

March 2, 2017

Dustin Owens Verified Complaint for Injunctive and Declaratory Relief and Exhibits

Daniel A. Horwitz



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**IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE**

DUSTIN OWENS,)

Plaintiff,)

v.)

METROPOLITAN NASHVILLE)

POLICE DEPARTMENT,)

Defendant.)

Case No. _____

VERIFIED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. The primary question presented in this case is whether the following sticker qualifies as an “obscenity”—a narrow, unprotected category of speech reserved for hard-core pornography—thereby causing it to lose the broad presumption of free-expression protection guaranteed by the First Amendment to the U.S. Constitution:



2. Because this stick-figure cartoon does not come anywhere close to satisfying the applicable constitutional standard for obscenity, the Metropolitan Nashville Police Department should be enjoined from punishing the Plaintiff for displaying it.

I. PARTIES

3. The Plaintiff, Mr. Dustin Owens (“Mr. Owens”), is a citizen of Tennessee who works and drives in Davidson County, Tennessee.

4. The Defendant, the Metropolitan Nashville Police Department (the “MNPDP”), is the municipal police department for Nashville and Davidson County, Tennessee.

II. JURISDICTION, AUTHORITY, AND VENUE

5. This Court has jurisdiction over this action pursuant to the Tennessee Declaratory Judgment Act, Tenn. Code Ann. § 29-14-102, and 42 U.S.C. § 1983.

6. This Court is vested with the authority to issue a declaratory judgment and injunction with the force and effect of a final decree pursuant to Tenn. Code Ann. § 29-14-102(c), Tenn. Code Ann. § 29-1-106, and 42 U.S.C. § 1983.

7. As the county where the causes of action giving rise to Plaintiff’s Complaint arose, venue is proper in Davidson County pursuant to Tenn. Code Ann. § 20-4-101(a).

III. FACTUAL ALLEGATIONS

8. On February 10, 2017, Mr. Owens was driving on or around Briley Parkway in Davidson County, Tennessee, when he was pulled over and cited by an officer of the MNPDP for displaying an “obscene bumper sticker” in violation of Tenn. Code Ann. § 55-8-187. Mr. Owens’ citation from this incident is attached hereto as **Exhibit A**. A photograph of the sticker at issue (hereinafter, the “stick-figure cartoon”) exactly as it appears on Mr. Owens’ truck is attached hereto as **Exhibit B**.

9. After ticketing Mr. Owens, the arresting officer ordered him to remove his stick-figure cartoon from his truck and demonstrate full compliance with his order within forty-five days (by March 27, 2017). To date, Mr. Owens has not complied.

10. Consequently, Mr. Owens is currently living under the pain of a pending censorship order from the MNPDP, and he is subject to being punished and prosecuted under penalty of law if he does not comply with it.

11. Based on the MNPDP's conclusion that his stick-figure cartoon is constitutionally obscene, Mr. Owens is currently subject to being seized and cited whenever and wherever he drives in Davidson County. As a consequence, Mr. Owens has filed the instant action for the purpose of obtaining both a declaratory judgment that his stick-figure cartoon is not constitutionally obscene and an injunction prohibiting the MNPDP from punishing him for displaying it.

IV. CAUSES OF ACTION

1. As-Applied Violation of Mr. Owens' Rights Under the First and Fourteenth Amendments

12. The Plaintiff reincorporates and realleges the foregoing allegations as if fully set forth herein.

13. As a matter of law, Mr. Owens' sticker is not constitutionally obscene.

14. The average person applying contemporary community standards would not find that Mr. Owens' stick-figure cartoon appeals predominantly to the prurient interest in sex.

15. Mr. Owens' stick-figure cartoon does not depict or describe, in a patently offensive way, sexual conduct as defined by Tennessee law.

16. Taken as whole, Mr. Owens' stick-figure cartoon does not lack serious literary, artistic, political, or scientific value.

17. Consequently, as it has been applied to Mr. Owens, Tenn. Code Ann. § 55-8-187 violates Mr. Owens' First Amendment rights to freedom of speech and expression, incorporated against the State of Tennessee pursuant to the Fourteenth Amendment.

2. Overbreadth

18. The Plaintiff reincorporates and realleges the foregoing allegations as if fully set forth herein.

19. In the alternative, Tenn. Code Ann. § 55-8-187 is unconstitutionally overbroad.

20. The overbreadth doctrine prohibits the Government from banning unprotected speech if a substantial amount of protected speech is also prohibited or chilled in the process.

21. Tenn. Code Ann. § 55-8-187 operates to censor more speech than is constitutionally permissible.

22. The U.S. Supreme Court has held that speech is obscene and does not enjoy constitutional protection if the Government can establish all three of the following factors: that the speech being censored, when taken as a whole, [1] "appeals to the prurient interest [in sex], [2] is patently offensive in light of community standards, and [3] lacks serious literary, artistic, political, or scientific value." *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 235 (2002) (citing *Miller v. California*, 413 U.S. 15, 24 (1973)).

23. These three factors must each be proven independently for speech to be lawfully categorized as obscene. As such, while satisfying the "patently offensive" prong

of the *Miller* test is necessary to demonstrate that speech is obscene, it is insufficient to justify censorship on its own.

24. Tenn. Code Ann. § 55-8-187, however, renders illegal the display of both “obscene” bumper stickers *and* “patently offensive” bumper stickers. See Tenn. Code Ann. § 55-8-187. Consequently, Tenn. Code Ann. § 55-8-187 treats “patently offensive” materials as a freestanding category of speech that may be prohibited without regard to the two additional factors set forth in *Miller*. As a result, Tenn. Code Ann. § 55-8-187 is unconstitutionally overbroad.

V. CLAIMS FOR RELIEF

WHEREFORE, the Plaintiff respectfully requests that this Court:

1. Issue a judgment declaring that, as applied to Mr. Owens, Tenn. Code Ann. § 55-8-187 violates his First Amendment rights to freedom of speech and expression.
2. In the alternative, issue a judgment declaring that Tenn. Code Ann. § 55-8-187 is unconstitutionally overbroad.
3. Issue a temporary injunction, and, thereafter, a permanent injunction prohibiting the MNPd from seizing, citing, or in any way prohibiting Mr. Owens from displaying his stick-figure cartoon.
4. Grant Mr. Owens’ reasonable costs and attorneys’ fees pursuant to 42 U.S.C. § 1988(b).
5. Grant Mr. Owens any and all other relief to which it appears he is entitled.

Respectfully submitted,

By:

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Counsel for Plaintiff Dustin Owens

VERIFICATION

I, Daniel A. Horwitz, after having been duly sworn according to law, hereby state that I have made an independent investigation into the averments stated herein, and that the facts, statements, and exhibits contained in the foregoing Complaint are true and correct to the best of my knowledge, information, and belief.

Pursuant to Tenn. R. Civ. P. 72, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

By: _____
Daniel A. Horwitz, BPR #032176
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Nashville, TN 37203
daniel.a.horwitz@gmail.com
(615) 739-2888

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of March, 2017, a copy of the foregoing was served via USPS certified mail, postage prepaid, and/or hand-delivered to the following:

Metro Nashville Police Department
c/o Metropolitan Department of Law
Metro Courthouse, Suite 108
P.O. Box 196300
Nashville, TN 37219-6300

Attorney General and Reporter for the State of Tennessee
Herbert Slatery III
Office of the Attorney General and Reporter
P.O. Box 20207
Nashville, TN 37202-0207

By: _____
Daniel A. Horwitz, Esq.

Exhibit A

K-535142

SUMMONS

OF OFFENSES **1**

The undersigned certifies to have just and reasonable grounds to believe, and does believe, that:

ON **FRIDAY FEB 20 1 30**
 DAY OF WEEK DATE MONTH YEAR A.M. P.M.

LAST NAME **OWENS**
 FIRST NAME **DUSTIN**
 MIDDLE INITIAL

245 INDIAN LAKE NASHVILLE TN
 CITY **HENDERSONVILLE** ST **TN** ZIP CODE **37075**

COMMERCIAL VEHICLE OVER 26,000 lbs. ACCIDENT
 16+ PASSENGER VEHICLE HAZARDOUS MATERIAL LIC. CLASS **F**

OPERATOR LICENSE NUMBER **DSR0176841310** CDL CDL REQ.

OPERATOR LICENSE STATE **FL** DATE OF BIRTH **04/11/1984** SEX **M** RACE **W**

VEHICLE DESCRIPTION **CHRY** **SLIK** **4DR** **RED**
 YEAR MAKE MODEL BODY TYPE COLOR

VEHICLE TAG NUMBER **E 80GHA** TAG STATE **FL** TAG YEAR **17**

LIST OWNER OF CAR IF DIFFERENT THAN DRIVER

UPON A PUBLIC STREET OR HIGHWAY, OR OTHER LOCATION NAMELY **DRILEY HWY**

AT **CLARKSVILLE HWY**
 NEAR

DID UNLAWFULLY COMMIT THE FOLLOWING OFFENSES IN VIOLATION OF THE METRO CODE.
 ALL TCA OFFENSES HEREIN ARE DECLARED TO BE MUNICIPAL VIOLATIONS PURSUANT TO METRO CODE 12.8.160

A	SPEED RESTRICTION _____ KPH _____ MPH IN _____ MPH ZONE _____ MPH ZONE	<input type="checkbox"/> MCL 12.20.10	<input type="checkbox"/> MCL 12.20.20	<input type="checkbox"/> MCL 12.20.30	<input type="checkbox"/> MCL 12.20.70	RADAR	
B	MCL 12.68.180 RECKLESS DRIVING	C	MCL 12.68.170 CARELESS DRIVING	D	MCL 12.24.40 RAN STOP SIGN	E	MCL 12.12.110 VIOLATION OF TRAFFIC LANE RESTRICTION
J	TCA 55-4-108 REGISTRATION CERTIFICATE NOT IN VEHICLE	K	MCL 12.8.90 UNLAWFUL USE OF LICENSE PLATE	L	TCA 55-3-102 DRIVING UNREGISTERED VEHICLE	M	MCL 12.32.30 LIGHTS REQUIRED ON VEHICLE
O	TCA 55-8-132 YIELD EMERGENCY VEH/MOVE OVER	P	MCL 12.32.50 MUFFLER LAW EXCESSIVE NOISE FUMES OR SMOKE	Q	TCA 55-50-351 DRIVER'S LICENSE NOT ON PERSON	R	TCA 55-50-333 DRIVER'S LICENSE CHANGE OF ADDRESS
S	TCA 55-12-139 PROOF OF INSURANCE	T	OBSCENE BUMPER STICKER 55-8-18T				

CONDITIONS NORMAL DAYLIGHT SNOW/ICE RAINING DARKNESS WET RELATED COMPLAINT NUMBER **17 0132392**

PROSECUTOR'S SIGNATURE **A.PARKER** EMPLOYEE AGENCY **MADP**
 OFFICER (PRINT) **A.PARKER** OFFICER RANK **DEPT**
 EMPLOYEE NUMBER **716890** ASSIGNED DIVISION **M**

Compliance Date For Office Use Only
 Must respond within 45 days of issuance date. Month Date Year

Upon the issuance of this citation you should receive a Davidson County Traffic Court Information Sheet explaining how to respond to this citation. If you did not receive one or have lost it, it is your responsibility to call (615) 862-5222 or visit <http://circuitclerk.nashville.gov/traffic> to obtain a copy.
 I hereby acknowledge receipt of a copy of this citation. I also waive formal issuance and service of a warrant upon me. I understand that I must respond to this citation with a designated form of action within 45 days from the issuance date of this citation. Failure to do so will result in a Default Judgment causing suspension of driver's license and issuance of execution.

DEFENDANT'S SIGNATURE _____ NOT AN ADMISSION OF GUILT



Exhibit B



Making My
Family