



local races on state election law issues; and (6) making direct contributions and expenditures in support of and in opposition to candidates and measures in furtherance of its mission.

3. Tennessee has “established a criminal cause of action for defamation involving campaign literature,” *see* Tenn. Op. Att’y Gen. No. 09-112 (June 10, 2009), which is codified at Tenn. Code Ann. § 2-19-142. Specifically, Tenn. Code Ann. § 2-19-142 provides that:

It is a Class C misdemeanor for any person to publish or distribute or cause to be published or distributed any campaign literature in opposition to any candidate in any election if such person knows that any such statement, charge, allegation, or other matter contained therein with respect to such candidate is false.

4. In order to further its mission, Tennesseans for Sensible Election Laws has published and distributed satirical and hyperbolic campaign literature in opposition to candidates for state office while knowing, in advance of publication and distribution, that the satirical and hyperbolic statements, charges, and allegations contained in its campaign literature were false. *See, e.g., Exhibit A* (Camper and Tate Campaign Literature), *available at* <https://tn4sense.org/commentary/it-shouldnt-be-a-crime-to-make-fun-of-your-state-representative-in-tennessee-it-is/>) (urging voters to: “**Vote against Rep. Camper and Sen. Tate in the next election.** After all, they have cauliflower for brains.”).

5. Tennesseans for Sensible Election Laws wishes to continue publishing and distributing other literally false campaign literature in opposition to candidates campaigning for state office—including satirical, parodical, and hyperbolic campaign literature—despite knowing that certain charges and allegations contained in its campaign literature are false.

6. For example, given Tennesseans for Sensible Election Laws' distaste for public officials who are inclined to support unconstitutional legislation and governmental interference with the rights of individuals, Tennesseans for Sensible Election Laws wishes to circulate a mailer in opposition to Tennessee State Representative Bruce Griffey (R-Paris), who recently introduced a bill to promote state-sponsored chemical castration of disfavored citizens. See Joel Ebert, *Republican lawmaker files bill to chemically castrate convicted sex offenders*, THE TENNESSEAN (Jan. 3, 2020), available at <https://www.tennessean.com/story/news/politics/2020/01/03/tennessee-republican-lawmaker-files-bill-chemically-castrate-sex-offenders/2803880001/>. Given what the Plaintiff considers to be the abhorrent nature of Representative Griffey's legislation and the historical horror of similar eugenics policies, Tennesseans for Sensible Election Laws wishes to publish and circulate campaign literature in opposition to Representative Griffey that both urges voters to vote against him and indicates, among other things, that Representative Griffey is "literally Hitler." See **Exhibit B** (Satirical Griffey Campaign Literature).

7. Because Representative Griffey is not, in fact, "literally Hitler," and because Tennesseans for Sensible Election Laws knows that Representative Griffey is not literally Hitler, Tennesseans for Sensible Election Laws' campaign literature would violate § 2-19-142, thus subjecting members of Tennesseans for Sensible Election Laws to **criminal prosecution** carrying a sentence of up to thirty days in jail and/or a fine not to exceed \$50.00. See Tenn. Code Ann. § 40-35-111(e)(3).

8. Tennesseans for Sensible Election Laws further wishes to be able to publish parodical and satirical campaign literature opposing politicians who violate campaign finance laws they support, such as Tennessee's prohibition on using campaign

contributions for personal expenditures. For example, in light of widespread reports that Tennessee State Representative Rick Staples (D-Knoxville) recently converted campaign funds for personal use—including spending campaign funds on a football game, to travel to Las Vegas, and to cater for his wedding, *see, e.g.*, Tyler Whetstone, *State Rep. Rick Staples' campaign spending, under scrutiny, includes a trip to the Gator Bowl*, KNOXVILLE NEWS SENTINEL (Feb. 17, 2020), *available at* <https://www.knoxnews.com/story/news/politics/2020/02/17/state-rep-rick-stapless-campaign-spending-under-scrutiny/4741099002/>—Tennesseans for Sensible Election Laws wishes to run online advertisements against Representative Staples satirizing his expenditures and urging voters to oppose him. *See Exhibit C* (Satirical Staples Campaign Literature).

9. More generally, Tennesseans for Sensible Election Laws wishes to be able to publish and distribute campaign literature against candidates for state office without credible fear of criminal liability; without its opponents being able to allege that circulating Tennesseans for Sensible Election Laws' campaign literature is criminal; and without concern that its members may or will be prosecuted in the event that a District Attorney in Tennessee deems any “statement, charge, allegation, or other matter contained” in its campaign literature to be “false.” *See* Tenn. Code Ann. § 2-19-142.

10. Given the extraordinarily serious criminal sanctions that Tennesseans for Sensible Election Laws faces both for publishing its prior campaign literature and if it continues to publish its desired campaign literature, Tennesseans for Sensible Election Laws has filed the instant action seeking, *inter alia*: (1) A declaration that Tenn. Code Ann. § 2-19-142 violates the First and Fourteenth Amendments to the United States Constitution both facially and as applied; and (2) A declaration that Tenn. Code Ann. § 2-

19-142 violates Tenn. Const. art. I § 19 both facially and as applied. Several independent bases compel this relief:

11. First, Tenn. Code Ann. § 2-19-142 facially imposes viewpoint discrimination. In particular, Tenn. Code Ann. § 2-19-142 only penalizes false speech in opposition to candidates for elected office, while permitting false speech that supports candidates for elected office. Such viewpoint discrimination is subject to strict scrutiny, which Tenn. Code Ann. § 2-19-142 cannot satisfy.

12. Second, Tenn. Code Ann. § 2-19-142 is a content- and identity-based restriction on political speech. By criminalizing only “campaign literature in opposition to any candidate,” but not any other literature or any speech in opposition to non-candidates, Tenn. Code Ann. § 2-19-142 discriminates on the basis of both speech’s content and the identity of the person being opposed. Such a content- and identity-based restriction on speech is subject to strict scrutiny, which Tenn. Code Ann. § 2-19-142 cannot satisfy.

13. Third, Tenn. Code Ann. § 2-19-142 prohibits “false” speech, which: (1) is generally protected by the First Amendment, *see generally United States v. Alvarez*, 567 U.S. 709 (2012), and (2) is not susceptible to any consistent or predictable definition in light of the government’s general inability to determine when a statement crosses the line into falsehood—particularly where matters of politics are concerned, *see generally* P.J. O’Rourke and Ilya Shapiro, *We Reserve the Right to Lie About Our Politicians*, POLITICO (Mar. 26, 2014), <https://www.politico.com/magazine/story/2014/03/supreme-court-lying-politicians-cato-amicus-105050>.

14. Fourth, Tenn. Code Ann. § 2-19-142 is an overbroad speech restriction that unconstitutionally chills and penalizes core political speech. Courts have long held that

the First Amendment's central aim is to protect this very type of speech from governmental efforts to restrain it.

15. Because Tenn. Code Ann. § 2-19-142 is not narrowly tailored to further any compelling governmental interest, and because Tennesseans for Sensible Election Laws enjoys a constitutional right to publish and distribute satirical, parodical, hyperbolic, and other literally false political campaign literature in opposition to candidates for elected office in Tennessee without having to fear of criminal liability, this Court should declare § 2-19-142 unconstitutional both facially and as applied to the Plaintiff.

## **II. PARTIES**

16. The Plaintiff, Tennesseans for Sensible Election Laws, is a non-partisan, non-profit organization of concerned citizens who care about protecting Tennessee's democratic process. Its mission is to ensure that Tennessee's election laws protect the rights of all Tennesseans to participate in democracy and support candidates of their choosing without unreasonable governmental interference.

17. Defendant Herbert H. Slatery III is the Attorney General and Reporter for the State of Tennessee. His duties include a general mandate "[t]o defend the constitutionality and validity of all legislation of statewide applicability" absent an exception not present here, *see* Tenn. Code Ann. § 8-6-109(b)(9), and he is entitled to be heard in and made a party to this proceeding pursuant to Tenn. Code Ann. § 29-14-107(b). As the Attorney General and Reporter for the State of Tennessee, Defendant Herbert H. Slatery III is sued in his official capacity only.

18. Defendant Davidson County District Attorney General is the Office of the District Attorney General for Tennessee's 20th Judicial District. The Davidson County District Attorney General's Office is responsible for the prosecution of all alleged

violations of state criminal laws that occur within Tennessee's 20th Judicial District, where the Plaintiff is registered as a multicandidate political campaign committee and conducts its core operations. Because Tenn. Code Ann. § 2-19-142 "is a Class C misdemeanor," *id.*, and independently pursuant to the broad criminal prohibition set forth in Tenn. Code Ann. § 2-19-102 ("A person commits a Class C misdemeanor if such person knowingly does any act prohibited by this title"), the Davidson County District Attorney General's responsibilities include prosecuting violations of Tenn. Code Ann. § 2-19-142. Glenn Funk, the Davidson County District Attorney General for Tennessee's 20th Judicial District, is sued in his official capacity only.

### **III. JURISDICTION, AUTHORITY, AND VENUE**

19. This Court has jurisdiction over this action pursuant to Tenn. Code Ann. § 1-3-121, Tenn. Code Ann. § 29-14-102, and 42 U.S.C. § 1983.

20. This Court is vested with the authority to issue a declaratory judgment and injunction with the force and effect of a final decree pursuant to Tenn. Code Ann. § 1-3-121, Tenn. Code Ann. § 29-14-102(c), Tenn. Code Ann. § 29-1-106, and 42 U.S.C. § 1983.

21. As the county where the causes of action giving rise to the Plaintiff's Complaint arise and where all Parties reside, venue is proper in Davidson County pursuant to Tenn. Code Ann. § 20-4-101(a) and Tenn. Code Ann. § 20-4-101(b).

### **IV. FACTUAL ALLEGATIONS**

22. This lawsuit centers upon political campaign literature that Tennesseans for Sensible Election Laws has previously published in opposition to candidates for elected office in Tennessee and that Tennesseans for Sensible Election Laws wishes to publish opposing Tennessee State Representatives Bruce Griffey and Rick Staples in their

upcoming 2020 election campaigns. The political campaign literature at issue is attached hereto as **Exhibits A–C**.

23. Representative Griffey has introduced and advocated in favor of Tennessee House Bill 1585—a bill pending in the 111th Tennessee General Assembly that would require certain individuals to undergo state-sponsored “chemical castration treatment.”<sup>1</sup> Tennessee House Bill 1585 is a serious constitutional affront, and it represents precisely the sort of constitutional ignorance and interference with the fundamental rights of individuals that Tennesseans for Sensible Election Laws ardently opposes.

24. In order to educate voters about Representative Griffey this election cycle, Tennesseans for Sensible Election Laws wishes to publish and distribute satirical campaign literature urging voters to oppose Representative Griffey’s election because, among other things, he is “literally Hitler.” *See Exhibit B*.

25. Because Representative Griffey is not, in fact, “literally Hitler,” and because Tennesseans for Sensible Election Laws is aware of that fact, the campaign literature that Tennesseans for Sensible Election Laws seeks to publish and distribute will subject it to the possibility of criminal prosecution under Tenn. Code Ann. § 2-19-142.

26. According to multiple news reports, Representative Staples has used campaign contributions for personal use, including to travel to Las Vegas, watch football, cater his wedding, and pay for his honeymoon.

27. Tennesseans for Sensible Election Laws opposes the unlawful expenditure of campaign contributions for personal use, and it wishes to publish a series of satirical but literally false online campaign advertisements that urge voters to oppose

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<sup>1</sup> The status of House Bill 1585 can be monitored at the following link:  
<http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB1585&ga=111>

Representative Staples' reelection. *See* **Exhibit C**.

28. Tennesseans for Sensible Election Laws' campaign literature represents core political speech protected by the First Amendment, but publishing it will subject the Plaintiff to fear of criminal liability and the real possibility of criminal prosecution.

29. Tennesseans for Sensible Election Laws, which risks prosecution by District Attorneys across the State of Tennessee wherever its campaign literature is distributed, is increasingly concerned about the possibility of criminal prosecution arising from its "false" campaign literature in light of multiple Tennessee officeholders' indication that speech with which they disagree will be officially designated "fake news." *See* Andrew Blake, *Tennessee lawmakers advance measure to designate CNN, Washington Post as 'fake news' outlets*, THE WASHINGTON TIMES (Feb. 27, 2020), <https://www.washingtontimes.com/news/2020/feb/27/tennessee-lawmakers-advance-measure-to-recognize-c/>.

30. Tennesseans for Sensible Election Laws' legitimate fear of criminal prosecution under Tenn. Code Ann. § 2-19-142 is further compounded by the fact that the Tennessee Attorney General has formally opined that "a prosecution against a newspaper or other news medium under Tenn. Code Ann. § 2-19-142 would not raise any constitutional objections." *See* Tenn. Op. Att'y Gen. No. 09-112 (June 10, 2009),

31. Tennesseans for Sensible Election Laws' legitimate fear of criminal prosecution under Tenn. Code Ann. § 2-19-142 is compounded further still by the fact that Tenn. Code Ann. § 2-19-142 has both been actively enforced, *see, e.g., Jackson v. Shelby Cty. Civil Serv. Merit Bd.*, No. W2006-01778-COA-R3CV, 2007 WL 60518 (Tenn. Ct. App. Jan. 10, 2007), and used as a basis for civil liability, *see, e.g., Murray v. Hollin*, No. M2011-02692-COA-R3CV, 2012 WL 6160575, at \*1 (Tenn. Ct. App. Dec. 10, 2012).

## **V. CAUSES OF ACTION**

### **1. Violation of the First and Fourteenth Amendments (Viewpoint Discrimination)**

32. Tennesseans for Sensible Election Laws reincorporates and realleges the foregoing allegations as if fully set forth herein.

33. Tenn. Code Ann. § 2-19-142 punishes false political speech *in opposition* to a candidate for elected office, while permitting false speech *in support of* such a candidate.

34. By punishing only false speech opposing candidates for public office while permitting false speech supporting such candidates, Tenn. Code Ann. § 2-19-142 is unconstitutional, both facially and as applied to Tennesseans for Sensible Election Laws, because it discriminates based on viewpoint in contravention of the First and Fourteenth Amendments to the United States Constitution.

### **2. Violation of the First and Fourteenth Amendments (Content-Based and Identity-Based Discrimination)**

35. Tennesseans for Sensible Election Laws reincorporates and realleges the foregoing allegations as if fully set forth herein.

36. Tenn. Code Ann. § 2-19-142 exclusively penalizes false campaign literature opposing candidates seeking elected office, while permitting all other false literature and all speech regarding non-candidates.

37. Tenn. Code Ann. § 2-19-142's content- and identity-based restrictions on speech contravene the First and Fourteenth Amendments to the United States Constitution.

### **3. Violation of the First and Fourteenth Amendments (Freedom of Speech)**

38. Tennesseans for Sensible Election Laws reincorporates and realleges the

foregoing allegations as if fully set forth herein.

39. Tenn. Code Ann. § 2-19-142 criminalizes “false” speech. This proscription contravenes the U.S. Supreme Court’s decision in *United States v. Alvarez*, 567 U.S. 709 (2012), which held that a statement’s falsity alone is not sufficient to remove it from the ambit of protection guaranteed by the First Amendment.

40. Although characterized as “a criminal cause of action for defamation involving campaign literature,” see Tenn. Op. Att’y Gen. No. 09-112 (June 10, 2009), Tenn. Code Ann. § 2-19-142’s text reflects that it is not constrained by multiple constitutional strictures governing defamation law, including recognized exceptions for hyperbole and satire and the requirement that a false statement produce a serious injury.

41. By criminalizing constitutionally protected speech, Tenn. Code Ann. § 2-19-142’s contravenes the First and Fourteenth Amendments to the United States Constitution.

#### **4. Violation of the First and Fourteenth Amendments (Overbreadth)**

42. *Tennesseans for Sensible Election Laws* reincorporates and realleges the foregoing allegations as if fully set forth herein.

43. Tenn. Code Ann. § 2-19-142 subjects a vast amount of constitutionally protected speech to criminal prosecution.

44. Tenn. Code Ann. § 2-19-142’s overbroad proscription unconstitutionally chills free expression and contravenes the core mission of the First Amendment: To encourage—rather than to punish—civic political discourse.

45. Because Tenn. Code Ann. § 2-19-142 prohibits a substantial amount of constitutionally protected speech, both in an absolute sense and relative to the statute’s

legitimate sweep, and because a substantial number of instances exist in which Tenn. Code Ann. § 2-19-142 cannot be applied constitutionally, Tenn. Code Ann. § 2-19-142 is unconstitutionally overbroad and contravenes the First and Fourteenth Amendments to the United States Constitution.

### **5. Violation of Tenn. Const. art. I § 19**

46. Tennesseans for Sensible Election Laws reincorporates and realleges the foregoing allegations as if fully set forth herein.

47. By restricting speech based on its content, proscribing protected speech, and criminalizing speech based on the viewpoint of the speaker, Tenn. Code Ann. § 2-19-142 violates Tenn. Const. art. I § 19, both facially and as applied to the Plaintiff.

### **VI. PRAYER FOR RELIEF**

**WHEREFORE**, the Plaintiff respectfully prays that:

1. Process issue and be served upon the Defendants, and that the Defendants be required to appear and answer this Complaint within the time mandated by law.

2. This Court issue a judgment declaring that Tenn. Code Ann. § 2-19-142 violates the First and Fourteenth Amendments to the United States Constitution and Tenn. Const. art. I § 19, both facially and as applied to the Plaintiff.

3. Upon rendering an unappealable final judgment, this Court enjoin Tenn. Code Ann. § 2-19-142's continued enforcement.

4. This Court award the Plaintiff reasonable costs and attorney's fees associated with prosecuting this action pursuant to 42 U.S.C. § 1988(b).

5. This Court grant the Plaintiff any and all other relief to which it appears it is entitled.

Respectfully submitted,

By: /s/ Daniel A. Horwitz  
\_\_\_\_\_  
Daniel A. Horwitz, BPR #032176  
1803 Broadway, Suite #531  
Nashville, TN 37203  
daniel.a.horwitz@gmail.com  
(615) 739-2888

G.S. Hans, BPR #37422  
*Clinical Professor*  
(615) 322-4964  
gautam.hans@vanderbilt.edu

Amber Banks  
*Student Lawyer*  
amber.m.banks@vanderbilt.edu

Cole Browndorf  
*Student Lawyer*  
cole.w.browndorf@vanderbilt.edu

James Ryan  
*Student Lawyer*  
james.h.ryan@vanderbilt.edu

Paige Tenkhoff  
*Student Lawyer*  
kathryn.p.tenkhoff@vanderbilt.edu

STANTON FOUNDATION FIRST AMENDMENT  
CLINIC VANDERBILT LAW SCHOOL  
131 21st Avenue South  
Nashville, TN 37203

*Counsel for Plaintiff Tennesseans for  
Sensible Election Laws*