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

ELAINE BLANCHARD, KEEDRAN FRANKLIN, PAUL GARNER, and BRADLEY WATKINS, Plaintiffs (dismissed), and ACLU OF TENNESSEE, INC., Intervening Plaintiff, v. CITY OF MEMPHIS, TENNESSEE, Defendant.	)	Case No. 2:17-cv-2120-JPM-egb

ORDER DENYING THE CITY'S MOTION FOR SUMMARY JUDGMENT ON THE ISSUE OF STANDING

Before the Court is the Motion for Summary Judgment on the Issue of Standing filed by Defendant City of Memphis, Tennessee (the "City") on June 18, 2018. (ECF No. 80.) For the reasons discussed below, the record reflects a genuine dispute as to (1) whether Intervening Plaintiff ACLU of Tennessee, Inc. (the "ACLU-TN") is an original party to the Consent Decree, and if it is not, (2) whether it is the successor in interest to an original party to the Consent Decree. If the ACLU-TN is either an original party to the Consent Decree or the successor in interest to an original party, the ACLU-TN has standing to enforce the Consent Decree. Accordingly, the City's Motion for Summary Judgment on the Issue of Standing is DENIED.

I. BACKGROUND

A. The Kendrick Complaint

On September 14, 1976, a group of plaintiffs filed a legal action in this Court (the "Kendrick Action") alleging that they were the subjects of unlawful surveillance by the City's "Domestic Intelligence Unit." (Complaint in the Kendrick Action ("Kendrick Complaint"), ECF No. 33-1 at 381.[1]) See also Kendrick, et al. v. Chandler, et al., No. 2:76-cv-00449 (W.D. Tenn. 1978). The style of the Kendrick Complaint listed "Chan Kendrick, Mike Honey, John Doe, and the American Civil Liberties Union in West Tennessee, Inc." as plaintiffs. (Kendrick Complaint at 381.)

In a section titled "PARTIES," the Kendrick Complaint explained the nature of the parties and their relevance to the Kendrick Action. (See Kendrick Complaint at 381-82.) The Kendrick Complaint described Chan Kendrick as "the Executive Director of the American Civil Liberties Union of Tennessee, Inc." (Id. at 382.) The Kendrick Complaint described Mike Honey as the "Southern Director of the National Committee Against Repressive Legislation (NCARL)." (Id. at 382.) The Kendrick Complaint described the next plaintiff as follows:

> The American Civil Liberties Union of West Tennessee, Inc. ("WTCLU") is a Chapter of the American Civil Liberties Union of Tennessee, Inc., which is an affiliate of the American Civil Liberties Union . . . . The West Tennessee Chapter is comprised of approximately five hundred members residing in the Western District of Tennessee, each of whom is dedicated to and involved in activities and conduct protected by the First, Fourth, Fifth, Sixth, Ninth, and Fourteenth Amendments to the Constitution of the United States, and the corporate entity itself is dedicated to and involved in such constitutionally protected activities. The WTCLU, and its members intend to continue such activities in the future. On information and belief, the WTCLU alleges that it has been the subject of unlawful surveillance by the Memphis Police Department . . . .

[1] All citations to page numbers in docket entries are to the CM/ECF PageID number.

(Id. at 382-83.) Finally, the Kendrick Complaint described John Doe as a citizen "whose true name and identity is unknown" and who "represents all those persons and/or organizations who were engaged in conduct and activities protected by the First, Fourth, Fifth, Sixth, Ninth, and Fourteenth Amendments to the Constitution of the United States." (Id. at 383.)

In a section titled "CLASS ACTION," the Kendrick Complaint attempted to bring suit "on behalf of the individual plaintiffs and on behalf of all persons similarly situated . . . ." (Kendrick Complaint at 384.) The proposed class consisted of "all individuals and organizations who have engaged in constitutionally protected activity and conduct, and who have been subjects of investigation by the Domestic Intelligence Unit of the Memphis Police Department." (Id.)

B. The Consent Decree

On September 14, 1978, pursuant to a settlement agreement between the City and certain parties in the Kendrick Action, this Court entered a consent Order, Judgment and Decree (the "Consent Decree") in the Kendrick Action. (See Consent Decree, ECF No. 9-1; Resp. to the City's Statement of Undisputed Facts ("Resp. Facts"), ECF No. 90-1 ¶ 9.) The Consent Decree prohibited the City from engaging in "political intelligence," defined as "the gathering, indexing, filing, maintenance, storage or dissemination of information, or any other investigative activity, relating to any person's beliefs, opinions, associations or other exercise of First Amendment Rights." (Consent Decree at 49-50.) The Consent Decree also prohibited the City from "engag[ing] in any action for the purpose of, or reasonably having the effect of, deterring any person from exercising First Amendment rights." (Id. at 50-51.)

In its preamble, the Consent Decree listed "Chan Kendrick, Mike Honey, and the American Civil Liberties Union in West Tennessee, Inc." as plaintiffs. (Consent Decree at 48.)

The Consent Decree did not mention John Doe, the American Civil Liberties Union of Tennessee, Inc., the National Committee Against Repressive Legislation, or any class of plaintiffs. (See id.; Resp. Facts ¶¶ 10-12, 15.) The Consent Decree was approved for entry by Arthur J. Shea, Deputy City Attorney ("Attorney for Defendants") as well as Jack D. Novik, American Civil Liberties Union Foundation; Bruce S. Kramer, American Civil Liberties Union in West Tennessee, Inc.; and Alex Hurder ("Attorneys for Plaintiffs"). (Consent Decree at 54.)

C. This Action

On February 22, 2017, Plaintiffs Elaine Blanchard, Keedran Franklin, Paul Garner, and Bradley Watkins (collectively, the "Blanchard Plaintiffs") brought this action to enforce the Consent Decree against the City. (ECF No. 1.) The Blanchard Plaintiffs alleged that the City violated the Consent Decree in a number of ways, including (1) by creating "black lists" of citizens who had to be escorted by police when visiting City Hall, and (2) by using a software program called "Geofeedia" to surveil citizens' social media postings. (Id. ¶¶ 14, 17.)

On March 1, 2017, the City filed a Motion to Dismiss the Blanchard Plaintiffs' Complaint, arguing that the Blanchard Plaintiffs lacked standing to enforce the Consent Decree because they were not parties to it. (ECF No. 8.) On March 3, 2017, the ACLU-TN intervened in this action as a plaintiff. (ECF No. 16.) Like the Blanchard Plaintiffs, the ACLU-TN alleged that the City violated the Consent Decree by creating City Hall police escort lists and using social media surveillance software. (See ECF No. 16 at 225-26.) The ACLU-TN further alleged that it was an original party to the Consent Decree "through its then active West Tennessee chapter." (ECF No. 16 ¶ 8.)

On March 8, 2017, the City filed a Motion to Dismiss the ACLU-TN's Complaint, arguing that the ACLU-TN, like the Blanchard Plaintiffs, was not a party to the Consent Decree. (ECF No. 22.) Specifically, the City argued that the actual plaintiff in the Kendrick Action was the West Tennessee Civil Liberties Union, Inc. (the "WTCLU") and that the "WTCLU and ACLU-TN were two separate, distinct legal entities at the time of the Kendrick action in 1976, and they remained separate entities until the WTCLU was ultimately dissolved in 1983." (ECF No. 22-1 at 290.) On June 6, 2017, the City supplemented its Motion to Dismiss with a collection of documents that the City contended "provide further circumstantial evidence for the proposition" that "the intervening plaintiff, ACLU of Tennessee, Inc., is a separate and distinct entity from the corporate entity which was the plaintiff in the *Kendrick* litigation - The West Tennessee Civil Liberties Union, Inc. (WTCLU)." (ECF No. 36 at 473.)

On June 30, 2017, the Court dismissed the Blanchard Plaintiffs from this action after determining that they lacked standing to enforce the Consent Decree as non-parties to it. (ECF No. 41.) The Court determined that the ACLU-TN had standing to enforce the Consent Decree, however, because the "ACLU-TN's close relationship with WTCLU indicates that ACLU-TN is a successor in interest to WTCLU, and was thus a party in privity to the Decree." (Id. at 522.) In other words, the Court found that the ACLU-TN could enforce the Consent Decree even if the City was correct that the WTCLU was the original party to the Consent Decree. (See id.)

On June 18, 2018, the City filed the instant Motion for Summary Judgment on the Issue of Standing. (ECF No. 80.) On July 9, 2018, the ACLU-TN filed a Response. (ECF No. 90.) On July 16, 2018, the City filed a Reply to the ACLU-TN's Response. (ECF No. 100.)

D. Undisputed Timeline of Events

Having reviewed the parties' filings and the entire record in this case, the Court finds that the following timeline of events is undisputed:

1. On **May 23, 1966**, the East Tennessee Civil Liberties Union, Inc. was incorporated in Tennessee. (ECF No. 33-5 at 410; Resp. to the ACLU-TN's Statement of Facts ("Reply Facts"), ECF No. 100-1 ¶ 2.)

2. On **October 13, 1966**, the Middle Tennessee Civil Liberties Union, Inc. was incorporated in Tennessee. (ECF No. 33-5 at 411; Reply Facts ¶ 2.)

3. On **April 18, 1967**, the WTCLU was incorporated in Tennessee. (ECF No. 33-6; Resp. Facts ¶ 17; Reply Facts ¶ 2.) According to its Charter of Incorporation, the WTCLU's purpose would be "to further the objectives of the American Civil Liberties Union and to advance the cause of civil liberties in the State of Tennessee." (WTCLU Charter, ECF No. 33-6 at 413; Resp. Facts ¶ 17.) The WTCLU's Charter also provided that the WTCLU's "general powers" would include the power "[t]o sue and be sued by the corporate name." (Id.)

4. On **September 18, 1968**, the ACLU-TN was incorporated in Tennessee. (Resp. Facts ¶ 18.) According to its Charter of Incorporation, the ACLU-TN was formed for several purposes, including (1) "consolidating the affairs and activities of the previously existing East Tennessee Civil Liberties Union, Inc. and Middle Tennessee Civil Liberties Union, Inc. and continuing the operations of said co[r]porations," and (2) "[t]o also absorb at a future time, if agreed to by the membership and/or Board of Directors of both corporations, to assume and continue the operations of the [WTCLU], a Tennessee corporation." (ACLU-TN Charter, ECF

No. 33-4 at 405; Resp. Facts ¶ 19.) According to its original By-Laws,[2] "Local Chapters [could] be established as branches subordinate to the [ACLU-TN]" but the "By-laws for any Chapter [would] not go into effect until they [had] been approved by the Board of Directors of the [ACLU-TN]." (ACLU-TN By-Laws, ECF No. 33-7 at 421.)

5. On **December 11, 1971**, the ACLU-TN's Board of Directors held a meeting at which they discussed the formation of a new "Upper East Tennessee Chapter," stating that the "bylaws of this group have been adopted and approved." (See ECF No. 90-3; Reply Facts ¶ 19.)

6. On **October 4, 1975**, the ACLU-TN held a Board of Directors' meeting at which members from the following six chapters/offices/locations were listed as present: "West Tennessee Chapter," "Middle Tennessee Chapter," "Franklin County," "Chattanooga," "Knoxville," and "Oak Ridge Area." (See ECF No. 33-9; Reply Facts ¶ 10 ("The evidence submitted by Intervening Plaintiff only proves that six chapters were present at the Meeting of October 4, 1975.").)

7. On **September 14, 1976**, the "American Civil Liberties Union [in/of] West Tennessee, Inc." and other plaintiffs filed the Kendrick Action. (See Kendrick Complaint at 381-82; Resp. Facts ¶¶ 1, 3.)

8. On **September 14, 1978**, this Court entered the Consent Decree, naming the "American Civil Liberties Union in West Tennessee, Inc." as one of the parties to the Decree. (See Consent Decree at 48; Resp. Facts ¶ 9.)

[2] In 1973, the ACLU-TN adopted another set of By-Laws that similarly provided: "By-laws for any Chapter shall not go into effect until they have been approved by the Board of Directors of the [ACLU TN]." (ECF No. 33-8 at 426.)

9. On **January 15, 1979**, the "Board of Directors of the West Tennessee Chapter of the American Civil Liberties Union" held a meeting at which several individuals, including Bruce Kramer, were listed as present. (Minutes of January 15, 1979 Meeting, ECF No. 80-8.) The ACLU-TN's Privilege Log states that a redacted section of the Board Minutes involves a "discussion regarding potential violation [of the] Kendrick Consent Decree." (See ACLU-TN Privilege Log, ECF No. 80-9 at 1245, Bates No. 146.)

10. On **January 10, 1983**, the "West Tennessee Chapter" of the ACLU-TN held a Board Meeting at which several individuals, including Bruce Kramer, were listed as present. (ECF No. 80-5.) The Minutes from the Board Meeting state that "Kathy [Hearne] reported that West Tennessee fundraising in 1982, although not a loss, was insufficient to adequately support the Chapter. The Memphis office depends on raising enough money to support it." (Id.; Resp. Facts ¶ 22.)

11. On **March 17, 1983**, both the WTCLU and the ACLU-TN had their incorporated statuses revoked, apparently for failure to file reports with the Tennessee Department of Revenue. (See ECF No. 33-6 at 418; ECF No. 22-3 at 301; see also Resp. Facts ¶ 27.)

12. On **December 11, 1987**, the ACLU-TN's "Memphis field office" was closed because the ACLU-TN's budget was "not able to support two offices." (ECF No. 80-13; Resp. Facts ¶ 28.)

13. On **February 1, 1988**, the ACLU-TN sent a letter to "Members and Friends" urging them to attend a meeting on February 11, 1988. (ECF No. 80-14; Resp. Facts ¶ 29.) That letter stated that "[t]he West Tennessee Chapter [was] at a crossroad" and that the "chapter board of directors [was] in a state of reorganization and revitalization." (Id.)

14. On an undetermined date, the ACLU-TN sent a letter to the "West Tennessee Chapter Board of Directors and Other Interested ACLU Members" inviting them to attend a meeting on June 2, 1988. (ECF No. 18-15; Resp. Facts ¶ 29.) That letter stated that "[e]xciting plans [were] underway to revitalize the West Tennessee Chapter." (Id.)

15. On **June 2, 1988**, the ACLU-TN held a meeting at which several individuals, including Bruce Kramer, were present. (ECF No. 80-16.) The meeting Memorandum stated that "[a] successful annual meeting [would be] the first step in the re-organization and revitalization of the West Tennessee Chapter." (Id.; Resp. Facts ¶ 29.)

16. On **March 14, 1991**, the ACLU-TN held a "West Chapter Reorganization Meeting." (ECF No. 80-18; Resp. Facts ¶ 30.) The Agenda for the meeting included a "Description of National/State/Chapter Relationships." (Id.)

17. From **July 1994** to **March 1995**, Hedy Weinberg, Sheri Lipman,[3] and other individuals made several attempts to "revitalize the Memphis chapter," but their efforts were unsuccessful. (Resp. Facts ¶¶ 31, 32; see also ECF Nos. 80-19, 80-20, 80-21, 80-22, 80-23, 80-24, 80-25.)

18. On **May 1, 1996**, now-Judge Lipman sent a memorandum regarding the "ACLU Revitalization in Memphis" to various "Interested Constitutionalists." (ECF No. 80-26.) The memorandum stated: "The ACLU has come back to town! We now have a core group of people who are meeting and reforming the Memphis chapter." (Id.) The parties do not dispute that "[i]n May 1996, a West Tennessee Chapter was re-formed." (Resp. Facts ¶ 33.)

[3] The Honorable Sheri Lipman is now a United States District Judge of this Court.

19. On **May 13, 1998**, the ACLU-TN had its revocation "cleared," and about one month later, on June 16, 1998, it was reinstated as a corporate entity. (See ECF No. 22-3 at 301.)

20. On an undetermined date, the West Tennessee Chapter was again disbanded, and the parties do not dispute that the "ACLU-TN currently has no chapters." (See Resp. Facts ¶ 34; Dep. of Hedy Weinberg, ACLU-TN's Corporate Representative, ECF No. 80-10 at 39:5.)

II. LEGAL STANDARD

A party is entitled to summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "A fact is 'material' for purposes of summary judgment if proof of that fact would establish or refute an essential element of the cause of action or defense." Bruederle v. Louisville Metro Gov't, 687 F.3d 771, 776 (6th Cir. 2012). When considering a motion for summary judgment, a court is "required to view the facts in the light most favorable to the non-moving party, and to draw all reasonable inferences in their favor." Gillis v. Miller, 845 F.3d 677, 694 (6th Cir. 2017); see also United States v. Diebold, Inc., 369 U.S. 654, 655 (1962) ("On summary judgment the inferences to be drawn from the underlying facts contained in such materials must be viewed in the light most favorable to the party opposing the motion.")

"Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts" are to be done at trial, not on a motion for summary judgment. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). The decisive "question is whether 'the evidence presents a sufficient disagreement to require [a trial] or whether it is so one-sided that one party must prevail as a matter of law.'" See Johnson v. Memphis Light Gas & Water Div., 777 F.3d 838, 843 (6th Cir. 2015) (quoting Liberty Lobby, 477 U.S. at 251-52).

"The moving party bears the initial burden of demonstrating the absence of any genuine issue of material fact." Mosholder v. Barnhardt, 679 F.3d 443, 448 (6th Cir. 2012) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)). "To support its motion, the moving party may show 'that there is an absence of evidence to support the nonmoving party's case.'" Id. (quoting Celotex, 477 U.S. at 325.)

"Once the moving party satisfies its initial burden, the burden shifts to the nonmoving party to set forth specific facts showing a triable issue of material fact." Mosholder, 679 F.3d at 448-49; see also Fed. R. Civ. P. 56(e); Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). "When the non-moving party fails to make a sufficient showing of an essential element of his case on which he bears the burden of proof, the moving parties are entitled to judgment as a matter of law and summary judgment is proper." Chapman v. UAW Local 1005, 670 F.3d 677, 680 (6th Cir. 2012). Conclusory allegations, unsupported by specific evidence, cannot establish a genuine factual dispute sufficient to defeat a motion for summary judgment. See Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 902 (1990); see also Fed. R. Civ. P. 56(e). Similarly, statements contained in an affidavit that are "nothing more than rumors, conclusory allegations and subjective beliefs" are insufficient. See Mitchell, 964 F.2d at 584-85. Additionally, "a mere 'scintilla' of evidence in support of the non-moving party's position is insufficient to defeat summary judgment; rather, the non-moving party must present evidence upon which a reasonable [trier of fact] could find in her favor." Tingle v. Arbors at Hilliard, 692 F.3d 523, 529 (6th Cir. 2012) (quoting Liberty Lobby, 477 U.S. at 251).

To show that a fact "cannot be or is genuinely disputed," each party must cite to "particular parts of materials in the record" or show that the other party's cited materials do not establish the presence or absence of a genuine factual dispute. Fed. R. Civ. P. 56(c)(1); see also

Bruederle, 687 F.3d at 776. "The court need consider only the cited materials, but it may consider other materials in the record." Fed. R. Civ. P. 56(c)(3). "[I]t is not the district court's duty 'to search the entire record to establish that it is bereft of a genuine issue of material fact.'" Wimbush v. Wyeth, 619 F.3d 632, 639 (6th Cir. 2010) (quoting St. v. J.C. Bradford & Co., 886 F.2d 1472, 1479 (6th Cir. 1989)).

III. LAW AND ANALYSIS

"[T]he doctrine of standing serves to identify those disputes which are appropriately resolved through the judicial process." Whitmore v. Arkansas, 495 U.S. 149, 155 (1990); see also U.S. Const. art. III § 2 (limiting the jurisdiction of federal courts to "Cases" and "Controversies"). To establish Article III standing, a plaintiff must show that "(1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and 3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 180-81 (2000) (citing Lujan v. Defs. of Wildlife, 504 U.S. 555, 561 (1992)). "The [plaintiff] bears the burden of establishing these elements." Lujan, 504 U.S. at 561.

Unless they are intended beneficiaries, non-parties to a contract typically lack standing to enforce it. See Wallis v. Brainerd Baptist Church, 509 S.W.3d 886, 899 (Tenn. 2016) ("[A] third party may seek to recover under a contract, but the third party bears the burden of proving, from the terms of the contract or the circumstances surrounding its execution, that, *at the time of contracting*, he was an intended third-party beneficiary of the contract.") (emphasis in original). With consent decrees, the rule is stricter: "even *intended* third-party beneficiaries of a consent

decree lack standing to enforce its terms." Aiken v. City of Memphis, 37 F.3d 1155, 1168 (6th Cir. 1994) (interpreting Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723 (1975) ("a consent decree is not enforceable directly or in collateral proceedings by those who are not parties to it even though they were intended to be benefited by it")); see also S.E.C. v. Dollar Gen. Corp., 378 F. App'x 511, 515 (6th Cir. 2010) ("Following Blue Chip Stamps, we have held that, third parties, even intended third-party beneficiaries, lack standing to enforce their interpretations of agreed judgments.").

A successor in interest typically has standing to enforce a contract entered into by its predecessor. See Bank of Am., Nat'l Ass'n v. Meyer, No. M2014-01123-COA-R3CV, 2015 WL 1275394, at *3 (Tenn. Ct. App. Mar. 17, 2015) ("As a result of the acquisition of Countrywide, Bank of America became the successor in interest to the deed of trust at issue in this case. Consequently, we hold that Bank of America has standing to bring this action against the Appellant."). Similarly, a consent decree can bind "persons who are in active concert or participation" with the parties to the consent decree. See Fed. R. Civ. P. 65(d). "This is derived from the common law doctrine that a decree of injunction not only binds the parties but also those identified with them in 'privity' with them, represented by them or subject to their control." Tennessee Ass'n of Health Maint. Organizations, Inc. v. Grier, 262 F.3d 559, 565 (6th Cir. 2001) (quoting Regal Knitwear Co. v. N.L.R.B., 324 U.S. 9, 14 (1945)). Accordingly, "those who are successors in interest to a party will be bound by a judgment against that party." Becherer v. Merrill Lynch, Pierce, Fenner, & Smith, Inc., 193 F.3d 415, 422 (6th Cir. 1999) (discussing whether the doctrine of *res judicata* precludes a plaintiff from pursuing claims already adjudicated against a party in privity with the plaintiff).

A. The record reflects a genuine dispute as to whether the ACLU-TN is an original party to the Consent Decree.

The City argues that the original party to the Consent Decree—which the City refers to as the "WTCLU/West Tennessee Chapter"—was dissolved as a corporate entity in 1983 and closed as one of the ACLU-TN's chapters in 1987. (See ECF No. 80-1 at 1209.) The ACLU-TN responds that the original party to the Consent Decree was the ACLU-TN's own West Tennessee Chapter (the "West Tennessee Chapter") and not the WTCLU, a distinct legal entity:

> The West Tennessee Civil Liberties Union, Inc. and the West Tennessee Chapter of the ACLU-TN are two different things. It was the West Tennessee Chapter of the ACLU-TN that brought the Kendrick suit. Because the West Tennessee Chapter was a part of ACLU-TN, and not a separate and distinct legal entity, ACLU-TN is the original party in interest and has standing to enforce the Decree.

(ECF No. 80 at 1699.) The City replies that the ACLU-TN has produced no actual evidence to support these assertions. (See ECF No. 100 at 2453-57.)

The record suggests that the WTCLU and the West Tennessee Chapter may have been the same entity at the time of the Kendrick Action and that the relevant entity no longer exists in any capacity. For example, the Kendrick Complaint refers to the relevant entity as both the "WTCLU" as well as the "West Tennessee Chapter" and appears to describe it as a "corporate entity," suggesting that the relevant entity was (1) incorporated, and (2) known by the acronym "WTCLU." (Kendrick Complaint at 382-83.) Moreover, the record does not appear to include the by-laws of any stand-alone "West Tennessee Chapter" or any direct evidence that such by-laws were approved by the ACLU-TN's Board of Directors, as required under the ACLU-TN's By-Laws. (See ECF No. 33-8 at 426.) Finally, on January 10, 1983, the "West Tennessee Chapter" held a Board Meeting at which "West Tennessee fundraising" was described as "insufficient to adequately support the Chapter," and three months later, on March 17, 1983,

the WTCLU was dissolved as a corporate entity.[4] (ECF No. 80-12.) About four years after that, on December 11, 1987, the ACLU-TN's "Memphis field office" was closed because the ACLU-TN's budget was "not able to support two offices." (ECF No. 80-13.) This timeline is consistent with a single entity—incorporated as the WTCLU but colloquially known as the West Tennessee Chapter—suffering financially, dissolving legally, and finally shuttering its physical office.

When considering a motion for summary judgment, however, the Court is "required to view the facts in the light most favorable to the non-moving party, and to draw all reasonable inferences in their favor." Gillis, 845 F.3d at 694. Moreover, it is the moving party, not the opponent of summary judgment, who "bears the initial burden of demonstrating the absence of any genuine issue of material fact." Mosholder, 679 F.3d at 448.

Neither the Kendrick Complaint nor the Consent Decree includes the WTCLU's full legal name, a suspicious fact given that only the WTCLU—and not "the American Civil Liberties Union [in/of] West Tennessee, Inc."—was actually incorporated at the time of the Kendrick Action. (See Kendrick Complaint at 381-82; Consent Decree at 48; Resp. Facts ¶ 17; Reply Facts ¶ 2.) Moreover, the "PARTIES" section of the Kendrick Complaint explicitly describes the relevant party as a "Chapter of the American Civil Liberties Union of Tennessee, Inc."—that is, a chapter of the ACLU-TN. (See Kendrick Complaint at 382.) Finally, from 1975 to 1996, multiple ACLU-related meetings and letters discussed the "West Tennessee Chapter" and/or the "Memphis Chapter" without mentioning the WTCLU. (See, e.g., ECF Nos. 33-9, 80-5, 80-9,

[4] The ACLU-TN was also dissolved as a corporate entity on March 17, 1983. (See ECF No. 22-3 at 301.) This suggests that the individuals responsible for maintaining the WTCLU's incorporated status may have been the same ones responsible for maintaining the ACLU-TN's status.

80-14, 80-15, 80-16, 80-17, 80-18, 80-19, 80-21, 80-22, 80-23, 80-26.) These meetings include (1) an October 4, 1975 meeting of the ACLU-TN's Board of Directors at which the "West Tennessee Chapter" was listed as present, and (2) a January 15, 1979 meeting of the "Board of Directors of the West Tennessee Chapter" at which a violation of the Consent Decree was discussed. (See ECF Nos. 33-9, 80-8, 80-9.)

Taken together and viewed in the light most favorable to the ACLU-TN, these facts suggest that the original party to the Consent Decree was an unincorporated chapter of the ACLU-TN that was distinct from the WTCLU but not distinct from the ACLU-TN. The record therefore reflects a genuine dispute as to whether the ACLU-TN is an original party to the Consent Decree.

B. The record reflects a genuine dispute as to whether the ACLU-TN is the successor in interest to an original party to the Consent Decree.

If the WTCLU was the original plaintiff in the Kendrick Action, then it was also a "Chapter of the American Civil Liberties Union of Tennessee, Inc." (See Kendrick Complaint at 382.) This implies that, by September 14, 1976, the ACLU-TN had approved the WTCLU's by-laws, as required by the ACLU-TN's By-Laws. (See ECF No. 33-7 at 421.) In that case—and viewing the record in the light most favorable to the ACLU-TN—the dissolution and shuttering of the WTCLU was not the end of its work; it was the fulfillment of one of the ACLU-TN's original purposes: to "absorb" the WTCLU "at a future time" and "to assume and continue [its] operations." (See ACLU-TN Charter, ECF No. 33-4 at 405.) Therefore, if the WTCLU was the original party to the Consent Decree, the record reflects a genuine dispute as to whether the ATCLU-TN was in privity with the WTCLU at the time of the Kendrick Action and is now the WTCLU's successor in interest.

The City argues that the Court's earlier-cited cases are distinguishable because they involve standing or consent decrees—but not both—and that "even a true successor in interest lacks standing to enforce a consent decree to which it was a nonparty." (See ECF No. 80-1 at 1209-15.) Essentially, the City argues that a successor in interest can be *bound* by a consent decree, but it cannot enforce the decree against others. (See id. at 1210-12.)

The City cites no cases, however, affirmatively stating this rule. (See id.) The law is clear that "those who are successors in interest to a party will be bound by a judgment against that party." Becherer, 193 F.3d at 422. The law is also clear that a successor in interest to a party has standing to enforce a contract entered into by that party. See Meyer, 2015 WL 1275394, at *3. Nevertheless, the City would have the Court dismiss the ACLU-TN's claims, arguing that the City agreed to be bound only by the original party to the Consent Decree, not its successors in interest. (See ECF No. 80-1 at 1214-15.)

In this particular case, the Consent Decree places restrictions on the City's conduct, but in another case, a consent decree might place restrictions on multiple opposing parties. Under the City's reading of the law, the successor in interest to a party in such a case would step into its predecessor's shoes only with respect to its predecessor's obligations, assuming none of its predecessor's rights. Article III may require that outcome, but the City points to no case that specifically says so. Absent controlling or persuasive authority, this Court will not reach that conclusion.

IV. CONCLUSION

For the foregoing reasons, the record reflects a genuine dispute as to (1) whether the ACLU-TN is an original party to the Consent Decree, and if it is not, (2) whether it is the

successor in interest to an original party to the Consent Decree. If the ACLU-TN is either an original party to the Consent Decree or the successor in interest to an original party, the ACLU-TN has standing to enforce the Consent Decree. Accordingly, the City's Motion for Summary Judgment on the Issue of Standing is DENIED.

IT IS SO ORDERED, this 30th day of July, 2018.

/s/ Jon P. McCalla
JON P. McCALLA
UNITED STATES DISTRICT JUDGE