

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

TENNESSEANS FOR SENSIBLE)
ELECTION LAWS,)

Plaintiff,)

v.)

Case No. 20-0312-III

HERBERT H. SLATERY III,)
in his official capacity as)
TENNESSEE ATTORNEY GENERAL)

and)

GLENN FUNK, in his official capacity)
as DISTRICT ATTORNEY GENERAL)
FOR THE 20th JUDICIAL DISTRICT OF)
TENNESSEE,)

Defendants.)

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

Defendants, Herbert H. Slatery III and Glenn Funk, in their official capacities, submit this memorandum of law in support of their motion to dismiss for lack of subject matter jurisdiction pursuant to Tenn. R. Civ. P. 12.02(1).

INTRODUCTION AND BACKGROUND

The facts recited herein are derived solely from the Plaintiff's Complaint. They are used only to provide the Court with background and context for this Motion to Dismiss and are not otherwise admitted.

Plaintiff is a multicandidate political action committee that advocates against certain election and campaign finance policy by—among other things—filing lawsuits seeking to challenge the constitutionality of state statutes. Defendant Herbert H. Slatery III is Attorney General and Reporter for the State of Tennessee and is tasked with defending the constitutionality of state statutes. *See* Tenn. Code Ann. § 8-6-109(b)(9). Defendant Glenn Funk is the duly elected District Attorney General for the 20th Judicial District of Tennessee and has the duty of prosecuting violations of state criminal statutes. *See* Tenn. Code Ann. § 8-7-103.

Plaintiff brings this action seeking a declaration that Tenn. Code Ann. § 2-19-142 violates the First and Fourteenth Amendments of the United States Constitution and Article I, Section 19 of the Tennessee Constitution and a permanent injunction enjoining enforcement of that statute. Tenn. Code Ann. § 2-19-142 makes it a Class C misdemeanor “for any person to publish or distribute or cause to be published or distributed any campaign literature in opposition to any candidate in any election if such person knows that any such statement, charge, allegation, or other matter contained therein with respect to such candidate is false.” Plaintiff alleges that Tenn. Code Ann. § 2-19-142:

- 1) Imposes viewpoint discrimination by only prohibiting false statements in opposition to a candidate, as opposed to in support of a candidate;
- 2) Imposes content- and identity-based discrimination by only criminalizing false statements in campaign literature in opposition to a candidate as opposed to other types of literature and speech in opposition to non-candidates;
- 3) Prohibits false speech, which is generally protected by the First Amendment; and
- 4) Chills and penalizes core political speech in violation of the First Amendment.

LEGAL STANDARD

A motion to dismiss for lack of subject matter jurisdiction calls into question the court's "lawful authority to adjudicate a controversy brought before it and should be viewed as a threshold inquiry." *Redwing v. Catholic Bishop for Diocese of Memphis*, 363 S.W.3d 436, 445 (Tenn. 2012). When the court's subject matter jurisdiction is challenged, the burden is on the plaintiff to demonstrate that the court has the requisite jurisdiction to hear and adjudicate plaintiff's claims. *See Staats v. McKinnon*, 206 S.W.3d 532, 543 (Tenn. Ct. App. 2006).

ARGUMENT

Plaintiff brings this action pursuant to Tenn. Code Ann. § 1-3-121, Tenn. Code Ann. § 29-14-102, and 42 U.S.C. § 1983. But Plaintiff's Complaint must be dismissed because none of these statutes confers subject matter jurisdiction on a chancery court to entertain an action for declaratory or injunctive relief regarding the constitutionality of a state criminal statute.

I. THIS COURT LACKS SUBJECT MATTER JURISDICTION TO ENJOIN ENFORCEMENT OF A CRIMINAL STATUTE.

Subject matter jurisdiction involves a court's power to adjudicate a particular type of case or controversy. *Osborn v. Marr*, 127 S.W.3d 737, 739 (Tenn. 2004). "Subject matter jurisdiction is conferred by statute or the Tennessee Constitution; the parties cannot confer it by appearance, plea, consent, silence or waiver." *In re Estate of Trigg*, 368 S.W.3d 483, 489 (Tenn. 2012). Tennessee courts have recognized that the "lack of subject matter jurisdiction is so fundamental that it requires dismissal whenever it is raised and demonstrated." *Dishmon v. Shelby State Cmty. Coll.*, 15 S.W.3d 477, 480 (Tenn. Ct. App. 1999).

Plaintiff's complaint seeks an injunction enjoining enforcement of Tenn. Code Ann. § 2-19-142. However the "long-standing rule in Tennessee is that state courts of equity lack jurisdiction to enjoin the enforcement of a criminal statute that is alleged to be unconstitutional

Clinton Books Inc. v. City of Memphis, 197 S.W.3d 749, 754 (Tenn. 2006)(citing *Alexander v. Elkins*, 179 S.W. 310, 311 (1915); *J.W. Kelly & Co. v. Conner*, 123 S.W. 622, 637 (1909)); see also *Spoone v. Mayor & Aldermen of Morristown*, 206 S.W.2d 422 (1947); *State v. FirstTrust Money Services, Inc.*, 931 S.W.2d 226, 229 (Tenn. Ct. App. 1996); *Brackner v. Estes*, 698 S.W.2d 637, 637, 639 (Tenn. Ct. App. 1985). This rule was recently reaffirmed by the Court of Appeals in a case involving this same Plaintiff. See *Tennesseans for Sensible Elections Laws v. Tennessee Bureau of Ethics and Campaign Finance*, No. M2018-01967-COA-R3-CV, 2019 WL 6770481 at *26 (Tenn. Ct. App. Dec. 12, 2019) (“We agree with the chancery court’s implicit conclusion that it lacked jurisdiction to enjoin the District Attorney General, and we will not extend the trial court’s injunction to the District Attorney General on appeal.”).

The Supreme Court has only recognized two exceptions to this rule: (1) where application of the criminal statute invades or appropriates property, or otherwise “interfere[s] with the possession of the owners” *Frankland Carriage Co., et al. v. City of Jackson*, 28 S.W.2d 343, 344 (1930) and (2) where the Supreme Court has already adjudged the criminal statute unconstitutional. *Clinton Books*, 197 S.W.3d at 753. As Plaintiff’s complaint does not allege that the Supreme Court has declared Tenn. Code Ann. § 2-19-142 unconstitutional or that application of this criminal statute interferes with any property rights, neither of these exceptions is applicable.

The Supreme Court has otherwise consistently held that the chancery courts of this State have no jurisdiction, inherent or statutory, to enjoin threatened criminal prosecutions, particularly as the defense of such prosecution provides an adequate remedy:

We are further of the opinion that courts of equity have no jurisdiction to enjoin threatened criminal proceedings under a statute enacted by a state in the exercise of the police power in relation to which the Legislature has complete jurisdiction, although it be charged that the statute is invalid and that a multiplicity of actions thereunder will injure and destroy civil and property rights of the

complainants, and that the damages resulting will be irreparable, when the complainants defense thereto, in a court having jurisdiction of the offense, is adequate and unembarrassed; and we hold that the chancery courts of Tennessee, neither under their inherent nor statutory jurisdiction, have any such power or jurisdiction, whatever may be the exceptions to the general rule in the courts of equity in other jurisdictions.

J.W. Kelly & Co., 123 S.W. at 636.

Plaintiff also cites 42 U.S.C. § 1983 as a basis for this Court’s subject matter jurisdiction to issue the requested declaratory and injunctive relief with respect to the criminal statute at issue—Tenn. Code Ann. § 2-19-142. But it is well-settled that “42 U.S.C. § 1983 did not attempt to bestow equity jurisdiction even in federal courts, when equity jurisdiction did not previously exist.” *Giles v. Harris*, 189 U.S. 475 (1903); *Rizzo v. Goode*, 423 U.S. 362 (1976). Moreover, the Tennessee Court of Appeals has held, in binding precedent, “that 42 U.S.C. § 1983 did not bestow jurisdiction in Tennessee courts of equity to enjoin threatened criminal proceedings and that the jurisdiction of chancery courts in this regard remains as fixed by existing state law.” *Tennessee Downs, Inc. v. William L. Gibbons*, 15 S.w.3d 843, 847 (Tenn. Ct. App. 1999). Accordingly, this Court lacks subject matter jurisdiction to grant the requested injunctive relief and such claim should be dismissed pursuant to Tenn. R. Civ. P. 12.02(1).

II. THIS COURT LACKS SUBJECT MATTER JURISDICTION TO GRANT PLAINTIFF DECLARATORY RELIEF.

Plaintiff invokes the Declaratory Judgment Act, Tenn. Code Ann. § 29-14-101, *et seq.*, to argue that this Court has jurisdiction to issue a declaratory judgment regarding the constitutionality of Tenn. Code Ann. § 2-19-142—a criminal statute. While chancery courts in general have subject matter jurisdiction to adjudicate declaratory judgment actions, “the Declaratory Judgment Act does not confer an independent basis for jurisdiction.” *Hill v. Beeler*, 286 S.W.2d 868, 871 (Tenn. 1956). Rather, the Declaratory Judgment Act only “conveys the power to construe or determine

the validity of any written instrument, statute, ordinance, contract, or franchise, *provided that the case is within the court's jurisdiction.*" *Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827, 837 (Tenn. 2008) (citing Tenn. Code Ann. § 29-14-103) (emphasis added). Thus "[t]he Declaratory Judgment Act does not grant the power to courts to declare and enforce rights outside their scope of jurisdiction." *Carter*, 2016 WL 1268110 at * 6 (citing *Morgan v. Norris*, No. 88-70-II, 1988 WL 133479, at *2 (Tenn. Ct App. Dec. 16, 1988)). Consequently, the Tennessee Supreme Court has held that "[a] declaratory judgment is proper in chancery, but only if chancery originally could have entertained a *suit of the same subject matter.*" *Zirkle v. City of Kingston*, 396 S.W.2d 356, 363 (Tenn. 1976) (citing *Gibson, Suits in Chancery* § 36, n. 62 (5th ed. 1955) (emphasis added)).

Article VI, Section 8 of the Tennessee Constitution provides that "the jurisdiction of the circuit, chancery and other inferior courts, shall be as now established by law, until changed by the legislature." Pursuant to this constitutional grant of authority, the Legislature has vested exclusive and original jurisdiction of all criminal matters in the circuit and criminal courts of this state. *See* Tenn. Code Ann. §§ 16-10-102; 40-1-107 – 108; *see also Tennesseans for Sensible Elections Laws v. Tennessee Bureau of Ethics and Campaign Finance*, 2019 WL 6770481 at *26 (it is well-settled that the validity and enforcement of criminal laws does not lie with a chancery court).

Accordingly, this Court lacks subject matter jurisdiction under the Declaratory Judgment Act to enter a declaratory judgment regarding the constitutionality of Tenn. Code Ann. § 2-19-142. *See Carter v. Slatery*, M2015-00554-COA-R3-CV, 2016 WL 1268110 at *7 (Tenn. Ct. App. Feb. 19, 2016) and *Memphis Bonding Co., Inc. v. Criminal Court of Tennessee 30th Dist.*, 490 S.W.3d 458, 467 (Tenn. Ct. App. 2015).

Plaintiff also asserts Tenn. Code Ann. § 1-3-121 as a basis for this Court’s subject matter jurisdiction. That statute provides in pertinent part that “[n]otwithstanding any law to the contrary, a cause of action shall exist under this chapter for any affected person who seeks declaratory or injunctive relief in any action brought regarding the legality or constitutionality of a governmental action.” But nothing in this statute alters the existing law regarding chancery court jurisdiction or explicitly confers jurisdiction on state chancery courts. *See, e.g., In re Baby*, 447 S.W.3d 807, 837 (Tenn. 2014) (citing *Northland Ins. Co. v. State*, 33 S.W.3d 727, 729 (Tenn. 2000)) (noting that a court only has subject matter jurisdiction when conferred by a statute or the state or federal constitutions). Thus, while Tenn. Code Ann. § 1-3-121 may provide a cause of action for declaratory relief, it does not expand the jurisdiction of Tennessee’s chancery courts.

Accordingly, this Court also lacks subject matter jurisdiction under Tenn. Code Ann. § 1-3-121 to enter a declaratory judgment regarding the constitutionality of Tenn. Code Ann. § 2-19-142.

CONCLUSION

For these reasons, Defendants respectfully request that this Court grant their motion to dismiss Plaintiff’s complaint for lack of subject matter jurisdiction Pursuant to Tenn. R. Civ. P. 12.01(1).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent by electronic mail transmission and/or first class U.S. mail, postage prepaid to:

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