

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE**

TENNESSEANS FOR SENSIBLE)
ELECTION LAWS,)
)
Plaintiff,)
)
v.) Case No.: _____
)
TENNESSEE BUREAU OF ETHICS)
AND CAMPAIGN FINANCE,)
REGISTRY OF ELECTION FINANCE,)
)
and)
)
DAVIDSON COUNTY DISTRICT)
ATTORNEY GENERAL,)
)
Defendants.)

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

I. INTRODUCTION

1. Tennesseans for Sensible Election Laws is a non-partisan, non-profit group 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 to support candidates of their choosing without unreasonable governmental interference.

2. In furtherance of this mission, Tennesseans for Sensible Election Laws wishes to make a \$25.00 campaign contribution to support a specific local candidate whom it has endorsed for election to the Metropolitan Council of Nashville and Davidson County, District #33. Because Tennesseans for Sensible Election Laws is a non-partisan

campaign committee that is not “controlled by a political party,” however—and for this reason alone—making such a contribution within ten days of the candidate’s election is illegal. See Tenn. Code Ann. § 2-10-117 (“No multicandidate political campaign committee other than a committee controlled by a political party on the national, state, or local level or by a caucus of such political party established by members of either house of the general assembly shall make a contribution to any candidate after the tenth day before an election until the day of the election.”).

3. If Tennesseans for Sensible Election Laws makes its desired \$25.00 campaign contribution, then its membership will be subject to criminal prosecution carrying a sentence of up to thirty days in jail, and could also face an additional civil penalty of up to \$10,000.00. See Tenn. Code Ann. § 2-19-102 (“A person commits a Class C misdemeanor if such person knowingly does any act prohibited by this title”); Tenn. Code Ann. § 40-35-111(e)(3) (“The authorized terms of imprisonment and fines for misdemeanors are: . . . Class C misdemeanor, not greater than thirty (30) days or a fine not to exceed fifty dollars (\$50.00), or both, unless otherwise provided by statute.”); Tenn. Code Ann. § 2-10-110(a)(2) (“A Class 2 offense is punishable by a maximum civil penalty of not more than ten thousand dollars”).

4. Consequently, given the extraordinarily serious sanctions that Tennesseans for Sensible Election Laws will face if it makes its desired campaign contribution, Tennesseans for Sensible Election Laws has filed the instant action seeking an injunction that permits the organization to make a \$25.00 campaign contribution to local candidate Antionette Lee without fear of incurring any criminal or civil penalties.

5. Several reasons support the issuance of an order permitting Tennesseans for Sensible Election Laws to make a \$25.00 campaign contribution free from criminal

and civil sanction. Specifically, Tenn. Code Ann. § 2-10-117 is comically unconstitutional for three separate reasons.

6. First, Tenn. Code Ann. § 2-10-117 contains an explicit speaker preference permitting only “a committee controlled by a political party on the national, state, or local level or by a caucus of such political party established by members of either house of the general assembly [to] make a contribution” during the ten days before an election. *Id.* As such, the statute expressly discriminates against all other speakers based solely on their identity and political affiliation. Speech restrictions distinguishing among different speakers—allowing speech by some but not others—violate the First Amendment.

7. Second, Tenn. Code Ann. § 2-10-117 contains a content-based restriction on just a single type of disfavored political speech and association—direct campaign contributions—while permitting all other forms of speech and association during the restricted time period at issue. Such content-based discrimination violates the First Amendment, and the First Amendment’s hostility to content-based regulations applies even when a regulation does not favor a particular side of a political controversy.

8. Third, Tenn. Code Ann. § 2-10-117 imposes a blanket ban on indispensable political speech during the most critical period before an election, placing a severe burden on political speech that is not narrowly tailored to achieve any compelling governmental interest.

9. Because there is no compelling governmental interest to support any of these restrictions, and because Tenn. Code Ann. § 2-10-117 is not narrowly tailored to achieve any compelling governmental interest, Tennesseans for Sensible Election Laws submits that the Defendants should be enjoined from enforcing Tenn. Code Ann. § 2-10-117, and that this Court should declare the statute unconstitutional.

II. PARTIES

10. Tennesseans for Sensible Election Laws is a non-partisan, non-profit group of concerned citizens who care about protecting Tennessee's democratic process. It is registered as a multi-candidate political campaign committee (popularly known as a "PAC") with both the Tennessee Bureau of Campaign Finance, Registry of Election Finance, and with the Davidson County Election Commission. *See Exhibit A.*

11. Defendant Tennessee Bureau of Ethics and Campaign Finance, Registry of Election Finance is an independent agency of Tennessee's state government. The Registry is responsible for the enforcement of Tennessee's Campaign Financial Disclosure Act, codified at Tenn. Code Ann. § 2-10-101, *et seq.* The Registry's responsibilities include assessing penalties for violations of Tenn. Code Ann. § 2-10-117. *See Exhibit B, ¶ 13(b)-(c).* The Registry and its members—William (Paz) Haynes, Henry Fincher, Patricia Heim, Tom Lawless, and Tom Morton—are sued in their official capacities only.

12. Defendant Davidson County District Attorney General is the District Attorney General for Tennessee's 20th Judicial District. It is responsible for the prosecution of all violations of state criminal laws that occur within Metropolitan Nashville and Davidson County. 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. § 2-10-117. Defendant Davidson County District Attorney General is sued in his official capacity only.

III. JURISDICTION, AUTHORITY, AND VENUE

13. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331.

14. This Court is vested with the authority to issue a declaratory judgment and an injunction with the force and effect of a final judgment pursuant to 28 U.S.C. § 2201 and 42 U.S.C. § 1983.

15. As the jurisdiction where the Defendants reside and where the causes of action giving rise to Plaintiff's Complaint have occurred, venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) and § 1391(b)(2).

IV. FACTUAL ALLEGATIONS

16. Tennesseans for Sensible Election Laws is a multi-candidate political campaign committee that is registered with both the Tennessee Bureau of Campaign Finance, Registry of Election Finance, and with the Davidson County Election Commission. A copy of Tennesseans for Sensible Election Laws' PAC registration is attached hereto as **Exhibit A**.¹

17. On Tuesday, September 19, 2017, the Davidson County Election Commission will hold a Special Runoff Election for Metro Council District #33. The candidates in the runoff election are Ms. Antoinette Lee and Mr. Tim Herndon. See **Exhibit C**. Ms. Lee and Mr. Herndon advanced to the September 19, 2017 Special Runoff Election after securing 415 votes and 402 votes, respectively, in the August 15, 2017 Special Election to fill the vacant seat for Metro Council District #33.

18. On Thursday, September 7, 2017, Tennesseans for Sensible Election Laws furnished a candidate questionnaire upon both Ms. Lee and Mr. Herndon seeking to ascertain their views on a variety of election-related issues, including: (1) public financing

¹ Under Tennessee law, "a group or organization becomes a multicandidate political campaign committee when it appoints or certifies a political treasurer to the Registry pursuant to Tenn. Code Ann. § 2-10-105(e)." Tenn. Op. Att'y Gen. No. 03-112 (Sept. 9, 2003).

of campaigns; (2) felon disenfranchisement; (3) political gerrymandering; (4) automatic voter registration; and (5) contribution limits for local candidates. Tennesseans for Sensible Election Laws' correspondence and accompanying candidate questionnaire are attached hereto as **Exhibit D**.

19. Late in the evening on September 13, 2017, Ms. Lee responded to Tennesseans for Sensible Election Laws, and she invited them to discuss their concerns with her further in the event that her candidacy was successful. (Mr. Herndon did not respond.) Tennesseans for Sensible Election Laws' membership is also impressed by Ms. Lee's public campaign promise to "ensure that all District #33 residents [] have a strong voice in their local government," see **Exhibit E**, which closely aligns with their own stated mission to "protect the rights of all Tennesseans to participate in democracy." Accordingly, Tennesseans for Sensible Election Laws opted to endorse Ms. Lee for Metro Council District #33. See **Exhibit F**. Its officers also voted to support her candidacy with an initial campaign contribution of \$25.00.

20. Traditionally, Tennessee law permits PACs like Tennesseans for Sensible Election Laws to contribute up to \$7,800.00 to support a local candidate's campaign. See **Exhibit G**.

21. Within ten days of an election, however, Tenn. Code Ann. § 2-10-117 forbids PACs like Tennesseans for Sensible Election Laws from making any campaign contribution at all. See *id* ("No multicandidate political campaign committee other than a committee controlled by a political party on the national, state, or local level or by a caucus of such political party established by members of either house of the general assembly shall make a contribution to any candidate after the tenth day before an election until the day of the election.").

22. If Tennesseans for Sensible Election Laws were “a committee controlled by a political party on the national, state, or local level or by a caucus of such political party established by members of either house of the general assembly,” *see id.*, then it would be exempt from Tenn. Code Ann. § 2-10-117’s prohibition on making campaign contributions within ten days of an election.

23. Because Tennesseans for Sensible Election Laws *is* a non-partisan PAC and is *not* controlled by a political party, however—and for this reason alone—it is legally prohibited from making its desired \$25.00 campaign contribution, and it could face both criminal and civil sanctions for doing so. *Id.*

24. Tennessee does not have a compelling state interest in discriminating against disfavored political speakers or determining who is permitted to speak based on a speaker’s political affiliation.

25. Tenn. Code Ann. § 2-10-117 does not forbid Tennesseans for Sensible Election Laws from engaging in other forms of political speech or association during the ten days before an election.

26. Instead, Tennesseans for Sensible Election Laws is solely prohibited from engaging in a single form of core political speech and association during the ten days before an election: making a campaign contribution.

27. Tennessee does not have a compelling state interest in imposing a content-based restriction on political speech or association.

28. During the ten days before an election, Tenn. Code Ann. § 2-10-117 imposes a categorical ban on all campaign contributions to state or local candidates from non-party PACs. *Id.*

29. The Special Election for Metro Council District #33 took place on August

15, 2017. The Special Runoff Election for Metro Council District #33 is scheduled to take place on September 19, 2017. Accordingly, only five weeks separated the two elections.

30 As such, Tenn. Code Ann. § 2-10-117 restricted the legal non-party PAC contribution period for candidates in the Special Runoff Election for Metro Council District #33 by nearly one-third. If a non-party PAC wished to contribute to one of the two runoff candidates, then the PAC was obligated to do so within just twenty-five days.

31. Tennessee does not have a compelling state interest in imposing a blanket prohibition on direct campaign contributions during the critical ten-day period before an election.

32. Defendant Tennessee Bureau of Ethics and Campaign Finance, Registry of Election Finance actively enforces Tenn. Code Ann. § 2-10-117. See, e.g., **Exhibit B**, ¶ 13(b)-(c).

33. To facilitate its enforcement of Tenn. Code Ann. § 2-10-117, when a prospective PAC seeks to register, it is required to certify whether it is “controlled by a political party on the national, state, or [sic] local level or by a caucus of a political party established by the members of either house of the general assembly.” See **Exhibit A**.

34. Defendant Tennessee Bureau of Ethics and Campaign Finance, Registry of Election Finance actively prosecutes violations of Tenn. Code Ann. § 2-10-117. On September 27, 2016, for example, the Registry issued another non-party PAC an Order to Show Cause setting forth alleged violations of Tenn. Code Ann. § 2-10-117 and warning that: “A violation of T.C.A. § 2-10-117 is punishable as a Class 2 offense, which would subject Stand PAC and/or Stand Independent to a maximum civil penalty of not more than ten thousand dollars (\$10,000).” See **Exhibit B**, ¶ 13(b)-(c).

35. Defendant Tennessee Bureau of Ethics and Campaign Finance, Registry of

Election Finance provides guidance on required compliance with Tenn. Code Ann. § 2-10-117. For example, the Registry's packet of "Frequently Asked Questions" includes a subsection on "Blackout Periods" that states: "During the nine (9) day period prior to any election day, a PAC is prohibited from making a campaign contribution to a candidate for state or local public office, unless the committee is a political party PAC." See **Exhibit H**, p. 8, #16. The Attorney General of the State of Tennessee has provided the same guidance. See Tenn. Op. Att'y Gen. No. 03-112 (Sept. 9, 2003) ("Tenn. Code Ann. § 2-10-117 prohibits a multicandidate political campaign committee, other than a committee controlled by a political party on the national, state or local level or by a caucus of such political party, from making a contribution to any candidate for the ten day period prior to an election.").

V. CAUSES OF ACTION

1. Violation of the First and Fourteenth Amendments

(Speaker Discrimination)

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

37. Tenn. Code Ann. § 2-10-117 contains an explicit speaker preference for favored speakers (party-controlled PACs) and discriminates against disfavored speakers (non-party PACs).

38. By imposing restrictions on non-party PACs but exempting party-controlled PACs from the same restrictions, Tenn. Code Ann. § 2-10-117 is unconstitutional both facially and as applied to Tennesseans for Sensible Election Laws because it grants a waiver to favored speakers while discriminating against disfavored speakers based on their identity.

2. Violation of the First and Fourteenth Amendments

(Discrimination Based on Political Association)

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

40. By imposing restrictions on campaign contributions based on whether a PAC is a “committee controlled by a political party on the national, state, or local level or by a caucus of such political party,” Tenn. Code Ann. § 2-10-117 is unconstitutional both facially and as applied to Tennesseans for Sensible Election Laws because it discriminates on the basis of a speaker’s political association. *Id.*

3. Violation of the First and Fourteenth Amendments

(Content Discrimination)

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

42. By imposing restrictions on direct campaign contributions but not on other forms of speech or association, Tenn. Code Ann. § 2-10-117 is unconstitutional both facially and as applied to Tennesseans for Sensible Election Laws because it imposes unconstitutional content-based discrimination.

4. Violation of the First and Fourteenth Amendments

(Freedom of Speech)

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

44. By imposing a categorical “Blackout Ban” on political campaign contributions during the most crucial period before an election, Tenn. Code Ann. § 2-10-117 is unconstitutional both facially and as applied to Tennesseans for Sensible Election

Laws because it unconstitutionally proscribes core political speech that falls within a realm in which the importance of First Amendment protection is at its zenith.

VI. CLAIMS FOR RELIEF

WHEREFORE, Tennesseans for Sensible Election Laws respectfully requests that this Court:

1. Issue a temporary restraining order permitting Tennesseans for Sensible Election Laws to make a \$25.00 campaign contribution to Antoinette Lee without fear of either criminal or civil sanction. Pursuant to LR65.01, notice of this Complaint has been furnished upon Defendants' counsel, and a verified, written application and accompanying memorandum of law in support of the issuance of a temporary restraining order shall be filed following notice to Defendants.
2. Issue a preliminary injunction and, thereafter, a permanent injunction enjoining the enforcement of Tenn. Code Ann. § 2-10-117.
3. Issue a judgment declaring that Tenn. Code Ann. § 2-10-117 is unconstitutional and violates Tennesseans for Sensible Election Laws' First and Fourteenth Amendment rights both facially and as applied.
4. Grant Tennesseans for Sensible Election Laws' reasonable costs and attorney's fees pursuant to 42 U.S.C. § 1988(b).
5. Grant Tennesseans for Sensible Election Laws all other relief to which it appears it is entitled.

Respectfully submitted,

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*Counsel for Plaintiff Tennesseans for
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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of September, 2017, a copy of the foregoing was served via USPS mail, postage prepaid, emailed, and/or sent via CM/ECF, and to the following parties:

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