

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

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STATE OF TENNESSEE *ex rel*  
RANDY RAYBURN;  
JOHN (JANE) DOES NOS. 1-13,  
AUSTIN RAY, and  
FLANEUR LLC D/B/A/ MELSROSE

Plaintiffs,

v.

ROBERT E. COOPER, JR.,  
TENNESSEE ATTORNEY GENERAL,

Defendant.

Civil No. 09-1284-I

O. & M.

CLERM & MASTER  
DAVIDSON CO. CHANCERY CT.

2009 OCT -5 PM 3: 34

FILED

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**CROSS-MOTION OF  
ATTORNEY GENERAL AND REPORTER ROBERT E. COOPER, JR  
FOR JUDGMENT ON THE PLEADINGS AND/OR FOR SUMMARY JUDGMENT**

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Attorney General and Reporter Robert E. Cooper, Jr., pursuant to Tenn. R. Civ. P. 12.03 and 56.02, hereby moves for judgment on the pleadings and/or for summary judgment respectively, asking this Court to dismiss this declaratory judgment action regarding the validity of 2009 Public Chapter 339. In support of these cross-motions, the Attorney General relies upon the memorandum of law that he has filed in opposition to Plaintiffs' motions for summary judgment.

As more fully set forth in the Attorney General's memorandum, judgment on the pleadings and/or summary judgment should be granted in favor of the Attorney General dismissing this action, as follows:

(1) This case ought to be dismissed because chancery courts do not have the authority to render declaratory rulings in criminal matters such as this law.

(2) Plaintiffs have failed to present a justiciable issue, therefore this case must be dismissed.

(3) Plaintiffs have failed to establish standing, therefore this case must be dismissed.

(4) Plaintiffs have failed to name and include necessary parties, the appropriate District Attorneys General.

(5) Plaintiffs have failed to establish that, as a matter of law, Chapter 339 is facially invalid due to unconstitutional vagueness. Plaintiffs have not alleged, and cannot show, that Chapter 339 would be unconstitutional regardless of how it is applied. This Court should declare that Chapter 339 is facially valid.

(6) Plaintiffs have failed to establish that, as a matter of law, Chapter 339 is fundamentally arbitrary or irrational in violation of substantive due process. This Court should declare that Chapter 339 complies with substantive due process.

(7) Plaintiffs have failed to establish that, as a matter of law, Chapter 339 is an unconstitutional delegation of police power by the legislature. This Court should declare that Chapter 339 is facially valid and does not constitute an invalid delegation of police power.

(8) This Court should declare that, as a matter of law, Chapter 339 is not preempted by the OSHA laws.

(9) Should this Court find that any particular phrase or portion of Chapter 339 is constitutionally invalid, elision should be applied to preserve the remainder of the law.

The case that has been presented can be resolved solely as a matter of law; without the need to consider any facts. Accordingly, the Attorney General and Reporter relies upon the

memorandum of law in opposition to Plaintiffs' Motion for Partial Summary Judgment, and the Response and Memorandum that were filed in opposition to Plaintiffs' Motion for a Temporary Injunction, in support of its pending motions. The Attorney General submits that even if this Court considers the affidavits presented by both parties, as a matter of law, this case should be dismissed and/or Chapter 339 be declared constitutionally valid.

**THE ATTORNEY GENERAL'S RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTIONS FOR SUMMARY JUDGMENT IS HEREBY AMENDED TO SPECIFICALLY INCLUDE ALL OF THE GROUNDS ASSERTED IN THESE MOTIONS (WHICH WERE INCLUDED IN HIS MEMORANDUM OF LAW).**

**NOTICE OF HEARING**

**THE ATTORNEY GENERAL'S CROSS-MOTION FOR JUDGMENT ON THE PLEADINGS AND/OR FOR SUMMARY JUDGEMNT WILL BE HEAR AT THE SAME TIME AS THE PLAINTIFFS' MOTIONS FOR SUMMARY JUDGMENT, ON FRIDAY, NOVEMBER 6, 2009, AT 9:00 A.M., AT THE DAVIDSON COUNTY HISTORIC COURTHOUSE, CHANCERY COURT, PART I.**

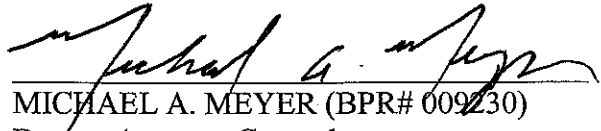
Respectfully submitted,

ROBERT E. COOPER, JR.  
ATTORNEY GENERAL and REPORTER



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***CERTIFICATE OF SERVICE***

I certify that a true and exact copy of the foregoing Motion has been delivered by hand, united states mail, postage prepaid, and/or e-mail, to:

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this 5<sup>th</sup> day of October, 2009.

*Lyndsay F. Sanders*  
LYNDSAY FULLER SANDERS  
Assistant Attorney General