

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

BONGO PRODUCTIONS, LLC, ROBERT )  
BERNSTEIN, SANCTUARY PERFORMING )  
ARTS LLC, and KYE SAYERS, )

Plaintiffs, )

v. )

Civ. Action  
No. \_\_\_\_\_

CARTER LAWRENCE, Tennessee State Fire )  
Marshal, in his official capacity, )  
CHRISTOPHER BAINBRIDGE, Director of )  
Codes Enforcement, in his official capacity, )  
GLENN R. FUNK, District Attorney General )  
for the 20th Judicial District, in his official )  
capacity, and NEAL PINKSTON, District )  
Attorney General for 11th Judicial District, )  
in his official capacity, )

Defendants. )

**COMPLAINT**

Plaintiffs Bongo Productions, LLC, Robert Bernstein, Sanctuary Performing Arts LLC, and Kye Sayers, on behalf of themselves, by and through their undersigned attorneys, bring this Complaint against the above-named Defendants and allege as follows:

**I. INTRODUCTION**

1. Plaintiffs are Tennessee businesses and service providers and their owners. They serve the public, and provide public access to their restrooms. Plaintiffs welcome transgender customers, clients, and staff, and allow transgender people to use the restrooms or facilities that accord with their gender identity.

2. Under newly enacted H.B. 1182/S.B.1224, 112th Gen. Assemb., 1st Reg. Sess. (Tenn. 2021) (“the Act”) (attached as Exhibit A and to be codified at Tenn. Code Ann. § 68-120-

101, et seq.), Plaintiffs—and any other business or public entity in Tennessee that allows transgender people to use the appropriate public restroom—will be required to post a controversial and misleading warning notice advising that “THIS FACILITY MAINTAINS A POLICY OF ALLOWING THE USE OF RESTROOMS BY EITHER BIOLOGICAL SEX, REGARDLESS OF THE DESIGNATION ON THE RESTROOM.” *See* Exh. B.

3. Plaintiffs do not want to display this notice. They do not agree with this characterization of their policies, and they do not want to convey the Tennessee General Assembly’s controversial and stigmatizing message to customers, clients, and staff.

4. If H.B. 1182 is allowed to go into effect, Plaintiffs and all other similarly situated businesses and entities open to the public in Tennessee will be forced to either display this government-mandated warning notice, or risk being charged with a Class B misdemeanor for violating the Tennessee building code, with a maximum penalty of six months in prison or \$500.

5. By forcing Plaintiffs to display a government-mandated warning notice with which they disagree, the Act violates the Plaintiffs’ First Amendment right against compelled speech.

6. Plaintiffs bring this action to challenge the constitutionality of the Act. Unless enjoined by this Court, the Act will take effect on July 1, 2021, irreparably harming Plaintiffs and their customers, clients, and staff, and violating Plaintiffs’ constitutional rights.

## **II. JURISDICTION AND VENUE**

7. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331 and 1343.

8. Plaintiffs’ claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, Rules 57 and 65 of the Federal Rules of Civil Procedure, and the general legal and equitable powers of this Court.

9. Venue is appropriate under 28 U.S.C § 1391(b) because one or more of the Defendants resides in this judicial district and because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this judicial district.

### **III. PARTIES**

#### **A. Plaintiffs**

10. Plaintiff Bongo Productions, LLC ("Bongo") owns several restaurants, coffee shops and a coffee roasting company all located in Nashville, Tennessee. *See* Bongo Roasting Co., available at <https://bongojava.com/> (last visited Jun. 24, 2021).

11. Plaintiff Robert M. Bernstein is Bongo's founder and chief manager.

12. Mr. Bernstein is responsible for decisions regarding compliance with state and local building codes for Bongo's establishments.

13. Mr. Bernstein opened Fido in 1996. Fido is a restaurant located in the Hillsboro Village neighborhood of Nashville.

14. Fido has 25 employees currently on staff and has employed hundreds of people over the years.

15. In the past, Bongo has employed transgender people. Bongo's and Fido's patrons include members of the transgender community.

16. Bongo and Mr. Bernstein have worked over the years to create a welcoming environment in their business for the LGBTQ community. In reaction to the rash of anti-transgender laws that passed this year and to show their support for transgender people, Fido's staff decorated one of their drink menu signs with transgender and LGBTQ pride flag colors.

17. Fido has three restrooms. One is a single-user unisex restroom, which is not subject to the Act. The other two restrooms have multiple stalls and/or urinals and bear sex designations.

18. Prior to the passage of the Act, Fido's management and Mr. Bernstein had never thought about a formal policy as to who could use which restroom. Their informal policy was to allow people to use the sex-designated restroom that best matches their gender identity. Mr. Bernstein has never received any complaints or concerns about their restroom policy.

19. Plaintiff Sanctuary Performing Arts LLC ("Sanctuary") is a performing arts venue, community center and safe haven located in Chattanooga, Tennessee. *See* Sanctuary Performing Arts, available at [www.Sanctuaryperformingarts.com](http://www.Sanctuaryperformingarts.com) (last visited Jun. 24, 2021). Sanctuary was founded by members of the transgender community in December 2020 to serve the needs of transgender and intersex people of all ages, as well as other LGBTQ people and allies.

20. Plaintiff Kye Sayers is Sanctuary's owner and one of its co-founders. She is a Tennessee native.

21. Ms. Sayers makes decisions for Sanctuary regarding compliance with state and local building codes.

22. Sanctuary has two employees on staff, as well as many volunteers. The majority of the people who work and volunteer there and those who participate in Sanctuary's programs are transgender. Since Sanctuary opened its doors in late 2020, approximately 400 people have been involved with Sanctuary as volunteers or participants.

23. Sanctuary has three restrooms. One is a single-user unisex restroom, which is not subject to the Act. The other two restrooms have multiple stalls or urinals and do not have a sex

designation at this time. Next month, Sanctuary intends to begin operating a full-service café and will be required by the local building code to post a sex designation on its two multi-user restrooms. Sanctuary will continue to allow transgender people to use the restroom that best accords with their gender identity.

24. Sanctuary has never received any complaints about their restroom policies.

25. Ms. Sayers and Sanctuary have worked hard to create a safe space for transgender and intersex people and their families in a state that is frequently perceived as unwelcoming to LGBTQ people.

## **B. Defendants**

26. Defendant Carter Lawrence is the Commissioner of the Tennessee Department of Commerce and Insurance, and in that capacity, is also the Tennessee Fire Marshal. He has concurrent responsibility for enforcement of the state building code. *See* Tenn. Code Ann. § 68-120-106. Mr. Lawrence is sued in his official capacity.

27. Defendant Christopher Bainbridge is the Director of the Codes Enforcement Section of the Tennessee State Fire Marshal's Office. The Codes Enforcement Section has enforcement authority over statewide building codes and standards, including the Act. *See* Tenn. Comp. R. & Regs. 0780-02-16.01. Mr. Bainbridge is sued in his official capacity.

28. Defendant Glenn R. Funk is the District Attorney General for the 20th Judicial District which covers Metropolitan Davidson County and Nashville, Tennessee. He is responsible for prosecuting all violations of the state criminal statutes occurring in the judicial district. Violations of the Act are Class B misdemeanors, *see* Tenn. Code Ann. § 68-120-108, and are punishable by up to six months' imprisonment and a fine not to exceed \$500, *see* Tenn. Code Ann. § 40-35-111(e)(2). General Funk is sued in his official capacity.

29. Defendant Neal Pinkston is the District Attorney General for 11th Judicial District which covers Hamilton County and Chattanooga, Tennessee. He is responsible for prosecuting all violations of the state criminal statutes occurring in the judicial district. Violations of the Act are Class B misdemeanors, *see* Tenn. Code Ann. § 68-120-108 and are punishable by up to six months' imprisonment and fine not to exceed \$500, *see* Tenn. Code Ann. § 40-35-111(e)(2). General Pinkston is sued in his official capacity.

#### **IV. FACTUAL ALLEGATIONS**

##### **A. Legislative History of H.B. 1182**

30. As enacted, H.B. 1182 requires “[a] public or private entity or business that operates a building or facility open to the general public and that, as a matter of formal or informal policy, allows a member of either biological sex to use any public restroom within the building or facility” to post a government-prescribed sign at the entrance of each sex-designated public restroom in the building or facility with a red and yellow “NOTICE” text at the top, and boldface black block letters on white background stating that “THIS FACILITY MAINTAINS A POLICY OF ALLOWING THE USE OF RESTROOMS BY EITHER BIOLOGICAL SEX, REGARDLESS OF THE DESIGNATION ON THE RESTROOM.” *See* Exh. B.

31. The Act defines covered entities to “include” those with facilities that are designated for “a specific biological sex,” and to “exclude” “a unisex, single-occupant restroom or family restroom intended for use by either biological sex.”

32. The Act does not define “biological sex.”

33. The legislative history shows that the Act is intended to apply to entities that allow transgender people<sup>1</sup> to use a restroom facility that accords with their gender identity, rather than the sex they were assigned at birth.

34. During the legislative debates on H.B. 1182, the sole justification offered by its sponsor, Representative Tim Rudd, was that the bill was necessary to “protect[] women and children against” people who could “tak[e] advantage of policies, executive orders, or legislation[] that [] allow the ‘opposite biological sex’ to enter a [multi-occupancy] restroom, shower, or locker room.”<sup>2</sup> He explained, with “new [laws] . . . giving transgenders [sic] [more] rights . . . I don’t want women . . . or children calling me next year [about] how they have been raped or molested [while using the bathroom facility].”<sup>3</sup>

35. During a subsequent committee meeting, Representative Rudd stated that “a woman has the right to know whether a man is going to be in her bathroom and vice versa for a man.”<sup>4</sup> This too was a reference to transgender people using the restrooms that accord with their gender identity.

36. When questioned by other representatives about the need for this bill, Representative Rudd responded that the bill was suggested by a constituent at a fundraiser, and

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<sup>1</sup> Transgender people are people whose gender identity—their deeply held internal understanding of who they are—differs from the sex they were assigned at birth. *See* Wylie C. Hembree, et al., *Endocrine Treatment of Gender-Dysphoric/Gender Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, 102 *J. of Clinical Endocrinology & Metabolism* 3869 (Sept. 13, 2017), available at <https://doi.org/10.1210/jc.2017-01658>.

<sup>2</sup> *Debate of H.B. 1182 Before the H. Pub. Serv. Comm.* at 19:50, 112th Gen. Assemb. (Mar. 10, 2021), available at [https://tnga.granicus.com/MediaPlayer.php?view\\_id=610&clip\\_id=24150](https://tnga.granicus.com/MediaPlayer.php?view_id=610&clip_id=24150).

<sup>3</sup> *Id.* at 31:49

<sup>4</sup> *Debate of H.B. 1182 Before the H. State Gov’t Comm.* at 1:04:40, 112th Assemb. (Mar. 23, 2021), available at [http://tnga.granicus.com/MediaPlayer.phpview\\_id=610&clip\\_id=24337&meta\\_id=575940](http://tnga.granicus.com/MediaPlayer.phpview_id=610&clip_id=24337&meta_id=575940).

he felt that the bill was needed because of the executive orders regarding rights for transgender people “coming out of Washington.”<sup>5</sup>

37. There was no testimony offered in support of the bill. The committee nonetheless voted to move the bill forward.<sup>6</sup>

38. During House floor debates on March 29, Representative Mike Stewart asked about the public policy underlying H.B. 1182. Representative Rudd once more responded that with the new executive orders and policies from Washington, it would be “good to put on notice.”<sup>7</sup> He also stated that it is “shocking and a danger to people that enter a bathroom marked ‘men’ or ‘women’ and someone of the opposite sex is standing there, which could scare people and provoke violence.”<sup>8</sup>

39. The bill passed the House and moved to the Senate, where it passed on April 29, 2021.

40. Governor Bill Lee signed H.B. 1182 into law on May 17, 2021.

41. H.B. 1182 will go into effect on **July 1, 2021**.

## **B. Application of H.B. 1182 to Plaintiffs**

42. While transgender people long have been part of our communities—attending schools, working, and using public restrooms without incident—rights for transgender people are nonetheless a subject of hotly contested debate in this state, and across the country. This is especially true around the right to access restrooms that match people’s gender identity. In just

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<sup>5</sup> *Id.* at 1:14:40.

<sup>6</sup> *Id.* at 1:24:00.

<sup>7</sup> *Discussion of H.B. 1182 Before H. Floor Sess., 18th Legis. Day* at 1:49:40, 112th Gen. Assemb. (Mar. 29, 2021), available at [http://tnga.granicus.com/MediaPlayer.php?view\\_id=610&clip\\_id=24423&meta\\_id=579987](http://tnga.granicus.com/MediaPlayer.php?view_id=610&clip_id=24423&meta_id=579987).

<sup>8</sup> *Id.*

2021, the Tennessee General Assembly has passed, and Governor Lee has signed into law, five bills targeting transgender people in Tennessee. Over a hundred anti-transgender bills were introduced nationwide in 2021 alone. *See* Am. Civil Liberties Union, *Legislation Affecting LGBT Rights Across the Country*, <https://www.aclu.org/legislation-affecting-lgbt-rights-across-country> (last updated May 28, 2021).

43. Transgender people are frequent targets of harassment and face widespread discrimination in all facets of life. Being forced to use restrooms that do not align with their gender puts transgender people at greater risk of harassment or violence, and also causes psychological and physical harm.<sup>9</sup>

44. Policies that allow transgender people to use the correct sex-designated restroom—the restroom that best matches their identity—do not legalize harassment, stalking, violence, or sexual assault. Nor do these policies change the sex-segregated nature of these facilities. In other words, allowing transgender people to use restrooms and other facilities that align with their gender identity simply ensures that everyone has access to spaces that match who they are. These policies do not permit unfettered access for anyone, regardless of sex, to spaces restricted to one sex.

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<sup>9</sup> *See* Timothy Wang, et al., *State Anti-Transgender Bathroom Bills Threaten Transgender People's Health and Participation in Public Life*, The Fenway Inst. (2016), [https://fenwayhealth.org/wp-content/uploads/2015/12/COM-2485-Transgender-Bathroom-Bill-Brief\\_v8-pages.pdf](https://fenwayhealth.org/wp-content/uploads/2015/12/COM-2485-Transgender-Bathroom-Bill-Brief_v8-pages.pdf).

45. Law enforcement officials<sup>10</sup> and sexual assault advocates<sup>11</sup> in states and cities with policies that prohibit discrimination based on transgender status, including with respect to use of single-sex facilities, have rejected the contention that these policies cause safety problems.

46. Plaintiffs recognize that people who are transgender may need to use the restroom while out in public, just like everyone else. Plaintiff Bongo has sex-designated restrooms and has informal policies allowing transgender people to use the restrooms that align with their gender identity. Plaintiff Sanctuary does not have sex-designated restrooms at this time, but will shortly, and intends to allow transgender people to use the restrooms that align with the sex they know themselves to be.

47. All Plaintiffs recognize that requiring transgender people to use restrooms associated with the sex they were assigned at birth would mean that their transgender customers, clients, and staff could not use the restroom without significant risk to their safety and dignity.

48. In order to avoid being subject to the Act's compelled speech requirements, Plaintiffs would need to change their policies to bar transgender people from using the restrooms that accord with their gender identity. They do not wish to do so.

49. Plaintiffs do not want to police whether transgender people are using their restrooms or attempt to verify their customers', clients', or employees' "biological sex."

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<sup>10</sup> Lou Chibbaro Jr., *Predictions of Trans Bathroom Harassment Unfounded*, Washington Blade (Mar. 31, 2016), <https://www.washingtonblade.com/2016/03/31/predictions-of-trans-bathroom-harassment-unfounded/>.

<sup>11</sup> Press Release, Nat'l Task Force to End Sexual and Domestic Violence Against Women, National Consensus Statement of Anti-Sexual Assault and Domestic Violence Organizations in Support of Full and Equal Access for the Transgender Community (Apr. 21, 2016), <https://endsexualviolence.org/wp-content/uploads/2017/09/STATEMENT-OF-ANTI-SEXUAL-ASSAULT-AND-DOMESTIC-VIOLENCE-ORGANIZATIONS-IN-SUPPORT-OF-EQUAL-ACCESS-FOR-THE-TRANSGENDER-COMMUNITY.pdf>.

50. It is impossible to ascertain whether or not someone is transgender by looking at them. Many transgender people have a physical appearance that is typical of the sex that matches their gender identity, not the sex they were assigned at birth. And many people who are not transgender may dress or appear in ways that are not stereotypically associated with their sex assigned at birth.

51. Plaintiffs do not have anyone guarding their restroom doors to ask for their birth certificates, inspect anyone's genitals, or interrogate any other aspect of their sex. They do not even know how they would attempt to do so without gross intrusions into the privacy of their employees, customers, and clients. Yet unless they do so, Plaintiffs and indeed all other businesses or other entities with restroom facilities open to the public throughout Tennessee will be required to display the specific sign required by the Act.

52. Fido has sex-designated multi-user restrooms. Mr. Bernstein is concerned that the Act's required warning notice will create confusion for his customers, clients, and employees.

53. Based on the legislative history of the Act, Plaintiffs Bongo and Mr. Bernstein are reasonably concerned that the Act applies to them, because they allow all women, including transgender women, to use the women's restroom, and all men, including transgender men, to use the men's restroom.

54. Plaintiff Sanctuary has two multi-user restrooms that are not presently sex-designated. Anyone is welcome to use any of Sanctuary's restrooms. Sanctuary intends to begin operating a café next month, and will then display a sex designation on its two multi-user restrooms because such a designation will be required by municipal building codes. Sanctuary and Ms. Sayers are reasonably concerned that the Act applies to Sanctuary now because its all-gender multi-user facilities are not "excluded" under the Act's definition of covered entities.

They are also concerned that the Act will apply to Sanctuary in the future once it adds a sex designation on its multi-user restrooms. At that time, Sanctuary will allow all women, including transgender women, to use the women's restroom, and all men, including transgender men, to use the men's restroom.

**C. HB 1182 requires Plaintiffs to communicate a controversial and ideological viewpoint.**

55. The phrase “biological sex” is a relatively recent one with no fixed definition. *See, e.g.,* Katrina Kazarkis, *The Misuses of “Biological Sex,”* 394 *The Lancet* 1898 (Nov. 23, 2019), available at [https://doi.org/10.1016/S0140-6736\(19\)32764-3](https://doi.org/10.1016/S0140-6736(19)32764-3).

56. The Endocrine Society's guideline explains that the terms “[b]iological sex, biological male or female” “refer to physical aspects of maleness and femaleness. As these may not be in line with each other (*e.g.*, a person with XY chromosomes may have female-appearing genitalia), the terms biological sex and biological male or female are imprecise and should be avoided.”<sup>12</sup>

57. In fact, a person's sex encompasses a number of different biological attributes, including sex chromosomes, certain genes, gonads, sex hormone levels, internal and external genitalia, other secondary sex characteristics, and gender identity.<sup>13</sup>

58. These components of sex do not all align neatly in every human being. Where they do not, best practice medical care recognizes that for purposes of social and legal recognition, a person's gender identity should be the basis for their sex classification. *See* World Pro. Ass'n for Transgender Health, *Standards of Care for the Health of Transsexual,*

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<sup>12</sup> Hembree, et al., *supra* note 1, at 3875 Table 1.

<sup>13</sup> *See id.*; *see also* Joshua D. Safer & Vin Tangpricha, *Care of Transgender Persons*, 381 *New Eng. J. Med.* 2451, available at <https://www.nejm.org/doi/10.1056/NEJMcp1903650>.

*Transgender, and Gender Nonconforming People* (2012), available at <https://www.wpath.org/publications/soc>. Although the detailed mechanisms are not fully understood, there is a medical consensus that there is a significant biologic component underlying gender identity.<sup>14</sup>

59. The Act also ignores entirely the existence of intersex people, by suggesting that there are only two possible sexes with the use of the mandated phrase “*either biological sex.*”

60. “Intersex” is an umbrella term for unique variations in reproductive or sex anatomy. Variations may appear in a person’s chromosomes, genitals, or internal organs like testes or ovaries. Some intersex traits are identified at birth, while others may not be discovered until puberty or later in life. There are over thirty medical terms for specific combinations of intersex traits. *See* InterAct, *Intersex Definitions* (last updated Feb. 19, 2021), available at <https://interactadvocates.org/intersex-definitions/>.

61. Despite this guidance from medical professionals, the phrase “biological sex” is frequently used by those seeking to limit rights for transgender people in order to not recognize their gender identity.

62. Prior to this year, there was no mention of “biological sex” in Tennessee law. When Tennessee law referenced restrooms, it used the terms “men” and “women,” “male” or “female,” or simply “sex.” *See, e.g.*, Tenn. Code Ann. § 68-120-503 (requiring equitable restrooms in public spaces); Tenn. Code Ann. § 4-24-303 (addressing restrooms and other sex segregated spaces in fire houses).

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<sup>14</sup> *See* Safer & Tangpricha, *supra* note 13; Joshua D. Safer & Vin Tangpricha, *Care of the Transgender Patient*, 171 *Annals of Internal Med.* ITC1 (July 2, 2019), available at <https://doi.org/10.7326/AITC201907020>; Denise Grady, *Anatomy Does Not Determine Gender, Experts Say*, *N.Y. Times* (Oct. 28, 2018), available at <https://www.nytimes.com/2018/10/22/health/transgender-trump-biology.html>.

63. Since 2013, state legislatures across the country have introduced bills to restrict transgender people's ability to access single-sex spaces such as restrooms. Many of these exclusions use the phrase "biological sex." For example, North Carolina's House Bill 2 (the "Public Facilities Privacy & Security Act"), restricted access to multiple occupancy restrooms based on "biological sex", which the bill defined as "[t]he physical condition of being male or female, which is stated on a person's birth certificate." H.B. 2, § 1.2, 2015 Gen. Assemb., 2nd Extra Sess. (N.C. 2016).

64. Some statutes that use the term "biological sex," like the Act, do not define it. *See, e.g.*, 2020 Or. Laws 1st Spec. Sess. Ch. 19, § 7a(3)(b)(L). Others use different and sometimes conflicting definitions. *See, e.g.*, W. Va. Code Ann. § 18-2-25d (West 2021) (defining "biological sex" as "an individual's physical form as male or female based solely on the individual's reproductive biology and genetics at birth"); Idaho Code Ann. § 33-6203 (West 2020) (providing that "biological sex" may be "verified" relying on "reproductive anatomy, genetic makeup, or normal endogenously produce testosterone levels," or a combination of those factors); Miss. Code Ann. § 11-62-3 (2016) (stating "biological sex" is "immutable" and "objectively determined by anatomy and genetics at time of birth"); *see also* S.B. 1367/H.B. 1233, 112th Gen. Assemb., 1st Reg. Sess. (Tenn. 2021) (providing that "'sex' means a person's immutable biological sex as determined by anatomy and genetics at the time of birth," and that "[e]vidence of a person's biological sex includes, but is not limited to, a government issued document that accurately reflects a person's sex listed on the person's original birth certificate").

65. Since 2016, the Tennessee General Assembly has introduced multiple bills that would restrict transgender people's access to the restroom that accords with their gender identity in schools or other public spaces. *See, e.g.*, H.B. 2414/S.B. 2387, 109th Gen. Assemb., 2nd Reg.

Sess. (Tenn. 2015) (requiring public schools to restrict access to restrooms based on sex assigned on original birth certificates) (did not pass); H.B. 888/S.B. 771, 110th Gen. Assemb., 1st Reg. Sess. (Tenn. 2017) (requiring public schools and higher education institutions to have each student use the restroom and locker room facilities consistent with the student’s sex indicated on their original birth certificate) (did not pass); H.B. 2620/S.B. 2480, 110th Gen. Assemb., Reg. Sess. (Tenn. 2018) (requiring the attorney general to defend or pay legal expenses for any school district that restricts access to multiuser restrooms on the basis of “biological sex”) (did not pass); S.B. 1297/H.B. 1151, 111th Gen. Assemb., Reg. Sess. (Tenn. 2019) (expanding offense of indecent exposure to apply to restrooms or locker rooms) (passed with amendments); H.B. 1274/S.B. 1499, 111th Gen. Assemb., 1st Reg. Sess. (Tenn. 2019) (similar to H.B. 2620); S.B. 1367/H.B. 1233, 112th Gen. Assemb., 1st Reg. Sess. (Tenn. 2021) (creating a private right of action for a student, teacher, or school employee who encounters “a member of the opposite sex in a multi-occupancy restroom or changing facility”). These bills, and similar bills nationwide, have been hotly contested and the subject of intense legislative and social debate.<sup>15</sup>

66. In 2018, federal efforts to rescind regulatory protections for transgender people were also framed in terms of exclusions based on “biological sex.” *See, e.g.*, Erica Green, Katie Benner, & Robert Pear, *‘Transgender’ Could Be Defined Out of Existence Under Trump*, N.Y. Times (Oct. 21, 2018), <https://www.nytimes.com/2018/10/21/us/politics/transgender-trump-administration-sex-definition.html> (citing leaked memo from Trump administration Department of Health and Human Services proposing to define “gender as a biological, immutable condition determined by genitalia at birth”). This draft policy prompted protests, rallies and extensive

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<sup>15</sup> *See, e.g.*, Jonathan Mattise, Kimberlee Kruesi, & Lindsay Whitehurst, *Tennessee Moves to the Forefront with Anti-Transgender Laws*, Associated Press (May 23, 2021), <https://apnews.com/article/tennessee-transgender-laws-b8d81d56287d6ed9d56c5da2203596b0>.

public debate. *See, e.g.*, Sarah Mervosh & Christine Hauser, *At Rallies and Online, Transgender People Say They #Won't Be Erased*, N.Y. Times (Oct. 22, 2018), available at <https://www.nytimes.com/2018/10/22/us/transgender-reaction-rally.html>; Open Letter from Over 2600 Scientists Opposing Proposed Legal Definition of Gender (Oct. 26, 2018), available at <https://not-binary.org/statement/> (“The proposal is in no way ‘grounded in science’ as the administration claims. The relationship between sex chromosomes, genitalia, and gender identity is complex, and not fully understood. There are no genetic tests that can unambiguously determine gender, or even sex. Furthermore, even if such tests existed, it would be unconscionable to use the pretext of science to enact policies that overrule the lived experience of people’s own gender identities.”).

67. This politicized usage of the phrase “biological sex,” as contrasted with a transgender person’s gender identity, is at odds with the medical consensus that gender identity itself has a biological basis. *See, e.g.*, Editorial, *Anatomy Does Not Define Gender*, 365 *Nature* 5 (Oct. 30, 2018), available at <https://www.nature.com/articles/d41586-018-07238-8>.

68. As used in the Act, the term “biological sex” carries an anti-transgender connotation that reflects the General Assembly’s viewpoint regarding sex and gender.

69. The Act also implies that allowing transgender people to use the restroom is sufficiently alarming to require a sign bearing a large red and yellow “NOTICE” warning.

70. The Act further requires Plaintiffs to appear to endorse the General Assembly’s viewpoint about “biological sex” by characterizing their own policy in the General Assembly’s controversial language (“THIS FACILITY MAINTAINS A POLICY . . .”).

71. Plaintiffs do not want to communicate these messages on the walls of their businesses.

72. The speech compelled by the Act also requires Plaintiffs with sex-designated restrooms to misrepresent their restroom policies by suggesting that they do not have sex-designated restrooms.

73. Plaintiffs understand that the Act's mandated phrase "either biological sex" in the political context of H.B. 1182 is offensive to transgender and intersex people because it asserts that transgender people are not the sex they know themselves to be and ignores the existence of intersex people.

74. Bongo and Mr. Bernstein believe that posting the warning notice required by H.B. 1182 will offend their staff, customers, friends, and family. Mr. Bernstein worries he would lose staff and customers if he is forced to post this sign.

75. Mr. Bernstein is uncomfortable with the government telling him to post a sign that he believes is ideologically motivated and inaccurate. He believes that the warning notice mandated by the Act is offensive and inaccurate because it uses the loaded phrase "biological sex" in a way that does not align with current scientific understandings of sex and gender.

76. Sanctuary and Ms. Sayers believe that posting the warning notice required by H.B. 1182 would send a message to transgender and intersex people that they are not welcome—which would undermine Sanctuary's mission and is the exact opposite of the message Sanctuary tries to cultivate in everything it does.

77. Sanctuary and Ms. Sayers believe that Sanctuary will lose community members and supporters they have worked hard to bring to Sanctuary since its doors opened last December if Sanctuary displays the warning notice.

78. Sanctuary and Ms. Sayers object to the General Assembly's use of the term "biological sex" as communicated by the Act and do not want to be forced to use that phrase.

## **V. IRREPARABLE HARM AND INJUNCTIVE RELIEF**

79. Under the Act, “[i]f an entity or business is notified that it is not in compliance with this section, the entity or business has thirty (30) days in which to comply before any action is taken against the entity or business.”

80. If Plaintiffs do not erect the Act’s required warning notice after notification that they are not in compliance, they face up to six months imprisonment and/or a fine of up to \$500, as well as other enforcement actions or civil penalties under Title 68, Chapter 120.

81. Plaintiffs do not want to display the government-mandated warning notice required by the Act. They also do not want to risk criminal penalties for exercising their right to avoid unwanted speech.

82. Enforcement of the Act will chill Plaintiffs’ speech, subjecting them to irreparable harm.

83. Plaintiffs have no adequate remedy at law.

### **CLAIMS FOR RELIEF**

#### **COUNT 1**

##### **(First Amendment—Compelled Speech)**

84. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 83.

85. The Act violates Plaintiffs’ rights under the First Amendment to the United States Constitution by compelling them, on pain of criminal penalty, to communicate a misleading and controversial government-mandated message that they would not otherwise display.

86. The Act is not rationally related to any legitimate government interest, let alone narrowly tailored to advance a compelling government interest.

## **REQUEST FOR RELIEF**

Wherefore, Plaintiffs respectfully request that this Court:

- A. Issue a preliminary injunction, later to be made permanent, restraining Defendants, their employees, agents, and successors in office from enforcing the Act;
- B. Enter a judgment declaring that the Act is unconstitutional under the First Amendment to the United States Constitution;
- C. Award Plaintiffs their reasonable costs and attorney's fees pursuant to 42 U.S.C. § 1988; and
- D. Grant such other or further relief as the Court deems just, proper, and equitable.

Dated: June 25, 2021

Respectfully submitted,

/s/ Thomas H. Castelli

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\*Pro hac vice motions forthcoming

# **EXHIBIT A**



# State of Tennessee

## PUBLIC CHAPTER NO. 453

### HOUSE BILL NO. 1182

By Representatives Rudd, Cepicky, Griffey, Sherrell, Moody, Todd

Substituted for: Senate Bill No. 1224

By Senators Rose, Hensley, Pody

AN ACT to amend Tennessee Code Annotated, Title 4; Title 5; Title 6; Title 7; Title 49 and Title 68, relative to public facilities.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 120, Part 1, is amended by adding the following as a new section:

(a) A public or private entity or business that operates a building or facility open to the general public and that, as a matter of formal or informal policy, allows a member of either biological sex to use any public restroom within the building or facility shall post notice of the policy at the entrance of each public restroom in the building or facility.

(b) Signage of the notice must be posted in a manner that is easily visible to a person entering the public restroom and must meet the following requirements:

(1) Be at least eight inches (8") wide and six inches (6") tall;

(2) The top one-third (1/3) of the sign must have a background color of red and state "NOTICE" in yellow text, centered in that portion of the sign;

(3) The bottom two-thirds (2/3) of the sign must contain in boldface, block letters the following statement centered on that portion of the sign:

THIS FACILITY MAINTAINS A POLICY OF ALLOWING THE USE  
OF RESTROOMS BY EITHER BIOLOGICAL SEX,  
REGARDLESS OF THE DESIGNATION ON THE RESTROOM

(4) Except as provided in subdivision (b)(2), have a background color of white with type in black; and

(5) Be located on a door to which the sign must be affixed or have its leading edge located not more than one foot (1') from the outside edge of the frame of a door to which the sign must be affixed.

(c) If an entity or business is notified that it is not in compliance with this section, the entity or business has thirty (30) days in which to comply before any action is taken against the entity or business.

(d) As used in this section:

(1) "Policy" means the internal policy of a public or private entity or such policy as the result of a rule, ordinance, or resolution adopted by an agency or political subdivision of this state; and

(2) "Public restroom":

(A) Includes a locker room, shower facility, dressing area, or other facility or area that is:

(i) Open to the general public;

**HB1182**

(ii) Designated for a specific biological sex; and

(iii) A facility or area where a person would have a reasonable expectation of privacy; and

(B) Excludes a unisex, single-occupant restroom or family restroom intended for use by either biological sex.

SECTION 2. This act takes effect July 1, 2021, the public welfare requiring it.

HOUSE BILL NO. 1182

PASSED: April 29, 2021



\_\_\_\_\_  
CAMERON SEXTON, SPEAKER  
HOUSE OF REPRESENTATIVES



\_\_\_\_\_  
RANDY MCNALLY  
SPEAKER OF THE SENATE

APPROVED this 17<sup>th</sup> day of May 2021



\_\_\_\_\_  
BILL LEE, GOVERNOR

# **EXHIBIT B**

# NOTICE

**THIS FACILITY MAINTAINS A  
POLICY OF ALLOWING THE USE  
OF RESTROOMS BY EITHER  
BIOLOGICAL SEX, REGARDLESS  
OF THE DESIGNATION ON THE  
RESTROOM**

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

### I. (a) PLAINTIFFS

Bongo Productions LLC, Robert Bernstein, Sanctuary Performing Arts LLC, and Kye Sayers

(b) County of Residence of First Listed Plaintiff Davidson  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Thomas H. Castelli (No. 24849), Stella Yarbrough (No. 33637), American Civil Liberties Union Foundation of Tennessee, PO Box 120160, Nashville, TN 37212, Tel: 615-320-7142

### DEFENDANTS

Carter Lawrence, TN State Fire Marshal, Christopher Bainbridge, Director of Codes Enforcement, Glenn R. Funk, District Attorney General, Neal Pinkston, District Attorney General

County of Residence of First Listed Defendant Davidson  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

### II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

### III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

### IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other  <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act  <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		FEDERAL TAX SUITS	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

### V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

### VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
42 U.S.C. § 1983, First Amendment to the United States Constitution

Brief description of cause:  
Challenge to the constitutionality of H.B 1182/S.B.1224

### VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ \_\_\_\_\_ CHECK YES only if demanded in complaint: JURY DEMAND:  Yes  No

### VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE \_\_\_\_\_ SIGNATURE OF ATTORNEY OF RECORD \_\_\_\_\_

### FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFF \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.