

**IN THE CIRCUIT COURT FOR MCMINN COUNTY, TENNESSEE  
AT ATHENS**

---

STATE OF TENNESSEE, <i>EX REL.</i>	§
STEPHEN M. HATCHETT,	§
	§
<i>Plaintiff,</i>	§
	§
<i>v.</i>	§ McMinn County Circuit Ct. Case
	§ No. 25-CV-358
LIBERTY PROPERTY SERVICES,	§
	§
<i>Defendant.</i>	§

---

**DEFENDANT’S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM  
AND INCORPORATED MEMORANDUM OF LAW**

---

**I. INTRODUCTION**

Comes now Defendant Liberty Property Services, through counsel, and under [Tennessee Rule of Civil Procedure 12.02\(6\)](#), respectfully moves this Court to dismiss the Plaintiff’s Petition for failure to state a claim upon which relief can be granted. As grounds for this Motion, the Defendant respectfully states as follows:

**II. LEGAL STANDARD**

“A motion to dismiss a complaint for failure to state a claim pursuant to [Rule 12.02\(6\) of the Tennessee Rules of Civil Procedure](#) asserts that the allegations in the complaint, accepted as true, fail to establish a cause of action for which relief can be granted.” [Conley v. State](#), 141 S.W.3d 591, 594 (Tenn. 2004). Generally, a motion to dismiss is resolved by examining the pleadings alone. [Leggett v. Duke Energy Corp.](#), 308 S.W.3d 843, 851 (Tenn. 2010) (citing [Cook ex rel. Uithoven v. Spinnaker’s of](#)

*Rivergate, Inc.*, 878 S.W.2d 934, 938 (Tenn. 1994)). However, this Court also may consider “items subject to judicial notice, matters of public record, orders, **items appearing in the record of the case**, and exhibits attached to the complaint whose authenticity is unquestioned; these items may be considered by the [trial court] without converting the motion into one for summary judgment.” *W. Exp., Inc. v. Brentwood Servs., Inc.*, No. M2008-02227-COA-R3-CV, 2009 WL 3448747, at \*3 (Tenn. Ct. App. Oct. 26, 2009) (emphasis added) (quoting *Ind. State Dist. Council of Laborers v. Brukardt*, No. M2007-02271-COA-R3-CV, 2009 WL 426237, at \*8 (Tenn. Ct. App. Feb. 19, 2009), *app. denied* (Tenn. Aug. 24, 2009)). Such items include court records and public records. See *State v. Nunley*, 22 S.W.3d 282, 288 (Tenn. Crim. App. 1999) (“Court records fall within the general rubric of facts readily and accurately determined.”); *Ind. State Dist. Council of Laborers*, 2009 WL 426237, at \*9 (“Tennessee law allows for judicial notice (TRE 201) of public records.” (citing COHEN, SHEPARD, AND PAINE, TENNESSEE LAW OF EVIDENCE § 2.01[4][c] (5th ed. 2005))), *app. denied* (Tenn. Aug. 24, 2009).

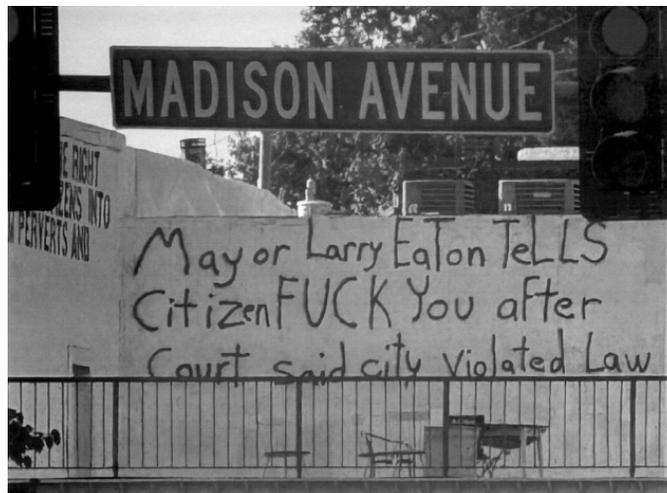
The rule that “a court must accept all allegations stated in a complaint as true does not apply to legal conclusions.” *State ex rel. Watson v. Waters*, No. E2009-01753-COA-R3-CV, 2010 WL 3294109, at \*4 (Tenn. Ct. App. Aug. 20, 2010). Further, “[a]lthough [this Court is] required to construe the [complaint’s] factual allegations in [a plaintiff’s] favor, and therefore accept the allegations of fact as true, [this Court is] not required to give the same deference to conclusory allegations.” *Kincaid v. SouthTrust Bank*, 221 S.W.3d 32, 40 (Tenn. Ct. App. 2006) (citing *Riggs v. Burson*,

941 S.W.2d 44, 48 (Tenn. 1997)). This Court also is “not required to accept as true the inferences to be drawn from conclusory allegations.” *Id.* Thus, “[c]onclusory allegations unsupported by material facts will not be sufficient to state such a claim.” *Lane v. Becker*, 334 S.W.3d 756, 763 (Tenn. Ct. App. 2010).

After applying these standards, where—as here—a plaintiff “can prove no set of facts in support of the claim that would entitle the plaintiff to relief[,]” a defendant’s motion to dismiss for failure to state a claim must be granted. See *Crews v. Buckman Lab’ys*, 78 S.W.3d 852, 857 (Tenn. 2002).

### **III. FACTS**

Defendant Liberty Property Services owns real property in McMinn County. Pet. at 2 ¶ 2. Liberty Property Services’ real property “sits directly across from the McMinn County Courthouse which houses numerous county offices including the Trustee, the Property Assessor, the Register of Deeds, and the County Mayor.” Aff. in Supp. of Pet. for TRO at 2. This case arises from the fact that the State of Tennessee—through District Attorney General Stephen M. Hatchett—is hopping mad that the subject property displays the following message:



*Id.* at Ex. B.

According to the State, the message displayed above “includes an obscenity in all capital letters[.]” Pet. at 3 ¶ 4. “[I]n the entire sentence, the only word in all capital letters is the aforementioned obscenity[.]” the State asserts. *Id.* at 3 ¶ 5. Lest there be any doubt that the State is, in fact, asserting that the word “FUCK” is obscene in the constitutional sense, the State also goes on to insist that the message at issue: (1) “is obscene as used in this context,” (2) “appeals to the prurient interest[.]” (3) “depicts or describes, in a patently offensive way, sexual conduct[.]” and (4) “lacks serious literary, artistic, political, or scientific value.” *Id.* at 3–4. Indeed, “[t]he word used plainly appeals to prurient interest . . . as it represents ‘a shameful or morbid interest in sex[.]’” the State proclaims. *See id.* at 5 ¶ 4.

#### **IV. ARGUMENT**

##### **A. THE PLAINTIFF HAS FAILED TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.**

###### **1. The State’s theory of obscenity is legally unsupportable.**

The State believes that the word “FUCK” is constitutionally obscene. *See generally* Pet. The State is badly mistaken. *See, e.g., Mahanoy Area Sch. Dist. v. Levy ex rel. B.L.*, 594 U.S. 180, 185–191 (2021) (“Fuck school fuck softball fuck cheer fuck everything” is “not obscene as this Court has understood that term.” (citing *Cohen v. California*, 403 U.S. 15, 19–20 (1971))); *see also Cohen*, 403 U.S. at 26 (“[W]e cannot indulge the facile assumption that one can forbid particular words without also running a substantial risk of suppressing ideas in the process. . . . [T]he State may not, consistently with the First and Fourteenth Amendments, make the simple

public display here involved of this single four-letter expletive a criminal offense.”).

In reality, obscenity is a narrow category of unprotected speech—one largely restricted to hardcore pornography—that “taken as a whole, lacks serious literary, artistic, political, or scientific value.” *Miller v. California*, 413 U.S. 15, 24 (1973). Publishing the statement “Mayor Larry Eaton Tells Citizen FUCK You after Court said city violated Law” does not meet—or even approach—this standard.

The statement attributed to the Defendant—which recounts an elected official’s vulgarity—is “core political speech” for which First Amendment protection is “at its zenith.” *Buckley v. Am. Const. L. Found., Inc.*, 525 U.S. 182, 186–87 (1999) (quoting *Meyer v. Grant*, 486 U.S. 414, 422–425 (1988)). Indeed, *the State itself alleges that the display at issue here is a political message. See* Pet. at 5 (“[T]he proof will show that the statement was placed on the wall as a means of coercing the City of Athens into settling various civil matters[.]”). Apart from its explicitly political content, the message also constitutes “pure speech to which . . . the First Amendment would provide strong protection.” *Mahanoy Area Sch. Dist.*, 594 U.S. at 191.

Nor is *vulgarity* the same thing as *obscenity*. “[O]ne man’s vulgarity is another’s lyric.” *Cohen*, 403 U.S. at 25. By contrast, *obscenity* is a narrowly defined category of unprotected speech. *Miller*, 413 U.S. at 24. To that end, under the obscenity statute that the State invokes to proscribe the speech at issue here, *see* Pet. at 4:

“Harmful to minors” means that quality of any description or representation, in whatever form, of nudity, sexual excitement, sexual conduct, excess violence or sadomasochistic abuse when the matter or performance:

- (A) Would be found by the average person applying contemporary community standards to appeal predominantly to the prurient, shameful or morbid interests of minors;
- (B) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors; and
- (C) Taken as whole lacks serious literary, artistic, political or scientific values for minors[.]

[Tenn. Code Ann. § 39-17-901\(6\)](#).

The statement “Mayor Larry Eaton Tells Citizen FUCK You after Court said city violated Law” does not satisfy *any* of these criteria, let alone all of them. It does not appeal predominantly—or at all—to the prurient, shameful, or morbid interests of minors. It is not patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors. And it does not lack serious literary, artistic, political, or scientific value for minors. Thus, the message is not constitutionally obscene, for minors or otherwise.

**2. The State’s alternative theory of liability has no chance of success, either.**

In an effort to sustain its desired censorship, the State also asserts a backup theory of liability. According to its Petition: “[S]hould this Honorable Court ultimately determine obscenity does not apply, the sentence would then constitute political advertisement such that a statement is required to appear indicating who authorized the statement to be published pursuant to [Tennessee Code Annotated Section 2-19-120](#).” Pet. at 3 ¶ 8.

The State’s backup theory of liability is equally hopeless. Under [Tennessee Code Annotated section 2-19-120\(a\)\(1\)](#):

Whenever any person *makes an expenditure* for the purpose of *financing a communication* that *expressly advocates the election or defeat of a clearly identified candidate*, as defined by § 2-10-102, or that solicits any contribution, through any broadcasting station, newspaper, magazine, outdoor advertising facility, poster, yard sign, direct mailing or any other form of general public political advertising, a disclaimer meeting the requirements of subdivision (a)(2), (3), (4) or (5) shall appear and be presented in a clear and conspicuous manner to give the reader, observer or listener adequate notice of the identity of persons who paid for and, where required, who authorized the communication.

*Id.* (emphases added).

“Expenditure” also is a term of art. “Expenditure’ means a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made for the purpose of influencing a measure or the nomination for election or election of any person to public office[.]” [Tenn. Code Ann. § 2-10-102\(6\)\(A\)](#).

The State’s Complaint does not even *allege* such a qualifying expenditure. *See generally* Pet. And the message the State seeks to censor does not “expressly advocate[] the election or defeat of a clearly identified candidate” anyhow. *See* [Tenn. Code Ann. § 2-19-120\(a\)\(1\)](#); *see also* [Tenn. Comp. R. & Regs. 0530-01-03-.07\(2\)](#) (“Expressly advocating’ means any communication containing a message advocating election or defeat, including but not limited to the name of the candidate, or expressions such as ‘vote for’, ‘elect’, ‘support’, ‘cast your ballot for’, or ‘vote against’, ‘defeat’ or ‘reject’.”). Thus, the State’s backup theory of liability fails, too.

## **V. CONCLUSION**

For the foregoing reasons, this Court should dismiss the Plaintiff’s Petition for failure to state a claim upon which relief can be granted.

Respectfully submitted,

By: /s/ Daniel A. Horwitz  
DANIEL A. HORWITZ, BPR #032176  
HORWITZ LAW, PLLC  
4016 WESTLAWN DR.  
NASHVILLE, TN 37209  
(615) 739-2888  
[daniel@horwitz.law](mailto:daniel@horwitz.law)

*Limited-Purpose Counsel for Defendant*

**CERTIFICATE OF SERVICE**

I certify that on December 22, 2025, a copy of the foregoing was sent via certified USPS mail, postage prepaid; via email; or via the Court's e-filing system to the following:

Stephen M. Hatchett, BPR 025440  
District Attorney General  
10th Judicial District  
3855 North Ocoee Street, 3rd Floor  
Cleveland, TN 37312  
Telephone: (423) 472-2179  
Fax: (423) 479-4344  
[smhatchett@tndagc.org](mailto:smhatchett@tndagc.org)

*Counsel for Plaintiff*

By: /s/ Daniel A. Horwitz  
DANIEL A. HORWITZ

**NOTICE OF HEARING**

**THIS MOTION SHALL BE HEARD ON JANUARY 23, 2026 IN THE CIRCUIT COURT OF MCMINN COUNTY, TENNESSEE, 6 E MADISON AVE, ATHENS, TN 37303. FAILURE TO FILE AND SERVICE A TIMELY WRITTEN RESPONSE MAY RESULT IN THIS MOTION BEING GRANTED WITHOUT FURTHER HEARING.**