

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

ACLU OF TENNESSEE,)	
)	
Intervening Plaintiff,)	
v.)	No. 2:17-cv-02120-JPM-dkv
)	
THE CITY OF MEMPHIS,)	
)	
Defendant.)	

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

The Defendant, the City of Memphis ("the City"), hereby responds to Intervening Plaintiff ACLU of Tennessee, Inc.'s ("ACLU-TN") "Statement of Facts" in Response to Defendant's Motion for Summary Judgment on the Issue of Standing.

As a threshold matter, the City objects to the Intervening Plaintiff's "Statement of Facts" because it does not adhere to the format proscribed in Local Rule 56.1(b), which requires that the non-moving party's statement of additional facts "be set forth in a separate, numbered paragraph with specific citations to the record supporting the contention that such fact is in dispute." LR 56.1(b). Intervening Plaintiff failed to set forth its statement of additional facts in separately enumerated paragraphs. Subject to and without waiving this objection, the City hereby responds to Intervening Plaintiff's "STATEMENT OF FACTS" (ECF No. 90, PageIDs 1694-1698) in the manner required by LR 56.1(b).

1. The ACLU-TN was formed in 1968 as the Tennessee Affiliate for the American Civil Liberties Union, Inc. (“ACLU”). See Doc No. 33-4, Charter of Incorporation for ACLU of Tennessee, Inc., [hereinafter, “ACLU-TN Charter”].

Response: Undisputed

2. Before its formation, three other corporate entities were created as affiliates of the ACLU. The East Tennessee Civil Liberties Union, Inc. was formed on May 23, 1966. The Middle Tennessee Civil Liberties Union, Inc. was formed on October 13, 1966. The West Tennessee Civil Liberties Union, Inc. was formed on April 18, 1967. See Doc. No. 33-5, Filing Information from the Tennessee Secretary of State.

Response: Disputed.

It is undisputed that the entities East Tennessee Civil Liberties Union, Inc., Middle Tennessee Civil Liberties Union, Inc., and West Tennessee Civil Liberties Union, Inc. were incorporated with the State of Tennessee on the dates listed above. It is disputed, however, that those entities were "created as affiliates of the ACLU." Intervening Plaintiff failed to properly support this assertion of fact with any evidence as required by Fed. R. Civ. P. 56(c)(1).

3. The idea of having three separate corporations serve as regional Tennessee affiliates for the ACLU was reconsidered.

Response: Disputed.

The Intervening Plaintiff failed to properly support this assertion of fact with any evidence as required by Fed. R. Civ. P. 56(c)(1).

4. The ACLU-TN was formed on September 18, 1968 after the formation of these three corporations. According to its Charter, it was formed specifically to consolidate the operations of the three corporate entities into one statewide corporation that would serve as the affiliate for the national ACLU. ACLU-TN Charter, Doc No. 33-4, Page ID 405.

Response: Disputed.

It is undisputed that the ACLU-TN was formed on September 18, 1968. It is also undisputed that ALCU-TN was formed for the purpose of affiliating itself with the American Civil Liberties Union. It is disputed, however, that ACLU-TN was "formed specifically to consolidate the operations of the three corporate entities into one statewide corporation that would serve as the affiliate for the national ACLU."

The Charter explicitly states as follows:

ACLU of Tennessee, Inc. 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.

2. To 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 No. 33-4, Page ID 405) (emphasis added).

Thus, it is clear from the plain language of the Charter that the purpose of forming ACLU-TN in 1968 was for consolidating the affairs and activities of the East Tennessee Civil Liberties Union, Inc. and Middle Tennessee Civil Liberties Union, Inc. The Charter explained that ACLU-TN was formed for the purpose of consolidating only those two entities, and not the West Tennessee Civil Liberties [Union], Inc. Indeed, whether or not the West Tennessee Civil

Liberties Union, Inc. was *ever* to be absorbed by the ACLU-TN was entirely undecided at the time ACLU-TN was chartered in 1968. *Id.*

5. The Charter specifically states that ACLU-TN would “consolidate the affairs and activities of the previously existing” Middle and East Tennessee entities. *Id.* The ACLU-TN would “absorb at a future time” the West Tennessee Civil Liberties Union, Inc. *Id.*

Response: Undisputed.

6. During its early years in operation, ACLU-TN was structured as a confederation of local chapters. According to ACLU-TN’s 1972 By-laws, in effect at the time the Kendrick case was filed, “[c]hapters of the ACLU of Tennessee, Inc., may be chartered by the Board of Directors in areas where membership size and interest justify such organization.” 1973 By-Laws of the American Civil Liberties Union of Tennessee, Inc. Doc. No. 33-8, Page ID 425-26. [hereinafter “1973 By-Laws”], Chapters are akin to a company establishing a local office to conduct its local affairs, while its headquarters manages the various offices around the state.

Response: Disputed.

It is disputed that "Chapters are akin to a company establishing a local office to conduct its local affairs, while its headquarters manages the various offices around the state." The Intervening Plaintiff failed to properly support this assertion of fact with any evidence as required by Fed. R. Civ. P. 56(c)(1). It is undisputed that ACLU-TN had chapters at the time of the 1973 By-Laws.

7. Chapters were part of the ACLU-TN and not separate legal entities. They were not corporations, formed under the laws of Tennessee or any other state, such as subsidiaries or affiliated corporate entities.

Response: Disputed

It is disputed that chapters were not separate legal entities and not corporations formed under the laws of Tennessee. In the Response to the City's Motion to Dismiss, Intervening Plaintiff asserted that the West Tennessee Civil Liberties Union, Inc. was a "chapter" of the ACLU-TN at the time of the *Kendrick* Consent Decree. "ACLU-TN was the actual party in interest in *Kendrick v. Chandler* because the West Tennessee Civil Liberties Union was operating as a Chapter under the ACLU-TN." (ECF No. 33, PageID 373).

In the Response to the City's Motion for Summary Judgment on Standing, however, the Intervening Plaintiff is asserting that it was not the West Tennessee Civil Liberties Union, Inc. that was a chapter of the ACLU-TN in 1978, but rather the "American Civil Liberties Union, Inc.", which is denoted in the *Kendrick* Complaint as "WTCLU" (ECF No. 90, PageID 1699.)

If West Tennessee Civil Liberties Union was a "chapter" of ACLU-TN, as Intervening Plaintiff earlier admitted, then Fact No. 7 is demonstrably false. The West Tennessee Civil Liberties Union, Inc. was incorporated with the State of Tennessee on April 18, 1967. (ECF No. 22-2.) Intervening Plaintiff has failed to support the assertion that chapters were not separate legal entities and were not corporations formed under the laws of Tennessee with any evidence as required by Fed. R. Civ. P. 56(c)(1).

8. The chapters operated entirely under the authority derived from the ACLU-TN By-laws. Id.

Response: Disputed.

Intervening Plaintiff has failed to support this assertion with any evidence as required by Fed. R. Civ. P. 56(c)(1).

9. Chapters operated as local offices for ACLU-TN in particular regions of the state.

Response: Disputed.

Intervening Plaintiff has failed to support this assertion with any evidence as required by Fed. R. Civ. P. 56(c)(1).

10. By 1975, ACLU-TN was operating with six chapters: Middle Tennessee, West Tennessee, Oak Ridge Area, Knoxville, Franklin County, and Chattanooga. See ACLU-TN Board of Directors Minutes for the Meeting of October 4, 1975, Doc. No. 33-9, Page ID 428.

Response: It is disputed that ACLU-TN was operating with six chapters in 1975. The evidence submitted by Intervening Plaintiff only proves that six chapters were present at the Meeting of October 4, 1975.

11. The Chapters were given the “authority to direct and govern activities of the ACLU in their areas, subject to the policies and regulations of the ACLU of Tennessee, Inc.” 1973 By-Laws , Doc. No. 33-8, Page ID 425-26.

Response: Undisputed with further clarification.

It is undisputed that the 1973 By-Laws contains that language, however the remaining verbiage of Section 2 and the subsequent Section 3 should also be noted.

Section 2. Such Chapters shall have authority to direct and govern activities of ACLU in their area, subject to the policies and regulations of the ACLU of Tennessee, Inc., and the American Civil Liberties Union, Inc. The charter of a Chapter may be revoked for cause by a two-thirds vote of the Board of Directors, but only after a statement of reasons has been furnished by the Board to the Chapter officers and a full hearing accorded.

Section 3. **By-laws for any Chapter shall not go into effect until they have, been approved by the Board of Directors of the Affiliate.**

(ECF No. 33-8, Page IDs 425-26.) (emphasis added).

12. Each Chapter's president served as a member of the ACLU-TN's Board. Additionally, each chapter was entitled to elect a member to the Board of Directors for every fifty members. Id.

Response: Undisputed with clarification.

The By-Laws state that the Board of Directors "shall consist of the Presidents of the duly chartered Chapters..." *Id.* at 424 (emphasis added).

13. Chapters were organized much like corporations, with by-laws, Boards of Directors and officers.

Response: Disputed.

Intervening Plaintiff failed to properly support this assertion of fact with any evidence as required by Fed. R. Civ. P. 56(c)(1).

14. However, an important distinction is that the chapters, including the West Tennessee Chapter, were not separate legal entities under state law. Instead they were formed and approved solely by ACLU-TN. “By-laws for any Chapter shall not go into effect unless they have been approved by the Board of Directors of the Affiliate.” Id.

Response: Disputed.

It is disputed that the chapters were not separate legal entities under state law. It is uncontroverted that the West Tennessee Civil Liberties Union, Inc. was a separately chartered entity under Tennessee law. (ECF No. 22-2.) *See also* Response No. 7.

15. Likewise, the ACLU-TN could terminate a chapter “for cause by a two-thirds vote of the Board of Directors. Id. Chapters were required to submit programing proposals and a budget to ACLU-TN every year. Id.

Response: Undisputed with further clarification.

See Response No. 11.

16. ACLU-TN also allocated funds to the chapters “as it deems appropriate.” Id.

Response: Undisputed.

17. ACLU-TN Board Minutes demonstrate that chapters where both integral to the operation of ACLU-TN and, definitively, a part of that organization. The earliest minutes available are from September 2, 1969, Chapters are already mentioned operating under the ACLU-TN.

The Board of Directors, TACLU, voted on July 12, 1969 to (1) maintain an Affiliate office and (2) employ an Executive Secretary or Director. The Executive Committee, in a subsequent meeting, urged an increase in Chapter income, and local participation as regards litigation, publicity, newsletters, telephone listings, office space, etc.

See Minutes ACLU of Tennessee, Inc. September 2, 1969, attached as Exhibit A.

Response: Undisputed with further clarification.

It is undisputed that chapters were a part of the ACLU-TN organization as early as 1969. The same meeting minutes detail the obligations of those chapters. "Chapters must sacrifice income, raise moneys for local problems, and even consider the prospect of raising local moneys for local problems, and even consider the prospect of raising local monies to support the State Affiliate office." (ECF No. 90-2, PageID 1731.)

18. The minutes demonstrate that the Chapters were operating as local offices for the affiliate and were integral in encouraging local action and in raising funds. However, they were not separate corporations.

Response: Disputed.

It is disputed that the Minutes demonstrate that the chapters were not separately chartered corporate entities. Intervening Plaintiff has failed to support the assertion that chapters were not separate legal entities and were not corporations formed under the laws of Tennessee with any evidence as required by Fed. R. Civ. P. 56(c)(1). *See also* Response No. 7.

19. In minutes dated December 11, 1971, the ACLU-TN Board of Directors discussed the formation of the Upper East Tennessee Chapter, stating that the "bylaws of this group have been adopted and approved." *See* Minutes ACLU of Tennessee, Inc. December 11, 1971, attached as Exhibit B.

Response: Undisputed.

20. From the discussion found later in the minutes, it is apparent that at this early date, three years after ACLUTN's formation, it had other chapters operating under its authority. Id. at p. 2.

Response: Undisputed.

21. The recording secretary for these minutes is listed as Mike Honey, one of the original plaintiffs in the Kendrick case and a Memphis resident. Id. at p. 3.

Response: Disputed.

It is undisputed that Mike Honey was the recording secretary for the Minutes cited, but it is disputed that Mike Honey was or is a Memphis resident. Intervening Plaintiff has failed to support that assertion with any evidence as required by Fed. R. Civ. P. 56(c)(1).

22. The October 4, 1975 minutes list the several members from differing chapters that were in attendance. See October 4, 1975 Minutes Doc. No. 33-9, Page ID 428. Notably, the West Tennessee Chapter is listed as attending.

Response: Undisputed.

23. Later in the minutes, topics for a retreat are discussed, including "Chapter organization and day to day operation." Id. at Agenda Item F.

Response: Undisputed.

24. The minutes demonstrate how ACLU-TN was organized as essentially a confederation of chapters operating underneath the state-wide affiliate.

Response: Undisputed.

25. By, at the latest, October 4, 1975, almost a year before the Kendrick litigation was filed, the West Tennessee Chapter was part of this organization.

Response: Disputed.

It is undisputed that an entity was functioning as some sort of chapter of ACLU-TN in West Tennessee. To the extent that Intervening Plaintiff is implying that the West Tennessee Chapter was the original party to the *Kendrick* Consent Decree, that assertion is disputed. Intervening Plaintiff has provided no evidence to support its claim that the entity that was a party to the *Kendrick* Complaint or the *Kendrick* Consent Decree was ever formally adopted as a chapter of the ACLU-TN, for purposes of enforcement of the Consent Decree.

26. In total, the Charter, By-Laws and historic minutes of ACLU-TN show that a West Tennessee Chapter of ACLU-TN was alive and well in 1976 and operating as a part of ACLU-TN. It was not a separate corporation or other legal entity.

Response: Disputed.

It is disputed that the chapters of ACLU-TN were not separate legal entities under state law. It is uncontroverted that the West Tennessee Civil Liberties Union, Inc. was a separately chartered entity under Tennessee law. (ECF No. 22-2.) *See also* Response Nos. 7, 25.

27. The West Tennessee Civil Liberties, Inc., like the other regional affiliates that were first created, was not operating in West Tennessee. The promise of ACLU-TN's Charter had been fulfilled and its operations had been "absorb[ed] at a future time." See ACLU-TN Charter.

Response: Disputed.

It is disputed that the West Tennessee Civil Liberties Union Inc. was not operating in Tennessee in 1976. West Tennessee Civil Liberties Union, Inc. was not dissolved until 1983. (ECF No. 22-2.) It is further disputed that the "promise of ACLU-TN's Charter had been fulfilled and its operations had been 'absorb[ed] at a future time.'" Intervening Plaintiff has failed to support this assertion of fact with any evidence as required by Fed. R. Civ. P. 56(c)(1).

Respectfully submitted,

/s/ Jennie Silk

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of July, 2018, a copy of the foregoing will be served via the Court's ECF system to:

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/s/ Jennie Silk_____