

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

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ELAINE BLANCHARD, KEEDRAN	)	
FRANKLIN, PAUL GARNER and BRADLEY	)	
WATKINS,	)	
	)	
Plaintiffs,	)	
and	)	
	)	
ACLU OF TENNESSEE, Inc.	)	
	)	
Intervening Plaintiff,	)	
v.	)	No. 2:17-cv-02120-jpm-DKV
	)	
THE CITY OF MEMPHIS,	)	
	)	
Defendant.	)	
	)	
	)	

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**CITY OF MEMPHIS'S SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF  
MOTION TO DISMISS**

**INTRODUCTION**

The City of Memphis, in its Memorandum in Support of Motion to Dismiss (Doc. 22-1) and its Reply Brief (Doc. 35), identified public record documents supporting 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). This Supplemental Memorandum attaches documents located at the University of Memphis Library, Special Collections Department, containing the papers of Michael Cody, Esq., one of the founding incorporators of WTCLU. The collection contains letters and other documents which provide further circumstantial evidence for the proposition

advanced by the City of Memphis on this subject. The purpose of this Supplemental Memorandum is to bring those documents to the attention of the Court.

The City also wishes to point out that on April 4, 2017, during a telephonic status conference with the Court, the attorneys for the plaintiffs advised the Court that an individual plaintiff in the *Kendrick* litigation, Mike Honey, had agreed to become involved as an intervening plaintiff in the present litigation. (See Minute Entry 31).

It has been more than eight weeks since that telephonic status conference. The deadline pursuant to the Scheduling Order for adding new parties has now passed. (See Scheduling Order Doc. 34). The standing issue must be resolved based on the identities of the parties before the Court.

**Documents from the Cody papers maintained in the Special Collections Department:**

Exhibit One is an Affidavit jointly executed by Pete Anthony Brunson and Samuel Collins Fulliton, summer associates with Baker, Donelson, Bearman, Caldwell & Berkowitz, outlining their inspection of and review of documents contained in the Special Collections Department at the University of Memphis Library regarding Mr. Cody's papers. The documents pulled from the collection have been authenticated by these witnesses and contain the following information, which is relevant to the Motion to Dismiss:

1. Letter to Mr. Cody from John W. Spence dated April 23, 1969. Attached as Exhibit Two. Mr. Spence describes himself as "a member of the Boards of the West Tennessee Chapter and the Tennessee affiliate," further confirming that the WTCLU is an entity separate and distinct from the ACLU of Tennessee, referenced as "the Tennessee affiliate." The correspondence further addresses concerns over efforts by the national ACLU to raise funds as interfering with dues collection for WTCLU. Clearly, as of that date, these two entities were

completely separate and distinct although there may well have been common board membership such as was apparently the case with Mr. Spence.<sup>1</sup>

2. Exhibit Three is a 1969 letter to Mr. Cody from Delton Pickering which similarly demonstrates the distinction between these two entities. In the letter, Mr. Pickering describes himself as the President of "ACLU in West Tennessee" which indicates a possible corporate organizational structure affiliated with ACLU of Tennessee, Inc., as opposed to WTCLU.

3. A third document retrieved from the records is a "Notice of Proposed By-Laws Change" which is undated but which was found with other materials almost exclusively dating to 1969. Attached as Exhibit Four. The proposed By-Laws change indicates an intention to combine the membership of individuals who may be associated with WTCLU and ALCU of Tennessee, Inc. No further records concerning the final disposition of the "Notice" were located, and ACLU of Tennessee, Inc. has provided no documentation of the implementation of this proposed Notice. Furthermore, even if a merger of some kind was implemented, this simply would have connected the two entities at a membership level and does nothing to alter the separate and distinct corporate organizational structures.

Finally, Collective Exhibit Five consists of an affiliates list and financial statements, which were documents located in the Cody materials apparently created by the ACLU national organization. These records clearly list WTCLU as a separate entity, as of 1967.

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<sup>1</sup> In the City's Reply Brief responding to ACLU of Tennessee's attachment of corporate documents to its Response to the City's Motion to Dismiss, we noted that the corporate charter of the organization, dated September 18, 1968, did not include a "merger" or formal affiliation with WTCLU, instead stating an intention to "...absorb at a future time, if agreed 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. 35, p.4)

The Joint Affidavit attached further confirms that after a complete review of the materials in the Cody papers, no document was located indicating in any way a merger of WTCLU with ACLU of Tennessee, Inc., or any expressed intention of that ACLU of Tennessee, Inc. be substituted for or stand in the shoes of WTCLU in any pending or contemplated litigation.

### **CONCLUSION**

For the reasons set forth previously and in this Supplemental Memorandum, the City respectfully requests that the Court find that the ACLU of Tennessee, Inc. has not carried its burden of demonstrating entitlement to standing to pursue the relief sought in the Complaint, and that the Complaint, at least with respect to forms of relief based upon the *Kendrick* litigation, be dismissed with prejudice.

Respectfully submitted,

/s/Buckner Wellford

Buckner Wellford (#TN 9687)

Thomas Parker (#TN 13908)

Jennie Vee Silk (#TN 35319)

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*Attorneys for Defendant, The City of Memphis*

**CERTIFICATE OF SERVICE**

I hereby certify that on June 6, 2017, the foregoing will be served by this Court's ECF system to:

Bruce S. Kramer  
Scott A. Kramer  
6070 Poplar Avenue, 6th Floor  
Memphis, Tennessee 38119

Thomas H. Castelli  
ACLU Foundation of Tennessee  
P.O. Box 120160  
Nashville, Tennessee 37212

s/Buckner Wellford

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FOR THE WESTERN DISTRICT OF TENNESSEE  
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v.	)	No. 2:17-cv-02120-jpm-DKV
	)	
THE CITY OF MEMPHIS,	)	
	)	
Defendant.	)	
	)	
	)	

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**Joint Affidavit of Pete Anthony Brunson and Samuel Collins Fulliton**

STATE OF TENNESSEE    }  
COUNTY OF SHELBY     }

1. My name is Pete Brunson. I am an adult resident of Fayetteville, Arkansas. I am over the age of 21, and I am competent to testify in this matter.
2. My name is Sam Fulliton. I am an adult resident of Nashville, Tennessee. I am over the age of 21, and I am competent to testify in this matter.
3. The facts in this affidavit are based on our personal knowledge and are true and correct to the best of our knowledge, information, and belief.

4. I, Pete Brunson, am a student at the University of Arkansas School of Law. I just completed my second year of law school.

5. I, Samuel Fulliton, am a student at the Vanderbilt School of Law. I just completed my second year of law school.

6. We are both working as Summer Associates at the law firm of Baker, Donelson, Bearman, Caldwell & Berkowitz in Memphis, Tennessee, for six weeks during the summer of 2017.

7. One of our assignments as Summer Associates was to go to the University of Memphis Library, Special Collections Department, and review the file containing the papers of Michael Cody, Esq., one of the founding incorporators of the West Tennessee Civil Liberties Union, Inc.

8. On May 17, 2017, we visited the University of Memphis Library Special Collections Department and reviewed the file containing the papers of Michael Cody, Esq.

9. We looked through a master table of contents of the file boxes to determine which file boxes contained documents relevant to the ACLU and WTCLU. We then reviewed all of those boxes.

10. We looked specifically for any document that might shed some light on the organizational structure of the ACLU of Tennessee, Inc. and the West Tennessee Civil Liberties Union, Inc.

11. We located several relevant documents. The first was a letter to Mr. Cody from John W. Spence dated April 23, 1969. In the letter, Mr. Spence describes himself as "a member of the Boards of the West Tennessee Chapter and the Tennessee affiliate." The letter further



addresses concerns over efforts by the national ACLU to raise funds as interfering with dues collection for WTCLU.

12. The next relevant document we found is a 1969 letter to Mr. Cody from Delton Pickering. In the letter, Mr. Pickering describes himself as the President of "ACLU in West Tennessee" which indicated a possible corporate organizational structure affiliated with ACLU of Tennessee, Inc., as opposed to WTCLU.

13. A third document we found in the file is a "Notice of Proposed By-Laws Change" which is undated but which was found with other materials almost exclusively dating to 1969. The proposed By-Laws change indicates an intention to combine the membership of individuals who may be associated with WTCLU and ALCU of Tennessee, Inc. We found no further records regarding the final disposition of the "Notice."

14. We also found a list of affiliates as well as financial statements of the national organization of the ACLU. These records clearly list WTCLU as a separate entity, as of 1967.

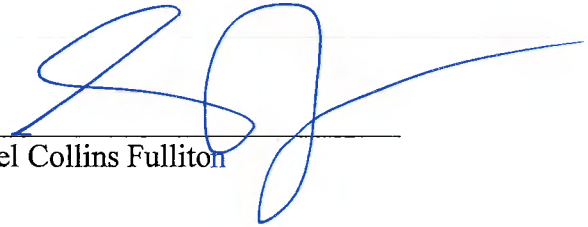
15. We made copies of each of the above-listed documents, and we brought the true copies back to Baker Donelson for further review.

16. We thoroughly reviewed every document in the file boxes pertaining to the ACLU or the WTCLU, and the above listed documents were the most relevant documents to the issue of the organizational structure of the ALCU of Tennessee and the West Tennessee Civil Liberties Union, Inc. during the 1960s and 1970s.

FURTHER AFFIANTS SAITH NOT.

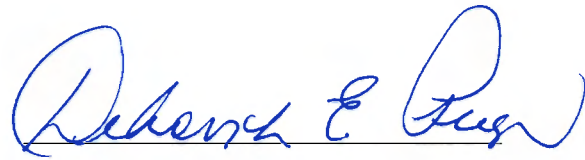


Pete Anthony Brunson



Samuel Collins Fulliton

SUBSCRIBED AND SWORN TO  
before me on this the 26th day of  
May, 2017.



Notary Public

My Commission Expires:

11-6-18



*AMK*

4/23/69

Mr. W. J. Michael Cody  
Burch, Porter & Johnson  
128 N. Court  
Memphis, Tn., 38103

Dear Mike:

I have your letter reporting on the April 19-20 meeting of the national ACLU board. Thank you for what I judge to be a concise and objective recital of the national issues discussed.

As to the Tennessee problem: I have voiced similar thoughts--that volunteer organizations such as the Tennessee affiliate must rely heavily on their paid staff for membership recruitment, etc.--several times. Mine is a long experience with such groups; there's hardly a one I haven't been a member of--sometimes a founder, often an officer.

Today, as a paid staff man for a somewhat similar organization--the U. S. Commission on Civil Rights, which relies heavily on Citizens Advisory Committees--I think I have still more insight into the needs of such groups.

To get down to cases, a disservice may have been done Mrs. Ennis when she was employed by the Tennessee affiliate, because her primary interests, I believe, are in the practice of law and legislation; an association executive must be interested in membership, financial strength, communication, and leadership development.

An attendant problem is affiliate-national relations: Our dues collection is complicated by national ACLU mailings. I will propose

2.

local collection and accounting, and a petition to the national ACLU that it discontinue direct solicitation of members of the Tennessee affiliate.

We have said repeatedly that we get so many solicitations that we lose track of when our dues are paid and when they are not.

I will be glad to discuss this further with you or others any time.

Sincerely yours,

John W. Spence  
1565 Vinton  
Memphis, Tn., 38104

P.S. I am, as you may know, a member of the boards of the West Tennessee chapter and the Tennessee affiliate.

# ACLU

## West Tennessee American Civil Liberties Union

3625 MIDLAND • MEMPHIS, TENNESSEE 38111

March 27, 1974

Mr. W. J. Michael Cody  
P.O. Box 3115  
Memphis, Tenn. 38103

Dear Mike:

We were informed last week that your membership in ACLU has been "suspended"; which simply means that you've received the five renewal solicitations routinely sent out by the national membership office and that in April your name will be "purged" from the rolls - unless you renew prior to that time. Obviously, those of us in the West Tennessee chapter are anxious that you remain officially in our number. So I'm enclosing a renewal form for your use.

You will be interested in knowing that membership in the West Tennessee chapter increased by 43% this past year. We're really pleased with this growth. Hopefully, we can continue to recruit new members at the same (or better) rate this year. Your membership and your good counsel mean a lot to us. So don't leave us now. We need you if we are to be a force for civil liberties in the community.

I had a chance to see you on the tube last Sunday, along with your Republican counterpart. You did a good job. I hope we can put up a winning Democratic fight this year and reverse some of Tennessee's Republican gains.

Yours sincerely,



Delton Pickering  
President  
ACLU in West Tennessee

DP:fb  
Enclosure

NOTICE OF  
PROPOSED BY-LAWS CHANGE

It is proposed that the statement in the by-laws on membership be changed to include persons in West Tennessee, as well as East and Middle Tennessee.

PRESENT BY-LAW: ARTICLE IV on MEMBERSHIP

All members in good standing of the American Civil Liberties Union, Inc., resident within the State of Tennessee east of the Tennessee River as it flows northerly from Alabama to Kentucky, shall be deemed members of the ACLU of Tennessee, Inc.

CHANGE THE ABOVE TO READ:

All members in good standing of the American Civil Liberties Union, Inc., resident within the State of Tennessee, shall be deemed members of the ACLU of Tennessee, Inc.

- - - -

INVITATION

This meeting will be the first statewide annual meeting held by the Tennessee ACLU. It will be an opportunity for people throughout the state to meet each other and to discuss civil liberties problems in their respective cities to find out what other people are doing about them.

We have deliberately limited the number of speakers so that individuals attending the meeting will have an opportunity to talk informally with each other. Informal conversations over lunch may be one of the most valuable parts of a meeting such as this.

We realize that for many people it is a long drive to Nashville, but we hope that as many persons as possible will make an effort to attend. We need to meet each other face to face at least once a year. Please feel free to bring any friends whom you think would be interested.

As an aid to the persons planning the meeting, it would be helpful if you would fill out and return the slip below to the ACLU office, 2126 Belcourt, Nashville, Tenn. 37212.

- - - -

I (will) (will not) (may) attend the annual meeting on May 10.

Name \_\_\_\_\_

Address \_\_\_\_\_

YAC Annual Meeting  
2126 Belcourt NE  
Nashville, TN 37212

American Civil Liberties Union  
156 Fifth Avenue  
New York, New York 10010

*Handwritten initials: KLU*

34 October 20, 1967

LIST OF AFFILIATES

\*Person to correspond with.

ALABAMA

CLU of Alabama  
Direct Correspondence To:  
C. H. Erskine Smith\*  
City National Bank Building - 14th Floor  
Birmingham, Alabama 35203

ARIZONA

Arizona CLU  
Executive Director  
Ted Mote\*  
1718 West Thomas Road  
Phoenix, Arizona 85016  
(602) 252-6291

President  
Bruce Clayton  
Post Office Box 3921  
Phoenix, Arizona 85030

CALIFORNIA

ACLU of Northern California  
Executive Director  
Ernest Besig\*  
503 Market Street  
San Francisco, California 94105  
office: (415) 433-2750

Chairman  
Van Dusen Kennedy  
673 Oberlin Avenue  
Berkeley, California 94708  
home: (415) 524-0771

Staff Counsel: Marshall W. Krause

ACLU of Southern California  
Executive Director  
Dr. Eason Monroe\*  
323 West Fifth Street, Room 202  
Los Angeles, California 90013  
office: (213) MA6-5156

President  
George Slaff  
1041 North Formosa  
Los Angeles, California 90046  
home: (213) 466-5191

Staff Counsel: A.L. Wirin

COLORADO

Colorado Branch, ACLU  
Executive Director  
Mrs. Dorothy E. Davidson\*  
1452 Pennsylvania Street  
Denver, Colorado 80203  
office: (303) TA5-2930

Chairman  
Royce Forsyth  
2205 South High Street  
Denver, Colorado

Greater Philadelphia Branch, ACLU  
Executive Director  
Spencer Coxe\*  
260 South Fifteenth Street  
Philadelphia, Pennsylvania 19102  
office: (215) PE5-7103  
home: (215) VI3-8476

President  
Prof. Monroe Beardsley  
1916 Delancey Street  
Philadelphia 3, Pennsylvania

RHODE ISLAND

Rhode Island CLU  
Executive Secretary  
Mrs. Norman Robinson (Natalie)\*  
142 Eighth Street  
Providence, Rhode Island 02906  
(401) 861-2971

Chairman  
Prof. William G. McLoughlin  
204 Bowen Street  
Providence, Rhode Island 02906  
(401) 521-0076

TENNESSEE

East Tennessee CLU  
President  
Walter Bishop\*  
102 West Lake Forrest Drive  
Knoxville, Tennessee 37920  
home: (615) 577-2830  
office: (615) 546-1660 ex. 274

West Tennessee CLU  
President  
W.J. Michael Cody, Esq.\*  
128 North Court Avenue  
Memphis, Tennessee 38103  
(901) 527-6385

Middle Tennessee CLU  
President  
Whitworth Stokes, Jr.\*  
618 Stahlman Building  
Nashville, Tennessee 37201  
office: (615) 244-2202  
home: (615) 292-8903

TEXAS

Texas CLU  
Executive Secretary  
Mrs. Enid Hallock  
3007 North Lamar, Room 203  
Austin, Texas 78705  
(512) 454-5856

Chairman  
Joseph L. Tita, Esq.  
1023 Americana Building  
Houston, Texas 77002  
office: (713) CA7-7288  
home: (713) MO8-9716

UTAH

Utah Affiliate, ACLU  
Interim President  
Dr. Richard G. Henson\*  
1151 Michigan Avenue  
Salt Lake City, Utah 84105  
office: (801) 364-1022



EXHIBIT D

AMERICAN CIVIL LIBERTIES UNION, INC.

(NATIONAL ORGANIZATION EXCLUSIVE OF AFFILIATES)

SPECIAL FUNDS SUMMARY OF FINANCIAL ACTIVITIES AND FUND BALANCES

YEAR ENDED DECEMBER 31, 1968

Fund Balances - January 1, 1968

Additions to Funds:

- Requests and memorial gifts
- Less: Affiliates' share and expense of collection
- Gain on sale of securities
- Dividends and interest (Note D)
- Contributions by affiliates
- Grant from Vigilance Fund
- Grant from Turner Fund

Total Additions to Fund

Total Funds Available

Grants and Expenses:

- Grants:
  - General Fund
  - Crisis Area Fund
  - Roger Baldwin Foundation of ACLU, Inc.,
  - Ghetto office projects
- Arizona CLU
- Georgia CLU
- Kentucky CLU
- Louisiana CLU
- Maryland CLU
- National Capital Area CLU
- Tennessee CLU
- Texas CLU
- Virginia CLU
- Wisconsin CLU
- West Tennessee CLU
- Expenses - custodian fee

Total Grants and Expenses

FUND BALANCES - DECEMBER 31, 1968 (Note C)

	Vigilance Fund	John B. Turner Fund	Endowment Fund	Arthur Keaven Monotki Fund	Geeta B. & Fanny J. Brown Fund	Crisis Area Fund	Edmund C. Evans Fund	Roger N. Baldwin Estrow Account
Total	\$323,365.01	\$103,546.86	\$ 95,825.31	\$ 2,352.52	\$8,325.62	\$21,759.15	\$5,841.68	\$41,595.89
\$116,650.59	\$106,795.27	\$ 500.00	\$9,355.32					
( 37,875.36)	( 37,822.00)		( 252.75)					
71,515.93	13,466.48	14,675.71						\$16,320.58
3,604.74						190.22		3,354.02
40,497.08								
26,824.42								
576.00								
\$221,793.40	\$ 96,245.27	\$ 15,175.71	\$9,103.07	\$ 60.50		\$67,897.50	\$ 190.22	\$19,674.60
\$822,033.80	\$419,571.12	\$17,013.34	\$9,103.07	\$8,386.12		\$89,656.65	\$6,031.90	\$61,270.49
\$ 71,300.00	\$ 26,700.00					\$40,000.00		\$ 4,600.00
27,400.42	26,824.42	576.00						
18,600.00						18,600.00		
5,196.00	3,176.00							
12,000.00	12,000.00							
2,000.00	2,000.00							
12,996.00								
1,180.00	260.00							
1,000.57								
5,999.30	5,999.30							
6,996.00	6,996.00							
4,249.98	4,249.98							
4,500.00	4,500.00							
1,000.00	1,000.00							
150.00								
\$173,568.27	\$ 35,621.10	\$ 576.00						150.00
\$648,465.53	\$323,921.51	\$16,437.34	\$9,103.07	\$8,386.12		\$71,596.00	\$1,000.57	\$ 4,750.00
						\$18,060.65	\$5,031.33	\$56,520.49

The accompanying notes are an integral part of this statement.