBERTIES  
UNION OF TENNESSEE, ET AL.,

Plaintiffs,

VS.

No. 90-2315-TUB

RICHARD C. HACKETT, ET AL.,

Defendants.

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ISSUES PRESENTED BY PLAINTIFFS

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COME NOW the Plaintiffs in both of the above-captioned lawsuits pursuant to the Order of this Court and jointly submit the following Legal Issues:

1. Does Ordinance No. 3957 to Amend Chapter 20 Code of Ordinances, City of Memphis, to Establish a New Division 4 under Article IV, Concerning Performances Harmful to Minor, violate on its face the:

- (a) First Amendment to the Constitution of the United States,
- (b) Ninth and Fourteenth Amendments to the Constitution of the United States,
- (c) 42 U.S.C. §1983,
- (d) Sections 1, 3 or 19 of Article I of the Constitution of the State of Tennessee,

because the Ordinance:

- (1) is unconstitutionally over broad and encompassing, severely inhibiting and effectively precluding minors' access to communicative material which is constitutionally protected;
- (2) is unconstitutionally so vague and indefinite that the likelihood of selective enforcement in a discriminatory manner will chill, restrain or inhibit expression protected by the Constitutions of the United States and of Tennessee;
- (3) exceeds the legitimate legislative scope of the City of Memphis and infringes upon protected rights.

2. Whether Ordinance No. 3957 imposes intended restrictions on the availability of constitutionally protected, non-obscene live performances unconstitutionally precluding plaintiffs and other adults and minors access to performances protected by the federal and state Constitutions.

3. Whether §20-125(1) of Ordinance No. 3957 is unconstitutionally vague and over broad by adding terms such as "excess violence" which could be applied to professional wrestling,

plays or operas with violent themes, and virtually any musical concert with violent themes resulting in a chilling effect on the accessibility of live performances in Memphis.

4. Whether Ordinance No. 3957, on its face, creates the opportunity for arbitrary, capricious and discriminatory enforcement in violation of the due process and equal protection provisions of the United States Constitution.

5. Whether Ordinance No. 3957 improperly interferes with parental rights to rear children.

6. Whether §20-128 of Ordinance No. 3957 violates the Fourteenth Amendment's guarantee against the deprivation of liberty without due process in subjecting minors to Juvenile Court proceedings for attempting to purchase a ticket prior to the actual live performance where:

- (a) one basis for the Ordinance is that minors are incapable of making choices given their age and maturity;
- (b) there are no standards available to guide minors in this decision;
- (c) Juvenile Court adjudication has serious, traumatic and permanent effects on the social and professional lives of minors;
- (d) parental consent does not serve as a defense, and such guidance cannot therefore be relied on by the minor.

7. Whether Ordinance No. 3957 is unconstitutionally over broad in deleting the conjunctive "and" between subsections (A) and (B) of §20-125(2); resulting in its application to live performances involving conduct which is merely "shameful".

8. Whether Ordinance No. 3957 exceeds the authority and grant of legislative power to the Memphis City Council, albeit to adopt more stringent controls on communicative materials available to minors in contravention of the First and Fourteenth Amendments to the Constitution of the United States.

9. Whether Ordinance No. 3957 violates the Fourteenth Amendment in failing to provide reasonable notice of what conduct or activity is proscribed.

10. Whether Ordinance No. 3957 is the least restrictive means available to accomplish the expressed goals of the City in controlling the "dissemination of pornography" to minors.

11. Whether the Memphis City Council is sufficiently justified in enacting Ordinance No. 3957 to regulate limitations on First Amendment freedoms under the four-prong O'Brien test; (1) is it within the constitutional power of the government, (2) does it further an important or substantial governmental interest, (3) is the governmental interest unrelated to the suppression of free expression, and (4) is the incidental restriction on alleged First Amendment freedoms no greater than is essential to the furtherance of that interest.

12. Whether Ordinance No. 3957 is unconstitutionally over broad in adding the term "excess violence" to the definition of "harmful to minors" when the Tennessee Supreme Court has expressly stated that any state definition of "prurient interest" at variance with or broader than the language of Roth v. United States, 354 US 476, 77 S.Ct. 1304, 1 L.Ed.2d 1498 (1957) or Miller v. California, 413 US 15, 93 S.Ct. 2607, 37 L.Ed.2d 419 (1973) is constitutionally infirm.

13. Whether Ordinance No. 3957 is unconstitutionally over broad in using the term "excess violence" where, under any constitutional test for obscenity, even as to minors, expression must be, in some significant way, erotic.

14. Whether Ordinance No. 3957 is unconstitutionally over broad in that it restricts access of mature juveniles to live performances that may not be harmful to all minors of all ages.

15. Whether Ordinance No. 3957 overly restricts protected speech that is neither obscene as to youths nor subject to some other legitimate proscription, but is suppressed solely to inhibit and discourage the young from ideas and taboos that a legislative body thinks unsuitable for them.

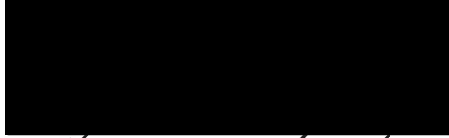
17. Whether Ordinance No. 3957 is "readily susceptible" to a narrowing construction that would make it constitutional?

THERE ARE NO FACTUAL ISSUES.

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF TENNESSEE

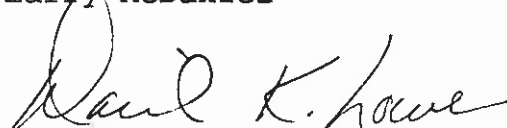
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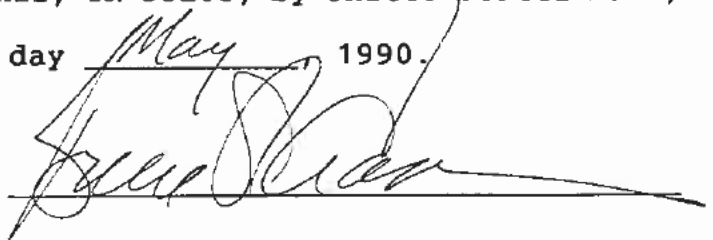
  
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Attorneys for Robert Eugene Crain  
and Glenda Destefanis

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon E. Brady Bartusch, Esq., City Attorney, 125 North Mid-America Mall, Suite #314, Memphis, TN 38103, by United States Mail, postage prepaid, this 31 day May, 1990.



A handwritten signature in cursive script, appearing to read "E. Brady Bartusch", is written over a horizontal line.

