

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE EASTERN DISTRICT OF TENNESSEE**  
**AT KNOXVILLE**

GLENN WHITING and ARD PROPERTY )  
MANAGEMENT, )  
)  
PLAINTIFFS, )

v. )

NO. 3:20-cv-54-TRM-DCP  
JURY DEMAND

CITY OF ATHENS, CHRIS TREW, in his )  
individual capacity and in his official capacity )  
as City Attorney for the City of Athens, and )  
SETH SUMNER in his individual capacity and )  
in his official capacity as City Manager for the )  
City of Athens, )  
)

DEFENDANTS.

**ANSWER TO SECOND AMENDED COMPLAINT FOR DAMAGES, DECLARATORY**  
**RELIEF, AND INJUNCTIVE RELIEF**

The Defendants, City of Athens, Chris Trew and C. Seth Sumner, in their individual capacity, hereby appear, by and through counsel and for these Defendants' Answer to Plaintiffs' Second Amended Complaint respond as follows. In response to the first unnumbered paragraph, the Defendants deny that the actions of any Defendant resulted in the violation of any of Plaintiffs' rights secured by the United States Constitution or were taken in violation of State or Federal law. Each subsequent numbered response herein refers to the equivalent numbered paragraph of the Amended Complaint.

1. It is denied that any of the Defendants violated the Constitutional rights of the Plaintiffs. Jurisdiction is not contested.

2. It is denied that any of the Defendants violated the Constitutional rights of the Plaintiffs. Venue is not contested.

3. These allegations are currently outside the course and scope of knowledge of these Defendants. It is specifically denied that Plaintiff Whiting is a resident or citizen of the City of Athens.

4. It is denied that ARD Property Management is a proper party to this action. Any claim by ARD Property Management is barred by the Statute of Limitations. It is denied that Glenn Whiting is an executor of ARD Property Management. It is denied that ARD Property Management owns the building located at 213 Pope Avenue, in Athens, Tennessee. It is denied that any such entity exists under the name ARD Property Management within the State of Tennessee. It is denied that ARD Property Management has standing to bring this action.

5. These allegations are admitted. It is denied that the City of Athens violated any rights of the Plaintiffs secured by the United States Constitution and is a property party to this litigation.

6. These allegations are admitted. It is denied that the Chris Trew violated any rights of the Plaintiffs secured by the United States Constitution and is a property party to this litigation.

7. These allegations are admitted only to the extent they refer to C. Seth Sumner, City Manager for the City of Athens. It is denied that the C. Seth Sumner violated any rights of the Plaintiffs secured by the United States Constitution and is a property party to this litigation.

8. These allegations fail to state a claim upon which relief may be granted against these Defendants. To the extent a further response is required, the allegations are denied. It is specifically denied that the issues raised by WWII veterans related to actions of the City of Athens.

9. These allegations are denied with strict proof required thereof.

10. It is admitted that Mr. Whiting has spoken at Athens City Council Meetings. The remaining allegations are currently outside the course and scope knowledge of these Defendants. For purposes of this Answer at this time, no response is able to be given, but strict proof is demanded.

11. It is denied that Whiting owns any real property within the City of Athens. The remaining allegations are currently outside the course and scope knowledge of these Defendants. For purposes of this Answer at this time, no response is able to be given, but strict proof is demanded.

12. These allegations are denied with strict proof required thereof.

13. These allegations fail to state a claim upon which relief may be granted against these Defendants. To the extent a further response is required, the allegations are denied.

14. These allegations fail to state a claim upon which relief may be granted against these Defendants. To the extent a further response is required, the allegations are denied. It is denied that any of the Defendants charged Whiting with criminal extortion. Upon information and belief, the “Naval Academy Honor Graduate Lieutenant Commander Walter Fitzpatrick” identified in Paragraph 14 was indicted by a McMinn County Grand Jury for harassment, aggravated perjury, stalking, and extortion. He was convicted of aggravated perjury and extortion, both Class D Felonies, and sentenced to three years with both judgments affirmed by the Court of Criminal Appeals. *State v. Fitzpatrick*, No. E2014-01864-CCA-R3-CD, Sept. 8, 2015 (Tenn. Ct. Crim. App. Sept. 8, 2015); See also *State v. Walter Francis Fitzpatrick, III*, No. E2013-00456- CCA-R3-CD, 2014 WL 1422981 (Tenn. Crim. App. Apr. 11, 2014), perm. app. denied (Tenn. Oct. 14, 2014) (affirming Fitzpatrick’s conviction in case number 12-108 for tampering with government records); *State v. Walter Francis Fitzpatrick, III*, No. E2011-00013-CCA-R3-CD (Tenn. Crim. App. Sept. 14, 2011) (order dismissing Fitzpatrick’s appeal of his convictions for disrupting a meeting and resisting arrest in case number 10-213 based on his failure to timely file a brief); *State v. Walter Francis Fitzpatrick, III*, No. E2011-01628-CCA-R3-CD (Tenn. Crim. App. Apr. 12, 2012) (order dismissing Fitzpatrick’s appeal of his conviction for resisting arrest in case number 11-018 based on his failure to timely file a brief).

15. These allegations fail to state a claim upon which relief may be granted against these Defendants. To the extent a further response is required, the allegations are denied.

16. These allegations fail to state a claim upon which relief may be granted against these Defendants. It is specifically denied that any city officials painted over the referenced sign. To the extent a further response is required, the allegations are denied.

17. These allegations are denied as written with strict proof required thereof.

18. These allegations are denied as written with strict proof required thereof.

19. These allegations are denied as written with strict proof required thereof.

20. These allegations are denied as written with strict proof required thereof.

21. These allegations are denied as written with strict proof required thereof.

22. These allegations are denied as written with strict proof required thereof.

23. These allegations are denied as written with strict proof required thereof.

24. These allegations are denied as written with strict proof required thereof.

25. These allegations are denied as written with strict proof required thereof.

26. These allegations are denied as written with strict proof required thereof.

27. These allegations are denied as written with strict proof required thereof.

28. These allegations are denied as written with strict proof required thereof.

29. These allegations are denied as written with strict proof required thereof.

30. It is admitted only that at some point Mr. Whiting threatened to paint a message on a downtown building. The remaining allegations are currently outside the course and scope knowledge of these Defendants. For purposes of this Answer at this time, no response is able to be given, but strict proof is demanded.

31. These allegations are denied as written with strict proof required thereof.

32. These allegations are denied with strict proof required thereof.

33. These allegations are denied as written with strict proof required thereof.

34. These allegations are denied as written with strict proof required thereof. The language contained within any Order entered by any representative(s) or agent(s) of the City speaks for itself.

35. These allegations are denied as written with strict proof required thereof.

36. These allegations are denied as written with strict proof required thereof.

37. These allegations are denied as written with strict proof required thereof.

38. These allegations are denied as written with strict proof required thereof.

39. These allegations are denied as written with strict proof required thereof.

40. The allegations in paragraph 40 of the Plaintiffs' Complaint fail to state a claim upon which relief may be granted against these Defendants. To the extent a further response is required, the allegations are denied.

41. The allegations in paragraph 41 of the Plaintiffs' Complaint fail to state a claim upon which relief may be granted against these Defendants. To the extent a further response is required, the allegations are denied.

42. The allegations in paragraph 42 of the Plaintiffs' Complaint fail to state a claim upon which relief may be granted against these Defendants. To the extent a further response is required, the allegations are denied.

43. These allegations are denied with strict proof required thereof.

44. These allegations are denied as written with strict proof required thereof.

45. These allegations are denied with strict proof required thereof.

46. These allegations fail to state a claim upon which relief may be granted against these Defendants. To the extent a further response is required, the allegations are denied. The language contained within the transcript referenced in this paragraph speaks for itself.

47. The language within the Complaint speaks for itself.

48. It is admitted that City Manager Seth Sumner, pursuant to the City's Code of Ordinances, is designated as the "public officer" under Section 13-304. To the extent the allegations contained in Paragraph 47 state or imply that such a designation is improper, said allegations are denied with strict proof required thereof.

49. It is admitted that City Manager Seth Sumner signed the order condemning the Pope

Avenue building. It admitted that the City of Athens and Seth Sumner followed its Charter and Code of Ordinances in taking any action related to the Pope Avenue building. Any other allegations contained in Paragraph 48 are denied as written with strict proof required thereof.

50. It is admitted that Mr. Gravely was the only witness who testified at the August 30, 2019 hearing, because no representatives of ARD Property Management chose to attend, despite receiving notice. Regarding Mr. Gravely's testimony, the transcript of his testimony speaks for itself. Any remaining allegations contained in Paragraph 49 are denied with strict proof required thereof.

51. The language contained within the September 25, 2019 order speaks for itself. Any remaining allegations contained in Paragraph 50 are denied as written with strict proof demanded thereof.

52. These allegations are denied with strict proof required thereof.

53. These allegations are denied as written with strict proof required thereof. The language contained within the transcript from the August 30, 2019 hearing speaks for itself.

54. These allegations are denied as written with strict proof demanded thereof. It is specifically denied that the Defendants had any obligation to notify Glenn Whiting of the hearing.

55. These allegations are denied as written with strict proof required thereof.

56. These allegations are denied as written with strict proof required thereof. The language contained within the transcript from the August 30, 2019 hearing speaks for itself.

57. These allegations are denied with strict proof required thereof.

58. These allegations are denied with strict proof required thereof.

59. These allegations are denied with strict proof required thereof.

60. These allegations are denied as written with strict proof required thereof.

61. These allegations are denied with strict proof required thereof.

62. These allegations are denied with strict proof required thereof.

63. The Defendants restate their response to the allegations set forth above as if fully set forth herein.

64. The Defendants incorporate their answers to the previous paragraphs as if set out fully herein.

65. The allegations in paragraph 65 of the Plaintiffs' Complaint fail to state a claim upon which relief may be granted against these Defendants. To the extent a further response is required, the allegations are denied

66. These allegations are denied with strict proof required thereof.

67. These allegations are denied with strict proof required thereof. The Plaintiffs have withdrawn their claims based upon an alleged violation of due process, or in the alternative have agreed that summary judgment is appropriate with respect to these claims.

68. These allegations are denied with strict proof required thereof.

69. These allegations are denied with strict proof required thereof.

70. These allegations are denied with strict proof required thereof.

71. These allegations are denied with strict proof required thereof.

72. These allegations are denied with strict proof required thereof.

73. These allegations are denied with strict proof required thereof.

74. These allegations are denied with strict proof required thereof.

75. It is requested that this Court empanel a jury to try Plaintiffs' Federal Constitutional claims.

76. It is denied that any action or inaction by the Defendants violated any of Plaintiffs' Constitutional rights.

77. The Defendants are entitled to an award of attorney's fees and costs pursuant to 42 U.S.C. § 1988.

78. The Defendants are entitled to an award of attorney's fees and costs pursuant to Tenn. Code Ann. § 29-20-113 should it be determined that Defendants Chris Trew and C. Seth Sumner were not acting in their individual capacity at the time of the matters stated in the Complaint.

79. It is maintained that all claims alleged against Defendants Chris Trew and C. Seth Sumner in their official capacity are redundant to the claims against the City and should be dismissed. Such claims fail to state a claim upon which relief can be granted pursuant to Fed. Rule Civ. Procedure 12(b)(6).

80. The Defendants Chris Trew and C. Seth Sumner are entitled to Qualified Immunity.

81. Plaintiffs' have failed to plead that no adequate state law remedy exists by which he could pursue his claims and failed to exhaust all reviews and remedies available under the City's Code and/or State Law.

82. The Defendants invoke and are entitled to all defenses available under Tennessee Law to shield city employees and officials, including State Law Good Faith Immunity, and the protections of the Tennessee Governmental Tort Liability Act.

83. It is maintained that Plaintiffs' claims pursuant to 42 U.S.C. § 1983 are barred by the applicable statute of limitations.

84. It is maintained that Defendant Trew is entitled to official immunity, absolute immunity and prosecutorial immunity.

85. It is maintained that Defendant Sumner is entitled to official immunity, absolute immunity and prosecutorial immunity.

86. Plaintiff Glenn Whiting lacks standing to bring this suit and any claims are barred by the statute of limitations.

87. Plaintiff ARD Property Management lacks standing to bring this suit and any claims are barred by the statute of limitations.



88. Plaintiffs' Complaint fails to state a claim upon which relief can be granted and should be dismissed in its entirety pursuant to Federal Rule of Civil Procedure 12(b)(6).

89. Anything not previously specifically admitted, denied or otherwise explained is hereby denied as written, as if fully set out herein, with strict proof is required thereof.

90. The Defendants reserve the right to amend their Answer upon further information and discovery in this case.

RESPECTFULLY submitted this 26<sup>th</sup> day of October, 2021.

CITY OF ATHENS, CHRIS TREW and  
C. SETH SUMNER, Defendants

By: /s/ Dan R. Pilkington

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system:

Van R. Irion  
800 S. Gay Street, Suite 700  
Knoxville, TN 37929

Dated this October 26, 2021.

/s/ Dan R. Pilkington  
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