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21 Attorneys for the Plaintiff

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

24 **DAN FRAZIER,**

25 Plaintiff,

vs.

PATRICIA J. BOOMSMA, IN HER OFFICIAL
CAPACITY AS THE CITY ATTORNEY OF THE
CITY OF FLAGSTAFF, ARIZONA; TERENCE
HANCE, IN HIS OFFICIAL CAPACITY AS THE
COCONINO COUNTY ATTORNEY, ARIZONA;
TERRY GODDARD, IN HIS OFFICIAL
CAPACITY AS THE ATTORNEY GENERAL OF
THE STATE OF ARIZONA; JOHN AND JANE
DOES, 1-50, INDIVIDUALLY AND IN THEIR
OFFICIAL CAPACITY AS CITY OR COUNTY
ATTORNEYS IN ARIZONA; JOHN AND JANE
DOES 51-3551, CITIZENS PROVIDED A
PRIVATE RIGHT OF ACTION AGAINST
PLAINTIFF IN SENATE BILL 1014,

Defendants.

) Case No.: 07-CV-8040-PCT-NVW
)
) **PLAINTIFF’S MOTION FOR A**
) **PRELIMINARY INJUNCTION**
) **AND EXPEDITED HEARING**
) **AND ORDER**

1 This is an action for declaratory relief brought pursuant to 42 U.S.C. §§1983 and 1988
2 and the First and Fourteenth Amendments to the United States Constitution. This action seeks
3 a declaration that Arizona’s recently enacted Senate Bill 1014 (hereinafter “Bill”), which
4 prohibits the use of the name of any soldier, alive or deceased, on any item for sale without
5 permission of the soldier or their legal representative, violates the First and Fourteenth
6 Amendments to the United States Constitution. The Bill, which was enacted into law on May
7 24, 2007 as an “emergency measure,” was intended by the legislature to prohibit the sale of
8 certain anti-war t-shirts by Plaintiff Dan Frazier. This legislative effort to stifle Plaintiff’s
9 fundamental rights of political speech, and to keep his expression of sentiments that
10 personalize the damage done by the war in Iraq out of the public discourse, requires the
11 intervention of this Court.
12
13

14 The sale of Plaintiff Frazier’s t-shirts and other merchandise with anti-war messages and
15 the names of deceased soldiers without prior permission is expressly prohibited by the Bill and
16 Plaintiff is now subject to both the civil and criminal penalties contained in the Bill. To date
17 no criminal or civil actions have been filed against Plaintiff Frazier and he merely seeks to
18 preserve the status quo until this Court can render a decision on the merits of his constitutional
19 claims.
20

21 Plaintiff, through counsel, now moves this Court for a preliminary injunction pursuant
22 to Rule 65(a) of the Federal Rules of Civil Procedure (“FRCP”) seeking a delay in the effective
23 date of Senate Bill 1014 until a determination of its constitutionality by this Court, and
24 enjoining the Defendants, their officers, agents, servants, employees, attorneys and all other
25

1 persons in active concert and participation with them from attempting to enforce Senate Bill
2 1014 in any manner pending further order of this Court.

3 Plaintiff requests a preliminary injunction to preserve the status quo and to protect
4 Plaintiff from the immediate and irreparable injury, including the deprivation of his
5 constitutional right to free speech and expression and the harm he will suffer if he is forced to
6 defend against criminal charges or civil lawsuits filed by any of the numerous individuals who
7 are entitled by Senate Bill 1014 to initiate legal action against Plaintiff.
8

9 Plaintiff further requests this Court expedite its consideration of the request for a
10 preliminary injunction in light of the fact that Plaintiff has been exposed to criminal and civil
11 liability since Senate Bill 1014 became effective on May 24, 2007. As a result, Plaintiff may
12 face criminal prosecution or civil litigation at any moment, either of which will cause Plaintiff
13 to suffer immediate and irreparable injury.
14

15 Plaintiff's motion is supported by his memorandum of points and authorities and his
16 Affidavit. Plaintiff is also prepared to provide oral testimony and other evidence in support of
17 his motion at a hearing on Plaintiff's Motion for Preliminary Injunction.
18

19 Respectfully submitted this 19th day of July, 2007.

21 /ss/
22 Lee Phillips
23 Natalie Jacobs
24 Charles Babbitt

24 /ss/
25 Daniel Pochoda
ACLU/AZ

1 CERTIFICATE OF SERVICE

2 I hereby certify that on July 19, 2007, I electronically transmitted the foregoing
3 document to the Clerk's Office using the CM/ECF System for filing. A hard copy was mailed
4 via U.S. Postal Service on July 19, 2007, to the following:

5
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17 Attorney for Patricia Boomsma, City Attorney

18 /s/
19 Vivian Johns
20 Legal Assistant
21
22
23
24
25