

**IN THE CIRCUIT COURT FOR  
LAWRENCE COUNTY, TENNESSEE**

STATE OF TENNESSEE,	)	
	)	
<i>Plaintiff,</i>	)	Case No. 36138
	)	
v.	)	
	)	JUDGE DAVID ALLEN
Arthur Jay Hirsch,	)	
	)	
<i>Accused.</i>	)	
_____	/	

**VERIFIED MOTION TO DISMISS  
Per Rule 12(a),(2)(A)(B)**

1            Arthur Jay Hirsch, Accused, moves this Court in its ministerial capacity to enter an order to  
2 dismiss for lack of factual subject matter jurisdiction on the following grounds: (1) *Misapplication*:<sup>1</sup>  
3 the permissive privilege statutes cited in the indictment (T.C.A. title 55) do not apply to Accused,  
4 (2) *Insufficient indictment*:<sup>2</sup> the indictment is invalid on its face due to lack of the requisite facts to  
5 the essential elements of the terms of the charges. and (3) *Fraudulent Fabrication of Evidence*:<sup>3</sup> the

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1

● "[a] court abuses its discretion when its ruling is based on an erroneous view of the law."  
*Chaves v. M/V Medina Star*, 47 F.3d 153, 156 (5th Cir. 1995).

2

● "It is an elementary principle of criminal pleading that, where the definition of an offence, whether it be at common law or by statute, "includes generic terms, it is not sufficient that the indictment shall charge the offence in the same generic terms as in the definition, but **it must state the species -- it must descend to particulars.**" 1 Arch.Cr.Pr. and Pl. 291. *United States v. Cruikshank*, 92 U.S. 542 {1875}(emphasis added)

● "**No essential element of the crime can be omitted without destroying the whole pleading.** The omission cannot be supplied by intendment, or implication, and the charge must be made directly and not inferentially, or by way of recital." *United States v. Hess.*, 124 U.S. 483, 8 S. Ct. 571 (emphasis added)

3

● Maxim of law; "*Out of fraud no action arises.*"

● "There is no question of the general doctrine that **fraud vitiates the most solemn contracts, documents, and even judgments.**" *United States v. Throckmorton*, 98 U.S. 61 (emphasis added)

1 suspended driver’s license in issue was fraudulently fabricated out of thin air and has no basis in law,  
2 Accused shows as follows:

### 3 **Brief Narrative**

4 Following a sideswiping accident, (for which Accused was not at fault), on July 29, 2017,  
5 Accused was cited by trooper JOHATHAN PULLEY at the accident scene, and was subsequently  
6 indicted for allegedly driving on a suspended driver’s license, non-registration of his truck, and not  
7 having insurance. The truth of the matter is set forth below:

### 8 **Biblical Basis For Defense**

9 ***Exercising rights:***<sup>4</sup> In presenting his bible-based defense, Accused is exercising his  
10 constitutionally secured rights of conscience,<sup>5</sup> freedom of religion,<sup>6</sup> and of speech,<sup>7</sup> and comes before  
11 this court in the name of Jesus Christ in obedience to the Word of God, to wit,

12 *“And whatsoever ye do in word or deed, do all in the name of the Lord Jesus, giving*  
13 *thanks to God and the Father by Him.” Colossians 3:17*

14 *“It is written, Man shall not live by bread alone, but by every word that proceedeth*  
15 *out of the mouth of God.” (Matthew 4:4)*

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4

See Requests for mandatory judicial notice, “ACCUSED’S BIBLICAL BASIS FOR DEFENSE” and “ THE UNALIENABLE RIGHT TO TRAVEL” for facts and law support for defense discussion.

5

Tenn. Constitution, Art. 1, §3. “That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; that no man can of right be compelled to attend, erect, or support any place of worship, or to maintain any minister against his consent; **that no human authority can, in any case whatever, control or interfere with the rights of conscience;** and that no preference shall ever be given, by law, to any religious establishment or mode of worship.” (emphasis added)

6

Within Constitution (First Amendment) embraces not only the **right to worship God according to the dictates of one’s conscience**, but also the right to do, or forbear to do, any act, for conscience sake, the doing or forbearing of which is not inimical to the peace, good order, and morals of society. *Barnette v. West Virginia State Board of Education*, D.C.W.Va., 47 F.Supp. 251, 253, 254. (emphasis added)

7

Tenn. Constitution, Art. 1, §19, “. . . **The free communication of thoughts and opinions, is one of the invaluable rights of man, and every citizen may freely speak, write, and print on any subject, being responsible for the abuse of that liberty. . .**”

1           **Sovereign authority:** Accused declares his sincerely held religious belief embraces a biblical  
2 world view that God exists;<sup>8</sup> that he is revealed in nature,<sup>9</sup> in his written word (the Bible),<sup>10</sup> and in  
3 the personage of his Son, Jesus Christ;<sup>11</sup> that He is the ultimate Sovereign authority,<sup>12</sup> and that He  
4 is Creator of heaven and earth and the source of all life<sup>13</sup>. All members of the human race are his  
5 servants and are to love him, obey his commandments,<sup>14</sup> and to bring him glory, praise and  
6 pleasure.<sup>15</sup>

7           **Confession of faith:** Accused declares that he is created in God’s image (Genesis 1:26, 27);

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● “. . . before me there was no God formed; neither shall there be after me. I, even I, am the Lord; and beside me there is no saviour.” Isa. 43:10, 11

9

● “For the invisible things of him from the creation of the world are clearly seen, being understood by the things that are made, even his eternal power and Godhead: so that they are without excuse.” Romans 1:20

10

● “Of his own will begat he us with the word of truth, that we should be a kind of firstfruits of his creatures.” James 1:18

● “For the word of God is quick, and powerful, and sharper than any twoedged sword, piercing even to the dividing asunder of soul and spirit, and of the joints and marrow, and is a discernor of the thoughts and intents of the heart.” Hebrews 4:12

11

● “Jesus saith unto him, Have I been so long time with you, and yet hast thou not known me Philip? He that hath seen me hath seen the Father; and how sayest thou then, show us the Father?” John 14:9

12

● “For thus saith the Lord that created the heavens; God himself that formed the earth and made it; he hath established it, he created it not in vain, he formed it to be inhabited; I am the Lord; and there is none else.” Isa. 45:18

13

● “The earth is the Lord’s, and the fulness thereof; the world and they that dwell therein.” Ps. 24:1

● “Thus saith God the Lord, he that created the heavens and stretched them out, he that spread forth the earth, and that which cometh out of it; he that giveth breath unto the people upon it and spirit to them that walk therein.” Isa. 42:5

14

● “Let us hear the conclusion of the whole matter. Fear God and keep his commandments: for this is the whole duty of man.” Eccl. 12:13

● “For this is the love of God, that we keep his commandments: and his commandments are not grievous.” 1 John 5:3

● “Thou hast commanded us to keep thy precepts diligently.” Ps. 119:4

15

● “Even every one that is called by my name: for I have created him for my glory, I have formed him: yea, I have made him.” Isa. 43:7;

● “This people have I formed for myself: they shall shew forth my praise.” Isa. 43:21

● “Thou art worthy, O Lord, to receive glory and honor and power: for thou hast created all things, and for thy pleasure they are and were created.” Rev. 4:11

1 and that he is a follower of Jesus Christ, having believed the Gospel of salvation, accepted God's  
2 free gift of eternal life by grace through faith, believing on the name of his Son. (Romans 10:9, 10,  
3 13). The Bible is Accused's final authority for all matters of life, and is active in advancing the  
4 Kingdom of God in obedience to Christ's great commission.<sup>16</sup>

## 5 **America, A Christian Nation;** 6 **Bible Declared The Word Of God**

7 Congress and the U.S. Supreme Court (SCOTUS) has declared and held that America is a  
8 "Christian nation," that the Bible is "the word of God," and that our court system is based on biblical  
9 truths and principles (*PUBLIC LAW 97-280 OCT. 4, 1982 ; Church of the Holy Trinity v. United*  
10 *States*, (143 U.S. 457-458, 465-471, 36 Led 226) (1892)). SCOTUS properly has noted "an  
11 unbroken history of official acknowledgment . . . of the role of religion in American life." *Lynch v.*  
12 *Donnelly*, 465 U.S., at 674, and has recognized that these references to "our religious heritage" are  
13 **constitutionally acceptable**. *Id.*, at 677. *Edwards v. Aguillard*, 482 U.S. 578 (1987); and also, that  
14 the Christian religion is part of the common law (*Vidal, et al. v. Girard's Executors*, 43 US 127, 11  
15 L. Ed. 205 - Supreme Court, (1844)).

## 16 **Unalienable Rights**

17 ***Unalienable rights come from Creator:*** Our fundamental and unalienable rights of **Life,**  
18 **Liberty** and the **Pursuit of Happiness**, which are endowed to us by our Creator at birth, are clearly  
19 established in the the word of God, to wit

20 "For in him [God] we live [Life], and move [Liberty], and have our being [Pursuit of  
21 Happiness]." (Acts 17:28),

22 and are repeated by Thomas Jefferson in America's first organic law document, The Declaration of  
23 Independence, 1776.<sup>17</sup>

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16

● "Go ye into all the world, and preach the gospel to every creature." Mark 16:15  
● "All power is given unto me in heaven and in earth. Go ye therefore, and teach all nations, baptizing them in the name of the Father, and of the Son, and of the Holy Ghost: Teaching them to observe all things whatsoever I have commanded you: and, lo I am with you always, even unto the end of the world. Amen." Matthew 28:18, 19, 20

17

**NOTE:** U.S. Code Volume 1, 2012 edition contains the Organic Laws as current law, i.e., the Declaration of Independence, the Articles of Confederation, The Northwest Ordinance and the U.S. Constitution.

1 “WE hold these Truths to be self-evident, that all Men are created equal, that they are endowed by  
2 their **Creator with certain unalienable<sup>18</sup> Rights**, that among these are **Life, Liberty and**  
3 **the Pursuit of Happiness—That to secure these Rights, Governments are instituted**  
4 **among Men, deriving their just powers from the consent of the governed...**”

5 All aspects of human existence involves movement/locomotion/travel. It is, indeed, self-evident that  
6 our rights—fundamental and derived—are inherently endowed by Almighty God from birth, and are,  
7 therefore, antecedent to the organization of the state/government and are distinctly separate from  
8 statutory privileges.

## 9 **Unalienable Personal Right To Travel**

10 ***Unconditional personal right to travel:*** Our unconditional (“unalienable”), fundamental  
11 and inherent/natural right to freely travel/move/locomote<sup>19</sup> makes possible the enjoyment of life and  
12 liberty, with the means of acquiring, possessing, and protecting property (“pursuit of happiness”),

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18

● “[T]he Due Process Clause protects the **unalienable liberty** recognized in the Declaration of Independence rather than the particular rights or privileges conferred by specific laws or regulations.”  
*Sandin v. Connor*, 515 US 472, 115 S. Ct. 2293, 132 L. Ed. 2d 418 - Supreme Court, 1995

\*\* Note: The U.S. Supreme Court relies on two dictionaries for such purposes. One is Bouvier’s Law Dictionary, the other is Webster’s 1828 Dictionary

● *Bouvier’s Law Dictionary (1856)* defines unalienable: “Incapable of being transferred. Things which are not in commerce, as, public roads, are in their nature unalienable. Some things are unalienable in consequence of particular provisions of the law forbidding their sale or transfer; as, pensions granted by the government. **The natural rights of life and liberty are unalienable.**”

● *Webster’s 1828 Dictionary* defines unalienable: UNA"LIENABLE, a. Not alienable; that cannot be alienated; that may not be transferred; as unalienable rights.

● *William Blackstone*, 18th century Common Law English jurist and judge defined unalienable in his Commentaries on the Laws of England, 1:93: “Those rights, then, which God and nature have established, and therefore called natural rights, such as life and liberty, need not the aid of human laws to be more effectually **invested in every man** than they are; neither do they receive any additional strength when declared by the municipal laws to be inviolable. On the contrary, **no human legislature has power to abridge or destroy them, unless the owner shall himself commit some act that amounts to a forfeiture.**” (emphasis added)

● *Blacks Law Dictionary, 2nd Edition, (1910)* defines unalienable: ”Not subject to alienation; the characteristic of those things which cannot be bought or sold or transferred from one person to another such as rivers and public highways and certain personal rights; e.g., liberty.”

\*\*Comment: **Essentially, unalienable rights are inherent to being human and exist forever outside of the world of commerce; they cannot be bought, sold or transferred...ever, i.e., "Unalienable" rights are rights that CANNOT under any circumstances be alienated.**

19

*Shapiro v. Thompson*, 394 U.S. 618, 643; *Dunn V. Blumstein*, 405 U.S. 330, 342 (1972) No. 70-13; *State v. Stroud*, 52 S.W. 697, 698

1 and the fulfilling of God’s will and purpose for them on earth. This personal freedom to move is  
2 specifically mentioned in scripture (Acts 17:28), and is a vital unenumerated secondary right  
3 constitutionally protected by the Ninth Amendment,<sup>20</sup> and safeguarded by original intent and  
4 subsequently repeated in each of Tennessee’s three constitutions (1796, 1835, 1870), (which forbid  
5 meddling by the “high Powers” and excepted the Peoples’ rights from the “General Powers of  
6 Government” . . . forever!)

7 *Tennessee Declaration of Rights, 1796 Constitution*

8 **Article 10<sup>th</sup>**

9 **Section 4<sup>th</sup>.** The Declaration of Rights hereto annexed is declared to be a part of the  
10 Constitution of this State and Shall never be violated on any pretence whatever. And to  
11 Guard against transgressions of the high Powers which we have delegated, **we declare that**  
12 **everything in the Bill of Rights contained and every other right not hereby delegated**  
13 **is excepted out of the General Powers of Government and shall for ever [i.e. forever]**  
14 **remain inviolate.** (emphasis added) (Now appearing at Art. 11, §16)

15 **(1)**

16 **MISAPPLICATION OF STATUTES: RIGHTS vs. PRIVILEGES**

17 *State’s presumption rebutted:* Accused declares that he has always traveled the streets and  
18 highways of Tennessee in the ordinary and usual course of life, business and pleasure in his personal  
19 private conveyance in the exercise of his protected liberty right to travel. (**ATTACHMENT A**,  
20 affidavit) Accused is indicted under taxable permissive privileges statutes (TCA title 55) with the  
21 presumption that he is operating a regulated business affecting the public interest transporting people  
22 or goods for hire (“private gain”) on the public highways in a motor vehicle, and is, therefore, subject  
23 to the state granted privilege license regulations to do so. Accused hereby vigorously rebutts the  
24 state’s said presumption,<sup>21</sup> and affirms that he has never applied for a Tennessee driver’s license and

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20

Amendment IX “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

21

Legal Maxim:*In dubiis, non præsimitur pro potentia.* In cases of doubt, the presumption is not in favor of a power.

1 paid a “privilege tax”<sup>22</sup> in order to gain permission to use the highways as a place of business for  
2 profit. (See ATTACHMENT A - affidavit).

### 3 **Courts Recognize Right To Travel As Distinct From** 4 **State Granted Permissive Privilege License**

5 (See Judicial Notice “II”)

6 ABSOLUTE RIGHT vs. PERMISSIVE PRIVILEGE

7 ● A **public highway** is such a passageway as any and **all members of the public** have an **absolute**  
8 **right** to use as distinguished from a **permissive privilege** of using same. *Standard Life Ins. Co. v.*  
9 *Hughes*, 203 Tenn. 636, 315 S.W.2d 239, 243, 1958 Tenn. LEXIS 229 (1958). (emphasis added)

10 TWO CLASSES<sup>23</sup> OF HIGHWAY USERS - RADICAL DIFFERENCE RECOGNIZED:

11 ● "The right of the citizen to travel upon the highway and transport his property thereon, in the  
12 **ordinary course of life and business, differs radically and obviously** from that of one who makes  
13 the highway his place of business and uses it for **private gain**, in the running of a stage coach or  
14 omnibus...This distinction, elementary and fundamental in character, is **recognized by all**  
15 **authorities."** *Hadfield v. Lundin* 98 Wash. 657, 663; 168 Pac. 516 (1917). Page 264 U. S. 144  
16 (emphasis added)

17 USUAL AND ORDINARY RIGHT TO TRAVEL AND TRANSPORT PROPERTY:

18 ● “The right of the Citizen to travel upon the highway and to transport his property thereon in the  
19 ordinary course of life and business... is the usual and ordinary right of the Citizen, a right common  
20 to all.”*Chicago Motor Coach vs. Chicago*, 169 NE 22; *Ligare vs. Chicago*, 28 NE 934; *Boon vs.*  
21 *Clark*, 214 SSW 607; 25 Am.Jur. (1st) Highways Sect.163

22 PRIVILEGED USE BY COMMON CARRIERS FOR HIRE:

23 ● “A citizen may have, under the Fourteenth Amendment, the **right to travel** and transport his  
24 property upon them by auto vehicle. But he has no right to make the highways his place of business  
25 by using them as a **common carrier for hire**. Such use is a **privilege** which may be granted or

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22

● “. . . a person cannot be compelled "to purchase, through a license fee or a license tax, the privilege  
freely granted by the constitution." *Murdock v. Pennsylvania*, 319 U.S. 105

23

\*\* **Comment:** Both state and federal supreme courts have recognized two separate and distinct classes of users of the  
public highways, namely, those exercising a free unregulated right to travel, and those operating by taxable, state-granted  
permissive privilege for which a license, registration and insurance is required, *to wit*,

(1) **Class One** (primary users)- those traveling freely unregulated by common law right in the ordinary course of life,  
business and pleasure in the usual and ordinary conveyance of the day; and

(2) **Class Two** (secondary users) - drivers, operators and chauffeurs engaged in regulated interstate commerce activity  
under taxable permissive privilege statutes (*e.g.* TCA Titles 55 & 65), transporting people or goods for hire on the  
roadways by means of a "self-propelled instrumentality of commerce" (*i.e.*, commercial motor carrier/motor vehicle).

1 withheld by the state in its discretion, without violating either the due process clause or the equal  
2 protection clause.” *Packard v. Banton*, 264 U.S. 140, 144 (emphasis added)

### 3 NO PRIVILEGE TAX ON PRIVATE VEHICLES

4 ● It is held that a tax upon a common carriers by motor vehicles is based upon a reasonable  
5 classification, and does not involve any unconstitutional discrimination, although it **does not apply**  
6 **to private vehicles, or those used by the owner in his own business, and not for hire.**” *Desser*  
7 *v. Wichita*, (1915) 96 Kan. 820; *Iowa Motor Vehicle Asso. v. Railroad Comrs.*, 75 A.L.R. 22.  
8 (emphasis added)

### 9 RIGHT TO TRAVEL NOT A PRIVILEGE - NO LICENSE REQUIRED:

10 ● “No State government entity has the power to allow or deny passage on the highways, byways, nor  
11 waterways... transporting his vehicles and personal property for either recreation or business, but  
12 by being subject only to local regulation i.e., safety, caution, traffic lights, speed limits, etc. Travel  
13 is not a privilege requiring licensing, vehicle registration, or forced insurances.”  
14 *People v. Nothaus*, 147 Colo. 210.

#### 15 RIGHTS CANNOT BE LICENSED:

16 ● *Bouvier’s Law Dictionary*, 1914, p. 2961. “Those who have the right  
17 to do something cannot be licensed for what they already have right to  
18 do as such license would be meaningless.”

### 19 INALIENABLE RIGHT TO TRAVEL NOT CREATED BY STATE:

20 ● “Highways are for the use of the traveling public, and all have the right to use them in a reasonable  
21 and proper manner; the use thereof is an inalienable right of every citizen.” Statutes at Large  
22 California Chapter 412 p.83 “RIGHT — A legal RIGHT, a constitutional RIGHT means a RIGHT  
23 protected by the law, by the constitution, but government does not create the idea of RIGHT or  
24 original RIGHTS; it acknowledges them. . .” *Escobedo v. State* 35 C2d 870 in 8 Cal Jur 3d p.27

### 25 PUBLIC OWNERSHIP OF STREETS:

26 ● The streets belong to the public, and are primarily for the use of the public in the ordinary way.  
27 *Packard v. Banton*, 264 U.S. 140, 144 (1924) No. 126

### 28 HIGHWAYS - PUBLIC PROPERTY, PRIVATE USE:

29 ● "The business of using the public highways for profit, earned by transporting persons and property  
30 for hire, has been definitely excluded from the category of private or personal rights . . .that **the**  
31 **primary use of the state highways is the use for private purposes.**"  
32 *State v. Harris*, 76 S.W.2d 324, 168 Tenn. 159 (1934) (emphasis added)

### 33 HIGHWAYS - PRIVATE PURPOSES USE:

34 ● “It is well established law that the **highways of the state are public property**; that their primary  
35 and preferred use is for **private purposes**, and that their **use for purposes of gain is special and**  
36 **extraordinary**, which, generally at least, the legislature may prohibit or condition as it sees fit.”  
37 *Stephenson v. Binford*, 287 U.S. 251, 264; *Packard v. Banton*, 264 U.S. 140, 144, and cases



1 cited; *Frost Trucking Co. v. Railroad Comm.* U.S. 583, 592-593; *Hodge Co. v. Cincinnati*, 284 U.S.  
2 335, 337; *Johnson Transfer & Freight Lines v. Perry*, 47 F. (2d) 900, 902; *Southern Motorways v.*  
3 *Perry*, 39 F. (2d) 145, 147; *People's Transit Co. v. Henshaw*, 20 F. (2d) 87, 89; *Weksler v. Collins*,  
4 317 Ill. 132, 138-139; 147 N.E. 797; *Maine Motor Coaches v. Public Utilities*, 125 Me. 63, 65 130  
5 Atl. 866. (emphasis added)

#### 6 USE OF HIGHWAYS FOR PLEASURE:

7 ● “Every member of the public has the right to use the public roads in a reasonable manner for the  
8 promotion of his health and happiness. . .” “A public road is a way **open to all the people, without**  
9 **distinction**, for passage and repassage at their pleasure.” *Sumner County v. Interurban Transp. Co.*,  
10 141 Tenn. 493, 213 S.W. 412, 1918 Tenn. LEXIS 112, 5 A.L.R. 765 (1919). (emphasis added)

#### 11 PUBLIC HIGHWAYS OPEN AND FREE:

12 ● “A highway is a public way open and free to any one who has occasion to pass along it on foot  
13 or with any kind of vehicle.” *Schlesinger v. City of Atlanta*, 129 S.E. 861, 867, 161 Ga. 148, 159;

#### 14 HIGHWAY RIGHT TO TRAVEL NOT EXTENDED TO PRIVATE GAIN BUSINESS:

15 ● “Heretofore the court has held, and we think correctly, that while a Citizen has the Right to travel  
16 upon the public highways and to transport his property thereon, that Right does not extend to the use  
17 of the highways, either in whole or in part, as a place of business for private gain.” *Barney vs. Board*  
18 *of Railroad Commissioners*, 17 P.2d 82, or 93 Mont. 115:

#### 19 PERSONAL RIGHT OF LOCOMOTION UNCONDITIONAL:

20 ● “The right to travel is an “**unconditional personal right**,” a right whose exercise may not be  
21 conditioned.”. . . “Iron curtains have no place in a free world. . .” “Undoubtedly the **right of**  
22 **locomotion, the right to remove from one place to another according to inclination**, is an  
23 attribute of **personal liberty**, and the right, ordinarily, of free transit from or through the territory  
24 of any State is a right secured by the Constitution.” *Shapiro v. Thompson*, 394 U.S. 618, 643; *Dunn*  
25 *V. Blumstein*, 405 U.S. 330, 342 (1972) No. 70-13; *State v. Stroud*, 52 S.W. 697, 698 (emphasis  
26 added)

#### 27 COMMON AND FUNDAMENTAL RIGHT TO TRAVEL & TRANSPORT:

28 ● “The use of the highways for the purpose of travel and transportation is not a mere privilege, but  
29 a common and fundamental Right of which the public and the individual cannot be rightfully  
30 deprived.” *Barney vs. Board of Railroad Commissioners*, 17 P.2d 82

#### 31 RIGHT TO TRAVEL UNDER 14<sup>TH</sup> AMENDMENT:

32 ● The right to travel without undue restriction was the very first right recognized as a fundamental  
33 liberty under the Fourteenth Amendment to the U.S. Constitution.  
34 See *Crandall v. Nevada*, 73 U.S. (6 Wall.) 35 (1867).

#### 35 PERSONAL LIBERTY - RIGHT OF LOCOMOTION:

36 ● “Personal liberty largely consists of the right of locomotion – to go where and when one pleases

1 – only so far restrained as the rights of others may make it necessary for the welfare of all other  
2 citizens.” *City of Chicago v. Banker*, 112 Ill. App. 94 (1904).

3 RIGHT OF LOCOMOTION IS PERSONAL LIBERTY ATTRIBUTE:

4 ● Chief Justice Fuller observed that “[u]ndoubtedly the right of locomotion, the right to remove from  
5 one place to another according to inclination, is an attribute of personal liberty . . .” *Williams v.*  
6 *Fears*, 179 U.S. 270, 274 (1900)

7 UNCONDITIONAL FREEDOM TO TRAVEL:

8 ● “In any event, **freedom to travel** throughout the United States has long been recognized as a basic  
9 right under the Constitution.” “[T]he right to travel freely . . . it is a virtually **unconditional personal**  
10 **right**, guaranteed by the Constitution to us all.”  
11 *United States v. Guest*, 383 U. S. 745, 757-758 (1966) (emphasis added)

12 OUR TRAVEL FREEDOM HERITAGE:

13 ● “The **right to travel** is a part of the '**liberty**' of which the citizen cannot be deprived without due  
14 process of law under the **Fifth Amendment**.” “Freedom of movement across frontiers in either  
15 direction, and inside frontiers as well, was a part of our heritage. Travel abroad, like travel within  
16 the country, may be necessary for a livelihood.”  
17 *Kent v. Dulles*, 357 U.S. 116, 125, 126 (1958) 481, 125 (emphasis added)

18 **Argument: Misapplication of Statute**

19 **State’s presumption:** Accused is being charged presumptuously with alleged violations of  
20 permissive privilege statutes which lawfully apply to those who have voluntarily applied to the state  
21 in writing for the privilege of using the public highways for “unusual” and “extraordinary” use for  
22 private gain (hire) purposes, and have received a privilege tax receipt(s) upon acceptance in the form  
23 of a driver’s license and vehicle tags. ( “**The granting of a license therefore must be regarded**  
24 **as nothing more than a mere form of imposing a tax. . . But as we have already said, these**  
25 **licenses give no authority. They are mere receipts for taxes...**” *License Tax Cases*, 72 U.S. 5,  
26 Wall. 462, 471, 472 {1866})

27 **Presumption rebutted:** There are no evidentiary documents of record showing that Accused  
28 ever applied for or was issued a valid Tennessee driver’s license. Accuse rebuts the presumption  
29 that he is/was ever engaged in a taxable, regulable commerce activity requiring a privilege license,  
30 vehicle registration or insurance. (See ATTACHMENT A\_ - affidavit)

31 **Exercise of God-given right:** Accused declares that he regularly exercises his God-given,  
32 unalienable liberty right to travel/move/locomote in keeping with his right of conscience and

1 sincerely held religious beliefs to obey God’s command to worship him (Deut. 6:13), to fulfill  
2 Christ’s gospel commission (Mat. 28:19, 20), to visit the fatherless and widows in their affliction  
3 (James 1;27), to visit the sick and imprisoned (Mat. 25:36), to provide for his household (1 Tim.  
4 5:8), to do good works (Titus 2:7; 3:14) in the advancement of the Kingdom of Heaven, etc.

5 ***Determining individual rights:*** Accused asks this Court to recognize and protect his  
6 individual God-given, unalienable right to travel as a duty. SCOTUS has held,

7 ● “Individual rights protection is the **only legitimate reason for government to exist**” . .  
8 the duty of this court, as of every judicial tribunal, is limited to **determining rights of**  
9 **persons or of property.** . .” *Tyler v. Judges of Court of Registration*, 179 U.S. 405, 409  
10 (1900) (emphasis added)

11 ***Unlawful conversion and criminalization of right:*** The state has unlawfully converted  
12 Accused’s unalienable right to travel into a privilege in the indictment, and criminalized him besides  
13 with a fraudulent fabricated suspended driver’s license (discussed below).

14 ● "No state may convert a secured liberty into a privilege, and issue a license and fee  
15 for it. . . a person cannot be compelled "to purchase, through a license fee or a license  
16 tax, the privilege freely granted by the constitution."  
17 *Murdock v. Pennsylvania*, 319 U.S. 105 (emphasis added)

18 ● "The claim and exercise of a constitutional Right cannot be converted into a crime."  
19 *Miller vs. U.S.*, 230 F. 486, 489

20 ● "It has long been established that a State may not impose a penalty upon those who  
21 exercise a **right guaranteed by the Constitution** . . . `Constitutional rights would be of little  
22 value if they could be . . . ‘indirectly denied’. . . ." *Harman v. Forssenius*, 380 U.S. 528, 540  
23 (1965) (emphasis added)

24 ● "There can be no sanction or penalty imposed upon one because of this exercise of  
25 constitutional Rights." *Snerer vs. Cullen*, 481 F. 946

26 ● "The state cannot diminish Rights of the people." *Hurtado vs. California*, 110 US 516

## 27 **Relief Requested**

28 THEREFORE, Accused is sure that this Court knows “A STATUTE CANNOT BE ENFORCED

1 AGAINST A PARTY WHO WAS NOT AT THE TIME SUBJECT TO ITS CONSTRUCTION.”

2 In recognition of this fact and protecting Accused’s unalienable right to travel without state  
3 interference, and for the wrongful misapplication of the charging statutes, and the rebutted  
4 presumption that Accused was engaged in a privilege tax activity requiring a driver’s license,  
5 registration and insurance, the Accused moves the Court to enter an order dismissing this suit with  
6 prejudice and expunging Accused’s case file #36318. Further, Accused requests this Court to state  
7 in writing the facts and law relied on if this motion is denied.

8 (2)

9 **INSUFFICIENT INDICTMENT**

10 (See Judicial Notice “III”)

11 "When the **privilege ends**, the power of **regulation ceases**."

12 *Munn v. Illinois*, 94 U.S. 113, 147 (1876)

13 *No evidentiary facts to the essential elements*. The scope of TCA Title 55 is solely  
14 commerce<sup>24</sup> in nature and deals with permissive privilege statutes, requiring those engaged in  
15 interstate or intrastate commerce activity on the public highways, transporting people or goods for  
16 hire (“private gain”) by motor vehicle/freight motor carrier, to pay a privilege tax, obtain a license,

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24

● TCA 55-50-504. Driving while license cancelled, suspended or revoked — Minors — Forfeiture — Notice. “. . . **the department shall abide by all federal rules and regulations relative to the issuance, suspension, and revocation of driver licenses and qualification of drivers.**” (emphasis added)

● "The [commerce] power vested in Congress . . . is the power to **prescribe the rule** by which that commerce is to be governed. . ." *Gibbons v. Ogden*, 22 U.S. 1, Wheat. 1, p. 301-302 (1824); *Brown v. Maryland*, 12 Wheat. 419) *Leisy v. Hardin*, 135 U.S. 100, 108

● **49 CFR Subpart B** - Minimum Standards for Substantial Compliance by States  
The rules in this part apply to **all States**.

§ **384.301** Substantial compliance-general requirements.

(a) To be in substantial compliance with 49 U.S.C. 31311(a), a **State must meet each and every standard** of subpart B of this part by means of the demonstrable combined effect of its statutes, regulations, administrative procedures and practices, organizational structures, internal control mechanisms, resource assignments (facilities, equipment, and personnel), and enforcement practices.

● **Congress is powerless to regulate anything which is not commerce.**

*Carter Coal, et all vs. Gelwring*, 298 U.S. 238, 56 S.Ct. 855 (emphasis added)

● “. . .Congress may control the State laws so far as it may be necessary to control them for the regulation of commerce. . . .That regulation is designed for the entire result, . . . It produces a uniform whole...” *Gibbons v. Ogden* 22 U.S. 1

1 register motor vehicles<sup>25</sup> and purchase insurance. State's indictment lacks the **requisite evidentiary**  
2 **facts** to the essential elements of the terms of the charges, e.g. "privilege",<sup>26</sup> which is defined as ". .  
3 the exercise of an occupation or business which requires a license from some proper authority,  
4 designated by some general law, and is not free to all, or any, without such license. To constitute a  
5 privilege the grant must confer authority to do something which, without the grant, would be illegal,  
6 for if what is to be done under the license is open to all without it, the grant would be a nugatory."  
7 *37 C.J. LICENSES PART ONE: FOR OCCUPATIONS AND PRIVILEGES I. DEFINITIONS, NATURE, OBJECT, AND*  
8 *DISTINCTIONS § 2.* (Also, see footnote 26) Since no requisite evidentiary facts to the essential  
9 elements<sup>27</sup> of the term "privilege" appear on the face of the indictment, and no nexus or presumed  
10 causal connection between Accused and the Tennessee Motor Vehicle Code (TMVC) on 07/29/2017  
11 is shown therein, it is insufficient and void. Relevant high court holding follow:

12 ● "When the **privilege ends**, the power of **regulation ceases**." *Munn v. Illinois*, 94 U.S. 113,  
13 147 (1876) (emphasis added)

14 ● "Generally, the charge should be so laid in the indictment or information as to bring the  
15 case precisely within the statutory description of the offense, distinctly **alleging all material**  
16 **facts necessary to constitute the essential elements of the offense. Nothing is to be left**  
17 **to implication or intendment, or to conclusion, nor can the failure to aver material facts**  
18 **be cured by argument or inference.**" *Hale v. United States*, 89 F.2d 578 (C.C. W. Va.,  
19 1937). (emphasis added)

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25

● TCA 55-4-101 (a)(1)(2)(2) The registration and the fees provided for registration shall constitute a **privilege tax** upon the operation of motor vehicles.

26

Privilege

● "A privilege is whatever business, pursuit, occupation, or vocation, affecting the public, the Legislature chooses to declare and tax as such." *Corn et al. v. Fort*, 170 Tenn. 377, 385, 95 S.W.2d 620, 623, 106 A.L.R. 647

● "Any occupation, business, employment or the like, affecting the public, may be classed and taxed as a privilege." *Allen v. Pullman's Palace Car Company*, 24 S.Ct. 39, 191 U.S. 171 (U.S. 11/16/1903)

● Any **occupation, business, employment** or the like, **affecting the public**, may be classed and **taxed as a privilege**. *K. & O. Railroad v. Harris*, 99 Tennessee, 684. (emphasis added).

27

● "**The essential elements of the definition of privilege is occupation and business, and not the ownership simply of property, or its possession or keeping it.**"

*Phillips v. Lewis*, 3 Shann. Cas. 231. Nashville, January Term, 1877 (emphasis added)

1 ● "No essential element of the crime can be omitted without destroying the whole  
2 **pleading**. The omission cannot be supplied by intendment, or implication, and the charge  
3 must be made directly and not inferentially, or by way of recital. *United States v. Hess.*, 124  
4 U.S. 483, 8 S. Ct. 571 (emphasis added)  
5

6 ● A citation [indictment] "is not sufficient to set forth the offence in the words of the statute,  
7 unless those words of themselves fully, directly, and expressly, without any uncertainty or  
8 ambiguity, set forth **all the elements necessary to constitute the offence intended to be**  
9 **punished . . .** " *United States v. Carll*, 105 U.S. 611, 612. (emphasis added)

10 ● *Francis v. Franklin*, 105 S. Ct. 1965, 471 U.S. 307 "It is, therefore, error in the court  
11 to...find a material fact, of which there is no evidence from which it may be legally  
12 inferred...*Slocum v. New York Life Ins. Co.*, 228 U.S. 364, 418

13 ● "But we have never permitted Congress to anticipate that activity itself in order to regulate  
14 individuals not currently engaged in commerce.....,] commerce.....**prosecution of those.....**  
15 **not currently engaged in any commercial activity..... is fatal to the Government's**  
16 **effort to "regulate..."** *National Federation Of Independent Business, et al., Petitioners (No.*  
17 *11-393) v. Kathleen Sebelius, Secretary Of Health And Human Services*, 132 S. Ct. 2566  
18 (emphasis added)

19 ● "The power to regulate commerce presupposes the existence of commercial activity to be  
20 regulated. The language of the Constitution reflects the natural understanding that the power  
21 to regulate assumes there is already something to be regulated..... As expansive as our  
22 cases construing the scope of the commerce power have been, they all have one thing in  
23 common: **They uniformly describe the power as reaching "activity."**" *National*  
24 *Federation Of Independent Business, et al., Petitioners (No. 11-393) v. Kathleen Sebelius,*  
25 *Secretary Of Health And Human Services*, 132 S. Ct. 2566 (emphasis added)

## 26 **Relief Requested**

27 THEREFORE, In light of the maxim, "A STATUTE CANNOT BE ENFORCED AGAINST A  
28 PARTY WHO WAS NOT AT THE TIME SUBJECT TO ITS CONSTRUCTION,"and for the lack  
29 of requisite evidentiary facts of the essential elements of the terms of the indictment charging  
30 statutes, Accused moves this Court to enter an order quashing the indictment as insufficient and  
31 dismissing this case as well as expunging Accused's case file #36318. Accused requests this Court  
32 to state in writing the facts and law relied on if this motion is denied.

33 **(3)**

## 34 **FRAUDULENT FABRICATION OF EVIDENCE**

35 "*Fraud vitiates everything.*" (Maxim)

1           ***Fictitious “suspended license” is a fraud:*** The indictment charge of Accused driving on a  
2 “suspended license” is a fraud. The department of safety and homeland security (DHS) has admitted  
3 in writing (**ATTACHMENT B**) to fabricating a fictitious driver license out of thin air in Accused’s  
4 name, “assigning” it a license number, and suspending it, making it an arrestable B misdemeanor.  
5 Said suspension criminalizes Accused who has never applied for or obtained a valid Tennessee  
6 driver’s license; nor has he a legal duty to do so, since he has never been engaged in a taxable  
7 permissive privilege activity which requires a driver’s license, vehicle registration and insurance  
8 upon using the public highways in commerce (for hire).

9           ***Fraudulent fabrication:*** DHS Commissioners, DAVID PURKEY and JEFF LONG, in their  
10 individual capacities, without statutory authority and under the color or law, wrongfully “assigned”  
11 to Accused a fabricated, fictitious driver license (#133629637) out of thin air, and then suspended  
12 it, making it an arrestable class B misdemeanor. Copies of correspondence (see **ATTACHMENT**  
13 **C**) from DHS show said commissioners pretended said fictitious license to be legally equivalent to  
14 a valid statutorily “issued” driver license – which it is not – and have based an adverse action on  
15 non-statutory, arbitrary grounds. Commission LONG along with his predecessor, DAVID PURKEY  
16 have disobeyed the law and are responsible for an ongoing fraudulent and injurious action against  
17 Accused.

18           ***No nexus with permissive privilege statutes:*** Accused is in receipt of two pieces of  
19 documentary evidence from DHS department of safety acknowledging that Accuse never applied  
20 for, nor was he ever issued, a valid Tennessee driver license (see **ATTACHMENT A** - affidavit @  
21 ¶¶11, 12). Therefore, Accused has no nexus with Tenn. Code Ann. (“TCA”) Title 55, and is not  
22 subject to the commercial activity permissive privilege statutes therein as commissioners erroneously  
23 presume. (see **ATTACHMENT A**, affidavit @¶¶9, 10)

24           ***No evidence of commerce activity:*** There is no evidence of record that Accused has ever  
25 been engaged in a state-granted privileged activity in commerce on the public highways which would  
26 require the payment of a privilege tax, obtaining a driver license, vehicle registration, or insurance<sup>28</sup>

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<sup>28</sup> "The use of public highways by private intrastate and interstate carriers of goods by motor vehicle may be conditioned by the state upon the carrier's **obtaining a license**, complying with reasonable regulations, **paying a**

1 (see ATTACHMENT A - affidavit @ ¶¶7, 8). Since there are no evidentiary facts of record of a  
2 "privilege activity" of interstate and/or intrastate commerce, then TCA Title 55 permissive privilege  
3 statutes cannot be factually or truthfully applied, meaning, a fraudulent, extortion conspiracy scheme  
4 is being carried out against Accused. Commissioners knowingly and intentionally misapplied the  
5 statutes presumptuously in the absence of evidentiary facts. Commissioner LONG's aforesaid  
6 fabrication is unlawful, based on fraud, and is outside his official authority.

7 ***No statutory authority - rules violation:*** Assigning a fabricated fictitious driver's license  
8 and suspending it is clearly outside LONG's and PURKEY's legislative authority prescribed in TCA  
9 Titles 55 and 65. Moreover, it is in direct violation of federally mandated compliance by all States<sup>29</sup>  
10 with respect to federal interstates and intrastate commerce rules and regulations contained in 49  
11 United States Code (USC) – TRANSPORTATION, §§31101- 31317, and in 49 CFR §§ 383.1 -  
12 383.155, and §§384.101 - 384.409.

13 ***Federal and state statutory rules violated: Record keeping requirements.***

14 • ***Federal rule:*** 49 CFR § 384.231(d) ***Record keeping requirements.*** The State must  
15 conform to the record keeping requirements which include driver records and driver  
16 identification records, etc.

17 § 384.231(e) The department shall maintain a copy of all licenses as issued.

18 • ***Compliant State statute:*** TCA Title 55-50-204. ***Records to be kept by department — Fee***  
19 ***for furnishing copies.***

20 (a) The department of safety **shall file every application for a license received by** it and  
21 shall maintain suitable indices containing in alphabetical order:

22 (3) The name of every licensee whose license has been suspended or revoked by the  
23 department, and after each name note the reasons for this action.

24 (c)(2)(B)(3) The department shall retain on the driver history record all convictions,  
25 disqualifications and other licensing actions for violations for at least three (3) years or  
26 longer as required under 49 CFR 384.231(d)<sup>30</sup>

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**reasonable license fee and a tax**, for expenses of highway administration and maintenance and reconstruction of the highways covered by the license, and upon the filing of an **insurance policy** as security against injuries from the carrier's negligent operations to persons and property other than the passengers and property he carries." *Continental Baking Co. v. Woodring*, 286 U.S. 352, 365 (1932) (Emphasis added)

<sup>29</sup>49 CFR § 383.3 Applicability.

<sup>30</sup> 49 CFR § 384.231 Satisfaction of State disqualification requirement.

(a) Applicability. The provisions of §§ 384.203, 384.206(b), 384.210, 384.213, 384.215 through 384.219, 384.221



1            ***License issuance rules violated.*** Commissioners unlawfully bypassed all the federal and  
2 state license issuance requirements by arbitrarily “assigning” instead of statutorily “issuing” said  
3 driver license making it fictitious and void/bogus. There is no authority to fabricate false evidence.

4            ***Federal and state licensing issuing statutory requirements:***

5            *Federal requirements:*

- 6            ● 49 USC CHAPTER 313—COMMERCIAL MOTOR VEHICLE OPERATORS  
7            ● 49 USC § 31308. Commercial driver’s license. Requirements for the issuance of a  
8 driver’s license (abbreviated):  
9            – pass written and driving tests;  
10            – the license to be tamperproof;  
11            – the name and address of the individual issued the license;  
12            – a physical description of the individual;  
13            – the social security account number or other number or information the Secretary  
14 decides is appropriate to identify the individual;  
15            – the class or type of commercial motor vehicle the individual is authorized to  
16 operate;  
17            – the name of the State that issued the license;  
18            – the dates between which the license is valid.  
19            ● 49 CFR § 384.201 Testing program.  
20            (a) The State shall adopt and administer a program for testing and ensuring the fitness  
21 of persons to operate commercial motor vehicles (CMVs) in accordance with the  
22 minimum Federal standards contained in part 383 of this title.  
23            ● 49 CFR § 384.202 Test standards.  
24            No State shall authorize a person to operate a CMV unless such person passes a  
25 knowledge and driving skills test for the operation of a CMV in accordance with part  
26 383 of this title.

27            *State requirements:*

- 28            ● TCA Title 55, Part 3 - Application, Examination, and Issuance  
  
29            ● TCA Title 55-50-321 Applications.  
30            (a) must use designated application form, show birth certificate, \$2.00 fee payment,  
31 proof of Tennessee residency.  
32            (b) proof of age and identification.  
33            (c)(1)(A) Every application shall state the full name, date and place of birth, sex,

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through 384.224, and 384.231 of this part **apply to the State of licensure of the person affected** by the provision.  
The provisions of § 384.210 of this part also apply to any State to which a person makes application for a transfer  
CDL. (emphasis added)

1 county of residence, residence address, including the street address and number or  
2 route and box number, or post office box number if the applicant has no bona fide  
3 residential street address, of applicant, height, weight, hair and eye color, social  
4 security number, if the applicant has been issued a social security number, and  
5 whether any such license has ever been suspended or revoked, or whether an  
6 application has ever been refused, and, if so, the date of and reason for the  
7 suspension, revocation, or refusal, and other information as the department may  
8 require to determine the applicant's identity, competency, and eligibility  
9 (C(i)(ii) applicant is U.S. citizens and a lawful resident.

10 **No authority to “assign” license:** The Title 40 statute cited below does NOT authorize the  
11 “assigning” of fabricated fictitious driver licenses and revocations . Here’s what the statute says:

12 ● **TCA 40-24-105.** Collection of fines, costs and litigation taxes -- Installment payment  
13 plan -- Suspended license -- Restricted license -- Conversion to civil judgment --  
14 Settlement.

15 (b)

16 (1) Any person who is **issued** a license under title 55 [ONLY FOR AN EXISTING  
17 STATUTORY ISSUED LICENSE], and who has not paid all litigation taxes, court costs,  
18 and fines assessed as a result of disposition of any offense under the criminal laws of this  
19 state within one (1) year of the date of the completion of the sentence shall **enter into an**  
20 **installment payment plan** with the clerk of the court ordering disposition of the offense to  
21 make payments on the taxes, costs, and fines owed. [NOTHING SAID HERE ABOUT  
22 “ASSIGNING” A FICTITIOUS LICENSE AS FALSELY ALLEGED] (emphasis added)

23 ● **TCA 55-50-102(48)** "Revocation of driver license" means the termination by formal  
24 action of the department of a person's driver license or privilege to operate a motor vehicle  
25 on the public highways, which termination shall not be subject to renewal or restoration  
26 except that an application for a new license may be presented and acted upon by the  
27 department after the expiration of at least one (1) year after the date of revocation; [NO  
28 LEGISLATIVE AUTHORITY SHOWN FOR “ASSIGNING” A FICTITIOUS LICENSE  
29 OUTSIDE STATUTORY REQUIREMENTS]

30 **Non-statutory grounds for fabrication;** The reasons given in DSHS notices mailed to  
31 Accused regarding the suspension of said fictitious driver license are, (1) failure to show liability  
32 insurance, and (2) failure to satisfy fines/penalties re. citations 37957 (12/10/2013) and 37958  
33 (12/10/2013). These grounds are non-statutory (false), i.e. they are not listed as causes/offenses for  
34 disqualification/suspension in either federal or state law as shown below.

35 ● Federal regulations; 49 CFR §383.51 **Disqualification of drivers.**  
36 § 383.51(a)(7)(b) Disqualification for **major offenses**, includes:

1 DUI, drug use, high blood alcohol level, refusing to take alcohol test, leaving scene  
2 of an accident, using vehicle to commit felony, driving on prior revoke/suspended  
3 license, manslaughter/homicide, using vehicle to transport drugs, using vehicle in  
4 human trafficking.

5 §383.51(a)(7)© **Disqualification for serious traffic offenses**, includes:  
6 speeding, reckless driving, improper lane changes, following too closely, violating  
7 traffic control laws, driving a CMV without license, wrong class of license, texting  
8 while driving, phone holding while driving.

9 ● *State statute*: TCA Title 55-50-102(51) “**Serious traffic violation**” means:

10 (A) Excessive speeding, as defined by the secretary by regulation; (B) Reckless,  
11 careless or negligent driving, as defined under § 55-10-205;(C) A violation of any  
12 state or local law relating to motor vehicle traffic control, other than a parking  
13 violation, arising in connection with an accident or collision resulting in death or  
14 personal injury to any person, or property damage;(D) Driving a commercial motor  
15 vehicle without obtaining a commercial driver license; (E) Driving a commercial  
16 motor vehicle without a commercial driver license in the driver's possession;(F)  
17 Driving a commercial motor vehicle without the proper class of commercial driver  
18 license and endorsements for the specific vehicle group being operated or for the  
19 passengers or type of cargo being transported; or (G) Any other violation of a state  
20 or local law relating to motor vehicle traffic control, other than a parking violation,  
21 that the secretary determines by regulation to be serious.

22 ***Falsified tax receipt***: The high courts have stated that a license is merely a tax receipt. By  
23 fabricating a fictitious driver license Commissioners LONG and PURKEY created a falsified tax  
24 receipt in Accused’s name which is fraud. Here is what the Supreme Court of the United States  
25 (“SCOTUS”) has declared:

26 ● “**The granting of a license therefore must be regarded as nothing more than a mere**  
27 **form of imposing a tax. . . But as we have already said,these licenses give no authority.**  
28 **They are mere receipts for taxes...** (emphasis added)  
29 *License Tax Cases*, 72 U.S. 5, Wall. 462, 471, 472 {1866}.

30 ● “Not having a **tax receipt** [e.g. driver license] or other papers to engage in some business  
31 does not prove violation of a tax law **when no business can be shown.**”  
32 *United States v. Resnick*, 299 U.S. 207, 209, 81 L. Ed. 127, 57 S. Ct. 126 (1936) (emphasis  
33 added)

34 ***Fraud upon the state***: Despite having no evidence that Accused was engaged in an interstate  
35 and/or intrastate commerce activity/trade for profit on the public highways, commissioners  
36 nevertheless arbitrarily created said fictitious license which is a fraud upon the State law, according

1 to SCOTUS’s ruling in *Gibbons* and *Resnick*.

2 ● *Gibbons v. Ogden*, 22 U.S 1, Wheat. 1 (1824)“But, when no trade is carried on, or  
3 intended to be carried on, under the license, it is clear that **the license is a fraud** upon the  
4 State law, if that law is in other respects valid.” (emphasis added)

5 ● “Not having a **tax receipt** [e.g. driver license] or other papers to engage in some business  
6 does not prove violation of a tax law **when no business can be shown.**”  
7 *United States v. Resnick*, 299 U.S. 207, 209, 81 L. Ed. 127, 57 S. Ct. 126 (1936) (emphasis  
8 added)

9 ***Permissive privilege status presumption rebutted:*** Commissioner LONG’s DSHS notice  
10 letters stated that Accused’s so-called “privilege to drive’ was suspended. “Privilege” in the context  
11 of commercial highway usage means a for-profit business, occupation or trade affecting the public  
12 interest transporting property or passengers for hire. There is no evidence of record that Accused  
13 was/is engaged in a regulated, taxable permissive privilege in commerce on the public highways of  
14 Tennessee when ticketed on three occasions.. Commissioners’ presumption and frivolous assertion  
15 that Accused was/am subject to the commercial permissive privilege statutes of TCA title 55 is  
16 hereby rebutted, having no merit-in-fact. (see ATTACHMENT A - affidavit @ ¶¶9, 10) The  
17 following cite references regarding the truth of “privilege” and “privilege tax” were ignored.

18 ●TCA 55-4-101 (a)(1)(2)(2) The registration and the fees provided for registration shall constitute  
19 a **privilege tax** upon the operation of motor vehicles.

20 ● *Privilege tax.* A tax on the **privilege of carrying on a business or occupatin** for which  
21 a license or franchise is required. *Gulf & Ship Island R. Co., v. Hewes*, 183 U.S. 66.  
22 Black’s Law Dictionary, 6<sup>th</sup> Ed., p. 1198 (emphasis added)

23 ●**"When the privilege ends, the power of regulation ceases."**

24 *Munn v. Illinois*, 94 U.S. 113, 147 (1876) (emphasis added)

25 ● Privileges are **special rights**, belonging to the individual or class, and not to the mass;  
26 properly, an exemption from some general burden, obligation or duty; **a right**  
27 **peculiar to some individual or body.** *Lonas v. State*, 50 Tenn. 287, 307.  
28 06/06/60 *Jack Cole Company v. Alfedd T. MacFarland*, 337 S.W.2d 453, 206 Tenn.  
29 694 (emphasis added)

30 ● “Any occupation, business, employment or the like, affecting the public, may be classed  
31 and **taxed as a privilege.**” *K. & O. Railroad v. Harris*, 99 Tennessee, 684 (emphasis  
32 added)

33 ● **“The essential elements of the definition of privilege is occupation and business, and  
34 not the ownership simply of property, or its possession or keeping it.”**

35 *Phillips v. Lewis*, 3 Shann. Cas. 231. Nashville, January Term, 1877 (emphasis

1 added)

- 2 ● ". . . **every ingredient** of which the offence is composed must be accurately and clearly  
3 alleged." *United States v. Cook*, 17 Wall. 174 (emphasis added)
- 4 ● "**The power to regulate commerce presupposes the existence of commercial activity**  
5 **to be regulated.** The language of the Constitution reflects the natural understanding  
6 that the power to regulate **assumes there is already something to be regulated**...As  
7 expansive as our cases construing the scope of the commerce power have been, they  
8 all have one thing in common: **They uniformly describe the power as reaching**  
9 **"activity."**" *National Federation of Independent Business, et al., Petitioners* (No.  
10 11-393) v. *Kathleen Sebelius, Secretary of Health and Human Services*, 132 S. Ct.  
11 2566. (emphasis added)
- 12 ● A public highway is such a passageway as any and **all members of the public** have an  
13 **absolute right** to use as distinguished from a **permissive privilege** of using same.  
14 *Standard Life Ins. Co. v. Hughes*, 203 Tenn. 636, 315 S.W.2d 239, 243, 1958 Tenn.  
15 LEXIS 229 (1958). (emphasis added)
- 16 ● "**A privilege tax cannot be imposed upon anything or any act, unless it constitutes a**  
17 **business, occupation, pursuit or vocation.** Such use for pleasure does not constitute  
18 a business, occupation, pursuit or vocation. **Pleasure taking does not constitute a**  
19 **business, occupation, pursuit or vocation, in the sense of the definition of a**  
20 **taxable privilege; and therefore is not subject to privilege taxation."**  
21 *Shannon's Compilation of Tennessee Statutes*, Vol. 1, 1917 (emphasis added)
- 22 ● TCA 67-4-401. Generally. Engaging in the various businesses mentioned in this part is  
23 declared to be a **privilege** for state purposes and **taxable** by the state alone, and any  
24 person so engaged shall pay to the commissioner of revenue, unless otherwise  
25 provided, the tax stated in this part. No county or municipality may impose any **tax**  
26 **upon the privileges** mentioned in this part, except license fees upon motor vehicles  
27 that might be imposed in the absence of this part. (emphasis added)
- 28 ● License. *Streets and Highways*. A permit to use street is a mere license revocable at  
29 pleasure. *Lanham v. Forney*, 196 Wash. 62, 81 P.2d. 777, 779. The **privilege** of  
30 using the streets and highways by the operation thereon of motor carriers for hire can  
31 be **acquired only by permission or license** from the state or its political  
32 subdivisions. *Black's Law Dictionary*, 6<sup>th</sup> Ed., p. 920 (emphasis added)
- 33 ● TCA §55-50- 301(a)(4) Any person licensed as a driver may exercise the privilege granted  
34 upon all streets and highways in this state and shall not be required to obtain any  
35 other license to exercise the privilege by any county, municipal or local board, or  
36 body having authority to adopt local police regulations.
- 37 ● "The tax is on the occupation, business, pursuits, vocation, or calling, it being one in  
38 which a profit is supposed to be derived by its exercise from the general public, and  
39 not a tax on the property itself or the mere ownership of it." .... "The legislature cannot,  
40 under our constitution, declare the simple enjoyment, possession, or ownership of  
41 property of any kind a privilege, and tax it as such. It may declare the business,  
42 occupation, vocation, calling, pursuit, or transaction, by which the property is put to

1 a peculiar use for a profit to be derived from the general public, a privilege and tax  
2 it as such, but it cannot tax the ownership itself as a privilege. The ownership of the  
3 property can only be taxed according to value." *Phillips v. Lewis*, 3 Shann. Cas. 231.  
4 Nashville, January Term, 1877 (emphasis added)

- 5 ● It is held that a tax upon a common carriers by motor vehicles is based upon a reasonable  
6 classification, and does not involve any unconstitutional discrimination, although it  
7 **does not apply to private vehicles, or those used by the owner in his own**  
8 **business, and not for hire."** *Desser v. Wichita*, (1915) 96 Kan. 820; *Iowa Motor*  
9 *Vehicle Asso. v. Railroad Comrs.*, 75 A.L.R. 22. (emphasis added)

10 **Acts of official oppression:** LONG and PURKEY, as a public servants with superior  
11 knowledge of the law, knew or should have known that their action of fabricating a fictitious  
12 suspended driver license (i.e. false evidence) in Accused's name was

- 13 (1) unlawful – without statutory authority under color of law;
- 14 (2) without Accused's knowledge and consent;
- 15 (3) without Accused voluntarily submitting an application as required by statute;
- 16 (4) an effort to coerce Accused into an inapplicable commercial driving privilege  
17 classification;
- 18 (5) criminalizing the exercise and enjoyment of Accused's constitutionally secured liberty  
19 right to freely travel on the public highways in the ordinary course of life, business and  
20 pleasure in his private conveyance;<sup>31</sup>
- 21 (6) the cause of numerous arrests and resultant mistreatment, injuries and economic damages;
- 22 (7) a non-statutory leveraging scheme to aid the court in debt collection contrary to TCA  
23 §40-24-105(b).

24 This meets the following statutory description of official oppression.

25 ● **Official oppression.** TCA § 39-16-403

26 (a) A public servant acting under color of office or employment commits an offense  
27 who:

- 28 (1) Intentionally subjects another to mistreatment or to arrest, detention, stop, frisk,  
29 halt, search, seizure, dispossession, assessment or lien when the public servant knows  
30 the conduct is unlawful; or
- 31 (2) Intentionally denies or impedes another in the exercise or enjoyment of any right,  
32 privilege, power or immunity, when the public servant knows the conduct is

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<sup>31</sup> ● "The claim and exercise of a constitutional [protected] right cannot be converted into a crime." *Miller vs. US*, 230 F 486, 489

● "No state may convert a secured liberty into a privilege, and issue a license and fee for it." *MURDOCK v. PENNSYLVANIA*, 319 U.S. 105 (emphasis added)

1 unlawful.

2 (b) For purposes of this section, a public servant acts under color of office or  
3 employment if the public servant acts, or purports to act, in an official capacity or  
4 takes advantage of the actual or purported capacity.

5 (c) An offense under this section is a Class E felony.

6 (d) Charges for official oppression may be brought only by indictment, presentment  
7 or criminal information; provided, that nothing in this section shall deny a person  
8 from pursuing other criminal charges by affidavit of complaint.

9 **Unauthorized exercise of official power.** Commissioners, as public servants, suspending  
10 the fabricated fictitious driver license in Accused's name (which made it a class B misdemeanor  
11 subject to arrest) and by entering this falsified information on a driver history data base, knowingly  
12 and intentionally put Accused in jeopardy of an arrest if stopped by law enforcement, which occurred  
13 a number of times. This act violates the law relating to their public office, and constitutes an  
14 unauthorized exercise of official power, i.e. official misconduct. (See TCA § 39-16-402)

### 15 **Relief requested**

16 THEREFORE, "A STATUTE CANNOT BE ENFORCED AGAINST A PARTY WHO WAS NOT  
17 AT THE TIME SUBJECT TO ITS CONSTRUCTION". This maxim applies to Accused's status  
18 in this instant matter, i.e. no evidence of record has shown Accused is subject to TCA Title 55's  
19 taxable, permissive privilege statutes. Accused moves the Court to enter an order (1) dismissing this  
20 case for fraud, (2) expunging this case from Accused's record, and (3) commanding that the  
21 Department of Safety and Homeland Security erase Accused's "suspended license" from their  
22 statewide data base. Further, Accused requests this Court to state in writing the facts and law relied  
23 on if this motion is denied.

### 24 **Final Relief Requested**

25 THEREFORE, in recognition of Accused, Arthur Jay Hirsch's, unalienable right to travel, and for  
26 one or more of the grounds set forth above in support thereof, Accused moves the Court to enter an  
27 order (1) dismissing this case, (2) ordering the expungement of Accused's case file #36138, and (3)  
28 ordering the removal of Accused's "suspended license" status from the DHS statewide data base to  
29 avoid further arrest potential. Further, Accused requests this Court to state in writing the facts and  
30 law relied on if this motion is denied.

1 I hereby declare under penalty of perjury under the laws of the United States of America that  
2 the foregoing is true and correct. Executed on July 15, 2022. Pursuant to 28 U.S.C. § 1746

3 By: \_\_\_\_\_  
4 Arthur Jay Hirsch  
5 1029 W. Gaines St.  
6 Lawrenceburg, TN 38464

7 CERTIFICATE OF SERVICE

8 I hereby certify that a copy of the above document was delivered to district attorney general,  
9 BRENT COOPER, on July 15, 2022.

10 \_\_\_\_\_  
11 Arthur Jay Hirsch