

Case No. M2023-00575-CCA-R3-CD
M2023-00575-SC-UNK-00
**IN THE TENNESSEE SUPREME COURT,
NASHVILLE**

FILED

JUL 31 2023

Clerk of the Appellate Courts
Rec'd By lmm

Arthur Jay Hirsch,)
))
Claimant,)
))
vs.)
))
STATE OF TENNESSEE, *et al*,)
))
Defendant(s))
/)

Roger A. Page, Chief Justice
EMERGENCY STAY & RULING
REQUESTED

**EMERGENCY STAY AND RULING REQUEST;
CONSTITUTIONAL CHALLENGE TO APPELLATE RULE**

Arthur Jay Hirsch, constitutional rights claimant (hereinafter, “Claimant”), without counsel, files this application/petition/address for emergency stay and ruling request, challenging Tennessee Rules of Appellate Procedure, Rule 6(a) as unconstitutional. Claimant alleges that the Tennessee supreme court’s non-legislative claims processing rule which demands payment of \$550.00 litigation tax/filing fee (“tax/fee”) as a condition precedent to him exercising his protected right to appellate review “*without sale, denial or delay*,” is facially **UNCONSTITUTIONAL**. Said rule amounts to a “**JUSTICE-FOR-SALE**” or “**PAY-TO-PLAY**” scheme that is contrary to the Rule of Law by violating Claimant’s rights secured by the Tennessee and U.S. Constitutions, and by disregarding prohibitive statutes and clearly established black-letter law as set forth below. **NOTICE: Claimant has been given until August 8, 2023 deadline to pay said \$550.00 tax/fee by CCA order or else his six-year-old misdemeanor case will be dismissed resulting in irreparable injury.**

“It has long been established that the loss of constitutional freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion) (citing *New York Times Co. v. United States*, 403 U.S. 713 (1971)). *Caneisha Mills, et al., v. District of Columbia* No. 08-7127, U.S. Court of Appeals for the District of Columbia, July 10, 2009.

Time, therefore, is of the essence and Claimant hereby requests this Court to immediately order a

stay to all further proceedings of his case in the Court of Criminal Appeals until a ruling is made in writing (citing facts and law), adjudicating his protected right to appeal “*without sale, denial or delay*” under the pertinent provisions of the Tennessee and U.S. constitutions,¹ and relevant authorities cited herein, *to wit*

➤Tennessee Constitution, Article 1, §2

That government being instituted for the common benefit, the doctrine of non-resistance against arbitrary power and oppression is absurd, slavish, and destructive of the good and happiness of mankind.

➤Tennessee Constitution, Article 1, §17 (in pertinent part)

That all courts shall be open. . . and right and justice administered without sale, denial, or delay.

➤Tennessee Constitution, Article 11, §16

The Declaration of Rights hereto annexed is declared to be a part of the Constitution of this State and Shall never be violated on any pretence whatever. And to Guard against transgressions of the high Powers which we have delegated, we declare that everything in the Bill of Rights contained is excepted out of the General Powers of Government and shall for ever [i.e. forever] remain inviolate.

➤“Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them.” *Miranda v. Arizona*, 384 U.S. 436, 491 (1966).

➤ T.C.A. § 16-3-403. Rules promulgated by The Tennessee Supreme Court shall not “abridge, enlarge, or modify any substantive right, and shall be consistent with the constitutions of the United States and Tennessee.”

➤The U. S. Supreme Court has previously held that, “A state may not impose a charge for the enjoyment of a right granted by the Federal Constitution.” No state may convert a secured liberty into a privilege. *Murdock v. Pennsylvania*, 319 U.S. 105, 113 (1943).

➤Tennessee Constitution, Article 1, §23 declares, “That the citizens have a right, in a peaceable manner, to assemble together for their common good, to instruct their representatives, and to apply to those invested with the powers of government for redress of grievances, or other proper purposes, by address or remonstrance.”

¹Claimant has learned from constitutional research, the **right of petition and the right of audience are inviolate rights** secured by the **First Amendment**, and/or reserved under the **Ninth Amendment** of the U.S. Constitution, and are made applicable to the several States pursuant to the **Fourteenth Amendment**.

➤ The Constitution of these United States is the supreme law of the land. **Any law that is repugnant to the Constitution is null and void of law. “. . . and that courts, as well as other departments, are bound by that instrument.”** *Marbury v. Madison*, 5 U.S. 137, 180 (1803).

➤ “We must not be understood by what has been said as conceding that the question of a denial of the equal protection of the laws can never arise under the taxing statutes of a state. On the contrary, **the power to tax is so far limited that it cannot be used to impair or destroy rights that are given or secured by the supreme law of the land.**”
Connolly v. Union Sewer Pipe Co., 184 U.S. 540, 563 (1902).

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

➤ **“It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon.** Their motto should be *obsta principiis*.”
Williams v. State, 506 S.W.2d 193 (Tenn.Crim.App. 1973).

➤ “When the privilege ends [e.g. litigation tax], the power of regulation ceases.”
Munn v. Illinois, 94 U.S. 113, 147 (1876).

SUMMARY FACTS & ARGUMENT

1. UNCONSTITUTIONAL RULE ALLEGED. Claimant challenges the aforesaid specific court rule as violative of his constitutionally secured rights to free access to the courts **“without sale, denial or delay,”** to address public servants, to equal protection of the laws and to due process.
2. ABRIDGMENT OF RIGHTS PROHIBITED. Tennessee supreme court rules shall not “abridge, enlarge, or modify any substantive right, and shall be consistent with the constitutions of the United States and Tennessee.” (TCA 16-3-403)
3. EXCEPTED/IMMUNE FROM RULE. Claimant is constitutionally excepted/immune from Tennessee supreme court’s said non-legislative claims processing rule per Art. 11, §16, and Art. 1, §17 above.
4. NO RULE MAKING ABROGATING RIGHTS. U.S. Supreme Court (“SCOTUS”) has held that “Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them.” *Miranda v. Arizona*, 384 U.S. 436, 491 (1966).
5. FILING FEE IS PRIVILEGE TAX. Said litigation tax/filing fee is a privilege tax; Tennessee Constitution, Article II §28. Claimant’s personal exercise of his right in freely petitioning the

Tennessee Court of Criminal Appeals to hear his case (“without sale, denial and delay”) is NOT the type of commercial activity or privilege in view upon which a tax may be levied pursuant to delegated authorities. Section 28 of Article 2 of the Constitution definitely indicates two objects and two modes of taxation. The object of the first class (ad valorem tax) is property taxed equally and uniformly upon its value, and the object of the second (privilege tax) is privileges classified and taxed according to the sound discretion of the Legislature. **Privilege tax is defined as a “tax on the privilege of carrying on a business or occupation for which a license or franchise is required.”** *Gulf & Ship Island R. Co., v. Hewes*, 183 U.S. 66. Black’s Law Dictionary, 6th Ed., p. 1198. The privilege tax “is on the occupation, avocation, or calling, it being one in which a profit is supposed to be derived, by its exercise, from the general public.” *Phillips v. Lewis*, 3 Tenn. Cas. 230, 244.. Like the other two branches of government, **the judicial branch must be commonly (equally) accessible to every citizen alike (“common benefit” - Art. 1, §2)**, and is to be funded by common taxation (by those NOT engaged in “privilege” activity) through appropriations made by the Legislature as provided in Art. II, §24.

6. UNLAWFUL CONVERSION. Tennessee supreme court’s rule has, in fact, converted Claimant’s right to freely appeal into a regulable, taxable privilege without constitutional authority to do so.
7. PROHIBITION OF STATE CONVERSION OF RIGHTS. SCOTUS has held that “A state may not impose a charge for the enjoyment of a right granted by the Federal Constitution.” No state may convert a secured liberty into a privilege. *Murdock v. Pennsylvania*, 319 U.S. 105, 113 (1943); Further, “The power to tax is so far limited that it cannot be used to impair or destroy rights that are given or secured by the supreme law of the land.” *Connolly v. Union Sewer Pipe Co.*, 184 U.S. 540, 563 (1902).
8. DUTY TO PROTECT RIGHTS. Tennessee supreme court has a duty to recognize that the aforesaid rule abrogates Claimant’s aforementioned rights, and it is incumbent upon the Court to protect his inherent rights by exempting him from the unconstitutional litigation tax/filing fee. “It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be *obsta principiis*.” *Williams v. State*, 506 S.W.2d 193 (Tenn.Crim.App. 1973).

EMERGENCY STAY AND RULING REQUEST

Claimant urgently requests the Court as follows:

- (1) EXPEDITED CONSIDERATION BY THE COURT. To give immediate expedited consideration to this emergency request without delay due to the above referenced August 8, 2023, rapidly approaching deadline.
- (2) EMERGENCY STAY. To promptly issue an order staying all appellate proceedings in the Court of Criminal Appeals until a ruling is made whether the \$550.00 fee is or is not constitutional.
- (3) HEARING REQUESTED. To grant and schedule a hearing before this Court to present oral arguments.
- (4) WRITTEN OPINION: To render a written opinion citing with specificity the facts and law relied on in support or denial of this constitutional challenge to Tennessee Rules of Appellate Procedure, Rule 6(a).

Respectfully submitted on July 31, 2023.

By Arthur Jay Hirsch
Arthur Jay Hirsch
1029 W. Gaines Street
Lawrenceburg, TN 38464
310-948-1668

cc; Jonathan Skrmetti, Attorney General and Reporter.
P.O. Box 20207
Nashville, TN 37202.