

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

CURB RECORDS, INC. and MIKE CURB  
FOUNDATION,

Plaintiffs,

v.

WILLIAM LEE, as Governor of the State of  
Tennessee, in his official capacity; CARTER  
LAWRENCE, as Commissioner of the Tennessee  
Department of Commerce and Insurance, in his  
official capacity; WILLIAM B. HERBERT IV, as  
Director of the Nashville Department of Codes and  
Building Safety, in his official capacity; and GLENN  
FUNK, as District Attorney General for the 20th  
Judicial District of Tennessee, in his official capacity,

Defendants.

Civil Action No. 3:21-cv-0500

Chief Judge Crenshaw  
Magistrate Judge Holmes

**PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

Plaintiffs Curb Records, Inc. (“Curb Records”) and the Mike Curb Foundation (“the Foundation”) move this Court to preliminarily enjoin enforcement of Tennessee Public Chapter No. 453, which they refer to as the “Compelled Sign Law” or “the Law.” *See* 2021 Tenn. Pub. Act ch. 453 (signed into law on May 17, 2021, to be codified in TENN. CODE ANN. § 68-120-1 (2021)). The Law requires all businesses and other entities with restrooms open to the public with formal or informal policies that allow transgender people to use the restroom that accords with their identity to post a stigmatizing and demeaning warning sign stating “NOTICE: THIS FACILITY MAINTAINS A POLICY OF ALLOWING THE USE OF RESTROOMS BY

EITHER BIOLOGICAL SEX, REGARDLESS OF THE DESIGNATION ON THE RESTROOM.” *Id.* at § 1(b)(3).

The Compelled Sign Law forces Plaintiffs’ businesses to post highly visible red and yellow signs in conspicuous locations that express a message that is the opposite of the welcoming and inclusive message they wish to express to everyone, including to any transgender employees and customers. *Id.* Instead, the Law compels Curb Records and the Foundation to publicly endorse a climate of fear and non-acceptance of transgender people that contradicts the companies’ values. In so doing, the Compelled Sign Law violates settled First Amendment law and, unless enjoined, will cause Plaintiffs to suffer irreparable harm both to their business interests and to their fundamental right not to be compelled by the government “to speak a particular message.” *Nat’l Inst. of Fam. & Life Advoc. v. Becerra*, 138 S. Ct. 2361, 2371 (2018).

The Compelled Sign Law also puts Plaintiff Curb Records as an employer subject to Title VII in the position of being forced to violate federal law. Curb Records must comply with Title VII’s prohibition against discrimination against any transgender people. *See Bostock v. Clayton Cnty.*, 140 S. Ct. 1731 (2020). As such, Curb Records must, and does, permit any transgender workers to use restrooms consistent with their gender identity. But if Curb Records complies with the Law by posting the required signage, it will violate Title VII by subjecting any transgender workers to disparate treatment and to a hostile work environment. Under settled law, when a state law conflicts with a federal law, as the Compelled Sign Law does here, federal law controls, and the state law may not be enforced. *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992) (holding that “state law that conflicts with federal law is ‘without effect’”) (*quoting Maryland v. Louisiana*, 451 U.S. 725, 746 (1981)). Plaintiff Curb Records asks this Court to enjoin enforcement of the Compelled Sign Law to avoid the serious penalties that would result from its enforcement.

Attached as Exhibit A is the June 30, 2021 Declaration of Michael Curb, which sets forth specific facts showing the irreparable injury that will result to Plaintiffs and the harm it will cause to the public interests if the Compelled Sign Law goes into effect. Specifically, Plaintiffs will suffer the constitutional injury of being made to speak a message with which they disagree. They will also suffer the loss of customer and visitor goodwill that has been built up around Curb Records' and the Foundation's corporate values of equality, inclusion, and respect for all people. Plaintiffs have established goodwill with their customers and visitors by affirming those corporate values through corporate practices that affirm the equality of transgender persons. By compelling Plaintiffs to post signs that contradict those values, Defendants will irreparably injure Plaintiffs by eroding that goodwill.

The equities tip sharply in favor of Plaintiffs. Defendants will suffer no injury from an injunction. An injunction will merely maintain the status quo. The state has no compelling interest in enforcing the Compelled Sign Law by requiring anyone, including Plaintiffs, to post misleading and discriminatory notices on the public restrooms of businesses. The legislative history of the Compelled Sign Law also shows that there is no harm addressed by the law or public safety interest in its enforcement. Finally, an injunction here will serve the public interest. By granting an injunction, the court will prevent irreparable harm to Plaintiffs' businesses, avoid public confusion and perpetuation of misinformation about Plaintiffs' businesses, and protect transgender people from discrimination and stigma, all of which are in the public's interest.

As set forth in the accompanying Memorandum of Law and Declaration of Michael Curb, the issuance of a preliminary injunction is warranted because: (1) Plaintiffs are likely to succeed on the merits of their claims that the Compelled Sign Law violates the First Amendment and Title VII; (2) Plaintiffs will suffer irreparable harm if the Law takes effect; (3) an injunction would

cause no harm to others; and (4) the public's interest is served by the issuance of an injunction. *ACLU Fund of Mich. v. Livingston Cnty.*, 796 F.3d 636, 642 (6th Cir. 2015).

For the foregoing reasons, and as set forth in the accompanying Memorandum of Law and Declaration, Plaintiffs respectfully request that this Court grant this motion for a preliminary injunction.<sup>1</sup>

Respectfully submitted,

/s/ William L. Harbison

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<sup>1</sup> As of the filing of this motion, the Defendants have not been served and no counsel for Defendants have made an appearance. Counsel for Plaintiffs will confer with counsel for Defendants to the extent required by Local Rule 7.01(a)(1) once an appearance has been made.

**CERTIFICATE OF SERVICE**

A copy of the foregoing will be served along with the Summons and Complaint.

*/s/ William L. Harbison* \_\_\_\_\_