

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE

GLENN WHITING, and  
ARD PROPERTY MANAGEMENT  
Plaintiffs,

CIVIL CASE NO: 3:20-CV-54

v.

**JURY TRIAL DEMANDED**

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.

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

COMES NOW the Plaintiffs Glenn Whiting and ARD Property Management by and through undersigned counsel, and brings this Second Amended Complaint against Defendants City of Athens, Chris Trew, and Seth Sumner for First Amendment retaliation, and violations of other State and Federal law; and for declaratory and injunctive relief pursuant to T.C.A. §§ 29-14-100 et seq. and 28 U.S.C. §§2201 et seq.

In support of this Complaint the Plaintiff alleges as follows:

**Jurisdiction and Venue**

1. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331. Remedies are provided by 42 U.S.C. § 1983.
2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because the events that form the basis for this Complaint primarily occurred in this district.

### **Parties**

3. Plaintiff Glenn Whiting is an adult citizen and resident of the State of Tennessee, currently residing in McMinn County.
4. Plaintiff ARD Property Management is a trust formed under the laws of the State of Tennessee. Plaintiff Glenn Whiting is executor of ARD Property Management. ARD Property Management owns the building located at 213 Pope Avenue, in Athens, Tennessee.
5. Defendant City of Athens is a local government political subdivision of the State of Tennessee, as established and governed by Tennessee State law.
6. Defendant Chris Trew is an adult individual and resident of the state of Tennessee. Upon information and belief defendant Trew currently resides in McMinn county. Defendant Trew currently serves as a City Attorney for the City of Athens.
7. Defendant Seth Sumner is an adult individual and resident of the state of Tennessee. Upon information and belief Mr. Sumner currently resides in McMinn County. At all times relevant to this lawsuit Mr. Sumner was the City Manager for the City of Athens. Defendant Sumner is sued both in his individual capacity and in his official capacity as the City of Athens.

### **Summary**

8. Seventy five years ago World War II veterans accused Athens local officials of predatory policing, police brutality, political corruption, and voter intimidation, leading to the famous Battle of Athens. Not much has changed. Athens City officials continue to grossly abuse their authority through discretionary enforcement of law. Said officials regularly, and as a matter of unwritten policy, single out individuals

with whom they have personal disputes or political disagreements, and use the power of their government positions to have laws enforced in a disproportionate manner against said individuals.

9. In the instant case, defendants Sumner, Trew, and other Athens City officials, have taken official actions, and have threatened to take further actions, against Mr. Whiting in retaliation for his recent expression of his political views at public meetings, as well as for expressing his political views via a display on the exterior wall of his building located at the corner of Jackson Street and Madison Avenue in downtown Athens.

#### **Background**

10. Plaintiff Glenn Whiting has lived with his family in McMinn County since 1993. He manages several properties and buildings belonging to the Whiting family both within the city limits of Athens and within the county. As an active member of the community Mr. Whiting has been involved in local politics for the entire 27 years that he has lived in McMinn County. Mr. Whiting regularly attends and speaks at Athens City Council meetings.
11. In 2014 Whiting's daughter obtained a jury verdict and civil judgment for breach of contract against an individual who worked closely with county officials, judges, the district attorney's office, and court personnel. The judgment debtor refused to pay the relatively small judgment. Because of the debtor's work with county officials, Mr. Whiting sent a certified letter to the judgment debtor, government employees, and other officials, informing them that Whiting intended to paint a sign on the side of his building located at Jackson Street and Madison Avenue in downtown Athens. The

building is located immediately across the street from the old Courthouse. It is also located directly between the District Attorney's Athens office and the courthouse. Most importantly, the building is located at a highly trafficked intersection at the center of town. Whiting's certified letter included the exact language that Whiting intended to place on the outside wall of his Jackson Street building. The sign informed its readers of the name and details of the judgment, and the judgment debtor's refusal to pay the judgment. The sign was embarrassing to several local officials because of their connection to the judgment debtor and his business that worked with the City and with the County courts.

12. While Whiting was painting his first sign, defendant City Attorney Trew came to the building (approximately two blocks from Trew's office) and told Whiting, "I can't let you do that. They are asking me to charge you with extortion."
13. After Whiting had posted his first political message on his Jackson Street building, Sheriff Joe Guy and Evan Walden met with District Attorney Steve Crump, urging the DA's office to bring criminal extortion charges against Mr. Whiting. (Mr. Walden's law partner acts as Judge for the City of Athens Court). Guy urged that said charges be grounded upon Whiting placing his previous political statement on his Jackson Avenue building.
14. The attempt to have Whiting charged with criminal extortion for expressing his political views on subjects of public interest is particularly disturbing because the community at issue has a history of charging, and convicting, citizens on criminal extortion charges based upon said citizens' attempts to petition the government for redress of grievances. For example, on March 18, 2014 Naval Academy Honor

Graduate Lieutenant Commander Walter Fitzpatrick was waiting in the McMinn County Courthouse to present a petition to the grand jury. Fitzpatrick had been asserting that the grand jury foreman had been illegally appointed and that he should be removed. The grand jury foreman was a local banker with political connections. Rather than hear his petition, the grand jury indicted Commander Fitzpatrick, alleging extortion. Fitzpatrick was arrested while he was quietly reading a book just outside the grand jury room. The extortion charge was based upon Fitzpatrick's petition to have the Grand Jury Foreman removed from his position.

15. During Fitzpatrick's prosecution Whiting and his family supported Fitzpatrick through public statements to the media, and through emotional support and financial support of Fitzpatrick's legal defense. This support of Fitzpatrick earned Whiting enemies within the community's political establishment.
16. Shortly after Whiting posted his sign on the wall, the judgment debtor from his daughter's lawsuit paid the judgment in full. Upon information and belief, officials encouraged said judgment debtor to pay the judgment in order to get the sign removed. After the judgment was paid, Whiting allowed city officials to paint over the sign.
17. Years later a car belonging to Whiting was stolen from a building located in Athens on Pope Avenue. The individual who stole the car later admitted that he took the car. Whiting had never met said car thief. Whiting reported the theft to Athens Police. However, the police department refused to investigate, because of the animosity toward Whiting held by city officials. Whiting brought these facts to the Athens City Council on several occasions. However, no investigation was ever performed.

18. Defendant Sumner and other officials have displayed open hostility toward Mr. Whiting at Council meetings because of Whiting's allegations regarding the City's failure to investigate. At one Council meeting Chief of Police Couch told council members that citizens like Whiting shouldn't be allowed to bring complaints about the Police Department to the City Council. He suggested that only the Police Department should be allowed to investigate such complaints. After this statement City Mayor Burris asked Chief Couch to reach out to Whiting in an attempt to resolve the matter. Chief Couch responded to the Mayor stating, "He (Whiting) knows how to find me."
19. Just prior to Whiting's complaints to the City Council about the Police Department's failure to investigate the theft of his car, an Athens City Council member, Dr. Dick Pelly, was falsely accused of sexual harassment. Despite Dr. Pelly and Mr. Whiting not agreeing on most political issues, they are friendly on a personal basis. When the Athens City Council sanctioned Dr. Pelly, Whiting spoke on Pelly's behalf at Council meetings, and challenged the truthfulness of several Council members. Pelly's hearing was held at a Council meeting in which Pelly was in Nashville for business that could not be rescheduled on the short notice given Pelly regarding the hearing. Upon information and belief the Council had been informed that Pelly would be out of town long before the hearing was scheduled. Sanctions were imposed quickly after Pelly's accuser made her complaint, despite the fact that no under-oath testimony was ever given against Pelly.
20. In sanctioning Dr. Pelly the Athens City Council stated that Pelly had violated the Council's Code of Conduct, and that those rules required the Council to sanction

Pelly. In response to this Whiting filed a complaint against another Council member who had previously admitted, during a recorded Council meeting, that he regularly broke specific traffic laws. Such an admission amounted to an admission of violating the same Code of Conduct. In contrast to the Pelly complaint, Whiting's complaint was ignored and not investigated for over six months. Upon Whiting's insistence, his complaint was finally addressed by defendant City Attorney Chris Trew. Trew summarily found that the Council member's admitted traffic violation amounted to "two left turns, not an illegal U-turn." Trew was aware at the time that this issue had been brought to the Council's attention because citizens were being ticketed for illegal U-turns, made in exactly the same manner and at exactly the same location as the Council member had admitted to making weekly U-turns.

21. Whiting was told by Athens Mayor Chuck Burriss that the issue regarding Whiting's stolen car needed to be heard at a "work session" where Council members discuss issues with citizens. The City's policy, according to Burriss, is that any citizen wishing to address the Council at a work session must file a petition to do so with the City Manager at least one day before the work session meeting. However, the unwritten policy actually followed at most work session meetings is to allow citizens to speak, even if they have not notified the Council of their intent to speak. For example, at an October Council meeting Mike Simmons, a friend of several City officials, was allowed to speak to the Council despite the fact that Mr. Simmons had not filed the requisite petition to do so. Yet after Burriss' personal invitation to Whiting to speak at the next work session, Burriss refused to allow Whiting to speak because he "had not filed a petition" to do so. This is just one example of pervasive special treatment for

“special” people, alongside simultaneous hostile treatment for people that City officials don’t like.

22. At an October 2018 Council meeting Mayor Burris refused to allow Commander Fitzpatrick to speak. Upon information and belief, this negative treatment was solely because Burris doesn’t like Fitzpatrick.
23. In order to discourage citizen input during City Council meetings, the Athens Council recently changed its rules to allow citizen speech at meetings only after all other matters have been addressed. Since it is impossible to know when any given meeting will be wrapping up, citizens are now required to sit for what could be hours before they will be heard, or to lose their opportunity by not being present exactly when the Council decides to hear the citizen. While the Council certainly has the right to arrange its schedule as it likes, and propound procedural rules as it likes (to a point), this change of rules was admittedly adopted to discourage citizens like Fitzpatrick and Whiting from addressing the Council. This rule change also gives Council members more general ability to control who speaks and who doesn’t.
24. During one Council meeting Mayor Burris and Council member Coker told Whiting that Whiting is an embarrassment to listen to. This public statement was, itself, a violation of the City Council’s Code of Conduct.
25. While working at his Jackson Street building on a Sunday, Whiting was approached by Council member Bo Perkins. Shortly after Perkins left an Athens Police officer approached Whiting and said, “I was told to tell you to move your truck.” The truck was parked on a sidewalk next to Whiting’s building. Whiting asked the officer who had told him to say that. The officer refused to say, but made Whiting move his truck.



Whiting has parked in the same manner, in the same location, dozens of times over many years. Only after City officials were angry at him was a police officer dispatched to specifically remove Whiting from parking in that location. It is well known by local law enforcement, and it is a common practice, that many downtown building owners park in a similar manner in order to perform maintenance work on their buildings.

26. A tenant of Mr. Whiting, Brenda Lowe, rents space in Mr. Whiting's Jackson Street building. Ms. Lowe has asked the City to allow her to add steps in front of one of her building entrances. Ms. Lowe offered to pay for the improvements and represented that the stairs are needed to improve safety. This improvement is needed to remedy a severe safety risk. The City has refused Ms. Lowe's reasonable request. Upon information and belief, the City's refusal is based upon the fact that the building is owned by Mr. Whiting and is motivated solely by animus toward Mr. Whiting.

#### **Recent Events**

27. During one particularly heated Council meeting Mr. Whiting was told that he would no longer be allowed to discuss at Council meetings the City's failure to investigate the theft of Whiting's car. After the meeting had concluded Whiting informed the Council, "If you silence me here I will tell my story on my wall, like I did before." Council member Perkins stated that such action would be damaging to the City.
28. At a later date defendant Sumner said to Whiting that his proposed actions "would be a mistake," and informed Whiting that he could not win against them (city officials). Upon information and belief, Sumner's statement was a threat to take official

government action in retaliation against Whiting if Whiting expressed his opinion on a political matter of public concern.

29. After the Council meeting of August 2019, Mayor Chuck Burris waited until Council member Dr. Pelly had left, while other members were told to stick around. Burris then called Whiting while Whiting was still driving home from the meeting. Burris told Whiting that he and the Chief of Police would like to meet with him immediately and asked him to return to the Council chambers. Upon returning Whiting saw that the Council (save Dr. Pelly), Mayor, City Manager, Chief of Police, other City officials and employees, and the media that had been at the Council meeting were still at the Council chambers. (This meeting was recorded by the media). The only person missing was Council member Dr. Pelly. Upon information and belief, Pelly had not been informed that another meeting was to be held with Council members and Mr. Whiting. Upon arriving Whiting was told that if he wants his stolen car investigated, he would have to help them in dealing with Dr. Pelly. At that meeting Whiting was accused of conspiring with Dr. Pelly. This was an unscheduled, unnoticed meeting, held by city officials for the purpose of discussing matters of public concern in the arranged-absence of one Council member. Upon information and belief, the Mayor, City Manager, Council save Pelly, and the Chief of Police knowingly participated in an illegal meeting, and intentionally set up said illegal meeting, in violation of Tennessee's Sunshine laws.
30. The following week Mr. Whiting informed several City officials, in person and in writing, that he intended to paint a message on the side of his building about the City's failure to investigate the theft of Whiting's car. He included the exact wording

he intended to put in the message. The message reflects Mr. Whiting's opinion regarding matters of public interest.

31. After being informed of Whiting's intention to post his message on the Jackson Street building, a City Council member informed Mr. Whiting that if he proceeded then the City would be taking actions against Mr. Whiting.
32. Following Whiting's notification regarding his plans, defendant Sumner stated to Mr. Whiting, "you don't want to fight me. You cannot win." The context and location of Sumner's statement to Mr. Whiting supports the conclusion that it was intended to be a threat: if he placed the planned message on his wall, Sumner would use his authority as City Manager to "fight" Mr. Whiting.
33. This conclusion is supported by the following: after Mr. Whiting spoke at more than one City Council meeting about the Police Department's failure to investigate Whiting's stolen car, in May of 2019 defendant Sumner ordered Athens Building Inspector Gene McConkey to issue a citation against Mr. Whiting and halt construction on roof improvements to an awning that had been installed on his Jackson Street building over ten years earlier. The improvements to the awning had already been approved by the Department of Codes enforcement. These facts have been confirmed by several witnesses. These witnesses state that Building Inspector McConkey informed Sumner that several other buildings downtown had similar awnings, that all those awnings were also violating the same ordinance, and that if a citation was issued against Whiting then it must also be issued against the other buildings' owners. In response Sumner ordered the building inspector to only issue a citation to Mr. Whiting, ordering only Whiting's awning improvements be halted.

Upon information and belief owners and or occupants of the other buildings are friends and/or political supporters of Sumner. Witnesses state that when the building inspector refused to single out Mr. Whiting, a major dispute occurred between McConkey and Sumner in front of several City employees.

34. On September 25, 2019, defendant Sumner signed an order requiring plaintiff ARD Property Management to demolish its building, located at 213 Pope Avenue, before December 1, 2019. Upon information and belief, Sumner is and was, before September 25, 2019, aware that the building at issue is owned by ARD Property Management, a trust that is managed and controlled by the Whiting family. Notice of the August 30 hearing regarding said building was sent to an individual who was a trustee for ARD Property Management, but is known to Sumner and Trew to be infirmed and unclear on legal procedures. Upon information and belief Sumner, and other high-level City of Athens officials, knew at the time of the notice that the Whiting family held an ownership interest in said building and that plaintiff Whiting was the primary manager of said building. Neither ARD Property Management nor plaintiff Whiting were properly noticed of the August hearing until after said hearing was held, despite their ownership interests in the building and despite Sumner's knowledge of said ownership interests. Several City officials had regularly contacted Whiting directly whenever issues with said building arose.

35. This is not the first time that the City has used law enforcement and regulatory harassment to extort, control, and punish individuals. In fact, the Jackson Street building owned by the plaintiffs was purchased by the plaintiffs from the City. Upon information and belief, the City had obtained the building by purchasing it as part of a

settlement of a lawsuit brought against the City by the previous owner of the Jackson Street building. Upon information and belief, the City had told the previous owner that the building contained asbestos and would need to be demolished. However, after purchasing the building the City did not demolish the building, remove any asbestos-containing materials, or perform any other remediation. Instead, city officials approached Mr. Whiting offering to sell him the building. City officials ensured Whiting at the time that he would not need to perform any of the remediation that the City had been demanding of the previous owner. Whiting ended up purchasing the building for less money than the City had paid for it to the previous owner. In other words, the City had forced the previous owner out by regulatory harassment, without any intention of actually enforcing any regulation.

36. The City did notify Whiting's father in law, Don Ammerman about the August hearing regarding the Pope Avenue building. However, Mr. Ammerman called defendant Trew to inform Trew that the Pope building would be sold soon and to ask for time to sell the building. Upon information and belief, Trew intentionally gave Ammerman the false impression that Ammerman did not need to attend the August hearing and that the City's issues with the Pope building wouldn't be a problem before the building was sold. The hearing was held without anyone from ARD Property Management present.

37. Strangely, City Building Inspector Gene McConkey had not been told anything about the City's hearing regarding the Pope Avenue building. Upon information and belief, defendants Sumner and Trew decided to not include Building Inspector McConkey in the August 30 hearing because McConkey had previously made clear that he would

not participate in the City's retaliation against Whiting during the argument with Sumner about the awning on Whiting's Jackson Street building. *See* ¶32, above.

38. After the August hearing, but before Sumner signed the September 25 order, defendant Sumner called Mr. Whiting and invited him to meet with Sumner and Athens City Attorney Chris Trew about the message Mr. Whiting intended to paint on his Jackson Street building. Defendant Sumner failed to show at the meeting to which he had personally invited Whiting. Instead, defendant Trew began the meeting by informing Whiting that Trew intended to talk Whiting out of putting up Whiting's planned sign. During the meeting, which was recorded by Mr. Whiting, Mr. Trew informed Mr. Whiting that if Whiting proceeded with his plans to put his message on the downtown building, then there were other "variables" that Mr. Whiting had not considered. Trew informed Whiting that by putting up his planned sign Whiting would be in violation of the terms of a Federal grant. Upon information and belief defendant Trew intended this statement to imply a threat to report Whiting to Federal authorities if Whiting posted his sign. Trew also specifically mentioned the Pope Street building and implied that if Mr. Whiting proceeded, the City would move forward regarding the building. At that meeting Whiting informed Trew that he fully intended to move forward with his plan to put a painted message on his downtown building. After plaintiff's meeting with Trew, Sumner signed the September 25 order.
39. During the meeting with Trew, Whiting had been unaware of the August hearing regarding the Pope Avenue building. Immediately after that meeting Whiting met with City building inspector McConkey to inquire what was going on with the Pope Avenue building. McConkey informed Whiting that he had no knowledge of any

action by the City at that time regarding the building. McConkey had no idea that a hearing had been held in which the City decided to demolish the building. At that meeting Whiting informed McConkey that if any repairs were required for the Pope Avenue building that Whiting was willing to make said repairs.

40. A survey of the area surrounding the Pope Avenue building confirms that other buildings are in much more dangerous conditions, yet these other buildings have not been scheduled for demolition or repair and are not currently subject to any actions by the City of Athens. *See* Ex. 1, Photos of Dangerous Building. The building seen in the attached photos is located near the Pope Avenue building, and more importantly, right across the street from a public baseball field. Upon information and belief the building seen in the attached photos is owned by a current Athens City Council Member. These facts support a conclusion that defendants' actions against Whiting's Pope Avenue building are motivated by the defendants' animus against the plaintiff and are in retaliation for his political speech.

41. Upon information and belief, several other buildings within the City of Athens are in more dangerous condition than the Pope Avenue building, yet the City has taken no actions against said buildings or the buildings' owners.

42. It is well established in binding precedent that the actions taken by the defendants against the plaintiffs are in violation of the 1<sup>st</sup> Amendment to the U.S. Constitution. Specifically, the 6<sup>th</sup> Circuit has established that "To prevail on [a] retaliation claim, [p]laintiffs must establish (i) that they were engaged in constitutionally protected conduct; (ii) that Defendants' adverse action caused them to suffer an injury that would likely chill a person of ordinary firmness from continuing to engage in that

- conduct; and (iii) that the adverse action was motivated at least in part as a response to the exercise of their constitutional rights." *Lucas v. Monroe County*, 203 F.3d 964, 973 (6th Cir. 2000).
43. Upon information and belief, defendant Sumner was motivated by personal malice against the plaintiff because defendant Sumner was angry at Mr. Whiting due to his public statements regarding issues of public concern.
44. Upon information and belief, the actions taken by Defendants Sumner and Trew were performed in their capacities as City Manager for the City of Athens, and City Attorney, respectively, and while both were acting under color of law.
45. Because the City of Athens has threatened to demolish the Pope Avenue building, Whiting is unable to perform any maintenance or repairs on said building until this lawsuit is completed, for fear that any such efforts and resources would be wasted if the City demolishes the building. Therefore, all deterioration of the Pope Avenue building caused by an inability to repair or maintain said building during the pendency of this lawsuit, are damages caused by the defendants.

**Facts Discovered Since Filing of Plaintiffs' First Complaint**

46. Since the filing of plaintiffs' first complaint the plaintiffs have obtained a transcript of the August 30, 2019 condemnation hearing held by the defendants. Additionally, the SOLE witness called at said hearing was deposed December 17, 2020.
47. Defendant Seth Sumner signed and filed the City's complaint against the Pope Avenue building.
48. Despite being the complaining party, defendant Seth Sumner presided as judge at the August 30, 2019 condemnation hearing.



49. Despite being the complaining party, defendant Seth Sumner signed the order condemning the Pope Avenue building to be demolished. In other words, Seth Sumner was simultaneously the complaining party, the presiding judge, the “jury,” and the executioner.
50. The sole witness at the August 30, 2019 condemnation hearing was Athens City employee Matthew Gravely. Mr. Gravely testified regarding the condition, valuation, and cost to repair the Pope Avenue building, despite the fact that Mr. Gravely has no qualifications to make any determinations regarding the condition, valuation, or cost to repair commercial buildings. Mr. Gravely has never been a licensed contractor, nor has he obtained any certifications from the State of Tennessee to inspect, value, or repair commercial buildings. Mr. Gravely does not know how thick the walls of the Pope Avenue building are, nor what thickness walls on commercial buildings typically are. Mr. Gravely had no idea what the current per square foot market valuation is for commercial buildings. Mr. Gravely had no idea what it would cost to replace the Pope Avenue building at current market costs.
51. Defendant Sumner, in his capacity as judge at the August 30, 2019 condemnation hearing, entered an order (dated September 25, 2019) which includes the following unsupported factual findings: “exterior walls, doors, and windows, are in disrepair and not maintained to prevent the elements from entering the interior of the structure. The interior walls and flooring are in disrepair and pose a danger to the structural integrity of the structure.” However, the sole witness at said hearing (Mr. Gravely) never uttered the words “exterior,” “walls,” “interior,” or “structural integrity.” In

other words, these factual findings determined by defendant Sumner were completely unsupported by any testimony.

52. Upon information and belief, because they intended to punish the plaintiffs for their political speech, both defendants Sumner and Trew had already decided what factual findings their order would contain, before the evidence was presented at the condemnation hearing, and despite the evidence (or lack thereof) actually presented at the hearing.
53. Upon information and belief, defendant Trew knew at the time of the August 30, 2019 condemnation hearing that the sole witness at said hearing was not qualified to make any determinations regarding the condition, value, or cost to repair ANY commercial building, including the Pope Avenue building. Despite this fact, defendant Trew offered into evidence expert testimony from the sole witness: Question: “In your opinion, can this structure be repaired at a reasonable cost in relation to its value?” Answer: “Yes.” Question: “In your opinion, can this structure be repaired at a cost less than 50 percent of its value?” Answer: “It cannot.” (Transcr. Aug. 30, 2019 Condemnation Hearing at 9:18-23).
54. Upon information and belief, defendant Trew acted to ensure that the plaintiffs would not have any representative or attorney present to represent the interests of the plaintiffs at the August 30, 2019 condemnation hearing. Specifically, he did not notify Glenn Whiting of the hearing, despite Trew’s knowledge that Whiting had an interest in the building, and despite the fact that the complaint states, “Any other person who may have an interest in the real property, the subject of this action shall

likewise take notice of this action and shall have a right to participate at the hearing mentioned hereafter.”

55. Defendant Trew failed to inform the condemnation hearing “court” that Glenn Whiting had an interest in the building at issue, despite Trew’s knowledge of same. This is a violation of Rule 3.3(a)(3) of the Tennessee Rules of Professional Conduct for attorneys, which reads in relevant part: “A lawyer shall not knowingly: in an ex parte proceeding, fail to inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.”

56. Defendant Trew failed to inform the condemnation hearing “court” that his sole witness was not qualified to testify as an expert witness regarding the condition, valuation, or repair of any commercial building. Yet, defendant Trew offered expert testimony from his witness regarding these subjects. This is a violation of Rule 3.3(a)(3) of the Tennessee Rules of Professional Conduct for attorneys, which reads in relevant part: “A lawyer shall not knowingly: in an ex parte proceeding, fail to inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.”

57. Despite acting as Judge at the August 30, 2019 condemnation hearing, defendant Sumner never uttered a word. Instead, defendant Trew, acting as attorney for the complaining City, took it upon himself to open the proceedings, present his evidence, and rule upon said evidence: “All right. No show. Demolish. The proof is presented that it’s being used for residential purposes.” (Transcr. Hrg. Aug. 30, 2019 at 10:7-9).

**FIRST CAUSE OF ACTION**  
**Violation of the First Amendment**

58. The actions of the defendants, as set forth in the paragraphs above, which are fully incorporated herein, entitle the plaintiff to a remedy under 42 U.S.C. § 1983 because the defendants have, under color of state law, violated Plaintiff's clearly established rights to free speech pursuant to the First Amendment to the United States Constitution as applied to the states and their political subdivisions.
59. Defendant City of Athens' policies and ordinances are vague, overbroad, and lack sufficient standards and safeguards to curtail the discretion of government officers, thereby allowing said officers' unbridled discretion to enforce said policies in an ad hoc and discriminatory manner.
60. The defendants, acting under color of law, intentionally deprived the plaintiff of his right to free speech by threatening to take otherwise unjustified regulatory actions and by taking otherwise unjustified regulatory actions, in retaliation for plaintiff's expression of his political opinions.
61. Defendants Sumner and Trew acted pursuant to the policies and/or customs of defendant City of Athens. Alternatively, defendants Sumner and Trew acted pursuant to customs and practices so wide spread as to have the force of official policy or law of defendant City of Athens.
62. Defendant Sumner's act of ordering the demolition of the building at Pope Avenue without legal justification and/or being motivated by personal malice against Whiting, was a violation of the First Amendment.
63. As a direct result of defendants' actions, the plaintiff has suffered direct and immediate violations of his constitutional rights and is therefore entitled to injunctive

and declaratory relief, damages, including punitive damages, and reasonable attorneys' fees, pursuant to Federal Rules of Civil Procedure 57 and 65 and 28 U.S.C. § 2201; to redress and remedy the violations, and to prevent irreparable harm and future violations of his rights and the rights of others.

**SECOND CAUSE OF ACTION**

**Declaratory and Injunctive Relief pursuant to T.C.A. §§ 29-14-100 et seq. and  
28 U.S.C. §§2201 et seq.**

64. The plaintiff incorporates the allegations set forth above as if fully set forth herein.
65. T.C.A. §§ 29-14-100 et seq. and 28 U.S.C. §§2201 et seq. grant this Court authority to declare the acts of the defendants, as set forth herein, to be unconstitutional, and to enjoin the defendants from continuing to take said actions and similar actions.
66. The plaintiff has been injured and aggrieved by and will continue to be injured and aggrieved by the City's unconstitutional acts.

**THIRD CAUSE OF ACTION**  
**Deprivation of Due Process**

67. The actions of the defendants, as set forth in the paragraphs above, which are fully incorporated herein, entitle the plaintiff to a remedy under 42 U.S.C. § 1983 because the defendants have, under color of state law, violated Plaintiff's clearly established rights to due process guaranteed under the Fourteenth Amendment to the United States Constitution as applied to the states and their political subdivisions.
68. Defendant City of Athens's policies and ordinances are vague, overbroad, and lack sufficient standards and safeguards to curtail the discretion of law enforcement officers, thereby allowing said officers' unbridled discretion to enforce said policies in an ad hoc and discriminatory manner.

69. The defendants, acting under color of law, intentionally deprived the plaintiffs of their right to property by failing to notify Mr. Whiting of the August 30, 2019 condemnation hearing despite knowing that Mr. Whiting had an interest in the property at issue prior to said hearing; and by acting in a manner intended to prevent a representative of ARD Property Management from attending said hearing.
70. Defendants Trew and Sumner acted pursuant to the policies and/or customs of defendant City of Athens. Alternatively, defendants Trew and Sumner acted pursuant to customs and practices so wide spread as to have the force of official policy or law of defendant City of Athens. Alternatively, defendant City of Athens' inadequate supervision and training of the defendants Trew and Sumner reflects deliberate indifference to the rights of those affected by the acts of defendants Trew and Sumner.
71. Defendant Trew's act of failing to inform the court that Mr. Gravely was not qualified to give the testimony that he offered was a knowing taking of property without due process.
72. Defendant Trew's act of failing to inform the court that Mr. Whiting had an interest in the Pope Avenue building was a knowing taking of property without due process.
73. Defendant Trew's intentional acts taken for the purpose of ensuring that ARD Property Management did not have a representative at the August 30, 2019 condemnation hearing was a knowing taking of property without due process.
74. As a direct result of defendants' actions, the plaintiffs have suffered direct and immediate violations of their constitutional rights and are therefore entitled to injunctive and declaratory relief, damages, including punitive damages, and

reasonable attorneys' fees, pursuant to Federal Rules of Civil Procedure 57 and 65 and 28 U.S.C. § 2201; to redress and remedy the violations, and to prevent irreparable harm and future violations of his rights and the rights of others.

### **Prayer and Relief**

WHEREFORE, Plaintiffs respectfully demands a jury trial, for judgment in their favor and against the defendants, damages, including actual damages, punitive damages, and/or nominal damages; temporary and permanent injunctive relief; a declaration that the actions of defendants, as described herein, were and are unconstitutional and illegal, and that the same were in contravention of plaintiffs' constitutional rights. Due to the intentional and outrageous acts performed by the defendants sued in their individual capacities, said acts in direct violation of the plaintiffs' well-established constitutional rights, the plaintiffs request punitive damages in an amount sufficient to punish said intentional acts and deter such conduct in the future. The plaintiffs further ask that defendants reimburse the plaintiffs for their reasonable attorney's fees, expenses, and costs associated with the maintenance of this action, pursuant to 42 U.S.C. § 1988, and all such further relief as the Court may deem just and proper.

Submitted this 15<sup>th</sup> Day of October, 2021.

s/Van R. Irion

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