



22-39.<sup>1</sup> Next, the Seventh Circuit held that the likelihood of success factor in this case “raises only a legal question” (*id.* at 11); that the application of the Act to the ACLU Program is not narrowly tailored to privacy (*id.* at 3, 46, 48, 50, 52) or public safety (*id.* at 49); that the application of the Act to the ACLU Program “very likely” fails mid-level scrutiny (*id.* at 3, 45); and that the ACLU has a “strong likelihood” of success on the merits of its First Amendment claims (*id.* at 52). Finally, the Seventh Circuit remanded with instructions to allow plaintiff’s amended complaint, and to enter a preliminary injunction. *Id.* at 52.

3. Plaintiff now is entitled to:

- (a) summary judgment in its favor;
- (b) a declaratory judgment under Rule 57 of the Federal Rules of Civil

Procedure that the application of the Act to the ACLU Program violates the First Amendment;  
and

- (c) a permanent injunction under Rule 65(d) of the Federal Rules of Civil

Procedure that enjoins defendant Anita Alvarez from prosecuting the ACLU and its employees and agents under the Act for audio recording on-duty police pursuant to the ACLU Program.

4. There is no genuine dispute as to any material fact, and plaintiffs are entitled to judgment as a matter of law.

5. In support of this motion, plaintiffs submit a legal memorandum, and a statement of material facts (including a supporting declaration and other materials).

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<sup>1</sup> The current Westlaw version of the Seventh Circuit’s opinion does not contain page citations. See *ACLU of Illinois v. Alvarez*, 679 F.3d 583 (7th Cir. 2012). Accordingly, this motion cites to the Seventh Circuit’s slip opinion. See Dkt. No. 54 (the certified copy of that opinion transmitted from the Seventh Circuit to this Court).

WHEREFORE, plaintiff respectfully requests that this Court (a) award summary judgment for plaintiff, (b) enter a declaratory judgment that the application of the Act to the ACLU Program violates the First Amendment, and (c) permanently enjoin Alvarez from prosecuting the ACLU and its employees and agents under the Act for audio recording on-duty police pursuant to the ACLU Program.

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Respectfully submitted:

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