

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

ELAINE BLANCHARD, et al.)
)
Plaintiffs,)
)
ACLU OF TENNESSEE, INC.,) Case No. 2:17-cv-02120-jpm-DKV
)
Intervening-Plaintiff)
)
v.)
)
CITY OF MEMPHIS)
)
Defendant.)
)

**ACLU OF TENNESSEE, INC.'S RESPONSE TO DEFENDANT'S STATEMENT
OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT ON THE ISSUE OF STANDING**

Intervening Plaintiff, ACLU of Tennessee, Inc. (“ACLU-TN”) responds to Defendant’s Statement of Undisputed Material Facts in Support of Defendant’s Motion to for Summary Judgment on the Issue of Standing.

ACLU-TN objects to the following statements of undisputed facts because they violate Local Rule 56.1. Local Rule 56.1 requires that the “each fact be set forth in a sperate numbered paragraph.” In paragraphs 1-5, 6-7, 9, 17, 22-24, 29-32, and 37-40, Defendant sets forth several individual facts in each paragraph, making it difficult for ACLU-TN to respond to each in turn. Subject to this objection, ACLU-TN makes the following responses.

1. The Kendrick complaint (ECF No. 33-1) was filed on September 14, 1976, by plaintiffs, "Chan Kendrick, Mike Honey, John Doe, and the American Civil Liberties Union in Western Tennessee, Inc." (ECF No. 33-1, PageID 381) (emphasis added) They alleged that they were the subjects of unlawful surveillance by the City's Domestic Intelligence Unit. (ECF No. 33-1, PageID 381). The Kendrick plaintiffs further alleged that the City and the Memphis Police Department created the Domestic Intelligence Unit to investigate and maintain files on citizens who were thought to be "subversive." (ECF No. 33-1, PageIDs 385-87). The Kendrick Complaint alleged that upon discovery of the existence of the files and demands by individuals to access the files, as well as public officials, the defendants conspired to "destroy" the files by burning them. (ECF No. 33-1, Page Ids 387). The Kendrick plaintiffs sought to enjoin the City from the surveillance, collection, maintenance, storage, and distribution of information about the plaintiffs' constitutionally protected activities, and also sought class action certification, attorneys' fees, and damages. (ECF No. 33-1, PageID 390).

RESPONSE: ACLU-TN agrees the facts set forth above are undisputed for the purpose of this summary judgment motion.

2. The *Kendrick* complaint explained the nature of each party and its relevance to the action in a section titled "PARTIES." Chan Kendrick was listed as "the Executive Director of the American Civil Liberties Union of Tennessee, Inc."

who alleged that he was the subject of unlawful surveillance by the Memphis Police Department's Domestic Intelligence Unit. (ECF No. 33-1, PageID 382). Mike Honey was listed as the "Southern Director of the National Committee Against Repressive Legislation," and he, too, alleged that he was the subject of unlawful surveillance by the Domestic Intelligence Unit. (ECF No. 33-1, PageID 382).

RESPONSE: ACLU-TN agrees the facts set forth above are undisputed for the purpose of this summary judgment motion.

3. The next party listed in the "PARTIES" section was "The American Civil Liberties Union of West Tennessee, Inc. ("WTCLU") ... a Chapter of the American Civil Liberties Union of Tennessee, Inc., which is an affiliate of the American Civil Liberties Union." (ECF No. 33-1, PageID 382). The American Civil Liberties Union of West Tennessee, Inc./WTCLU/West Tennessee Chapter of ACLU-TN was "comprised of approximately five hundred members residing in the Western District of Tennessee." (ECF No. 33-1, PageIDs 381- 82). The *Kendrick* complaint states that the "corporate entity" of The American Civil Liberties Union of West Tennessee, Inc. was dedicated to and involved with constitutionally protected activities, and the corporate entity (referred to as "WTCLU") and its members "intend[ed] to continue such activities in the future." The WTCLU alleged that it was also the subject of unlawful surveillance by the MPD's Domestic Intelligence Unit. (ECF No. 33-1, PageIDs 382).

RESPONSE: For the purpose of summary judgment, ACLU-TN agrees that the party in the complaint is listed as the American Civil Liberties Union of West Tennessee, Inc. and described as a chapter of the ACLU-TN, which is an affiliate of the ACLU. ACLU-TN agrees that the complaint alleges that the chapter has 500 members in the Western District of Tennessee. ACLU-TN agrees that the complaint alleges that it, its West Tennessee chapter and members are dedicated to and involved with constitutionally protected activities. ACLU-TN agrees that the complaint alleges that the West Tennessee chapter was also under surveillance. ACLU-TN disputes the statement's characterization that the term "corporate entity." referred solely the West Tennessee Chapter. There was no American Civil Liberties Union in West Tennessee, Inc. that is a legal corporate entity at the time or since. For the Court's Reference, the section of the complaint states, in full:

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, all being non-profit, non-partisan organizations dedicated to the preservation of citizens' rights and liberties guaranteed by the constitution and laws of the United States. The West Tennessee Chapter is comprised of approximately five hundred members residing in the western District of Tennessee, each of who 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 "Domestic Intelligence Unit.

(Kenrick Complaint, Doc. No. 33-1, PageID 382).

4. The *Kendrick* complaint did not allege that ACLU-TN was the subject of unlawful surveillance by the Memphis Police Department. (ECF No. 33-1).

RESPONSE: ACLU-TN agrees that the Kendrick Complaint did not specifically state that ACLU-TN was under surveillance, but disputes that the complaint did not carry this meaning. As established in the record, The West Tennessee chapter of ACLU-TN has been established in advance of the filing of the Kendrick Complaint and, at the latest, by October 4, 1975. See ACLU-TN Board of Directors Minutes for the Meeting of October 4, 1975, Exhibit I, to Plaintiff's Response to Defendant's Motion to Dismiss, Doc. No. 33-9, PageID 428. As a chapter it was a part of the ACLU-TN and formed under its By-laws. See ACLU-TN 1973 By-laws, Exhibit H to Plaintiff's Response to Defendant's Motion to Dismiss, Doc. No. 33-8, PageID 425-26. Because a part of the ACLU-TN, the chapter, was alleged to be under surveillance, it can fairly be said that the ACLU-TN was likewise under surveillance.

5. The final party listed in the "PARTIES" section was "John Doe... a citizen of the United States whose true name and identity is unknown." (ECF No. 33-1, PageIDs 382). John Doe was said to represent "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. John Doe intends to continue in such activity in the future." (ECF No. 33-1, PageIDs 382).

RESPONSE: ACLU-TN agrees the facts set forth above are undisputed for the purpose of this summary judgment motion.

6. The *Kendrick* Complaint also attempted to bring suit on behalf of "all persons similarly situated pursuant to Rule 23(a) of the Federal Rules of Civil Procedure." (ECF No. 33- 1, PageIDs 383). This proposed class of plaintiffs "represent[ed] a class 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." (ECF No. 33-1, PageIDs 383).

RESPONSE: ACLU-TN agrees the facts set forth above are undisputed for the purpose of this summary judgment motion.

7. The *Kendrick* complaint referenced one other individual who allegedly suffered at the hands of the Domestic Intelligence Unit, Eric Carter. (ECF No. 33-1, PageIDs 386). In August 1976, Mr. Carter, who was president of the student body of Memphis State University and a member of the group Vietnam Veterans Against the War, requested the file the Domestic Intelligence Unit kept on him. Instead of producing the file, the defendants burned it rather than allowing Mr. Carter to

review it. (ECF No. 33-1, PageID 386). Despite his status as an alleged victim of the defendants' conduct, Mr. Carter was not a plaintiff to the *Kendrick* complaint nor the *Kendrick* Consent Decree. (ECF No. 33-1).

RESPONSE: ACLU-TN agrees the facts set forth above are undisputed for the purpose of this summary judgment motion.

8. The *Kendrick* complaint also explained that plaintiff Chan Kendrick, individually and in his "official capacity as Executive Director of the American Civil Liberties Union of Tennessee, and plaintiff WTCLU, requested that the defendants not destroy, alter or disseminate any of the files maintained by the Domestic Intelligence Unit." (ECF No. 33-1, PageIDs 387).

RESPONSE: ACLU-TN agrees the facts set forth above are undisputed for the purpose of this summary judgment motion.

9. On September 14, 1978, the City and the plaintiffs, to which only a limited number of the plaintiffs were made parties, agreed upon a settlement memorialized in a consent "Order, Judgment, and Decree." (ECF No. 9-1, PageID 48). The plaintiffs who were listed as parties on the *Kendrick* Consent Decree included the following: "Chan Kendrick, Mike Honey, and the American Civil Liberties Union in West Tennessee, Inc." *See id.* There is nothing in the Consent

Decree that preserves the right of enforcement to any successors of the American Civil Liberties Union of West Tennessee, Inc. (ECF No. 9-1).

RESPONSE: ACLU-TN agrees the facts set forth above are undisputed for the purpose of this summary judgment motion.

10. John Doe was not a party to the *Kendrick* Consent Decree. (ECF No. 9-1).

RESPONSE: ACLU-TN agrees the facts set forth above are undisputed for the purpose of this summary judgment motion.

11. The "class of plaintiffs" listed in the Kendrick complaint were not parties to the Consent Decree. (ECF No. 9-1).

RESPONSE: ACLU-TN agrees the facts set forth above are undisputed for the purpose of this summary judgment motion.

12. The National Committee Against Repressive Legislation was not a party to the Consent Decree. (ECF No. 9-1).

RESPONSE: ACLU-TN agrees the facts set forth above are undisputed for the purpose of this summary judgment motion.

13. Chan Kendrick in his official capacity as Executive Director of American Civil Liberties Union of Tennessee, Inc., was not a party to the Consent Decree. (ECF No. 9-1).

RESPONSE: ACLU-TN disputes the facts set forth above as they are stated. The Decree list Chan Kenrick as a party to the Order, Judgment and Decree. (Doc. No.9-1).

14. Eric Carter was not a party to either the *Kendrick* complaint or the Consent Decree. (ECF No. 9-1).

RESPONSE: ACLU-TN agrees the facts set forth above are undisputed for the purpose of this summary judgment motion.

15. The American Civil Liberties Union was not a party to the Consent Decree, and the Consent Decree does not mention the ACLU-TN. (ECF No. 9-1).

RESPONSE: ACLU-TN agrees the facts set forth above are undisputed for the purpose of this summary judgment motion.

16. The ACLU-TN was not a party to the 1978 Kendrick Consent Decree. (ECF No. 9-1).

RESPONSE: ACLU-TN disputes the facts set forth. As argued more fully in its Response to Defendant's Motion for Summary Judgment, ACLU-TN maintains that

the American Civil Liberties Union in West Tennessee was a chapter of the ACLU-TN organized solely under its By-laws. The record shows that the West Tennessee Chapter was part of the ACLU-TN in 1975, before the filing of the Kendrick case. See October 4, 1975 Minutes, Doc. No. 33-9, Page ID 428. Although a chapter name was used for the party in the case, the actual party in interest was the ACLU-TN. The West Tennessee Chapter was not a separately chartered corporate entity under the laws of Tennessee or any other state. As alleged in the original Kendrick Complaint, it was a chapter. Kendrick Complaint, Doc. No 33-2 PAGE ID 382. - ACLU-TN's 1973 By-laws explain that a chapter can only be formed underneath ACLU-TN and is subject to ACLU-TN's policies and regulations. See ACLU-TN 1973 By-laws, Doc. No. 33-8, Page ID 425-26. Chapters run the business of the ACLU-TN in their localities, including bringing litigation. Id.

17. On April 18, 1967, West Tennessee Civil Liberties Union, Inc. ("WTCLU") filed formation papers with the State. (Doc. 22-2, PageID 299). According to its Charter, WTCLU was granted the power "[t]o sue and be sued by the corporate name." (Doc. 33-6, PageIDs 413- 15). The Charter also states that the purpose of the WTCLU "shall be to further the objectives of the American Civil Liberties Union and to advance the cause of civil liberties in the State of Tennessee." (Doc. 33-6, PageID 413). The WTCLU's charter does not say that its purpose was to further the objectives of the ACLU-TN. See Id.

RESPONSE: ACLU-TN agrees the facts set forth above are undisputed.

18. ACLU-TN did not exist at the time WTCLU was chartered in 1967. (Doc. 22-3, PageIDs 300-01).

RESPONSE: ACLU-TN agrees the facts set forth above are undisputed.

19. On September 18, 1968, ACLU-TN filed formation papers with the State. (Doc. 22-3, PageIDs 300-01). According to its Charter, ACLU-TN was formed, in relevant part, "for the purpose of (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 previous operations of said corporations," 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 West Tennessee Civil Liberties, Inc., a Tennessee corporation." (Doc. 33-4, PageID 405) (emphasis added).

RESPONSE: ACLU-TN agrees the facts set forth above are undisputed.

20. ACLU-TN admits that it has no evidence that ACLU-TN ever adopted by bylaws [sic] of the WTCLU. *See* Pl.'s Resp. to Req. for Admis., p. 6 (attached as Exhibit A); Dep. of ACLU- TN's Corporate Representative at 36:16-22 (April 30, 2018) (attached as Exhibit B).

RESPONSE: The above facts are unclear. ACLU-TN agrees that it is undisputed that it had no evidence that ACLU-TN ever adopted by-laws for the West Tennessee Civil Liberties Union, Inc., which was a separate corporation. ACLU-TN would have no reason to adopt the by-laws of another corporation. ACLU-TN disputes the above facts to the extent that they mean that ACLU-TN has no evidence that it approved the by-laws of its West Tennessee Chapter. ACLU-TN points to its October 4, 1975 minutes which include the West Tennessee Chapter as one of many chapters operating statewide, See October 4, 1975 Minutes, Doc. No. 33-9, Page ID 428, and ACLU-TN's 1973 By-Laws, which require the approval of chapter By-laws before chapters are allowed to operate as part of the ACLU-TN. ACLU-TN 1973 By-laws, Doc. No. 33-8, Page ID 425-26.

21. Although its bylaws were never formally adopted by ACLU-TN, the WTCLU/West Tennessee Chapter that existed in the 1970s was affiliated with the ACLU-TN around the time of the *Kendrick* litigation, and attended an ACLU-TN Board of Directors Meetings in 1975 (Doc 33-9, PageID 428).

RESPONSE: The above facts are again unclear. ACLU-TN maintains that the corporate entity known as the West Tennessee Civil Liberties Union, Inc. and the West Tennessee Chapter, which was referenced in the October 4, 1975 minutes are two different things. ACLU-TN agrees that it is undisputed that it had no evidence that ACLU-TN every adopted by-laws for the West Tennessee Civil Liberties Union,

Inc., which was a separate corporation. ACLU-TN would have no reason to adopt the by-laws of another corporation. ACLU-TN disputes the above facts to the extent that they mean that ACLU-TN never formally approved by-laws of its West Tennessee Chapter as required by ACLU-TN's original By-laws and the 1973 By-Laws, which require the approval of chapter By-laws before chapters are allowed to operate as part of the ACLU-TN. See October 4, 1975 Minutes, Doc. No. 33-9, Page ID 428; ACLU-TN 1973 By-laws, Doc. No. 33-8, Page ID 425-26.

22. During the 1970s and 1980s, each chapter of the ACLU-TN was largely responsible for its own fundraising, including the WTCLU/West Tennessee Chapter. The Minutes from the WTCLU Board Meeting on January 10, 1983, explained that the WTCLU's fundraising efforts in the prior year were "insufficient to adequately support the Chapter. The Memphis office depends on raising enough money to support it." (ACLU 000211-12, attached as Exhibit C).

RESPONSE: ACLU-TN disputes that the minutes identified in the above paragraph contain the acronym, "WTCLU." The minutes self-identify instead as "Minutes of the Regular Meeting of the Board of Directors American Civil Liberties Union, West Tennessee Chapter." ACLU-TN agrees that chapters were responsible for fund raising and that the January 10, 1983 minutes make the statements that "Kathy 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." ACLU-TN disputes that each chapter was "largely responsible for its own fundraising." As indicated in the 1973 By-laws, the chapters could also receive allocations from the state office when needed. ACLU-TN 1973 By-laws, Doc. No. 33-8, Page ID 425-26

23. Each chapter was entirely responsible for choosing, funding, and litigating whatever cases it chose to initiate. For example, the Minutes from the December 11, 1978 Meeting of the Board of Directors of WTCLU reported: "After due discussion, it was unanimously resolved that the Chapter should undertake representation of this individual in connection with her hearing before the Haywood County School Board." (ACLU 000143-45, attached as Exhibit D). To take another example, the Minutes from the May 12, 1980 WTCLU Board of Directors' Meeting reported that "[t]he consensus of the group was that we should not take the case because the damages were slight and the impact value would apparently be limited. A letter rejecting the case will be sent to the client." (ACLU 000167, attached as Exhibit E).

RESPONSE: ACLU-TN agrees the facts set forth above are undisputed.

24. The decision of whether to seek enforcement of the *Kendrick* Consent Decree rested with the entity WTCLU/West Tennessee Chapter and not the ACLU-TN. Within a redacted portion of the Minutes of the January 15, 1979 Regular Meeting of Board of Directors of the WTCLU, the WTCLU discussed "whether to

bring case for violating Kendrick Decree." (See ACLU 000146-47, attached as Exhibit F; ACLU's Privilege Log, Line No. 146, attached as Exhibit G).

RESPONSE: ACLU-TN disputes that the minutes identified in the above paragraph contain the acronym, "WTCLU." The minutes self-identify instead as "Minutes of the Regular Meeting of the Board of Directors American Civil Liberties Union, West Tennessee Chapter." The acronym WTCLU are not contained in the minutes. See Doc. No 80-8, Page Id 1243. ACLU disputes Defendant characterization of the statement in the privilege log actually states "Minutes from discussion regarding potential violation on Kendrick Consent Decree." See Doc No. 80-9, Page ID 1245. Nothing in either document suggests that the that the decision to seek enforcement rested only with the West Tennessee Chapter. The 1973 By-laws suggest that the chapters had authority to "direct and govern activities of ACLU in their area, subject to the policies and regulations of the ACLU of Tennessee, Inc."

25. ACLU-TN also admitted that it has no evidence that ACLU-TN was the entity that initiated, funded, or pursued the *Kendrick* case. *See* Dep. of ACLU-TN's Corporate Representative at 39:16-40:22 (April 30, 2018) (Exhibit H).

RESPONSE: ACLU-TN disputes the above statement. The deposition testimony cited by Defendant does not bear out its assertion. In the testimony, when asked whether she knew whether ACLU-TN funded the Kendrick litigation, the deponent

answered "I don't know." (See TN's Corporate Representative at 40:5-8 (April 30, 2018) (Attached as Exhibit C)).

26. The last reported meeting of the WTCLU Board of Directors was held on March 3, 1983. (See ACLU 000215, attached as Exhibit I).

RESPONSE: ACLU-TN disputes the above statement. The exhibit cited is a memorandum to the West Tenness Chapter Board of Directors with a proposed agenda for a March 14, 1983 board meeting. Nothing in the document suggests that a meeting was held on March 3, 1983 or that the meeting was the last reported meeting. See Exhibit I, to Defendant's Statement of Undisputed Facts, Doc. No. 80-11, Page ID 1250). Exhibit J to Defendant's Statement of Undisputed facts speaks of board meetings for the West Tennessee chapter as late as May 5, 1988 and June 2, 1988. Doc. No. 80-15, Page ID 1255.

27. On March 17, 1983, the West Tennessee Civil Liberties Union, Inc. was dissolved as a corporate entity with the State of Tennessee. (Doc. 22-2, Page ID 299).

RESPONSE: ACLU-TN agrees the facts set forth above are undisputed.

28. On December 11, 1987, the "Memphis field Office" of ACLU of Tennessee was closed because the budget was inadequate to support it. (ACLU 000211-12, attached as Exhibit J); (ACLU 000302, attached as Exhibit K).

RESPONSE: ACLU-TN agrees the facts set forth above are undisputed.

29. In 1988 there was some effort to "reorganize and revitalize" the West Tennessee Chapter. On February 1, 1988, ACLU-TN sent a letter to "Members and Friends" inviting them to the February 11, 1988 West Tennessee Chapter meeting stating: "The West Tennessee Chapter is at a crossroad.... Your chapter board of directors is in a state of reorganization and revitalization." (ACLU 000301, attached as Exhibit L). In a letter to "West Tennessee Chapter Board of Directors and Other Interested ACLU Members," the ACLU-TN invited the WTCLU Directors to a June 2 meeting. The purpose of the June 2 meeting was to discuss the "[e]xciting plans [that were] underway to revitalize the West Tennessee Chapter." (ACLU 000298-99, attached as Exhibit M). The ACLU-TN followed up to that June 2, 1988 meeting in a Memorandum that discussed the need to have a "successful annual meeting" as the "first step in the reorganization and revitalization of the West Tennessee Chapter." (ACLU 000296-97, attached as Exhibit N).

RESPONSE: ACLU-TN agrees the facts set forth above are undisputed for the purposes of this Summary Judgment Motion.

30. Around March 1991, another attempt was made to reorganize the West Tennessee Chapter. In a letter to Bruce Kramer from Hedy Weinberg dated March 11, 1991, Ms. Weinberg outlined the necessary steps to reinstate the West Tennessee Chapter. Those steps included identifying an interim chapter board,

organizing a local legal committee, planning a public education forum, and designating a chapter president and chapter representatives. (ACLU 000276-77, attached as Exhibit O). On March 14, 1991, ACLU held a "West Tennessee Chapter Reorganization Meeting." The Agenda for the meeting actually discussed the nature of the "National/State/Chapter Relationships." (ACLU 000278, attached as Exhibit P).

RESPONSE: ACLU-TN agrees the facts set forth above are undisputed for the purposes of this Summary Judgment Motion.

31. Hedy Weinberg made another attempt to revitalize the Memphis chapter from July 1994 - March 1995. On July 27, 1994, Ms. Weinberg sent a letter to a new member of ACLU-TN who lived in Memphis. In the letter, Ms. Weinberg stated: "I am delighted in your interest in becoming involved in the Memphis area. We hope to revitalize our Memphis Chapter in the fall and I will contact you when an organizing meeting is planned." (ACLU 000236, attached as Exhibit Q). On September 20, 1994, Ms. Weinberg received a letter from an attorney who stated: "I am excited to be a part of the coming together of what hopefully will be a new chapter of the ACLU for Memphis and greater West Tennessee." (ACLU 000239, attached as Exhibit R)(emphasis added). Throughout the remainder of 1994, Ms. Weinberg attempted to "revitalize" the Memphis Chapter of ACLU-TN. In several documents she stated that she wanted "to get things going again in Memphis"

(ACLU 000241, attached as Exhibit S); wanted to "revitalize the Memphis chapter" (ACLU 000242, attached as Exhibit T; and she was looking forward to working "in the future with the Memphis Chapter of the ACLU." (ACLU 000243-44, attached as Exhibit U).

RESPONSE: ACLU-TN agrees the facts set forth above are undisputed for the purposes of this Summary Judgment Motion.

32. Other individuals also attempted to revitalize the Memphis chapter in 1995. but that effort failed. In January 1995, a group of individuals met "to organize our kick-off gathering" of the new West Tennessee Chapter of ACLU-TN. (ACLU 000245-46, attached as Exhibit V). In that letter, the honorable Sheri (now United States District Court Judge) Lipman explained that she was "extremely hopeful that we can get a core group of people, including those previously involved and new to the organization, who will serve as a base for the chapter for many years. There is no reason Memphis can't support a chapter." (ACLU 000246, Exhibit V). The planned kick-off event never took place. On March 9, 1995, Judge Lipman sent another letter explaining that the "kick-off event will not take place on March 12, 1995." (ACLU 000249, attached as Exhibit W). She urged the group "not [to] let the delay in getting this off the ground affect anyone's excitement. I am very hopeful that we will be able to build a strong chapter here in Memphis, with quality programming for the entire community. " *See Id.*

RESPONSE: ACLU-TN agrees the facts set forth above are undisputed for the purposes of this Summary Judgment Motion.

33. In May 1996, a West Tennessee Chapter was re-formed. (See ACLU000252, attached as Exhibit X).

RESPONSE: ACLU-TN agrees the facts set forth above are undisputed for the purposes of this Summary Judgment Motion.

34. ACLU-TN currently has no chapters. (*See* Dep. of ACLU-TN's Corporate Representative at 39:5 (April 30, 2018) (Exhibit H)).

RESPONSE: ACLU-TN agrees the facts set forth above are undisputed.

35. Elaine Blanchard, Keedran Franklin, Paul Garner, and Bradley Watkins (collectively, "the individual plaintiffs") filed suit on February 22, 2017 to enforce the provisions of the Order, Judgment and Decree entered by this Court in *Kendrick, et. al. v. Chandler et al.*, No. C76-449 (W.D. Tenn. 1978) (hereafter the "Consent Decree"). (ECF No. 1).

RESPONSE: ACLU-TN states that the Complaint speaks for itself, but agrees the facts set forth above are undisputed for the purposes of this Summary Judgment Motion.

36. ACLU-TN intervened in the action on March 3, 2017 (ECF No. 16), specifically seeking an order of contempt against the City for violating the Consent Decree, injunctive relief to ensure the City's future compliance with the Consent Decree, and an award of attorneys' fees (ECF No. 16, PageID 228).

RESPONSE: ACLU-TN states that the intervening complaint speaks for itself, but agrees the facts set forth above are undisputed for the purposes of this Summary Judgment Motion.

37. The City filed a Motion to Dismiss the individual plaintiffs based on their lack of standing on March 1, 2017 (ECF No. 9). The City argued that the individual plaintiffs were not original parties to the *Kendrick* Consent Decree, and thus lacked standing to enforce it. (ECF No. 9, PageID 37).

RESPONSE: ACLU-TN states that Defendant's Motion to Dismiss speaks for itself, but agrees the facts set forth above are undisputed for the purposes of this Summary Judgment Motion.

38. The City then filed a Motion to Dismiss the intervening plaintiff, ACLU-TN on March 8, 2017 (ECF No. 22), on similar grounds. The City argued that the entity that was a party to the 1978 *Kendrick* Consent Decree was not ACLU-TN, but rather the separately incorporated American Civil Liberties Union in West Tennessee, Inc., which was also known as the West Tennessee Civil

Liberties Union, Inc. ("WTCLU") -- an acronym repeatedly used in the *Kendrick* Complaint to reference the Plaintiff in that action. Because the ACLU-TN was not a party to the Consent Decree, the City argued it lacked standing to enforce the provisions of the Consent Decree. (ECF No. 22, PageIDs 289-91).

RESPONSE: ACLU-TN states that Defendant's Motion to Dismiss speaks for itself, but agrees the Defendant made these arguments.

39. In response, ACLU-TN argued that ACLU-TN was the actual party in the *Kendrick* litigation because the American Civil Liberties Union in West Tennessee, Inc./West Tennessee Civil Liberties Union, Inc. was functioning as a "chapter" of ACLU-TN at that time. (ECF No. 33, PageID 373-74). ACLU-TN relied on language in the original *Kendrick* Complaint and on ACLU-TN's bylaws in place at that time to support its claim that the American Civil Liberties Union of West Tennessee, Inc./West Tennessee Civil Liberties Union, Inc. was operating as part of ACLU-TN at the time of the *Kendrick* Consent Decree, and was essentially the same party for purposes of standing. See *Id.*

RESPONSE: ACLU-TN states that its Response to Defendant's Motion to Dismiss speaks for itself. ACLU-TN disputes that it argued that the West Tennessee Chapter of the ACLU-TN, which is called the American Civil Liberties Union in West Tennessee Inc. in the Kendrick Complaint is the same thing as the corporation known as the West Tennessee Civil Liberties Union, Inc. ACLU-TN disputes that it

argued that the West Tennessee Civil Liberties Union, Inc. was a chapter. In fact, ACLU-TN specifically argued that name "West Tennessee Civil Liberties Union, Inc." appears no where in the Kendrick Complaint.

40. On June 30, 2017, the Court entered an Order (ECF 41) granting the City's Motion to Dismiss with respect to the individual plaintiffs, holding that they lacked standing because they were not original parties to the *Kendrick* Consent Decree. The Court explained that even if the individual plaintiffs were intended third-party beneficiaries of the Consent Decree, they still lacked standing to enforce its terms based on the clear law of the Sixth Circuit set forth in *Aiken v. City of Memphis*, 37 F.3d 1155, 1168 (6th Cir. 1994) (ECF 41 at PageIDs 520-21).

RESPONSE: ACLU-TN states that the Court's order speaks for itself and that the Court's legal decision cannot be an undisputed fact. ACLU-TN agrees that the Court's order resulted in the dismissal of the individual plaintiffs.

41. In the same Order (ECF 41), the Court denied the City's Motion to Dismiss the intervening plaintiff, ACLU-TN. (ECF 41, PageID 524). In the Order, the Court acknowledged that "ACLU-TN was not a named plaintiff in the *Kendrick* lawsuit," and that the named plaintiff to the Consent Decree was "American Civil Liberties Union in West Tennessee, Inc." (ECF 41 PageID 522) (emphasis added).

RESPONSE: ACLU-TN states that the Court's order speaks for itself but agrees that the Court made these statements.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 9, 2018, a true and correct copy of the foregoing document and the above-described exhibits has been served via ECF to:

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