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22 **IN THE UNITED STATES DISTRICT COURT**  
23 **FOR THE DISTRICT OF ARIZONA**

24 **DAN RAY FRAZIER,**

25 Plaintiff,

vs.

26 **PATRICIA J. BOOMSMA, IN HER OFFICIAL**  
27 **CAPACITY AS THE CITY ATTORNEY OF THE**  
28 **CITY OF FLAGSTAFF, ARIZONA; TERENCE**  
29 **HANCE, IN HIS OFFICIAL CAPACITY AS THE**  
30 **COCONINO COUNTY ATTORNEY, ARIZONA;**  
31 **TERRY GODDARD, IN HIS OFFICIAL CAPACITY**  
32 **AS THE ATTORNEY GENERAL OF THE STATE**  
33 **OF ARIZONA; JOHN AND JANE DOES, 1-50,**  
34 **INDIVIDUALLY AND IN THEIR OFFICIAL**  
35 **CAPACITY AS CITY OR COUNTY ATTORNEYS**  
36 **IN ARIZONA; JOHN AND JANE DOES 51-3551,**  
37 **CITIZENS PROVIDED A PRIVATE RIGHT OF**  
38 **ACTION AGAINST PLAINTIFF IN SENATE BILL**  
39 **1014,**

Defendants.

) Case No.:

)  
) **COMPLAINT FOR**  
) **DECLARATORY RELIEF FOR**  
) **THE VIOLATION OF**  
) **PLAINTIFF'S RIGHT TO FREE**  
) **SPEECH**

1 **INTRODUCTION**

2 1. This is an action for declaratory relief brought pursuant to 42 U.S.C. §§1983  
3 and 1988 and the First and Fourteenth Amendments to the United States Constitution.  
4 This action seeks a declaration that Arizona’s recently enacted Senate Bill 1014  
5 (hereinafter “Bill”), which prohibits the use of the name of any soldier, alive or deceased,  
6 on any item for sale without permission of the soldier or their legal representative,  
7 violates the First and Fourteenth Amendments to the United States Constitution. The  
8 Bill was intended by the legislature to prohibit the sale of anti-war t-shirts by Plaintiff  
9 Dan Ray Frazier. This legislative effort to stifle Plaintiff’s fundamental rights of political  
10 speech, and to keep the expression of sentiments that personalize the damage done by  
11 the war in Iraq out of the public discourse, requires the intervention of this Court.

10 **PARTIES**

11 2. Plaintiff Dan Ray Frazier, is a resident of Flagstaff, Arizona and Coconino  
12 County. Mr. Frazier is a political activist and vendor of t-shirts and other items which  
13 express his political views and beliefs.

14 3. Defendant Patricia J. Boomsma, was, at all times relevant to this complaint,  
15 the duly appointed City Attorney for the City of Flagstaff, Arizona. Defendant City  
16 Attorney Boomsma is the chief legal officer for the City of Flagstaff, Arizona with  
17 jurisdiction to enforce the criminal provisions of the Bill in the state courts of Arizona.

18 4. Defendant Terence Hance, was, at all times relevant to this complaint, the duly  
19 elected County Attorney for Coconino County, Arizona. Defendant County Attorney  
20 Hance is the chief legal officer for Coconino County, Arizona with jurisdiction to enforce  
21 the criminal provisions of the Bill in the state courts of Arizona.

22 5. Defendant Terry Goddard, was, at all times relevant to this complaint, the duly  
23 elected Attorney General for the State of Arizona. Defendant Attorney General  
24 Goddard is the chief legal officer for the state of Arizona with jurisdiction to enforce the  
25 criminal provisions in the state courts of Arizona.

23 6. Defendants John and Jane Does 1-50 are prosecuting attorneys with  
24 jurisdiction to enforce the criminal provisions of the Bill in the state courts of Arizona.

25 7. Defendants John and Jane Does 51-3,551 are current or former soldiers in the  
Armed Forces of the United States and / or other private citizens with authority to  
maintain private causes of action against Plaintiff, pursuant to SB 1014.

1 **JURISDICTION AND VENUE**

2 8. This Court has jurisdiction over this action pursuant to 42 U.S.C. §1983, 28  
3 U.S.C. §§1331, 1343 and 2201(a).

4 9. Venue is proper in the District of Arizona under 28 U.S.C. §1402(b) as Plaintiff  
5 Dan Ray Frazier resides in Flagstaff, Arizona.

6 **FACTS**

7 10. Plaintiff Dan Ray Frazier owns and operates CarryaBigSticker.com, an  
8 internet website on which Mr. Frazier sells t-shirts and other items which contain  
9 expressions of his political views and beliefs. Plaintiff seeks to change the policies of the  
10 current United States administration relating to the Iraq war.

11 11. Among the items for sale on Plaintiff's website are t-shirts which contain the  
12 words "BUSH LIED – THEY DIED". The statement "BUSH LIED" is printed on the front  
13 of the t-shirt and the statement "THEY DIED" is printed on the back of the t-shirt in large  
14 capital and bold letters. (See a photograph of the t-shirt attached to this complaint as  
15 Exhibit "A"). The "BUSH LIED – THEY DIED" is printed over a background of the  
16 names of the American soldiers who have died in Iraq. The names of the deceased  
17 soldiers are printed in small type approximately the size of newsprint.

18 12. The t-shirts, like many of Mr. Frazier's products, are designed and sold to  
19 prominently display an anti-war message and to have this message reach the public  
20 and contribute to the public debate over the occupation of Iraq by the United States.

21 13. The t-shirt includes the names of soldiers killed in Iraq to underscore the  
22 significant loss of life, the harm done by the Iraq war and the need to bring an end to the  
23 war and prevent the further loss of life.

24 14. The names of the soldiers killed in Iraq are matters of public record and can  
25 be accessed by private citizens in numerous ways.

15 15. The use of the names of soldiers in anti-war messages including political  
16 cartoons, newspapers, magazines, and books that are sold is widespread. The use of  
17 names of soldiers in pro-war messages or to remember particular individuals are also  
18 widespread.

19 16. Individuals throughout the country purchase Mr. Frazier's t-shirts and other  
20 anti-war merchandise on his site.

1 17. Plaintiff has received protests about the sale of his t-shirts from organized  
2 groups associated with the United States Armed Services and from family members of  
3 soldiers killed in Iraq.

4 18. Mr. Frazier maintains that the First Amendment to the United States  
5 Constitution guarantees him the right of free speech and expression, including the right  
6 to continue to disseminate his beliefs about the war in Iraq printed on the t-shirts.

7 19. The groups and individuals opposed to Mr. Frazier's t-shirt sales complained  
8 to the Arizona Governor's Office and the Arizona State Legislature to stop Mr. Frazier.

9 20. Edward Flinn, Director of the Arizona Department of Emergency and Military  
10 Affairs ("DEMA") testified before the Arizona Legislature that because the Governor's  
11 Office had received complaints about Mr. Frazier's anti-war t-shirts from families of  
12 soldiers killed in Iraq the Governor, through his office, asked Representative Nelson to  
13 sponsor Senate Bill 1014 in the Arizona Legislature.

14 21. Flinn stated that there is a website, referring to Mr. Frazier's website, that  
15 sells t-shirts with the deceased soldiers' names on them and that SB 1014 would apply  
16 to the t-shirts, and other items which contain the names of soldiers killed in Iraq, which  
17 are sold on that site.

18 22. Margy Bons, a mother of a soldier killed in Iraq, testified before the Arizona  
19 Legislature that she had previously complained directly to Plaintiff, Dan Ray Frazier, as  
20 had family members of other deceased soldiers. Ms. Bons stated that she was  
21 appearing in support of the SB 1014 because of the message on the t-shirts, "BUSH  
22 LIED – THEY DIED", and that she did not object to the use of her son's name in other  
23 public offerings, including books for sale.

24 23. Ms. Bons told the media that if the Bill passed, she would see "Dan Ray  
25 Frazier in court".

26 24. At the same legislative hearing, a letter was read from Terri Shaw, the mother  
27 of another soldier killed in Iraq, in support of the Bill. The letter stated that her  
28 deceased son served in the Iraq war and that she objected to the appearance of his  
29 name in an anti-war message.

30 25. Senate Bill 1014 was passed by the legislature without dissent as an  
31 "emergency measure that is necessary to preserve the public peace, health or safety  
32 and is operative immediately as provided by law." The Bill was signed into law by

1 Governor Janet Napolitano on Thursday, May 21, 2007. (See Senate Bill 1014  
2 attached as Exhibit "B").

3 26. The actions of Dan Ray Frazier, in selling his t-shirts and other merchandise  
4 with anti-war messages and the names of deceased soldiers without prior permission,  
5 are expressly prohibited by the language of the Bill.

6 27. Plaintiff is subject to both the civil and criminal penalties contained in the Bill.

7 28. Plaintiff can be prosecuted by defendants, Boomsma, Hance and Goddard,  
8 as well as all other local prosecutors in Arizona, for a violation of the criminal provisions  
9 of the Bill if any of the acts constituting the alleged crime occurred in that prosecutor's  
10 jurisdiction.

11 29. Plaintiff can also be sued by multiple persons in multiple courts throughout  
12 the State of Arizona who seek to enforce the civil penalty provisions of the Bill.

13 30. There is an actual controversy between Plaintiff Frazier and Defendants that  
14 has created a likelihood of a criminal prosecution and civil litigation against Plaintiff in  
15 many jurisdictions and courts.

16 31. Plaintiff reasonably apprehends that the Bill will be used against him in civil  
17 and criminal prosecutions for the sale and dissemination of his anti-war t-shirts.

18 32. The likelihood of criminal prosecutions and/or civil lawsuits has been  
19 significantly increased by the nationwide media coverage of Mr. Frazier and SB 1014.

20 29. Plaintiff does not have the resources to defend against such lawsuits and his  
21 livelihood and well-being and that of his family will be greatly threatened merely by the  
22 need to engage in such a defense.

23 33. Plaintiff reasonably believes that he is a target of criminal prosecutions  
24 pursuant to this Bill.

25 34. Since passage of the Bill, Plaintiff has been contacted by officers from the  
Flagstaff Police Department on at least two occasions. These officers contacted  
Plaintiff to confirm that Plaintiff was aware that the recently enacted legislation had been  
signed into law by the Governor, making it a crime to continue to market his anti-war t-  
shirts.

35. On Friday, June 22, 2007, Plaintiff was advised by officers of the Flagstaff  
Police Department that they were preparing a report to be submitted to the Flagstaff

1 City Attorney's Office which would seek the filing of a criminal complaint against  
2 Plaintiff.

3 36. A declaration about the constitutionality of this Bill and the rights of Plaintiff  
4 to publish the anti-war message on the t-shirts without prior permission is required in  
5 order to avoid irreparable injury to Plaintiff and his family and to their livelihood.

6 **CLAIM FOR RELIEF**

7 **COUNT I – FREEDOM OF EXPRESSION (FIRST  
8 AND FOURTEENTH AMENDMENTS)**

9 Plaintiff repeats and realleges paragraphs 1 - 36, as set forth fully herein.  
10 Senate Bill 1014, which criminalizes Plaintiff's sale of anti-war t-shirts and subjects him  
11 to civil penalties, violates Plaintiff's constitutional rights of free speech and expression  
12 guaranteed by the First and Fourteenth Amendments to the United States Constitution.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff requests that this Court:

15 (a) Declare, pursuant to 28 U.S.C. § 2201 and 2202, that as written and as  
16 applied to Plaintiff, Arizona Senate Bill 1014 violates the fundamental rights of Plaintiff  
17 protected by the First and Fourteenth Amendments to the Constitution of the United  
18 States;

19 (b) Award Plaintiff his costs and attorneys' fees incurred in pursuing this action as  
20 provided in 42 U.S.C. § 1988;

21 (c) Grant such other and further relief as the Court may deem just and proper.

22 Respectfully submitted this 26th day of June, 2007

23           /SS/            
24 Lee Phillips  
25 Natalie Jacobs  
Charles Babbitt

          /SS/            
Daniel Pochoda  
ACLU/AZ