

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

BONGO PRODUCTIONS, LLC, and ROBERT )  
BERNSTEIN, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
CARTER LAWRENCE, Tennessee State Fire )  
Marshal, in his official capacity, et al., )  
 )  
Defendants. )

Civ. Action  
Case No. 3:21-cv-00490  
Judge Trauger

**MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION  
FOR ATTORNEYS’ FEES, COSTS, AND EXPENSES**

As the representatives of the prevailing party in this litigation, the ACLU and the ACLU of Tennessee (“ACLU-TN”) respectfully submit this memorandum in support of their Motion for Attorneys’ Fees, Costs, and Expenses.

**FACTUAL AND PROCEDURAL BACKGROUND**

In April 2021, the state of Tennessee enacted a law to compel businesses to adopt the state’s ideological message by posting signs that are controversial, confusing, and designed to incite fear and anti-transgender animosity. Tennessee Code Annotated § 68-120-120 (2021) (“the Act” or “H.B. 1182”). Specifically, the Act requires any business with a formal or informal policy of allowing transgender people to use the restroom that accords with their identity to post a warning sign with large red and yellow “NOTICE” text at the top, and boldface black block letters on a 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.” The Act compels Plaintiffs to engage in this unwanted controversial speech or risk 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 of the Tennessee Code.

Plaintiffs Bongo Productions, LLC, and Robert Bernstein are a Tennessee business and the founder and owner of that business. Bernstein Decl. ¶¶ 1–2, ECF No. 7-1. Plaintiffs operate a facility, a restaurant named Fido, with an informal policy allowing transgender people to use the restrooms that accord with their identity. *Id.* at ¶ 11. Plaintiffs pride themselves in being strong supporters of transgender people, and greatly value the patronage and support of transgender people who have been among Plaintiffs’ customers, friends, family, and employees. *Id.* at ¶¶ 6-8, 14. As such, the Act compels Plaintiffs to speak a message to the public that is offensive to them, and with which they strongly disagree.

Plaintiffs filed this lawsuit and moved for preliminary injunction on June 25, 2021, alleging that the Act violated their First Amendment rights. (ECF Nos. 1, 6). This Court granted the preliminary injunction on July 9, 2021, writing that the Act represented a “brazen violation,” of the principles at the core of the First Amendment’s prohibition against government compelled speech. Mem. Op. at 31, ECF No. 22. The Court found that “the Act unambiguously mandates that the plaintiffs and other regulated parties speak a particular message, in public, that they have shown, with evidence, that they earnestly consider to be anathema to their beliefs and values.” *Id.* at 18.

After conducting written and oral discovery, Plaintiffs moved for summary judgment on January 31, 2022 (ECF. No. 35). The Court granted Plaintiffs’ motion on May 17, 2022, permanently enjoining remaining Defendants from enforcing the Act and declaring that enforcement of the Act would violate the First Amendment to the United States Constitution. (ECF. No. 43). This Court’s Order represents full and complete relief. No appeal was taken.

## LEGAL STANDARD

Prevailing parties in civil rights actions brought under 42 U.S.C. § 1983 are entitled to the award of reasonable attorneys' fees and expenses. 42 U.S.C. § 1988(b). The purpose of Section 1988 is to ensure “effective access to the judicial process’ for persons with civil rights grievances.” *Henslev v. Eckerhart*, 461 U.S. 424, 429 (1983); *see also Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 559 (2010) (“Section 1988 serves an important public purpose by making it possible for persons without means to bring suit to vindicate their rights.”) The presumption is that absent “special circumstances” that would render an award “unjust,” a prevailing party “must” be awarded attorneys’ fees and expenses. *Indep. Fed. of Flight Attendants v. Zipes*, 491 U.S. 754, 759, 761 (1989).

This Court has discretion in determining what constitutes a reasonable fee under the circumstances of the case. *Blanchard v. Bergeron*, 489 U.S. 87, 96 (1989). Given the Court’s familiarity with the litigation and that a district court’s determination of a reasonable fee is given significant deference, no evidentiary hearing is necessary. *Wilson-Simmons v. Lake County Sheriff’s Department*, 207 F.3d 818, 823 (6th Cir. 2000).

## ARGUMENT

This litigation successfully prevented the enforcement of an unconstitutional law and affirmed the First Amendment rights of businesses and business owners who opposed the offensive message contained in the Act. This outcome was the result of hundreds of hours of labor from a legal team of ACLU and ACLU-TN staff working remotely across the country.

In 2021 and 2022, the attorneys at these organizations crafted the legal theories that provided the foundation for this litigation, drafted motions and obtained a preliminary injunction, engaged in substantive written discovery and document production, and successfully filed a motion

for summary judgment. The legal services rendered involved substantial research regarding complex and relatively novel legal arguments. This litigation required considerable time and resources on behalf of the representative organizations.

The representative organizations have expended a cumulative total of 280.9 hours during the course of their representation. This amount is reasonable and is supported by the declarations of several prominent Nashville attorneys. Detailed descriptions of the time entries for each attorney working on this matter bear out the reasonableness of the time spent on representation. As the declarations demonstrate, the rates used are reasonable given the reputation and experience of each of the attorneys, the results obtained in this matter, and the nature of this case.

The representative organizations move this Court for an award of reasonable attorneys' fees under 42 U.S.C. § 1988 in the following amounts:

ACLU	\$	76,917.50
ACLU – Tennessee	\$	21,649.00
<b>Total</b>	<b>\$</b>	<b>98,566.50</b>

In addition, the amount of costs and expenses to be reimbursed is \$6,982.25. The representative organizations are contemporaneously submitting a Bill of Costs (\$2,044.75), *attached as* Ex. 2, and an invoice for the services of Dr. Taylor (\$4,937.50), *attached as* Ex. 3, which list all reimbursable costs. As demonstrated below, all of these values are reasonable and justified by established law.

**I. Plaintiffs Prevailed On Their Claim Resulting in Full and Complete Relief.**

The “most critical factor” in determining the reasonableness of a fee award is the “degree of success obtained.” *Hensley*, 461 U.S. at 436. Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee. *Id.* at 435. “[A] plaintiff qualifies as a prevailing party when the plaintiff wins relief on the merits in the form of a court order, consent

decree, or judicially-enforced settlement that materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff.” *Jones v. Haynes*, 350 F. Supp. 3d 691, 695 (M.D. Tenn. 2018)(citing *Sole v. Wyner*, 551 U.S. 74, 82 (2007); see also *Farrar v. Hobby*, 506 U.S. 103, 111-12 (1992).

Plaintiffs have undoubtedly obtained excellent results in this matter and prevailed on their claim. Plaintiffs first prevailed at the preliminary injunction stage wherein the Court found Plaintiffs’ claim had a strong likelihood of success on the merits because the Act was a “brazen violation” of the First Amendment. (Mem. Op., ECF. No. 22, PAGE ID #231). Plaintiffs then prevailed on the merits at the summary judgment stage. This Court granted each of Plaintiffs’ requests for relief by (1) ordering Defendants to take no action to enforce the Act and (2) declaring the enforcement of the Act would violate the First Amendment. (Order, ECF. No. 43, PAGE ID #1171). Plaintiffs are the clear prevailing party in this action.

The Court’s Order Granting Summary Judgment (ECF. No. 43) represents full and complete relief to Plaintiffs. Before the lawsuit, Plaintiff business and its owner would have been forced under criminal penalty to display a sign with which they vehemently disagreed. At the end of this litigation, no business in Tennessee, including Plaintiffs, can be forced by Defendants to display this message. This is a “material alteration” of the legal relationship of the parties that directly benefits Plaintiff and is enforced through an enduring court order. See *Farrar v. Hobby*, 506 U.S. at 111-12.

## **II. The Amount of Attorneys’ Fees Sought Are Reasonable.**

The primary method for determining a reasonable fee is the so-called “lodestar” method, which multiplies the number of hours reasonably expended on the litigation by a reasonable hourly rate. *Hensley*, 461 U.S. at 433. A “strong presumption” favors the prevailing counsel’s entitlement

to the lodestar fee. *See City of Burlington v. Dague*, 505 U.S. 557, 562 (1992). And because civil rights litigation often has significant benefits far beyond immediate monetary relief, as in this matter, the availability of attorneys' fees does not depend on the amount or existence of any monetary recovery. *See City of Riverside v. Rivera*, 477 U.S. 561, 575-76 (1986) ("Congress recognized that reasonable attorney's fees under § 1988 are not conditioned upon and need not be proportionate to an award of money damages."). In addition to counsel's time, reasonable attorneys' fees should encompass the work of paralegals and law clerks who provide critical assistance to the litigation of these matters. *Missouri v. Jenkins by Agyei*, 491 U.S. 274, 285-86 (1989). Attached as Exhibit A is a chart reflecting the number of hours worked by Counsel, their respective hourly rates, and the resulting "lodestar" fee of \$98, 566.50. Details regarding these hours and the respective experience of Counsel are reflected in the attached declarations. *See* Decl. of Emerson Sykes; Decl. of Rose Saxe; Decl. of Malita Picasso; Decl. of Stella Yarbrough.

**A. The Hours Expended Are Reasonable.**

In determining the lodestar under Section 1988, the first question is whether the hours spent are reasonable. *See Hensley*, 461 U.S. at 433. Plaintiffs bear the burden of establishing the reasonableness of the hours claimed by submitting adequate documentation of the hours worked. *Id.* at 437. Plaintiff has submitted the billing records for each attorney, which accounts for the time spent on this matter, adequately documenting the need for, and reasonableness of, the hours actually charged. *See* Decl. of Emerson Sykes; Decl. of Rose Saxe; Decl. of Malita Picasso; Decl. of Stella Yarbrough.

As the Court is aware, this matter involved complex and novel constitutional questions. Investigating and litigating this matter required a high level of expertise on behalf of the attorneys involved—ranging from complex First Amendment jurisprudence, complex scientific and

linguistic understanding of terms used in the Act, various immunities and defenses, and federal civil rights litigation more broadly. As reflected in their declarations, Counsel and staff at each of the organizations providing legal services to Plaintiffs in this matter all bring a depth and breadth of experience that was required to address all facets of this litigation. The strategic nature of this case required frequent interaction among Counsel. *See, e.g., Glover v. Johnson*, 138 F.3d 229, 252–53 (6th Cir. 1998) (holding that reasonable consultation among counsel is properly compensable). The attorneys involved in this matter divided work over time, as reflected in the attached hours, to ensure that work was not duplicative. For example, staff at ACLU crafted the majority of the pleadings and conducted legal research and developed expert testimony, while ACLU-TN investigated the application of the Act and took the lead on developing client relationships and communicating with clients.

In addition, the hours sought to be compensated by undersigned Counsel represent a reduction in the total number of hours actually spent on this matter. As indicated in the attached declarations, Counsel for Plaintiffs have decided not to seek an award for several categories of fees. For example, Counsel for Plaintiffs have not sought reimbursement for the hours of labor performed by paralegal or other support staff. Counsel has also not sought hourly fees for more than one attorney from each organization where multiple attorneys staffed a joint-counsel teleconference. Counsel have made reductions in their time in accordance with the same review of billing records that they would perform before sending a bill to any fee-paying clients. Each of the undersigned attorneys have submitted a declaration setting out their actual hours expended on this matter and a determination that the amount of time spent on this litigation is reasonable. *See* Decl. of Emerson Sykes; Decl. of Rose Saxe; Decl. of Malita Picasso; Decl. of Stella Yarbrough.

#### **B. The Hourly Rates Identified Are Reasonable**

As to the second prong of the lodestar determination, the requested hourly rates are reasonable. The Court determines reasonableness of hourly rates by reference to the “prevailing market rates in the relevant community.” *Blum v. Stenson*, 465, U.S. 886, 895 (1984). The prevailing market rate determination takes into account the “training, background, experience and skill of the individual attorney.” *Northcross v. Board of Ed. of Memphis City Schools*, 611 F. 2d 624, 638 (6th Cir. 1979). Where attorneys are in private practice, a court can look to the attorney’s actual hourly rate at which the attorney bills and collects fees from paying clients for guidance. *Id.*; *see also Hadix v. Johnson*, 65 F.3d 532, 536 (6th Cir. 1995) (finding that “normal billing rates usually ‘provide an efficient and fair short cut for determining the market rate.’”).

During the course of this litigation, there were primarily five attorneys who worked on this matter. The hourly rates for each of these attorneys as well as the number of hours actually expended on the case are attached in Exhibit A.

These rates are also consistent with the hourly rates awarded in other similar cases to attorneys with similar experience. *See, e.g., Hanson v. McBride*, 3:18-CV-00524, 2020 WL 5893825, at \*8 (M.D. Tenn. Oct. 2, 2020) (“\$475 is within the realm of what is ordinary and reasonable for experienced litigation counsel in this district.”); *Rodriguez et al. v. Providence Comm. Corr., et al.*, 3:15-cv-01048, Amended Order Granting Final Approval of Class Settlement (July 18, 2018) (approving rates for counsel between \$450 and \$700); *Howard v. Tennessee*, 3:16-CV-2829, 2018 WL 10151080, at \*5 (M.D. Tenn. Dec. 14, 2018) (awarding rate of \$400 to law firm associate, and rates between \$450–\$600 an hour to law firm partners); *Siddle v. Crants*, No. 3:09-CV-00175, 2013 WL 1245678, at \*19–25 (M.D. Tenn. Mar. 26, 2013) (finding rates of \$400, \$490, \$550, and \$575 per hour to be reasonable for partners).

### **III. The Court Should Grant Reimbursement of Minimal Costs and Expenses.**

“Unless a federal statute, these rules, or a court order provides otherwise, costs—other than attorney’s fees—should be allowed to the prevailing party.” Fed. R. Civ. P. 54(a). “Section 1988 permits district courts to award those ‘incidental and necessary expenses incurred in furnishing effective and competent representation’ as part of the award of attorney fees.” *Waldo v. Consumers Energy Co.*, 726 F.3d 802, 827 (6th Cir. 2013) (quoting *Sigley v. Kuhn*, 205 F.3d 1341, 2000 WL 145187, at \*8 (6th Cir. 2000)). Recoverable expenses include those out-of-pocket costs incurred by the attorney, which are normally charged to fee-paying clients in the normal course of providing legal services. *Id.*

Here, Counsel for Plaintiffs seeks only minimal expenses, including filing fees and minimal costs related to discovery. All of these costs have been paid, and all were reasonable and necessary for adequate representation of the Plaintiffs in this matter. Counsel has not sought reimbursement for other expenses typically awardable in these circumstances, such as phone charges, copying, legal research platforms, or postage.

### CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that the Court authorize the compensation of Counsel in the amount of \$ 98, 566.50, and to grant approval of the payment of expenses in the amount of \$2,044.75. As the representatives of the party who obtained full and complete relief on every count, Counsel are entitled to their reasonable fee as described above.

Dated September 14, 2022.

Respectfully submitted,  
/s/ Stella Yarbrough

Stella Yarbrough (BPR # 33637)  
Thomas H. Castelli (BPR # 24849)  
ACLU (Nashville Office)

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*Attorneys for Plaintiff*

\*Admitted *pro hac vice*

**CERTIFICATE OF SERVICE**

I hereby certify that on September 14, 2022, a true and correct copy of the foregoing report was served on the Tennessee Attorney General's Office, counsel for all Defendants, via the Court's ECF/CM system.

Alexander S. Rieger  
Rainey A. Lankford  
Office of the Attorney General and Reporter  
P.O. Box 20207  
Nashville, Tennessee 37202-0207  
Alex.rieger@ag.tn.gov  
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/s/ Stella Yarbrough  
Stella Yarbrough

# Exhibit 1

Attorneys' Fees

<b>Name</b>	<b>Position</b>	<b>Organization</b>	<b>Hours</b>	<b>Rate</b>	<b>Total</b>
Thomas H. Castelli	Attorney	ACLU-Tennessee	23.60	\$475.00	\$11, 210
Stella Yarbrough	Attorney	ACLU-Tennessee	28.60	\$365.00	\$10, 439
Emerson Sykes	Attorney	ACLU	41.6	\$450	\$18, 720
Rose Saxe	Attorney	ACLU	64.4	\$475	\$30, 590
Malita Picasso	Attorney	ACLU	122.7	\$225.00	\$27, 607.50
<b>Total</b>					\$98, 566.50

# Exhibit 2

Costs and Expenses

<b>Date</b>	<b>Description</b>	<b>Fee</b>
6/25/2021	Court Filing Fee	\$402.00
6/25/2021	PHV Fee - Saxe	\$150.00
6/25/2021	PHV Fee - Sykes	\$150.00
10/20/2021	PHV Fee - Picasso	\$150.00
12/20/2021	Deposition Transcript and Court Reporter Fees	\$701.50
12/22/2021	Deposition Transcript and Court Reporter Fees	\$326.25
12/22/2021	Invoice for Dr. Taylor	\$4937.50
1/11/2022	Deposition Transcript and Court Reporter Fees	\$165.00
	<b>TOTAL</b>	<b>\$6,982.25</b>

# Shayne Sebold Taylor MD

7513 Hallows Dr  
Nashville, TN  
37221

520.661.1973  
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**BILLED TO**  
**American Civil Liberties**  
**Union**  
125 Broad Street  
New York, NY  
1004

## Invoice

**INVOICE NUMBER**  
00001

**DATE OF ISSUE**  
12/22/2021

DESCRIPTION	UNIT COST	QTY/HR RATE	AMOUNT
October 7	1 hour	\$350/hr	\$350
October 23	1 hour	\$350/hr	\$350
October 27	30 min	\$350/hr	\$175
October 29	30 min	\$350/hr	\$175
October 30	1 hour	\$350/hr	\$350
October 31	1 hour	\$350/hr	\$350
December 18	3 hours	\$425/hr	\$1275
December 22	4.5 hours	\$425/hr	\$1912.5

**SUBTOTAL** \$4937.50

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**INVOICE TOTAL**  
**\$4937.50**



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

BONGO PRODUCTIONS, LLC, and ROBERT	)	
BERNSTEIN,	)	
	)	
Plaintiffs,	)	
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v.	)	Civ. Action
	)	Case No. 3:21-cv-00490
	)	Judge Trauger
CARTER LAWRENCE, Tennessee State Fire	)	
Marshal, in his official capacity, et al.,	)	
	)	
Defendants.	)	

**DECLARATION OF STELLA YARBROUGH**

Pursuant to 28 U.S.C. § 1746, I, Stella Yarbrough, hereby declare as follows:

1. The national American Civil Liberties Union (“ACLU”) and the ACLU of Tennessee (“ACLU-TN”), were retained in 2021 to represent Plaintiffs Bongo Productions, LLC and Robert Bernstein in this matter. (Former Plaintiffs Kye Sayers and Sanctuary were also originally represented by these attorneys in this action.)
  
2. The ACLU-TN is a state-wide nonprofit, nonpartisan organization with over 15,000 members dedicated to defending the principles embodied in the Tennessee and U.S. Constitution and our nation’s civil rights laws. The ACLU Foundation of Tennessee is a nonprofit organization under section 501(c)(3) of the Internal Revenue Code and educates the public about civil liberties and employs lawyers who provide legal representation free of charge in cases involving civil liberties. The ACLU-TN is dedicated to advancing and protecting the civil liberties of lesbian, gay, bisexual, transgender and queer individuals in Tennessee. ACLU-TN works for fair treatment of LGBTQ persons in employment, schools, housing, public places and health care. Since

its inception, ACLU-TN has also frequently fought to protect the First Amendment rights of Tennesseans, including the right to free speech.

**Qualifications of ACLU Staff Working on the Case**

3. I am the Legal Director of ACLU-TN and have been in this position since April 4, 2022. My practice with the ACLU-TN is devoted exclusively to constitutional and civil rights claims under the Tennessee and U.S. Constitution.
4. I started this position on April 4, 2022. Prior to being the legal director, I was the staff attorney at the ACLU-TN, a staff attorney at the Tennessee Department of Education's Office of Civil Rights, and an assistant public defender at the Nashville Defender's Office.
  - a. I earned a Bachelor of Arts degree in Religious Studies from Pepperdine University in 2010. I earned a Juris Doctorate from Vanderbilt Law School and a Master's degree in Theological Studies from Vanderbilt Divinity School in 2014.
  - b. I was admitted to the practice of law in the State of Tennessee in 2014.
  - c. I am admitted to practice in the state courts of Tennessee (2014), U.S. District Court for the Western District of Tennessee (2020), U.S. District Court for the Middle District of Tennessee (2020), and the Sixth Circuit for the U.S. Court of Appeals.
  - d. In my current role, I manage the ACLU-TN's docket including the following cases: Busby v. Bonner, No. 2:20-cv-2359-SHL (W.D. Tenn. May 20, 2020); Blanchard v. City of Memphis, No. 2:17-cv-02120-jpm-DKV (W.D. Tenn. 2018); and, L.E. v. Lee, et al, Case No. 3:21-cv-00835.

5. **Thomas H. Castelli** is the former Legal Director of the ACLU-TN and held this position during the pendency of this litigation. He was the Legal Director from May 11, 2013 to February 4, 2022.
  - a. He obtained a Bachelor of Arts degree in Political Science from Rhodes College in Memphis Tennessee in 1996. He earned his Juris Doctorate from the University of Tennessee College of Law in 1999.
  - b. He practiced law in Georgia from 1999 until 2005. He has been admitted to the Bar of the State of Tennessee since 2005 and has practiced in the Federal District Court for the Middle District of Tennessee since 2006.
  - c. During his time as the legal director of the ACLU-TN, he litigated civil rights cases in this Court including: Atkins, et al. v. Parker, et al., Case No. 3:16-cv-01954; Doe v. Hommrich, et al., Case No. 3:16-cv-00799; FemHealth USA, Inc. v. City of Mount Juliet, et al., Case No. 3:19-cv-01141; and, Nashville Community Bail Fund v. Gentry, Case No. 3:20-cv-00103.

#### **Attorney Hourly Rates**

6. My current hourly rate is \$365. Based on prevailing market rates in Nashville, TN, \$365 is a reasonable hourly rate for an attorney of my background and experience.
7. Thomas H. Castelli's current hourly rate is \$475 an hour. Based on prevailing market rates in Nashville, TN, \$475 is a reasonable hourly rate for an attorney of his background and experience.
8. Recently, both of the above rates for Counsel were approved as reasonable based on counsel's experience and consistent with the rates charged in comparable litigation by

This Court. See Nashville Community Bail Fund v. Gentry, Case. No. 3:20-cv-00103 (Order, ECF No. 90; Mem. Op. ECF No. 91).

9. The attorney hours spent on this case were reduced because of the assistance of ACLU-TN support staff, including paralegals and legal interns. We do not seek compensation for any time spent on this case by paralegals or interns.

**Requested Attorneys' Fees**

10. Below is a table summarizing all the time for which Plaintiffs are seeking fees in connection with this matter:

<i>Name (position)</i>	<i>Time Spent</i>	<i>Hourly Rate*</i>	<i>Billable Amount</i>
Thomas H. Castelli (attorney)	23.6	\$475	\$11,210
Stella Yarbrough (attorney)	28.6	\$365	\$10,439

**SUM: \$21, 649**

11. Reasonable billing judgment was exercised to exclude hours that were not absolutely necessary, were duplicated by other attorneys, or are not adequately documented. In particular, we are not seeking compensation for the following:

- a. Hours spent on team calls which included another attorney from the ACLU-TN who has documented that time instead;
- b. Hours spent participating in meet and confers which included another attorney from the ACLU-TN who has documented that time instead;
- c. Hours spent preparing the fee petition in this case; and
- d. Hours spent on administrative tasks related to the case.

12. ACLU-TN attorneys' time records were kept contemporaneously with the work performed. I have attached the detailed time records for each ACLU timekeeper, *attached as Ex. 1.*

**Reasonable Litigation Expenses and Costs**

13. Plaintiffs are also claiming \$6, 982.25 in costs and expenses. *See Exs. 2 and 3 to Mem. of Law in Support of the Motion.*
14. These expenses were reasonably incurred in the course of providing effective representation to the Plaintiffs, and Plaintiffs' counsel made appropriate efforts throughout the litigation to reduce unnecessary expenses.
15. The hourly rates, hours, and expenses reflected in this affidavit and its attachments are customary and reasonable and were necessarily incurred in representing Plaintiffs in this matter.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 14, 2022.

/s/ Stella Yarbrough

# Exhibit 1

<i>Bongo v. Lawrence, Stella Yarbrough</i>		
<b>Date</b>	<b>Hours: Minutes</b>	<b>Description</b>
1/14/2022	1.00	Meeting with co-counsel to discuss draft of Motion for Summary Judgment
1/14/2022	2.00	Draft Motion for Voluntary Dismissal for Plaintiff Sayers and Sanctuary LLC
1/18/2022	3.40	Drafting MIS of MSJ; Reviewing Prior SJ Motions; Drafting SJ standard
1/19/2022	2.20	Drafting MIS of MSJ; Zauderer Standard Research
1/21/2022	6.90	Drafting Sections for MIS of MSJ
1/25/2022	3.20	Drafting Motion for Summary Judgment
1/28/2022	1.30	Reviewing and Editing Drafts of Motion, MIS of MSJ
1/31/2022	3.00	Reviewing and Editing MSJ; formatting to file
1/31/2022	2.80	Formatting and Filing MSJ and Attachments
3/8/2022	0.90	Meeting with co-counsel to discuss Reply
3/11/2022	1.60	Reviewing, editing, formatting Reply Motion
3/11/2022	0.30	Filing Reply
<b>Total</b>	28.60	

<i>Bongo v. Lawrence, Thomas H. Castelli</i>		
<b>Date</b>	<b>Hours: Minutes</b>	<b>Description</b>
6/25/2021	0.50	Final review of complaint before filing
6/25/2021	0.30	File complaint, summonses and cover sheet
6/25/2021	0.50	final review of motion for PI, brief and exhibits
6/25/2021	0.30	File Motion for PI, brief and Exhibits
6/25/2021	0.20	Review and file Motions for admission PHV
6/30/2021	0.40	Draft and file Notice with Court re: service
6/25/2021	0.50	draft and send transmittal letter with complaint, summonses, Motion for PI, Brief, Exhibits and notice of CMC to Attorney Generals office
7/7/2021	0.50	Review response to motion for PI
7/9/2021	0.50	Review Order and decision granting PI
7/16/2021	0.30	Review Answer to complaint
8/18/2021	0.20	review and file proposed CMO
8/19/2021	0.30	draft and file motion for co-counsel to participate via telephone in CMC
8/23/2021	1.00	prepare for CMC (including travel to Court and wait time)
8/23/2021	0.20	Case Management Conference

12/15/2021	0.50	Draft joint mediation report		
12/15/2021	0.10	file Joint mediation report		
12/15/2021	0.10	discussion with co-counsel re: discovery		
12/15/2021	0.30	draft and send email to opposing counsel re: discovery responses and deposition scheduling		
12/15/2021	0.30	review and send final discovery responses		
12/6/2021	1.00	Meeting with co-counsel to discuss and discovery responses		
12/14/2021	0.20	Email to Opposing Counsel re: mediation report		
12/17/2021	0.10	Email to Opposing Counsel re: discovery responses		
12/20/2021	4.00	Deposition of Leigh Furgeson		
12/20/2021	0.30	conversation with co-counsel re: deposition		
12/21/2021	3.00	Deposition of Dr. Taylor		
1/11/2022	1.00	Prepare client for deposition		
1/11/2022	2.00	Deposition of Bob Bernstein		
1/11/2022	1.00	Meeting with co-counsel re: Sanctuary status and standing issues		
1/25/2022	0.70	Review and edit statement of undisputed facts		
1/26/2022	1.00	Review and edit Memo in support of motion for summary judgment		
1/28/2022	0.30	Email to co-counsel re: citations for SJ brief and attaching Exhibits		
1/28/2022	0.20	Review and edit Motion for SJ		
1/28/2022	0.50	Review and edit Memo in support of motion for summary judgment		
1/31/2022	0.30	Email to co-counsel re: edits to brief and request for oral argument		
1/31/2022	0.50	prepare Exhibits to SJ motion for filing		
1/31/2022	0.50	Final review and file Motion for SJ, Memo in Support, Statement of Facts and Exhibits		
<b>Total</b>	23.60			

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

BONGO PRODUCTIONS, LLC, and ROBERT	)	
BERNSTEIN,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civ. Action
	)	Case No. 3:21-cv-00490
	)	Judge Trauger
CARTER LAWRENCE, Tennessee State Fire	)	
Marshal, in his official capacity, et al.,	)	
	)	
Defendants.	)	

**DECLARATION OF EMERSON SYKES**

Pursuant to 28 U.S.C. § 1746, I, Emerson J. Sykes, hereby declare as follows:

1. The national American Civil Liberties Union (“ACLU”) and the ACLU of Tennessee (“ACLU-TN”), were retained in 2021 to represent Plaintiffs Bongo Productions, LLC and Robert Bernstein in this matter. (Former Plaintiffs Kye Sayers and Sanctuary were also originally represented by these attorneys in this action.)
  
2. The ACLU is a national nonprofit, nonpartisan organization with over a million members dedicated to defending the principles embodied in the U.S. Constitution and our nation’s civil rights laws. The ACLU Foundation is a nonprofit organization under section 501(c)(3) of the Internal Revenue Code that educates the public about civil liberties and employs lawyers who provide legal representation free of charge in cases involving civil liberties. The ACLU’s Speech, Privacy & Technology (SPT) Project is dedicated to protecting and expanding the First Amendment freedoms of expression, association, and inquiry; expanding the right to privacy and increasing the control that individuals have over their personal information; and ensuring that civil liberties are enhanced rather than

compromised by new advances in science and technology. The ACLU's SPT Project, together with ACLU state affiliates and other projects at ACLU National, has filed numerous lawsuits challenging new legislation that violates the First or Fourth Amendments and implicates other priority interests such as protecting the transgender community, including the state law at issue in this case.

3. I am a Senior Staff Attorney at the ACLU SPT Project, and have been in this position since April 29, 2021. I joined the ACLU SPT Project as a staff attorney on September 17, 2018. My practice with the ACLU is devoted exclusively to litigating First Amendment claims, and advocacy on behalf of free speech and the right to protest.
4. I obtained a Bachelor of Arts degree in Political Science from Stanford University in 2005. I earned my Juris Doctorate from New York University School of Law in 2011.
5. I have been a member in good standing of the Bar of the State of New York since 2012, and have been admitted to multiple federal courts since then.
6. Following my graduation from law school, I was as a Senior Policy Fellow in the office of a Member of Parliament in Ghana in 2011. I served as Parliamentarian and Assistant General Counsel to the New York City Council from 2012-2013. From 2013 until I joined the ACLU in 2018, I was a Legal Advisor for Africa at the International Center for Not-for-Profit Law.
7. I have litigated numerous First Amendment cases in federal courts as direct counsel, including *BERT v. O'Connor*, No. 5:21-cv-01022-G (W.D. Okla. filed Oct. 19, 2021) (challenging Oklahoma's education gag order); *McKesson v. Doe*, 592 U.S. \_\_\_\_ (2020) (challenging the Fifth Circuit's ruling on protest organizer liability for the unlawful acts of others); and *Frese v. Formella*, No. 21-1068 (1st Cir. appeal filed May 7, 2021)

(challenging New Hampshire’s criminal defamation law); and as amicus, including *McLendon v. Long*, 22 F.4th 1330 (11th Cir. 2022) (challenging Butts County, GA requirement that people on the sex offender registry post warning signs on their property); *TN v. Bassett*, No. E2019-02236-CCA-R3-CA (Tenn. Crim. App. 2022) (challenging the use of a rap music video as criminal evidence); *Iancu v. Brunetti*, 588 U.S. \_\_\_\_ (2019) (challenging the Lanham Act’s prohibition on “immoral or scandalous” trademarks), and more.

8. On June 28, 2021, I was granted leave to appear *pro hac vice* in this matter (DKT-10)
9. My hours expended working on this case are attached to this Affidavit as Exhibit 1.
10. The time expended and costs incurred have been reasonable, and the records submitted are an accurate reflection of the time I expended in this case. I documented my time in six-minute increments.
11. I exercised billing judgment to prepare these time records. For example, I did not list time for numerous small tasks, or for any tasks that did not take at least six minutes to complete. We also did not bill for many meetings among co-counsel where one attorney billed for that time, and we did not bill for the time of paralegals or interns who worked on this matter.
12. My current hourly rate is \$450. Based on prevailing market rates Nashville, TN \$450 is a reasonable hourly rate for an attorney of my background and experience.

Dated: June 15, 2022

By: /s/ Emerson Sykes

Emerson Sykes

American Civil Liberties Union

SPT Project

125 Broad Street, 18<sup>th</sup> Floor

New York, NY 10004

Phone: (646) 885-8331

Email: [esykes@aclu.org](mailto:esykes@aclu.org)

*Attorney for Plaintiffs*

**Emerson Sykes Attorney Fees***Bongo v. Lawrence*

<b>Date</b>	<b>Description</b>	<b>Duration</b>
5/5/2021	Compelled speech research	0.8
5/7/2021	Review litigation strategy documents	0.4
5/13/2021	Review legal research on HB1183 enforc	0.3
6/4/2021	Review 6th Circuit compelled speech res	0.4
6/10/2021	Edit draft complaint	1.1
6/14/2021	Develop legal strategy regarding experts	0.2
6/14/2021	Assign legal reseach to interns	0.3
6/17/2021	Edit revised draft Complaint	0.6
6/17/2021	Review intern research	0.3
6/17/2021	Drafting PI brief	2.1
6/18/2021	Drafting PI brief	3.9
6/20/2021	Drafting PI brief	3.7
6/21/2021	Review litigation strategy memo	0.4
6/21/2021	Drafting PI brief	1.8
6/22/2021	Editing revised draft PI brief	1.2
6/23/2021	Final edits to draft PI brief	4.4
6/24/2021	Final edits to draft Complaint	0.9
6/25/2021	Proofreading Complaint, PI brief	1.2
6/25/2021	Supervising filing logistics	2.9
7/7/2021	Review State's filings	2.1
7/8/2021	Review State's filings	0.9
7/9/2021	Editing draft PI Reply brief	0.3
7/9/2021	Review PI decision	0.9
7/12/2021	Review PI decision	2.1
8/9/2021	Review draft CMO	0.6
8/23/2021	Case Management status conference	1.1
9/17/2021	Review draft client disclosures	0.4
1/25/2022	Review draft SJ brief	2.7
1/27/2022	Review revised draft SJ brief	1.4
1/28/2022	Review draft stipulation of dismissal	0.3
1/31/2022	Supervising filing logistics	0.9
3/10/2022	Review draft SJ reply brief	0.4
5/17/2022	Review SJ decision	0.6
	Total	41.6

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

BONGO PRODUCTIONS, LLC, and ROBERT	)	
BERNSTEIN,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civ. Action
	)	Case No. 3:21-cv-00490
	)	Judge Trauger
CARTER LAWRENCE, Tennessee State Fire	)	
Marshal, in his official capacity, et al.,	)	
	)	
Defendants.	)	

**DECLARATION OF MALITA PICASSO**

Pursuant to 28 U.S.C. § 1746, I, Malita Picasso, hereby declare as follows:

1. I am above the age of 18, I am competent to testify, and I have personal knowledge of the matters contained in this declaration.
  
2. I am a Staff Attorney at the national American Civil Liberties Union (national ACLU), and I represent Plaintiffs in this litigation.
  
3. The ACLU is a national nonprofit, nonpartisan organization with over a million members dedicated to defending the principles embodied in the U.S. Constitution and our nation’s civil rights laws. The ACLU Foundation is a nonprofit organization under section 501(c)(3) of the Internal Revenue Code that educates the public about civil liberties and employs lawyers who provide legal representation free of charge in cases involving civil liberties. The national ACLU relies upon the contributions of its members and supporters, and in part upon attorney fees incurred in litigation, to fund its operations.
  
4. I am licensed to practice law in New York and I have been since March 4, 2020.

5. On October 25, 2021, I was granted leave to appear *pro hac vice* as Co-Counsel in this matter.
6. In 2012, I graduated from Stanford University.
7. In 2019, I graduated from City University of New York School of Law.
1. Upon graduation, I joined the ACLU LGBTQ & HIV Project as a legal fellow sponsored by the Skadden Foundation. Following my fellowship, I was hired as a Staff Attorney with the ACLU LGBTQ & HIV Project. The ACLU's LGBTQ & HIV Project was founded in 1986. It is dedicated to advancing justice for lesbian, gay, bisexual, transgender and queer individuals, and for people living with HIV. Since 2016, the ACLU's LGBTQ & HIV Project, together with its state affiliates, has filed eight lawsuits challenging new legislation that specifically targets the transgender community, including the state law at issue in this case.
8. I have significant experience working on complex constitutional and other federal civil rights litigation protecting and advancing the protections of transgender people, similar to the work I performed in this lawsuit.
9. I was a key member of the ACLU team litigation *Ray v. McCloud*, 507 F.Supp.3d 925 (S.D. Ohio, 2020), securing a permanent injunction against the Ohio Department of Health and Human Services policy of denying transgender people access to accurate birth certificates.
10. I represented the ACLU as *amici* before the U.S. Court of Appeals for the Ninth Circuit in *Alor Reyes v. Garland*, No. 20-71466, Dkt.Entry 26 (9<sup>th</sup> Cir. April 28, 2021).
11. I also assisted with briefing in opposition to *certiorari* filed before the U.S. Supreme Court in *Parents for Privacy v. William P. Barr*, 141 S. Ct. 894 (2020).
12. Currently, I am counsel in several state and federal civil rights litigations in

which I represent transgender people in exercising their rights under the U.S. Constitution. See *Hersom v. Crouch*, Case No. 2:21-cv-450 (S.D. W.V.); *Marquez v. State of Montana*, Cause No. DV 21-873, (Montana Thirteenth Judicial District Court); *Maloney v. Yellowstone County*, Hearing Officer Decision and Notice of Issuance of Administrative Decision, Case No. 1572-2019, Jan. 24, 2022.

13. Apart from my litigation experience, I have been invited to speak at various conferences and panels including: Harvard School of Public Health Conference on Women, Gender, and Health (2021); SAGE National LGBT Elder Housing Virtual Institute (2020); National Trans Bar Association Panel on Title VII and *Bostock*; and a CLE Panel for the Monroe County Bar Association on Title VII and *Bostock*.

14. My hours expended working on this case are attached to this Affidavit as Exhibit 1.

15. The time expended and costs incurred have been reasonable, and the records submitted are an accurate reflection of the time I expended in this case. I documented my time in six-minute increments.

16. I exercised billing judgment to prepare these time records. For example, I did not list time for many small tasks or for any tasks that did not take at least six minutes to complete.

17. The reasonable hourly rate for my work is \$225.

18. The lodestar figure for my work on this case, determined by multiplying my reasonable hours expended by my reasonable rate, is \$27, 607.50.

Dated: May 17, 2022

By: \_\_\_\_\_  
Malita Picasso (N.Y. Bar 5750013)

American Civil Liberties Union  
LGBT & HIV Project  
125 Broad Street, 18<sup>th</sup> Floor  
New York, NY 10004  
Phone: (212) 549-2561  
Email: mpicasso@aclu.org

*Attorney for Plaintiffs*

<b>Project</b>	<b>Description</b>	<b>Start date</b>	<b>Start time</b>
Bongo	Discovery Plan Meeting	10/5/2021	13:00:05
Bongo	Drafting Interrogatories and RFPs	10/5/2021	14:58:26
Bongo	Drafting Interrogatories and RFPs	10/7/2021	10:23:05
Bongo	Drafting Interrogatories and RFPs	10/7/2021	11:52:48
Bongo	Meeting with Shayne RE Expert Report, Deadlines and Depos	10/7/2021	15:00:13
Bongo	Drafting Interrogatories and RFPs	10/7/2021	15:37:39
Bongo	Drafting Interrogatories and RFPs	10/7/2021	16:21:48
Bongo	PHV Application	10/12/2021	9:30:38
Bongo	Emailing Lambda RE Dr. Shayne Taylor	10/12/2021	10:50:52
Bongo	Reading Dr. T's Lambda depo	10/18/2021	16:11:47
Bongo	Reading Dr. T's Lambda depo	10/18/2021	18:36:13
Bongo	Dr. T's Expert Report	10/25/2021	10:00:13
Bongo	Dr. T's Expert Report	10/27/2021	11:20:00
Bongo	Dr. T's Expert Report	10/29/2021	10:02:55
Bongo	Dr. T's Expert Report	10/30/2021	12:04:17
Bongo	Dr. T's Expert Report	10/30/2021	13:50:12
Bongo	Dr. T's Expert Report	10/30/2021	14:00:18
Bongo	Dr. T's Expert Report	10/31/2021	11:00:43
Bongo	Legal team meeting	11/19/2021	10:00:03
Bongo	Responding to Defs' Discovery Requests	11/30/2021	12:30:11
Bongo	Responding to Defs' Discovery Requests	11/30/2021	13:21:17
Bongo	Responding to Defs' Discovery Requests	11/30/2021	16:38:11
Bongo	Responding to Defs' Discovery Requests	12/5/2021	16:08:24
Bongo	Responding to Defs' Discovery Requests	12/6/2021	10:52:29
Bongo	Responding to Defs' Discovery Requests	12/8/2021	13:11:55
Bongo	Responding to Defs' Discovery Requests	12/9/2021	10:30:06
Bongo	Responding to Defs' Discovery Requests	12/10/2021	13:21:23
Bongo	30(b)(6)	12/13/2021	12:37:53
Bongo	30(b)(6)	12/13/2021	15:55:30
Bongo	30(b)(6)	12/13/2021	16:35:40
Bongo	Responding to Defs' Discovery Requests	12/13/2021	17:27:43
Bongo	30(b)(6)	12/13/2021	17:52:38
Bongo	30(b)(6)	12/13/2021	17:52:41
Bongo	Responding to Defs' Discovery Requests	12/13/2021	19:01:23
Bongo	Responding to Defs' Discovery Requests	12/14/2021	11:21:37
Bongo	30(b)(6)	12/15/2021	16:32:56
Bongo	Dr. T's Expert Report	12/15/2021	16:33:06
Bongo	Dr. T's Expert Report	12/17/2021	10:42:00
Bongo	30(b)(6)	12/17/2021	11:26:03
Bongo	30(b)(6)	12/19/2021	14:16:18
Bongo	30(b)(6)	12/20/2021	7:30:15
Bongo	Dr. T's Expert Report	12/22/2021	8:30:12
Bongo	Preparing client for depo	1/11/2022	8:57:43
Bongo	Preparing client for depo	1/11/2022	9:08:59
Bongo	Bob Bernstein Deposition	1/11/2022	10:15:12
Bongo	Legal Research	1/11/2022	12:20:22

Bongo	Legal Research	1/11/2022	13:21:30
Bongo	Summary Judgment Research	1/12/2022	14:17:08
Bongo	Summary Judgment Research	1/12/2022	15:58:00
Bongo	Summary Judgment Research	1/12/2022	15:58:05
Bongo	Summary Judgement Brief	1/17/2022	9:53:00
Bongo	Summary Judgement Brief	1/17/2022	14:52:15
Bongo	Transcription fee processing	1/18/2022	9:31:22
Bongo	Summary Judgement Brief	1/18/2022	9:45:34
Bongo	Summary Judgement Brief	1/18/2022	12:00:18
Bongo	Summary Judgement Brief	1/18/2022	14:37:00
Bongo	Summary Judgement Brief	1/19/2022	11:01:00
Bongo	Summary Judgement Brief	1/19/2022	16:46:53
Bongo	Summary Judgement Brief	1/19/2022	19:58:06
Bongo	Summary Judgement Brief	1/20/2022	13:14:15
Bongo	Summary Judgement Brief	1/20/2022	15:44:27
Bongo	Summary Judgement Brief	1/21/2022	10:16:31
Bongo	Summary Judgement Brief	1/21/2022	15:25:21
Bongo	Summary Judgement Brief	1/22/2022	8:43:02
Bongo	Summary Judgement Brief	1/25/2022	15:00:43
Bongo	Summary Judgement Brief	1/25/2022	16:30:38
Bongo	Summary Judgement Brief	1/25/2022	18:18:52
Bongo	Summary Judgement Brief	1/25/2022	19:55:42
Bongo	Summary Judgement Brief	1/26/2022	14:16:47
Bongo	Summary Judgement Brief	1/26/2022	18:26:14
Bongo	Summary Judgement Brief	1/26/2022	19:45:52
Bongo	Summary Judgement Brief	1/27/2022	12:23:40
Bongo	Summary Judgement Brief	1/27/2022	15:11:03
Bongo	Summary Judgement Brief	1/27/2022	16:33:46
Bongo	Summary Judgement Brief	1/28/2022	8:00:51
Bongo	Summary Judgement Brief	1/29/2022	10:30:23
Bongo	Summary Judgement Brief	1/30/2022	18:20:04
Bongo	Summary Judgement Brief	1/31/2022	10:59:31
Bongo	Reply Brief MSJ	3/4/2022	8:10:51
Bongo	Reply Brief MSJ	3/8/2022	6:55:35
Bongo	Reply Brief MSJ	3/9/2022	9:47:44
<b>BONGO</b>	<b>TOTAL</b>		

<b>End date</b>	<b>End time</b>	<b>Duration</b>
10/5/2021	13:35:05	0:35:00
10/5/2021	17:30:26	2:32:00
10/7/2021	11:00:37	0:37:32
10/7/2021	13:59:47	2:06:59
10/7/2021	15:25:13	0:25:00
10/7/2021	16:15:03	0:37:24
10/7/2021	18:06:48	1:45:00
10/12/2021	10:17:38	0:47:00
10/12/2021	11:18:52	0:28:00
10/18/2021	16:28:27	0:16:40
10/18/2021	18:42:56	0:06:43
10/25/2021	12:00:45	2:00:32
10/27/2021	12:34:00	1:14:00
10/29/2021	14:30:55	4:28:00
10/30/2021	12:48:58	0:44:41
10/30/2021	13:53:12	0:03:00
10/30/2021	15:02:55	1:02:37
10/31/2021	11:27:43	0:27:00
11/19/2021	10:30:08	0:30:05
11/30/2021	13:02:01	0:31:50
11/30/2021	14:20:58	0:59:41
11/30/2021	17:53:13	1:15:02
12/5/2021	16:50:11	0:41:47
12/6/2021	11:26:55	0:34:26
12/8/2021	13:57:04	0:45:09
12/9/2021	11:49:49	1:19:43
12/10/2021	16:11:22	2:49:59
12/13/2021	13:00:53	0:23:00
12/13/2021	16:23:03	0:27:33
12/13/2021	17:20:55	0:45:15
12/13/2021	17:43:13	0:15:30
12/13/2021	17:52:40	0:00:02
12/13/2021	19:01:21	1:08:40
12/13/2021	19:05:47	0:04:24
12/14/2021	11:37:42	0:16:05
12/15/2021	16:33:06	0:00:10
12/15/2021	17:18:05	0:44:59
12/17/2021	12:54:00	2:12:00
12/17/2021	19:42:03	8:16:00
12/19/2021	20:41:51	6:25:33
12/20/2021	11:43:15	4:13:00
12/22/2021	11:57:59	3:27:47
1/11/2022	9:01:31	0:03:48
1/11/2022	10:14:56	1:05:57
1/11/2022	12:20:06	2:04:54
1/11/2022	12:47:25	0:27:03

1/11/2022	14:03:55	0:42:25
1/12/2022	15:58:08	1:41:00
1/12/2022	18:00:00	2:02:00
1/12/2022	15:58:42	0:00:37
1/17/2022	12:57:23	3:04:23
1/17/2022	15:31:46	0:39:31
1/18/2022	9:34:57	0:03:35
1/18/2022	10:27:15	0:41:41
1/18/2022	13:10:04	1:09:46
1/18/2022	18:37:59	4:00:59
1/19/2022	13:59:33	2:58:33
1/19/2022	18:06:54	1:20:01
1/19/2022	20:12:52	0:14:46
1/20/2022	13:47:13	0:32:58
1/20/2022	20:46:57	5:02:30
1/21/2022	13:15:49	2:59:18
1/21/2022	18:36:18	3:10:57
1/22/2022	11:28:34	2:45:32
1/25/2022	18:08:19	3:07:36
1/25/2022	16:30:38	0:00:00
1/25/2022	19:32:03	1:13:11
1/25/2022	20:34:04	0:38:22
1/26/2022	17:50:57	3:34:10
1/26/2022	19:36:21	1:10:07
1/26/2022	22:10:19	2:24:27
1/27/2022	13:52:11	1:28:31
1/27/2022	16:25:50	1:14:47
1/27/2022	20:16:01	3:42:15
1/28/2022	9:57:20	1:56:29
1/29/2022	12:09:38	1:39:15
1/30/2022	18:57:45	0:37:41
1/31/2022	12:39:03	1:39:32
3/4/2022	9:33:13	1:22:22
3/8/2022	7:45:07	0:49:32
3/9/2022	10:31:40	0:43:56

**122:39:15**

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

BONGO PRODUCTIONS, LLC, and ROBERT	)	
BERNSTEIN,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civ. Action
	)	Case No. 3:21-cv-00490
	)	Judge Trauger
CARTER LAWRENCE, Tennessee State Fire	)	
Marshal, in his official capacity, et al.,	)	
	)	
Defendants.	)	

**DECLARATION OF ROSE SAXE**

Pursuant to 28 U.S.C. § 1746, I, Rose A. Saxe, hereby declare as follows:

1. The national American Civil Liberties Union (“ACLU”) and the ACLU of Tennessee (“ACLU-TN”), were retained in 2021 to represent Plaintiffs Bongo Productions, LLC and Robert Bernstein in this matter. (Former Plaintiffs Kye Sayers and Sanctuary were also originally represented by these attorneys in this action.)
  
2. The ACLU is a national nonprofit, nonpartisan organization with over a million members dedicated to defending the principles embodied in the U.S. Constitution and our nation’s civil rights laws. The ACLU Foundation is a nonprofit organization under section 501(c)(3) of the Internal Revenue Code that educates the public about civil liberties and employs lawyers who provide legal representation free of charge in cases involving civil liberties. The ACLU’s LGBTQ & HIV Project was founded in 1986. It is dedicated to advancing justice for lesbian, gay, bisexual, transgender and queer individuals, and for people living with HIV. Since 2016, the ACLU’s LGBTQ & HIV Project, together with

its state affiliates, has filed eight lawsuits challenging new legislation that specifically targets the transgender community, including the state law at issue in this case.

3. I am a Deputy Project Director at the ACLU LGBTQ & HIV Project, and have been in this position since April 2, 2018. I joined the ACLU LGBTQ & HIV Project as a staff attorney on October 25, 2004. My practice with the ACLU is devoted exclusively to constitutional and civil rights claims, and advocacy on behalf of LGBTQ people and people living with HIV.
4. I obtained a Bachelor of Arts degree in English from Georgetown University in 1995. I earned my Juris Doctorate from Yale University School of Law in 2000.
5. Following my graduation from law school, I clerked for Judge Janet Bond Arterton on the United States District Court for the District of Connecticut from 2000-2002, and for then-Judge Sonia Sotomayor on the Second Circuit Court of Appeals from 2002-2003.
6. I practiced in private practice for one year before joining the ACLU in 2004. I have been a member in good standing of the Bar of the State of New York since 2002, and have been admitted to multiple federal courts since then.
7. I have litigated dozens of civil rights cases involving LGBTQ and HIV-related issues in state and federal courts as direct counsel or amicus, including *United States v. Windsor*, 570 U.S. 744 (2013) (challenge to federal Defense of Marriage Act); *Masterpiece Cakeshop, Ltd. v. Colorado Civ. Rights Comm'n*, 138 S. Ct. 1719 (2018) (defense of Colorado nondiscrimination law); *Corbitt v. Taylor*, 513 F. Supp. 3d 1309 (M.D. Al. 2021) (challenge to Alabama policy requiring genital surgery to update gender marker on driver's licenses), appeal filed, No. 21-10486 (11th Cir. Feb. 12, 2021); *Fisher-Borne v. Moore*, No. 14-2230 (4th Cir. 2014) (challenge to North Carolina's refusal to recognize

marriages of same-sex couples); *Rummell v. Kitzhaber*, 6:13-CV-02256 (D. Or. 2013) (challenge to Oregon's refusal to allow same-sex couples to marry); *Henderson v. Thomas*, 913 F. Supp. 2d 1267 (M.D. Al. 2012) (challenge to Alabama's segregation of incarcerated people living with HIV); *Arkansas Dep't of Human Servs. v. Cole*, 380 S.W.2d 429 (Ar. S. Ct. 2011) (challenge to Arkansas law banning unmarried cohabiting individuals--which at the time included all same-sex couples--from fostering or adopting children), and more.

8. On June 28, 2021, I was granted leave to appear *pro hac vice* in this matter (DKT-10)
9. My hours expended working on this case are attached to this Affidavit as Exhibit 1 and total
10. The time expended and costs incurred have been reasonable, and the records submitted are an accurate reflection of the time I expended in this case. I documented my time in six-minute increments.
11. I exercised billing judgment to prepare these time records. For example, I did not list time for numerous small tasks, or for any tasks that did not take at least six minutes to complete. We also did not bill for many meetings among co-counsel where one attorney billed for that time, and we did not bill for the time of paralegals or interns who worked on this matter.
12. My current hourly rate is \$475. Based on prevailing market rates Nashville, TN \$475 is a reasonable hourly rate for an attorney of my background and experience.
13. The lodestar figure for my work on this case, determined by multiplying my reasonable hours expended by my reasonable rate, is \$30, 590.00.

Dated: June 15, 2022

By: /s/ Rose Saxe

Rose Saxe

American Civil Liberties Union

LGBTQ & HIV Project

125 Broad Street, 18<sup>th</sup> Floor

New York, NY 10004

Phone: (212) 549-2605

Email: [rsaxe@aclu.org](mailto:rsaxe@aclu.org)

*Attorney for Plaintiffs*

Project	Description	Date	Duration
Bongo v Lawrence	Review legislative history	5/18/2021	0.7
Bongo v Lawrence	Research legal theories	5/18/2021	0.5
Bongo v Lawrence	Research legal theories	5/18/2021	0.5
Bongo v Lawrence	Draft complaint	5/21/2021	2
Bongo v Lawrence	Review legal research re: compelled speech	5/24/2021	0.7
Bongo v Lawrence	Draft complaint	5/25/2021	2.6
Bongo v Lawrence	Draft complaint	5/27/2021	0.8
Bongo v Lawrence	Emails to co-counsel re complaint	6/1/2021	0.3
Bongo v Lawrence	Research legal claims	6/3/2021	0.6
Bongo v Lawrence	Call w co-counsel re: potential plaintiffs	6/3/2021	0.5
Bongo v Lawrence	Revise draft complaint	6/11/2021	1.7
Bongo v Lawrence	Edit draft complaint	6/11/2021	2.7
Bongo v Lawrence	Edit draft complaint	6/12/2021	1.5
Bongo v Lawrence	Edit draft complaint	6/15/2021	1.2
Bongo v Lawrence	Draft PI brief	6/15/2021	1.3
Bongo v Lawrence	Call with Kye Sayers	6/15/2021	0.6
Bongo v Lawrence	Draft PI brief	6/15/2021	1.5
Bongo v Lawrence	Draft plaintiff declaration	6/15/2021	1
Bongo v Lawrence	Revise draft complaint and plaintiff declarations	6/16/2021	2.2
Bongo v Lawrence	Draft / revise PI brief	6/16/2021	2.3
Bongo v Lawrence	Call w potential expert witness	6/17/2021	0.3
Bongo v Lawrence	Draft PI brief, edit complaint	6/17/2021	1.6
Bongo v Lawrence	Review and revise draft complaint	6/18/2021	2.5
Bongo v Lawrence	Review and revise draft complaint	6/18/2021	1.6
Bongo v Lawrence	Revise plaintiff declarations	6/18/2021	1.3
Bongo v Lawrence	Review and revise draft complaint	6/18/2021	1.2
Bongo v Lawrence	Call w expert	6/21/2021	0.7
Bongo v Lawrence	Review and revise PI brief	6/21/2021	2.2
Bongo v Lawrence	Call w co-counsel re: PI brief	6/22/2021	0.5
Bongo v Lawrence	Review and revise PI brief, plaintiff decs	6/22/2021	2.8
Bongo v Lawrence	Call w expert	6/23/2021	0.3
Bongo v Lawrence	Review expert declaration	6/23/2021	0.8
Bongo v Lawrence	Review and revise plaintiff decs	6/23/2021	0.5

Bongo v Lawrence	Review final edits to complaint	6/24/2021	0.3
Bongo v Lawrence	Review final edits to PI brief	6/24/2021	0.3
Bongo v Lawrence	Draft PI motion	6/24/2021	0.5
Bongo v Lawrence	Proofread brief	6/25/2021	0.8
Bongo v Lawrence	Review state's oppo brief	7/7/2021	0.7
Bongo v Lawrence	TC w Expert re: state's brief	7/8/2021	0.5
Bongo v Lawrence	Review PI decision	7/9/2021	0.7
Bongo v Lawrence	Review decision	7/9/2021	0.5
Bongo v Lawrence	call w co-counsel re: CMO	7/30/2021	0.5
Bongo v Lawrence	TC w co-counsel re: 26(f) conference	7/30/2021	1
Bongo v Lawrence	Draft CMO	8/4/2021	0.8
Bongo v Lawrence	Edit draft CMO	8/6/2021	0.4
Bongo v Lawrence	Edit draft CMO	8/9/2021	0.4
Bongo v Lawrence	Review disclosures	9/14/2021	0.5
Bongo v Lawrence	Call w co-counsel re: discovery requests and emails re: same	10/5/2021	0.7
Bongo v Lawrence	Call w MP, TC re: discovery plan	10/5/2021	0.5 (not billed; Picasso ho
Bongo v Lawrence	Review draft discovery requests	10/12/2021	0.7
Bongo v Lawrence	Discuss expert report and review emails re: same	10/29/2021	1
Bongo v Lawrence	Review and edit depo notice	11/19/2021	0.2
Bongo v Lawrence	Discovery planning call w co-counsel	11/19/2021	0.5 (not billed; Picasso ho
Bongo v Lawrence	Review draft discovery responses	12/9/2021	0.4
Bongo v Lawrence	Team call re discovery responses	12/10/2021	0.7
Bongo v Lawrence	Review and edit draft discovery responses	12/14/2021	0.2
Bongo v Lawrence	Review draft mediation report	12/14/2021	0.2
Bongo v Lawrence	Review and edit depo outline, TC re same	12/15/2021	1
Bongo v Lawrence	Review depo outline	12/15/2021	0.3
Bongo v Lawrence	Review and edit draft statement of undisputed facts	1/24/2022	1.2
Bongo v Lawrence	Review 56.1 statement and edit	1/25/2022	0.8
Bongo v Lawrence	Review and edit draft SJ brief	1/25/2022	1
Bongo v Lawrence	review & edit draft SJ brief	1/25/2022	1.2
Bongo v Lawrence	Review and respond to emails re: draft SJ brief	1/25/2022	0.3
Bongo v Lawrence	Review and edit draft SJ brief	1/27/2022	1
Bongo v Lawrence	Review opp SJ and emails re: same	3/3/2022	0.8
Bongo v Lawrence	Review state's oppo SJ brief and emails re: same	3/4/2022	1.2

Bongo v Lawrence	TC w co-counsel re: reply brief	3/8/2022	0.4
Bongo v Lawrence	Draft reply brief	3/9/2022	1.4
Bongo v Lawrence	Edit reply brief	3/10/2022	0.3
			64.4



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ours billed instead)

