

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

TENNESSEANS FOR SENSIBLE
ELECTION LAWS,

Plaintiff,

v.

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.

Case No. 20-0312-III

REPLY IN SUPPORT OF MOTION TO DISMISS

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

First, Plaintiff appears to concede that the Complaint's request for injunctive relief must be dismissed. No authority cited or argument made in its response contests that this Court is without jurisdiction to enjoin the enforcement of a criminal statute.

Second, there is admittedly dissonance in the appellate decisions concerning whether a plaintiff can bring a declaratory judgment action in chancery court challenging a criminal statute. Plaintiff's closest case to the issue is *Tennesseans for Sensible Election Laws v. Tennessee Bureau*

of Ethics & Campaign Fin., No. M2018-01967-COA-R3-CV, 2019 WL 6770481 (Tenn. Ct. App. Dec. 12, 2019). That case cites *Erwin Billiard Parlor v. Buckner*, 300 S.W.365 (Tenn. 1927), as an example where the Supreme Court “held that the trial court had jurisdiction to consider the declaratory judgment action.” *Id.* at 566. Plaintiff could also have easily cited *Blackwell v. Haslam*, No. M2011-00588-00A-R3-CV, 2012 WL 113655 (Tenn. Ct. App. Jan. 11, 2012), for a discussion regarding whether *Davis-Kidd Booksellers*, 866 S.W.2d 520 (Tenn. 1993), and *Clinton Books*, 197 S.W.3d 749 (Tenn. 2006), support a plaintiff bringing a declaratory judgment in chancery court to challenge a criminal statute.

On the other hand, *Zirkle v. City of Kingston*, 396 S.W.2d 356 (Tenn. 1965) arose after both *J.W. Kelly* and *Erwin*, and it held that “[s]ince chancery does not have jurisdiction of the complainants’ suit under any of their theories—injunction, unjust enrichment, conversion—it cannot take jurisdiction to enter a declaratory judgment.” *Id.* at 363. And unlike *Tennesseans for Sensible Election Laws*, which is unpublished and an appeal was not sought, in *Carter v. Slatery*, 2016 WL 1268110 (Tenn. Ct. App. Feb. 19, 2016), permission to appeal was denied by the Supreme Court and *Memphis Bonding Co., Inc. v. Criminal Court of Tennessee, 30th District*, 490 S.W. 3d (Tenn. Ct. App. 2015), is published authority. *Carter* correctly notes that “neither *David-Kidd* nor *Clinton Books* contained any discussion regarding a chancery court’s subject matter jurisdiction over a request for declaratory relief,” and *Memphis Bonding* (published) directly disagrees with *Blackwell* (unpublished). See Tenn. Sup. Ct. R. 4. *Zirkle*, *Carter* and *Memphis Bonding* are binding authority entitled to greater weight than the cases cited by Plaintiff and make clear that this Court may not entertain a declaratory action considering the validity of a criminal statute.

Regardless of why Plaintiff strains so hard to remain here instead of simply refileing this action, it is clear that *Zirkle*, *Carter* and *Memphis Bonding* are eminently correct that chancery courts lack jurisdiction to declare the constitutionality of criminal statutes.

Third, Plaintiff fails to provide any authority disagreeing with *Tennessee Downs Inc. v. Gibbons*, 15 S.W.3d 843 (Tenn. 1999) (perm. app. denied), which held that the enactment of 42 U.S.C. § 1983 did not enlarge the jurisdiction of state courts. Yet again, regardless of whether a cause of action may exist, a court must have jurisdiction to hear it—and Congress cannot modify the jurisdiction of Tennessee’s courts. Thus even though 42 U.S.C. § 1983’s cause of action may include injunctive relief, Tennessee precedent is clear that the federal statute does not provide the chancery court with jurisdiction to enjoin a criminal statute. *Id.* at 846-47. So too here. If the court hearing the § 1983 action lacks jurisdiction to render declaratory relief, § 1983 will not independently confer that jurisdiction. The same is true for Tenn. Code Ann. § 1-3-121. It may provide a cause of action, but it does not explicitly expand the chancery court’s jurisdiction. *See Osborn v. Marr*, 127 S.W.3d 737, 739 (Tenn. 2004) (“Courts may not exercise jurisdictional powers that have no been conferred on them directly or by necessary implication.”). Nothing in Tenn. Code Ann. § 1-3-121 expressly confers jurisdiction on chancery courts, and since criminal courts can construe criminal statutes, there is no need to consider the question of “necessary implication.”

Lastly, Plaintiff’s final argument regarding whether the Tennessee constitution provides subject matter jurisdiction to adjudicate these claims is a red herring. Nowhere in its complaint is a request that this Court make a sweeping determination that there exists a private right to equitable relief under the Tennessee Constitution. Nor would it matter—again, new causes of action do not necessarily expand a court’s jurisdiction to order declaratory relief. And the federal and state cases

cited by Plaintiff concerning this issue only address past and present violations of constitutional rights, not future ones. (Resp. 20, 21). Plaintiff alleges no current enforcement of this statute against it. Thus, Plaintiff's attempt to complicate the declaratory claim for relief pending before this Court with dicta addressing possible claims for a non-hypothetical violation of a constitutional right is obfuscatory and unnecessary to resolve the motion to dismiss.

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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