

1 **INTRODUCTION**

2 1. This is an action for declaratory relief brought pursuant to 42 U.S.C. §§1983 and
3 1988 and the First and Fourteenth Amendments to the United States Constitution. This
4 action seeks a declaration that Arizona’s recently enacted Senate Bill 1014 (hereinafter
5 “Bill”), which prohibits the use of the name of any soldier, alive or deceased, on any item
6 for sale without permission of the soldier or their legal representative, violates the First and
7 Fourteenth Amendments to the United States Constitution. The Bill provides civil and
8 criminal penalties for certain unauthorized uses of the name of an American soldier. The
9 section providing a civil penalty is codified at A.R.S. §12-761 (hereinafter “civil remedy
10 statute”). The section providing a criminal penalty is codified at A.R.S. §13-3726
11 (hereinafter “criminal statute”). The Bill was intended by the legislature to prohibit the sale
12 of anti-war t-shirts by Plaintiff Dan Frazier. This legislative effort to stifle Plaintiff’s
13 fundamental rights of political speech, and to keep the expression of sentiments that
14 personalize the damage done by the war in Iraq out of the public discourse, requires the
15 intervention of this Court.

13 **PARTIES**

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

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

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

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

6. Defendants John and Jane Does 1-50 are prosecuting attorneys with jurisdiction

1 to enforce the criminal provisions of the Bill in the state courts of Arizona.

2 7. Defendant Margy Bons is the mother of a fallen Marine Sgt. Michael Marzano,
3 and a private citizen with authority to maintain private causes of action against Plaintiff,
4 pursuant to SB 1014. On September 24, 2007, the Los Angeles Times reported that Ms.
5 Bons told them she plans to sue Mr. Frazier now that the Arizona civil remedy statute is in
6 effect.

7 8. Defendant Laura Landaker is a relative of the fallen Marine pilot Jared M.
8 Landaker and a private citizen with authority to maintain private causes of action against
9 Plaintiff, pursuant to SB 1014. On September 23, 2007, Mr. Frazier received a "Legal
10 Notice" from M.D. Clifton of the Steven Stars Foundation, Inc., requesting that he
11 "immediately stop using the name of 1st Lt. Jared M. Landaker, USMC, to promote the sale
12 of your merchandise." The notice further directed Mr. Frazier to forward all monies
13 generated from the sale of such items "to the Landaker estate and in particular the Seven
14 Stars Foundation, Inc. Failure to comply with this notice will result in legal action to protect
15 the name and honor of our fallen hero." The notice stated that a copy had been provided
16 to Laura Landaker, President of the Steven Stars Foundation, Inc.

17 9. Defendant Robin Read is a relative of the fallen Army Sergeant Brandon Michael
18 Read and a private citizen with authority to maintain private causes of action against
19 Plaintiff, pursuant to SB 1014. On October 3, 2007, Mr. Frazier received a letter from
20 Francis X. Santore, Jr. of Santore & Santore, Attorneys at Law in Greenville, Tennessee.
21 The letter was written on behalf of Ms. Robin Read, the mother of the late Sgt. Brandon
22 Michael Read who died in Iraq on September 6, 2004. The letter demands the removal of
23 Sgt. Read's name from Mr. Frazier's anti-war t-shirts. The letter concludes "we shall bring
24 suit in the United States District Court for the Eastern District of Tennessee at Greenville
25 for such proper redress as the Court may offer the Read family."

10. 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.

JURISDICTION AND VENUE

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

12. Venue is proper in the District of Arizona under 28 U.S.C. §1402(b) as Plaintiff

1 Dan Frazier resides in Flagstaff, Arizona.

2 **FACTS**

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

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

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

17 16. The t-shirt includes the names of soldiers killed in Iraq to underscore the
18 significant loss of life, the harm done by the Iraq war and the need to bring an end to the
19 war and prevent the further loss of life.

20 17. The names of the soldiers killed in Iraq are matters of public record and can be
21 accessed by private citizens in numerous ways.

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

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

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

21. Mr. Frazier maintains that the First Amendment to the United States Constitution
guarantees him the right of free speech and expression, including the right to continue to

1 disseminate his beliefs about the war in Iraq printed on the t-shirts.

2 22. The groups and individuals opposed to Mr. Frazier's t-shirt sales complained to
3 the Arizona Governor's Office and the Arizona State Legislature to stop Mr. Frazier.

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

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

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

19 26. Ms. Bons told the media that if the Bill passed, she would see "Dan Frazier in
20 court".

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

25 28. Senate Bill 1014 was passed by the legislature without dissent as an
"emergency measure that is necessary to preserve the public peace, health or safety and
is operative immediately as provided by law." The Bill was signed into law by Governor
Janet Napolitano on Thursday, May 21, 2007. (See Senate Bill 1014 attached as Exhibit
"B").

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

1 30. Plaintiff is subject to both the civil and criminal penalties contained in the Bill.

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

6 32. Plaintiff can also be sued by multiple persons in multiple courts throughout the
7 State of Arizona who seek to enforce the civil penalty provisions of the Bill, including
8 Defendants Bons, Landaker and Read who have each recently threatened to sue him
9 under the civil remedy statute, A.R.S. §12-761.

10 33. There is an actual controversy between Plaintiff Frazier and Defendants that
11 has created a likelihood of a criminal prosecution and civil litigation against Plaintiff in
12 many jurisdictions and courts.

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

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

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

20 37. Plaintiff reasonably believes that he is a target of criminal prosecutions pursuant
21 to this Bill.

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

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

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

CLAIM FOR RELIEF

1 I hereby certify that on October 23, 2007, I electronically transmitted the
2 foregoing document to the Clerk's Office using the CM/ECF System for filing. A
3 hard copy was been mailed via U.S. Postal Service to the following:
4

5 Terry Goddard, Attorney General
6 Carrie J. Brennan, Assistant Attorney General
7 1275 West Washington, Phoenix, AZ 85007-2976

8 Terance Hance, Coconino County Attorney
9 110 E. Cherry Avenue
10 Flagstaff, AZ 86001

11 Samantha Kelty
12 Mangum, Wall, Stoops & Warden, P.L.L.C.
13 100 North Elden
14 P.O. Box 10
15 Flagstaff, AZ 86002

16 Attorney for Patricia Boomsma, City Attorney

17 /s/

18 Vivian Johns
19 Legal Assistant
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