**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,<br><br>Plaintiffs,<br><br>And<br><br>ACLU OF TENNESSEE, INC.,<br><br>Intervening-Plaintiff,<br><br>vs.<br><br>THE CITY OF MEMPHIS,<br><br>Defendant. | ) | NO. 2:17-cv-02120-JPM-dkv |

**ORDER GRANTING MOTION TO DISMISS AS TO BLANCHARD PLAINTIFFS; ORDER DENYING MOTION TO DISMISS AS TO INTERVENING-PLAINTIFF ACLU OF TENNESSEE, INC.**

This Cause is before the Court on Defendant City of Memphis's Motion to Dismiss the Complaint of Plaintiffs Elaine Blanchard, Keedran Franklin, Paul Garner, and Bradley Watkins (the "Blanchard Plaintiffs") (ECF No. 8 at PageID 33) and Motion to Dismiss the Complaint of Intervening-Plaintiff ACLU of Tennessee, Inc. ("ACLU-TN") (ECF No. 22 at PageID 283), filed on March 1, 2017 and March 8, 2017, respectively.

The Blanchard Plaintiffs and ACLU-TN allege that Defendant City of Memphis is engaging in law enforcement activities that interfere with First Amendment rights, in violation of the 1978 Consent Order, Judgment and Decree in the case of Kendrick, et al. v. Chandler, et al., No. 2-76-cv-00449 (W.D. Tenn.). (ECF No. 1, 26.) Defendant City of Memphis, in its Motions

to Dismiss, argues that the Court lacks subject-matter jurisdiction to enforce the Decree, and that the Blanchard Plaintiffs and ACLU-TN lack standing to pursue the litigation. (ECF No. 8, 22.)

For the reasons stated below, the Court GRANTS Defendant's Motion to Dismiss the Complaint of the Blanchard Plaintiffs and DENIES Defendant's Motion to Dismiss ACLU-TN's Intervenor Complaint.[1]

## I. BACKGROUND

This case arises from a Consent Order, Judgment and Decree (the "Kendrick Decree") entered in 1978 in case of Kendrick, et al. v. Chandler, et al., No. 2:76-CV-00449 (W.D. Tenn.). (ECF No. 1; ECF No. 16.) The parties in Kendrick consisted of Plaintiffs Chan Kendrick, Mike Honey, and the American Civil Liberties Union in West Tennessee, Inc., and Defendants Wyeth Chandler, Mayor of the City of Memphis, W.O. Crumby, Chief of Police and Acting Director of the Police of the City of Memphis, PT Ryan, Captain of the Intelligence Section of the Memphis Police Department, and George W. Hutchison, Deputy Chief of Operations of the Memphis Police Department. (ECF No. 1-1.) The District Court entered an Order, Judgment and Decree on September 14, 1978 with the consent of the defendants. (Id. at PageID 9.) The purpose of the Kendrick Decree was to "prohibit the defendants and the City of Memphis from engaging in law enforcement activities which interfere with any person's rights protected by the First Amendment to the United States Constitution." (Id. at PageID 10.)

[1] Defendant filed a Motion for Oral Argument on the Issue of ACLU-TN's Standing on June 16, 2017 (ECF No. 38), to which ACLU-TN responded in opposition on June 23, 2017 (ECF No. 39). Without seeking leave from the Court, Defendant filed a reply to ACLU-TN's response on June 26, 2017. (ECF No. 40.) The Court DENIES AS MOOT Defendant's Motion for Oral Argument with the entry of this Order. Defendant is reminded that "[e]xcept as provided by LR 12.1(c) and LR 56.1(c), reply memoranda may be filed only upon court order granting a motion for leave to reply." L.R. 7.2(c).

Plaintiffs Elaine Blanchard, Keedran Franklin, Paul Garner, and Bradley Watkins (the "Blanchard Plaintiffs") filed a Complaint against Defendant City of Memphis on February 22, 2017 to enforce the Kendrick Decree and "for damages and other relief" against the City of Memphis. (ECF No. 1.) ACLU of Tennessee, Inc. ("ACLU-TN") filed a Motion to Intervene on March 2, 2017. (ECF No. 12.) The Motion to Intervene was granted. (ECF No. 15.) ACLU-TN filed its Intervenor Complaint on March 3, 2017. (ECF No. 16.) The Blanchard Plaintiffs and ACLU-TN allege that Defendant City of Memphis conducted video recording of protests in front of City Hall on February 21, 2017 and established a list of protesters, in violation of the Kendrick Decree. (ECF No. 1 at PageIDs 4-5; ECF No. 16 at PageIDs 225-26.) The Blanchard Plaintiffs also allege that Defendant failed to publish the Kendrick Decree on the City of Memphis and the Memphis Police Department websites, in violation of the Decree (ECF No. 1 at PageID 5.) The Blanchard Plaintiffs and ACLU-TN additionally allege that the Memphis Police Department uses a program called Geofeedia to monitor social media postings in violation of the Kendrick Decree. (Id.; ECF No. 16 at PageID 227.) Lastly, the Blanchard Plaintiffs and ACLU-TN allege that the City of Memphis and the Memphis Police Department have created "black lists" of people who may not come into City Hall without police escort, which includes people who participated in protected First Amendment activities. (ECF No. 1 at PageID 6; ECF No. 16 at PageID 226.) The Blanchard Plaintiffs and ACLU-TN seek compensatory damages, injunctive relief, and a declaratory judgment. (ECF No. 1 at PageID 7; ECF No. 16 at PageID 228.)

On March 7, 2017, Defendant filed a Motion to Bifurcate and Stay or Limit Discovery, requesting that the Court bifurcate the standing and subject-matter jurisdiction issues from the

merits of the case, and grant a stay of discovery or limit initial discovery to the standing issue. (ECF No. 19.) The Court denied Defendant's Motion on March 31, 2017. (ECF No. 27.)

Defendant filed a Motion to Dismiss the Complaint of the Blanchard Plaintiffs on March 1, 2017, asserting that the Court lacks subject-matter jurisdiction to enforce the Kendrick Decree and that the Blanchard Plaintiffs lack standing to bring the suit. (ECF No. 8.) The Blanchard Plaintiffs filed a Response in Opposition on March 29, 2017. (ECF No. 26.) Defendant filed a Reply to the Blanchard Plaintiffs' Response on April 3, 2017. (ECF No. 29.)

Defendant filed a Motion to Dismiss the Intervenor Complaint of ACLU-TN on March 8, 2017, asserting that the Court lacks subject-matter jurisdiction over the Kendrick Decree and that ACLU-TN lacks Article III standing. (ECF No. 22.) ACLU-TN filed a Response in Opposition on April 5, 2017. (ECF No. 33.) Defendant filed a Reply to ACLU-TN's Response on April 10, 2017. (ECF No. 35.)[2]

## II. LEGAL STANDARD

### A. Subject-Matter Jurisdiction

If the court determines at any time that it lacks jurisdiction, the case must be dismissed. Fed. R. Civ. P. 12(b)(1). The plaintiff "bears the burden of establishing that jurisdiction exists." Serras v. First Tennessee Bank Nat. Ass'n, 875 F.2d 1212, 1214 (6th Cir. 1989) (citing McNutt v. General Motors Acceptance Corp., 298 U.S. 178, 189 (1936); Weller v. Cromwell Oil Co., 504

[2] Without seeking leave from the Court, Defendant City of Memphis filed a Supplemental Memorandum on June 6, 2017 (ECF No. 36), to which ACLU-TN filed a Response on June 9, 2017 (ECF No. 37). Pursuant to the Local Rule 12.1, replies to a motion to dismiss must be filed within 14 days after the response is served, and a reply may not exceed 10 pages without prior Court approval. Defendant filed its timely Reply to ACLU-TN's Response on April 10, 2017. (ECF No. 35.) The supplemental memorandum, filed almost 2 months after Defendant's Reply, is not only untimely but is also a total of 16 pages when combined with Defendant's Reply. (See ECF Nos. 35, 36.) The Court therefore declines to consider Defendant's Supplemental Memorandum.

F.2d 927, 929 (6th Cir. 1974)). Both the Blanchard Plaintiffs and ACLU-TN assert that the Court has ancillary jurisdiction to enforce the Kendrick Decree. (ECF Nos. 26, 33.)

The doctrine of "ancillary jurisdiction" recognizes a "federal courts' jurisdiction over some matters (otherwise beyond their competence) that are incidental to other matters properly before them." Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 378 (1994). "Ancillary jurisdiction applies to related proceedings that are technically separate from the initial case that invoked federal subject-matter jurisdiction." 13 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 3523, at 154 (3d ed. 2008). An ancillary suit is defined as:

> A bill filed to continue a former litigation in the same court . . . to obtain and secure the fruits, benefits and advantages of the proceedings and judgment in a former suit in the same court by the same court . . . or to obtain any equitable relief in regard to, or connected with, or growing out of, any judgment or proceeding at law rendered in the same court.

Kokkonen, 511 U.S. at 378 (citing Julian v. Central Trust Co., 193 U.S. 93 (1904)). Ancillary jurisdiction has generally been asserted for two purposes: "(1) to permit disposition by a single core of claims that are, in varying respects and degrees, factually interdependent, and (2) to enable a court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees." Id. at 379-80. The first of the two purposes has largely been codified in the supplemental jurisdiction statute, 28 USC § 1367. See Hudson v. Coleman, 347 F.3d 138, 142 (6th Cir. 2003). The second of the two purposes, asserted by the Blanchard Plaintiffs and ACLU-TN and addressed in the instant Order, is generally referred to as "ancillary enforcement jurisdiction." Id.

"A consent decree is essentially a settlement agreement subject to continued judicial policing." Williams v. Vukovich, 720 F.2d 909, 920 (6th Cir. 1983). "A consent decree has

attributes of both a contract and of a judicial act." Id. As such, a court's jurisdiction over a consent decree should be analyzed as if the consent decree is both a settlement agreement and a judicial act.

**1. Continuing Jurisdiction Over a Settlement Agreement**

In Kokkonen, the Supreme Court discussed a court's ancillary jurisdiction over a settlement agreement. Kokkonen, 511 U.S. at 379. The Court concluded that ancillary jurisdiction did not exist to enforce the settlement agreement, because the Stipulation and Order of Dismissal with Prejudice that dismissed the case "did not reserve jurisdiction in the District Court to enforce the settlement agreement," refer to the settlement agreement, or incorporate its terms. Id. at 377-81. The Supreme Court distinguished the case from Julian, in which ancillary jurisdiction existed because "the court, in a prior decree of foreclosure, had *expressly reserved* jurisdiction to adjudicate claims against the judicially conveyed property, and to retake and resell the property if claims it found valid were not paid." Id. at 379. The Court emphasized the importance of the language in the Order of Dismissal, stating that "the parties' compliance with the terms of the settlement contract (or the court's "retention of jurisdiction" over the settlement contract) may, in the court's discretion, be one of the terms set forth in the order." Id. at 381. The Supreme Court also emphasized the consented-to nature of a settlement agreement, stating that "[i]f the parties *wish* to provide for the court's enforcement of a dismissal-producing settlement agreement, they can seek to do so." Id. at 381. The Court concluded that a "court is authorized to embody the settlement contract in its dismissal order (or, what has the same effect, retain jurisdiction over the settlement contract) if the parties agree." Id. at 381-82. The Sixth Circuit has interpreted Kokkonen to indicate that a district court may retain jurisdiction to enforce a settlement agreement if the court "either (1) has language in the dismissal order

indicating its retention of jurisdiction, or (2) incorporates the terms of the settlement agreement into the dismissal order." Hehl v. City of Avon Lake, 90 F. App'x 797, 801 (6th Cir. 2004).

**2. Continuing Jurisdiction Over an Injunction**

"The injunctive quality of consent decrees compels the court to: 1) retain jurisdiction over the decree during the term of its existence, . . . 2) protect the integrity of the decree with its contempt powers, . . . and 3) modify the decree should 'changed circumstances' subvert its intended purpose." Williams v. Vukovich, 720 F.2d 909, 920 (6th Cir. 1983) (quoting Stotts v. Memphis Fire Department, 679 F.2d 541 (6th Cir. 1982); Brown v. Neeb, 644 F.2d 551, 563 (6th Cir. 1981)). "A district court must look to the specific terms of a consent decree in determining whether and when to terminate supervision or jurisdiction over it." Gonzales v. Galvin, 151 F.3d 526, 531 (6th Cir. 1998) (citations omitted). "Factors to be considered include (1) any specific terms providing for continued supervision and jurisdiction over the consent decree; (2) the consent decree's underlying goals; (3) whether there has been compliance with prior court orders; (4) whether defendants made a good faith effort to comply; (5) the length of time the consent decree has been in effect; and (6) the continuing efficacy of the consent decree's enforcement." Id. (citing Heath v. DeCourcy, 992 F.2d 630, 633 (6th Cir.1993)). "Notwithstanding this list of "factors," a district court may not terminate its jurisdiction until it finds both that Defendants are in compliance with the decree's terms and that the decree's objectives have been achieved." Id.

**B. Standing**

To satisfy the standing requirements of Article III of the Constitution, a plaintiff must show: "(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. Defenders of Wildlife, 504 U.S. 555, 560–61 (1992)). "To establish injury in fact, a plaintiff must show that he or she suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" Spokeo v. Robins, 136 S.Ct. 1540, 1548 (2016). A plaintiff bears the burden to show he or she has standing. Susan B. Anthony List v. Driehaus, 134 S. Ct. 2334, 2342 (2014).

**1. Third-Party Beneficiaries to a Consent Decree**

"[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." Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 750 (1975). See also S.E.C. v. Dollar Gen. Corp., 378 F. Appx 511, 515 (6th Cir. 2010) (holding that "third parties, even intended third-party beneficiaries, lack standing to enforce their interpretations of agreed judgments"); Aiken v. City of Memphis, 37 F.3d 1155, 1168 (6th Cir. 1994) (following Blue Chip's ruling to hold that "even intended third-party beneficiaries of a consent decree lack standing to enforce its terms.").

**2. Successors in Interest to a Consent Decree**

Acquiring entities typically have standing as successors-in-interest. See Bank of America, National Association v. Meyer, No. 14-01123, WL 1275394, at *3 (Tenn. Ct. App. 2015) (holding that Bank of America had standing as a successor in interest of a deed of trust of an acquired corporation). Tennessee law also allows for derivative standing in several other situations, including labor disputes. T.C.A. § 1132(a)(1)(B). See also Scott v. Regions Bank, 702 F. Supp. 2d 921, 929 (E.D. Tenn. 2010) (allowing a trustee of a testamentary trust to have

derivative standing as a successor in interest to bring an action under ERISA to recover health care benefits).

"The invasion of a common-law right (including a right conferred by contract) can constitute an injury sufficient to create standing." See Katz v. Pershing, LLC, 672 F.3d 64 (1st Cir. 2012) (citing Ala. Power Co. v. Ickes, 302 U.S. 464 (1938)). Successors in interest to a consent decree are bound by the decree as parties in privity. See Vulcan, Inc. v. Fordees Corporation, 658 F.2d 1106, 1109 (6th Cir. 1981) (discussing privity to a consent decree in the context of res judicata). Federal Rule of Civil Procedure Rule 65(d) provides that "[e]very order granting an injunction . . . is binding only upon the parties to the action, their officers, agents, servants, employees." Fed. R. Civ P. 65(d). This rule 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. Greir, 262 F.3d 559, 594 (6th Cir. 2001) (quoting Regal Knitwear Co. v. National Labor Relations Board, 324 U.S. 9, 14 (1945).

Privity is defined as parties who "have a sufficiently close relationship with the record parties to be bound by the judgment." Vulcan, 658 F.3d at 1109. A party is in privity with another if that party is "represented by them or subject to their control." Tennessee Ass'n of Health Maint. Organizations, Inc. v. Greis, 262 F.3d 559, 594 (6th Cir. 2001) (quoting Regal Knitwear Co. v. National Labor Relations Board, 324 U.S. 9, 14 (1945)). "Whether privity exists in a given case is a question of fact." Vulcan, 658 F.3d at 1109. Under the concept of privity, a litigant who is not a party to the prior suit may be bound by a prior judgment if he/she is a successor in interest, a nonparty who controlled the earlier lawsuit, or a nonparty who was adequately represented by a party in the prior litigation. Sweeney v. City of Steubenville, 147

F.Supp.2d 872, 880 (N.D. Ohio 2001); Baltz v. Botto, 147 F.Supp. 468, 477 (W.D. Tenn. 1956) ("A successor in interest is in privity with its predecessor in interest").

## III. ANALYSIS

### A. Subject-Matter Jurisdiction

Defendant argues that the Court lacks subject-matter jurisdiction over the Kendrick Decree, asserting that the Decree was a final adjudication of the matters before the Kendrick court and that the language of the Decree did not indicate that it was intended to operate in perpetuity. (ECF No. 9 at PageIDs 41-46; ECF No. 22-1 at PageID 297.) The Blanchard Plaintiffs and ACLU-TN argue that the Court retains jurisdiction over the Kendrick Decree due to the language of the Decree and the nature of the Decree as an injunction. (ECF No. 26 at PageIDs 329-31; ECF No. 33 at PageIDs 374-79.)

#### 1. The Decree as a Settlement Agreement Under Kokkonen

Section M of the Kendrick Decree, titled "Retention of Jurisdiction," reads as follows:

> The Court will retain jurisdiction of this action, including any issue which might arise regarding the payment of attorneys' fees to counsel for plaintiffs, pending disposition of all matters contained in this Decree and for the purpose of issuing any additional order required to effectuate this Decree.

(ECF No. 1-1 at PageID 14.) The Court finds that the explicit retention of jurisdiction in the Kendrick Decree gives the Court ancillary jurisdiction over the instant case. Cf. Kokkonen, 511 US at 377, 389. Unlike Kokkonen, the order resolving the Kendrick case reserved jurisdiction to enforce the decree, thus giving the Court ancillary jurisdiction "to protect its proceedings and vindicate its authority." Id. at 380. Similar to Julian, ancillary jurisdiction exists based upon the fact that the Kendrick court expressly reserved jurisdiction to issue orders required to effectuate the Decree. See id. at 379. Defendant argues that the Decree has long since been "effectuated," as the Decree applies to a different set of plaintiffs and defendants. (ECF No. 9 at PageID 43.)

The plain language of the Decree, however, purports to bind the Memphis Police Department in its present and future capacities, defining "Defendants" as "defendants Chandler, Crumby, Ryan and Hutchinson and their *successors in office*." (ECF No. 1-1 at PageID 11 (emphasis added).) The Decree defines the City of Memphis as "*all present and future* officials, employees and any other agents, and all departments, divisions and any other agencies, of the City of Memphis, Tennessee." (Id. (emphasis added).) If the Decree has been violated by the City of Memphis, as Plaintiffs suggest, the Court must retain jurisdiction "to effectuate this Decree." (Id.) A breach of the Decree would be a violation of the order of dismissal,[3] and pursuant to Kokkonen, ancillary jurisdiction to enforce the Decree therefore exists. Id. at 381.

**2. The Decree as an Injunction**

Defendant also argues that public policy prohibits the Kendrick Decree from operating in perpetuity. (ECF No. 9 at PageID 45-46.) The Court, however, does not find any language in the Decree indicating a specific timeframe or expiration date. Additionally, given the injunctive nature of the Decree, the Court finds that the specific terms as well as the injunctive nature weigh in favor of retaining jurisdiction over the decree. See Gonzales v. Galvin, 151 F.3d 526, 531 (6th Cir. 1998) (putting forth a list of factors for a district court to consider in determining whether and when to terminate supervision or jurisdiction over a consent decree). The presence of a retention of jurisdiction clause, with no particular duration, as well as the language of the consent decree purporting to bind the defendants' "successors in office" and "all present and future officials" of the City of Memphis, weigh in favor of continued supervision and jurisdiction.

[3] The Order, Judgment, and Decree in the instant case essentially functioned as the "order of dismissal" described in Kokkonen, because it operated as a final adjudication of the merits in the Kendrick litigation. Though the case did not close upon entry of the order, the remainder of the docket entries did not concern the merits of the case, but rather were filed to resolve the remaining issue of attorney's fees. (See Kendrick, et al. v. Chandler, et al., No. 2:76-CV-00449 (W.D. Tenn.), ECF No. 5.)

(ECF No. 1-1 at PageID 11, 12.) The underlying goals of the Decree, to "prohibit the defendants and the City of Memphis from engaging in law enforcement activities which interfere with any person's rights protected by the First Amendment" also weigh in favor of continued jurisdiction. The Decree binds the City of Memphis, an entity that was likely expected to survive for more than 39 years; therefore, it appears that the Kendrick court contemplated that the injunction would be enforced beyond 2017.[4] Enforcement of the Decree would no doubt have continuing efficacy to protect the First Amendment rights of "any individual, group or organization" against abuses by the government. (ECF No. 1-1 at PageID 11.) Construing the Complaint in the light most favorable to Plaintiffs, it does not appear that the Decree's objectives have been achieved such that the Decree no longer needs to be in effect. Rather, continuing jurisdiction over the Decree allows an ongoing process to exist whereby the Court may ensure that the First Amendment rights are protected. Due to all of these considerations, the Court finds that the factors weigh against terminating over the Decree at this time.

**B. Standing**

**1. Blanchard Plaintiffs**

Defendant argues that the Blanchard Plaintiffs lack standing because they suffered no injury in fact as they were not parties to the Kendrick Decree. (ECF No. 9 at PageIDs 39-41.) Even if the Blanchard Plaintiffs were intended third-party beneficiaries, Defendant argues that they would still lack standing to enforce the Decree. (Id.) The Blanchard Plaintiffs assert that they are intended, not incidental third-party beneficiaries, and so have standing to enforce the Decree. (ECF No. 26 at PageIDs 326-29.)

[4] The Court does not decide whether the Decree should be "enforced in perpetuity"; rather, the Court holds only that it need not terminate its supervision of the Decree at this time.

The Blanchard Plaintiffs recycle the same argument that was rejected by the Sixth Circuit in Aiken. In Aiken, the Sixth Circuit clearly stated that "even intended third-party beneficiaries of a consent decree lack standing to enforce its terms." Aiken, 37 F.3d at 1168. As such, the Blanchard Plaintiffs lack standing to enforce the Kendrick Decree.[5]

**2. ACLU-TN**

Defendant argues that ACLU-TN lacks standing to enforce the Kendrick Decree because the West Tennessee Civil Liberties Union ("WTCLU"), not ACLU-TN, was the original party to the Decree, and therefore ACLU-TN did not suffer an injury in fact. (ECF No. 22-1 at PageIDs 291-97.) ACLU-TN argues that it was an original party to the Kendrick lawsuit because the WTCLU was operating as a chapter of the ACLU-TN. (ECF No. 33 at PageIDs 369-74.)

The WTCLU was formed on April 18, 1967 "to further the objectives of the American Civil Liberties Union and to advance the cause of civil liberties in the State of Tennessee." (ECF No. 33-6 at PageID 413.) The WTCLU was formed as a general welfare, not-for-profit corporation.[6] (Id. at PageIDs 413, 414, 418.)

[5] Plaintiffs argue that the holding in Blue Chip is contrary to Federal Rule of Civil Procedure 71, citing cases from the Second Circuit, Ninth Circuit, and Restatement (Second) of Contracts, all of which, unlike Aiken, are merely persuasive and not binding to this Court.

[6] There appears to be some confusion as to whether WTCLU was formed as a non-profit or for-profit corporation. (Compare ECF No. 22-2 at PageID 299 with ECF No. 33-6 at PageIDs 413, 414, 418.) The Court finds persuasive WTCLU's 1967 Charter of Incorporation, which indicates that WTCLU was intended to be formed as a not-for-profit corporation, as well as the 1983 notice of dissolution/revocation from the Tennessee Department of Revenue, which describes WTCLU as a not-for-profit corporation. (See ECF No. 33-6 at PageIDs 413, 418.) The Court places lesser weight on the classification of the WTCLU found through an Internet search conducted on the Tennessee Department of State website in March 2017. (See ECF No. 22-2, 22-4.) See also Federal Rule of Evidence 1002 ("An original writing, recording, or photograph is required in order to prove its content unless these rules or a federal statute provides otherwise.") In any event, classification of WTCLU as a non-profit or for-profit organization does not materially affect the Court's analysis in the section.

ACLU-TN was formed on September 18, 1968, in part, "to assume and continue the operations of the West Tennessee Civil Liberties, Inc., a Tennessee Corporation." (ECF No. 33-4 at PageIDs 404-05.) ACLU-TN was formed as a general welfare, not-for-profit corporation. (Id. at PageID 406.) The bylaws of ACLU-TN, as revived in 1973, describe the structure of the organization. (ECF No. 33-8.) Specifically, the bylaws describe the chapters of the ACLU-TN as having the "authority to direct and govern activities of ACLU in their area, subject to the policies and regulations of the ACLU of Tennessee, Inc." (Id. at PageID 425.)

The Kendrick lawsuit was filed on September 10, 1976. (Kendrick, et al. v. Chandler, et al., No. 2:76-cv-00449 (W.D. Tenn.), ECF No. 5 at PageID 24.) The description of the plaintiff at issue in the Kendrick lawsuit reads: "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." (Id., ECF No. 2 at PageID 2.) ACLU-TN was not a named plaintiff in the Kendrick lawsuit. (Id.) The Kendrick Decree, which concluded the merits of the Kendrick lawsuit on September 14, 1978, named the plaintiff "American Civil Liberties Union in West Tennessee, Inc." as a party to the Decree. (ECF No. 1-1.)

The WTCLU and ACLU-TN were dissolved on March 17, 1983 for failure to file annual reports with the Department of Revenue. (ECF No. 33-6 at PageID 418; ECF No. 22-3 at PageID 301.) ACLU-TN had its revocation cleared by the Department of Revenue and was reinstated in 1998. (ECF No. 22-3 at PageID 301.)

The Court finds that 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. WTCLU

was established to "further the objectives of the American Civil Liberties Union . . . in the state of Tennessee." (ECF No. 33-6 at PageID 413.) WTCLU, as a chapter of the ACLU-TN, had the authority to "direct and govern" activities of the ACLU in Western Tennessee. (ECF No. 33-8 at PageID 425.) WTCLU, therefore, acted on behalf of ACLU-TN in the filing of the Kendrick lawsuit. ACLU-TN's Charter of Incorporation states that the purpose of ACLU-TN's incorporation is to "assume and continue the operations of West Tennessee Civil Liberties, Inc." (ECF No. 33-4 at PageID 405.) When WTCLU dissolved in 1983, ACLU-TN "assume[d] and continue [d] the operations of the WTCLU. (ECF No. 33-4 at PageID 405.) ACLU-TN's bylaws, ACLU-TN's charter, and WTCLU's charter show that ACLU-TN was represented by WTCLU in the Kendrick litigation, and WTCLU was subject to ACLU-TN's control; thus ACLU-TN was a party in privity to the Decree. (ECF No. 33-4, 33-7, 33-8.) As a party in privity, ACLU-TN is bound by the Decree, and ACLU-TN's "legally protected interest" in the Kendrick Decree is violated through a violation of the Decree. Spokeo, 136 S.Ct. at 1548; see Tennessee Ass'n of Health Maint. Organizations, Inc. v. Greir, 262 F.3d 559, 594 (6th Cir. 2001) ("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"). As such, ACLU-TN has standing to enforce the Decree as one who suffers an injury-in-fact.

Defendant argues that ACLU-TN and WTCLU exist in a parent-subsidiary relationship, and, as such, ACLU-TN as the parent company does not have standing to sue on behalf of WTCLU, the subsidiary. (ECF No. 22-1 at PageID 296.) Defendant has not alleged that ACLU-TN or WTCLU were stock-owning corporations at any point in time; therefore, it appears that

the entities do not meet the definition of parent and subsidiary companies.[7] ACLU-TN is therefore not precluded from bringing suit based on a parent-subsidiary relationship.

## IV. CONCLUSION

For the reasons stated above, the Court GRANTS Defendant's Motion to Dismiss the Complaint of the Blanchard Plaintiffs (ECF No. 1) due to lack of standing. All complaints asserted by Plaintiffs Elaine Blanchard, Keedran Franklin, Paul Garner, and Bradley Watkins against Defendant City of Memphis are hereby DISMISSED WITHOUT PREJUDICE. The Court DENIES Defendant's Motion to Dismiss the Complaint of ACLU-TN (ECF No. 16).[8]

It is so ordered, this 30th day of June, 2017.

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

[7] A parent-subsidiary relationship is generally one where the parent company has the right to vote—or has the power to sell or direct—fifty percent or more of a class of voting security (stock) of the subsidiary. See, e.g., United States v. Bestfoods, 524 U.S. 51, 61 (1998). Tennessee courts have adhered to similar principles, holding that a parent subsidiary relationship is defined by control through ownership of another corporation's stock. See, e.g., United States v. American Mercantile Corp., 889 F.Supp.2d 1058, 1071 (W.D. Tenn. 2012); Gordon v. Greenview Hosp., Inc., 300 S.W.3d 635, 652-53 (Tenn. 2009). A parent company does not have standing to sue for the wrong suffered by its subsidiary. MSS, Inc. v. Maser Corp., No. 3:09-CV-00601, 2011 WL 2938424, at *2 (M.D. Tenn. July 18, 2011). See also Media Gen., Inc. v. Tanner, 625 F.Supp. 237, 244 (W.D. Tenn. 1985) (citation omitted) (holding that a "parent corporation could not bring suit for diminution in the value of its capital stock because of injury that was actually incurred by its subsidiary"); House v. Estate of Edmondson, 245 S.W.3d 372, 381 (Tenn. 2008) (citation omitted) ("[T]he proper party to bring a claim on behalf of a corporation is the corporation itself.'").

[8] Defendant requests additional time to conduct discovery on the issue of ACLU-TN's standing. (ECF No. 35 at PageID 444.) The Court has found that ACLU-TN has carried its burden of establishing standing. The Court declines to grant Defendant additional time under these circumstances.