

IN THE CIRCUIT COURT FOR MCMINN COUNTY, TENNESSEE

STATE OF TENNESSEE,
EX REL. STEPHEN M. HATCHETT,
DISTRICT ATTORNEY GENERAL,

Plaintiff,

vs.

Docket No.: 2025-CV-358

FILED

FEB 23 2026

3:40pm

RHONDA J. COOLEY
CIRCUIT COURT CLERK
BY WMB D.C.

LIBERTY PROPERTY SERVICES and
GLENN WHITING (Intervening Defendant),

Defendants.

ORDER REGARDING MOTION TO DISMISS

This matter is before the Court based upon the defendant's Motion to Dismiss the Temporary Restraining Order and Permanent Injunction" filed by the State of Tennessee on September 22, 2025. This matter originated when the State of Tennessee filed their petition for temporary restraining order and permanent injunction in the Circuit Court of McMinn County, Tennessee at Athens on September 22, 2025. In that petition, the petitioner/plaintiff filed the action by and through Stephen M. Hatchett, the elected District Attorney General of the 10th Judicial District, pursuant to T.C.A. §39-17-905 and §39-17-909. The petitioner alleged that the property in question belonging to the defendant Liberty Property Services:

- (2) "has been covered over the years with various messages regarding various matters, primarily grievances, whether real or imagined, in either stenciled paint or with spray paint; and
- (3) on several occasions words that would meet the legal

definition of obscenity were written on the walls of the building rather than entire words, only certain letters of the words with enough letters to make it clear what words was being used, as can be seen in the attached Exhibit C; (4) however, on or about September, 19, 2025 words appeared on the wall of the building on an uppermost part of the building that includes an obscenity in all capital letters, as can be seen in the attached Exhibit B; and (5) of note in the entire sentence, the only word in all capital letters of the aforementioned obscenity”.

The Court notes that the word shown on the aforementioned exhibits is what is known in common parlance as the “F” word. However, as set out in the petition, the word is fully spelled out, as painted on the defendant’s building.

In the petition, the petitioner alleges that the word in question is obscene pursuant to T.C.A. §37-17-901(10). Subpart 10 states the following:

(A) The average person applying contemporary community standards would find that the word, taken as a whole, appeals to the prurient interest;

(B) The average person applying the contemporary community standards would find that the word depicts or describes, in a patently offensive way, sexual conduct, and

(C) The word, taken as a whole, lacks serious literary, artistic, political or scientific value.

The petitioner further alleges that because of the location, the materials “being exhibited to minors, along with every other person that reaches the courthouse square, and is harmful to minors”, pursuant to T.C.A. §39-17- 9016, to wit;

“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 predominate to the prurient, shameful or morbid interest 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 a whole, lacks serious literary, artistic, political or scientific value for minors; *id.*

The petitioner goes on to allege that the word used is “patently offensive” pursuant to T.C.A. §39-17-901(11), as it “as it goes substantially beyond customary limits of candor in describing or representing such matters”. The petitioner alleges that the word “plainly appeals to the prurient interest” pursuant to T.C.A. §39-17-901(12), as it represents “a shameful or morbid interest in sex”.

The petitioner further alleges that the statement was placed on the wall as a means of coercing the City of Athens into settling other existing civil actions between the City of Athens and the individual Glen Whiting, who, upon information and belief, is the spouse of Connie Ammerman. The Court notes that Connie Ammerman was, at the time of the recording of the deed to the property, the listed/named trustee of the

defendant Liberty Property Services.

The petitioner requested a Temporary Restraining Order requiring the section of the wall depicted in the attached Exhibit B to be covered with an opaque weather-proof covering so as to "protect the writing from being viewed daily by minors until this matter is litigated, as well as to preserve it as evidence of potential violation of T.C.A. §2-19-120".

This matter was set, by this Court, for final hearing on October 23, 2025. However, on October 3, 2025, Connie Ammerman filed her Motion to Dismiss, setting out the following:

MOTION TO DISMISS

I, Connie Ammerman, requests this Court dismiss my name from this action. Plaintiff has resigned from different trusts that I was on due to the harassment from the City. I have zero involvement in this action and zero ability to even request the board stop the writing on the wall. This is a matter that needs to be between Glen Whiting, who is the only one doing the writing on the wall up to this point.

Wherefore, plaintiff request be dismissed from this action.

The Court notes that the defendants filed their TRAP 10 and TRAP 7 extraordinary appeals with the Court of Appeals. However, the Court of Appeals denied both requests per curiam, on October 20, 2025. On October 21, 2025, the individual Glen Whiting filed a Motion to "Intervien", under Rule 19. Mr. Whiting, acting pro se, set out the following in his motion:

District Attorney Stephen Hatchett is attempting to violate my right to defend myself and his in this Court's attempt to deny me my freedom of speech. Listed on the complaint was Liberty Properties and Connie Ammerman. The attempt to silence the speech is speech that came directly from myself and no-body else. It would be the same if I rented a billboard and put my sign up. It's not the billboard company you would want to silence. In this case, it's not Liberty Properties or Connie Ammerman that you are attempting to silence. It's my speech. Therefore, I must be granted the right to "intervien". The only reason I was not was to again attempt to keep me silent. Rule 19 show that I have the right to "intervien" due to the fact it's my speech that this court and the D.A.'s office wants to silence".

On October 23, 2025, Attorney Charles W. Pope, acting on behalf of Liberty Property Services, requested a continuance in behalf of the defendants Liberty Property Services and Connie Ammerman. On October 23, 2025, the Court, acting on the pro se motion filed by Connie Ammerman, filed an agreed order of dismissal, dismissing Ms. Ammerman from this matter. On October 23, 2025, the Court also entered an agreed order for temporary injunction and resetting the motion for a trial date, pursuant to the agreement of all parties. The trial date was set for January 23, 2026. However, Mr. Whiting filed a Notice of Hearing on his Motion to Intervene as a Rule 19 necessary

party, on November 25, 2025. The Court notes that the notice of hearing was prepared for Glen Whiting by Attorney Van R. Irion. However, Mr. Irion set out in a footnote that he was not, at that time, and did not intend to file a notice of appearance in this matter, and further stated that he prepared the notice for Mr. Whiting but was not in fact representing Mr. Whiting in this matter. The Court notes that in Mr. Whiting's motion to intervene, Mr. Whiting sets out that he was acting in his personal capacity when he wrote what he wrote on the wall of the building in question. He further set out that what he posted on the wall "was a political message".

Also on November 26, 2025. The defendants Liberty Property Services, by and through their counsel Van R. Irion, filed a motion for a protective order, pertaining to discovery requests filed by the petitioner State of Tennessee. This Court, by order entered December 22, 2025, held that "the issues, presently before the Court, do not seem to pertain to those issues covered in the subpoena duces tecum". Therefore, the Court finds that this matter, at this point in time, pertains to the ownership of the building upon which words are being written. Those words are alleged to be obscene. Other issues pertaining to the defendant trust do not appear to be in dispute or at issue in this matter or at this time. The Court ordered that the property owner through its duly authorized representative "shall answer the questions pertaining to the ownership of the building". Otherwise, the Court found that the information being sought in the discovery request was irrelevant to those matters at issue in this case at this time.

With regard to the motion to intervene filed by Mr. Whiting, the Court held that "the property is clearly owned by the entity who is the named defendant, and who is in fact the fee simple owner of the property as set in the deed". The Court has been

provided no other indicia of ownership by Mr. Whiting, or anyone else. The current status of ownership clearly shows the property was conveyed to Liberty Property Services, an irrevocable trust, Connie L. Ammerman, Trustee. "Based upon the mandates of Rule 24, the Court finds there is no statute conferring any unconditional right to intervene to Mr. Whiting. Furthermore, the Court finds that Mr. Whiting has not claimed any ownership interest in the property. Therefore, the Court finds complete relief can be granted among those already parties". The Court went on to hold that "the Court finds the disposition of this action should be between the State of Tennessee and the owner of the building". Therefore, the Court denied Mr. Whiting's motion. Mr. Whiting subsequently filed a "MOTION TO RECONSIDER ORDER OF DECEMBER 15, 2025 ORDER DENYING MY RIGHT TO BE AN INTERESTED PARTY AND TO DISQUALIFY THE DAS OFFICE AND THIS COURT 'RECUSS' FOR CAUSE". This motion was filed by Mr. Whiting January 5, 2026, therefore, on the date previously scheduled for trial, the Court was unable to conduct the trial pursuant to the rules that pertain to judicial recusal until such time as the hearing was had as to Mr. Whiting's request for this Court to recuse. On January 23, 2026, Mr. Whiting appeared individually and argued his motion to recuse. Van Irion appeared on behalf of Liberty Property Services for the hearing. The Court finds that at the end of Mr. Whiting's argument, he orally announced his decision to withdraw his request for the Court to "recuss". Mr. Whiting was informed that he would need to make the request in writing. He filed his request January 23, 2026. This Court entered an order regarding the motion to recuse on January 30, 2026, wherein the Court granted Mr. Whiting's request to withdraw his motion to recuse. Furthermore, the Court provided two potential trial

dates so as to bring this matter to a final hearing regarding the petition for temporary restraining order and permanent injunction. The parties were unable to agree on the dates provided by the Court, and the parties suggested February 19, 2026, and the Court agreed.

On December 23, 2025, Daniel A. Horwitz, filed a Notice of Special and Limited Appearance on behalf of the defendant Liberty Property Services. Mr. Horwitz also filed a Motion to Dismiss for Failure to State a Claim, along with a Memorandum of Law. The State of Tennessee filed their response on December 29, 2025. This Court could not hear or take any action on the motion to dismiss, or any other motions, due to the pending motion to recuse filed by Mr. Whiting, as set out above. Mr. Whiting's motion again was not heard until January 23, 2026. As set out above, Mr. Whiting's motion to recuse was dismissed, at his request. In addition to all of the above, the defendant Liberty Property Services filed their Motion for Clarification of this Court's order regarding the State's motion to compel and renewed motion for contempt, as well as their motion for protective order and for reasonable attorney fees incurred by the defendant, however, that motion was also not heard due to the pending motion to recuse filed by Mr. Whiting. The State of Tennessee filed their response to both Mr. Whiting's motion and Mr. Irion's motion on January 22, 2026.

This Court was provided certain case law citations by both the petitioner and the respondent Liberty Property Services. This Court has thoroughly reviewed the case law as cited by the parties, as well as having done its own research regarding the specific issue that is before the Court, primarily pertaining to the defendant's motion to dismiss. As pointed out in the defendant's memorandum of law, this Court may consider "items

subject to judicial notice, matters of public record, orders, items appearing in the record of the case, as well as exhibits to the complaint, whose authenticity is unquestioned; these items may be considered by the Court, without converting the motion to 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)). Furthermore, the memorandum points out that "Tennessee law allows for judicial notice (TRE 201) of public records."

Furthermore, pursuant to Tennessee case law, the rule that "a court must accept all allegations stated in the 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). Furthermore, "[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 Rigg v. Burson, 941 S.W.2d 44, 48 (Tenn. 1997)).

The Court finds, that there is no question that defendant Liberty Property Services is the owner of the real property involved in the suit. This case arises from the fact that Mr. Whiting, by his own candid admission, has from time to time written certain things on the side of the building belonging to Liberty Property Services that the petition alleges are obscene and/or in violation of Tennessee law, for the reasons set out in the petition. The word in question is what is commonly known in many circles as the "F"

word. However, in this case, the issue is that Mr. Whiting has spelled out the entire word and painted it on the side of the building.

The defendant, Liberty Property Services, argues that the State is mistaken in their argument that the “F” word as used in this case is constitutionally obscene. The defendant cites multiple cases, that the Court has now had the opportunity to review. Many of those cases are from the United States Supreme Court. Specifically, Mahoney Area Sch. Dist. V. Levy ex rel. B.L., 594 U.S. 180, 185-191 (2021) sets out the following by the United States Supreme Court: “F” school “F” softball “F” cheer “F” everything”(this Court has simply changed the full spelling of the “F” word and using the initial only), finding the same is “not obscene as this Court has understood that term.” The Mahoney court cited Cohen v. California, 403 U.S. 15, 19-20 (1971), as well as Cohen, 403 U.S. at 26 that held the following: “[W]e cannot indulge the facile assumption that one can forbid particular words without also running a substantial risk of some suppressing ideas in the process... [T]he State may not, consistently with the First and Fourteenth Amendments, make a simple public display here involved of this single four-letter expletive a criminal offense.” The defendant goes on to quote the United States Supreme Court’s holding in Miller v. California, 413 U.S. 15, 24 (1973), wherein the Court held “in reality, obscenity is a narrow category of unprotected speech - one largely restricted to hard-core pornography - that ‘taken as a whole, lacks serious literary, artistic, political, or scientific value’”. The defendants go to quote U.S. Supreme Court’s further finding in Buckley v. Am Const. L. Found., Inc., 525 U.S. 182, 186-87(1999) the following: “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); *Meyer v. Grant*, 486 U.S. 414, 422-425 (1988)). The defendant goes on to set out that vulgarity is not the same thing as obscenity. The defendant further quotes the *Cohen* case set out above as follows: “one man’s vulgarity is another’s lyric”. By contrast, obscenity is a narrowly defined category of unprotected speech principles. (See *Miller*, 413 US, at 24).

The Court also considered a more recent Tennessee case, the same being *Pereira v. City of Lakeland, Tennessee and Katrina Shields*. In that case, the plaintiff, Julie Pereira, had placed a sign in her front yard concerning the 2020 presidential election which read, “F” EM both 2024”. (She spelled out the word). The City of Lakeland cited Ms. Pereira based upon the Lakeland Municipal Code, which prohibited, among other things, signs that contain “statements of an obscene, indecent or immoral character which would offend public morals or decency” and signs that exhibits statements of an obscene nature. The United States District Court for the Western District of Tennessee held, citing *Cohen v. California*, that “the plaintiff’s political sign is not obscene, and the defendants may not lawfully regulate it based on the viewpoint it expresses”. The Court went on to hold “for these reasons, the Court DECLARES UNCONSTITUTIONAL the defendant’s enforcement action against the plaintiff for displaying her unredacted political yard sign, a copy of which is set forth in the record”. The Court went on to hold that “the defendant City of Lakeland was permanently enjoined from taking any further enforcement action against the plaintiff for displaying her unredacted political yard sign”.

While this Court may find certain words painted by Mr. Whiting on the side of

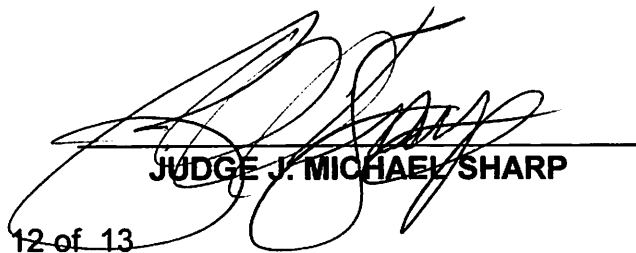
defendant Liberty Services building problematic or personally offensive, that is not the rule of law that this Court is required to follow. This Court took an oath to follow the applicable law that the Court finds to be in effect at the time in question. Based upon all of the case law set out above by the defendants, as well as other case law reviewed by this Court, the Court finds that the word painted on the side of the building by Mr. Whiting has been found to be protected speech by the United States Supreme Court. Thus, based upon the United States Supreme Court's rulings, the political message Mr. Whiting painted on the side of the building is not constitutionally obscene.

Finally, the State argues that the writing on the side of the building constitutes political advertisement, such that the statement would be required to appear indicating who authorized the statement, pursuant to T.C.A. §2-19-120. The Court finds that that statute is inapplicable in this case, in that the statement that is at issue here does not expressly advocate the election or defeat of a clearly identifiable candidate, as defined by §2-10-102, nor does it solicit any contribution or otherwise meet the mandates of the statute. There is no allegation of any expenditure as set out in the petition, nor is there any statement that expressly advocates the election or defeat of a clearly identified candidate.

Based upon all of the above, the Court finds the defendant's motion to dismiss is in order. Therefore, the petition for temporary restraining order and permanent injunction as filed is dismissed.

IT IS SO ORDERED.

This 23rd day of February, 2026.


JUDGE J. MICHAEL SHARP

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing has been served upon the following by delivering the same via U. S. Mail and/or via facsimile to the parties listed below:

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This 23rd day of February, 2026.

Wesley Brown
CLERK