

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.	)
	)

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

Intervening Plaintiff, ACLU of Tennessee, Inc. responds to Defendant's Motion for Summary Judgment on the Issue of Standing, requesting that the Court deny Defendant's motion.

**INTRODUCTION**

Defendant filed a motion to dismiss Intervening Plaintiff, ACLU of Tennessee, Inc.'s (ACLU-TN) complaint, raising issues of standing and jurisdiction. (Doc. No. 8). Defendant argued that ACLU-TN was not an original party to the Order Judgement and Decree (the "Decree") entered by this Court in 1978. The Court denied this Motion, finding that ACLU-TN was, at the least, a successor-in-interest to the entity that was a party to the Decree. Defendant now files a Motion for Summary Judgment on the same issue. Defendant again insists that a long defunct corporate entity,

whose name appears nowhere in the original complaint, was a plaintiff in the original lawsuit. In fact, ACLU-TN, doing business through its West Tennessee Chapter, was the original party. Even if Defendant were correct that another legal entity was the plaintiff, the Court's successor-in interest analysis from its prior order remains correct and ACLU-TN has standing to maintain this effort to enforce the Decree.

### **STATEMENT OF FACTS**

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"]. 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.

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

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.

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

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

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. 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.

Chapters were organized much like corporations, with by-laws, Boards of Directors and officers. 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. 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. ACLU-TN also allocated funds to the chapters "as it deems appropriate." Id.

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. 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.

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

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

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

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. 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.

### **ARGUMENT AND CITATION TO AUTHORITY**

For a court to have jurisdiction over a “case” or “controversy”, it must be established that the party bringing the case before the court has standing to do so. See Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992). There are three elements that must be met to establish standing; (1) the plaintiff must suffer “injury in fact”, (2) the injury must be “fairly traceable to the challenged conduct of the defendant”, and (3) it must be “likely” that the injury will be “redressed by a favorable decision”. See id. at 560-61. It is the burden of the party invoking federal jurisdiction to establish these elements. See id. at 561. These elements must be supported to the same degree “as any other matter which the plaintiff bears the burden of proof”, which varies at different stages of litigation. See id.

Defendant argues that ACLU-TN was not a party to the original litigation and, therefore, has suffered no injury for Defendant’s violation of the Decree. The requirement of standing then rests on whether ACLU-TN was an original party. If not, the Court’s original successor-in-interest ruling remains correct and establishes standing.

- A. **ACLU-TN was the actual party in interest in Kendrick v. Chandler because the American Civil Liberties Union in West Tennessee was operating as a Chapter under the ACLU-TN By-Laws.**

The West Tennessee Civil Liberties Union, Inc. was not a chapter of the ACLU-TN nor was it a party to the Kendrick litigation. The West Tennessee Civil Liberties

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

The Kendrick Complaint specifically refers to Plaintiff American Civil Liberties Union of West Tennessee, Inc. as a chapter of the ACLU-TN.

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-profits, 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 whom is dedicated to and involved in activities and conduct protected by the First, Fourth, Fifth, Sixth, ninth and Fourteenth Amendments to the Constitution of the United States, and the corporate entity itself is dedicated to and involved in such constitutionally protected activities.

Kendrick Complaint ¶3(c) (emphasis added). The plain language of the Kendrick Complaint states that the American Civil Liberties Union of West Tennessee, Inc. was operating as part of the ACLU-TN. The misuse of the abbreviation “Inc.” does magically grant an organization corporate status. American Civil Liberties Union of West Tennessee, Inc. was not a properly formed corporation under Tennessee law, or the laws of any other state. Notably, the “Inc.” is absent in the pleadings for the reference to national ACLU, yet that fact does not automatically strip the corporation of its form. There is and was no corporation known by this specific name. It is clear that at sometime before October 5, 1975, the West Tennessee Chapter came into

existence under ACLU-TN's By-laws. See October 4, 1975 Minutes, Doc. No. 33-9, Page ID 428.

Defendant argues that this suggestion of incorporation and the use of the acronym "WTCLU" somehow establishes that the original plaintiff was the West Tennessee Civil Liberties Union, Inc. This simply cannot be the case.

The name "West Tennessee Civil Liberties Union, Inc" is entirely absent from the Kendrick Complaint. The acronym "WTCLU" alone does not prove that the West Tennessee Civil Liberties Union, Inc. had anything to do with the Complaint. If the corporation were indeed operating at the time and was an original party to the 1976 lawsuit, its name would certainly have appeared in the Kendrick Complaint in some form more substantial than a mere acronym.

In contrast, ACLU-TN's name does appear in the Complaint. As clearly explained in the Complaint itself, American Civil Liberties Union of West Tennessee, Inc. was a chapter of ACLU-TN. To understand what this means, the Court should look to the ACLU-TN's 1973 By-laws, which instruct on what the term "chapter" means. As revealed in the By-laws, a chapter is not a separate legal entity, but a local office chartered under ACLU-TN's By-laws. See 1973 By-Laws, at Art. VIII, § 2. A chapter is specifically authorized to conduct business on behalf of the ACLU-TN. Id. Its existence is entirely dependent on the ACLU-TN and it is required to report its activities to ACLU-TN. Id. §§ 3-4.

Moreover, the Charter and minutes show that West Tennessee Civil Liberties Union, Inc. had been absorbed by ACLU-TN in the years prior to the Kendrick

litigation. The Charter of the ACLU-TN states that the corporation's purpose was to absorb the activities of the three regional entities created in 1966 and 1967. The relationship shown in Board of Directors Minutes over the years before the Kendrick Complaint demonstrates that that goal was achieved by 1976.

Minutes for ACLU-TN Board of Director meeting held on October 4, 1975, show that various *chapters* are in attendance, including the West Tennessee Chapter. Nothing in the minutes or in the by-laws suggest that it would be proper for a fully firmed corporation to become a chapter. The simplest solution to absorbing the West Tennessee Civil Liberties Union, Inc. would not be to make it a chapter, but to create a new West Tennessee Chapter under the rules set out in the By-laws, and abandon the now unnecessary corporation.

The West Tennessee Chapter was a part of ACLU-TN and brought litigation under the authority granted to it by ACLU-TN By-laws. In effect, ACLU-TN was "doing business as" the American Civil Liberates Union in West Tennessee when it filed the lawsuit. This is akin to a company's Memphis office conducting its affairs in Memphis, while its headquarters manages the various offices around the state.

While the chapter system of corporate management has fallen by the wayside in the past decades, the ACLU-TN persists and is the proper party to the 1978 Decree. Therefore, ACLU-TN has standing to enforce the Decree.

B. Even if the West Tennessee Civil Liberties Union, Inc. were the original Plaintiff in Kendrick v. Chandler, ACLU-TN Has Standing to Enforce the Decree as its Successor-in-Interest.

Even if the original Kendrick Complaint were the West Tennessee Civil Liberties Union, Inc. and not a chapter of ACLU-TN, the Court's analysis in its Order denying Defendant's Motion to Dismiss is correct, and ACLU-TN should be considered a successor-in-interest.

The Court found in its Order that the ACLU-TN was a successor-in-interest to the West Tennessee Civil Liberties Union, Inc, because it was operating as a chapter to the ACLU-TN and because of their close relationship and common purpose. As is evidenced the by-laws, chapters operated under the close supervision and control of the ACLU-TN, while simultaneously providing fundraising support and handling litigation and local education efforts.

As the Court noted, in the Sixth Circuit a party was bound by the effects of a consent decree if it were a successor in interest. Vulcan, Inc. v. Fordees Corp., 658 F.2d 1106, 1111 (6th Cir. 1981). Defendant attempts to distinguish the case, noting that the case concerned whether a consent decree imposed *res judicata* on a successor-in-interest. Indeed, this was the focus of the case. The Court held that "Fordees' interests were "so closely aligned" with those of M&G that they were fairly represented in the Pennsylvania proceedings." Therefore, Fordees was precluded from re-litigating the matter.

While the foci of the cases are different, the Court rightly found that the same logic applies. If the law demands that parties in privity are so closely aligned that a

consent decree entered by one may be enforced against another, then such parties should be able to enforce that same decree.

Defendant also cites Sanders v. Republic Services of Kentucky, LLC, 113 Fed. Appx. 648 (6th Cir. 2004), an unpublished decision, for the proposition that those who are not a party to a decree cannot enforce it. Sanders was not a case where a successor-in-interest or party in privity sought to enforce a consent decree. In that case, the plaintiffs were not connected at all to the original plaintiffs to the consent agreement. While they had been parties to the original litigation, that litigation did not result in their inclusion in the settlement. The court, therefore, prohibited plaintiffs from attempting to enforce another parties' agreement. Id. at 650-51. The case does not treat the issue at all as to whether a successor-in-interest or party in privity, which necessarily would not be the actual entity signing onto a consent decree, can enforce the decree. The case merely repeats the standard that a third-party beneficiary cannot sue to enforce a consent decree. Sanders, 113 F. App'x at 650 ("It also is worth noting that the plain text of the Agreed Judgment itself reserves the right of enforcement solely to Valley View and its successors.").

For the foregoing reasons, ACLU-TN has established standing to bring this action enforcing the Decree.

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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